

Nos. 23-13916 & 23-13921  
(consolidated with No. 23-13914)

---

**In the United States Court of Appeals  
for the Eleventh Circuit**

---

COAKLEY PENDERGRASS et al.,  
*Plaintiffs-Appellees,*

ANNIE LOIS GRANT et al.,  
*Plaintiffs-Appellees,*

v.

SECRETARY OF STATE OF GEORGIA,  
*Defendant-Appellant.*

---

On Appeal from the United States District Court  
for the Northern District of Georgia  
Nos. 1:21-cv-05339 & 1:22-cv-00122—Steve C. Jones, Judge

---

***PENDERGRASS AND GRANT APPELLEES’  
SUPPLEMENTAL APPENDIX  
VOLUME I OF VI***

---

Joyce Gist Lewis	Abha Khanna	Michael B. Jones
Adam M. Sparks	Makeba Rutahindurwa	ELIAS LAW GROUP LLP
KREVOLIN & HORST, LLP	ELIAS LAW GROUP LLP	250 Mass. Ave NW,
One Atlantic Center	1700 Seventh Ave,	Suite 400
1201 W. Peachtree St. NW,	Suite 2100	Washington, DC 20001
Suite 3250	Seattle, WA 98101	(202) 968-4490
Atlanta, GA 30309	(206) 656-0177	
(404) 888-9700		

*Counsel for Plaintiffs-Appellees in Nos. 23-13916 & 23-13921*

## INDEX OF APPENDIX

### Docket No.

#### **Volume I**

Complaint .....	1
Order on Motions for Preliminary Injunction .....	97

#### **Volume II**

Order on Motions for Preliminary Injunction (cont.) .....	97
Declaration of William S. Cooper .....	174-1
Expert Report of Orville Vernon Burton .....	174-5
Expert Report of Loren Collingwood .....	174-6

#### **Volume III**

Expert Report of Loren Collingwood (cont.).....	174-6
Expert Report of John R. Alford.....	174-8
Pretrial Order .....	231
Excerpts from Trial Transcript (9/6/2023 AM).....	279
Excerpts from Trial Transcript (9/8/2023 PM).....	281
Excerpts from Trial Transcript (9/14/2023 AM).....	285
Order and Memorandum of Decision .....	286

#### **Volume IV**

Order and Memorandum of Decision (cont.) .....	286
--	-----

#### **Volume V**

Order and Memorandum of Decision (cont.) .....	286
Excerpts from Trial Transcript (9/11/2023 PM).....	292



Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) .....	26
---	----

**Volume VI**

Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) (cont.).....	26
--	----

Certificate of Service

# *Pendergrass* Doc. 1

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

COAKLEY PENDERGRASS; TRIANA  
ARNOLD JAMES; ELLIOTT  
HENNINGTON; ROBERT RICHARDS;  
JENS RUECKERT; and OJUAN GLAZE,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official  
capacity as the Georgia Secretary of State;  
REBECCA N. SULLIVAN, in her official  
capacity as the Acting Chair of the State  
Election Board; SARA TINDALL  
GHAZAL, in her official capacity as a  
member of the State Election Board;  
MATTHEW MASHBURN, in his official  
capacity as a member of the State Election  
Board; and ANH LE, in her official  
capacity as a member of the State Election  
Board,

Defendants.

CIVIL ACTION FILE  
NO. \_\_\_\_\_

**COMPLAINT**

1. Plaintiffs bring this action to challenge the Georgia General Assembly's congressional redistricting plan, the Georgia Congressional Redistricting Act of 2021 ("SB 2EX"), on the ground that it violates Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301.

2. In undertaking the latest round of congressional redistricting following the 2020 decennial census, the General Assembly has diluted the growing electoral strength of the state’s communities of color. Faced with Georgia’s changing demographics, the General Assembly has ensured that the growth of the state’s Black population will not translate to increased political influence at the federal level.

3. The 2020 census data make clear that minority voters in Georgia are sufficiently numerous and geographically compact to form a majority of eligible voters—which is to say, a majority of the voting age population<sup>1</sup>—in multiple congressional districts throughout the state, including an additional majority-Black district in the western Atlanta metropolitan area. This additional majority-Black district can be drawn without reducing the total number of districts in the region and

---

<sup>1</sup> The phrases “majority of eligible voters” and “majority of the voting age population” have been used by courts interchangeably when discussing the threshold requirements of a vote-dilution claim under Section 2 of the Voting Rights Act. Compare, e.g., *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1019 (8th Cir. 2006) (“[T]he first *Gingles* precondition . . . ‘requires only a simple *majority of eligible voters* in a single-member district.’” (emphasis added) (quoting *Dickinson v. Ind. State Election Bd.*, 933 F.2d 497, 503 (7th Cir. 1991))), with *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009) (plurality op.) (“[T]he majority-minority rule relies on an objective, numerical test: Do minorities make up *more than 50 percent of the voting-age population* in the relevant geographic area?” (emphasis added)). The phrase “majority of eligible voters” when used in this Complaint shall also refer to the “majority of the voting age population.”

statewide in which Black voters have the opportunity to elect candidates of their choice.

4. Rather than draw this additional congressional district to allow Georgians of color the opportunity to elect their preferred candidates, the General Assembly instead chose to “pack” some Black voters in the Atlanta metropolitan area and “crack” other Black voters among rural-reaching, predominantly white districts.

5. Section 2 of the Voting Rights Act prohibits this result and requires the General Assembly to draw an additional congressional district in which Black voters have the opportunity to elect their candidate of choice.

6. By failing to create this district, the General Assembly’s response to Georgia’s changing demographics has had the effect of diluting minority voting strength in the state.

7. Accordingly, Plaintiffs seek an order (i) declaring that SB 2EX violates Section 2 of the Voting Rights Act; (ii) enjoining Defendants from conducting future elections under SB 2EX; (iii) requiring adoption of a valid plan for new congressional districts in Georgia that comports with Section 2 of the Voting Rights Act; and (iv) providing any and such additional relief as is appropriate.

## **JURISDICTION AND VENUE**

8. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 1357.

9. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper under 28 U.S.C. § 1391(b) because “a substantial part of the events or omissions giving rise to the claim occurred” in this district.

## **PARTIES**

11. Plaintiff Coakley Pendergrass is a Black citizen of the United States and the State of Georgia. The Rev. Pendergrass is a registered voter and intends to vote in future congressional elections. He is a resident of Cobb County and located in the Eleventh Congressional District under the enacted plan, where he is unable to elect candidates of his choice to the U.S. House of Representatives despite strong electoral support for those candidates from other Black voters in his community. The Rev. Pendergrass resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn congressional district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting

power of Black voters like the Rev. Pendergrass and denies them an equal opportunity to elect candidates of their choice to the U.S. House of Representatives.

12. Plaintiff Triana Arnold James is a Black citizen of the United States and the State of Georgia. Ms. James is a registered voter and intends to vote in future congressional elections. She is a resident of Douglas County and located in the Third Congressional District under the enacted plan, where she is unable to elect candidates of her choice to the U.S. House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. James resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn congressional district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Ms. James and denies them an equal opportunity to elect candidates of their choice to the U.S. House of Representatives.

13. Plaintiff Elliott Hennington is a Black citizen of the United States and the State of Georgia. Mr. Hennington is a registered voter and intends to vote in future congressional elections. He is a resident of Cobb County and located in the Fourteenth Congressional District under the enacted plan, where he is unable to elect candidates of his choice to the U.S. House of Representatives despite strong electoral

support for those candidates from other Black voters in his community. Mr. Hennington resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn congressional district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Hennington and denies them an equal opportunity to elect candidates of their choice to the U.S. House of Representatives.

14. Plaintiff Robert Richards is a Black citizen of the United States and the State of Georgia. Mr. Richards is a registered voter and intends to vote in future congressional elections. He is a resident of Cobb County and located in the Fourteenth Congressional District under the enacted plan, where he is unable to elect candidates of his choice to the U.S. House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Richards resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn congressional district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Richards and denies them an equal opportunity to elect candidates of their choice to the U.S. House of Representatives.



15. Plaintiff Jens Rueckert is a Black citizen of the United States and the State of Georgia. Mr. Rueckert is a registered voter and intends to vote in future congressional elections. He is a resident of Cobb County and located in the Fourteenth Congressional District under the enacted plan, where he is unable to elect candidates of his choice to the U.S. House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Rueckert resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn congressional district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Rueckert and denies them an equal opportunity to elect candidates of their choice to the U.S. House of Representatives.

16. Plaintiff Ojuan Glaze is a Black citizen of the United States and the State of Georgia. Mr. Glaze is a registered voter and intends to vote in future congressional elections. He is a resident of Douglas County and located in the Thirteenth Congressional District under the enacted plan. The Thirteenth Congressional District is a district in which Black voters like Mr. Glaze are packed, preventing the creation of an additional majority-Black district as required by the Voting Rights Act.

17. Defendant Brad Raffensperger is the Georgia Secretary of State and is named in his official capacity. Secretary Raffensperger is Georgia’s chief election official and is responsible for administering the state’s elections and implementing election laws and regulations, including Georgia’s congressional plan. *See* O.C.G.A. § 21-2-50; Ga. Comp. R. & Regs. 590-1-1-.01–.02 (specifying, among other things, that Secretary of State’s office must provide “maps of Congressional, State Senatorial and House Districts” when requested). Secretary Raffensperger is also an ex officio non-voting member of the State Election Board, which is responsible for “formulat[ing], adopt[ing], and promulgat[ing] such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” O.C.G.A. §§ 21-2-30(d), -31(2).

18. Defendant Rebecca N. Sullivan is the Acting Chair of the State Election Board and is named in her official capacity. In this role, she must “formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” *Id.* § 21-2-31(2).

19. Defendant Sara Tindall Ghazal is a member of the State Election Board and is named in her official capacity. In this role, she must “formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” *Id.* § 21-2-31(2).

20. Defendant Matthew Mashburn is a member of the State Election Board and is named in his official capacity. In this role, he must “formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” *Id.* § 21-2-31(2).

21. Defendant Anh Le is a member of the State Election Board and is named in her official capacity. In this role, she must “formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” *Id.* § 21-2-31(2).

### **LEGAL BACKGROUND**

22. Section 2 of the Voting Rights Act prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a). Thus, in addition to prohibiting practices that deny the exercise of the right to vote, Section 2 prohibits vote dilution.

23. A violation of Section 2 is established if “it is shown that the political processes leading to nomination or election” in the jurisdiction “are not equally open to participation by members of a [minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” *Id.* § 10301(b).

24. Such a violation might be achieved by “cracking” or “packing” minority voters. To illustrate, the dilution of Black voting strength “may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters”—cracking—“or from the concentration of blacks into districts where they constitute an excessive majority”—packing. *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

25. In *Thornburg v. Gingles*, the U.S. Supreme Court identified three necessary preconditions for a claim of vote dilution under Section 2: (i) the minority group must be “sufficiently large and geographically compact to constitute a majority in a single-member district”; (ii) the minority group must be “politically cohesive”; and (iii) the majority must vote “sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Id.* at 50–51.

26. Once all three preconditions are established, Section 2 directs courts to consider whether, “based on the totality of circumstances,” members of a racial minority “have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b).

27. The Senate Report on the 1982 amendments to the Voting Rights Act identified several nonexclusive factors that courts should consider when determining

if, under the totality of circumstances in a jurisdiction, the operation of the challenged electoral device results in a violation of Section 2. *See Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1288–89 (11th Cir. 2020).

These “Senate Factors” include:

- a. the history of official voting-related discrimination in the state or political subdivision;
  - b. the extent to which voting in the elections of the state or political subdivision is racially polarized;
  - c. the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, or prohibitions against bullet-voting;
  - d. the exclusion of members of the minority group from candidate-slating processes;
  - e. the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;
  - f. the use of overt or subtle racial appeals in political campaigns;
- and

g. the extent to which members of the minority group have been elected to public office in the jurisdiction.

28. The Senate Report itself and the cases interpreting it have made clear that “there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” *United States v. Marengo Cnty. Comm’n*, 731 F.2d 1546, 1566 n.33 (11th Cir. 1984) (quoting S. Rep. No. 97-417, at 29 (1982)); *see also id.* at 1566 (“The statute explicitly calls for a ‘totality-of-the circumstances’ approach and the Senate Report indicates that no particular factor is an indispensable element of a dilution claim.”).

## **FACTUAL BACKGROUND**

### **The 2020 Census**

29. Between 2010 and 2020, Georgia’s population increased by more than 1 million people. As a result of this population growth, the state will retain 14 seats in the U.S. House of Representatives.

30. The population growth during this period is entirely attributable to the increase in Georgia’s minority population. The 2020 census results indicate that Georgia’s Black population grew by over 15 percent and now comprises 33 percent of Georgia’s total population. Meanwhile, Georgia’s white population *decreased* by

4 percent over the past decade. In total, Georgia's minority population now comprises just under 50 percent of the state's total population.

### **The 2021 Congressional Redistricting Plan**

31. In enacting Georgia's new congressional map, the Republican-controlled General Assembly diluted the political power of the state's minority voters.

32. On November 22, 2021, the General Assembly passed SB 2EX, which adopted a new congressional redistricting plan that revised existing congressional district boundaries. Republican Governor Brian Kemp signed SB 2EX into law on December 30, 2021.

33. Democratic and minority legislators were largely excluded from the redistricting process and repeatedly decried the lack of transparency. Moreover, lawmakers and activists from across the political spectrum questioned the speed with which the General Assembly undertook its redistricting efforts, observing that the haste resulted in unnecessary divisions of communities and municipalities.

34. Rather than create an additional congressional district in the western Atlanta metropolitan area in which Georgia's growing Black population would have the opportunity to elect candidates of its choice, the General Assembly did just the opposite: it packed and cracked Georgia's Black voters to dilute their influence.

35. SB 2EX packs Black voters into the Atlanta metropolitan area, particularly into the new Thirteenth Congressional District, which includes significant Black populations in south Fulton, Douglas, and Cobb Counties. The remaining Black communities in Douglas and Cobb Counties are cracked among the new Third, Sixth, Eleventh, and Fourteenth Congressional Districts—predominantly white districts that stretch into the rural reaches of western and northern Georgia.

36. This combination of cracking and packing dilutes the political power of Black voters in the Atlanta metropolitan area. The General Assembly could have instead created an additional, compact congressional district in which Black voters, including Plaintiffs, comprise a majority of eligible voters and have the opportunity to elect their preferred candidates, as required by Section 2 of the Voting Rights Act. Significantly, this could have been done without reducing the number of other districts in which Black voters have the opportunity to elect candidates of their choice.

37. Unless enjoined, SB 2EX will deny Black voters an equal opportunity to elect candidates of their choice.

38. The relevant factors and considerations readily require the creation of an additional majority-Black district under Section 2.



### **Racial Polarization**

39. This Court has recognized that “voting in Georgia is highly racially polarized.” *Ga. State Conf. of NAACP v. Georgia*, 312 F. Supp. 3d 1357, 1360 (N.D. Ga. 2018) (three-judge panel).

40. “Districts with large black populations are likely to vote Democratic.” *Id.* Indeed, during competitive statewide elections over the past decade—from the 2012 presidential election through the 2021 U.S. Senate runoff elections—an average of 97 percent of Black Georgians supported Democratic candidates.

41. White voters, by striking contrast, overwhelmingly vote Republican. An average of only 13 percent of white Georgians supported Democratic candidates in competitive statewide elections over the past decade.

42. Georgia’s white majority usually votes as a bloc to defeat minority voters’ candidates of choice, including in the areas where Plaintiffs live and the Black population could be united to create a new majority-Black district.

### **History of Discrimination**

43. Georgia’s past discrimination against its Black citizens, including its numerous attempts to deny Black voters an equal opportunity to participate in the political process, is extensive and well documented. This prejudice is not confined to history books; the legacy of discrimination manifests itself today in state and local

elections marked by racial appeals and undertones. And the consequences of the state's historic discrimination persist to this day as well, as Black Georgians continue to experience socioeconomic hardship and marginalization.

44. This history dates back to the post-Civil War era, when Black Georgians first gained the right to vote and voted in their first election in April 1868. Soon after this historic election, a *quarter* of the state's Black legislators were either jailed, threatened, beaten, or killed. In 1871, the General Assembly passed a resolution that expelled 25 Black representatives and three senators but permitted the four mixed-race members who did not “look” Black to keep their seats. The General Assembly's resolution was based on the theory that Black Georgians' right of suffrage did not give them the right to hold office, and that they were thus “ineligible” to serve under Georgia's post-Civil War state constitution.

45. After being denied the right to hold office, Black Georgians who attempted to vote also encountered intense and frequently violent opposition. The Ku Klux Klan and other white mobs engaged in a campaign of political terrorism aimed at deterring Black political participation. Their reigns of terror in Georgia included, for instance, attacking a Black political rally in Mitchell County in 1868, killing and wounding many of the participants; warning the Black residents of Wrightsville that “blood would flow” if they exercised their right to vote in an

upcoming election; and attacking and beating a Black man in his own home to prevent him from voting in an upcoming congressional election.

46. In the General Assembly, fierce resistance to Black voting rights led to more discriminatory legislation. In 1871, Georgia became the first state to enact a poll tax. At the state's 1877 constitutional convention, the General Assembly made the poll tax permanent and cumulative, requiring citizens to pay all back taxes before being permitted to vote. The poll tax reduced turnout among Black voters in Georgia by half and has been described as the single most effective disenfranchisement law ever enacted. The poll tax was not abolished until 1945—after it had been in effect for almost 75 years.

47. After the repeal of the poll tax in 1945, voter registration among Black Georgians significantly increased. However, as a result of the state's purposeful voter suppression tactics, not a *single* Black lawmaker served in the General Assembly between 1908 and 1962.

48. Georgia's history of voter discrimination is far from ancient history. As recently as 1962, 17 municipalities and 48 counties in Georgia required segregated polling places. When the U.S. Department of Justice filed suit to end this practice, a local Macon leader declared that the federal government was ruining "every vestige of the local government."

49. Other means of disenfranchising Georgia’s Black citizens followed. The state adopted virtually every one of the “traditional” methods to obstruct the exercise of the franchise by Black voters, including literacy and understanding tests, strict residency requirements, onerous registration procedures, voter challenges and purges, the deliberate slowing down of voting by election officials so that Black voters would be left waiting in line when the polls closed, and the adoption of “white primaries.”

50. Attempts to minimize Black political influence in Georgia have also tainted redistricting efforts. During the 1981 congressional redistricting process, in opposing a bill that would maintain a majority-Black district, Joe Mack Wilson—a Democratic state representative and chair of the House Reapportionment Committee—openly used racial epithets to describe the district: following a meeting with officials of the U.S. Department of Justice, he complained that “the Justice Department is trying to make us draw [n\*\*\*\*\*] districts and I don’t want to draw [n\*\*\*\*\*] districts.” Speaker of the House Tom Murphy objected to creating a district where a Black representative would certainly be elected and refused to appoint any Black lawmakers to the conference committee, fearing that they would support a plan to allow Black voters to elect a candidate of their choice. Several senators also

expressed concern about being perceived as supporting a majority-Black congressional district.

51. Indeed, federal courts have invalidated Georgia's redistricting plans for voting rights violations numerous times. In *Georgia v. United States*, the U.S. Supreme Court affirmed a three-judge panel's decision that Georgia's 1972 reapportionment plan violated Section 5 of the Voting Rights Act, at least in part because it diluted the Black vote in an Atlanta-based congressional district in order to ensure the election of a white candidate. *See* 411 U.S. 526, 541 (1973); *see also* *Busbee v. Smith*, 549 F. Supp. 494, 517 (D.D.C. 1982) (three-judge panel) (denying preclearance based on evidence that Georgia's redistricting plan was product of purposeful discrimination in violation of Voting Rights Act), *aff'd*, 459 U.S. 1166 (1983); *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) (per curiam) (three-judge panel) (invalidating state legislative plans that reduced number of majority-minority districts).

52. Due to its lengthy history of discrimination against racial minorities, Georgia became a "covered jurisdiction" under Section 5 of the Voting Rights Act upon its enactment in 1965, meaning that any changes to Georgia's election practices or procedures (including the enactment of new redistricting plans) were prohibited

until either the U.S. Department of Justice or a federal court determined that the change did not result in backsliding, or “retrogression,” of minority voting rights.

53. Accordingly, between 1965 and 2013—at which time the U.S. Supreme Court effectively barred enforcement of the Section 5 preclearance requirement in *Shelby County v. Holder*, 570 U.S. 529 (2013)—Georgia received more than 170 preclearance objection letters from the U.S. Department of Justice.

54. Georgia’s history of racial discrimination in voting, here only briefly recounted, has been thoroughly documented by historians and scholars. Indeed, “[t]he history of the state[’s] segregation practice and laws at all levels has been rehashed so many times that the Court can all but take judicial notice thereof.” *Brooks v. State Bd. of Elections*, 848 F. Supp. 1548, 1560 (S.D. Ga. 1994); *see also*, e.g., *Fair Fight Action, Inc. v. Raffensperger*, No. 1:18-CV-5391-SCJ, slip op. at 41 (N.D. Ga. Nov. 15, 2021), ECF No. 636 (taking judicial notice of fact that “prior to the 1990s, Georgia had a long sad history of racist policies in a number of areas including voting”).

55. Ultimately, as this Court has noted, “Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather

than the exception.” *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs*, 950 F. Supp. 2d 1294, 1314 (N.D. Ga. 2013) (quoting *Brooks*, 848 F. Supp. at 1560), *aff’d in part, rev’d in part on other grounds*, 775 F.3d 1336 (11th Cir. 2015).

### **Use of Racial Appeals in Political Campaigns**

56. In addition to Georgia’s history of discrimination against minorities in voting, political campaigns in the state have often relied on both overt and subtle racial appeals—both historically *and* during recent elections.

57. In 2016, Tom Worthan, former Republican Chair of the Douglas County Board of Commissioners, was caught on video making racist comments aimed at discrediting his Black opponent, Romona Jackson-Jones, and a Black candidate for sheriff, Tim Pounds. During the recorded conversation with a Douglas County voter, Worthan asked, “[D]o you know of another government that’s more black that’s successful? They bankrupt you.” Worthan also stated, in reference to Pounds, “I’d be afraid he’d put his black brothers in positions that maybe they’re not qualified to be in.”

58. In the 2017 special election for Georgia’s Sixth Congressional District—a majority-white district that had over the previous three decades been represented by white Republicans Newt Gingrich, Johnny Isakson, and Tom Price—the husband of the eventual Republican victor, Karen Handel, shared an image over

social media that urged voters to “[f]ree the black slaves from the Democratic plantation.” The image also stated, “Criticizing black kids for obeying the law, studying in school, and being ambitious as ‘acting white’ is a trick the Democrats play on Black people to keep them poor, ignorant and dependent.” The image was then shared widely by local and national media outlets.

59. During that same election, Jere Wood—the Republican Mayor of Roswell, Georgia’s eighth-largest city—insinuated that voters in the Sixth Congressional District would not vote for Democratic candidate Jon Ossoff because he has an “ethnic-sounding” name. When describing voters in that district, Wood said, “If you just say ‘Ossoff,’ some folks are gonna think, ‘Is he Muslim? Is he Lebanese? Is he Indian?’ It’s an ethnic-sounding name, even though he may be a white guy, from Scotland or wherever.”<sup>2</sup>

60. On a separate occasion, State Senator Fran Millar alluded to the fact that the Sixth Congressional District was gerrymandered in such a way that it would not support candidate Ossoff—specifically, because he was formerly an aide to a

---

<sup>2</sup> In actuality, now-U.S. Senator Ossoff’s paternal forebears were Ashkenazi Jewish immigrants who fled pogroms during the early 20th century. *See* Etan Nechin, *Jon Ossoff Tells Haaretz How His Jewish Upbringing Taught Him to Fight for Justice*, Haaretz (Dec. 20, 2020), <https://www.haaretz.com/us-news/.premium-jon-ossoff-tells-haaretz-how-his-jewish-upbringing-taught-him-to-fight-for-justice-1.9386302>.



Black member of Congress. State Senator Millar said, “I’ll be very blunt. These lines were not drawn to get Hank Johnson’s protégé to be my representative. And you didn’t hear that. They were not drawn for that purpose, OK? They were not drawn for that purpose.”

61. Earlier in 2017, Tommy Hunter, a member of the board of commissioners in Gwinnett County—the second-most populous county in the state—called the late Black Congressman John Lewis a “racist pig” and suggested that his reelection to the U.S. House of Representatives was “illegitimate” because he represented a majority-minority district.

62. Racist robocalls targeted the Democratic candidate for governor in 2018, referring to Stacey Abrams as “Negress Stacey Abrams” and “a poor man’s Aunt Jemima.” The Republican candidate, now-Governor Kemp, posted a statement on Twitter on the eve of the election alleging that the Black Panther Party supported Ms. Abrams’s candidacy.

63. Governor Kemp also ran a controversial television advertisement during the primary campaign asserting that he owned “a big truck, just in case [he] need[s] to round up criminal illegals and take ‘em home [him]self.”

64. The 2020 campaigns for Georgia’s two U.S. Senate seats were also rife with racial appeals. In one race, Republican incumbent Kelly Loeffler ran a paid

advertisement on Facebook that artificially darkened the skin of her Democratic opponent, now-Senator Raphael Warnock. In the other race, Republican incumbent David Perdue ran an advertisement against Democratic nominee Ossoff that employed a classic anti-Semitic trope by artificially enlarging now-Senator Ossoff's nose.

65. Senator Perdue later mispronounced and mocked the pronunciation of then-Senator Kamala Harris's first name during a campaign rally, even though the two had been colleagues in the Senate since 2017.

66. Racial appeals were apparent during local elections in Fulton County even within the last few weeks. City council candidates in Johns Creek and Sandy Springs pointed to Atlanta crime and protests that turned violent to try to sway voters, publicly urging residents to vote for them or risk seeing their cities become home to chaos and lawlessness. *The Atlanta Journal-Constitution* quoted Emory University political scientist Dr. Andra Gillespie, who explained that although the term "law and order" is racially neutral, the issue becomes infused with present-day cultural meaning and thoughts about crime and violence and thus carries racial undertones.

67. These are just a few—and, indeed, only among the more recent—examples of the types of racially charged political campaigns that have tainted elections in Georgia throughout the state’s history.

### **Ongoing Effects of Georgia’s History of Discrimination**

68. State-sponsored segregation under Georgia’s Jim Crow laws permeated all aspects of daily life and relegated Black citizens to second-class status. State lawmakers segregated everything from public schools to hospitals and graveyards. Black Georgians were also precluded from sitting on juries, which effectively denied Black litigants equal justice under the law. Moreover, Black Georgians were excluded from the most desirable manufacturing jobs, which limited their employment opportunities to primarily unskilled, low-paying labor. And in times of economic hardship, Black employees were the first to lose their jobs.

69. Decades of Jim Crow and other forms of state-sponsored discrimination—followed by continued segregation of public facilities well into the latter half of the 20th century, in defiance of federal law—resulted in persistent socioeconomic disparities between Black and white Georgians. These disparities hinder the ability of Black voters to participate effectively in the political process.

70. Black Georgians, for instance, have higher poverty rates than white Georgians. According to the U.S. Census Bureau’s 2019 American Community

Survey (“ACS”) 1-Year Estimate, 18.8 percent of Black Georgians have lived below the poverty line in the past 12 months, compared to 9 percent of white Georgians.

71. Relatedly, Black Georgians have lower per capita incomes than white Georgians. The 2019 ACS 1-Year Estimate shows that white Georgians had an average per capita income of \$40,348 over the past 12 months, compared to \$23,748 for Black Georgians.

72. Black Georgians also have lower homeownership rates than white Georgians. The 2019 ACS 1-Year Estimate shows that 52.6 percent of Black Georgians live in renter-occupied housing, compared to 24.9 percent of white Georgians. And Black Georgians also spend a higher percentage of their income on rent than white Georgians. The 2019 ACS 1-Year Estimate shows that in Georgia, the percent of income spent on rent is a staggering 54.9 percent for Black Georgians, compared to 40.6 percent for white Georgians.

73. Black Georgians also have lower levels of educational attainment than their white counterparts and are less likely to earn degrees. According to the 2019 ACS 1-Year Estimate, only 25 percent of Black Georgians have obtained a bachelor’s degree or higher, compared to 37 percent of white Georgians.

74. These disparities impose hurdles to voter participation including working multiple jobs, working during polling place hours, lack of access to

childcare, lack of access to transportation, and higher rates of illness and disability. All of these hurdles make it more difficult for poor and low-income voters to participate effectively in the political process.

## **CAUSES OF ACTION**

### **COUNT I: SB 2EX Violates Section 2 of the Voting Rights Act**

75. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

76. Section 2 of the Voting Rights Act prohibits the enforcement of any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or” membership in a language minority group. 52 U.S.C. § 10301(a).

77. Georgia’s congressional district boundaries, as currently drawn, crack and pack minority populations with the effect of diluting their voting strength, in violation of Section 2 of the Voting Rights Act.

78. Black Georgians in the northwestern and western Atlanta metropolitan area are sufficiently numerous and geographically compact to constitute a majority of eligible voters in an additional congressional district, without reducing the number of minority-opportunity districts already included in the enacted map.

79. Under Section 2 of the Voting Rights Act, the General Assembly was required to create an additional congressional district in which Black voters in this area would have the opportunity to elect their candidates of choice.

80. Black voters in Georgia, including in and around this area, are politically cohesive. Elections in this area reveal a clear pattern of racially polarized voting that allows blocs of white voters usually to defeat Black voters' preferred candidates.

81. The totality of the circumstances establishes that the enacted congressional map has the effect of denying Black voters an equal opportunity to participate in the political process and elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.

82. By engaging in the acts and omissions alleged herein, Defendants have acted and continue to act to deny Plaintiffs' rights guaranteed by Section 2 of the Voting Rights Act. Defendants will continue to violate those rights absent relief granted by this Court.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs request that this Court:

A. Declare that SB 2EX violates Section 2 of the Voting Rights Act;

B. Enjoin Defendants, as well as their agents and successors in office, from enforcing or giving any effect to the boundaries of the congressional districts as drawn in SB 2EX, including an injunction barring Defendants from conducting any further congressional elections under the enacted map;

C. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to order the adoption of a valid congressional redistricting plan that includes an additional congressional district in the western Atlanta metropolitan area in which Black voters have the opportunity to elect their preferred candidates, as required by Section 2 of the Voting Rights Act, without reducing the number of minority-opportunity districts currently drawn in SB 2EX;

D. Grant such other or further relief the Court deems appropriate, including but not limited to an award of Plaintiffs' attorneys' fees and reasonable costs.

Dated: December 30, 2021

By: **Adam M. Sparks**

Joyce Gist Lewis  
Georgia Bar No. 296261  
Adam M. Sparks  
Georgia Bar No. 341578  
**KREVOLIN & HORST, LLC**  
One Atlantic Center  
1201 West Peachtree Street, NW,  
Suite 3250  
Atlanta, Georgia 30309  
Telephone: (404) 888-9700  
Facsimile: (404) 888-9577  
Email: jlewis@khlawfirm.com  
Email: sparks@khlawfirm.com

Kevin J. Hamilton\*  
**PERKINS COIE LLP**  
1201 Third Avenue, Suite 4900  
Seattle, Washington 98101  
Phone: (206) 359-8000  
Facsimile: (206) 359-9000  
Email: KHamilton@perkinscoie.com

Respectfully submitted,

Abha Khanna\*  
Jonathan P. Hawley\*  
**ELIAS LAW GROUP LLP**  
1700 Seventh Avenue, Suite 2100  
Seattle, Washington 98101  
Phone: (206) 656-0177  
Facsimile: (206) 656-0180  
Email: AKhanna@elias.law  
Email: JHawley@elias.law

Daniel C. Osher\*  
Christina A. Ford\*  
Graham W. White\*  
Michael B. Jones  
Georgia Bar No. 721264  
**ELIAS LAW GROUP LLP**  
10 G Street NE, Suite 600  
Washington, D.C. 20002  
Phone: (202) 968-4490  
Facsimile: (202) 968-4498  
Email: DOsher@elias.law  
Email: CFord@elias.law  
Email: GWhite@elias.law  
Email: MJones@elias.law

*Counsel for Plaintiffs*

*\*Pro hac vice application forthcoming*



## *Pendergrass* Doc. 97

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

**ALPHA PHI ALPHA FRATERNITY  
INC., et al.,  
Plaintiffs,**

**v.**

**BRAD RAFFENSPERGER, in his  
official capacity as Secretary of State of  
Georgia,  
Defendant.**

---

**COAKLEY PENDERGRASS, et al.,  
Plaintiffs,**

**v.**

**BRAD RAFFENSPERGER, et al.,  
Defendants.**

---

**ANNIE LOIS GRANT, et al.,  
Plaintiffs,**

**v.**

**BRAD RAFFENSPERGER, et al.,  
Defendants.**

**CIVIL ACTION FILE**

**No. 1:21-CV-5337-SCJ**

**CIVIL ACTION FILE**

**No. 1:21-CV-5339-SCJ**

**CIVIL ACTION FILE**

**No. 1:22-CV-122-SCJ**

**ORDER FOLLOWING  
COORDINATED HEARING ON  
MOTIONS FOR PRELIMINARY  
INJUNCTION**

## TABLE OF CONTENTS

I. BACKGROUND .....	11
A. What Is Redistricting and Why Is It Necessary? .....	12
B. Factual History .....	14
C. The Purpose of the Voting Rights Act and the Conduct It Prohibits .....	16
D. Timeline.....	19
II. LEGAL STANDARD .....	21
A. Preliminary Injunction .....	21
1. Eleventh Circuit.....	21
2. Recent Supreme Court Authority .....	23
B. The Voting Rights Act.....	27
1. The Gingles Preconditions .....	28
2. The Senate Factors.....	29
C. Evidentiary Considerations.....	32
D. Motions to Dismiss .....	33
III. FINDINGS OF FACT AND CONCLUSIONS OF LAW .....	34
A. Likelihood of Success on the Merits.....	34
1. The First Gingles Precondition: Numerosity and Compactness .....	35
a) Credibility Determinations .....	35
(1) Mr. Cooper .....	35
(2) Mr. Esselstyn.....	38

(3) Mr. Morgan.....	42
(4) Ms. Wright .....	46
b) First <i>Gingles</i> Precondition Legal Standard.....	51
(1) Numerosity .....	52
(2) Compactness.....	54
c) Pendergrass .....	55
(1) Numerosity .....	58
(a) Demographic developments in Georgia.....	59
(b) Georgia’s 2021 congressional plan .....	63
(c) The Pendergrass Plaintiffs’ illustrative congressional plan.....	66
(2) Geographic Compactness .....	69
(a) Population equality.....	71
(b) Compactness .....	71
(c) Contiguity.....	76
(d) Preservation of political subdivisions .....	76
(e) Preservation of communities of interest.....	79
(f) Core Retention .....	85
(g) Racial considerations .....	87
(3) Conclusions of Law .....	92
d) Grant and Alpha Phi Alpha.....	93
(1) The Grant Plaintiffs are substantially likely to establish a Section 2 violation .....	101

(a) Senate Districts .....	101
i) Numerosity.....	101
ii) Geographic compactness.....	107
(a) Population equality .....	108
(b) Compactness.....	110
(c) Contiguity .....	115
(d) Preservation of political subdivisions.....	115
(e) Preservation of communities of interest .....	118
(f) Incumbent protection.....	123
(g) Core retention.....	123
(h) Racial considerations.....	125
(b) Esselstyn House Districts.....	129
i) Numerosity.....	129
ii) Geographic Compactness.....	133
(a) Population equality .....	134
(b) Compactness.....	135
(c) Contiguity .....	139
(d) Preservation of political subdivisions.....	139
(e) Preservation of communities of interest .....	143

(f) Incumbent protection.....	145
(g) Core retention.....	148
(h) Racial considerations.....	149
(2) The Alpha Phi Alpha Plaintiffs are substantially likely to establish a Section 2 violation.....	153
(a) Cooper’s Illustrative House District 153.....	153
i) Numerosity.....	153
ii) Geographic compactness.....	155
(a) Population equality .....	156
(b) Compactness.....	157
(c) Contiguity .....	159
(d) Preservation of political subdivisions.....	159
(e) Preservation of communities of interest .....	164
(f) Incumbent protection.....	165
(g) Core retention.....	168
(h) Racial considerations.....	169
(3) Conclusions of Law .....	171
2. The Second Gingles Precondition: Political Cohesion.....	172
a) The parties’ arguments .....	172
(1) Defendants .....	172

(2) Plaintiffs .....	173
(3) Conclusions of law.....	174
b) The existence of political cohesion.....	176
(1) Pendergrass.....	176
(a) Plaintiffs’ Expert: Dr. Maxwell Palmer .....	176
i) Qualification.....	177
ii) Analysis.....	178
(b) Defendants’ Expert: Dr. John Alford.....	180
i) Qualification.....	180
ii) Analysis.....	182
(c) Conclusions of Law.....	185
(2) Grant .....	186
(a) Dr. Palmer’s analysis .....	186
(3) Alpha Phi Alpha .....	187
(a) Plaintiffs’ Expert: Dr. Lisa Handley .....	188
i) Qualification.....	188
ii) Analysis.....	190
(a) Statewide general elections .....	191
(b) State legislative elections .....	192
(c) Primaries .....	193
(b) Defendants’ Expert: Dr. Alford.....	195
(c) Conclusions of Law.....	197

3. The Third Gingles Precondition: Bloc Voting.....	197
a) Pendergrass .....	198
b) Grant.....	200
c) Alpha Phi Alpha .....	202
4. The Senate Factors.....	205
a) Senate Factor One: Georgia has a history of official, voting-related discrimination.....	205
b) Senate Factor Two: Georgia voters are racially polarized. ....	209
c) Senate Factor Three: Georgia’s voting practices enhance the opportunity for discrimination. ....	210
d) Senate Factor Four: Georgia has no history of candidate slating for legislative elections. ....	211
e) Senate Factor Five: Georgia’s discrimination has produced significant socioeconomic disparities that impair Black Georgians’ participation in the political process. ....	211
f) Senate Factor Six: Both overt and subtle racial appeals are prevalent in Georgia’s political campaigns. ....	215
g) Senate Factor Seven: Black candidates in Georgia are underrepresented in office and rarely succeed outside of majority-minority districts. ....	217
h) Senate Factor Eight: Georgia is not responsive to its Black residents. ....	218
i) Senate Factor Nine: The justifications for the enacted redistricting maps are tenuous. ....	219



5. Conclusions of Law.....	220
B. Irreparable Injury .....	220
C. Balancing of the Equities and Public Interest .....	221
1. Findings of Fact .....	222
2. Conclusions of Law.....	230
IV. CONCLUSION .....	237

**ORDER**<sup>1</sup>

This matter appears before the Court on the pending Motions for Preliminary Injunction filed in the above-stated cases concerning the legality of the State of Georgia's newly adopted redistricting plans. APA Doc. No. [39],

---

<sup>1</sup> In the interest of judicial economy, the Court issues a single order that will be filed by the Clerk in each of the above-stated cases. The Court's issuance of this single order does not imply or reflect any intention of the court to consolidate these cases under Federal Rule of Civil Procedure 42 or otherwise.

For reference, the following citations are used for support for each of the findings below:

Citation	Document Type
<u>APA</u> Doc. No. [ ]	Docket entry from <u>Alpha Phi Alpha</u>
<u>Grant</u> Doc. No. [ ]	Docket entry from <u>Grant</u>
<u>Pendergrass</u> Doc. [ ]	Docket entry from <u>Pendergrass</u>
Tr.	Transcript of the preliminary injunction hearing held February 7-14, 2022 in all three cases and filed at <u>APA</u> Doc. Nos. [106-117]; <u>Grant</u> Doc. Nos. [68-79]; <u>Pendergrass</u> Doc. Nos. [73-75, 77-85].
DX	Defendants' Exhibits
APAX	<u>Alpha Phi Alpha</u> Plaintiffs' Exhibits
GPX	<u>Grant/Pendergrass</u> Plaintiffs' Exhibits
<u>APA</u> Stip.	<u>Alpha Phi Alpha</u> joint stipulated facts filed at <u>APA</u> Doc. No. [94]
<u>Grant</u> Stip.	<u>Grant</u> joint stipulated facts filed at <u>Grant</u> Doc. No. [56]
<u>Pendergrass</u> Stip.	<u>Pendergrass</u> joint stipulated facts filed at <u>Pendergrass</u> Doc. No. [63]

Grant Doc. No. [19], Pendergrass Doc. No. [32]. In considering this important matter, the Court has had the benefit of thousands of pages of briefing and evidence, as well as the testimony of numerous fact and expert witnesses the Court observed over a six-day hearing on this matter. After careful review and consideration, the Court finds that while the plaintiffs have shown that they are likely to ultimately prove that certain aspects of the State's redistricting plans are unlawful, preliminary injunctive relief is not in the public's interest because changes to the redistricting maps at this point in the 2022 election schedule are likely to substantially disrupt the election process. As a result, the Court will not grant the requests for preliminary injunctive relief.

The Court's analysis proceeds as follows. First, the Court discusses redistricting, voting rights law, and the factual and procedural backgrounds of the above-stated actions. Second, the Court provides the relevant legal standard and discusses the voting rights legislation and case law that guides this Court's analysis. Finally, the Court provides its findings of fact and conclusions of law, which includes the Court's credibility determinations of expert witnesses as well as the Court's analysis under the pertinent law.

## I. BACKGROUND

Long ago, the United States Supreme Court in Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886), described the “political franchise of voting” as “a fundamental political right, [] preservative of all rights.” Our sister court in the Northern District of Alabama therefore aptly expanded: “Voting is an inviolable right, occupying a sacred place in the lives of those who fought to secure the right and in our democracy, because it is ‘preservative of all rights.’” People First of Ala. v. Merrill, 491 F. Supp. 3d 1076, 1091 (N.D. Ala. 2020) (quoting Yick Wo, 118 U.S. at 370), appeal dismissed sub nom. People First of Ala. v. Sec’y of State for Ala., No. 20-13695-GG, 2020 WL 7038817 (11th Cir. Nov. 13, 2020), and appeal dismissed, No. 20-13695-GG, 2020 WL 7028611 (11th Cir. Nov. 16, 2020).

In the three cases before the Court, each set of Plaintiffs argues that their voting rights have been violated by the redistricting plans recently adopted by the State of Georgia in the wake of the 2020 Census. The Court thus approaches this case “with caution, bearing in mind that these circumstances involve ‘one of the most fundamental rights of . . . citizens: the right to vote.’” Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs, 775 F.3d 1336, 1345 (11th Cir. 2015) (citations omitted).

**A. What Is Redistricting and Why Is It Necessary?**

The country's system of elections is based on the principle of "one person, one vote" espoused by the Supreme Court in Baker v. Carr, 369 U.S. 186 (1962). As a result, and because our federal system of government is representative when people are drawn into electoral districts, those districts must have equal populations. Karcher v. Daggett, 462 U.S. 725, 730 (1983) ("Article I, § 2 establishes a 'high standard of justice and common sense' for the apportionment of congressional districts: 'equal representation for equal numbers of people.'" (quoting Wesberry v. Sanders, 376 U.S. 1, 18 (1964))). Otherwise, the voting strength of people who live in districts with large populations will be diluted compared to those who live in districts with smaller populations. The Supreme Court has therefore held that in elections for members of the United States House of Representatives, "the command of Art. I, § 2 [of the Constitution], that Representatives be chosen 'by the People of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." Wesberry, 376 U.S. at 7-8 (footnotes omitted) (citations omitted). This principle has also been extended to state legislative bodies: "[A]s a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral

state legislature must be apportioned on a population basis.” Reynolds v. Sims, 377 U.S. 533, 568 (1964).

The number of people who must be in a particular electoral district depends on which legislative office the district is designed to cover. For instance, the U.S. Constitution prescribes that for the House of Representatives, “[t]he Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative.” U.S. Const. art. I, § 2, cl. 3. When district populations are not equal, the districts are malapportioned. Because populations naturally shift and change over time, district boundaries must be adjusted periodically to correct any malapportionment. This “[r]ealignment of a legislative district’s boundaries to reflect changes in population and ensure proportionate representation by elected officials” is known as reapportionment or redistricting. Reapportionment, Black’s Law Dictionary (11th ed. 2019) (citing U.S. Const. art. I, § 2, cl. 3); redistricting, Black’s Law Dictionary (11th ed. 2019). The U.S. Constitution requires that reapportionment for members of the U.S. House of Representatives occur every ten years, based on the Decennial Census. U.S. Const. art. I, § 2, cl. 3; id., amend XIV, § 2. Likewise, the Georgia Constitution

requires that the Senate and House districts of the General Assembly be reapportioned after each Decennial Census. Ga. Const. art. III, § 2, ¶ II.

**B. Factual History**

All of this explains why it was necessary, after the results of the 2020 Census became available, for the Georgia General Assembly to pass laws reapportioning districts for the U.S. House of Representatives (SB 2EX), the Georgia Senate (SB 1EX), and the Georgia House (HB 1EX). Each of these provisions was signed into law by Governor Brian Kemp on December 30, 2021. Plaintiffs' claims all stem from that redistricting process, but they do not claim that the districts are malapportioned. Rather, their claims are based on the alleged improper dilution of their votes tied to race.

Within hours of Governor Kemp signing SB 2EX, SB 1EX, and HB 1EX into law, Plaintiffs in Alpha Phi Alpha v. Raffensperger, No. 1:21-cv-05337-SCJ (Alpha Phi Alpha) and Pendergrass v. Raffensperger, No. 1:21-cv-05339-SCJ (Pendergrass), filed suit. Ultimately, between December 30, 2021, and January 11, 2022, the three cases at issue here were filed against State of Georgia officials, alleging these redistricting plans (collectively, the "Enacted Plans") violated Section 2 of the Voting Rights Act of 1965.

The Alpha Phi Alpha Plaintiffs challenge certain State Senate and State House districts in the Enacted Plans. Specifically, they challenge Senate Districts 16, 17, and 23 in the Enacted State Senate Plan (SB 1EX), and House Districts 74, 114, 117, 118, 124, 133, 137, 140, 141, 149, 150, 153, 154, and 155, in the Enacted State House Plan (HB 1EX). APA Doc. No. [1], ¶¶ 64–66, 70–74. The Alpha Phi Alpha Plaintiffs contend that the Enacted State Senate and House Plans fail to include additional majority-minority districts (i.e., districts in which the majority of the voting-age population is Black) that would give Black voters the opportunity to elect their preferred candidates. Instead, they assert Black voters have been heavily “packed” into certain districts and split up into predominantly white districts (i.e., “cracked”) in other areas. See generally APA Doc. No. [1].

The Grant v. Raffensperger, No. 1:22-cv-00122-SCJ (Grant) Plaintiffs, likewise challenge the Enacted State Senate and House Plans. Specifically, the Grant Plaintiffs challenge Senate Districts 10, 16, 17, 23, 24, 25, 28, 30, 34, 35 in the Enacted State Senate Plan, and House Districts 61, 64, 69, 74, 75, 78, 117, 133, 142, 143, 144, 145, 147, and 149 in the Enacted State House Plan. Grant Doc. No. [1], ¶¶ 41–44. They argue the General Assembly should have drawn three



additional majority-minority State Senate districts and five State House districts. See generally Grant Doc. No. [1].

Finally, the Pendergrass Plaintiffs, challenges certain congressional districts in the Congressional Enacted Plan. Specifically, the Pendergrass Plaintiffs challenge congressional Districts 3, 6, 11, 13, and 14. Pendergrass Doc. No. [1], ¶ 35. The Pendergrass Plaintiffs allege that SB 2EX should have included an additional majority-minority district in the western Atlanta metropolitan area.

Each set of Plaintiffs contends these failures to draw additional majority-minority districts violates Section 2 of the Voting Rights Act of 1965.

**C. The Purpose of the Voting Rights Act and the Conduct It Prohibits**

“The Fifteenth Amendment was ratified in 1870, in the wake of the Civil War. It provides that ‘[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude,’ and it gives Congress the ‘power to enforce this article by appropriate legislation.’” Shelby Cnty., Ala. v. Holder, 570 U.S. 529, 536 (2013). Even after the adoption of this amendment, however, many discriminatory systems—including violence—were used to deprive Blacks (among others) of their right to vote.

One particularly extreme use of such violence took place on Sunday, March 7, 1965 (“Bloody Sunday”). On that day, civil rights proponents began marching from Selma, Alabama to Montgomery, Alabama for, among other things, the right to vote. After crossing the Edmund Pettus Bridge, the marchers were attacked by state troopers and civilians, an event that was televised across America. The Bloody Sunday attack caused public outrage. See James D. Wascher, Recognizing the 50th Anniversary of the Voting Rights Act, Fed. Law., May 2015, at 41 (hereinafter, “Wascher”) (citing Richard H. Pildes, *Introduction*, in The Future of the Voting Rights Act xi, (David L. Epstein, et al., eds., 2006)). Shortly thereafter, Congress passed the Voting Rights Act of 1965 (“VRA”). It was signed into law on August 6 of that year. Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 52 U.S.C. §§ 10301–10702). The VRA was adopted specifically “[t]o enforce the fifteenth amendment to the Constitution of the United States.” Id. Many commentators have “rightly called [it] the most effective civil rights legislation ever adopted.” Wascher at 38; see also Terrye Conroy, The Voting Rights Act of 1965: A Selected Annotated Bibliography, 98 Law Libr. J. 663, 663 (2006) (stating that the VRA “is widely considered one of the most important and successful civil rights laws ever enacted”).

While the VRA has been amended several times, as originally adopted, Section 2 prohibited practices that denied or abridged the right to vote “on account of” race or color. Section 4 contained an automatic trigger for the review of new voting laws or practices adopted in certain locations that had a history of using discriminatory voting tests or devices (such as poll taxes or literacy requirements) (the “coverage formula”). The entire State of Georgia was among these “covered jurisdictions.” Under Section 5, covered jurisdictions were required to submit new voting procedures or practices for prior approval (“preclearance”) by the Department of Justice or a district court panel of three judges. See Wascher at 41. The VRA thus “employed extraordinary measures to address an extraordinary problem.” Shelby Cnty., 570 U.S. at 534.

In 2013, the Supreme Court held that the coverage formula was no longer constitutional because it had not been reformulated since 1975. Shelby Cnty., 570 U.S. at 538, 556–57. As a result, the State of Georgia is no longer a covered jurisdiction. The current round of redistricting is the first to be done as a result of a Decennial Census after the Shelby County ruling. Thus, this is the first time in over fifty years in which Georgia has redistricted following the Decennial Census without having to seek preclearance. But Shelby County “in no way

affect[ed] the permanent, nationwide ban on racial discrimination in voting found in § 2.” Shelby Cnty., 570 U.S. at 557. And it is Section 2 on which the Plaintiffs in these three cases predicate their claims.

**D. Timeline**

Due to the serious time exigencies surrounding the fair and timely resolution of these cases, including the provisions of Georgia’s election law that set various deadlines applicable to the upcoming 2022 elections, the Court moved expeditiously to hold a Rule 16 Status Conference on January 12, 2022. APA Doc. No. [8]; Pendergrass Doc. No. [15].

Following the Status Conference, the Court set the following schedule for briefing on motions to dismiss in all three matters: Motions to Dismiss were due by 5:00 PM EST on January 14, 2022; Responses were due by 5:00 PM on January 18; Replies were due by 5:00 PM on January 20. APA Doc. No. [37]; Grant Doc. No. [14]; Pendergrass Doc. No. [33].

The Court also set an expedited schedule for briefing on any motions for preliminary injunction in all three matters: Motions for preliminary injunction were due by 5:00 PM EST on January 13, 2022; Responses were due by 5:00 PM EST on January 18; Replies were due by 5:00 PM EST on January 20. APA Doc. No. [36]; Grant Doc. No. [15]; Pendergrass Doc. No. [35].

The Court then scheduled a six-day preliminary injunction hearing with deadlines for exchange of witnesses and exhibits, objections to witnesses and exhibits, and stipulated facts to streamline the hearing process. APA Doc. No. [55]; Grant Doc. No. [44]; Pendergrass Doc. No. [41]. The Court thereafter entered expedited rulings, denying Defendants' Motions to Dismiss on January 28, 2022. APA Doc. No. [65]; Grant Doc. No. [44]; Pendergrass Doc. No. [43].

The coordinated hearing on the preliminary injunctions in all three cases was held from February 7 through February 14, 2022. APA Doc. Nos. [106]–[117]; Grant Doc. Nos. [68]–[79]; Pendergrass Doc. Nos. [73]–[75], [77]–[85].<sup>2</sup>

Related to the coordinated hearing and in accordance with the Court's orders setting deadlines, the parties filed stipulations, requests for judicial notice, supplemental authority (and responses), and proposed findings and conclusions of law,<sup>3</sup> which the Court has reviewed in conjunction with the issuance of this Order.<sup>4</sup> APA Doc. Nos. [61], [73], [94], [95], [98], [101], [119],

---

<sup>2</sup> On February 8, 2022, the Court verbally granted the Motion for Leave to File Brief as Amici Curiae in Support of Plaintiffs filed by Fair Districts Ga and the Election Law Clinic at Harvard. APA Doc. No. [90]. The Amici Curiae brief has been fully considered by the Court in rendering its decision.

<sup>3</sup> In the interest of judicial economy, portions of the proposed findings of fact/conclusions of law have been adopted and incorporated into this Order.

<sup>4</sup> In addition, non-party, Fair Districts Ga and the Election Law Clinic at Harvard filed a Motion for Leave to File Brief as Amici Curiae in Support of Plaintiffs. APA Doc.

[120], [121], [123], [124]; Grant Doc. Nos. [39], [47], [56], [60], [61], [80], [81], [82]; Pendergrass Doc. Nos. [47], [54], [63], [66], [67], [69], [86], [87], [88].

The Court has also reviewed the entire record of each of the three cases at issue, inclusive of the exhibits and evidence admitted during the coordinated hearing. The pending preliminary injunction motions are now ripe for review.

## II. LEGAL STANDARD

### A. Preliminary Injunction

#### 1. *Eleventh Circuit*

To obtain injunctive relief, Plaintiffs must demonstrate:

- (1) a substantial likelihood of success on the merits;
- (2) that irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.

Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A., 320 F.3d 1205, 1210 (11th Cir. 2003); see also Parker v. State Bd. of Pardons and Paroles, 275 F.3d 1032, 1034–35 (11th Cir. 2001). Injunctive relief is an extraordinary and drastic remedy and should not be granted unless the movant clearly establishes the

---

No. [90]. On February 8, 2022, the Court verbally granted the Motion. The Amici Curiae brief has been fully considered by the Court in rendering its decision.

burden of persuasion as to each of these four factors. Siegel v. LePore, 234 F. 3d 1163, 1176 (11th Cir. 2000); McDonald's Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998). Moreover, when a party seeks to affirmatively enjoin a state governmental agency, requiring it to perform a certain action, the “case must contend with the well-established rule that the Government has traditionally been granted the widest latitude in the dispatch of its own affairs.” Martin v. Metro. Atlanta Rapid Transit Auth., 225 F. Supp. 2d 1362, 1372 (N.D. Ga. 2002) (citing Rizzo v. Goode, 423 U.S. 362, 378–79 (1976)). This rule “bars federal courts from interfering with non-federal government operations in the absence of facts showing an immediate threat of substantial injury.” Id. (quoting Midgett v. Tri-Cnty. Metro. Dist. of Or., 74 F. Supp. 2d 1008, 1012 (D. Or. 1999); citing Brown v. Bd. of Trs. of LaGrange Ind. Sch. Dist., 187 F.2d 20 (5th Cir. 1951)).<sup>5</sup> The decision to grant preliminary injunctive relief is within the broad discretion of the district court. Majd-Pour v. Georgiana Cmty. Hosp., Inc., 724 F.2d 901, 902 (11th Cir. 1984).

---

<sup>5</sup> All decisions of the former Fifth Circuit entered prior to October 1, 1981, are binding precedent in the Eleventh Circuit. Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1209–10 (11th Cir. 1981).

## 2. *Recent Supreme Court Authority*

Added to this mix is the recent Supreme Court order in Merrill v. Milligan, 595 U.S. ---, 142 S. Ct. 879 (Feb. 7, 2022). Milligan involves challenges under the United States Constitution and the VRA to Alabama's recently redrawn congressional electoral maps. See generally Milligan v. Merrill, Case No. 2:21-cv-1530-AMM (N.D. Ala.) (three-judge court), consolidated with Singleton v. Merrill, Case No. 2:21-cv-1291-AMM (N.D. Ala.) (three-judge court). After an extensive evidentiary hearing, the three-judge court entered preliminary injunctions enjoining the Alabama Secretary of State from conducting congressional elections using those maps. Id. Doc. No. [107]. The Alabama defendants applied to the United States Supreme Court for a stay of the injunctive relief from those orders. Milligan, 142 S. Ct. at 879.<sup>6</sup> The Supreme Court granted the request and stayed, without opinion, the injunctions that were issued by the three-judge court. See id. Chief Justice Roberts, as well as Justices Kagan, Breyer, and Sotomayor, dissented. Id. at 882–89.

---

<sup>6</sup> Because the orders were issued by a three-judge court, all appellate review is by the United States Supreme Court. 52 U.S.C. § 10306(c) ("The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.").



Justice Kavanaugh, joined by Justice Alito, wrote separately to concur with the stay of the injunctions. See id. at 879–82. Justice Kavanaugh’s concurrence first emphasized that the stay was not a ruling on the merits but followed precedent – the Purcell principle<sup>7</sup> – which dictates that federal courts generally “should not enjoin state election laws in the period close to an election.” Id. at 879. This is important because

[l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others. It is one thing for a State on its own to toy with its election laws close to a State’s elections. But it is quite another thing for a federal court to swoop in and re-do a State’s election laws in the period close to an election.

Id. at 881 (footnote omitted). Because “practical considerations sometimes require courts to allow elections to proceed despite pending legal challenges,”

---

<sup>7</sup> The Purcell principle derives from Purcell v. Gonzales, 549 U.S. 1 (2006) (per curiam). There, the Supreme Court noted that “[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase.” Id. at 4–5. Accordingly, the Court vacated an appellate court order that enjoined enforcement of a voter-identification law about a month before an election. Id. at 3. Based on Purcell, both the Supreme Court and lower federal courts have applied the principle that “lower federal courts should ordinarily not alter the election rules on the eve of an election.” Republican Nat’l Comm. v. Democratic Nat’l Comm., 140 S. Ct. 1205, 1207 (2020) (citations omitted).

id. at 882 (quoting Riley v. Kennedy, 553 U.S. 406, 426 (2008)), Justice Kavanaugh concluded that the Purcell principle should be applied to modify the traditional preliminary injunction standard when elections are close at hand:

I would think that the Purcell principle thus might be overcome even with respect to an injunction issued close to an election if a plaintiff establishes at least the following: (i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship.

Id. at 881 (citations omitted).

Although Justice Kavanaugh’s concurrence is not controlling, this Court would be remiss if it ignored its conclusions. First, even dicta from the Supreme Court carries strong persuasive value. The Eleventh Circuit has made this clear. In rejecting another appellate court’s dismissal of Supreme Court dicta, the Eleventh Circuit emphasized the following:

We disagree with the [] opinion’s dismissal of the Supreme Court’s specific pronouncements []. A lot. We will start with the most fundamental reason. We have always believed that when the Founders penned Article III’s reference to the judicial power being vested “in one supreme Court and in such inferior

Courts” as Congress may establish, they used “supreme” and “inferior” as contrasting adjectives, with us being on the short end of the contrast. See U.S. Const. Art. III § 1. . . .

It is true that the Supreme Court’s analysis . . . and its conclusion that the issue remains an open question in Supreme Court jurisprudence, is dicta. However, there is dicta and then there is dicta, and then there is Supreme Court dicta. . . .

We have previously recognized that “dicta from the Supreme Court is not something to be lightly cast aside.”

Schwab v. Crosby, 451 F.3d 1308, 1325 (11th Cir. 2006) (quoting Peterson v. BMI Refractories, 124 F.3d 1386, 1392 n.4 (11th Cir. 1997)).

Second, although the Supreme Court did not issue an opinion in Milligan explaining its reasoning for staying the three-judge court’s injunction orders, five justices agreed that the stay should issue. That is, a majority of the Supreme Court necessarily concluded that there was a “fair prospect” it would reverse the injunction on the merits, the Alabama defendants would suffer irreparable injury if the injunction were not lifted, the equities weighed in the defendants’ favor, and the injunction was not in the public interest. 142 S. Ct. at 880 (Kavanaugh, J., concurring). Taken in this light, Justice Kavanaugh’s opinion carries even more weight than typical Supreme Court dicta.

Accordingly, although this Court applies the traditional test employed by the Eleventh Circuit for determining whether a preliminary injunction should issue, it is cognizant of the proposed standard set forth by Justice Kavanaugh and that the State of Georgia has already begun the process of preparing for elections to take place under the Enacted Plans.

**B. The Voting Rights Act**

Subsection (a) of Section 2 of the VRA prohibits standards, practices, and procedures that deny or abridge the right to vote of any United States citizen based on race or color. 52 U.S.C. § 10301(a). Such a violation is established

if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Id. at § 10301(b). The Eleventh Circuit has emphasized that Section 2 is “a constitutional exercise of congressional enforcement power under the Fourteenth and Fifteenth Amendments.” United States v. Marengo Cnty. Comm’n, 731 F.2d 1546, 1550 (11th Cir. 1984).

1. *The Gingles Preconditions*

In Thornburg v. Gingles, 478 U.S. 30 (1986), the Supreme Court first interpreted Section 2 after Congress amended it in 1982. The statute, as amended, focuses on the results of the challenged standards, practices, and procedures; it is not concerned with whether those processes were adopted because of discriminatory intent. Id. at 35–36. “Under the results test, the inquiry is more direct: past discrimination can severely impair the present-day ability of minorities to participate on an equal footing in the political process. Past discrimination may cause [B]lack to register or vote in lower numbers than whites. Past discrimination may also lead to present socioeconomic disadvantages, which in turn can reduce participation and influence in political affairs.” Marengo Cnty. Comm’n, 731 F.2d at 1567 (footnote omitted) (citation omitted).

Under Gingles, plaintiffs must show that they have satisfied three prerequisites to make out a Section 2 vote dilution claim:

First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. If it is not, as would be the case in a substantially integrated district, the *multi-member form* of the district cannot be responsible for minority voters’ inability to elect its candidates. Second, the

minority group must be able to show that it is politically cohesive. If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests. Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority’s preferred candidate.

478 U.S. at 50–51 (footnotes omitted) (citations omitted). Despite Gingles’s focus on multi-member districts, in Voinovich v. Quilter, 507 U.S. 146, 153 (1993), the Supreme Court made clear that single-member districts can also dilute minority voting strength and thereby violate Section 2. The Gingles requirements “present mixed questions of law and fact.” Solomon v. Liberty Cnty., Fla., 899 F.2d 1012, 1017 n.6 (11th Cir. 1990) (Kravitch, J., specially concurring).

## 2. *The Senate Factors*

In addition to applying the Gingles factors, courts must also consider several factors that may be relevant to Section 2 claims, which were identified in the Senate Report accompanying the 1982 VRA amendment. Gingles, 478 U.S. at 44–45. The Court notes, “it will be only the very unusual case in which the plaintiffs can establish the . . . Gingles [threshold] factors but still have failed to establish a violation of § 2 under the totality of the circumstances.”

Nipper v. Smith, 39 F.3d 1494, 1514 (11th Cir. 1994) (citing Jenkins v. Red Clay Consol. Sch. Bd. of Educ., 4 F.3d 1103, 1116 (3d Cir. 1993)); see also Clark v. Calhoun Cnty., 88 F.3d 1393, 1402 (5th Cir. 1996) (same). However, Gingles instructs Courts to evaluate the Senate Factors to determine, under the totality of the circumstances, if there was a Section 2 violation. See Gingles, 478 U.S. at 48, n.15. As later explained by the Eleventh Circuit, the Senate Report factors (the “Senate Factors”) that will “typically establish” a violation of Section 2 are:

1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote or otherwise to participate in the democratic process;
2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions,<sup>8</sup> or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

---

<sup>8</sup> Single-shot or bullet voting “enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates.” Gingles, 478 U.S. at 38 n.5 (internal quotation marks omitted) (citations omitted).

4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;

5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment[,] and health, which hinder their ability to participate effectively in the political process;

6. whether political campaigns have been characterized by overt or subtle racial appeals;

7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Solomon, 899 F.2d at 1015–16. Two additional circumstances may also be probative of a Section 2 violation:

8. whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group;

9. whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Id. at 1016.

In Gingles, the Supreme Court concluded that the Senate Factors “will often be pertinent to certain types of § 2 violations, particularly to vote dilution claims.” 478 U.S. at 45 (footnote omitted). In conjunction, the Gingles



preconditions and Senate Factors require the consideration of race to some extent when evaluating electoral districts so that the voting rights of minorities are not denied or abridged. 52 U.S.C. § 10301(a); see also, e.g., Gingles, 478 U.S. 30; Voinovich, 507 U.S. 146; Solomon, 899 F.2d 1012; Marengo Cnty. Comm’n, 731 F.2d at 1561 (“Section 2 is not meant to create race-conscious voting but to attack the discriminatory results of such voting where it is present.”). Satisfying the Gingles preconditions and the Senate Factors proves the injury of vote dilution. Such harms must, however, be evaluated on a district-by-district basis. Gill v. Whitford, 138 S. Ct. 1916, 1930 (2018).

Chief Justice Roberts recently noted that “it is fair to say that Gingles and its progeny have engendered considerable disagreement and uncertainty regarding the nature and contours of a vote dilution claim.” Milligan, 142 S. Ct. at 882–83 (Roberts, C.J., dissenting) (citations omitted). Despite the disagreement and apparent uncertainty, this Court applies the relevant Supreme Court and Eleventh Circuit precedent as they currently exist.

### C. Evidentiary Considerations

At the preliminary injunction stage, “a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is ‘appropriate given the character and

objectives of the injunctive proceeding.” Levi Strauss & Co. v. Sunrise Int’l Trading Inc., 51 F.3d 982, 985 (11th Cir. 1995). A substantial amount of evidence was presented by the parties during the hearing, and much of it has been considered by the Court for purposes of this Order, even if such evidence may not ultimately be admissible at trial. When discussing the evidence, this Order addresses to the extent necessary any objections raised by the parties.<sup>9</sup>

**D. Motions to Dismiss**

The Court has already ruled on the motions to dismiss filed by Defendants in each of these three cases and denied their requests to certify the Court’s rulings for interlocutory appeal. APA Doc. No. [65]; Pendergrass Doc. No. [50]; Grant Doc. No. [43]. No party has sought reconsideration of those Orders. See generally APA Docket; Pendergrass Docket; Grant Docket. Accordingly, the Court does not further address Defendants’ argument that there is no private right of action under Section 2.<sup>10</sup>

---

<sup>9</sup> The Court entered a separate order addressing evidentiary rulings.

<sup>10</sup> The Court is aware of the recent decision in Arkansas State Conference NAACP v. Arkansas Board of Apportionment, Case No. 4:21-cv-01239-LPR, 2022 WL 496908, at \*1 (E.D. Ark. Feb. 17, 2022) (APA Doc. No. [119]), in which the district court concluded there is no implied private right of action under Section 2. Given the extent and weight of the authority holding otherwise (see APA Doc. No. [65], 32–33), including from the Supreme Court, this Court finds no basis to alter the analysis in its Order denying Defendants’ motions to dismiss.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the parties' briefs, evidence, and other filings, and having listened to and considered the testimony and arguments presented during the preliminary injunction hearing, the Court now provides the following findings of fact and conclusions of law. The Court first discusses Plaintiffs' likelihood of success on the merits, analyzing the Section 2 claims under the framework established by Gingles and its progeny. The Court then discusses whether Plaintiffs have shown that they will suffer irreparable injury absent the requested injunctions, whether Plaintiffs' threatened injury outweighs whatever the damage the proposed injunction may cause Defendants and if issued, whether the injunction is adverse to the public interest.

#### **A. Likelihood of Success on the Merits**

The Court's analysis begins with the first Gingles precondition and a credibility review of the expert witnesses who testified in relation to this prong.

1. *The First Gingles Precondition: Numerosity and Compactness*

a) *Credibility Determinations*

(1) *Mr. Cooper*

The Alpha Phi Alpha and Pendergrass Plaintiffs qualified Mr. William S. Cooper as an expert in redistricting and with reference to census data. Feb. 7, 2022, Morning Tr. 38:16–18; Feb. 7, 2022, Afternoon Tr. 112:16–19. Mr. Cooper earned a bachelor’s degree in economics from Davidson College and has earned his living for the last thirty years by drawing maps, both for electoral purposes and for demographic analysis. APAX 1, ¶¶ 1–2. He has extensive experience testifying in federal courts about redistricting issues and has been qualified in forty-five voting rights cases in nineteen states. Id. ¶ 2.

Over twenty-five of these cases led to changes in local election district plans. Id. And five of the cases resulted in changes to statewide legislative boundaries: Rural West Tennessee African-American Affairs Council, Inc. v. McWherter, 877 F. Supp. 1096 (W.D. Tenn. 1995); Old Person v. Brown, 182 F. Supp. 2d 1002 (D. Mont. 2002); Bone Shirt v. Hazeltine, 336 F. Supp. 2d 976 (D.S.D. 2004); Alabama Legislative Black Caucus v. Alabama, 231 F. Supp. 3d 1026 (M.D. Ala. 2017); and Thomas v. Reeves, 2:18-CV-441-CWR-FKB, 2021 WL 517038 (S.D. Miss. Feb. 11, 2021).

Mr. Cooper has served as an expert in two post-2010 local level Section 2 cases in Georgia (Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm'rs, 118 F. Supp. 3d 1338 (N.D. Ga. 2015) and Ga. State Conf. of the NAACP v. Emanuel Cnty., 6:16-CV-00021, (S.D. Ga. 2016)) both of which resulted in settlements and implementation of the maps that Mr. Cooper created. Mr. Cooper has worked on behalf of both plaintiffs and defendants in redistricting cases. Caster v. Merrill, No. 2:21-cv-1536-AMM, 2022 WL 264819, at \*35 (N.D. Ala. Jan. 24, 2022); APAX 1, 67-72.

The Court finds Mr. Cooper's testimony highly credible. Mr. Cooper has spent the majority of his career drawing maps for redistricting and demographic purposes, and he has accumulated extensive expertise (more so than any other expert in the first Gingles precondition in the case) in redistricting litigation, particularly in Georgia. Indeed, his command of districting issues in Georgia is sufficiently strong that he was able to draw a draft remedial plan for Pendergrass's counsel "in a couple of hours in late November." Feb. 7, 2022, Morning Tr. 69:6-9.

Throughout Mr. Cooper's reports and his live testimony, his opinions were clear and consistent, and he had no difficulty articulating his bases for them. See APAX 1, Feb. 7, 2022, Morning Tr. 39-104; Feb. 7, 2022, Afternoon Tr.

113–241. But he was not dogmatic: he took Mr. Tyson’s and the Court’s criticism of the compactness of his Illustrative State Senate District 18 seriously and stated, “I think the Plaintiffs – the Defendant are going to complain about [Senate District 18]. I think they sort of have a valid argument that you don’t need to have a district that long, so . . . if I had that opportunity, will fix that problem.” Feb. 7, 2022, Afternoon Tr. 149:14–23.

The Court particularly credits Mr. Cooper’s testimony that he “tried to balance” all traditional redistricting principles. Feb. 7, 2022, Morning Tr. 50:24. Mr. Cooper also testified that he “was aware of [all the traditional redistricting principles] and [he] tried to achieve plans that were fair and balanced.” Feb. 7, 2022, Afternoon Tr. 140:6–7. He was candid that he prioritized race only to the extent necessary to answer the essential question asked of him as an expert on the first Gingles precondition (“Is it possible to draw an additional, reasonably compact majority-Black district?”), and clearly explained that he did not prioritize it to any greater extent. See Feb. 7, 2022, Morning Tr. 51:4–5 (“I was aware of the racial demographics for most parts of the state, but certainly [race] did not predominate”); Feb. 7, 2022, Afternoon Tr. 135:17–19 (“I was aware of race as traditional redistrict principles suggest one should be. I mean, it’s Voting Rights Act[.]. It’s Federal Law.”). Mr. Cooper acknowledged that [the]

tradeoffs between traditional districting criteria are necessary, and he did not ignore any criteria. See Feb. 7, 2022, Afternoon Tr. 230:22–25 (“I have attempted to balance [traditional redistricting principles] together and I think overall, the Plan does comply with traditional redistricting principles, but I’m certainly willing to accept criticism and would make adjustments upon receiving that criticism.”).

During Mr. Cooper’s live testimony, the Court carefully observed his demeanor, particularly as he was cross-examined for the first time about his work on this case. He consistently defended his work with careful and deliberate explanations of the cases for his opinions. The Court observed no internal inconsistencies in his testimony, no appropriate question that he could not or would not answer, and no reason to question the veracity of his testimony. The Court finds that his methods and conclusions are highly reliable, and ultimately that his work as an expert on the first Gingles precondition is helpful to the Court.

*(2) Mr. Esselstyn*

The Grant Plaintiffs qualified Mr. Blakeman B. Esselstyn as an expert in redistricting and census data. Feb. 8, 2022, Afternoon Tr. 111:18–112:1. Mr. Esselstyn earned his bachelor’s in Geology & Geophysics and International

Studies from Yale University and a Master's in Computer and Information Technology from the University of Pennsylvania, School of Engineering. GPX 3, 26. Mr. Esselstyn testified that he has "more than 20 years in experience in looking at maps and demographics and recognizing patterns and things like that." Feb. 9, 2022, Afternoon Tr. 168:10-12. Since 2017, Mr. Esselstyn has taught two one-semester-graduate-level courses in Geographic Information Systems. GPX 3, at 27. Mr. Esselstyn has designed redistricting plans that were accepted by various local governments in North Carolina. Id. at 27-28. Mr. Esselstyn was a testifying expert witness in Jensen v. City of Asheville, Buncombe County, North Carolina, Superior Court (2009); Hall v. City of Asheville, Buncombe County, North Carolina, Superior Court (2009); and Arnold v. City of Asheville, Buncombe County, North Carolina, Superior Court (2005). On *voir dire*, Mr. Esselstyn acknowledged that he has never drawn a statewide map that was used in an election and that he has never drawn a map for any jurisdiction in Georgia. Feb. 8, 2022, Afternoon Tr. 112:13-18. The Court finds Mr. Esselstyn's testimony highly credible. Mr. Esselstyn has spent the majority of his professional life drawing maps for redistricting and demographic purposes.



Throughout Mr. Esselstyn's reports and his live testimony, his opinions were clear and consistent, and he had no difficulty articulating his bases for them. See GPX 3; Feb. 8, 2022, Afternoon Tr. 107–128; Feb. 9, 2022, Afternoon Tr. 148–276. Mr. Esselstyn acknowledged that his Illustrative State and House Plans had higher population deviations, more precinct splits, and more county splits than the Enacted State House and Senate Plans. Feb. 9, 2022, Afternoon Tr. 203:18–21, 205:8–14, 23–25. Mr. Esselstyn also stated that if he was asked to try to reduce these changes, he “could probably accommodate.” Id. at 204:23–25.

The Court particularly credits Mr. Esselstyn's testimony that he tried “to sort of find the best balance that [he] can” for all the traditional redistricting principles. Feb. 9, 2022, Afternoon Tr. 157:14–25. Mr. Cooper also testified the traditional redistricting principles are “sort of the multi-layered puzzle” and it's a balancing act” because “there are often criteria that will be [in tension] with each other.” Id. at 157:24–25. He was candid that he prioritized race only to the extent necessary to answer the essential question asked of him as an expert on the first Gingles precondition (“Is it possible to draw an additional, reasonably compact majority-Black district?”), and clearly explained that he did not prioritize it to any greater extent. See id. at 155:20–156:2 (“[M]y

understanding of Section 2 in the Gingles criteria is that the key metric is whether a district has a majority of Any Part Black population. . . . And that means . . . [y]ou have to look at the numbers that measure the percentage of the population is Black.”). Mr. Esselstyn acknowledged that tradeoffs between traditional districting criteria are necessary, and he did not ignore any criteria.

See id. at 157:14–21

[O]ften the criteria will be [in tension] with each other. It may be that you are trying to just follow precinct lines and not split . . . precincts, but the precincts have funny shapes. So that means you either are going to end up with a less compact shape that doesn’t split precincts or you could split a precinct and end up with a more compact shape.

During Mr. Esselstyn’s live testimony, the Court carefully observed his demeanor, particularly as he was cross-examined for the first time about his work on this case. He consistently defended his work with careful and deliberate explanations of the cases for his opinions. The Court observed no internal inconsistencies in his testimony, no appropriate question that he could not or would not answer, and no reason to question the veracity of his testimony. The Court finds that his methods and conclusions are highly reliable, and ultimately that his work as an expert on the first Gingles precondition is helpful to the Court.

*(3) Mr. Morgan*

The Defendants qualified Mr. John B. Morgan as an expert in redistricting and the analysis of demographic data. Feb. 11, 2022, Morning Tr. 121:8–10. Mr. Morgan has a bachelor's in History from the University of Chicago and has earned his living for the last thirty years by drawing maps, both for electoral purposes and for demographic analysis. DX 2, ¶ 2; Feb. 11, 2022, Morning Tr. 119:13–18. Prior to this case, Mr. Morgan has served as a testifying expert in five cases. Feb. 11, 2022, Afternoon Tr. 244:12–15. He has performed redistricting work for 20 states and performed demographics and election analysis in 40 states for both statewide and legislative candidates. DX 2, at 17–18.

Despite Mr. Morgan's extensive experience, the Court assigns very little weight to Mr. Morgan's testimony. Mr. Morgan's previous redistricting work includes drawing maps that were ultimately struck down as unconstitutional racial gerrymanders (Feb. 11, 2022, Afternoon Tr. 183:9–17, 183:24–184:6), as well as serving as an expert for the defense in a case in Georgia where the map was ultimately found to have violated the Voting Rights Act (Feb. 14, 2022, Morning Tr. 9:21–10:6).

In Georgia State Conference of NAACP v. Fayette County Board of Commissioners, Mr. Morgan testified as an expert for the defense opposite Mr. Cooper, who testified as an expert for the plaintiffs. 950 F. Supp. 2d 1294, 1310–11 (N.D. Ga. 2013). In granting the motion for summary judgment, that court found that the plaintiffs successfully asserted a vote dilution claim. Id. at 1326. At the preliminary injunction hearing for the cases sub judice, Mr. Morgan admitted that he worked on the 2011–2012 North Carolina State Senate Maps. Feb. 11, 2022, Afternoon Tr.182:22–183:13. Ultimately, twenty-eight districts in North Carolina’s 2011 state House and Senate redistricting plans were struck down as racial gerrymanders. Id. at 183:14–19; see also Covington v. North Carolina, 316 F.R.D. 117 (M.D.N.C. 2016), aff’d North Carolina v. Covington, 137 S. Ct. 2211 (2017).

Additionally, two federal courts have determined that Mr. Morgan’s testimony was not credible. Feb. 11, 2022, Afternoon Tr. 245:19–246:15, 246:17–19, 247:25–248:21. The Court gives great weight to the credibility determinations of its sister courts.

At the hearing for this matter, Mr. Morgan testified that he had helped draw the 2011 Virginia House of Delegates Maps. Feb. 11, 2022, Afternoon Tr. 183:20–25. In that case, “Mr. Morgan testified . . . that he played a substantial

role in constructing the 2011 plan, which role included his use of the Maptitude software to draw district lines.” Bethune-Hill v. Virginia State Bd. of Elections, 326 F. Supp. 3d 128, 151 (E.D. Va. 2018). Ultimately, a three-judge court found that 11 of the House of Delegates districts were racial gerrymanders. Feb. 11, 2022, Afternoon Tr. 184:1–6; see also Bethune-Hill, 326 F. Supp. 3d at 181.

Mr. Morgan served as both a fact and expert witness in Bethune-Hill. That court ultimately found that Mr. Morgan’s testimony was not credible. That court found that “Morgan’s testimony was wholly lacking in credibility. Th[is] adverse credibility finding[] [is] not limited to particular assertions of [this] witness[], but instead wholly undermine[s] the content of . . . Morgan’s testimony.” Bethune-Hill, 326 F. Supp. 3d at 174; Feb. 11, 2022, Afternoon Tr. 246:17–19, 247:25–248:4. Specifically, “Morgan testified in considerable detail about his reasons for drawing dozens of lines covering all 11 challenged districts, including purportedly race-neutral explanations for several boundaries that appeared facially suspicious.” Bethune-Hill, 326 F. Supp.3d at 151. “In our view, Morgan’s contention, that the precision with which these splits divided white and black areas was mere happenstance, simply is not credible.” Id. “[W]e conclude that Morgan did not present credible testimony, and we decline to consider it in our predominance analysis.” Id. at 152.

Mr. Morgan also served as a testifying expert in Page v. Virginia State Bd. of Elections, No. 3:13cv678, 2015 WL 3604029 (E.D. Va. June 5, 2015). Feb. 11, 2022, Afternoon Tr. 245:2–5. When counsel for the Pendergrass and Grant Plaintiffs asked Mr. Morgan if he recalled that court’s opinions about his testimony, he stated: “not specifically.” Id. at 245:9–11. That court found “Mr. Morgan, contends that the majority-white populations excluded . . . were predominately Republican. . . . The evidence at trial, however, revealed that Mr. Morgan’s analysis was based upon several pieces of mistaken data, a critical error. . . . Mr. Morgan’s coding mistakes were significant to the outcome of his analysis.” Page, 2015 WL 3604029, at \*15 n.25; Feb. 11, 2022, Afternoon T. 245:19–3. Mr. Morgan explained that his error was caused because the attorneys asked him to produce an additional exhibit on the day of trial. Feb. 11, 2022, Afternoon Tr. 246:8–14.

During Mr. Morgan’s live testimony, the Court carefully observed his demeanor, particularly as he was cross-examined for the first time about his work on this case. The Court found that Mr. Morgan declined to answer counsel’s and the Court’s questions about the definition for “packing.” Feb. 11, 2022, Afternoon Tr. 192:24–196:25. The Court specifically asked Mr. Morgan for his definition of packing (Id. at 194:4), to which Mr. Morgan responded,

“Honestly, I have seen so many different places —” Id. at 194:4–6. The Court then stated, “I understand that. You said you have been doing this for four decades. You have more experience than just about everybody. What is your definition of it?” Id. at 194:7–9. Despite the Court and counsel’s questioning, Mr. Morgan never gave a clear definition for the term “packing.” Id. at 194:7–196:25. The Court also observed that Mr. Morgan consistently could not recall that his credibility was undermined in previous redistricting cases. As such, the Court finds that Mr. Morgan’s testimony lacks credibility, and the Court assigns little weight to his testimony.

*(4) Ms. Wright*

Over objection from the Grant and Pendergrass Plaintiffs, Defendants offered Ms. Regina Harbin Wright as an expert on redistricting in Georgia and the analysis of demographic data in Georgia.<sup>11</sup> Ms. Wright is an experienced map drawer and a busy public servant. Ms. Wright serves as the Executive Director of the Legislative and Congressional Reapportionment Officer (LCRO), a joint office of the Georgia General Assembly. DX 41, ¶ 2. Ms. Wright

---

<sup>11</sup> In 2012, Ms. Wright served as a technical advisor and consultant to this Court in the redrawing the Cobb County, Georgia electoral commission districts. See Crumly v. Cobb Cnty. Bd. of Elections & Voter Registration, 892 F. Supp. 2d 1333 (N.D. Ga. 2012); Feb. 11, 2022, Morning Tr. 9:2–4.

has worked for LRCO for just over twenty-one years and has been the director for almost ten years. Feb. 11, 2022, Morning Tr. 6:20–24. LRCO assists the General Assembly in drawing the Georgia State House and Senate Districts, the Public Service Commission, as well as the fourteen (14) United States Congressional Districts. Id. LRCO provides an array of maps and data reports to both legislators and the public at large. Id.

Ms. Wright has served as an expert or technical advisor for redistricting by federal courts in eight federal cases since the 2010 redistricting cycle. See DX 41, ¶ 6 (Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm’rs, 996 F. Supp. 2d 1353, 1359 (N.D. Ga. 2014) (appointed as the court’s “independent technical advisor”); Fayette Cnty. Bd. of Comm’rs, 118 F. Supp. 3d at 1340 (appointed to be the court’s “expert or technical advisor”); Crumly v. Cobb Cnty. Bd. of Elections & Voter Registration, 892 F. Supp. 2d 1333, 1344 (N.D. Ga. 2012) (appointed as the court’s “technical advisor and consultant”) Martin v. Augusta-Richmond Cnty., No. CV 112-058, 2012 WL 2339499, at \*1 (S.D. Ga. June 19, 2012) (appointed by the court as “advisor and consultant”); Walker v. Cunningham, No. CV 112-058, 2012 WL 2339499, at \*5 (S.D. Ga. June 19, 2012) (three-judge court) (appointed by the court “as its independent technical advisor”); Bird v. Sumter Cnty. Bd. of Educ., CA No. 1:12cv76-WLS (M.D. Ga.



2013) Doc. No. [70], 5 (appointed as the court's "independent technical advisor"); Adamson v. Clayton Cnty. Elections & Reg. Bd., CA No. 1:12cv1665-CAP (N.D. Ga. 2012), Doc. No. [23], 2 (appointed as the court's "independent technical advisor."); Ga. State Conf. of NAACP v. Kemp, 312 F. Supp. 3d 1357, 1360–62 (N.D. Ga. 2018) (three-judge court) (testified at preliminary judgment hearing by deposition)).

Counsel for Defendants offered Ms. Wright as an expert on redistricting in Georgia and the analysis of demographic data in Georgia. Feb. 11, 2022, Morning Tr. 10:1–3. Counsel for the Grant and Pendergrass Plaintiffs objected to Ms. Wright's certification as an expert because

Her credibility has been specifically questioned by the Court in connection with the 2015 redistricting where she moved many [B]lack voters from districts where their votes would have made an impact to districts where they would not. And [her] report[, in this case,] is little more than a running commentary untethered to data, much less any sort of scientific or technical analysis that would lend to credibility before this Court . . . . [A]lthough [Ms. Wright] has practical experience relating generally to redistricting, she doesn't apply that technical or specialized knowledge here in any way which might be helpful to this Court . . . . her testimony is not based on sufficient facts or data which are notably absent from the report . . . . [Ms. Wright] has not and cannot show that her analysis or conclusions to the product are reliable

principles or methods at 702(C), and it too, is wholly absent from her report.

Feb. 11, 2022, Morning Tr. 20:10–17, 21:8–11, 18–20. The Court overruled counsel’s objection and admitted Ms. Wright as an expert on redistricting in Georgia and the analysis of demographic data in Georgia. Id. at 24:1–5.

Although the Court finds that Ms. Wright is a credible expert witness with over twenty-one years of experience in redistricting and demographics in Georgia, the Court assigns little weight to her testimony regarding compactness and demographics; however, the Court assigns a greater amount of weight to Ms. Wright’s testimony about communities of interest and political subdivisions in Georgia.

The Court finds that Ms. Wright did not provide any statistical metric by which to measure the compactness of any of the illustrative maps. Ms. Wright’s report does not explain how she determined whether a particular district was more or less compact and thus was not permitted to explain her methodology at the hearing. DX 41; Feb. 11, 2022, Morning Tr. 47:18–48:6. Thus, the Court assigns very little weight to Ms. Wright’s testimony regarding a district’s compactness. The Court does recognize that Ms. Wright was given one day to

prepare and submit her expert report to the Court. See APA Doc. No. [85]; Pendergrass Doc. No. [58]; Grant Doc. No. [51].

Ms. Wright also testified about the demographics of the enacted Congressional, State House, and State Senate districts in comparison to the Illustrative Congressional, State House, and State Senate districts. Ms. Wright testified that the Secretary of State's Office used the Non-Hispanic Black metric as opposed to the Any Part Black metric that was used by Mr. Cooper and Mr. Esselstyn. Id. at 79:4–80:1. In particular, Ms. Wright testified when evaluating the percentage of Black registered voters, Ms. Wright's analysis is based on non-Hispanic Black metric and not Any Part Black metric. Id. at 79:18–21. Because the Court uses the Any Part Black metric to determine if the Black population is sufficiently numerous to create an additional majority-minority district—"it is proper to look at *all* individuals who identify themselves as [B]lack" in their census responses, even if they "self-identify as both [B]lack and a member of another minority group," because the case involved "an examination of only one minority group's effective exercise of the electoral franchise." Georgia v. Ashcroft, 539 U.S. 461, 473 n.1 (2003)—the Court assigns little weight to Ms. Wright's demographic analysis.

The Court assigns greater weight to Ms. Wright’s testimony about communities of interest and political subdivisions in Georgia. Ms. Wright has twenty-one years of experience in drawing statewide Congressional, State House, and State Senate districts. DX 41, ¶ 2. Ms. Wright also assists in drawing maps for local County Commissions, Boards of Education, and City Councils throughout the state of Georgia. Id. Ms. Wright oversees a staff that draws maps in Georgia for statewide legislative districts, local redistricting plans, city creation boundaries, annexations and de-annexations, and precinct boundary changes. Id. ¶ 3. Finally, Ms. Wright has been appointed as an expert and technical advisor to the Court in seven federal redistricting cases between 2012 and 2015. Id. at 6. Accordingly, the Court finds that Ms. Wright has extensive knowledge about communities of interest and political subdivisions in Georgia. Thus, Ms. Wright’s testimony regarding communities of interest and political subdivisions in Georgia is highly credible.

Having discussed the expert witnesses relevant to the analysis of the first Gingles precondition in these cases.

**b) First Gingles Precondition Legal Standard**

To satisfy the first Gingles precondition, the plaintiffs must establish that Black voters as a group are “sufficiently large and geographically compact to

constitute a majority in some reasonably configured legislative district.” Cooper, 137 S. Ct. at 1470 (internal quotation marks omitted). “When applied to a claim that single-member districts dilute minority votes, the first Gingles [pre]condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice.” Johnson v. De Grandy, 512 U.S. 997, 1008 (1994). Although “[p]laintiffs typically attempt to satisfy [the first Gingles precondition] by drawing hypothetical majority-minority districts,” Clark, 88 F.3d at 1406, such illustrative plans are “not cast in stone” and are offered only “to demonstrate that a majority-[B]lack district is feasible,” Clark v. Calhoun Cnty., 21 F.3d 92, 95 (5th Cir. 1994); see also Bone Shirt v. Hazeltine, 461 F.3d 1011, 1019 (8th Cir. 2006) (same); Solomon, 899 F.2d at 1018 n.7 (Kravitch, J., specially concurring) (“So long as the potential exists that a minority group could elect its own representative in spite of racially polarized voting, that group has standing to raise a vote dilution challenge under the Voting Rights Act.” (citing Gingles, 478 U.S. at 50 n.17)).

**(1) Numerosity**

The plaintiffs must show that the Black population is sufficiently numerous to create an additional majority-minority district. “In majority-

minority districts, a minority group composes a numerical, working majority of the voting-age population. Under present doctrine, [Section] 2 can require the creation of these districts.” Bartlett v. Strickland, 556 U.S. 1, 13 (2009) (plurality op.). “[A] party asserting [Section] 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent.” Id. at 19–20. When a voting rights “case involves an examination of only one minority group’s effective exercise of the electoral franchise[,] . . . it is proper to look at *all* individuals who identify themselves as black” when determining a district’s Black Voting Age Population (“BVAP”). Ashcroft, 539 U.S. at 474 n.1 (2003); see also Fayette Cnty., 118 F. Supp. 3d at 1343 n.8 (“[T]he Court is not willing to exclude Black voters who also identify with another race when there is no evidence that these voters do not form part of the politically cohesive group of Black voters in Fayette County.”).

In determining whether a district is sufficiently numerous, Courts use the Any Part Black Voting Age Population (“AP BVAP”) demographics, not single-race black demographics. The Supreme Court concluded that “it is proper to look at *all* individuals” even if they “self-identify as both [B]lack and a member of another minority group,” because the case involved “an

examination of only one minority group's effective exercise of the electoral franchise." Ashcroft, 539 U.S. at 473 n.1 (2003). Because this Court must decide a case that involves claims about Georgia's Black population's effective exercise of the electoral franchise, this Court relies on the AP BVAP metric.

## *(2) Compactness*

The plaintiffs must show that Georgia's Black population can form additional reasonably compact Congressional, State Senate, and State House districts. Under the compactness requirement of the first Gingles precondition, Plaintiffs must show that it is "possible to design an electoral district[] consistent with traditional redistricting principles." Davis v. Chiles, 139 F.3d 1414, 1425 (11th Cir. 1998). Compliance with this criterion does not require that the illustrative plans be equally or more compact than the enacted plans; instead, this criterion requires only that the illustrative plans contain reasonably compact districts. An illustrative plan can be "far from perfect" in terms of compactness yet satisfy the first Gingles precondition. Wright v. Sumter Cnty. Bd. of Elections & Registration, 301 F. Supp. 3d 1297, 1326 (M.D. Ga. 2018), aff'd, 979 F.3d 1282 (11th Cir. 2020). "While no precise rule has emerged governing § 2 compactness," League of United Latin American Citizens (LULAC) v. Perry, 548 U.S. 399, 433 (2006), plaintiffs satisfy the first

Gingles precondition when their proposed majority-minority district is “consistent with traditional districting principles,” Davis, 139 F.3d at 1425.

These traditional districting principles include “maintaining communities of interest and traditional boundaries,” “geographical compactness, contiguity, and protection of incumbents. Thus, while Plaintiffs’ evidence regarding the geographical compactness of their proposed district does not alone establish compactness under § 2, that evidence, combined with their evidence that the district complies with other traditional redistricting principles, is directly relevant to determining whether the district is compact under § 2.” Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs, 950 F. Supp. 2d 1294, 1307 (N.D. Ga. 2013) (citations omitted), aff’d in part, rev’d in part on other grounds, 775 F.3d 1336 (11th Cir. 2015).

Plaintiffs’ Illustrative Plans must comply with the one person one vote requirement under the Equal Protection Clause. Fayette Cnty., 996 F. Supp. 2d at 1368.

**c) Pendergrass**

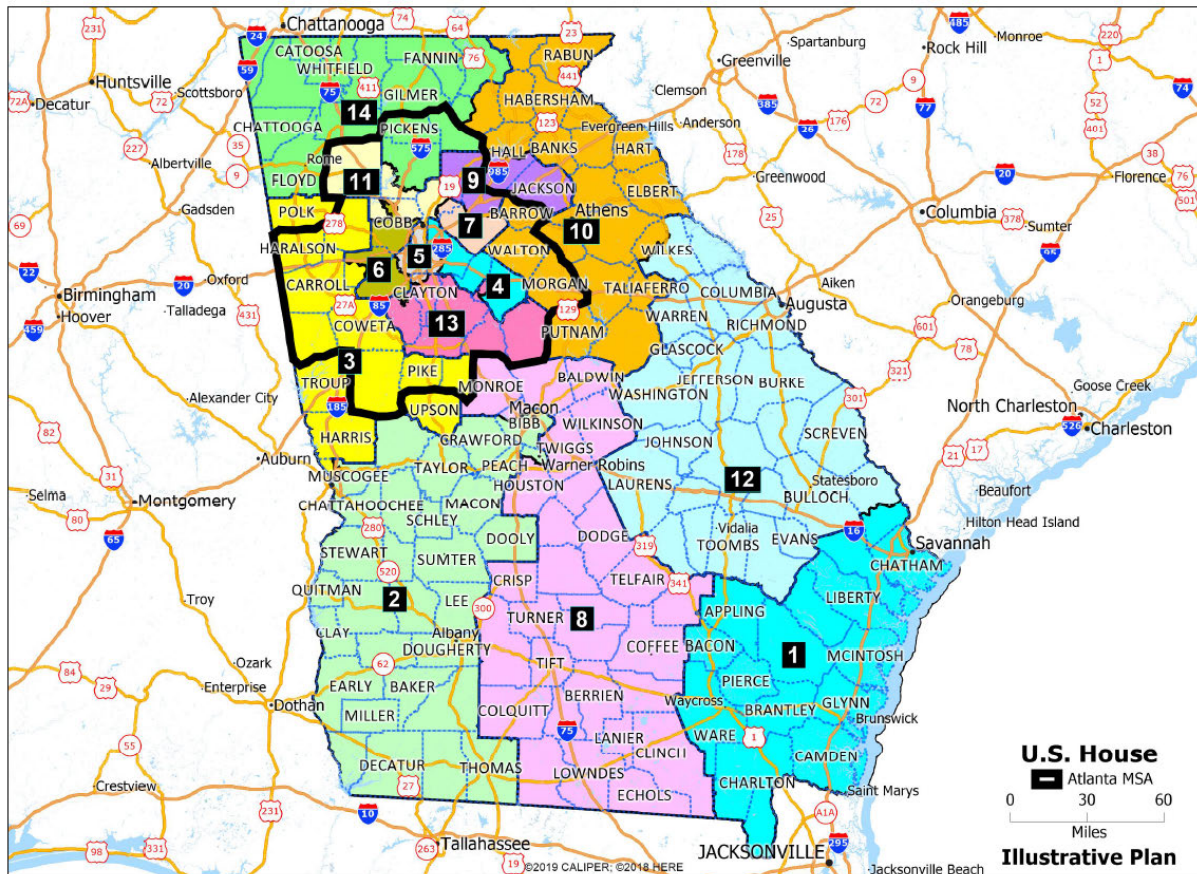
The Court finds that the Pendergrass Plaintiffs have established that they are substantially likely to succeed on the merits of showing that it is possible to create an additional majority-minority congressional district in the western



Atlanta metropolitan area that complies with the relevant considerations under Gingles.

The Pendergrass Plaintiffs move for an order preliminarily enjoining Defendants from enforcing the boundaries of the congressional districts as drawn in the Georgia Congressional Redistricting Act of 2021, which they claim violates Section 2 by failing to include an additional congressional district in the western Atlanta metropolitan area in which Black voters would have the opportunity to elect their preferred candidates. Pendergrass Doc. No. [32], 2. In particular, the Pendergrass Plaintiffs contend that the new congressional map packs Black voters into the Thirteenth Congressional District—which has a BVAP over 66% and includes south Fulton, north Fayette, Douglas, and Cobb Counties—and cracks other Black voters among the more rural and predominately white Third, Eleventh, and Fourteenth Congressional Districts. Pendergrass Doc. No. [32-1], 4, 6–7. The Pendergrass Plaintiffs argue that increases in Georgia’s Black population over the last decade, along with concurrent decreases in the state’s white population, create an opportunity for an additional majority-minority congressional district that the State did not draw. See id. at 5, 9–10. Specifically, Plaintiffs contend that they can satisfy the first Gingles precondition by showing that an additional, compact majority-

minority district can be drawn in the western Atlanta metropolitan area. Id. at 9–10. Plaintiffs rely on the following illustrative plan by expert demographer William S. Cooper to demonstrate how such a district could be drawn.



GPX 1, at 65–66. With Mr. Cooper’s illustrative congressional plan, the Pendergrass Plaintiffs contend that they have drawn an illustrative Congressional District 6 – which includes parts of Cobb, Douglas, Fulton, and Fayette Counties – that is majority AP Black and thus would allow Black voters to elect their preferred candidates. Pendergrass Doc. No. [32-1], 10; GPX 1,

¶¶ 47–48 & fig.8. Moreover, Plaintiffs argue that Mr. Cooper’s illustrative congressional district is sufficiently compact and complies with other traditional redistricting principles such as population equality, contiguity, maintaining political boundaries and communities of interest, and avoiding pairing of incumbents. Pendergrass Doc. No. [32-1], 10.

Because the first Gingles precondition requires showings that the relevant minority population is “sufficiently large and geographically compact to constitute a majority in a single-member district,” LULAC, 548 U.S. at 425 (quoting De Grandy, 512 U.S. at 1006–07), the Court now turns to discussion of whether the Pendergrass Plaintiffs have made those showings with their proposed congressional plan.

#### *(1) Numerosity*

The first Gingles precondition requires a “numerosity” showing that “minorities make up more than 50 percent of the voting-age population in the relevant geographic area.” Bartlett v., 556 U.S. at 18. The Court finds that the Pendergrass Plaintiffs have established that the AP BVAP in the western Atlanta metropolitan area is sufficiently numerous to constitute a majority of the voting-age population in a new congressional district in the western Atlanta metropolitan area. Below, the Court will discuss relevant demographic

developments in Georgia and then turn to how those developments inform review of the enacted and illustrative congressional maps.

(a) Demographic developments in Georgia

The U.S. Census Bureau releases population and demographic data to the states after each census for use in redistricting. Pendergrass Stip. ¶ 24. The Census Bureau provided initial redistricting data to Georgia on August 12, 2021. Id. ¶ 25. This data shows that from 2010 to 2020, Georgia's population grew by over 1 million people to 10.71 million, up 10.6% from 2010. Id. ¶ 26; GPX 1, ¶ 13. Based upon Georgia's population, it maintained its fourteen seats in the U.S. House of Representatives. Pendergrass Stip. ¶ 27.

Georgia's population growth since 2010 can be attributed to increases in the state's overall minority population. GPX 1, ¶ 14 & fig.1. For example, from 2010 to 2020, Georgia's Black population increased by almost half a million people, up nearly 16% in that time. Pendergrass Stip. ¶ 28; GPX 1, ¶ 15. During that decade, 47.26% of the state's population gain was attributable to Black population growth. Pendergrass Stip. ¶ 29; GPX 1, ¶ 14 & fig.1. Indeed, Georgia's Black population, as a share of the overall statewide population, increased from 31.53% in 2010 to 33.03% in 2020. GPX 1, ¶ 16 & fig.1. And as a

matter of total population, AP Black Georgians comprise the largest minority population in the state (at 33.03%). Pendergrass Stip. ¶ 32.

Georgia's white population, however, decreased by 51,764 persons, or approximately 1%, from 2010 to 2020. Pendergrass Stip. ¶ 30; GPX 1, ¶ 15 & fig.1. As a result, while non-Hispanic white Georgians remain a majority of the state's population, it is by a slim margin—50.06%. GPX 1, ¶ 17.

Georgia's Black population has increased in absolute and percentage terms since 1990, from about 27% in 1990 to 33% in 2020. Pendergrass Stip. ¶ 31. In that time, the Black population has more than doubled: from 1.75 million to 3.54 million, an increase that is the equivalent of the populations of more than two congressional districts. GPX 1, ¶ 22 & fig.3. Over the same period, the non-Hispanic white population also increased, but at a slower rate: from 4.54 million to 5.36 million, amounting to an increase of about 18% over the three-decade period. GPX 1, ¶ 22 & fig.3. And the percentage of Georgia's population identifying as non-Hispanic white has dropped from about 70% to just over 50%. See Pendergrass Stip. ¶ 31; GPX 1, ¶ 21 & fig.3.

As of the 2020 census, Georgia has a total voting-age population of 8,220,274, of whom 2,607,986 (31.73%) are AP Black. Pendergrass Stip. ¶ 33;

GPX 1, ¶ 18 & fig.2. The total estimated citizen voting-age population in Georgia in 2019 was 33.8% AP Black. Pendergrass Stip. ¶ 34; GPX 1, ¶ 20.

The Atlanta Metropolitan Statistical Area (the “Atlanta MSA”) consists of the following twenty-nine counties: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton. Pendergrass Stip. ¶ 35; GPX 1, ¶ 12 n.3. The Atlanta MSA has driven Georgia’s population growth in recent decades, due in part to a large increase in the region’s Black population. See GPX 1, ¶ 24 & fig.4. Between 2010 and 2020, the overall population in the Atlanta MSA grew by 803,087 persons – greater than the population of a Georgia congressional district. See GPX 1, ¶ 29 & fig.5.<sup>12</sup> About half of that increase was attributable to the Atlanta MSA’s Black population growing by 409,927 persons (or 23.07%). GPX 1, ¶ 29 & fig.5.<sup>13</sup> And looking at the period from 2000 to 2020, the Black population in the Atlanta

---

<sup>12</sup> According to the 2020 Census, the Atlanta MSA now has a total voting-age population of 4,654,322 persons. GPX 1, ¶ 30 & fig.6.

<sup>13</sup> According to the 2020 Census, the Atlanta MSA’s voting-age population now includes 1,622,469 (34.86%) AP Black persons and 4,342,333 (52.1%) non-Hispanic white persons. GPX 1, ¶ 30 & fig.6.



MSA grew from 1,248,809 to 2,186,815 in 2020—or 938,006 persons.

Pendergrass Stip. ¶ 36.<sup>14</sup>

This increase in the Atlanta MSA’s Black population contrasts with the comparative decrease in the non-Hispanic white population in the same area. Under the 2000 Census, the population in the Atlanta MSA was 60.42% non-Hispanic white. GPX 1, ¶ 24 & fig.4. That share decreased to 50.78% in 2010 and then further to 43.71% in 2020. Id. In fact, between 2010 and 2020, the non-Hispanic white population in the Atlanta MSA decreased by 22,736 persons. Pendergrass Stip. ¶ 37; GPX 1, ¶ 24 & fig.4.

Demographic trends in another sub-group of counties provide further insight. The eleven core counties of the Atlanta Regional Commission (“ARC”) service area are Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, and Rockdale. Feb. 7, 2022, Morning Tr. 96:3–10. According to the 2020 Census, these ARC counties account for more than half (54.7%) of Georgia’s Black population. GPX 1, ¶ 27. When considering the

---

<sup>14</sup> Charting the percentage share growth over the last two decades also illustrates the increases in the AP Black population in the Atlanta MSA: The AP Black population in the Atlanta MSA was 29.29% in 2000, which increased to 33.61% in 2010 and then further to 35.91% in 2020. Pendergrass Stip. ¶ 36.

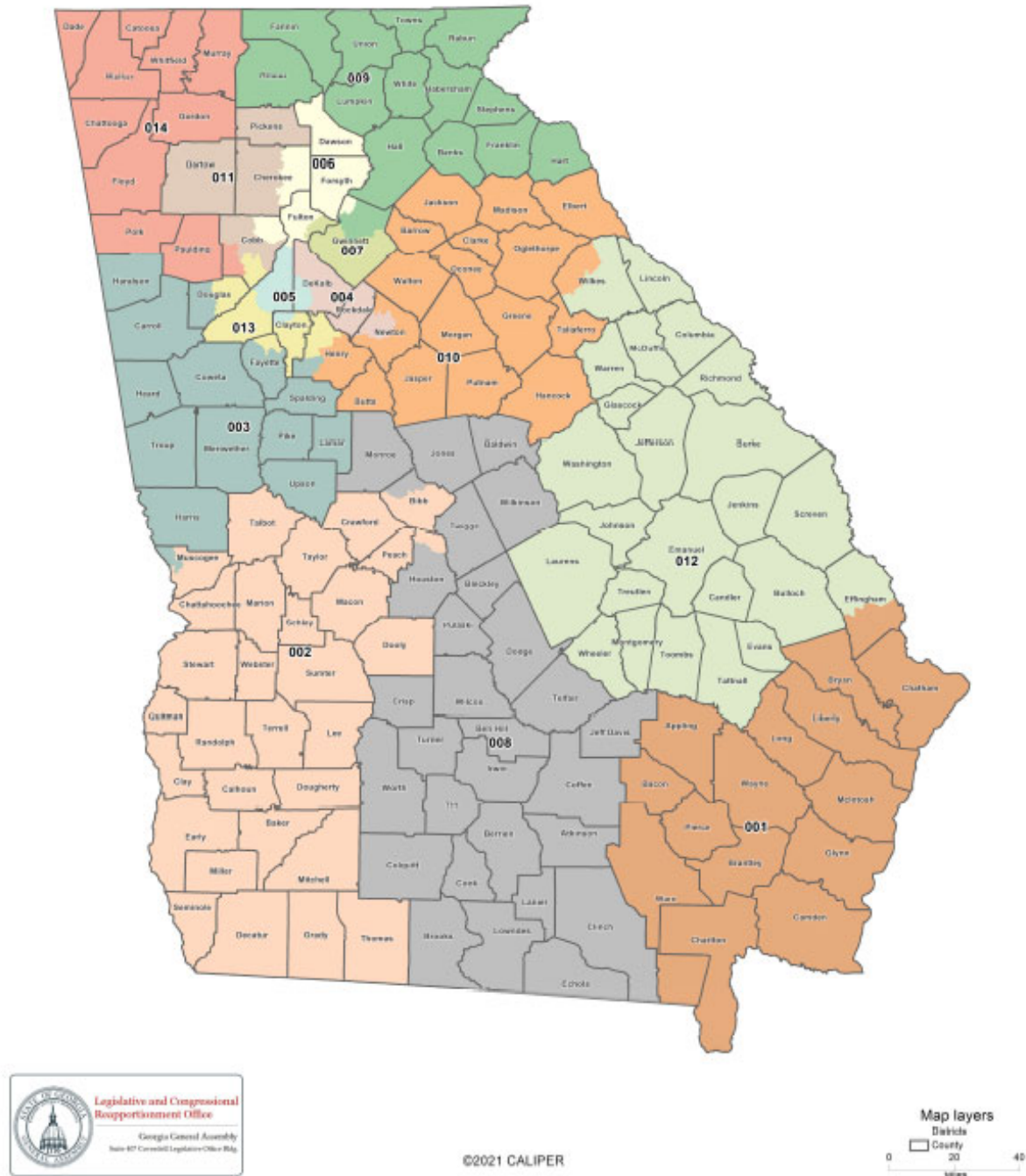
entire Atlanta MSA (including the ARC counties), the Atlanta metropolitan area encompasses 61.81% of Georgia's Black population. Id.

And focusing more particularly on the area in which the illustrative District 6 is located, the 2020 Census shows that the combined Black population in Cobb, Fulton, Douglas, and Fayette Counties is 807,076 persons, which is more than necessary to constitute either an entire congressional district or a majority in two congressional districts. GPX 1, ¶ 40 & fig.7. More than half (53.27%) of the total population increase in these four counties since 2010 can be attributed to the increase in the counties' Black population. Id. ¶ 41.

**(b) Georgia's 2021 congressional plan**

Georgia's Enacted 2021 Congressional Plan contains two majority-minority districts using the AP BVAP metric—Districts 4 and 13. See Pendergrass Stip. ¶ 48. The Enacted Congressional Plan places Districts 3, 6, 11, 13, and 14 in the northwestern part of the state, including areas in the western portions of the Atlanta MSA.





GPX 1, at 55–56. The Enacted Congressional Plan reduces Congressional District 6’s<sup>15</sup> AP BVAP from 14.6% under the prior congressional plan to 9.9%. Pendergrass Stip. ¶ 49; GPX 1, ¶ 38. Under the 2021 plan, Congressional District 13 has an AP BVAP of over 66%. Pendergrass Stip. ¶ 50. Under the Enacted Congressional Plan, Congressional Districts 3, 11, and 14 border Congressional District 13. Id. ¶ 51.

Mr. Cooper observed that “District 13 is packed with African-American voters. Under the 2021 plan it’s almost 65 percent, a little bit over 65 percent black voting age.” Feb. 7, 2022, Morning Tr. 45:4–6. Mr. Cooper concluded that “it would be very easy to unpack that population so that there are fewer African Americans living in the district but still a clear majority black voting age population district. And in so doing create an additional majority black district in western metro Atlanta that would include a little part of Fayette County and south Fulton County, . . . eastern Douglas County and central Southern Cobb County.” Id. at 45:7–14. Mr. Cooper further observed that “the fragmentation of the black population . . . is most evident in Cobb County. Cobb County has

---

<sup>15</sup> The Court takes judicial notice that Congresswoman Lucy McBath, a Black woman, was elected to represent Congressional District 6 in 2018 and won reelection in 2020, even though the AP BVAP for the district was 14.6%.

been split four ways under the enacted plan . . . . As it now stands, the enacted plan takes population that is just a few minutes away from downtown Atlanta in western Cobb County and puts it in District 14, which goes all the way to the suburbs of Chattanooga.” Id. at 46:19–47:4.

(c) **The Pendergrass Plaintiffs’  
illustrative congressional plan**

Analyzing the demographic trends discussed above, as well as the enacted congressional map, Mr. Cooper concludes that “[t]he Black population in metropolitan Atlanta is sufficiently numerous and geographically compact to allow for the creation of an additional compact majority-Black congressional district anchored in Cobb and Fulton Counties (District 6 in the Illustrative Plan).” GPX 1, ¶¶ 10, 42, 59. Mr. Cooper opines that this “additional congressional district can be merged into the enacted 2021 Plan without making changes to six of the 14 districts: CD 1, CD 2, CD 5, CD 7, CD 8, and CD 12 are unaffected.” Id. ¶ 11; see also id. ¶ 46 (“The result leaves intact six congressional districts in the enacted plan, modifying eight districts in the 2021 Plan to create an additional majority-Black district in and around Cobb and Fulton Counties.”); Feb. 7, 2022, Morning Tr. 51:6–20 (Mr. Cooper’s testimony about the unchanged districts).

Mr. Cooper drew an illustrative congressional plan that includes an additional majority-minority congressional district—illustrative Congressional District 6—in the western Atlanta metropolitan area. Pendergrass Stip. ¶ 52; GPX 1, ¶¶ 47–48 & fig.8. Mr. Cooper’s Illustrative Congressional District 6 has an AP BVAP of 50.23% and a non-Hispanic Black citizen voting-age population (“BCVAP”) of 50.69%. Pendergrass Stip. ¶ 53; GPX 1, ¶ 47.<sup>16</sup> Mr. Cooper’s Illustrative Congressional Plan includes three total majority-minority districts using the any part BVAP metric and five total majority-minority districts using the non-Hispanic BCVAP metric. Pendergrass Stip. ¶ 55.<sup>17</sup>

Neither Mr. Morgan nor Ms. Wright disputes that Mr. Cooper’s Illustrative Congressional District 6 is a majority-minority district under both the AP BVAP and non-Hispanic BCVAP metrics. See DX 3, ¶ 9 (Mr. Morgan’s expert report noting that Mr. Cooper’s Illustrative Congressional District 6 has a “50.2% any-part Black voting age population”); DX 41, ¶ 29 (Ms. Wright’s expert report acknowledging that Mr. Cooper’s Illustrative Congressional

---

<sup>16</sup> District 6 is below 50% on other racial metrics, including single-race BVAP and the percentage of registered voters who are Black. See DX 43. As stated above, however, this Court is relying on the AP Black metric.

<sup>17</sup> As a result of the adjustments in the illustrative map, District 13 went from having a 66.75% BVAP to having a 51.40% BVAP, and District 4 went from having a 54.42% BVAP to a 52.40% BVAP. See GPX 2, ¶ 5 & fig.1.

District 6 is “over the 50% threshold on any part Black”).<sup>18</sup> Both Mr. Morgan and Ms. Wright admitted during the hearing that Mr. Cooper’s illustrative Congressional District 6 has an AP BVAP of 50.23%. See Feb. 11, 2022, Morning Tr. 82:21–83:7 (Ms. Wright); Feb. 11, 2022, Afternoon Tr. 233:19–234:1 (Mr. Morgan). Although Ms. Wright claimed that Mr. Cooper’s illustrative Congressional District 6 “is below 50% Black on voter registration” (DX 41, ¶ 29), she admitted during the hearing that more than 8% of registered voters are of unknown race and that this qualifying information was not included in her expert report.<sup>19</sup> See Feb. 11, 2022, Morning Tr. 71:10–78:12.

Notably, Mr. Cooper’s illustrative plan does not reduce the number of preexisting majority-minority districts in the enacted congressional plan. See GPX 1, ¶ 51; GPX 2, ¶ 5 & fig.1. Mr. Cooper testified that creating an additional majority-minority congressional district in the western Atlanta metropolitan

---

<sup>18</sup> While Mr. Morgan notes that District 6 is “a *barely* majority Black district at 50.2%” AP BVAP (DX 3, ¶ 9 (emphasis added)), the question is whether the illustrative district is majority Black. Bartlett, 556 U.S. at 18. Because 50.2% is a majority, the Court finds that the numerosity requirement is met.

<sup>19</sup> Ms. Wright’s report and testimony at trial referenced demographic statistics used by the Secretary of State’s Office. See DX 41, ¶¶ 10–12, 21, 27–29; Feb. 11, 2022, Morning Tr. 71:10–78:12. Because this information was not attached to Ms. Wright’s expert report, or submitted as an exhibit at trial, the Court requested that counsel for Defendants provide said statistics to the Court for review. Feb. 11, 2022, Morning Tr. 80:15–18. The Court reviewed the demographic statistics when preparing this Order.

area with the Black communities in Cobb, Douglas, Fulton, and Fayette Counties “was extremely easy to do” and “not a complicated plan drawing project.” Feb. 7, 2022, Morning Tr. 53:6–8. Mr. Cooper emphasized this point throughout the hearing. E.g., id. at 69:6–9 (stating that “it was extraordinarily easy to draw this additional majority black district in the western part of metro Atlanta” and that “[i]t basically just draws it[self]”); id. at 75:11–12 (Mr. Cooper’s testimony: “There are no complexities here like there might be in other states. This is just drop-dead obvious.”).

Based on the expert reports and testimony provided in this case, the Court concludes that Mr. Cooper’s illustrative congressional plan contains an additional majority-minority congressional district.

Based on the expert reports and testimony provided in this case, the Court concludes that Mr. Cooper’s Illustrative Congressional Plan contains an additional majority-Black congressional district. Thus, the Court finds that the Pendergrass Plaintiffs have satisfied the numerosity component of the first Gingles precondition.

## *(2) Geographic Compactness*

To satisfy the first Gingles precondition, the Pendergrass Plaintiffs must also show that their proposed majority-Black congressional district is

sufficiently compact. This compactness requirement under Gingles requires a showing that it is “possible to design an electoral district[] consistent with traditional redistricting principles.” Davis, 139 F.3d at 1425.

The redistricting guidelines adopted by the Georgia General Assembly provide that those drawing new districts should account for or consider population equality, compactness, contiguity, respect for political subdivision boundaries and communities of interest, and compliance with Section 2 of the Voting Rights Act. See GPX 40. Mr. Cooper testified that his Illustrative Map adheres to these and other neutral districting criteria. See Feb. 7, 2022, Morning Tr. 48:16–50:21 (Mr. Cooper’s testimony describing traditional districting principles employed during his map-drawing process). Mr. Cooper explained that none of the traditional districting principles predominated when he drew his Illustrative Congressional Plan; instead, he “tried to balance them all” and “did not prioritize anything other than specifically meeting the one-person, one-vote zero population ideal district size.” Id. 50:22–51:2.

For the reasons discussed below, the Court finds that the Pendergrass Plaintiffs’ Illustrative Plan comports with traditional redistricting principles—including those enumerated in the General Assembly’s redistricting guidelines.



Thus, the Court finds that the Pendergrass Plaintiffs satisfy the remainder of the first Gingles precondition analysis.

**(a) Population equality**

First, an illustrative plan must comply with the one-person, one-vote principle. See Wright, 301 F. Supp. 3d at 1325–26; see also Reynolds, 377 U.S. at 577 (“[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable.”).

Mr. Cooper’s expert report demonstrates that his Illustrative Plan contains minimal population deviation. See GPX 1 at 67–68; Feb. 7, 2022, Morning Tr. 55:12–18 (Mr. Cooper’s testifying that population equality is “reflected with perfection [in his illustrative map] because the districts are plus or minus one person”). Accordingly, the Court finds that Mr. Cooper’s Illustrative Congressional Map complies with the one-person, one-vote principle.

**(b) Compactness**

Second, as discussed in greater detail above, an illustrative plan must contain “reasonably compact” districts. See Bush v. Vera, 517 U.S. 952, 979 (1996). Mr. Cooper testified that “there is no bright line rule” for compactness,



“nor should there be” given that “so many factors [] enter into the equation” — including, in Georgia, the fact that “municipal boundaries in many [c]ounties [] are not exactly compact.” Feb. 7, 2022, Morning Tr. 60:14–24.

The parties’ experts evaluated the Enacted Congressional Plan and Mr. Cooper’s Illustrative Plan using the Reock and Polsby-Popper analyses, two commonly used measures of a district’s compactness. See GPX 1, ¶ 54 & nn.11–12 & fig.10; DX 1, ¶ 17 & chart 2; see also Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections, 835 F. Supp. 2d 563, 570 (N.D. Ill. 2011) (referring to “the Polsby-Popper measure and the Reock indicator” as “two widely acceptable tests to determine compactness scores”). The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. GPX 1, ¶ 54 & n.11. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. Id. The measure is always between 0 and 1, with 1 being the most compact. Id.; see also Feb. 7, 2022, Morning Tr. 59:21–60:4 (Mr. Cooper describing the Reock score as “just creating a number between zero and one to compare the area of a district with a circle drawn around the district, and so the higher you are towards one, the more compact the district would be under that measure”). The Polsby-Popper test,

on the other hand, computes the ratio of the district area to the area of a circle with the same perimeter. GPX 1, ¶ 54 n.12. The measure is always between 0 and 1, with 1 being the most compact. Id.; see also Feb. 7, 2022, Morning Tr. 60:5–13 (Mr. Cooper’s testimony describing the Polsby-Popper measure). In discussing these methods of measuring compactness scores, Defendants’ mapping expert Mr. Morgan stated that while he would not assert that a certain score would be a universally applicable threshold for compactness, the compactness scores generally “are usually useful in comparing one plan to another” and that “when you do a lot of comparisons, you can see some cases where things are considerably less compact than others.” Feb. 11, 2022, Afternoon Tr. 226:2–11.

Mr. Cooper reported that the mean Reock score for his Illustrative Plan is 0.40, compared to a mean score of 0.43 for the Enacted Plan, and that the mean Polsby-Popper score for this Illustrative Plan is 0.23, compared to 0.25 for the Enacted Plan. GPX 1, ¶ 54 & fig.10; see also id. at 78–83. Mr. Morgan confirmed these figures in his report. See DX 3, ¶ 17; see also Feb. 11, 2022, Afternoon Tr. 243:3–9. The following table included in Mr. Morgan’s report compares, on a district-by-district level for the eight congressional districts

changed in Mr. Cooper’s Illustrative Plan, the compactness measures of Mr. Cooper’s illustrative districts to those of the districts in the Enacted Map:

<b>Proposed Remedial Districts /Adopted Districts</b>	<b>Adopted Plan Reock</b>	<b>Cooper Remedial Plan Reock</b>	<b>Adopted Plan Polsby-Popper</b>	<b>Cooper Remedial Polsby-Popper</b>
<b>Congress 003</b>	<b>0.46</b>	0.40	<b>0.28</b>	0.25
<b>Congress 004</b>	<b>0.31</b>	0.29	<b>0.25</b>	0.21
<b>Congress 006</b>	<b>0.42</b>	0.38	<b>0.20</b>	0.16
<b>Congress 009</b>	0.38	<b>0.40</b>	0.25	<b>0.32</b>
<b>Congress 010</b>	<b>0.56</b>	0.40	<b>0.28</b>	0.18
<b>Congress 011</b>	<b>0.48</b>	0.40	<b>0.21</b>	0.16
<b>Congress 013</b>	0.38	<b>0.42</b>	0.16	<b>0.25</b>
<b>Congress 014</b>	0.43	<b>0.48</b>	<b>0.37</b>	0.34

DX 1, ¶ 17 & chart 2. Mr. Cooper testified that, “practically speaking, there is no difference” between compactness measures for the Illustrative and Enacted Congressional Plans. Feb. 7, 2022, Morning Tr. 61:4–15. Mr. Cooper also testified that the compactness measures for his Illustrative Congressional Plan are “[i]n the usual range. There is no problem with the compactness per se in either” the Enacted or Illustrative Congressional Plans. Id. at 61:16–20. Further, while Mr. Morgan stated that Mr. Cooper’s Illustrative Congressional Plan is “less compact overall” than the Enacted Plan (DX 3, ¶ 17), he did not opine that Mr. Cooper’s Illustrative Plan is not reasonably compact. Feb. 11, 2022,

Afternoon Tr. 243:19–244:1; see also id. at 228:3–16 (Mr. Morgan conceding that there is no minimum compactness threshold for districts under Georgia law).

Given the evidence discussed above, the Court finds that Mr. Cooper’s Illustrative Congressional Map has comparable compactness scores to Georgia’s enacted 2021 congressional plan. More specifically, after reviewing the compactness measures supplied by the expert reports in this case and listening to the expert testimony at the preliminary injunction hearing, the Court concludes that the districts in Mr. Cooper’s Illustrative Plan are reasonably compact for purposes of the first Gingles precondition analysis. And beyond recognizing that the numerical compactness measures indicate that the affected districts in the Illustrative Plan are sufficiently compact, the Court finds that the districts in the Illustrative Plan pass the “eyeball test” in that they appear from a visual review to be compact. See Ala. State Conf. of NAACP v. Alabama, No. 2:16-CV-731-WKW, 2020 WL 583803, at \*20 (M.D. Ala. Feb. 5, 2020) (“District 1 is contiguous and also passes the eyeball test for geographical compactness.”); Comm. for a Fair & Balanced Map, 835 F. Supp. 2d at 571 (noting a district’s Polsby-Popper and Reock scores but also stating that the district “passe[d] muster under the ‘eyeball’ test for compactness”). Accordingly, the Court finds that Mr. Cooper’s Illustrative

Congressional Plan is consistent with the traditional districting principle of compactness.

**(c) Contiguity**

Third, an illustrative plan's district must be contiguous. See Davis, 139 F.3d at 1425. The parties do not dispute that Mr. Cooper's Illustrative Congressional Map contains contiguous districts. See Feb. 7, 2022, Morning Tr. 62:4-14 (Mr. Cooper's testimony confirming that his illustrative districts are contiguous).

**(d) Preservation of political subdivisions**

Fourth, an illustrative plan should consider the "preservation of significant political and geographic subdivisions." See Adamson, 876 F. Supp. 2d at 1353.

Mr. Cooper testified that he "attempted to avoid splitting counties where unnecessary and avoid splitting towns and municipalities." Feb. 7, 2022, Morning Tr. 55:19-56:22. However, he also noted that "to meet one-person, one-vote in the congressional plan, it is absolutely necessary to split some counties." Id. at 56:3-5. In those cases, Mr. Cooper "would try to split the county by precinct," though splitting precincts was also sometimes necessary to achieve population equality. Id. at 56:6-10. If splitting a precinct was

necessary, Mr. Cooper “would follow, if possible, a municipal boundary or an observable boundary like a road or waterway. And in some cases, [Mr. Cooper] generally follow[ed] observable boundaries, but also rel[ied] on a census bureau boundary that is established, known as a block group.” Id. at 56:11–19.

As Mr. Morgan notes, Mr. Cooper’s plan splits more political subdivisions than the Enacted Plan does. DX 3, ¶ 15. Overall, however, the Court finds that county, voting district (“VTD”),<sup>20</sup> and municipal splits are comparable between the Enacted Congressional Plan and Mr. Cooper’s Illustrative Plan. Although thirteen counties are split in Mr. Cooper’s Illustrative Plan (compared to twelve in the Enacted Plan), Mr. Cooper’s Illustrative Plan includes fewer unique county-district combinations than the Enacted Plan—fourteen compared to nineteen—indicating fewer splits overall. See GPX 1, ¶ 55 & fig.11; id. at 84–91; Feb. 7, 2022, Morning Tr. 56:20–57:21 (Mr. Cooper’s testimony distinguishing between number of counties that are split as opposed to number of splits total). Further, Mr. Cooper’s Illustrative

---

<sup>20</sup> The term “voting district” is “a generic term adopted by the Bureau of the Census to include the wide variety of small polling areas, such as election districts, precincts, or wards, that State and local governments create for the purpose of administering elections.” U.S. Census Bureau, <https://www2.census.gov/geo/pdfs/reference/GARM/Ch14GARM.pdf> (last visited February 27, 2022).

Congressional Plan splits fewer municipalities than the Enacted Plan: seventy-nine compared to ninety. See GPX 1, ¶ 55 & fig.11; id. at 92–97; Feb. 7, 2022, Morning Tr. 57:22–58:4 (Mr. Cooper’s testimony describing municipality splits). Mr. Cooper’s Illustrative Congressional Plan splits only five more VTDs than the Enacted Plan. See GPX 1, at 84–91; Feb. 7, 2022, Morning Tr. 58:5–59:3 (Mr. Cooper’s testimony describing VTD splits). And as compared to the Enacted Congressional Plan, in which Cobb County is divided among four congressional districts, Mr. Cooper’s Illustrative Plan divides Cobb County between only two congressional districts. Feb. 7, 2022, Morning Tr. 46:23–47:1, 53:9–22.

Based on the record, the Court finds that Mr. Cooper’s Illustrative Congressional Plan sufficiently respects political subdivision boundaries for purposes of the first Gingles precondition. While Mr. Cooper’s plan splits more political subdivisions than the Enacted Plan splits, the difference is small and not material. Further, the Court finds that Mr. Cooper provided convincing and permissible reasons for why he opted to split many of the political subdivisions he did split. E.g., Feb. 7, 2022, Morning Tr. 55:21–59:3, 83:2–20 (explaining that he had to split certain counties in order to comply with the one-person, one-

vote requirement). On balance, the Court finds that the Illustrative Plan adequately respects political subdivision boundaries.

(e) **Preservation of communities of interest**

Fifth, an illustrative map should seek to keep communities of interest together in the same districts. See LULAC, 548 U.S. at 432–33. The Supreme Court has indicated that communities of interest may form by commonalities in “socio-economic status, education, employment, health, and other characteristics.” See id. at 432 (citation omitted); see also Perez v. Abbott, No. SA-11-CV-360, 2017 WL 1406379, at \*60 (W.D. Tex. Apr. 20, 2017) (recognizing communities of interest that shared “socioeconomic issues, poverty, lack of good jobs, and lack of access to health services and public hospitals”). “The recognition of nonracial communities of interest reflects the principle that a State may not assume from a group of voters’ race that they think alike, share the same political interests, and will prefer the same candidates at the polls.” LULAC, 548 U.S. at 432–33 (cleaned up). But the Supreme Court has also noted “evidence that in many cases, race correlates strongly with manifestations of community of interest (for example, shared broadcast and print media, public



transport infrastructure, and institutions such as schools and churches).” Bush, 517 U.S. at 964.<sup>21</sup>

With these principles in mind, the Court now turns to discuss whether the Pendergrass Plaintiffs’ Illustrative Map respects communities of interest. Because the relevant portions of the Enacted Map and the Pendergrass Plaintiffs’ Illustrative Map are in the western portion of the state, the Court focuses its discussion on those districts.

Referring to the Enacted Congressional District 14, Mr. Cooper testified, “I think you would be hard-pressed to find anything with relation to south Cobb County that would connect that part of District 14 to the remainder, particularly since District 14 extends way to the north. So it’s really – it’s really getting into an Appalachian Regional commission territory. It’s just not the same.” Feb. 7, 2022, Morning Tr. 47:5–15. When asked by the Court how he would describe southwest Cobb County, Mr. Cooper responded, “Suburban.” Id. at 47:16–18.

---

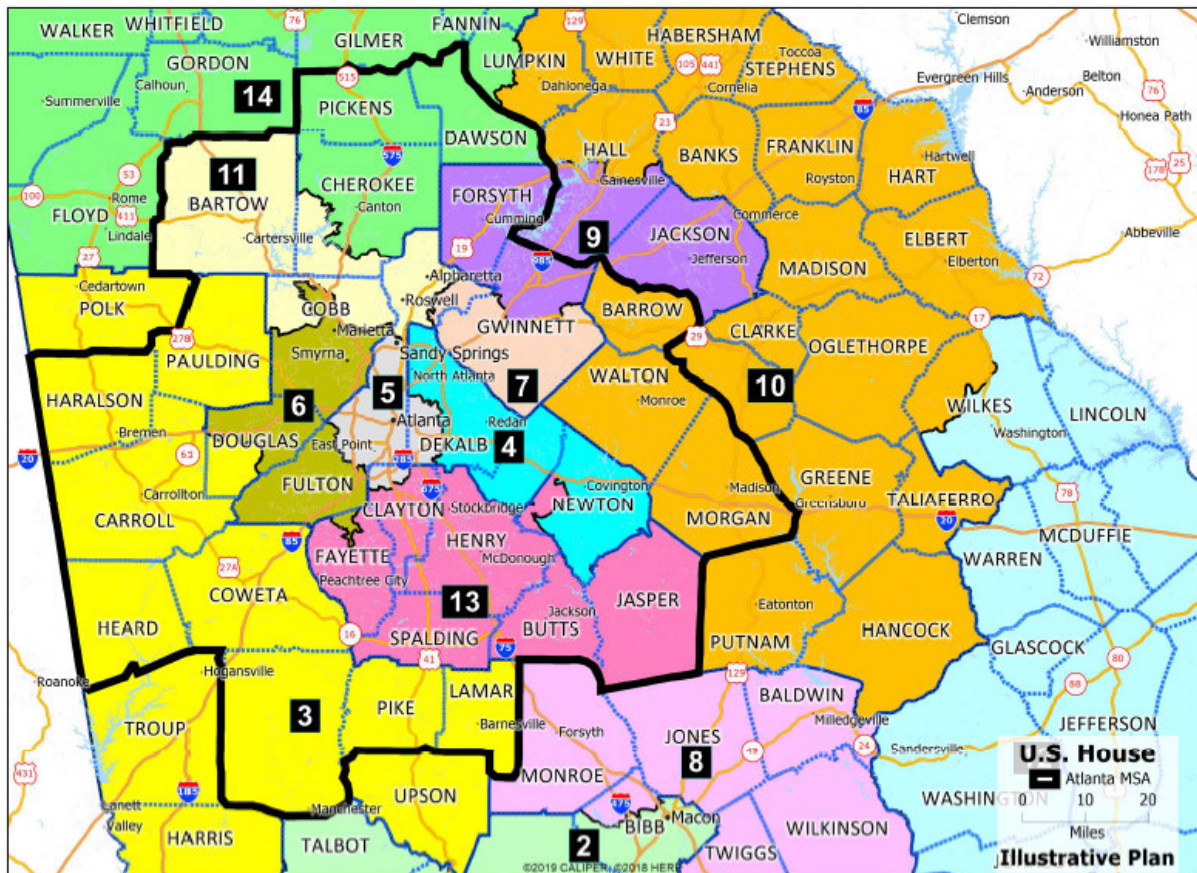
<sup>21</sup> While Georgia’s redistricting guidelines provide that communities of interest should be considered when districts are being drawn, the guidelines do not define what constitutes a community of interest. See GPX 40, at 2.

Jason Carter, a former member of the State Senate and candidate for Governor of Georgia during the 2014 election, agreed that the treatment of Cobb County in the enacted congressional map does not serve a clear community of interest, noting that it “looks like . . . you are taking bits and pieces of Cobb County and you are sticking them in these districts that are very, very different from Cobb County.” Feb. 10, 2022, Afternoon Tr. 127:8–20. Mr. Carter explained that this “part of Cobb [County] is essentially Metro Atlanta. It’s a suburban part . . . . And if you look at [Chattooga] County or some of these others, we are talking about rural, mountain counties in essence that are not part of the Metro Atlanta area at all and [confront] very different sets of issue[s], it would seem to me.” Id. at 127:21–128:8. He further explained the difficulties that Cobb County residents would have in securing representation due to being included in more rural-reaching congressional districts: “[I]f you are in a part of that district that is, again, buried as an appendage, in a district that has a significant number of other interests, then you are not going to have the amount of responsiveness that you would otherwise have.” Id. at 132:1–15.

Ms. Wright described southwest Cobb County as “municipalized” and “developed.” Feb. 11, 2022, Morning Tr. 33:19–34:3. She also confirmed that this

area is “part of metro Atlanta.” Id. at 34:4–5. By contrast, she described Polk and Bartow Counties in northwest Georgia—which are connected with southwest Cobb County in the Enacted Congressional Plan—as “more rural counties.” Id. at 34:6–11.

Mr. Cooper explained that he looked at maps of Georgia’s regional commissions and metropolitan statistical areas to guide his preservation of communities of interest. Feb. 7, 2022, Morning Tr. 62:15–63:17; see also Feb. 11, 2022, Morning Tr. 90:3–91:12 (Ms. Wright’s testimony agreeing that a “community of interest is anything that unites people in an area and brings them together” and broadly defining communities of interest to include regions with shared commercial and economic interests). Mr. Cooper testified that he used these sources to derive communities with shared economic and transportation interests. Feb. 7, 2022, Morning Tr. 62:23–63:4. As depicted in his expert report, Mr. Cooper’s illustrative Congressional District 6 is comprised of pieces of four counties—Cobb, Douglas, Fulton, and Fayette—that are among the 11 core ARC counties:



GPX 1, ¶ 47 & fig.8. As Mr. Cooper testified, “these [c]ounties are all part of core Atlanta,” and the distances between them “are fairly small.” Feb. 7, 2022, Morning Tr. 92:23–25; see also id. at 96:22–25 (Mr. Cooper’s testimony characterizing 11 ARC counties as core Atlanta area). Mr. Cooper also testified that he was aware of the creation of at least four majority-Black Georgia State Senate districts in the western Atlanta metropolitan area under the newly enacted legislative maps. See GPX 2, ¶ 3; Feb. 7, 2022, Morning Tr. 103:4–14. He explained that “four Senate districts is one congressional, 14 times four is 56.

So that's why I was so confident at the outset that it was going to be likely that I could draw the additional majority black district in that part of the state." Feb. 7, 2022, Morning Tr. 103:15-22.

Commenting on Mr. Cooper's illustrative Congressional District 6, Mr. Carter testified, that it was "clearly" a "suburban district" in a "fast-growing" area of suburban Atlanta. Feb. 10, 2022, Afternoon Tr. 133:8-14. Mr. Carter noted that illustrative Congressional District 6 is an area within forty-five minutes of downtown Atlanta that confronts similar issues. See id. at 133:8-18. Mr. Carter described the interests that residents of the western Atlanta metropolitan area share, such as similar suburban school districts, transportation concerns ("the Atlanta traffic reports affect everybody's life in that part of West Cobb and it affects basically nobody's life in Gordon County"), and healthcare concerns. Id. at 128:9-129:11. Applying these shared concerns to Mr. Cooper's illustrative Congressional District 6, Mr. Carter testified that residents of these areas would have similar transportation, housing, and healthcare issues. Id. at 133:19-23. He further testified that Fulton, Cobb, and Douglas Counties are growing quickly "from a school district standpoint" and will "be in the kind of environments that are going to look familiar to each other." Id. at 133:23-134:2. Asked about shared infrastructure

concerns, Mr. Carter responded, “I think from an infrastructure standpoint, there is no doubt that the infrastructure needs here are really cohesive because you’ve got the traffic issues that are there . . . . And that also includes [] land use management . . . . [T]he Chattahoochee River runs through here and you are talking about drainage and land use and as these things are growing fast, the connectedness of this area is really real. So that infrastructure piece is another thing that links it together.” Id. at 134:3–18.

Based on the record, the Court finds that Mr. Cooper’s Illustrative Congressional Plan sufficiently respects communities of interest in the western Atlanta metropolitan area for purposes of the first Gingles precondition. Several witnesses testified that the areas constituting illustrative Congressional District 6 are developed and suburban in nature and generally face the same infrastructure, medical care, educational, and other critical needs. The Court finds that these needs, along with the relative geographic proximity given the compactness of the proposed district, combine to create a community of interest for Gingles purposes.

**(f) Core Retention**

Next, the Court discusses the preservation of existing district cores, which is not an enumerated districting principle adopted by the Georgia



General Assembly. See GPX 40. Mr. Morgan opined that while the 2021 Enacted Congressional Plan “largely maintains existing district cores” from the prior congressional plan, Mr. Cooper’s Illustrative Plan “makes drastic changes” to many of the districts from the prior plan. DX 3, ¶ 12 & chart 1. Mr. Cooper responds, however, that he could not avoid drawing illustrative districts with lower core retention scores than the districts in the Enacted Congressional Plan in light of his objective of satisfying the first Gingles precondition. See GPX 2, ¶ 4. As he explained in his expert report, “[c]ore retention is largely irrelevant when an election plan is challenged on the grounds that it violates Section 2[] of the VRA. The very nature of the challenge means that districts adjacent to the demonstrative majority-minority district must change, while adhering to traditional redistricting principles.” Id.

During his testimony at the hearing, Mr. Morgan conceded that illustrative plans are necessarily different from enacted plans. Feb. 11, 2022, Afternoon Tr. 214:1–3. The Court also notes that Mr. Cooper’s Illustrative Plan does not alter six of Georgia’s fourteen congressional districts. See GPX 1, ¶¶ 11, 46; Feb. 7, 2022, Morning Tr. 51:6–20 (Mr. Cooper’s testimony describing unchanged districts). As such, the Court finds that not only does Mr. Cooper’s Illustrative Congressional Plan comply with the traditional districting

principles and the General Assembly's guidelines, his plan also does not alter existing district cores in a manner that counsels against finding that it satisfies the first Gingles precondition.

(g) **Racial considerations**

Finally, the Court addresses whether Mr. Cooper subordinated traditional districting principles in favor of race-conscious considerations. A state cannot use race as the predominant factor motivating the decision to place a significant number of voters within or without a particular district, and the state is not allowed to subordinate other factors, such as compactness or respect for political subdivisions, to racial considerations. Wright, 301 F. Supp. 3d at 1325 (citations omitted). Thus, an illustrative plan should not subordinate traditional redistricting principles to racial considerations substantially more than is reasonably necessary to avoid liability under Section 2. See Davis, 139 F.3d at 1424.

Mr. Cooper was asked "to determine whether the African American population in Georgia is 'sufficiently large and geographically compact' to allow for the creation of an additional majority-Black congressional district in the Atlanta metropolitan area." GPX 1, ¶ 8 (footnotes omitted); see also Feb. 7, 2022, Morning Tr. 98:8-16. He testified that he was not asked to either "draw



as many majority black districts as possible” or “draw every conceivable way of drawing an additional majority black district.” Id. at 98:17–24. And Mr. Cooper testified that if he had found that a majority-Black district could not have been drawn, he would have reported that to counsel, as he has “done [] in other cases.” Id. at 98:25–99:24. Mr. Cooper testified that race “is something that one does consider as part of traditional redistricting principles” because “you have to be cognizant of race in order to develop a plan that respects communities of interest, as well as complying with the Voting Rights Act[,] because one of the key tenets of traditional redistricting principles is the importance of not diluting the minority vote.” Id. at 48:4–15. Mr. Cooper emphasized that he accounted for other considerations when he drew his illustrative map, including the traditional districting principles described above. See id. at 48:16–51:5. Although he “was aware of the racial demographics for most parts of the state,” race “certainly did not predominate.” Id. at 51:3–5; see also id. at 50:22–51:2 (testifying that no factor was a predominant factor in drawing the Illustrative Plan); 99:25–100:9 (Mr. Cooper’s testimony: “I looked at all of the factors that are part of the traditional redistricting principles and tried to balance them. So I tried to draw a compact district, a district that didn’t split very many political subdivisions,

and we [have] already seen that the plan that I’ve drawn splits fewer municipalities than the adopted [] plan. And I looked at other factors, . . . the various traditional redistricting factors. The idea was to balance those factors and show that a district could be created if it could be created.”); id. at 101:25–102:13 (similar).

Although Ms. Wright opined that she “cannot explain the decision to take District 6 into Fayette County” in Mr. Cooper’s illustrative map (DX 41, ¶ 29), Mr. Cooper explained that “[t]o meet one-person one-vote requirements, one has to split Fayette County between District 13 and District 6 because if you put all of Fayette County in District 13, it would be overpopulated by . . . several thousand people.” Feb. 7, 2022, Morning Tr. 64:22–65:8. Mr. Cooper noted that “the northern part of Fayette County” is “a racially diverse area. That is not overwhelmingly black. It’s balanced to some part[s] of Cobb County where there is no racial majority.” Id. at 82:6–18.

Similarly, Ms. Wright suggested that “District 13 reaches into Newton County in an unusual way that cannot be explained by normal redistricting principles” (DX 41, ¶ 29), but Mr. Cooper again explained that this was done “to balance populations out” because including all of Newton County in Congressional District 4 would have made that district overpopulated. Feb. 7,

2022, Morning Tr. 66:11–67:1. Ms. Wright also stated that “District 6 specifically grabs Black voters near Acworth and Kennesaw State University to connect them with other Black voters in South Cobb, Douglas, and Fulton Counties” (DX 41, ¶ 29), but Mr. Cooper explained that this decision was also made “to ensure that District 6 met population equality.” Feb. 7, 2022, Morning Tr. 65:14–21. Mr. Cooper noted that the northern arm of his illustrative Congressional District 6 is not in “an area that is predominately black. It is a racially diverse area[.]” Id. at 65:21–66:2; see also id. at 84:4–7 (Mr. Cooper’s testimony: “I was not trying to maximize the black voting age population of District 6 by going into . . . Kennesaw and Acworth.”); id. at 85:18–86:4 (Mr. Cooper’s testimony: “I had to go in some direction and pick up fairly heavily populated areas, and I knew Kennesaw and Acworth were racially diverse so from a community of interest standpoint it made sense to include that with central Cobb County, which is also racially diverse, and southern Cobb County, which is more predominantly black.”); id. at 97:5–10 (Mr. Cooper’s testimony: “That was an area with relative racial diversity. I thought it would fit into a majority black district. But I was not trying to identify majority black blocks to put into District 6 from that area.”).

Indeed, when asked if “there [were] densely populated black areas in those [c]ounties that you didn’t include in your illustrative map,” Mr. Cooper confirmed that “there would be ways to enhance the black voting age population, not just in District 6 but elsewhere, by changing lines and perhaps splitting some additional [c]ounties.” Feb. 7, 2022, Morning Tr. 66:3–10; see also id. at 97:11–19 (Mr. Cooper’s testimony agreeing that he could have “done further changes to the plan that was adopted, perhaps, splitting an additional [c]ounty or something to find other areas to draw a majority black district”). In response to Ms. Wright’s suggestion that “[t]he divisions of Cobb, Fayette, and Newton Counties do not make sense as part of normal redistricting principles” and were made “in service of some kind of specific goal” (DX 41, ¶ 29), Mr. Cooper confirmed that he did not have a single specific goal in mind when drawing his Illustrative Congressional Map, explaining that he was asked “to determine whether or not an additional majority black district could be created, but that was not the goal per se. I had to also follow traditional redistricting principles and then make an assessment as to whether that one additional black district could be determined. I determined that it could be, but that was not my goal per se.” Feb. 7, 2022, Morning Tr. 68:5–20.

Given the record and the evidence discussed above, the Court finds that race did not predominate in the drawing of Mr. Cooper's Illustrative Congressional Plan. Specifically, the Court finds that Ms. Wright's criticisms of the Illustrative Plan are conclusory and lack analysis. For every unsupported conclusion she made that certain illustrative districts did not comply with traditional redistricting principles, Mr. Cooper offered detailed and readily understandable explanations for why he drew districts in the way he did and how his plan complies with traditional redistricting principles. Moreover, the Court finds that while Mr. Cooper was conscious of race when drawing the congressional districts, other redistricting principles were not subordinated.

### *(3) Conclusions of Law*

Thus, based on the evidence presented, the Court finds that the Pendergrass Plaintiffs' Illustrative Plan demonstrates that the Black population in the western Atlanta metropolitan area is sufficiently geographically compact to constitute a voting-age majority in an additional congressional district. Moreover, the Court finds that the Illustrative Plan is consistent with traditional redistricting principles. Accordingly, the Court finds that the Pendergrass Plaintiffs have shown a substantial likelihood to succeed on the merits of the first Gingles precondition.

d) Grant and Alpha Phi Alpha

The Court finds that the Grant and Alpha Phi Alpha Plaintiffs have sufficiently established that they are substantially likely to succeed on the merits in showing that it is possible to create two additional State Senate Districts and two State House Districts in the Atlanta Metropolitan area and one additional State House District in southwestern Georgia under relevant Gingles considerations.

In addition, as indicated above, Plaintiffs in both the Grant and Alpha Phi Alpha cases allege that the State maps passed in SB 2EX and HB 1EX violate Section 2 of the Voting Rights Act. Both the Grant and Alpha Phi Alpha Plaintiffs allege that the Georgia legislature should have drawn two additional Senate Districts in the southern metropolitan Atlanta area and one additional Senate District in the Eastern Black belt area. Grant Doc. No. [1], ¶¶ 41-42; APA Doc. No. [1], ¶¶ 64-66. While the Illustrative Maps (drawn by redistricting experts, Mr. Esselstyn and Mr. Cooper) presented by the Grant and Alpha Phi Alpha Plaintiffs are not exact replicas, they largely overlap.<sup>22</sup> Compare GPX 3,

---

<sup>22</sup> The Court recognizes that “there is more than one way to draw a district so that it can reasonably be described as meaningfully adhering to traditional principles, even if not to the same extent or degree as some other hypothetical district.” Chen v. City of Houston, 206 F.3d 502, 519 (5th Cir. 2000). And the remedial plan that the Court eventually implements if it finds Section 2 liability need not be one of the maps

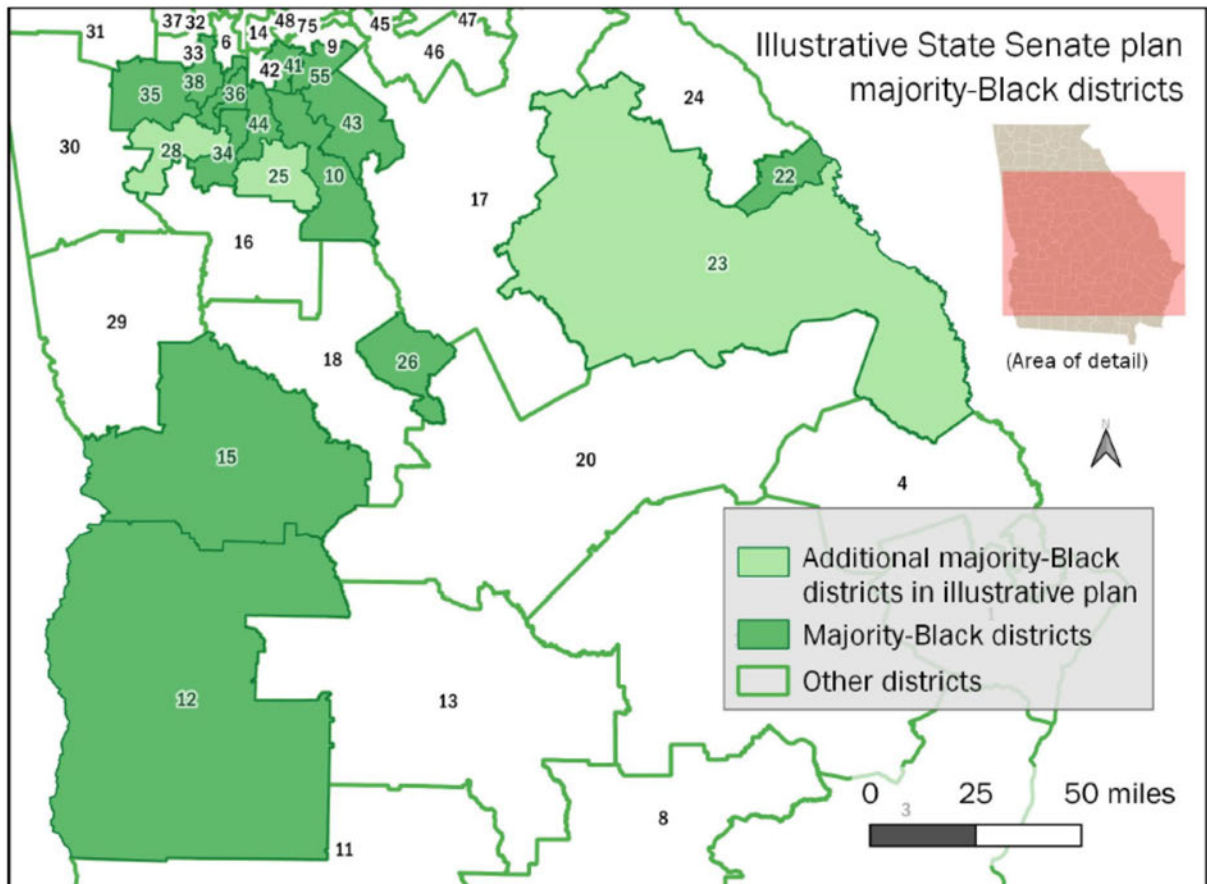
¶ 26 & fig.6, with APAX 1, ¶ 79 & fig.17; compare GPX 3, ¶ 27 & fig.7, with APAX 1, ¶ 76 & fig.15; compare GPX 3, ¶ 41 & fig.12 with APAX 1, ¶ 112 & fig.28. The Court finds that both plans concern areas of Henry, Clayton, and Fayette Counties. Accordingly, because the Court found that Mr. Esselstyn's Illustrative Senate District 25 and 28 have a substantial likelihood of success on the merits as to the first Gingles precondition, the Court does not rule on the substantial likelihood of success of Mr. Cooper's Illustrative Senate Districts 17 and 28.

Compare GPX 3, ¶ 24 & fig.4

---

proposed by Plaintiffs. See Clark, 21 F.3d at 95-96 & n.2 (“[P]laintiffs’ proposed district is not cast in stone. It was simply presented to demonstrate that a majority-black district is feasible in [the jurisdiction] . . . [T]he district court, of course, retains supervision over the final configuration of the districting plan.”).

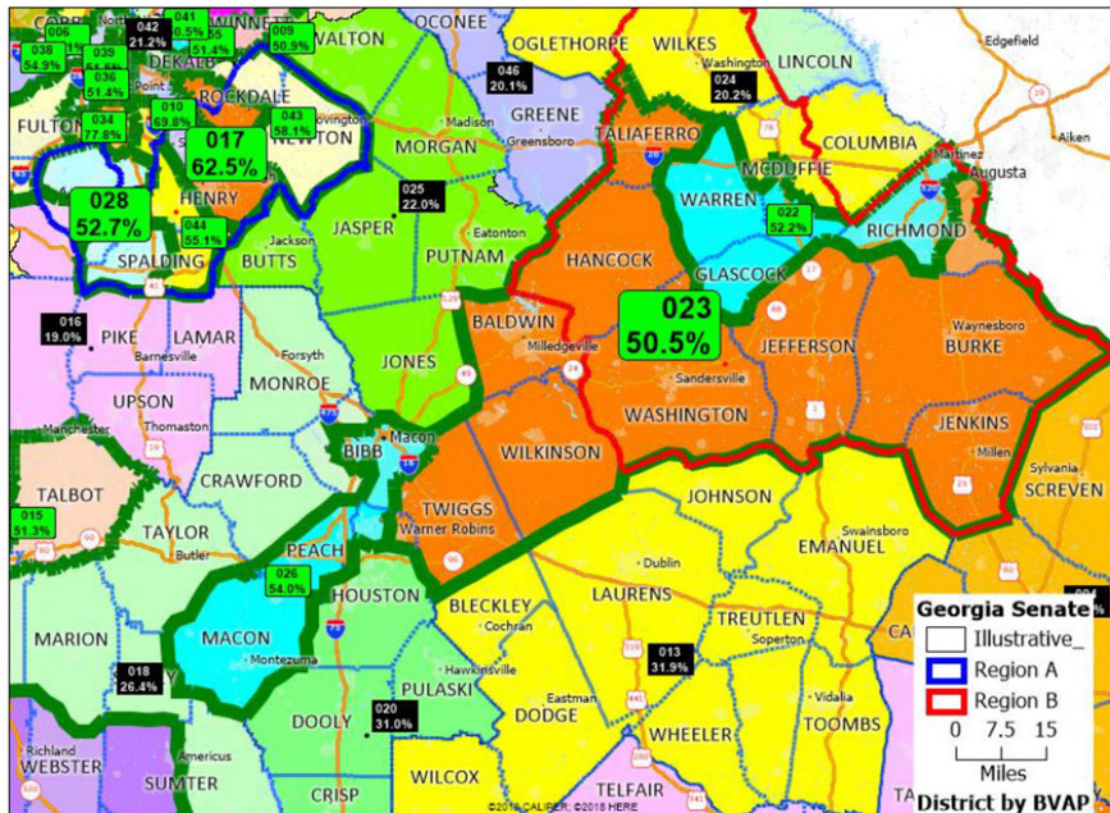
**Figure 4: Map of majority-Black districts in the illustrative State Senate plan.**



with, APAX 1, ¶ 71 & fig.14.



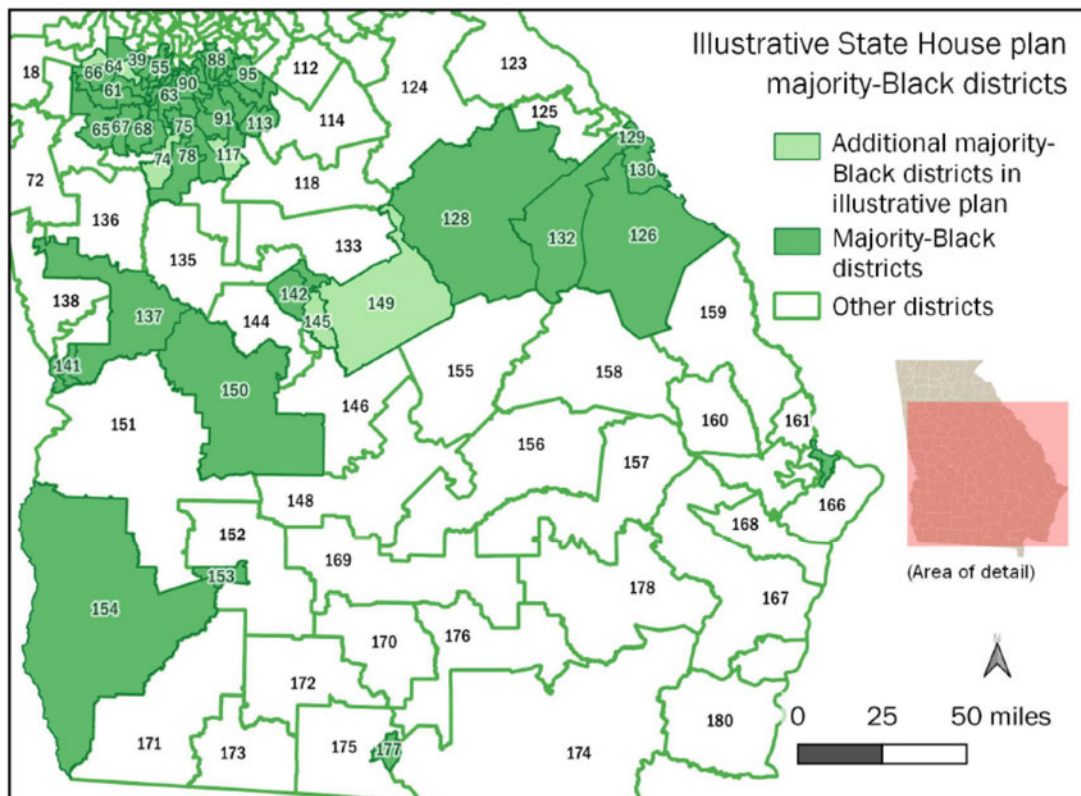
Figure 14



Additionally, both the Grant and Alpha Phi Alpha Plaintiffs allege that the Georgia legislature should have drawn five additional House Districts. The Grant Plaintiffs allege that two additional House Districts could be drawn in the southern Atlanta metropolitan area (Grant Doc. No. [1], ¶ 43), and the Alpha Phi Alpha Plaintiffs allege that three additional House Districts could be drawn in the southern Atlanta metropolitan area (APA Doc. No. [1], ¶¶ 70-72.). Mr. Cooper's Illustrative House Districts 74, 110, and 111 concern areas of

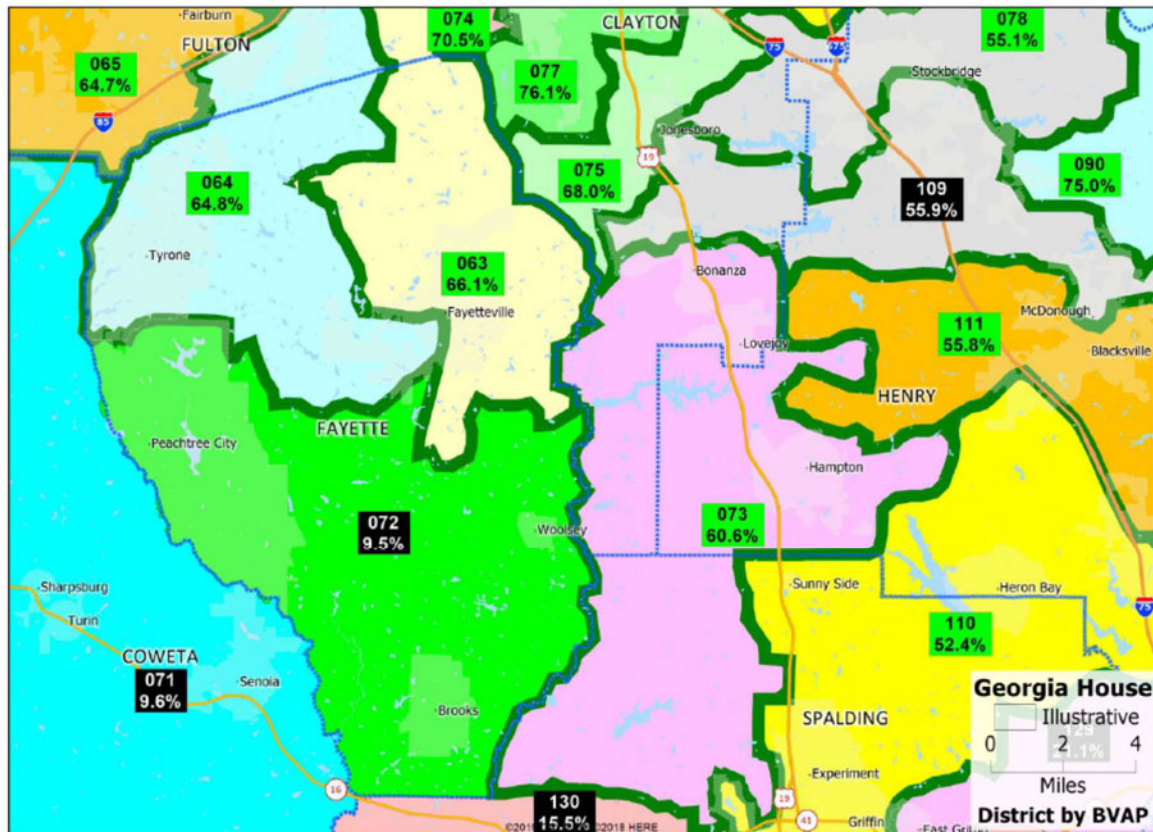
Henry, Fayette, and Clayton Counties. Mr. Esselstyn's Illustrative House Districts 74 and 117 also concern Henry, Fayette, Clayton, and Cowetta Counties. Accordingly, because the Court found that Mr. Esselstyn's Illustrative House District 74 and 117 have a substantial likelihood of success on the first Gingles precondition, the Court does not rule on the substantial likelihood of success of Mr. Cooper's Illustrative House Districts 73, 110, and 111.

**Figure 10: Map of majority-Black districts in the illustrative House plan.**



GPX 3, ¶ 39 & fig.10.

**Figure 28: Illustrative Plan District 73 and Vicinity**

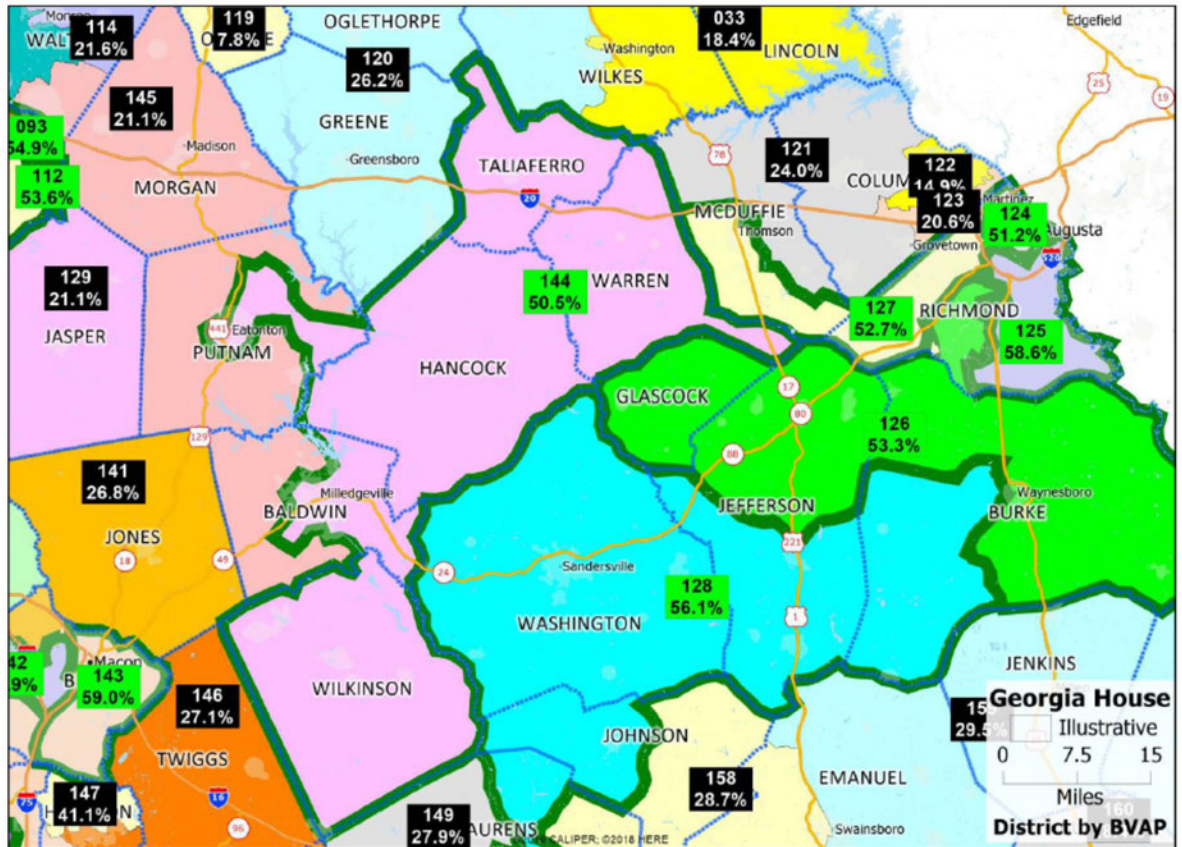


APAX 1, ¶ 111 & fig.28.

The Grant Plaintiffs' redistricting expert drew one additional House District in the western metropolitan Atlanta area and two additional House Districts in central Georgia, that are anchored in Bibb County. See GPX 3, ¶ 39 & fig.10. The Alpha Phi Alpha Plaintiffs' redistricting expert drew one additional House District in the Eastern Black Belt and one additional House District in Southwestern Georgia.

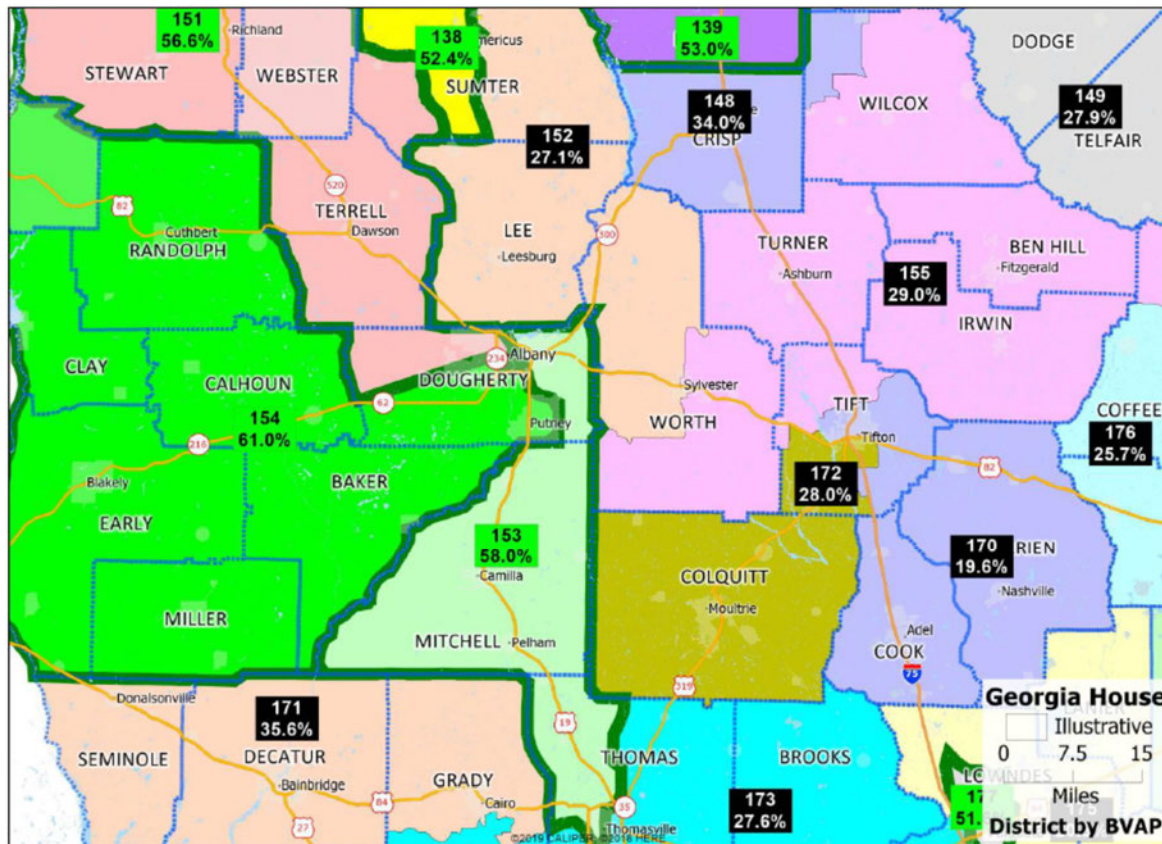


**Figure 32: Illustrative Plan: District 144 and Vicinity**



Id. ¶ 116 & fig.32.

**Figure 34: Illustrative Plan: District 153 and vicinity**



Id. ¶ 118 & fig.34.

To recap the prior ruling, at this stage, the Court finds that the Grant and Alpha Phi Alpha Plaintiffs have established a substantial likelihood of succeeding on the merits of their claim that SB 2EX and HB 1EX violate Section 2 of the Voting Rights Act because the Black population is sufficiently large and compact to create two additional Black-majority Senate Districts in the southern Atlanta metropolitan area, two additional House Districts in the

southern Atlanta metropolitan area, one additional House District in southwestern Georgia.<sup>23</sup>

(1) *The Grant Plaintiffs are substantially likely to establish a Section 2 violation*

This Court finds that the Grant Plaintiffs have shown that they have a substantial likelihood of satisfying the first Gingles precondition with respect to two additional State Senate Districts and two additional State House Districts in the Atlanta metropolitan area.

(a) Senate Districts

i) *Numerosity*

As indicated above, on December 30, 2021, Governor Kemp signed into law State Senate Maps. The Georgia State Senate map consists of 56 districts. GPX 3, ¶ 20; Feb. 9, 2022, Afternoon Tr. 169:13–14. The 2014 Georgia State Senate plan contained 13 majority-Black districts using the AP BVAP metric

---

<sup>23</sup> At this stage and without further discovery, the Court does not find that the Grant and Alpha Phi Alpha Plaintiffs have established that they have a substantial likelihood of succeeding on the merits of their claims that a third State Senate District should have been drawn in the Eastern Black Belt or that additional House Districts should have been drawn in the western Atlanta metropolitan area, central Georgia, or in the Eastern Black Belt. Because the burden of proving substantial likelihood of success for a preliminary injunction is a “high threshold,” this in no way predetermines whether Plaintiffs can prove that Section 2 requires the creation of an additional Senate District in the Eastern Black Belt, or additional House Districts in central Georgia and in the Eastern Black Belt. See Louisiana v. Envir. Soc., Inc. v. Coleman, 524 F.2d 930, 931 (5th Cir. 1975).

when the 2020 Census data was applied. Grant Stip. ¶ 30. The Enacted State Senate Map contains 14 majority-Black districts using the AP BVAP metric. Grant Stip. ¶ 56; GPX 3, ¶ 21; Feb. 9, 2022, Afternoon Tr. 169:8–12. Ten of those districts are in the Atlanta metropolitan area and four are in the Black Belt. GPX 3, ¶ 21 & fig.3.

Redistricting expert, Mr. Esselstyn, drew two illustrative Senate Districts in the Atlanta metropolitan area, which are labeled Esselstyn Illustrative State Senate District 25 and Illustrative State Senate District 28. Just about half of Georgia’s Black population lives in six counties in the Atlanta MSA. GPX 3, ¶ 17. Those six counties, listed in order of Black population, are Fulton, DeKalb, Gwinnett, Cobb, Clayton, and Henry. Id. Under the 2000 Census, the population in the 29-county Atlanta MSA was 29.29% AP Black, increasing to 33.61% in 2010, and increasing further to 35.91% in 2020. Since 2000, the Black population in the Atlanta MSA has grown from 1,248,809 to 2,186,815 in 2020. Grant Stip. ¶ 44.

Mr. Esselstyn’s Illustrative State Senate District 25 is an additional majority-Black State Senate district in the southeastern Atlanta metropolitan area and is composed of portions of Clayton and Henry Counties. Grant Stip. ¶ 64; GPX 3, ¶ 26 & fig.6; Feb. 9, 2022, Afternoon Tr. 171:17–23, 228:10–13.

Mr. Esselstyn’s Illustrative State Senate District 25 has an AP BVAP over 50%.

Grant Stip. ¶ 65; GPX 3, ¶ 24 & tbl.1; Feb. 9, 2022, Afternoon Tr. 171:24–172:8.

Mr. Esselstyn’s Illustrative State Senate District 28 is an additional majority-Black State Senate district in the southwestern Atlanta metropolitan area and is composed of portions of Clayton, Coweta, Fayette, and Fulton Counties. Grant Stip. ¶ 66; GPX 3, ¶ 27 & fig.7; Feb. 9, 2022, Afternoon Tr. 172:11–17. Mr. Esselstyn’s Illustrative State Senate District 28 has an AP BVAP over 50%. Grant Stip. ¶ 67; GPX 3, ¶ 24 & tbl.1; Feb. 9, 2022, Afternoon Tr. 172:18–20.

**Table 1: Illustrative Senate plan majority-Black districts with BVAP percentages**

District	BVAP%	District	BVAP%	District	BVAP%
10	61.10%	26	52.84%	39	60.21%
12	57.97%	28	57.28%	41	62.61%
15	54.00%	34	60.19%	43	58.52%
22	50.84%	35	54.05%	44	71.52%
23	50.43%	36	51.34%	55	65.97%
25	58.93%	38	66.36%		

Grant Stip. ¶ 60; GPX 3, ¶ 24 & tbl.1; Feb. 9, 2022, Afternoon Tr. 169:20–22.



Mr. Morgan and Ms. Wright do not dispute that Mr. Esselstyn's Illustrative State Senate District 25 and Mr. Esselstyn's Illustrative State Senate District 28 both have AP BVAPs over 50%. See DX 2, ¶ 11 (Mr. Morgan's expert report confirming that Mr. Esselstyn's illustrative State Senate plan contains 17 majority-Black districts); Feb. 11, 2022, Afternoon Tr. 191:21-25 (Mr. Morgan's testimony agreeing that Mr. Esselstyn's illustrative State Senate plan includes three additional majority-Black districts); DX 41, ¶ 20 (Ms. Wright's expert report noting that "[t]he Esselstyn Senate plan also adds majority-Black districts above the adopted Senate plan when using the any-part Black voting age population Census metric"); Feb. 11, 2022, Morning Tr. 78:13-22, 80:23-81:24 (Ms. Wright's testimony acknowledging that AP BVAPs of Mr. Esselstyn's additional majority-Black State Senate districts exceed 50%).

Mr. Morgan's expert report included a chart demonstrating that Mr. Esselstyn's illustrative State Senate plan contains three fewer districts with AP BVAPs above 65% compared to the Enacted Plan.

**Chart 1. Number of Majority-Black Senate Districts.**

<b>Majority-Black Senate Districts</b>			
<b>% AP Black VAP</b>	<b>2021 Adopted Plan</b>	<b>Proposed Democratic Plan</b>	<b>Esselstyn Remedial Plan</b>
Over 75%	0	1	0
70% to 75%	3	2	1
65% to 70%	3	3	2
60% to 65%	3	1	4
55% to 60%	3	3	4
52% to 55%	1	3	3
50% to 52%	1	2	3
<b>Total # Districts</b>	<b>14</b>	<b>15</b>	<b>17</b>

DX 2, ¶ 10 & chart 1.

As Mr. Esselstyn explained in his supplemental expert report, “[o]ne reason that the Enacted Plans have fewer majority-Black districts than the Illustrative Plans is that more Black voters were unnecessarily concentrated into certain Metro Atlanta districts in the Enacted Plans. By unpacking these districts, the Illustrative Plans contain fewer packed districts—and, consequently, additional majority-Black districts.” GPX 4, ¶ 4.

Defendants argue that Senate District 25 is not sufficiently numerous to form an additional majority-Black district. Defendants point out that in

Mr. Esselstyn's Illustrative State Senate District 25, the district is 56.51% single-race Black voting age population and only 52.71% Black voter registration. DX 46. However, this argument fails. First, courts use the AP Black demographics, not single-race black demographics to determine whether the Black community is sufficiently numerous. Because this Court must decide a case that involves claims about Georgia's Black population's effective exercise of the electoral franchise, this Court relies on the AP Black metric.

Second, the Supreme Court held that "a party asserting [Section] 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." Bartlett, 556 U.S. at 19–20. As stated above, the single-race Black population exceeds 50% of the voting age population of Mr. Esselstyn's Illustrative State Senate District 25. Additionally, the percentage of Black registered voters exceeds 50%. Accordingly, the Mr. Esselstyn's Illustrative State Senate District 25 is sufficiently numerous for an additional majority-minority district.

Based on the expert reports and testimony provided in this case, the Court concludes that Mr. Esselstyn's Illustrative State Senate plan contains two additional majority-Black districts in the metropolitan Atlanta area.

*ii) Geographic compactness*

Mr. Esselstyn states that his Illustrative State Senate Plan “was drawn to comply with and balance” the principles enumerated in the 2021-2022 Senate Reapportionment Committee Guidelines. GPX 3, ¶ 29. The guidelines are as follows:

1. Each legislative district of the General Assembly should be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.
2. All plans adopted by the committee will comply with Section 2 of the Voting Rights Act of 1965, as amended.
3. All plans adopted by the Committee will comply with the United States and Georgia Constitutions.
4. Districts shall be composed of contiguous geography. Districts that connect on a single point are not contiguous
5. No multi-member districts shall be drawn on any legislative redistricting plan.
6. The Committee should consider:
  - a. The boundaries of counties and precincts;
  - b. Compactness; and
  - c. Communities of interest.
7. Efforts should be made to avoid unnecessary pairing of incumbents.

8. The identifying of these criteria is not intended to limit the consideration of other principles or factors that the Committee deems appropriate.

GPX 39, at 3.

Mr. Esselstyn explained in his supplemental expert report and during his testimony at the hearing, applying these traditional districting principles often required balancing. See GPX 4, ¶ 14. As he described the process,

It's a balancing act. So . . . often the criteria will be [in tension] with each other. It may be that you are trying to just follow precinct lines and not split . . . precincts, but the precincts have funny shapes. So that means you either are going to end up with a less compact shape that doesn't split precincts or you could split a precinct and end up with a more compact shape. And some of the county shapes are highly irregular as well. So sometime[s] you can have a decision about splitting counties as well. So that's the example of where there's no one clear right answer and I'm trying to sort of find the best balance that I can.

Feb. 9, 2022, Afternoon Tr. 157:14–25.

**(a) Population equality**

Mr. Esselstyn's Illustrative State Senate Maps are not malapportioned and comply with the one-person, one-vote principle. See Wright, 301 F. Supp. 3d at 1325–26; see also Reynolds, 377 U.S. at 577 (“[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct

districts, in both houses of its legislature, as nearly of equal population as practicable.”).

Mr. Esselstyn’s expert report demonstrates that his Illustrative State Senate Plan contains minimal population deviation. In both the Enacted and Illustrative State Senate Plans, most district populations are within  $\pm 1\%$  of the ideal, and a small minority are between  $\pm 1$  and  $2\%$ . None has a deviation of more than  $2\%$ . For the Enacted Plan, the relative average deviation is  $0.53\%$ , and for the Illustrative Plan, the relative average deviation is  $0.68\%$ . GPX 3, ¶ 30; see also id. at 49–52, 54–55 (Mr. Esselstyn’s expert report listing population statistics for enacted and illustrative State Senate maps); id. at 66 (similar); Feb. 9, 2022, Afternoon Tr. 158:4–22, 176:20–177:5, 188:4–12 (Mr. Esselstyn’s testimony describing compliance with population equality). Mr. Esselstyn conceded that his illustrative Senate Plan had higher population deviations than the Enacted State Senate Map. Feb. 9, 2022, Afternoon Tr. 205:8–14. Mr. Esselstyn’s population deviations are within the limits allowed by the Equal Protection Clause.

[M]inor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case . . . under the Fourteenth Amendments. . . . Our decisions have established, as a general matter, that an apportionment plan with a

maximum population deviation under 10% falls within this category of minor deviations.

Brown v. Thomson, 462 U.S. 825, 842 (1983) (quoting Reynolds, 377 U.S. at 745) (quotation marks omitted). Thus, the Court finds that Mr. Esselstyn's Illustrative Senate Plan complies with population equality.

**(b) Compactness**

Mr. Esselstyn's Illustrative State Senate Plan has comparable compactness scores to the Enacted State Senate Map. Mr. Esselstyn reported the average compactness scores for both the Enacted Plans and his illustrative legislative plans using five measures—Reock,<sup>24</sup> Schwartzberg,<sup>25</sup> Polsby-

---

<sup>24</sup> The Court discussed Reock and Polsby-Popper in the Pendergrass section of this Order; however, considering the Order's length, the Court deems it proper to readdress these measures for the reader. The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact. GPX 3, at 63.

<sup>25</sup> The Schwartzberg test is a perimeter-based measure that compares a simplified version of each district to a circle, which is considered to be the most compact shape possible. For each district, the Schwartzberg test computes the ratio of the perimeter of the simplified version of the district to the perimeter of a circle with the same area as the original district. This measure is usually greater than or equal to 1, with 1 being the most compact. GPX 3, at 63.

Popper,<sup>26</sup> Area/Convex Hull,<sup>27</sup> and Number of Cut Edges.<sup>28</sup> GPX 3, ¶¶ 31, 46 & tbls. 2, 5; see also Feb. 9, 2022, Afternoon Tr. 158:23–160:1 (Mr. Esselstyn’s testimony describing common measures of compactness).

Mr. Esselstyn concluded that the average compactness measures for the Enacted State Senate Map and his Illustrative Plan “are almost identical, if not identical.” GPX 3, ¶ 31 & tbl.2; see also *id.* at 66–79 (Mr. Esselstyn’s expert report providing detailed compactness measures for enacted and illustrative State Senate maps); Feb. 9, 2022, Afternoon Tr. 160:2–10, 177:6–19, 188:13–17 (Mr. Esselstyn’s testimony describing compliance with compactness principle); Feb. 11, 2022, Afternoon Tr. 223:23–224:3 (Mr. Morgan’s testimony confirming

---

<sup>26</sup> The Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter:  $4\pi \text{Area} / (\text{Perimeter}^2)$ . The measure is always between 0 and 1, with 1 being the most compact. GPX 3, at 63.

<sup>27</sup> The Area/Convex Hull test computes the ratio the district area to the area of the convex hull of the district (minimum convex polygon which completely contains the district). The measure is always between 0 and 1, with 1 being the most compact. GPX 3, at 63.

<sup>28</sup> The Cut Edges test counts the number of edges removed (“cut”) from the adjacency (dual) graph of the base layer to define the districting plan. The adjacency graph is defined by creating a node for each base layer area. An edge is added between two nodes if the two corresponding base layer areas are adjacent – which is to say, they share a common linear boundary. If such a boundary forms part of the district boundary, then its corresponding edge is cut by the plan. The measure is a single number for the plan. A smaller number implies a more compact plan. GPX 3, at 63–64; see also Feb. 9, 2022, Afternoon Tr. 236:2–16 (Mr. Esselstyn’s testimony describing Cut Edges measurement).



that overall compactness scores of Mr. Esselstyn’s illustrative State Senate map and enacted map are similar).

Mr. Esselstyn reported those measures as follows:

**Table 2: Compactness measures for enacted and illustrative State Senate plans.**

	Reock (average)	Schwartzberg (average)	Polsby- Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.42	1.75	0.29	0.76	11,005
Illustrative	0.41	1.76	0.29	0.75	10,998

GPX 3, ¶ 31 & tbl.2.

In his expert report, Mr. Morgan, confirmed the accuracy of Mr. Esselstyn’s compactness statistics without suggesting that Mr. Esselstyn’s Illustrative Maps fail to comply with this districting principle. See DX 2, ¶¶ 23-24 & chart 5. Moreover, his report demonstrated that most of the additional majority-Black districts in Mr. Esselstyn’s Illustrative Plans outperform their precursors in the Enacted Plans according to the Polsby-Popper compactness measure, with Senate District 25 performing better according to that measure and the Reock measure:

**Chart 5. Compactness score summary**

<b>New Black-Majority District</b>	<b>Adopted Plan Reock</b>	<b>Esselstyn Remedial Plan Reock</b>	<b>Adopted Plan Polsby-Popper</b>	<b>Esselstyn Remedial Plan Polsby-Popper</b>
<b>Senate 23</b>	<b>0.37</b>	0.34	0.16	<b>0.17</b>
<b>Senate 25</b>	0.39	<b>0.57</b>	0.24	<b>0.34</b>
<b>Senate 28</b>	<b>0.45</b>	0.38	<b>0.25</b>	0.19
<b>House 64</b>	<b>0.37</b>	0.22	<b>0.36</b>	0.22
<b>House 74</b>	<b>0.50</b>	0.30	<b>0.25</b>	0.19
<b>House 117</b>	<b>0.41</b>	0.40	0.28	<b>0.33</b>
<b>House 145</b>	<b>0.38</b>	0.34	0.19	<b>0.21</b>
<b>House 149</b>	0.32	<b>0.42</b>	0.22	<b>0.23</b>

Id.

Defendants maintained a line of questioning at the preliminary injunction hearing in an effort to show that the Reock and Schwartzberg scores of the 2021 adopted state Senate plan are more compact on average than Mr. Esselstyn’s illustrative state Senate plan. Feb. 9, 2022, Afternoon Tr. 235:10–25. The evidence showed that several districts on the Esselstyn remedial Senate plan are far less compact than the 2021 adopted state Senate plan. DX 2, ¶ 24. However, the Enacted State Senate Map and Mr. Esselstyn’s Illustrative Senate Map have identical Polsby-Popper scores (0.29) and Mr. Esselstyn’s Illustrative Senate Map has seven fewer cut edges than the Enacted State Senate Map. Second, under the Reock, Schwartzberg and Area/Convex Hull tests the Illustrative Plan is one-one-hundredth of a point

less compact than the enacted State Plan. Accordingly, the Court does not find that Mr. Esselstyn's illustrative legislative maps are not sufficiently compact.

Looking at the challenged districts specifically, the Court finds Mr. Esselstyn's Illustrative State Senate District 25 is more compact than the Enacted State Plan. Mr. Esselstyn's Illustrative State Senate District 25 has a Reock score of 0.57 and Polsby-Popper score of 0.34 and the Enacted State Senate District 25 has a Reock score of 0.39 and a Polsby-Popper score of 0.24. See DX 2, ¶¶ 23-24 & chart 5. The Enacted State Senate District 28 is slightly more compact than Mr. Esselstyn's Illustrative State Senate District 28. Mr. Esselstyn's Illustrative State Senate District 28 has a Reock score of 0.38 and a Polsby-Popper score of 0.19 and the Enacted State Senate District 28 has a Reock score of 0.45 and a Polsby-Popper score of 0.19. Id. The Court finds that Mr. Esselstyn's Illustrative State Senate District 25 is sufficiently compact and more compact than Enacted State Senate District 25.

The Court also finds that Mr. Esselstyn's Illustrative State Senate District 28 is sufficiently compact. The Court does not find that the difference of six-hundredths of a point in the Polsby-Popper score and seven-hundredths of a point difference in the Reock scores makes Mr. Esselstyn's Illustrative State Senate District 28 not compact. Thus, the Court finds that Mr. Esselstyn's

Illustrative State Senate District 25 and Mr. Esselstyn's Illustrative State Senate District 28 are sufficiently compact and satisfy the first Gingles precondition.

**(c) Contiguity**

Mr. Esselstyn's Illustrative Senate Districts are contiguous. There is no factual dispute on this issue. See Feb. 9, 2022, Afternoon Tr. 160:11-13 (Mr. Esselstyn's testimony confirming that his illustrative districts are contiguous).

**(d) Preservation of political subdivisions**

Mr. Esselstyn's Illustrative Senate Plan preserves political subdivisions. Mr. Esselstyn testified that it was "not always possible" to preserve political subdivisions because, for example, "a typical precinct size is in the neighborhood typically around a few thousand people," and "[s]o often to get the best shape . . . , it's often practical to divide precincts." Feb. 9, 2022, Afternoon Tr. 160:20-161:1-8. Mr. Esselstyn concluded that "[w]hile the creation of three additional majority-Black State Senate districts involved the division of additional counties and VTDs, the differences are marginal." GPX 3, ¶¶ 32-33 & tbl.3; see also id. at 80-91 (Mr. Esselstyn's expert report providing political subdivision splits for enacted and illustrative State Senate maps); Feb. 9, 2022, Afternoon Tr. 161:9-11 (Mr. Esselstyn's testimony stating that "the

numbers of divided counties and precincts in the Illustrative Plans are similar, slightly higher than those for the Enacted Plans”); id. at 177:20–25, 188:18–24 (Mr. Esselstyn’s testimony describing preservation of political subdivisions). He reported the splits in the enacted and illustrative State Senate maps as follows:

**Table 3: Political subdivision splits for enacted and illustrative State Senate Plans**

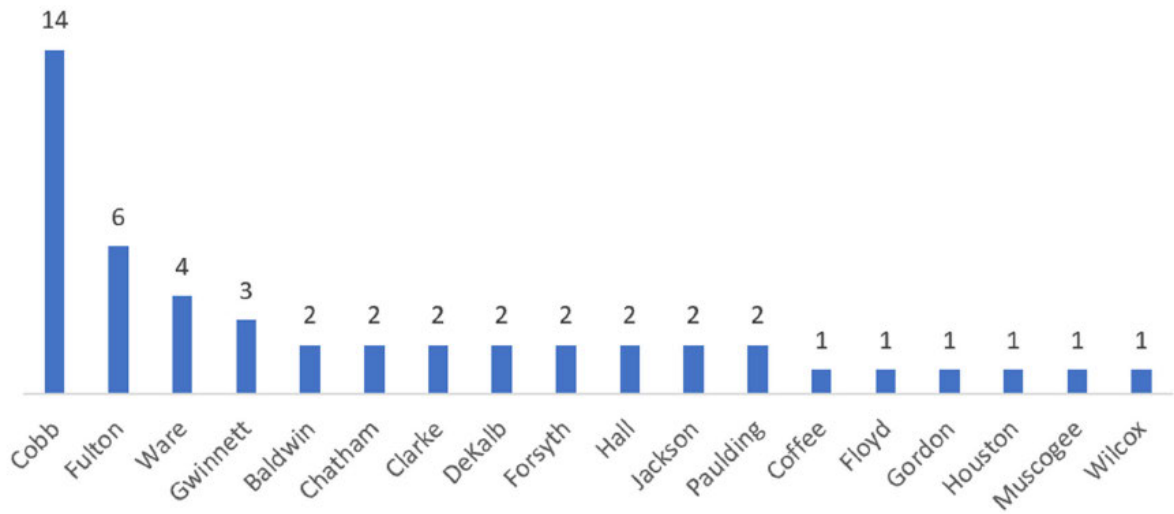
	Intact Counties	Split Counties	Split VTDs
Enacted	130	29	47
Illustrative	125	34	49

GPX 3, ¶¶ 32–33 & tbl.3.

Out of 2,698 VTDs statewide, only 49 are split in Mr. Esselstyn’s illustrative State Senate plan, and in only 18 of Georgia’s 159 counties. Grant Doc. No. [61-1], ¶ 3 & fig.1; Feb. 9, 2022, Afternoon Tr. 163:17–20, 166:5–9. The 2021 Enacted State Senate Map divides fewer precincts than Mr. Esselstyn’s Illustrative State Senate Maps. Feb. 9, 2022, Afternoon Tr. 205:23–25, 236:25–237:1. However, some of the VTD splits in Mr. Esselstyn’s Illustrative State Senate Maps are inherited from the Enacted State Senate map because Mr. Esselstyn’s illustrative map leaves a majority of districts untouched. Id. at 164:23–165:4. Mr. Esselstyn’s second supplemental report included a

histogram depicting the VTD splits in his illustrative State Senate plan by county.

**Figure 1: VTD splits in illustrative State Senate plan by County**



Grant Doc. No. [61-1], ¶ 3 & fig.1. Thus, the Court finds that Mr. Esselstyn's Illustrative State Senate Map complies with the traditional redistricting principle of keeping political subdivisions together; even though, Mr. Esselstyn's Illustrative State Senate Maps has two more split VTDs than the Enacted State Senate Map.

Mr. Esselstyn's illustrative Senate plan splits thirty-four counties, which is five more than the 2021 adopted state Senate plan. Grant Stip. ¶¶ 58, 75; Feb. 9, 2022, Afternoon Tr. 203:18-21; DX 2, ¶ 21. However, the number of county splits in Mr. Esselstyn's Illustrative State Senate Map is lower than the

number of such splits in the legislative plans used in the most recent elections (which is to say, Georgia’s 2014 State Senate plans).

**Table 1: Number of split counties in various plans.<sup>1</sup>**

	Illustrative	Adopted 2014/2015
State Senate	34	38
House	70	73

GPX 4, ¶ 11 & tbl.1; Feb. 9, 2022, Afternoon Tr. 178:1–5, 188:25–189:4. Defendants’ expert Mr. Morgan’s report confirmed Mr. Esselstyn’s statistics for political subdivision splits without opining that Mr. Esselstyn’s illustrative maps fail to comply with this districting principle. See DX 2, ¶¶ 20–22; see also Feb. 11, 2022, Afternoon Tr. 220:15–221:20 (Mr. Morgan’s testimony confirming Mr. Esselstyn’s reported figures and conceding that his expert report offers no opinion on issue of split geographies). Thus, the Court finds that Mr. Esselstyn’s Illustrative State Senate Maps comply with the traditional redistricting principle of maintaining existing political subdivisions.

(e) **Preservation of  
communities of interest**

The Court finds that Mr. Esselstyn’s Illustrative State Senate Maps preserve communities of interest. Mr. Esselstyn testified regarding his definition of a community of interest:

[C]ommunity of interest could be something as large as the Black Belt. As large as Metro Atlanta. Can span multiple counties. And . . . it could also be as small as a neighborhood. So it can be an area that is large or larger geographically but the basic idea is you are looking at areas that have a shared characteristics or where the people have a shared interest.

Feb. 9, 2022, Afternoon Tr. 167:1–11. Although sometimes such communities “can be delineated on [a] map” — such as municipalities, college campuses, or military bases — at other times “they don’t have clearly defined boundaries.” Id. at 167:18–168:9; see also Feb. 11, 2022, Morning Tr. 90:5–91:12 (Ms. Wright’s testimony broadly defining communities of interest). Mr. Esselstyn testified that in drawing his illustrative maps, he sought to preserve communities of interest where possible. Feb. 9, 2022, Afternoon Tr. 168:13–16. This does not necessarily mean that each illustrative district is homogenous; as Mr. Esselstyn explained, “I don’t believe that the communities of interest principle[] requires every two communities in a given district to have commonalities. I don’t think that’s what the principle stands for. . . . [M]y focus on communities of interest is trying to keep them intact, when possible.” Feb. 9, 2022, Afternoon Tr. 221:1–222:11. Accordingly, the absence of “some shared characteristic” does not necessarily indicate “a failure to meet the communities of interest criteria or any other [] traditional redistricting principle.” Id. at 222:12–17.



With respect to Mr. Esselstyn's Illustrative State Senate District 25, Defendants' expert Ms. Wright conceded that "District 25 is at least more compact," but concluded that Mr. Esselstyn's Illustrative State Senate District 25 has the effect of dividing communities of interest in Mr. Esselstyn's Senate District 10. DX 41, ¶ 23; Feb. 11, 2022, Morning Tr. 48:20–49:4. Mr. Esselstyn's Illustrative Senate District 10 stretches from Stonecrest in DeKalb County to Butts County. Id. The Court finds that even if Mr. Esselstyn's Illustrative Senate District 10 divides communities of interest, that does not necessarily mean that Mr. Esselstyn's Illustrative State Senate District 25 does not respect traditional redistricting principles. See Wright, 301 F. Supp. 3d at 1326 (finding that plaintiffs successfully proved violation of Section 2 of the VRA, even though the "illustrative plan [was] [] far from perfect"). Given that Mr. Esselstyn's Illustrative Senate District 10 does not represent a challenged district, and Ms. Wright testified that Mr. Esselstyn's Senate District 25 is "at least more compact," (Feb. 11, 2022, Morning Tr. 48:20–49:4), the Court finds that Mr. Esselstyn's Senate District 25 respects communities of interest.

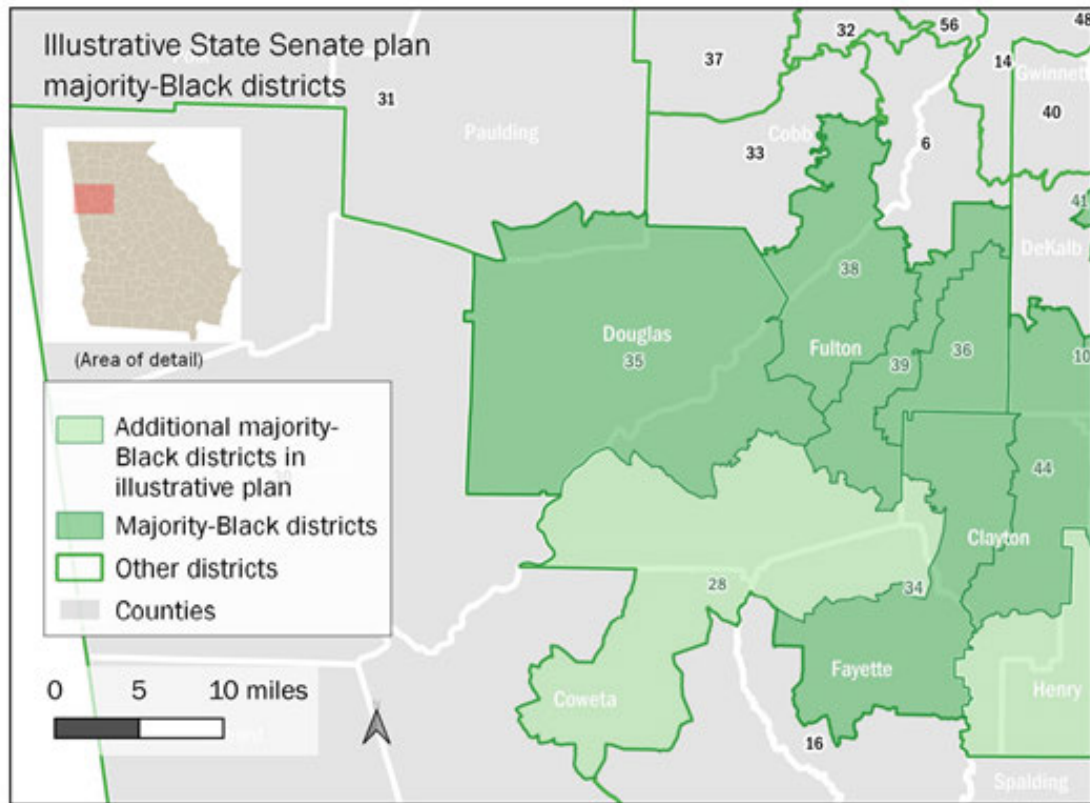
Jason Carter, a former member of the State Senate and candidate for Governor of Georgia during the 2014 election, testified that Mr. Esselstyn's Illustrative State Senate District 25

includes virtually all of Henry County in a single district . . . [which] helps in some context for sure . . . . [I]f there were really differing aspects in Henry County that needed to be divided, up that would be one thing but . . . Henry County is a fast-growing, multi-racial community that . . . would seem like [] the kind of place that can be kept together . . . if you can make it coherent, it would seem that that would be great.

Feb. 10, 2022, Afternoon Tr. 138:9-139:6. Thus, the Court finds that Mr. Esselstyn's Illustrative State Senate District 25 respects communities of interest.

With respect to Mr. Esselstyn's Illustrative Senate District 28, Defendants argued it connects pieces of the following counties to create a district that is majority-Black: Clayton, Coweta, Fayette, and Fulton. See Feb. 9, 2022, Afternoon Tr. 229:4-7. To create this district, Mr. Esselstyn has to double the traditional number of Senate districts in Clayton County from two to four and cut into Coweta County to reach a sizeable Black population in Newnan. DX 41, ¶ 22; Feb. 9, 2022, Afternoon Tr. 229:23-230:16. Unlike the Democratic Senate plan and 2021 adopted state Senate plan that kept Coweta County whole, Mr. Esselstyn's Senate District 28 splits Coweta County three ways. DX 13; DX 10; Feb. 9, 2022, Afternoon Tr. 231:8-17. Mr. Esselstyn's Illustrative Senate District 28 from his report is reproduced below.

**Figure 7: Map of western Metro Atlanta area of illustrative plan with majority-Black State Senate districts indicated.**



GPX 3, ¶ 27 & fig.7.

Mr. Carter described the communities of interest contained in Mr. Esselstyn’s Illustrative Senate District 28 as follows: “[T]hat is . . . to me, a cohesive community and . . . Newnan certainly has more in common with that part of South Fulton than it does with . . . Franklin, Georgia, because of the issues that it confronts from an infrastructure standpoint and [] other issues[.]” Feb. 10, 2022, Afternoon Tr. 139:18–140:19. Despite the additional county splits, Mr. Esselstyn’s Illustrative Senate District 28 “goes right around the Airport,

285. 85 corridors that are . . . those suburban south side areas.” Id. at 140:10–12.

Thus, Mr. Esselstyn’s Illustrative Senate District 28 respects communities of interest.

**(f) Incumbent protection**

Defendants point out that Mr. Esselstyn’s Illustrative State Senate Map pairs incumbents Marty Harbin (R) and Valencia Seay (D) into one district; while, the Enacted State Senate Map pairs no incumbents who are running for reelection. DX 1, ¶ 15. During the hearing, Mr. Esselstyn testified that “I was not able to find a publicly-available authoritative source . . . for incumbent address data . . . [s]o, as a result I did not have that data and so I did not take it into account.” Feb. 9, 2022, Afternoon Tr. 223:16–18. Despite not having this information, Mr. Esselstyn’s Illustrative State Senate Maps only create one incumbent pairing. The Court finds that Mr. Esselstyn’s Illustrative State Senate Map complies with the traditional redistricting principle of protecting incumbents.

**(g) Core retention**

The Court finds that Mr. Esselstyn’s Illustrative State Senate Map retains the core of the Enacted State Senate Map. As an initial note, preservation of existing district cores was not an enumerated districting principle adopted by

the General Assembly. See GPX 39; 40. However, in terms of implementing a remedial map, the Court takes core retention into consideration.

Mr. Esselstyn's Illustrative State Senate Plan changes 22 of the 56 2021 Enacted State Senate districts in the process of creating three additional majority-Black districts. DX 2, ¶ 19. Mr. Esselstyn explained in his supplemental expert report, "One of the guiding principles in the creation of my Illustrative Plans was to keep changes to a minimum while adhering to other neutral criteria . . . . [W]hile the illustrative plans are—intentionally—a departure from the enacted plans, most of the plans' districts remain intact." GPX 4, ¶ 9; see Feb. 9, 2022, Afternoon Tr. 267:20–268:4 (Mr. Esselstyn's testimony: "One of the other considerations for me was not trying to make more changes that I have to.").

The Court finds that Mr. Esselstyn's Illustrative State Senate Maps do not change over 60% of the Enacted State Senate Map. The Court notes that "[m]odifying one district necessarily requires changes to districts adjacent to the original modification, and harmonizing those changes with traditional redistricting criteria (such as population equality and intactness of counties) often inescapably results in cascading changes to other surrounding districts."

GPX 4, ¶ 9. Accordingly, the Court finds that Mr. Esselstyn's Illustrative State Senate Map respects the principle of core retention.

**(h) Racial considerations**

Defendants argued that Mr. Esselstyn's Illustrative Senate Maps must fail because they were predominately drawn for racial considerations. The Court is not persuaded by this argument. Both the Supreme Court's and Eleventh Circuit's "precedents require [Section 2] plaintiffs to show that it would be possible to design an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a minority candidate." Davis, 139 F.3d at 1425. "[I]ntentional creation of a majority-minority district necessarily requires consideration of race." Fayette Cnty., 118 F. Supp. 3d at 1345. Therefore, "[t]o penalize [plaintiffs] . . . for attempting to make the very showing that Gingles [and its progeny] demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section [2] action." Davis, 139 F.3d at 1425. Consideration of race accordingly does not mean that an illustrative plan must be subjected to strict scrutiny or any other heightened bar beyond the question of whether traditional districting principles were employed. Consistent with this understanding, the Eleventh Circuit, and every other circuit to address this

issue, has rejected attempts to graft the constitutional standard that applies to racial gerrymandering by the State onto the first Gingles precondition vote dilution analysis. See Davis, 139 F.3d at 1417–18; see also, e.g., Bone Shirt, 461 F.3d at 1019; Clark, 88 F.3d at 1406–07; Sanchez v. Colorado, 97 F.3d 1303, 1327 (10th Cir. 1996); Cane v. Worcester Cnty., 35 F.3d 921, 926 n.6 (4th Cir. 1994); Bridgeport Coal. for Fair Representation v. City of Bridgeport, 26 F.3d 271, 278 (2d Cir. 1995), vacated on other grounds sub nom. City of Bridgeport v. Bridgeport Coal. for Fair Representation, 512 U.S. 1283 (1994).

Mr. Esselstyn explained that he was asked “to determine whether there are areas in the State of Georgia where the Black population is ‘sufficiently large and geographically compact’ to enable the creation of additional majority-Black legislative districts relative to the number of such districts provided in the enacted State Senate and State House of Representatives redistricting plans from 2021.” GPX 3, ¶ 8 (footnote omitted); see also Feb. 9, 2022, Afternoon Tr. 150:11–19, 202:15–29 (Mr. Esselstyn’s testimony confirming what he was asked to do in this case). Mr. Esselstyn testified that he was not asked to maximize the number of majority-Black districts in the State Senate or House map. Feb. 9, 2022, Afternoon Tr. 150:23–25. Mr. Esselstyn also testified that it

was necessary for him to consider race as part of his analysis because, under Section 2,

the key metric is whether a district has a majority of the Any Part Black population. So that means it has to be over 50 percent. And that means looking at a column of numbers in order to determine, to assess whether a district has that characteristic. You have to look at the numbers that measure the percentage of the population is Black.

Id. at 155:15–156:2. When asked by the Court whether race was the controlling issue when drawing his illustrative House District 149, Mr. Esselstyn responded, “There’s not one predominant consideration . . . . I’m trying to see if something can be satisfied while considering all the other traditional principles and the principles adopted by the General Assembly.” Feb. 9, 2022, Afternoon Tr. 254:1–255:18. Mr. Esselstyn emphasized that he took other considerations into account as well when drawing his Illustrative Plans, including population equality, compliance with the federal and state constitutions, contiguity, and other traditional districting principles. Id. at 156:10–157:9; see also id. at 275:2–11 (Mr. Esselstyn’s testimony explaining that, when drawing illustrative districts, “I’m not looking at any one race of voters . . . . I’m always looking [at] a multitude of considerations”).



Defendants' expert, Ms. Wright, opined that Mr. Esselstyn's Illustrative Senate District 25 and 28 were drawn predominately with racial considerations, "District 25 . . . strategically connects pieces of south Clayton with Henry apparently in service of a racial goal" (DX 41, ¶ 23) and "District 28 . . . splits Clayton County into four districts in a manner that make [sic] no geographical sense apart from a racial goal." Id. ¶ 22. Without more, the Court is unable to uphold Ms. Wright's assessment. Mr. Esselstyn testified that he used various metrics including but not limited to population size, communities of interest, and political subdivisions, in addition to race when he drew his Illustrative State Senate Maps. Accordingly, the Court does not find that race predominated the drawing of Mr. Esselstyn's Illustrative State Senate Districts 25 and 28.

The Court finds that Mr. Esselstyn's Illustrative State Senate Districts 25 and 28 contain Black population that are sufficiently numerous and compact, as to create two additional districts that comply with traditional redistricting principles. Accordingly, the Court finds that the Grant Plaintiffs have a substantial likelihood of success in proving that Mr. Esselstyn's Illustrative State Senate Districts 25 and 28 satisfy the first Gingles precondition.

(b) Esselstyn House Districts

i) *Numerosity*

As stated above, on December 30, 2021, Governor Kemp signed the Enacted State House Map into law. The Georgia House of Representatives map consists of 180 districts. GPX 3, ¶ 35; Feb. 9, 2022, Afternoon Tr. 178:10–12. The 2015 Georgia House of Representatives plan contained 47 majority-Black districts using the AP BVAP metric when the 2020 Census data was applied. Grant Stip. ¶ 31. The enacted House plan contains 49 majority-Black districts using the AP BVAP metric. Grant Stip. ¶ 57; GPX 3, ¶ 36; Feb. 9, 2022, Afternoon Tr. 178:17–19. Thirty-four of those districts are in the Atlanta metropolitan area, 13 are in the Black Belt, and two small districts are within Chatham County (anchored in Savannah) and Lowndes County (anchored in Valdosta) in the southeastern part of the state. GPX 3, ¶ 36 & fig.9.

Mr. Esselstyn also drew two additional majority-Black House Districts in the metropolitan Atlanta area: Illustrative State House District 74 and Illustrative State House District 117. As stated above, the AP Black population in the Atlanta MSA increased from 29.29% in 2000 to 33.61% in 2010 and to 35.91% in 2020. Grant Stip. ¶ 44. And half of Georgia’s Black population live in Fulton, DeKalb, Gwinnett, Cobb, Clayton, and Henry counties. GPX 3, ¶ 17.

Mr. Esselstyn drew two additional majority-Black House districts in the southern Atlanta metropolitan area (Mr. Esselstyn’s Illustrative State House District 74 and Mr. Esselstyn’s Illustrative State House District 117) are composed of portions of Clayton, Fayette, and Henry Counties. Grant Stip. ¶ 70; GPX 3, ¶ 41 & fig.12; Feb. 9, 2022, Afternoon Tr. 185:12–18. Mr. Esselstyn’s illustrative House Districts 74 and 117 have AP BVAPs over 50%. Grant Stip. ¶ 71; GPX 3, ¶ 39 & tbl.4; Feb. 9, 2022, Afternoon Tr. 185:23–186:5.

**Table 4: Illustrative House plan majority-Black districts with BVAP percentages**

District	BVAP%	District	BVAP%	District	BVAP%	District	BVAP%
38	54.23%	69	62.73%	91	60.01%	137	52.13%
39	55.29%	74	53.94%	92	68.79%	140	57.63%
55	55.38%	75	66.89%	93	65.36%	141	57.46%
58	63.04%	76	67.23%	94	69.04%	142	50.14%
59	70.09%	77	76.13%	95	67.15%	143	50.64%
60	63.88%	78	51.03%	113	59.53%	145	50.38%
61	64.87%	79	71.59%	115	53.77%	149	50.02%
62	72.26%	84	73.66%	116	51.95%	150	53.56%
63	69.33%	85	62.71%	117	51.56%	153	67.95%
64	50.24%	86	75.05%	126	54.47%	154	54.82%
65	55.32%	87	73.08%	128	50.40%	165	50.33%
66	50.64%	88	63.35%	129	54.87%	177	53.88%
67	58.92%	89	62.54%	130	59.91%		
68	55.75%	90	58.49%	132	52.34%		

Grant Stip. ¶ 61; GPX 3, ¶ 39 & tbl.4.

Mr. Morgan and Ms. Wright do not dispute that Mr. Esselstyn’s Illustrative State House District 74 and Mr. Esselstyn’s Illustrative State House

District 117 have AP BVAPs over 50%. See DX 2, ¶ 13 (confirming that Mr. Esselstyn's illustrative House plan contains 54 majority-Black districts); DX 41, ¶ 24 (Ms. Wright's expert report noting that "[t]he Esselstyn House plan adds majority-Black districts above the adopted House plan when using the any-part Black voting age population Census metric"); Feb. 11, 2022, Morning Tr. 81:25–82:16 (Ms. Wright's testimony acknowledging that AP BVAPs of Mr. Esselstyn's additional majority-Black House districts exceed 50%).

Mr. Morgan's expert report includes a chart demonstrating that Mr. Esselstyn's illustrative House plan contains three fewer districts with AP BVAPs above 65% compared to the Enacted Plan.

**Chart 2. Number of Majority-Black House Districts**

<b>Majority-Black House Districts</b>			
<b>% AP Black VAP</b>	<b>2021 Adopted Plan</b>	<b>Proposed Democratic Plan</b>	<b>Esselstyn Remedial Plan</b>
Over 75%	2	6	2
70% to 75%	9	7	5
65% to 70%	7	7	8
60% to 65%	8	3	8
55% to 60%	11	9	10
52% to 55%	10	10	10
50% to 52%	2	3	11
<b>Total # Districts</b>	<b>49</b>	<b>45</b>	<b>54</b>

DX 2, ¶ 12 & chart 2. As Mr. Esselstyn explained in his supplemental expert report, “[o]ne reason that the enacted plans have fewer majority-Black districts than the illustrative plans is that more Black voters were unnecessarily concentrated into certain Metro Atlanta districts in the enacted plans. By unpacking these districts, the illustrative plans contain fewer packed districts – and, consequently, additional majority-Black districts.” GPX 4, ¶ 4.

Although Ms. Wright asserts that Mr. Esselstyn’s illustrative House Districts 64, 74, and 117 are “below 50% Black on voter registration” (DX 41, ¶¶ 27–28), she admitted during the hearing that more than 8% of registered

voters are of unknown race and that this qualifying information was not included in her expert report. Feb. 11, 2022, Morning Tr. 71:10–78:12.<sup>29</sup>

Based on the expert reports and testimony provided in this case, the Court concludes that Mr. Esselstyn’s illustrative House plan contains two additional majority-Black districts.

*ii) Geographic Compactness*

Mr. Esselstyn states that his illustrative State House Map “was drawn to comply with and balance” the principles enumerated in the 2021-2022 House Reapportionment Committee Guidelines, discussed supra. GPX 3, ¶ 44; 40, 3.

As stated above, Mr. Esselstyn explained in his supplemental expert report and during his testimony at the hearing, applying these traditional districting principles often required balancing. See GPX 4, ¶ 14. As he described the process,

It’s a balancing act. So . . . often the criteria will be [in tension] with each other. It may be that you are trying to just follow precinct lines and not split . . . precincts, but the precincts have funny shapes. So that means you either are going to end up with a less compact shape that doesn’t split precincts or you could split a precinct and end up with a more compact shape. And some of the county shapes are highly irregular as well. So sometime[s] you can have a decision about

---

<sup>29</sup> See supra n.19.

splitting counties as well. So that's the example of where there's no one clear right answer and I'm trying to sort of find the best balance that I can.

Feb. 9, 2022, Afternoon Tr. 157:14–25.

Mr. Esselstyn's Illustrative House Districts 74 and 117 are consistent with traditional redistricting principles of compactness.

**(a) Population equality**

Mr. Esselstyn's Illustrative State House Map is not malapportioned and complies with the one-person, one-vote principle. See Wright, 301 F. Supp. 3d at 1325–26; see also Reynolds, 377 U.S. at 577 (“[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable.”). Mr. Esselstyn's expert report demonstrates that his Illustrative State House Map contains minimal population deviation.

In both the Enacted and Illustrative House plans, most district populations are within  $\pm 1\%$  of the ideal, and a small minority are between  $\pm 1$  and 2%. None has a deviation of more than 2%. For the Enacted Plan, the relative average deviation is 0.61%, and for the Illustrative Plan, the relative average deviation is 0.64%. GPX 3, ¶ 45; see also id. at 97–106, 108–13 (Mr. Esselstyn's expert report listing population statistics for enacted and

illustrative House maps); id. at 121 (similar); Feb. 9, 2022, Afternoon Tr. 158:4–22, 176:20–177:5, 188:4–12 (Mr. Esselstyn’s testimony describing compliance with population equality).

Mr. Esselstyn conceded that his illustrative House plan has higher deviations than the 2021 adopted House plan. Feb. 9, 2022, Afternoon Tr. 205:8–14. Mr. Esselstyn’s population deviations are within the limits allowed by the Equal Protection Clause. See Brown, 462 U.S. at 842 (quoting Reynolds, 377 U.S. at 745). Thus, the Court finds that Mr. Esselstyn’s Illustrative Senate Plan complies with population equality.

**(b) Compactness**

Mr. Esselstyn’s Illustrative State House Plan has comparable compactness scores to HB 1EX. Using the same compactness measures as for the Illustrative Senate plans, Mr. Esselstyn concluded that the average compactness measures for the enacted House plan and his illustrative plan “are almost identical, if not identical.” GPX 3, ¶ 46 & tbl.5; see also id. at 121–52 (Mr. Esselstyn’s expert report providing detailed compactness measures for enacted and illustrative House maps); Feb. 9, 2022, Afternoon Tr. 160:2–10 (Mr. Esselstyn’s testimony describing compliance with compactness principle); Feb. 11, 2022, Afternoon Tr. 224:4–7 (Mr. Morgan’s testimony confirming that



overall compactness scores of Mr. Esselstyn’s illustrative House map and enacted map are similar). Mr. Esselstyn reported those measures as follows:

**Table 5: Compactness measures for enacted and illustrative House plans.**

	Reock (average)	Schwartzberg (average)	Polsby- Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.39	1.80	0.28	0.72	22,020
Illustrative	0.39	1.82	0.28	0.72	22,475

GPX 3, ¶ 46 & tbl.5.

Looking at average compactness scores, Mr. Esselstyn’s Illustrative House plan has identical Reock, Polsby-Popper and Area/Convex Hull scores as the State’s enacted plan, and it is two-hundredths of a point less compact under the Schwartzberg method. GPX 3, ¶ 46 & tbl.5. In his expert report, Mr. Morgan confirmed the accuracy of Mr. Esselstyn’s compactness statistics without suggesting that Mr. Esselstyn’s illustrative maps are not sufficiently compact. See DX 2, ¶¶ 23–24 & chart 5.

**Chart 5. Compactness score summary**

<b>New Black-Majority District</b>	<b>Adopted Plan Reock</b>	<b>Esselstyn Remedial Plan Reock</b>	<b>Adopted Plan Polsby-Popper</b>	<b>Esselstyn Remedial Plan Polsby-Popper</b>
<b>Senate 23</b>	<b>0.37</b>	0.34	0.16	<b>0.17</b>
<b>Senate 25</b>	0.39	<b>0.57</b>	0.24	<b>0.34</b>
<b>Senate 28</b>	<b>0.45</b>	0.38	<b>0.25</b>	0.19
<b>House 64</b>	<b>0.37</b>	0.22	<b>0.36</b>	0.22
<b>House 74</b>	<b>0.50</b>	0.30	<b>0.25</b>	0.19
<b>House 117</b>	<b>0.41</b>	0.40	0.28	<b>0.33</b>
<b>House 145</b>	<b>0.38</b>	0.34	0.19	<b>0.21</b>
<b>House 149</b>	0.32	<b>0.42</b>	0.22	<b>0.23</b>

Looking at the Schwartzberg and Cut Edges scores, the 2021 adopted state House plan is more compact on average than Mr. Esselstyn’s illustrative state House plan. See Feb. 9, 2022, Afternoon Tr. 264:24–265:7. Of the twenty-six districts changed on Mr. Esselstyn’s illustrative state House plan, sixteen are less compact on the Reock measurement and fifteen are less compact on the Polsby-Popper measurement. DX 2, ¶ 24. This evidence, however, does not persuade the Court that Mr. Esselstyn’s Illustrative House Map is not sufficiently compact. First, the Enacted State House Map and Mr. Esselstyn’s Illustrative House Map have identical compactness scores in three out of the five compactness measures. See GPX 3, ¶ 46 & tbl.5. Second, the Enacted State House Map is only two-hundredths of a point more compact than Mr. Esselstyn’s Illustrative Map and has only 455 fewer cut edges. Id. The Court

does not find that these minor deviations render Mr. Esselstyn's Illustrative House Map non-compact. Accordingly, the Court does not find that Mr. Esselstyn's Illustrative House Map is not sufficiently compact.

Looking at the challenged districts specifically, the Court finds Mr. Esselstyn's Illustrative State House District 74 is less compact than the Enacted State House District 74. Whereas Mr. Esselstyn's Illustrative State House District 74 has a Reock score of 0.30 and Polsby-Popper score of 0.19, the Enacted State House District 74 has a Reock score of 0.50 and a Polsby-Popper score of 0.25. See DX 2, chart 5. Also, although Enacted State House District 117 is slightly more compact than Mr. Esselstyn's Illustrative State House District 117 under the Reock measure, it is less compact under the Polsby-Popper measure. Id. Specifically, Mr. Esselstyn's Illustrative State House District 117 has a Reock score of 0.40 and a Polsby-Popper score of 0.33 and the Enacted State Senate District 28 has a Reock score of 0.41 and a Polsby-Popper score of 0.28. Id.

After reviewing the data above, the Court finds that Mr. Esselstyn's Illustrative State House Districts 74 and 117 are sufficiently compact. The Court does not find that the difference of one-hundredths of a point in the Reock score makes Mr. Esselstyn's Illustrative State House District 117 not compact,

especially given that the Mr. Esselstyn's Illustrative State House District 117 Polsby-Popper score is five-hundredths of a point higher than the Enacted State House District 117. The Court also finds that Mr. Esselstyn's Illustrative State House District 74 is sufficiently compact. Although Mr. Esselstyn's Illustrative State House District 74 has a Reock score that is a twentieth of a point less compact than the Enacted State House District 74 and six-hundredths of a point less compact under Polsby-Popper, Mr. Morgan acknowledged that there is no minimum compactness threshold for districts under Georgia law. See Feb. 11, 2022, Afternoon Tr. 228:3–16. Thus, the Court finds that Mr. Esselstyn's Illustrative State House Districts 74 and 117 are sufficiently compact and satisfy the first Gingles precondition.

**(c) Contiguity**

Mr. Esselstyn's Illustrative House Districts 74 and 117 are contiguous. There is no factual dispute on this issue. See Feb. 9, 2022, Afternoon Tr. 160:11–13 (Mr. Esselstyn's testimony confirming that his illustrative districts are contiguous).

**(d) Preservation of political subdivisions**

Mr. Esselstyn's Illustrative House Plan preserves political subdivisions. Mr. Esselstyn testified that it was “not always possible” to preserve political

subdivisions because, for example, “the ideal population for a House district is around 60,000 people, and there are going to be counties that have way more than 60,000 people. So you are going to have to divide that county up into multiple districts.” Feb. 9, 2022, Afternoon Tr. 160:14–25. Similarly, “a typical precinct size is in the neighborhood typically around a few thousand people,” and “[s]o often to get the best shape . . . it’s often practical to divide precincts.” Id. at 161:1–8. Mr. Esselstyn concluded that “[w]hile the creation of five additional majority-Black House districts involved the division of one additional county and a handful of VTDs, the differences are marginal.” GPX 3, ¶¶ 47–48 & tbl.6; see also id. at 153–85 (Mr. Esselstyn’s expert report providing political subdivision splits for enacted and illustrative House maps); Feb. 9, 2022, Afternoon Tr. 161:9–11 (Mr. Esselstyn’s testimony stating that “the numbers of divided counties and precincts in the illustrative plans are similar, slightly higher than those for the enacted plans”). He reported the splits in the enacted and illustrative House maps as follows:

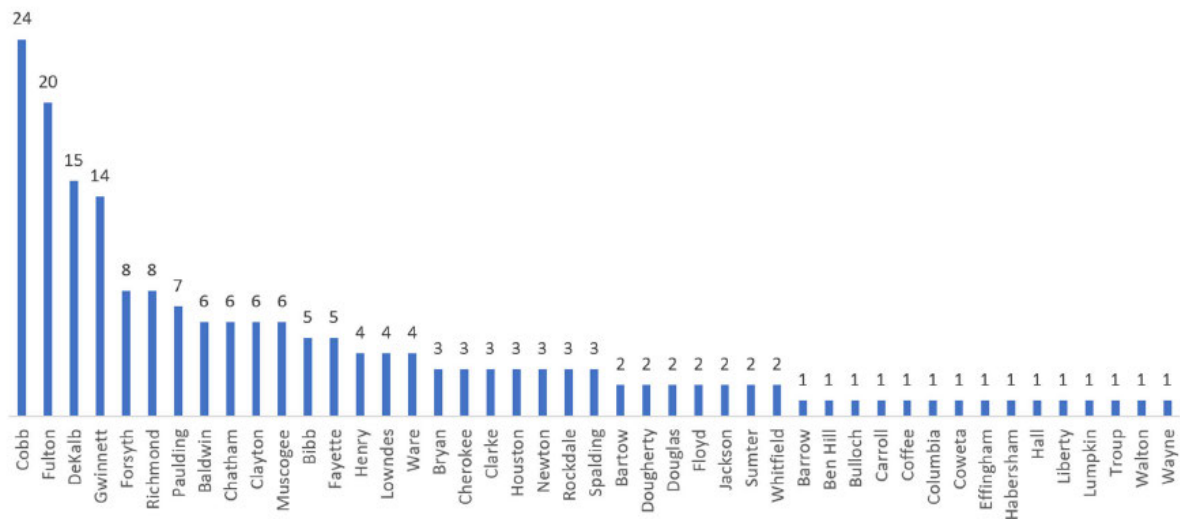
**Table 6: Political subdivision splits for enacted and illustrative House plans.**

	Intact Counties	Split Counties	Split VTDs
Enacted	90	69	185
Illustrative	89	70	192

GPX 3, ¶¶ 47–48 & tbl.6.

Out of 2,698 VTDs statewide, only 192 are split in Mr. Esselstyn’s illustrative House plan, and in only 45 of Georgia’s 159 counties. Grant Doc. No. [61-1], ¶ 4 & fig.2; Feb. 9, 2022, Afternoon Tr. 164:13–17, 166:4–11. Some of these VTD splits are inherited from the enacted House map because Mr. Esselstyn’s illustrative map leaves a vast majority of districts untouched. Feb. 9, 2022, Afternoon Tr. 164:22–165:6. Mr. Esselstyn’s second supplemental report included a histogram depicting the VTD splits in his illustrative House plan by county:

**Figure 2: VTD splits in illustrative State House plan by County**



Grant Doc. No. [61-1], ¶ 4 & fig.2.

After reviewing this data, the Court finds that although Mr. Esselstyn’s Illustrative State House Maps has seven more split VTDs than the Enacted State

Senate Map, it still complies with the traditional redistricting principle of keeping political subdivisions together. Thus, the Court finds fact that Mr. Esselstyn's Illustrative State House Maps satisfy this factor.

Mr. Esselstyn's illustrative House plan splits 70 counties, which is one more than the 2021 enacted state House plan. Grant Stip. ¶¶ 59, 76; Feb. 9, 2022, Afternoon Tr. 267:4-7; DX 2, ¶ 22. However, the number of county splits in Mr. Esselstyn's illustrative State Senate and House plans are lower than the number of such splits in the legislative plans used in the most recent elections (namely, Georgia's 2014 State Senate and 2015 House plans). GPX 4, ¶ 11 & tbl.1; Feb. 9, 2022, Afternoon Tr. 178:1-5, 188:25-189:4.

Mr. Morgan confirmed Mr. Esselstyn's statistics for political subdivision splits without opining that Mr. Esselstyn's illustrative maps fail to comply with this districting principle. See DX 2, ¶¶ 20-22; see also Feb. 11, 2022, Afternoon Tr. 220:15-221:20 (Mr. Morgan's testimony confirming Mr. Esselstyn's reported figures and conceding that his expert report offers no opinion on issue of split geographies). After reviewing the data above, the Court finds that Mr. Esselstyn's Illustrative State House Maps comply with the traditional redistricting principle of maintaining existing political subdivisions.

(e) Preservation of  
communities of interest

The Court finds that Mr. Esselstyn's Illustrative State House Maps preserve communities of interest. Mr. Esselstyn testified regarding his definition of a community of interest: "[C]ommunity of interest could be something as large as the Black Belt. As large as Metro Atlanta. Can span multiple counties. And . . . it could also be as small as a neighborhood. So it can be an area that is large or larger geographically but the basic idea is you are looking at areas that have a shared characteristic[] or where the people have a shared interest." Feb. 9, 2022, Afternoon Tr. 167:1-11. Although sometimes such communities "can be delineated on a map"—such as municipalities, college campuses, or military bases—at other times "they don't have clearly defined boundaries." Id. at 167:18-168:9; see also Feb. 11, 2022, Morning Tr. 90:3-91:12 (Ms. Wright's testimony broadly defining communities of interest). Mr. Esselstyn testified that in drawing his illustrative maps, he sought to preserve communities of interest where possible. Feb. 9, 2022, Afternoon Tr. 168:13-16. This does not necessarily mean that each illustrative district is homogenous; as Mr. Esselstyn explained, "I don't believe that the communities of interest principle[] requires every two communities in a given district to have commonalities. I don't think that's what the principle stands for. . . . [M]y focus



on communities of interest is trying to keep them intact, when possible.” Id. at 221:1–222:11. Accordingly, the absence of “some shared characteristic” does not necessarily indicate “a failure to meet the communities of interest criteria or any other [] traditional redistricting principle.” Id. at 222:12–17.

Defendants’ expert Ms. Wright did not testify or provide any expert opinion about whether Mr. Esselstyn’s Illustrative House Districts 74 and 117 respected communities of interest.<sup>30</sup> When asked by Defendants’ counsel whether the composition of his illustrative House District 74 was “to achieve the goal of majority status in [that] district,” Mr. Esselstyn responded, “No. . . . [T]here are always multiple goals,” such as preserving the community of Irondale, ensuring that Fayetteville was kept intact in the illustrative map, and being “relatively consistent with what it is in the enacted plan” in terms of preexisting district boundaries. Feb. 9, 2022, Afternoon Tr. 246:16–247:5. Ms. Wright, in rebuttal testified that Irondale was not an incorporated city in

---

<sup>30</sup> Ms. Wright’s expert report states that “Districts 74 and 117 suffer from the same problems I outlined above regarding Cooper House District 73 and 110” (DX 41, ¶ 27); however, the Court is unable to determine exactly what problems Mr. Esselstyn’s House Districts 74 and 117 suffer from. While Mr. Esselstyn’s Illustrative House Districts 74 and 117 overlaps with Mr. Cooper’s Illustrative House Districts 73 and 110, the districts are not identical and have boundaries that affect different communities. Thus, the Court will not apply Ms. Wright’s opinions about Mr. Cooper’s Illustrative House District 73 and 110 to Mr. Esselstyn’s Illustrative House Districts 74 and 117.

Georgia. Feb. 11, 2022, Morning Tr. 51:18–52:2. Even though Irondale is not an incorporated municipality, it does not mean that it is not a community of interest. Accordingly, the Court finds that Mr. Esselstyn’s Illustrative House Districts 74 and 117 adhere to the traditional redistricting principle of maintaining communities of interest.

(f) **Incumbent protection**

Mr. Morgan states in his report that Mr. Esselstyn’s illustrative state House plan pairs eight sets of incumbents (16 total) who are running for reelection, whereas the Enacted State House map pairs only four sets of incumbents (eight total) who are running for reelection. DX 2, ¶¶ 17–18 & chart 4.

**Chart 4. House incumbent pairings**

<b>Incumbent Pairings</b>	<b>Adopted House Plan</b>	<b>Esselstyn House Plan</b>
Pairing #1	Rebecca Mitchell -D Shelly Hutchison -D	Mike Glanton -D Demetrius Douglas -D
Pairing #2	Gerald Green -R Winifred Dukes -D	Rebecca Mitchell -D Shelly Hutchison -D
Pairing #3	James Burchett -R Dominic LaRiccica -R	El-Mahdi Holly -D Regina Lewis-Ward -D
Pairing #4	Danny Mathis – R Robert Pruitt - R	Miriam Paris -D Dale Washburn -R
Pairing #5		Robert Dickey -R Shaw Blackmon -R
Pairing #6		Noel Williams – R Robert Pruitt - R
Pairing #7		Gerald Green -R Winifred Dukes -D
Pairing #8		James Burchett -R Dominic LaRiccica -R
<b>Total incumbents Paired</b>	<b>8</b>	<b>16</b>

DX 2, ¶ 18 & chart 4.

During the hearing, Mr. Esselstyn testified that “I was not able to find a publicly-available authoritative source . . . for incumbent address data . . . [s]o, as a result, I did not have that data and so I did not take it into account.” Feb. 9, 2022, Afternoon Tr. 223:16–22. Indeed, the Court finds it notable that Mr. Esselstyn’s Illustrative State House Map creates only eight incumbent pairings even though Mr. Esselstyn had no address information regarding

incumbents. Further, three of the incumbent pairings are unchanged from the Enacted State House Map (Rebecca Mitchell and Shelly Hutchinson; Gerald Green and Winifred Dukes; James Burchett and Dominic LaRicca). DX 2, ¶ 18 & chart 4. Additionally, while Robert Pruitt is paired against Danny Mathis in the enacted plan, Robert Pruitt is paired against Noel Williams in Mr. Esselstyn's Illustrative House Maps—in both pairings, both incumbents are Republicans. Id.

With respect to Mr. Esselstyn's Illustrative House Districts 74 and 117, six-incumbents are paired against one another, two more than the Enacted House Plan. Two of the incumbent pairings (Miriam Paris and Dale Washburn; and Shaw Blackmon and Robert Dickey) are not impacted by Mr. Esselstyn's Illustrative House Districts 74 and 117. Rep. Paris currently represents House District 142 in Bibb County and Rep. Washburn represents House District 141 in Bibb and Monroe Counties. Rep. Blackmon represents House District 146 in Houston County and Rep. Dickey represents House District 140 in Houston, Bibb, Monroe and Peach Counties. Georgia General Assembly House of Representatives, <https://www.legis.ga.gov/members/house> (last visited Feb.

28, 2022).<sup>31</sup> Thus, Mr. Esselstyn's Illustrative House Districts 74 and 117 creates six incumbent pairings, two more than the Enacted State House Map. The Court finds that Mr. Esselstyn's Illustrative State House Map complies with the traditional redistricting principle of protecting incumbents.

**(g) Core retention**

The Court finds that Mr. Esselstyn's Illustrative State House Map retains the core of the Enacted State House Map. As an initial note, preservation of existing district cores was not an enumerated districting principle adopted by the General Assembly. See GPX 40. However, if the Court were to implement a remedial map, the Court would consider core retention. Thus, the Court has considered this issue and finds as follows:

Mr. Esselstyn's illustrative state House plan changes 26 of the 180 2021 adopted House districts in the process of creating five additional majority-minority districts. DX 2, ¶ 19. Mr. Esselstyn explained in his supplemental expert report that "[o]ne of the guiding principles in the creation of my illustrative plans was to keep changes to a minimum while adhering to other neutral criteria . . . . While the illustrative plans are—intentionally—a

---

<sup>31</sup> The Court takes judicial notice of the names of the members of the House of Representative for the Georgia General Assembly and the districts that those members serve. Fed. R. Evid. 201(b).

departure from the enacted plans, most of the plans' districts remain intact." GPX 4, ¶ 9; see also Feb. 9, 2022, Afternoon Tr. 267:20–268:4 (Mr. Esselstyn's testimony: "One of the other considerations for me was not trying to make more changes [than] I have to.").

The Court finds that in Mr. Esselstyn's Illustrative House Map, "86% of the districts are unchanged from the enacted House plan." GPX 4, ¶ 9. The Court notes that "[m]odifying one district necessarily requires changes to districts adjacent to the original modification, and harmonizing those changes with traditional redistricting criteria (such as population equality and intactness of counties) often inescapably results in cascading changes to other surrounding districts." Id. Accordingly, the Court finds that Mr. Esselstyn's Illustrative State House Map respects the principle of core retention.

**(h) Racial considerations**

Defendants argue that Mr. Esselstyn's Illustrative House Maps still must fail because they were drawn predominately for racial considerations. The Court is not persuaded by this argument. Both the U.S. Supreme Court's and Eleventh Circuit's "precedents require [Section 2] plaintiffs to show that it would be possible to design an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a

minority candidate.” Davis, 139 F.3d at 1425. “[I]ntentional creation of a majority-minority district necessarily requires consideration of race.” Fayette Cnty., 118 F. Supp. 3d at 1345. Therefore, “[t]o penalize [plaintiffs] . . . for attempting to make the very showing that Gingles, Nipper, 39 F.3d 1494, and [Southern Christian Leadership Conference v. Sessions, 56 F.3d 1281 (11th Cir. 1995),] demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section Two action.” Davis, 139 F.3d at 1425.

Mr. Esselstyn explained that he was asked “to determine whether there are areas in the State of Georgia where the Black population is ‘sufficiently large and geographically compact’ to enable the creation of additional majority-Black legislative districts relative to the number of such districts provided in the enacted State Senate and State House of Representatives redistricting plans from 2021.” GPX 3, ¶ 8 (footnote omitted); see also Feb. 9, 2022, Afternoon Tr. 150:11–19 (Mr. Esselstyn’s testimony confirming what he was asked to do in this case). Mr. Esselstyn testified that he was not asked to maximize the number of majority-Black districts in the State Senate or House map. Feb. 9, 2022, Afternoon Tr. 150:23–25. Mr. Esselstyn also testified that it was necessary for him to consider race as part of his analysis because, under Section 2, “the key metric is whether a district has a majority of the Any Part Black population. So

that means it has to be over 50 percent. And that means looking at a column of numbers in order to determine, to assess whether a district has that characteristic. You have to look at the numbers that measure the percentage of the population is Black.” Id. at 155:15–156:2.

When asked by the Court whether race was the “controlling question” when drawing his illustrative House District 149, Mr. Esselstyn responded that he did not have “one predominant consideration. . . . [he was] trying to see if something can be satisfied while considering all the other traditional principles and the principles adopted by the General Assembly.” Feb. 9, 2022, Afternoon Tr. 254:1–255:18. Mr. Esselstyn emphasized that he took other considerations into account as well when drawing his illustrative plans, including population equality, compliance with the federal and state constitutions, contiguity, and other traditional districting principles. Id. at 156:10–157:9; see also id. at 275:2–11 (Mr. Esselstyn’s testimony explaining that, when drawing illustrative districts, “I’m not looking at any one race of voters. . . . I’m always looking [at] a multitude of considerations”).

Defendants’ expert Ms. Wright opined that Mr. Esselstyn’s Illustrative House District 117 was drawn predominately with racial considerations: “It is also unusual that District 116 follows the interstate except to take a single



precinct across the interstate that likely has racial implications for District 117.”

DX 41, ¶ 27. The Court does not agree with Ms. Wright’s assessment. As stated above, Mr. Esselstyn testified that he used various metrics including but not limited to population size, communities of interest, and political subdivisions, in addition to race, when he drew his Illustrative State House Maps. Accordingly, the Court does not find that race predominated the drawing of Mr. Esselstyn’s Illustrative State House Districts 74 and 117.

The Court finds that Mr. Esselstyn’s Illustrative State House Districts 74 and 117 contain Black populations that are sufficiently numerous and compact to create two districts that comply with traditional redistricting principles. Accordingly, the Court finds that the Grant Plaintiffs have a substantial likelihood of success in proving that Mr. Esselstyn’s Illustrative State House Districts 74 and 117 satisfy the first Gingles precondition.

(2) *The Alpha Phi Alpha Plaintiffs are substantially likely to establish a Section 2 violation.*<sup>32</sup>

(a) Cooper's Illustrative House District 153

This Court finds that the Alpha Phi Alpha Plaintiffs have shown that they have a substantial likelihood of satisfying the first Gingles precondition with respect to an additional majority-minority district in southwest Georgia.

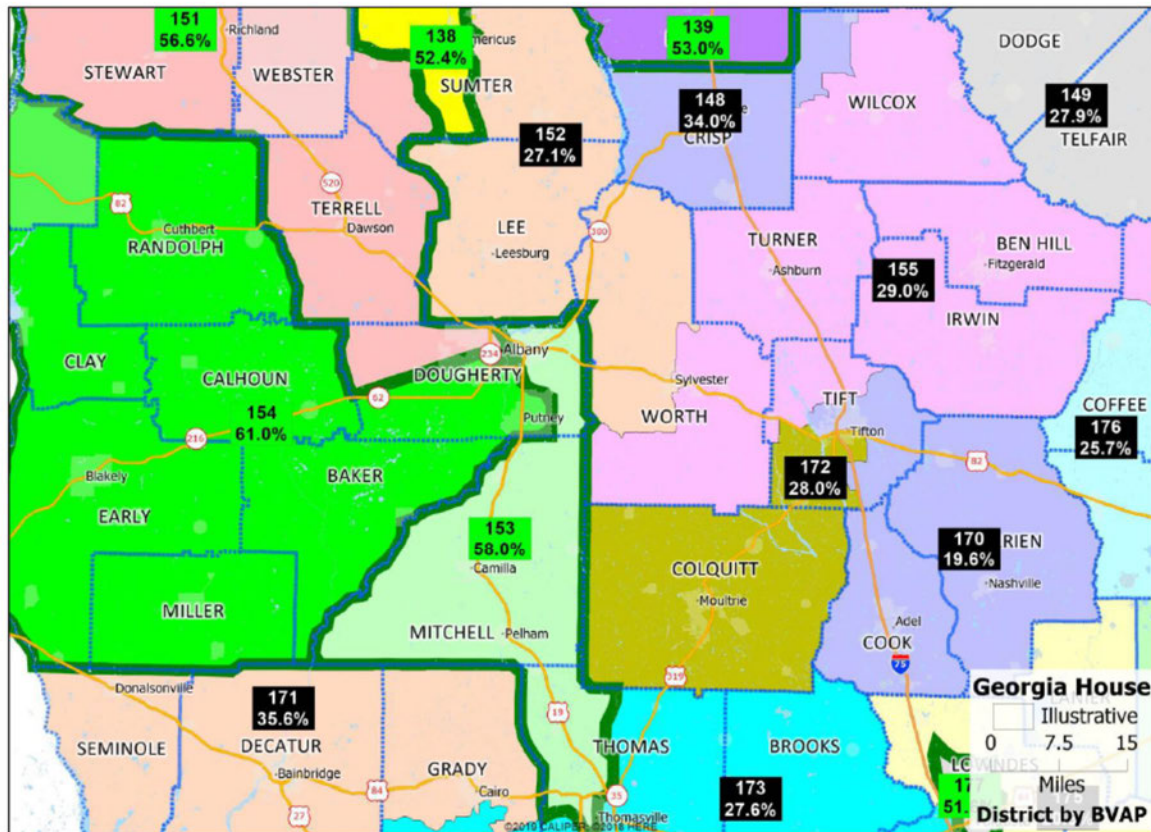
i) *Numerosity*

Mr. Cooper drew one illustrative House District in southeastern Georgia. Mr. Cooper's Illustrative House District 153 is in the area South of Albany, including Dougherty, Mitchell, and Thomas Counties. APAX 1, ¶ 118 & fig.34. Mr. Cooper's Illustrative State House District 153 includes all of Mitchell County, and parts of Dougherty and Thomas Counties. Id.

---

<sup>32</sup> In closing arguments, the court asked counsel for Alpha Phi Alpha whether the Alpha Phi Alpha Plaintiffs would be "upset if [the Court] just totally disregarded Mr. Cooper['s] maps on the Senate?" Feb. 14, 2022, Morning Tr. 81:25-82:1. In response, counsel stated "[n]ot at all, your Honor. They draw districts in exactly – pretty much the same areas of the State and at the end of the day, remedy the same violation based on the exact same population growth, based on the exact same concentration of Black voting strengths in different parts of the Black Belt." Id. 82:2-7. Accordingly, the Court formally incorporates its findings for the Grant Plaintiffs into its findings for the Alpha Phi Alpha Plaintiffs.

**Figure 34:** *Illustrative Plan: District 153 and vicinity*



APAX 1, ¶ 117 & fig.34.

In 1990, Non-Hispanic whites constituted about half of the overall population in the Senate District 12 region. See APAX 1, ¶ 55 & fig.9. By 2020, Non-Hispanic whites comprised only about one-third of the population. See id. Over the same period, the Black population grew in absolute terms from 102,728 to 115,621, representing just under half the population in 1990, but 60.6% of the population by 2020. See id. From 2000 to 2020, the proportion of

the AP Black population in the southwest Georgia counties comprising Senate District 12 grew, representing just over half the population in 2000 at 55.33%, but 60.6% of the population by 2020. APA Stip. ¶ 109. In the area where Enacted Senate District 12 was drawn with a majority-Black population, only two of the three House districts in the Enacted House Plan are majority Black. See id. ¶ 110. This fact, combined with the increase in the proportion of the Black population in that area over the last decade, indicates that an additional Black-majority House district can very likely be drawn in the area of Southwest Georgia covered by Enacted Senate District 12. Feb. 7, 2022, Afternoon Tr. 123:6–19, 124:8–16; see also APAX 1, ¶ 117 & fig.34; id. ¶ 118 & fig.35. Mr. Cooper’s Illustrative House District 153 has an AP BVAP of 57.96%. APAX 1, at 293. Neither of Defendants’ experts disputes that Mr. Cooper’s Illustrative House District 153 has an AP BVAP greater than 50%. Accordingly, the Court finds that the Black population in Mr. Cooper’s Illustrative State House District 153 is sufficiently numerous to constitute an additional Black-majority house district.

*ii) Geographic compactness*

Mr. Cooper reported that his plans “comply with traditional redistricting principles, including population equality, compactness, contiguity, respect for

communities of interest, and the non-dilution of minority voting strength.”

APAX 1, ¶ 8. Mr. Cooper testified that he attempted to balance all these principles and that no one principle predominated over the others. See Feb. 7, 2022, Afternoon Tr. 140:2–7 (“I tried to balance [all the traditional redistricting principles]. I was aware of them all and I tried to achieve plans that were fair and balanced.”).

**(a) Population equality**

Mr. Cooper’s Illustrative House District 153 is not malapportioned, and it complies with the one-person, one-vote principle. “[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable.” Reynolds, 377 U.S. at 577. Mr. Cooper’s report states that the population deviation for his Illustrative House District 153 is 1.35% (APAX 1, at 293) and the enacted House District 153 has a population deviation of 0.36% (id. at 282). Mr. Cooper also testified that his Illustrative House Map overall had a deviation of  $\pm 1.5\%$ . Feb. 7, 2022, Afternoon Tr. 169:1–2. Mr. Cooper’s population deviations are within the limits allowed by the Equal Protection Clause.

[M]inor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case . . . under the Fourteenth Amendment . . . . Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations.

Brown v. Thomson, 462 U.S. 835, 842 (1983) (quotations and citations omitted).

Thus, the Court finds that Mr. Cooper's Illustrative House District 153 complies with population equality.

**(b) Compactness**

Mr. Cooper's Illustrative House District 153 has a comparable compactness score to the Enacted State House Map. Mr. Cooper reported that his Illustrative House Map has an average Reock score of 0.39 and an average Polsby-Popper score of 0.27. APAX 1, ¶¶ 122-123 & fig.36. In comparison, the Enacted State House Map has an average Reock score of 0.39 and an average Polsby-Popper score of 0.28. Id. In other words, Mr. Cooper's Illustrative House Map has an identical Reock score as the enacted House Map and is one one-hundredth of a point less compact under Polsby-Popper. Id.

**Figure 36**

**Compactness Scores – Illustrative House Plan vs 2014 Benchmark  
and 2021 House Plans**

	Reock			Polsby-Popper	
	Mean	Low		Mean	Low
<b>Illustrative House Plan</b>	.39	.16		.27	.11
<b>2014 Benchmark House Plan</b>	.39	.13		.27	.09
<b>2021 House Plan</b>	.39	.12		.28	.10

Id.

Defendants’ expert Mr. Morgan reports that Mr. Cooper’s Illustrative House District 153 has a Reock score of 0.28 and a Polsby-Popper score of 0.19. DX 1, ¶ 24 & chart 5. In comparison, the Enacted State House District 153 has a Reock score of 0.30 and a Polsby-Popper score of 0.30. Id.

**Chart 5. Compactness score summary**

<b>New Majority-Black District</b>	<b>Adopted Plan Reock</b>	<b>Cooper Plan Reock</b>	<b>Adopted Plan Polsby-Popper</b>	<b>Cooper Plan Polsby-Popper</b>
Senate 6	0.41	<b>0.43</b>	<b>0.24</b>	0.23
Senate 9	0.24	<b>0.33</b>	0.21	0.21
Senate 17	0.35	<b>0.37</b>	0.17	<b>0.18</b>
Senate 23	<b>0.37</b>	0.35	0.16	0.16
Senate 28	0.45	<b>0.49</b>	<b>0.25</b>	0.22
House 73	0.28	<b>0.44</b>	0.20	0.20
House 110	0.36	<b>0.44</b>	<b>0.33</b>	0.24
House 111	<b>0.33</b>	0.30	<b>0.29</b>	0.23
House 144	<b>0.51</b>	0.31	<b>0.32</b>	0.16
House 153	<b>0.30</b>	0.28	<b>0.30</b>	0.19



Id.

The Court finds that Mr. Cooper's Illustrative House District 153 is sufficiently compact. Mr. Cooper's Illustrative House District 153 has a Reock score only two-hundredths of a point less compact than the Enacted State House District 153. Additionally, the Court does not find that the difference in nine-hundredths of a point difference in the Polsby-Popper scores makes Mr. Cooper's Illustrative House District 153 not compact. Thus, the Court finds that Mr. Cooper's Illustrative House District 153 is sufficiently compact to satisfy the first Gingles precondition.

**(c) Contiguity**

Mr. Cooper's Illustrative House District 153 is contiguous. There is no factual dispute on this issue. See Feb. 7, 2022, Afternoon Tr. 133:8-13 (Mr. Cooper testimony confirming that he used Maptitude when drawing to alert him to whether his districts were contiguous).

**(d) Preservation of political subdivisions**

Mr. Cooper's Illustrative State House District 153 preserves political subdivisions. Mr. Cooper reported that "[t]he illustrative plans are drawn to follow, to the extent possible, county and VTD boundaries. Where counties are split to comply with one-person one-vote requirements or to avoid pairing



incumbents, [he] ha[s] generally used whole 2020 Census VTDs as sub-county components.” APAX 1, ¶ 9 (footnote omitted). Mr. Cooper also stated that “[w]here VTDs are split, [he] ha[s] followed census block boundaries that are aligned with roads, natural features, census block groups, or municipal boundaries.” Id.

Mr. Cooper’s Illustrative House Plan as a whole, splits four more counties than the Enacted State House Map and splits 83 more VTDs than the Enacted House Plan. APAX 1, ¶ 124 & fig.37. The Court notes that Mr. Cooper based his Illustrative House Plan on the 2015 Benchmark House Plan, not the Enacted State House Map, because Mr. Cooper began drawing his maps before the Georgia Assembly passed the Enacted State House Map. See Feb. 7, 2022, Afternoon Tr. 239:25–240:5.

**Figure 37**

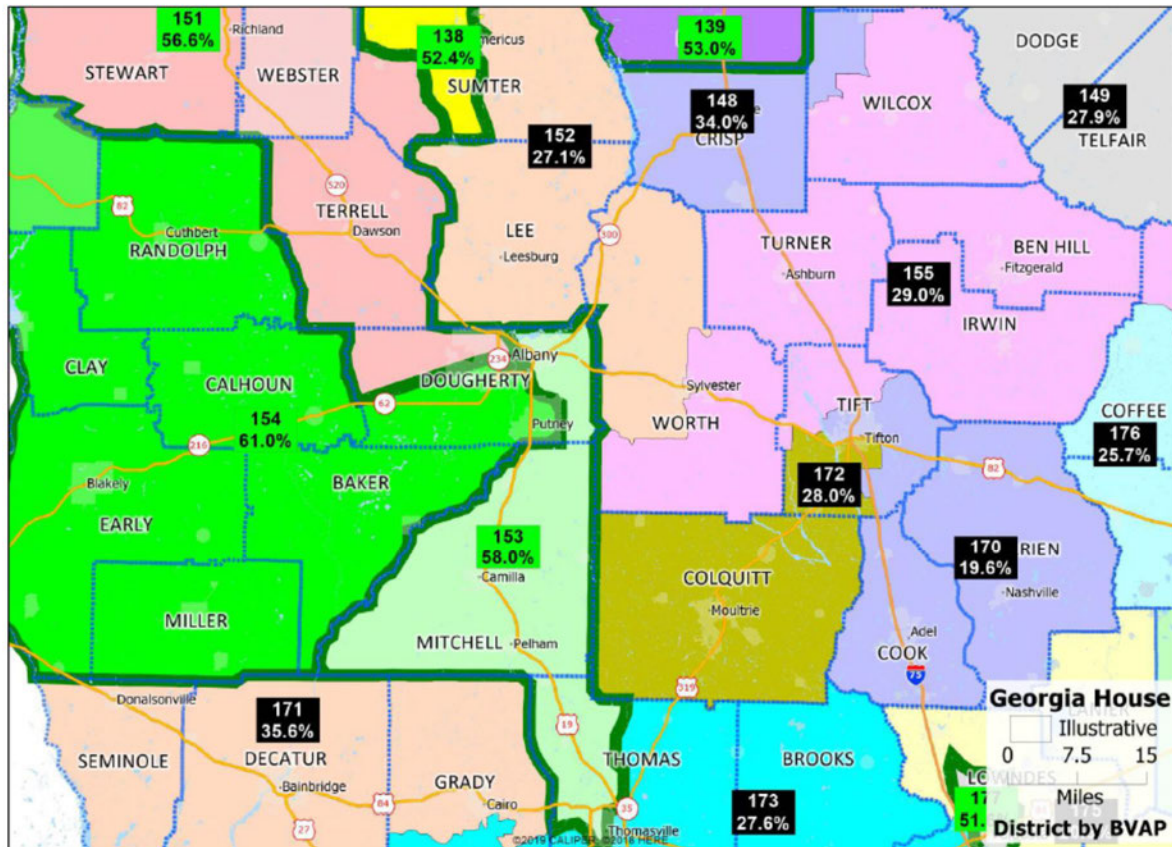
**County and VTD Splits – Illustrative Plan vs 2006 and 2015 Plans**

	County Splits (Populated)	Unique County- District Combinations	2020 VTD Splits (Populated)
<b>Illustrative House Plan</b>	74	206	262
<b>2015 Benchmark House Plan</b>	73	215	232
<b>2021 House Plan</b>	70	211	179

APAX 1, ¶ 124 & fig.37.

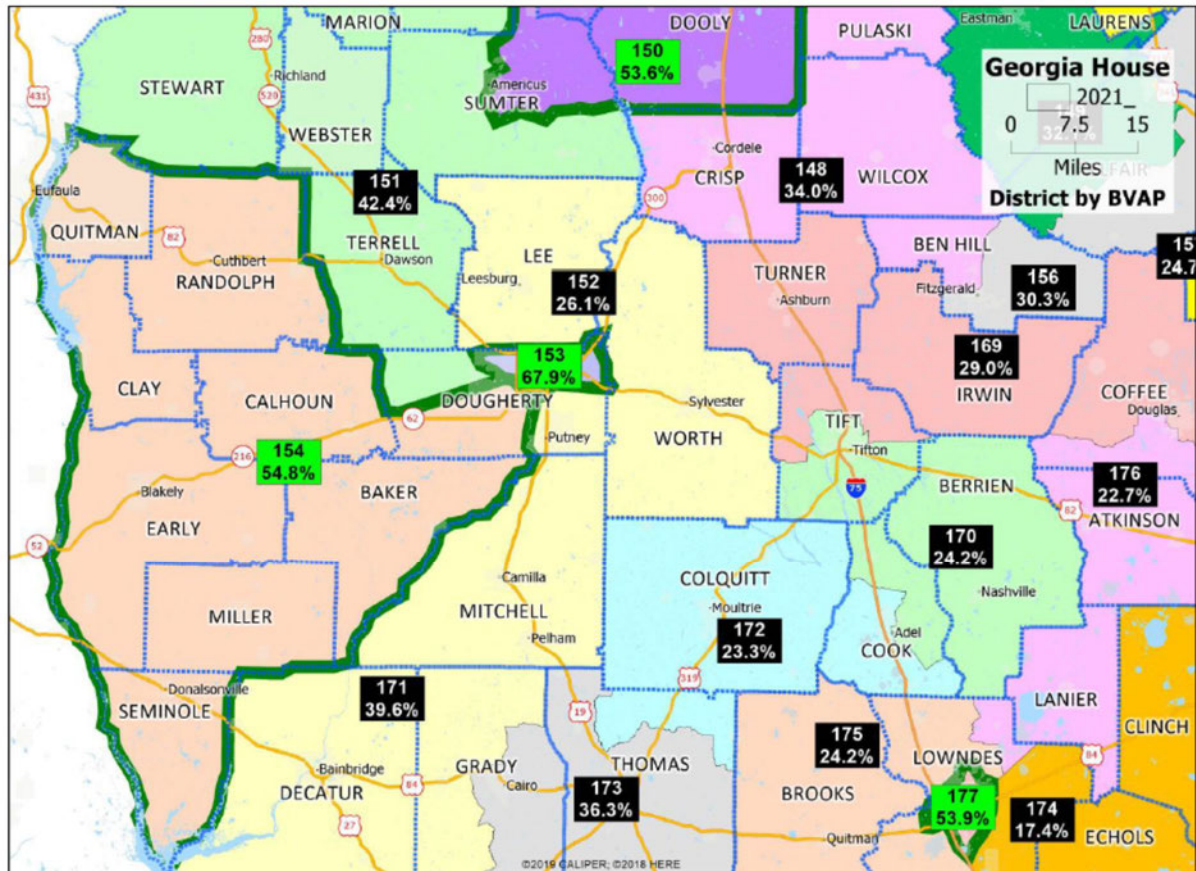
With respect to Mr. Cooper's Illustrative House District 153, Mr. Cooper testifies that his Illustrative House District 153 includes "part of Dougherty County, Albany, [] all of Mitchell and part of Thomas into Thomasville, following the main route there from Albany to Thomasville." Feb. 7, 2022, Afternoon Tr. 159:10-14. Defendants noted that Mr. Cooper's Illustrative State House District 153 has the effect that no district is wholly within Dougherty County on the illustrative plan. See id. at 217:2-10. Upon review, however, the Court notes that Dougherty County is split four ways in the Enacted State Plan and only three ways Mr. Cooper's Illustrative State House Plan. Compare APAX 1, at ¶ 117 & fig.34,

**Figure 34:** *Illustrative Plan: District 153 and vicinity*



with *id.* at ¶ 118 & fig.35.

**Figure 35: 2021 Plan: District 151, 153, 171 and Vicinity**



In Mr. Cooper’s Illustrative State House Plan, Dougherty County is split among Illustrative Districts 151, 153, and 154. *Id.* at 60 fig.34. In the Enacted State House Map, on the other hand, Dougherty County is split between Districts 153, 154, 155 and 171. *Id.* at 61 fig.35. Although District 153 is wholly within Dougherty County in the Enacted State House Map, Mr. Cooper’s Illustrative State House Map splits Dougherty County three not four times. Accordingly, the Court does not find that Mr. Cooper’s Illustrative House

District 153 does not respect political boundaries simply because there is not one district that is wholly within Dougherty County. The Court finds that Mr. Cooper adhered to respecting political subdivisions when he drew his Illustrative House District 153.

(e) **Preservation of communities of interest**

The Court finds that Mr. Cooper's Illustrative House District 153 preserves communities of interest. Mr. Cooper testified that "there is a clear transportation route along the Highway 19." Feb. 7, 2022, Afternoon Tr. 160:19–23. Additionally, Mr. Cooper stated that "the Southwest Georgia Regional Commission includes Thomas, and extends all the way out to the Albany area. So it's in the same Regional Commission and it's connected by a major highway that's featured in the Georgia tourist volume I think that you can get at rest stops." Id. at 161:3–8. Thus, Mr. Cooper opined, "[t]here are clear connections between Albany and Thomasville." Id. at 161:8–9. Defendants' expert Ms. Wright, however, testified that Albany and Thomasville are "communities that would not typically be combined together . . . . Albany is very – is a very unique, defined identity in that region, as is Thomasville further south, but they don't share a common interest." Feb. 11, 2022, Morning Tr. 44:22–45:2. The Court is not convinced by this assessment. After all, Ms. Wright also testified



that a community of interest is “kind of in the eye of the beholder.” Id. at 91:11–12. The Court finds that there is a major roadway that connects the two towns, and the regional commission lists Albany and Thomasville as part of the same region. Feb. 7, 2022, Afternoon Tr. 160:19–23; 161:3–8. Accordingly, the Court finds that Mr. Cooper’s Illustrative State House District 153 contains communities of common interest.

**(f) Incumbent protection**

Mr. Cooper’s Illustrative State House District 153 does not pair any incumbents. Mr. Morgan criticized Mr. Cooper’s Illustrative State House Plan because it paired 26 total incumbents as opposed to the Enacted State House Map, which paired eight incumbents. DX 1, ¶ 18. Mr. Cooper responded explaining that he used a publicly available database when he drew his Illustrative State House Plan, which had different information than the “incumbent databases used by the Georgia General Assembly during the redistricting process” that Mr. Morgan used. APAX 2, ¶¶ 3–4. Mr. Cooper testified that after he received the information that Mr. Morgan had access to, he was able to sharply reduce the number of incumbent pairings in three or four hours. Feb. 7, 2022, Afternoon Tr. 138:14–140:1. Mr. Cooper was ultimately

able to reduce the number of incumbent pairings significantly. See APAX 2, ¶¶ 3-14.

Of the incumbent pairings that Mr. Morgan identified, only incumbents Winifred Dukes and Gerald Greene currently represent a district that is impacted by Mr. Cooper's Illustrative House District 153.

**Chart 4. House incumbent pairings**

<b>Incumbent Pairings</b>	<b>Adopted House Plan</b>	<b>Cooper House Plan</b>
Pairing #1	Rebecca Mitchell -D Shelly Hutchison -D	Matthew Gambill -R Mitchell Scoggins -R
Pairing #2	Gerald Green -R Winifred Dukes -D	Trey Kelley -R Tyler Smith -R
Pairing #3	James Burchett -R Dominic LaRiccica -R	Matt Dubnik -R Emory Dunahoo -R
Pairing #4	Danny Mathis - R Robert Pruitt - R	Angelika Kausche -D Sam Park -D
Pairing #5		Regina Lewis-Ward -D Angela Moore -D
Pairing #6		Billy Mitchell -D Doreen Carter -D
Pairing #7		Mike Cheokas -R Debbie Butler -D
Pairing #8		Rick Williams -R Dave Belton -R
Pairing #9		Noel Williams -R Shaw Blackmon -R
Pairing #10		Robert Pruitt -R Matt Hatchett -R
Pairing #11		Gerald Greene -R Winifred Dukes -D
Pairing #12		Ron Stephens -R Carl Guillard -D
Pairing #13		Darlene Taylor -R John LaHood -R
<b>Total incumbents Paired</b>	<b>8</b>	<b>26</b>

DX 1, ¶ 17 & chart 4.; See Georgia General Assembly House of Representatives, <https://www.legis.ga.gov/members/house> (last visited Feb. 28, 2022). Rep. Dukes represents House District 154, which includes part of Albany. Id. This



pairing, however, exists in both the Enacted State House Plan and Mr. Cooper's Illustrative State House Plan. DX 1, ¶ 17 & chart 4. The Court thus finds that Mr. Cooper's Illustrative State House District 153 protects incumbents because no incumbents are paired in this district.

**(g) Core retention**

Defendants argue that Mr. Cooper's Illustrative House Plan does not retain the core of the Enacted State House Map. As an initial note, preservation of existing district cores was not an enumerated districting principle adopted by the General Assembly. See GPX 40. However, if the Court were to implement a remedial map, the Court would consider core retention. Thus, the Court has considered this issue and finds as follows:

The Court finds that Mr. Cooper's Illustrative State House Maps and the enacted House Maps overlap by 61.4%. Although, Mr. Morgan found that only enacted House District 003 was unchanged in Mr. Cooper's Illustrative House Plan (DX 1, ¶ 19), Mr. Cooper found that there is a total 61.4% overlap between Mr. Cooper's Illustrative State House Plan and the Enacted State House Map (APAX 2, ¶ 16). Mr. Morgan testified that he only opined on whether the districts between Mr. Cooper's Illustrative State House Plan and the Enacted State House Map were exactly the same. Feb. 14, 2022, Morning Tr. 13:23-14:1.

However, Mr. Morgan did not contest that Mr. Cooper's Illustrative State House Plan and the Enacted State House Map overlapped by 61.4%. Id. at 14:13–20. Accordingly, the Court finds that Mr. Cooper's Illustrative House Plan maintains more than half of the Enacted State House Map.

**(h) Racial considerations**

Defendants also argue that Mr. Cooper's Illustrative State House Maps still must fail because they were drawn predominately for racial considerations. The Court is not persuaded by this argument. Both the U.S. Supreme Court's and Eleventh Circuit's "precedents require [Section 2] plaintiffs to show that it would be possible to design an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a minority candidate." Davis, 139 F.3d at 1425. "[I]ntentional creation of a majority-minority district necessarily requires consideration of race." Fayette Cnty., 118 F. Supp. 3d at 1345. Therefore, "[t]o penalize [plaintiffs] . . . for attempting to make the very showing that Gingles [and its progeny] demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section Two action." Davis, 139 F.3d at 1425.

Mr. Cooper explained that he was "aware of race as traditional redistricting principles suggest one should be." Feb. 7, 2022, Afternoon Tr.

135:17–18. Mr. Cooper explained that considering race was required to comply with the Voting Rights Act, which is federal law. Id. at 135:17–21. Mr. Cooper testified that he did not aim to draw any minimum number of Black-majority districts in his analysis. Id. at 135:22–136:3. When asked by the State whether his goal “really was to create an additional majority Black district in the creation of [his] House and Senate Plans,” he answered that his goal “was to determine whether or not additional majority Black districts could be created. So there was no goal per se.” Id. at 164:16–21. Mr. Cooper repeatedly testified that he balanced all redistricting principles and stated that no one principle predominated. E.g., id. at 140:3–7, 230:17–25.

Ms. Wright testified that Mr. Cooper’s Illustrative House District 153 contained “communities that would not typically be combined together. So [she is] not sure what the reason would be unless there was another particular goal in mind to draw that.” Feb. 11, 2022, Morning Tr. 44:22–25. The Court does not agree with Ms. Wright’s assessment. Mr. Cooper testified that his Illustrative House District 153 is connected by “a clear transportation route along Highway 19” (Feb. 7, 2022, Afternoon Tr. 160:22–23) and is in within the same regional commission (id. at 161:3–8). Mr. Cooper also testified that he took into account a district’s population size, political subdivisions and

incumbent pairings, in addition to race. Accordingly, the Court does not find that race predominated the drawing of Mr. Cooper's Illustrative State House District 153.

The Court finds that Mr. Cooper's Illustrative House District 153 contains Black population that is sufficiently numerous and compact, as to create an additional district that complies with traditional redistricting principles. Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have a substantial likelihood of success in proving that Mr. Cooper's Illustrative House District 153 satisfies the first Gingles precondition.

### *(3) Conclusions of Law*

Thus, based upon the evidence presented, the Court finds that the Grant and Alpha Phi Alpha Plaintiffs have sufficiently established that they are substantially likely to succeed on the merits of satisfying the first Gingles precondition because it is possible to create two additional State Senate Districts (Mr. Esselstyn's Illustrative Senate Districts 25 and 28) and two State House Districts in the Atlanta Metropolitan area (Mr. Esselstyn's Illustrative House Districts 74 and 117) and one additional State House District in southwestern Georgia (Mr. Cooper's Illustrative House District 153).

2. *The Second Gingles Precondition: Political Cohesion*

The second Gingles element is that “the minority group . . . show that it is politically cohesive.” 478 U.S. at 50. This involves an assessment of the extent to which elections in the jurisdiction are affected by racial polarization:

[T]he question whether a given district experiences legally significant racially polarized voting requires discrete inquiries into minority and white voting practices. A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and, consequently, establishes minority bloc voting within the context of § 2.

Id. at 56 (citations omitted).

All the parties agree that there is an extremely large degree of racial polarization in Georgia elections. However, they starkly disagree about the causes of that polarization and whether those causes are relevant to the second Gingles precondition.

a) *The parties’ arguments*

(1) *Defendants*

Defendants contend, in short, that the polarization is caused by partisan factors rather than “the race of the candidate” Black voters vote for. APA Doc. No. [120], ¶ 285. Because white voters cohesively support Republican

candidates and Black voters cohesively support Democratic candidates without regard to whether the candidate is Black or white, Defendants attribute the polarization to partisanship. Id. ¶¶ 286–287. In doing so, Defendants assert that the extreme level of polarization is really partisan rather than racial. Id. Because the vote dilution must be “on account of race or color” to violate Section 2, Defendants argue that the Court must determine whether some other factor is the cause. See id. ¶ 430. As a result, Defendants argue that Plaintiffs cannot show that “electoral losses are ‘on account of race or color’ and not partisan voting patterns.” Id. 430 (citing 52 U.S.C. § 10301(a); Solomon, 221 F. 3d at 1225 (en banc); LULAC, 999 F. 2d at 854 (en banc)).

## ***(2) Plaintiffs***

In contrast, all three sets of Plaintiffs contend that the reasons *why* Black Georgia voters and white Georgia voters overwhelmingly support opposing candidates is irrelevant to Section 2’s effects-based inquiry. The evidence compellingly demonstrates acute polarization by race and, Plaintiffs assert, what causes Georgia voters to vote that way is not relevant to the second Gingles Precondition or the second Senate Factor. They argue they are not required “to prove [that] racism determines the voting choices of the white electorate in order to succeed in a voting rights case.” Pendergrass Doc. No.

[87], ¶ 351 (citing Askew v. City of Rome, 127 F.3d 1355, 1382 (11th Cir. 1997); Fayette Cnty., 950 F. Supp. 2d at 1321 n.29); see also APA Doc. No. 121, ¶ 665 (similar); Grant Doc. No. [82], ¶ 381 (same).

### *(3) Conclusions of law*

The Court concludes as a matter of law that, to satisfy the second Gingles precondition, Plaintiffs need not prove the causes of racial polarization, just its existence. The plurality opinion in Gingles concluded that, “[f]or purposes of § 2, the legal concept of racially polarized voting incorporates neither causation nor intent. *It means simply that the race of voters correlates with the selection of a certain candidate or candidates; that is, it refers to the situation where different races (or minority language groups) vote in blocs for different candidates.*” Gingles, 478 U.S. at 62 (emphasis added). Thus, four Supreme Court justices concluded that the existence of political polarization does not negate Plaintiffs’ ability to establish the second Gingles precondition by showing the extent of racial-bloc voting. Id.; see also Chisom v. Roemer, 501 U.S. 380, 404 (1991) (emphasizing that “Congress made clear that a violation of § 2 could be established by proof of discriminatory results alone”).

The weight that should be placed on the extent of such polarization—and any link to partisanship—must necessarily be part of the totality-of-the-

circumstances analysis under the second Senate Factor. Gingles, 478 U.S. at 37 (identifying extent of racial polarization in elections under second Senate Factor); Solomon, 899 F.2d at 1015 (Kravitch, J., specially concurring) (same). However, such evidence must again be considered in light of the admonition in Gingles's plurality opinion that

[i]t is the *difference* between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives. Consequently, we conclude that under the “results test” of § 2, only the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters.

....

[W]e would hold that the legal concept of racially polarized voting, as it relates to claims of vote dilution, refers only to the existence of a correlation between the race of voters and the selection of certain candidates. Plaintiffs need not prove causation or intent in order to prove a prima facie case of racial bloc voting and defendants may not rebut that case with evidence of causation or intent.

478 U.S. at 63, 74 (emphasis in original).

As discussed above, applying the standard advocated by Defendants would undermine the congressional intent behind the 1982 amendments to the VRA—namely, to focus on the *results* of the challenged practices. Id. at 35–36;



see also Marengo Cnty. Comm’n, 731 F.2d at 1567. Congress wanted to avoid “unnecessarily divisive [litigation] involv[ing] charges of racism on the part of individual officials or entire communities.” S. Rep. No. 97-417, pt. 1, at 36 (1982); see also Solomon, 899 F.2d at 1016 n.3 (Kravitch, J., specially concurring) (explaining that this theory “would involve litigating the issue of whether or not the community as a whole was motivated by racism, a divisive inquiry that Congress sought to avoid by instituting the results test”). As the Eleventh Circuit long ago made clear, “[t]he surest indication of race-conscious politics is a pattern of racially polarized voting.” Marengo Cnty. Comm’n, 731 F.2d at 1567.

Here, each set of Plaintiffs has more than satisfied its burden to show political cohesion among Black voters in the relevant regions and districts.

**b) The existence of political cohesion**

**(1) Pendergrass**

**(a) Plaintiffs’ Expert: Dr. Maxwell Palmer<sup>33</sup>**

The Pendergrass Plaintiffs proffered Dr. Maxwell Palmer as their racially polarized voting expert. Feb. 10, 2022, Morning Tr. 44:17–20, 47:8–19.

---

<sup>33</sup> To the extent Dr. Palmer provided evidence related to other issues or Plaintiffs, the following discussion is necessarily applicable to those matters as well.

*i) Qualification*

Dr. Palmer received his undergraduate degree in mathematics, and government and legal study from Bowdoin College in Maine; he holds a Ph.D. in political science from Harvard University. Feb. 10, 2022, Morning Tr. 45:14–18. He is currently a tenured associate professor of political science at Boston University. Id. at 45:21–25. He teaches classes on American politics and political methodology, including data science and formal theory. Id. at 46:1–5. Among his principle areas of research are voting rights. Id. at 46:6–8.

Dr. Palmer has previously served as an expert witness in numerous redistricting cases, conducting racially polarization analyses in each; he has never been rejected as such an expert. Feb. 10, 2022, Morning Tr. 46:9–24; GPX 5, ¶ 3 & 22–31. He has also served as an expert for the Virginia Independent Redistricting Commission. Feb. 10, 2022, Morning Tr. 47:3–7; GPX 5, at 29.

Defendants did not object to Dr. Palmer being qualified as an expert in redistricting and data analysis, and the Court so qualified him. Feb. 10, 2022, Morning Tr. 47:15–19. The Court found Dr. Palmer’s testimony to be credible and his analyses to be methodologically sound. The Court notes that Dr. Palmer’s findings are consistent with the Alpha Phi Alpha Plaintiffs’ expert

Dr. Handley. See infra (III.A.2.(b)(3)(a)(ii)). It credits that testimony and the reliability of Dr. Palmer's conclusions.

During Dr. Palmer's live testimony, the Court carefully observed his demeanor, particularly as he was cross-examined for the first time about his work on this case. He consistently defended his work with careful and deliberate explanations of the cases for his opinions. When Defense counsel questioned his methodology, and particularly the reason behind not using primary data, Dr. Palmer provided measured and thoughtful responses. The Court observed no internal inconsistencies in his testimony, no appropriate question that he could not or would not answer, and no reason to question the veracity of his testimony. The Court finds that his methods and conclusions are highly reliable, and ultimately that his work as an expert on the second and third Gingles preconditions is helpful to the Court.

*ii) Analysis*

Dr. Palmer was tasked with offering an expert opinion on the extent to which voting is racially polarized in each of the Congressional Districts 3, 11, 13, and 14 of the Enacted Maps, as well as the region covered by those districts. Pendergrass Stip. ¶ 56; GPX 5, ¶ 9; Feb. 10, 2022, Morning Tr. 52:5-16. Dr. Palmer found strong evidence of such voting in every area he examined.

Feb. 10, 2022, Morning Tr. 48:3–6. In other words, Dr. Palmer found that Black and white voters consistently support different candidates. GPX 5, ¶ 6.

To assess polarization, Dr. Palmer employed a statistical method called Ecological Inference (“EI”) to derive estimates of the percentages of Black and white voters in elections conducted in the relevant Congressional Districts in 31 statewide elections held between 2012 and 2021. GPX 5, ¶¶ 10, 12; Feb. 10, 2022, Morning Tr. 49:19–50:1, 51:16–19. He described EI as a “statistical procedure . . . that estimates group-level preferences based on aggregate data.” GPX 5, ¶ 12. His EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. GPX 5, ¶ 10; Feb. 10, 2022, Morning Tr. 51:20–52:3.

First, Dr. Palmer examined each racial group’s support for each candidate to determine if members of the group voted cohesively in support of a single candidate in each election. GPX 5, ¶ 13. If a significant majority of the group supported a single candidate, he then identified that candidate as the group’s candidate of choice. Id. Dr. Palmer next compared the preferences of white voters to the preferences of Black voters. Id. In every election he examined, across the relevant region and in each Congressional District from the Enacted Maps, Dr. Palmer found that Black voters had clearly identifiable

candidates of choice. GPX 5, ¶¶ 15, 17–18, & figs. 2–4, 6; Feb. 10, 2022, Morning Tr. 52:17–54:19. For elections from 2012 through 2021, Black voters on average supported their preferred candidates with an estimated vote share of 98.5%. GPX 5, ¶¶ 6, 14–15 & figs. 2–3, tbl.1.

(b) **Defendants’ Expert: Dr. John Alford**<sup>34</sup>

Defendants proffered Dr. John Alford as their expert on the issue of racial polarization. Feb. 11, 2022, Afternoon Tr. 140:17–22. Plaintiffs did not object to Dr. Alford being so qualified, and the Court so qualified him. Id. at 140:23–141:4.

*i) Qualification*

Dr. Alford is a tenured professor of Political Science at Rice University. DX 42, Ex. 1, at 1; Feb. 11, 2022, Afternoon Tr. 140:1–4. He holds a Master’s in Public Administration from the University of Houston and a Ph.D. in Political Science from the University of Iowa. DX 42, Ex. 1, at 1; Feb. 11, 2022, Afternoon Tr. 139:18–25. He has taught graduate and undergraduate level courses on various subjects, including redistricting, elections, and political representation. DX 42, 2. Dr. Alford has authored numerous scholarly articles and presented

---

<sup>34</sup> Since Dr. Alford was Defendants’ expert in each of the three cases on multiple issues, the following discussion applies to those matters as well.

papers at various conferences and consortia. DX 42, Ex. 1, at 1–8. He has previously been qualified as an expert witness on racial polarization in cases involving Section 2 claims. Id. at 140:13–18. However, Dr. Alford has never published a paper on racially polarized voting or any peer-reviewed articles using EI; and, he has never written about Section 2 of the Voting Rights Act in an academic publication. See Feb. 11, 2022, Afternoon Tr. 160:8–16.

While the Court found Dr. Alford to be credible, his conclusions were not reached through methodologically sound means and were therefore speculative and unreliable. Other courts have come to similar conclusions. See Lopez v. Abbott, 339 F. Supp. 3d 589, 610 (S.D. Tex. 2018) (crediting Dr. Handley’s testimony over Dr. Alford’s because “Dr. Alford’s testimony . . . focused on issues other than the ethnicity of the voters and their preferred candidates – which are the issues relevant to bloc voting”); Texas v. U.S., 887 F. Supp. 2d 133, 146–47 (D.D.C. 2012) (critiquing Dr. Alford’s approach because he used an analysis that “lies outside accepted academic norms among redistricting experts,” and instead relying heavily on Dr. Handley’s testimony), vacated on other grounds, 570 U.S. 928 (2013).

*ii) Analysis*

Dr. Alford was tasked with responding to Dr. Palmer's expert report and providing expert opinions about the nature of the polarized voting in Georgia. DX 42; Feb. 11, 2022, Afternoon Tr. 140:5-12. Dr. Alford assumed that Dr. Palmer's EI analysis of existence of racially polarized voting was sound because he knows from his own past work that Dr. Palmer is competent at performing such analyses. Feb. 11, 2022, Afternoon Tr. 143:14-21. However, he raised concerns that Dr. Palmer's results were more attributable to partisanship than race. See DX 42, at 6.

The Court cannot credit this testimony. Dr. Alford admitted on cross-examination that he did not identify any errors that would affect Dr. Palmer's analysis or conclusions. Feb. 11, 2022, Afternoon Tr. 153:3-7. The basis for his testimony was only Dr. Alford's conclusion that Black voters overwhelmingly prefer Democratic candidates and white voters overwhelmingly support Republican candidates. Feb. 11, 2022, Afternoon Tr. 171:8-16; DX 42, at 5. But Dr. Alford did not perform his own analyses of voter behavior, and he testified that it is not possible to separate partisan polarization from racial polarization based on Dr. Palmer's analysis. DX 42; Feb. 11, 2022, Afternoon Tr. 143:4-10. In fact, there is no evidentiary support in the record for Dr. Alford's treatment of

race and partisanship as separate and distinct factors affecting voter behavior. Nor is there any evidence—aside from Dr. Alford’s speculation—that partisanship is the cause of the racial polarization identified by Dr. Palmer. DX 42, at 3–4. Dr. Alford himself acknowledged that polarization can reflect both race *and* partisanship, and that “it’s possible for political affiliation to be motivated by race.” Feb. 11, 2022, Afternoon Tr. 171:8–16. All this undermines Dr. Alford’s insistence that partisanship rather than race is the cause of the polarization. In any event, and as discussed above, the cause of the polarization is not relevant to the second Gingles precondition.

Other courts have discounted Dr. Alford’s testimony for similar reasons. *See, e.g., NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist.*, 462 F. Supp. 3d 368, 381 (S.D.N.Y. 2020) (“[Dr. Alford’s] testimony, while sincere, did not reflect current established scholarship and methods of analysis of racially polarized voting and voting estimates.”), *aff’d sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist.*, 984 F.3d 213 (2d Cir. 2021); *Flores v. Town of Islip*, 382 F. Supp. 3d 197, 233 (E.D.N.Y. 2019) (“Dr. Alford maintains that at least 80% of the white majority in Islip must vote against the Hispanic-preferred candidate for the white bloc vote to be sufficient. . . . This theory has no foundation in the applicable caselaw.”); *Lopez v. Abbott*, 339 F. Supp. 3d 589, 610 (S.D. Tex. 2018)



("At this juncture, the Court is only concerned with whether there is a pattern of white bloc voting that consistently defeats minority-preferred candidates. That analysis requires a determination that the different groups prefer different candidates, as they do. It does not require a determination of why particular candidates are preferred by the two groups."); Patino v. City of Pasadena, 230 F. Supp. 3d 667, 709–13 (S.D. Tex. 2017) (finding in favor of the plaintiffs as to Gingles' second and third prongs, contrary to Dr. Alford's testimony on behalf of the defendant jurisdiction), stay denied pending appeal, 667 F. App'x 950 (5th Cir. 2017) (per curiam); Montes v. City of Yakima, 40 F. Supp. 3d 1377, 1401–07 (E.D. Wash. 2014) (finding the same and stating that Dr. Alford's testimony did "not defeat a finding of Latino voter cohesion"); Benavidez v. Irving Indep. Sch. Dist., No. 3:13–CV–0087–D, 2014 WL 4055366, at \*11–13 (N.D. Tex. Aug. 15, 2014) (same); Fabela v. City of Farmers Branch, No. 3:10–CV–1425–D, 2012 WL 3135545, at \*8–13 (N.D. Tex. Aug. 2, 2012) (same); Texas v. United States, 887 F. Supp. 2d 133, 181 (D.D.C. 2012) ("[T]he fact that a number of Anglo voters share the same political party as minority voters does not remove those minority voters from the protections of the VRA. The statute makes clear that this Court must focus on whether minorities are able to elect the candidate of their choice, no matter the political party that may benefit."),

vacated on other grounds, 570 U.S. 928 (2013); Benavidez v. City of Irving, 638 F. Supp. 2d 709, 722–25, 731–32 (N.D. Tex. 2009) (finding in favor of the plaintiffs as to Gingles’ second and third prongs, contrary to Dr. Alford’s testimony on behalf of the defendant jurisdiction); see also Feb. 11, 2022, Afternoon Tr. 172:17–20 (agreeing that other courts have rejected his testimony before “[i]n the sense of deciding to go in a different direction than what I thought the facts of the case suggested”).

(c) **Conclusions of Law**

The Court concludes that the Pendergrass Plaintiffs have satisfied their burden to establish that Black voters in Georgia (at least for those regions examined) are politically cohesive. Gingles, 478 U.S. at 49. “Bloc voting by blacks tends to prove that the black community is politically cohesive, that is, it shows that blacks prefer certain candidates whom they could elect in a single-member, black majority district.” Id. at 68. Dr. Palmer’s analysis clearly demonstrate high levels of such cohesiveness, both across the congressional focus area and in the individual districts that comprise it. Neither Dr. Alford’s testimony nor his expert report undermines this conclusion.

This finding is also consistent with previous findings of political cohesion among Black Georgians. See, e.g., Wright, 301 F. Supp. 3d at 1313

(noting that, in ten elections for Sumter County Board of Education with Black candidates, “the overwhelming majority of African Americans voted for the same candidate”); Wright, 979 F.3d at 1306 (noting “the high levels of racially polarized voting” in Sumter County).

(2) Grant

The Grant Plaintiffs also proffered Dr. Palmer as their racially polarized voting expert. Feb. 10, 2022, Morning Tr. 44:17–20, 47:8–11. Defendants again proffered Dr. Alford. Except with regard to the specific areas and districts analyzed by Dr. Palmer for the Grant case, (which are discussed further below), the discussion concerning the existence of political cohesion in Pendergrass applies equally here. The Court likewise finds that the Grant Plaintiffs have met their burden to establish the second Gingles precondition.

(a) Dr. Palmer’s analysis

In Grant, Dr. Palmer was tasked with offering an expert opinion on the extent to which voting is racially polarized in five different “focus areas” based on the Georgia General Assembly House and Senate Enacted Maps. Grant Stip. ¶ 77; Feb. 10, 2022, Morning Tr. 60:1–13; GPX 6, ¶ 9. The focus areas cover those regions where Plaintiffs’ illustrative majority-minority districts are located. GPX 6, ¶ 9. For the Georgia House, Dr. Palmer examined regions he described

as the Black Belt (covering Enacted Map House Districts 133, 142, 143, 145, 147, and 149), Southern Atlanta (Enacted Map House Districts 69, 74, 75, 78, 115, and 117), and Western Atlanta (Enacted Map House Districts 61 and 64). GPX 6, ¶ 10. For the Georgia Senate, Dr. Palmer looked at the Black Belt (Enacted Map Senate Districts 22, 23, 24, 25, and 26) and Southern Atlanta (Enacted Map Senate Districts 10, 16, 17, 25, 28, 34, 35, 39, and 44). GPX 6, ¶ 11.

The analysis Dr. Palmer performed was the same type of EI as that in Pendergrass (GPX 6, ¶¶ 14-16; Feb. 10, 2022, Morning Tr. 59:12-25, 60:18-21), and the results were similar: Black voters in the relevant regions supported their preferred candidate with at least 95.2% of the vote. GPX 6, ¶ 17 & fig.2, tbl.1. Each of the House districts Dr. Palmer examined also exhibited a high degree of polarization. Id. ¶ 18 & fig.3. For the Senate districts, 12 of the 14 showed racial polarization. Id.<sup>35</sup>

### (3) Alpha Phi Alpha

The Alpha Plaintiffs proffered Dr. Lisa Handley as an expert in racial polarization analysis and the analysis of minority vote dilution and

---

<sup>35</sup> For the two districts where Dr. Palmer concluded there was not consistent evidence of racially polarized voting, he noted the following: “Voting is generally not polarized in Senate District 39. In Senate District 44, White voters do not have a clear candidate of choice in 18 of the 31 elections, and majorities of White voters opposed the Black-preferred candidate in 13 elections.” GPX 6, ¶ 18 & fig.3.

redistricting. Feb. 10, 2022, Morning Tr. 76:13, 81:8–10. Defendants proffered Dr. Alford. Accordingly, except with regard to the specific areas and districts analyzed by Dr. Handley for the Alpha Phi Alpha case, the discussion concerning the existence of political cohesion in Pendergrass applies here, too.

(a) Plaintiffs' Expert:  
Dr. Lisa Handley

i) *Qualification*

Dr. Handley holds a Ph.D. in Political Science from The George Washington University. Feb. 10, 2022, Morning Tr. 78:22–79:4; APAX 3, at 47. She has over thirty years of experience in the areas of redistricting and voting rights, and has provided election assistance to numerous countries including to various post-conflict countries through the United Nations. Feb. 10, 2022, Morning Tr. 79:5–18; APAX 3, at 47. She has taught political science courses at both the graduate and undergraduate level at several universities. APAX 3, at 47. She has authored numerous scholarly works concerning redistricting and minority vote dilution, including her dissertation. Feb. 10, 2022, Morning Tr. 79:22–80:4; APAX 3, at 50–52.

Dr. Handley has served as an expert in “scores” of redistricting and voting rights cases, including on behalf of jurisdictions defending against Section 2 cases. Feb. 10, 2022, Morning Tr. 80:5–12, 102:23–103:6; APAX 3, at 46.

In those cases, she generally analyzes voting patterns by race and ethnicity. Feb. 10, 2022, Morning Tr. 80:13–19. As an expert, she has also numerous times performed analyses of racial-bloc voting and evaluations of whether proposed districts provide minorities with the opportunity to elect candidates of their choice. Feb. 10, 2022, Morning Tr. 80:20–81:7. She has routinely been qualified as an expert in cases where she used the same methodology she employed here. Feb. 10, 2022, Morning Tr. 84:25–85:4; APA Doc. No. [118-2], ¶ 4.

Defendants did not object to Dr. Handley being qualified as an expert in the analysis of racial polarization and minority vote dilution and redistricting, and the Court so qualified her. Feb. 10, 2022, Morning Tr. 81:14–17. The Court found Dr. Handley’s testimony to be credible and her analyses to be sound. At the live hearing, the Court carefully observed Dr. Handley’s demeanor, particularly as she was cross-examined for the first time about his work on this case. She consistently defended his work with careful and deliberate explanations of the cases for his opinions. When Defense counsel questioned her about her methodology particularly the reason behind not using confidence intervals, Dr. Palmer provided measured and thoughtful responses. The Court observed no internal inconsistencies in her testimony, no appropriate question that he could not or would not answer, and no reason to question the veracity

of her testimony. Thus, the Court credits that testimony and the reliability of Dr. Handley's conclusions.

*ii) Analysis*

Dr. Handley was tasked with conducting an analysis of voting patterns by race in several regions of Georgia to determine whether there is racially polarized voting there. APAX 3, at 2. She concluded that an election was racially polarized where, according to her EI analysis, "the outcome would be different if the election were held only among black voters compared to only among white voters." Feb. 10, 2022, Morning Tr. 83:13–14. In all six regions that Dr. Handley examined, Black voters were cohesive in supporting their preferred candidates. APAX 3, at 23.

Dr. Handley analyzed voting patterns by race in the six regions that are the focus of the Alpha Phi Alpha case, specifically: the Eastern Atlanta Metro Region, the Southern Atlanta Metro Region, East Central Georgia with Augusta, the Southeastern Atlanta Metro Region, Central Georgia, and Southwest Georgia. APAX 3, at 2; Feb. 10, 2022, Morning Tr. 83:7–8. Dr. Handley's analysis employed three commonly used statistical methods that have been widely accepted by courts in voting rights cases: homogeneous precinct analysis, ecological regression, and "King's EI." Feb. 10, 2022, Morning

Tr. 83:21–23, 84:3–24, 85:12–25; APAX 3, at 3–5; APA Doc. No. [118-2], ¶ 4. Dr. Handley has employed King’s EI in numerous cases, and courts have routinely accepted her use of that methodology to assess racially polarized voting. APA Doc. No. [118-2], ¶ 4; Feb. 10, 2022, Morning Tr. 84:20–85:4. She uses homogeneous precinct analysis and ecological regression to check the estimates produced by EI. Feb. 10, 2022, Morning Tr. 84:2–19. She has used all three techniques in previous cases. Id. at 83:19–85:4.

Although Dr. Alford claimed that Dr. Handley should have used a version of EI called “RxC,” Dr. Handley credibly explained why her use of King’s EI here was appropriate. Dr. Handley testified that she uses EI RxC analysis in only two situations: (1) when “estimating the voting patterns of more than two racial/ethnic groups”; or (2) when she lacks data showing “turnout by race,” and she “instead must rely on voting age population by race to estimate voting patterns.” APA Doc. No. [118-2], ¶¶ 1–2. Because neither was present here, she concluded that King’s EI was an appropriate methodology. Id.

(a) **Statewide general elections**

Dr. Handley estimated of the percentage of Black and white voters in the six regions in statewide general elections for U.S. Senate, Governor,



Commissioner of Insurance, and School Superintendent. Feb. 10, 2022, Morning Tr. 86:1-7; APAX 3, at 5-6; APA Doc. No. [118-1]. All but two of those elections involved Black and white candidates—i.e., they were biracial elections. APAX 3, at 6, 8-11; Feb. 10, 2022, Morning Tr. 91:8-17. According to Dr. Handley, biracial elections are the most probative for measuring racial polarization. Feb. 10, 2022, Morning Tr. 86:16-20. Courts generally have agreed. See Feb. 11, 2022, Afternoon Tr. 170:25-171:7. Dr. Handley also analyzed the 2020 U.S. Senate general election and 2021 U.S. Senate runoff election with Jon Ossoff, in part because Black candidates ran in the primary. Feb. 10, 2022, Morning Tr. 86:23-87:3.

The racial polarization was stark in every statewide general election that Dr. Handley analyzed, with the vast majority of Black voters supporting one candidate and the vast majority of white voters supporting the other candidate. Feb. 10, 2022, Morning Tr. 90:18-20, 91:6-25, 101:20-23; APA Doc. No. [118-1]. The Black-voter preferred candidates in these races typically received more than 98% of Black voters' support. APA Doc. No. [118-1].

**(b) State legislative elections**

Dr. Handley also looked at 26 State legislative elections in the relevant regions. Feb. 10, 2022, Morning Tr. 86:1-7, 91:12-17; APAX 4, at 5, 7-10. She

found starkly racially polarized voting here, too. Feb. 10, 2022, Morning Tr. 91:8-25; APAX 4, at 5, 7-10. She analyzed recent biracial elections in General Assembly districts wholly contained within or overlapping with the additional majority-Black districts drawn by Plaintiffs' expert demographer. Feb. 10, 2022, Morning Tr. 91:8-17; APAX 3, at 8-11. There were eight such State senate contests, and 18 such State house contests. APAX 3, at 8-11. All these elections were racially polarized, with Black candidates receiving a minuscule share of the white vote and the overwhelming support of Black voters. Feb. 10, 2022, Morning Tr. 91:8-25; APAX 4, at 5, 7-10. Indeed, in all but one of the 26 contests, over 95% of Black voters supported the same candidate. APAX 4, at 5, 7-10.

(c) **Primaries**

In addition to analyzing statewide elections, Dr. Handley applied her EI analysis to statewide Democratic primaries for Governor, Lieutenant Governor, Commissioner of Insurance, School Superintendent, and Commissioner of Labor. APAX 3, at 5-6; APA Doc. No. [118-1]; Feb. 10, 2022, Morning Tr. 86:3-4. Although Dr. Handley acknowledged that polarized voting is "somewhat less stark in the primaries" and in a few instances the support of Black and white voters for the same candidate is close (Feb. 10, 2022, Morning Tr. 101:3-23), the majority of primaries she analyzed across all six

regions still demonstrated evidence of racially polarized voting (Feb. 10, 2022, Morning Tr. 100:13–16; APAX 4, at 2–3). The only regular exceptions were the two recent Democratic primaries in which Black voters supported white candidates (Jon Ossoff in the 2020 primary for U.S. Senate and Jim Barksdale in his bid for the Democratic nomination for U.S. Senate in 2016). APAX 3, at 8, 23.

Specifically, Dr. Handley found that in all six regions, at least 62.5% of the eight primaries she analyzed showed evidence of racial polarization. APAX 4, at 2–3. For example, in the 2018 Democratic primary for Lieutenant Governor, the white candidate received an average of more than 83% of the white vote in these areas, and the Black candidate received an average of nearly 60% of the Black vote. See APA Doc. No. [118-1], 3–13. Similarly, in the 2018 Democratic primary for the Commissioner of Insurance, the white candidate received on average more than 60% of the white vote, and the Black candidate received on average more than 78% of the Black vote. See APA Doc. No. [118-1], 3–13.

This evidence of racial polarization in primary elections is particularly compelling here because it undermines Defendants’ contention that the polarization is the result of partisan factors. By definition, partisan affiliation

cannot explain polarized election outcomes in primary contests, where Democrats are necessarily running against other Democrats.

**(b) Defendants' Expert:  
Dr. Alford**

As an expert witness, Dr. Alford has used all three statistical methods employed by Dr. Handley here. Feb. 11, 2022, Afternoon Tr. 168:21-24. He agrees that King's EI is "the gold standard for experts in this field doing a racially-polarized voting analysis." Id. at 163:20-23. Dr. Alford did, however, voice some concern that the type of ecological inference analysis Dr. Handley employed was not really "King's EI" but instead an "iterative version of it" that lacks "an appropriate test of statistical significance." Id. at 165:13-15. Dr. Handley later clarified that she did use King's EI to produce her results, and she ran the analysis more than once (i.e., "iteratively"). APA Doc. No. [118-2], ¶ 1. Dr. Handley has used, and courts have accepted and relied on, this exact method of EI in numerous prior minority vote dilution cases. Feb. 10, 2022, Morning Tr. 84:25-85:4; APA Doc. No. [118-2], ¶ 4.

Dr. Alford did agree with Dr. Handley's assessment that statewide general elections involving Black and white candidates are the most probative for measuring racial polarization. Feb. 11, 2022, Afternoon Tr. 170:25-171:7. And he did not dispute Dr. Handley's conclusions there is a high degree of

racial polarization in the election contests she analyzed, testifying that in general elections in Georgia, Black voters are “very cohesive.” Id. at 154:15–17; DX 42, at 6. He concluded the same of white voters. Feb. 11, 2022, Afternoon Tr. 154:18–19; DX 42, at 6. Dr. Alford also found Dr. Handley’s conclusions and those of Dr. Palmer were “entirely compatible with each other,” and that both showed polarized voting. Feb. 11, 2022, Afternoon Tr. 142:9–13, 145:21. Dr. Alford said that “[i]t would be hard to get a difference more stark” than the voting patterns of Black and white voters reflected in the analyses of Drs. Handley and Palmer. Id. at 154:20–22.

Moreover, Dr. Alford did not testify to anything contradicting Dr. Handley’s assessment that there was evidence of racially polarized voting in Democratic primaries in the six regions she evaluated. In fact, in a previous case in which he was an expert witness, “Dr. Alford testified that an analysis of primary elections is preferable to general elections because primary elections are nonpartisan and cannot be influenced by the partisanship factor.” Perez v. Pasadena Indep. Sch. Dist., 958 F. Supp. 1196, 1225 (S.D. Tex. 1997), aff’d, 165 F.3d 368 (5th Cir. 1999); accord Feb. 11, 2022, Afternoon Tr. 171:17–172:16 (Dr. Alford testifying that partisanship cannot explain racial polarization in

nonpartisan elections such as primaries). This undermines Dr. Alford's speculation that partisanship explains the polarization better than race.

(c) **Conclusions of Law**

As with Dr. Alford's critiques of Dr. Palmer's analyses, the Court finds the criticisms of Dr. Handley's work unpersuasive. For the same reasons as stated with regard to the Pendergrass Plaintiffs, the Alpha Phi Alpha Plaintiffs have satisfied their burden to establish that, for the regions and elections Dr. Handley examined, Black voters in Georgia are politically cohesive. Gingles, 478 U.S. at 49.

3. ***The Third Gingles Precondition: Bloc Voting***

The third Gingles precondition requires that the minority group be able to demonstrate that "the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate." Gingles, 478 U.S. at 51 (citations omitted). In Gingles, the Supreme Court treated the terms "racial bloc" and "racial polarization" as interchangeable. Id. at 53 n.21. Thus, the third precondition involves the same evaluation as to the voting preferences of the majority group as that the second precondition does for the minority group: "[I]n general, a white bloc vote that normally will defeat

the combined strength of minority support plus white ‘crossover’ votes rises to the level of legally significant white bloc voting.” Id. at 56 (citations omitted).

a) **Pendergrass**

In addition to his work concerning political cohesion, Dr. Palmer also testified about racial-bloc voting. He employed the same methods described above, and the Court incorporates that discussion here by reference.<sup>36</sup> Dr. Palmer’s analysis shows that white voters in the regions he examined vote sufficiently as a bloc to defeat Black voters’ candidates of choice except in majority-Black districts. Feb. 10, 2022, Morning Tr. 48:9–13; GPX 5, ¶ 7.

Overall, Dr. Palmer found “strong evidence of racially polarized voting” as a whole and in each individual congressional district he examined. Feb. 10, 2022, Morning Tr. 48:3–8; GPX 5, ¶¶ 6, 18. White voters had clearly identifiable candidates of choice in each election. GPX 5, ¶¶ 16–17 & figs. 2–4. From 2012 to 2021, white voters were highly cohesive in opposing the Black candidate of choice in every election. On average, Dr. Palmer found that white voters supported Black-preferred candidates with an average of just 11.5% of the vote.

---

<sup>36</sup> See supra Sections III(A)(2)(b)(1)(a), (2)(a).

See id. ¶ 16. White voters, however, on average supported their preferred candidates with an estimated vote-share of 88.5%. See id.

As a result of this racially polarized voting in the regions Dr. Palmer examined, candidates preferred by Black voters have generally been unable to win elections outside of majority-Black districts. Feb. 10, 2022, Morning Tr. 48:9–13. Excluding the existing majority-Black Congressional District 13, Black-preferred candidates were defeated by white-bloc voting in all 31 elections Dr. Palmer examined. GPX 5, ¶ 21. Dr. Alford did not dispute Dr. Palmer’s conclusions about racial-bloc voting. Feb. 11, 2022, Afternoon Tr. 159:7–11.

Dr. Palmer also assessed the anticipated performance of Plaintiffs’ Illustrative Congressional District 6. Feb. 10, 2022, Morning Tr. 47:21–48:2. Dr. Palmer concluded that this proposed district would permit the Black voters there to elect candidates of their choice with an average of 66.7% of the vote. Id. at 48:5–8, 58:13–59:1; GPX 5, ¶¶ 8, 22–23. Dr. Alford did not contest this conclusion. Dr. Palmer’s analysis of the illustrative district also weighs in favor of the feasibility of the Pendergrass Plaintiffs’ proposed remedy.



For these reasons and those explained above,<sup>37</sup> the Court credits Dr. Palmer's analysis and testimony, and concludes that the Pendergrass Plaintiffs have satisfied their burden under the third Gingles precondition.

**b) Grant**

Dr. Palmer testified similarly concerning the regions he examined in Grant. In the areas as a whole and in each legislative district, Dr. Palmer concluded that white voters had clearly identifiable candidates of choice for every election he analyzed. Feb. 10, 2022, Morning Tr. 60:22–25; GPX 6, ¶ 17 & figs. 2–3, tbl.1. In elections from 2012 to 2021, white voters were highly cohesive in voting in opposition to the Black voters' candidate of choice. On average, Dr. Palmer found that white voters supported Black-preferred candidates with a maximum of just 17.7% of the vote. GPX 6, ¶ 17. That is, white voters on average supported their preferred candidates with an estimated vote share of 82.3%. Id.

Dr. Palmer also concluded that, as a result of this racially polarized voting, candidates preferred by Black voters in the regions he examined have generally been unable to win elections outside of majority-Black districts. GPX

---

<sup>37</sup> See supra Sections III(A)(2)(b)(1)(a), (2)(a).

6, ¶ 20. He testified that “Black-preferred candidates win almost every election in the Black-majority districts, but lose almost every election in the non Black-majority districts.” Id.

Using returns from 31 statewide elections, Dr. Palmer analyzed the illustrative State House and Senate districts drawn by Esselstyn. GPX 6, ¶ 22 & fig.5, tbl.10. He found that in “Senate Districts 23, 25, and 28, the Black-preferred candidate won a larger share of the vote in all 31 statewide elections. In House District 117, the Black-preferred candidate won all 19 elections since 2018.” Id. ¶ 22. He also confirmed that that changes Esselstyn made to the majority-Black districts in the Enacted Maps would not change the ability of candidates preferred by Black voters to win there. Feb. 10, 2022, Morning Tr. 65:1–4.

For these reasons and those explained above,<sup>38</sup> the Court credits Dr. Palmer’s analysis and testimony, and concludes that the Grant Plaintiffs have satisfied their burden under the third Gingles precondition.

---

<sup>38</sup> See supra Sections III(A)(2)(b)(1)(a), (2)(a).

c) Alpha Phi Alpha

The Alpha Phi Alpha Plaintiffs' expert, Dr. Handley, also provided evidence about racial-bloc voting. She performed the same type of analysis for racial-bloc voting as she did for political cohesion, looking at voting patterns by race in the six identified regions. APAX 3, at 2. For every general election she analyzed, Dr. Handley found that white voters voted as a bloc against the preferred candidates of Black voters. Id. at 8; APAX 4, at 5, 7-10; APA Doc. No. [118-1]; Feb. 10, 2022, Morning Tr. 90:18-20, 91:22-25, 101:20-23. She concluded that, as a result of the stark racial polarization, candidates preferred by Black voters were consistently unable to win elections and will likely continue to be unable to win elections outside of majority-Black districts. Feb. 10, 2022, Morning Tr. 95:24-96:3; APAX 3, at 8-9.

Specifically, Dr. Handley found that the candidate of choice for Black voters on average secured the support of less than 5% of white voters in State Senate races and less than 9.5% of white voters in State House races. APAX 3, at 8; APAX 4, at 5, 7-10. As a result, blocs of white voters in the regions Dr. Handley examined were able to consistently defeat the candidates preferred by Black voters in state legislative general elections, except where the districts were majority Black. Feb. 10, 2022, Morning Tr. 95:21-96:3; APA Doc.

No. [118-1]. Based on this “starkly” racially polarized voting, Dr. Handley concluded that the ability of Black voters to elect candidates of their choice to the Georgia General Assembly is substantially impeded unless majority-minority districts are drawn to provide Black voters with such opportunities. Feb. 10, 2022, Morning Tr. 82:16–83:4, 95:9–96:3, 99:12–18; APAX 3, at 12.

Dr. Handley also evaluated whether Black voters had the opportunity to elect candidates of their choice under the illustrative districts drawn by Cooper compared with the Enacted Maps. Feb. 10, 2022, Morning Tr. 81:21–25; APAX 3, at 7–8. She used recompiled election results with official data from 2016, 2018, and 2020 statewide election contests and 2020 Census data, to determine whether Black voters have an opportunity to elect their candidates of choice. Feb. 10, 2022, Morning Tr. 92:18–93:3, 93:7–9; APAX 3, at 2–4. Recompiled elections analysis has been accepted by courts and used by special masters specifically for the purpose of evaluating whether a proposed majority-minority district will provide Black voters with the opportunity to elect their candidates of choice. Feb. 10, 2022, Morning Tr. 92:1–93:17.

To do so, Dr. Handley calculated a “General Election” effectiveness score (“GE Score”), which averaged the vote-share of candidates of choice for Black voters in five prior statewide elections in each of the districts in the illustrative

maps and the Enacted Maps for the regions of focus. Feb. 10, 2022, Morning Tr. 92:18–93:3, 93:7–9; APAX 3, at 12. The GE Scores show that, on average, the candidates preferred by Black voters receive less than 50% of the vote outside of districts that are majority-Black and were thus likely to be defeated. Feb. 10, 2022, Morning Tr. 97:4–99:11; APAX 3, at 12–23. Based on her analysis, Dr. Handley concluded that the illustrative maps provide “at least one additional black opportunity district compared to the enacted plan” in the regions she analyzed. Feb. 10, 2022, Morning Tr. 83:2–4; APAX 3, at 12–20. This means that, for each of the proposed majority-Black districts, candidates of choice for Black voters would have received more than 50% of the total vote, providing Black voters with an opportunity they would not otherwise have had to elect those candidates. APAX 3, at 22–23.

For example, in and around Illustrative House District 153, white voters consistently joined together to defeat Black voters’ candidates of choice. Feb. 10, 2022, Morning Tr. 95:21–96:3; APA Doc. No. [118-1]. As House District 173 was constituted before the Enacted Maps were adopted, its area overlapped with illustrative House District 153. In elections in District 173 in 2016 and 2020, candidates preferred by Black voters garnered more than 96% of Black votes but were defeated because of white racial-bloc voting, with white voters’

candidates of choice securing more than 90% of the white vote. APAX 4, at 8, 10.

Accordingly, and for the reasons explained above,<sup>39</sup> the Court credits Dr. Handley's analysis and testimony and concludes that the Alpha Phi Alpha Plaintiffs have satisfied their burden under the third Gingles precondition.

#### **4. *The Senate Factors***

As indicated above, to determine whether vote dilution is occurring, "a court must assess the impact of the contested structure or practice on minority electoral opportunities on the basis of objective factors. The Senate Report [from the 1982 Amendments to the VRA] specifies factors which typically may be relevant to a § 2 claim[.]" Gingles, 478 U.S. at 44. The Court now reviews the relevant Senate factors.

##### **a) Senate Factor One: Georgia has a history of official, voting-related discrimination.**

It cannot be disputed that Black Georgians have experienced franchise-related discrimination. "African-Americans have in the past been subject to legal and cultural segregation in Georgia[.]" Cofield v. City of LaGrange, 969 F. Supp. 749, 767 (N.D. Ga. 1997). "Black residents did not enjoy the right to

---

<sup>39</sup> See supra Section III(A)(2)(b)(3)(a).

vote until Reconstruction.” Id. “Moreover, early in this century, Georgia passed a constitutional amendment establishing a literacy test, poll tax, property ownership requirement, and a good-character test for voting.” Id. “This act was accurately called the ‘Disfranchisement Act.’ Such devices that limited black participation in elections continued into the 1950s.” Id.

This Court recently took judicial notice of the fact that “prior to the 1990s, Georgia had a long sad history of racist policies in a number of areas including voting.” Fair Fight Action, Inc. v. Raffensperger, No. 1:18-CV-5391-SCJ, slip op. at 41 (N.D. Ga. Nov. 15, 2021) (hereinafter, “Fair Fight”) (order denying defendants’ motion for summary judgment). As this Court has described, “Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather than the exception.” Fayette Cnty., 950 F. Supp. 2d at 1314; see also Wright, 301 F. Supp. 3d at 1310 (“Georgia’s history of discrimination has been rehashed so many times that the Court can all but take judicial notice thereof.” (citation and internal quotation marks omitted)).

The Pendergrass and Grant Plaintiffs detailed this sad history through the report and testimony of their expert witness, Dr. Orville Vernon Burton. See GPX 7; Feb. 10, 2022, Morning Tr. 4:11–43:22. Dr. Burton is a professor of history at Clemson University who earned his undergraduate degree from Furman University and Ph.D. in American History from Princeton University. GPX 7, at 4. He was retained “to analyze the history of voting-related discrimination in Georgia and to contextualize and put in historical perspective such discrimination.” Id. at 2. His report describes the many decades of efforts to minimize the influence of minority – and specifically Black – voters. See id. at 2–3; 7–54. This historical review spans from the Reconstruction era to the present day. Id. at 9–54. Most of his analysis relates to discrimination that occurred prior to the 1980s. See id. at 9–38. Dr. Burton expounded on his report when he testified remotely by videoconference at the hearing, where he was qualified as an expert on the history of race discrimination and voting. Feb. 10, 2022, Morning Tr. 7:6–11. The Court has reviewed Dr. Burton’s report and closely observed his testimony. The Court finds Dr. Burton to be highly credible. His historical analysis was thorough and methodologically sound. Further, the Court finds Dr. Burton’s conclusions to be reliable.



Dr. Burton opined on the extensive history of discrimination against Black voters in Georgia and concluded that throughout the State's history, "voting rights have followed a pattern where after periods of increased nonwhite voter registration and turnout, the state has passed legislation, and often used extralegal means, to disenfranchise minority voters." GPX 7, at 8. This discrimination included years of physical violence and intimidation (id. at 12-15, 22), as well as official barriers such as poll taxes and legislation that had the effect of disenfranchising most Black voters (e.g., id. at 15-20). The Court need not belabor this issue—as stated above, this history is well-documented in the relevant caselaw. The Court finds that Plaintiffs have shown that Black Georgians have historically experienced franchise-related discrimination.

During the hearing, Defendants seemingly attempted to cast aside this history as long past and therefore less relevant. See, e.g., Feb. 10, 2022, Morning Tr. 25:16-26:13 (emphasizing how much of Dr. Burton's report concerns pre-1980 matters). Of course, whether some of the history Dr. Burton discussed is decades or centuries old does not diminish the importance of those events and trends under this Senate Factor, which specifically requires the Court to consider the *history* of official discrimination in Georgia. And it is not a novel concept that a history of discrimination can have present-day ramifications. See

Marengo Cnty. Comm’n, 731 F.2d at 1567; Wright, 301 F. Supp. at 1319 (quoting Marengo Cnty. Comm’n).

Accordingly, the Court finds that Plaintiffs have demonstrated the history of voting-related discrimination in Georgia. The first Senate Factor thus weighs decisively in Plaintiffs’ favor.

**b) Senate Factor Two: Georgia voters are racially polarized.**

“The second Senate Factor focuses on ‘the extent to which voting in the elections of the State or political subdivision is racially polarized.’” Wright, 979 F.3d at 1305 (quoting LULAC, 548 U.S. at 426). “This ‘factor will ordinarily be the keystone of a dilution case.’” Id. (quoting Marengo Cnty. Comm’n, 731 F.2d at 1566).

Plaintiffs’ experts, Dr. Palmer and Dr. Handley, provided clear evidence through their reports and hearing testimony that Black and white Georgians consistently support different candidates. Defendants’ expert, Dr. Alford, did not contest this point—in fact, he agreed with it. See Feb. 11, 2022, Afternoon Tr. 153:15–154:22. Moreover, Dr. Alford’s observations about the relationship between race and partisanship—namely, that Black voters overwhelmingly support Democratic candidates and that white voters overwhelmingly support Republican candidates (see Feb. 11, 2022, Afternoon Tr. 171:8–16)—are

irrelevant because the fact remains that voters are racially polarized, as Plaintiffs have shown. In short, the Court's analysis on the second and third Gingles preconditions controls here.<sup>40</sup> The second Senate Factor thus weighs in Plaintiffs' favor.

c) **Senate Factor Three: Georgia's voting practices enhance the opportunity for discrimination.**

Senate Factor Three "considers 'the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting.'" Wright, 979 F.3d at 1295 (quoting Gingles, 478 U.S. at 44-45).

For this Senate Factor, the Court returns to Dr. Burton's expert report and testimony. Dr. Burton opined that throughout much of the twentieth century, Georgia deliberately malapportioned its legislative and congressional districts to dilute the votes of Black Georgians, citing as examples past congressional districts in and near Atlanta that were severely malapportioned. See GPX 7, at 29-30; Feb. 10, 2022, Morning Tr. 12:7-18. Dr. Burton also opined that Georgia's history is marked by electoral schemes that have enhanced the opportunity for

---

<sup>40</sup> See supra Sections III.A.2. and III.A.3.

discrimination against Black voters, such as shifts from voting by district to at-large voting and staggered voting. See GPX 7, at 34–36. Dr. Burton also opined that similar efforts have persisted to today. See id. at 44–53. Because Plaintiffs have shown there has been a history of voting practices or procedures in Georgia that have enhanced the opportunity for discrimination against Black voters, the Court finds that this factor weighs in Plaintiffs’ favor.

d) **Senate Factor Four: Georgia has no history of candidate slating for legislative elections.**

It is undisputed that Georgia uses no slating process for its legislative or congressional elections. As a result, this factor is irrelevant to these cases.

e) **Senate Factor Five: Georgia’s discrimination has produced significant socioeconomic disparities that impair Black Georgians’ participation in the political process.**

The Eleventh Circuit has “recognized in binding precedent that ‘disproportionate educational, employment, income level, and living conditions arising from past discrimination tend to depress minority political participation.’” Wright, 979 F.3d at 1294 (quoting Marengo Cnty. Comm’n, 731 F.2d at 1568). “Where these conditions are shown, and where the level of black participation is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of

political participation.” Id. (quoting Marengo Cnty., 731 F.2d at 1568–69); United States v. Dallas Cnty. Comm’n, 739 F.2d 1529, 1537 (11th Cir. 1984) (“Once lower socio-economic status of [B]lacks has been shown, there is no need to show the causal link of this lower status on political participation.”)).

Here, Plaintiffs have offered unrebutted evidence that Black Georgians suffer socioeconomic hardships stemming from centuries-long racial discrimination, and that those hardships impede their ability to fully participate in the political process. To that end, the Court accepts the analysis and conclusions of Plaintiffs’ expert, Dr. Loren Collingwood. Dr. Collingwood, a professor of political science at the University of New Mexico, has published extensively on matters of election administration and racially polarized voting. See GPX 11, at 2. Dr. Collingwood analyzed data from the American Community Survey (“ACS”), as well as voter-turnout data from the Georgia Secretary of State’s office. Id. at 3. From this data, he concluded that Black Georgians are disadvantaged socioeconomically relative to non-Hispanic white Georgians by several measures. Id. at 3–6.

For example, the unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%). Id. at 4; Pendergrass Stip. ¶ 58. White households in Georgia are twice as likely as Black households to

(1) report an annual income above \$100,000 and (2) not to live below the poverty line. GPX 11, at 4; Pendergrass Stip. ¶¶ 59–60. Black Georgians are less likely than white Georgians to have received a high school diploma or a bachelor’s degree or higher. GPX 11, at 4; Pendergrass Stip. ¶¶ 62–63. And statistics indicate that Black Georgians also experience disparities in medical care. See, e.g., GPX 11, at 4 (stating that Black Georgians are more likely than white Georgians to lack health insurance).<sup>41</sup>

These disparities have extended to the political arena. Historically and today, the number of Black legislators serving in the Georgia General Assembly has trailed the number of white legislators, and Georgia has never had a Black governor. See Pendergrass Stip. ¶¶ 64–65. Generally, Black Georgians have voted at significantly lower rates than white Georgians, and there is evidence that Black Georgians have been less engaged in political activities such as attending political meetings and donating to political campaigns. See GPX 11, at 6–23.

---

<sup>41</sup> This Court recently credited similar evidence that “twice as many Black Georgians as white Georgians live below the poverty line; the unemployment rate for Black Georgians is double that of white Georgians; Black Georgians are less likely to attain a high school or college degree; and Black Georgians die of cancer, heart disease and diabetes at a higher rate than white Georgians.” Fair Fight, slip op. at 44 (citations omitted).

After careful review of Dr. Collingwood's report, the Court accepts Dr. Collingwood as qualified to opine as an expert on demographics and political science. The Court finds Dr. Collingwood to be credible, his analysis methodologically sound, and his conclusions reliable. The Court credits Dr. Collingwood's opinions and conclusions, which support a finding that Black Georgians bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process. Specifically, the Court is persuaded by Dr. Collingwood's opinion that many of the socioeconomic disparities discussed above have been a cause of lower political participation among Black Georgians. See id. at 6.

To be sure, Senator Raphael Warnock was recently elected as the first Black Georgian to serve Georgia in the U.S. Senate. Pendergrass Stip. ¶ 66. And while Defendants have highlighted the record-breaking turnout of Black voters in the 2020 election as an indication that Blacks are no longer hindered from participating in the political process (see Feb. 10, 2022, Afternoon Tr. 198:18–24), the Court finds that it is still important to consider the pre-2020 level of Black political participation for purposes of this Senate Factor. Put another way, the Court finds that one recent example of increased Black voter turnout does

not erase the evidence that Black individuals have for years participated less in the political process in Georgia.

Accordingly, the Court finds that Plaintiffs' evidence on this factor weighs in favor of a finding of vote dilution.

f) **Senate Factor Six: Both overt and subtle racial appeals are prevalent in Georgia's political campaigns.**

This factor "asks whether political campaigns in the area are characterized by subtle or overt racial appeals." Wright, 979 F.3d at 1296 (quoting Gingles, 478 U.S. at 45).

This Court recently credited evidence of racial appeals in recent Georgia elections. Fair Fight, slip op. at 44–46. In addition, Plaintiffs have submitted substantial evidence that overt and subtle racial appeals remain common in Georgia politics. To start, Dr. Burton's report provides a historical backdrop for this issue, discussing early, post-Civil War racial appeals in Georgia politics. GPX 7, at 9–20. And at the hearing, Dr. Burton related this history to the modern era, testifying that contemporary racial appeals in Georgia stem from the political realignment that followed Democrats' support for civil rights legislation in the 1960s and that saw white Georgians overwhelmingly switch to the Republican Party. Feb. 10, 2022, Morning Tr. 20:13–22:8. Dr. Burton



Nos. 23-13916 & 23-13921  
(consolidated with No. 23-13914)

---

**In the United States Court of Appeals  
for the Eleventh Circuit**

---

COAKLEY PENDERGRASS et al.,  
*Plaintiffs-Appellees,*

ANNIE LOIS GRANT et al.,  
*Plaintiffs-Appellees,*

v.

SECRETARY OF STATE OF GEORGIA,  
*Defendant-Appellant.*

---

On Appeal from the United States District Court  
for the Northern District of Georgia  
Nos. 1:21-cv-05339 & 1:22-cv-00122—Steve C. Jones, Judge

---

**PENDERGRASS AND GRANT APPELLEES’  
SUPPLEMENTAL APPENDIX  
VOLUME II OF VI**

---

Joyce Gist Lewis	Abha Khanna	Michael B. Jones
Adam M. Sparks	Makeba Rutahindurwa	ELIAS LAW GROUP LLP
KREVOLIN & HORST, LLP	ELIAS LAW GROUP LLP	250 Mass. Ave NW,
One Atlantic Center	1700 Seventh Ave,	Suite 400
1201 W. Peachtree St. NW,	Suite 2100	Washington, DC 20001
Suite 3250	Seattle, WA 98101	(202) 968-4490
Atlanta, GA 30309	(206) 656-0177	
(404) 888-9700		

*Counsel for Plaintiffs-Appellees in Nos. 23-13916 & 23-13921*

## INDEX OF APPENDIX

### Docket No.

#### **Volume I**

Complaint .....	1
Order on Motions for Preliminary Injunction .....	97

#### **Volume II**

Order on Motions for Preliminary Injunction (cont.) .....	97
Declaration of William S. Cooper .....	174-1
Expert Report of Orville Vernon Burton .....	174-5
Expert Report of Loren Collingwood .....	174-6

#### **Volume III**

Expert Report of Loren Collingwood (cont.) .....	174-6
Expert Report of John R. Alford .....	174-8
Pretrial Order .....	231
Excerpts from Trial Transcript (9/6/2023 AM) .....	279
Excerpts from Trial Transcript (9/8/2023 PM) .....	281
Excerpts from Trial Transcript (9/14/2023 AM) .....	285
Order and Memorandum of Decision .....	286

#### **Volume IV**

Order and Memorandum of Decision (cont.) .....	286
--	-----

#### **Volume V**

Order and Memorandum of Decision (cont.) .....	286
Excerpts from Trial Transcript (9/11/2023 PM) .....	292

Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) .....	26
---	----

**Volume VI**

Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) (cont.).....	26
--	----

Certificate of Service

explained that during this transition, Republican politicians courted conservative constituents with race-based appeals, including what Dr. Burton deemed to be implicitly racist language and terms such as the “Welfare queen” and “strapping young buck.” Id.; GPX 8, at 3–6. Dr. Burton further opined that such coded racial appeals have continued to this day, with conservative political discourse constantly focused on matters such as poverty, “criminal corruption,” and immigration. Feb. 10, 2022, Morning Tr. 21:25–22:8, 30:20–32:13.

For this Senate Factor, Plaintiffs also relied on the report and testimony of Dr. Adrienne Jones, a political science professor at Morehouse College in Atlanta, who has expertise in the history of racial discrimination in voting. See APAX 5, at 3. The Court has reviewed Dr. Jones’s report and listened to her testify during the hearing. The Court finds her to be credible, and the Court accepts her as qualified to opine as an expert on political science. Feb. 10, 2022, Afternoon Tr. 172:3–10. In her report and in her testimony, Dr. Jones opined that explicit and subtle racial appeals have been used in political campaign strategies in Georgia. E.g., APAX 5, at 25–29; see also Feb. 10, 2022, Afternoon Tr. 176:2–183:4 (discussing what Dr. Jones determines to be racial appeals in recent campaigns, which has included the darkening of Black candidates’ skin

color in advertisements to create what Dr. Jones opines to be a “dark menacing” image). Dr. Jones concludes that these and similar instances of race-based messaging in recent Georgia campaigns and election cycles show that racial appeals continue to play an important role in Georgia political campaigns. APAX 5, at 25–29.

After careful review and consideration, the Court finds that Plaintiffs have presented sufficient evidence for this factor to weigh in their favor. The Court is unable to uphold Defendants’ suggestion that appeals to racism by “unsuccessful candidates” do not weigh toward this Senate Factor or the totality of the circumstances. As this Court has previously explained, “this factor does not require that racially polarized statements be made by successful candidates. The factor simply asks whether campaigns include racial appeals.” Fair Fight, slip op. at 45–46 (citing Gingles, 478 U.S. at 37).

g) **Senate Factor Seven: Black candidates in Georgia are underrepresented in office and rarely succeed outside of majority-minority districts.**

This factor “focuses on ‘the extent to which members of the minority group have been elected to public office in the jurisdiction.’” Wright, 979 F.3d at 1295 (quoting LULAC, 548 U.S. at 426). “If members of the minority group have not been elected to public office, it is of course evidence of vote dilution.”

Marengo Cnty. Comm’n, 731 F.2d at 1571. As discussed above under Senate Factor Five, Plaintiffs’ evidence demonstrates that Black Georgians have been and continue to be underrepresented in statewide elected offices and rarely succeed in local elections outside of majority-minority districts. Further, the Court notes that Dr. Burton discussed how Black Georgians historically have been underrepresented politically – comparatively few Black individuals have held statewide positions, and Black candidates tend to have struggled even at the county level unless they were in majority-minority districts. See GPX 7, at 32–38, 53–54. Based on the evidence presented, the Court finds that this factor thus weighs in Plaintiffs’ favor.

h) **Senate Factor Eight: Georgia is not responsive to its Black residents.**

“The authors of the Senate Report apparently contemplated that unresponsiveness would be relevant only if the plaintiff chose to make it so, and that although a showing of unresponsiveness might have some probative value a showing of responsiveness would have very little.” Marengo Cnty. Comm’n, 731 F.2d at 1572 (footnote omitted). As discussed above, Dr. Collingwood’s expert report shows significant socioeconomic disparities between Black and white Georgians, which Dr. Collingwood opines contribute to the lower rates at which Black Georgians engage in the political process and

elect their preferred candidates. See GPX 11, at 16–19. Moreover, political science professor Dr. Traci Burch was offered as an expert in political behavior, barriers to voting, and political participation. See APAX 6, at 3. She explained that disparities, such as the ones Dr. Collingwood identified, are often caused by public policies and demonstrate a lack of responsiveness by public officials to the needs of Black Georgians, which in turn leaves those Black Georgians dissatisfied with their elected representatives and the quality of the local services they receive. See id. at 28. While the Court does not find that this evidence causes this factor to weigh heavily in Plaintiffs’ favor, it still weighs in their favor.

i) **Senate Factor Nine: The justifications for the enacted redistricting maps are tenuous.**

Defendants have offered no justification for the General Assembly’s failure to draw additional majority-Black legislative districts in the areas at issue in the pending cases. And Mr. Esselstyn’s and Mr. Cooper’s illustrative maps demonstrate that it is possible to create such maps while respecting traditional redistricting principles—just as the Voting Rights Act requires.

This factor thus weighs in Plaintiffs’ favor.

## 5. *Conclusions of Law*

As is clear from this discussion, the Court finds that Plaintiffs have satisfied each of the Gingles preconditions for at least some of the Illustrative Districts at issue. Further, all the applicable Senate Factors weigh in Plaintiffs' favor. The Court therefore concludes that the Pendergrass Plaintiffs have satisfied their burden to show a substantial likelihood of success as to Illustrative Congressional District 6. The Grant Plaintiffs have shown a substantial likelihood of success as to Illustrative State Senate Districts 25 and 28, and Illustrative State House Districts 74 and 177. The Alpha Phi Alpha Plaintiffs have shown a likelihood of success as to Illustrative State House District 153. This does not mean that the other proposed districts cannot ultimately succeed, only that Plaintiffs have not met their burden as to those districts at this preliminary injunction stage.

### B. Irreparable Injury

The Eleventh Circuit has explained that an injury is irreparable "if it cannot be undone through monetary remedies." Cunningham v. Adams, 808 F.2d 815, 821 (11th Cir. 1987) (citation omitted). It has also been held that "[a]bridgement or dilution of a right so fundamental as the right to vote constitutes irreparable injury." Cardona v. Oakland Unified Sch. Dist., 785



F. Supp. 837, 840 (N.D. Cal. 1992); see also League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 247 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental voting rights irreparable injury.”) (citations omitted).

In view of this Court’s finding, supra, that there is a substantial likelihood the Enacted Plans violate Section 2 of the Voting Rights Act,<sup>42</sup> this Court further finds that Plaintiffs have met their burden of persuasion of establishing that the resulting threatened injury of having to vote under those plans cannot be undone through any form of monetary or post-election relief as to the 2022 election cycle only. See League of Women Voters, 769 F.3d at 247 (“[O]nce the election occurs, there can be no do-over and no redress.”).

**C. Balancing of the Equities and Public Interest**

“The last two requirements for a preliminary injunction involve a balancing of the equities between the parties and the public.” Florida v. Dep’t of Health & Hum. Servs., 19 F.4th 1271, 1293 (11th Cir. 2021). “Where the government is the party opposing the preliminary injunction, its interest and harm—the third and fourth elements—merge with the public interest.” Id.

---

<sup>42</sup> See generally supra Section III.A.

(citation omitted). All Defendants in each of the cases at issue were named in their official capacities as governmental actors and oppose the preliminary injunction. Therefore, the Court will address the third and fourth preliminary injunction factors together in a merged format in accordance with applicable authority. See Swain v. Junior, 961 F.3d 1276, 1293 (11th Cir. 2020) (indicating that the balance of the equities and public interest factors “‘merge’ when, as here, ‘the Government is the opposing party’”) (quoting Nken v. Holder, 556 U.S. 418, 435 (2009)).

Thus, the Court proceeds with its findings of fact and conclusions of law as to the issue of whether the threatened injuries to Plaintiffs outweigh the harm that the preliminary injunction would cause Defendants and the public.

### ***1. Findings of Fact***

At the preliminary injunction hearing, this Court heard extensive evidence about Georgia’s election timelines and machinery, as well as evidence on the potential effects of issuing a preliminary injunction related to the upcoming 2022 election cycle. The Court heard from multiple witnesses in this regard. The Court found the expert witness testimony of Lynn Bailey, the former director of the Richmond County Board of Elections, who has decades of experience as a county election official, particularly credible.

More specifically, the evidence at the hearing showed that the election timeline is tight in a normal year, but it is even more challenging this year because of the delayed release of the 2020 Census data and an earlier-than-usual general primary, currently scheduled for May 24, 2022. DX 38, ¶ 8; Feb. 9, 2022, Morning Tr. 8:21–9:2. The General Election is scheduled to be held on November 8, 2022. DX 4, Ex. 1, at 1.

In addition, the election calendar generally works backwards from the date for an election. DX 38, ¶ 12. The earliest day a candidate could circulate a nominating petition for the 2022 General Election was January 13, 2022. See O.C.G.A. § 21-2-170(e). The deadline for calling special elections to be held in conjunction with the May 2022 primary and the deadline for setting polling places outside the boundaries of a precinct was February 23, 2022. DX 38, ¶¶ 13–14; Feb. 9, 2022, Morning Tr. 118:6–12. Qualifying for the May 2022 primary is set to begin on March 7, 2022. DX 4, ¶ 6; see also O.C.G.A. § 21-2-153(c)(1)(A). County registrars can begin mailing absentee ballots on April 5, 2022. DX 4, ¶ 14. Absentee ballots for overseas voters must be mailed by April 9, 2022. Feb. 8, 2022, Afternoon Tr. 88:4–8; see also O.C.G.A. § 21-2-384(a)(2). The early voting period for the May 2022 primary election begins on May 2, 2022. DX 4, Ex. 1, at 2. The primary election is scheduled to be held on May 24,

2022. Id. at 1.<sup>43</sup> The primary election runoff is scheduled for June 21, 2022. Id. The General Election is scheduled to be held on November 8, 2022. Id.

Before the Georgia Secretary of State's office can create ballots for use in the primary election, county elections officials must allocate voters to their correct districts by updating street segments in Georgia's voter registration database – the 2022 process has already begun as of the date of this Order. DX 4, ¶¶ 6–7; Feb. 9, 2022, Morning Tr. 41:24–42:10. More specifically, county election officials have to update each individual street segment manually to update district numbers for voters on that street segment. Feb. 9, 2022, Morning Tr. 17:5–18:9, 32:1–25. During this process, county election officials engage in a manual review of maps to identify where each street segment is located on the new district plans. Id. at 20:14–21:9, 81:7–20; DX 38, ¶ 9. Once a county has entered the data-entry/redistricting module, the county registrar is prevented from engaging in normal activity in the voter registration system, such as adding new voters. Feb. 9, 2022, Morning Tr. 20:4–11; DX 7, at 31.

---

<sup>43</sup> A number of Georgia election officials requested a change in the primary election schedule in the summer of 2021; however, the General Assembly did not make that change during the special session, as had been requested. Feb. 9, 2022, Morning Tr. 54:1–23. Without the schedule change, election officials proceeded to plan for the election by contacting polling places and taking other steps based on the established election calendar. Id. at 57:6–25.

Defendants' representative witness from the Secretary of State's office, Michael Barnes, stated in his declaration that "[c]ounty registrars generally need several weeks to complete the reallocation process for voters in their particular counties." DX 4, ¶ 16.<sup>44</sup> There was also evidence that it took Fulton County four weeks to update its street segments. Feb. 9, 2022, Morning Tr. 83:12-19.<sup>45</sup>

After counties complete updating their street segments, the next step is to request precinct cards from the voter-registration system to notify voters about their new districts. DX 7, at 49. Also, after county registrars complete the process of updating all the street segments in a county with new district numbers, the Center for Election Systems of the Office of the Secretary of State begins the manual process of creating ballot combinations for use in the

---

<sup>44</sup> The Secretary of State set a February 18, 2022, non-statutory deadline for all county registrars to complete their updates to the voter-registration database with new district information. DX 4, ¶ 15; DX 38, ¶ 12; Feb. 8, 2022, Afternoon Tr. 73:20-74:1.

<sup>45</sup> Plaintiffs' demographer/map expert, Mr. Esselstyn also provided testimony about the feasibility of implementing his maps/plans. However, that testimony was based on his belief that Georgia's voter-registration system allowed the mass assignment of all voters in a single precinct to a particular district. Feb. 8, 2022, Afternoon Tr. 123:15-124:16. Mr. Esselstyn was mistaken on that point, as several county election officials attested, and thus his testimony on the feasibility of relief does not assist the Court.

election. DX 4, ¶¶ 8-9, 11; DX 38, ¶ 12; Feb. 8, 2022, Afternoon Tr. 68:3-23.<sup>46</sup> Ballot combinations account for every possible combination of political districts in the State and include all races from United States Congress down to county commission and school board. Feb. 8, 2022, Afternoon Tr. 67:11-68:2; Feb. 9, 2022, Morning Tr. 105:4-24. There is at least one ballot combination per precinct, so the total is more than 2,000 ballot combinations or styles in the state of Georgia. Feb. 8, 2022, Afternoon Tr. 67:24-68:2; DX 4, ¶ 9. According to Elections Director Michael Barnes, the Center for Election Systems has already started building election projects for use in the 2022 primary election for counties that already know their districts. Feb. 8, 2022, Afternoon Tr. 70:4-7.

Once qualifying occurs, the Center for Election Systems adds candidate names to the relevant contests and begins preparing proofing packages to send to counties. DX 4, ¶ 12; Feb. 8, 2022, Afternoon Tr. 70:8-71:2. County election officials then proof those drafts, identify errors, and return the drafts to the Center for Election Systems to make corrections to the databases. Feb. 8, 2022, Afternoon Tr. 71:3-6; DX 38, ¶¶ 15, 16. The Center for Election Systems then

---

<sup>46</sup> State officials cannot build ballot combinations until after county registrars have entered all updated information into the voter-registration database. Feb. 9, 2022, Morning Tr. 92:16-19.

makes those corrections, generates a revised proofing package, and creates print files for absentee ballots and final project files for programming the voting machines. Feb. 8, 2022, Afternoon Tr. 71:7–23. This entire process occurs for all 159 counties between the close of qualifying on March 11 and the deadline for sending ballots for overseas voters on April 9. Id. at 71:24–72:4, 86:23–88:8.

The upcoming primary is the first time the State of Georgia has built ballot combinations for the Dominion ballot-marking voting system after redistricting. Id. at 72:8–20. In addition, extra election projects have to be built this year because of the addition of ranked-choice voting for overseas and military voters. Id. If all the ballot combinations are not ready by qualifying, then no ballot proofing can occur because the Center for Elections Systems cannot generate a proofing package without both the ballot combinations and candidate information. Id. at 72:21–73:19.

There was also evidence presented at the hearing about various remedial/injunctive relief options, such as changing the qualifying date without changing the election date, and changing both the qualifying and election dates. The evidence revealed that if the qualifying dates for the primary elections are moved without moving the May 24, 2022, election date, the work of the Center for Election Systems and counties becomes incredibly

compressed, risking the accuracy of the election. Id. 74:13–75:16. In essence, delaying qualifying without delaying the primary would limit the time election officials have to engage in the quality-assurance checks necessary to ensure the election is accurate. Feb. 9, 2022, Morning Tr. 8:13–9:15. In addition, without candidate names after qualifying, no ballot proofs can be completed, meaning that the Center for Election Systems cannot send proofing packages and counties cannot begin proofing ballots. Feb. 8, 2022, Afternoon Tr. 75:17–76:7. There was also testimony that reduced time for proofing ballots can lead to errors in information that could result in less voter confidence in the election system. Id. at 102:8–103:15.

The evidence also showed that delaying qualifying without delaying the primary while also imposing new district lines would require election officials to simultaneously input new district information while conducting other tasks related to elections, reducing the opportunity to check for errors. DX 38, ¶ 21.

The evidence from Ms. Bailey concerning changing the election date was clear: there could be “massive upheaval.” DX 38, ¶ 19. She testified that there could be problems with the polling places as some counties have already secured their polling locations for the May 2022 primary. Feb. 9, 2022, Morning Tr. 94:15–19, 111:20–25, 119:3–5. In addition, election officials have already



scheduled poll workers and poll-worker training around the existing election calendar for the May primary. Id. at 121:7–10. And voters are already being notified of their districts and polling locations for the May primary election. Id. at 10:13–11:11.

The testimony also showed that facilities used as polling locations have other events on their calendars this year. Id. at 9:16–24, 27:15–23; DX 38, ¶¶ 19–20. For example, churches have often scheduled Vacation Bible School around the planned election dates and may not be available as polling locations if the date of the election were to change. Feb. 9, 2022, Morning Tr. 68:5–19, 119:3–18. In addition, finding new polling facilities is challenging not only because of scheduling but also because of the electrical power needs of Georgia’s voting machines. Id. at 73:17–74:5, 75:15–20.<sup>47</sup>

Furthermore, when the 2020 primary elections were delayed during the pandemic, county officials in Fulton County lost access to polling locations. Id. at 95:10–24. The resulting loss of access meant voters were combined in voting

---

<sup>47</sup> The Court recognizes that Plaintiffs’ witness, Bishop Reginald Johnson, offered 520 African Methodist Episcopal churches as polling places. Feb. 9, 2022, Afternoon Tr. 131:24–132:21. However, it was not clearly established that all 520 of these churches would meet the power requirements for the Dominion voting machines and other polling location requirements.

locations. Id. at 95:1–96:17. Voters in Fulton County (a number of whom were of color) waited in line for hours during the June 9, 2020, primary at locations where polling places had to be combined. Id. at 96:18–97:22. There was also testimony that voter confidence can be adversely affected by long lines and that moving polling locations causes confusion for voters. Id. at 98:9–23; Feb. 9, 2022, Afternoon Tr. 144:21–23.<sup>48</sup>

Additionally, there was testimony of the “whiplash” effect that could occur if the primary election date were changed by this Court and then that order were stayed by an appellate court. On this, the testimony from Ms. Bailey was clear that there would be chaos and confusion for local election officials and voters. Feb. 9, 2022, Morning Tr. 12:22–13:3; DX 38, ¶ 19.

## 2. *Conclusions of Law*

This Court must weigh the threatened injury to Plaintiffs (discussed above) and the public interests of the State of Georgia.

---

<sup>48</sup> Another potential concern with awarding remedial relief in these cases is the fact that the recent change in Georgia law from nine-week runoffs to four-week runoffs is currently being challenged in three of the consolidated cases challenging provisions of SB 202, which regulates various election processes and activities. New Georgia Project v. Raffensperger, Sixth District AME v. Raffensperger, and Concerned Black Clergy v. Raffensperger, Consolidated Case No. 1:21-mi-55555-JPB (N.D. Ga.).

The State of Georgia has significant interests “in conducting an efficient election [and] maintaining order,” because “[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.” New Ga. Project v. Raffensperger, 976 F.3d 1278, 1284 (11th Cir. 2020) (quoting Purcell, 549 U.S. at 4).

The Court finds that the public interest of the State of Georgia would be significantly undermined by altering the election calendar and unwinding the electoral process at this point.

More specifically, the evidence at the preliminary injunction hearing showed that elections are complex and election calendars are finely calibrated processes, and significant upheaval and voter confusion can result if changes are made late in the process. With candidate qualifying for the State of Georgia set to begin in six days, any change now would be considered late in the process. Applying the Purcell principle, the United States Supreme Court “has also repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election.” Republican Nat’l Comm. v. Democratic Nat’l Comm., 140 S. Ct. 1205, 1207 (2020) (citing, inter alia, Purcell, 549 U.S. at 1).

And while “it would be the unusual case in which a court would be justified in not taking appropriate action to [e]nsure that no further elections are conducted under the invalid plan,” the United States Supreme Court has recognized that “under certain circumstances, such as where an impending election is imminent and a State’s election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid.” Reynolds, 377 U.S. at 585. Here, in considering the “proximity of a forthcoming election and the mechanics and complexities of state election laws, and . . . general equitable principles,” the Court is of the opinion that it would not be proper to enjoin the 2022 election cycle for which the election machinery is already in progress. Id.

More specifically, the evidence at the preliminary injunction hearing showed that moving the date for qualifying without moving the date of the primary election risks the accuracy of the primary because of the required timelines for building ballot combinations, proofing draft ballots, and preparing ballots for printing by the deadline for overseas and military voters. Likewise, moving the primary election date would upend months of planning by local election officials. Multiple county election officials testified that they

already selected polling places for all election dates in 2022 and changing those dates could entail having to locate new polling places on short notice. Fulton County's experience in June 2020 showed that consolidating polling places at the last minute can lead to long lines for voters (including voters of color). And several witnesses testified to the voter confusion that would occur if last-minute changes were required. There is also the potential for "whiplash" if orders of this Court and subsequent rulings of appellate courts resulted in different conclusions. Such events could create even more voter confusion and loss of confidence in the election system. See Purcell, 549 U.S. at 4-5 ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls."). In essence, the sum of the testimony of the election officials presented at the preliminary injunction hearing was that changes in the 2022 election calendar at this point would result in significant cost, confusion, and hardship.

Further, under applicable law, this Court would be required to first give the Georgia General Assembly the opportunity to draw new district plans based on this Court's findings. Cf. Wise v. Lipscomb, 437 U.S. 535, 540 (1978) ("When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a

reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan.”).<sup>49</sup> Even if this election process were to continue through a court-drawn redistricting plan, at least one former special master recommends “[a]llowing one month for the drawing of a plan and an additional month for hearings and potential modifications to it [in order to] build in enough of a cushion so that all concerned can proceed in a nonfrenzied fashion.” Nathaniel Persily, When Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans, 73 Geo. Wash. L. Rev. 1131, 1148 (2005). This is because “[a] quick plan . . . is not necessarily a good plan.” Id. at 1147.<sup>50</sup>

Ultimately, voters are not well served “by a chaotic, last-minute reordering of [] districts. It is best for candidates and voters to know significantly in advance of the [qualifying] period who may run where.” Favors

---

<sup>49</sup> While constitutionality of the apportionment scheme is not at issue in these three cases, the Supreme Court’s ruling in Wise is still analogous.

<sup>50</sup> The Court notes that the evidence at the preliminary injunction hearing showed that the General Assembly’s process of drawing redistricting maps for 2021 took “a couple of months” even though the legislation for the maps was introduced, considered, and passed in a matter of days. Feb. 11, 2022, Morning Tr. 59:3-17; 114:9-15.

v. Cuomo, 881 F. Supp. 2d 356, 371 (E.D.N.Y. 2012) (three-judge court) (citing Diaz v. Silver, 932 F. Supp. 462, 466–68 (E.D.N.Y. 1996) (three-judge court)).

While not precedential, as indicated above, the Court is also aware of the Supreme Court’s ruling on Alabama’s motion to stay the three-judge court’s injunction in Merrill v. Milligan. APA Doc. No. [97]; Grant Doc. No. [59]; Pendergrass Doc. No. [65].<sup>51</sup> Given the similarity of the claims in these three cases on the one hand and the Alabama cases on the other hand (i.e., they are Section 2 cases seeking at least one additional majority-minority district), and the timeline (i.e., both sets of cases involve a May 24 primary election), it would be unwise, irresponsible, and against common sense for this Court not to take note of Milligan, which essentially allowed Alabama’s May 24, 2022, primary election to go forward despite a three-judge court’s preliminary injunction ruling that the plaintiffs had a likelihood of success on the merits of their Section 2 claims. See Upham v. Seamon, 456 U.S. 37, 44 (1982) (noting that the Supreme Court has “authorized District Courts to order or to permit elections

---

<sup>51</sup> The Court also recognizes that the stay issued by the Supreme Court did not change the law in this Circuit. Cf. Schwab v. Sec’y, Dep’t of Corr., 507 F.3d 1297, 1298 (11th Cir. 2007) (“The district court’s action in granting the stay is contrary to the unequivocal law of this circuit that . . . grants of certiorari do not themselves change the law . . .”).

to be held pursuant to apportionment plans that do not in all respects measure up to the legal requirements, even constitutional requirements”).

Numerous other lower courts have also permitted elections to proceed when the state’s election machinery was already in progress, even after a finding that the districts were unlawful. See Wright v. Sumter Cnty. Bd. of Elections & Registration, No. 1:14-CV-42 (WLS), 2018 WL 7365178, at \*3 (Mar. 30, 2018), objections overruled, 2018 WL 7365179 (Apr. 11, 2018), and modified, 2018 WL 7366461 (M.D. Ga. June 21, 2018); see also Covington, 316 F.R.D. 117.

While this Court proceeded with these three important cases as quickly as practicable in light of the complicated issues involved, the “greatest public interest must attach to adjudicating these claims fairly – and correctly.” Favors, 881 F. Supp. 2d at 371. Given the massively complex factual issues combined with the timeline of candidate qualifying set to begin in days, it would not serve the public interest or the candidates, poll workers, and voters to enjoin use of the Enacted Plans and begin the process of putting new plans in their place for the 2022 election cycle.

After review of the evidence and briefing submitted by the parties, this Court concludes that due to the mechanics of State election requirements, there is insufficient time to effectuate remedial relief for purposes of the 2022 election



cycle. The Court is unable to disregard the Purcell principle given the progress of Georgia's election machinery toward the 2022 election. The merged balancing of the harms and public interest factors weigh against injunctive relief at this time.

#### IV. CONCLUSION

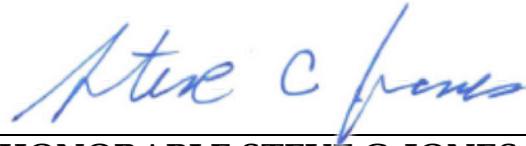
For the foregoing reasons, the Court **DENIES** the pending Motions for Preliminary Injunctions in each of the above-stated cases. Doc. Nos. [26], [39], 1:21-cv-5337; Doc. No. [32], 1:21-cv-5339; Doc. No. [19], 1:22-cv-122.<sup>52</sup> Having determined that a preliminary injunction should not issue, the Court cautions that this is an interim, non-final ruling that should not be viewed as an indication of how the Court will ultimately rule on the merits at trial.

Under the specific circumstances of this case, the Court finds that proceeding with the Enacted Maps for the 2022 election cycle is the right decision. But it is a difficult decision. And it is a decision the Court did not make lightly.

---

<sup>52</sup> While the option of halting all proceedings to await a future ruling by the United States Supreme Court was briefly mentioned at the preliminary injunction hearing, in the absence of a formal motion and full briefing, the Court declines to halt these proceedings. To this regard, each of the above-stated cases shall proceed on the same discovery tracks previously set for the three-judge court redistricting cases pending in the Northern District of Georgia. The Court will issue formal scheduling orders at a later date.

**IT IS SO ORDERED** this 28th day of February, 2022.



---

**HONORABLE STEVE C. JONES**  
**UNITED STATES DISTRICT JUDGE**

# *Pendergrass* Doc. 174-1

# EXHIBIT 1

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

COAKLEY PENDERGRASS et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official  
capacity as the Georgia Secretary of State,  
et al.,

Defendants.

CIVIL ACTION FILE

NO. 1:21-CV-05339-SCJ

**DECLARATION OF WILLIAM S. COOPER**

WILLIAM S. COOPER, acting in accordance with 28 U.S.C. § 1746, Federal Rule of Civil Procedure 26(a)(2)(B), and Federal Rules of Evidence 702 and 703, does hereby declare and say:

**I. INTRODUCTION**

1. My name is William S. Cooper. I have a B.A. in Economics from Davidson College. As a private consultant, I serve as a demographic and redistricting expert for the Plaintiffs.

2. I have testified at trial as an expert witness on redistricting and demographics in federal courts in about 50 voting rights cases since the late 1980s. Over 25 of the cases led to changes in local election district plans. Five of the cases resulted in changes to statewide legislative boundaries: *Rural West Tennessee*

*African-American Affairs Council, Inc. v. McWherter*, No. 92-cv-2407 (W.D. Tenn.); *Old Person v. Brown*, No. 96-cv-0004 (D. Mont.); *Bone Shirt v. Hazeltine*, No. 01-cv-3032 (D.S.D.); *Alabama Legislative Black Caucus v. Alabama*, No. 12-cv-691 (M.D. Ala.); and *Thomas v. Reeves*, No. 18-cv-441 (S.D. Miss.). In *Bone Shirt v. Hazeltine*, the court adopted the remedial plan I developed.

3. I served as the *Gingles* 1 expert for two post-2010 local-level Section 2 cases in Georgia, *Georgia State Conference of NAACP v. Fayette County Board of Commissioners*, No. 11-cv-123 (N.D. Ga.), and *Georgia State Conference of NAACP v. Emanuel County Board of Commissioners*, No. 16-cv-21 (S.D. Ga.). In both cases, the parties settled on redistricting plans that I developed (with input from the respective defendants). In the latter part of the decade, I served as the *Gingles* 1 expert in three additional Section 2 cases in Georgia, which were all voluntarily dismissed in advance of the 2020 elections: *Georgia State Conference of NAACP v. Gwinnett County Board of Commissioners*, No. 16-cv-2852 (N.D. Ga.); *Thompson v. Kemp*, No. 17-cv-1427 (N.D. Ga.); and *Dwight v. Kemp*, No. 18-cv-2869 (N.D. Ga.).

4. In 2022, I testified as an expert in redistricting and demographics in six cases challenging district boundaries under Section 2 of the Voting Rights Act: *Caster v. Merrill*, No. 21-1356-AMM (N.D. Ala.); *Alpha Phi Alpha Fraternity v. Raffensperger*, No. 21-05337-SCJ (N.D. Ga.); *Pendergrass v. Raffensperger*, No. 21-

05339-SCJ (N.D. Ga.); *NAACP v. Baltimore County*, No. 21-cv-03232-LKG (D. Md.); *Christian Ministerial Alliance v. Hutchinson*, No. 4:19-cv-402-JM (E.D. Ark.); and *Robinson v. Ardoin*, No. 3:22-cv-00211-SDD-SDJ (M.D. La.). I also testified at trial this year as an expert on demographics in *NAACP v. Lee*, No. 4:21cv187-MW/MAF (N.D. Fla.), a case involving recent changes to Florida's election law.

5. Since the release of the 2020 Census data, three county commission-level plans I developed as a private consultant have been adopted by local governments, in San Juan County, Utah; Bolivar County, Mississippi; and Washington County, Mississippi. In addition, a school board plan I developed was adopted by the Jefferson County, Alabama Board of Education (*Stout v. Jefferson County*).

6. My redistricting experience is further documented in **Exhibit A**.

7. I am being compensated at a rate of \$150.00 per hour. No part of my compensation is dependent upon the conclusions that I reach or the opinions that I offer.

**A. Purpose of Declaration**

8. The attorneys for the Plaintiffs in this case asked me to determine whether the African American<sup>1</sup> population in Georgia is "sufficiently large and

---

<sup>1</sup> In this declaration, "African American" refers to persons who are Single Race Black or Any Part Black (i.e., persons of two or more races and some part Black), including Hispanic Black. In some instances (e.g., for historical comparisons), numerical or percentage references identify Single Race Black as "SR Black" and Any Part Black as "AP Black." Unless noted otherwise, "Black" means AP Black. It is my understanding that following the U.S. Supreme Court decision in

geographically compact”<sup>2</sup> to allow for the creation of an additional majority-Black congressional district in the Atlanta metropolitan area.

9. **Exhibit B** describes the sources and methodology I have employed in the preparation of this report and the Illustrative Plan. In short, I used the Maptitude for Redistricting software program as well as data and shapefiles from the U.S. Census Bureau and the Georgia Legislative and Congressional Reapportionment Office, among other sources.

## **B. Expert Conclusions**

10. The Black population in metropolitan Atlanta is sufficiently numerous and geographically compact to allow for the creation of an additional majority-Black congressional district anchored in Cobb, Douglas, and Fulton Counties (CD 6 in the Illustrative Plan) consistent with traditional redistricting principles.

11. The additional majority-Black congressional district can be merged into the enacted 2021 Plan without making changes to six of the 14 districts: CD 1, CD 2, CD 5, CD 7, CD 8, and CD 12 are unaffected.

---

*Georgia v. Ashcroft*, 539 U.S. 461 (2003), the “Any Part” definition is an appropriate Census classification to use in most Section 2 cases.

<sup>2</sup> This is the first *Gingles* precondition. See *Thornburg v. Gingles*, 478 U.S. 30 (1986).



### **C. Organization of Declaration**

12. The remainder of this declaration is organized as follows: **Section II** reviews state-level and Metro Atlanta 1990–2020 demographics, as defined by the 29-county Atlanta-Sandy Springs-Alpharetta MSA.<sup>3</sup> **Section III** provides maps and population statistics for the 2012 Benchmark Plan and the enacted 2021 Plan. **Section IV** presents the Illustrative Plan that I have prepared, based on the 2020 Census, which includes an additional majority-Black district in Metro Atlanta.

## **II. DEMOGRAPHIC PROFILE**

### **A. Georgia: 2010 to 2020**

13. According to the 2020 Census, Georgia has a total population of 10,711,908 persons—up by 1.02 million since 2010.

---

<sup>3</sup> In this declaration, Metro Atlanta refers to the 29-county Atlanta-Sandy Springs-Alpharetta Metropolitan Statistical Area (“MSA”). It includes the counties of Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton.

MSA is an abbreviation for “metropolitan statistical area.” Metropolitan statistical areas are defined by the U.S. Office of Management and Budget and reported in historical and current census data produced by the U.S. Census Bureau. As the Census Bureau has explained, “[m]etropolitan statistical areas consist of the county or counties (or equivalent entities) associated with at least one urbanized area of at least 50,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties.” Source: <https://www.census.gov/programs-surveys/metro-micro/about/glossary.html>.

14. **Figure 1** reveals that Georgia’s population growth since 2010 can be attributed entirely to gains in the overall minority population.

**Figure 1**  
**Georgia: Population by Race and Ethnicity (2010 Census to 2020 Census)**

	<b>2010 Population</b>	<b>Percent</b>	<b>2020 Population</b>	<b>Percent</b>	<b>2010–2020 Change (Persons)</b>	<b>2010–2020 Change (Percent)</b>
Total Population	9,687,653	100.00%	10,711,908	100.00%	1,024,255	10.57%
NH White*	5,413,920	55.88%	5,362,156	50.06%	-51,764	-0.96%
<b>Total Minority Population</b>	<b>4,273,733</b>	<b>44.12%</b>	<b>5,349,752</b>	<b>49.94%</b>	<b>1,076,019</b>	<b>25.18%</b>
Latino	853,689	8.81%	1,123,457	10.49%	269,768	31.60%
NH Black*	2,910,800	30.05%	3,278,119	30.60%	367,319	12.62%
NH Asian*	311,692	3.22%	475,680	4.44%	163,988	52.61%
NH Hawaiian and Pacific Islander	5,152	0.05%	6,101	0.06%	949	18.42%
NH American Indian and Alaska Native*	21,279	0.22%	20,375	0.19%	-904	-4.25%
NH Other*	19,141	0.20%	55,887	0.52%	36,746	191.98%
NH Two or More Races*	151,980	1.57%	390,133	3.65%	238,153	156.70%
SR Black	2,950,435	30.46%	3,320,513	31.00%	370,078	12.54%
<b>AP Black</b>	<b>3,054,098</b>	<b>31.53%</b>	<b>3,538,146</b>	<b>33.03%</b>	<b>484,048</b>	<b>15.85%</b>

\*Single race, non-Hispanic

15. Between 2010 and 2020, the Black population in Georgia increased by 484,048 persons. By contrast, during the same decade, the non-Hispanic White (“NH White”) population fell by 51,764 persons.

16. Georgia's Black population, as a share of the overall statewide population, increased between 2010 and 2020, from 31.53% in 2010 to 33.03% in 2020.

17. Non-Hispanic Whites are a razor-thin majority of the state's 2020 population (50.06%). Black Georgians account for one-third (33.03%) of the population and comprise the largest minority population, followed by Latinos (10.49%).

[Intentionally Blank]

## B. Georgia: Voting Age and Citizen Voting Age

18. As shown in **Figure 2**, African Americans in Georgia constitute a slightly smaller percentage of the voting age population (“VAP”) than the total population. According to the 2020 Census, Georgia has a total VAP of 8,220,274 persons, of whom 2,607,986 (31.73%) are AP Black. The NH White VAP is 4,342,333 (52.82%).

**Figure 2**  
**Georgia: 2020 Voting Age and 2021 Estimated Citizen Voting Age**  
**Populations by Race and Ethnicity<sup>4</sup>**

	<b>2020 VAP (Persons)</b>	<b>2020 VAP (Percent)</b>	<b>2021 CVAP (Percent)</b>
Total	8,220,274	100.00%	100.0%
NH White	4,342,333	52.82%	55.7%
<b>Total Minority</b>	<b>3,877,941</b>	<b>47.18%</b>	<b>44.3%</b>
Latino	742,918	9.04%	5.9%
SR Black	2,488,419	30.27%	31.4%
<b>AP Black</b>	<b>2,607,986</b>	<b>31.73%</b>	<b>33.3%</b>

19. The rightmost column in Figure 2 reveals that both the Black and NH White populations comprise a higher percentage of the citizen voting age population

---

<sup>4</sup> To prepare this table, I relied on the PL 94-171 redistricting file issued by the Census Bureau; Table S2901 of the 1-Year 2021 American Community Survey (“ACS”), available at <https://data.census.gov/cedsci/table?q=S2901&g=0400000US13&tid=ACSST1Y2021.S2901>; and the Public Use Microdata Sample of the 1-Year 2021 ACS, available at <https://data.census.gov/mdat/#/search?ds=ACSPUMS1Y2021&vv=AGEP%2800,18%3A99%29&cv=RACBLK%281%29&r v=ucgid,CIT%281,2,3,4,%29&wt=PWGTP&g=0400000US13>.

(“CVAP”) than the corresponding voting age population, owing to higher non-citizenship rates among other minority populations.

20. According to estimates from the 1-Year 2021 American Community Survey (“ACS”), African Americans represent 33.3% of the statewide CVAP—about 1.5 percentage points higher than the 2020 AP Black VAP. The NH White CVAP is 55.7%—nearly three percentage points higher than NH White VAP in the 2020 Census.

21. The Black CVAP in Georgia is poised to go up this decade. According to the 1-Year 2021 ACS, Black citizens of all ages represent 34.45% of all citizens.<sup>5</sup>

[Intentionally Blank]

---

<sup>5</sup> Source: <https://data.census.gov/mdat/#/search?ds=ACSPUMS1Y2021&vv=AGEP&cv=RACBLK%281%29&rv=ucgid,CIT%281,2,3,4%29&wt=PWGTP&g=0400000US13>.

## C. Black Population as a Component of Total Population: 1990 to 2020

### 1. Georgia

22. As shown in **Figure 3**, Georgia's Black population has increased significantly in absolute and percentage terms since 1990, from about 27% in 1990 to 33% in 2020. Over the same time period, the percentage of the population identifying as NH White has dropped from 70% to 50%.

**Figure 3**  
**Georgia: Population by Race and Ethnicity (1990 Census to 2020 Census)**

	<b>1990 Population</b>	<b>Percent</b>	<b>2000 Population</b>	<b>Percent</b>	<b>2010 Population</b>	<b>Percent</b>	<b>2020 Population</b>	<b>Percent</b>
Total Population	6,478,216	100.00%	8,186,453	100.00%	9,687,653	100.0%	10,711,908	100.00%
NH White	4,543,425	70.13%	5,128,661	62.65%	5,413,920	55.88%	5,362,156	50.06%
<b>Total Minority Population</b>	<b>1,934,791</b>	<b>29.87%</b>	<b>3,057,792</b>	<b>37.35%</b>	<b>4,273,733</b>	<b>44.12%</b>	<b>5,349,752</b>	<b>49.94%</b>
Latino	108,922	1.68%	435,227	5.32%	853,689	8.81%	1,123,457	10.49%
<b>Black*</b>	<b>1,746,565</b>	<b>26.96%</b>	<b>2,393,425</b>	<b>29.24%</b>	<b>3,054,098</b>	<b>31.53%</b>	<b>3,538,146</b>	<b>33.03%</b>

\*SR Black in 1990; AP Black 2000–2020

23. Since 1990, the Black population has more than doubled: from about 1.75 million to 3.54 million, an increase that is the equivalent of the populations of more than two congressional districts. The NH White population has also increased, but at a much slower rate: from 4.54 million to 5.36 million, amounting to an increase of only about 18% over the three-decade period.

### 2. Metro Atlanta

24. **Exhibit C** is a Census Bureau-produced map showing boundaries for the Atlanta MSA, along with other metropolitan and micropolitan areas in Georgia.

25. **Figure 4** demonstrates that the key driver of population growth in Georgia this century has been Metro Atlanta, led in no small measure by a large increase in the Black population.

**Figure 4**  
**Metro Atlanta: Population by Race and Ethnicity (1990 Census to 2020 Census)**

	<b>1990 Population</b>	<b>Percent</b>	<b>2000 Population</b>	<b>Percent</b>	<b>2010 Population</b>	<b>Percent</b>	<b>2020 Population</b>	<b>Percent</b>
Total Population	3,082,308	100.00%	4,263,438	100.00%	5,286,728	100.00%	6,089,815	100.00%
NH White	2,190,859	71.08%	2,576,109	60.42%	2,684,571	50.78%	2,661,835	43.71%
<b>Total Minority Population</b>	<b>891,449</b>	<b>28.92%</b>	<b>1,687,329</b>	<b>39.58%</b>	<b>2,602,157</b>	<b>49.22%</b>	<b>3,427,980</b>	<b>56.29%</b>
Latino	58,917	1.91%	270,655	6.35%	547,894	10.36%	730,470	11.99%
<b>Black*</b>	<b>779,134</b>	<b>25.28%</b>	<b>1,248,809</b>	<b>29.29%</b>	<b>1,776,888</b>	<b>33.61%</b>	<b>2,186,815</b>	<b>35.91%</b>

\*SR Black in 1990; AP Black 2000–2020

26. According to the 1990 Census, the area that today comprises the 29-county MSA was 25.28% Black, increasing to 35.91% in 2020. Since 2000, the Black population in Metro Atlanta has climbed by 75%: from 1.25 million in 2010 to 2.19 million in 2020.

27. According to the 2020 Census, a majority of Metro Atlanta residents are non-White, while NH Whites comprise 43.71% of the Metro Atlanta population. This is a major shift compared to the previous decade; in 2010, NH Whites represented 50.78% of the Metro Atlanta population.

28. According to the 2020 Census, the 11 core counties comprising the Atlanta Regional Commission (“ARC”) service area<sup>6</sup> account for more than half (54.7%) of the statewide Black population. After expanding the region to include the 29 counties in the Atlanta MSA (including the 11 ARC counties), Metro Atlanta encompasses 61.81% of the state’s Black population.

29. **Exhibit D** breaks down Black population changes from 2010 to 2020 by county for each of the 29 counties in Metro Atlanta.

[Intentionally Blank]

---

<sup>6</sup> Source: <https://atlantaregional.org/atlanta-region/about-the-atlanta-region>.



30. **Figure 5** shows that the population gain in Metro Atlanta between 2010 and 2020 amounted to 803,087 persons—greater than the population of one of the state’s congressional districts—with more than half of the gain coming from an increase in the Black population, which increased by 409,927 (or 23.07%). Meanwhile, over the same decade, the NH White population in Metro Atlanta fell by 22,736 persons.

**Figure 5**  
**Metro Atlanta: Population by Race and Ethnicity (2010 Census to 2020 Census)**

	<b>2010 Number</b>	<b>Percent</b>	<b>2020 Number</b>	<b>Percent</b>	<b>2010–2020 Change (Persons)</b>	<b>2010–2020 Change (Percent)</b>
Total Population	5,286,728	100.00%	6,089,815	100%	803,087	15.19%
NH White*	2,684,571	50.78%	2,661,835	43.7%	-22,736	-0.85%
<b>Total Minority Population</b>	<b>2,602,157</b>	<b>49.22%</b>	<b>3,427,980</b>	<b>56.3%</b>	<b>825,823</b>	<b>31.74%</b>
Latino	547,894	10.36%	730,470	12.0%	182,576	33.32%
NH Black*	1,684,178	31.86%	2,019,208	33.16%	335,030	19.89%
NH Asian*	252,616	4.78%	397,009	6.52%	144,393	57.16%
NH Hawaiian and Pacific Islander*	2,075	0.04%	2,386	0.04%	311	14.99%
NH American Indian and Alaska Native*	10,779	0.20%	10,562	0.17%	-217	-2.01%
NH Other*	13,749	0.26%	39,254	0.64%	25,505	185.50%
NH Two or More Races*	126,322	2.39%	229,091	3.76%	102,769	81.35%
SR Black	1,712,121	32.39%	2,048,212	33.63%	336,091	19.63%
<b>AP Black</b>	<b>1,776,888</b>	<b>33.61%</b>	<b>2,186,815</b>	<b>35.91%</b>	<b>409,927</b>	<b>23.07%</b>

\*Single race, non-Hispanic

31. As shown in **Figure 6**, according to the 2020 Census, the 29-county MSA has a total VAP of 4,654,322 persons, of whom 1,622,469 (34.86%) are AP Black. The NH White VAP is 2,156,625 (46.34%).

**Figure 6**  
**Metro Atlanta: 2020 Voting Age and 2021 Estimated Citizen Voting Age**  
**Populations by Race and Ethnicity<sup>7</sup>**

	<b>2020 VAP (Persons)</b>	<b>2020 VAP (Percent)</b>	<b>2021 CVAP (Percent)</b>
Total	4,654,322	100.00%	100.00%
NH White	2,156,625	46.34%	49.8%
<b>Total Minority</b>	<b>2,426,643</b>	<b>53.66%</b>	<b>50.2%</b>
Latino	487,286	10.47%	6.6%
SR Black	1,541,370	33.12%	34.6%
<b>AP Black</b>	<b>1,622,469</b>	<b>34.86%</b>	<b>N/A</b>

32. According to estimates from the 1-Year 2021 ACS, SR African Americans represent 34.6% of the CVAP in Metro Atlanta—about 1.5 percentage points higher than the 2020 SR Black VAP. The NH White CVAP is 49.8%, about 3.5 percentage points higher than the NH White VAP in the 2020 Census.

33. Despite the significant Black population growth in Metro Atlanta, the region includes just three majority-Black districts under the 2021 Plan—CD 4, CD 5, and CD 13—the same number the region has had for the past two decades.

---

<sup>7</sup> To prepare this table, I relied on the PL 94-171 redistricting file issued by the U.S. Census Bureau and Table S2901 of the 1-Year 2021 ACS, available at <https://data.census.gov/table?q=S2901&g=310XX00US12060>. The Census Bureau does not publish a citizenship estimate for the AP Black CVAP at the MSA level.

34. As shown in **Figure 7**, over the two decades since the last majority-Black district (CD 13) was drawn, Metro Atlanta’s population has grown by 1.8 million, with the Black population up by 938,006.

**Figure 7**  
**29-County MSA (Metro Atlanta): 2000 to 2020 Population Change**

	<b>2000 Population (Persons)</b>	<b>2000 Population (Percent)</b>	<b>2020 Population (Persons)</b>	<b>2020 Population (Percent)</b>	<b>2000–2020 Change (Persons)</b>	<b>2000–2020 Change (Percent)</b>
Total Population	4,263,438	100.00%	6,089,815	100.00%	1,826,377	42.84%
NH White	2,576,109	60.42%	2,661,835	43.71%	85,726	3.33%
<b>Total Minority Population</b>	<b>1,687,329</b>	<b>39.58%</b>	<b>3,427,980</b>	<b>56.29%</b>	<b>1,740,651</b>	<b>103.16%</b>
Latino	270,655	6.35%	730,470	11.99%	459,815	169.89%
<b>AP Black</b>	<b>1,248,809</b>	<b>29.29%</b>	<b>2,186,815</b>	<b>35.91%</b>	<b>938,006</b>	<b>75.11%</b>

35. Given the dramatic increase in Georgia’s Black population in Metro Atlanta during this century, the obvious focal point for determining whether an additional majority-Black district can be created in the state is indeed Metro Atlanta. And, as shown below, a new majority-Black district can readily be created in and around Cobb, Douglas, and Fulton Counties.

### **III. 2012 BENCHMARK PLAN AND 2021 PLAN**

#### **A. 2012 Benchmark Plan**

36. **Exhibit E** contains a map packet depicting the 2012 Benchmark Plan, with corresponding 2010 Census statistics, prepared by the Georgia Legislative & Congressional Reapportionment Office (“GLCRO”).

37. **Exhibit F** is a table that I prepared reporting 2020 Census population statistics for the 2012 Plan, as well as CVAP estimates from the Census Bureau’s 2015–2019 Special Tabulation.<sup>8</sup>

**B. 2021 Plan**

38. **Exhibit G** contains a map packet depicting the 2021 Plan, with corresponding 2020 Census statistics, prepared by GLCRO.

39. Additional 2021 Plan information regarding compactness scores, county splits, municipal splits, and VTD<sup>9</sup> splits is reported for comparison with the Illustrative Plan described in the next section.

40. The 2021 Plan reduces CD 6’s BVAP from 14.6% under the 2012 Benchmark Plan to 9.9%. This decrease occurred in an area that has experienced significant growth in the Black population since the 2010 Census. Notably, the area is adjacent to two majority-Black districts (CD 4 and CD 13) with Black citizen voting age populations (“BCVAP”) in the 60% range under both the Benchmark 2012 Plan and the 2021 Plan.

41. According to the 2020 Census, the BVAP in the (by then overpopulated) Benchmark 2012 CD 13 was 62.65%. Under the 2021 Plan, the BVAP in CD 13

---

<sup>8</sup> Source: <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html>.

<sup>9</sup> “VTD” is a U.S. Census Bureau term; VTDs generally correspond to precincts. Statewide, in 2020, there were 2,698 VTDs in Georgia.

jumps to 66.75%. Indeed, the BVAP in CD 13 has steadily increased over the past two decades. According to the 2010 Census, under the then-overpopulated Benchmark 2006 Plan, the BVAP in CD 13 stood at 55.70%.

42. As shown in **Figure 8**, based on the 2020 Census, the combined Black population in Cobb, Fulton, Douglas, and Fayette Counties is 807,076 persons, more than necessary to constitute an *entire* congressional district—or, put differently, a majority in two congressional districts.

**Figure 8**  
**Four-County Area: 2010 Census to 2020 Census Population and Black Population Changes**

	<b>2020 Population</b>	<b>2020 Black Population</b>	<b>2010–2020 Population Change</b>	<b>2010–2020 Black Population Change</b>	<b>Black Population Change as Percentage of Total Change</b>
Cobb	766,149	223,116	78,071	42,151	53.99%
Douglas	144,237	74,260	11,834	20,007	169.06%
Fayette	119,194	32,076	12,627	9,578	75.85%
Fulton	1,066,710	477,624	146,129	60,732	41.56%
<b>Total</b>	<b>2,096,290</b>	<b>807,076</b>	<b>248,661</b>	<b>132,468</b>	<b>53.27%</b>

43. More than half (53.27%) of the total population increase in the four counties since 2010 can be attributed to the increase in the Black population. Building off this growth, the Illustrative Plan described in the next section shows how an additional majority-Black congressional district can be drawn in the area encompassing Cobb, Fulton, Douglas, and Fayette Counties—with no meaningful

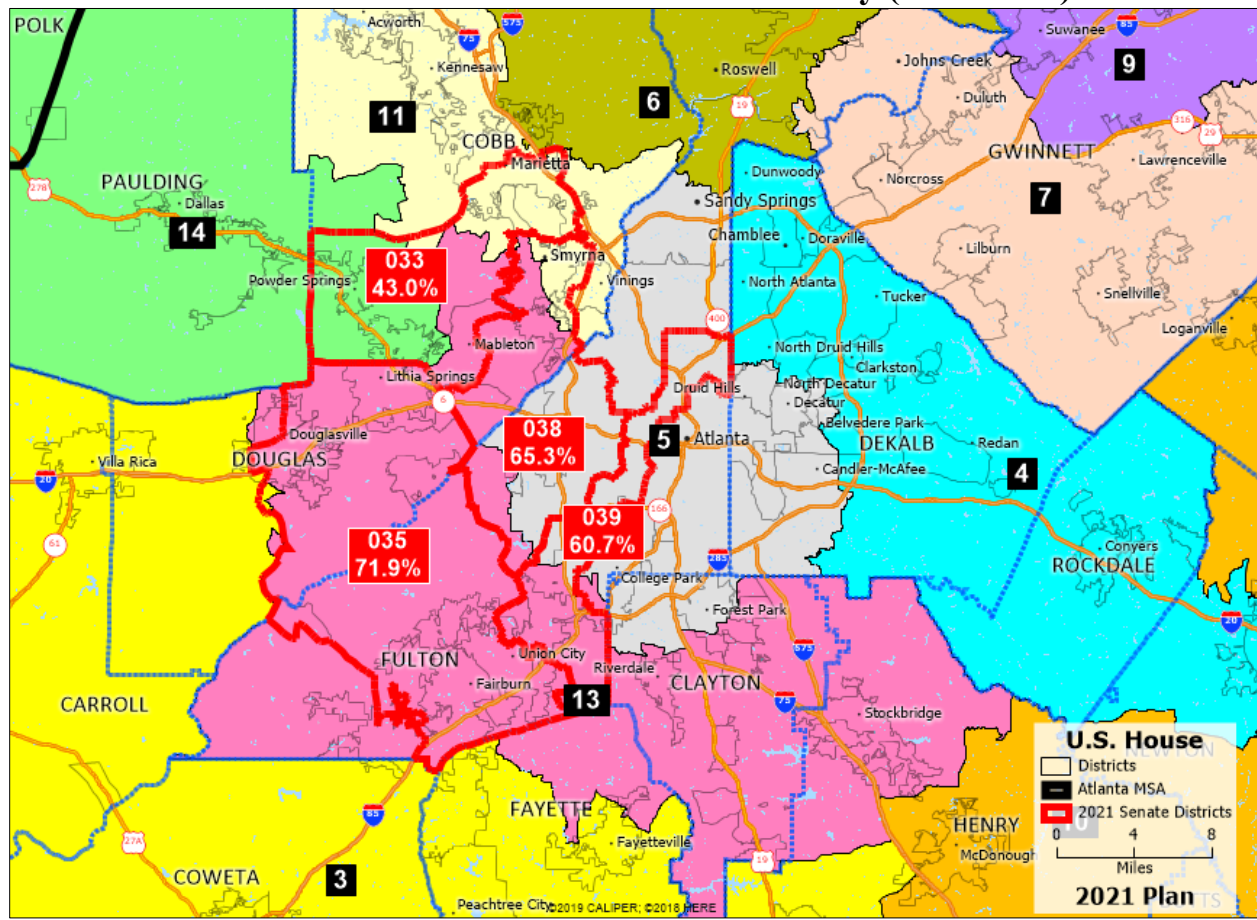
impact on compactness and fewer splits of political subdivisions (i.e., counties, VTDs, and municipalities).

44. Indeed, that an additional majority-Black district can readily be drawn in this four-county area is confirmed by the composition of newly enacted Georgia State Senate districts in Metro Atlanta. The enacted 2021 Senate Plan includes three majority-Black districts that encompass parts of western Fulton County, southern Cobb County, and eastern Douglas County, and a fourth racially diverse Senate district in Cobb County.

[Intentionally Blank]

45. With respect to ideal district population size, four Senate districts are exactly the equivalent of one congressional district, given that 56 (the number of Senate districts) divided by 14 (the number of congressional districts) equals four. And, as shown in **Figure 9** below, there is ample room to create an additional majority-Black congressional district in the three-county area generally defined by three majority-Black and one racially diverse Senate districts in the enacted 2021 Senate Plan: SD 39 (approximately 61% BVAP), SD 35 (72% BVAP), SD 38 (60% BVAP), and Cobb County SD 42 (43% BVAP).

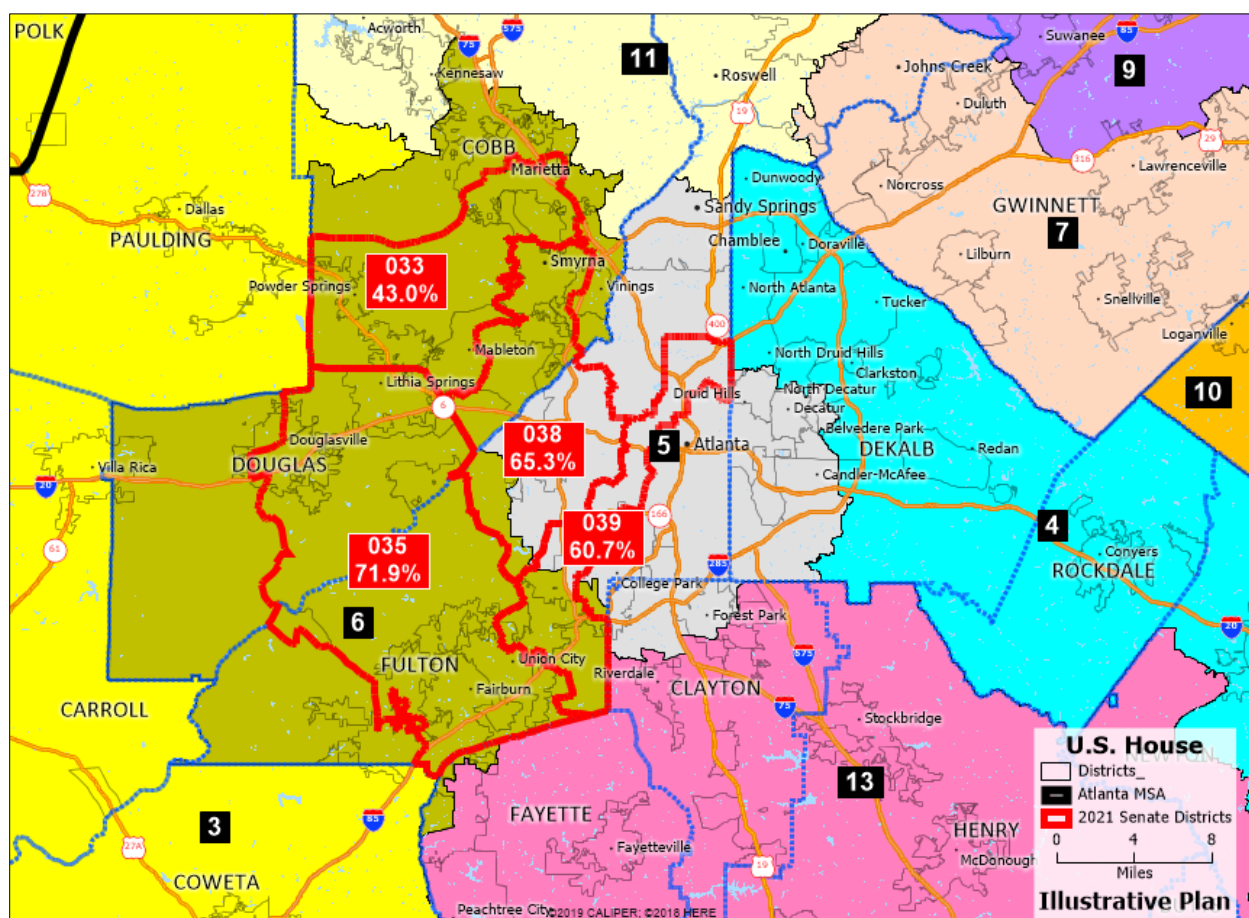
**Figure 9**  
**2021 Plan with Partial Senate Plan Overlay (Red Lines)**





46. **Figure 10** below is a preview of the Illustrative Plan described in the next section. Note how majority-Black Illustrative CD 6 closely aligns with the four Senate districts displayed in Figure 8, and then extends west to include all of Douglas County, south to include all of southern Fulton County, and north into racially diverse areas of Cobb County.

**Figure 10**  
**Illustrative Plan with Partial Senate Plan Overlay (Red Lines)**





#### **IV. Illustrative Plan**

##### **A. Traditional Redistricting Principles**

47. The Illustrative Plan I have prepared demonstrates that the Black population is sufficiently numerous and geographically compact to allow for the creation of an additional majority-Black congressional district in Metro Atlanta.

48. The Illustrative Plan adheres to traditional redistricting principles, including population equality, compactness, contiguity, respect for political subdivision boundaries, respect for communities of interest, and the non-dilution of minority voting strength.

49. I drew the Illustrative Plan to follow, to the extent possible, county boundaries. Where counties are split to comply with one-person, one-vote requirements, I have generally used whole 2020 Census VTDs as sub-county components. Where VTDs are split, I have followed census block boundaries that are aligned with roads, natural features, municipal boundaries, census block groups, and post-2020 Census county commission districts.

50. In drafting the Illustrative Plan, I sought to minimize changes to the 2021 Plan while abiding by all of the traditional redistricting principles listed above. I balanced all of these considerations, and no one factor predominated in my drawing of the Illustrative Plan.

51. The result leaves intact six congressional districts in the enacted plan, modifying only eight districts in the 2021 Plan to create an additional majority-Black district (Illustrative CD 6) encompassing all of Douglas County and parts of Cobb, Fayette, and Fulton Counties. The eight districts that are changed under the Illustrative Plan are CD 3, CD 4, CD 6, CD 9, CD 10, CD 11, CD 13, and CD 14.

52. The districts in the Illustrative Plan are also contiguous.

53. As shown in **Figure 11**, the Illustrative Plan abides by the one-person, one-vote principle. Like the 2021 Plan, population deviations in the Illustrative Plan are plus or minus one person from the ideal population size of 765,136.

**Figure 11**  
**Illustrative Plan Population Summary**

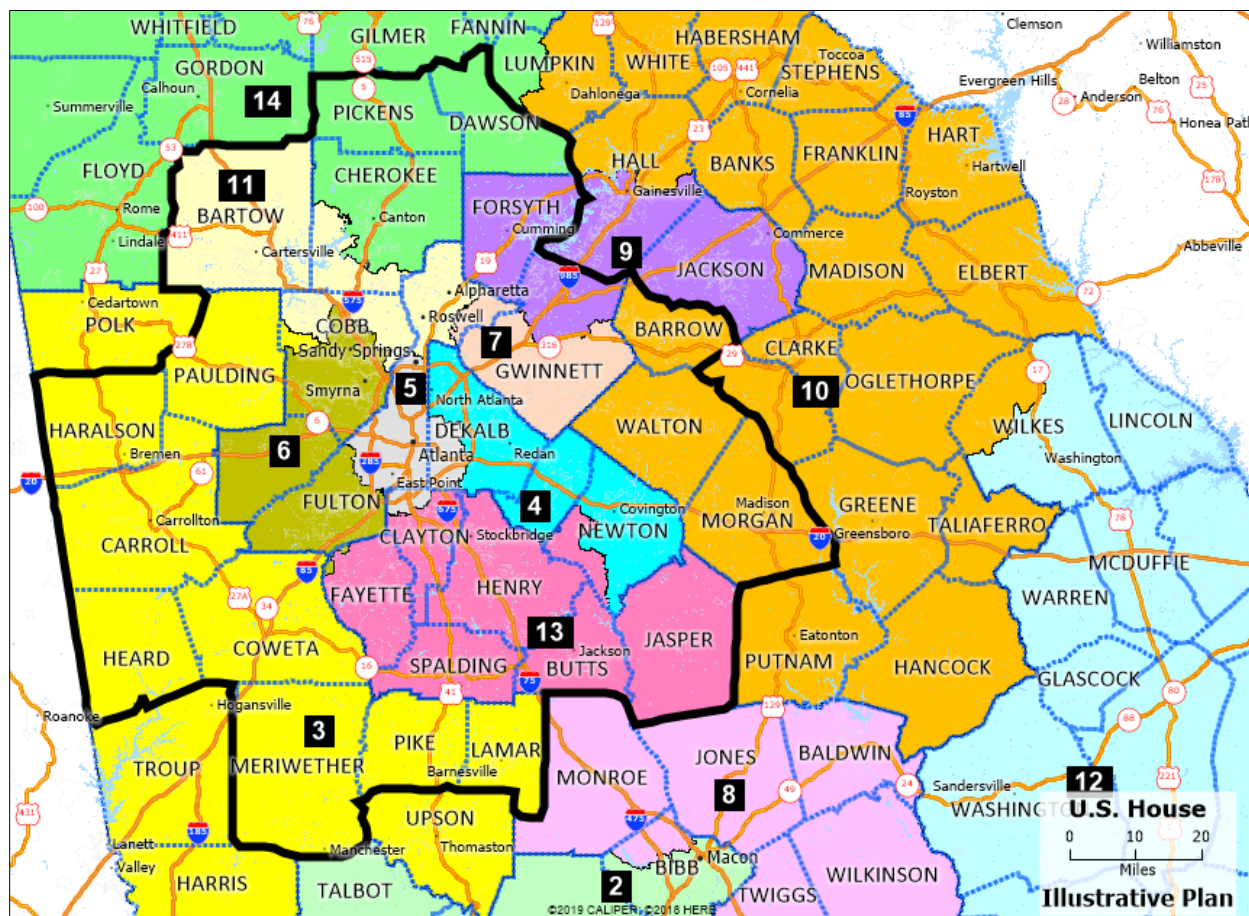
District	Population	Deviation	AP Black	% AP Black	Latino	% Latino	NH White	% NH White
1	765,137	1	230,783	30.16%	59,328	7.75%	440,636	57.59%
2	765,137	1	393,195	51.39%	45,499	5.95%	305,611	39.94%
3	765,135	-1	166,096	21.71%	49,935	6.53%	517,659	67.66%
4	765,136	0	410,019	53.59%	87,756	11.47%	212,004	27.71%
5	765,137	1	392,822	51.34%	56,496	7.38%	273,819	35.79%
6	765,137	1	396,891	51.87%	108,401	14.17%	225,985	29.54%
7	765,137	1	239,717	31.33%	181,851	23.77%	225,905	29.52%
8	765,136	0	241,628	31.58%	54,850	7.17%	443,123	57.91%
9	765,136	0	94,059	12.29%	128,393	16.78%	429,340	56.11%
10	765,137	1	118,199	15.45%	61,244	8.00%	548,312	71.66%
11	765,137	1	110,368	14.42%	81,466	10.65%	492,121	64.32%
12	765,136	0	294,961	38.55%	43,065	5.63%	398,843	52.13%
13	765,135	-1	404,963	52.93%	71,377	9.33%	253,135	33.08%
14	765,135	-1	44,445	5.81%	93,796	12.26%	595,663	77.85%
<b>Total</b>	<b>10,711,908</b>	<b>N/A</b>	<b>3,538,146</b>	<b>33.03%</b>	<b>1,123,457</b>	<b>10.49%</b>	<b>5,362,156</b>	<b>50.06%</b>

54. **Exhibit I-1** contains additional voting age and citizen voting age summaries by district.

## B. Illustrative Plan Overview

55. The map in **Figure 12** depicts Metro Atlanta with an overlay of the Illustrative Plan. CD 6, the additional majority-Black district, is anchored in Cobb, Douglas, and Fulton Counties, along with a small part of Fayette County.

**Figure 12**  
**Illustrative Plan: Metro Atlanta**



56. **Exhibit H-1** is a higher resolution of the Figure 10 map. **Exhibit H-2** is a statewide map that displays all 14 districts under the Illustrative Plan.

57. **Exhibit I-1** is a table reporting 2020 Census population statistics for the Illustrative Plan, as well as CVAP estimates from the Census Bureau’s 2016–2020 Special Tabulation.<sup>10</sup>

58. **Exhibit I-2** is a set of maps depicting the Illustrative Plan, zooming in on each of the 14 districts under the Illustrative Plan. Districts in the 2021 Plan that do not change are displayed with red line boundaries.

59. **Exhibit I-3** details district assignments by county population in the Illustrative Plan.

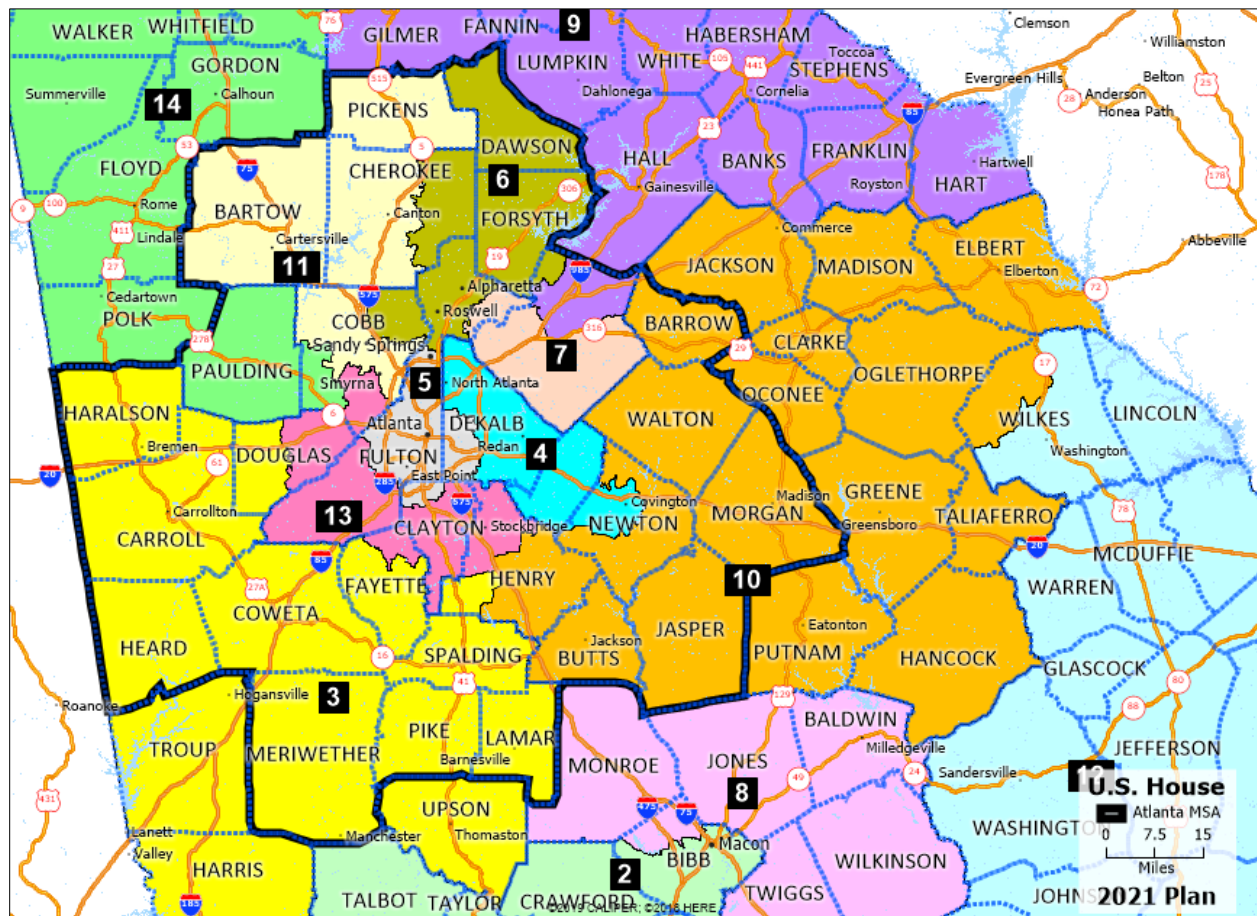
[Intentionally Blank]

---

<sup>10</sup> In the summary population exhibits by plan that I have prepared, I also report the NH DOJ Black CVAP metric. The NH DOJ Black CVAP category includes voting age citizens who are either NH SR Black or NH Black and White. An “Any Part Black CVAP” category that would include Black Hispanics cannot be calculated from the 5-Year ACS Census Bureau Special Tabulation. The estimates are disaggregated from the block group level as published by the U.S. Census Bureau. The most current data available is from the 2016–2020 Special Tabulation, with a survey midpoint of July 1, 2018. Source: <https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html>. The 2016–2020 estimates reflect 2020 Census population distribution. The 2017–2021 CVAP estimates will be released by the Census Bureau in early 2023.

60. For comparison, the map in **Figure 13** depicts Metro Atlanta and surrounding counties with an overlay of the 2021 Plan. The 2021 Plan splits majority-non-White Cobb County into parts of four districts: from south to north, CD 13, CD 14, CD 11, and CD 6. Southwest Cobb County is in CD 14, which stretches all the way to the suburbs of Chattanooga.

**Figure 13**  
**2021 Plan: Metro Atlanta**



61. **Exhibit J-1** is a higher resolution of the **Figure 10** map. **Exhibit J-2** is a statewide map that displays all 14 districts under the 2021 Plan.



62. For comparison, **Exhibit K-1** is a table reporting 2020 Census population statistics for the 2021 Plan, as well as CVAP estimates from the Census Bureau’s 2016–2020 Special Tabulation.

63. **Exhibit K-2** is a set of maps depicting the 2021 Plan, zooming in on each of the 14 districts under the 2021 Plan.

64. **Exhibit K-3** details district assignments by county population in the 2021 Plan.

### **C. Communities of Interest**

65. In the development of the Illustrative Plan, I prioritized keeping counties whole and minimizing unnecessary county splits. For example, as Illustrative CD 6 (which includes just three Cobb County splits) makes clear, there is no reason to split Cobb County into four pieces (i.e., four splits), as under the 2021 Plan.

66. I also endeavored to keep municipalities intact and avoid splitting VTDs (in that order of priority) wherever possible. In many instances there are geographic conflicts between municipality lines and VTD lines, such that keeping one geographic level whole might require splitting the other.

67. These three levels of geography—counties, municipalities, and VTDs—together with census tracts and census block groups are the best way to achieve a quantifiable measure of the extent to which a redistricting plan respects communities of interest.

68. Going beyond these quantifiable measures of communities of interest, it simply makes more sense to anchor Illustrative CD 6 in the western part of Metro Atlanta. As the Illustrative Plan demonstrates, CD 6 can be drawn in a compact fashion that keeps Atlanta-area urban/suburban/exurban voters together. In sharp contrast, the 2021 Plan—its treatment of Cobb County in particular—inexplicably mixes Appalachian North Georgia with urban/suburban Metro Atlanta. In some redistricting plans, it might be necessary to mix urban and rural voters in a sprawling congressional district. But that is not the case here: Cobb County can be combined in a congressional district with all or part of Douglas, Fulton, and Fayette Counties, all of which are core Metro Atlanta counties under the Atlanta Regional Commission map. Illustrative CD 6 thus unites Georgians in the Metro Atlanta area with shared interests and concerns.

69. In Cobb County, the Illustrative Plan assigns all but noncontiguous zero-population areas of Marietta to CD 6. Kennesaw (population 33,036) is split between CD 6 and CD 11.<sup>11</sup> (See **Exhibit M-3**.) By contrast, the 2021 Plan divides populated areas of Marietta (population 60,972) between CD 6 and CD 11 and also divides

---

<sup>11</sup> I placed the east end of Kennesaw in Illustrative CD 6—namely, two whole VTDs (Big Shanty 01 and Kennesaw 1A) and part of another (Kennesaw 3A). Big Shanty 01 contains a group of noncontiguous populated blocks surrounded by the oddly shaped Kennesaw 3A; I split Kennesaw 3A following two census-defined block group boundaries.

populated areas of Smyrna (population 55,663) between CD 11 and CD 13. (See **Exhibit M-4.**)

70. Douglas County is entirely in CD 6 in the Illustrative Plan. The 2021 Plan divides Douglas County between CD 6 and CD 11, splitting Douglasville (population 34,650). (See **Exhibit M-4.**)

71. In Fulton County, the Illustrative Plan and the 2021 Plan follow the boundary of CD 5, which is identical in both plans.

72. Illustrative CD 6 extends into Fayette County to ensure that CD 13 is not overpopulated. In order to meet zero-deviation requirements, the dividing line between Illustrative CD 6 and Illustrative CD 13 generally follows the municipal boundary of Tyrone (population 7,658). (See **Exhibit M-3.**) By contrast, in Fayette County, the 2021 Plan divides populated areas of Fayetteville (population 18,957) between CD 13 and CD 3. (See **Exhibit M-4.**)

[Intentionally Blank]



#### D. BVAP and BCVAP by District

73. Notably, the Illustrative Plan does not reduce the number of preexisting majority-Black districts in the 2021 Plan. For reference, **Figure 14** compares BVAP and BCVAP under the Illustrative Plan and the 2021 Plan. The eight districts that change are identified with a bolded font.

**Figure 14**  
**BVAP and BCVAP Comparison: Illustrative Plan and 2021 Plan**

District*	Illustrative Plan				2021 Plan		
	% BVAP	% NH BCVAP	% NH DOJ BCVAP		% BVAP	% NH BCVAP	% NH DOJ BCVAP
1	28.17%	29.16%	29.67%		28.17%	29.16%	29.67%
2	49.29%	49.55%	50.001%		49.29%	49.55%	50.001%
<b>3</b>	<b>20.47%</b>	<b>19.64%</b>	<b>20.02%</b>		<b>23.32%</b>	<b>22.53%</b>	<b>22.86%</b>
<b>4</b>	<b>52.77%</b>	<b>55.62%</b>	<b>56.37%</b>		<b>54.52%</b>	<b>57.71%</b>	<b>58.46%</b>
5	49.60%	51.64%	52.35%		49.60%	51.64%	52.35%
<b>6</b>	<b>50.23%</b>	<b>50.18%</b>	<b>50.98%</b>		<b>9.91%</b>	<b>9.72%</b>	<b>10.26%</b>
7	29.82%	31.88%	32.44%		29.82%	31.88%	32.44%
8	30.04%	30.46%	30.76%		30.04%	30.46%	30.76%
<b>9</b>	<b>11.66%</b>	<b>11.29%</b>	<b>11.74%</b>		<b>10.42%</b>	<b>10.03%</b>	<b>10.34%</b>
<b>10</b>	<b>14.31%</b>	<b>15.09%</b>	<b>15.39%</b>		<b>22.60%</b>	<b>22.11%</b>	<b>22.56%</b>
<b>11</b>	<b>13.67%</b>	<b>12.91%</b>	<b>13.48%</b>		<b>17.95%</b>	<b>17.57%</b>	<b>18.30%</b>
12	36.72%	36.60%	37.19%		36.72%	36.60%	37.19%
<b>13</b>	<b>51.13%</b>	<b>49.64%</b>	<b>50.34%</b>		<b>66.75%</b>	<b>66.36%</b>	<b>67.05%</b>
<b>14</b>	<b>5.17%</b>	<b>4.80%</b>	<b>5.19%</b>		<b>14.28%</b>	<b>13.19%</b>	<b>13.71%</b>

\*Bold font identifies districts that are changed from the 2021 Plan configuration.

[Intentionally Blank]

**E. VAP by Race in Majority-Black and Majority-White Districts**

74. As shown in **Figure 15**, only about half (49.96%) of Black voters in Georgia reside in a majority-Black congressional district under the 2021 Plan. Under the Illustrative Plan, 57.48% of the Black VAP would reside in a majority-Black district—still far lower than the corresponding 75.50% NH White VAP residing in majority-White districts.

**Figure 15**  
**Same-Race VAP in Majority-Black and Majority-White Districts: 2021 Plan and Illustrative Plan**

<b>Redistricting Plan</b>	<b>% Black VAP in Majority-Black Districts</b>	<b>%NH White VAP in Majority-White Districts</b>	<b>Difference (% Black VAP minus % NH White VAP)</b>
2021 Plan	49.96%	82.47%	-32.51%
Illustrative Plan	57.48%	75.50%	-18.01%

**F. Online Interactive Map**

75. The Illustrative Plan can be viewed in detail and analyzed on the Dave’s Redistricting website at the following link: <https://davesredistricting.org/join/acc0684b-36b9-4b85-8049-ffb67a63aa57>.

76. For comparison, the 2021 Plan can also be viewed and analyzed on the Dave’s Redistricting website at the following link: <https://davesredistricting.org/join/385b8d71-ecdb-4767-80d9-ebd75b8d8c63>.

77. Alternatively, the Illustrative Plan can be viewed with a red-line overlay of the 2021 Plan on the Maptitude Online website at the following link: <https://online.caliper.com/mas-874-drp-290-ujr/maps/lahchqqg000g8gqi3qx9>.

#### **G. Supplemental Plan Information and Comparisons**

78. Compactness scores for the Illustrative Plan are about the same as the 2021 Plan—and within the norm in Georgia and elsewhere.<sup>12</sup> **Exhibit L-1** contains compactness scores generated by Maptitude for the Illustrative Plan. Corresponding scores for the 2012 Benchmark Plan and 2021 Plan are in **Exhibit L-2** and **Exhibit L-3**.

[Intentionally Blank]

---

<sup>12</sup> See, for example, the comparison of compactness scores across all states by the geospatial firm Azavea in their white paper titled *Redrawing the Map on Redistricting: 2012 Addendum*, available at: [https://redistricting.azavea.com/assets/pdfs/Azavea\\_Redistricting-White-Paper-Addendum-2012\\_sm.pdf](https://redistricting.azavea.com/assets/pdfs/Azavea_Redistricting-White-Paper-Addendum-2012_sm.pdf).

79. **Figure 13** (condensed from the Exhibit L series) is a summary, reporting the mean averages and low scores for the Reock<sup>13</sup> and Polsby-Popper<sup>14</sup> metrics under both the Illustrative Plan and the 2021 Plan.

**Figure 13**  
**Compactness Comparison: Illustrative Plan, 2012 Benchmark, and 2021 Plan**

	Reock		Polsby-Popper	
	Mean	Low	Mean	Low
<b>Illustrative Plan</b>	.43	.28	.27	.18
<b>2012 Benchmark</b>	.45	.33	.26	.16
<b>2021 Plan</b>	.44	.31	.27	.16

80. **Exhibit M-1** contains a county and VTD split report generated by Maptitude for the Illustrative Plan. **Exhibit M-2** and **Exhibit M-3** are corresponding split reports for the 2012 Benchmark Plan and the 2021 Plan. **Exhibit M-4** contains the Illustrative Plan’s municipal split report for the 531 incorporated cities and towns. **Exhibit M-5** and **Exhibit M-6** are corresponding split reports for the 2012 Benchmark Plan and the 2021 Plan.

---

<sup>13</sup> As the Maptitude for Redistricting software documentation (authored by the Caliper Corporation) explains, “[t]he Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact. The Reock test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.”

<sup>14</sup> As the Maptitude for Redistricting software documentation (authored by the Caliper Corporation) explains, “[t]he Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter:  $4\pi\text{Area}/(\text{Perimeter}^2)$ . The measure is always between 0 and 1, with 1 being the most compact. The Polsby-Popper test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.”

81. **Figure 14** summarizes county, 2020 VTD, and municipal splits under the Illustrative Plan, the 2012 Benchmark Plan, and the 2021 Plan.

**Figure 14**  
**County, VTD, and Municipal Splits: Illustrative Plan, 2012 Benchmark, and 2021 Plan (All Districts)**

	Split Counties*	County Splits*	2020 VTD Splits*	Split Cities/Towns <sup>#</sup>	City/Town Splits*
<b>Illustrative Plan</b>	15	18	43	37	78
<b>2012 Benchmark Plan</b>	16	22	43	40	85
<b>2021 Plan</b>	15	21	46	43	91

\*Excludes unpopulated areas

<sup>#</sup>Out of 531 municipalities (calculated by subtracting the number of whole cities in the Maptitude report from 531)

82. The Illustrative Plan and 2021 Plan both split 15 counties. But, as Figure 14 reveals, the Illustrative Plan is superior across the other four categories: **(1)** total county splits (counting multiple splits, i.e., unique county-district combinations in a single county)—18 vs. 21 splits; **(2)** 2020 VTD splits (counting multiple splits and excluding unpopulated areas)—43 vs. 46 splits, **(3)** split municipalities (out of 531)—37 vs. 43 splits; and **(4)** total municipal splits (excluding unpopulated areas)—78 vs. 91 splits.

## **H. County and Municipal Socioeconomic Characteristics**

83. For background on socioeconomic characteristics by race and ethnicity at the state, MSA, county, municipal, and unincorporated-community levels in

Georgia, I have prepared charts based on the 5-Year 2015–2019 ACS. That data is available online.<sup>15</sup>

84. In addition, I have prepared charts and reproduced the U.S. Census Bureau’s Table S0201<sup>16</sup> statistical summaries of socioeconomic characteristics from the 1-Year 2021 ACS for Georgia, the two most populous MSAs in the state (Atlanta and Augusta-Richmond County), and the four most populous counties of the Atlanta MSA (Cobb, Dekalb, Fulton, and Gwinnett). Statistics for other, less populous counties are not available in the S0201 series.

85. These charts and data tables document that socioeconomic disparities by race exist at the county and municipal levels throughout Georgia. In an almost unbroken fashion, NH Whites maintain higher levels of socioeconomic well-being.

## **V. CONCLUSION**

86. The Black population in Metro Atlanta is sufficiently numerous and geographically compact to allow for the creation of an additional majority-Black congressional district consistent with traditional redistricting principles, anchored in

---

<sup>15</sup> The county-level data is available at [http://www.fairdata2000.com/ACS\\_2015\\_19/Georgia](http://www.fairdata2000.com/ACS_2015_19/Georgia); the community-level data is available at [http://www.fairdata2000.com/ACS\\_2015\\_19/Georgia/00\\_Places\\_2500+](http://www.fairdata2000.com/ACS_2015_19/Georgia/00_Places_2500+); and the state-, metro counties-, and MSA-level data is available at [http://www.fairdata2000.com/ACS\\_2021/Georgia](http://www.fairdata2000.com/ACS_2021/Georgia).

<sup>16</sup> The full S0201 data is available at [https://data.census.gov/cedsci/table?text=s0201&t=001%3A005%3A451&g=0400000US13,13%240500000\\_0500000US13067,13089,13121,13135\\_310XX00US12060,12260&y=2021](https://data.census.gov/cedsci/table?text=s0201&t=001%3A005%3A451&g=0400000US13,13%240500000_0500000US13067,13089,13121,13135_310XX00US12060,12260&y=2021).

Cobb, Fulton and Douglas Counties, without reducing the number of majority-Black districts in the 2021 Plan.

87. The Illustrative Plan creates an additional majority-Black district in Metro Atlanta, where the Black population has increased by 938,006 persons since 2000—accounting for 75.1% of the statewide Black population increase this century—and where, according to the Governor’s Office of Planning and Budget, the Black population will continue to increase over the course of this decade.<sup>17</sup>

###

---

<sup>17</sup> Source: <https://opb.georgia.gov/census-data/population-projections>.

I reserve the right to continue to supplement my report in light of additional facts, testimony, and/or materials that might come to light.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 5, 2022

A handwritten signature in black ink that reads "Bill Cooper". The signature is written in a cursive, slightly slanted style.

---

WILLIAM S. COOPER



**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT A**

*William S. Cooper*  
*P.O. Box 16066*  
*Bristol, VA 24209*  
*276-669-8567*  
*bcooper@msn.com*

### **Summary of Redistricting Work**

I have a B.A. in Economics from Davidson College in Davidson, North Carolina.

Since 1986, I have prepared proposed redistricting maps of approximately 750 jurisdictions for Section 2 litigation, Section 5 comment letters, and for use in other efforts to promote compliance with the Voting Rights Act of 1965. I have analyzed and prepared election plans in over 100 of these jurisdictions for two or more of the decennial censuses – either as part of concurrent legislative reapportionments or, retrospectively, in relation to litigation involving many of the cases listed below.

From 1986 to 2022, I have prepared election plans for Section 2 litigation in Alabama, Connecticut, Florida, Georgia, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming.

### **Post-2020 Redistricting Experience**

Since the release of the 2020 Census, three county commission-level plans I developed as a private consultant have been adopted by local governments in San Juan County, Utah, Bolivar County, Miss., and Washington County, Miss. In addition, a school board plan I developed was adopted by the Jefferson County, Alabama Board of Education (*Stout v. Jefferson County*).

In 2022, I have testified at trial in seven Sec. 2 lawsuits: Alabama (Congress), Arkansas (Supreme and Appellate Courts), Florida (voter suppression), Georgia (State

House, State Senate, and Congress), Louisiana (Congress) and Maryland (Baltimore County Commission).

### **2010s Redistricting Experience**

I developed statewide legislative plans on behalf of clients in nine states (Alabama, Connecticut, Florida, Georgia, Kentucky, Mississippi, South Carolina, Texas, and Virginia), as well as over 150 local redistricting plans in approximately 30 states – primarily for groups working to protect minority voting rights. In addition, I have prepared congressional plans for clients in eight states (Alabama, Florida, Georgia, Louisiana, Maryland, Ohio, Pennsylvania, South Carolina, and Virginia).

In March 2011, I was retained by the Sussex County, Virginia Board of Supervisors and the Bolivar County, Mississippi Board of Supervisors to draft new district plans based on the 2010 Census. In the summer of 2011, both counties received Section 5 preclearance from the U.S. Department of Justice (DOJ).

Also in 2011, I was retained by way of a subcontract with Olmedillo X5 LLC to assist with redistricting for the Miami-Dade County, Florida Board of Commissioners and the Miami-Dade, Florida School Board. Final plans were adopted in late 2011 following public hearings.

In the fall of 2011, I was retained by the City of Grenada, Mississippi to provide redistricting services. The ward plan I developed received DOJ preclearance in March 2012.

In 2012 and 2013, I served as a redistricting consultant to the Tunica County, Mississippi Board of Supervisors and the Claiborne County, Mississippi Board of Supervisors.

In *Montes v. City of Yakima* (E.D. Wash. Feb. 17, 2015) the court adopted, as a remedy for the Voting Rights Act Section 2 violation, a seven single-member district plan

that I developed for the Latino plaintiffs. I served as the expert for the Plaintiffs in the liability and remedy phases of the case.

In *Pope v. Albany County* (N.D.N.Y. Mar. 24, 2015), the court approved, as a remedy for a Section 2 violation, a plan drawn by the defendants, creating a new Black-majority district. I served as the expert for the Plaintiffs in the liability and remedy phases of the case.

In 2016, two redistricting plans that I developed on behalf of the plaintiffs for consent decrees in Section 2 lawsuits in Georgia were adopted (*NAACP v. Fayette County, Georgia* and *NAACP v. Emanuel County, Georgia*).

In 2016, two federal courts granted summary judgment to the plaintiffs based in part on my *Gingles 1* testimony: *Navajo Nation v. San Juan County, Utah* (C.D. Utah 2016) and *NAACP v. Ferguson-Florissant School District, Missouri* (E. D. Mo. August 22, 2016).

Also in 2016, based in part on my analysis, the City of Pasco, Washington admitted to a Section 2 violation. As a result, in *Glatt v. City of Pasco* (E.D. Wash. Jan. 27, 2017), the court ordered a plan that created three Latino majority single-member districts in a 6 district, 1 at-large plan.

In 2018, I served as the redistricting consultant to the Governor Wolf interveners at the remedial stage of *League of Women Voters, et al. v. Commonwealth of Pennsylvania*.

In August 2018, the Wenatchee City Council adopted a hybrid election plan that I developed – five single-member districts with two members at-large. The Wenatchee election plan is the first plan adopted under the Washington Voting Rights Acts of 2018.

In February 2019, a federal court ruled in favor of the plaintiffs in a Section 2 case regarding Senate District 22 in Mississippi, based in part on my *Gingles 1* testimony in *Thomas v. Bryant* (S.D. Ms. Feb 16, 2019).

In the summer of 2019, I developed redistricting plans for the Grand County (Utah) Change of Form of Government Study Committee.

In the fall of 2019, a redistricting plan I developed for a consent decree involving the Jefferson County, Alabama Board of Education was adopted *Traci Jones, et al. v. Jefferson County Board of Education, et al.*

In May 2020, a federal court ruled in favor of the plaintiffs in a Section 2 case in *NAACP et al. v. East Ramapo Central School District, NY*, based in part on my *Gingles* 1 testimony. In October 2020, the federal court adopted a consent decree plan I developed for elections to be held in February 2021.

In May and June of 2020, I served as a consultant to the City of Quincy, Florida – the Defendant in a Section 2 lawsuit filed by two Anglo voters (*Baroody v. City of Quincy*). The federal court for the Northern District of Florida ruled in favor of the Defendants. The Plaintiffs voluntarily dismissed the case.

In the summer of 2020, I provided technical redistricting assistance to the City of Chestertown, Maryland.

I am currently a redistricting consultant and expert for the plaintiffs in *Jayla Allen v. Waller County, Texas*. I testified remotely at trial in October 2020.

Since 2011, I have served as a redistricting and demographic consultant to the Massachusetts-based Prison Policy Initiative for a nationwide project to end prison-based gerrymandering. I have analyzed proposed and adopted election plans in about 25 states as part of my work.

In 2018 (Utah) and again in 2020 (Arizona), I have provided technical assistance to the Rural Utah Project for voter registration efforts on the Navajo Nation Reservation.

**Post-2010 Demographics Experience**

My trial testimony in Section 2 lawsuits usually includes presentations of U.S. Census data with charts, tables, and/or maps to demonstrate socioeconomic disparities between non-Hispanic Whites and racial or ethnic minorities.

I served as a demographic expert for plaintiffs in four state-level voting cases related to the Covid-19 pandemic (South Carolina, Alabama, and Louisiana) and state court in North Carolina.

I have also served as an expert witness on demographics in non-voting trials. For example, in an April 2017 opinion in *Stout v. Jefferson County Board of Education* (Case no.2:65-cv-00396-MHH), a school desegregation case involving the City of Gardendale, Ala., the court made extensive reference to my testimony.

I provide technical demographic and mapping assistance to the Food Research and Action Center (FRAC) in Washington D.C and their constituent organizations around the country. Most of my work with FRAC involves the Summer Food Program and Child and Adult Care Food Program. Both programs provide nutritional assistance to school-age children who are eligible for free and reduced price meals. As part of this project, I developed an online interactive map to determine site eligibility for the two programs that has been in continuous use by community organizations and school districts around the country since 2003. The map is updated annually with new data from a Special Tabulation of the American Community Survey prepared by the U.S. Census Bureau for the Food and Nutrition Service of the U.S. Department of Agriculture.

### **Historical Redistricting Experience**

In the 1980s and 1990s, I developed voting plans in about 400 state and local jurisdictions – primarily in the South and Rocky Mountain West. During the 2000s and

2010s, I prepared draft election plans involving about 350 state and local jurisdictions in 25 states. Most of these plans were prepared at the request of local citizens' groups, national organizations such as the NAACP, tribal governments, and for Section 2 or Section 5 litigation.

Election plans I developed for governments in two counties – Sussex County, Virginia and Webster County, Mississippi – were adopted and precleared in 2002 by the U.S. Department of Justice. A ward plan I prepared for the City of Grenada, Mississippi was precleared in August 2005. A county supervisors' plan I produced for Bolivar County, Mississippi was precleared in January 2006.

In August 2005, a federal court ordered the State of South Dakota to remedy a Section 2 voting rights violation and adopt a state legislative plan I developed (*Bone Shirt v. Hazeltine*).

A county council plan I developed for Native American plaintiffs in a Section 2 lawsuit (*Blackmoon v. Charles Mix County*) was adopted by Charles Mix County, South Dakota in November 2005. A plan I drafted for Latino plaintiffs in Bethlehem, Pennsylvania (*Pennsylvania Statewide Latino Coalition v. Bethlehem Area School District*) was adopted in March 2009. Plans I developed for minority plaintiffs in Columbus County, North Carolina and Montezuma- Cortez School District in Colorado were adopted in 2009.

Since 1986, I have testified at trial as an expert witness on redistricting and demographics in federal courts in the following voting rights cases (approximate most recent testimony dates are in parentheses). I also filed declarations and was deposed in most of these cases.

**Alabama**

*Caster v. Merrill* (2022)

*Chestnut v. Merrill* (2019)

*Alabama State Conference of the NAACP v. Alabama* (2018)  
*Alabama Legislative Black Caucus et al. v. Alabama et al.* (2013)

**Arkansas**

*The Christian Ministerial Alliance v. Hutchinson* (2022)

**Colorado**

*Cuthair v. Montezuma-Cortez School Board* (1997)

**Florida**

*NAACP v. Lee* (2022)

*Baroody v. City of Quincy* (2020)

**Georgia**

*Pendergrass v. Raffensperger* (2022)

*Alpha Phi Alpha v. Raffensperger* (2022)

*Cofield v. City of LaGrange* (1996)

*Love v. Deal* (1995)

*Askew v. City of Rome* (1995)

*Woodard v. Lumber City* (1989)

**Louisiana**

*Galmon v. Ardoin* (2022)

*Terrebonne Parish NAACP v. Jindal, et al.* (2017)

*Wilson v. Town of St. Francisville* (1996)

*Reno v. Bossier Parish* (1995)

*Knight v. McKeithen* (1994)

**Maryland**

*NAACP v. Baltimore County* (2022)

*Cane v. Worcester County* (1994)

**Mississippi**

*Thomas v. Bryant* (2019)

*Fairley v. Hattiesburg* (2014)

*Boddie v. Cleveland School District* (2010)

*Fairley v. Hattiesburg* (2008)

*Boddie v. Cleveland* (2003)

*Jamison v. City of Tupelo* (2006)

*Smith v. Clark* (2002)

*NAACP v. Fordice* (1999)

*Addy v Newton County* (1995)

*Ewing v. Monroe County* (1995)

*Gunn v. Chickasaw County* (1995)

*Nichols v. Okolona* (1995)



**Montana**

*Old Person v. Brown (on remand) (2001)*  
*Old Person v. Cooney (1998)*

**Missouri**

*Missouri NAACP v. Ferguson-Florissant School District (2016)*

**Nebraska**

*Stabler v. Thurston County (1995)*

**New York**

*NAACP v. East Ramapo Central School District (2020)*  
*Pope v. County of Albany (2015)*  
*Arbor Hills Concerned Citizens v. Albany County (2003)*

**Ohio**

*A. Philip Randolph Institute, et al. v. Ryan (2019)*

**South Carolina**

*Smith v. Beasley (1996)*

**South Dakota**

*Bone Shirt v. Hazeltine (2004)*  
*Cottier v. City of Martin (2004)*

**Tennessee**

*Cousins v. McWherter (1994)*  
*Rural West Tennessee African American Affairs Council v. McWherter (1993)*

**Texas**

*Jayla Allen v. Waller County, Texas*

**Utah**

*Navajo Nation v. San Juan County (2017)*, brief testimony –11 declarations, 2 depositions

**Virginia**

*Smith v. Brunswick County (1991)*  
*Henderson v. Richmond County (1988)*  
*McDaniel v. Mehfoud (1988)*  
*White v. Daniel (1989)*

**Wyoming**

*Large v. Fremont County (2007)*

In addition, I have filed expert declarations or been deposed in the following cases that did not require trial testimony. The dates listed indicate the deposition date or

date of last declaration or supplemental declaration:

**Alabama**

*People First of Alabama v. Merrill* (2020), Covid-19 demographics only  
*Alabama State NAACP v. City of Pleasant Grove* (2019)  
*James v. Jefferson County Board of Education* (2019)  
*Voketz v. City of Decatur* (2018)

**Arkansas**

*Mays v. Thurston* (2020)-- Covid-19 demographics only)

**Connecticut**

*NAACP v. Merrill* (2020)

**Florida**

*Florida State Conference of the NAACP v. Lee, et al.*, (2021)  
*Calvin v. Jefferson County* (2016)  
*Thompson v. Glades County* (2001)  
*Johnson v. DeSoto County* (1999)  
*Burton v. City of Belle Glade* (1997)

**Georgia**

*Dwight v. Kemp* (2018)  
*Georgia NAACP et al. v. Gwinnett County, GA* (2018)  
*Georgia State Conference NAACP et al v. Georgia* (2018)  
*Georgia State Conference NAACP, et al. v. Fayette County* (2015)  
*Knighton v. Dougherty County* (2002)  
*Johnson v. Miller* (1998)  
*Jones v. Cook County* (1993)

**Kentucky**

*Herbert v. Kentucky State Board of Elections* (2013)

**Louisiana**

*Power Coalition for Equity and Justice v. Edwards* (2020), Covid-19 demographics only  
*Johnson v. Ardoin* (2019)  
*NAACP v. St. Landry Parish Council* (2005)  
*Prejean v. Foster* (1998)  
*Rodney v. McKeithen* (1993)

**Maryland**

*Baltimore County NAACP v. Baltimore County* (2022)  
*Benisek v. Lamone* (2017)  
*Fletcher v. Lamone* (2011)

**Mississippi**

*Partee v. Coahoma County* (2015)

*Figgs v. Quitman County* (2015)  
*West v. Natchez* (2015)  
*Williams v. Bolivar County* (2005)  
*Houston v. Lafayette County* (2002)  
*Clark v. Calhoun County (on remand)*(1993)  
*Teague v. Attala County (on remand)*(1993)  
*Wilson v. Clarksdale* (1992)  
*Stanfield v. Lee County*(1991)

**Montana**

*Alden v. Rosebud County* (2000)

**North Carolina**

*Lewis v. Alamance County* (1991)  
*Gause v. Brunswick County* (1992)  
*Webster v. Person County* (1992)

**Rhode Island**

*Davidson v. City of Cranston* (2015)

**South Carolina**

*Thomas v. Andino* (2020), Covid-19 demographics only  
*Vander Linden v. Campbell* (1996)

**South Dakota**

*Kirkie v. Buffalo County* (2004)  
*Emery v. Hunt* (1999)

**Tennessee**

*NAACP v. Frost, et al.* (2003)

**Virginia**

*Moon v. Beyer* (1990)

**Washington**

*Glatt v. City of Pasco* (2016)  
*Montes v. City of Yakima* (2014)

###

**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT B**

## **Exhibit B – Methodology and Sources**

1. In the preparation of this report, I analyzed population and geographic data from the Decennial Census and the American Community Survey.

2. For my redistricting analysis, I used a geographic information system (GIS) software package called *Maptitude for Redistricting*, developed by the Caliper Corporation. This software is deployed by many local and state governing bodies across the country for redistricting and other types of demographic analysis.

3. The geographic boundary files that I used with *Maptitude* are created from the U.S. Census 1990-2020 TIGER (Topologically Integrated Geographic Encoding and Referencing) files.

4. I used population data from the 1990-2020 PL 94-171 data files published by the U.S. Census Bureau. The PL 94-171 dataset is published in electronic format and is the complete count population file designed by the Census Bureau for use in legislative redistricting. The file contains basic race and ethnicity data on the total population and voting-age population found in units of Census geography such as states, counties, municipalities, townships, reservations, school districts, census tracts, census block groups, precincts (called voting districts or “VTDs” by the Census Bureau) and census blocks.

5. I obtained and used 2020 block-level disaggregated citizenship data (2015-2019 ACS and 2016-2020 ACS) from the Redistricting Data Hub via <https://redistrictingdatahub.org/>

6. The attorneys for the plaintiffs provided me with incumbent addresses.

7. For my analysis, I also relied on shapefiles for current and historical legislative plans available on the website of the Legislative and Congressional Reapportionment Office.

8. In addition, I obtained shapefiles for the House, Senate, and Congressional plans in effect during the early 2000's from the American Redistricting Project.

<https://thearp.org/blog/map-archive/>

9. I developed the illustrative plans presented in this report using *Maptitude for Redistricting*. The *Maptitude for Redistricting* software processes the TIGER files to produce a map for display on a computer screen. The software also merges demographic data from the PL 94-171 files to match the relevant decennial Census geography.

10. I also reviewed and used data from the American Community Survey ("ACS") conducted by the Census Bureau – specifically, the 1-year 2021 ACS, the 5-year 2015-2019 ACS, and the 5-year 2016-2020 ACS Special Tabulation of citizen population and voting age population by race and ethnicity (prepared by the

Census Bureau for the U.S. Department of Justice) and available from the link

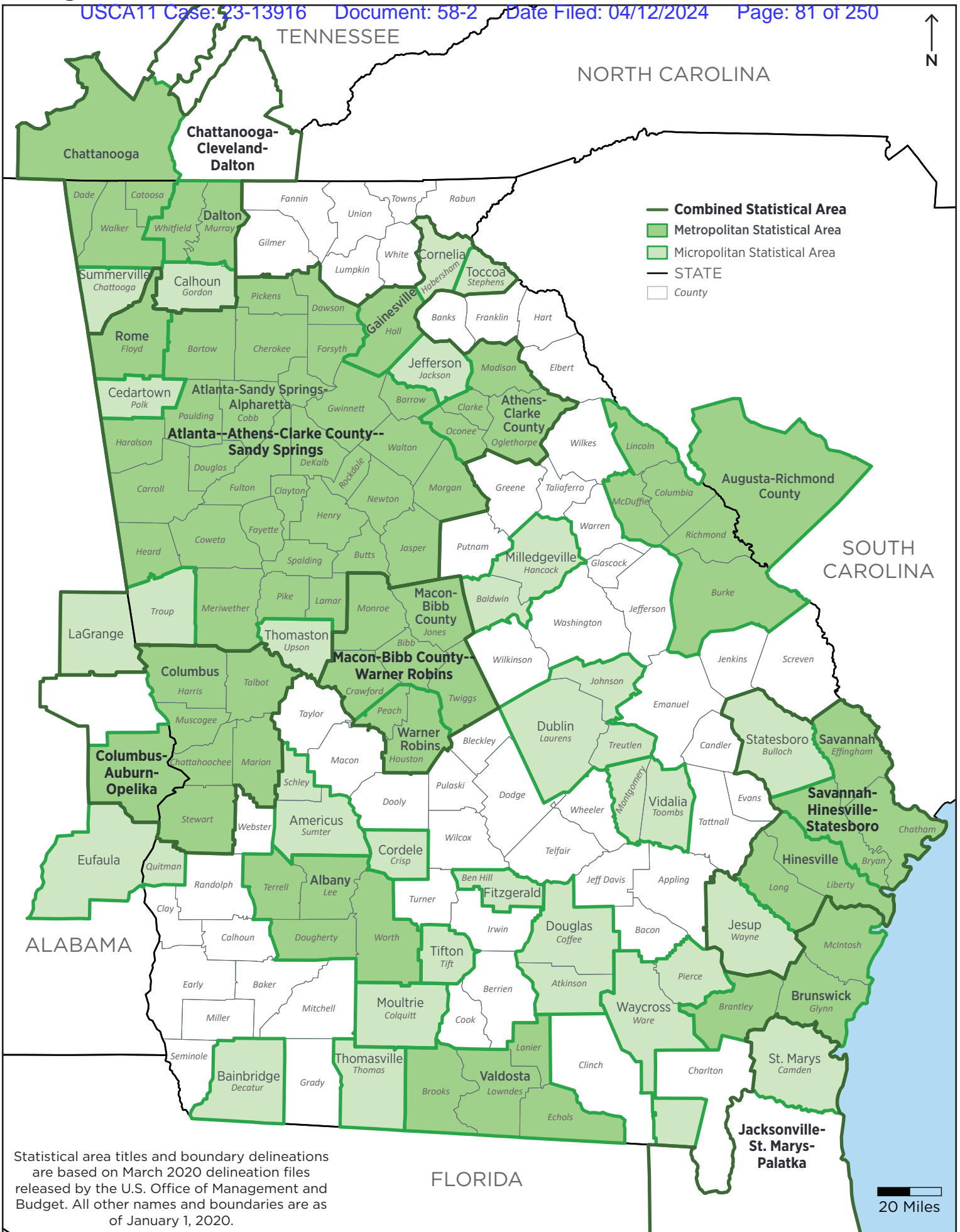
below:

<https://www.census.gov/programs-surveys/decennial-census/about/voting-rights/cvap.html>

# # #

**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT C**





**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT D**

**Metro Atlanta Black Population Change 2010-2020 by County**

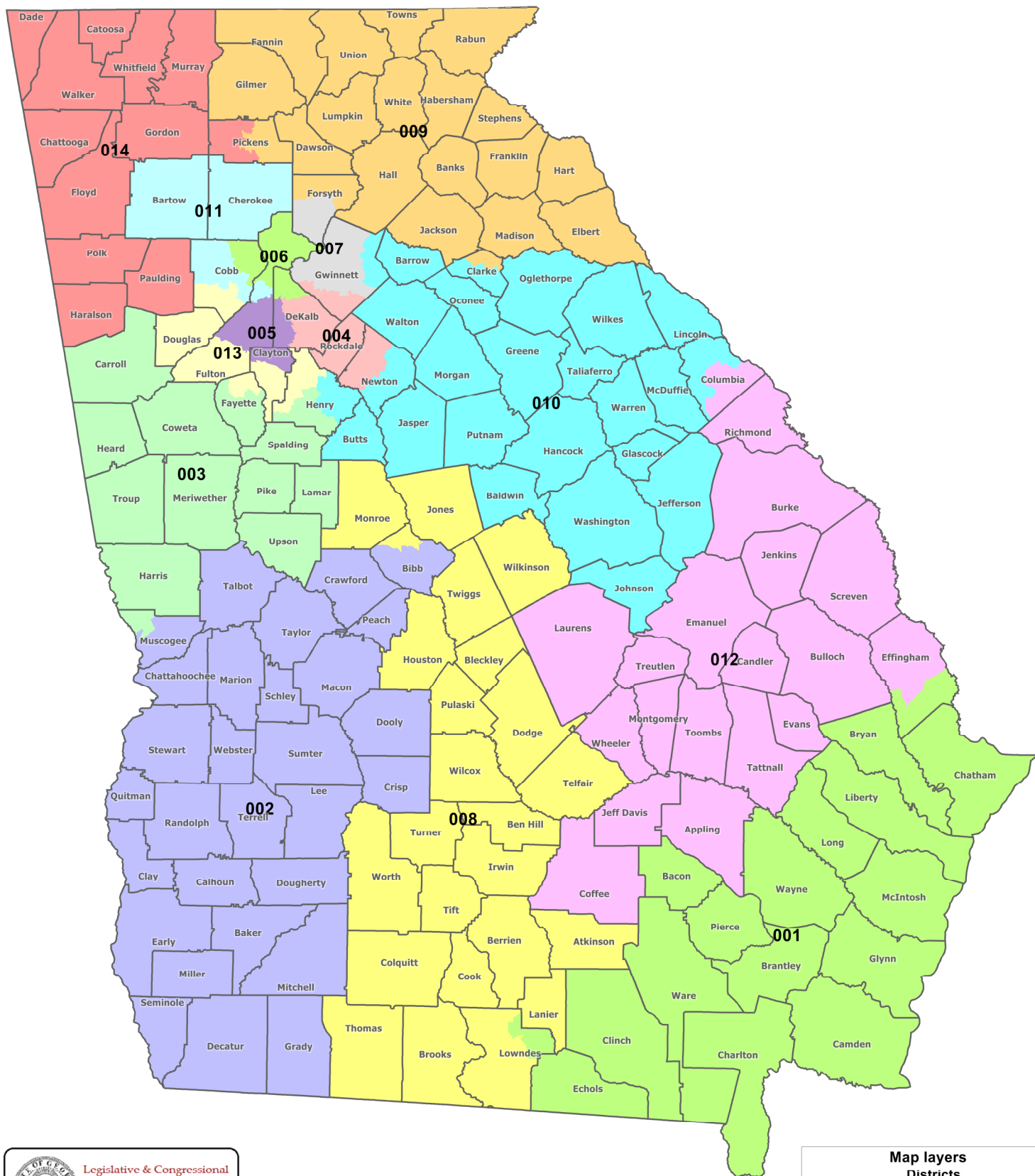
**Illustrative District 6 Counties with Highlight**

**2010 -2020 Change**

County (Metro Atlanta in Bold)	2020 Pop	AP Black	Latino	NH White	18+ Pop	18+ AP Black	18+ Latino	NH18+ White	2010 -2020 Change				
									Black Pop Pop Change	Black Pop Change	18+ Pop Change	Black 18+Pop change	% Black 18+Pop change
BARROW	83505	11907	10560	55582	62195	8222	6726	43241	14138	3287	12417	2553	45.0%
BARTOW	108901	13395	10751	80159	83570	9377	6817	63759	8744	2365	10213	2083	28.6%
BUTTS	25434	7212	803	16628	20360	5660	559	13510	1779	595	2030	564	11.1%
CARROLL	119148	24618	9586	80725	90996	17827	6129	63803	8621	3049	8593	2916	19.6%
CHEROKEE	266620	21687	32111	197867	202928	14976	20915	156155	52274	7817	47502	6222	71.1%
CLAYTON	297595	216351	42546	25902	220578	158854	27378	23396	38171	40374	36133	37475	30.9%
COBB	766149	223116	111240	369182	591848	166141	74505	303300	78071	42151	80257	41430	33.2%
COWETA	146158	28289	11053	99421	111155	20196	7384	78073	18841	5130	18670	4501	28.7%
DAWSON	26798	392	1605	23544	21441	249	1047	19183	4468	203	4194	146	141.7%
DEKALB	764382	407451	81471	215895	595276	314230	55506	180161	72489	22898	68519	34330	12.3%
DOUGLAS	144237	74260	16035	49877	108428	53377	10212	41416	11834	20007	13558	17860	50.3%
FAYETTE	119194	32076	9480	68144	91798	23728	6168	55102	12627	9578	13330	8373	54.5%
FORSYTH	251283	13222	25226	159407	181193	8751	16204	122017	75772	7917	59087	5460	165.9%
FULTON	1066710	477624	86302	404793	847182	368635	61914	340541	146129	60732	146287	62029	20.2%
GWINNETT	957062	287687	220460	310583	709484	202762	146659	252041	151741	86155	138870	71745	54.8%
HARALSON	29919	1541	497	26825	22854	1106	323	20617	1139	13	1307	44	4.1%
HEARD	11412	1142	253	9589	8698	832	153	7407	-422	-101	-88	-60	-6.7%
HENRY	240712	125211	18437	86297	179973	89657	12030	69744	36790	46914	35708	38225	74.3%
JASPER	14588	2676	684	10771	11118	1966	402	8400	688	-466	693	-306	-13.5%
LAMAR	18500	5220	475	12344	14541	4017	323	9852	183	-611	93	-577	-12.6%
MERIWETHER	20613	7547	475	12084	16526	5845	299	9994	-1379	-1204	-256	-393	-6.3%
MORGAN	20097	4339	712	14487	15574	3280	434	11452	2229	20	2145	160	5.1%
NEWTON	112483	55901	7164	46746	84748	40433	4561	37631	12525	13634	13663	12748	46.0%
PAULDING	168661	41296	12564	108444	123998	28164	7974	83066	26337	15231	24768	11767	71.8%
PICKENS	33216	512	1198	30122	26799	319	755	24626	3785	124	4005	81	34.0%
PIKE	18889	1613	348	16313	14337	1254	207	12422	1020	-333	1306	-210	-14.3%
ROCKDALE	93570	57204	9540	24500	71503	41935	6089	21457	8355	16468	9202	14643	53.7%
SPALDING	67306	24522	3666	37105	52123	17511	2377	30612	3233	2894	4261	2752	18.6%
WALTON	96673	18804	5228	68499	73098	13165	3236	53647	12905	5086	11918	4068	44.7%
<b>29-County MSA</b>	<b>6,089,815</b>	<b>2,186,815</b>	<b>730,470</b>	<b>2,661,835</b>	<b>4,654,322</b>	<b>1,622,469</b>	<b>487,286</b>	<b>2,156,625</b>	<b>803,087</b>	<b>409,927</b>	<b>768,385</b>	<b>380,629</b>	<b>30.7%</b>

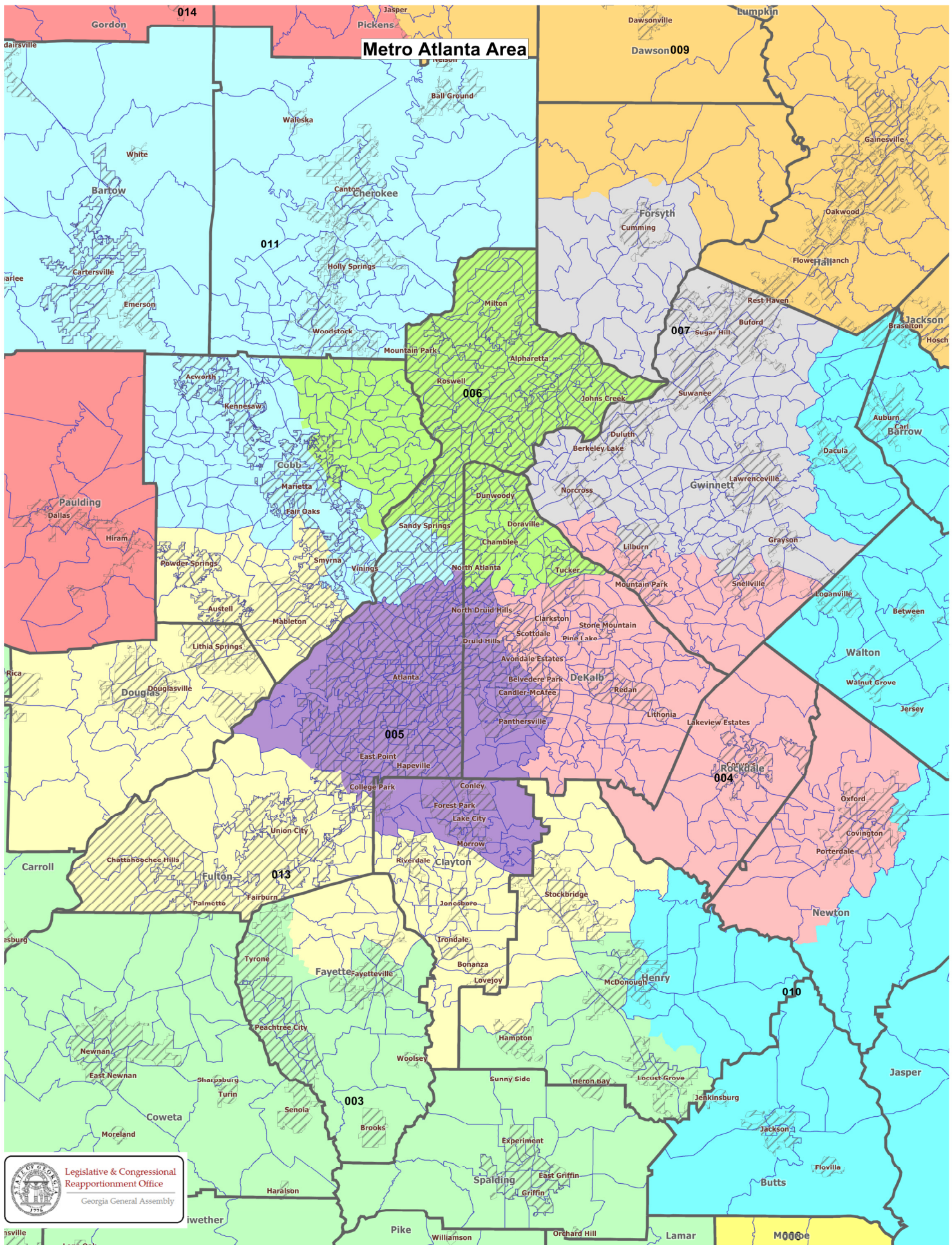
**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT E**

## Georgia Congressional Districts



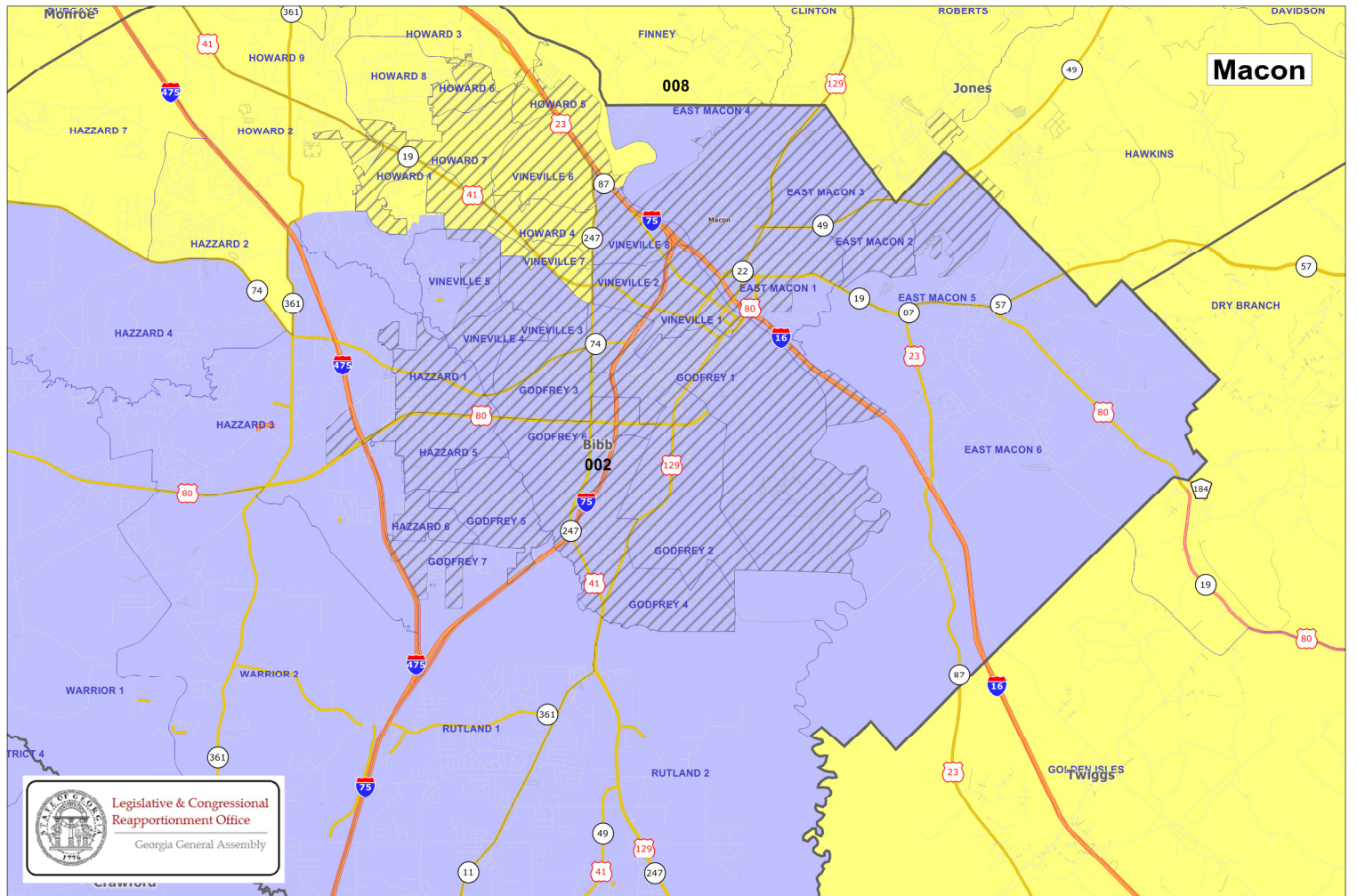
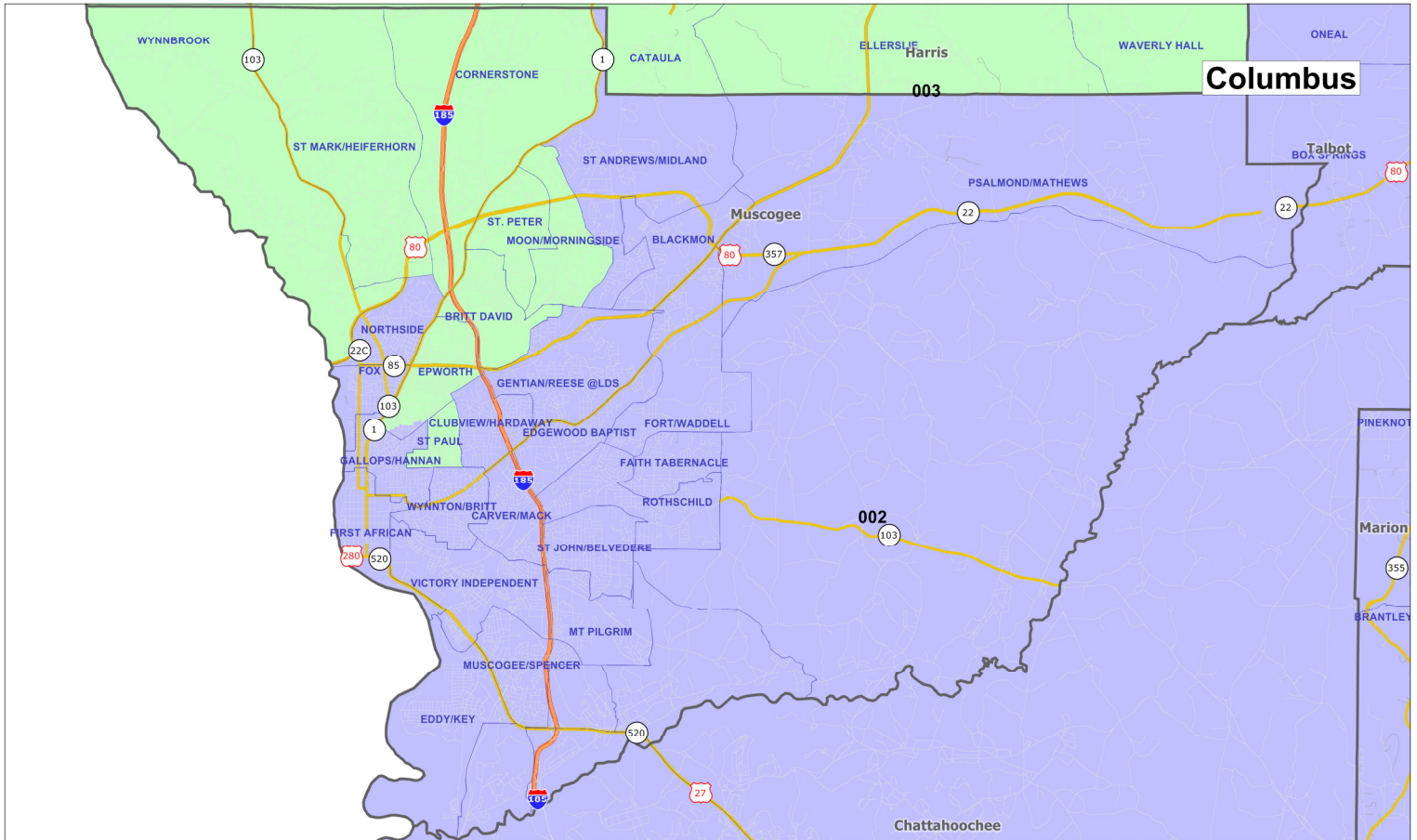


## Georgia Congressional Districts





# Georgia Congressional Districts



Plan Name: **Congress12**

Plan Type : **Congress**

User: **staff**

Administrator: **State**

DISTRICT	POPULATION	DEVIATION	% DEVIATION	BLACK	% BLACK	BLACK COMBO	TOTAL BLACK	%TOTAL BLACK	HISP. OR LATINO	%HISP
001	691,974	-1	0.00%	207,711	30.02%	8,443	216,154	31.24%	39,767	5.75%
VAP	518,743			147,082	28.35%	3,105	150,187	28.95%	25,656	4.95%
002	691,976	1	0.00%	354,925	51.29%	6,835	361,760	52.28%	31,577	4.56%
VAP	516,392			252,570	48.91%	2,847	255,417	49.46%	20,824	4.03%
003	691,974	-1	0.00%	159,578	23.06%	7,034	166,612	24.08%	34,910	5.04%
VAP	511,518			112,315	21.96%	2,247	114,562	22.40%	22,243	4.35%
004	691,976	1	0.00%	397,911	57.50%	10,608	408,519	59.04%	64,605	9.34%
VAP	503,508			278,767	55.36%	5,240	284,007	56.41%	41,041	8.15%
005	691,976	1	0.00%	409,269	59.14%	9,031	418,300	60.45%	54,614	7.89%
VAP	541,900			306,497	56.56%	5,708	312,205	57.61%	37,210	6.87%
006	691,975	0	0.00%	86,265	12.47%	6,771	93,036	13.44%	92,409	13.35%
VAP	519,046			64,149	12.36%	3,330	67,479	13.00%	62,253	11.99%
007	691,975	0	0.00%	125,010	18.07%	8,298	133,308	19.26%	129,930	18.78%
VAP	489,868			83,770	17.10%	3,453	87,223	17.81%	82,112	16.76%
008	691,976	1	0.00%	204,995	29.62%	5,455	210,450	30.41%	39,578	5.72%
VAP	518,240			145,966	28.17%	1,898	147,864	28.53%	25,129	4.85%
009	691,975	0	0.00%	46,065	6.66%	3,675	49,740	7.19%	79,413	11.48%
VAP	520,856			33,384	6.41%	1,014	34,398	6.60%	46,597	8.95%
010	691,976	1	0.00%	172,398	24.91%	5,577	177,975	25.72%	32,589	4.71%
VAP	521,343			123,759	23.74%	1,963	125,722	24.12%	20,668	3.96%
011	691,975	0	0.00%	107,707	15.57%	7,554	115,261	16.66%	75,109	10.85%
VAP	512,598			76,732	14.97%	3,130	79,862	15.58%	47,452	9.26%
012	691,975	0	0.00%	238,190	34.42%	7,297	245,487	35.48%	36,890	5.33%
VAP	518,253			169,848	32.77%	2,741	172,589	33.30%	23,384	4.51%
013	691,976	1	0.00%	382,493	55.28%	11,657	394,150	56.96%	71,303	10.30%
VAP	495,652			262,130	52.89%	5,163	267,293	53.93%	43,142	8.70%
014	691,974	-1	0.00%	57,918	8.37%	5,428	63,346	9.15%	70,995	10.26%
VAP	508,184			40,501	7.97%	1,480	41,981	8.26%	41,291	8.13%



Plan Name: **Congress12**

Plan Type : **Congress**

User: **staff**

Administrator: **State**

DISTRICT	POPULATION	DEVIATION	% DEVIATION	BLACK	% BLACK	BLACK COMBO	TOTAL BLACK	%TOTAL BLACK	HISP. OR LATINO	%HISP
----------	------------	-----------	----------------	-------	------------	----------------	----------------	-----------------	--------------------	-------

Total Population: 9,687,653

Ideal Value: 691,975

**Summary Statistics**

Population Range: 691,974 to 691,976

Absolute Overall Range: 2

Relative Range: 0.00% to 0.00%

Relative Overall Range: 0.00%

**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT F**

**Georgia U.S. House -- 2020 Census -- 2012 Benchmark Plan**

District	Population	Deviation	% Deviation	AP Black	% AP Black	Latino	% Latino	NH White	% NH White
01	755781	-9355	-1.22%	230595	30.51%	59037	7.81%	431902	57.15%
02	673028	-92108	-12.04%	357993	53.19%	38403	5.71%	259967	38.63%
03	763075	-2061	-0.27%	210025	27.52%	49428	6.48%	467888	61.32%
04	773761	8625	1.13%	478654	61.86%	84862	10.97%	160581	20.75%
05	788126	22990	3.00%	450410	57.15%	65869	8.36%	229087	29.07%
06	765793	657	0.09%	111594	14.57%	107495	14.04%	425616	55.58%
07	859440	94304	12.33%	192903	22.45%	179379	20.87%	327075	38.06%
08	719919	-45217	-5.91%	234178	32.53%	49867	6.93%	410808	57.06%
09	775367	10231	1.34%	58090	7.49%	102240	13.19%	580920	74.92%
10	775012	9876	1.29%	204453	26.38%	52350	6.75%	480661	62.02%
11	802515	37379	4.89%	147155	18.34%	101218	12.61%	501446	62.48%
12	738624	-26512	-3.47%	270885	36.67%	49500	6.70%	390796	52.91%
13	792916	27780	3.63%	509032	64.20%	95919	12.10%	164627	20.76%
14	728551	-36585	-4.78%	82179	11.28%	87890	12.06%	530782	72.85%
<b>Total</b>	<b>10711908</b>		<b>24.37%</b>	<b>3538146</b>	<b>33.03%</b>	<b>1123457</b>	<b>10.49%</b>	<b>5362156</b>	<b>50.06%</b>

District	18+ Pop	18+ SR Black	% 18+ SR Black	18+ AP Black	% 18+ AP Black	18+ Latino	% 18+ Latino	18+ NH White	% 18+ NH White
01	582105	157603	27.07%	165850	28.49%	39826	6.84%	349176	59.99%
02	518145	257952	49.78%	264896	51.12%	25509	4.92%	214262	41.35%
03	583475	144198	24.71%	151383	25.95%	32235	5.52%	373021	63.93%
04	587002	342687	58.38%	357025	60.82%	55810	9.51%	136384	23.23%
05	635913	337506	53.07%	350672	55.14%	47194	7.42%	200864	31.59%
06	589600	76565	12.99%	85256	14.46%	72875	12.36%	342630	58.11%
07	635791	125592	19.75%	136048	21.40%	120021	18.88%	261700	41.16%
08	549306	163622	29.79%	169305	30.82%	32639	5.94%	328086	59.73%
09	603376	37833	6.27%	41315	6.85%	64783	10.74%	471167	78.09%
10	599155	143138	23.89%	149396	24.93%	34397	5.74%	386676	64.54%
11	622759	100488	16.14%	109414	17.57%	67723	10.87%	404958	65.03%
12	565091	189400	33.52%	197124	34.88%	32450	5.74%	313867	55.54%
13	596630	359769	60.30%	373783	62.65%	62186	10.42%	140659	23.58%
14	551926	52066	9.43%	56519	10.24%	55270	10.01%	418883	75.89%
<b>Total</b>	<b>8220274</b>	<b>2488419</b>	<b>30.27%</b>	<b>2607986</b>	<b>31.73%</b>	<b>742918</b>	<b>9.04%</b>	<b>4342333</b>	<b>52.82%</b>

District	% NH Single-Race Black CVAP*	% Latino CVAP	% NH Single-Race Asian CVAP*	% SR NH White CVAP
001	30.09%	4.47%	1.55%	62.88%
002	51.78%	2.96%	1.00%	43.47%
003	24.88%	3.61%	1.60%	69.06%
004	63.91%	3.95%	3.45%	27.85%
005	59.21%	3.50%	3.41%	33.18%
006	15.20%	5.78%	8.07%	70.14%
007	22.46%	9.90%	11.84%	54.91%
008	31.28%	3.20%	1.28%	63.51%
009	7.15%	5.32%	1.12%	85.39%
010	25.49%	3.29%	1.89%	68.68%
011	17.37%	5.62%	2.67%	73.54%
012	35.23%	3.75%	1.45%	58.83%
013	61.85%	5.45%	2.46%	29.45%
014	9.57%	5.27%	0.85%	83.31%

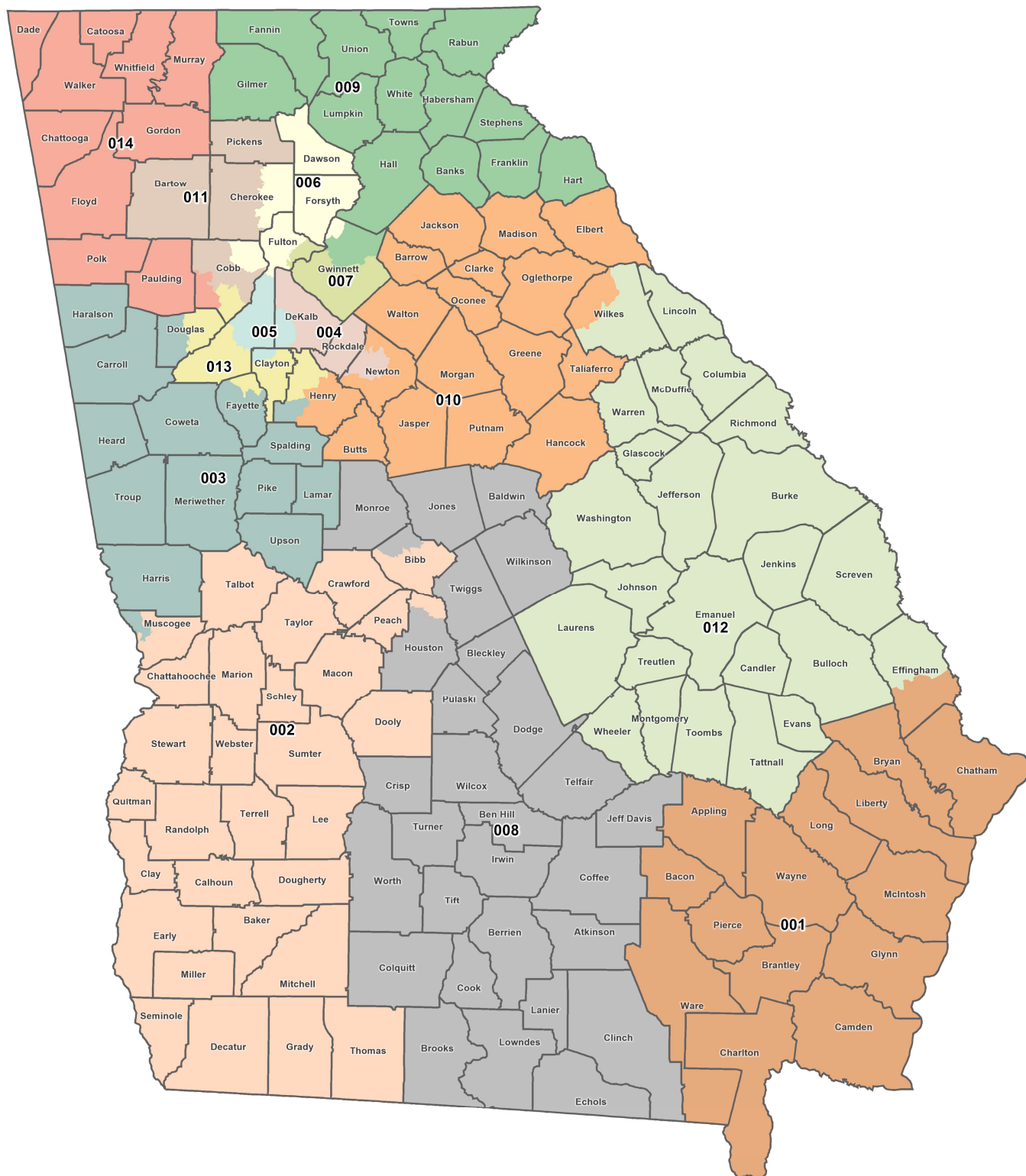
Note: Citizen Voting Age Population (CVAP) percentages are disaggregated from block-group level ACS estimates (with a survey midpoint of July 2017)

Source for CVAP disaggregation: Redistricting Data Hub

<https://redistrictingdatahub.org/dataset/georgia-cvap-data-disaggregated-to-the-2020-block-level-2019/>

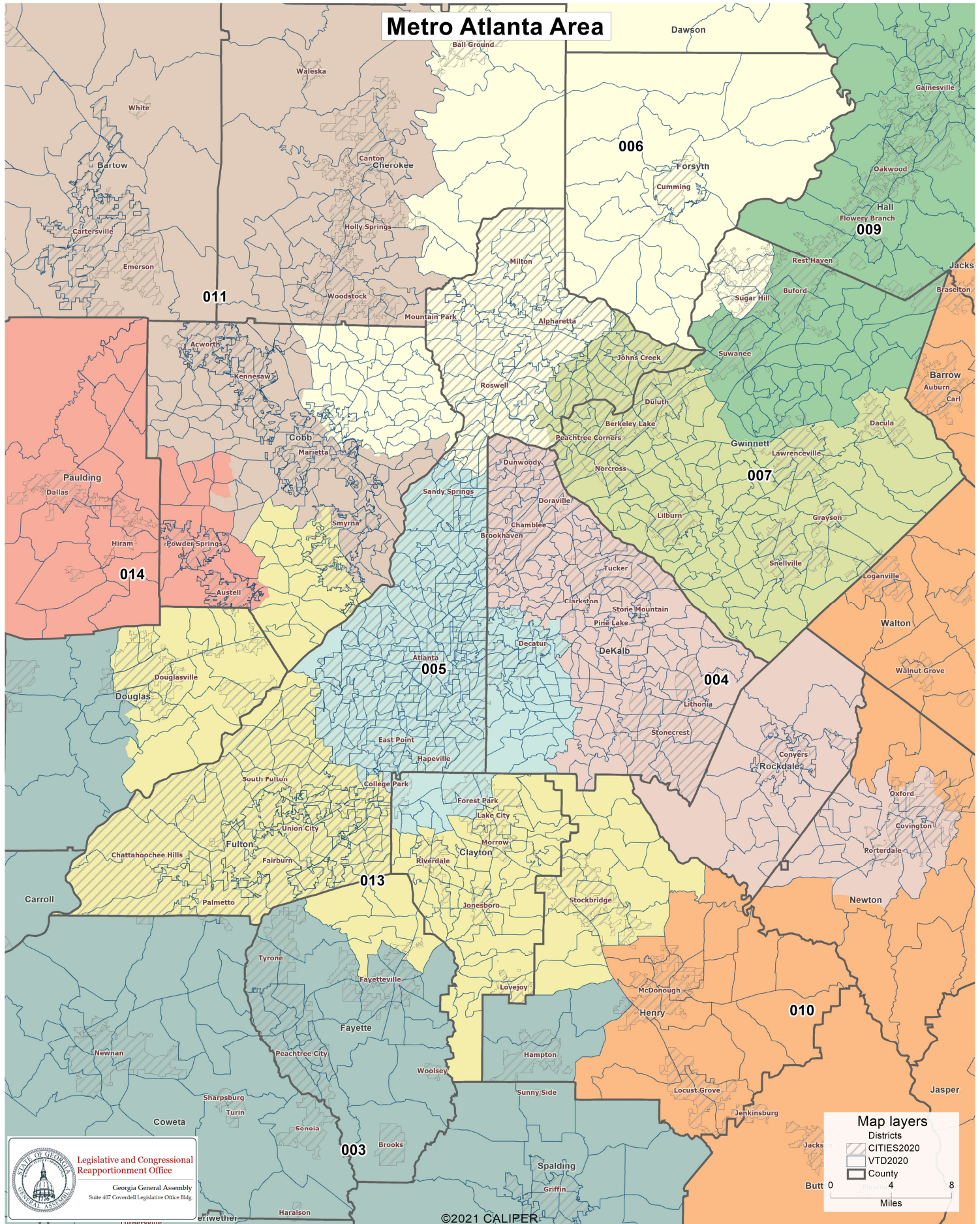
**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT G**

# Proposed Joint Congressional Districts of Georgia





# Proposed Joint Congressional Districts of Georgia

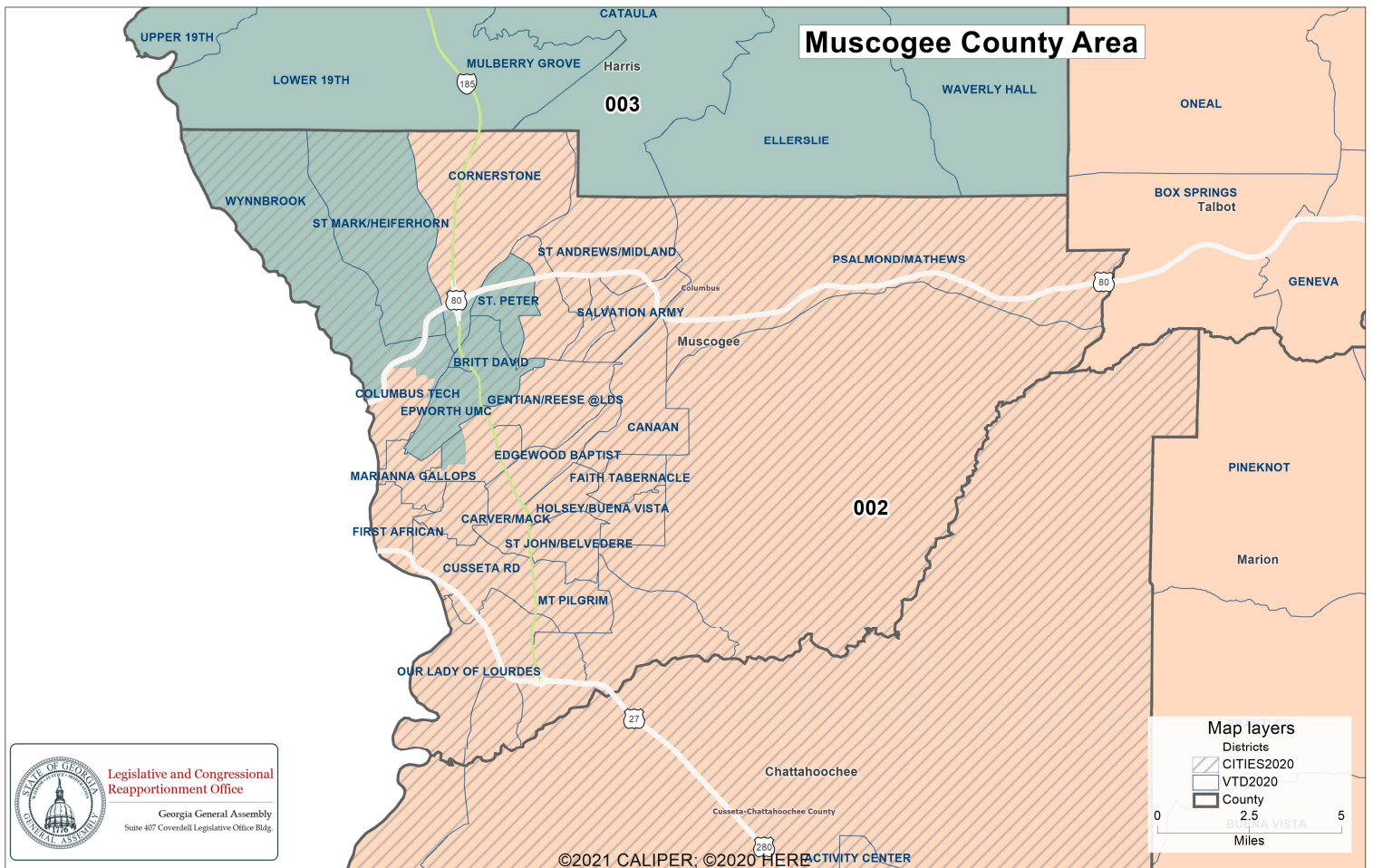
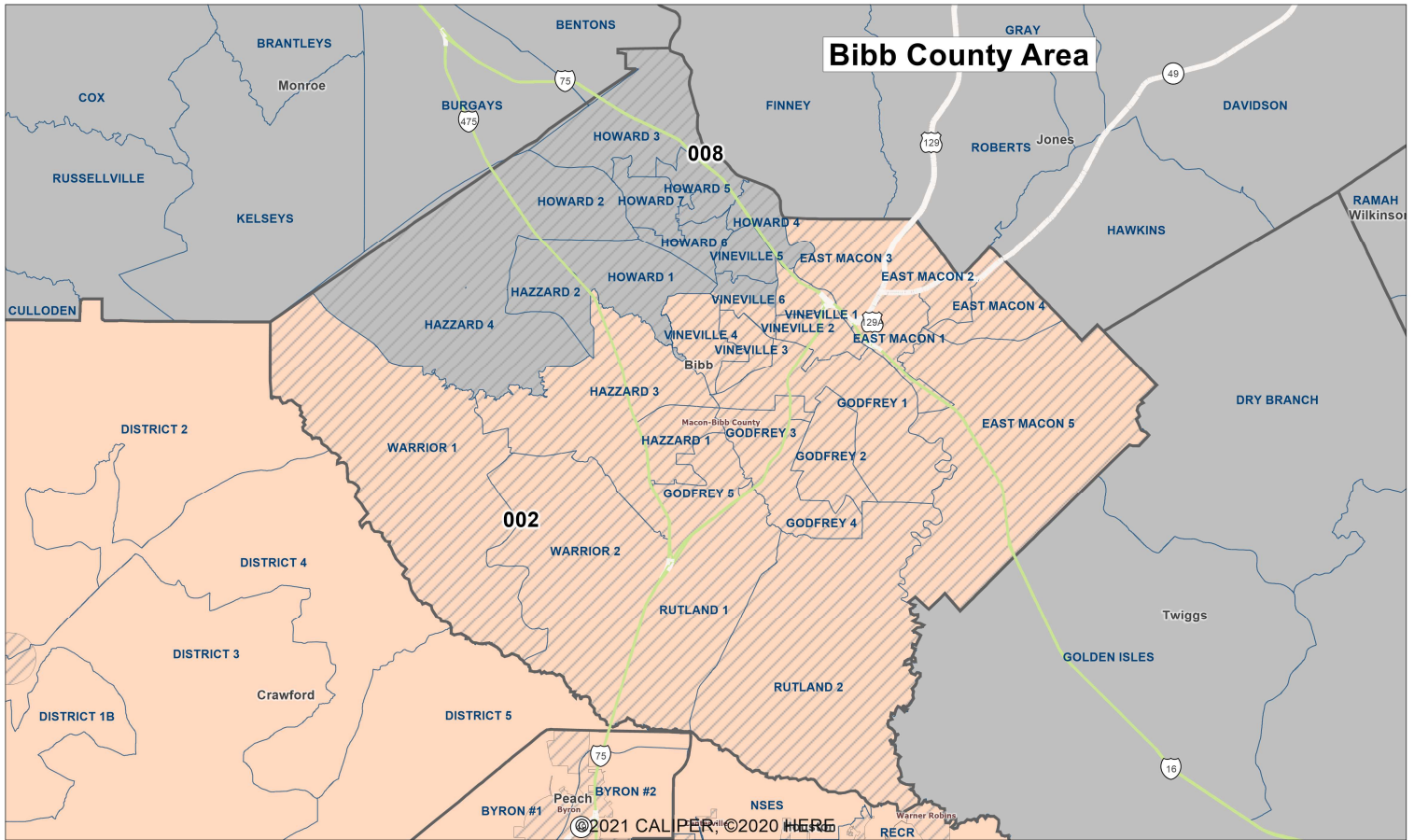


Legislative and Congressional  
Reapportionment Office

Georgia General Assembly  
Suite 407 Covered Legislative Office Bldg.



# Proposed Joint Congressional Districts of Georgia



Legislative and Congressional  
Reapportionment Office

Georgia General Assembly  
Suite 407 Cowdell Legislative Office Bldg.

Map layers

Districts  
CITIES2020  
VTD2020  
County

0 2.5 5  
Miles

©2021 CALIPER; ©2020 HERE

User: S018

Plan Name: Congress-prop1-2021

Plan Type: Congress

## Population Summary

### Summary Statistics:

Population Range: 765,135 to 765,137  
Ratio Range: 0.00  
Absolute Range: -1 to 1  
Absolute Overall Range: 2  
Relative Range: 0.00% to 0.00%  
Relative Overall Range: 0.00%  
Absolute Mean Deviation: 0.71  
Relative Mean Deviation: 0.00%  
Standard Deviation: 0.80

District	Population	Deviation	% Devn.	[18+_Pop]	[% 18+_Pop]	[% NH_Wht]	[% NH_Blkl]	[% Hispanic Origin]	[% NH_Asn]	[% NH_Ind]	[% NH_Hwn]	[% NH_Oth]	[% NH_2+ Races]
001	765,137	1	0.00%	589,266	77.01%	57.59%	27.54%	7.75%	2.19%	0.24%	0.16%	0.44%	4.1%
002	765,137	1	0.00%	587,555	76.79%	39.94%	49.03%	5.95%	1.34%	0.21%	0.1%	0.34%	3.09%
003	765,136	0	0.00%	586,319	76.63%	64.37%	22.61%	6.31%	2.09%	0.21%	0.04%	0.47%	3.91%
004	765,135	-1	0.00%	589,470	77.04%	25.82%	52.19%	11.63%	6.13%	0.16%	0.04%	0.65%	3.39%
005	765,137	1	0.00%	621,515	81.23%	35.79%	48.53%	7.38%	4.09%	0.16%	0.04%	0.52%	3.49%
006	765,136	0	0.00%	574,797	75.12%	63.7%	8.58%	10.23%	12.4%	0.16%	0.04%	0.69%	4.21%
007	765,137	1	0.00%	566,934	74.1%	29.52%	28.11%	23.77%	14.26%	0.16%	0.04%	0.69%	3.45%
008	765,136	0	0.00%	585,857	76.57%	57.91%	29.72%	7.17%	1.56%	0.19%	0.05%	0.31%	3.09%
009	765,137	1	0.00%	592,520	77.44%	64.7%	9.72%	15.39%	5.95%	0.2%	0.04%	0.42%	3.59%
010	765,135	-1	0.00%	588,874	76.96%	63.58%	22.12%	7.66%	2.26%	0.17%	0.04%	0.53%	3.63%
011	765,137	1	0.00%	595,201	77.79%	61.33%	16.33%	13.04%	3.76%	0.19%	0.04%	0.82%	4.49%
012	765,136	0	0.00%	588,119	76.86%	52.13%	36.12%	5.63%	1.83%	0.21%	0.11%	0.36%	3.61%
013	765,137	1	0.00%	574,789	75.12%	16.35%	64.26%	12.23%	3.17%	0.18%	0.05%	0.66%	3.1%
014	765,135	-1	0.00%	579,058	75.68%	68.07%	13.58%	12.69%	1.14%	0.22%	0.05%	0.4%	3.85%

**Total: 10,711,908**

**Ideal District: 765,136**



User: S018

Plan Name: Congress-prop1-2021

Plan Type: Congress

## Population Summary

### Summary Statistics:

Population Range: 765,135 to 765,137  
Ratio Range: 0.00  
Absolute Range: -1 to 1  
Absolute Overall Range: 2  
Relative Range: 0.00% to 0.00%  
Relative Overall Range: 0.00%  
Absolute Mean Deviation: 0.71  
Relative Mean Deviation: 0.00%  
Standard Deviation: 0.80

District	Population	Deviation	% Devn.	[18+_Pop]	[% 18+_Pop]	[% NH18+_Wht]	[% NH18+_Blk]	[% H18+_Pop]	[% NH18+_Asn]	[% NH18+_Ind]	[% NH18+_Hwn]	[% NH18+_Oth]	[% NH18+_2+ Races]
001	765,137	1	0.00%	589,266	77.01%	60.41%	26.44%	6.78%	2.36%	0.26%	0.14%	0.37%	3.24%
002	765,137	1	0.00%	587,555	76.79%	42.73%	47.62%	5.12%	1.41%	0.23%	0.09%	0.28%	2.53%
003	765,136	0	0.00%	586,319	76.63%	66.83%	22%	5.33%	2.08%	0.22%	0.04%	0.38%	3.11%
004	765,135	-1	0.00%	589,470	77.04%	28.25%	51.79%	10.12%	6.09%	0.16%	0.04%	0.58%	2.96%
005	765,137	1	0.00%	621,515	81.23%	37.92%	47.14%	6.67%	4.53%	0.16%	0.04%	0.48%	3.07%
006	765,136	0	0.00%	574,797	75.12%	66.63%	8.61%	9.11%	11.44%	0.14%	0.04%	0.63%	3.41%
007	765,137	1	0.00%	566,934	74.1%	32.78%	27.35%	21.27%	14.97%	0.16%	0.04%	0.59%	2.85%
008	765,136	0	0.00%	585,857	76.57%	60.52%	28.84%	6.1%	1.6%	0.2%	0.05%	0.25%	2.43%
009	765,137	1	0.00%	592,520	77.44%	68.29%	9.37%	12.89%	5.94%	0.21%	0.03%	0.34%	2.92%
010	765,135	-1	0.00%	588,874	76.96%	66.2%	21.34%	6.51%	2.3%	0.19%	0.03%	0.46%	2.98%
011	765,137	1	0.00%	595,201	77.79%	63.99%	16.25%	11.22%	3.82%	0.2%	0.04%	0.75%	3.73%
012	765,136	0	0.00%	588,119	76.86%	54.65%	35.06%	4.87%	1.95%	0.22%	0.1%	0.3%	2.86%
013	765,137	1	0.00%	574,789	75.12%	18.82%	63.75%	10.52%	3.38%	0.19%	0.05%	0.61%	2.68%
014	765,135	-1	0.00%	579,058	75.68%	71.33%	13.14%	10.58%	1.17%	0.23%	0.04%	0.32%	3.2%

**Total:** 10,711,908

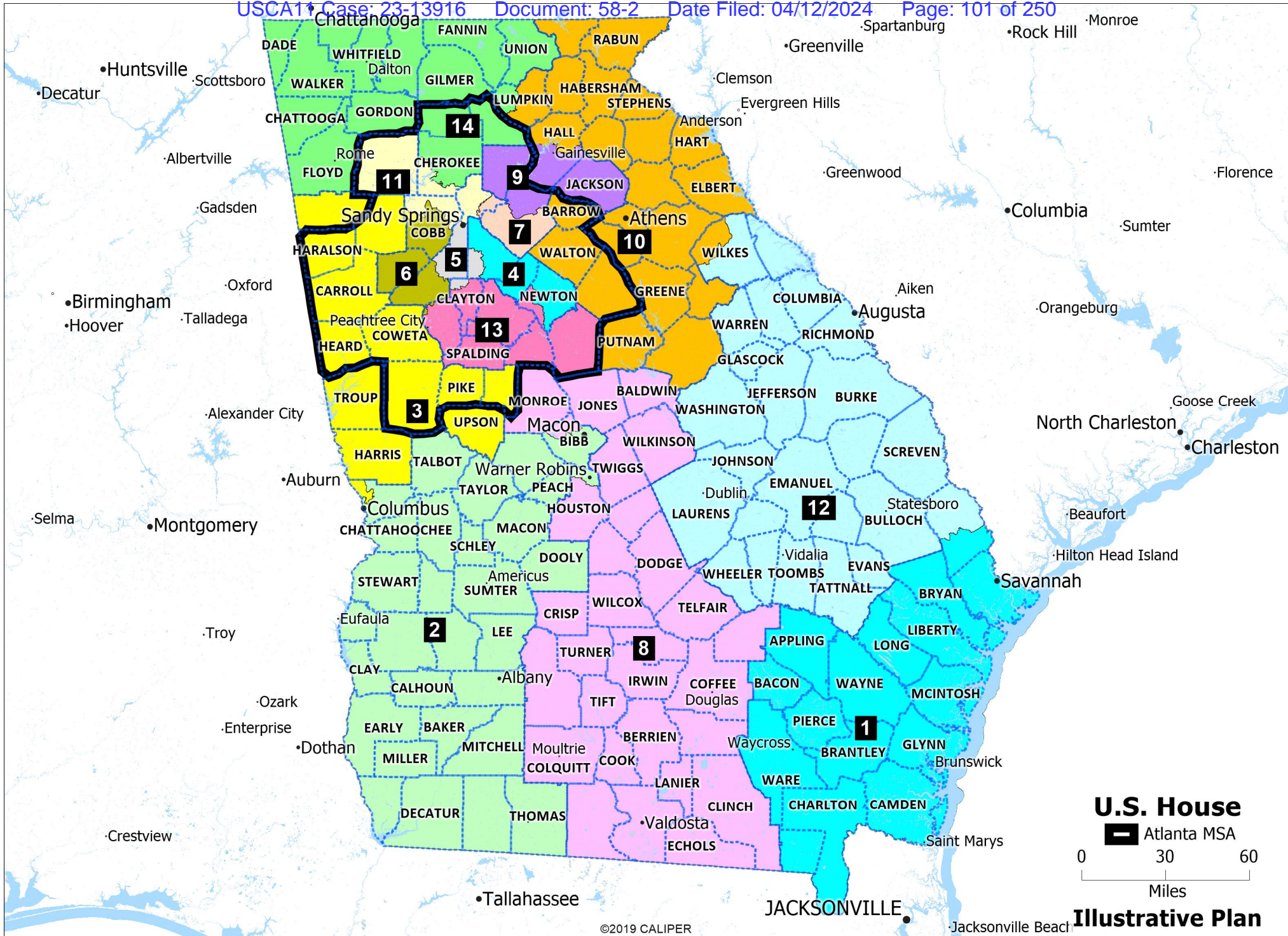
**Ideal District:** 765,136

**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT H-1**



**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT H-2**





**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT I-1**

**Georgia U.S. House -- 2020 Census -- Illustrative Plan**

District	Population	Deviation	% Deviation	AP Black	% AP Black	Latino	% Latino	NH White	% NH White
001	765137	1	0.00%	230783	30.16%	59328	7.75%	440636	57.59%
002	765137	1	0.00%	393195	51.39%	45499	5.95%	305611	39.94%
003	765135	-1	0.00%	166096	21.71%	49935	6.53%	517659	67.66%
004	765136	0	0.00%	410019	53.59%	87756	11.47%	212004	27.71%
005	765137	1	0.00%	392822	51.34%	56496	7.38%	273819	35.79%
006	765137	1	0.00%	396891	51.87%	108401	14.17%	225985	29.54%
007	765137	1	0.00%	239717	31.33%	181851	23.77%	225905	29.52%
008	765136	0	0.00%	241628	31.58%	54850	7.17%	443123	57.91%
009	765136	0	0.00%	94059	12.29%	128393	16.78%	429340	56.11%
010	765137	1	0.00%	118199	15.45%	61244	8.00%	548312	71.66%
011	765137	1	0.00%	110368	14.42%	81466	10.65%	492121	64.32%
012	765136	0	0.00%	294961	38.55%	43065	5.63%	398843	52.13%
013	765135	-1	0.00%	404963	52.93%	71377	9.33%	253135	33.08%
014	765135	-1	0.00%	44445	5.81%	93796	12.26%	595663	77.85%
<b>Total</b>	<b>10711908</b>		<b>0.00%</b>	<b>3538146</b>	<b>33.03%</b>	<b>1123457</b>	<b>10.49%</b>	<b>5362156</b>	<b>50.06%</b>

District	18+ Pop	18+ SR Black	% 18+ SR Black	18+ AP Black	% 18+ AP Black	18+ Latino	% 18+ Latino	18+ NH White	% 18+ NH White
001	589266	157770	26.77%	166025	28.17%	39938	6.78%	355947	60.41%
002	587555	281564	47.92%	289612	49.29%	30074	5.12%	251047	42.73%
003	580018	112454	19.39%	118709	20.47%	31852	5.49%	405926	69.99%
004	590640	298897	50.61%	311670	52.77%	58947	9.98%	177832	30.11%
005	621515	295885	47.61%	308271	49.60%	41432	6.67%	235652	37.92%
006	587247	282051	48.03%	294976	50.23%	71798	12.23%	192370	32.76%
007	566934	157650	27.81%	169071	29.82%	120604	21.27%	185838	32.78%
008	585857	170421	29.09%	175967	30.04%	35732	6.10%	354572	60.52%
009	564244	59821	10.60%	65790	11.66%	83453	14.79%	335720	59.50%
010	602127	81481	13.53%	86178	14.31%	39876	6.62%	447109	74.25%
011	588795	72303	12.28%	80507	13.67%	55168	9.37%	393920	66.90%
012	588119	207872	35.35%	215958	36.72%	28628	4.87%	321394	54.65%
013	576337	283204	49.14%	294669	51.13%	46150	8.01%	207154	35.94%
014	591620	27046	4.57%	30583	5.17%	59266	10.02%	477852	80.77%
<b>Total</b>	<b>8220274</b>	<b>2488419</b>	<b>30.27%</b>	<b>2607986</b>	<b>31.73%</b>	<b>742918</b>	<b>9.04%</b>	<b>4342333</b>	<b>52.82%</b>

District	% NH Single-Race Black CVAP*	% NH DOJ Black CVAP**	% Latino CVAP	% SR NH White CVAP
001	29.16%	29.67%	4.49%	63.10%
002	49.55%	50.001%	3.17%	44.62%
003	19.64%	20.02%	3.61%	74.12%
004	55.62%	56.37%	3.89%	35.11%
005	51.64%	52.35%	3.48%	39.75%
006	50.18%	50.98%	6.45%	39.13%
007	31.88%	32.44%	11.20%	43.69%
008	30.46%	30.76%	3.79%	63.40%
009	11.29%	11.74%	8.78%	71.51%
010	15.09%	15.39%	3.93%	78.27%
011	12.91%	13.48%	5.92%	74.73%
012	36.60%	37.19%	3.39%	56.94%
013	49.64%	50.34%	4.96%	40.44%
014	4.80%	5.19%	5.57%	87.19%

**CVAP Source:**

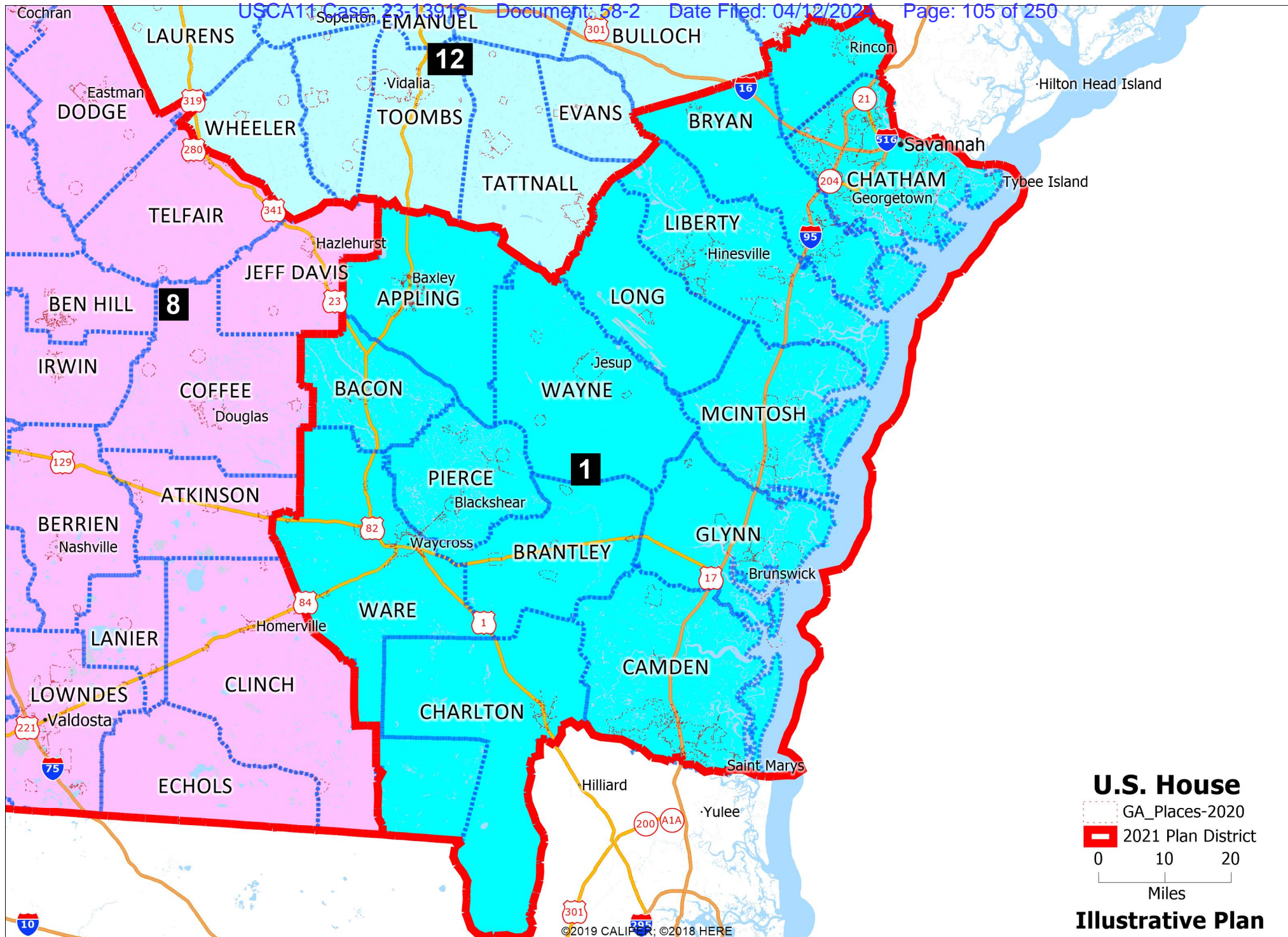
\* 2016-20 ACS Special Tabulation <https://redistrictingdatahub.org/dataset/georgia-cvap-data-disaggregated-to-the-block-level-2020/>

Note: Citizen Voting Age Population (CVAP) percentages are disaggregated from block-group level ACS estimates

\* Single race NH Black CVAP, \*\*NH DOJ Black= SR NH Black CVAP+SR NH Black/White CVAP

**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT I-2**

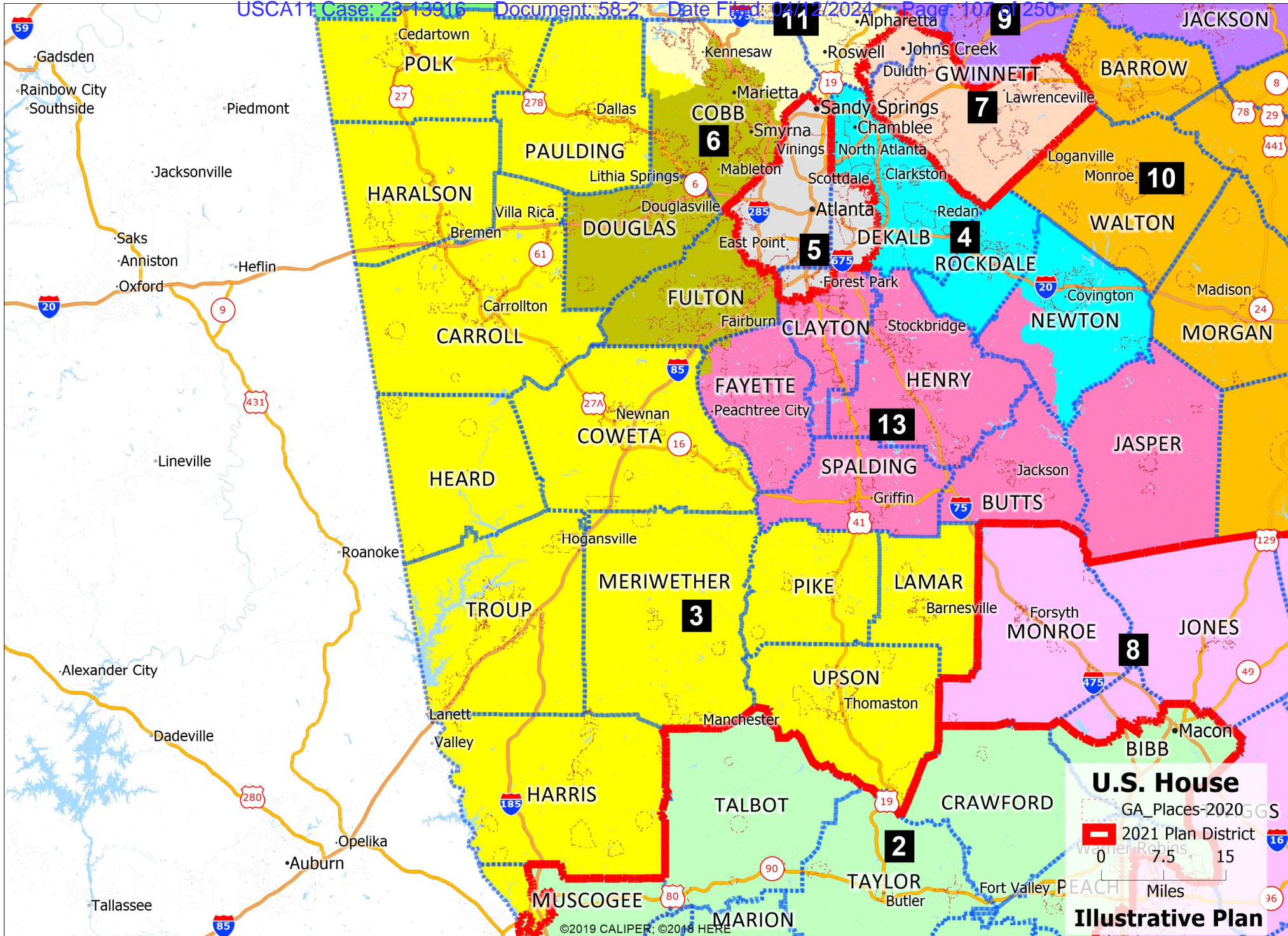




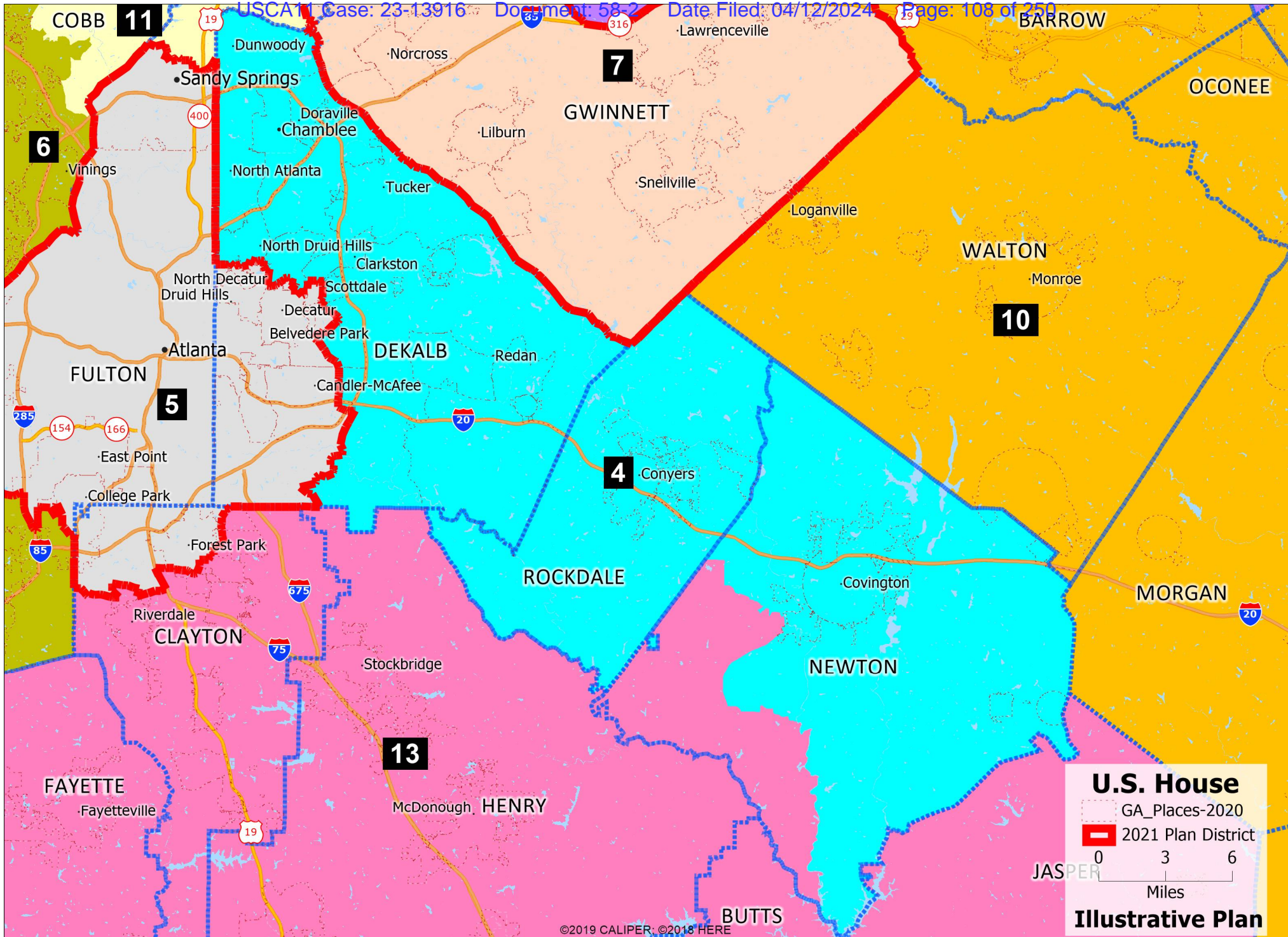




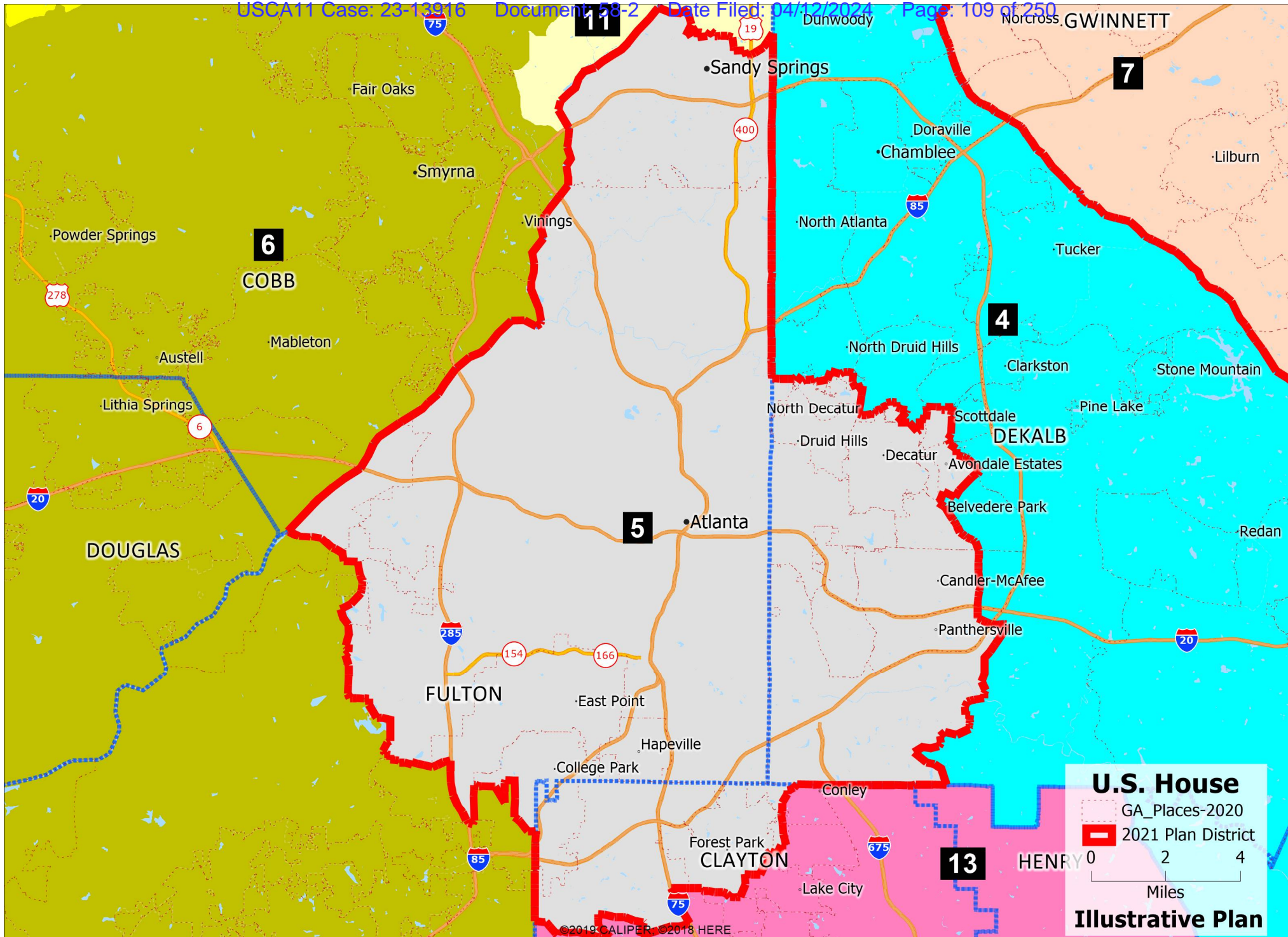




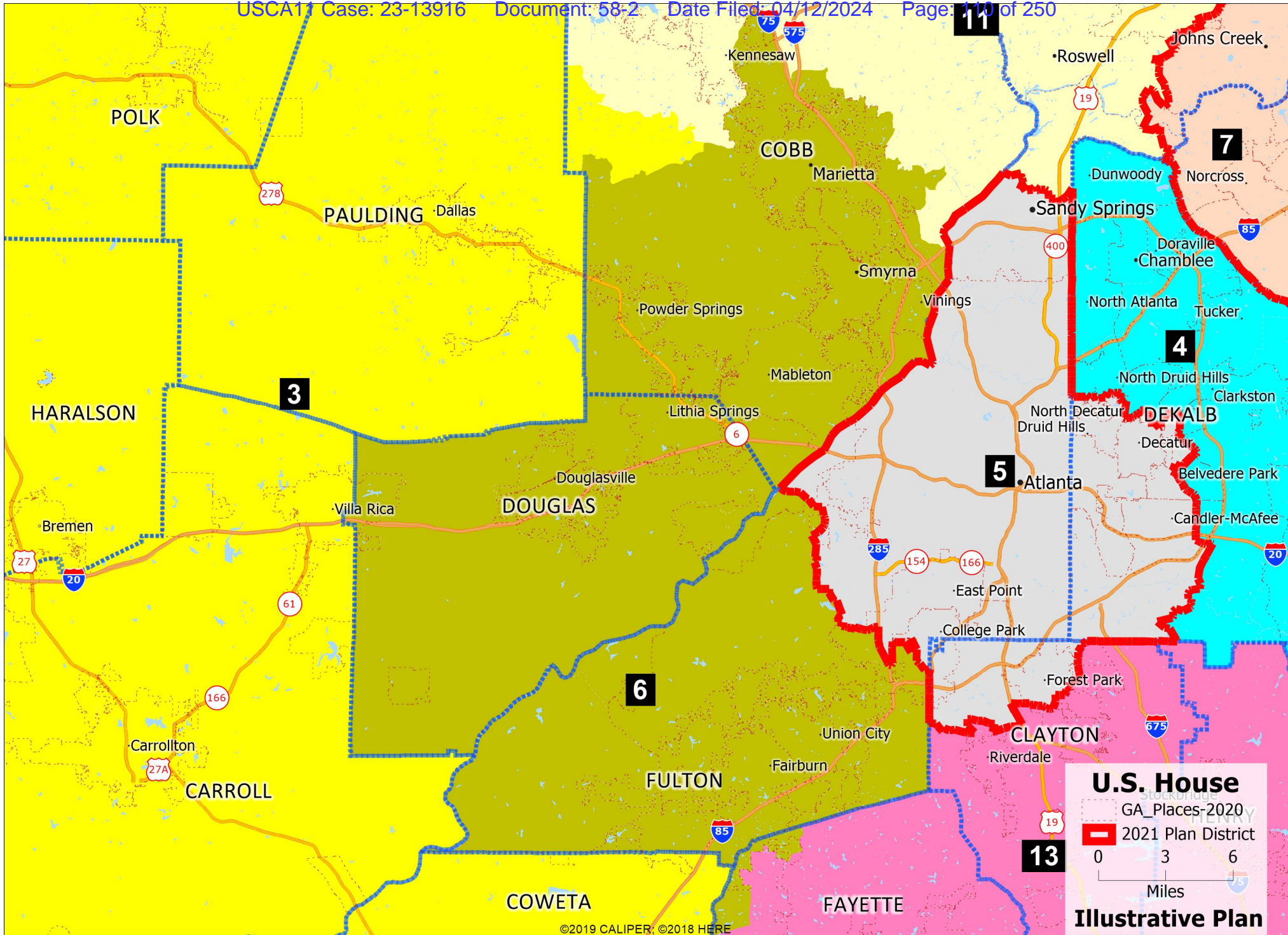




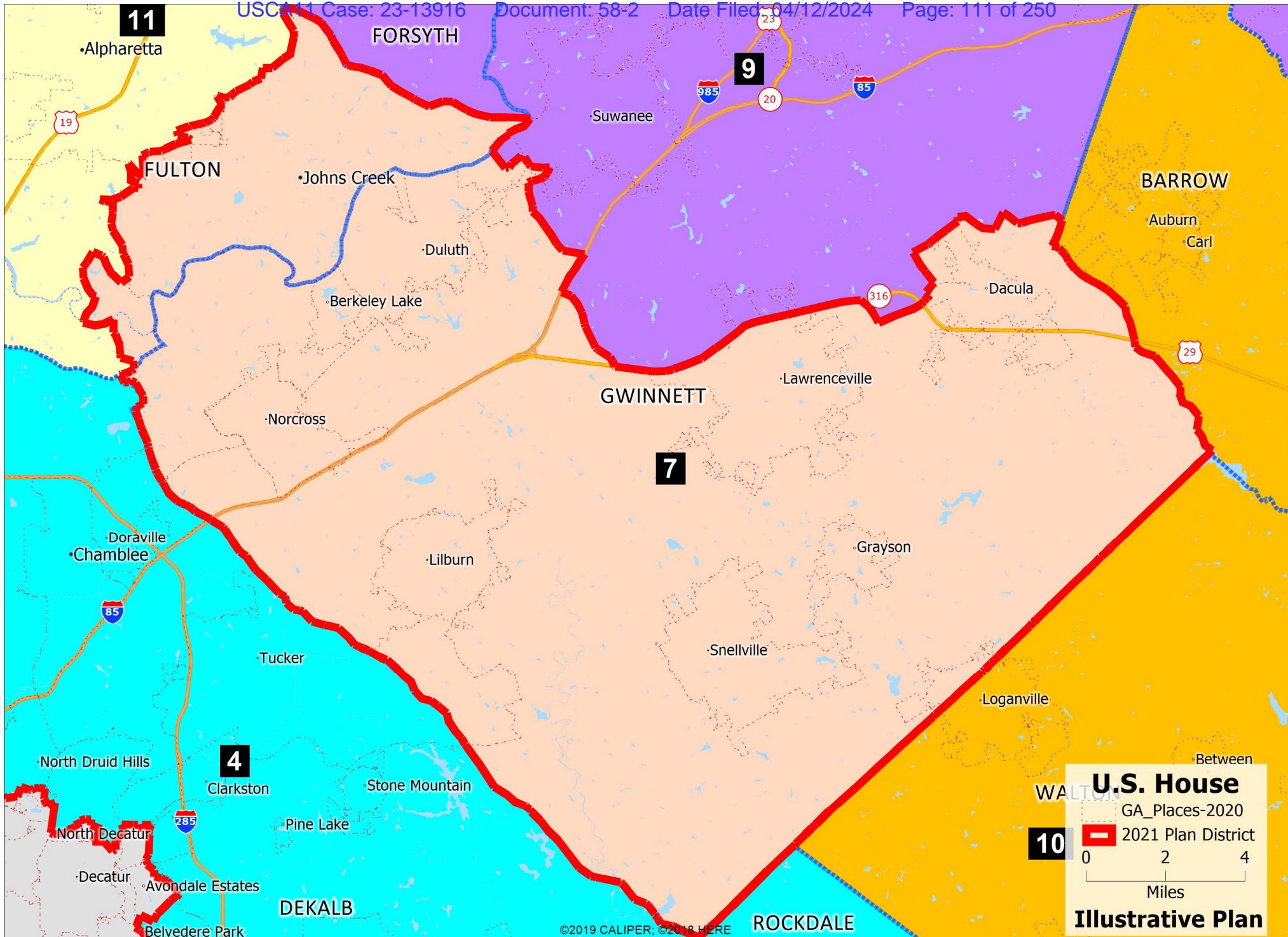




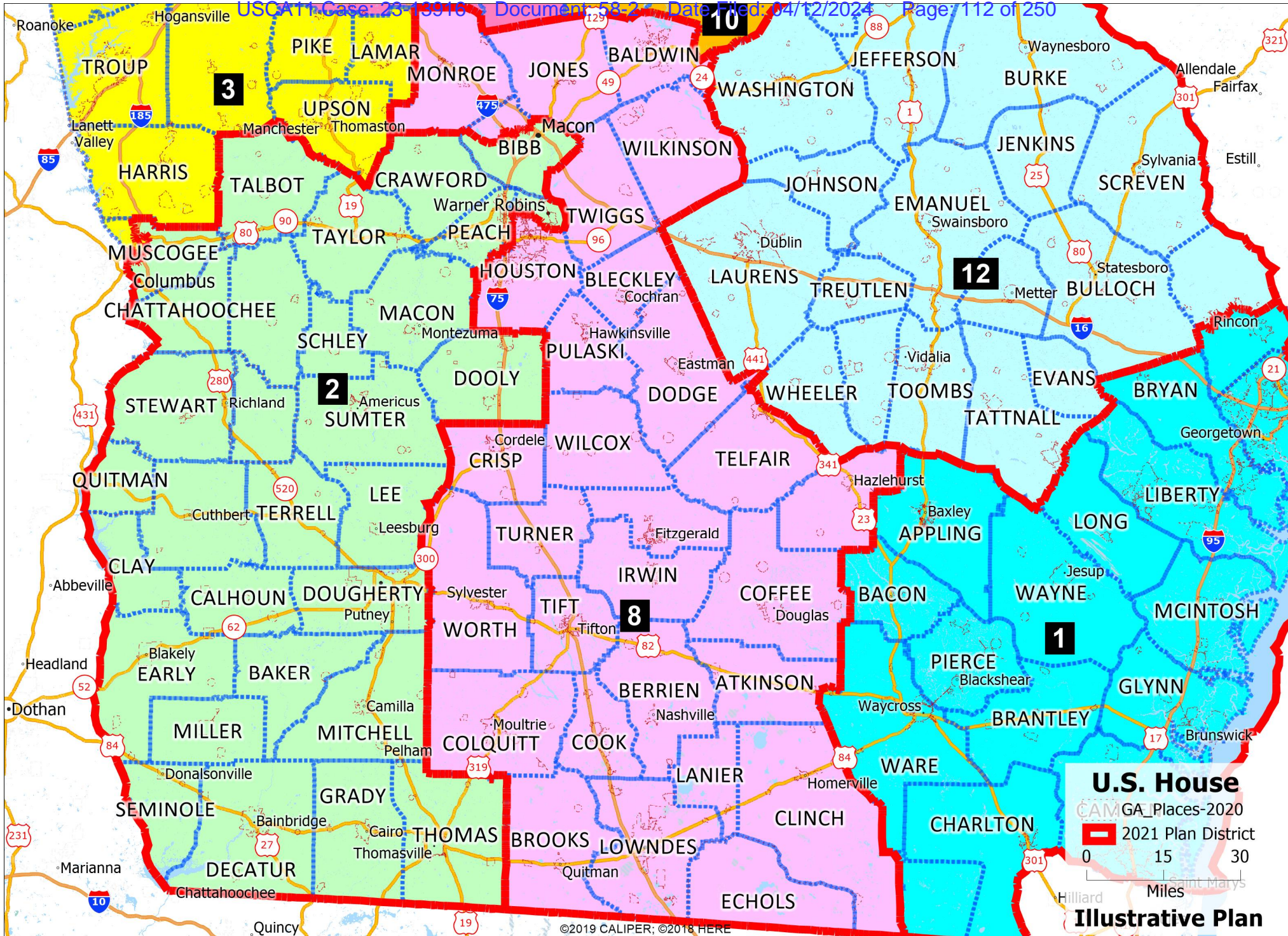




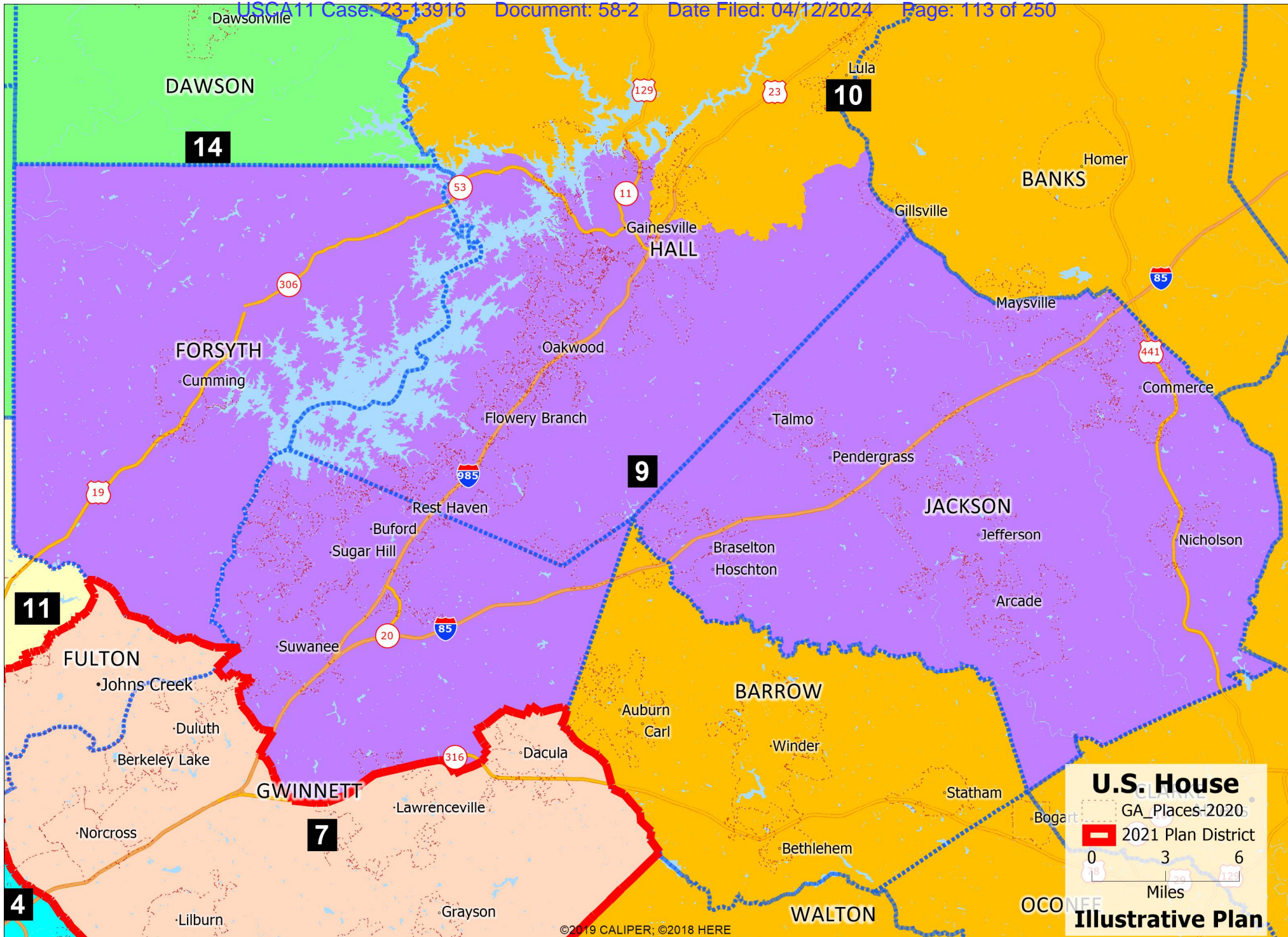




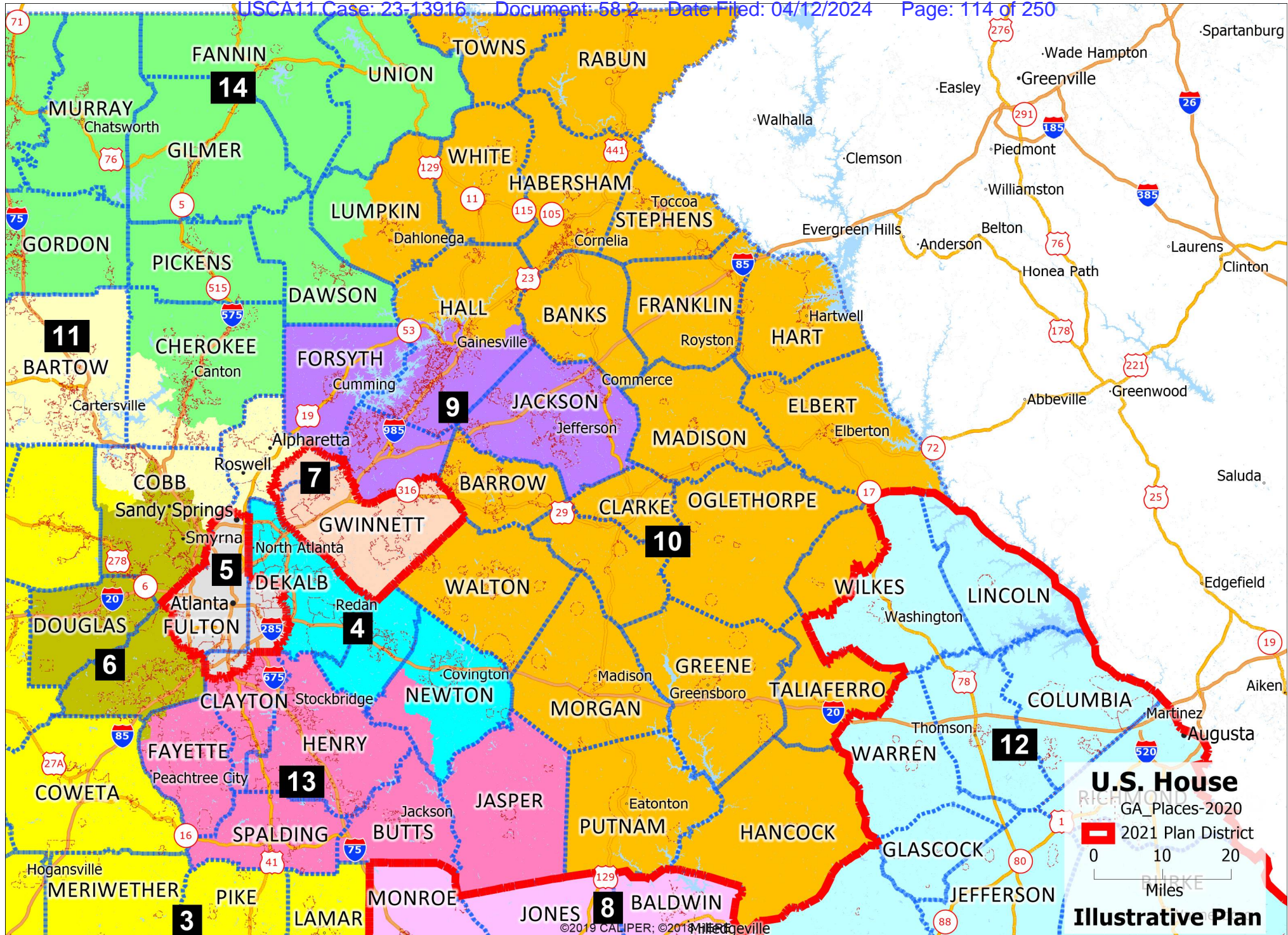




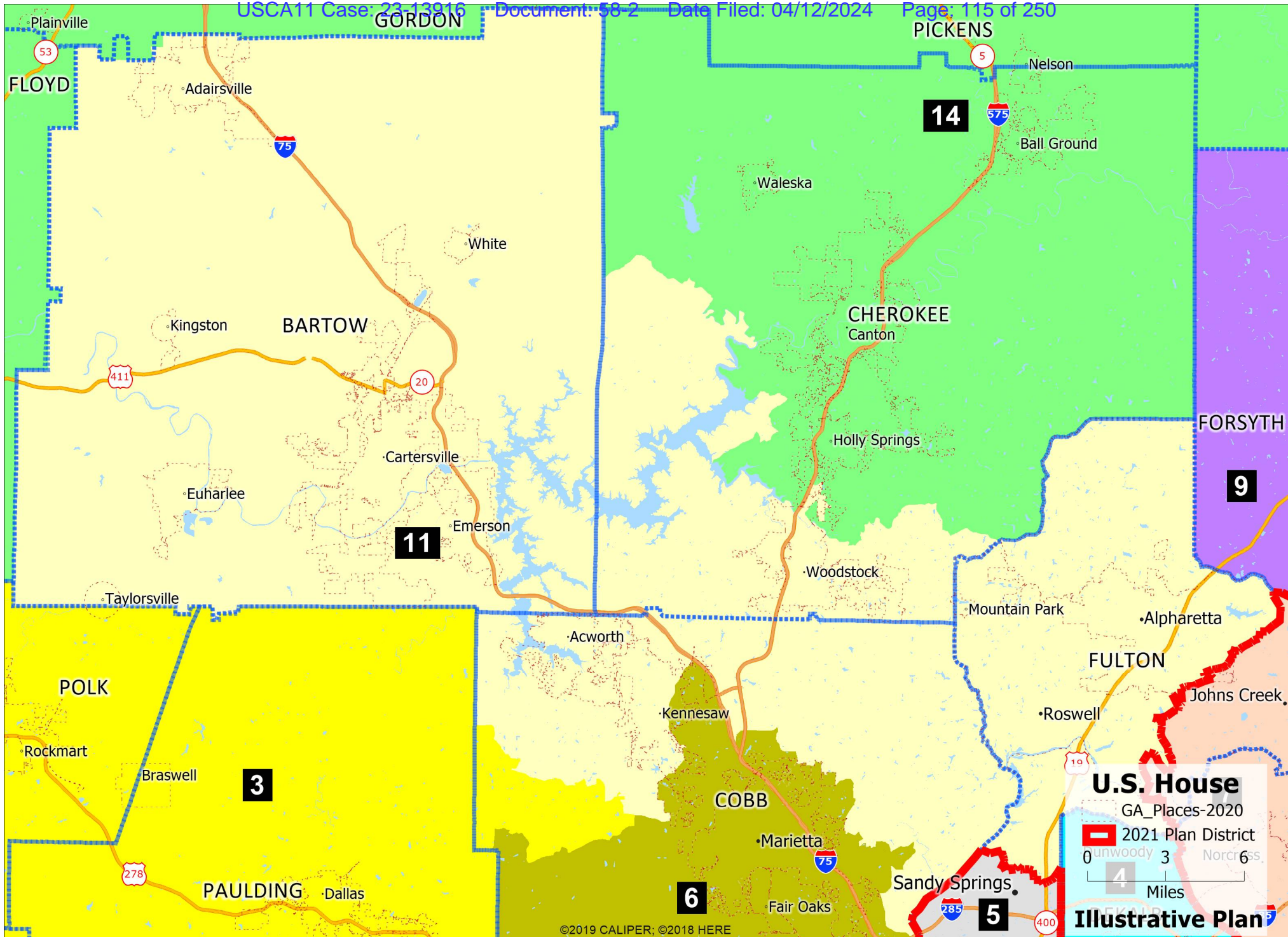








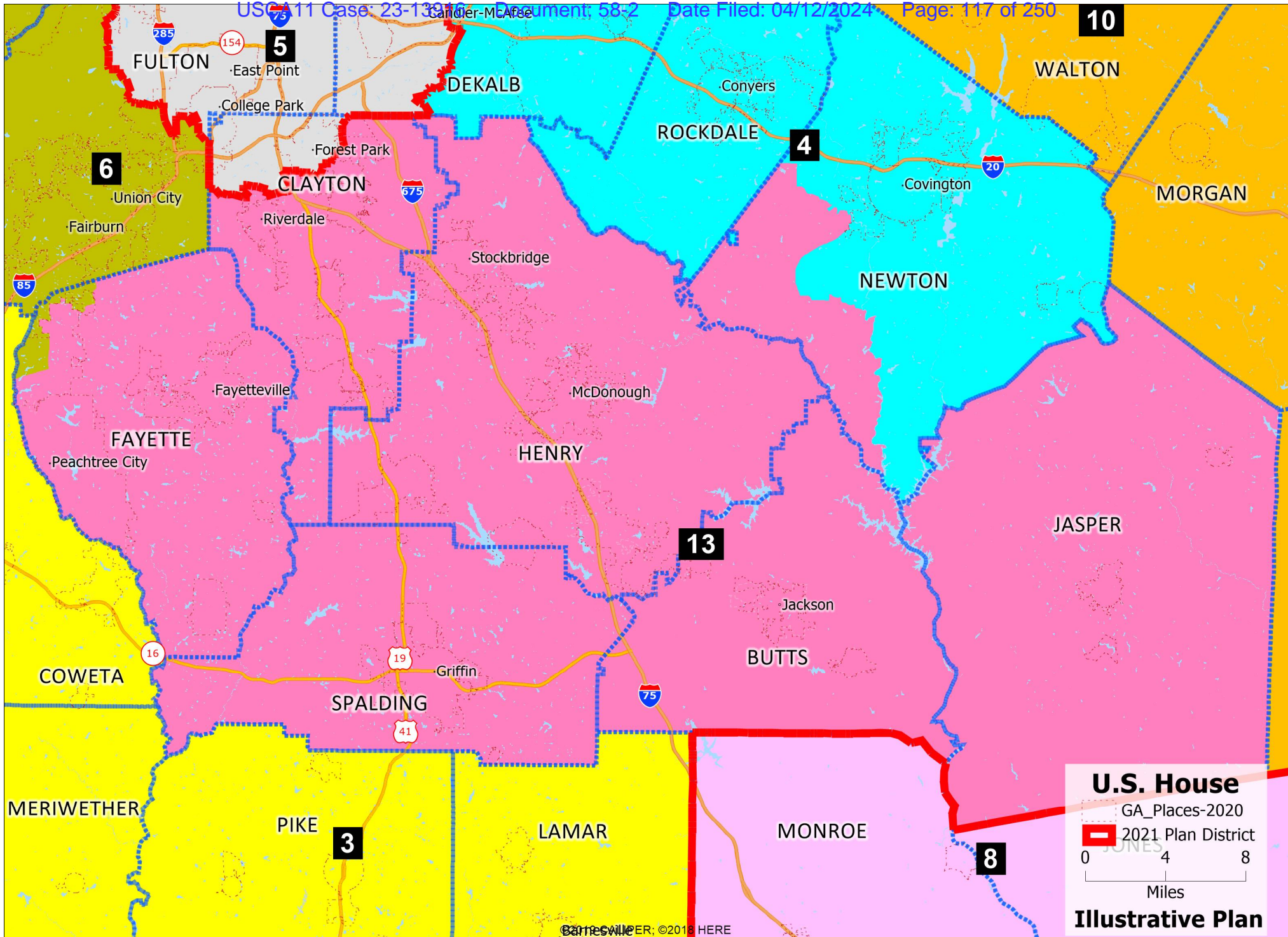




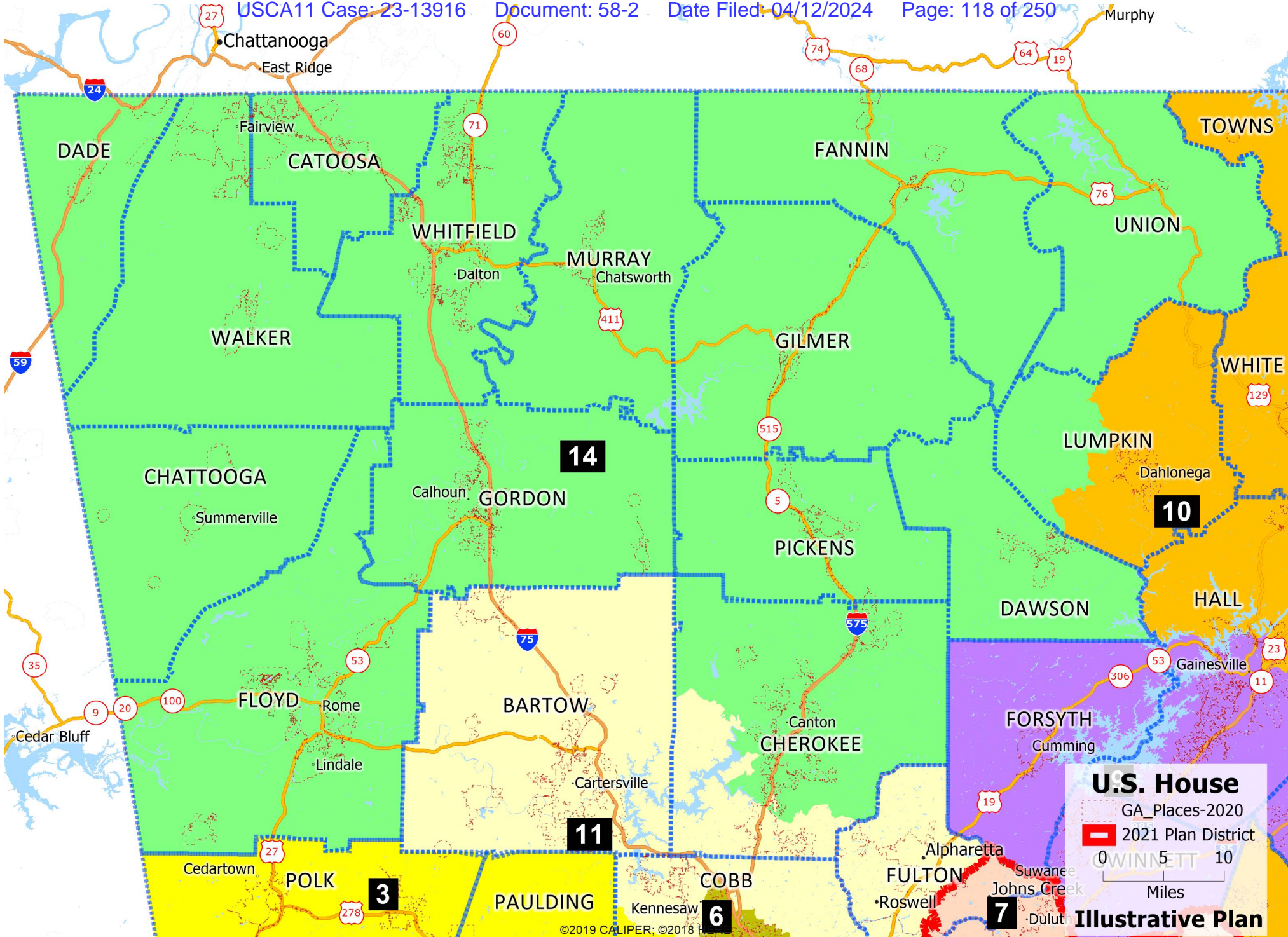












**DECLARATION OF WILLIAM S. COOPER:**  
**EXHIBIT I-3**



User:

Plan Name: Illustrative Plan

Plan Type:

## Plan Components with Population Detail

Monday, November 21, 2022

2:45 PM

	Total Population	NH_Wht	AP_BlK	[Hispanic Origin]
<b>District 001</b>				
<b>County: Appling GA</b>				
Total:	18,444	12,674	3,647	1,825
		68.72%	19.77%	9.89%
Voting Age	13,958	10,048	2,540	1,118
		71.99%	18.20%	8.01%
<b>County: Bacon GA</b>				
Total:	11,140	8,103	1,970	875
		72.74%	17.68%	7.85%
Voting Age	8,310	6,374	1,245	547
		76.70%	14.98%	6.58%
<b>County: Brantley GA</b>				
Total:	18,021	16,317	733	326
		90.54%	4.07%	1.81%
Voting Age	13,692	12,522	470	212
		91.45%	3.43%	1.55%
<b>County: Bryan GA</b>				
Total:	44,738	31,321	7,463	3,269
		70.01%	16.68%	7.31%
Voting Age	31,828	23,033	5,025	1,919
		72.37%	15.79%	6.03%
<b>County: Camden GA</b>				
Total:	54,768	37,203	11,072	3,658
		67.93%	20.22%	6.68%
Voting Age	41,808	29,410	7,828	2,457
		70.35%	18.72%	5.88%
<b>County: Charlton GA</b>				
Total:	12,518	7,532	2,798	2,036
		60.17%	22.35%	16.26%
Voting Age	10,135	5,929	2,147	1,971
		58.50%	21.18%	19.45%
<b>County: Chatham GA</b>				
Total:	295,291	139,433	115,458	23,790
		47.22%	39.10%	8.06%
Voting Age	234,715	119,161	85,178	16,551
		50.77%	36.29%	7.05%
<b>County: Effingham GA</b>				
Total:	47,208	35,249	6,652	2,875
		74.67%	14.09%	6.09%
Voting Age	34,272	26,449	4,374	1,700
		77.17%	12.76%	4.96%

	Total Population	NH_Wht	AP_Bl	[Hispanic Origin]
<b>District 001</b>				
<b>County: Glynn GA</b>				
Total:	84,499	52,987	22,098	6,336
		62.71%	26.15%	7.50%
Voting Age	66,468	44,302	15,620	4,116
		66.65%	23.50%	6.19%
<b>County: Liberty GA</b>				
Total:	65,256	24,004	31,146	7,786
		36.78%	47.73%	11.93%
Voting Age	48,014	19,065	21,700	5,231
		39.71%	45.20%	10.89%
<b>County: Long GA</b>				
Total:	16,168	8,774	4,734	1,979
		54.27%	29.28%	12.24%
Voting Age	11,234	6,422	3,107	1,227
		57.17%	27.66%	10.92%
<b>County: McIntosh GA</b>				
Total:	10,975	7,060	3,400	231
		64.33%	30.98%	2.10%
Voting Age	9,040	5,998	2,641	166
		66.35%	29.21%	1.84%
<b>County: Pierce GA</b>				
Total:	19,716	16,403	1,801	998
		83.20%	9.13%	5.06%
Voting Age	14,899	12,662	1,262	595
		84.99%	8.47%	3.99%
<b>County: Ware GA</b>				
Total:	36,251	22,275	11,421	1,612
		61.45%	31.51%	4.45%
Voting Age	27,788	17,818	8,226	1,012
		64.12%	29.60%	3.64%
<b>County: Wayne GA</b>				
Total:	30,144	21,301	6,390	1,732
		70.66%	21.20%	5.75%
Voting Age	23,105	16,754	4,662	1,116
		72.51%	20.18%	4.83%
<b>District 001 Total</b>				
Total:	765,137	440,636	230,783	59,328
		57.59%	30.16%	7.75%
Voting Age	589,266	355,947	166,025	39,938
		60.41%	28.17%	6.78%
<b>District 002</b>				
<b>County: Baker GA</b>				
Total:	2,876	1,514	1,178	143
		52.64%	40.96%	4.97%
Voting Age	2,275	1,235	932	77
		54.29%	40.97%	3.38%

	Total Population	NH_Wht	AP_Bl	[Hispanic Origin]
<b>District 002</b>				
<b>County: Bibb GA</b>				
Total:	108,371	29,397 27.13%	72,197 66.62%	4,818 4.45%
Voting Age	82,489	25,121 30.45%	52,370 63.49%	3,351 4.06%
<b>County: Calhoun GA</b>				
Total:	5,573	1,766 31.69%	3,629 65.12%	149 2.67%
Voting Age	4,687	1,567 33.43%	2,998 63.96%	90 1.92%
<b>County: Chattahoochee GA</b>				
Total:	9,565	5,403 56.49%	1,825 19.08%	1,610 16.83%
Voting Age	7,199	4,212 58.51%	1,287 17.88%	1,160 16.11%
<b>County: Clay GA</b>				
Total:	2,848	1,143 40.13%	1,634 57.37%	41 1.44%
Voting Age	2,246	973 43.32%	1,231 54.81%	19 0.85%
<b>County: Crawford GA</b>				
Total:	12,130	8,866 73.09%	2,455 20.24%	415 3.42%
Voting Age	9,606	7,079 73.69%	1,938 20.17%	287 2.99%
<b>County: Decatur GA</b>				
Total:	29,367	14,280 48.63%	12,583 42.85%	1,911 6.51%
Voting Age	22,443	11,586 51.62%	9,189 40.94%	1,196 5.33%
<b>County: Dooly GA</b>				
Total:	11,208	4,611 41.14%	5,652 50.43%	797 7.11%
Voting Age	9,187	4,029 43.86%	4,526 49.27%	493 5.37%
<b>County: Dougherty GA</b>				
Total:	85,790	20,631 24.05%	61,457 71.64%	2,413 2.81%
Voting Age	66,266	17,909 27.03%	45,631 68.86%	1,591 2.40%
<b>County: Early GA</b>				
Total:	10,854	4,813 44.34%	5,688 52.40%	186 1.71%
Voting Age	8,315	3,985 47.93%	4,075 49.01%	113 1.36%

	Total Population	NH_Wht	AP_Bl	[Hispanic Origin]
<b>District 002</b>				
<b>County: Grady GA</b>				
Total:	26,236	14,715	7,693	3,273
		56.09%	29.32%	12.48%
Voting Age	19,962	11,968	5,678	1,857
		59.95%	28.44%	9.30%
<b>County: Houston GA</b>				
Total:	48,521	19,375	22,637	4,663
		39.93%	46.65%	9.61%
Voting Age	36,233	16,052	15,657	2,988
		44.30%	43.21%	8.25%
<b>County: Lee GA</b>				
Total:	33,163	22,758	7,755	953
		68.62%	23.38%	2.87%
Voting Age	24,676	17,356	5,503	603
		70.34%	22.30%	2.44%
<b>County: Macon GA</b>				
Total:	12,082	4,078	7,296	472
		33.75%	60.39%	3.91%
Voting Age	9,938	3,379	6,021	322
		34.00%	60.59%	3.24%
<b>County: Marion GA</b>				
Total:	7,498	4,486	2,223	560
		59.83%	29.65%	7.47%
Voting Age	5,854	3,643	1,687	337
		62.23%	28.82%	5.76%
<b>County: Miller GA</b>				
Total:	6,000	3,949	1,831	136
		65.82%	30.52%	2.27%
Voting Age	4,749	3,239	1,358	92
		68.20%	28.60%	1.94%
<b>County: Mitchell GA</b>				
Total:	21,755	10,106	10,394	964
		46.45%	47.78%	4.43%
Voting Age	17,065	8,284	7,917	615
		48.54%	46.39%	3.60%
<b>County: Muscogee GA</b>				
Total:	175,155	58,991	95,521	13,791
		33.68%	54.54%	7.87%
Voting Age	132,158	48,043	69,548	9,099
		36.35%	52.62%	6.88%
<b>County: Peach GA</b>				
Total:	27,981	12,119	12,645	2,547
		43.31%	45.19%	9.10%
Voting Age	22,111	10,071	9,720	1,788
		45.55%	43.96%	8.09%

*Pendergrass* Doc. 174-5

# EXHIBIT 4

***Pendergrass et al. v. Raffensperger, et al.*, No. 1:21-cv-05339**  
**United States District Court for the Northern District of Georgia**  
**Expert Report of Orville Vernon Burton, Ph.D.**



---

**Dr. Orville Vernon Burton**

December 5, 2022



## **I. STATEMENT OF INQUIRY**

I have been asked by Plaintiffs' counsel to serve as an expert witness in litigation concerning Georgia redistricting. Plaintiffs' counsel asked me to analyze the history of voting-related discrimination in Georgia and to contextualize and put in historical perspective such discrimination. I have also been asked to analyze the relationship between race and partisanship in Georgia politics.

I am being compensated at \$350 per hour for my work on this case. My compensation is not contingent on or affected by the substance of my opinions or the outcome of this case.

## **II. SUMMARY OF FINDINGS**

Throughout Georgia's history, and through today, the state of Georgia has attempted, often successfully, to minimize the electoral influence of minority voters and particularly of Black Georgians. Voting rights in Georgia have followed a pattern where after periods of increased nonwhite voter registration and turnout, the state, through both legislation and extralegal means, finds methods to disfranchise and reduce the influence of minority voters.

This history has its roots in the Reconstruction era. As soon as formerly enslaved men gained the right to vote in Georgia, both violence and wholesale changes in voter registration laws ensured they could not vote. By the early 20<sup>th</sup> century, the cumulative effects of the poll tax and the white primary had nearly removed all Black Georgians from voter registration lists. Around this time, Georgia also structured its elections to the disadvantage of Black Georgians. Specifically, Georgia's county unit system, introduced in 1917 until it was outlawed by the Supreme Court in the 1960s, gave a greater share of proportion of votes to small, rural, and much whiter counties, compared to larger and more urban counties, where the majority of Black Georgia voters lived.

When the Supreme Court eventually ruled against white-only primaries in the 1940s, Georgia worked to circumvent the ability of those citizens to vote through registration schemes, voter challenges, voter purges, and more. And when the county-unit system fell, Georgia replaced them with at-large districts and majority vote requirements, systems designed to ensure that Black candidates could not be elected to office. Those systems were wildly effective: By the time of the 1964 Civil Rights Act (CRA) and the 1965 Voting Rights Act (VRA), while Black Georgians were 34 percent of the voting age population, there were only three Black elected officials in Georgia.

Even after the Voting Rights Act of 1965, Black voters and Black elected officials in Georgia continued to be systematically underrepresented. To neutralize Black voting strength, Georgia officials used an array of mechanisms to block, discourage, dilute, or otherwise prevent or limit Black voting in Georgia. Between 1965-1980, nearly 30% of all of the Department of Justice's objections to voting-related changes under Section 5 were attributable to Georgia alone.

For the next forty years, Georgia failed to go a redistricting cycle without objection from the Department of Justice (DOJ). Georgia's congressional reapportionment in 1971, for example, was the first held under Section 5 preclearance rules, and it showed, as one expert has described, "the extraordinary lengths to which the legislature was prepared to go to exclude Blacks from the congressional delegation." After DOJ refused to preclear the plan and required Georgia to implement a new congressional plan, Andrew Young became the only Black U.S. Congressman from Georgia and the first African American elected to the United States House of Representatives from the South in the twentieth century (along with Barbara Jordan of Texas, significantly both Black candidates were elected from urban districts). In the redistricting cycle after the 1980 census, the Georgia General Assembly again tried to limit Black voting strength in Atlanta. DOJ again refused to preclear the plan; John Lewis eventually won the seat that was created under the revised congressional plan. When Congress did re-authorize the VRA in 1982, it cited systemic abuses by Georgia officials to evade Black voting rights.

Notably, the tactics that have plagued Georgia's history to dilute the power of Black Georgians have persisted into the modern era. These policies around voting have also come at a time of rapid demographic shifts in Georgia's electorate: Georgia is the only state in the Deep South where the percentage of the Black population has sharply increased over the past half century. In just the past ten years, much of it in the wake of *Shelby County v. Holder* (2013), Georgia has slashed polling places by the hundreds (primarily in Black communities), increased voter purges and challenges against minority voters, launched state-sponsored investigations against minority voting groups, and more. In just the past year, Georgia enacted Senate Bill 202, a law DOJ could no longer stop under preclearance but which DOJ has alleged was passed with the intent and effect of limiting Black Georgians' voting power. While that suit remains to be litigated, the state has already begun replacing Black office holders in majority-Black counties and implementing policies to the disadvantage of Black Georgians.

The history of Georgia demonstrates a clear pattern, one that attempts (and often succeeds) in diluting and impairing Black Georgians' voting power. Georgia's recently enacted congressional plan must be viewed in this context.

This pattern, moreover, is reflected in Georgia's politics. Race is a central feature of politics in Georgia. Though race is central to any explanation of the modern party system in the South, and particularly in Georgia, racial identification is a complex phenomenon. A variety of factors, such as the racial context of an election, contribute to the importance of race in partisan politics. While the degree may vary, race is always a factor in southern campaigns.<sup>1</sup> As Valentino and Sears note, "race has been a dominant element in Southern politics from the beginning."<sup>2</sup>

As discussed at length below, as a historical matter, the alignment in Georgia of Black voters with the Democratic Party and white voters with the Republican Party that we see today stems from the Civil Rights Act of 1964 (CRA) and the Voting Rights Act of 1965 (VRA). It is worth noting that this realignment that began in the 1960s was not the result of a new issue which redefined partisan politics; instead, it was caused by new divisions based on an old issue. Southern whites, even today, continue to be antagonistic towards policies designed to promote the political, economic, and social progress of minorities.<sup>3</sup> However, it is clear that the explicitly race-based policies of the 1960s sparked the formation of the political alignment of Black and white voters that we see today in Georgia.

It is equally worth noting that my discussion here is not meant to, and does not, suggest in any way that all voters who identify with the Republican Party in Georgia are racist. Instead, it is meant to show that race unquestionably contributes to Georgia's partisan divides today, and, similarly, that those divides cannot be fully explained without discussing race.

### **III. EXPERT CREDENTIALS**

#### **A. Professional Background and Qualifications**

---

<sup>1</sup> James M. Glaser, *Race, Campaign Politics, and the Realignment in the South* (New Haven: Yale University Press, 1996), 25-26, 43.

<sup>2</sup> Nicholas A. Valentino and David O. Sears. "Old Times There Are Not Forgotten: Race and Partisan Realignment in the Contemporary South," *American Journal of Political Science*. vol. 49, no. 3 (2005), 672-688.

<sup>3</sup> James M. Glaser, *Race, Campaign Politics, and the Realignment in the South* (New Haven: Yale University Press, 1996), 17, 19.

I received my undergraduate degree from Furman University in 1969 and my Ph.D. in American History from Princeton University in 1976 and have been researching and teaching American History at universities since 1971. Currently I am the Judge Matthew J. Perry Distinguished Professor of History, and Professor of Global Black Studies, Sociology and Anthropology, and Computer Science at Clemson University. From 2008 to 2010, I was the Burroughs Distinguished Professor of Southern History and Culture at Coastal Carolina University. I am emeritus University Distinguished Teacher/Scholar, Professor of History, African American Studies, and Sociology at the University of Illinois. I am a Senior Research Scientist at the National Center for Supercomputing Applications (NCSA) where I was Associate Director for Humanities and Social Sciences (2004-2010). I was also the founding Director of the Institute for Computing in Humanities, Arts, and Social Science (ICHASS) at the University of Illinois and currently chair the ICHASS Advisory Board.

I am the author or editor of more than twenty books and nearly three hundred articles, which can be found on my Curriculum Vitae attached to the end of this report. I have received a number of academic awards and honors. I was selected nationwide as the 1999 U.S. Research and Doctoral University Professor of the Year (presented by the Carnegie Foundation for the Advancement of Teaching and by the Council for Advancement and Support of Education). I have been recognized by my peers and was elected president of the Southern Historical Association and of the Agricultural History Society and elected to the Society of American Historians. In 2016, I received the College of Architecture, Art, and Humanities Dean's Award for "Excellence in Research." In 2017, I received the Governor's Award for Lifetime Achievement in the Humanities from the South Carolina Humanities Council and in 2021 I was awarded the Benjamin E. Mays Legacy Award. In 2018, I was part of the initial Clemson University Research, Scholarship and Artistic Achievement Award group of scholars. In 2022, I received the Clemson University Alumni Award for Outstanding Achievements in Research and was appointed to the South Carolina African American Heritage Commission, inducted into the Morehouse College Martin Luther King, Jr. Collegium of Scholars, and received the Southern Historical Association's most coveted award, the John Hope Franklin Lifetime Achievement Award.

My most recent book, co-authored with civil rights attorney Armand Derfner, *Justice Deferred: Race and the Supreme Court* (2021), was deemed "authoritative and highly readable" by Harvard University Law professor Randall Kennedy in his review in *The Nation*. *Justice*

*Deferred* was featured as a session at the November 2021 annual meetings of the Social Science History Association in Philadelphia, for a session at the April 2022 Midwestern Political Science Association meeting in Chicago and as a plenary session at the October 2022 Association for the Study of African American Life and History Association in Montgomery. Sessions on *Justice Deferred* are also scheduled for the annual meetings of the American Historical Association in January 2022 in Philadelphia and at the Organization of American History Association in March 2022 in Los Angeles. My book *The Age of Lincoln*, published in 2007, won the *Chicago Tribune* Heartland Literary Award for Nonfiction and was selected for Book of the Month Club, History Book Club, and Military Book Club. One reviewer proclaimed, “If the Civil War era was America's ‘Iliad,’ then historian Orville Vernon Burton is our latest Homer.” The book was featured at sessions of the annual meetings of the Association for the Study of African American Life and History, the Social Science History Association, and the Southern Intellectual History Circle. Among the articles I have published are several related to the issues discussed in this report and at least two law review articles address these issues directly. I was one of ten historians selected to contribute to the *Presidential Inaugural Portfolio* (January 21, 2013) by the Joint Congressional Committee on Inaugural Ceremonies. I edit two academic press series for the University of Virginia Press: *The American South Series* and the *A Nation Divided: Studies in the Civil War Era Series*.

As a scholar, I have had a long-time relationship with Georgia. I was born in Royston, and own the family farm in Madison County, Georgia. I am a recognized authority on the Georgia educator and theologian Dr. Benjamin E. Mays, who taught at Morehouse College from 1921 to 1923, was the longtime president of Morehouse College (1940-67), campaigned and was elected to the Atlanta schoolboard in 1969. The Atlanta school board members elected him president in 1970 and he served as president until he retired in 1981. My book, *In My Father House Are Many Mansions: Family and Community in Edgefield, South Carolina* (1985) is an intense study of a large section of South Carolina that is only separated from Georgia by the Savannah River, and the area has strong ties to Georgia and especially to the city of Augusta, which I have studied since before my Ph.D.

I have researched in the archives of the University of Georgia, Emory University, and Morehouse College. I have served on the Ph.D. committees, and am serving on one currently, at the University of Georgia. I gave one of Georgia’s annual humanities lectures in conjunction with

the Governor's Awards for the Humanities. I also keynoted one of the annual meetings of the Georgia Historical Society. I served on the Advisory Committee for the Atlanta History Museum to develop new exhibits on the modern South. I have been invited to present papers and talks and participate in seminars at Universities and colleges in the state of Georgia. I was invited and spoke at the Carter Center, and spoke at the University of Georgia, Augusta University, Payne College, Mercer University, gave the Crown lecture at Morehouse College, Georgia State University, Georgia Southern University, Fort Valley State University, Berry College, Emory University, the Georgia Institute of Technology, Young Harris College. I also led a workshop on teaching history for Georgia public school teachers in Athens, Georgia. Most recently, on October 12, 2022, I was invited back to Morehouse College for an academic conference. I was part of a panel discussing a special issue of *The Journal of Modern Slavery: A Multidisciplinary Exploration* 7:4 (2022) which was also issued as a book, *Slavery and its Consequences: Racism, Inequity & Exclusion in the USA*. On October 20, 2022, I returned to Georgia Southern University and spoke on "The Past, Present, and Future of Voting Rights" (with former Savannah Mayor Dr. Otis Johnson) as part of the Legacy of Slavery to Lecture series.

#### **B. Prior Testimony**

Over the past forty years, I have been retained to serve as an expert witness and consultant in numerous voting rights cases by the Voting Section of the Civil Rights Division of the United States Department of Justice (DOJ), the Voting Rights Project of the Southern Regional Office of the American Civil Liberties Union, the Brennan Center, the NAACP, the Legal Defense Fund (LDF) of the NAACP, the Mexican American Legal Defense and Educational Fund, the California Rural Legal Association, the League of United Latin American Citizens, the Lawyers' Committee for Civil Rights Under Law, the Legal Services Corporation, the Southern Poverty Law Center, and other individuals and groups.

I have extensive experience in analyzing social and economic status, discrimination, and historical intent in voting rights cases, as well as group voting behavior. I have been qualified as an expert in the fields of districting, reapportionment, and racial voting patterns and behavior in elections in the United States. My testimony has been accepted by federal courts on both statistical analysis of racially polarized voting and socioeconomic analysis of the population, as well as on the history of discrimination and the discriminatory intent of laws. For example, in 2021, my testimony and my report were cited in the Final Judgment and Order in Community Success



Initiative. v. Moore, 19 CVS 15941 (Superior Court, Wake County, March 28, 2022). In 2014, my testimony and my report was cited by the U.S. District Court for the Southern District of Texas in finding that the Texas in-person Voter ID Law was racially motivated and had a disparate effect on minorities. *See Veasey v. Perry*, 71 F.Supp.3d 627 (S.D. Tex. 2014). My testimony and reports have been cited by the U.S. Department of Justice. In 2012, for example, my report was cited by the Justice Department as a reason for their objection to the in-person South Carolina Voter ID law. *See* Dkt. 118-1, *South Carolina v. United States*, No. 1:12-cv-00203-CKK-BMK-JDB (D.D.C. June 29, 2012).

To the best of my knowledge and memory, in the last five or so years I have given testimony and/or depositions in the following cases: (i) *Pendergrass v. Raffensperger*, 1:21-cv-05339 (N.D. Ga.), (ii) *Grant v. Raffensperger*, 1:22-cv-00122 (N.D. Ga.), (iii) *League of Women Voters v. Lee*, No. 4:21-cv-186 (N.D. Fla.), (iv) *Community Success Initiative v. Moore*, No. 19-cv-15941 (N.C. Superior Court) (2020); (v) *Perez v. Perry* (5:11-CV-00360, W.D. Tex.); (vi) *South Carolina v. United States* (1:12-cv-00203, D.D.C.); and (vii) *Veasey v. Perry* (2:13-CV-193, S.D. Tex.). In addition, I testified on the VRA in a Congressional Briefing on December 4, 2015.

### **C. Methodology and Sources**

In this report, I have employed the standard methodology used by historians and other social scientists in investigating the adoption, operations, and maintenance of election laws. When analyzing political decision-making, historians examine the circumstantial and contextual evidence regarding the political, institutional, and social environment and context in which a decision is made, as well as direct evidence of the reasons asserted for the decision. We examine relevant scholarly studies, newspaper coverage of events, reports of local, state or federal governments, relevant court decisions, and the record in court cases, including expert reports, depositions and trial testimony, and statistical data. In writing this report, I have examined a wide range of sources. I have relied on primary and secondary sources available to me at the time of writing this report. This report makes extensive use of primary sources, especially contemporary newspapers, which record debates and speeches, and help to provide a barometer of public sentiment. Where possible, I have consulted historical and current newspaper and news magazines accounts, social media, miscellaneous online resources, from multiple perspectives, and checked for accuracy. I have also read the records of both houses of the Georgia General Assembly, the



journals and debates of the constitutional conventions, bill histories, and public statutes. I have studied census data, election returns, state and federal reports, official elections records. I have also used videos that have been recorded and preserved. I have also consulted secondary published works, as well as MA and Ph.D. theses, on politics and race relations in Georgia by other historians and social scientists, specifically, as well as in the South as a whole. This report features extensive footnotes to allow readers to assess the accuracy and credibility of my evidence and my conclusions.

#### **IV. GEORGIA'S HISTORY OF RACE DISCRIMINATION IN VOTING**

##### **A. Introduction**

Native Georgia historian, Dr. U. B. Phillips, argued in 1928 that the central theme of southern history was white racism. According to Phillips, white Southerners believed so strongly in white supremacy that they were determined the South “shall be and remain a white man’s country.”<sup>4</sup> Recently, Georgian and today’s most eminent historian of the American South, Spalding Distinguished Professor of History, emeritus at the University of Georgia, Dr. James C. Cobb, characterized Phillips’s argument as a “longstanding determination of whites to control people of color.” In Cobb’s own 2017 historical investigation of Georgia’s racial history he concluded, “the historical and contemporary pervasiveness of this impulse [of white Georgians determination to control people of color] is difficult to deny.”<sup>5</sup> My own research has found the same underlying purpose. This report demonstrates that this white determination resonates even today and especially in the area of voting rights. Over generations, people of color in Georgia have been discriminated against, disfranchised, and their vote diluted in ingenious ways by those who control the franchise in state and local governments.

The courts have taken judicial notice of this long and continuing history of racial discrimination, particularly in the area of voting rights. In 1994, in *Brooks v. State Board of Elections*, 848 F. Supp. 1548, 1560 (S.D. Ga. 1994), the court found: “Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race

---

<sup>4</sup> Ulrich B. Phillips, “The Central Theme of Southern History,” *American Historical Review*, Volume 34, Issue 1 (Oct. 1928), 31; Orville Vernon Burton, “The South as ‘Other,’ The Southerner as ‘Stranger,’” *The Journal of Southern History*, Volume 79, Issue 1 (February 2013): 7-50.

<sup>5</sup> Declaration of Dr. James C. Cobb at 8, *NAACP v. Gwinnett County Board of Registrations and Elections*, Civil Action No. 1:16-cv-02852, (N.D. Ga. Aug. 9, 2017).

discrimination were apparent and conspicuous realities, the norm rather than the exception.” This discrimination continues to this day.

In *A Voting Rights Odyssey: Black Enfranchisement in Georgia* (2003), Laughlin McDonald, an expert on Georgia’s voting history, wrote:

“While Georgia was not an anomaly, no state was more systematic and thorough in its efforts to deny or limit voting and officeholding by African-Americans after the Civil War. It adopted virtually every one of the traditional ‘expedients’ to obstruct the exercise of the franchise by blacks, including literacy and understanding tests, the poll tax, felony disfranchisement laws, onerous residency requirements, cumbersome registration procedures, voter challenges and purges, the abolition of elective offices, the use of discriminatory redistricting and apportionment schemes, the expulsion of elected blacks from office, and the adoption of primary elections in which only whites were allowed to vote. And where these technically legal measure failed to work or were thought insufficient, the state was more than willing to resort to fraud and violence in order to smother black political participation and safeguard white supremacy.”<sup>6</sup>

As McDonald further explained, Georgia and other southern states “continued their opposition to equal voting rights into the twentieth century and after the passage of the Voting Rights Act in 1965.”<sup>7</sup> Since McDonald published this assessment of Georgia’s history of voter discrimination and suppression in 2003, the state of Georgia has continued attempts to minimize the electoral influence of minority voters. Throughout the history of the state of Georgia, voting rights have followed a pattern where after periods of increased nonwhite voter registration and turnout, the state has passed legislation, and often used extralegal means, to disfranchise minority voters. Georgia continues attempts to minimize the electoral influence of minority voters, most recently in the redistricting plan passed by the Georgia General Assembly and signed by the Governor, and culminating in the disfranchisement mechanisms and implementation of SB 202. The first section of this report describes this extensive history from as far back as Reconstruction through the present day.

---

<sup>6</sup> Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia* (Cambridge: Cambridge University Press, 2003), 2–3. The early history of voter suppression and voter intimidation of Black voters from 1867 till the 1990s in Georgia is carefully documented by Laughlin McDonald, Michael B. Binford, and Ken Johnson in “Georgia,” chapter three of *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965-1990*, edited by Chandler Davidson and Bernard Grofman (Princeton, N.J.: Princeton University Press, 1994), 67-102.

<sup>7</sup> McDonald, *A Voting Rights Odyssey*, 3.

## **B. Reconstruction Era (End of the Civil War to 1870s)**

From Georgia's beginning, Black Georgians were precluded from participating in nearly all of Georgia's political and civil life. Near the start of the Civil War, in 1860, the United States census recorded 41,080 owners of 462,000 enslaved persons. Except for Virginia, Georgia had more enslaved persons and more owners of slaves than any state. But free Blacks were denied citizenship and voting rights in antebellum Georgia too; under the 1777 Georgia Constitution, voting was limited to "male white inhabitants, of the age of twenty-one years." Before the start of the Civil War, in March 1861, Alexander H. Stephens, a Georgian and vice-president of the Confederacy, explained that the new government had as its cornerstone, "the great truth than the negro is not equal to the white man."<sup>8</sup>

Immediately following the Civil War was a period of opportunity for the newly freed population. But in opposition to any such new freedom were targeted policies against Black Georgians.<sup>9</sup> With the defeat of the Confederacy, turmoil and uncertainty roiled the countryside. In June 1865, the 9,000 U.S. Army soldiers provided some measure of order and, where they were stationed, some protection for the newly freed enslaved people. With President Andrew Johnson's appointment of a provisional governor, white adult males who took a loyalty oath to the United States voted for delegates to write a new state constitution. While the new 1865 Georgia Constitution abolished slavery (as it was required to), the 1865 Constitution continued to limit the franchise to "free white male citizens of this State." Georgia's 1865 Constitution also excluded Black Georgians from holding office.<sup>10</sup>

At the end of the Civil War, Confederate states seeking to rejoin the Union were required to ratify the 13<sup>th</sup> Amendment, which specifically outlawed slavery.<sup>11</sup> In December 1865, the

---

<sup>8</sup> Keith S. Hebert, *Cornerstone of the Confederacy: Alexander Stephens and the Speech that Defined the Lost Cause* (2021); McDonald, *A Voting Rights Odyssey*, 16.

<sup>9</sup> Jeffrey Robert Young, "Slavery in Antebellum Georgia," *New Georgia Encyclopedia*, [www.georgiaencyclopedia.org/articles/history-archaeology/slavery-antebellum-georgia](http://www.georgiaencyclopedia.org/articles/history-archaeology/slavery-antebellum-georgia) (Oct. 20, 2003) (last edited Sep. 30, 2020); William Harris Bragg, "Reconstruction in Georgia," *New Georgia Encyclopedia*, <https://www.georgiaencyclopedia.org/articles/history-archaeology/reconstruction-in-georgia/> (Oct. 21, 2005) (last edited Sep. 30, 2020)

<sup>10</sup> Numan V. Bartley, *The Creation of Modern Georgia* (Athens: University of Georgia Press, 1983), 46-47; Bragg, "Reconstruction in Georgia."

<sup>11</sup> Orville Vernon Burton, *The Age of Lincoln* (New York: Hill and Wang, 2007), 269-70, 275, 298, 368; Orville Vernon Burton and Armand Derfner, *Justice Deferred: Race and the Supreme Court* (Harvard University Press, 2021), 37-38, 41, 44-45;

Georgia General Assembly ratified the 13<sup>th</sup> Amendment, and President Andrew Johnson returned governing the state to Georgia's elected officials. While the language of the prisoner exemption clause of the 13<sup>th</sup> Amendment was common to state constitutions and the Northwest Ordinance, historian Eric Foner notes that it "did not go unnoticed among white Southerners" that the 13<sup>th</sup> Amendment included a prisoner exemption clause.<sup>12</sup> In November 1865, for instance, former Confederate general John T. Morgan pointed out in a speech in Georgia that the 13<sup>th</sup> Amendment did not prevent states from enacting laws that enabled "'judicial authorities' to consign to bondage blacks convicted of crime."<sup>13</sup>

Georgia, like other states in the former Confederacy, then enacted "Black Codes," although the state did not refer to them with that name. This legislation regulated and restricted the rights of Black citizens through neutral-sounding regulations.<sup>14</sup> Although Black Georgians could not be legally subjected to penalties or punishment that did not apply to whites, it was local white officials and all white juries who decided whom would be punished and whom would not. While Black Georgians were granted some property rights, they could not serve on juries, or vote, or, significantly, testify against whites in court. Thus white Georgia officials were able to apply supposedly race neutral laws in a way that targeted the former enslaved people. Around this time, the Georgia legislature elected two prominent former Confederate officials as Georgia's two U.S. Senators, Alexander Stephens and Herschel Johnson, which the North saw as a flagrant act of white Georgian defiance and led Congress to deny them a seat in Washington.

In reaction to the re-election of former Confederate leaders, to the Black Codes, and to increasing violence against newly freed Black people, Georgia and nine other former Confederate States were placed under Federal military authority in 1867. As part of that oversight, adult Black males were given the right to vote, and the following time period was one of tremendous opportunity for Black Georgians. After the passage of the Second and Third Reconstruction Acts by Congress in 1867, Black males voted for the first time, and federally appointed registrars added 98,507 Black men to the voting lists, and required Georgia, as a requirement for readmission as a

---

<sup>12</sup> Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: W. W. Norton, 2019), 47-48, 110.

<sup>13</sup> Sidney Andrews, *The South Since the Civil War* (Boston: Houghton Mifflin, 1971), 323-24 (first published by Ticknor and Fields, 1866); John Richard Dennett, *The South as It Is, 1865- 1866*, (Tuscaloosa: University of Alabama Press, 2010), 110.

<sup>14</sup> Bartley, 17; Bragg, "Reconstruction in Georgia."

state, to write Black suffrage into the state constitution, elect a government based on the new Constitution, and ratify the Fourteenth Amendment, which granted citizenship to the formerly enslaved and guaranteed equal protection, and provided that Congress and the federal government could enforce that protection even against the states.<sup>15</sup> In December 1867, a new constitutional convention, held in Atlanta, guaranteed Black citizenship, protection of the laws, and the right of male suffrage. In the next election, in April 1868, held under the new constitution, twenty-five Black Georgians were elected to the State House, and three were elected to the State Senate.

Shortly afterward, white Georgians plotted to eliminate their power. Robert Toombs, a Democratic Party leader from Wilkes County, Georgia, exclaimed at a meeting of Georgia Democrats in July 1868 that it was an injustice that Georgia had been forced to accept “[Republican Governor Rufus] Bullock and nigger Government.”<sup>16</sup> Toombs had served as secretary of state of the Confederacy and as a Confederate general, and he objected to Georgia’s Constitution of 1868, drafted during Reconstruction, because he believed it granted Black people too many rights of citizenship.<sup>17</sup> That same year, *The Atlanta Constitution* also insisted that “the negro [was] incapable of self-government,” and that the “interest of the white race . . . should be held as paramount to all perilous experiments upon an alien race.”<sup>18</sup>

Even white Republicans sought to eliminate Black suffrage. Samuel Bard, the editor of the *Atlanta Daily New Era*, a Republican newspaper, reassured his readers that “Reconstruction does not make negro suffrage a permanency,” and promised that “as soon as the State is once more in its place . . . they can amend their Constitution, disfranchise the negroes, and restore suffrage to the disfranchised whites.”<sup>19</sup> By that December, Democrats, though in the minority, convinced a

---

<sup>15</sup> Bartley, 48.

<sup>16</sup> “Mammoth Democratic Mass Meeting,” *The Atlanta Constitution* (Atlanta, GA), July 24, 1868 (available online at <https://www.Newspapers.com/image/26848994>).

<sup>17</sup> McDonald, *A Voting Rights Odyssey* at 35-36.

<sup>18</sup> *The Atlanta Constitution* (Atlanta, GA), July 30, 1868 (available online at <https://www.Newspapers.com/image/26849014/>).

<sup>19</sup> “Reconstruction and the Southern Whites,” *The Atlanta Daily New Era* (Atlanta, GA), January 4, 1868. For a scholarly overview of these post-Civil War and post-Reconstruction disfranchising measures, see *Quiet Revolution in the South*, 67–70.

sufficient number of white Republicans to agree to expel all Black members of the Georgia legislature. By September 1868, all Black legislators were expelled from the General Assembly.<sup>20</sup>

This expulsion, along with the continuing high levels of racial violence directed at African Americans, convinced Congress to suspend Georgia's status once again as a state. Black legislators were reseated after the passage of the Congressional Reorganization Act of 1869.<sup>21</sup> In 1870 the Georgia Legislature returned the expelled Black legislators to their seats and expelled twenty-two members who had served as Confederate officers. That same year it passed the Akerman Law, prohibiting any person from challenging or hindering voters at the polls.<sup>22</sup> White Georgians reacted with vengeance; between 1867 and 1872, "at least a quarter of the state's Black legislators were jailed, threatened, bribed, beaten or killed."<sup>23</sup> At the heart of Black voter suppression was both explicit and implicit white violence. As Sidney Andrews, a journalist from Massachusetts, wrote in 1865, "any man holding and openly advocating even moderately radical views on the negro question, stands an excellent chance, in many counties of Georgia and South Carolina, of being found dead some morning."<sup>24</sup>

In October 1868, the *Atlanta Daily New Era* reported that those "despairing Democracy are resorting to the grossest acts of violence with the view of intimidating the negro away from the polls."<sup>25</sup> Historian Edmund Drago noted that starting in the April 1868 election through the 1872 presidential election, Democrats resorted to murder, violence, fraud, and intimidation, and successfully decreased Republican votes. Black politicians were threatened with violence, and some Black legislators were murdered by the Ku Klux Klan.<sup>26</sup>

---

<sup>20</sup>C. Mildred Thompson, *Reconstruction in Georgia: Economic, Social, Political, 1865-1872* (New York: Columbia University Press, 1915) 214; Edmund L. Drago, *Black Politicians and Reconstruction in Georgia: A Splendid Failure* (Baton Rouge: Louisiana State University Press, 1982), 148. There remains today a bronze sculpture on the Georgia Legislature's grounds entitled "Expelled Because of Color" to the 33 Black members of the Georgia Legislature who were expelled at that time.

<sup>21</sup> Drago, 55.

<sup>22</sup> McDonald, *A Voting Rights Odyssey*, 17–25.

<sup>23</sup> McDonald, *A Voting Rights Odyssey*, 35.

<sup>24</sup> Sidney Andrews, "The South Since the War," in Brooks D. Simpson, ed., *Reconstruction: Voices From America's First Great Struggle for Racial Equality* (New York: Library of America, 2018), 140

<sup>25</sup> *The Atlanta Daily New Era* (Atlanta, GA), October 25, 1868.

<sup>26</sup> Drago, 141-159.



One such instance of political violence happened in Camilla, Georgia in the fall of 1868. Just two months after the state assembly expelled its African American members, local officials from Mitchell County and the surrounding area organized a march from Albany to Camilla that would end at a local Republican rally. Several hundred Black Georgians joined the planned march along with several white Republicans, but upon entering town, local whites hiding out in storefronts along the town square gunned them down, murdering at least a dozen and wounding another thirty. The result of such a massacre was that white Democrats took control of southwest Georgia.<sup>27</sup>

Klan violence against Black legislators was severe. On October 29, 1869, a Black state legislator named Abram Colby from Greene County, Georgia was attacked by a group of sixty-five Klansmen, who dragged him into the woods and beat him for more than three hours before leaving him for dead. The mob explained that they were attacking Colby because he “had influence with the negroes of other counties.”<sup>28</sup> Colby later recounted before the Congressional Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States that, as he was beaten with “sticks and with straps that had buckles on the ends of them,” his assailants had demanded that he promise to never “vote another damned Radical ticket.”<sup>29</sup> Colby testified that the same group of men had also attempted to bribe him to switch parties or resign from the legislature. Colby’s story, while horrific, was not unique—this kind of violence against Black Republicans was common between 1869 and 1872.<sup>30</sup> The Ku Klux was active throughout the

---

<sup>27</sup> See Lee W. Formwalt, “Camilla Massacre,” New Georgia Encyclopedia, <https://www.georgiaencyclopedia.org/articles/history-archaeology/camilla-massacre/> (Sep. 5, 2002) (last edited Aug 20, 2020) See also Lee Formwalt, “The Camilla Massacre of 1868: Racial Violence as Political Propaganda,” *The Georgia Historical Quarterly*, Vol. 71, No. 3 (Fall, 1987), 399-426.

<sup>28</sup> *Ibid.*

<sup>29</sup> United States Congress, Joint Select Committee on the Condition of Affairs in the Late Insurrectionary States, Luke P. Poland, John Scott, and Woodrow Wilson Collection, *Report of the Joint select committee appointed to inquire into the condition of affairs in the late insurrectionary states, so far as regards the execution of laws, and the safety of the lives and property of the citizens of the United States and Testimony taken* (Washington: U.S. Government Printing Office, 1872). Available online from the Library of Congress, <https://lcn.loc.gov/35031867>.

<sup>30</sup> *Ibid.*; see also Kidada E. Williams, “The Wounds that Cried Out: Reckoning with African Americans’ Testimonies of Trauma and Suffrage from Night Riding” in *The World the Civil War Made*, Gregory P. Downs and Kate Masur, eds. (Chapel Hill: University of North Carolina Press, 2015) 159-62, 170-72.



state. Charles Kendricks, a politically active African American carpenter, and landowner in Gwinnett County, was appointed as an election manager by the state's Republican governor; he reported that a Klan leader had burst into his home waving a pistol and threatening to hang him. When he wrestled with the intruder and managed to run away, he was shot. The same perpetrator had previously pistol whipped Kendricks and attempted to stab him when he had seen Kendricks approaching the polls to vote.<sup>31</sup>

The example of Georgian Tunis Campbell is illustrative of Georgia's disfranchisement and intimidation tactics. Born in 1812, Tunis Campbell was a prominent African American abolitionist, who arrived in Georgia as an agent of the Freedman's Bureau. In the spring of 1865, he traveled to the Georgia coast and established a freedmen's settlement. When president Andrew Johnson began pardoning ex-Confederates and returning their land, Campbell purchased a large tract of land on St. Catherine's Island, allocated new settlements, and organized what became a self-governing community.<sup>32</sup> From there, Campbell moved into politics, becoming the head of the Republican Party in Georgia, a local registrar of voters, a delegate to Georgia's new Constitutional Convention, and eventually a state senator. He consulted with U.S. President Ulysses S. Grant and Senator Charles Sumner in 1871 on the need for voting rights for African Americans. He even headed up his own militia to protect him and his community from attacks from local bands of the Ku Klux Klan.<sup>33</sup> Local whites attempted to undermine Campbell from the start. In 1867, while serving as a state registrar, he survived a poisoning attempt, which reportedly killed one of his colleagues. Two years later, when both Tunis and his son won seats in the Georgia General Assembly, white state officials voted to deny them their seats.

---

<sup>31</sup> Testimony Taken by the Joint Select Committee to Inquire into the Condition of Affairs in the Late Insurrectionary States: Georgia, Volume I (Washington, D.C.: Government Printing Office, 1872), 350-55, 515-517. Available online at: [https://ia601409.us.archive.org/32/items/reportofjointsel06unit/reportofjointsel06unit\\_bw.pdf](https://ia601409.us.archive.org/32/items/reportofjointsel06unit/reportofjointsel06unit_bw.pdf).

<sup>32</sup> Russell Duncan, "Tunis Campbell, 1812-1891," New Georgia Encyclopedia, <https://www.georgiaencyclopedia.org/articles/arts-culture/tunis-campbell-1812-1891/> (Dec. 10, 2004) (last modified Jul 15, 2020). See also Russell Duncan, *Freedom's Shore: Tunis Campbell and the Georgia Freedmen* (Athens: University of Georgia Press, 1986).

<sup>33</sup> *Ibid*; See also Richard Hogan, "Resisting Redemption: The Republican Vote in Georgia in 1876," *Social Science History*, Vol. 35, No. 2 (Summer 2011), 13-166. See also, Jess McHugh, "He fought for Black voting rights in Georgia. He was almost killed for it." *The Washington Post* (Oct. 25, 2020) available at: <https://www.washingtonpost.com/history/2020/10/25/voting-rights-tunis-campbell-civil-war/>

During this time of immense violence, intimidation, and chicanery, in 1871 white Democrats took control of the Georgia Legislature. With a majority of elected officials dedicated to white supremacy, the state of Georgia tightened its grip on would-be Black voters and especially on Black elected officials, reinstituting an annual poll tax to dissuade or outright prohibit impoverished Black Georgians from voting. The poll tax and continued violence was effective: In 1872 only four Black citizens were elected to the Georgia Legislature, and only three in 1874.

In 1871, the state of Georgia also voted to remove the Republican Governor, thus basically ending political Reconstruction in Georgia. Then Democrats re-organized county elections and took control of local elections, thereby diminishing both the electoral power of Black voters-- and negating Tunis Campbell's authority as the leading politician in McIntosh County. In 1874, for example, Campbell won a seat in Georgia's House of Representatives, but Georgia's Democratically controlled legislature threw out all of the votes from Darien, Georgia (Campbell's base of support) after learning that a local election judge was not a registered property holder.<sup>34</sup>

Finally, in 1876, after years of trying to thwart Campbell's political career, white Democrats arrested Campbell on trumped up charges alleging malfeasance in office. A Georgia court sentenced him to a yearlong term in prison, which he served while working as a convict-lease laborer at a state labor camp. He left Georgia upon his release and published a memoir entitled *The Sufferings of the Rev. T. G. Campbell and his Family in Georgia (1877)*.<sup>35</sup>

The story of Tunis Campbell illustrates the effectiveness of violence, intimidation, fraud, and the poll tax. After white Democrats seized control of the Georgia state legislature, they organized a new constitutional convention, chaired by the same Robert Toombs cited above, who had been the secretary of state of the Confederacy. The Georgia state constitution of 1877 implemented a cumulative poll tax for elections, so that potential voters had to pay all previous unpaid poll taxes before casting a ballot.<sup>36</sup> The new 1877 Georgia constitution did not disfranchise its African American citizens in explicit words. But as historian Edmund Drago noted, however,

---

<sup>34</sup> See Hogan, 147.

<sup>35</sup> See Duncan, "Tunis Campbell." See also Tunis G. Campbell, *Sufferings of the Rev. T.G. Campbell and his family, in Georgia* (Washington, D.C.: Enterprise Publishing Company, 1877). Available online at: <https://archive.org/details/sufferingsofrevt00camprich/page/9/mode/2up>

<sup>36</sup> For a brief explanation of how the cumulative poll tax worked to disfranchise African Americans, see Avidit Acharya et al., *Deep Roots: How Slavery still Shapes Southern Politics* 146 (2018).

new restrictions, combined with reinstated poll taxes, were “sufficient to render black participation in politics improbable.”<sup>37</sup>

### **C. The Populist & Early Progressive Movement Era (1880s to 1910s)**

Populism emerged in the late 1880s as a challenge to the Post-Reconstruction settlement in Georgia. Populism meant different things to different people in different places, but it usually meant an emphasis on “the people” rather than on “the elite.” In Georgia “the people” meant the white people and the maintenance of white supremacy and the avoidance of any challenges to one-party rule. Almost all Georgia white elites were committed to the maintenance of white supremacy. A leading political figure in Georgia in these years was not a Populist but the Progressive Movement leader Henry Grady, who proclaimed the first of many “New Souths.” Grady wrote in 1885 that racial inequality is “instinctive—deeper than prejudice or pride—and bred in the bone and blood” and therefore it was essential that “the white race must dominate forever in the South.”<sup>38</sup>

Populism and the Farmer’s Alliance became a major factor in Georgia politics in the late 1880s. Most Georgia Populists were not racial egalitarians, but they did denounce race hatred and lynching, and promoted enlightened and mutual self-interest as an economic strategy. The Populists also called for financial reforms and regulation of corporations, particularly the railroads. The *Atlanta Constitution* warned that maintaining white supremacy was more important than “all the financial reform in the world.”<sup>39</sup> In Georgia progressivism was, in the words of historian John Dittmer, “conservative, elitist, and above all, racist.”<sup>40</sup>

The populist career of Tom Watson, a Congressman and U.S. Senator from Georgia, demonstrated the difficulties of challenging white supremacy in the state. Watson was initially a supporter of the interracial alliance of the populist movement, advocating for the rights of African Americans to vote and even standing guard all night to protect an African American’s right to vote. But after 1900, in his Georgia congressional campaign, Watson refashioned himself as virulently

---

<sup>37</sup> McDonald, 35–37; Drago, 156.

<sup>38</sup> Bartley, 85–86.

<sup>39</sup> McDonald, *A Voting Rights Odyssey*, 37.

<sup>40</sup> John Dittmer, *Black Georgia in the Progressive Era, 1900–1920* (Urbana: University of Illinois, 1977), 214.

racist (and anti-Semitic), a vehement defender of lynching, running on a platform of white supremacy.<sup>41</sup>

Georgia then took additional steps to exclude Black voters from the franchise at the end of the 19<sup>th</sup> century. In 1890, the Georgia legislature passed a law ceding primary elections to party officials. The law kept political candidates from trying to appeal to Black voters or to build multiracial coalitions.<sup>42</sup> In 1898, the Georgia Democratic Party adopted the use of a statewide primary, a popular progressive reform to remove politics from “smoke-filled back rooms.” But the adoption in Georgia was not a reform to bring in more democracy. In 1900, following the lead of South Carolina, Georgia became the second state to bar Black voters from participating in the Democratic Party, under the pretense that the Democratic Party was a private “club” and only had to accept the patronage of its chosen “guests.” Because Georgia was a one-party Democratic state, this meant that Black Georgians had no effective role in the state’s politics. The white primary was one of the central ways Georgia evaded the Fifteenth Amendment.<sup>43</sup>

Georgia’s government took another a giant step towards evading the Fifteenth Amendment in 1908, when it passed the “Progressive era” Felder-Williams bill, which became known as the “Disenfranchising Act.” Because the Fifteenth Amendment barred outright elimination of Black voting, other methods were used to curb and discourage Black voting without explicitly banning it. Even so, many agreed with the Georgia Congressman Tom Watson, who said in 1910 that “the hour has struck for the south to say that the fifteenth amendment is not law and will no longer be respected.”<sup>44</sup>

The 1908 Felder-Williams bill broadly disfranchised many Georgians but included a series of exceptions that would continue to allow most white voters to vote, such as: (1) having served

---

<sup>41</sup> Julia Mary Walsh, “‘Horny -Handed Sons of Toil’: Workers, Politics, and Religion in Augusta, Georgia, 1880—1910,” (Urbana: University of Illinois, 1999). Available online at: <https://www.ideals.illinois.edu/handle/2142/84756>; Donald A. Grant, *The Way it Was in the South: The Black Experience in Georgia* (1993; University of Georgia Press, 2001), 175-78; C. Vann Woodward, *Tom Watson: Agrarian Rebel* (1938; Oxford University Press, 1963); Barton Shaw, “Populist Party.” New Georgia Encyclopedia, <https://www.georgiaencyclopedia.org/articles/history-archaeology/populist-party/> (Sep. 3, 2002) (last modified Sep. 29, 2020)

<sup>42</sup> Bartley, 149; GA History, “White Primary Ends,” available online at: <http://gahistorysms.weebly.com/white-primary-ends.html>

<sup>43</sup> McDonald, *A Voting Rights Odyssey*, 38.

<sup>44</sup> *Ibid*, 39–40

in either the U.S. or Confederate armies, (2) having descended from someone who had served in either the U.S. or Confederate armies, (3) owning forty acres of land or five hundred dollars' worth of property in Georgia, (4) being able to write or to understand and explain any paragraph of the U.S. or Georgia Constitution, or (5) being "persons of good character who understand the duties and obligations of citizenship."<sup>45</sup> Overall, the Felder-Williams bill's literacy test, plus a property requirement and a cumulative poll tax, eliminated almost all existing Black voters in Georgia (along with a fair number of poor whites.)

While the bill became known as the "Disenfranchising Act," Georgia officials like Governor Hoke Smith justified the bill in the name of "honest elections in Georgia," which could begin by "keeping registration lists above suspicion."<sup>46</sup> Thus, pursuant to this new law, a new registration of voters was held after its adoption by popular vote.<sup>47</sup> The technique of disfranchisement under the name of something else, such as honest elections, became more prevalent in Georgia and elsewhere. As the *Atlanta Journal* wrote about the Felder-Williams bill, in passing it "Georgia takes her place among the enlightened and progressive states which have announced that the white man is to rule. She has declared in clear and specific terms for Anglo-Saxon supremacy and the integrity of the ballot."<sup>48</sup>

In the campaign to disfranchise Black voters, Georgia officials blamed a specter of voter fraud, echoing rhetoric from the violent overthrow of Reconstruction that Black residents did not deserve the rights of citizenship and the sanctity of the ballot. For Southern Progressives, as Governor Hoke Smith argued, "the first step toward purifying the ballot" was "the exclusion of the ignorant and purchasable negro."<sup>49</sup> White Democrats blamed "fraudulent negro voters" for Republican rule during Reconstruction, and falsely claimed that denying African Americans the right to vote would eliminate fraud.<sup>50</sup> John M. Brown, the editor of *The Bainbridge Democrat*, argued that "the negro as a voter—by a very large majority—is purchasable," and without

---

<sup>45</sup> *Ibid*, 41.

<sup>46</sup> Georgia. General Assembly. House of Representatives. *Journal of the House of Representatives of the State of Georgia* (Atlanta, GA: Franklin-Turner Company, 1908), 11. Available online through the University of Georgia at: [http://dlg.galileo.usg.edu/do:dlg\\_ggpd\\_y-ga-bl404-b1908](http://dlg.galileo.usg.edu/do:dlg_ggpd_y-ga-bl404-b1908).

<sup>47</sup> *Journal of the House of Representatives of the State of Georgia*, 19.

<sup>48</sup> McDonald, *A Voting Rights Odyssey*, 42.

<sup>49</sup> "Hoke Smith Writes of Campaign Issues," *The Atlanta Georgian and News* (Atlanta, GA), July 29, 1910.

<sup>50</sup> *The Atlanta Constitution* (Atlanta GA), June 16, 1898.

disfranchisement a “minority of the whites” could control Black voters and take Georgia hostage.<sup>51</sup> The false claim that Black votes were fraudulent began during Reconstruction and continues as a trope today.<sup>52</sup>

This pretext of voter fraud and purifying elections was used to justify the wholesale change in voter registration laws. In conjunction with the Felder-Williams bill that stripped Black men of their voter registrations, the Georgia General Assembly also approved a measure to amend the process for registering voters. The *Cartersville News* explained that this “pure election law” provided that “the registration list shall be placed on exhibit in the office of the clerk of the court, where all may inspect and may challenge those who are thought not worthy of a place.”<sup>53</sup> The bill stipulated that “the list from the voters’ books . . . shall be open to public inspection, and any citizen of the county shall be allowed to contest the right of registration of any person whose name appears upon the voters’ list.”<sup>54</sup> This “challenge” provision was incorporated into the 1910 Code of the State of Georgia, and remains substantively unchanged to this day.<sup>55</sup>

The purpose of both the disfranchisement law and the registration law was clear: to disfranchise Black Georgians and keep it that way. Governor Smith explained that during his tenure that “we adopted a registration law” that “was intended to make complete and fully effective the disfranchisement law.”<sup>56</sup> The *Atlanta Semi-Weekly Journal* wrote that “the registration provision of the pure election law which guarantees the ballot to every real white citizen of the

---

<sup>51</sup> “For Negro Disfranchisement,” *The Bainbridge Democrat* (Bainbridge, GA), September 3, 1908.

<sup>52</sup> *The Atlanta Constitution* (Atlanta GA), June 16, 1898.

<sup>53</sup> “Laws to Govern Georgia Elections,” *The Cartersville News* (Cartersville, GA), August 20, 1908.

<sup>54</sup> Part I, Title VII, *Acts and Resolutions of the General Assembly of the State of Georgia, 1908* (Atlanta, GA: Charles P. Byrd, 1908), 60. Available online through the Digital Library of Georgia at: [https://dlg.usg.edu/record/dlg\\_zlg1\\_102041291](https://dlg.usg.edu/record/dlg_zlg1_102041291)

<sup>55</sup> Originally codified as § 34-605, the 1908 voter challenge provision was preserved in substantially the same form through extensive reorganization and modernization of the Georgia Election code in 1964 and 1981, when it was re-codified at § 21-2-230. As observed in the editor’s note for the 2008 edition of *The Official Code of Georgia, Annotated* § 21-2-230, the voter challenge provision of the reorganized 1981 *Official Code of Georgia* was so similar to the 1933 *Code*’s voter challenge statute that any legal opinions decided under the older code would apply to § 21-2-230. See O.C.G.A. § 21-2-230 (2008). On intimidation and the use of the Georgia Challenge law, see *Vigilante: Georgia’s Vote Suppression Hitman* (Show&Tell Films 2022).

<sup>56</sup> “Hoke Smith Writes of Campaign Issues,” *The Atlanta Georgian and News* (Atlanta, GA), July 29, 1910



state” ensures that “his ballot’s power shall not be vitiated by a corrupt and floating element,” i.e. the Black voter whose vote was “fraudulent.”<sup>57</sup>

Together, these laws were devastatingly effective at eliminating both Black elected officials from seats of power and Black voters from the franchise. At this time of the Felder-Williams bill, the last remaining African American in the legislature was William H. Rogers, and he resigned after the passage of the bill. There would not be another Black Georgian in the legislature for half a century. In terms of voters, in 1908, 33,816 Black Georgians were registered to vote. Two years later, only 7,847 African Americans were registered, a decrease of more than 75 percent. In comparison, fewer than six percent of white voters were disfranchised by Georgia’s new election laws.<sup>58</sup> From 1920 to 1930 the combined Black vote total never exceeded 2,700.<sup>59</sup> In 1940 the total Black registration in Georgia was an estimated 20,000, around two or three percent of eligible Black voters. If anything, this figure exaggerates Black voting strength, since until 1944 Black voters were barred from the only election that mattered, the Democratic Party primary.<sup>60</sup>

#### **D. Early 20th Century (1910s to 1940s)**

During the early 20<sup>th</sup> century, beyond the poll tax and the white primary which had functionally removed nearly all Black Georgians from voter registration lists, Black Georgians also faced an array of state-sponsored discrimination across all aspects of life which led back to voting.<sup>61</sup> One was education. In *Cumming v. Richmond County School Board*, 175 U.S. 528 (1899), the U.S. Supreme Court sanctioned Georgia’s de jure segregation of white from Black students. The case arose after the school board in Augusta, Georgia, closed the only Black public high school in the county, while still operating its white high school. The Georgia Supreme Court

---

<sup>57</sup> “A Puerile Attack on a Great Law,” *The Atlanta Semi-Weekly Journal* (Atlanta, GA), June 24, 1910.

<sup>58</sup> *Ibid.*; see also *Quiet Revolution in the South*, 67.

<sup>59</sup> McDonald, *A Voting Rights Odyssey*, 46.

<sup>60</sup> *Ibid.*, 49; see also J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* (Chapel Hill: University of North Carolina, 1999), 201.

<sup>61</sup> The continuing effects of discrimination in Georgia hinder the ability of minority group members to participate effectively in the political process. Disparities in education, income, and health outcomes persist in Georgia, effectively disadvantaging many minority voters. Although another expert is providing census data and other statistics on racial disparities in socio-economic characteristics usually cited in connection with Senate Factor 5, I am providing a historical background here.



approved of the closure and segregation, and so did the U.S. Supreme Court. And without support for schools for Black Georgians, not only could literacy tests be used to keep Black people from voting, but under-resourced education and segregated schools severely stalled economic and social mobility for Georgia's Black residents.<sup>62</sup>

Like many southern states in the early years of the twentieth century, Georgia, on both a state and local level, instituted a vast array of Jim Crow legislation concerning restaurants, parks, zoos, chain gangs, and even prohibiting whites and African Americans from swearing on the same Bible in Atlanta courtrooms.<sup>63</sup> Georgia was also dead last among states in the percentage of Black farmers who owned their own land, at only 12.8%.<sup>64</sup> Of course, under the Felder-Williams Disenfranchisement Act, ownership of land was one of the exceptions of access to the franchise.

In 1916, Georgia elected Hugh M. Dorsey as governor. By no means a racial liberal, Dorsey did oppose the worst of Jim Crow. In his pamphlet entitled, *A Statement from Governor Hugh M. Dorsey as to the Negro in Georgia*, published before he left office in 1921, he highlighted the condition of Black Georgians at the time. He wrote, "in some counties the Negro is being driven out as though he were a wild beast. In others he is held a slave." Governor Dorsey also wrote, in response to white mob violence against Black Georgians, that Georgia "stand[s] indicted before the world. If the conditions. . . should continue, both God and man would justly condemn Georgia more severely than man and God have condemned Belgium and Leopold for the Congo atrocities."<sup>65</sup> Governor Dorsey wrote the truth; violence and threat of violence was constant for many Black Georgians after white Democrats controlled the state in the late 19<sup>th</sup> and first part of the 20<sup>th</sup> century.

---

<sup>62</sup> Edward A. Hatfield, "Segregation," New Georgia Encyclopedia, <http://www.georgiaencyclopedia.org/articles/history-archaeology/segregation> (Jun 1, 2007) (last edited Jul 20, 2020); Grant, 220. The Booker T. Washington High School in Atlanta opened in 1924; there were several denominational high schools for African Americans in Georgia.

<sup>63</sup> Bartley, 148.

<sup>64</sup> Adrienne Petty and Mark Schulz, "American Landowners and the Pursuit of the American Dream," in *Lincoln's Unfinished Work: The New Birth of Freedom from Generation to Generation*, Orville Vernon Burton and Peter Eisenstadt eds. (Baton Rouge: Louisiana State University, 2022), 133–171.

<sup>65</sup>"A statement from Governor Hugh M. Dorsey as to The Negro in Georgia," (<https://archive.org/details/statementfromgov00georrich>) (also available through the Library of Congress at <https://lcn.loc.gov/21027163>; cited in Cobb, 22-23.

At the time, a common form of state-sanctioned violence was debt peonage and the convict lease system, which some have described as slavery by another name. In theory, the federal Debt Peonage Act of 1867 had outlawed the peonage system—the system of debt slavery—throughout the United States. But even up through the 1920s, the federal government investigated and prosecuted hundreds of employers across the South, including particularly in Georgia, for practicing peonage. But the federal government’s prosecutions rarely succeeded in punishing offending landowners. In the end, peonage was ended by outside social and economic forces. In 1915, the boll weevil was found on Georgia cotton plants and thereafter the insect devastated cotton agriculture. In addition to the boll weevil, the Great Depression and the mechanization of agriculture spelled the end of the cotton plantations of Georgia. Only the decline of the cotton plantations ended the practice of peonage.<sup>66</sup>

Throughout World War I, Black Georgians also faced state-sanctioned racial discrimination. While the Selective Service Act of 1917 required all able-bodied men of a certain age to register for a national draft, regardless of race, it was local draft boards that were responsible for processing men registering for the draft and selecting which registrants would be inducted into military service.<sup>67</sup> In Fulton County, for example, the draft board “granted exemptions to 526 of the first 815 white registrants examined but turned down only six out of 202 black men.”<sup>68</sup> Statistically, across Fulton County, 65 percent of the whites but only three percent of the Black Georgians were granted exemptions from military service. Fulton County’s racially discriminatory decisions were so flagrant that President Woodrow Wilson, who had lived in Augusta, Georgia as

---

<sup>66</sup> Miller Handley Karnes, “Law, Labor, and Land in the Postbellum Cotton South: The Peonage Cases in Oglethorpe County, Georgia, 1865-1940,” (Urbana: University of Illinois, 2000), available online at: <https://www.ideals.illinois.edu/handle/2142/84756>; Cobb, 19-22; Pete Daniel, *The Shadow of Slavery: Peonage in the South, 1901-1969* (New York: Oxford University Press, 1972), 110-131; Talitha L. Laflouria, *Chained in Silence: Black Women and Convict Labor in the New South* (Chapel Hill: UNC Press, 2016); Sarah Haley, *No Mercy Here: Gender, Punishment, and the Making of Jim Crow Modernity* (Chapel Hill: UNC Press, 2016).

<sup>67</sup> U.S. Congress, “An Act To authorize the President to increase temporarily the Military Establishment of the United States,” United States Statutes at Large, Vol. 40 (1917-1919), 65<sup>th</sup> Congress (available online through the Law Library of Congress at <https://www.loc.gov/law/help/statutes-at-large/65th-congress/session-1/c65sch.pdf?locIdr=blogloc-ww1>).

<sup>68</sup> Arthur E Barbeau and Florette Henri, *The Unknown Soldiers: Black American Troops in World War I* (Philadelphia: Temple University Press, 1974), 35.

a boy, and who is today remembered as the president who segregated the federal government and endorsed the racist movie, “Birth of a Nation,” was forced to remove officials of the Fulton County Georgia Draft Board.

As Black Georgians were drafted into the war at a higher proportion than were whites, the NAACP established a chapter in Georgia in 1917, which was the same year that Georgia adopted the county unit form of government. The county-unit system became the method for determining the winner of the Democratic primary, the only elections in the state that mattered.<sup>69</sup>

Under the county-unit system, every county was given twice the number of unit votes as they had representatives in the state house. Each of Georgia’s 159 counties had at least one seat in the legislature, no county had more than three. The winner in each county’s primary election received all that county’s unit votes. This system gave a greater share of proportion of votes to small, rural, and much whiter counties, compared to larger and more urban counties, where the majority of still active Black voters lived.<sup>70</sup> As in many states prior to the *Baker v. Carr* (1962) decision, Georgia’s election system had a strongly rural bias, but perhaps in no state was the rural tilt as pronounced as in Georgia, diluting the strength of Black voters across Georgia.

Against this backdrop, in 1919, the Atlanta chapter of the NAACP was wildly successful in its voter registration drive: in one month, they registered more than one thousand new Black voters, more than doubling the number of Black voters who participated in past elections. The success of the NAACP caused panic among leading whites, and the following year, the Georgia General Assembly proposed legislation to prohibit Blacks from voting or from holding office.<sup>71</sup>

As Black Georgians returned from the war, many white Georgians held a deep antipathy regarding Black WWI veterans, which led in part to the rise of the Ku Klux Klan in Georgia following the war. Historian Nancy MacLean wrote about this time, in which seeing Black men in military uniforms, “a symbol commanding respect,” led white Georgians to racial violence as backlash.

---

<sup>69</sup> Between 1872 and 1950, the Democratic candidate won every state-wide race. See McDonald, *A Voting Rights Odyssey* at 81.

<sup>70</sup> Scott E. Buchanan, “County Unit System,” *New Georgia Encyclopedia*, <http://www.georgiaencyclopedia.org/articles/counties-cities-neighborhoods/county-unit-system> (Apr 15, 2005) (last edited Aug 21, 2020).

<sup>71</sup> Nancy MacLean, *Behind the Mask of Chivalry: The Making of the Second Ku Klux Klan* (Athens: University of Georgia, 1994), 28.

After World War I, in Georgia and elsewhere, African Americans again continued to try to vote despite the *legal* means of disfranchisement which state officials (white Democrats) had enacted, and whites again resorted to violence and intimidation to keep African Americans from the polls. For example, in Harris County, Georgia, African Americans planned to vote because President Franklin Roosevelt had a vacation home nearby, giving Black voters there a sense of federal protection. Trying to eliminate that sense of protection, however, white Georgians in the area “dug some graves there by the courthouse... and burned some crosses at the crossroads.”<sup>72</sup>

Of course, lynchings throughout the state served as a reminder for Black Georgians who challenged the status quo, and in practice lynchings did not need to be directly connected to the right to vote to act as a threat against all Black Georgians who dared participate in the franchise. From 1875 to 1930, there were 462 lynchings in Georgia. Only the state of Mississippi had more reported lynchings. Graphic descriptions of the lynchings sent messages to Black Georgians to stay in line (and to whites that racial violence would go unprosecuted).<sup>73</sup>

#### **E. World War II Era (1940s to 1950s)**

Up until the 1940s, Black Georgians had been successfully excluded from the franchise by many means, including the white primary. In 1944, however, in *Smith v. Allwright* the United States Supreme Court issued a landmark decision holding that political parties could not exclude Black Americans from participating in the party’s primary elections, thereby prohibiting the widely utilized white primary system.<sup>74</sup>

One year later, in 1945, the United States District Court for the Middle District of Georgia ruled in *King v. Chapman* that the Muscogee County Democratic Executive Committee and the state of Georgia had violated the Fourteenth, Fifteenth, and Seventeenth Amendment rights of Primus E. King, a Black voter who had been turned away when he had attempted to vote in the Democratic Party’s primary in Columbus, Georgia that prior summer. The judge, in part relying

---

<sup>72</sup>Testimony of William Simpson, Trial Transcript at 115, 118, *Brown v. Reames*, Civ. No. 75-80-COL (M. D. Ga.)

<sup>73</sup> W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880-1930* (Urbana-Champaign: University of Illinois Press, 1993); McDonald, 47; Georgia Lynching Project, circa 1875-1930,” (<https://scholarblogs.emory.edu/galynchings/counties/>).

<sup>74</sup> *Smith v. Allwright*, 321 U.S. 649 (1944).

on *Smith v. Allwright*, found that despite Georgia's attempts to make party primaries "purely private affairs," primary elections were "by a law an integral part of the election machinery."<sup>75</sup>

These cases, along with Governor Ellis Arnall's decision not to attempt to "circumvent the [*Allwright*] decision," and organizing efforts by groups like the NAACP-backed All Citizens Registration Committee, led to a massive surge in voter registration in 1946, especially among Black voters.<sup>76</sup> By the time of the 1946 primary, 118,387 Black Georgians had registered to vote. According to the *Jackson Progress-Argus* of Jackson, Georgia, this was "by all odds the largest registration in Georgia's primary."<sup>77</sup>

This important progression in Black voter registration, however, was met by outright hostility from candidates in the 1946 Gubernatorial election. For example, the race-baiting Democratic gubernatorial candidate in that election, Eugene Talmadge, campaigned on a platform of white supremacy and disfranchisement, threatening that if the "Democratic White Primary is not restored and preserved," Black voters, "directed by influences outside of Georgia," would control the Democratic Party.<sup>78</sup> This language echoed earlier comments from Georgia Governor Hoke-Smith which questioned the legitimacy of Black voters.<sup>79</sup> As Talmadge menacingly warned, "wise Negroes will stay away from white folks ballot boxes." Similarly, Marvin Griffin, a candidate for Lieutenant Governor, made white supremacy a cornerstone of his campaign and announced that he believed "the White Democratic Party should be kept white in Georgia, and that

---

<sup>75</sup> *King v. Chapman*, 62 F. Supp. 639 (M.D. Ga. 1945); *Chapman v. King*, 154 F.2d 460 (5th Cir. 1946); *Chapman v. King*, 327 U.S. 800 (1946); "Judge Rules Negroes May Vote," *The Atlanta Constitution* (Atlanta, GA), October 13, 1945; "Georgia Reform Faces Test in Hot Primary," *The Sunday News* (Lancaster, PA), July 14, 1946; Ronald H. Bayor, *Race and the Shaping of Twentieth-Century Atlanta* (Chapel Hill, NC: University of North Carolina Press, 1996), 34.

<sup>76</sup> McDonald, *A Voting Rights Odyssey*, 49.

<sup>77</sup> "Total Registration in Georgia May Reach Million When Deadline Falls," *The Jackson Progress-Argus* (Jackson, GA), June 20, 1946; "118, 387 Qualified to Vote in Georgia Primary Election," *The Plaindealer* (Kansas City, KS), July 19, 1946.

<sup>78</sup> "Georgia CAN Restore the Democratic White Primary and Retain County Unit System," *The Forsyth County News* (Cummings, GA), July 4, 1946.

<sup>79</sup> "Our Last Chance for WHITE SUPREMACY," *The Jackson Herald* (Jefferson, GA), July 11, 1946; "Georgia's State Campaign To Be Red Hot Affair," *The Gaffney Ledger* (Gaffney, SC), April 25, 1946.

carpet baggers and scalawags should not be permitted to take over this state and destroy southern racial traditions.”<sup>80</sup>

As the 1946 gubernatorial race progressed, both Griffin’s and Talmadge’s campaigns relied on voter challenges to disfranchise Black voters and repudiate the recent court rulings.<sup>81</sup> In particular, Talmadge responded to *Smith v. Allwright* by mounting challenges to Black voter registration forms, claiming they were filled out incorrectly. Although the state law required specific reasons for voiding registrations, Talmadge’s crew cited spurious reasons. They created pre-filled forms with spaces to fill in the voter’s name and county, with reasons such as “the voter was not a resident, was not eighteen, was not a person of good character, could not read the English language,” and so forth.<sup>82</sup> These forms demonstrated that Talmadge’s campaign did not know the specific circumstances or qualifications of the voters they challenged; all they knew were that these voters “were black, and that was enough.”<sup>83</sup> Ultimately, the Talmadge machine challenged so many voters that when those voters arrived in person to prove their qualifications, “it proved impossible to process all of them on election day, and as a result the Black voters were allowed to cast their ballots.”<sup>84</sup> All in all, during this election, more than thirty counties challenged Black registrations, denying an estimated 15,000 to 25,000 Black registrants the right to vote.<sup>85</sup>

The state of Georgia also continued to attempt to circumvent the rule against white primaries. In 1947, the Georgia General Assembly introduced a bill that would allow the continuation of a white-only primary by divorcing primaries from state action entirely. Willis Smith, a representative from Carroll County, said “Georgia is in trouble with the Negroes unless this bill is passed.” Echoing historian U. B. Phillips’ Central theme of Southern history, Smith continued “This is white man’s country, and we must keep it that way.”<sup>86</sup>

---

<sup>80</sup> *The Houston Home Journal* (Perry, GA), May 30, 1946; Kathy Lohr, “FBI Re-Examines 1946 Lynching Case,” July 25, 2006 (available online at: <http://www.npr.org/templates/story/story.php?storyId=5579862>); Cobb Declaration, 26.

<sup>81</sup> “Talmadge ‘Purge’ of Negro Voters Bogging Down in Georgia Counties,” *The Atlanta Constitution* (Atlanta, GA), July 12, 1946.

<sup>82</sup> McDonald, *A Voting Rights Odyssey*, 52-53.

<sup>83</sup> *Ibid.*, 52-54.

<sup>84</sup> *Ibid.*, 53.

<sup>85</sup> *Ibid.*, 52-54.

<sup>86</sup> *Ibid.*, 55. The bill was vetoed by Gov. Thompson who questioned its legality and believed it would invite fraud.



But perhaps the most successful way Georgia continued to circumvent the rule against white primaries was the continuation of the county-unit system, which had both the purpose and the effect of containing the Black vote in the urban areas of the state. By the early 1940s, 43.5% of the state's population (and 39.9% of the state's white population) controlled 59% of the unit votes. The unit vote system was inherently non-majoritarian, and situations in which candidates won the popular vote but lost the unit vote were not uncommon. And it had the consequence that not only legislative districts, but state-wide races for governor and other executive branch positions had a rural and white bias. The main target of the county-unit system was Atlanta and Fulton County, where many Black Georgians lived. In 1946, each unit vote in Fulton County represented 14,092 popular votes, while each unit vote in Chattahooche County (a much whiter county) represented 132 popular votes. In other words, each voter in Chattahooche County had 120 times the weight of a Fulton County voter.

The county-unit system was a bulwark for the racist and die-hard white supremacist machine of long-time governor Eugene Talmadge. Talmadge claimed the enemies of the county unit system were a group of "liberals, white primary antagonists, and integrationists." While five constitutional challenges were brought against the county-unit system in the 1940s and 1950s, none succeeded.<sup>87</sup>

Following Governor Talmadge's death, voter challenges to Black voters were used again during the 1948 Georgia gubernatorial special election. In Laurens County, Georgia, nearly three-quarters of the 2,477 of the Black Georgians who were registered to vote were purged after they were unable to appear before the board of registrars, which a grand jury later found illegal.<sup>88</sup> Marion County also engaged in a similar, and unsuccessful purge that targeted Black voters, who were challenged because of their supposed "lack of education."<sup>89</sup> While the efforts to purge Black voters in Laurens and Marion Counties failed, other counties pushed forward. The day before the Democratic primary election, 558 Black voters were purged from Spalding County's registration

---

<sup>87</sup> Ibid., 83.

<sup>88</sup> "Tax Collector of Laurens County Puts Negroes Back on List," *The Butler Herald* (Butler, GA), June 17, 1948; "'Vote Purge' Evidence Said Insufficient," *The Atlanta Constitution* (Atlanta, GA), August 29, 1948; "Twiggs Board Directed to Enroll Negroes," *The Atlanta Constitution* (Atlanta, GA), August 14, 1948.

<sup>89</sup> "Marion County Striking 400 From Voting List," *The Butler Herald* (Butler, GA), August 26, 1948; "Attempts to Intimidate Voters Told," *The Alabama Tribune* (Montgomery, AL), September 17, 1948;



list. Attempts to challenge and purge Black voters from voter registration lists also occurred in Lowndes, Schley, and Twiggs counties, and may have also taken place in Dougherty County as well.

When attempts to challenge African American voters' qualifications failed, other methods of voter intimidation were employed. For example, Augusta employed "slowdown" tactics in the 1948 elections that mirrored what Savannah did in 1946, whereby "several thousand blacks were unable to vote before the polls closed because of the delaying tactics of poll officials and were simply turned away."<sup>90</sup> Election officials only allowed three Black voters to vote per hour, in the hopes that there would "be plenty of Negroes standing in line when the polls close."<sup>91</sup> Furthermore, in 1949 the state government (unsuccessfully) attempted to force a general re-registration, "with the obvious aim of ridding the rolls of Negro voters."<sup>92</sup>

Along with strategic election-related tactics, there was also an upsurge of Klan activity and violence directed at Black voters.<sup>93</sup> In the days before the 1948 Democratic primary election, the Ku Klux Klan successfully suppressed Black voting in Lowndes County by burning crosses and threatening African American voters.<sup>94</sup> Acting Governor M.E. Thompson alleged that "during 1948 intimidation of voters by the Ku Klux Klan is being employed as a substitute for the purge campaign of 1946."<sup>95</sup> Threats of the Ku Klux Klan, extralegal violence, and all white juries within the legal system made these tactics effective. For example, a Black minister and teacher in Bleckley County went to the courthouse to register to vote in the 1955 election, but the chief of

---

<sup>90</sup> "'Vote Purge' Evidence Said Insufficient," *The Atlanta Constitution* (Atlanta, GA), August 29, 1948; "Twiggs Board Directed to Enroll Negroes," *The Atlanta Constitution* (Atlanta, GA), August 14, 1948. "Attempts to Intimidate Voters Told," *The Alabama Tribune* (Montgomery, AL), September 17, 1948; "Pre-Vote Klan Threats Substitute for Poll Purge of '46 – Thompson," *The Atlanta Constitution* (Atlanta, GA), March 25, 1948.

<sup>91</sup> "Attempts to Intimidate Voters Told," *The Alabama Tribune* (Montgomery, AL), September 17, 1948; "Pre-Vote Klan Threats Substitute for Poll Purge of '46 – Thompson," *The Atlanta Constitution* (Atlanta, GA), March 25, 1948.

<sup>92</sup> William M. Bates, "Require High School For Voters, Cook Asks," *The Atlanta Constitution* (Atlanta, GA), November 20, 1957.

<sup>93</sup> McDonald, *A Voting Rights Odyssey*, 52–54.

<sup>94</sup> Patrick Novotny, *This Georgia Rising: Education, Civil Rights, and the Politics of Change in Georgia in the 1940s* (Macon: Mercer University Press, 2008), 270; "Attempts to Intimidate Voters Told"; "Pre-Vote Klan Threats Substitute for Poll Purge of '46 – Thompson."

<sup>95</sup> *Id.*

police told him “[n]o niggers register in this courthouse.” The next year, someone burned a cross in his yard. He did not attempt to register again until 1964.<sup>96</sup>

After the passage of the 1957 Civil Rights Act, Georgia Governor Marvin Griffin—the candidate whose campaign had filed thousands of challenges against Black voters in 1946—formed a state election law revision committee, which introduced new voter requirements that were “aimed primarily . . . at curbing potential Negro voting strength in Georgia.”<sup>97</sup> Voters could be disqualified for offenses like “moonshine liquor law violations, adultery and child abandonment,” and the law would also impose a new, more stringent voter qualification test.<sup>98</sup> Rather than forcing a re-registration to ensure that all 1.2 million registered voters in the state could meet the new requirements, the new requirements “could be invoked against a registered voter upon challenge by another voter.”<sup>99</sup> Griffin’s insistence that the legislation include a \$1.00 poll tax (which had been previously eliminated in Georgia in 1945) and bi-annual re-registration ultimately led to the bill’s demise in the General Assembly.<sup>100</sup> From poll tax to registration schemes, the purpose in tweaking voting requirements was difficult to miss; the intent was to keep the numbers of eligible Black voters as low as possible, and to keep the requirements for voting accessible to the more marginal white voters.

#### **F. Pre-Voting Rights Act (Early 1960s)**

By the end of the 1950s and the start of the 1960s, Georgia’s malapportioned districts, which had the obvious effect of favoring rural white voters over urban Black voters, continued to grow. In 1960, even though the eight counties with the largest population had 41 percent of the

---

<sup>96</sup> Even with the VRA, Bleckley County did not see significant increase in Black registration because of the legacy of terror associated with attempting to register at the courthouse. In 1984, Bleckley County allowed satellite registration, and Black registration did increase. See McDonald, *A Voting Rights Odyssey*, 56.

<sup>97</sup> William M. Bates, “Crime Barriers and Stiffer Tests Proposed to Curb Negro Voting,” *The Atlanta Constitution* (Atlanta, GA), November 22, 1957; “Griffins Poll Tax, Voter Registration Bids Face Scuttling Move in House,” *The Atlanta Constitution* (Atlanta, GA), February 13, 1958.

<sup>98</sup> Bates, “Crime Barriers and Stiffer Tests Proposed to Curb Negro Voting”; Bates, “Griffins Poll Tax, Voter Registration Bids Face Scuttling Move in House.”

<sup>99</sup> Bates, “Crime Barriers and Stiffer Tests Proposed to Curb Negro Voting.”

<sup>100</sup> Bates, “Griffins Poll Tax, Voter Registration Bids Face Scuttling Move in House.”

state's population, they had only 12 percent of the members in the Georgia House of Representatives.<sup>101</sup>

Georgia's congressional districts were also grossly malapportioned around this time. In 1957, Georgia's Fifth District, consisting of Fulton, DeKalb, and Rockdale Counties, was the second most populous congressional district in the United States, with an estimated population of 782,800—about twice the size of the average congressional district. At the same time, Georgia's Ninth District, a much whiter district in the northeast part of the state, had an estimated population of 238,790, less than a third of the population of the fifth District. By 1960, Fulton County was the most underrepresented county in its state legislature of any county in the United States. DeKalb County was in third place.<sup>102</sup> Over time, the explosive growth of Atlanta, and the consequent increase in Black voters, put increased pressure on the county-unit system. Although still badly disproportionate in comparison to registration for whites, growing Black voting strength in Georgia was increasingly able to make a difference in close elections, something the state's segregationists were acutely aware of.

Defending the county-unit system became an issue on which die-hard segregationists would take their stand. For Peter Zack Greer, elected lieutenant-governor of Georgia in 1962, “left-wing radicals and Pinks,” were intent on unleashing the “bloc Negro vote in Atlanta.”<sup>103</sup> Even more moderate segregationists expressed similar sentiments. Carl Sanders, elected Georgia's governor in 1962, stated that eliminating the county-unit system would leave state government in the hands of “pressure groups or bloc votes”—the leading white Georgia euphemism for Black voters—and would keep “liberals and radicals from taking over.”<sup>104</sup>

Attempting to prevent the overturning of the county-unit system, in 1962 the Georgia General Assembly made some modifications to increase the representation of Fulton County in the state senate from three to seven. At the same time, however, they allowed the creation of multi-member, at-large districts so that the Black voters in a given county would always be outvoted,

---

<sup>101</sup> McDonald, *A Voting Rights Odyssey*, 80–84; Key, 117–124; Kousser, *Southern Politics in State and Nation*, 203–204.

<sup>102</sup> “What About Justice For the Fifth District?,” *Atlanta Constitution*, 23 October 1952; Bruce Galphin, “Only State Legislature Can Effectuate Reapportionment,” 28 November 1957; “We Challenge Congressman Jim Davis to Follow Seventh District's Example,” *Atlanta Constitution*, 30 March, 1962

<sup>103</sup> McDonald, *A Voting Rights Odyssey*, 82.

<sup>104</sup> *Ibid.*, 82–83.

and Fulton County’s state senators would be elected on an at-large basis. After this system was ruled unlawful, there were two majority-minority districts in Fulton County, one of which elected Leroy Johnson, the first African American to serve in a southern state legislature in many decades.<sup>105</sup>

Beginning in 1963, the United States Supreme Court fully outlawed Georgia’s county-unit system in *Gray v. Sanders*, 372 U.S. 368 (1963), culminating in *Wesberry v. Sanders*, 374 U.S. 802 (1963), another case arising from Georgia in which the United States Supreme Court mandated equal apportionment for the upper houses of state legislatures and for congressional districts. As one Georgia scholar wrote, “[these cases were] not a racial discrimination case[s], but its concept that voting districts must be composed of substantially equal populations was to prove one of the keys that opened the door to minority officeholding in Georgia.”<sup>106</sup>

In an attempt to subvert the Court’s decisions and to curb Black voting strength and electoral victories, in 1963, the all-white Election Laws Study Committee (ELSC) of the Georgia General Assembly proposed new voting rules for the state of Georgia. The goal of the Committee was to “replace[] the invalid county unit law” with rules that could operate to the same effect.<sup>107</sup> These rules included, most notably, a majority-vote rule to elect any candidate to local, state, and federal office in both primary and general elections, thus requiring a runoff if any candidate received only a plurality of the vote. The bill’s sponsor, Representative Denmark Groover (a self-described “segregationist”), explained such a requirement would reduce the influence of the “Negro bloc vote.”<sup>108</sup> And indeed, in practice, a majority-vote rule ensures that a Black candidate cannot be elected where Black voters are a minority of the population and voting is racially polarized, even when the white vote is split. *See, e.g., City of Port Arthur v. United States*, 459 U.S. 159, 167 (1982) (requiring removal of a majority vote rule for preclearance under Section 5, recognizing that “[i]n the context of racial bloc voting prevalent in [a city in which African Americans constituted a minority of the population], the [majority-vote] rule would permanently foreclose a black candidate from being elected”). Groover’s majority-vote law was ultimately

---

<sup>105</sup> *Ibid.*, 86-89.

<sup>106</sup> *Ibid.*, 80, 89-90.

<sup>107</sup> McDonald, *A Voting Rights Odyssey*, 91.

<sup>108</sup> Kousser, *Colorblind Injustice*, 198; McDonald, *A Voting Rights Odyssey*, 92.

enacted by the Georgia General Assembly in 1964, and to this day Georgia requires a majority vote for office.<sup>109</sup>

In addition to this majority vote requirement, in 1964 the Georgia legislature passed a new voting law with a literacy requirement, a strengthened voter understanding test, a prohibition on voter assistance except in cases of physical disability, a numbered-post provision (a specific method of at-large voting), and an anti-facsimile ballot provision, prohibiting voters from taking sample ballots or lists of candidates into the voting booth, to prevent, or as one of the leaders in the Senate said, “bloc voting” by Black Georgians.<sup>110</sup>

That same year Georgia’s election laws underwent a substantial revision as the General Assembly passed “a simplified and comprehensive code of election laws” in response to criticism that the state’s election law was disorganized and disjointed.<sup>111</sup> The reorganization of Georgia’s election laws introduced some important changes, such as the creation of the State Election Board and the standardization of calendars for county and state primaries. But Georgia maintained many other discriminatory laws in the 1964 revisions. For example, the state kept its voter challenge provision. The new election law code stipulated that “any elector of the county shall be allowed to challenge the right of registration of any person whose name appears on the electors list,” and outlined the process for contesting another citizen’s right to vote.<sup>112</sup> This voter challenge statute would end up surviving the modernization, recodification, and reorganization of the Georgia Code of Laws in 1981 and a subsequent update to provide for Georgia’s participation in the national “motor voter” program in 1994.<sup>113</sup> In fact, as the editor’s note for the 2008 edition of *The Official Code of Georgia, Annotated* § 21-2-230 observed, the voter challenge provision of the reorganized

---

<sup>109</sup> See Ga. Code Ann. § 21-2-501.

<sup>110</sup> McDonald, *A Voting Rights Odyssey*, 91–103; Kousser, *Colorblind Injustice*, 105, 232–236.

<sup>111</sup> As Assistant Attorney General Paul Rodgers, a member of the Election Laws Study Committee, argued, “it’s the biggest mess you’ve ever seen.” “New Election Code an Attempt to Simplify ‘Hodgepodge’ Laws,” *The Atlanta Constitution* (Atlanta, GA), May 4, 1964. Lieutenant Governor Peter Zack Geer complained that the state’s election laws were “strewn helter-skelter through the Code of Georgia,” and expressed his belief that the new code would be “surrounded with and imbedded in due process of law and judicial standards.” “Lieutenant Governor Geer Favors New Election Law Code,” *The Forsyth County News* (Cummings, GA), May 27, 1964.

<sup>112</sup> *Journal of the Senate of the State of Georgia at the Extraordinary Session*, 1964 (Hapeville, GA: Longino and Porter, Inc., 1964), 83.

<sup>113</sup> “Revising Outdated State Laws a Painstaking Job,” *The Atlanta Constitution* (Atlanta, GA), July 12, 1981; “Legislators Give Update of ’94 General Assembly Session,” *Forsyth County News* (Cummings, GA), April 6, 1994;

1981 *Official Code of Georgia* is so similar to the 1933 *Code*'s voter challenge statute that any legal opinions decided under the older code would also apply to § 21-2-230.<sup>114</sup>

### **G. Voting Rights Act Era (1960s and 1970s)**

On the eve of the enactment of the Voting Rights Act (VRA) in 1965, most Black Georgians' voting power had been made ineffective by voting rules which were neutral in their language, but functionally discriminatory in effect. By the time of the VRA, while Black Georgians were 34 percent of the voting age population, there were only three elected Black officials, and those officials had been elected in just the previous three years before the enactment of the Voting Rights Act. Overall, less than a third of the eligible Black population was registered in the state, and in Georgia's twenty-three counties with a Black voting age majority, only 16 percent of African Americans were registered compared to 89 percent of whites.<sup>115</sup> "This exclusion from the normal political process was not fortuitous; it was the result of two centuries of deliberate and systematic discrimination by the state against its minority population."<sup>116</sup>

The Voting Rights Act of 1965 would ultimately change the trajectory of voting rights for Black Georgians. In the award-winning book, *Quiet Revolution in the South: The Impact of the Voting Rights Act, 1965–1990*, Laughlin McDonald, Michael B. Binford, and Ken Johnson documented carefully the impact and opening of the franchise to African Americans in Georgia from 1965 through 1990.<sup>117</sup> Beyond statistical improvements in Black registration and elected officials, the VRA affected the tone of the political system itself. In 1974, Andrew Young, a civil rights activist with SCLC who would later be elected mayor of Atlanta in 1982, addressed the Association of Southern Black Mayors: "It used to be that Southern politics was just 'nigger' politics: who could 'outnigger' the other. Then you registered 10 to 15 percent in the community and folk would start saying 'Nigra.'" After registration numbers went to 35 to 40 percent, "it's amazing how quick they learned how to say 'Nee-grow.'" And when registration increased to 70

---

<sup>114</sup> O.C.G.A § 21-2-230 (2008)

<sup>115</sup> U.S. Commission on Civil Rights, *Political Participation: A Study of the Participation by Negroes in the Electoral and Political Processes in Ten Southern States since the Passage of the Voting Rights Act of 1965* (Washington, D.C.: U.S. Government Printing Office, 1968), 216-17, 232-39.

<sup>116</sup> McDonald, et. al., "Georgia," in *Quiet Revolution in the South*, 67-102, 409-413, quotation on p. 67.

<sup>117</sup> *Id.*



percent of the Black votes registered in the South, “everybody’s proud to be associated with their black brothers and sisters.”<sup>118</sup>

But the 1965 VRA did not translate to instant success in Black voter registration numbers. Even eleven years after the VRA, Black voters in Georgia were systematically underrepresented as a percentage of registered voters even after the passage of the VRA.<sup>119</sup> As the table below demonstrates, Black registration trailed white registration significantly even in 1976, particularly in the state of Georgia.<sup>120</sup>

State	% whites registered to vote, 1976	% Blacks registered to vote, 1976	% Difference
Alabama	75.4	58.1	17.3
Georgia	73.2	56.3	16.9
Louisiana	78.8	63.9	14.9
Mississippi	77.7	67.4	10.3
South Carolina	64.1	60.6	3.5
Texas	69.4	64.0	5.5
Virginia	67.0	60.7	6.3

The historical record also shows that most Georgia officials continued their hostility to Black voters and the VRA itself, especially the § 5 preclearance provisions to which they were now subject. As the VRA and other civil rights legislation gathered strength after the mid-1960s, white Georgia officials went to greater lengths to invent conditions and pretexts for challenging and neutralizing Black voting strength, both in the substance in their changes, and by refusing to seek preclearance at all.<sup>121</sup>

<sup>118</sup> Jack Bass and Walter DeVries, *The Transformation of Southern Politics: Social Change and Political Consequence since 1945* (Basic Books, 1976), 47; David S. Broder, *Changing of the Guard: Power and Leadership in America* (Simon and Schuster, 1980), 367.

<sup>119</sup> Campbell Gibson and Kay Jung, *Historical Census Statistics on Population Totals by Race* (Washington, DC: US Bureau of Census, 2002); McDonald, et al., “Georgia,” in *Quiet Revolution in the South*, 102.

<sup>120</sup> Laughlin McDonald, *Voting Rights in the South: Ten Years of Challenging Continuing Discrimination Against Minorities* (Atlanta: ACLU, Southern Regional Office, 1982).

<sup>121</sup> For examples of white Georgians hostility to the Voting Rights Act and to African American attempts at voting, see especially the testimonies of Julian Bond and Laughlin McDonald in



One of the most common tactics of preventing Black voters from electing candidates of choice was the change from voting by district to at-large voting. The effect of at-large voting, particularly in a jurisdiction with less than a majority of Black voters, is to ensure the white population can elect all the representatives to that district. In 1964, before the VRA, Calhoun County (63% Black), Clay (61% Black), Dooly (50% Black), Early (45% Black), Morgan (45% Black), Newton (31% Black), and Miller (28% Black) had district elections for county government. But after the VRA, all adopted at-large voting, directly violating § 5 preclearance rules. Between 1976 and 1980, all of these counties were sued, and now have district voting for county elections.<sup>122</sup>

In 1964, as previously discussed, in response to growing African American electoral strength, the Georgia General Assembly had adopted a law that required many offices to be won by a majority vote and not a mere plurality. At the time, the majority of Georgia's 159 counties had operated under a plurality system. The majority vote system was adopted to prevent a Black candidate being "first past the post" against a divided white vote.<sup>123</sup> Local jurisdictions also made the change to majority voting after the VRA. The city of Moultrie, Georgia, for example, adopted a majority voting procedure for city offices in 1965. All Black candidates were defeated until a § 5 suit forced the city to adopt districts in 1977. The city of Americus adopted a majority vote in 1968. Until a successful § 5 suit in 1977, two Black candidates who won by plurality in their Americus election races were defeated in the run-off election with a majority requirement. Around this time, Covington and St. Mary's, both cities with substantial Black populations, adopted a majority vote without seeking preclearance for doing so.<sup>124</sup> Overall, between 1975 and 1982, the U.S. Attorney-General brought 66 suits against majority voting requirements, many of them in Georgia. Many of these Georgia-specific instances can be found in Appendix A, located at the end of this report.

---

Extension of the Voting Rights Act: hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, Ninety-seventh Congress, first session, May 6, 7, 13, 19, 20, 27, 28, June 3, 5, 10, 12, 16, 17, 18, 23, 24, 25, and July 13, 1981. (on Bond see pp. 224ff)(McDonald, 596 ff)

<sup>122</sup> McDonald, *Voting Rights in the South*, 40–43

<sup>123</sup> McDonald, *A Voting Rights Odyssey*, 92–102; Kousser, *Colorblind Injustice*, 197–242.

<sup>124</sup> McDonald, *Voting Rights in the South*, 43–46

Numbered posts (another method of at-large voting) were another way to discriminate against Black voters and Black candidates. When, for instance, there were three open positions for county commissioner, rather than electing the three candidates with the highest vote totals, candidates had to run specifically for seats No. 1, No. 2, and No. 3, diminishing the chances of electing Black candidates. From 1975 to 1982, the Attorney-General objected to 60 submissions involving numbered posts, many from Georgia. Dawson, Kingsland, and St. Mary's all adopted numbered posts elections for the city council in the 1960s and 1970s, none of them applying for preclearance in doing so.<sup>125</sup>

Staggered voting was another technique used to limit Black voting strength, by limiting the numbers of open seats at any one time and making it more difficult to Black candidates to get elected, particularly if combined with at-large voting schemes. Peach County, for example, staggered the election of its county commissioners starting in 1968, and the city of Kingsland did the same in 1976 without seeking preclearance.<sup>126</sup>

Annexations of territory by cities to decrease the percentage of the Black population were, through 1982, the most common type of suit brought by the DOJ. The city of Jackson, for example, used annexation to limit Black voting strength until enjoined in 1981.<sup>127</sup>

There were many other forms of Section 5 noncompliance in Georgia. In 1981, Julian Bond, a Georgia State Senator, testified before the House of Representatives that there were over four hundred non-submissions of Section 5 notifications by Georgia jurisdictions.<sup>128</sup> Many jurisdictions in Georgia simply refused to comply with Section 5 objections, such as Sumter County, Pike County, and Waynesboro. Other jurisdictions, such as Thomson, when faced with a Section 5 objection to majority voting, city officials encouraged the two white candidates to have an informal "run-off" to avoid splitting the white vote and allowing the Black candidate to win. This practice, known as "cuing," the endorsement by white community leaders of a specific

---

<sup>125</sup> Ibid. at 50–51.

<sup>126</sup> Ibid. at 51–52

<sup>127</sup> Ibid. at 52–53

<sup>128</sup> "Testimony of Julian Bond, State Senator from Georgia, Extension of the Voting Rights Act: Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee of the Judiciary," May–July 1981.

candidate prior to the actual election, is in the words of Laughlin McDonald, “doing by indirection that which Section 5 expressly forbids.”<sup>129</sup>

Overall, the number of VRA Section 5 preclearance challenges raised by private or federal suit show that Georgia was one of the most active and ingenious in trying to prevent Black voting strength. From 1965 to 1981, the DOJ received a total of 34,798 voting changes submitted for preclearance under Section 5. DOJ ultimately objected to 815 of these proposed changes, and of those, 226, or almost 30 percent, were from the state of Georgia.<sup>130</sup> This figure far exceeds that of other states. Louisiana, for example, the state that was subject to the second-most number of objections, was only the subject of 136 objections, which is just a little over half of Georgia’s objections.<sup>131</sup>

This number likely significantly undercounts the number of actual and potential § 5 violations in Georgia prior to the 1982 reauthorization of the VRA. In a 1984 article, Drew Days and Lani Guinier estimated that “covered jurisdictions have made literally hundreds of changes that have never met the preclearance requirement of Section 5,” and that the DOJ “has not been able to ensure that every electoral change by covered jurisdictions, or indeed most of them, was subjected to the Section 5 process.”<sup>132</sup> In another study, based on interviews with local attorneys in Georgia and Mississippi involved in voting issues found that 36.4% of attorneys that responded to the survey reported that local jurisdictions went ahead with election changes despite a pending preclearance request. The survey revealed other ways of gaming the VRA system—waiting until shortly before the election to file the Section 5 request, not giving the DOJ adequate time to respond, or alternatively, exhaustively arguing every nuance of a Section 5 request, hoping to win outright, or at least gain an advantage by exhaustion and attrition.<sup>133</sup> Even still, as noted, between 1965 and 1980, DOJ objected to more than 200 changes submitted by Georgia under Section 5.<sup>134</sup>

In 1969, the United States Supreme Court in *Allen v. State Board of Elections*, 393 U.S. 544 (1968), made clear that changes made under preclearance under Section 5 of the VRA were to be construed broadly because to limit its scope to a specific set of voting restrictions would be

---

<sup>129</sup> McDonald, *Voting Rights in the South*, 60.

<sup>130</sup> *Ibid.*, 20-25.

<sup>131</sup> *Id.*

<sup>132</sup> Drew Days III and Lani Guinier, “Enforcement of Section 5 of the Voting Rights Act,” in Chandler, *Minority Vote Dilution*, 168.

<sup>133</sup> Ball et al., “The View from Georgia and Mississippi.”

<sup>134</sup> McDonald, *Voting Rights in the South*, 20–23.

“underestimating the ingenuity of those bent on keeping Negroes from voting.” The *Allen* Court also made clear that preclearance extended to reapportionment plans.<sup>135</sup>

Georgia’s congressional reapportionment in 1971 was the first held under Section 5 preclearance rules, and it showed, in the words of Laughlin McDonald, “the extraordinary lengths to which the legislature was prepared to go to exclude Blacks from the congressional delegation.”<sup>136</sup> A plan proposed by two Black state senators to increase the Black percentage of Georgia’s Fifth congressional district from 34 to 45% was defeated 45 to 9. The plan which was approved by the Georgia General Assembly carved the Black population in the Fourth, Fifth, and Sixth Districts to give the Fifth district a substantial white majority, with the Fifth district as 38% Black, and specifically excluded from the district the homes of Andrew Young—who had unsuccessfully run for Congress in the district in 1970—and Maynard Jackson, another budding Black politician.

The Georgia General Assembly’s 1971 reapportionment plan was rejected by the Department of Justice under Section 5. Under a revised reapportionment plan, the Fifth District was 44.2% Black, in 1972, Georgian Andrew Young (along with Barbara Jordan in Texas), significantly both were elected from urban districts, became the first African Americans elected to the United States House of Representatives from the South in the twentieth century. Young was elected three times, resigning his seat in 1977 to become President Carter’s ambassador to the United Nations. It would take over a decade for another Black Georgian to be elected to the United States Congress from the state of Georgia.<sup>137</sup>

## **H. End of the Twentieth Century (1980s–2002)**

In the redistricting cycle after the 1980 census, the Georgia General Assembly again tried to limit Black voting strength in Atlanta. The Georgia General Assembly’s reapportionment plan contained white majorities in nine of the ten congressional districts, even though Georgia’s population at the time was nearly 30% Black. Julian Bond, by then a Georgia state senator, introduced a bill that would have made the Fifth congressional district 69% Black. In response, the Chair of the Senate Reapportionment Committee criticized the proposal as one that would

---

<sup>135</sup> Cited in Orville Vernon Burton and Armand Derfner, *Justice Deferred: Race and the Supreme Court* (Cambridge, MA: Harvard University, 2021), 228.

<sup>136</sup> McDonald, *A Voting Rights Odyssey*, 149.

<sup>137</sup> Bullock, “History of Redistricting,” 1065–66; McDonald, *A Voting Rights Odyssey*, 149–150.

cause “white flight.” The Chair of the House Reapportionment Committee similarly criticized the proposal on the grounds that he was disinclined to draw “nigger districts” or support “nigger legislation.”<sup>138</sup> Some members of the Georgia General Assembly stated they did not want to go back to their districts and “explain[] why I was a leader in getting a black elected to the United States Congress.” Bond’s proposal was predictably rejected, and the reapportionment plan drawn by the Georgia General Assembly was, as in the previous decade, rejected under Section 5 of the Voting Rights Act. The Court then approved a new plan with a district that was 65% Black. Julian Bond and John Lewis, two old friends and comrades from the Student Nonviolent Coordinating Committee (SNCC), vied for the seat; Lewis ultimately won.<sup>139</sup>

In 1980, Laughlin McDonald noted that of the 18 Black Georgians elected to county governments—about only 3% of all office holders—16 of them were elected in majority Black districts or counties. As McDonald wrote in 1982, “blacks in Georgia’s majority white counties or districts, for all practical purposes, cannot get elected.”<sup>140</sup>

On the eve of the possible expiration of the VRA in the early 1980s, Georgia continued to show that such an extension was necessary. In 1980, DeKalb County adopted a policy that it would no longer approve community groups to conduct voter registration drives.<sup>141</sup> In 1981, Georgia was blocked from changing the rules about who could help voters at the polls under Section 5.<sup>142</sup> The early 1980s also saw continued use of voter challenges against Black voters. In 1981, white Georgians on the northside of Atlanta formed the Voter Information Project (VIP), which used Georgia’s voter challenge law to dispute the right to vote of more than 50,000 registered voters in Fulton County, including 37,000 urban voters. Of these challenged voters, 58 percent were African

---

<sup>138</sup> McDonald, *A Voting Rights Odyssey*, 168-173.

<sup>139</sup> *Id.*

<sup>140</sup> McDonald, *Voting Rights in the South*, 40-43.

<sup>141</sup> “Testimony of Julian Bond, State Senator from Georgia, Extension of the Voting Rights Act: Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee of the Judiciary,” May-July 1981, 54-55.

<sup>142</sup> Sept. 18 Letter from William Bradford Reynolds to Michael Bowers at 2-3 (1981), quoted in Expert Witness Report of Dr. Peyton McCrary at 8, 18 (“McCrary Report”), *Fair Fight v. Raffensperger*, No. 1:18-cv-05391-SCJ (N.D. Ga. 2020), ECF No. 339. According to the 1970 census data (the latest available at the time of the DOJ objection), in Georgia, only 8 percent of whites over the age of 25 had completed less than five years of school while 32 percent of Blacks over the age of 25 had completed less than five years of school (also cited in McCrary).

Americans. As a result, in 1981, one in five registered voters was purged from Fulton County's voters' rolls.<sup>143</sup>

That same year, the *New York Times* summarized the status of Black voters in Georgia as the country debated the 1982 re-authorization of the VRA:

"26.2 percent of the population is black, only 3.7 percent of the elected officials are black. The glitter of power in Atlanta, where two blacks are among the three frontrunners to succeed the city's two-term black mayor, Maynard Jackson. In fifteen of the state's twenty-two counties where blacks comprise a majority or close to it, no blacks serve on county commissions. It is not for want of trying; 34-year-old Edward Brown Jr. has twice run unsuccessfully for office in Mitchell Co. In Mr. Brown's instance, all-white poll officials and paper ballots greatly reduced his chances for winning. Testifying in a court case, Mr. Brown stated that it is difficult to win when whites as a matter of policy vote against blacks. Citing his defeats, he said that whites were transported to and from polling places by county sheriffs who urged them not to vote for Mr. Brown "because he's a nigger."<sup>144</sup>

When Congress did re-authorize the VRA in 1982, it cited systemic abuses by Georgia officials to evade Black voting rights.<sup>145</sup>

At the end of the decade, Georgia again began another reapportionment cycle. Over the course of the 1990 redistricting cycle, the Department of Justice twice rejected the Georgia General Assembly's state's reapportionment plan, before finally approving the third submission.<sup>146</sup> After the 1992 election, a total of thirty-four African Americans were in the Georgia General Assembly, almost all of them from Black majority districts, almost all of whom owed their seats to litigation and to Section 5 of the Voting Rights Act.

### **I. Modern Era (2000s to Present Day)**

Voter suppression tactics that have plagued Georgia's history have persisted into the modern era. These policies around voting have also come at a time of rapid demographic shifts in Georgia's electorate: Georgia is the only state in the Deep South where the percentage of the Black population has sharply increased over the past half century. Because of the remarkable growth of

---

<sup>143</sup> Barry King, "Notices Sent on Fulton Voter Purge," *The Atlanta Constitution* (Atlanta, GA), March 3, 1981; Jim Walls, "One in Five Voters Dropped From Rolls," *The Atlanta Constitution* (Atlanta, GA), April 16, 1981; Frederick Allen, "Voter Challenges Seen Through a Glass Darkly," *The Atlanta Constitution* (Atlanta, GA), September 15, 1981.

<sup>144</sup> Stuart, "Once Again a Clash Over Voting Rights," *N.Y. Times* (Sept. 27, 1981).

<sup>145</sup> S. Rep. No. 97-417, 97th Cong. 2d Sess. 10, 13 (1982).

<sup>146</sup> McDonald, *A Voting Rights Odyssey* 211–224.



metro Atlanta and its four core counties, Fulton, DeKalb, Gwinnett, and Cobb, these changing demographics in Georgia—especially its Black, Latino/a, and Asian populations, who tend to support Democratic candidates—combined with minority voter mobilization efforts are the “likeliest threat to Republican domination of Georgia elections.”<sup>147</sup>

**i. 2000s through 2010 Redistricting**

For the fourth decade in a row, in the 2000 redistricting cycle the Georgia General Assembly passed redistricting plans that would not survive preclearance. Specifically, the district court in the District of Columbia refused to preclear the General Assembly’s Senate plan which decreased the Black voting age percentage in the districts surrounding Chatham, Albany, Dougherty, Calhoun, Macon, and Bibb Counties. Overall, the court found “the presence of racially polarized voting” and that “the State ha[d] failed to demonstrate by a preponderance of the evidence that the reapportionment plan for the State will not have a retrogressive effect.” *Georgia v. Ashcroft*, 195 F.Supp. 2d 25, 94 (D. D.C. 2002), *affirmed*, *King v. Georgia*, 537 U.S. 1100 (2003).

The 2002 election proved to be a watershed moment for the state of Georgia. For nearly half a decade, white voters in Georgia had been abandoning the Democratic Party for the Republican Party. When Republican Sonny Perdue defeated Democrat incumbent Roy Barnes as governor in 2002, the election “broke a Democratic stronghold on the Georgia governorship that had kept the GOP out since Reconstruction.”<sup>148</sup> In the 2004 election, Republicans also won the majority of House seats, shifting control of the legislature.

Georgia was the first state covered by Section 5 of the VRA to pass an in-person voter identification law. In 2005, the Georgia General Assembly promptly passed a photo ID law, limiting Georgians to only six acceptable forms of identification. Voters who lacked acceptable identification could purchase one from the state for \$20 to \$35. Sue Burmeister, the Georgia State Senator who had introduced the photo ID legislation, said in testimony before the Department of

---

<sup>147</sup> McCrary Report at 37; on the increasing influence of Latina/Latino peoples, see Victor Zuniga and Reuben Hernandez Leon, “The Dalton Story: Mexican Immigration and Social Transformation in the Carpet Capital of the World,” 34-50 and Mary E. Odem, “Latino Immigrants and the Politics of Space in Atlanta,” 112-125 in Mary E. Odem and Elaine Lacy, eds., *Latino Immigrants and the Transformation of the U.S. South* (University of Georgia Press, 2009).

<sup>148</sup> Danny Hayes and Seth C. McKee, “Booting Barnes: Explaining the Historic Upset in the 2002 Georgia Gubernatorial Election,” *Politics and Policy* 32 (December 2004), 1, quoted in McCrary Report at 29.



Justice that “if there are fewer black voters because of the bill, it will only be because there is less opportunity for fraud,” and that “when Black voters in her Black precincts are not paid to vote, they do not go to the polls.”<sup>149</sup> Shortly after the law’s enactment, the U.S. District Court for the Northern District of Georgia preliminary enjoined the law, finding the photo ID law was “most likely to prevent Georgia’s elderly, poor, and African–American voters from voting.” *Common Cause/Georgia v. Billups*, 406 F. Supp. 2d 1326, 1365–66 (N.D. Ga. 2005). In reaction to the injunction, the Georgia General Assembly was forced to make the voter ID cards free.

Several years later, following the 2010 U.S. Census, white Republican Georgia lawmakers worked not only to maintain power but to create a super-majority through redistricting. The Georgia General Assembly’s reapportionment plan created a record number of majority-Black districts, which by packing Black votes together, solidified Republican holds in the surrounding districts. Ultimately, the Georgia Republican Party was successful in achieving a super-majority in the Senate; it fell one seat short of a super-majority in the House.<sup>150</sup>

In 2015, the Georgia General Assembly engaged in mid-cycle redistricting after the Supreme Court invalidated Section 5’s preclearance formula in *Shelby County, Alabama v. Holder*, 570 U.S. 529 (2013).<sup>151</sup> No longer subject to preclearance, the Georgia General Assembly reduced the Black and Latina/o voting age percentage in House districts 105 and 111, both of which had become increasingly diverse over the prior half-decade (and unlikely to elect Republicans).<sup>152</sup> Plaintiffs initially brought suit over the changes under Section 2 of the Voting Rights Act, but the continued migration of voters of color into those districts rendered the General Assembly’s changes obsolete. After minority candidates prevailed in those districts in 2018, the plaintiffs withdrew their complaint.<sup>153</sup>

---

<sup>149</sup> Carol Anderson, *One Person, No Vote: How Voter Suppression is Destroying Our Economy* (New York: Bloomsbury, 2018), 60–62; Ari Berman, *Give Us the Ballot: The Modern Struggle for Voting Rights in America* (New York: Picador, 2015) 222–224, 226–229; Stacey Abrams, *Our Time is Now: Power, Purpose, and the Fight for a Fair America* (New York: Henry Holt, 2020), 75–76

<sup>150</sup> Charles S. Bullock III, “The History of Redistricting in Georgia,” *Georgia Law Review* 52, no. 4 (2018): 1095–1098; Expert Report of Laughlin McDonald at 17, *Dwight et al. v. Kemp*, ECF No. 178 (Aug. 6, 2018).

<sup>151</sup> Expert Report of Jowei Chen, *Georgia State Conference of NAACP v. State of Georgia*, No. 1:17-cv-1427, ECF No. 63 (N.D. Ga. Dec. 22, 2017).

<sup>152</sup> *Id.*

<sup>153</sup> *Georgia State Conference of NAACP*, No. 1:17-cv-1427, ECF No. 221.

## ii. State-Sponsored Voter Investigations

As in Georgia's past, modern-day elected officials, law enforcement officers, and political activists have continued to harass and intimidate Black voters and candidates in order to maintain political power. Nowhere is this more obvious than in Quitman, Georgia—a predominantly Black city in otherwise predominantly white Brooks County. In the early 2000s, Nancy Dennard, a Black educator, won a 2009 special election to the Brooks County School Board through a campaign that targeted citizens “who had never voted before” and who had problems getting to the polls on election day. At the time, Dennard's opponent complained about the large number of absentee ballots cast for Dennard. The Georgia secretary of state's office conducted a brief investigation but found no evidence of fraud.<sup>154</sup>

The next year, two more Black women and allies of Dennard—Diane Thomas and Linda Troutman—ran for seats on the school board and again worked to increase voter turnout through absentee voting. This time, the Brooks County School Board hired a private investigator to track Dennard and her allies. More than 1,400 Black voters participated in the Democratic primary election for school board that year—three times the turnout in previous midterm elections—and Thomas and Troutman were elected as the Democratic Party's nominees. In response, then-Secretary of State Brian Kemp (in cooperation with the Georgia Bureau of Investigation) opened a formal investigation into the 2010 election in Quitman.<sup>155</sup>

Six weeks after Thomas and Troutman won seats on the school board, state and local police arrested Dennard, Thomas, Troutman, and seven other people. Two more women were arrested a year later. The “Quitman 10+2,” as they came to be known, were collectively charged with 102 felony counts. Prosecutors alleged that organizers had provided unlawful assistance to voters and had unlawfully possessed ballots when they delivered sealed ballots to the post office. Despite a paucity of evidence, Kemp doggedly pursued a case against the Quitman 10+2, only backing down in 2016 when Georgia's attorney general issued an opinion clarifying that it was not a violation of the law for organizers to mail absentee ballots.

---

<sup>154</sup> John Ward, “How a Criminal Investigation in Georgia Set an Ominous Tone for African-American Voters,” Yahoo! News, August 6, 2019. <https://news.yahoo.com/how-a-criminal-investigation-in-georgia-set-a-dark-tone-for-african-american-voters-090000532.html> (accessed April 27, 2021).

<sup>155</sup> Ward, “How a Criminal Investigation in Georgia Set an Ominous Tone for African-American Voters.”

Afterward, Dennard argued the investigation and prosecution were an attempt to disqualify Black officeholders and stifle Black political activism. She insisted, “[T]hey thought they could make an example out of me, and that would kill the spirit of this movement.”<sup>156</sup> Thomas interpreted the Quitman 10+2’s arrest and investigation by explaining that “the message sent to our citizens was, if you don’t want the GBI to come visiting and put you in jail, you better not vote.”<sup>157</sup>

In 2014, in comments to a group of Republican voters in Gwinnet County, then-Secretary of State Brian Kemp made clear the connection between minority voting rights and election victories when he remarked that “the Democrats are working hard . . . registering all these minority voters that are out there and . . . if they can do that, they can win these elections in November.”<sup>158</sup> Around the same time, Kemp’s office launched a criminal investigation into the New Georgia Project, an organization with the explicit goal of registering Georgia’s unregistered minority voters. The New Georgia Project was later cleared of any wrongdoing.<sup>159</sup>

In 2015, Kemp’s office similarly launched an investigation into the Asian American Legal Advocacy Center (“AALAC”), an organization which had previously criticized Secretary Kemp for not registering all voters who had submitted voter registrations to Georgia. Secretary Kemp pursued the investigation for over two years before finding no evidence of wrongdoing. One journalist tracking these investigations described them as “legal terrorism, exploiting the law to intimidate and discourage citizens from accessing their constitutional right to vote.”<sup>160</sup>

---

<sup>156</sup> Ward, “How a Criminal Investigation in Georgia Set an Ominous Tone for African-American Voters.”

<sup>157</sup> Ariel Hart, “Voting Case Mirrors National Struggle,” *The Atlanta Journal-Constitution*, December 13, 2014; Gloria Tatum, “Voter Fraud Charges from 2020 Fizzle in Quitman, South Georgia,” *The Atlanta Progressive News*, September 18, 2014, <http://atlantaprogressivenews.com/2014/09/18/voter-fraud-charges-from-2010-fizzle-in-quitman-south-georgia/> (accessed April 27, 2021).

<sup>158</sup> Steve Benen, “Georgia GOP Official Express Concerns About ‘Minority Voters,’” MSNBC, September 11, 2014. <https://www.msnbc.com/rachel-maddow-show/georgia-gop-official-express-concerns-about-minority-voters-msna410401> (accessed April 27, 2021).

<sup>159</sup> Spencer Woodman, “Register Minority Voters in Georgia, Go to Jail,” *The New Republic*, May 5, 2015, <https://newrepublic.com/article/121715/georgia-secretary-state-hammers-minority-voter-registration-efforts> (accessed May 10, 2021); “State launches fraud investigation into voter registration group,” *WSB-TV 2* (Atlanta, Georgia), September 9, 2014;

<sup>160</sup> Austin Adkins, “Opinion: Voter Fraud Investigations Weaponized to Suppress Voters,” *The Mainline*, November 3, 2019, <https://www.mainlinezine.com/voter-fraud-investigations-weaponized-to-suppress-voters/>; Michael Wines, “Critics See Efforts by Counties and Towns to

### iii. Voting Restrictions in Georgia Post-*Shelby County*

After the Supreme Court invalidated the existing coverage formula in *Shelby County, Alabama v. Holder*, 570 U.S. 529 (2013), Georgia was no longer bound to submit any changes it made to its voting system through a preclearance regime. In her dissent in that case, Justice Ginsburg famously commented that “throwing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.” *Id.* at 590 (J. Ginsburg, dissenting). A few days after the decision, Daniel O. Franklin, a professor of political science at Georgia State University, predicted that “the court’s decision will likely change very little” in Georgia and the other preclearance states.<sup>161</sup> Franklin was wrong: Georgia took advantage of this change almost immediately.

Within four days of *Shelby County*, for example, the local Georgia press reported that the Augusta-Richmond County government (a consolidated city-county government) re-opened discussions of moving its elections from November to July. This change matters: Moving elections away from the usual election day, invariably reduces voter turnout and usually has an adverse impact on minority voter turnout, and DOJ had previously rejected the proposed change under Section 5. After a series of closed-door meetings, Augusta-Richmond County government changed the date of their elections in early 2014, just months after *Shelby County*.<sup>162</sup> Similarly, Greene County, Georgia approved a redistricting plan that would have eliminated one or two of the only Black districts on the county commission—a change that DOJ had previously refused to preclear. By the end of 2013, the Georgia General Assembly approved another plan for Greene County that reduced the Black voting age population in one district by 50% and placed the home of the other

---

Purge Minority Voters From Rolls,” *New York Times* (New York, NY), July 31, 2016, <https://www.nytimes.com/2016/08/01/us/critics-see-efforts-to-purge-minorities-from-voter-rolls-in-new-elections-rules.html>; Kristina Torres, “Georgia suit settled alleging black voters wrongfully disqualified,” *Atlanta Journal-Constitution* (Atlanta, GA), March 16, 2017, <https://www.ajc.com/news/state--regional-govt--politics/georgia-suit-settled-alleging-black-voters-wrongfully-disqualified/djDIYjpvYJcZW8CJzgKL/>.

<sup>161</sup> Daniel P. Franklin, “Court’s Decision is Likely to Change Little,” *Atlanta Journal Constitution* (June 30, 2013).

<sup>162</sup> Harry Baumgarten, “*Shelby County v. Holder*’s Biggest and Most Harmful Impact May Be On Our Nation’s Smallest Towns,” Harry Baumgarten, Campaign Legal Center, 20 June 2016, <https://campaignlegal.org/update/shelby-county-v-holders-biggest-and-most-harmful-impact-may-be-our-nations-smallest-towns>

Black commissioner outside of the boundaries of the newly redrawn district. Without preclearance, the new redistricting plan went into effect.<sup>163</sup>

But preclearance itself was never a panacea even before *Shelby County*. With Georgia's 159 counties and hundreds of local jurisdictions (part of the over 30,000 jurisdictions in the preclearance states), it was impossible to keep track of every local jurisdiction, many of which refused to file voting-related changes with DOJ. At-large, county-wide, or city-wide voting has been historically one of the main tactics used to curb voting rights strength. Preclearance had hardly ended the practice. In December 2013, of Georgia's 159 counties, thirty-four elected all county commissioners at-large. One of those was Baker County, where almost half of the population was Black, but all of the county commissioners were white. A former Baker County Commissioner, Robert Hall, was quoted in the *Atlanta Journal Constitution* as saying, "we don't have many Blacks in Baker County that are landowners and taxpayers and responsible."<sup>164</sup> This trend is not unique to Baker County. In December 2013, the *Atlanta-Journal Constitution* reported that across Georgia, while "more than half of majority-black counties have majority-white commissions," "no majority-white county has a majority-black commission."<sup>165</sup> These type of election arrangements continue to disadvantage Black Georgians: As of 2013, in Georgia, white Georgians were 59% of registered voters, but accounted for 77% of the commissioners, while for Black Georgians who were 30% of registered voters, but accounted for only 22% of county commissioners.<sup>166</sup>

Overall, the end of preclearance has opened the doors to all manner of voter suppression and disenfranchisement, largely directed against minorities. The U.S. Commission on Civil Rights, found that among the former preclearance states as of 2018, only Georgia had adopted all five of the most common restrictions that impose roadblocks to the franchise for minority voters, including (1) voter ID laws, (2) proof of citizenship requirements, (3) voter purges, (4) cuts in

---

<sup>163</sup> Ariel Hart, Jeff Ernsthausen, and David Wickett, "Disputed Voting Systems, Racial Power Gap Persists," *Atlanta Journal Constitution*, (Dec. 7, 2013).

<sup>164</sup> *Id.*

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*; Ariel Hart, Jeff Ernsthausen, and David Wickett, "Racial Politics Not So Clear Cut," *Atlanta Journal Constitution*, (Dec. 9, 2013)

early voting, and (5) widespread polling place closures.<sup>167</sup> This report discusses a few of these changes below, concluding with a brief overview of Senate Bill 202, passed by the Georgia General Assembly in 2021, which the U.S. Department of Justice has challenged under Section 2 of the Voting Rights Act as a law with the effect and intent of making it more difficult for Black Georgians to vote.

#### **a. Polling Place Closures**

In a 2015 memo to local election officials, then-Secretary of State Kemp encouraged counties to reduce voting locations, noting that “as a result of the *Shelby vs. Holder* [sic] Supreme Court decision, [counties are] no longer required to submit polling place changes to the Department of Justice for preclearance.”<sup>168</sup> And to be sure, in the first presidential election after *Shelby County*, throughout Georgia “dozens of polling places” were “closed, consolidated, or moved.”<sup>169</sup> In Macon-Bibb County, a majority-Black county, the number of polling places dropped from forty to thirty-two; those closures took place in primarily Black neighborhoods. When the Memorial Gym precinct in Macon, in a Black neighborhood, was closed for renovations, local officials suggested the sheriff’s office as an alternative. Lowndes County, which has a substantial Black population, reduced the number of polling places from thirty-seven to nine, and Tift County was considering, until heated local protests, consolidating all twelve county polling places into a single location. Hancock County proposed closing several polling places, including one in a Black neighborhood that was seventeen miles from its nearest alternative, in downtown Sparta. Hancock County relented only after an outcry from the Georgia NAACP and the Georgia Lawyers’ Committee for Civil Rights Under the Law, who claimed that “the planned closures would have

---

<sup>167</sup> U.S. Commission on Civil Rights, *An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Enforcement Report* (Washington, 2018), 369. The restrictions on naturalized citizens were later curtailed; see “Georgia Must Ease Rules Proving Citizenship, Judge Says” PBS News Hour, <https://www.pbs.org/newshour/politics/georgia-must-ease-rule-for-voters-proving-citizenship-judge-says> (Nov. 2, 2018).

<sup>168</sup> The Leadership Conference Education Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote* (Sept. 2019), 32. According to this report, then-Secretary of State Kemp “encouraged counties to consolidate voting locations. He specifically spelled out twice – in bold font – that noting that ‘as a result of the *Shelby vs. Holder* Supreme Court decision, [counties are] no longer required to submit polling place changes to the Department of Justice for preclearance.’”

<sup>169</sup> Kristina Torres, “Cost-Cutting Raises Voter Access Fears,” *Atlanta Journal Constitution*, (Oct. 13, 2016); Kristina Torres, “State Monitored For Voting Rights Issues,” *Atlanta Journal Constitution*, (Jun. 20, 2016).



disproportionately affected voters in the majority Black county in poor and rural areas with no access to regular transportation.”<sup>170</sup>

By 2019, the Leadership Conference Education Fund found that Georgia had closed over 200 polling locations in Georgia since the *Shelby County* decision despite adding millions of voters to the voter rolls.<sup>171</sup> By 2019, “eighteen counties in Georgia closed more than half of their polling places, and several closed almost 90 percent.”<sup>172</sup> In 2020, the nine counties in metro Atlanta that had nearly half of the registered voters (and the majority of the Black voters in the state) had only 38% of the state’s polling places.<sup>173</sup> Unsurprisingly, because of the fewer polling places, the lines at majority-Black polling places increased, and sometimes dramatically so. In the June 2020 primary, for example, waiting times to vote in some metro Atlanta suburbs, such as Union City (a subdivision that is 88% Black majority) was as long as five hours.<sup>174</sup> Union City was not an outlier. A 2020 study found that “about two-thirds of the polling places that had to stay open late for the June primary to accommodate waiting voters were in majority-Black neighborhoods, even though they made up only about one-third of the state’s polling places.”<sup>175</sup>

#### **b. Voter Purges and Challenges**

After *Shelby County*, Georgia officials also made more systematic efforts to purge the voting rolls in ways that particularly disadvantaged minority voters and candidates. Between 2012 and 2018, for example, then-Secretary of State Kemp removed 1.4 million voters from the eligible voter rolls. In a single day in 2017, Georgia removed over 500,000 names from the list of 6.6 million registered voters, which according to election law experts might be the “largest mass disenfranchisement in U.S. history.”<sup>176</sup> While there can be legitimate reasons to drop names from

---

<sup>170</sup> *Id.*

<sup>171</sup> The Leadership Conference Education Fund, *Democracy Diverted: Polling Place Closures and the Right to Vote* (Sept. 2019), 31.

<sup>172</sup> *Id.*

<sup>173</sup> Stephen Fowler, “Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours? Their Numbers Have Soared, and Their Polling Places Have Dwindled,” *ProPublica*, <https://www.propublica.org/article/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-their-numbers-have-soared-and-their-polling-places-have-dwindled>, (Oct. 17, 2020).

<sup>174</sup> Mark Niese and Nick Thieme, “Fewer Polls Cut Voter Turnout Across Georgia,” *Atlanta Journal Constitution*, 15 December, 2009; Fowler, “Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours?”

<sup>175</sup> Fowler, “Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours?”

<sup>176</sup> Alan Judd, “Georgia’s Strict Laws Lead to Large Purge of Voters,” *Atlanta Journal Constitution*, 27 October, 2018.



the eligibility rolls (such as for a voter who is deceased, who has moved, or who has a felony conviction), the vast majority of those purged were those who simply had not voted in intervening years. While those kinds of purges are technically permitted (though not required) by federal law, those purged were significantly over-represented in precincts that overwhelmingly voted for Stacey Abrams, the Black candidate in the 2018 gubernatorial race.<sup>177</sup>

One of the most insidious forms of voter disenfranchisement by Georgia in recent years which disproportionately affected minority voters was Georgia’s “exact matching” procedures. As the Northern District of Georgia has explained, Georgia’s exact match procedures policies meant that when a prospective voter submitted a voter registration application, Georgia would check the registration against its Department of Driver Services (“DDS”) or files from the Social Security Administration (“SSA”). If the applicants’ information did not match those files exactly, “then the voter registration application is placed in ‘pending status,’ and the person may not vote until the person corrects the information. The burden is on the applicant to take the next steps to correct any information and/or present the necessary proof required to the appropriate officials to become a Georgia voter.” *Georgia Coal. for People's Agenda, Inc. v. Kemp*, 347 F. Supp. 3d 1251, 1255–56 (N.D. Ga. 2018). If the voter did not present new information, their application was rejected. *Id.*

The legal history of exact-match legislation in Georgia is complex. It was originally passed by the Georgia General Assembly in 2008, and was originally blocked under preclearance, though it received Department of Justice approval in 2010 when the Secretary of State agreed to place “safeguards” on the practice. As the Department of Justice later argued, however, it is not clear if those safeguards were ever used. After *Shelby County*, Georgia operated the exact match procedures without strict safeguards, leading to federal suits such as the one above.

As civil rights groups have shown, Georgia’s exact match procedures were more likely to disenfranchise minority voters. Between 2013 and 2016, more than 34,000 Georgia voters’ applications were suspended using the exact-match system. Under the DDS match, Black Georgians, who made up only 28.2 percent of the registered voters, were 53.3 percent of those voters whose applications were cancelled or placed in pending status. By contrast, non-Hispanic

---

<sup>177</sup> Angela Caputo, Geoff Hing, and Johnny Kaufman, “After the Purge: How a Massive Voter Purge Affected the 2018 Election,” APM Reports, <https://www.apmreports.org/story/2019/10/29/georgia-voting-registration-records-removed> (Oct. 29, 2019).

whites, who were almost half of registered voters in Georgia, made up a far lower 18.3 percent of those applications that were canceled or pending. Under the SSA match, the discrepancy was even starker. Black Georgians made up 74.6 percent of those in the cancelled and pending files, while non-Hispanic whites were only 9.5 percent. By July 2018, 51,111 voters' applications were suspended, and placed in the "pending voter" category, of whom 80% were either African American, Hispanic/Latino, or Asian.<sup>178</sup> By 2019, Georgia agreed to largely abandon its exact matching process.<sup>179</sup>

Voter challenges directed at minority voters have also persisted in modern Georgia. In advance of the 2016 election, the Hancock County Election Board, which at the time was majority white, used the voter challenge process to challenge approximately 180 voters, almost all of whom were Black. Those Black residents made up nearly a fifth of the city's registered voters. In pursuit of the challenges, the Hancock County Board dispatched the local police to summon those Black residents to hearings to prove their residence or lose their voting rights. Many thought they were being arrested, and many of those challenged were intimidated and did not vote in the fall election. The white candidate for mayor won a narrow victory.<sup>180</sup>

Although the Hancock County attorney denied that this purge was "about . . . race," the Georgia State Conference of the NAACP, the Georgia Coalition for the People's Agenda, and four voters who had their registrations challenged sued the Hancock County Board of Elections seeking an injunction to force the Board to end their use of the challenge procedures. The U.S. District Court for the Northern District of Georgia later ordered the defendants to pay the plaintiffs'

---

<sup>178</sup> Abrams, *Our Time is Now*, 58–61; Anderson, *One Person, No Vote*, 78–81; McCrary Report.

<sup>179</sup> Aja Arnold, "Ex Post Facto: Abrams v Kemp," *The Mainline* 11 May 2020, <https://www.mainlinezine.com/ex-post-facto-abrams-vs-kemp-2018/>; Brentin Mook, "How Dismantling the Voting Rights Act Helped Georgia Discriminate Again," *Bloomberg City Lab*, 15 October, 2018, <https://www.bloomberg.com/news/articles/2018-10-15/how-georgia-s-exact-match-program-was-made-possible>; Stanley Augustin, "Georgia Largely Abandons its Broken 'Exact Match' Voter Registration Process," *Lawyers' Committee For Civil Rights*, 5 April, 2019, <https://www.lawyerscommittee.org/georgia-largely-abandons-its-broken-exact-match-voter-registration-process/>

<sup>180</sup> Michael Wines, "Critics: Racial Bias Creeping Back Into Electoral Purges," *Atlanta Journal Constitution*, 1 August, 2016

attorney fees and required the Board of Elections to follow a strict process that required the Board to notify the plaintiffs' counsel if the Board made any future voter challenges.<sup>181</sup>

**c. Senate Bill 202**

Of final note is the Georgia General Assembly's passage of Senate Bill (SB) 202 in the spring of 2021 in the wake of significant minority voting strength in Georgia and the election of Georgia's first Black United States Senator. SB 202 is currently the subject of multiple lawsuits which allege that it violates both Section 2 of the VRA and the Fourteenth and Fifteenth Amendments, including by the United States Department of Justice.<sup>182</sup>

These allegations are not surprising. Many of the provisions of SB 202 target methods of voting that Black voters used to tremendous effect in the 2020 General Election and 2021 Runoff election, and also specifically target voting in the Atlanta metro area, home to the majority of Georgia's Black voters.<sup>183</sup> While SB 202 has more than 40 provisions, some of its most notable changes are: (1) reducing the time available to request an absentee ballot, (2) increasing identification requirements for absentee voting, (3) banning state and local governments from sending unsolicited absentee ballot applications, (4) limiting the use of absentee ballot drop boxes, (5) banning mobile polling places, (6) and prohibiting anyone who is not a poll worker from giving food or drink to voters in line to vote.<sup>184</sup>

One of SB 202's most notable changes to voting access is to drop boxes, which were used extensively by Black voters in the 2020 General Election. In that election, in the four core Atlanta Metro counties, Cobb, DeKalb, Fulton, and Gwinnett, 56% of absentee ballot voters, or 305,000

---

<sup>181</sup> *Ga. State Conference of the NAACP v. Hancock Cnty. Bd. of Elections & Registration*, No. 5:15-CV-00414 (CAR) (M.D. Ga. Mar. 30, 2018); Michael Wines, "Critics See Efforts by Counties and Towns to Purge Minority Voters From Rolls," *New York Times* (New York, NY), July 31, 2016, <https://www.nytimes.com/2016/08/01/us/critics-see-efforts-to-purge-minorities-from-voter-rolls-in-new-elections-rules.html>; Kristina Torres, "Georgia suit settled alleging black voters wrongfully disqualified," *Atlanta Journal-Constitution* (Atlanta, GA), March 16, 2017, <https://www.ajc.com/news/state--regional-govt--politics/georgia-suit-settled-alleging-black-voters-wrongfully-disqualified/djDIIfYjpvYJJcZW8CJzgKL/>

<sup>182</sup> *See United States v. Georgia*, No. 1:21-cv-02575 (N.D. Ga. June 25, 2021).

<sup>183</sup> For a helpful summary, see Stephen Fowler, "What Does Georgia's New Voting Law SB 202 Do?" NPR, <https://www.gpb.org/news/2021/03/27/what-does-georgias-new-voting-law-sb-202-do>

<sup>184</sup> Georgia Senate Bill 202 (2021); see also Stephen Fowler, "What Does Georgia's New Voting Law SB 202 Do?" NPR, <https://www.gpb.org/news/2021/03/27/what-does-georgias-new-voting-law-sb-202-do>

of 547,000, used drop boxes.<sup>185</sup> After SB 202, the number of drop boxes in those counties will drop from the 111 available in the 2020 election to 23.<sup>186</sup> In Fulton County, the number will drop from 38 to 8. Cobb County Election Director Janine Eveler told the *Atlanta Journal-Constitution* that drop boxes “are no longer useful. The limited numbers mean you cannot deploy them in sufficient numbers to reach the voting population.”<sup>187</sup>

SB 202 also made significant changes to how votes will be counted and who will supervise the counting. These changes included (1) removing the Secretary of State as the Chair of the State Election Board and replacing the Chair with someone appointed by a majority of the Georgia General Assembly, (2) giving the State Election Board (and by extension the Georgia General Assembly) more power to intervene in county election boards, and (3) allowing the State Election Board (and by extension the Georgia General Assembly) more power to suspend election board members and replace them.<sup>188</sup>

The collective impact of these provisions is substantial. University of Georgia Political Scientist Charles Bullock explained that when all the obstacles in SB 202 are considered “as a package, the bill’s voting restrictions could deter thousands of people from voting in future elections” and could very well alter the outcome of close statewide races.<sup>189</sup> “Each new obstacle,” Dr. Bullock explained, “has the potential to stop voters ... from participating in democracy.”<sup>190</sup>

Indeed, SB 202 is already being used against county election officials, and particularly Black officials. By June 2021, Georgia County commissions had replaced ten county election

---

<sup>185</sup> Niese, et. al., “Drop box use heavy in Democratic areas before Georgia voting law,” *Atlanta Journal-Constitution*, July 12, 2021, <https://www.ajc.com/politics/drop-box-use-soared-in-democratic-areas-before-georgia-voting-law/N4ZTGHLWD5BRBOUKBHTUCFVOEU/>.

<sup>186</sup> “How New State Voting Laws Could Impact Voters,” *Brennan Center for Justice*, September 1, 2021, <https://www.brennancenter.org/our-work/research-reports/how-new-state-voting-laws-could-impact-voters>.

<sup>187</sup> Mark Niese, “ID Law Adds Hurdles For Thousands,” *AJC*, 1 June, 2021; “Application For Official Georgia Absentee Ballot,” [https://sos.ga.gov/admin/uploads/2021\\_Absentee\\_Ballot\\_Application2.pdf](https://sos.ga.gov/admin/uploads/2021_Absentee_Ballot_Application2.pdf); “Democratic Counties Showed Higher Drop Box Use”

<sup>188</sup> Georgia Senate Bill 202 (2021); see also Stephen Fowler, “What Does Georgia’s New Voting Law SB 202 Do?”

<sup>189</sup> Mark Niese, *New Georgia law changes voting rules—and maybe results*, *Atlanta-Journal Constitution* (Mar. 28, 2021), available at <https://www.ajc.com/politics/new-georgia-law-changes-voting-rules-and-maybe-results/4QBKQXRS45GUZHBSQ67W4FVLR/>.

<sup>190</sup> *Id.*

officials, most Democrats, half of them Black.<sup>191</sup> As of December 2021, six counties in Georgia have fully reorganized their county board of supervisors since the passage of SB 202. In Spaulding County, in particular, the three Black women who constituted a majority of the Board has been replaced, as has the elections supervisor. A majority of three white Republicans now control the board and has already moved to restrict voting access, including by eliminating Sunday voting.<sup>192</sup> In five of the counties that restructured election boards—Troup, Morgan, Pickens, Stephens, and Lincoln—the legislature shifted the power to appoint some or all election board to local county commissioners, all of which are controlled by Republicans. Previously the appointments had been split evenly between the local Democratic and Republican parties, with the intent to ensure a politically balanced election board.<sup>193</sup> In December, 2021, Lincoln County, whose elections board was recently disbanded under SB 202, indicated plans to close six of the county’s seven polling places, a move that would require some registered voters to travel as far as twenty-three miles to the nearest polling site and which would disadvantaging the county’s Black voters.<sup>194</sup> And while it has not yet occurred, shortly after the passage of SB 202, the Georgia State Election Board set up a review board to review the performance of the Fulton County Election Board, setting up the prospect for a takeover of the Elections Board in Fulton, the home of hundreds of thousands of Black Georgians.<sup>195</sup>

**d. Electoral success of Black candidates.**

Even today, more than fifty years after the original 1965 VRA, most Black candidates in Georgia are only able to win in districts which are majority Black. The following tables show just how stark this phenomenon has been in Georgia’s 2020 elections for the General Assembly. In the

---

<sup>191</sup> Nick Corasanti and Reid J. Epstein, “How Republican States Are Expanding Their Power Over Elections,” *New York Times*, July 1, 2021, <https://www.nytimes.com/2021/06/19/us/politics/republican-states.html>; Mark Niese and Brad Branch, “Fulton County Elections Takeover Mulled,” 27 July, 2021

<sup>192</sup> James Oliphant and Nathan Layne, Georgia Republicans purge Black Democrats from County Election Boards, Reuters, Reuters, 9 December 2021, <https://www.reuters.com/world/us/georgia-republicans-purge-black-democrats-county-election-boards-2021-12-09/>.

<sup>193</sup> *Id.*

<sup>194</sup> Susan McCord, “Lincoln County Looks to Eliminate All Polling Places But One,” *Augusta Chronicle*, 21 December, 2021.

<sup>195</sup> Nick Corasanti and Reid J. Epstein, “How States are Expanding Their Control Over Elections,” *New York Times*, 19 June, 2021; Mark Niese and Brad Branch, “Fulton County Elections Takeover Mulled,” 27 July, 2021

Georgia House, for example, none of Georgia’s Black House members were elected from a district with more than 55% white voters. In the Georgia Senate, none of Georgia’s Black Senators were elected from a district with more than 47% white voters. This trend is not surprising given the historically pervasive racially polarized voting in the state. These figures are shown below:<sup>196</sup>

Winning Candidates in 2020 in Georgia House of Representatives

Percentage white registered voters in district	White Republicans <sup>197</sup>	Black Democrats	White Democrats
Under 40%	0	48	7
40–46.2%	1	3	2
46.2–54.9	11	1	6
55–62.4%	23	0	5
Over 62.4%	68	0	0

Winning Candidates in 2020 in Georgia State Senate

Percentage white registered voters in district	White Republicans	Black Democrats	White Democrats
Under 47%	0	16	1
47–54.9%	3	0	3
Over 55%	51	0	0

Black candidates have faced similar difficulties in running for statewide office throughout the South. The three victories of Raphael Warnock, in the 2020 general election, in the 2020 runoff, and in the 2022 general election, are rare instances of a Black candidate winning statewide office.

---

<sup>196</sup> Lawyers Committee for Civil Rights, *The Central Role of Racial Demographics in Georgia Elections: How Race Affects Elections for the Georgia General Assembly* (May 2021).

<sup>197</sup> There are currently no Black Republicans in the Georgia General Assembly.

According to a recent study (2022) reflected in the table below, from 1989 to 2018 Black success in statewide races in the South is rare:<sup>198</sup>

Success of Candidates for Statewide Office in the South, 1989-2018

A. Democrats

Race of candidate	Democrats won %	Democrats Lost	n
White	42.6	57.4	455
Black	15.9	84.1	69
Latino	25	75	16
Total	38.7	63.3	540

B. Republicans

Race of Candidate	Republicans won%	Republicans lost%	n
White	61.4	38.6	526
Black	20	80	5
Latino	77.8	22.2	9
Total	61.3	38.7	540

## V. THE RELATIONSHIP BETWEEN RACE AND PARTISANSHIP IN GEORGIA POLITICS

### A. Historical Foundations of the Partisan Divide Among Black and White Georgians

Since Reconstruction, conservative whites in Georgia and other southern states have more or less successfully and continuously held onto power. While the second half of the twentieth century was generally marked by a slow transition from conservative white Democrats to conservative white Republicans holding political power, the reality of conservative white political dominance did not change. As discussed below, the Democratic Party's embrace of civil rights

---

<sup>198</sup> Charles Bullock III, Susan A. McManus, Jeremy D. Mayer, and Mark Rozell, *African American Statewide Candidates in the New South*, (New York: Oxford University Press, 2022), 8, 9. The tables include all of the states of the Old Confederacy except for Louisiana. The volumes cover has photographs of Stacey Abrams and Raphael Warnock.



legislation—and the Republican Party’s opposition to it—was the catalyst of this enduring political transformation.<sup>199</sup>

The Democratic Party’s embrace of civil rights policies in the mid-20th Century caused Black voters to leave the Republican Party (the Party of Lincoln) for the Democratic Party. At the same time, the Democratic Party’s embrace of civil rights legislation sparked what Earl Black and Merle Black describe as the “Great White Switch,” in which white voters abandoned the Democratic Party for the Republican Party. In the 1948 presidential election, South Carolina Governor J. Strom Thurmond mounted a third-party challenge against Democratic President Harry Truman in protest of Truman’s support for civil rights, including his integration of the armed forces. Thurmond ran on the so-called Dixiecrat party which claimed the battle flag of the Confederacy for its symbol. Thurmond’s campaign ended Democratic dominance of deep South states by winning South Carolina, Alabama, Mississippi, and Louisiana.<sup>200</sup>

This trend of white voters in Georgia abandoning the Democratic Party due to its support of civil rights was readily apparent in the 1964 and 1968 presidential elections. In 1964, the Republican nominee, Barry Goldwater, won only six states in a landslide defeat to President Lyndon B. Johnson: his home state of Arizona, and all five states comprising the Deep South (South Carolina, Georgia, Alabama, Mississippi, and Louisiana). In fact, Goldwater was the first Republican presidential candidate to *ever* win Georgia’s electoral votes.<sup>201</sup> In 1968, Georgia’s electoral votes were won by George Wallace, another third-party presidential candidate who ran on a platform of vociferous opposition to civil rights legislation.<sup>202</sup> And other than favorite son Jimmy Carter, no Democratic nominee for President has since won Georgia’s electoral votes until President Joe Biden’s victory in 2020.

---

<sup>199</sup> Nancy J. Weiss, *Farewell to the Party of Lincoln: Black Politics in the Age of FDR* (Princeton, NJ: Princeton University Press, 1983); Barbara M. Linde, *African Americans in Political Office: From the Civil War to the White House* (New York: Lucent Press, 2015).

<sup>200</sup> Joseph Crespino, *Strom Thurmond’s America: A History* (New York: Farrar, Straus and Giroux, 2012); Nadine Cohodas, *Strom Thurmond and The Politics of Southern Change* (Macon: Mercer University Press, 1993); Jack Bass & Marilyn W. Thompson, *Strom: The Complicated Personal and Political Life of Strom Thurmond* (New York: Public Affairs, 2005).

<sup>201</sup> “1964,” The American Presidency Project, *available at* <https://www.presidency.ucsb.edu/statistics/elections/1964> (last accessed Dec. 5, 2022).

<sup>202</sup> “1968,” The American Presidency Project, *available at* <https://www.presidency.ucsb.edu/statistics/elections/1968> (last accessed Dec. 5, 2022).

White southerners abandoned the Democratic Party for the Republican Party because the Republican Party identified itself with racial conservatism. Consistent with this strategy, Republicans today continue to use racialized politics and race-based appeals to attract racially conservative white voters.<sup>203</sup> As Goldwater told a group of Republicans from southern states, it was better for the Republican Party to forego the “Negro vote” and instead court white southerners who opposed equal rights.<sup>204</sup> Historians and political scientists agree that Goldwater “sought to create a general polarization of southern voters along racial lines.” The effectiveness of what was called the “Southern strategy” during Richard Nixon’s presidency had a profound impact on the development of the nearly all-white modern Republican Party in the South. South Carolinian Harry Dent, who had previously worked for Senator Strom Thurmond, became Nixon’s advisor and helped implement the “Southern strategy.”<sup>205</sup> Although more subtle in his appeal to white southern voters, Nixon followed the advice of Republican Party strategist Kevin Phillips in 1970. Phillips argued that “[t]he GOP can build a winning coalition without Negro voters.” He understood, and made certain others understood, that “Negro-Democratic mutual identification” was important for the building of a white Republican Party in the South. With Phillips’s Southern Strategy, the Democratic Party in the South became identified as the “Negro party through most of the South.” With the Democratic Party identified with African Americans, whites in the South would become Republicans, and that would allow the Republican Party to become the majority party in what had

---

<sup>203</sup> Earl Black & Merle Black, *Politics and Society in the South* (Cambridge: Harvard University Press, 1987); Thomas F. Schaller, *Whistling Past Dixie: How Democrats Can Win Without the South*, (New York: Simon and Schuster, 2006), 65; Kevin P. Phillips, *The Emerging Republican Majority* (New Rochelle, NY: Arlington House, 1969); Dan T. Carter, *Politics of Rage: George Wallace, the Origins of the new Conservatism, and the Transformation of American Politics* (Baton Rouge: Louisiana State University Press, 2000); Dan T. Carter, *From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge: Louisiana State University Press, 1996); Rick Perlstein, *Before the Storm: Barry Goldwater and the Unmaking of the American Consensus* (New York: Hill and Wang, 2001); Timothy N. Thurber, *Republicans and Race: The GOP’s Frayed Relationship with African Americans, 1945-1974* (2013); Heather Cox Richardson, *To Make Men Free: A History of the Republican Party* (New York: Basic Books, 2021), 10, 11, 321-408, 456-475.

<sup>204</sup> Dan T. Carter, “Unfinished Transformation: Matthew J. Perry’s South Carolina,” in *Matthew J. Perry: The Man, His Times, and His Legacy*, ed., W. Lewis Burke and Belinda F. Gergel (Columbia: University of South Carolina Press, 2004), 251.

<sup>205</sup> David Stout, “Harry Dent, an Architect of Nixon ‘Southern Strategy,’ Dies at 77,” N.Y. Times (Oct. 2, 2007), available at <https://www.nytimes.com/2007/10/02/us/02dent.html>.

traditionally been the solid Democratic South.<sup>206</sup> After studying Phillips's plan, Nixon told his staff to implement the strategy and emphasized, "don't go for Jews and Blacks."<sup>207</sup>

Matthew D. Lassiter, a historian of the Atlanta suburbs, observed that "the law-and-order platform at the center of Nixon's suburban strategy tapped into Middle American resentment toward antiwar demonstrators and black militants but consciously employed a color-blind discourse that deflected charges of racial demagoguery."<sup>208</sup> And John Ehrlichman, President Nixon's domestic policy advisor, admitted in 1994 that the war on drugs—a key part of law-and-order campaigns—had an ulterior motive. He observed that "the Nixon campaign in 1968, and the Nixon White House after that, had two enemies: the antiwar left and black people." While the Nixon campaign "couldn't make it illegal to be either against the war or black," they knew that "by getting the public to associate the hippies with marijuana and blacks with heroin, and then criminalizing both heavily, [they] could disrupt those communities."<sup>209</sup>

Georgia is a flash point of this modern strategy. According to Dr. Peyton McCrary, a historian who recently retired after a 26-year career with the Department of Justice: "In Georgia politics since 2002, state government is dominated by the Republican Party, the party to which now most non-Hispanic white persons belong. The greatest electoral threat to the Republican Party and Georgia's governing elected officials is the growing number of African American, Hispanic, and Asian citizens, who tend strongly to support Democratic candidates. The increase in minority population and the threat of increasing minority voting strength provides a powerful incentive for Republican officials at the state and local level to place hurdles in the path of minority citizens seeking to register and vote. That is what has happened."<sup>210</sup> Moreover, "In white-majority Georgia,

---

<sup>206</sup> Kevin P. Phillips, *The Emerging Republican Majority* (New York: Arlington House, 1969), 467-68.

<sup>207</sup> Carter, *From George Wallace to Newt Gingrich*, 45; Kenneth O'Reilly, *Nixon's Piano: Presidents and Racial Politics from Washington to Clinton* (New York: Free Press, 1995), 285-86; Dan Carter, "Civil Rights and Politics in South Carolina: The Perspective of One Lifetime, 1940-2003" in *Toward the Meeting of the Waters: Currents in the Civil Rights Movement of South Carolina during the Twentieth Century*, ed. Winfred B. Moore, Jr. and Orville Vernon Burton (Columbia: University of South Carolina Press, 2008), 413.

<sup>208</sup> Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, NJ: Princeton University Press, 2006), 234.

<sup>209</sup> Dan Baum, "Legalize It All," *Harper's* (April 2016).

<sup>210</sup> Expert Rep. of Dr. Peyton McCrary at 8, *Fair Fight Action v. Raffensperger*, No. 1:18-cv-05391SCJ, (N.D. Ga. Apr. 24, 2020), ECF No. 339 ("McCrary Report").

Republicans benefitted from a pattern of voting that was polarized along racial lines.”<sup>211</sup> University of Georgia political scientist Charles Bullock noted that “the relationship between race and voting in 2002 was striking.”<sup>212</sup> Moreover, Bullock and Keith Gaddie showed that “since 1992, Democrats have always taken at least 80 percent of the black vote while most whites invariably preferred Republicans.”<sup>213</sup> Indeed, the racial bloc voting in Georgia is so strong, and race and partisanship so deeply intertwined, that statisticians refer to it as multicollinearity, meaning one cannot, as a scientific matter, separate partisanship from race in Georgia elections.<sup>214</sup>

To be sure, Republicans nominated a Black candidate—Herschel Walker, a former University of Georgia football legend—to challenge Senator Raphael Warnock in the 2022 general election for U.S. Senate. But Walker’s nomination only underscores the extent to which race and partisanship remain intertwined. Republican leaders in Georgia admittedly supported Walker because they wanted to “peel[ ] off a handful of Black voters” and “reassure white swing voters that the party was not racist.”<sup>215</sup> The strategy failed. Exit polls clearly showed that Warnock remained the candidate of Black voters and Walker was the candidate of white voters.<sup>216</sup> In fact, Walker’s share of the Black vote was virtually identical to that of Governor Brian Kemp, who was also on the general election ballot in his re-election bid against Stacey Abrams.<sup>217</sup>

	U.S. Senate	Governor
--	-------------	----------

<sup>211</sup> McCrary Report at 30.

<sup>212</sup> Charles S. Bullock III, “Georgia: Republicans at the High Water Mark?” in Bullock and Mark J. Rozell (eds.), *The New Politics of the Old South* (New York, Rowman & Littlefield, 5th ed. 2014), 58.

<sup>213</sup> Charles S. Bullock III & Ronald Keith Gaddie, *The Triumph of Voting Rights in the South* (Norman, University of Oklahoma Press, 2009), 100.

<sup>214</sup> Donald E. Farrar & Robert R. Glauber, “Multicollinearity in Regression Analysis: The Problem Revisited,” *Review of Economics and Statistics*, XLIX (February 1967), 92-107, esp. p. 98; Peyton McCrary, Clark Miller, & Dale Baum, “Class and Party in the Secession Crisis: Voting Behavior in the Deep South, 1856-1861,” *Journal of Interdisciplinary History* viii:3 (Winter 1978): 450, n.35.

<sup>215</sup> Cleve R. Wootson Jr., “Herschel Walker’s Struggles Show GOP’s Deeper Challenges in Georgia,” *Washington Post* (Sept. 22, 2022), <https://www.washingtonpost.com/politics/2022/09/22/herschel-walker-georgia-black-voters/>

<sup>216</sup> NBC News, Georgia Senate Exit Polls (Nov. 8, 2022), *available at* [https://www.nbcnews.com/politics/2022-elections/georgia-senate-results?icid=election\\_statenav](https://www.nbcnews.com/politics/2022-elections/georgia-senate-results?icid=election_statenav); NBC News, Georgia Governor Exit Polls, (Nov. 8, 2022), *available at* [https://www.nbcnews.com/politics/2022-elections/georgia-governor-results?icid=election\\_statenav](https://www.nbcnews.com/politics/2022-elections/georgia-governor-results?icid=election_statenav).

<sup>217</sup> *See supra* n.218.

	WARNOCK (D)	WALKER (R)	ABRAMS (D)	KEMP (R)
Black men	85%	12%	84%	14%
Black women	93%	5%	93%	6%
White men	27%	71%	23%	76%
White women	30%	68%	27%	72%

Similarly, a CNN poll of Black voters, released on Friday, December 2, 2022, found Mr. Walker winning just three percent of Black voters.”<sup>218</sup> And when New York Times reporters interviewed more than “more than two dozen Black voters across Georgia, many said they did not see Mr. Walker, who has taken a conciliatory approach to matters of race, as representing the interests of Black people.”<sup>219</sup> The Times reported that “many Black voters disagree with how Mr. Walker,” quoting Black human resources coordinator, Ms. Darca Davis, “views the nation and also other African American people.”<sup>220</sup>

It is undeniable that support in Georgia for the Democratic and Republican parties remains profoundly split by race. The 2022 Senate race between Walker and Warnock—two Black men—produced utterly asymmetrical voting patterns among white and Black voters, demonstrating more clearly than any recent election in Georgia’s history the continued salience of race in Georgia elections and how the two parties are intricately defined by race.

## **B. Racial Appeals in Georgia Politics**

Explicit racial appeals in politics are more taboo today than they were in the mid-20th Century. Nonetheless, implicit or subtle appeals to race are still common and contribute to Georgia’s racial polarization. The success of the Democratic Party in the South relies crucially on engaging and mobilizing Black voters. Consequently, the modern Republican party has made attacking the Black core of the Democratic Party, especially urban areas where most Black voters live, one of its fundamental strategies.

---

<sup>218</sup> Maya King, Clyde McGrady, & Jezmine Ulloa, “In Georgia, a Heated Senate Race Stirs Mixed Emotions in Black Voters,” *N.Y. Times* (Dec. 3, 2022), <https://www.nytimes.com/2022/12/03/us/politics/georgia-senate-runoff-black-voters.html>.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

### i. Historical Foundations

Republican political operative Lee Atwater from Georgia's neighbor South Carolina had learned from fellow South Carolinian and Nixon Southern strategist Harry Dent. As Atwater, the Republican campaign aide and strategist who helped George H.W. Bush win election in 1988 by helping to create the infamous "Willie Horton" advertisement, notoriously explained in 1981 that when the Republican Party recognized that overt appeals were no longer effective, they shifted to ideas with plainly racial ties: "forced busing, states' rights, and all that stuff."<sup>221</sup> These implicit racial appeals communicate the same ideas as explicit racial appeals by alluding to "racial stereotypes or a perceived threat" from racial or ethnic minorities. Atwater was especially candid in his explanation:

You start out in 1954 by saying, "Nigger, nigger, nigger." By 1968 you can't say "nigger"—that hurts you, backfires. So you say stuff like, uh, forced busing, states' rights, and all that stuff, and you're getting so abstract. Now, you're talking about cutting taxes, and all these things you're talking about are totally economic things and a byproduct of them is, blacks get hurt worse than whites.... "We want to cut this," is much more abstract than even the busing thing, uh, and a hell of a lot more abstract than "Nigger, nigger."<sup>222</sup>

Princeton University Political Scientist Tali Mendelberg defined Atwater's implicit racial appeal as "one that contains a recognizable – if subtle – racial reference, most easily through visual references."<sup>223</sup> Ian Haney Lopez, the Chief Justice Earl Warren Professor of Public Law at Berkeley Law, University of California, described implicit racial appeals as a "*coded* racial appeal," with "one core point of the code being to foster deniability," since the "explicit racial appeal of yesteryear now invites political suicide." One characteristic of implicit racial appeals is that they are usually most successful when their racial subtext goes undetected.<sup>224</sup> Implicit racial

---

<sup>221</sup> Peter Baker, "Bush Made Willie Horton an Issue in 1988, and the Racial Scars Are Still Fresh," N.Y. Times (Dec. 3, 2018), <https://www.nytimes.com/2018/12/03/us/politics/bush-willie-horton.html>; Rick Perlstein, "Exclusive: Lee Atwater's Infamous 1981 Interview on the Southern Strategy," *The Nation* (Nov. 13, 2012), <http://www.thenation.com/article/170841/exclusive-lee-atwaters-infamous-1981-interview-southern-strategy>.

<sup>222</sup> Rick Perlstein, "Exclusive: Lee Atwater's Infamous 1981 Interview on the Southern Strategy," *The Nation* (Nov. 13, 2012), <http://www.thenation.com/article/170841/exclusive-lee-atwaters-infamous-1981-interview-southern-strategy>.

<sup>223</sup> Tali Mendelberg, *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality* (Princeton, N.J.: Princeton University Press, 2001), 9, 11.

<sup>224</sup> Lopez, *Dog Whistle Politics*, 130, 4.



appeals make use of coded language to activate racial thinking.<sup>225</sup> Racial cues, in the form of code words, such as “welfare queen,” “lazy,” “criminal,” “taking advantage,” “corruption,” “fraud,” “voter fraud,” and “law and order” are racial code words that refer back to Reconstruction era when African Americans were first elected to office. Other coded issues, such as “poverty” and “immigration,” prime racial attitudes among white voters.

Reagan’s 1980 presidential campaign was extremely effective at using subtle racial appeals to win white votes. Indeed, he chose to open that campaign with a state’s rights speech at the Neshoba County Fair in Mississippi, the notorious scene of the murder of three civil rights workers in 1964. His campaign also used racial coded terms such as “welfare queen” and “strapping young buck.”<sup>226</sup> 22% of Democrats ultimately supported Regan in 1980, but those defections were substantially higher among Democrats with racially conservative views.<sup>227</sup> 71% of Democrats who felt “the government should not make any special effort to help [African Americans] because they should help themselves” voted for Reagan.<sup>228</sup>

Similarly, in the 1988 campaign, Republican candidate George H.W. Bush associated Democratic candidate Governor Michael Dukakis with Willie Horton, an African American convicted of murder who committed an additional murder and rape when released on a weekend furlough program for prisoners that had been supported by Governor Dukakis. The Bush campaign showed images of Mr. Horton, rendering the racial appeal clear: supporting Dukakis would allow Black murderers to roam the streets. This appeal to the racial fears contributed to Bush’s victory in 1988.<sup>229</sup>

Georgia was a focal point of this strategy. Following the leadership of Richard Nixon and the Republican National Committee, the Georgia Republican party insurgence was grounded on

---

<sup>225</sup> Nicholas A. Valentino, Vincent L. Hutchings, and Ismail K. White. “Cues that Matter: How Political Ads Prime Racial Attitudes During Elections,” *American Political Science Review* 96 (2002), 75-90.

<sup>226</sup> Ian Haney-Lopez, “The Racism at the Heart of the Reagan Presidency,” Salon (Jan. 11, 2014), *available at* [https://www.salon.com/2014/01/11/the\\_racism\\_at\\_the\\_heart\\_of\\_the\\_reagan\\_presidency/](https://www.salon.com/2014/01/11/the_racism_at_the_heart_of_the_reagan_presidency/).

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> Ian Haney Lopez, *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class* (New York: Oxford University Press, 2013) 59, 105-7; Orville Vernon Burton, *Justice Deferred: Race and the Supreme Court* (Cambridge: The Belknap Press of Harvard University Press, 2021), 260, 328.



fiscal conservatism, opposition to integration (particularly busing), and a growing demand among white suburbanites for “law and order.” The rallying cry of “law and order” became a dog whistle for many candidates and voters.<sup>230</sup> And the person who perhaps more than anyone else helped steer the Republican Party to this new form of race baiting was Georgia politician Newt Gingrich, who was first elected to Congress from a suburban Atlanta district in 1978 and became the Republican speaker of the U.S. House of Representatives in 1994.

The title of former Emory University history professor Dan T. Carter’s study of race and politics illustrates the trajectory of race appeals: *From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994*.<sup>231</sup> For Dr. Carter, Wallace is the key figure in the modern use of code words and racist language. But Gingrich is, in the words of Dana Milbank, the “architect of our [current political] dysfunction.”<sup>232</sup> Gingrich ran against Virginia Shephard, a white Democrat, during his first campaign in 1978. He distributed a flyer showing his opponent in a photo with Black Georgia representative Julian Bond which read:

If you like welfare cheaters, you’ll love Virginia Shephard. In 1976, Virginia Shephard voted to table a bill to cut down on welfare cheaters. People like Mrs. Shephard, who was a welfare worker for five years, and Julian Bond fought together to kill the bill.<sup>233</sup>

One of Gingrich’s campaign aides later said “we went after every rural southern prejudice we could think of.”<sup>234</sup> Gingrich’s first act after being elected to Congress was to call for the expulsion of Democrat Charles Diggs from Detroit, the first Black member of Congress elected from an urban district in Michigan, who had diverted \$6,000 in funds from his congressional payroll for his personal use—even though similar infractions by white legislators had not previously resulted

---

<sup>230</sup> Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton, N.J.: Princeton University Press, 2006), 234.

<sup>231</sup> Dan T. Carter, *From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge: Louisiana State University Press, 1996)

<sup>232</sup> Dana Milbank, *The Destructionists: The Twenty-Five-Year Crack-Up of the Republican Party* (New York: Doubleday, 2022), 49; see also Julian E. Zelizer, *Burning Down the House: Newt Gingrich, The Fall of a Speaker, and the Rise of the New Republican Party* (New York: Penguin, 2020).

<sup>233</sup> Milbank, *The Destructionists*, 66.

<sup>234</sup> *Id.*

in expulsion. Gingrich led the successful campaign for Representative Diggs' expulsion, though he was subsequently re-elected.<sup>235</sup> According to Dana Milbank:

Gingrich claimed to be racially progressive (he favored a Martin Luther King Jr. federal holiday), but was proficient in racist dog whistles, railing against the “corrupt, liberal welfare state,” drafting a Republican platform in Georgia warning that “America is in danger of decaying into a jungle of violent crimes,” saying that because of civil rights leader Jesse Jackson “it’s going to be a Dukakis-Jackson administration no matter who the vice presidential nominee is.” He argued for branding Democrats with the words “welfare” and “criminal rights.” He claimed that “it is in the interest of the Republican Party...[ellipsis in original] to invent new Black leaders, so to speak—people who have a belief in discipline, hard work, and patriotism. He decried “multicultural nihilistic hedonism.” He fought civil rights groups in trying to add a new category, “multi-cultural to the census. When Gingrich’s Republicans won the House in 1994, it was in large part because for the first time since Reconstruction, Democrats had lost their southern majority in Congress.”<sup>236</sup>

Racism, whether dog whistled or communicated directly, became a hallmark of the Gingrich Republican Party. Georgia Republican congressman Bob Barr, in the 1990s addressed the Council of Conservative Citizens, a descendant of the White Citizens Council.<sup>237</sup> Radio commentator Rush Limbaugh said at one point that “if any race of people should not have guilt over slavery, it’s Caucasians.”<sup>238</sup> Gingrich himself remains active in Georgia politics, campaigning for Trump-backed candidates in the 2022 election cycle, opining that Kamala Harris “is the dumbest vice president ever,” while reinforcing stereotypes while challenging them, arguing that Republican African American Senate candidate Herschel Walker “is dramatically smarter than people think he is.”<sup>239</sup>

---

<sup>235</sup> *Id.*

<sup>236</sup> *Id.* at 66–67.

<sup>237</sup> *Id.* at 68.

<sup>238</sup> *Id.*

<sup>239</sup> Shannon McCaffrey, “Back in Georgia, Newt Gingrich looks to make his mark on 2022 election,” *Atlanta Journal Constitution* (May 28, 2022), <https://www.ajc.com/politics/election/back-in-georgia-newt-gingrich-looks-to-make-his-mark-on-2022-election/HFSZFXCZFRDKZB4CLVAJTE427I/>.

## ii. Modern Examples

### a. 2018 Gubernatorial Race

Racist appeals have continued to characterize Georgia elections and reached a crescendo in 2018 when Stacey Abrams, the Democratic minority leader in the Georgia House of Representatives, challenged Brian Kemp, the Republican Secretary of State, in the 2018 race for Governor. Kemp's efforts and successes to limit Black voting strength by striking voters, especially minority voters from the voting rolls are discussed elsewhere in this report. *See supra* Part IV.I. Kemp justified this disfranchisement by claiming that he was defending the integrity of the vote against "radical leftists," "outside agitators," and "criminal illegals" who were invading the state in large numbers. He claimed that Abrams was encouraging "illegals"—which for Kemp included both documented and undocumented immigrants. He told Georgia voters, echoing Donald Trump, that "we can build a wall—a big, red, beautiful wall—around the state of Georgia to knock that blue wave down."<sup>240</sup>

Kemp also circulated on social media a photograph of a few members of the New Black Panther Party, considered a hate group by the Southern Poverty Law Center, attending an Abrams rally with guns. Although Abrams condemned the New Black Panther Party, Kemp circulated the photo on Facebook with the accompanying message: "The New Black Panther Party is a virulently racist and antisemitic organization whose leaders have encouraged violence against whites, Jews, and police officers. SHARE if you agree that Abrams and the Black Panthers are TOO EXTREME for Georgia!"<sup>241</sup> The post spread quickly through right-wing media.<sup>242</sup> As one media commentator later noted, "[i]t was too easy for Brian Kemp's last-minute dog whistle about Stacey Abrams to go viral."<sup>243</sup>

---

<sup>240</sup> Carol Anderson, *One Person, One Vote: How Voter Suppression is Destroying Our Democracy* (New York: Bloomsbury Publishing, 2020), 173.

<sup>241</sup> April Glaser, "It Was Too Easy for Brian Kemp's Last-Minute Dog Whistle About Stacey Abrams To Go Viral," *Slate* (Nov. 6, 2018), <https://slate.com/technology/2018/11/brian-kemp-stacey-abrams-dog-whistle-black-panthers-facebook.html>.

<sup>242</sup> *See* Penny Starr, *Armed Black Panthers Lobby for Democrat Gubernatorial Candidate Stacey Abrams*, *Breitbart* (Nov. 4, 2018), available at [https://www.breitbart.com/politics/2018/11/04/armed-black-panthers-lobby-for-democrat-gubernatorial-candidate-stacey-abrams/?utm\\_source=wnd&utm\\_medium=wnd&utm\\_campaign=syndicated](https://www.breitbart.com/politics/2018/11/04/armed-black-panthers-lobby-for-democrat-gubernatorial-candidate-stacey-abrams/?utm_source=wnd&utm_medium=wnd&utm_campaign=syndicated).

<sup>243</sup> April Glaser, "It Was Too Easy for Brian Kemp's Last-Minute Dog Whistle About Stacey Abrams To Go Viral," *supra* n.241.

Abrams was attacked with even more overtly racist appeals from third parties. For example, a robo-call created by a fringe right-wing group circulated in the Atlanta suburbs before the election. The speaker in the robo-call imitated Oprah Winfrey and stated:

“This is the magical Negro, Oprah Winfrey, asking you to make my fellow Negro, Stacey Abrams, governor of Georgia. Yes, also the Jews who own the American media saw something in me—the ability to trick dumb white women to think like me. And to do, read, and think what I told them to do.... I see that same potential in Stacey Abrams. Where others see a poor man’s Aunt Jemima, I see someone that white women can be tricked into voting for—especially the fat ones.”<sup>244</sup>

The FCC later called for a \$12 million fine against the originator of the racist robo-calls.<sup>245</sup> As one commentator noted after the 2018 election, “racist appeals didn’t hurt” the candidates making them in Georgia and throughout the South, and actually “did help them.”<sup>246</sup>

#### **b. 2020 U.S. Senate Race**

Racial appeals were also evident in the 2020 U.S. Senate race. Democrats nominated Raphael Warnock, a Black minister preaching from the same pulpit Martin Luther King Jr. once occupied at Ebenezer Baptist Church, attempting to be the first Black senator from the state of Georgia. Warnock faced racist attacks throughout the 2020 campaign, often through “dog whistle” attacks that did not explicitly focus on Warnock’s race as explained above.

Warnock’s opponent in the general election was then-Senator Kelly Loeffler. Loeffler attacked Warnock repeatedly as a “radical liberal” and characterized his sermons delivered at Ebenezer Baptist Church as un-Christian. Congressman Doug Collins, who was defeated by Loeffler defeated in the Republican primary but later supported her in the general election, said that “there is no such thing as a pro-choice pastor. What you have is a lie from the bed of hell. It is time to send *it* back to Ebenezer Baptist Church,” referring to Warnock as an “it” and Ebenezer

---

<sup>244</sup> Madison Feller, “A Racist, Anti-Semitic Robo-Call Targeting Stacey Abrams is Going Out to Georgia Voters,” *Elle* (Nov. 6, 2018), <https://www.elle.com/culture/career-politics/a24662570/robo-call-georgia-voters-targeting-stacey-abrams-racist/>.

<sup>245</sup> Mark Niesse, “Racist robocalls attacking Stacey Abrams lead to proposed fines,” *Atlanta Journal Constitution* (Jan. 31, 2020), <https://www.ajc.com/news/state--regional-govt--politics/racist-robocalls-attacking-stacey-abrams-lead-proposed-fines/3gqUT9zGxqKkHCN1XtInVN/>.

<sup>246</sup> Jarvis De Berry, “The Dirty South: Racist Appeals Didn’t Hurt Candidates, Did Help Them,” *Nola* (Nov. 17, 2018), [https://www.nola.com/opinions/article\\_2affbc92-aaf4-5c6c-88d6-9fe1db466492.html](https://www.nola.com/opinions/article_2affbc92-aaf4-5c6c-88d6-9fe1db466492.html)

Baptist Church as satanic.<sup>247</sup> This line of attack crossed a line and exposed the “fragile relationship that Georgia Republicans have maintained with Ebenezer Baptist Church, and by extension, the King family.”<sup>248</sup> Loeffler claimed in response that “there is not a racist bone in my body.”<sup>249</sup>

Leaving the question of her bones aside, Loeffler was supported by a number of prominent racists and white nationalists. She was photographed with Chester Doles, a former “Grand Klaliff” of the Ku Klux Klan in North Georgia and a member of the neo-Nazi National Alliance,<sup>250</sup> and did an interview on the One America News Channel with Jack Posobiec, “a TV pundit associated with white supremacy and Nazism.”<sup>251</sup> Senator Loeffler also received the enthusiastic support of the newly elected congresswoman from North Georgia Marjorie Taylor Green, who had recorded a number of videos which stated, among other things, that Black people’s progress is hindered by African American gang activity, drugs, lack of education, Planned Parenthood, and abortions.<sup>252</sup> Warnock also faced blatant racist attacks on the campaign trail. For example, one of his virtual town hall meetings was interrupted by hecklers who were “chanting the N-word” in an attempt to shut down the virtual event.<sup>253</sup>

---

<sup>247</sup> Rick Rojas, “Georgia Pastors See Attacks on Black Church in Campaign Against Warnock,” N.Y. Times (Dec. 19, 2020), <https://www.nytimes.com/2020/12/19/us/georgia-pastors-see-attack-on-black-church-in-campaign-against-warnock.html>.

<sup>248</sup> Jim Galloway, “Taking Senator Kelly Loeffler to Church,” *Atlanta Journal-Constitution* (Dec. 1, 2020), <https://www.ajc.com/politics/politics-blog/opinion-the-kelly-loeffler-raphael-warnock-runoff-crosses-a-line/Z7YGGZ4MBOFFNJHKBBIJT6SHJM/>.

<sup>249</sup> Rick Rojas, “Georgia Pastors See Attacks on Black Church in Campaign Against Warnock,” N.Y. Times, *supra* n.247.

<sup>250</sup> “Loeffler campaign: She had ‘no idea’ she posed with neo-Nazi,” Associated Press (Dec. 13, 2020), *available at* <https://apnews.com/article/race-and-ethnicity-georgia-media-social-media-elections-99c40bece8a6fc6904647727493f1257>.

<sup>251</sup> Leon Stafford, “Warnock Tests Loeffler’s View That She’s Not Racist,” *Atlanta Journal Constitution* (Dec. 22, 2020), <https://www.ajc.com/politics/senate-watch/campaign-check-warnock-tests-loefflers-view-that-shes-not-racist/SOWX3GL3ARDJNBFDWWZYQ75BVM/>.

<sup>252</sup> Ally Mutnick & Melanie Zanora, “House Republican Leaders Condemn GOP Candidate Who Made Racist Videos,” *Politico* (June 17, 2020), <https://www.politico.com/news/2020/06/17/house-republicans-condemn-gop-candidate-racist-videos-325579>; Greg Bluestein, “QAnon Believer’s Victory a Mixed Blessing for GOP,” *Atlanta Journal Constitution*, Aug. 13, 2020, at A1.

<sup>253</sup> Jason Braverman, “Town Hall with Georgia US Senate Candidate Allegedly Interrupted With Racist Attacks, Pornography,” *11 Alive* (Aug. 25, 2022), <https://www.11alive.com/article/news/politics/elections/virtual-town-hall-with-democratic-us-senate-candidate-hacked-with-racist-attacks-pornography/85-ba6f9c4d-b55f-4465-8a15-5d1d856cd8f7>.

**c. 2022 Gubernatorial Race**

Racial appeals dominated Stacey Abrams's second run for Governor in 2022. Governor Kemp faced a primary challenge from former Senator David Perdue, who attempted to win over Republican primary voters through racist attacks against Abrams. Perdue said in a televised interview that Abrams was "demeaning her own race" and should "go back where she came from."<sup>254</sup> Kemp, who eventually defeated Perdue, repeatedly attacked Abrams in the general election as "upset and mad," evoking the trope and dog whistle of the "angry Black woman."<sup>255</sup> Moreover, Kemp's campaign deliberately darkened Abrams's face in campaign advertisements in an effort to create a darker, more menacing image.<sup>256</sup>

As was true in the 2018 campaign, Abrams faced repeated racist attacks from third parties. After Stacy Abrams planned a campaign rally in Forsythe County, in suburban Atlanta, the Republican Party of Forsythe County issued a digital flyer that was "a 'call to action' encouraging 'conservatives and patriots' to 'save and protect our neighborhoods,'" and accused both Abrams and Senator Warnock of being "designers of destructive socialism" that would be "crossing over our county border."<sup>257</sup> The flier carried echoes of the infamous pogrom in Forsythe County in 1912, when most of the Black people in the county were forcibly expelled.<sup>258</sup>

**d. "Voter Fraud" and "Fulton County"**

The use of "coded terms" has been a common racial appeal across elections in Georgia. And among "coded terms" in modern politics, probably none has the racial salience of "voter fraud." Although accusations of minority voter fraud were a major theme in the efforts of

---

<sup>254</sup> Ewan Palmer, "David Perdue Doubles Down on 'Racist' Stacey Abrams Remarks in TV Interview," *Newsweek*, (May 24, 2022), <https://www.newsweek.com/david-perdue-racist-stacey-abrams-go-back-georgia-1709429>.

<sup>255</sup> Abby Vesoulis, "Did Brian Kemp Employ a Dog Whistle During His Campaign Against Stacey Abrams?," *Mother Jones* (Oct. 18, 2022), <https://www.motherjones.com/politics/2022/10/Georgia-debate-governor-abrams-kemp/>.

<sup>256</sup> Doug Richards, "Darkened Skin in Anti-Abrams Ad Racially Charged, 'Pernicious,' Political Analysts Say," *11 Alive* (Sept. 30, 2022), <https://www.11alive.com/article/news/politics/darkened-skin-in-georgia-political-ads-2022/85-3ff31b49-c451-4af8-8033-fd732fe787ae>.

<sup>257</sup> Maya King, "In Georgia County With Racist History, Flier Paints Abrams as Invading Enemy," *N.Y. Times* (Sept. 16, 2022), <https://www.nytimes.com/2022/09/16/us/politics/stacey-abrams-forsyth-georgia-republicans.html>.

<sup>258</sup> See Patrick Phillips, *Blood at the Root: A Racial Cleansing in America* (New York: Norton, 2016).



conservative whites during and after Reconstruction to restrict and eliminate Black suffrage, the phrase “voter fraud” is a relatively recent addition to America’s toxic racial vocabulary. In the 1960s, the heyday of the civil rights movement, the phrase “voter fraud” appeared precisely twice in the pages of the *New York Times*, and in the four decades from 1960 to 1999 it appeared 185 times. From 2015 through April 2022, the phrase “voter fraud” appeared in the pages of the *New York Times* 1,526 times.<sup>259</sup>

At the national level, a turning point in the recent history of “voter fraud” accusations was the 2000 presidential election in Florida and its razor-thin margins. Beyond the obvious post-election turmoil related to recounts, 180,000 ballots, close to 3% of the total votes cast, failed to be counted in Florida, and subsequent analysis showed that election officials discarded one in ten votes cast by Black voters as opposed to less than one in fifty votes cast by whites. Various methods used by election officials in counting ambiguous ballots, as well as the purging of allegedly disenfranchised felons, which included many persons eligible to vote, were consequential to the results of the election and in the end, likely cost Democratic presidential candidate Al Gore more than fifty thousand votes.<sup>260</sup> The racial disparity in the Florida recount is, in the opinion of historian Allan Lichtman, “the great underreported scandal of the twenty-first century,” as the general public, following news coverage, tended to blame faulty ballot design, the notorious “hanging chads” and butterfly ballots, rather than the systematic disenfranchisement of Black voters.<sup>261</sup>

Underreported it may be, but Republicans learned an important lesson from the Florida fight—claiming that Democratic officials engaged in voter fraud and disenfranchising as many likely Democratic voters as possible can be a valuable tool in creating chaos and winning elections. As voting law expert Richard L. Hasen stated, “before 2000, there were some rumblings about

---

<sup>259</sup> These figures are drawn from the ProQuest data base, “Historical Newspapers: The New York Times” through the end of 2018, and the search feature for the daily *New York Times* from 2019 through 2 April 2022. The term “vote fraud” has an older history, but in recent years it has largely been supplanted, in the *New York Times* and other newspapers, by “voter fraud.” If there is a difference between the two phrases, vote fraud need not be committed by voters—for instance, corrupt officials can either stuff or conveniently lose ballot boxes, or, more recently used advanced technology to manipulate voting totals. “Voter fraud” on the other hand, implies the illegal action is directly taken by voters.

<sup>260</sup> Allan J. Lichtman, *The Embattled Vote in America: From the Founding to the Present* 181–186 (2020)

<sup>261</sup> *Id.*



Democratic voter fraud, but it really wasn't part of the main discourse."<sup>262</sup> Afterwards, "the myth that Democratic voter fraud is common, and that it helps Democrats win election, has become part of the Republican orthodoxy."<sup>263</sup> But perhaps more importantly, reference to fraud has become a racial code word for minority and Black voters. Or in the words of Emory University Professor Carol Anderson, the real lesson of 2000 for Republicans was to do whatever it takes to limit the growing demographic presence of racial minorities among voters, that "those who controlled the key levers of the electoral and political machinery could give purges, bureaucratic runarounds, and other types of chicanery the aura of legality," and above all lie about election fraud.<sup>264</sup> And lie "often, loudly, boldly, unashamedly, and consistently," until lies "drowned out the truth."<sup>265</sup> Those lies have only become noisier and more brazen since 2000.

These parallel historical narratives about election integrity and voter fraud (false tropes from the excuses for overthrowing the interracial democratically elected governments from Reconstruction era), racial dynamics in Georgia, and coded discussions about the interaction between those two ideas all came to a head during the Trump presidency. Accusations of electoral malfeasance was a staple of Donald Trump's campaigns. Following the Iowa caucuses in February 2016, for example, Trump finished second to Texas Senator Ted Cruz. Calling for the caucus results to be nullified and for a new election, he claimed "Ted Cruz didn't win Iowa, he stole it."<sup>266</sup>

Trump proceeded to regularly assert during campaign appearances that "the election is going to be rigged," and cast aspersions on urban voters.<sup>267</sup> He claimed without any evidence that without strict in-person voter ID laws, there will be people who will "vote ten times," and "keep

---

<sup>262</sup> Cited in Ari Rabin-Haut and Media Matters for America, *Lies, Incorporated: The World of Post-Truth Politics* (New York: Anchor Books, 2016), 135.

<sup>263</sup> Jane Meyer, "The Voter Fraud Myth," *The New Yorker* (Oct. 22, 2012), <https://www.newyorker.com/magazine/2012/10/29/the-voter-fraud-myth>.

<sup>264</sup> Carol Anderson, *One Person, No Vote: How Voter Suppression is Destroying Our Democracy* (New York: Bloomsbury, 2018), 50.

<sup>265</sup> *Id.* at 60–62; Ari Berman, *Give Us the Ballot: The Modern Struggle for Voting Rights in America* (New York: Picador, 2015) 222–224, 226–229; Stacey Abrams, *Our Time is Now: Power, Purpose, and the Fight for a Fair America* (Henry Holt, 2020), 75–76.

<sup>266</sup> Amy Tennery, "Trump Accuses Cruz of Stealing Iowa Caucuses Through Fraud," *Reuters* (Feb. 3, 2016), available at <https://www.reuters.com/article/us-usa-election-trump-cruz/trump-accuses-cruz-of-stealing-iowa-caucuses-through-fraud-idUSMTZSAPEC23ZBL9YS>.

<sup>267</sup> Jonathan Blitzer, "Trump and the Truth: The 'Rigged' Election," *The New Yorkers* (Oct. 8, 2016), available at <https://www.newyorker.com/news/news-desk/trump-and-the-truth-the-rigged-election>.

voting and voting and voting.”<sup>268</sup> He also suggested that voter fraud would come from cities with large African American and minority populations. In October 2016, for example, candidate Trump said that “voter fraud is all too common, take a look at Philadelphia, what’s been going on, take a look at Chicago, take a look at St. Louis,” and said what was happening in those cities was “horrendous.”<sup>269</sup> That fall, Trump told an almost all-white crowd outside Pittsburgh that it was “so important that you watch other communities, because we won’t have this election stolen from us.”<sup>270</sup> He also complained that undocumented immigrants, most of whom were persons of color, would be used to defraud the election, and that President Obama was “letting people pour into the country so they can vote.”<sup>271</sup>

Donald Trump later brought these racial appeals to Georgia by using references to “Fulton County” as coded language. As part of his effort to overturn the 2020 election results in Georgia, Trump called Georgia Secretary of State Brad Raffensperger and told him that “political corruption” in Fulton County was “rampant” and that many Republican votes in Fulton County were shredded, along with other baseless conspiracy theories.<sup>272</sup> Trump’s campaign later attacked two Black poll workers in Fulton County: Ruby Freeman and her daughter Shaye Moss. In his testimony before the Georgia Senate, Rudy Giuliani showed a video which purported to show Freeman and Moss engaging in “surreptitious illegal activities” akin to “drug dealers” who were “passing out dope,” reflecting old racist tropes about persons of color.<sup>273</sup> Although the accusations were utter nonsense, former President Trump told Secretary Raffensperger that Ruby Freeman was a “professional vote scammer and hustler.”<sup>274</sup> The two women received harassing phone calls and death threats, often laced with racial slurs, frightening nighttime knocks on their doors—they had to leave their residence and go into hiding—along with suggestions that they should be “strung up

---

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

<sup>271</sup> *Id.*

<sup>272</sup> Quinn Scanlan, “Trump ‘Just Plain Wrong’ on Fraud Claims: Georgia Secretary of State Raffensperger,” ABC News (Jan. 4, 2021), *available at* <https://abcnews.go.com/Politics/trump-plain-wrong-fraud-claims-georgia-secretary-state/story?id=75032595>.

<sup>273</sup> Jason Szep and Linda So, “Trump Campaign Demonized Two Georgia Election Workers—And Death Threats Followed,” Reuters, (Dec. 1 2021),

<https://www.reuters.com/investigates/special-report/usa-election-threats-georgia/> (emphasis added).

<sup>274</sup> *Id.*

from the nearest lamppost and set on fire,” horribly echoing the calls for lynchings of Black citizens from earlier years who were attempting to participate in the political process<sup>275</sup> As discussed above, the intense focus on Fulton County is not random—reference to this large, urban, majority-minority county in Georgia has been used as a coded racial appeal in the election context.

The drumbeat of allegations against the “integrity” of Georgia’s electoral processes, especially as practiced in the interracial county governments in the Atlanta metro area, has continued. In August 2021, Republican Congressman Jody Hice, who challenged Raffensperger in the Republican primary in the race for Secretary of State, stated that “as long as *these people* are allowed to continue cheating, they will continue to do so.” Kemp claimed that “Fulton County has a long history of mismanagement, incompetence, and lack of transparency when it comes to running elections, including during the 2020 elections.” Butch Miller, a candidate for lieutenant-governor argued that “maintaining integrity of our elections is of the utmost importance to me and my colleagues in the state senate. Unfortunately, Fulton County’s apparent disregard for election procedures and state law have called that integrity into doubt.”<sup>276</sup>

### **C. Divergent Race-Related Views of Members of the Democratic and Republican Parties in Georgia**

Aside from the use and effect of racial appeals in Georgia, the significant impact race has on the state’s partisan divides is made readily apparent when one considers the opposing positions that members of Georgia’s Democratic and Republican parties take on issues inextricably linked to race. For example, the Democratic and Republican members of Georgia’s congressional delegation consistently oppose one another on issues relating to civil rights. As indicated in the table below, each Republican member of the delegation during the 2017-2019 congressional session received extremely low scores (no higher than 6-13% on a scale of 0-100%) on the civil rights scorecard produced by the NAACP, an organization dedicated to promoting minority rights. Meanwhile, each Democratic member received extremely high scores (81-100%).

---

<sup>275</sup> *Id.*

<sup>276</sup> Mark Niese, “Board Launches Fulton County Election Woes Inquiry,” *Atlanta Journal Constitution* (Aug. 19, 2021), <https://www.ajc.com/politics/panel-appointed-to-investigate-fulton-election-problems/IBRJTWD4ERAP7HRIFZ7D243JAA/>.

Pro-Civil Rights Votes Among Georgia’s Congressional Delegation, 2017-2019 Congressional Session <sup>277</sup>			
Republican Members		Democratic Members	
Johnny Isakson	13%	Sanford Bishop Jr.	81%
David Perdue	9%	Hank Johnson	100%
Earl “Buddy” Carter	6%	John Lewis	97%
Drew Ferguson	13%	David Scott	84%
Rob Woodall	9%		
Austin Scott	13%		
Doug Collins	6%		
Jody B. Hice	6%		
Barry Loudermilk	6%		
Rick W. Allen	9%		
Tom Graves	9%		

The Pew Research Center’s *Beyond Red and Blue: The Political Typology* (issued in November 2021) confirm these differences between the parties on issues relating to race. This study divided political allegiance into nine distinct typology groups, four leaning Republican, four leaning Democratic, with the “Stressed Sideliners,” uncertain and generally not following politics very closely.<sup>278</sup> Among the four Republican groupings [Faith and Flag Conservatives (85% white), Committed Conservatives (82% white), Populist Right (85% white), and Ambivalent Right (65% white)], the survey found “no more than about a quarter say a lot more has to be done to ensure equal rights for all Americans regardless of their racial or ethnic backgrounds, by comparison, no fewer than about three-quarters of any Democratic group [Progressive Left (68% white), Establishment Liberals (51% white), Democratic Mainstays 46% white), and Outsider Left (49% white) says a lot more needs to be done to achieve this goal.”<sup>279</sup> The four Republican groups agreed between 78 and 94% that “white people do not benefit much or not at all from the advantage that Black people do not have,” or in other words, that there is no systematic racism at work in American society or institutions.<sup>280</sup> Among the four Democratic leaning groups, there was

<sup>277</sup> Nat’l Ass’n for the Advancement of Colored People, “NAACP Civil Rights Federal Legislative Report Card, Congressional Votes 2017-2018” (Feb. 1, 2019), <https://naacp.org/sites/default/files/documents/115th-Final-Report-Card.pdf>.

<sup>278</sup> Pew Research Center, *Beyond Red and Blue: The Political Typology*, (Nov. 9, 2021), <https://www.pewresearch.org/politics/2021/11/09/beyond-red-vs-blue-the-political-typology-2/>.

<sup>279</sup> *Id.* at 7.

<sup>280</sup> *Id.* at 14.

agreement (between 73 and 96%) that “a lot more needs to be done to ensure equal rights for all Americans regardless of their ethnic or racial backgrounds.”<sup>281</sup>

Georgia-specific polls suggest the same. An NORC poll conducted for 3,291 likely Georgia voters just before the 2020 election found that 45% were Democratic or Democratic leaning, 51% Republican or Republican leaning. Among voters who believed that racism was the most important issue facing the country, 78% voted for Joe Biden and 20% voted for Donald Trump. Among voters who believed that racism was “not too or not at all serious,” 9% voted for Biden and 90% voted for Trump. And among voters who believe that racism is a serious problem in policing, 65% voted for Biden and 33% voted for Trump.<sup>282</sup>

### C. Conclusion

As this report has shown, Georgia has worked for decades to diminish the voting power of Black Georgians, both at the structural electoral level (in terms of redistricting and electoral arrangements), and at the individual level (in terms of voter requirements). These efforts have often been successful, stymying Georgia’s Black voters from exercising their full political power. It is my opinion that Georgia’s newest congressional plan is best viewed with this historical context.

Moreover, the correlation between race and party in Georgia is no coincidence. Instead, race and issues inextricably linked to race have long played a role in separating Black voters and white voters along partisan lines, and they continue to contribute to the partisan divisions we see today.

### APPENDIX A: Representative Discriminatory Voting Tactics

Voting Mechanism Adoption	Name of Georgia Jurisdiction	Details
Majority voting requirement	Americus (city)	Adopted plurality to majority vote for mayor and city council in 1968

---

<sup>281</sup> *Id.* at 29

<sup>282</sup> A.P. VoteCast, “Georgia Voter Surveys: How Different Groups Voted,” N.Y. Times, (Nov. 3 2020), <https://www.nytimes.com/interactive/2020/11/03/us/elections/ap-polls-georgia.html>.

	Jackson (city)	Adopted majority vote after passage of VRA, enjoined in 1981
	Covington (city)	Adopted a majority vote and runoff election requirement for city council in 1967
	St. Mary's (city)	Adopted majority vote requirement for city council in 1967
	Waynesboro (city)	Adopted a majority vote requirement in 1971, ignored §5 finding against the city until 1976
	Moultrie (city)	Adopted majority vote requirement for city council in 1965; used at-large elections
	Augusta, Alapaha, Ashburn, Athens, Butler, Cairo, Camilla, Crawfordville, East Dublin, Hartwell, Hinesville, Hogansville, Jesup, Jonesboro, Lakeland, Louisville, Lumber City, Madison, Nashville, Newman, Palmetto, Sandersville, Sylvester, Thomson, Wadley, Waynesboro, Wrens	Other cities in Georgia that adopted majority vote requirements after 1970
<b>At-Large Voting</b>	Dooly County	Utilized at-large voting from 1967 to 1981
	Miller County	Utilized at-large voting from 1967 to 1980
	Pike County	Utilized at-large voting from 1967 to 1980. No preclearance

		was sought. In 1979, the US AG said preclearance was necessary, but county refused to honor this until a subsequent lawsuit in 1980.
	Harris County	Utilized at-large voting for board of commissioners starting in 1974
	Sumter County	Utilized at-large voting for county commissioners in 1972 following Section 5 finding that the county was malapportioned. In 1981 a three-judge federal panel found that this required preclearance.
	Jackson (city)	Utilized at-large voting following passage of Voting Rights Act; Annexed several dozen areas to suppress Black voting; enjoined by federal court in 1981
	Burke County	Utilized at-large voting until 1976, until enjoined by a federal court in 1981
	Putnam County	Utilized at-large voting until 1981
	McDuffie County	Utilized at-large voting until a 1978 consent decree .
	Coffee County	Utilized at-large voting until a 1977 consent decree .



	Douglas County	Utilized at-large voting until a 1977 consent decree.
	Peach County	Utilized at-large voting until a 1979 consent decree .
	Waynesboro (city)	Utilized at-large voting until a 1977 consent decree.
	Americus (city)	Utilized at-large voting until a 1980 consent decree.
	Dawson County	Utilized at-large voting until a 1980 consent decree.
	Madison County	Utilized at-large voting until a 1978 consent decree.
	Morgan, Newton, and Twiggs Counties	Adopted at-large voting in 1971
	Wilkes, McDuffie Counties	Adopted at-large voting in 1972
	Newton and Bibb Counties	Adopted at-large voting for Board of Education in 1971
	Baldwin, Truetlen, McDuffie, Camden, Putnam, Pike, Spalding, and Wilkes Counties	Adopted at-large voting for Board of Education in 1972
	Toombs, Sumter, and Clarke Counties	Adopted at-large voting for Board of Education in 1973
	Harris, Charlton, and Taylor Counties	Adopted at-large voting for Board of Education in 1975
	Long County	Adopted at-large voting for Board of Education in 1975
<b>Numbered Post System</b>	Dawson (city)	Adopted numbered-post system in 1970
	Kingsland (city)	Adopted numbered-post system in 1967

<b>Other tactics</b>	DeKalb County	Limited minority voting registration drives in 1980
	Seminole County	Used voting districts drawn in 1933 (which severely diluted Black voting strength) up until 1980.
	Camden County	Designated an all-white women's club as the new municipal polling place in 1978
	Peach County	Adopted staggered voting for County Commissioners in 1968
	Moultrie (city)	Instituted a literacy test for new Black poll workers but grandfathering in all previously serving all-white poll workers in 1978.

Source: Laughlin McDonald, *Voting Rights in the South: Ten Years of Challenging Continuing Discrimination Against Minorities* (ACLU, Southern Regional Office, 1982); Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia* (Cambridge: Cambridge University Press, 2003), 141–143.

## *Pendergrass* Doc. 174-6

# EXHIBIT 5

## **Expert Report of Dr. Loren Collingwood**

*Pendergrass v. Raffensperger*, No. 1:21-CV-05339-SCJ (N.D. Ga.)

December 12, 2022

*Loren Collingwood*

---

## Background and Qualifications

I am an associate professor of political science at the University of New Mexico. Previously, I was an associate professor of political science and co-director of civic engagement at the Center for Social Innovation at the University of California, Riverside. I have published two books with *Oxford University Press*, 39 peer-reviewed journal articles, and nearly a dozen book chapters focusing on sanctuary cities, race/ethnic politics, election administration, and racially polarized voting. I received a Ph.D. in political science with a concentration in political methodology and applied statistics from the University of Washington in 2012 and a B.A. in psychology from the California State University, Chico, in 2002. I have attached my curriculum vitae, which includes an up-to-date list of publications.

In between my B.A. and Ph.D., I spent 3-4 years working in private consulting for the survey research firm Greenberg Quinlan Rosner Research in Washington, D.C. I also founded the research firm Collingwood Research, which focuses primarily on the statistical and demographic analysis of political data for a wide array of clients, and lead redistricting and map-drawing and demographic analysis for the Inland Empire Funding Alliance in Southern California. I am the redistricting consultant for the West Contra Costa Unified School District, California, independent redistricting commission, in which I am charged with drawing court-ordered single-member districts.

I have served as an expert witness in a number of cases related to redistricting. I testified for the plaintiff in the Voting Rights Act (VRA) Section 2 case *NAACP v. East Ramapo Central School District*, No. 17 Civ. 8943 (S.D.N.Y.), on which I worked from 2018 to 2020. In that case, I used the statistical software eiCompare and WRU to implement Bayesian Improved Surname Geocoding (BISG) to identify the racial/ethnic demographics of voters and estimate candidate preference by race using ecological data. I was also the racially polarized voting (RPV) expert in several cases during this redistricting cycle: *East St. Louis Branch NAACP v. Illinois State Board of Elections*, No. 1:21-cv-05512 (N.D. Ill.), having filed two reports and sat for a deposition; *Johnson v. Wisconsin Elections Commission*, No. 2021AP1450-OA (Wis.), having filed three reports; *Rivera v. Schwab*, No. 2022-CV-000089 (Kan. Dist. Ct.), having filed a report, sat for a deposition, and testified at trial; *LULAC v. Abbott*, No. 3:21-CV-00259-DCG-JES-JVB (W.D. Tex.), having filed three reports and sat for a deposition; *Walen v. Burgum*, No. 1:22-cv-00031-PDW-CRH (D.N.D.), having filed a report and testified at trial; and *Soto Palmer v. Hobbs*, No. 3:22-cv-05035-RSL (W.D. Wash.), having filed a report.

I have also served as an expert witness in other cases related to voting rights more generally. I am the quantitative expert in *LULAC of Iowa v. Pate*, No. CVCV061476 (Iowa Dist. Ct.), and have filed an expert report in that case. I am the BISG expert in *LULAC Texas v. Scott*, No. 1:21-cv-00786-XR (W.D. Tex.), and have filed two reports and been deposed in that case. I am also the RPV expert in *Lower Brule Sioux Tribe v. Lyman County*, No. 3:22-CV-03008-RAL (D.S.D.), where I filed a report and testified at trial.

I am being compensated at a rate of \$400/hour. No part of my compensation is dependent upon the conclusions that I reach or the opinions that I offer.

## Executive Summary

- On every metric, Black Georgians are disadvantaged socioeconomically relative to non-Hispanic white Georgians. Blacks are worse off than whites on the following measures: income, unemployment, poverty, health, and educational attainment.
- These socioeconomic disparities have an adverse effect on the ability of Black Georgians to participate in the political process, as measured by voter turnout and other forms of political participation.
- This means that the political system does not respond to Black Georgians in the same way it responds to white Georgians. If the system did respond, we would expect to see fewer gaps in both health and economic indicators and a reduction in voter turnout gaps.
- Instead, Black Georgians vote at significantly lower rates than white Georgians. That is true at the statewide, county, and precinct levels—including in the Atlanta-Sandy Springs-Alpharetta Metropolitan area. This is also true in the Black Belt region of Georgia.
- The data show a significant relationship between turnout and disparities in health, employment, and education: as health, education, and employment outcomes increase, so does voter turnout in a material way.
- Black Georgians also lag behind white Georgians in other forms of political participation, like making campaign contributions, engaging local officials, and running for office.
- The academic literature overwhelmingly shows that these low levels of political participation are attributable to the socioeconomic disparities discussed above.

My opinions are based on the following data sources: the American Community Survey (ACS) across time; 2020 and 2022 statewide-, county-, and precinct-level voter registration and aggregate turnout data from the Georgia Secretary of State; 2010-2022 statewide voter turnout from the Georgia Secretary of State; 2014-2022 county-level voter turnout data from the Georgia Secretary of State; and the 2020 Cooperative Election Study.

## Analysis

### A. Senate Factor 5

I have been asked to examine item 5 of what has come to be known as the Senate Factors. During the 1982 Voting Rights Act extension, the Senate Judiciary Committee listed out factors that could be considered in evaluating a Section 2 VRA claim. These factors allow experts to inform the court as to the extent that minorities “are denied equal access to the political process.”

Senate Factor 5 examines the extent that minority group members (here, Black individuals) in a political jurisdiction (in this case the state of Georgia) bear the effects of discrimination in education, employment, and health that hinder said group’s political participation. Without a doubt, my analysis demonstrates that Black Georgians face clear and significant disadvantages in the above areas that reduce their ability to participate in the political process.



This analysis also speaks to Senator Factor 8: whether elected officials are less responsive to the particularized needs of the members of the minority group. My findings show that clear disparities across health and socioeconomic indicators impede Black Georgians' political participation. It follows that the political system is relatively unresponsive to Black Georgians; otherwise, we would not observe such clear disadvantages in healthcare, economics, and education.

## **B. Socioeconomic Disparities**

Starting with the 2015-2019 ACS, I constructed the following metrics for both the Black and white populations in Georgia: household median income; total households reporting income above \$100,000; total households reporting income above \$125,000; households receiving Supplemental Nutrition Assistance Program (SNAP, or food stamps) benefits in the past 12 months; percent of the population living below the poverty line in the last 12 months; percent of children living below the poverty line; percent of adults living below the poverty line; percent of the population over the age of 25 with a high school diploma; percent of the population over the age of 25 with a college degree; unemployment rate; percent of the population reporting a disability; and percent of the population reporting health insurance. These metrics reflect broad racial disparities in education, employment, and health.

As shown in Table 1, there are clear racial disparities in employment. The unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%). And disparities persist among those *with* employment: white households are twice as likely as Black households to report an annual income above \$100,000. Black Georgians, meanwhile, were more than twice as likely—and Black children in particular more than three times as likely—to live below the poverty line over the past year. Black Georgians were nearly three times more likely than white Georgians to receive SNAP benefits.

On education, Black adults over the age of 25 are more likely than their white peers to lack a high school diploma (13.3% compared to 9.4%). These disparities fare no better in higher education: 35% of white adults over the age of 25 have obtained a bachelor's degree or higher compared to 24% of their Black counterparts.

Finally, on health, the Black population in Georgia is more likely to report a disability (11.8% compared to 10.9% for whites) and is more likely to lack health insurance (18.9% compared to 14.2% among 19-64 year-olds). All told, the numbers convey consistent racial disparities across economics, health, employment, and education.

I also reproduced the same analyses using the 2016-2020 ACS. As shown in Table 2, the racial disparities reported above hold across the different economic, health, employment, and education metrics.

	Black	White	White - Black
Median Household Income	\$44670	\$67955	\$23285
Pct. HH Income > \$100K	0.165	0.322	0.157
Pct. HH Income > \$125K	0.096	0.224	0.128
Pct. HH receiving SNAP	0.227	0.077	-0.15
Pct. below poverty line	0.215	0.101	-0.114
Pct. below poverty line, children	0.313	0.115	-0.198
Pct. below poverty line, VAP	0.18	0.098	-0.082
Pct. w/ Less than HS Diploma	0.133	0.094	-0.039
Pct. w/ Bachelor's Degree or higher	0.24	0.351	0.111
Pct. Unemployed	0.087	0.044	-0.043
Pct Disabled, ages 19-64	0.118	0.109	-0.009
Pct. Uninsured, ages 19-64	0.189	0.142	-0.047

*Table 1. Socioeconomic indicators across Black and white Georgians, 2015-2019 ACS.*

	<b>Black</b>	<b>White</b>	<b>White - Black</b>
Median Household Income	\$46964	\$70784	\$23820
Pct. HH Income > \$100K	0.18	0.34	0.16
Pct. HH Income > \$125K	0.108	0.24	0.132
Pct. HH receiving SNAP	0.222	0.071	-0.151
Pct. below poverty line	0.201	0.098	-0.103
Pct. below poverty line, children	0.293	0.108	-0.185
Pct. below poverty line, VAP	0.169	0.095	-0.074
Pct. w/ Less than HS Diploma	0.124	0.088	-0.036
Pct. w/ Bachelor's Degree or higher	0.251	0.358	0.107
Pct. Unemployed	0.085	0.043	-0.042
Pct Disabled, ages 19-64	0.121	0.109	-0.012
Pct. Uninsured, ages 19-64	0.187	0.141	-0.046

*Table 2. Socioeconomic indicators across Black and white Georgians, 2016-2020 ACS.*

These patterns hold across nearly every county in the state. Using the 2015-2019 ACS, I gathered the same metrics at the county level and considered only counties with at least 1,000 white and 1,000 Black residents. Georgia has 159 counties; of these, 141 meet this threshold. Whites have a higher median household income than Blacks in 136 of 141 of these counties.<sup>1</sup> Just two counties—Habersham and Paulding—feature a higher Black median household income (Habersham: \$64,286 vs. \$50,418; Paulding: \$50,418 vs. \$68,843). Among households making more than \$100,000, whites have an advantage over Blacks in 140 of the 141 counties.

Turning to SNAP, a higher percentage of Blacks have relied on SNAP in the past 12 months than whites in 140 of the 141 counties. In 136 of the 141 counties, Blacks are more likely to live below the poverty line than are whites. And in 130 of the 141 counties, whites are more likely than Blacks to have a 4-year college degree or higher.

<sup>1</sup> The ACS does not provide median income for Black households in three counties so these counties are treated as missing for this median household income comparison.

While the county distribution is not as pronounced with respect to unemployment and uninsured status, these disparities are still heavily weighted towards Black disadvantage. Blacks have a higher unemployment rate than whites in 118 of the 141 counties (84%), and the share of the population that is uninsured is higher for Blacks than for whites in 92 of the 141 counties (65%).<sup>2</sup>

## **C. Effect on Political Participation**

### **1. Academic Literature**

Socioeconomic disparities like these unquestionably affect political participation. There is a vast literature in political science that demonstrates a strong and consistent link between socioeconomic status (SES) and voter turnout. In general, voters with higher income and education are disproportionately likely to vote and participate in American politics (Wolfinger and Rosenstone 1980; Leighley and Nagler 2013; Nie et al. 1996; Mayer 2011). Brady, Verba, and Schlozman (1995) argue that resources—conceptualized as time, money, and civic skills (all related to education and income)—drive donation behavior, campaign volunteering, and voting. These broad SES findings hold using a variety of research designs. For example, Henderson (2018) uses a hookworm eradication program haphazardly (i.e., at random) applied to counties in the early 20th century South (the program exogenously covaries with educational attainment) to show a causal relationship between education and political participation.

Other research is in accord. Avery (2015) indicates that states with higher income inequality have greater income bias in turnout. Shah and Wichowsky (2019) show a link between home foreclosures and participation: Neighborhoods with a higher share of home foreclosures during the 2008 financial crisis subsequently experienced a drop in voter turnout, and affected individuals were less likely to vote in future elections. And findings in Pacheco and Fletcher (2015) indicate an association between self-reported health and voter turnout.

This overwhelming academic literature shows that the socioeconomic disadvantages suffered by Black Georgians affect their ability to participate in the political process.

This means that the political system does not respond to Black Georgians in the same way it responds to white Georgians. If the system did respond, we would expect to see fewer gaps in both health and economic indicators and a reduction in voter turnout gaps. A clear and consistent finding in political science research demonstrates that elected officials do not respond to constituent inquiry from minorities as readily as they do to white constituents (Barreto et al. 2004; Costa, 2017; White et al., 2015).

### **2. Voter Turnout**

When Georgians register to vote, they indicate their race. The Georgia Secretary of State maintains yearly statewide-, county-, and precinct-level voter registration and turnout by race. I gathered

---

<sup>2</sup> My conclusions about the reported racial disparities do not change when relying on the 2016-2020 ACS.

these data for the 2020 and 2022 general elections.<sup>3</sup> To calculate voter turnout, for both Black and white Georgians, I divided the total number of Black and white people who voted by the total number of the respective registered voter counts.

**a. Statewide Analysis**

For the years 2010-2022, I gathered statewide turnout data by race. The 2010-2012 turnout data is only available on the Secretary of State’s website at the statewide level. Table 3 displays even-year statewide general election voter turnout by race across the 2010-2022 time period. This is a comprehensive list of elections as it covers both midterm and presidential election cycles.

For each election cycle, registered white voters turned out at higher rates than did registered Black voters. For instance, during the 2022 midterm election, whites turned out at 58.3%, whereas Blacks turned out at 45.0%, which translates into a gap of 13.3 percentage points in turnout. A similar gap (12.6%) is visible in the 2020 presidential election cycle. This Black-white gap is most narrow during President Obama’s 2012 re-election – at 3.1% -- but in every single case whites vote at a noticeably higher rate than do Blacks.

<b>Year</b>	<b>Black TO</b>	<b>White TO</b>	<b>Gap</b>	<b>Total Turnout</b>
<b>2022</b>	<b>45</b>	<b>58.3</b>	<b>-13.3</b>	<b>50.5</b>
<b>2020</b>	<b>60</b>	<b>72.6</b>	<b>-12.6</b>	<b>65.7</b>
<b>2018</b>	<b>53.9</b>	<b>62.2</b>	<b>-8.3</b>	<b>56.4</b>
<b>2016</b>	<b>56.2</b>	<b>67.9</b>	<b>-11.6</b>	<b>62</b>
<b>2014</b>	<b>40.6</b>	<b>47.5</b>	<b>-6.9</b>	<b>42.9</b>
<b>2012</b>	<b>72.6</b>	<b>75.7</b>	<b>-3.1</b>	<b>72.9</b>
<b>2010</b>	<b>50.4</b>	<b>55.9</b>	<b>-5.5</b>	<b>52.1</b>

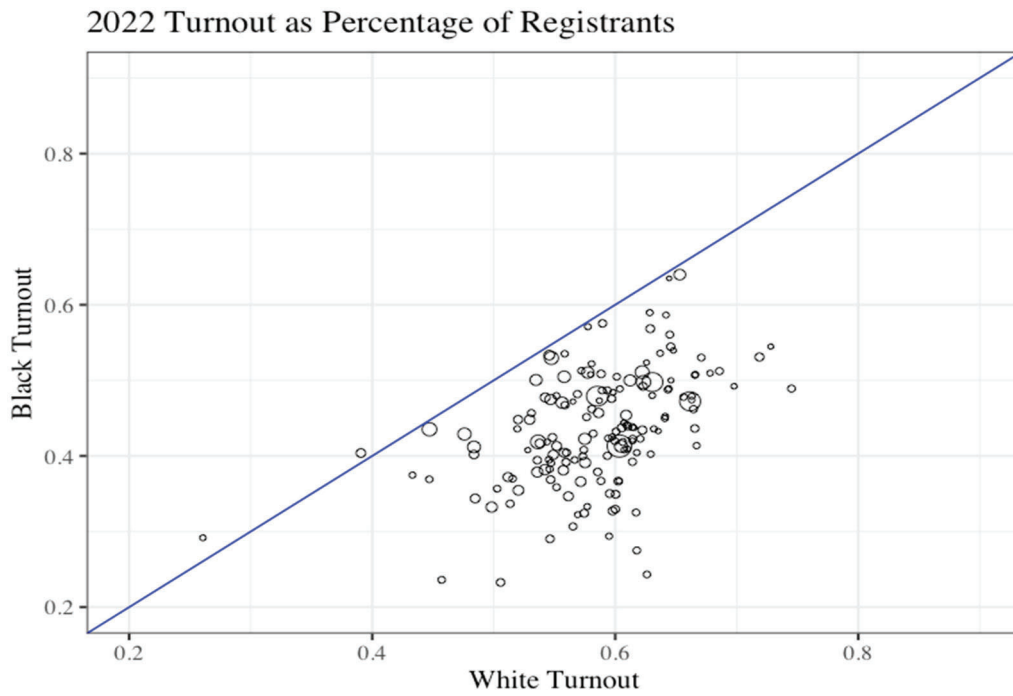
*Table 3. Statewide voter turnout by race, 2010-2022.*

**b. Countywide Analysis**

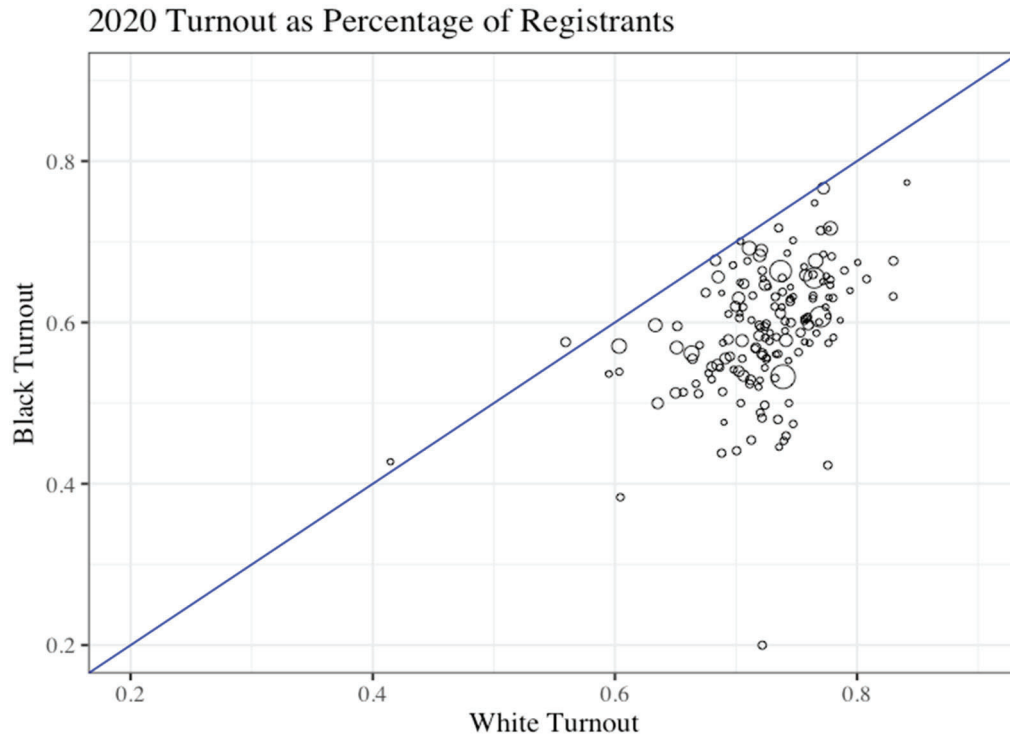
Next, I compared the share of a county’s white registrants who voted in 2022 against the share of a county’s Black registrants who voted in 2022. Figure 1 visually compares turnout (denominator is registration) between whites and Blacks across the state’s counties. In almost every single county, white registrants voted at higher rates than did Black registrants. This is visually demonstrated by the fact that almost all of the dots (counties) fall below the blue identity line, as opposed to above. Only in Chattahoochee and Liberty Counties did Black registrants cast ballots

<sup>3</sup> This data was previously available at: [https://sos.ga.gov/index.php/elections/general\\_election\\_turnout\\_by\\_demographics\\_november\\_2020](https://sos.ga.gov/index.php/elections/general_election_turnout_by_demographics_november_2020).

at (slightly) higher rates than did white registrants. Using 2020 data, I find nearly identical results, as illustrated in Figure 2.



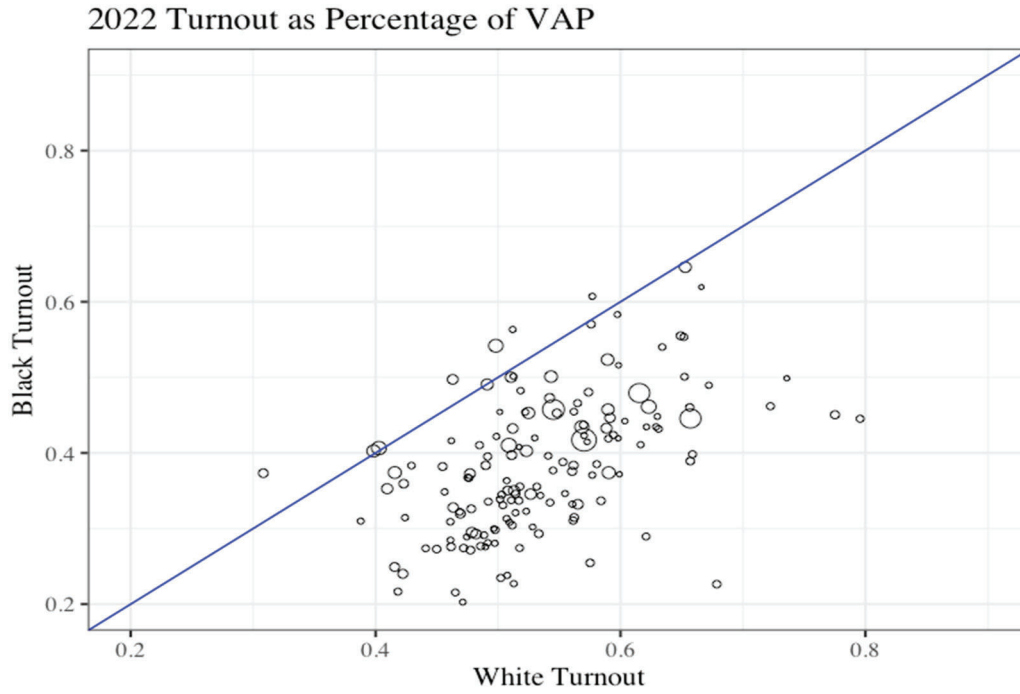
*Figure 1. 2022 turnout by county; white-Black differential based on voter registration.*



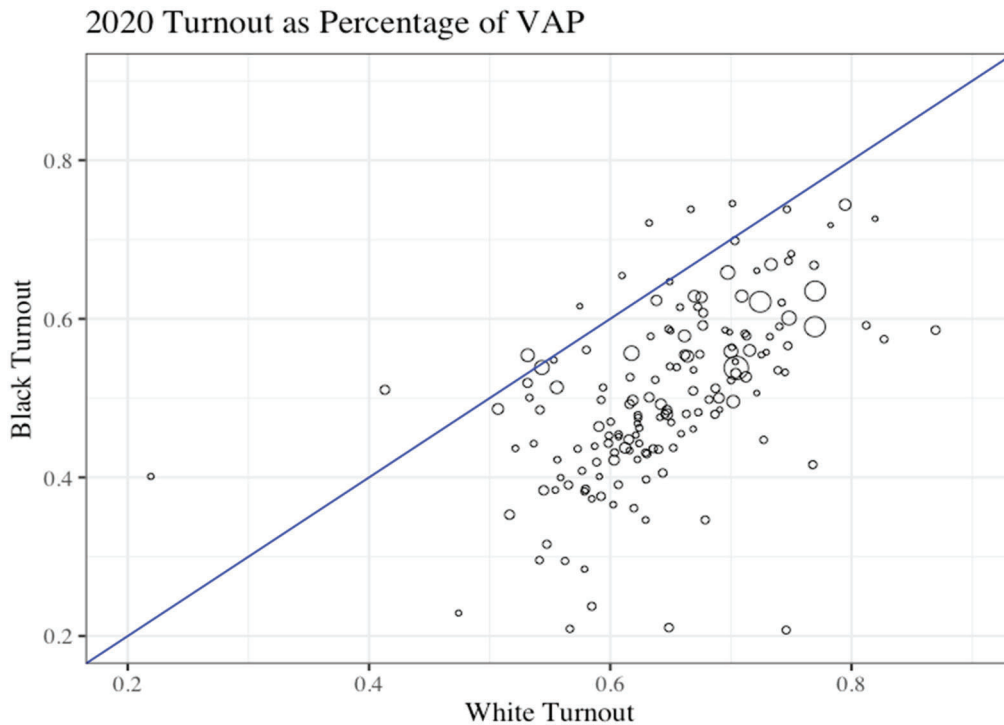
*Figure 2. 2020 turnout by county; white-Black differential based on voter registration.*

Below, Figures 3 and 4 plot out the same relationship but swap out registration for voting age population (VAP) as the denominator. The relationship is very similar using both 2022 and 2020 turnout data. Stated differently, the substantive findings do not change regarding which denominator is selected: white Georgians clearly vote at higher rates than Black Georgians.



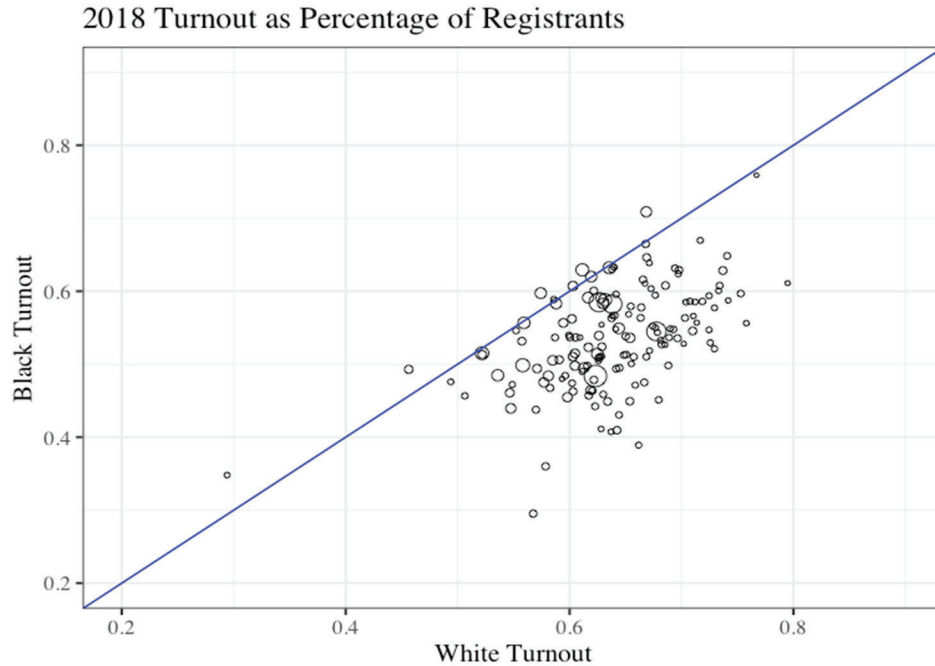


*Figure 3. 2020 turnout by county; white-Black differential based on VAP.*

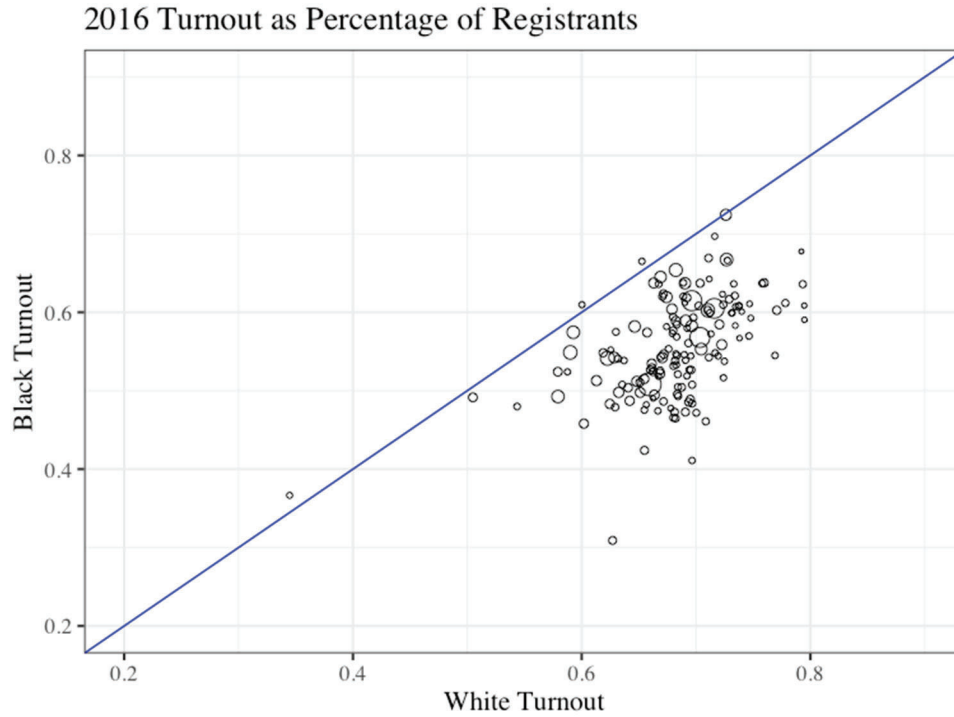


*Figure 4. 2020 turnout by county; white-Black differential based on VAP.*

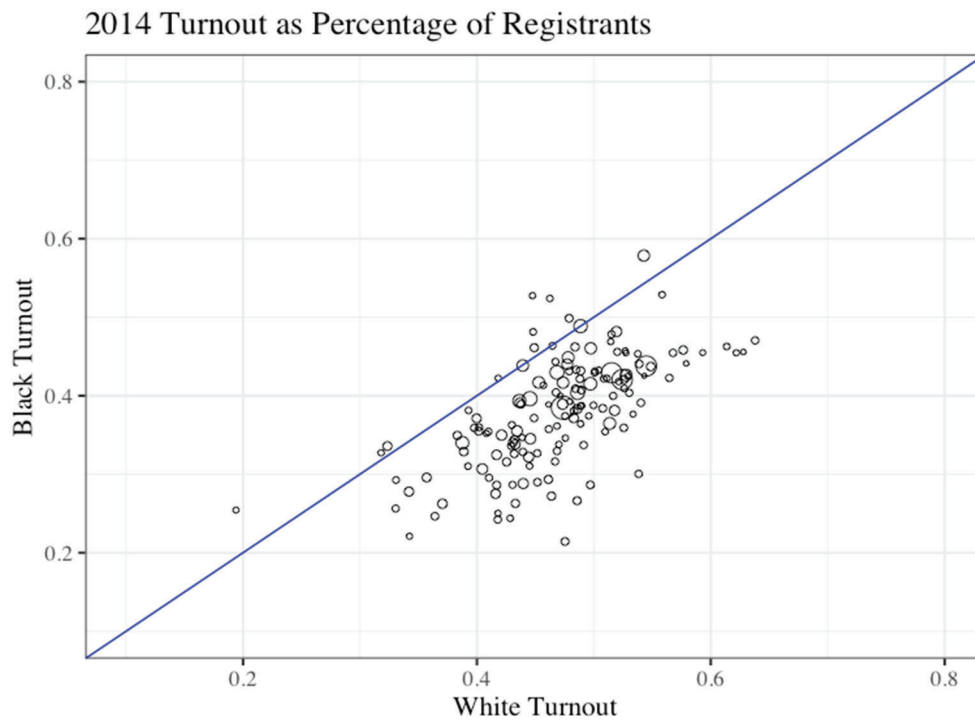
I also replicated the white-Black turnout differential analysis for the 2014-2018 elections because such data are readily available from the Georgia Secretary of State. Figure 5 plots out the 2018 white vs. Black turnout gap and demonstrates substantively the same trends discussed above. Figures 6 and 7 present the same analyses for the 2016 and 2014 elections, respectively.



*Figure 5. 2018 turnout by county; white-Black differential based on voter registration.*



*Figure 6. 2016 turnout by county; white-Black differential based on voter registration.*



*Figure 7. 2014 turnout by county; white-Black differential based on voter registration.*

**c. Precinct-Level Analysis**

I replicated the 2020 and 2022 county analysis with Georgia precincts gathered from the Secretary of State's website.<sup>4</sup> The 2020 precinct file contains 2,784 precincts across the state and the 2022 precinct file contains 2,852 precincts. Both files include both registration and votes cast for whites and Blacks. I then subset the datasets to precincts with more than 100 Blacks and 100 whites to reduce the influence of outliers—namely, extremely small precincts. This resulted in a total of 1,957 precincts in the 2020 data and 2,010 precincts in the 2022 data.

The analysis of precinct-level turnout does not change the core substance of the reported findings. Of the 1,957 precincts in 2020, whites have a higher turnout in 1,549 (79.2%) precincts and Blacks in only 408 (20.8%) precincts. In 2022, whites have a higher turnout in 1,629 (81.0%) of the precincts, while Blacks have a turnout advantage in only 381 (19.0%) of the precincts. Figures 8 and 9 visually display the results, which are consistent with both the statewide and county analyses. The clear majority of precinct dots fall below the blue identity line.

---

<sup>4</sup> This data was previously available at: [https://sos.ga.gov/index.php/elections/general\\_election\\_turnout\\_by\\_demographics\\_november\\_2020](https://sos.ga.gov/index.php/elections/general_election_turnout_by_demographics_november_2020).

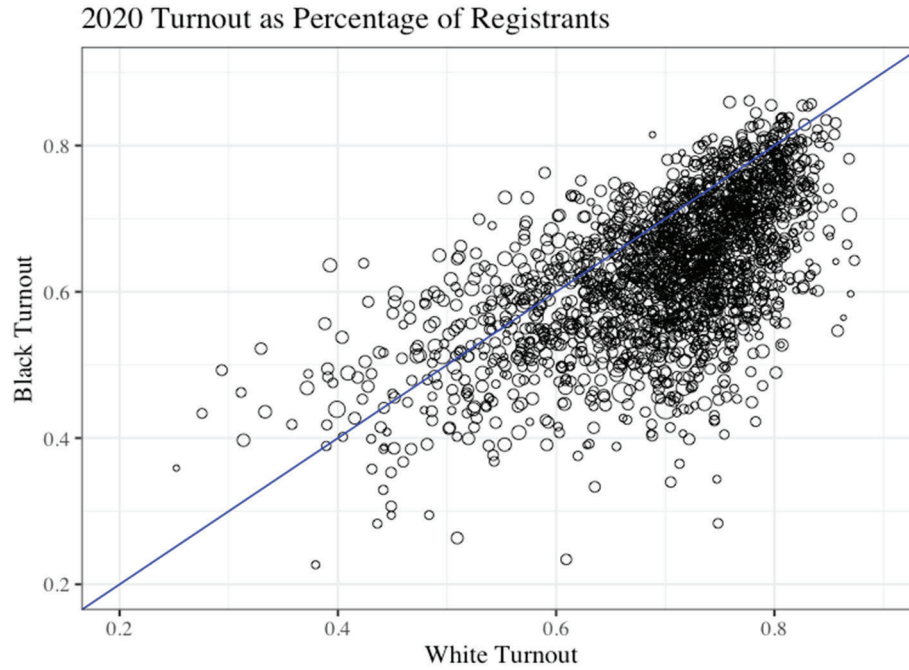


Figure 8. 2020 turnout by precinct; white-Black differential based on voter registration.

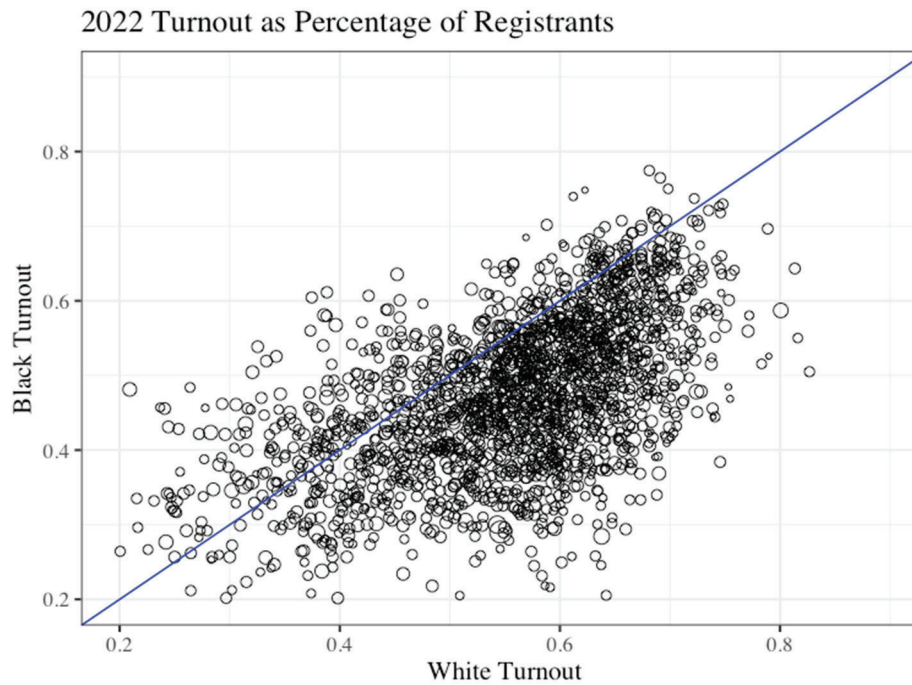


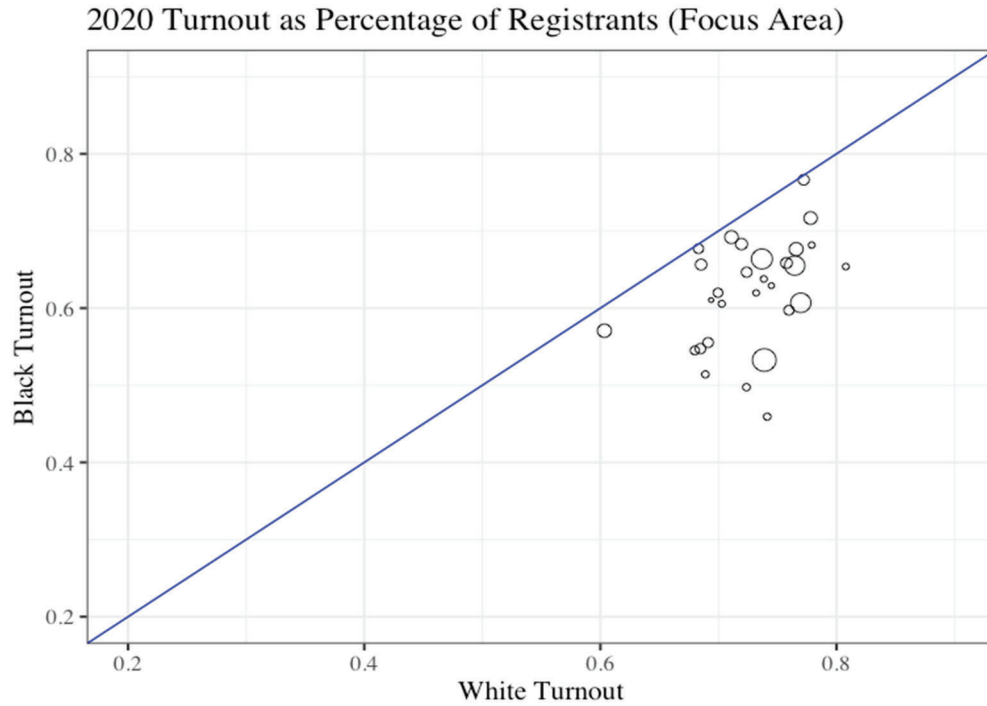
Figure 9. 2020 turnout by precinct; white-Black differential based on voter registration.

**d. Analysis of Atlanta-Sandy Springs-Alpharetta Metropolitan Area**

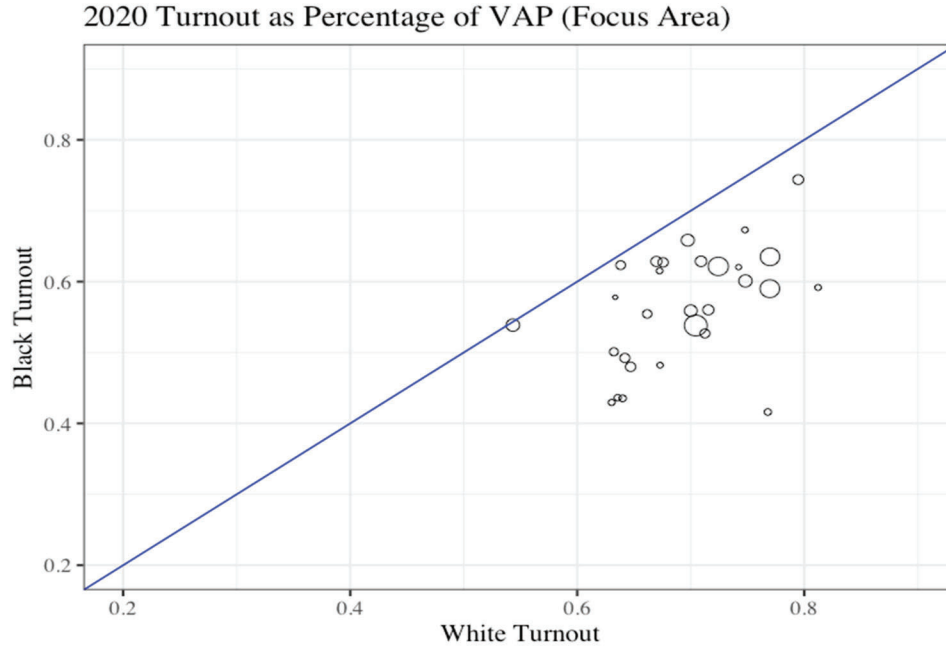
I also examined Black vs. white voter turnout rates in the Atlanta metropolitan area and Black Belt. For the former, I analyzed a subset Georgia counties: those in the Atlanta-Sandy Springs-Alpharetta Metropolitan Statistical Area.<sup>5</sup> Figures 10 through 13 plot out the white vs. Black turnout gap in the 2020 and 2022 general elections based on both registration and voting age population as the denominators. The trend is very similar to the overall statewide trend. In the 2020 election, Black turnout was not higher than white turnout in any of the counties. This result is consistent with the 2022 election, except that Black turnout very slightly exceeded white turnout in only three counties (Clayton, Henry, and Rockdale) when using voting age population, rather than registration, as the denominator.

---

<sup>5</sup> The counties include: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton.

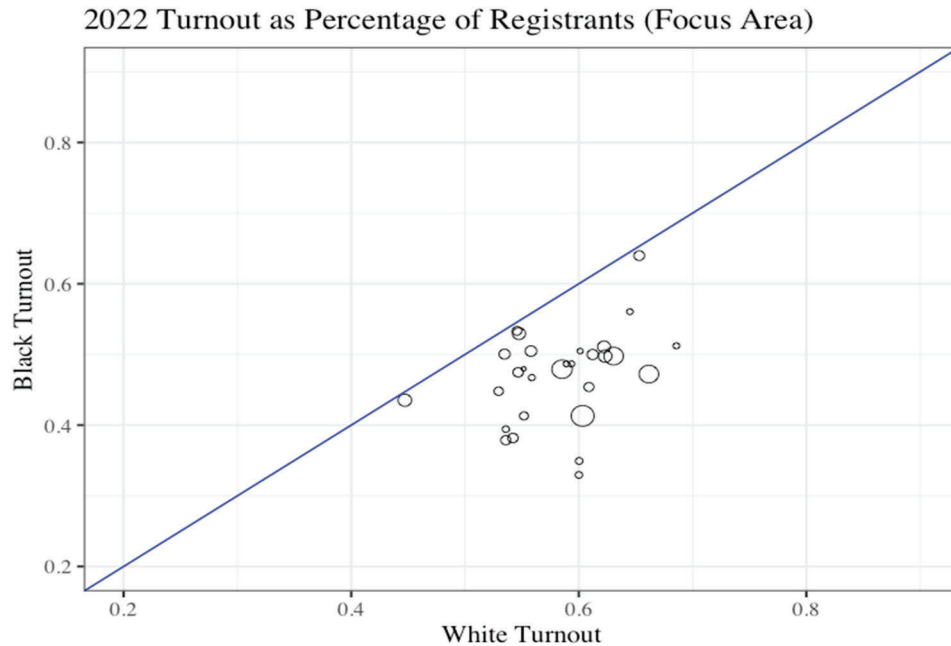


*Figure 10. 2020 turnout by county in Atlanta metropolitan area; white-Black differential based on voter registration.*

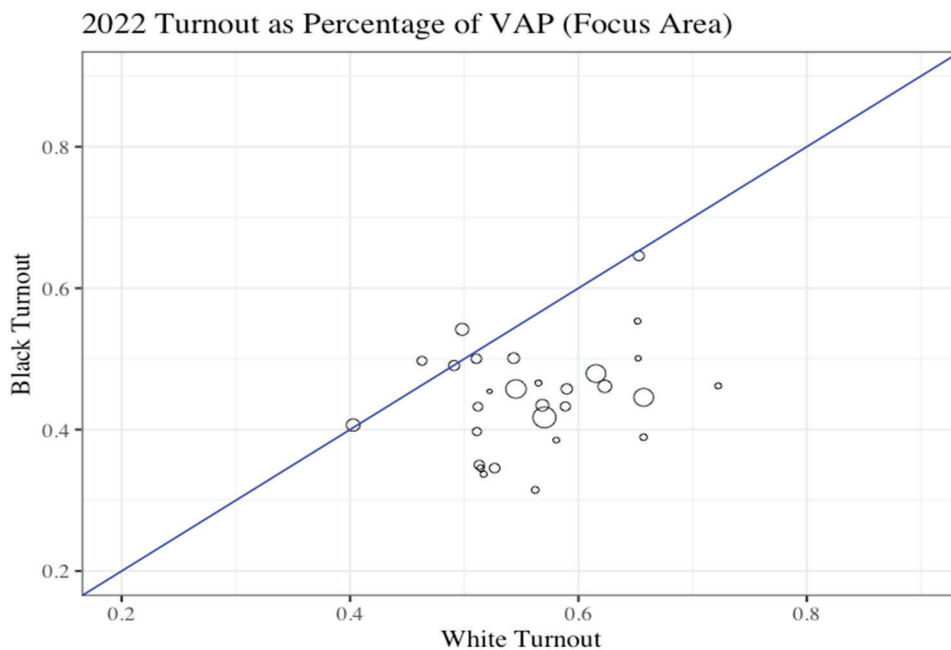


*Figure 11. 2020 turnout by county in Atlanta metropolitan area; white-Black differential based on VAP.*



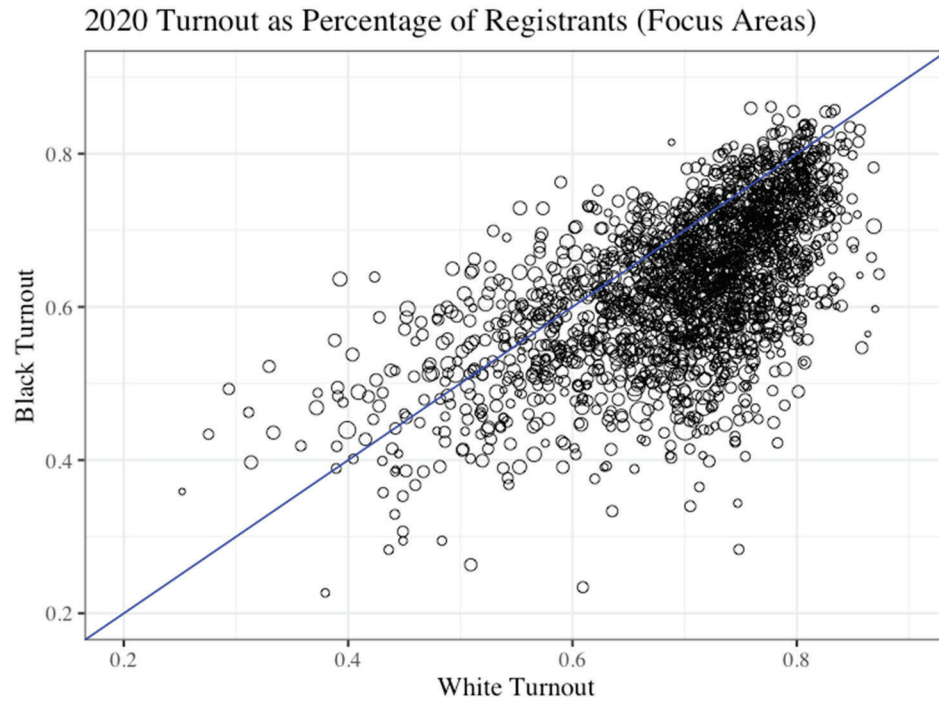


*Figure 12. 2022 turnout by county in Atlanta metropolitan area; white-Black differential based on voter registration.*

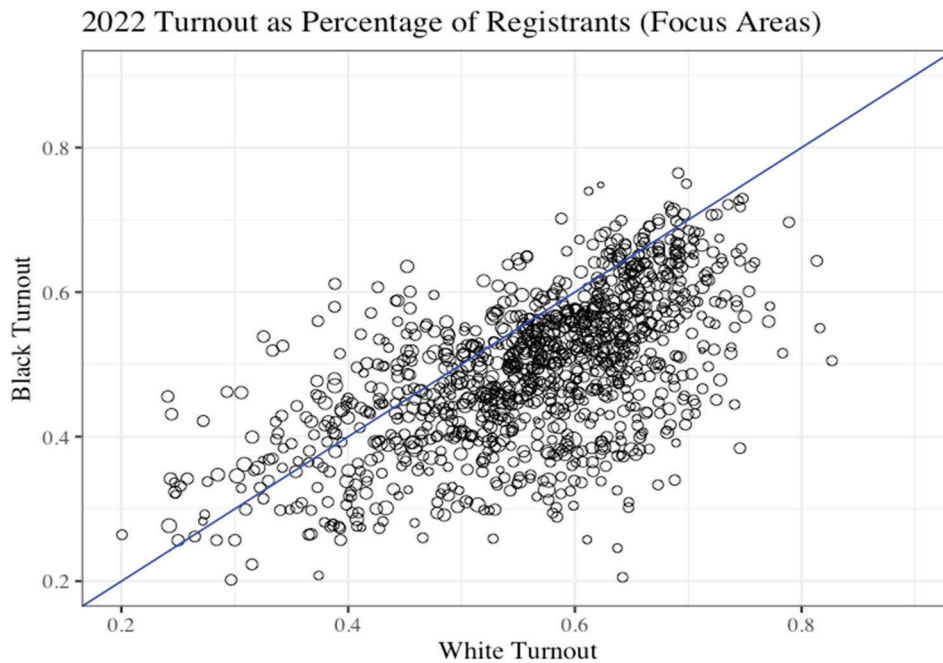


*Figure 13. 2020 turnout by county in Atlanta metropolitan area; white-Black differential based on VAP.*

Finally, I conducted the same analysis among precincts falling in the same set of counties. Again, as shown in Figures 14 and 15, whites vote at higher rates than do Blacks in the overwhelming majority of precincts.



*Figure 14. 2020 turnout by precinct in Atlanta metropolitan area; white-Black differential based on voter registration.*

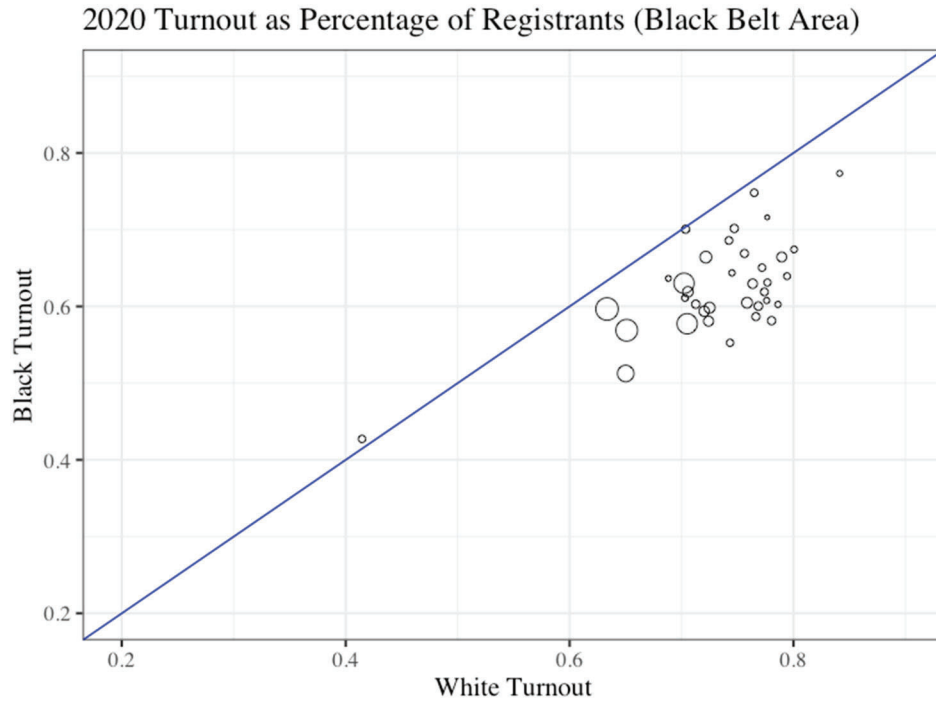


*Figure 15. 2022 turnout by precinct in Atlanta metropolitan area; white-Black differential based on voter registration.*

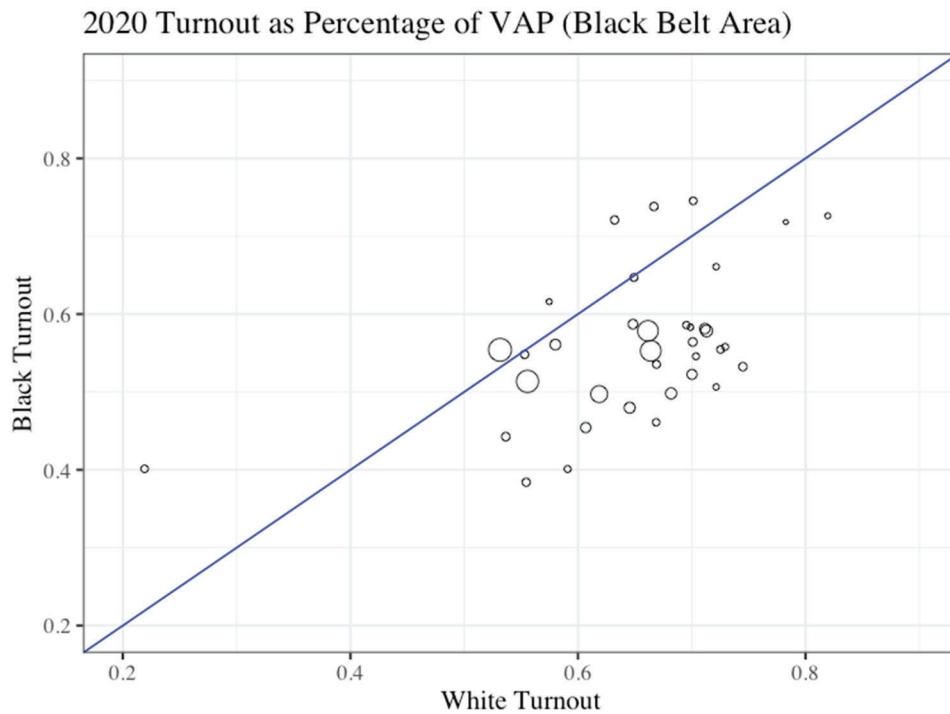
**e. Analysis of the Black Belt Area**

As an additional set of analyses, I examined 2020 and 2022 Black vs. white voter turnout rates in the traditional “Black Belt” area of the state. The geographic area includes the following counties, which I subset the data to: Baker, Bibb, Burke, Calhoun, Chattahoochee, Clay, Dooly, Dougherty, Early, Glascock, Hancock, Houston, Jefferson, Lee, Macon, Marion, McDuffie, Miller, Mitchell, Muscogee, Peach, Quitman, Randolph, Richmond, Schley, Stewart, Sumter, Talbot, Taliaferro, Taylor, Terrell, Twiggs, Warren, Washington, Webster, and Wilkinson.

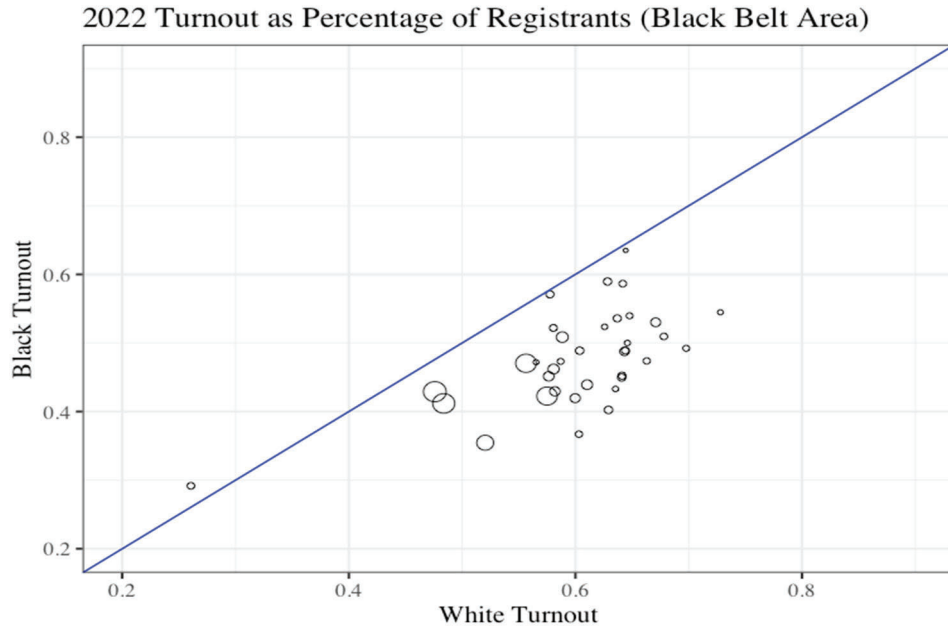
Figures 16 through 19 plot out the Black vs. white turnout gap based on both registration and VAP in this area. The trend is very similar to the overall statewide trend for both the 2020 and 2022 general elections.



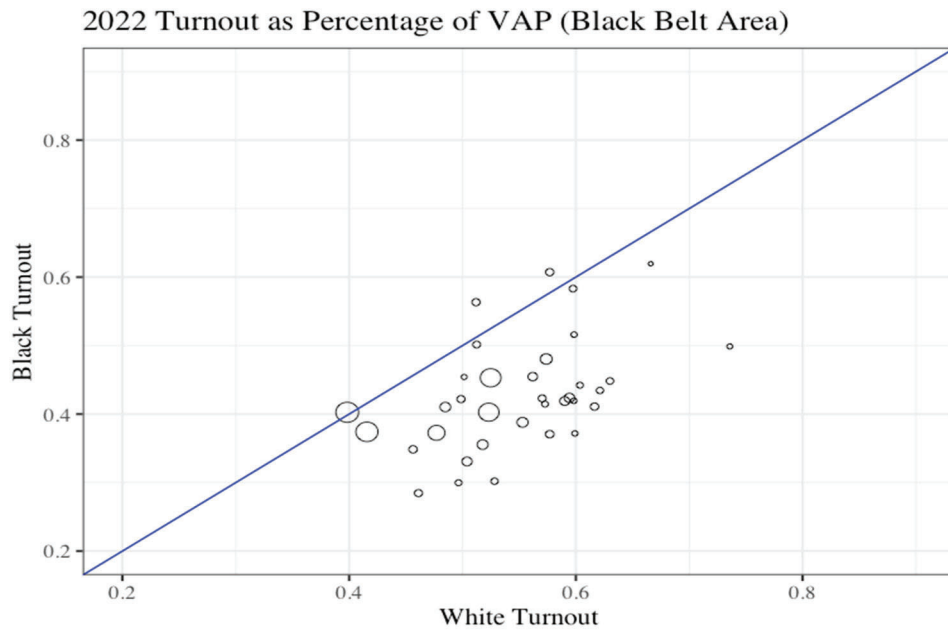
*Figure 16. 2020 turnout by county in Black Belt; white-Black differential based on voter registration.*



*Figure 17. 2020 turnout by county in Black Belt; white-Black differential based on VAP.*

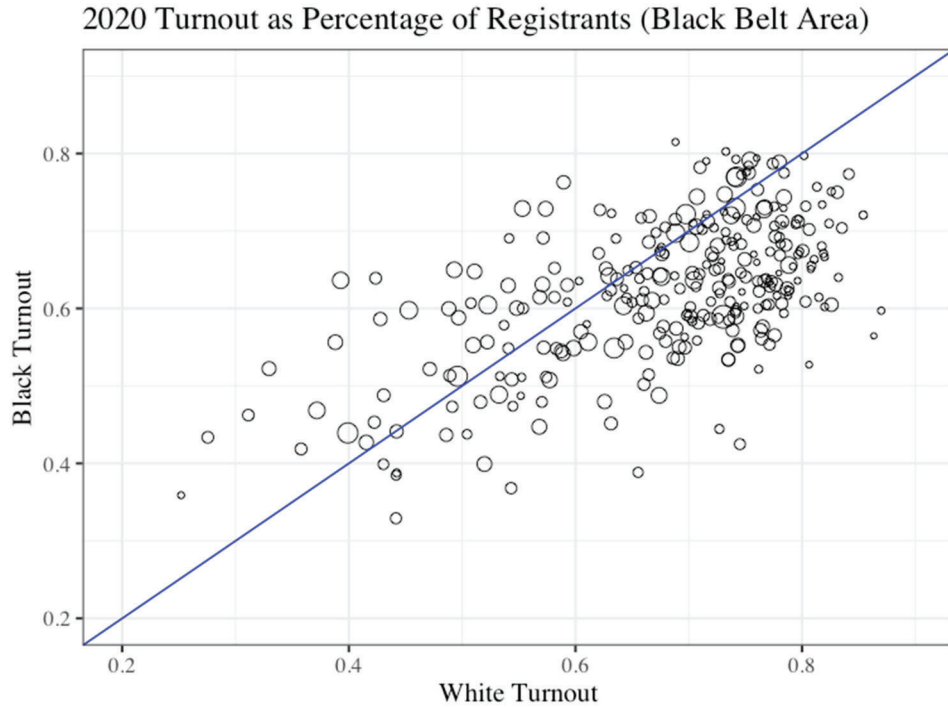


*Figure 18. 2022 turnout by county in Black Belt; white-Black differential based on voter registration.*

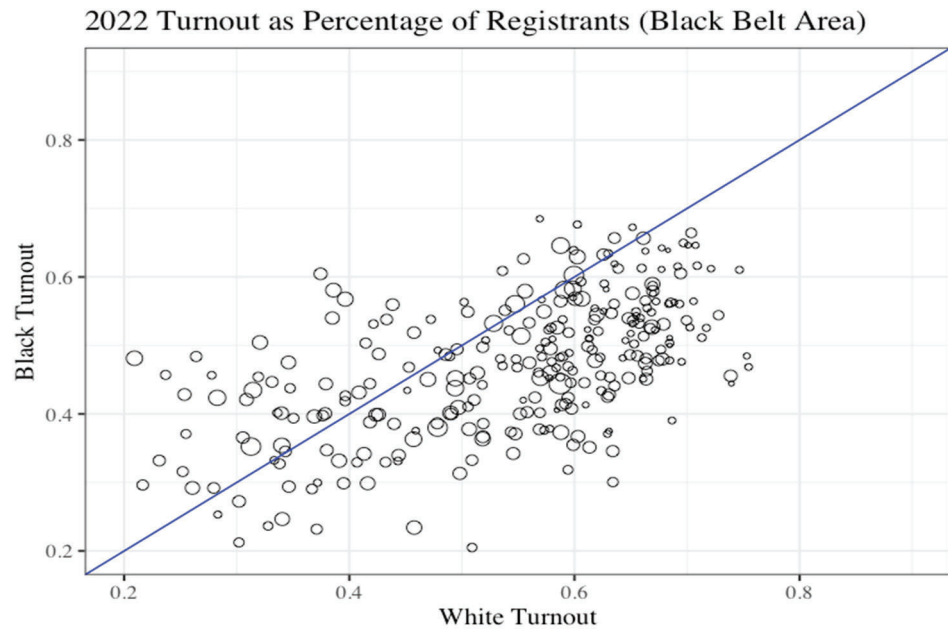


*Figure 19. 2020 turnout by county in Black Belt; white-Black differential based on VAP.*

Similar to the analysis in the Atlanta metropolitan area, I examined the white-Black turnout differential among precincts falling into the set of Black Belt counties. As depicted in Figures 20 and 21, once again, I find that whites vote at higher rates than do Blacks in the clear majority of the precincts.



*Figure 20. 2020 turnout by precinct in Black Belt; white-Black differential based on voter registration.*



*Figure 21. 2022 turnout by precinct in Black Belt; white-Black differential based on voter registration.*

**f. Relationship Between Turnout in 2020 and Socioeconomic Disparities**

This section examines how the documented turnout differences are related to the socioeconomic disparities discussed at the outset of this report, like education and income, using both the 2015-2019 and 2016-2020 ACS datasets. Specifically, I examined the county-level relationship between different measures of Black educational attainment and Black voter turnout using the 2020 general election data.<sup>6</sup> Figure 22 plots out the relationship between percent Black with less than a high school education and Black voter turnout using the 2015-2019 ACS.<sup>7</sup> The blue line is the bivariate regression line ( $\beta = -0.35$ ,  $p < 0.001$ ), which shows that each 10-percentage-point increase in the size of the Black population without a high school degree decreases Black turnout by 3.5 percentage points. The difference between counties with the highest percentage of Black population with less than a high school education compared to counties with the lowest percentage of Black population with less than a high school degree (referred to as “min-max effects”)<sup>8</sup> surmounts to a decline of 11.8 [7.0, 16.5] percentage points in the Black turnout.

Figure 23 shows that these relationships hold when relying on the 2016-2020 ACS estimates for educational attainment. Specifically, a 10-percentage-point increase in the size of the Black population without a high school degree corresponds to a statistically significant 3.8 percentage point ( $p < 0.001$ ) decline in the Black turnout. The corresponding min-max decline in turnout is 12.4 [7.5, 17.3] percentage points.

---

<sup>6</sup> I replicated this analysis using 2022 turnout data, as shown in subsection (g).

<sup>7</sup> For each analysis I subset the data to counties with more than 1,000 registered Black voters. I do this to avoid outlier issues that can emerge with smaller counties. However, this subset does not change in any substantive way the results compared to a full data analysis. All regression analyses are weighted by total Black registration in the county.

<sup>8</sup> Min-max effect is the discrete change of moving from minimum to maximum value of the independent variable (for example, percent black population without high school education). Ninety-five percent (95%) confidence intervals for each estimate are reported in brackets.



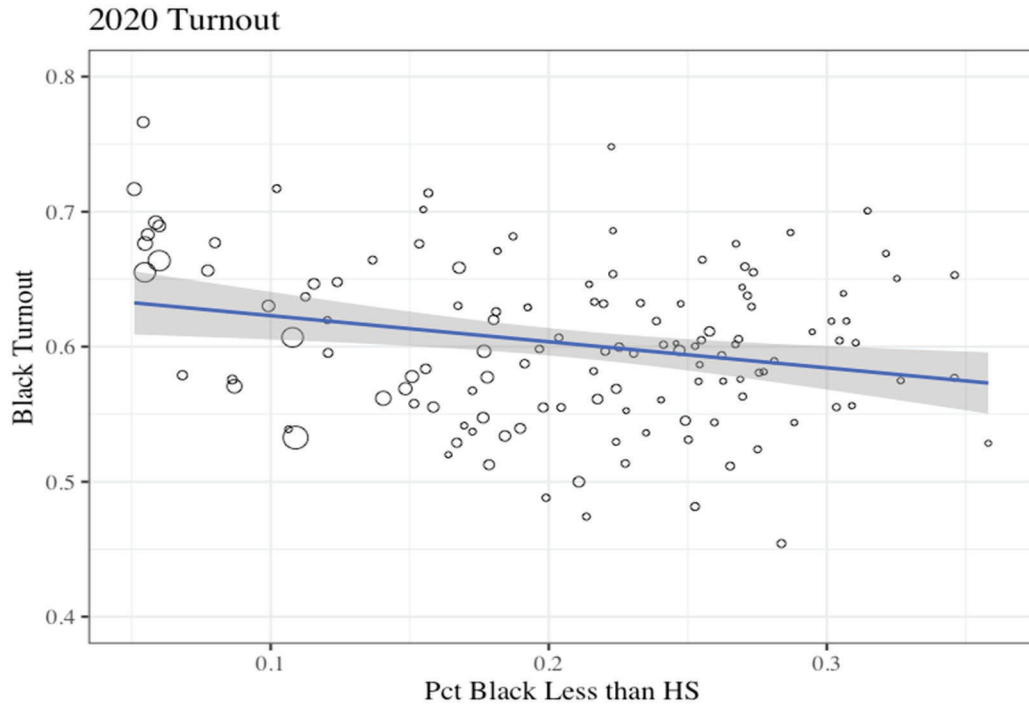


Figure 22. Association between Black less than high school education and 2020 Black turnout (2015-2019 ACS).

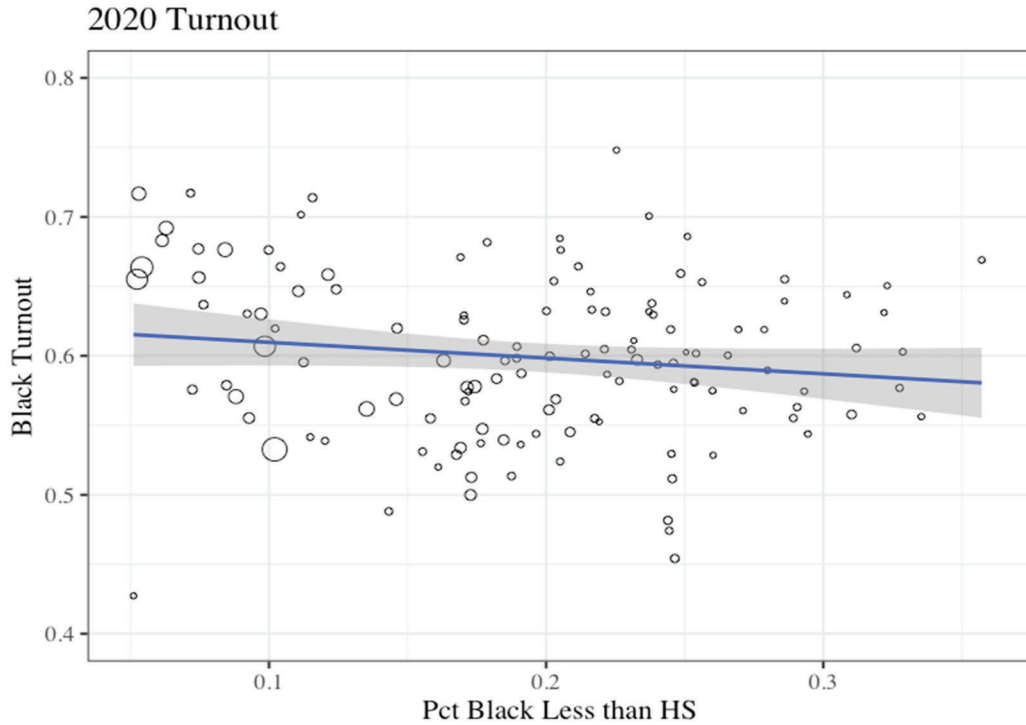


Figure 23. Association between Black less than high school education and 2020 Black turnout (2016-2020 ACS).

Figure 24 plots the relationship between the share of Blacks with a 4-year college degree and the share of Black registrants who voted by county. The relationship paints an inverse picture to the previous plot. As a county's Black education rises, so does the turnout rate. A bivariate regression reveals a statistically significant relationship ( $\beta = 0.23$ ,  $p < 0.001$ ), indicating that Black turnout rises 2.3 percentage points for each 10-percentage-point increase in percent Black 4-year degree, with a min-max effect size of 11.2 [6.9, 15.5] percentage points.

Figure 25 represents the same analysis using the 2016-2020 ACS. As shown, Black turnout increases by 2.1 percentage points for each 10-percentage-point increase in percent Black 4-year degree, with a min-max effect size of 11.8 [7.1, 16.6] percentage points. In both cases, I find statistically and substantively significant relationships between educational attainment and turnout, indicating that counties with lower levels of Black education are less likely than counties with higher levels of education to turnout.

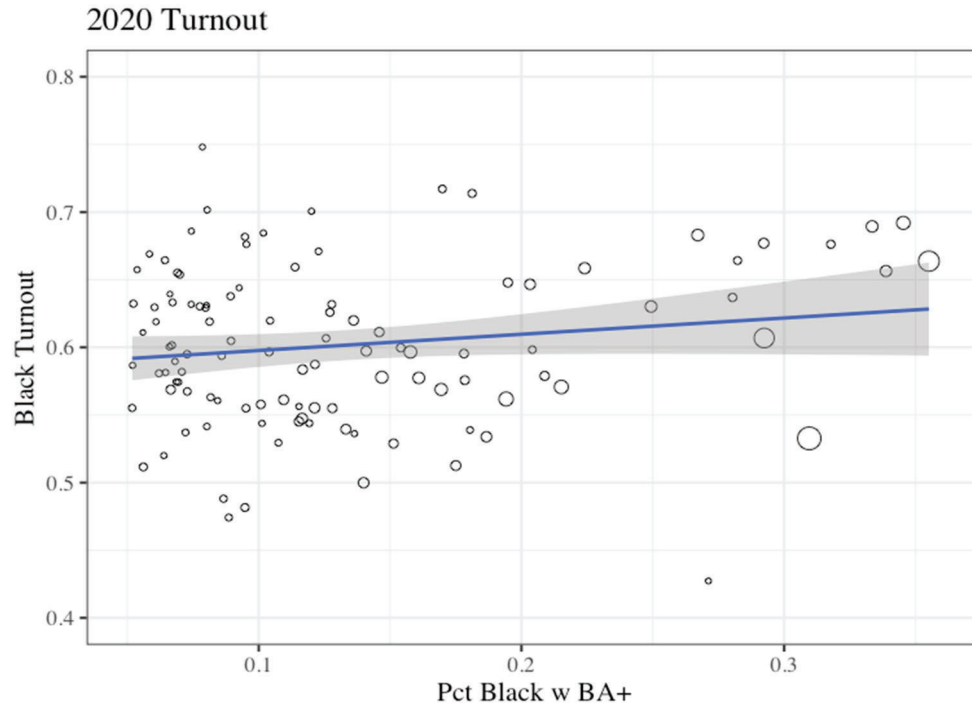


Figure 24. Association between Black 4-year degree and 2020 Black turnout (2015-2019 ACS).

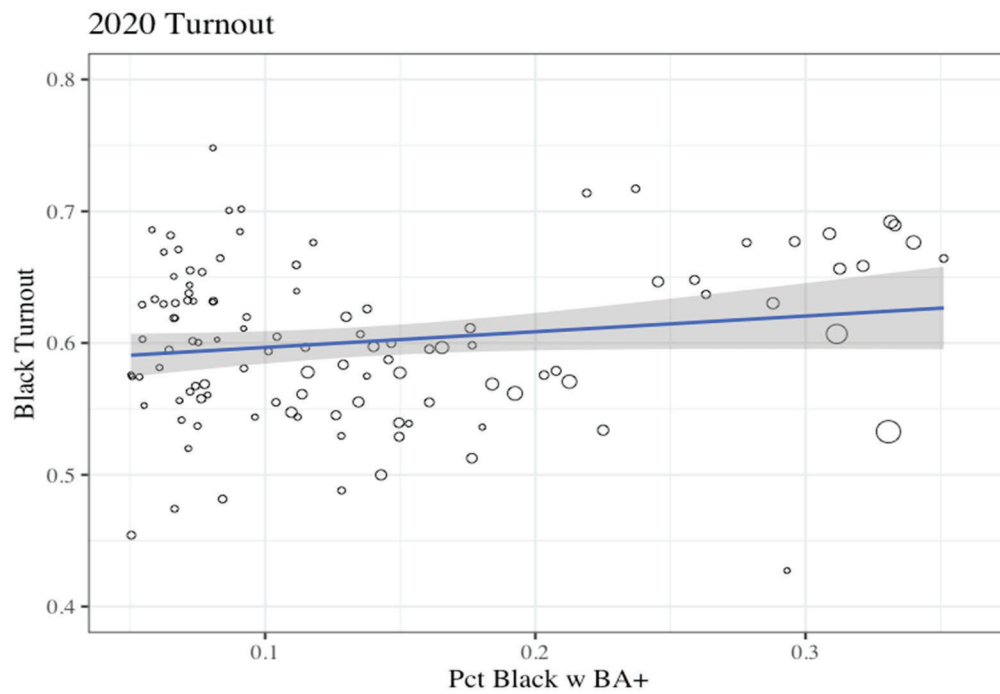


Figure 25. Association between Black 4-year degree and 2020 Black turnout (2016-2020 ACS).

Turning to income-related measures, Figure 26 plots out the relationship between the share of Blacks below the poverty line and the share of Black registrants who voted by county. As a county's Black poverty rises, the turnout rate declines. A bivariate regression reveals a statistically significant relationship ( $\beta = -0.49$ ,  $p < 0.001$ ), indicating that Black turnout falls 4.9 percentage points for each 10-percentage-point increase in percent Black below the poverty line. The min-max effect size is a decline of 25.7 [20.4, 31.1] percentage points in turnout, which is a substantively large gap between counties with the lowest Black poverty levels and those with the highest Black poverty levels.

Figure 27 visually depicts the same associations using the 2016-2020 ACS data. A 10-percentage-point increase in percent Black below the poverty line corresponds to a statistically significant 5.0 percentage point ( $p < 0.001$ ) decline in turnout. The difference in turnout levels between counties with the highest and lowest poverty levels amounts to a 21.1 [16.6, 25.6] percentage point gap.

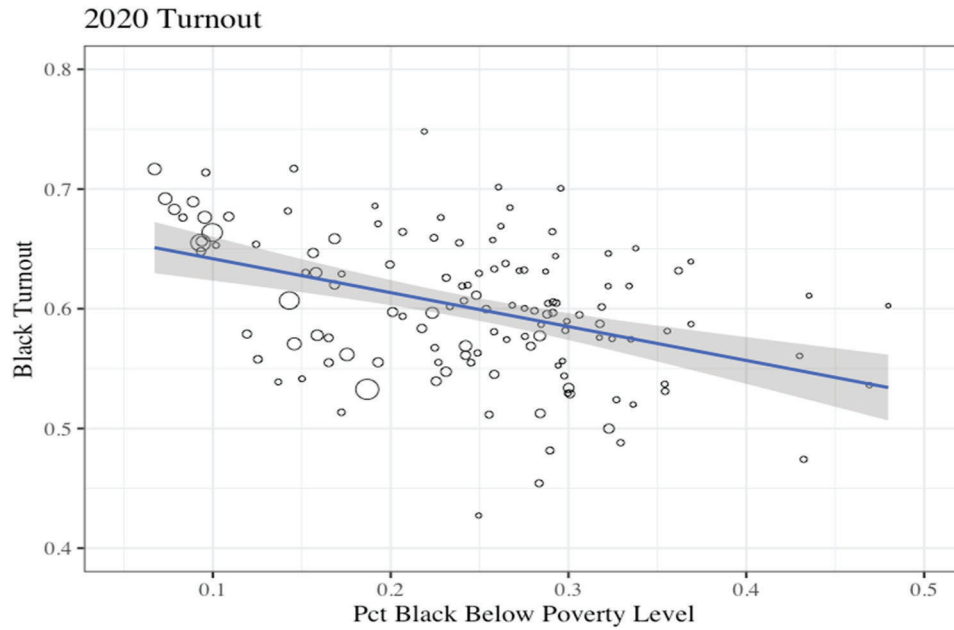


Figure 26. Association between Black poverty rates and 2020 Black turnout (2015-2019 ACS).

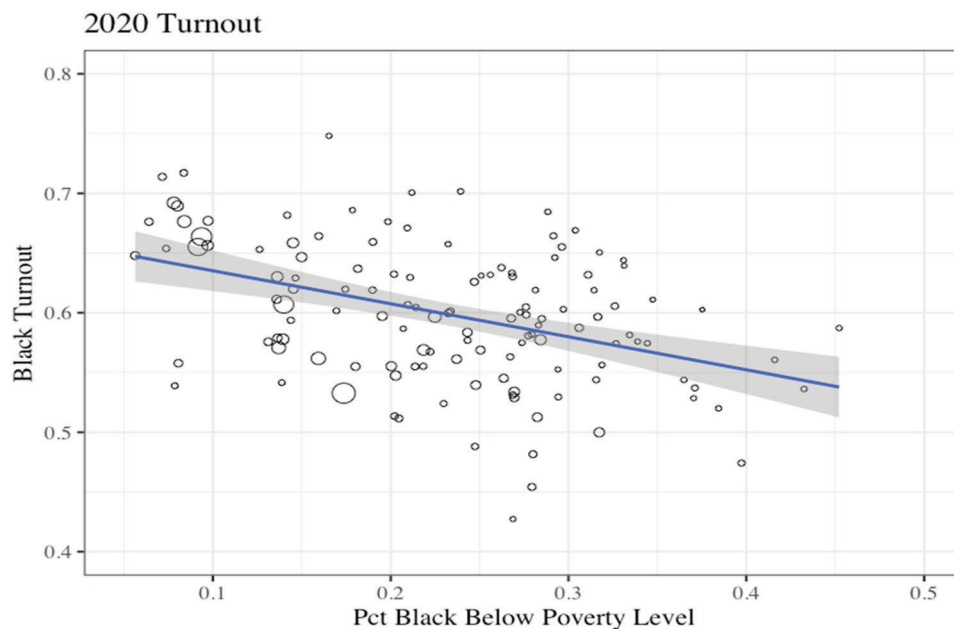


Figure 27. Association between Black poverty rates and 2020 Black turnout (2016-2020 ACS).

Lastly, Figures 28 and 29 plot the relationship between Black median household income and the share of Black registrants who voted by county. As a county's Black household income rises, the turnout rate rises. A bivariate regression with the 2015-2019 ACS data reveals a statistically significant relationship ( $\beta = 0.117$ ,  $p < 0.001$ ), and a min-max effect of 22.1 [17.5, 26.7] percentage points. The results are statistically and substantively similar using the 2016-2020 ACS: Counties with higher levels of Black median household income have a higher black turnout ( $\beta = 0.120$ ,

$p < 0.001$ ). The discrete difference between such counties amounts to a min-max effect size of 20.5 [16.4, 24.7] percentage points in turnout.

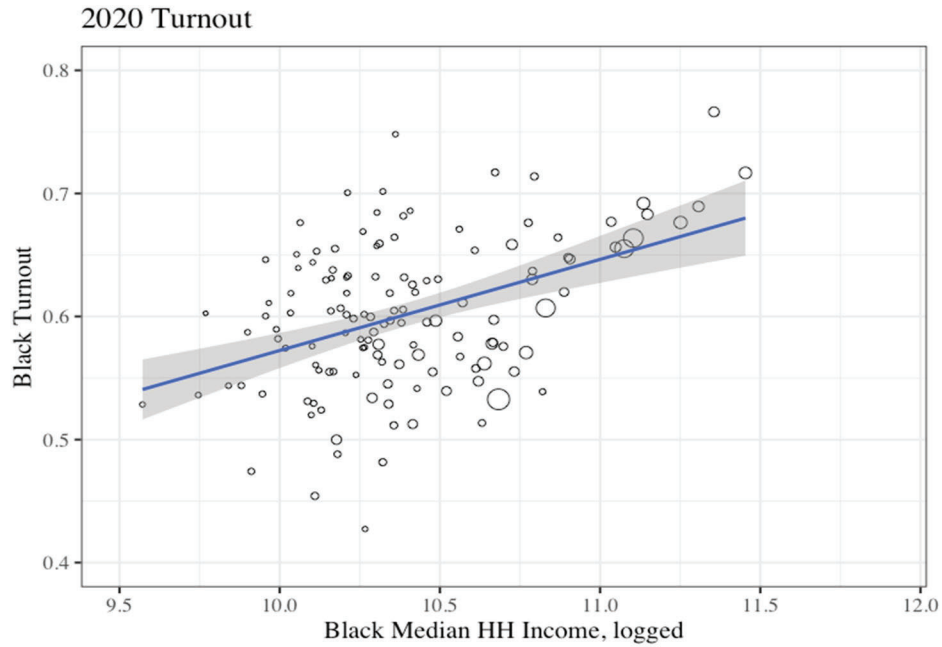


Figure 28. Association between Black median household income and 2020 Black turnout (2015-2019 ACS).

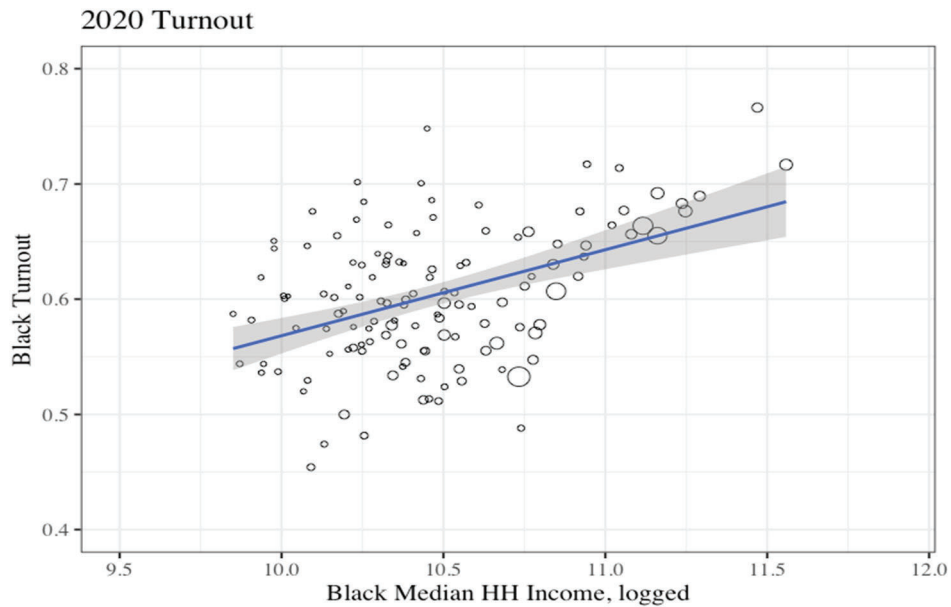


Figure 29. Association between Black median household income and 2020 Black turnout (2016-2020 ACS).

**g. Replication of the Relationship Between Turnout and Socioeconomic Disparities Using 2022 General Election Data**

This section replicates the analysis of Black turnout and socioeconomic disparities, as measured with the 2016-2020 ACS, using the 2022 general election data. This analysis shows that all the four socioeconomic indicators are once again statistically associated with Black turnout levels.

Starting with education, Figures 30 and 31 show that both measures of educational attainments are associated with Black turnout (at  $p < 0.001$ ). The discrete difference between counties with the highest percentage of Black population with less than a high school degree compared to counties with the lowest percentage of Black population with less than a high school degree amount to a 12.5 [8.2, 16.7] percentage point decline in Black turnout. When comparing counties with the highest share of bachelor's degrees to those with the lowest share of a bachelor's degrees, I find a discrete difference of 13.3 [9.3, 17.3] percentage points in turnout. This means that counties with lower levels of Black education attainment have significantly lower levels of Black turnout.



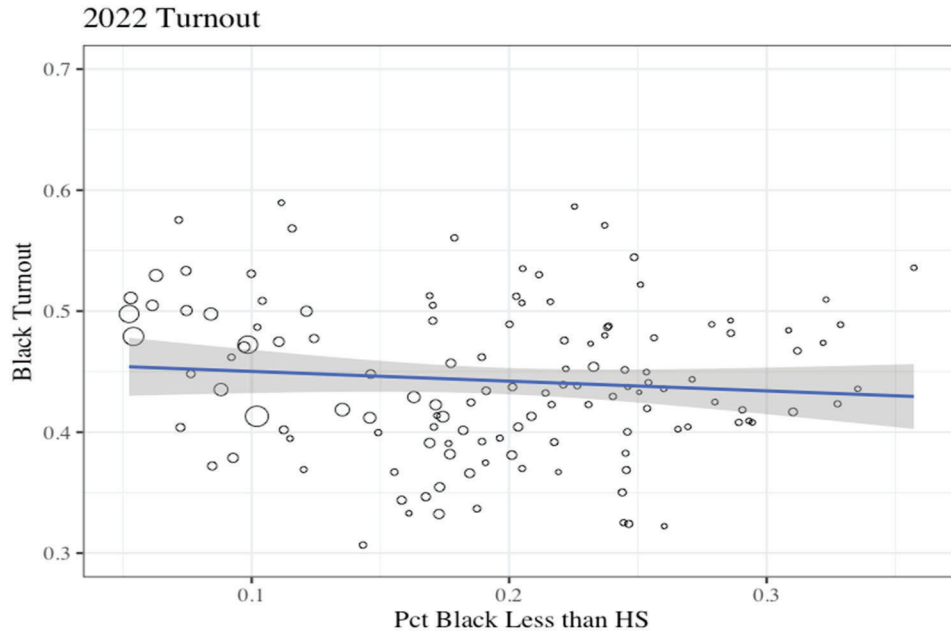


Figure 30. Association between Black less than high school education and 2022 Black turnout (2016-2020 ACS).

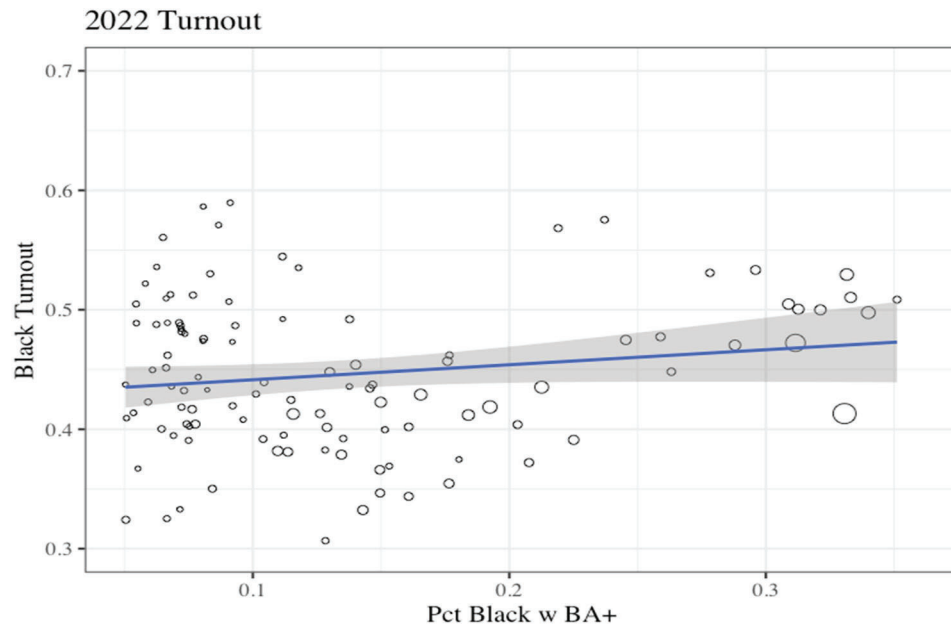


Figure 31. Association between Black 4-year degree and 2022 Black turnout (2016-2020 ACS).

Moving on to indicators of economic disparities, I find that as the percentage of counties with Blacks below the poverty line rises, Black turnout declines (see Figure 32). This relationship is statistically significant (at  $p < 0.001$ ). Substantively, counties with the highest levels of Black poverty have a 20.4 [16.5, 24.2] percentage point *lower* Black turnout than counties with the lowest levels of Black poverty. Replacing poverty levels with median household income leads to the same

conclusion. As Figure 33 shows, logged household income is statistically associated with Black turnout. Specifically, counties with the highest Black median household income report 19.0 [15.4, 22.6] percentage point higher Black turnout than counties with the lowest median household income. In sum, this replication analysis using the 2022 general election data further underscores how socioeconomic disparities are linked to turnout levels.

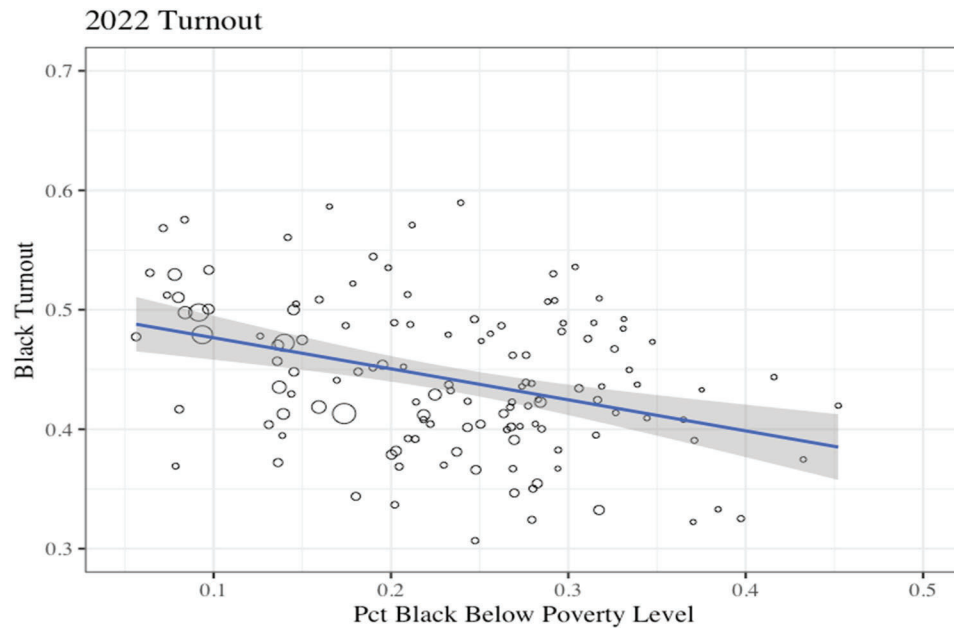


Figure 32. Association between Black poverty rates and 2022 Black turnout (2016-2020 ACS).

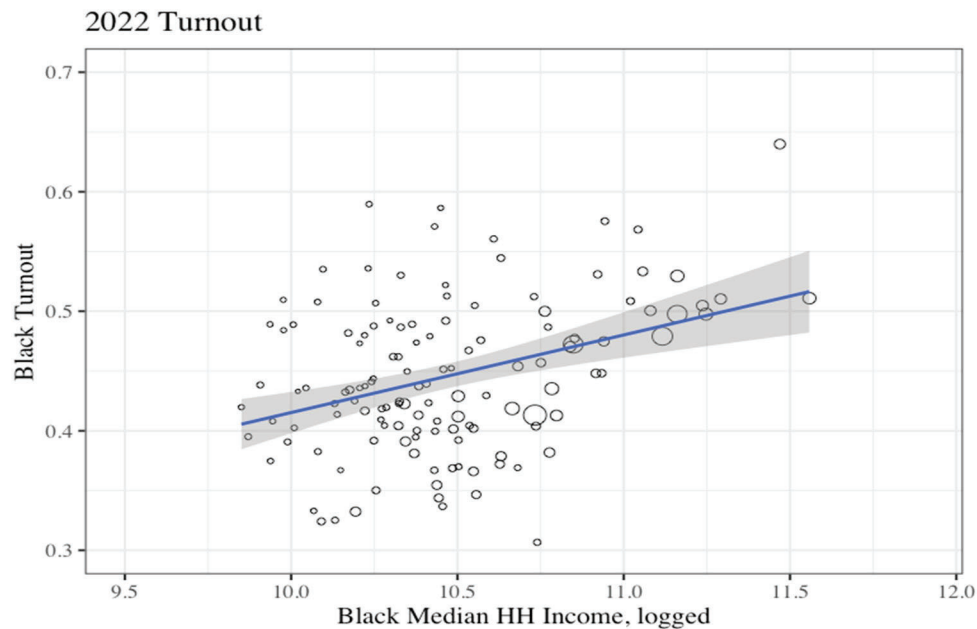


Figure 33. Association between Black median household income and 2022 Black turnout (2016-2020 ACS).

### 3. Other Forms of Voter Participation

This next section examines disparities between Blacks and whites among other modes of voter participation. I downloaded the 2020 Cooperative Election Study (CES) common form post-election survey.<sup>9</sup> The CES is a widely used publicly available survey dataset political scientists use to write academic papers and inform our scientific knowledge of the American voter. The full dataset contains 61,000 interviews. I subset the data to Georgia respondents, of which there are 2,002. To compare white vs. Black political participation, I further subset the data to only non-Hispanic white and Black respondents. This yields a dataset of  $n=1,753$ . Finally, 339 individuals whom CES initially interviewed in the pre-election survey did not take the post-election survey; thus, the final dataset is  $n=1,414$ . All tabulations presented below include survey weights to ensure that the analysis is representative of the target audience.<sup>10</sup>

The survey asks a battery of political participation questions where respondents indicate they have (1) or have not (0) participated in such an act.

1. Attend local political meetings (such as school board or city council)
2. Put up a political sign (such as a lawn sign or bumper sticker)
3. Work for a candidate or campaign
4. Attend a political protest, march or demonstration
5. Contact a public official
6. Donate money to a candidate, campaign, or political organization

I also analyze two other yes (1) / no (0) questions related to political participation:

1. Did a candidate or political campaign organization contact you during the 2020 election?
2. Have you ever run for elective office at any level of government (local, state or federal)?

Below I present cross-tabulations between each item and race (white/Black), along with a chi-square statistical test. The cross-tabulation shows, for instance, the share of whites that participate in a particular activity vs. the share of whites that do not participate in such activity. The analysis is designed to assess whether Blacks and whites engage in political participation at different rates. If the chi-square p-value is .10, then we can say that we have 90% confidence that this relationship has not occurred by chance. In short, the lower the p-value, the more statistical confidence we have that whites and Blacks behave differently politically.

Overall, the results strongly point to relative Black disparity in political participation. In five of the eight survey items, a statistically significant relationship exists between race and political

---

<sup>9</sup> Available at: <https://cces.gov.harvard.edu>.

<sup>10</sup> Weighting data here has the effect of growing the sample size of the dataset to  $n=1,557$  respondents.

participation (at either  $p < .10$  or  $p < .05$ ). That is, whites are more likely to say they engaged in the political activity than are Blacks.

For instance, 5.9% of whites say they attended a political meeting, whereas 3.5% of Blacks said they did ( $p < 0.05$ ). On political signs, 17.9% of whites put one up vs. 6.5% of Blacks ( $p < 0.001$ ). Whites are also more likely to report having worked for a candidate or campaign (3.6% vs. 1.8%,  $p < 0.05$ ). One of the larger differences emerges on the question regarding contacting a public official. Twenty-one percent (21%) of whites say they contacted an official, whereas 8.8% of Blacks report doing so ( $p < 0.001$ ). Differences emerge across donation behavior too: 24.4% vs. 13.6% ( $p < 0.001$ ).

There are three questions where significant statistical differences do not emerge, although whites nonetheless engage in the political activity to a greater degree than do Blacks: political protest (whites at 6.2% vs. Blacks at 4.4%,  $p = 0.142$ ); being contacted by a political campaign organization (61.3% vs. 61.3%,  $p = 0.995$ ), and running for office (1.7% vs. 0.7%,  $p = 0.12$ ).

**Attend local political meetings (such as school board or city council)?**

<i>Race</i>	<i>No</i>	<i>Pct. No</i>	<i>Yes</i>	<i>Pct. Yes</i>
White	954	94.08%	60	5.92%
Black	523	96.49%	19	3.51%
<i>Chi-2 = 4.262 DF = 1 P-Value = 0.039</i>				

*Table 4. Political attendance.*

**Put up a political sign (such as a lawn sign or bumper sticker)?**

<i>Race</i>	<i>No</i>	<i>Pct. No</i>	<i>Yes</i>	<i>Pct. Yes</i>
White	832	82.05%	182	17.95%
Black	507	93.54%	35	6.46%
<i>Chi-2 = 38.863 DF = 1 P-Value = 0</i>				

*Table 5. Political signs.*

**Work for a candidate or campaign?**

<i>Race</i>	<i>No</i>	<i>Pct. No</i>	<i>Yes</i>	<i>Pct. Yes</i>
White	978	96.35%	37	3.65%
Black	533	98.16%	10	1.84%
<i>Chi-2 = 3.934 DF = 1 P-Value = 0.0473</i>				

*Table 6. Campaign work.*

**Attend a political protest, march, or demonstration?**

<i>Race</i>	<i>No</i>	<i>Pct. No</i>	<i>Yes</i>	<i>Pct. Yes</i>
White	951	93.79%	63	6.21%
Black	519	95.58%	24	4.42%
<i>Chi-2 = 2.155 DF = 1 P-Value = 0.1421</i>				

*Table 7. Political protest.*

**Contact a public official?**

<i>Race</i>	<i>No</i>	<i>Pct. No</i>	<i>Yes</i>	<i>Pct. Yes</i>
White	801	78.99%	213	21.01%
Black	495	91.16%	48	8.84%
<i>Chi-2 = 37.513 DF = 1 P-Value = 0</i>				

*Table 8. Contacting officials.*

**Donate money to a candidate, campaign, or political organization?**

<i>Race</i>	<i>No</i>	<i>Pct. No</i>	<i>Yes</i>	<i>Pct. Yes</i>
White	767	75.64%	247	24.36%
Black	469	86.37%	74	13.63%
<i>Chi-2 = 24.882 DF = 1 P-Value = 0</i>				

*Table 9. Political donations.*

**Did a candidate or political campaign organization contact you during the 2020 election?**

<i>Race</i>	<i>No</i>	<i>Pct. No</i>	<i>Yes</i>	<i>Pct. Yes</i>
White	392	38.66%	622	61.34%
Black	210	38.67%	333	61.33%
<i>Chi-2 = 0 DF = 1 P-Value = 0.9953</i>				

*Table 10. Campaign contacts.*

**Have you ever run for elective office at any level of government (local, state or federal)?**

<i>Race</i>	<i>No</i>	<i>Pct. No</i>	<i>Yes</i>	<i>Pct. Yes</i>
White	986	98.31%	17	1.69%
Black	539	99.26%	4	0.74%
<i>Chi-2 = 2.414 DF = 1 P-Value = 0.1202</i>				

*Table 11. Running for office.*

All told, the results are compelling: White Georgians engage in a wide range of political activity at higher rates than Black Georgians, including activities like donating to campaigns, contacting public officials, and posting political signs. And as the academic literature discussed earlier in this report shows, these differences are directly attributable to socioeconomic disparities in health, education, and income.

## Conclusion

The picture these data paint is straightforward: Black Georgians experience significant disparities in income, education, and health compared to non-Hispanic white Georgians. And these disparities cause Black Georgians to be less likely to participate effectively in the political process as measured by voter turnout and other forms of voter participation like making political donations, engaging elected officials, and even running for office. These trends are in accord with overwhelming academic literature showing that Blacks suffer socioeconomic disparities and so are therefore less likely than whites to participate in the political process. These findings therefore provide strong evidence for the presence of Senate Factor 5 in the state of Georgia.

## References

- Avery, James M. 2015. “Does Who Votes Matter? Income Bias in Voter Turnout and Economic Inequality in the American States from 1980 to 2010.” *Political Behavior* 37 (4): 955–76.
- Barreto, M. A., Segura, G. M., & Woods, N. D. (2004). The mobilizing effect of majority–minority districts on Latino turnout. *American Political Science Review*, 98(1), 65-75.
- Brady, Henry E, Sidney Verba, and Kay Lehman Schlozman. 1995. “Beyond Ses: A Resource Model of Political Participation.” *American Political Science Review* 89 (2): 271–94.
- Costa, M. (2017). How Responsive are Political Elites? A Meta-Analysis of Experiments on Public Officials. *Journal of Experimental Political Science*, 4(3), 241-254.
- Henderson, John A. 2018. “Hookworm Eradication as a Natural Experiment for Schooling and Voting in the American South.” *Political Behavior* 40 (2): 467–94.
- Leighley, Jan E, and Jonathan Nagler. 2013. *Who Votes Now?* Princeton University Press.



Mayer, Alexander K. 2011. “Does Education Increase Political Participation?” *The Journal of Politics* 73 (3): 633–45.

Nie, Norman H, Jane Junn, Kenneth Stehlik-Barry, and others. 1996. *Education and Democratic Citizenship in America*. University of Chicago Press.

Pacheco, Julianna, and Jason Fletcher. 2015. “Incorporating Health into Studies of Political Behavior: Evidence for Turnout and Partisanship.” *Political Research Quarterly* 68 (1): 104–16.

Shah, Paru, and Amber Wichowsky. 2019. “Foreclosure’s Fallout: Economic Adversity and Voter Turnout.” *Political Behavior* 41 (4): 1099–1115.

White, A., Nathan, N., & Faller, J. (2015). What Do I Need to Vote? Bureaucratic Discretion and Discrimination by Local Election Officials. *American Political Science Review*, 109(1), 129-142.

Wolfinger, Raymond E, and Steven J Rosenstone. 1980. *Who Votes?* Yale University Press.

# Loren Collingwood

University of New Mexico  
Department of Political Science  
1 University of New Mexico  
Albuquerque, NM 87131

Office: (951) 827-5590  
Email: [1collingwood@unm.edu](mailto:1collingwood@unm.edu)  
website: <http://www.collingwoodresearch.com>

---

## Employment

Associate Professor, University of New Mexico, 2020 - Present  
Associate Professor, University of California, Riverside 2019 - 2020  
Assistant Professor, University of California, Riverside 2012 - 2019  
Assistant Analyst, Greenberg Quinlan Rosner, Washington DC 2005-2007  
Field Associate, Greenberg Quinlan Rosner, Washington DC 2003-2005

---

## Education

Ph.D., Political Science, University of Washington 2007 - 2012  
Committee: Matt Barreto (chair), Chris Parker, Luis Fraga, Chris Adolph, Peter Hoff  
M.A., Political Science, University of Washington, 2009  
B.A., Psychology, California State University, Chico, 1998 - 2002  
Minor: Political Science  
Honors: *Cum Laude*, NCAA Scholar-Athlete in soccer

---

## Research Fields

American Politics, Political Behavior, Methods, Race and Ethnic Politics, Immigration

---

## Books

2. **Collingwood, Loren.** *Campaigning in a Racially Diversifying America: When and How Cross-Racial Electoral Mobilization Works.* 2020. Oxford University Press.

Featured in *Veja*, Brazil

1. **Collingwood, Loren** and Benjamin Gonzalez O'Brien. *Sanctuary Cities: The Politics of Refuge.* 2019. Oxford University Press.

Featured in *Teen Vogue*, *Seattle Times*; *Phoenix New Times*

---

## Articles

40. Gonzalez O'Brien, Ben, **Loren Collingwood**, and Michael A. Paarlberg. "What Leads to Refuge? Sanctuary Policies and the Influence of Local Demographics and Partisanship." *Urban Affairs Review*. (Conditional Accept).
39. **Collingwood, Loren**, Gabriel Martinez, and Kassra Oskooii. "Undermining Sanctuary? When Local and National Partisan Cues Diverge." *Urban Affairs Review*. (Forthcoming).
38. **Collingwood, Loren** and Benjamin Gonzalez O'Brien. "Is Distance to Drop Box an Appropriate Proxy for Drop Box Treatment? A Case Study of Washington State." *American Politics Research*. (Forthcoming)
37. Barreto, Matt, Michael Cohen, **Loren Collingwood**, Chad Dunn, and Sonni Waknin. "A Novel Method for Showing Racially Polarized Voting: The Promise of Bayesian Improved Surname Geocoding." *New York University Review of Law and Social Change*. 46(1). (Forthcoming)
36. Barreto, Matt, **Loren Collingwood**, Sergio Garcia-Rios, and Kassra Oskooii. "Estimating Candidate Support: Comparing Iterative EI & EI-RxC Methods." *Sociological Methods & Research*. (Forthcoming).
35. Morín, Jason L., Rachel Torres, and **Loren Collingwood**. 2021. "Cosponsoring and Cashing in: U.S. House Members' support for punitive immigration policy and financial payoffs from the private prison industry." *Business and Politics*. 23(4): 492-509.

Featured in KOAT-ABQ news

34. Newman, Benjamin; Merolla, Jennifer; Shah, Sono; Lemi, Danielle; **Collingwood, Loren**; Ramakrishnan, Karthick. 2021. "The Trump Effect: An Experimental Investigation of the Emboldening Effect of Racially Inflammatory Elite Communication." *British Journal of Political Science* 51(3): 1138-1159.

Featured in New York Times; Washington Post; The Times of India; Washington Post; NBC News; New York Times; Forbes; NBC News

33. **Collingwood, Loren** and Sean Long. 2021. "Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act." *Urban Affairs Review*. 57(3): 731-762.

Featured in NPR; Modesto Bee, IVN News San Diego; Woodland Daily Democrat; Silicon Valley Voice; Spectrum 1; Washington Post; Politico

32. Oskooii, Kassra, Nazita Lajevardi, and **Loren Collingwood**. 2021. "Opinion Shift and Stability: Enduring Individual-Level Opposition to Trump's 'Muslim Ban'." *Political Behavior*. 43: 301-337.

Featured in Washington Post

31. Hickel, Flavio, Rudy Alamillo, Kassra Oskooii, and **Loren Collingwood**. 2020. "When American Identity Trumps Latinx Identity: Explaining Support for Restrictive Immigration Policies." *Public Opinion Quarterly*. 84(4), 860-891.

Featured in Academic Times

30. Walker, Hannah, **Loren Collingwood**, and Tehama Lopez Bunyasi. 2020. "White Response to Black Death: A Racialized Theory of White Attitudes About Gun Control." *DuBois Review: Social Science Research on Race*. 17(1): 165-188.
29. Filindra, Alexandra, **Loren Collingwood**, and Noah Kaplan. 2020. "Anxiety and Social Violence: The Emotional Underpinnings of Support for Gun Control." *Social Science Quarterly*. 101: 2101-2120.
28. McGuire, William, Benjamin Gonzalez O'Brien, Katherine Baird, Benjamin Corbett, and **Loren Collingwood**. 2020. "Does Distance Matter? Evaluating the Impact of Drop Boxes on Voter Turnout." *Social Science Quarterly*. 101: 1789-1809.
27. Reny, Tyler, Ali Valenzuela, and **Loren Collingwood**. 2020. "'No, You're Playing the Race Card': Testing the Effects of Anti-Black, Anti-Latino, and Anti-Immigrant Appeals in the Post-Obama Era." *Political Psychology*. 41(2): 283-302.

Featured in VOX The Weeds Podcast

26. **Collingwood, Loren**, Benjamin Gonzalez O'Brien, and Joe Tafoya. 2020. "Partisan Learning or Racial Learning: Opinion Change on Sanctuary City Policy Preferences in California and Texas." *Journal of Race and Ethnic Politics*. 5(1): 92-129.
25. **Collingwood, Loren** and Benjamin Gonzalez. 2019. "Covert Cross-Racial Mobilization, Black Activism, and Political Participation Pre-Voting Rights Act." *Florida Historical Quarterly* 97(4) Spring.
24. Gonzalez O'Brien, Ben, Elizabeth Hurst, Justin Reedy, and **Loren Collingwood**. 2019. "Framing Refuge: Media, Framing, and Sanctuary Cities." *Mass Communication and Society*. 22(6), 756-778.
23. DeMora, Stephanie, **Loren Collingwood**, and Adriana Ninci. 2019. "The Role of Super Interest Groups in Public Policy Diffusion." *Policy and Politics*. 47(4): 513-541.
22. **Collingwood, Loren**, Stephen Omar El-Khatib, Ben Gonzalez O'Brien. 2019. "Sustained Organizational Influence: American Legislative Exchange Council and the Diffusion of Anti-Sanctuary Policy." *Policy Studies Journal*. 47(3): 735-773.
21. **Collingwood, Loren** and Benjamin Gonzalez O'Brien. 2019. "Public Opposition to Sanctuary Cities in Texas: Criminal Threat or Immigration Threat?" *Social Science Quarterly*. 100(4): 1182-1196.
20. Reny, Tyler, **Loren Collingwood**, and Ali Valenzuela. 2019. "Vote Switching in the 2016 Election: Racial and Immigration Attitudes, Not Economics, Explains Shifts in White Voting." *Public Opinion Quarterly*. 83(1): 91-113.

Featured in VOX; The Week; The Economist; New York Times; The Economist

19. Gonzalez-O'Brien, Benjamin, **Loren Collingwood**, and Stephen Omar El-Khatib. 2019. "The Politics of Refuge: Sanctuary Cities, Crime, and Undocumented Immigration." *Urban Affairs Review*. 55(1): 3-40.

Featured in WaPo Monkey Cage I; and Monkey Cage II; WaPo Fact Check; InsideHigherEd; PolitiFact; The Hill; Christian Science Monitor; Pacific Standard; NBC News; Huffington Post; Seattle Times; The Denver Post; San Jose Mercury News; Chicago Tribune; San Diego Union Tribune; VOX

18. Oskooii, Kassra, Sarah Dreier, and **Loren Collingwood**. 2018. "Partisan Attitudes Toward Sanctuary Cities: The Asymmetrical Effects of Political Knowledge." *Politics and Policy* 46(6): 951-984.

17. **Collingwood, Loren**, Jason Morín, and Stephen Omar El-Khatib. 2018. "Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy." *Race and Social Problems*. 10(4): 275-292.

Featured in CityLab; The Guardian; Mother Jones; NPR

16. **Collingwood, Loren**, Benjamin Gonzalez O'Brien, and Sarah K. Dreier. 2018. "Evaluating Public Support for Legalized Marijuana: The Case of Washington." *International Journal of Drug Policy*. 56: 6-20.

15. **Collingwood, Loren**, McGuire, Will, Gonzalez O'Brien, Ben, Baird, Katie, and Hampson, Sarah. 2018. "Do Dropboxes Improve Voter Turnout? Evidence from King County, Washington." *Election Law Journal*. 17:1.

Featured in Seattle Times; CBS News

14. **Collingwood, Loren**, Nazita Lajevardi, and Kassra Oskooii. 2018. "A Change of Heart? How Demonstrations Shifted Individual-Level Public Opinion on Trump's Muslim Ban." *Political Behavior*. 40(4): 1035-1072.

Featured in VOX; ThinkProgress; LSE Blog; Al Jazeera; San Francisco Chronicle; NPR; Business Insider; Washington Post

13. **Collingwood, Loren**, Ashley Jochim, and Kassra Oskooii. 2018. "The Politics of Choice Reconsidered: Partisanship and Minority Politics in Washington's Charter School Initiative." *State Politics & Policy Quarterly* 18(1): 61-92.

12. Newman, Ben, Sono Shah, and **Loren Collingwood**. 2018. "Race, Place, and Building a Base: Ethnic Change, Perceived Threat, and the Nascent Trump Campaign for President." *Public Opinion Quarterly*. 82(1): 122-134.

Featured in Pacific Standard; LSE Blog; Newsweek

11. Skulley, Carrie, Andrea Silva, Marcus J. Long, **Loren Collingwood**, and Ben Bishin, "Majority Rule vs. Minority Rights: Immigrant Representation Despite Public Opposition on the 1986 Immigration Reform and Control Act." 2018. *Politics of Groups and Identities*. 6(4): 593-611.

10. Alamillo, Rudy and **Loren Collingwood**. 2017. "Chameleon Politics: Social Identity and Racial Cross-Over Appeals." *Politics of Groups and Identities*. 5(4): 533-650.

Featured in WaPo's Monkey Cage; NBC News; Los Angeles Times

9. **Collingwood, Loren**, Kassra Oskooii, Sergio Garcia-Rios, and Matt Barreto. 2016. "eiCompare: Comparing ecological inference estimates across EI and EI:RxC." *The R Journal*. 8(2): 92-101.

Featured in Investigate West

8. Barreto, Matt, **Loren Collingwood**, Christopher Parker, and Francisco Pedraza. 2015. "Racial Attitudes and Race of Interviewer Item Non-Response." *Survey Practice*. 8:5.

Nos. 23-13916 & 23-13921  
(consolidated with No. 23-13914)

---

**In the United States Court of Appeals  
for the Eleventh Circuit**

---

COAKLEY PENDERGRASS et al.,  
*Plaintiffs-Appellees,*

ANNIE LOIS GRANT et al.,  
*Plaintiffs-Appellees,*

v.

SECRETARY OF STATE OF GEORGIA,  
*Defendant-Appellant.*

---

On Appeal from the United States District Court  
for the Northern District of Georgia  
Nos. 1:21-cv-05339 & 1:22-cv-00122—Steve C. Jones, Judge

---

***PENDERGRASS AND GRANT APPELLEES’  
SUPPLEMENTAL APPENDIX  
VOLUME III OF VI***

---

Joyce Gist Lewis	Abha Khanna	Michael B. Jones
Adam M. Sparks	Makeba Rutahindurwa	ELIAS LAW GROUP LLP
KREVOLIN & HORST, LLP	ELIAS LAW GROUP LLP	250 Mass. Ave NW,
One Atlantic Center	1700 Seventh Ave,	Suite 400
1201 W. Peachtree St. NW,	Suite 2100	Washington, DC 20001
Suite 3250	Seattle, WA 98101	(202) 968-4490
Atlanta, GA 30309	(206) 656-0177	
(404) 888-9700		

*Counsel for Plaintiffs-Appellees in Nos. 23-13916 & 23-13921*

## INDEX OF APPENDIX

### Docket No.

#### **Volume I**

Complaint .....	1
Order on Motions for Preliminary Injunction .....	97

#### **Volume II**

Order on Motions for Preliminary Injunction (cont.) .....	97
Declaration of William S. Cooper .....	174-1
Expert Report of Orville Vernon Burton .....	174-5
Expert Report of Loren Collingwood .....	174-6

#### **Volume III**

Expert Report of Loren Collingwood (cont.).....	174-6
Expert Report of John R. Alford.....	174-8
Pretrial Order .....	231
Excerpts from Trial Transcript (9/6/2023 AM).....	279
Excerpts from Trial Transcript (9/8/2023 PM).....	281
Excerpts from Trial Transcript (9/14/2023 AM).....	285
Order and Memorandum of Decision .....	286

#### **Volume IV**

Order and Memorandum of Decision (cont.) .....	286
--	-----

#### **Volume V**

Order and Memorandum of Decision (cont.) .....	286
Excerpts from Trial Transcript (9/11/2023 PM).....	292



Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) .....	26
---	----

**Volume VI**

Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) (cont.).....	26
--	----

Certificate of Service

7. Barreto, Matt and **Loren Collingwood**. 2015. "Group-based Appeals and the Latino Vote in 2012: How Immigration Became a Mobilizing Issue." *Electoral Studies*. 40:490-499.

Featured in Latino Decisions blog

6. **Collingwood, Loren**, Matt Barreto, and Sergio Garcia-Rios. 2014. "Revisiting Latino Voting: Cross-Racial Mobilization in the 2012 Election." *Political Research Quarterly*. 67(3): 632-645.

Featured in LSE Blog

5. Jurka, Tim, **Loren Collingwood**, Amber Boydston, Emiliano Grossman, and Wouter van Atteveldt. 2013. "RTextTools: A Supervised Learning Package for Text Classification in R" *The R Journal*. 5(1).
4. **Collingwood, Loren**. 2012. "Education Levels and Support for Direct Democracy." *American Politics Research*, 40(4): 571-602.
3. **Collingwood, Loren** and John Wilkerson. 2012. "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods." *Journal of Information Technology and Politics*, 9(3).
2. **Collingwood, Loren**, Matt Barreto and Todd Donovan. 2012. "Early Primaries, Viability, and Changing Preferences for Presidential Candidates." *Presidential Studies Quarterly*, 42(2).
1. Barreto, Matt, **Loren Collingwood**, and Sylvia Manzano. 2010. "A New Measure of Group Influence in Presidential Elections: Assessing Latino Influence in 2008." *Political Research Quarterly*. 63(4).

Featured in Latino Decisions blog

---

## Book Chapters

11. **Collingwood, Loren**, Stephanie DeMora , and Sean Long. "Demographic Change, White Decline, and the Changing Nature of Racial Politics in Election Campaigns." In *Cambridge Handbook in Political Psychology*. Edited by Danny Osborne and Chris Sibley. [Forthcoming].
10. Morín, Jason L. and **Loren Collingwood**. "Contractor Politics: How Political Events Influence Private Prison Company Stock Shares in the Pre and Post Trump Era." In *Anti-immigrant Rhetoric, Actions, and Policies during the Trump Era (2017-2019)*. [Forthcoming]
9. Parker, Christopher S., Christopher C. Towler, **Loren Collingwood**, and Kassra Oskooii. 2020. "Race and Racism in Campaigns." In Oxford Encyclopedia of Persuasion in Political Campaigns. Edited by Elizabeth Suhay, Bernard Grofman, and Alexander H. Trechsel. DOI: 10.1093/oxfordhb/9780190860806.013.38
8. **Collingwood, Loren**, and DeMora, Stephanie. 2019. "Latinos and Obama." In Jessica Lavariega Monforti (ed.) *Latinos in the American Political System: An Encyclopedia of Latinos as Voters, Candidates, and Office Holders*.
7. DeMora, Stephanie, and **Collingwood, Loren**. 2019. "George P. Bush." In Jessica Lavariega Monforti (ed.) *Latinos in the American Political System: An Encyclopedia of Latinos as Voters, Candidates, and Office Holders*.

6. El-Khatib, Stephen Omar, and **Collingwood, Loren**. 2019. "Ted Cruz." In Jessica Lavariega Monforti (ed.) *Latinos in the American Political System: An Encyclopedia of Latinos as Voters, Candidates, and Office Holders*.
  5. **Collingwood, Loren**, Sylvia Manzano and Ali Valenzuela. 2014. "November 2008: The Latino vote in Obama's general election landslide." In *Latino America: How America's Most Dynamic Population Is Poised to Transform the Politics of the Nation*. By Matt Barreto and Gary Segura. New York: Public Affairs Press. (co-authored chapter with Matt Barreto and Gary Segura)
  4. **Collingwood, Loren**, Justin Gross and Francisco Pedraza. 2014. "A 'decisive voting bloc' in 2012." In *Latino America: How America's Most Dynamic Population Is Poised to Transform the Politics of the Nation*. By Matt Barreto and Gary Segura. New York: Public Affairs Press. (co-authored chapter with Matt Barreto and Gary Segura)
  3. Barreto, Matt, **Loren Collingwood**, Ben Gonzalez, and Chris Parker. 2011. "Tea Party Politics in a Blue State: Dino Rossi and the 2010 Washington Senate Election." In William Miller and Jeremy Walling (eds.) *Stuck in the Middle to Lose: Tea Party Effects on 2010 U.S. Senate Elections*. Rowan and Littlefield Publishing Group.
  2. **Collingwood, Loren** and Justin Reedy. "Criticisms of Deliberative Democracy." In Nabatchi, Tina, Michael Weiksner, John Gastil, and Matt Leighninger, eds., *Democracy in motion: Evaluating the practice and impact of deliberative civic engagement*. New York: Oxford University Press, 2010.
  1. **Collingwood, Loren**. "Initiatives." In Haider-Markel, Donald P., and Michael A. Card. *Political Encyclopedia of U.S. States and Regions*. Washington, DC: CQ Press, 2009.
- 

## Software

R package: **RTextTools**. This package uses supervised learning methods to automate text classification. Coauthors include Jurka, Boydston, Grossman, and van Atteveldt. Available on CRAN.

R package: **eiCompare**. This package compares outcomes between ecological inference (EI) estimates and EI:Rows by Columns (RxC) estimates. Primary purpose is employed in racially polarized voting analysis. Development Version available here: [eiCompare](#) or on CRAN. Coauthors include Barreto, Oskooii, Garcia-Rios, Burke, Decter-Frain, Murayama, Sachdeva, Henderson, Wood, and Gross.

R package: **Rvoterdistance**. Calculates distance between voters and multiple polling locations and/or ballot drop boxes. Ports C++ code for high speed efficiency. Available on CRAN.

R package: **Rweights**. Creates survey weights via iterative variable raking. Survey design object and weights vector are produced for use with R, Stata, and other programs. Currently in alpha form with unix tarball available here: [Rweights](#).

R package: **Rmturkcheck**. Functions for cleaning and analyzing two-wave MTurk (or other) panel studies. Available: [Rmturkcheck](#)

R package: **RCopyFind**. Functions for extracting data frames then plotting results from WCopyFind plagiarism text program. Co-authored with and Maintained by Steph DeMora. Available: [RCopyFind](#)

---

## Under Review / Working Papers

Barreto, Matt, Michael Cohen, **Loren Collingwood**, Chad Dunn, and Sonni Waknin. “Using Bayesian Improved Surname Geocoding (BISG) to Assess Racially Polarized Voting in Voting Rights Act Challenges.” [Revise & Resubmit]

Decter-Frain, Ari, Pratik Sachdeva, **Loren Collingwood**, Juandalyn Burke, Hikari Murayama, Matt Barreto, Scott Henderson, Spencer Wood, and Joshua Zingher. “Comparing BISG to CVAP Estimates in Racially Polarized Voting Analyses.” [Revise & Resubmit]

Hickel Jr., Flavio R., Kassra A.R. Oskooii, and **Loren Collingwood**. “Social Mobility Through Immigrant Resentment: Explaining Latinx Support for Restrictive Immigration Policies and Anti-Immigrant Candidates.” [Revise & Resubmit]

**Collingwood, Loren**, Jason Morín, and Edward Vargas. “Protesting Detention: How Protests Activated Group Empathy and Party ID to Shift Attitudes on Child Detention.” [Working Paper]

Paarlberg, Michael A. and **Loren Collingwood**. “Fact or Fiction: Testing the link between local immigration policy and the MS-13 ‘Threat’.” [Working Paper]

---

## Awards, Grants, and Fellowships

Matt Barreto and Loren Collingwood. Detection of Vote Dilution: New tools and methods for protecting voting rights. Data Science for Social Good project selection, University of Washington. 2020

Loren Collingwood. Measuring Cross-Racial Voter Preferences. UCR Faculty Senate. \$3,500. 2019.

Francisco Pedraza and Loren Collingwood. Evaluating AltaMed’s 2018 GOTV Efforts in Los Angeles. \$12,000. 2018-2019.

Allan Colbern, Loren Collingwood, Marcel Roman. A Mess in Texas: The Deleterious Effects of SB4 on Public Trust in Law Enforcement. Center for American Progress. \$7,100. 2018.

Karthick Ramakrishnan, Mindy Romero, Loren Collingwood, Francisco Pedraza, Evaluating California’s Voter’s Choice Act. Irvine Foundation. \$150,000, 2018-2019.

William McGuire, Loren Collingwood, Ben Gonzalez O’Brien, and Katie Baird, “Evaluating the Impact of Drop Boxes and Get-Out-The-Vote Advertising on Voter Turnout in Pierce County, WA.” MIT Election Data and Science Lab, \$16,365, 2017

Justin Freebourn and Loren Collingwood, Blum Initiative \$4,000, 2017

Hellman Fellowship Grant, UC Riverside, \$30,000, 2014-2015

Best Dissertation Award, 2013 Western Political Science Association

UC Riverside Harrison & Ethel Silver Fund, \$2,000, 2013

Best Graduate Student Paper Award State Politics section, 2012 American Political Science Association

Texas A&M Experimental Methods Winter Institute, \$800, January, 2011

UseR! 2011 Conference travel grant, \$1000, August, 2011

Center for Statistics and the Social Sciences travel grant, \$870, January, 2011

David J. Olson Research Grant, University of Washington Political Science, \$2,000, January, 2011

Warren Miller Scholarship Award, Inter-University Consortium for Political and Social Research, Summer 2009

Matthews Fellowship, University of Washington, Winter 2008 - Spring 2009

Brennan Center for Justice, New York University [with Matt Barreto]

Indiana Voter Identification Study, \$40,000 – Oct. 2007, 6 months

---

## Teaching Experience

POSC 10 (American Politics); POSC 146 (Mass Media & Public Opinion); POSC 171 (State Politics); POSC 104S (Race and Ethnic Politics Special Topics); POSC 108 (Race and Ethnic Politics)

POLS 300: Immigration Politics with Focus on Latino Politics

POLS 300: The Voting Rights Act: Causes and Effects

POSC 202A: Introduction to Quantitative Methods (Graduate)

POSC 207: Statistical Programming and Data Science for the Social Sciences (Graduate)

POSC 207: Quantitative Text Analysis (Graduate)

POSC 220: Graduate Seminar in Race and Ethnic Politics in the U.S.

POSC 256: Graduate Seminar in Public Opinion

POSC 253: Graduate Seminar in Electoral Politics

Text Classification with R using the `RTextTools` package, UNC-Chapel Hill Workshop

Text Analysis with Political Data, Claremont Graduate School, 2019

CSSS Intermediate R Workshop 2011, Instructor (Summer)

POLS 501: Advanced Research Design and Analysis, Teaching Assistant (2 quarters)

ICPSR Summer Course: Methodological Issues in Quantitative Research on Race and Ethnicity, Teaching Assistant

POLS 202: Introduction to American Politics, Teaching Assistant

CSSS Math Camp 2011, Teaching Assistant

POLS 499D: Center for American Politics and Public Policy Undergraduate Honors Seminar (2 quarters)

---

## Professional Service

Co-editor, *Politics of Groups and Identities*, 2020-2021

Reviewer, Political Behavior, Journal of Information Technology and Politics, American Politics Research, Social Sciences Quarterly, Journal of Politics, Politics of Groups and Identities, American Journal of Political Science, Political Research Quarterly, State Politics and Public Policy, American Political Science Review, British Journal of Political Science, Journal of Race and Ethnic Politics, Urban Studies, Urban Affairs Review; many other journals

---

## Conference Papers and Presentations

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk California Lutheran University. (October 2020).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk California State University, Chico. (March 2020).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk Humboldt State University. (March 2020).

Collingwood, Loren. "Campaigning in a Racially Diversifying America: Whether and How Cross-Racial Electoral Mobilization Works." Invited Talk Oregon State University. (February 2020).

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of San Diego. (November 2019).

Collingwood, Loren. "Campaigning in a Racially Diversifying America: Whether and How Cross-Racial Electoral Mobilization Works." Invited Talk University of Massachusetts. (January 2020).

Collingwood, Loren. "Campaigning in a Racially Diversifying America: Whether and How Cross-Racial Electoral Mobilization Works." Invited Talk University of New Mexico. (December 2019).

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk California State University, Northridge, Los Angeles. (November 2019).

Collingwood, Loren and Benjamin Gonzalez O'Brien. "Sanctuary Cities: The Politics of Refuge." Invited Talk Occidental College, Los Angeles. (November 2019).

Collingwood, Loren (with Sean Long). "Can States Promote Minority Representation? Assessing the Effects of the California Voting Rights Act." UC Irvine Critical Observations on Race and Ethnicity Conference. (November 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of Geneva, Switzerland. (November 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of Bern, Switzerland. (October 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk ETH Zurich, Switzerland. (October 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk London School of Economics, U.K. (October 2019).

Collingwood, Loren. "Sanctuary Cities: The Politics of Refuge." Invited Talk University of Leeds, U.K. (October 2019).

Valenzuela, Ali, Kassra Oskooi, and Loren Collingwood. "Threat or Reassurance? Framing Midterms Results among Latinos and Whites." American Political Science Association, Washington, DC. (August 2019).

Paarlberg, Michael A. and Loren Collingwood. "Much Ado about Nothing: Local Immigration Policy and the MS-13 'Threat' ." American Political Science Association, Washington, DC. (August 2019).

Collingwood, Loren. "A Mess in Texas: The Deleterious Effects of SB4 on Public Trust in Law Enforcement." International Center for Local Democracy (ICLD) Conference on Local Democracy. Umea, Sweden (June 2019).

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." Invited Talk University of California, Irvine (May 2019).

Collingwood, Loren. "Text Analysis with R." Invited talk and presentation. Claremont Graduate University (May 2019)

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." PRIEC. UC Davis (May 2019).

Collingwood, Loren. "Data Analysis with R." Invited presentation and training Cal Poly Pomona (May 2019)

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." Invited Talk Northern Arizona University (May 2019)

Collingwood, Loren (with Jason Morín). "Contractor Politics: How Political Events Influence Private Prison Company Stock Shares in the Pre and Post Trump Era." Invited Talk Universidad Nacional Autonoma de Mexico, Distrito Federal, Mexico (February 2019).

Roman, Marcel, Allan Colbern, and Loren Collingwood. "A Mess in Texas: The Deleterious Effects of SB4 on Public Trust in Law Enforcement." PRIEC Consortium. University of Houston (December 2018)

Collingwood, Loren. "The #FamiliesBelongTogether Outcry: How Protests Shifted Attitudes on Immigrant Family Separation and Child Detention." Invited Talk University of Illinois Chicago (November 2018)

Collingwood, Loren. "Ongoing Research in Sanctuary Cities and Immigration Politics." Invited Talk University of Pennsylvania Perry World House (November 2018)

Collingwood, Loren. "Unfair Detention: How Protests Activated Racial Group Empathy to Shift Attitudes on Child Detention." Invited Talk Rutgers University (October 2018)

Collingwood, Loren. "Unfair Detention: How Protests Activated Racial Group Empathy to Shift Attitudes on Child Detention." UCR Alumni Research Presentation Washington and Philadelphia (October 2018)

Collingwood, Loren, Jason Morin. "Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy." Invited Talk UCLA (October 2018).



Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "Opinion Shift and Stability: Enduring Opposition to Trump's "Muslim Ban". APSA (September 2018).

Collingwood, Loren, Jason Morin, and Stephen Omar El-Khatib. "Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy." American Political Science Association Conference (August 2018).

Collingwood, Loren, Sergio Garcia-Rios, and Hannah Walker. "The Impact of Exposure to Police Brutality on Political Attitudes Among Black and White Americans." Cooperative Comparative Post-Election Survey (CMPS) Conference. (August, 2018).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "Opinion Shift and Stability: Enduring Opposition to Trump's "Muslim Ban". Politics of Race Immigration and Ethnicity Consortium (August 2018).

Collingwood, Loren, Jason Morin, and Stephen Omar El-Khatib. "Expanding Carceral Markets: Detention Facilities, ICE Contracts, and the Financial Interests of Punitive Immigration Policy." Politics of Race Immigration and Ethnicity Consortium, Michigan State University (April 2018)

Collingwood, Loren, Benjamin Gonzalez O'Brien, and Joe Tafoya. "Partisan Learning or Racial Learning: Opinion Change on Sanctuary City Policy Preferences in California and Texas." Midwest Political Science Association Conference (April 2018).

El-Khatib, Stephen Omar and Loren Collingwood. "State Policy Responses to Sanctuary Cities: Explaining the Rise of Sanctuary City Legislative Proposals." Midwest Political Science Association Conference (April 2018).

Hannah Walker, Loren Collingwood, and Tehama Lopez Bunyasi. "Under the Gun: Black Responsiveness and White Ambivalence to Racialized Black Death." Midwest Political Science Association Conference (April 2018).

Hannah Walker, Loren Collingwood, and Tehama Lopez Bunyasi. "Under the Gun: Black Responsiveness and White Ambivalence to Racialized Black Death." Western Political Science Association Conference (April 2018).

DeMora, Stephanie, Adriana Ninci, and Loren Collingwood. "Shoot First in ALEC's Castle: The Diffusion of Stand Your Ground Laws." Politics of Race Immigration and Ethnicity Consortium, ASU (February 2018).

El-Khatib, Stephen Omar and Loren Collingwood. "State Policy Responses to Sanctuary Cities: Explaining the Rise of Sanctuary City Legislative Proposals." Politics of Race Immigration and Ethnicity Consortium, UCR (September 2017).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "A Change of Heart? How Protests Shifted Individual-Level Public Opinion on Trump's Muslim Ban." APSA (September 2017).

Collingwood, Loren, McGuire, Will, Gonzalez O'Brien Ben, Hampson, Sarah, and Baird, Katie. "Do Dropboxes Improve Voter Turnout? Evidence from King County, Washington." APSA (September 2017).

Collingwood, Loren, Reny, Tyler, Valenzuela, Ali. "Flipping for Trump: In 2016, Immigration and Not Economic Anxiety Explains White Working Class Vote Switching." UCLA (May 2017).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "A Change of Heart? How Protests Shifted Individual-Level Public Opinion on Trump's Muslim Ban." UCLA (May 2017).

Collingwood, Loren, Nazita Lajevardi, and Kassra Oskooii. "A Change of Heart? How Protests Shifted Individual-Level Public Opinion on Trump's Muslim Ban." Politics of Race Immigration and Ethnicity Consortium, UCSB (May 2017).

Reny, Tyler, Ali Valenzuela, and Loren Collingwood. "Public Reactions to Anti-Latino Appeals in the Age of Obama: Race, Illegality and Changing Norms." Vancouver, Western Political Science Association Conference (April. 2017).

Collingwood, Loren, McGuire, Will, Gonzalez-O'Brien Ben, Hampson, Sarah, and Baird, Katie. "Do Dropboxes Improve Voter Turnout? Evidence from King County, Washington." WPSA (April 2017).

Gonzalez-O'Brien, Benjamin, Loren Collingwood, and Stephen El-Khatib. "Gimme Shelter: The Myth and Reality of the American Sanctuary City". Vancouver, Western Political Science Association Conference WPSA (April 2017).

Rush, Tye, Pedraza, Francisco, Collingwood, Loren. "Relieving the Conscience: White Guilt and Candidate Evaluation." Politics of Race Immigration and Ethnicity Consortium, UCI (March 2017).

Reny, Tyler, Ali Valenzuela, and Loren Collingwood. "Public Reactions to Anti-Latino Appeals in the Age of Obama: Race, Illegality and Changing Norms." Philadelphia, American Political Science Association Conference (Sept. 2016)

Barreto, Matt, Loren Collingwood, Sergio Garcia-Rios, and Kassra Oskooii. "Estimating Candidate Support: Comparing EI & EI-RxC." Chicago, Midwest Political Science Association Conference (April 2016)

Bishin, Benjamin, Loren Collingwood, and Erinn Lauterbach. "Cross-Racial Mobilization in a Rapidly Diversifying Polity: Latino Candidates and Anglo Voters" Chicago, Midwest Political Science Association Conference (April 2016)

Gonzalez-O'Brien, Benjamin, Loren Collingwood, and Stephen El-Khatib. "Gimme Shelter: The Myth and Reality of the American Sanctuary City". San Diego, Western Political Science Association Conference (April 2016)

Collingwood, Loren and Antoine Yoshinaka. The new carpetbaggers? Analyzing the effects of migration on Southern politics. The Citadel Conference on Southern Politics, Charleston, SC (Mar 2016)

Alamillo, Rudy and Loren Collingwood. Chameleon Politics: Social Identity and Racial Cross-Over Appeals. American Political Science Association Conference, San Francisco (Sept 2015)

Reny, Tyler, Ali Valenzuela, and Loren Collingwood. "Public Reactions to Anti-Latino Appeals in the Age of Obama: Race, Illegality and Changing Norms." San Francisco, American Political Science Association Conference (Sept 2015)

Alamillo, Rudy and Loren Collingwood. Chameleon Politics: Social Identity and Racial Cross-Over Appeals. Western Political Science Association Conference, Las Vegas (April 2015)

Barreto, Matt and Loren Collingwood. Confirming Electoral Change: The 2012 U.S. Presidential Election OSU Conference (October, 2013). "Earning and Learning the Latino Vote in 2008 and 2012: How the Obama Campaign Tried, Refined, Learned, and Made Big Steps in Cross-Racial Mobilization to Latinos.

Collingwood, Loren and Ashley Jochim. 2012 Midwest Political Science Association Annual Conference (April) Chicago, IL. "Electoral Competition and Latino Representation: The Partisan Politics of Immigration Policy in the 104th Congress."

Collingwood, Loren. 2012 Western Political Science Association Annual Conference (March) Portland, OR. "The Development and Use of Cross-Racial Mobilization as Campaign Strategy in U.S. Elections: The Case of Texas 1948-2010."

Collingwood, Loren. 2012 Institute for Pragmatic Practice Annual Conference (March) Seattle, WA. "Changing Demographics, Rural Electorates, and the Future of American Politics."

Collingwood, Loren. 2012 Politics of Race, Immigration, and Ethnicity Consortium (January) Riverside, CA. "The Development of Cross-Racial Mobilization: The Case of Texas 1948-2010."

Collingwood, Loren. 2011 American Political Science Association Annual Conference (September) Seattle, WA. "The Pursuit of Victory and Incorporation: Elite Strategy, Group Pressure, and Cross Racial Mobilization."

Forman, Adam and Loren Collingwood. 2011 American Political Science Association Annual Conference (September) Seattle, WA. "Measuring Power via Presidential Phone Records." (Poster)

Collingwood, Loren with (Tim Jurka, Wouter Van Atteveldt, Amber Boydston, and Emiliano Grossman). UseR! 2011 Conference. (August) Coventry, United Kingdom. "RTextTools: A Supervised Learning Package for Text Classification in R."

Jurka, Tim, Loren Collingwood, Wouter Van Atteveldt, Amber Boydston, and Emiliano Grossman. 2011 Comparative Agendas Project Conference. (June) Catania, Italy. "RTextTools: A Supervised Learning Package for Text Classification in R."

Collingwood, Loren and John Wilkerson. 2011 Journal of Information Technology & Politics Conference. (May) Seattle, WA. "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren. 2011 Politics of Race, Immigration, and Ethnicity Consortium (May) Davis, CA. "The Pursuit of Victory and Incorporation: Elite Strategy, Group Pressure, and Cross Racial Mobilization"

Collingwood, Loren. 2011 Western Political Science Conference (April) San Antonio, TX. "Race-Matching as Targeted Mobilization."

Collingwood, Loren. 2011 Western Political Science Conference (April) San Antonio, TX. "The Pursuit of Victory and Incorporation: Elite Strategy, Group Pressure, and Cross Racial Mobilization"

Collingwood, Loren (with John Wilkerson). Invited Talk: Texas A&M University. (April, 2011) "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren (with John Wilkerson). Invited Talk: Rice University. (April, 2011) "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren. 2011 Midwest Political Science Association Annual Conference (April) Chicago, IL. "Race-Matching as Targeted Mobilization."

Collingwood, Loren and John Wilkerson. 2011 Text as Data Conference. (March) Evanston, IL. "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren and John Wilkerson. 2011 Southern Political Science Conference. (January) New Orleans, LA. "Tradeoffs in Accuracy and Efficiency in Supervised Learning Methods."

Collingwood, Loren (with Ben Gonzalez). 2010 American Political Science Association Annual Conference. (September) Washington, DC. "The Political Process in Florida: Modeling African American Registration Rates Post *Smith v. Allwright*, 1944-1964."

Wilkerson, John, Steve Purpura, and Loren Collingwood. 2010 NSF Funded Tools for Text Workshop. (June) Seattle, WA. "Rtexttools: A Supervised Machine Learning Package in an R-Wrapper."

Collingwood, Loren and Marcela Garcia-Castanon. 2010 Western Political Science Association Annual Conference. (April) San Francisco, CA. "Negativity as a Tool: candidate poll standing and attack politics."

Collingwood, Loren. 2010 Politics of Race, Immigration, and Ethnicity Consortium. (January) Riverside, CA. "White Outreach: A spatial approach to modeling black incorporation in Florida post *Smith v. Allwright*, 1944-1965."

Collingwood, Loren. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "Levels of Education, Political Knowledge and Support for Direct Democracy."

Collingwood, Loren. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "The Negativity Effect: Psychological underpinnings of advertising recall in modern political campaigns."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "Negativity as a Tool: predicting negative responses and their effectiveness in the 2008 campaign season."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Western Political Science Association Annual Conference. (March) Vancouver, BC. "Switching codes: analyzing Obama's strategy for addressing Latinos in the 2008 presidential campaign."

Collingwood, Loren, (with Matt Barreto and Sylvia Manzano) 2009 Shambaugh Conference. (March) University of Iowa, IA. "More than one way to shuck a tamale: Latino influence in the 2008 general election."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Midwest Political Science Association Annual Conference. (April) Chicago, IL. "Switching codes: analyzing Obama's strategy for addressing Latinos in the 2008 presidential campaign."

Collingwood, Loren and Marcela Garcia-Castanon. 2009 Pacific Northwest Political Science Conference. (October) Victoria, BC. "Negativity as a Tool: predicting negative responses and their effectiveness in the 2008 campaign season."

Collingwood, Loren and Francisco Pedraza (with Matt Barreto and Chris Parker). 2009 Center for Statistics and the Social Sciences 10th Anniversary Conference. (May) Seattle, WA. "Race of interviewer effects: perceived versus actual."

Collingwood, Loren (with Matt Barreto, Chris Parker, and Francisco Pedraza). 2009 Pacific Northwest Political Science Conference. (October) Victoria, BC. "Race of interviewer effects: perceived versus actual."

Barreto, Matt, Loren Collingwood and Todd Donovan. 2008 Midwest Political Science Association Annual Conference. (April) Chicago, IL. "Early Presidential Primaries, Viability, and Vote Switching in 2008."

Collingwood, Loren. 2008 Midwest Political Science Association Annual Conference. (April) Chicago, IL. "Levels of Education and Support for Direct Democracy: A Survey Experiment."

Collingwood, Loren. 2008 American Political Science Association Annual Conference. (September) Boston, MA. "Levels of Education and Support for Direct Democracy: A Survey Experiment." (Poster)

Collingwood, Loren. 2008 American Political Science Association Annual Conference. (September) Boston, MA. "Response Effects in Multi-Candidate Primary Vote Questions." (Poster)

## Computer Skills

R, Stata, Python, WinBugs/JAGS, L<sup>A</sup>T<sub>E</sub>X, SPSS, MySQL, Access, ArcGIS, Some C++ when interacting with R.

---

## Reports

Collingwood, Loren. (2008). *The Washington Poll: pre-election analysis*. [www.washingtonpoll.org](http://www.washingtonpoll.org).

Collingwood, Loren. (2008). *Democratic underperformance in the 2004 gubernatorial election: explaining 2004 voting patterns with an eye towards 2008*. [www.washingtonpoll.org](http://www.washingtonpoll.org).

Barreto, Matt, Loren Collingwood, Francisco Pedraza, and Barry Pump. (2009). *Online voter registration in Washington State and Arizona*. Commissioned by Pew Research Center.

Collingwood, Loren, Todd Donovan, and Matt Barreto. (2009). *An assessment of ranked choice voting in Pierce County, WA*.

Collingwood, Loren. (2009). *An assessment of the fiscal impact of ranked choice voting in Pierce County, WA*. Commissioned by the League of Women Voters.

Barreto, Matt, and Loren Collingwood. (2009). *Latino candidates and racial block voting in primary and judicial elections: An analysis of voting in Los Angeles County board districts*. Commissioned by the Los Angeles County Chicano Employees Association.

Barreto, Matt, and Loren Collingwood. (2011). *A Review of Racially Polarized Voting For and Against Latino Candidates in Los Angeles County 1994-2010*. Commissioned by Los Angeles County Supervisor Gloria Molina. August 4.

Collingwood, Loren. (2012). *Recent Political History of Washington State: A Political Map*. Commissioned by the Korean Consulate.

Collingwood, Loren. (2012). *Analysis of Polling on Marijuana Initiatives*. Commissioned by Greenberg Quinlan Rosner.

Collingwood, Loren, Sean Long, and Francisco Pedraza. (2019). *Evaluating AltaMed Voter Mobilization in Southern California, November 2018*. Commissioned by AltaMed.

---

## Relevant Work Experience

### *Collingwood Research, LLC*

Statistical Consulting and Analysis

January 2008 - Present

Conducted over 200 projects involving political research, polling, statistical modeling, redistricting analysis and mapping, data analysis, micro-targeting, and R software development for political and non-profit clients. Clients include: Greenberg Quinlan Rosner, Latino Decisions, Pacific Market Research, Beck Research, Squier Knapp Dunn Communications, Anzalone-Lizst Research, League of Women Voters, Shelia Smoot for Congress, pollster.com, Comparative Agendas Project, Amplified Strategies, Gerstein Bocian & Agne, Strategies 360, the Korean Consulate, the California Redistricting Commission, Monterey County Redistricting Commission, ClearPath Strategies, Los Angeles County Council, Demchak & Baller Legal, Arnold & Porter LLP, JPM Strategic Solutions, National Democratic Institute (NDI) – on site in Iraq, Latham & Watkins, New York ACLU, United States Department of Justice (Demography), Inland Empire Funder's Alliance (Demography), Perkins & Coie, Elias Law Group; Campaign Legal Center; Santa Clara County (RPV Analysis); Native American Rights Fund (NARF); West Contra Costa Unified School District (Demography); Lawyers' Committee for Civil Rights Under Law; LatinoJustice PRLDEF, Voces de Frontera; Roswell, NM Independent School District

## Expert Witness Work

Expert Witness: *LOWER BRULE SIOUX TRIBE v. LYMAN COUNTY*, 2022

Expert Witness: *Walen and Henderson v. Burgum and Jaeger No 1:22-cv-00031-PDW-CRH*, 2022

Expert Witness: *Faith Rivera, et al. v. Scott Schwab and Michael Abbott No. 2022-CV-000089*, 2022

Expert Witness: *LULAC Texas et al. v. John Scott et al (1:21-cv-0786-XR)*, 2022

Expert Witness: *Pendergrass v. Raffensperger (N.D. Ga. 2021)*,

Expert Witness: *Johnson, et al., v. WEC, et al., No. 2021AP1450-OA*, 2021

Expert Witness: *East St. Louis Branch NAACP vs. Illinois State Board of Elections*, 2021

Expert Witness: *LULAC of Iowa vs. Pate*, 2021-2022

Expert Witness: *United States Department of Justice vs. City of Hesperia*, 2021-2022

Expert Witness: *NAACP vs. East Ramapo Central School District*, New York, 2018-2019

Riverside County, Corona and Eastvale, 2015

Los Angeles County Redistricting Commission, 2011

Racially Polarized Voting analysis of Latino and Asian candidates in San Mateo County and alternative map creation, 2010-2011

State of California, Citizens Redistricting Commission, including Blythe, CA, in Riverside County, 2011

Monterey County, CA Redistricting, alternative map creation, 2011



*Greenberg Quinlan Rosner*

Assistant Analyst, Anna Greenberg

June 2005 - May 2007

Assisted in the development of questionnaires, focus group guidelines, memos, and survey reports for political, non-profit, and corporate clients. Moderated in-depth interviews and focus groups.

*Greenberg Quinlan Rosner*

Field Associate

December 2003 - June 2005

Managed qualitative and quantitative data collection process in the U.S. and internationally. Provided methodological advice, including sample stratification, sampling Latino populations, and modal sampling strategies.

*Congressman Adam Schiff*

Database Manager

March 2003 - June 2003

Managed constituent mail and survey databases; updated and maintained Member's Congressional voting record.

*Strategic Consulting Group*

Field Organizer, Carol Roberts for Congress

July 2002 - November 2002

Recruited and coordinated over 100 volunteers for mailings, canvassing, phone banking, and GOTV operations. Developed internship program and managed 15 interns from local colleges and high schools.

*Institute for Policy Studies*

Intern, John Cavanagh

May 2001 - August 2001

Provided research assistance for projects advocating reform of the WTO, World Bank, and IMF. Worked on reports and op-ed pieces on global economic issues advocating fair trade.



## *Pendergrass* Doc. 174-8

# EXHIBIT 7

EXPERT REPORT OF JOHN R. ALFORD, Ph.D.

**Scope of Inquiry**

I have been retained by the Georgia Secretary of State and State Election Board as an expert to provide analysis related to *Grant v. Raffensperger*, *Alpha Phi Alpha v. Raffensperger*, and *Pendergrass v. Raffensperger*. All three cases allege the current U.S. Congressional, state Senate, and state House districts in Georgia violate Section 2 of the Voting Rights Act. In early 2022, I provided a report and testified in the preliminary injunction hearing in this matter. I have examined the reports and supplemental reports provided by plaintiffs' experts Dr. Maxwell Palmer, and Dr. Lisa Handley in this case. My rate of compensation in this matter is \$500 per hour.

**Qualifications**

I am a tenured full professor of political science at Rice University. At Rice, I have taught courses on redistricting, elections, political representation, voting behavior and statistical methods at both the undergraduate and graduate level. Over the last thirty years, I have worked with numerous local governments on districting plans and on Voting Rights Act issues. I have previously provided expert reports and/or testified as an expert witness in voting rights and statistical issues in a variety of court cases, including on behalf of the U.S. Attorney in Houston, the Texas Attorney General, a U.S. Congressman, and various cities and school districts.

In the 2000 round of redistricting, I was retained as an expert to provide advice to the Texas Attorney General in his role as Chair of the Legislative Redistricting Board. I subsequently served as the expert for the State of Texas in the state and federal litigation involving the 2001 redistricting for U.S. Congress, the Texas Senate, the Texas House of Representatives, and the Texas State Board of Education. In the 2010 round of redistricting in Texas, I was again retained as an expert by the State of Texas to assist in defending various state election maps and systems including the district maps for the U.S. Congress, the Texas Senate, the Texas House of Representatives, and the current at large system for electing Justices to the State Supreme Court

and Court of Appeals, as well as the winner-take-all system for allocating Electoral College votes.

I have also worked as an expert on redistricting and voting rights cases at the state and/or local level in Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Michigan, Mississippi, New Mexico, New York, Pennsylvania, Washington, and Wisconsin. The details of my academic background, including all publications in the last ten years, and work as an expert, including all cases in which I have testified by deposition or at trial in the last four years, are covered in the attached CV (Appendix 1).

### **Data and Sources**

In preparing this report, I have reviewed the reports filed by the plaintiffs' experts in this case. I have relied on the analysis provided to date by Dr. Palmer and Dr. Handley in their expert reports in this case. I have also relied on various election and demographic data provided by Dr. Palmer and Dr. Handley in their disclosures related to their reports in this case. In addition, I relied on data on turnout by race for the 2022 Republican Primary election provided to counsel by the Georgia Secretary of State, and 2022 precinct-level election results for that election downloaded from the publicly available website of the Georgia Secretary of State.

### **Dr. Palmer's Reports**

Dr. Palmer, in his report in *Pendergrass v. Raffensperger* dated 12/12/2022, provides the results of an EI election analysis that he used to assess Racially Polarized Voting (RPV) in each of 40 contests between 2012 and 2022, and reports the results in his Tables 1 through 6 for five U.S. Congressional districts and as a combined focus area. Similarly, in his report in *Grant v. Raffensperger* dated 12/12/2022, Dr. Palmer provides the EI results for the same 40 contests between 2012 and 2022 as reported in his Tables 2 through 6, for three Georgia House and two Georgia Senate focus areas. The race of the candidate preferred by Black voters is indicated in Dr. Palmer's tables with an asterisk by the name of each Black candidate, and the absence of an asterisk indicating a non-Black candidate. Across the 40 reported contests 19 of the preferred candidates are Black and 21 are non-Black, providing an ideal, almost equal distribution, for comparing both Black and white voter support for Black-preferred candidates that happen to be Black, with Black voter support for Black-preferred candidates that happen not to be Black.

However, despite having this data identified in his reports and the associated opportunity analyze it, there is no discussion of the impact, if any, that the race of the candidate might have on the behavior of Black or white voters in these contests. Also, Dr. Palmer provides no party labels in these tables, and does not mention the party of candidates in his discussion of the results of his analysis.

As evident in Dr. Palmer's Tables 1-6 in his *Pendergrass* report, and Tables 2-6 in his *Grant* report, the pattern of polarization is quite striking. Black voter support for their preferred candidate is typically in the 90 percent range and scarcely varies at all across the ten years examined from 2012 to 2022. Nor does it vary in any meaningful degree from the top of the ballot elections for U.S. President to down-ballot contests like Public Service Commissioner. While slightly more varied, estimated white voter opposition to the Black-preferred candidate is typically above 80 percent. In the *Pendergrass* Table 1 for the combined focus area, Dr. Palmer reports estimates of Black voter support that only varies between 96 and 99 percent when results are rounded to the nearest percent. White voter opposition to the Black preferred candidate is slightly more varied, but still remarkably stable, ranging in *Pendergrass* Table 1 only from 84.5% to 91.4 percent.

What accounts for this remarkable stability in the divergent preferences of Black and white voters across years and offices? It is clearly not Black voter's preference for Black candidates, or white voter's disinclination to vote for Black candidates. At 98.5 percent, the average Black support for the 19 Black candidates identified as Black in Palmer's *Pendergrass* Table 1 is indeed nearly universal, but so is the average 98.4 percent support for the 21 candidates identified as non-Black in Table 1. Similarly, the average white vote in opposition to the 19 candidates identified as Black in *Pendergrass* Table 1 is a clearly cohesive 88.1 percent, but so is the average 87.1 percent white voter opposition to the 21 candidates identified as non-Black. The same can said for Dr. Palmer's results in his *Grant* report where, for example, the average Black support for the 19 candidates identified as Black in Table 2 is 98.2 percent, and Black voter support for the 21 candidates identified as non-Black is a nearly identical 98.1 percent. Similarly, the average white vote in opposition to the 19 candidates identified as Black in *Grant* Table 2 is a clearly cohesive 90.1 percent, but so is the average 89.1 percent white voter opposition to the 21 candidates identified as non-Black.

If we do consider the party affiliation of the candidates, the pattern over these election contests is stark in both the *Grant* report and the *Pendergrass* report. In all 40 contests the candidate of choice of Black voters is the Democrat and the candidate of choice of white voters is the Republican.

In contrast, the race of the candidates does not appear to be influential. Black voter support for Black Democratic candidates is certainly high, as Dr. Palmer's Tables 2 through 6 in *Grant* and Tables 1 through 5 in *Pendergrass* clearly show, but those same figures also show Black voter support in the same high range for white Democratic candidates as it is for Black Democratic candidates. Similarly, white voter support for Black Democratic candidates is very low, but white voter support for white Democratic candidates is also very low.<sup>1</sup> In other words, there appears to be just one overarching attribute of candidates that uniformly leads to their relative acceptability or unacceptability among white voters and Black voters alike. And it is not the candidate's race. It is their party affiliation.

For example, in the 2022 contest for Governor in Dr. Palmer's *Pendergrass* Table 1 (his combined focus region) Stacey Abrams, the Black Democratic candidate, gets an estimated 98.5% of the Black vote, but in the same election in the adjacent Lt. Governor contest Charlie Bailey, a white Democrat, gets an almost identical estimated 98.4% of the Black vote. Looking at White voters a similar pattern is clear. Abrams gets an estimated 10.3% of the white vote, but in the same election in the adjacent Lt. Governor contest Baily, the white Democrat, received a similar estimated 12.1% of the white vote.

Similarly, in the 2021 U.S. Senate runoffs in Dr. Palmer's *Pendergrass* Table 1 (his combined focus region) Raphael Warnock, the Black Democratic candidate gets an estimated 98.7% of the Black vote, but in the same election in the other Senate contest Jon Ossoff, a white Democrat gets an identical estimated 98.7% of the Black vote. Looking at white voters a similar pattern is clear. Warnock, the Black Democratic candidate, gets an estimated 15.2% of the white vote, but in the same election in the other Senate contest, Ossoff, the White Democrat, gets an almost identical estimated 14.5% of the white vote.

---

<sup>1</sup> The limited evidence from the 2022 endogenous elections provided in Dr. Palmer's supplemental reports do not contradict this broad pattern.

Moving beyond his EI analysis, Dr. Palmer also provides reconstituted election results to demonstrate the success rate of Black preferred candidates in his focus areas. Given that as mentioned above the Black preferred candidate is always the Democratic candidate and given the dominance of political party in the EI results as discussed above, it is no surprise that these tables show stable performance for Democratic candidates across the 40 contests, regardless of race. For example, in Dr. Palmer's Table 7 in his *Pendergrass* report, the average vote share for the Democratic candidate is 41.7 percent in the 19 contests where the Democratic candidate is Black, and a very similar 42.3 percent in the 21 contests where the Democratic candidate is not Black.

In short, all that Dr. Palmer's analysis demonstrates is that Black voters provide uniformly high levels of support for Democratic candidates and white voters provide uniformly high levels of support for Republican candidates. There is no indication in these EI results that the high levels of Black voter support for Democratic candidates is connected in any meaningful way to the race of the Democratic or Republican candidates. Similarly, there is no indication in these results that the high levels of white voter support for the Republican candidates is connected in any meaningful way to the race of the Democratic or Republican candidates.

### **Dr. Handley's Report**

Dr. Handley's December 12, 2022 report in *Alpha Phi Alpha* focuses first on general elections, and reports results similar to those reported by Dr. Palmer. Black voters support Democratic candidates and white voters support Republican candidates. She indicates that she has chosen to focus on racially contested elections, so this limits the ability to see whether this partisan pattern varies at all with the race of the candidates, but in the two contests without a Black Democrat, the Ossoff 2020 Senate contest and 2021 runoff, the results for both Black and White voters are very similar to the results for the racially contested elections, as was the case in Dr. Palmer's larger set of general elections.

Unlike Dr. Palmer, Dr. Handley also analyzes eleven racially contested statewide Democratic primaries. The results in these primaries are very different from the general election patterns. The general election pattern is a very important contrast to keep in mind when evaluating the results for these eleven primary contests. In the general elections, Black support for the Democratic candidate is very high and very stable in the upper 90% range. Similarly,



White voter opposition to the Democratic candidates is also high and stable in the 80 percent and up range.

While there is not currently a bright-line court standard for determining the level of support needed under *Gingles* prongs 2 and 3 to demonstrate cohesion, multiple plaintiffs' experts have recently discussed a minimum of 60 percent threshold for cohesion in a two-person contest. Simply having a preferred candidate (50 percent plus 1 in a two-candidate contest) is not sufficient. This is, of course, true by definition. If simply having a preferred candidate was sufficient to establish cohesion, then the *Gingles* 2 threshold test would always be met in two candidate contests and thus not actually constitute a test at all. As Dr. Palmer notes on page 4 of his *Pendergrass* report, "[i]f the group's support is roughly evenly divided between the two candidates, then the group does not cohesively support a single candidate". Even if a more stringent 75 percent or 80 percent threshold was the cohesion threshold standard, the results for the general elections provided by both Dr. Palmer and Dr. Handley clearly establish partisan polarization, with Blacks always favoring Democratic candidates at stable levels well above 80 percent, and whites favoring Republican candidates at similarly stable levels, typically above 80 percent.

Applying the 60 percent threshold for cohesion to the 40 general election contests in Dr. Palmer's *Grant* report or the 40 general election contests in Dr. Palmer's *Pendergrass* report, produces the same clear result. In 40 out of 40 contests, Black voters provide cohesive support to the Democratic candidate and white voters provide cohesive support to the opposing Republican candidate. This unequivocal result is what Palmer references as supporting his conclusion of polarized voting. As he states on pages 5-6 of his December 12, 2022 *Grant* report:

*Black voters are extremely cohesive, with a clear candidate of choice in all 40 elections. In contrast to Black voters, Figure 2 shows that White voters are highly cohesive in voting in opposition to the Black-preferred candidate in every election across the five focus areas. Table 1 lists the average level of support for the Black-preferred candidate for Black and White voters in each focus area. Across all five focus areas, Black voters support their preferred candidate with an average of 98.5% and a minimum of 95.2% of the vote, and White voters support Black-preferred candidates with an average of 8.3% and a maximum of 17.7% of the vote. This is strong evidence of racially polarized voting across all five focus areas.*

The same can be said for the 16 general election contests that Dr. Handley includes for each of her seven focus regions as reported in her Appendix C1-C7. In every one of the 16 contests examined in all seven regions, Black voter support for the Democratic candidate clearly exceeds 60 percent and in all the regular elections (excluding the one 20 candidate special Senate election in 2020) exceeded 90 percent. White voters provided cohesive support to the opposing Republican candidates exceeding 60% in every contest with the sole exception of the 2022 Senate contest in Appendix 1, where the white estimated vote fell just short of 60 percent at 59.3 percent.

As Dr. Handley, herself, states on page 9 of her December 23, 2022 Report:

*Overall, the average percentage of Black vote for the 16 Black-preferred candidates is 96.1%. The average percentage of White vote for these 16 Black-preferred candidates across the seven areas is 11.2%. (When Ossoff is excluded, and only Black-preferred Black candidates are considered, the average White vote is slightly lower: 11.1 %.) The highest average White vote for any of the 16 candidates is 14.4% for Raphael Warnock in his 2022 general election bid for re-election. While the percentage of White support for candidates preferred by Black voters varies across the areas, in five of the seven areas the average did not even reach 10%. White crossover voting was the highest in the Eastern Atlanta Metro Region (Map 1), but only about one third of White voters typically supported the Black-preferred Black candidates in this area.*

She finds similarly clear evidence of polarization when she considers the analysis of state legislative elections included in her Appendix B1 and B2, stating on page 9 of her December 23, 2022:

*Nearly every one of the 54 of the state legislative elections analyzed (53 of the 54 contests, or 98.1%) was racially polarized. The estimates of Black and White support for the state legislative candidates in these contests analyzed can be found in Appendices B1 (State Senate) and B2 (State House). Black voters were quite cohesive in supporting Black candidates in these state legislative contests: on average, 97.4% of Black voters supported their preferred Black state senate candidates, and 91.5% supported their preferred Black state house candidate. Very few White voters supported these candidates, however: Black-preferred Black state senate candidates garnered, on average, 10.1% of the White vote; Black-preferred Black state house candidates received, on average, 9.8% of the White vote.*

Based on their summary descriptions of their general election analysis, it is clear that both Dr. Palmer and Dr. Handley know what a convincing pattern of polarization looks like. That clear pattern is not present once candidate party labels are removed from the contest. Dr. Palmer

makes no effort to address this issue of conflating polarization in support for Democratic versus Republican candidates with racial polarization. Dr. Handley attempts to address the issue by providing analysis for eleven Democratic primaries in each of her seven focus regions.

But looking at the Democratic primary contests, as reported in Dr. Handley's Appendix C1-C7, the contrast to the pattern in the partisan general elects is stark. As detailed above, the pattern of Black voter support for Democratic candidates and white voter support for their Republican opponents in general elections is near universal, and both Black and white voters show strong and highly stable levels of cohesion. In contrast the pattern Dr. Handley identifies in the Democratic primaries is far from universal or stable. The support of Black voters for Black candidates varies widely, and seldom reaches above 80 percent. Similarly, white voter support for Democratic candidates is typically below 20% in the general elections, but in the primaries white support for Black candidates varies widely and is often fairly evenly divided. In many of the contests within Dr. Handley's six focus regions, for example, the votes of Blacks, whites, or both are divided too evenly to characterize the voting as cohesive. Even ignoring any concern for establishing minority or majority cohesion and applying a very loose standard of Blacks and whites simply preferring different candidates, Dr. Handley is only able to conclude that "the majority (55.8%) of the contests I analyzed were racially polarized" (page 10), a level not much above chance, and far below the 100 percent or 98.1 percent reported for general elections.

If we consider the *Gingles* 2 and 3 cohesion thresholds, even this slight result disappears. Using even a modest 60% standard for voter cohesion, Black voters vote cohesively for Black candidates in only 35 contests out of 77 (46 percent). If we add the instances where Blacks vote cohesively for white candidate that rises to 49 contests (64 percent of the 77 total). In those 49 contests, white voters cohesively opposed the Black preference in only 10 contests (20 percent of the 49 contests).

### **Herschel Walker Senate Race**

The recent 2022 Republican U.S. Senate primary provides an additional racially contested primary to consider. Among the six candidates, the majority winner was Herschel Walker, one of the three Black candidates. Given that Black voters were less than 12 percent of the voters in any county in the state in that primary, and that Walker received a majority of the vote in every county in Georgia, it is clear the Walker was the preferred candidate among White voters

in the Republican primary. This can be seen as well in an initial look at EI estimates for the area covered in Dr. Handley’s Appendix A1, reproduced below in Table 1 (Eastern Atlanta Metro Region – Map Area 1, Dekalb, Henry, Morgan, Newton, Rockdale, and Walton). With an estimated 62 percent support among Black voters, and 67 percent support among white voters, Walker is the preferred candidate of both Black and white voters in the Republican primary.

Table 1; Ecological Estimates of Voting Patterns by Race in the 2022 Republican U.S. Senate Primary for Dr. Handley’s Eastern Atlanta Metro Region

			95% Confidence Interval			95% Confidence Interval			95% Confidence Interval	
Last Name	Candidate Race	Black support	Low	High	White Support	Low	High	Other Support	Low	High
Herschel Walker	Black	<b>62.4%</b>	57.8%	67.4%	<b>67.0%</b>	66.3%	67.6%	5.3%	1.8%	11.7%
Kelvin King	Black	<b>10.1%</b>	7.7%	12.8%	<b>2.5%</b>	2.0%	3.0%	17.5%	12.5%	22.5%
"Jon" McColumn	Black	<b>3.0%</b>	1.7%	4.8%	<b>0.9%</b>	0.6%	1.2%	22.4%	18.8%	25.4%
Gary Black	white	<b>12.8%</b>	9.6%	16.2%	<b>15.3%</b>	14.5%	16.0%	9.3%	3.3%	17.0%
Latham Saddler	white	<b>7.1%</b>	4.1%	10.7%	<b>12.7%</b>	11.9%	13.5%	15.7%	7.8%	24.0%
Josh Clark	white	<b>4.5%</b>	2.7%	6.8%	<b>1.6%</b>	1.1%	2.2%	29.8%	23.7%	35.3%

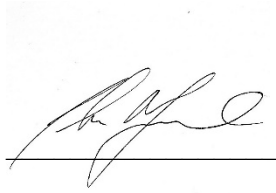
## Summary Conclusions

The partisan general election analysis report by Dr. Palmer and Dr. Handley show that Black voters cohesively support Democratic candidates, regardless of whether those candidates are Black or White. Similarly, white voters cohesively vote for Republican candidates, and in opposition to Democratic candidates, regardless of whether those Democratic candidates are Black or white. Thus, it is cohesive Black voter support for *Democratic* candidates, and white voter support for *Republican* candidates that the general election analysis reveals, not cohesive Black voter support for *Black* candidates and white voter support for *white* candidates.

Nonetheless, the voting pattern is clearly one of partisan polarized voting, with both highly cohesive Black vote for the Democrat and highly cohesive white vote for the Republican candidate. The more limited analysis of Democratic primaries reported by Dr. Handley shows a very different picture of voting behavior from the general elections. Nothing even approaching the levels of Black and white cohesion seen in the general elections appears anywhere in the

primary contests, and the overall patterns are mixed and variable even within the same set of voters on the same day as we see in the multiple contests in the 2018 Democratic primary. Similarly, the 2022 U.S. Senate Republican primary indicates that white Republican primary voters are willing to support a Black Republican candidate over multiple white opponents.

February 6, 2023

A handwritten signature in black ink, appearing to read "John R. Alford", is written over a horizontal line.

John R. Alford, Ph.D.

# **Appendix 1**

**CV**

**John R. Alford**  
Curriculum Vitae  
January 2023

Dept. of Political Science  
Rice University - MS-24  
P.O. Box 1892  
Houston, Texas 77251-1892  
713-348-3364  
jra@rice.edu

**Employment:**

Professor, Rice University, 2015 to present.  
Associate Professor, Rice University, 1985-2015.  
Assistant Professor, University of Georgia, 1981-1985.  
Instructor, Oakland University, 1980-1981.  
Teaching-Research Fellow, University of Iowa, 1977-1980.  
Research Associate, Institute for Urban Studies, Houston, Texas, 1976-1977.

**Education:**

Ph.D., University of Iowa, Political Science, 1981.  
M.A., University of Iowa, Political Science, 1980.  
M.P.A., University of Houston, Public Administration, 1977.  
B.S., University of Houston, Political Science, 1975.

**Books:**

*Predisposed: Liberals, Conservatives, and the Biology of Political Differences.* New York: Routledge, 2013. Co-authors, John R. Hibbing and Kevin B. Smith.

**Articles:**

“Political Orientations Vary with Detection of Androstenone,” with Amanda Friesen, Michael Gruszczynski, and Kevin B. Smith. **Politics and the Life Sciences.** (Spring, 2020).

“Intuitive ethics and political orientations: Testing moral foundations as a theory of political ideology.” with Kevin Smith, John Hibbing, Nicholas Martin, and Peter Hatemi. **American Journal of Political Science.** (April, 2017).

“The Genetic and Environmental Foundations of Political, Psychological, Social, and Economic Behaviors: A Panel Study of Twins and Families.” with Peter Hatemi, Kevin Smith, and John Hibbing. **Twin Research and Human Genetics.** (May, 2015.)

“Liberals and conservatives: Non-convertible currencies.” with John R. Hibbing and Kevin B. Smith. **Behavioral and Brain Sciences** (January, 2015).

“Non-Political Images Evoke Neural Predictors Of Political Ideology.” with Woo-Young Ahn, Kenneth T. Kishida, Xiaosi Gu, Terry Lohrenz, Ann Harvey, Kevin Smith, Gideon Yaffe, John Hibbing, Peter Dayan, P. Read Montague. **Current Biology.** (November, 2014).



“Cortisol and Politics: Variance in Voting Behavior is Predicted by Baseline Cortisol Levels.” with Jeffrey French, Kevin Smith, Adam Guck, Andrew Birnie, and John Hibbing. **Physiology & Behavior**. (June, 2014).

“Differences in Negativity Bias Underlie Variations in Political Ideology.” with Kevin B. Smith and John R. Hibbing. **Behavioral and Brain Sciences**. (June, 2014).

“Negativity bias and political preferences: A response to commentators Response.” with Kevin B. Smith and John R. Hibbing. **Behavioral and Brain Sciences**. (June, 2014).

“Genetic and Environmental Transmission of Political Orientations.” with Carolyn L. Funk, Matthew Hibbing, Kevin B. Smith, Nicholas R. Eaton, Robert F. Krueger, Lindon J. Eaves, John R. Hibbing. **Political Psychology**, (December, 2013).

“Biology, Ideology, and Epistemology: How Do We Know Political Attitudes Are Inherited and Why Should We Care?” with Kevin Smith, Peter K. Hatemi, Lindon J. Eaves, Carolyn Funk, and John R. Hibbing. **American Journal of Political Science**. (January, 2012)

“Disgust Sensitivity and the Neurophysiology of Left-Right Political Orientations.” with Kevin Smith, John Hibbing, Douglas Oxley, and Matthew Hibbing, **PlosONE**, (October, 2011).

“Linking Genetics and Political Attitudes: Re-Conceptualizing Political Ideology.” with Kevin Smith, John Hibbing, Douglas Oxley, and Matthew Hibbing, **Political Psychology**, (June, 2011).

“The Politics of Mate Choice.” with Peter Hatemi, John R. Hibbing, Nicholas Martin and Lindon Eaves, **Journal of Politics**, (March, 2011).

“Not by Twins Alone: Using the Extended Twin Family Design to Investigate the Genetic Basis of Political Beliefs” with Peter Hatemi, John Hibbing, Sarah Medland, Matthew Keller, Kevin Smith, Nicholas Martin, and Lindon Eaves, **American Journal of Political Science**, (July, 2010).

“The Ultimate Source of Political Opinions: Genes and the Environment” with John R. Hibbing in **Understanding Public Opinion**, 3rd Edition eds. Barbara Norrander and Clyde Wilcox, Washington D.C.: CQ Press, (2010).

“Is There a ‘Party’ in your Genes” with Peter Hatemi, John R. Hibbing, Nicholas Martin and Lindon Eaves, **Political Research Quarterly**, (September, 2009).

“Twin Studies, Molecular Genetics, Politics, and Tolerance: A Response to Beckwith and Morris” with John R. Hibbing and Cary Funk, **Perspectives on Politics**, (December, 2008). This is a solicited response to a critique of our 2005 APSR article “Are Political Orientations Genetically Transmitted?”

“Political Attitudes Vary with Physiological Traits” with Douglas R. Oxley, Kevin B. Smith, Matthew V. Hibbing, Jennifer L. Miller, Mario Scalora, Peter K. Hatemi, and John R. Hibbing, **Science**, (September 19, 2008).

“The New Empirical Biopolitics” with John R. Hibbing, **Annual Review of Political Science**, (June, 2008).

“Beyond Liberals and Conservatives to Political Genotypes and Phenotypes” with John R. Hibbing and Cary Funk, **Perspectives on Politics**, (June, 2008). This is a solicited response to a critique of our 2005 APSR article “Are Political Orientations Genetically Transmitted?”

"Personal, Interpersonal, and Political Temperaments" with John R. Hibbing, **Annals of the American Academy of Political and Social Science**, (November, 2007).

"Is Politics in our Genes?" with John R. Hibbing, **Tidsskriftet Politik**, (February, 2007).

"Biology and Rational Choice" with John R. Hibbing, **The Political Economist**, (Fall, 2005)

"Are Political Orientations Genetically Transmitted?" with John R. Hibbing and Carolyn Funk, **American Political Science Review**, (May, 2005). (The main findings table from this article has been reprinted in two college level text books - Psychology, 9th ed. and Invitation to Psychology 4th ed. both by Wade and Tavis, Prentice Hall, 2007).

"The Origin of Politics: An Evolutionary Theory of Political Behavior" with John R. Hibbing, **Perspectives on Politics**, (December, 2004).

"Accepting Authoritative Decisions: Humans as Wary Cooperators" with John R. Hibbing, **American Journal of Political Science**, (January, 2004).

"Electoral Convergence of the Two Houses of Congress" with John R. Hibbing, in **The Exceptional Senate**, ed. Bruce Oppenheimer, Columbus: Ohio State University Press, (2002).

"We're All in this Together: The Decline of Trust in Government, 1958-1996." in **What is it About Government that Americans Dislike?**, eds. John Hibbing and Beth Theiss-Morse, Cambridge: Cambridge University Press, (2001).

"The 2000 Census and the New Redistricting," **Texas State Bar Association School Law Section Newsletter**, (July, 2000).

"Overdraft: The Political Cost of Congressional Malfeasance" with Holly Teeters, Dan Ward, and Rick Wilson, **Journal of Politics** (August, 1994).

"Personal and Partisan Advantage in U.S. Congressional Elections, 1846-1990" with David W. Brady, in **Congress Reconsidered** 5th edition, eds. Larry Dodd and Bruce Oppenheimer, CQ Press, (1993).

"The 1990 Congressional Election Results and the Fallacy that They Embodied an Anti-Incumbent Mood" with John R. Hibbing, **PS** 25 (June, 1992).

"Constituency Population and Representation in the United States Senate" with John R. Hibbing. **Legislative Studies Quarterly**, (November, 1990).

"Editors' Introduction: Electing the U.S. Senate" with Bruce I. Oppenheimer. **Legislative Studies Quarterly**, (November, 1990).

"Personal and Partisan Advantage in U.S. Congressional Elections, 1846-1990" with David W. Brady, in **Congress Reconsidered** 4th edition, eds. Larry Dodd and Bruce Oppenheimer, CQ Press, (1988). Reprinted in *The Congress of the United States, 1789-1989*, ed. Joel Silby, Carlson Publishing Inc., (1991), and in *The Quest for Office*, eds. Wayne and Wilcox, St. Martins Press, (1991).

"Can Government Regulate Fertility? An Assessment of Pro-natalist Policy in Eastern Europe" with Jerome Legge. **The Western Political Quarterly** (December, 1986).

"Partisanship and Voting" with James Campbell, Mary Munro, and Bruce Campbell, in **Research in Micropolitics. Volume 1 - Voting Behavior**. Samuel Long, ed. JAI Press, (1986).

"Economic Conditions and Individual Vote in the Federal Republic of Germany" with Jerome S. Legge. **Journal of Politics** (November, 1984).

"Television Markets and Congressional Elections" with James Campbell and Keith Henry. **Legislative Studies Quarterly** (November, 1984).

"Economic Conditions and the Forgotten Side of Congress: A Foray into U.S. Senate Elections" with John R. Hibbing, **British Journal of Political Science** (October, 1982).

"Increased Incumbency Advantage in the House" with John R. Hibbing, **Journal of Politics** (November, 1981). Reprinted in *The Congress of the United States, 1789-1989*, Carlson Publishing Inc., (1991).

"The Electoral Impact of Economic Conditions: Who is Held Responsible?" with John R. Hibbing, **American Journal of Political Science** (August, 1981).

"Comment on Increased Incumbency Advantage" with John R. Hibbing, Refereed communication: **American Political Science Review** (March, 1981).

"Can Government Regulate Safety? The Coal Mine Example" with Michael Lewis-Beck, **American Political Science Review** (September, 1980).

## **Awards and Honors:**

CQ Press Award - 1988, honoring the outstanding paper in legislative politics presented at the 1987 Annual Meeting of the American Political Science Association. Awarded for "The Demise of the Upper House and the Rise of the Senate: Electoral Responsiveness in the United States Senate" with John Hibbing.

## **Research Grants:**

National Science Foundation, 2009-2011, "Identifying the Biological Influences on Political Temperaments", with John Hibbing, Kevin Smith, Kim Espy, Nicolas Martin and Read Montague. This is a collaborative project involving Rice, University of Nebraska, Baylor College of Medicine, and Queensland Institute for Medical Research.

National Science Foundation, 2007-2010, "Genes and Politics: Providing the Necessary Data", with John Hibbing, Kevin Smith, and Lindon Eaves. This is a collaborative project involving Rice, University of Nebraska, Virginia Commonwealth University, and the University of Minnesota.

National Science Foundation, 2007-2010, "Investigating the Genetic Basis of Economic Behavior", with John Hibbing and Kevin Smith. This is a collaborative project involving Rice, University of Nebraska, Virginia Commonwealth University, and the Queensland Institute of Medical Research.

Rice University Faculty Initiatives Fund, 2007-2009, "The Biological Substrates of Political Behavior". This is in assistance of a collaborative project involving Rice, Baylor College of Medicine, Queensland Institute of Medical Research, University of Nebraska, Virginia Commonwealth University, and the University of Minnesota.

National Science Foundation, 2004-2006, "Decision-Making on Behalf of Others", with John Hibbing. This is a collaborative project involving Rice and the University of Nebraska.

National Science Foundation, 2001-2002, dissertation grant for Kevin Arceneaux, "Doctoral Dissertation Research in Political Science: Voting Behavior in the Context of U.S. Federalism."

National Science Foundation, 2000-2001, dissertation grant for Stacy Ulbig, "Doctoral Dissertation Research in Political Science: Sub-national Contextual Influences on Political Trust."

National Science Foundation, 1999-2000, dissertation grant for Richard Engstrom, "Doctoral Dissertation Research in Political Science: Electoral District Structure and Political Behavior."

Rice University Research Grant, 1985, Recent Trends in British Parliamentary Elections.

Faculty Research Grants Program, University of Georgia, Summer, 1982. Impact of Media Structure on Congressional Elections, with James Campbell.

## Papers Presented:

"The Physiological Basis of Political Temperaments" 6th European Consortium for Political Research General Conference, Reykjavik, Iceland (2011), with Kevin Smith, and John Hibbing.

"Identifying the Biological Influences on Political Temperaments" National Science Foundation Annual Human Social Dynamics Meeting (2010), with John Hibbing, Kimberly Espy, Nicholas Martin, Read Montague, and Kevin B. Smith.

"Political Orientations May Be Related to Detection of the Odor of Androstenone" Annual meeting of the Midwest Political Science Association, Chicago, IL (2010), with Kevin Smith, Amanda Balzer, Michael Gruszczynski, Carly M. Jacobs, and John Hibbing.

"Toward a Modern View of Political Man: Genetic and Environmental Transmission of Political Orientations from Attitude Intensity to Political Participation" Annual meeting of the American Political Science Association, Washington, DC (2010), with Carolyn Funk, Kevin Smith, and John Hibbing.

"Genetic and Environmental Transmission of Political Involvement from Attitude Intensity to Political Participation" Annual meeting of the International Society for Political Psychology, San Francisco, CA (2010), with Carolyn Funk, Kevin Smith, and John Hibbing.

"Are Violations of the EEA Relevant to Political Attitudes and Behaviors?" Annual meeting of the Midwest Political Science Association, Chicago, IL (2010), with Kevin Smith, and John Hibbing.

"The Neural Basis of Representation" Annual meeting of the American Political Science Association, Toronto, Canada (2009), with John Hibbing.

“Genetic and Environmental Transmission of Value Orientations” Annual meeting of the American Political Science Association, Toronto, Canada (2009), with Carolyn Funk, Kevin Smith, Matthew Hibbing, Pete Hatemi, Robert Krueger, Lindon Eaves, and John Hibbing.

“The Genetic Heritability of Political Orientations: A New Twin Study of Political Attitudes” Annual Meeting of the International Society for Political Psychology, Dublin, Ireland (2009), with John Hibbing, Cary Funk, Kevin Smith, and Peter K Hatemi.

“The Heritability of Value Orientations” Annual meeting of the Behavior Genetics Association, Minneapolis, MN (2009), with Kevin Smith, John Hibbing, Carolyn Funk, Robert Krueger, Peter Hatemi, and Lindon Eaves.

“The Ick Factor: Disgust Sensitivity as a Predictor of Political Attitudes” Annual meeting of the Midwest Political Science Association, Chicago, IL (2009), with Kevin Smith, Douglas Oxley Matthew Hibbing, and John Hibbing.

“The Ideological Animal: The Origins and Implications of Ideology” Annual meeting of the American Political Science Association, Boston, MA (2008), with Kevin Smith, Matthew Hibbing, Douglas Oxley, and John Hibbing.

“The Physiological Differences of Liberals and Conservatives” Annual meeting of the Midwest Political Science Association, Chicago, IL (2008), with Kevin Smith, Douglas Oxley, and John Hibbing.

“Looking for Political Genes: The Influence of Serotonin on Political and Social Values” Annual meeting of the Midwest Political Science Association, Chicago, IL (2008), with Peter Hatemi, Sarah Medland, John Hibbing, and Nicholas Martin.

“Not by Twins Alone: Using the Extended Twin Family Design to Investigate the Genetic Basis of Political Beliefs” Annual meeting of the American Political Science Association, Chicago, IL (2007), with Peter Hatemi, John Hibbing, Matthew Keller, Nicholas Martin, Sarah Medland, and Lindon Eaves.

“Factorial Association: A generalization of the Fulker between-within model to the multivariate case” Annual meeting of the Behavior Genetics Association, Amsterdam, The Netherlands (2007), with Sarah Medland, Peter Hatemi, John Hibbing, William Coventry, Nicholas Martin, and Michael Neale.

“Not by Twins Alone: Using the Extended Twin Family Design to Investigate the Genetic Basis of Political Beliefs” Annual meeting of the Midwest Political Science Association, Chicago, IL (2007), with Peter Hatemi, John Hibbing, Nicholas Martin, and Lindon Eaves.

“Getting from Genes to Politics: The Connecting Role of Emotion-Reading Capability” Annual Meeting of the International Society for Political Psychology, Portland, OR, (2007.), with John Hibbing.

“The Neurological Basis of Representative Democracy.” Hendricks Conference on Political Behavior, Lincoln, NE (2006), with John Hibbing.

“The Neural Basis of Representative Democracy” Annual meeting of the American Political Science Association, Philadelphia, PA (2006), with John Hibbing.

“How are Political Orientations Genetically Transmitted? A Research Agenda” Annual meeting of the Midwest Political Science Association, Chicago Illinois (2006), with John Hibbing.

"The Politics of Mate Choice" Annual meeting of the Southern Political Science Association, Atlanta, GA (2006), with John Hibbing.

"The Challenge Evolutionary Biology Poses for Rational Choice" Annual meeting of the American Political Science Association, Washington, DC (2005), with John Hibbing and Kevin Smith.

"Decision Making on Behalf of Others" Annual meeting of the American Political Science Association, Washington, DC (2005), with John Hibbing.

"The Source of Political Attitudes and Behavior: Assessing Genetic and Environmental Contributions" Annual meeting of the Midwest Political Science Association, Chicago Illinois (2005), with John Hibbing and Carolyn Funk.

"The Source of Political Attitudes and Behavior: Assessing Genetic and Environmental Contributions" Annual meeting of the American Political Science Association, Chicago Illinois (2004), with John Hibbing and Carolyn Funk.

"Accepting Authoritative Decisions: Humans as Wary Cooperators" Annual Meeting of the Midwest Political Science Association, Chicago, Illinois (2002), with John Hibbing

"Can We Trust the NES Trust Measure?" Annual Meeting of the Midwest Political Science Association, Chicago, Illinois (2001), with Stacy Ulbig.

"The Impact of Organizational Structure on the Production of Social Capital Among Group Members" Annual Meeting of the Southern Political Science Association, Atlanta, Georgia (2000), with Allison Rinden.

"Isolating the Origins of Incumbency Advantage: An Analysis of House Primaries, 1956-1998" Annual Meeting of the Southern Political Science Association, Atlanta, Georgia (2000), with Kevin Arceneaux.

"The Electorally Indistinct Senate," Norman Thomas Conference on Senate Exceptionalism, Vanderbilt University; Nashville, Tennessee; October (1999), with John R. Hibbing.

"Interest Group Participation and Social Capital" Annual Meeting of the Midwest Political Science Association, Chicago, Illinois (1999), with Allison Rinden.

"We're All in this Together: The Decline of Trust in Government, 1958-1996." The Hendricks Symposium, University of Nebraska, Lincoln. (1998)

"Constituency Population and Representation in the United States Senate," Electing the Senate; Houston, Texas; December (1989), with John R. Hibbing.

"The Disparate Electoral Security of House and Senate Incumbents," American Political Science Association Annual Meetings; Atlanta, Georgia; September (1989), with John R. Hibbing.

"Partisan and Incumbent Advantage in House Elections," Annual Meeting of the Southern Political Science Association (1987), with David W. Brady.

"Personal and Party Advantage in U.S. House Elections, 1846-1986" with David W. Brady, 1987 Social Science History Association Meetings.



"The Demise of the Upper House and the Rise of the Senate: Electoral Responsiveness in the United States Senate" with John Hibbing, 1987 Annual Meeting of the American Political Science Association.

"A Comparative Analysis of Economic Voting" with Jerome Legge, 1985 Annual Meeting of the American Political Science Association.

"An Analysis of Economic Conditions and the Individual Vote in Great Britain, 1964-1979" with Jerome Legge, 1985 Annual Meeting of the Western Political Science Association.

"Can Government Regulate Fertility? An Assessment of Pro-natalist Policy in Eastern Europe" with Jerome Legge, 1985 Annual Meeting of the Southwestern Social Science Association.

"Economic Conditions and the Individual Vote in the Federal Republic of Germany" with Jerome S. Legge, 1984 Annual Meeting of the Southern Political Science Association.

"The Conditions Required for Economic Issue Voting" with John R. Hibbing, 1984 Annual Meeting of the Midwest Political Science Association.

"Incumbency Advantage in Senate Elections," 1983 Annual Meeting of the Midwest Political Science Association.

"Television Markets and Congressional Elections: The Impact of Market/District Congruence" with James Campbell and Keith Henry, 1982 Annual Meeting of the Southern Political Science Association.

"Economic Conditions and Senate Elections" with John R. Hibbing, 1982 Annual Meeting of the Midwest Political Science Association. "Pocketbook Voting: Economic Conditions and Individual Level Voting," 1982 Annual Meeting of the American Political Science Association.

"Increased Incumbency Advantage in the House," with John R. Hibbing, 1981 Annual Meeting of the Midwest Political Science Association.

## **Other Conference Participation:**

Roundtable Participant – Closing Round-table on Biopolitics; 2016 UC Merced Conference on Bio-Politics and Political Psychology, Merced, CA.

Roundtable Participant "Genes, Brains, and Core Political Orientations" 2008 Annual Meeting of the Southwestern Political Science Association, Las Vegas.

Roundtable Participant "Politics in the Laboratory" 2007 Annual Meeting of the Southern Political Science Association, New Orleans.

Short Course Lecturer, "What Neuroscience has to Offer Political Science" 2006 Annual Meeting of the American Political Science Association.

Panel chair and discussant, "Neuro-scientific Advances in the Study of Political Science" 2006 Annual Meeting of the American Political Science Association.



Presentation, "The Twin Study Approach to Assessing Genetic Influences on Political Behavior" Rice Conference on New Methods for Understanding Political Behavior, 2005.

Panel discussant, "The Political Consequences of Redistricting," 2002 Annual Meeting of the American Political Science Association.

Panel discussant, "Race and Redistricting," 1999 Annual Meeting of the Midwest Political Science Association.

Invited participant, "Roundtable on Public Dissatisfaction with American Political Institutions", 1998 Annual Meeting of the Southwestern Social Science Association.

Presentation, "Redistricting in the '90s," Texas Economic and Demographic Association, 1997.

Panel chair, "Congressional Elections," 1992 Annual Meeting of the Southern Political Science Association.

Panel discussant, "Incumbency and Congressional Elections," 1992 Annual Meeting of the American Political Science Association.

Panel chair, "Issues in Legislative Elections," 1991 Annual Meeting of the Midwest Political Science Association.

Panel chair, "Economic Attitudes and Public Policy in Europe," 1990 Annual Meeting of the Southern Political Science Association

Panel discussant, "Retrospective Voting in U.S. Elections," 1990 Annual Meeting of the Midwest Political Science Association.

Co-convener, with Bruce Oppenheimer, of Electing the Senate, a national conference on the NES 1988 Senate Election Study. Funded by the Rice Institute for Policy Analysis, the University of Houston Center for Public Policy, and the National Science Foundation, Houston, Texas, December, 1989.

Invited participant, Understanding Congress: A Bicentennial Research Conference, Washington, D.C., February, 1989.

Invited participant--Hendricks Symposium on the United States Senate, University of Nebraska, Lincoln, Nebraska, October, 1988

Invited participant--Conference on the History of Congress, Stanford University, Stanford, California, June, 1988.

Invited participant, "Roundtable on Partisan Realignment in the 1980's", 1987 Annual Meeting of the Southern Political Science Association.

## **Professional Activities:**

### **Other Universities:**

Invited Speaker, Annual Lecture, Psi Kappa -the Psychology Club at Houston Community College, 2018.

Invited Speaker, Annual Allman Family Lecture, Dedman College Interdisciplinary Institute, Southern Methodist University, 2016.

Invited Speaker, Annual Lecture, Psi Sigma Alpha – Political Science Dept., Oklahoma State University, 2015.

Invited Lecturer, Department of Political Science, Vanderbilt University, 2014.

Invited Speaker, Annual Lecture, Psi Kappa -the Psychology Club at Houston Community College, 2014.

Invited Speaker, Graduate Student Colloquium, Department of Political Science, University of New Mexico, 2013.

Invited Keynote Speaker, Political Science Alumni Evening, University of Houston, 2013.

Invited Lecturer, Biology and Politics Masters Seminar (John Geer and David Bader), Department of Political Science and Biology Department, Vanderbilt University, 2010.

Invited Lecturer, Biology and Politics Senior Seminar (John Geer and David Bader), Department of Political Science and Biology Department, Vanderbilt University, 2008.

Visiting Fellow, the Hoover Institution, Stanford University, 2007.

Invited Speaker, Joint Political Psychology Graduate Seminar, University of Minnesota, 2007.

Invited Speaker, Department of Political Science, Vanderbilt University, 2006.

#### **Member:**

Editorial Board, Journal of Politics, 2007-2008.

Planning Committee for the National Election Studies' Senate Election Study, 1990-92.

Nominations Committee, Social Science History Association, 1988

#### **Reviewer for:**

American Journal of Political Science  
 American Political Science Review  
 American Politics Research  
 American Politics Quarterly  
 American Psychologist  
 American Sociological Review  
 Canadian Journal of Political Science  
 Comparative Politics  
 Electoral Studies  
 Evolution and Human Behavior  
 International Studies Quarterly

Journal of Politics  
Journal of Urban Affairs  
Legislative Studies Quarterly  
National Science Foundation  
PLoS ONE  
Policy Studies Review  
Political Behavior  
Political Communication  
Political Psychology  
Political Research Quarterly  
Public Opinion Quarterly  
Science  
Security Studies  
Social Forces  
Social Science Quarterly  
Western Political Quarterly

### **University Service:**

Member, University Senate, 2021-2023.

Member, University Parking Committee, 2016-2022.

Member, University Benefits Committee, 2013-2016.

Internship Director for the Department of Political Science, 2004-2018.

Member, University Council, 2012-2013.

Invited Speaker, Rice Classroom Connect, 2016.

Invited Speaker, Glasscock School, 2016.

Invited Speaker, Rice Alumni Association, Austin, 2016.

Invited Speaker, Rice Alumni Association, New York City, 2016.

Invited Speaker, Rice TEDxRiceU , 2013.

Invited Speaker, Rice Alumni Association, Atlanta, 2011.

Lecturer, Advanced Topics in AP Psychology, Rice University AP Summer Institute, 2009.

Scientia Lecture Series: "Politics in Our Genes: The Biology of Ideology" 2008

Invited Speaker, Rice Alumni Association, Seattle, San Francisco and Los Angeles, 2008.

Invited Speaker, Rice Alumni Association, Austin, Chicago and Washington, DC, 2006.

Invited Speaker, Rice Alumni Association, Dallas and New York, 2005.

Director: Rice University Behavioral Research Lab and Social Science Computing Lab, 2005-2006.

University Official Representative to the Inter-university Consortium for Political and Social Research, 1989-2012.

Director: Rice University Social Science Computing Lab, 1989-2004.

Member, Rice University Information Technology Access and Security Committee, 2001-2002

Rice University Committee on Computers, Member, 1988-1992, 1995-1996; Chair, 1996-1998, Co-chair, 1999.

Acting Chairman, Rice Institute for Policy Analysis, 1991-1992.

Divisional Member of the John W. Gardner Dissertation Award Selection Committee, 1998

Social Science Representative to the Educational Sub-committee of the Computer Planning Committee, 1989-1990.

Director of Graduate Admissions, Department of Political Science, Rice University, 1986-1988.

Co-director, Mellon Workshop: Southern Politics, May, 1988.

Guest Lecturer, Mellon Workshop: The U.S. Congress in Historical Perspective, May, 1987 and 1988.

Faculty Associate, Hanszen College, Rice University, 1987-1990.

Director, Political Data Analysis Center, University of Georgia, 1982-1985.

### **External Consulting:**

Expert Witness, Soto Palmer v. Hobbs, (Washington State), racially polarized voting analysis, 2022.

Expert Witness, Pendergrass v. Raffensperger, (Georgia State House and Senate), racially polarized voting analysis, 2022.

Expert Witness, LULAC, et al. v. Abbott, et al., Voto Latino, et al. v. Scott, et al., Mexican American Legislative Caucus, et al. v. Texas, et al., Texas NAACP v. Abbott, et al., Fair Maps Texas, et al. v. Abbott, et al., US v. Texas, et al. (consolidated cases) challenges to Texas Congressional, State Senate, State House, and State Board of Education districting, 2022.

Expert Witness, Robinson/Galmon v. Ardoyn, (Louisiana), racially polarized voting analysis, 2022.

Expert Witness, Christian Ministerial Alliance et al v. Arkansas, racially polarized voting analysis, 2022.

Expert Witness, Johnson v. Wisconsin Elections Commission, 2022.

Expert Witness, Rivera, et al. v. Schwab, Alonzo, et al. v. Schwab, Frick, et al. v. Schwab, (consolidated cases) challenge to Kansas congressional map, 2022.

Expert Witness, Grant v. Raffensperger, challenge to Georgia congressional map, 2022

Expert Witness, Brooks et al. v. Abbot, challenge to State Senate District 10, 2022.

Expert Witness, Elizondo v. Spring Branch ISD, 2022.

Expert Witness, Portugal v. Franklin County, et al., challenge to Franklin County, Washington at large County Commissioner's election system, 2022.

Consulting Expert, Gressman Math/Science Petitioners, Pennsylvania Congressional redistricting, 2022.

Consultant, Houston Community College – evaluation of election impact for redrawing of college board election districts, 2022.

Consultant, Lone Star College – evaluation of election impact for redrawing of college board election districts, 2022.

Consultant, Killeen ISD – evaluation of election impact for redrawing of school board election districts, 2022.

Consultant, Houston ISD – evaluation of election impact for redrawing of school board election districts, 2022.

Consultant, Brazosport ISD – evaluation of election impact for redrawing of school board election districts, 2022.

Consultant, Dallas ISD – evaluation of election impact for redrawing of school board election districts, 2022.

Consultant, Lancaster ISD – redrawing of all school board member election districts including demographic analysis and redrawing of election districts, 2021.

Consultant, City of Baytown – redrawing of all city council member election districts including demographic analysis and redrawing of election districts, 2021.

Consultant, Goose Creek ISD – redrawing of all board member election districts including demographic analysis and redrawing of election districts, 2021.

Expert Witness, Bruni et al. v. State of Texas, straight ticket voting analysis, 2020.

Consulting Expert, Sarasota County, VRA challenge to district map, 2020.

Expert Witness, Kumar v. Frisco ISD, TX, racially polarized voting analysis, 2019.

Expert Witness, Vaughan v. Lewisville ISD, TX, racially polarized voting analysis, 2019.

Expert Witness, Johnson v. Ardoyn, (Louisiana), racially polarized voting analysis, 2019.

Expert Witness, Flores et al. v. Town of Islip, NY, racially polarized voting analysis, 2018.

Expert Witness, Tyson v. Richardson ISD, racially polarized voting analysis, 2018.

Expert Witness, Dwight v. State of Georgia, racially polarized voting analysis, 2018.

Expert Witness, NAACP v. East Ramapo Central School District, racially polarized voting analysis, 2018.

Expert Witness, Georgia NAACP v. State of Georgia, racially polarized voting analysis, 2018.

## *Pendergrass* Doc. 231



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

ALPHA PHI ALPHA FRATERNITY INC.  
et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official  
capacity as Secretary of State of Georgia,

Defendant.

CIVIL ACTION FILE  
NO. 1:21-CV-5337-SCJ

---

COAKLEY PENDERGRASS et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official  
capacity as the Georgia Secretary of State,  
et al.,

Defendants.

CIVIL ACTION FILE  
NO. 1:21-CV-5339-SCJ

---

ANNIE LOIS GRANT et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official  
capacity as the Georgia Secretary of State,  
et al.,

Defendants.

CIVIL ACTION FILE  
NO. 1:22-CV-122-SCJ

## **PRETRIAL ORDER**

1.

There are no motions or other matters pending for consideration by the Court except as noted:

**By Plaintiffs and Defendants:** Other than any pretrial motions which may be filed pursuant to the Court's scheduling order, there are no pending motions in this case.

2.

All discovery has been completed, unless otherwise noted, and the Court will not consider any further motions to compel discovery. (Refer to LR 37.1B). Provided there is no resulting delay in readiness for trial, the parties shall, however, be permitted to take the depositions of any persons for the preservation of evidence and for use at trial.

**By Plaintiffs and Defendants:** All discovery has been completed in this case.

3.

Unless otherwise noted, the names of the parties as shown in the caption to this Order and the capacity in which they appear are correct and complete, and there is no question by any party as to the misjoinder or non-joinder of any parties.

**By Plaintiffs:** There are no issues regarding the names of the parties and joinder.

**By Defendants:** The parties are properly named in the caption of this Order.

4.

Unless otherwise noted, there is no question as to the jurisdiction of the court; jurisdiction is based upon the following code sections. (When there are multiple claims, list each claim and its jurisdictional basis separately.)

**By Plaintiffs:** There is no question regarding this Court's jurisdiction. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 1357.

**By Defendants:** Defendants assert that this Court lacks jurisdiction over Plaintiffs' Voting Rights Act claims because (1) the claims must be heard by a three-judge court pursuant to 28 U.S.C. § 2284 and (2) Section 2 of the Voting Rights Act does not permit an action to be filed by private parties. This Court would otherwise have jurisdiction pursuant to 52 U.S.C. §10301 and 28 U.S.C. § 1331.

5.

The following individually-named attorneys are hereby designated as lead counsel for the parties:

***Pendergrass and Grant Plaintiffs:*** Abha Khanna, Joyce Gist Lewis

***Alpha Phi Alpha Plaintiffs:*** Sophia Lin Lakin, Rahul Garabadu, and Debo Adegbile

**Defendants:** Bryan P. Tyson, Bryan Jacoutot

6.

Normally, the plaintiff is entitled to open and close arguments to the jury. (Refer to LR39.3(B)(2)(b)). State below the reasons, if any, why the plaintiffs should not be permitted to open arguments to the jury.

**By Plaintiffs and Defendants:** This case will not be tried before a jury. Plaintiffs request the opportunity to present opening and closing arguments to the Court.

7.

The captioned case shall be tried (\_\_\_\_) to a jury or ( X ) to the court without a jury, or (\_\_\_\_) the right to trial by jury is disputed.

8.

State whether the parties request that the trial to a jury be bifurcated, i.e. that the same jury consider separately issues such as liability and damages. State briefly the reasons why trial should or should not be bifurcated.

**Plaintiffs' and Defendants' Statement:** This case will be tried to the court and the parties do not request a bifurcated trial.

9.

Because this case will be tried to the Court, the parties have not attached a list of questions for the Court to propound to the jury concerning their legal qualifications to serve.

10.

Because this case will be tried to the Court, the parties have not attached a list of questions for the Court to propound to jurors on voir dire examination.

11.

Because this case will be tried to the Court, the parties have no voir dire questions or corresponding objections.

12.

Because this case will be tried to the Court, the parties are not requesting any strikes.

13.

State whether there is any pending related litigation. Describe briefly, including state and civil action number.

Five related cases challenging the redistricting plans enacted in 2021 by the Georgia General Assembly remain pending:

- *Alpha Phi Alpha Fraternity, Inc. et al. v. Raffensperger*, No. 1:21-cv-05337-SCJ;
- *Pendergrass et al. v. Raffensperger et al.*, No. 1:21-cv-05339-SCJ;

- *Grant et al. v. Raffensperger et al.*, No. 1:22-cv-00122-SCJ;
- *Common Cause v. Raffensperger*, No. 1:22-cv-00090-ELB-SCJ-SDG; and
- *Georgia State Conference of the NAACP v. Georgia*, No 1:21-cv-05338-ELB-SCJ-SDG.

14.

Attached hereto as Attachment “C-1” for the *Pendergrass* Plaintiffs, Attachment “C-2” for the *Grant* Plaintiffs, and Attachment “C-3” for the *Alpha Phi Alpha* Plaintiffs are the Plaintiffs’ outlines of their cases, including succinct factual summaries of Plaintiffs’ causes of action.

15.

Attached hereto as Attachment “D” is Defendants’ outline of the case which includes a succinct factual summary of all general, special, and affirmative defenses relied upon.

16.

Attached hereto as Attachment “E” are the facts stipulated by the parties. No further evidence will be required as to the facts contained in the stipulation and the stipulation may be read into evidence at the beginning of the trial or at such other time as is appropriate in the trial of the case. It is the duty of counsel to cooperate fully with each other to identify all undisputed facts. A refusal to do so may result in the imposition of sanctions upon the noncooperating counsel.

17.

The legal issues to be tried are as follows:

**By Plaintiffs:**

A. Whether the failure to create an additional congressional district in the western Atlanta metropolitan area in which Black voters have the opportunity to elect candidates of their choice violates Section 2 of the VRA. (*Pendergrass*)

B. Whether the failure to create additional State Senate districts in the Atlanta metropolitan area and Black Belt in which Black voters have the opportunity

to elect candidates of their choice violates Section 2 of the VRA. (*Alpha Phi Alpha* and *Grant*)

C. Whether the failure to create additional State House districts in the Atlanta metropolitan area and Black Belt in which Black voters have the opportunity to elect candidates of their choice violates Section 2 of the VRA. (*Alpha Phi Alpha* and *Grant*)

D. The nature and extent of appropriate remedial relief should the Court conclude the Plaintiffs have established liability on one or more of their Section 2 claims in *Pendergrass*, *Alpha Phi Alpha*, and/or *Grant*.

**By Defendants:**

A. Whether Georgia's 2021 congressional districting plan results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color because the political processes leading to nomination or election in Georgia are not equally open to participation by Black voters, in that Black voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. (*Pendergrass*)

B. Whether Georgia's 2021 State Senate districting plan results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color because the political processes leading to nomination or election in Georgia are not equally open to participation by Black voters, in that Black voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. (*Alpha Phi Alpha* and *Grant*)

C. Whether Georgia's 2021 State House of Representatives districting plan results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color because the political processes leading to nomination or election in Georgia are not equally open to participation by Black

voters, in that Black voters have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. (*Alpha Phi Alpha* and *Grant*)

18.

Attached hereto as Attachment “F-1” for the *Pendergrass* Plaintiffs, Attachment “F-2” for the *Grant* Plaintiffs, Attachment “F-3” for the *Alpha Phi Alpha* Plaintiffs, and Attachment “F-4” for the Defendants is a list of all the witnesses and their addresses for each party. The list must designate the witnesses whom the party will have present at trial and those witnesses whom the party may have present at trial. Expert (any witness who might express an opinion under Rule 702), impeachment, and rebuttal witnesses whose use as a witness can be reasonably anticipated must be included. Each party shall also attach to the list a reasonable specific summary of the expected testimony of each expert witness.

All of the other parties may rely upon a representation by a designated party that a witness will be present unless notice to the contrary is given fourteen (14) days prior to trial to allow the other party(s) to subpoena the witness or to obtain the witness’ testimony by other means.

Witnesses who are not included on the witness list (including expert, impeachment and rebuttal witnesses whose use should have been reasonably anticipated) will not be permitted to testify, unless expressly authorized by court order based upon a showing that the failure to comply was justified.

19.

To facilitate coordination across the *Alpha Phi Alpha*, *Grant* and *Pendergrass* cases, and permit additional time to streamline the presentation of evidence, the parties have stipulated and this Court has ordered that exhibit lists will be exchanged by all parties and filed with the Court no later than July 31, 2023, and objections to the same will be provided no later than August 4, 2023. *Alpha Phi Alpha* [[Doc. 269](#)], *Grant* [[Doc. 230](#)], *Pendergrass* [[Doc. 216](#)].



20.

To facilitate coordination across the *Alpha Phi Alpha*, *Grant* and *Pendergrass* cases, and permit additional time to streamline the presentation of evidence, the parties have stipulated and this Court has ordered that deposition designations will be exchanged by all parties and filed with the Court no later than July 31, 2023, and objections to the same will be provided no later than August 4, 2023. *Alpha Phi Alpha* [[Doc. 269](#)], *Grant* [[Doc. 230](#)], *Pendergrass* [[Doc. 216](#)].

21.

Given the extensive briefing and the Court's familiarity with these cases, the parties have elected to forgo filing trial briefs at this time unless requested by the Court.

22.

Because this case will not be tried to a jury, the parties do not intend to submit requests for charge.

23.

Because this case will not be tried to a jury, the parties are not proposing a special verdict form.

24.

Unless otherwise authorized by the Court, arguments in all jury cases shall be limited to one-half hour for each side. Should any party desire any additional time for argument, the request should be noted (and explained) herein.

**Plaintiffs' and Defendants' Statement:** Given the complexities and fact-intensive nature of the issues in these cases, the parties request that the *Pendergrass*, *Grant*, and *Alpha Phi Alpha* plaintiffs each receive 30 minutes for opening arguments and 60 minutes for closing arguments. The parties further request that the Defendants receive 60 minutes for opening arguments and 90 minutes for closing arguments.

25.

Counsel will file proposed findings of fact and conclusions of law not later than September 25, 2023, as set forth in the Second Amended Scheduling Orders in each case, unless this date is modified by subsequent Court order.

26.

Pursuant to LR 16.3, lead counsel and persons possessing settlement authority to bind the parties have discussed in good faith the possibility of settlement of this case. The court ( ) has or (X) has not discussed settlement of this case with counsel. It appears at this time that there is:

- ( ) A good possibility of settlement.
- ( ) Some possibility of settlement.
- ( ) Little possibility of settlement.
- ( X ) No possibility of settlement.

27.

Unless otherwise noted, the Court will not consider this case for a special setting, and it will be scheduled by the clerk in accordance with the normal practice of the court.

28.

The *Pendergrass*, *Grant*, and *Alpha Phi Alpha* Plaintiffs estimate that it will require 5.5 days to present their evidence. The Defendants estimate that it will require 3.5 days to present their evidence. It is estimated that the total trial time is nine (9) days.

29.

IT IS HEREBY ORDERED that the above constitutes the pretrial order for the above captioned case ( ) submitted by stipulation of the parties or (X) approved by the court after conference with the parties.

IT IS FURTHER ORDERED that the foregoing, including the attachments thereto, constitutes the pretrial order in the above case and that it supersedes the pleadings which are hereby amended to conform hereto and that this pretrial order shall not be amended except by Order of the court to prevent manifest injustice. Any attempt to reserve a right to amend or add to any part of the pretrial order after the pretrial order has been filed shall be invalid and of no effect and shall not be binding upon any party or the court, unless specifically authorized in writing by the court.

IT IS SO ORDERED this 15th day of August,  
2023.

  
UNITED STATES DISTRICT JUDGE

Each of the undersigned counsel for the parties hereby consents to entry of the foregoing pretrial order, which has been prepared in accordance with the form pretrial order adopted by this court.

s/Abha Khanna  
Counsel for *Pendergrass* Plaintiffs

s/Bryan Tyson  
Counsel for Defendants

s/Abha Khanna  
Counsel for *Grant* Plaintiffs

s/Rahul Garabadu  
Counsel for *Alpha Phi Alpha* Plaintiffs

## **ATTACHMENT C-1**

### **1. *Pendergrass* Plaintiffs' Outline of the Case**

Plaintiffs contend that the Georgia General Assembly's enacted redistricting plan for Georgia's congressional districts ("SB 2EX") unlawfully dilutes Black voting strength in violation of Section 2 of the Voting Rights Act (VRA).

Between 2010 and 2020, Georgia's Black population grew by 484,048 people, accounting for 47.26% of the state's overall population gain. In the metropolitan Atlanta region in particular, the Black population has increased by over 900,000 people in the last 20 years.

Despite these striking demographic changes, the enacted congressional plan fails to reflect the growth in Georgia's Black population. Instead, the enacted congressional plan packs Black voters in the western Atlanta metro area in the supermajority-Black Thirteenth Congressional District and cracks Black voters into other districts that stretch into the western and northern reaches of the state. The Black population is sufficiently large and geographically compact such that the General Assembly could have drawn, consistent with traditional redistricting principles, at least one additional majority-Black congressional district.

Voting is also highly racially polarized statewide; Black voters are politically cohesive, and white voters cohesively oppose Black-preferred candidates. In both statewide and localized contests, the white majority usually votes as a bloc to defeat the candidates preferred by Black voters in the focus area.

In light of Georgia’s legacy of racial discrimination against its Black population, the subordination of their political power, and the ongoing, cumulative effects of that legacy, the state’s enacted congressional map will prevent Black Georgians from participating equally in the political process. Therefore, SB 2 EX dilutes the voting strength of Black voters in violation of Section 2 of the VRA.

## **2. Relevant Statutes and Case Law**

Section 2 of the Voting Rights Act prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” [52 U.S.C. § 10301\(a\)](#). This includes the

manipulation of district lines [to] dilute the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door.

*Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994). Section 2 claims “turn[ ] on the presence of discriminatory effects, not discriminatory intent.” *Allen v. Milligan*, 143 S. Ct. 1487, 1507 (2023).

To prevail on their Section 2 claim, Plaintiffs must show that (1) the minority group is “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) the minority group “is politically cohesive”; and (3) “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986).

Once Plaintiffs have made this threshold showing, the Court must then examine “the totality of circumstances”—including the Senate Factors, which are the nine factors identified in the U.S. Senate report that accompanied the 1982 amendments to the VRA—to determine whether “the political processes leading to nomination or election in the State or political subdivision are not equally open to participation” by members of the minority group. 52 U.S.C. § 10301(b); *see also Gingles*, 478 U.S. at 43–44; PI Order 29–32 (describing Senate Factors).



## **ATTACHMENT C-2**

### **1. *Grant* Plaintiffs' Outline of the Case**

Plaintiffs contend that the Georgia General Assembly's enacted redistricting plans for the Georgia State Senate ("SB 1EX") and the Georgia House of Representatives ("HB 1EX") unlawfully dilute Black voting strength in violation of Section 2 of the Voting Rights Act (VRA). Between 2010 and 2020, Georgia's Black population grew by 484,048 people, accounting for 47.26% of the state's overall population gain. In the metropolitan Atlanta region in particular, the Black population has increased by over 900,000 people in the last 20 years.

Despite these striking demographic changes, the enacted State Senate and House plans fail to reflect the growth in Georgia's Black population. Instead, the enacted plans unnecessarily pack Black Georgians together in some communities and break up areas with large, cohesive Black populations in others. In these areas, the Black population is sufficiently large and geographically compact such that the General Assembly could have drawn, consistent with traditional redistricting principles, at least three additional majority-Black State Senate districts, and at least five majority-Black House districts.

Voting is also highly racially polarized statewide; Black voters are politically cohesive, and white voters cohesively oppose Black-preferred candidates. In both statewide and localized contests, the white majority usually votes as a bloc to defeat the candidates preferred by Black voters in the focus area.

In light of Georgia's legacy of racial discrimination against its Black population, the subordination of their political power, and the ongoing, cumulative effects of that legacy, the state's enacted State Senate and House maps will prevent Black Georgians from participating equally in the political process. Therefore, SB 1 EX and HB 1 EX dilute the voting strength of Black voters in violation of Section 2 of the VRA.

## **2. Relevant Statutes and Case Law**

Section 2 of the Voting Rights Act prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” [52 U.S.C. § 10301\(a\)](#). This includes the

manipulation of district lines [to] dilute the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door.

*Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994). Section 2 claims “turn[ ] on the presence of discriminatory effects, not discriminatory intent.” *Allen v. Milligan*, 143 S. Ct. 1487, 1507 (2023).

To prevail on their Section 2 claims, Plaintiffs must show that (1) the minority group is “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) the minority group “is politically cohesive”; and (3) “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986).

Once Plaintiffs have made this threshold showing, the Court must then examine “the totality of circumstances”—including the Senate Factors, which are the nine factors identified in the U.S. Senate report that accompanied the 1982 amendments to the VRA—to determine whether “the political processes leading to nomination or election in the State or political subdivision are not equally open to participation” by members of the minority group. 52 U.S.C. § 10301(b); *see also Gingles*, 478 U.S. at 43–44; PI Order 29–32 (describing Senate Factors).

### **ATTACHMENT C-3**

#### **1. *Alpha Phi Alpha* Plaintiffs' Factual Statement**

Since 2000, Georgia's Black population has increased by over 1.1 million people, now representing one-third of the state's total population. In metro Atlanta in particular, the Black population has increased by over 900,000 people in the last 20 years, while the Black population in the state's historic Black Belt has also grown relative to the white population and become increasingly concentrated. However, despite these striking demographic changes, the numbers of majority-Black State Senate and House districts have barely changed. There have been no majority-Black State Senate districts added and just two majority-Black House districts added since the prior redistricting plans. There is also a substantial gap between the number of Black Georgians living in majority-Black districts and the number of white Georgians living in majority-white districts—a further indicator that the number of majority-Black districts is disproportionately low and that Black voting strength is being unlawfully diluted.

The new State Senate and House plans enacted by the General Assembly in 2021 constitute textbook violations of the VRA. In a number of areas across the State, including in Metro Atlanta and portions of the Black Belt (which extends from

Augusta to Southwest Georgia), the Black population is sufficiently large and geographically compact such that the General Assembly could have drawn, consistent with traditional redistricting principles, at least three additional majority-Black State Senate districts, and at least five majority-Black House districts—but did not do so.

Voting is highly racially polarized in these areas and statewide, such that Black-preferred candidates typically lose to white preferred candidates except in majority-Black legislative districts. Black and white voters are politically cohesive. And in both statewide and localized contests, the white majority usually votes as a bloc to defeat the candidates preferred by Black voters unless districts are drawn to provide Black voters with opportunities to elect candidates of their choice.

In light of Georgia's legacy of racial discrimination against its Black population, the subordination of their political power, and the ongoing, cumulative effects of that legacy, among other factors, the state's maps will prevent Black Georgians from participating equally in the political process. Therefore, SB 1EX and HB 1EX dilute the political strength of Black voters in violation of Section 2 of the VRA.

## 2. Relevant Authority

Section 2 of the Voting Rights Act prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” [52 U.S.C. § 10301\(a\)](#). This includes the

manipulation of district lines [to] dilute the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door.

*Johnson v. De Grandy*, [512 U.S. 997, 1007](#) (1994). Section 2 claims “turn[ ] on the presence of discriminatory effects, not discriminatory intent.” *Allen v. Milligan*, [143 S. Ct. 1487, 1507](#) (2023); *see also* [Dkt. 268 at 45-46](#) (Order Denying Summary Judgment).

To prevail on their Section 2 claims, Plaintiffs must show that (1) the minority group is “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) the minority group “is politically cohesive”; and (3) “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Thornburg v. Gingles*, [478 U.S. 30, 50–51](#) (1986). “[T]he second and third *Gingles* preconditions do not require Plaintiffs to prove that

race is the cause of the minority group’s political cohesion or racial bloc voting.”

Dkt. 268 at 44 (Order Denying Summary Judgment).

Once Plaintiffs have made this threshold showing, the Court must then examine “the totality of circumstances”—including the Senate Factors, which are the nine factors identified in the U.S. Senate report that accompanied the 1982 amendments to the VRA—to determine whether “the political processes leading to nomination or election in the State or political subdivision are not equally open to participation” by members of the minority group. 52 U.S.C. § 10301(b); *see also Gingles*, 478 U.S. at 43–44; PI Order 29–32 (describing Senate Factors).



## **ATTACHMENT D**

### **I. Defendants' succinct factual statement and affirmative defenses.**

#### ***A. Alpha Phi Alpha***

Plaintiffs filed this case on December 30, 2021, seeking injunctive relief regarding the State's 2021 State Senate and State House of Representatives redistricting plans under Section 2 of the Voting Rights Act, [52 U.S.C. § 10301](#). [APA [Doc. 1](#)]. Specifically, Plaintiffs claim that three additional majority-Black State Senate districts and five additional majority-Black State House districts should have been drawn by the Georgia General Assembly. Plaintiffs also claim that voting is racially polarized in Georgia and that the totality of the circumstances demonstrate that the redistricting plans result in a denial or abridgement of the rights of Black voters to vote on account of race or color.

Defendants assert that, even if this Court has jurisdiction to hear this case, Plaintiffs have not presented sufficient evidence to support their claims. Specifically, Defendants assert that Plaintiffs' illustrative plans were drawn primarily based on race and thus cannot be used to show additional districts the legislature should have drawn. Further, Defendants assert that Plaintiffs have improperly defined racially polarized voting as only requiring race-based bloc voting in which a white majority

voting bloc usually defeats the candidate preferred by a Black minority voting bloc. (See, Attachment C-3). This definition represents only half the inquiry, as Plaintiffs still must adduce evidence that this voter behavior is occurring “at least plausibly on account of race,” *Allen v. Milligan*, 216 L. Ed. 2d 60, 75 (2023), in order to establish *racially* polarized voting as distinct from less insidious voting patterns that are not prohibited by the Voting Rights Act, like *partisan* polarized voting. Defendants also assert that voting in Georgia is equally open to all voters, regardless of race, as demonstrated by the success of candidates of choice of Black voters, the high voter turnout of voters of all races, and the lack of barriers to opportunities to participate in the political process.

Further, Defendants assert that finding for Plaintiffs requires interpreting the Voting Rights Act in a way that calls its constitutionality into question, because the Voting Rights Act’s inherently race-based remedies are not justified by present conditions and are not congruent and proportional to the exercise of congressional power under the Fourteenth and Fifteenth Amendments.

Affirmative Defense: Plaintiffs lack constitutional standing to bring this action.

Affirmative Defense: Plaintiffs lack statutory standing to bring this action.

Affirmative Defense: Plaintiffs' federal claims are barred by the Eleventh Amendment to the U.S. Constitution.

Affirmative Defense: Plaintiffs' claims are barred by sovereign immunity.

Affirmative Defense: Plaintiffs' claims are barred because Section 2 of the Voting Rights Act provides no private right of action.

Affirmative Defense: Plaintiffs' claims are barred because they should be heard by a three-judge panel.

Affirmative Defense: To grant the relief Plaintiffs seek, the Court must interpret the Voting Rights Act in a way that violates the U.S. Constitution.

**B. *Grant***

Plaintiffs filed this case on January 11, 2022, seeking injunctive relief regarding the State's 2021 State Senate and State House of Representatives redistricting plans under Section 2 of the Voting Rights Act, [52 U.S.C. § 10301](#). [Grant [Doc. 1](#)]. Specifically, Plaintiffs claim that three additional majority-Black State Senate districts and five additional majority-Black State House districts should have been drawn by the Georgia General Assembly. Plaintiffs also claim that voting is racially polarized in Georgia and that the totality of the circumstances demonstrate

that the redistricting plans result in a denial or abridgement of the rights of Black voters to vote on account of race or color.

Defendants assert that, even if this Court has jurisdiction to hear this case, Plaintiffs have not presented sufficient evidence to support their claims. Specifically, Defendants assert that Plaintiffs' illustrative plans were drawn primarily based on race and thus cannot be used to show additional districts the legislature should have drawn. Further, Defendants assert that Plaintiffs have improperly defined racially polarized voting as only requiring race-based bloc voting in which a white majority voting bloc usually defeats the candidate preferred by a Black minority voting bloc. (*See*, Attachment C-2, *supra*). This definition represents only half the inquiry, as Plaintiffs still must adduce evidence that this voter behavior is occurring "at least plausibly on account of race," *Allen v. Milligan*, 216 L. Ed. 2d 60, 75 (2023), in order to establish *racially* polarized voting as distinct from less insidious voting patterns that are not prohibited by the Voting Rights Act, like *partisan* polarized voting. Defendants also assert that voting in Georgia is equally open to all voters, regardless of race, as demonstrated by the statewide success of candidates of choice of Black voters, the high voter turnout of voters of all races, and the lack of barriers to opportunities to participate in the political process.

Further, Defendants assert that finding for Plaintiffs requires interpreting the Voting Rights Act in a way that calls its constitutionality into question, because the Voting Rights Act's inherently race-based remedies are not justified by present conditions and are not congruent and proportional to the exercise of congressional power under the Fourteenth and Fifteenth Amendments.

Affirmative Defense: Plaintiffs lack constitutional standing to bring this action.

Affirmative Defense: Plaintiffs lack statutory standing to bring this action.

Affirmative Defense: Plaintiffs' federal claims are barred by the Eleventh Amendment to the U.S. Constitution.

Affirmative Defense: Plaintiffs' claims are barred by sovereign immunity.

Affirmative Defense: Plaintiffs' claims are barred because Section 2 of the Voting Rights Act provides no private right of action.

Affirmative Defense: Plaintiffs' claims are barred because they should be heard by a three-judge panel.

Affirmative Defense: To grant the relief Plaintiffs seek, the Court must interpret the Voting Rights Act in a way that violates the U.S. Constitution.

***C. Pendergrass***

Plaintiffs filed this case on December 30, 2021, seeking injunctive relief regarding the State’s 2021 congressional redistricting plan under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. [Pendergrass Doc. 1]. Specifically, Plaintiffs claim that one additional majority-Black congressional district should have been drawn by the Georgia General Assembly. Plaintiffs also claim that voting is racially polarized in Georgia and that the totality of the circumstances demonstrate that the congressional redistricting plan results in a denial or abridgement of the rights of Black voters to vote on account of race or color.

Defendants assert that, even if this Court has jurisdiction to hear this case, Plaintiffs have not presented sufficient evidence to support their claims. Specifically, Defendants assert that Plaintiffs’ illustrative plan was drawn primarily based on race and thus cannot be used to show an additional district the legislature should have drawn. Further, Defendants assert that Plaintiffs have improperly defined racially polarized voting as only requiring race-based bloc voting in which a white majority voting bloc usually defeats the candidate preferred by a Black minority voting bloc. (*See*, Attachment C-1). This definition represents only half the inquiry, as Plaintiffs still must adduce evidence that this voter behavior is occurring “at least plausibly on

account of race,” *Allen v. Milligan*, 216 L. Ed. 2d 60, 75 (2023), in order to establish *racially* polarized voting as distinct from less insidious voting patterns that are not prohibited by the Voting Rights Act, like *partisan* polarized voting. Defendants also assert that voting in Georgia is equally open to all voters, regardless of race, as demonstrated by the statewide success of candidates of choice of Black voters, the high voter turnout of voters of all races, and the lack of barriers to opportunities to participate in the political process.

Further, Defendants assert that finding for Plaintiffs requires interpreting the Voting Rights Act in a way that calls its constitutionality into question, because the Voting Rights Act’s inherently race-based remedies are not justified by present conditions and are not congruent and proportional to the exercise of congressional power under the Fourteenth and Fifteenth Amendments.

Affirmative Defense: Plaintiffs lack constitutional standing to bring this action.

Affirmative Defense: Plaintiffs lack statutory standing to bring this action.

Affirmative Defense: Plaintiffs’ federal claims are barred by the Eleventh Amendment to the U.S. Constitution.

Affirmative Defense: Plaintiffs’ claims are barred by sovereign immunity.



Affirmative Defense: Plaintiffs' claims are barred because Section 2 of the Voting Rights Act provides no private right of action.

Affirmative Defense: Plaintiffs' claims are barred because they should be heard by a three-judge panel.

Affirmative Defense: To grant the relief Plaintiffs seek, the Court must interpret the Voting Rights Act in a way that violates the U.S. Constitution.

**II. All relevant rules, regulations, statutes, ordinances, and illustrative case law relied upon as creating a defense in these lawsuits.**

1. *African Am. Voting Rights Legal Def. Fund v. Villa*, [54 F.3d 1345](#) (8th Cir. 1995)
2. *Ala. State Conference of the NAACP v. Alabama*, No. 2:16-CV-731-WKW [WO], [2020 U.S. Dist. LEXIS 18938](#) (M.D. Ala. Feb. 5, 2020)
3. *Ala. State Conference of the NAACP v. Alabama*, [949 F.3d 647](#) (11th Cir. 2020)
4. *Alden v. Maine*, [527 U.S. 706, 715](#), [119 S. Ct. 2240](#) (1999)
5. *Allen v. Milligan*, Case No. 21-1086, [2023 WL 3872517](#) (U.S. June 8, 2023)
6. *Alltel Commc'ns, Inc. v. City of Macon*, [345 F.3d 1219](#) (11th Cir. 2003)
7. *Alpha Phi Alpha Fraternity v. Raffensperger*, [587 F. Supp. 3d 1222](#) (N.D. Ga. 2022)
8. *Ark. State Conference NAACP v. Ark. Bd. of Apportionment*, No. 4:21-cv-01239-LPR, [2022 U.S. Dist. LEXIS 29037](#) (E.D. Ark. Feb. 17, 2022)
9. *Baird v. Indianapolis*, [976 F.2d 357](#) (7th Cir. 1992)
10. *Bartlett v. Strickland*, [556 U.S. 1](#) (2009)
11. *Bolden v. Mobile*, [423 F. Supp. 384, 388](#) (S.D. Ala. 1976)
12. *Bolden v. Mobile*, [571 F.2d 238, 243](#) (5th Cir. 1978)
13. *Brnovich v. Democratic Nat'l Committee*, [141 S.Ct. 2321](#) (2021)
14. *Brooks v. Miller*, [58 F.3d 1230](#) (11th Cir. 1998)

15. *Brown v. Jacobsen*, 590 F. Supp. 3d 1273 (D. Mont. 2022)
16. *Burton v. City of Belle Glade*, 178 F.3d 1175 (11th Cir. 1999)
17. *Bush v. Vera*, 517 U.S. 952, 977 (1996)
18. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986)
19. *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978)
20. *City of Boerne v. Flores*, 521 U.S. 507 (1997)
21. *City of Mobile v. Bolden*, 446 U.S. 55 (1980)
22. *Curling v. Raffensperger*, 50 F.4th 1114 (11th Cir. 2022)
23. *Davis v. Chiles*, 139 F.3d 1414 (11th Cir. 1998)
24. *Earl Old Person v. Brown*, 312 F.3d 1036 (9th Cir. 2002)
25. *Fairley v. Hattiesburg Miss.*, 662 F. App'x 291 (5th Cir. 2016)
26. *Franklin v. Massachusetts*, 505 U.S. 788 (1992)
27. *GA. State Conference of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 775 F.3d 1336 (11th Cir. 2005)
28. *Gill v. Whitford*, 138 S. Ct. 1916 (2018)
29. *Greater Birmingham Ministries v. Sec'y of Ala.*, 992 F. 3d 1299 (11th Cir. 2021)
30. *Grove v. Emison*, 507 U.S. 25, 40 (1993)
31. *Gonzalez v. City of Aurora*, 535 F.3d 594 (7th Cir. 2008)
32. *Goosby v. Town Bd.*, 180 F.3d (2d Cir. 1999)
33. *Gregory v. Ashcroft*, 501 U.S. 452 (1991)
34. *Holder v. Hall*, 512 U.S. 874 (1994)
35. *Jacobson v. Fla. Sec'y of State*, 957 F.3d 1193 (11th Cir. 2020)
36. *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018)
37. *Johnson v. Bd. of Regents*, 263 F.3d 1234 (11th Cir. 2001)
38. *Johnson v. De Grandy*, 512 U.S. 997 (1994)
39. *Johnson v. DeSoto Cnty. Bd. of Comm'rs*, 204 F.3d 1335 (11th Cir. 2000)
40. *Johnson v. Governor of Fla.*, 405 F.3d 1314 (11th Cir. 2005)
41. *Johnson v. Hamrick*, 296 F.3d 1065 (11th Cir. 2002)
42. *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62 (2000)
43. *La. State Conference of the NAACP v. Louisiana*, 490 F. Supp. 3d 982 (M.D. La. 2020)
44. *Lance v. Coffman*, 549 U. S. 437 (2007)
45. *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831 (5th Cir. 1993)

46. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399 (2006)
47. *League of Women Voters of Fla. Inc. v. Fla. Sec’y of State*, 66 F. 4th 905 (11th Cir. 2023)
48. *Lewis v. Alamance County, N.C.*, 99 F.3d 600 (4th Cir. 1996)
49. *Lewis v. Governor of Ala.*, 944 F. 3d 1287 (11th Cir. 2019)
50. *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)
51. *Marion v. DeKalb County, Ga.* 821 F. Supp. 685 (N.D. Ga. 1993)
52. *Merrill v. Milligan*, 142 S.Ct. 879 (2022)
53. *Miller v. Johnson*, 515 U.S. 900 (1995)
54. *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010)
55. *Negron v. City of Miami Beach, Fla.*, 113 F.3d 1563 (11th Cir. 1997)
56. *Nipper v. Smith*, 39 F.3d 1494 (11th Cir. 1994)
57. *Purcell v. Gonzalez*, 549 U.S. 1 (2006)
58. *Raines v. Byrd*, 521 U.S. 811 (1997)
59. *Repub. Nat’l Comm. v. Dem. Nat’l Comm.*, 140 S. Ct. 1205 (2020)
60. *Rucho v. Common Cause*, 139 S. Ct. 2484 (2019)
61. *Simon v. Eastern Ky. Welfare Rights Org.*, 426 U.S. 26 (1976)
62. *Singleton v. Merrill*, 582 F. Supp. 3d 924 (N.D. Ala. 2022)
63. *Solomon v. Liberty Cty.*, 899 F.2d 1012 (11th Cir. 1990)
64. *Solomon v. Liberty Cty. Comm’rs*, 221 F. 3d 1218 (11th Cir. 2000)
65. *Southern Christian Leadership Conference v. Sessions*, 56 F.3d 1281 (11th Cir. 1995)
66. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016)
67. *Summit Med. Assocs., P.C. v. Pryor*, 180 F.3d 1326 (11th Cir. 1999)
68. *Thornburg v. Gingles*, 478 U.S. 30 (1986)
69. *United Jewish Organizations, Inc. v. Carey*, 430 U.S. 144 (1977)
70. *United States v. Chemical Foundation, Inc.*, 272 U.S. 1 (1926)
71. *United States v. Marengo Cnty. Comm’n*, 731 F.2d 1546 (11th Cir. 1984)
72. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464 (1982)
73. *Vecinos De Barrio Uno v. City of Holyoke*, 72 F.3d 973 (1st Cir. 1995)
74. *Voinovich v. Quilter*, 507 U.S. 146 (1993)
75. *Warth v. Seldin*, 422 U.S. 490 (1975)
76. *Whitcomb v. Chavis*, 403 U.S. 124 (1971)
77. *White v. Regester*, 412 U.S. 755 (1983)

- 78. *Wood v. Raffensperger*, 981 F.3d 1307, 1313 (11th Cir. 2020)
- 79. *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297 (M.D. Ga. 2018)
- 80. O.C.G.A. § 21-2-31
- 81. O.C.G.A. § 21-2-153
- 82. 52 U.S.C. § 10301
- 83. Fed. R. Evid. 401
- 84. Fed. R. Evid. 403
- 85. Fed. R. Evid. 602
- 86. Fed. R. Evid. 801
- 87. Fed. R. Evid. 803
- 88. Fed. R. Evid. 807
- 89. Fed. R. Evid. 901
- 90. U.S. Const. Art. I, Sec. III, Para. 2
- 91. U.S. Const. Amendment XIV
- 92. U.S. Const. Amendment XV

## **ATTACHMENT E**

### **Joint Stipulated Facts for Trial**

#### **I. Parties**

##### **A. *Pendergrass* Plaintiffs**

###### **1. Coakley Pendergrass**

1. Plaintiff Coakley Pendergrass is Black.
2. Plaintiff Coakley Pendergrass resides in Cobb County, Georgia.
3. Under the enacted congressional plan, Plaintiff Coakley Pendergrass resides and is a registered voter in Congressional District 11.

###### **2. Triana Arnold James**

4. Plaintiff Triana Arnold James is Black.
5. Plaintiff Triana Arnold James resides in Douglas County, Georgia.
6. Under the enacted congressional plan, Plaintiff Triana Arnold James resides and is a registered voter in Congressional District 3.

###### **3. Elliott Hennington**

7. Plaintiff Elliott Hennington is Black.
8. Plaintiff Elliott Hennington resides in Cobb County, Georgia.

9. Under the enacted congressional plan, Plaintiff Elliott Hennington resides and is a registered voter in Congressional District 14.

**4. Robert Richards**

10. Plaintiff Robert Richards is Black.

11. Plaintiff Robert Richards resides in Cobb County, Georgia.

12. Under the enacted congressional plan, Plaintiff Robert Richards resides and is a registered voter in Congressional District 14.

**5. Jens Rueckert**

13. Plaintiff Jens Rueckert is Black.

14. Plaintiff Jens Rueckert resides in Cobb County, Georgia.

15. Under the enacted congressional plan, Plaintiff Jens Rueckert resides and is a registered voter in Congressional District 14.

**6. Ojuan Glaze**

16. Plaintiff Ojuan Glaze is Black.

17. Plaintiff Ojuan Glaze resides in Douglas County, Georgia.

18. Under the enacted congressional plan, Plaintiff Ojuan Glaze resides and is a registered voter in Congressional District 13.

**B. *Grant* Plaintiffs**

**1. Annie Lois Grant**

19. Plaintiff Annie Lois Grant is Black.

20. Plaintiff Annie Lois Grant resides in Union Point, Georgia.

Under the enacted legislative plans, Plaintiff Annie Lois Grant resides in and is a registered voter in Senate District 24 and House District 124.

**2. Quentin T. Howell**

21. Plaintiff Quentin T. Howell is Black.

22. Plaintiff Quentin T. Howell resides in Milledgeville, Georgia.

23. Under the enacted legislative plans, Plaintiff Quentin T. Howell resides in and is a registered voter in Senate District 25 and House District 133.

**3. Elroy Tolbert**

24. Plaintiff Elroy Tolbert is Black.

25. Plaintiff Elroy Tolbert resides in Macon, Georgia.

26. Under the enacted legislative plans, Plaintiff Elroy Tolbert resides in and is a registered voter in Senate District 18 and House District 144.

**4. Triana Arnold James**

27. Plaintiff Triana Arnold James is Black.



28. Plaintiff Triana Arnold James resides in Villa Rica, Georgia.

29. Under the enacted legislative plans, Plaintiff Triana Arnold James resides in and is a registered voter in Senate District 30 and House District 64.

**5. Eunice Sykes**

30. Plaintiff Eunice Sykes is Black.

31. Plaintiff Eunice Sykes resides in Locust Grove, Georgia.

32. Under the enacted legislative plans, Plaintiff Eunice Sykes resides in and is a registered voter in Senate District 25 and House District 117.

**6. Elbert Solomon**

33. Plaintiff Elbert Solomon is Black.

34. Plaintiff Elbert Solomon resides in Griffin, Georgia.

35. Under the enacted legislative plans, Plaintiff Elbert Solomon resides in Senate District 16 and House District 117.

**7. Dexter Wimbish**

36. Plaintiff Dexter Wimbish is Black.

37. Plaintiff Dexter Wimbish resides in Griffin, Georgia.

38. Under the enacted legislative plans, Plaintiff Dexter Wimbish resides in Senate District 16 and House District 74.

**8. Garrett Reynolds**

- 39. Plaintiff Garrett Reynolds is Black.
- 40. Plaintiff Garrett Reynolds resides in Tyrone, Georgia.
- 41. Under the enacted legislative plans, Plaintiff Garrett Reynolds resides in Senate District 16 and House District 68.

**9. Jacqueline Faye Arbuthnot**

- 42. Plaintiff Jacqueline Faye Arbuthnot is Black.
- 43. Plaintiff Jacqueline Faye Arbuthnot resides in Powder Springs, Georgia.
- 44. Under the enacted legislative plans, Plaintiff Jacqueline Faye Arbuthnot resides in Senate District 31 and House District 64.

**10. Jacquelyn Bush**

- 45. Plaintiff Jacquelyn Bush is Black.
- 46. Plaintiff Jacquelyn Bush resides in Fayetteville, Georgia.
- 47. Under the enacted legislative plans, Plaintiff Jacquelyn Bush resides in Senate District 16 and House District 74.

**11. Mary Nell Conner**

- 48. Plaintiff Mary Nell Conner is Black.

49. Plaintiff Mary Nell Conner resides in Henry County, Georgia.

50. Under the enacted legislative plans, Plaintiff Mary Nell Conner resides in Senate District 25 and House District 117.

**C. *Alpha Phi Alpha* Plaintiffs**

**1. Alpha Phi Alpha Fraternity Inc.**

51. Plaintiff Alpha Phi Alpha Fraternity Inc. is the first intercollegiate Greek-letter fraternity established for Black Men.

52. Alpha Phi Alpha Fraternity Inc. has thousands of members in Georgia, including Black Georgians who are registered voters who live in Senate Districts 16, 17, and 23 under the 2021 Senate Plan, as well as in House Districts 74, 114, 117, 128, 133, 134, 145, 171, and 173 under the 2021 House Plan.

53. Alpha Phi Alpha Fraternity Inc. has long made political participation for its members and Black Americans an organizational priority, including through programs to raise political awareness, register voters, and empower Black communities.

54. Harry Mays is a member of Alpha Phi Alpha Fraternity Inc.

55. Harry Mays resides in House District 117 under the State's 2021 House Plan.

56. Under the *Alpha Phi Alpha* Plaintiffs' illustrative maps, Harry Mays would reside in a new majority Black House District.

## **2. Sixth District of the African Methodist Episcopal Church**

57. Plaintiff Sixth District of the African Methodist Episcopal Church is a nonprofit religious organization.

58. The Sixth District is one of twenty districts of the African Methodist Episcopal Church and covers the entirety of the State of Georgia.

59. Plaintiff Sixth District of the African Methodist Episcopal Church has more than 500 member-churches in Georgia.

60. Member-churches of Plaintiff Sixth District of the African Methodist Episcopal Church have tens of thousands of members across Georgia.

61. Plaintiff Sixth District of the African Methodist Episcopal Church has churches located in Senate Districts 16, 17, and 23 under the 2021 Senate Plan as well as in House Districts 74, 114, 117, 128, 133, 134, 145, 171, and 173 under the 2021 House Plan.

62. Plaintiff Sixth District of the African Methodist Episcopal Church has long made encouraging and supporting civic participation among its members a core aspect of its work, including through programs to register voters, transporting

churchgoers to polling locations, hosting “Get Out the Vote” efforts, and providing food, water, encouragement, and assistance to voters waiting in lines at polling locations.

63. Plaintiff Phil S. Brown is a member of the Lofton Circuit African Methodist Episcopal Church in Wrens, Georgia.

64. Plaintiff Janice Stewart is a member of the Saint Peter African Methodist Episcopal Church in Camilla, Georgia.

### **3. Eric T. Woods**

65. Plaintiff Eric T. Woods is a Black citizen of the United States and the State of Georgia.

66. Plaintiff Eric T. Woods is a resident of Tyrone, Georgia in Fayette County.

67. Plaintiff Eric T. Woods has been a registered voter at his current address since 2011.

68. Plaintiff Eric T. Woods resides in State Senate District 16, which is not majority Black, under the 2021 Senate Plan.

69. Under the *Alpha Phi Alpha* Plaintiffs' illustrative state Senate map drawn by Mr. Cooper, Plaintiff Eric T. Woods would reside in a new majority Black Senate District, Illustrative Senate District 28.

#### **4. Katie Bailey Glenn**

70. Plaintiff Katie Bailey Glenn is a Black citizen of the United States and the State of Georgia.

71. Plaintiff Katie Bailey Glenn is a resident of McDonough, Georgia in Henry County.

72. Plaintiff Katie Bailey Glenn has been a registered voter at her current address for approximately 50 years.

73. Plaintiff Katie Bailey Glenn resides in State Senate District 17, which is not majority Black, under the State's 2021 Senate Plan.

74. Under the *Alpha Phi Alpha* Plaintiffs' illustrative state Senate map, drawn by Mr. Cooper, Plaintiff Katie Bailey Glenn would reside in a new majority-Black Senate District, Illustrative Senate District 17.

#### **5. Phil S. Brown**

75. Plaintiff Phil S. Brown is a Black citizen of the United States and the State of Georgia.

76. Plaintiff Phil S. Brown is a resident of Wrens, Georgia in Jefferson County.

77. Plaintiff Phil S. Brown has been a registered voter at his current address for years.

78. Plaintiff Phil S. Brown resides in State Senate District 23, which is not majority Black, under the State's 2021 Senate Plan.

79. Under the *Alpha Phi Alpha* Plaintiffs' illustrative state Senate map, drawn by Mr. Cooper, Plaintiff Phil S. Brown would reside in a new majority Black Senate District, Illustrative Senate District 23.

## **6. Janice Stewart**

80. Plaintiff Janice Stewart is a Black citizen of the United States and the State of Georgia.

81. Plaintiff Janice Stewart is a resident of Thomasville, Georgia in Thomas County.

82. Plaintiff Janice Stewart has been a registered voter at her current address for years.

83. Plaintiff Janice Stewart resides in State House District 173, which is not majority Black, under the State's 2021 House Plan.



84. Under the *Alpha Phi Alpha* Plaintiffs' illustrative state House map, drawn by Mr. Cooper, Plaintiff Janice Stewart would reside in a new majority Black House District, Illustrative House District 171.

**D. Defendants**

**1. Brad Raffensperger**

85. Defendant Brad Raffensperger is the Georgia Secretary of State and is named in his official capacity.

**2. Sara Tindall Ghazal**

86. Defendant Sara Tindall Ghazal is a member of the State Election Board and is named in her official capacity in the *Grant* and *Pendergrass* cases.

**3. Janice Johnston**

87. Defendant Janice Johnston is a member of the State Election Board and is named in her official capacity in the *Grant* and *Pendergrass* cases.

**4. Edward Lindsey**

88. Defendant Edward Lindsey is a member of the State Election Board and is named in his official capacity in the *Grant* and *Pendergrass* cases.

## **5. Matthew Mashburn**

89. Defendant Matthew Mashburn is a member of the State Election Board and is named in his official capacity in the *Grant* and *Pendergrass* cases.

## **6. William S. Duffey, Jr.**

90. Defendant William S. Duffey, Jr. is chair of the State Election Board and is named in his official capacity in the *Grant* and *Pendergrass* cases.

## **II. 2020 Census**

91. The U.S. Census Bureau releases data to the states after each census for use in redistricting. This data includes population and demographic information for each census block.

92. The Census Bureau provided redistricting data to Georgia on August 21, 2021.

### **A. Statewide Population Growth**

93. From 2010 to 2020, Georgia's population grew by over 1 million people to 10.71 million, up 10.57% percent from 2010.

94. As a result of this population growth, the state retained 14 seats in the U.S. House of Representatives.

95. Between 2010 and 2020, Georgia's Any-Part Black (defined throughout these Stipulations as Any Part or AP Black, meaning the combined total of persons who are single-race Black and persons of two or more races and some part Black, including Hispanic Black) population increased by 484,048 people since 2010.

96. Between 2010 and 2020, 47.26% of the state's overall population gain was attributable to AP Black population growth.

97. Georgia's AP Black population, as a share of the overall statewide population, increased between 2010 and 2020, from 31.53% in 2010 to 33.03% in 2020.

98. As a matter of total population, AP Black Georgians comprise the largest minority population in the state, at 33.03%.

99. From 2010 to 2020, Georgia's white population decreased by 51,764.

100. Between 2000 to 2020, the AP Black population in Georgia increased by 1,144,721, from 2,393,425 to 3,538,146.

101. Between 2000 to 2020, the white population in Georgia increased by 233,495.

102. Georgia's AP Black population has increased in absolute and percentage terms since 1990, from about 27% in 1990 to 33.03% in 2020. Over the same time period, the percentage of the population identifying as non-Hispanic white has dropped from 70% to 50.06%.

103. Since 1990, the AP Black population has more than doubled: from 1.75 million to 3.54 million.

104. Georgia has a total voting-age population of 8,220,274, of whom 2,607,986 (31.73%) are AP Black and 2,488,419 (30.27%) are single-race Black.

105. The total estimated citizen voting-age population in Georgia in 2019 was 33.87% AP Black and 32.9% single-race Black. The total estimated citizen voting-age population in 2021 was 33.3% AP Black and 31.4% single-race Black.

#### **B. Metro Atlanta**

106. The Atlanta Metropolitan Statistical Area ("MSA") consists of the following 29 counties: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton.

107. The population gain in counties in the Atlanta MSA between 2010 and 2020 amounted to 803,087 persons and the AP Black population gain in counties in the Atlanta MSA between 2010 and 2020 amounted to 409,927.

108. According to the 2000 Census, the population of counties in the current Atlanta MSA area was 29.29% AP Black, increasing to 33.61% in 2010, and 35.91% in 2020.

109. The AP Black population of counties in the current Atlanta MSA has grown from 1,248,809 in 2000 to 2,186,815 in 2020—an increase of 938,006 people.

110. According to the 2020 census, the counties in the Atlanta MSA have a total voting-age population of 4,654,322 persons, of whom 1,622,469 (34.86%) are AP Black.

111. The Atlanta Regional Commission (“ARC”) includes 11 core counties: Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, and Rockdale.

112. Between 2010 and 2020, the non-Hispanic white population in the counties in the Atlanta MSA decreased by 22,736 persons.

**C. South Metro Atlanta Area**

113. The southern portion of the Metro Atlanta area contains the following five counties: Fayette, Spalding, Henry, Rockdale, and Newton.

114. In 2000, 18.51% of the population in the five-county Fayette-Spalding-Henry-Rockdale-Newton area was AP Black. By 2010, the AP Black population in that area more than doubled to reach 36.70% of the overall population. It then grew to 46.57% by 2020.

115. Between 2000 and 2020, the AP Black population in the five-county Fayette-Spalding-Henry-Rockdale-Newton area quadrupled, from 74,249 to 294,914.

116. Senate Districts 34 and 44 are adjacent to Senate District 16 under the 2021 Senate Plan.

117. Senate Districts 10, 16, 25, 43, and 46 are adjacent to Senate District 17 under the 2021 Senate Plan.

**D. The Black Belt**

118. The Black Belt refers to an area that runs across the southeastern United States. Counties in the Black Belt region often have significant Black populations as

a share of total population, and share a history of, among other things, antebellum slavery and plantation agriculture.

119. In Georgia, the Black Belt runs across the middle of the State, roughly from Augusta to Southwest Georgia.

120. The following counties in the region around Augusta are at least 40% AP Black: Jenkins, Burke, Richmond, Jefferson, McDuffie, Wilkes, Taliaferro, Warren, Washington, and Hancock Counties.

121. Jenkins, Burke, Richmond, Jefferson, McDuffie, Wilkes, Taliaferro, Warren, Washington, and Hancock Counties have experienced a slight overall population increase since 2000, from 321,998 to 325,164 in 2020.

122. During that same period of time, the AP Black population in Jenkins, Burke, Richmond, Jefferson, McDuffie, Wilkes, Taliaferro, Warren, Washington, and Hancock Counties increased by 14,480, from 163,310 (50.66%) to 177,610 (54.62%).

123. During that same period of time, the white population in Jenkins, Burke, Richmond, Jefferson, McDuffie, Wilkes, Taliaferro, Warren, Washington, and Hancock Counties decreased by 22,755 from 146,870 (45.61%) to 124,115 (38.17%).



124. The Macon–Warner Robins–Fort Valley Combined Statistical Area consists of the following counties: Twiggs, Macon-Bibb, Jones, Monroe, Crawford, Houston, and Peach.

125. The total population of Twiggs, Macon-Bibb, Jones, Monroe, Crawford, Houston, and Peach has increased from 356,801 in 2000 to 425,416 in 2020.

126. During that same period of time, the AP Black population in Twiggs, Macon-Bibb, Jones, Monroe, Crawford, Houston, and Peach Counties increased from 131,627 (36.89%) to 177,269 (to 41.67%).

127. During that same period of time, the white population in Metropolitan Macon decreased from 211,927 (59.40%) to 208,498 (49.01%).

128. The following counties in Southwest Georgia are at least 40% AP Black: Sumter, Webster, Stewart, Quitman, Clay, Randolph, Terrell, Calhoun, Dougherty, Early, Baker, and Mitchell Counties.

129. Senate District 12 (“SD12”) under 2021 State Senate Plan includes all or part of the following counties: Sumter, Webster, Stewart, Quitman, Clay, Randolph, Terrell, Calhoun, Dougherty, Early, Miller, Baker, and Mitchell Counties.

130. From 2000 to 2020, the overall population in Sumter, Webster, Stewart, Quitman, Clay, Randolph, Terrell, Calhoun, Dougherty, Early, Miller, Baker, and Mitchell Counties decreased from 214,686 to 190,819.

131. During that same period of time, the AP Black population in Sumter, Webster, Stewart, Quitman, Clay, Randolph, Terrell, Calhoun, Dougherty, Early, Miller, Baker, and Mitchell Counties decreased by 3,165 from 118,786 (55.33%) to 115,621 (60.6%).

132. During that same period of time, the white population in Sumter, Webster, Stewart, Quitman, Clay, Randolph, Terrell, Calhoun, Dougherty, Early, Miller, Baker, and Mitchell Counties decreased by 26,393, from 90,946 (42.36%) to 64,553 (33.83%).

133. The county-level demographic information based on 2000, 2010, and 2020 Census data set forth in exhibits G-1, G-2, and G-3 of the December 5, 2022 Report of William Cooper [*Alpha Phi Alpha* [Dkt. No. 231-1](#)] are not disputed.

### **III. The 2021 Redistricting Process**

134. The House Legislative and Congressional Reapportionment Committee adopted the guidelines filed as *Alpha Phi Alpha* [Dkt. No. 39-17](#) prior to the public release of the redistricting plans.

135. The Senate Reapportionment and Redistricting Committee adopted the guidelines filed as *Alpha Phi Alpha* [Dkt. No. 39-18](#) prior to the public release of the redistricting plans.

136. The Georgia General Assembly held nine in-person and two virtual joint public hearing committee meetings on redistricting beginning on June 15, 2021, to gather input from voters.

137. The joint redistricting committees released an educational video about the redistricting process at their June 15, 2021 meeting.

138. The General Assembly created an online portal for voters to offer comments on redistricting plans and received more than 1,000 comments from voters in at least 86 counties.

139. All of the public town hall meetings convened by the State's Redistricting Committees were held during June and July 2021.

140. On August 21, 2021, the Census Bureau released the detailed population counts that Georgia used to redraw districts.

141. The joint committees held a meeting to hear from interested groups on August 30, 2021.

142. The National Conference of State Legislatures, American Civil Liberties Union of Georgia, Common Cause, Fair Districts GA, the Democratic Party of Georgia, and Asian-Americans Advancing Justice – Atlanta presented at the August 30, 2021 joint meeting.

143. The 2021 Senate and House Plans were first released on November 2, 2021.

144. The General Assembly’s special session to consider the draft Senate and House Plans (and other specified topics) began on November 3, 2021.

145. After the special session convened, the House and Senate redistricting committees held multiple meetings prior to voting on proposed redistricting plans.

146. The House and Senate redistricting committees received public comment on the proposed maps during committee meetings held in the special session.

147. On November 12, 2021, the General Assembly passed the 2021 Senate and House Plans.

148. On November 22, 2021, the General Assembly passed the 2021 congressional redistricting plan.

149. Governor Kemp signed the 2021 Senate, House, and Congressional Plans into law on December 30, 2021.

150. No Democratic members of the General Assembly voted in favor of the 2021 Congressional, Senate, or House plans.

151. No Black legislator in the General Assembly voted in favor of the 2021 Congressional, Senate, or House plans.

152. The 2021 Congressional, Senate, and House Plans were used in the 2022 elections.

#### **IV. Timing of Redistricting**

153. A newly redrawn State Senate map signed into law on April 11, 2002 was used in the primary election on August 20, 2002 and general election on November 5, 2002.

154. Newly redrawn State Senate and State House maps approved by a court on March 25, 2004 were used in the primary election on July 20, 2004 and general election on November 2, 2004.

155. During the 2022 redistricting cycle, the Secretary of State's office informed county election officials that the last day to make redistricting changes in then-operative ElectionNet system was February 18, 2022.

156. Not all counties completed the redistricting process prior to the February 18, 2022 deadline set by the Secretary of State's office.

157. The Georgia Registered Voter Information System (GaRVIS) reduces the minimum time for a county to enter and exit the redistricting module of the system from four days to as little as 24 hours.

158. GaRVIS improves on the technical processing performance of Georgia's prior voter information system in terms of the system's responsiveness to user updates.

## **V. Adopted Plan Statistics**

159. There are 14 Congressional districts in the State's 2021 Congressional Plan.

160. The previous 2012 Congressional Plan contained 4 AP Black voting age population majority Congressional districts at the time it was enacted.

161. The previous 2012 Congressional Plan contained 4 AP Black voting age population majority Congressional districts using 2020 Census data.

162. The State's 2021 Congressional Plan contains three Black-majority Congressional districts fully within the 29-County Atlanta MSA.

163. The previous 2012 Congressional Plan contained three Black-majority Congressional districts fully within the 29-County Atlanta MSA.

164. The 2021 Congressional Plan splits 15 counties.

165. The prior 2012 Congressional Plan split 16 counties.

166. The 2021 Enacted Congressional Plan Statistics set forth in exhibits G and K-1 of the December 5, 2022 Report of William Cooper [*Pendergrass* Dkt. Nos. 174-1, 174-2] are not disputed.

167. The 2012 Benchmark Congressional Plan Statistics set forth in exhibits E and F of the December 5, 2022 Report of William Cooper [*Pendergrass* Dkt. No. 174-1] are not disputed.

168. The Compactness Reports for the 2021 Enacted Congressional Plan and Benchmark 2012 Congressional Plan, as set forth in exhibits L-3 and L-2 of the December 5, 2022 Report of William Cooper [*Pendergrass* Dkt. No. 174-2] are not disputed.

169. The County Population Components Report for the 2021 Enacted Congressional Plan, as set forth in exhibit K-3 of the December 5, 2022 Report of William Cooper [*Pendergrass* Dkt. No. 174-2] is not disputed.



170. The Political Subdivision Split Reports for the 2021 Enacted Congressional Plan, as set forth in exhibits M-3 and M-6 of the December 5, 2022 Report of William Cooper [*Pendergrass* [Dkt. No. 174-2](#)] are not disputed.

171. The Political Subdivision Split Reports for the 2012 Benchmark Plan, as set forth in exhibits M-2 and M-5 of the December 5, 2022 Report of William Cooper [*Pendergrass* [Dkt. No. 174-2](#)] are not disputed.

172. There are 56 Senate districts in the State's 2021 Senate Plan.

173. The previous (2014) Senate plan contained 15 majority-Black Senate districts at the time it was enacted.

174. The 2014 Senate plan contained 13 majority-Black districts using 2020 Census data, plus a 14th district with a Black voting age population of 49.76%.

175. The 2021 State Senate Plan did not pair any incumbents who were running for reelection in 2022.

176. The State's 2021 Senate Plan contains 10 Black-majority Senate districts fully within the 29-County Atlanta MSA.

177. The previous 2014 Senate Plan contained 10 Black-majority Senate districts fully within the 29-County Atlanta MSA.

178. The 2006 Senate Plan that was in place prior to the 2014 Senate Plan contained 10 Black-majority Senate districts fully within the 29-County Atlanta MSA, using 2010 Census data.

179. There are 180 House districts in the State's 2021 House Plan.

180. The previous (2015) House plan contained 47 majority-Black House districts at the time it was enacted.

181. The 2015 State House plan contained 47 majority-Black districts using 2020 Census Data.

182. The 2021 State House Plan paired four sets of incumbents who were running for reelection in 2022.

183. The State's 2021 House Plan contains 33 Black-majority House districts fully within the 29-County Atlanta MSA.

184. The previous 2015 House plan contained 31 Black-majority Senate districts fully within the 29-County Atlanta MSA.

185. The 2006 House plan that was in place prior to the 2015 House Plan contained 30 Black-majority Senate districts fully within the 29-County Atlanta MSA, using 2010 Census data.

186. The 2021 Enacted Senate Plan Statistics, 2021 Enacted House Plan Statistics, 2014 Benchmark Senate Plan Statistics, and 2015 Benchmark House Plan Statistics set forth respectively in exhibits L and M-1, Y and Z-1, I-1 and J-1, and V-1 and W-1 of the December 5, 2022 Report of William Cooper [*Alpha Phi Alpha* Dkt. Nos. 231-1, 231-3] are not disputed.

187. The County Population Components Reports for the 2021 Enacted Senate and Enacted House Plans set forth respectively in exhibits M-2 and Z-2 of the December 5, 2022 Report of William Cooper [*Alpha Phi Alpha* Dkt. Nos. 231-1, 231-3] are not disputed.

188. The Political Subdivision Split Reports for the 2021 Enacted Senate Plan, 2021 Enacted House Plan, Benchmark 2014 Senate Plan, and Benchmark 2015 House Plan, as set forth respectively in exhibits T-3 and T-6, AH-1, AH-3 AH-5, T-2 and T-4, and AH-2, AH-4, and AH-6 of the December 5, 2022 Report of William Cooper [*Alpha Phi Alpha* Dkt. Nos. 231-1, 231-3, 231-4, 231-5], are not disputed.

189. The Compactness Reports for the 2021 Enacted Senate Plan, 2021 Enacted House Plan, Benchmark 2014 Senate Plan, and Benchmark 2015 House Plan, as set forth respectively in exhibits S-1, S-3, AG-1, AG-3, S-2, and AG-2 of

the December 5, 2022 Report of William Cooper [*Alpha Phi Alpha* Dkt. Nos. 231-3, 231-4] are not disputed.

## **VI. *Gingles* Preconditions**

### **E. Mr. Cooper's Illustrative Congressional Plan**

190. Plaintiffs' mapping expert, William S. Cooper, prepared an illustrative congressional plan with an additional majority-Black congressional district (illustrative Congressional District 6) anchored in the western Atlanta metropolitan area.

191. Mr. Cooper's illustrative Congressional District 6 has an AP Black population of 396,891 people, or 51.87% of the district's population.

192. Mr. Cooper's illustrative Congressional District 6 has an AP BVAP of 50.23%.

193. Plaintiffs' racially polarized voting expert, voting expert, Dr. Maxwell Palmer, analyzed the performance of Black-preferred candidates in general elections in Mr. Cooper's illustrative Congressional District 6.

194. In all cases where Dr. Palmer analyzed the performance of Black-preferred candidates related to illustrative Congressional District 6, the Black-preferred candidate was a Democrat.

195. In each of the 31 statewide races from 2012 through 2021, the Black-preferred candidate won a larger share of the vote in Mr. Cooper's illustrative Congressional District 6, with an average of 66.1%.

196. In the 31 statewide races from 2012 through 2021, the Black-preferred candidate also won a larger share of the vote in Mr. Cooper's illustrative Congressional District 13 (the only district from which Mr. Cooper's illustrative Congressional District 6 was drawn that previously performed for Black-preferred candidates), with an average of 62.3%.

197. Population deviations in Mr. Cooper's illustrative plan are limited to plus-or-minus one person from the ideal district population of 765,136.

198. The districts in Mr. Cooper's illustrative congressional plan are contiguous.

199. The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact.

200. The Polsby-Popper test computes the ratio of each district area to the area of a circle with the same perimeter. The measure is always between 0 and 1, with 1 being the most compact.

201. The Reock score for Mr. Cooper's illustrative Congressional District 6 is 0.45.

202. The average Reock score of the enacted congressional plan is 0.44.

203. The Reock score of the enacted Congressional District 6 is 0.42.

204. The Polsby-Popper score for Mr. Cooper's illustrative Congressional District 6 is 0.27.

205. The average Polsby-Popper score of the enacted congressional plan is 0.27.

206. The Polsby-Popper score of the enacted Congressional District 6 is 0.20.

207. The Compactness Report for Mr. Cooper's Congressional Plan, as set forth in exhibit L-1 of the December 5, 2022 Report of William Cooper [*Pendergrass* Dkt. Nos. 174-2] is not disputed.

208. The Illustrative Congressional Plan statistics set forth in exhibit I-1 of the December 5, 2022 Report of William Cooper [*Pendergrass* [Dkt. No. 174-1](#)] are not disputed.

209. The County Population Components Report for Mr. Cooper's Illustrative Congressional Plan, as set forth in exhibits I-3 of the December 5, 2022 Report of William Cooper [*Pendergrass* Dkt. Nos. 174-1,174-2] is not disputed.

210. The Political Subdivision Split Reports for Mr. Cooper's Illustrative Congressional Plan, as set forth in exhibits M-1 and M-4 of the December 5, 2022 Report of William Cooper [*Pendergrass* Dkt. Nos. 174-2] are not disputed.

211. Both Mr. Cooper's illustrative congressional plan and the enacted plan split 15 counties.

212. Mr. Cooper's illustrative plan leaves six of the 14 districts in the enacted plan unchanged: Congressional Districts 1, 2, 5, 7, 8, and 12.

213. Districts 2, 5, and 7 elected Black Democratic members of Congress in the 2022 elections.

214. Dr. Palmer conducted a racially polarized voting analysis of enacted Congressional Districts 3, 6, 11, 13, and 14, both as a region (the "focus area") and individually.



215. In all cases where Dr. Palmer analyzed the performance of Black-preferred candidates related enacted Congressional Districts 3, 6, 11, 13, and 14, both as a region (the “focus area”) and individually, the Black-preferred candidate was a Democrat.

216. In all cases where Dr. Palmer analyzed the performance of Black-preferred candidates related enacted Congressional Districts 3, 6, 11, 13, and 14, both as a region (the “focus area”) and individually, the white-preferred candidate was a Republican.

217. Dr. Palmer employed a statistical method called ecological inference (“EI”) to derive estimates of the percentages of Black and white voters in the focus area that voted for each candidate in 40 statewide general elections between 2012 and 2022.

218. Black voters in Georgia are extremely cohesive, with a clear candidate of choice in all 40 general elections Dr. Palmer examined.

219. On average, across the focus area, Black voters supported their candidates of choice with 98.4% of the vote in the 40 general elections Dr. Palmer examined.

220. Black voters are also extremely cohesive in the general election of each congressional district that comprises the focus area, with a clear candidate of choice in all 40 general elections Dr. Palmer examined.

221. On average, in the 40 general elections Dr. Palmer examined, Black voters supported their candidates of choice in general elections with 97.2% of the vote in Congressional District 3, 93.3% in Congressional District 6, 96.1% in Congressional District 11, 99.0% in Congressional District 13, and 95.8% in Congressional District 14.

222. White voters in Georgia are highly cohesive in voting in opposition to the Black-preferred candidate in every general election Dr. Palmer examined.

223. On average, across the focus area, white voters supported Black-preferred candidates in general elections with only 12.4% of the vote, and in no general election that Dr. Palmer examined did this estimate exceed 17%.

224. On average, in the 40 general elections Dr. Palmer examined, white voters supported Black-preferred candidates with 6.7% of the vote in Congressional District 3, 20.2% in Congressional District 6, 16.1% in Congressional District 11, 15.5% in Congressional District 13, and 10.3% in Congressional District 14.

225. Across the focus area, white-preferred candidates won the majority of the vote in all 40 general elections Dr. Palmer examined in Congressional Districts 3, 6, 11, and 14.

226. Only in the majority-Black Congressional District 13 did the Black-preferred candidate win a larger share of the vote in the 40 general elections Dr. Palmer examined.

227. The endogenous election results from the 2022 general election showed that Black-preferred candidates were defeated in Congressional Districts 3, 6, 11, and 14.

**F. Mr. Esselstyn's Illustrative State Senate and House Plans  
(Grant)**

228. Georgia's Black population is sufficiently numerous to allow for the creation of three additional majority-Black State Senate districts.

229. Georgia's Black population is sufficiently numerous to allow for the creation of five additional majority-Black State House districts.

230. Plaintiffs' mapping expert, Blakeman B. Esselstyn, drew illustrative State Senate and House maps that include three additional majority-Black State Senate districts and five additional majority-Black House districts.

231. Mr. Esselstyn's illustrative State Senate plan includes three additional majority-Black State Senate districts compared to the enacted plan, for a total of 17 out of 56 districts.

232. Specifically, Senate Districts 23, 25, and 28 are not majority-Black in the enacted plan but are majority-Black in the illustrative plan.

233. The additional majority-Black State Senate district 23 includes all of Burke, Glascock, Hancock, Jefferson, Screven, Taliaferro, Warren, and Washington Counties and parts of Baldwin, Greene, McDuffie, Augusta-Richmond, and Wilkes Counties.

234. Mr. Esselstyn's illustrative Senate District 23 has a Black voting-age population ("BVAP") of 51.06 percent.

235. The additional majority-Black State Senate district 25 is composed of portions of Clayton and Henry Counties.

236. Mr. Esselstyn's illustrative Senate District 25 has an AP BVAP of 58.93%.

237. The additional majority-Black State Senate district 28 is composed of portions of Clayton, Coweta, Fayette, and Fulton Counties.

238. Mr. Esselstyn's illustrative Senate District 28 has an AP BVAP of 57.28%.

239. Mr. Esselstyn's illustrative House plan includes five additional majority-Black House districts compared to the enacted plan, for a total of 54 out of 180 districts.

240. House Districts 64, 74, 117, 145, and 149 are not majority-Black in the enacted plan but are majority-Black in the illustrative plan.

241. The additional majority-Black House district 64 is composed of portions of Douglas, Fulton, and Paulding Counties.

242. Mr. Esselstyn's illustrative House District 64 has an AP BVAP of 50.24%.

243. The additional majority-Black House districts 74 and 117 are composed of portions of Clayton, Fayette, and Henry Counties.

244. Mr. Esselstyn's illustrative House District 74 has an AP BVAP of 53.94%.

245. Mr. Esselstyn's illustrative House District 117 has an AP BVAP of 51.56%.

246. Two additional majority-Black House districts 145 and 149 are composed of portions of Baldwin, Macon-Bibb, and Houston Counties, as well as all of Twiggs and Wilkinson Counties.

247. Mr. Esselstyn's illustrative House District 145 has an AP BVAP of 50.38%.

248. Mr. Esselstyn's illustrative House District 149 has an AP BVAP of 51.53%.

249. The Illustrative State Senate and Senate House Plan statistics set forth respectively in Attachments E and J of the December 5, 2022 Report of Blakeman B. Esselstyn [*Grant* [Dkt. No. 191-1](#)] are not disputed.

250. The Compactness Reports for Mr. Esselstyn's Illustrative State Senate and Senate House Plans, as set forth respectively in Attachments H and L of the December 5, 2022 Report of Blakeman B. Esselstyn [*Grant* [Dkt. No. 191-1](#)] are not disputed.

251. The Political Subdivision Split Reports for Mr. Esselstyn's Illustrative State Senate and Senate House Plans, as set forth respectively in Attachments H and L of the December 5, 2022 Report of Blakeman B. Esselstyn [*Grant* [Dkt. No. 191-1](#)] are not disputed.

252. The County Population Components Report for Mr. Esselstyn's Illustrative State Senate and Senate House Plans, as set forth respectively in Attachment C of the December 5, 2022 Report of Blakeman B. Esselstyn [*Grant Dkt. No. 191-1*] is not disputed.

253. Plaintiffs' racially polarized voting expert, Dr. Maxwell Palmer, analyzed the performance of Black-preferred candidates in Mr. Esselstyn's illustrative State Senate and House plans.

254. In all cases where Dr. Palmer analyzed the performance of Black-preferred candidates related to Mr. Esselstyn's illustrative State Senate and State House plans, the Black-preferred candidate was a Democrat.

255. Black-preferred candidates would have won all 31 statewide general elections between 2012 and 2020 in Mr. Esselstyn's illustrative House Districts 64, 74, and 149 and illustrative Senate Districts 23, 25, and 28.

256. In illustrative House District 117, the Black-preferred candidate would have won all 19 general elections since 2018.

257. In illustrative House District 145, the Black-preferred candidate would have won all 19 general elections since 2018, and 27 of the 31 general elections overall.



258. The districts in Mr. Esselstyn's illustrative Senate and House plans are contiguous.

259. The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact.

260. The Polsby-Popper test computes the ratio of each district area to the area of a circle with the same perimeter. The measure is always between 0 and 1, with 1 being the most compact.

261. Mr. Esselstyn's illustrative plans leave 34 of 56 Senate districts and 155 of 180 House districts in the enacted plan unchanged.

262. Dr. Palmer conducted racially polarized voting analyses across five different focus areas, comprising the districts from which Mr. Esselstyn's additional majority-Black legislative districts were drawn.

263. In all cases where Dr. Palmer conducted racial polarized voting analyses across five different focus areas, the Black-preferred candidate was a Democrat.

264. Dr. Palmer examined the following areas of the enacted House plan: House Districts 133, 142, 143, 145, 147, and 149, which include Bleckley, Crawford, Dodge, Twiggs, and Wilkinson counties and parts of Baldwin, Bibb, Houston, Jones, Monroe, Peach, and Telfair counties; House Districts 69, 74, 75, 78, 115, and 117, which include parts of Clayton, Fayette, Fulton, Henry, and Spalding counties; and House Districts 61 and 64, which include parts of Douglas, Fulton, and Paulding counties.

265. Dr. Palmer examined the following areas of the enacted State Senate plan: Senate Districts 22, 23, 24, 25, and 26, which include Baldwin, Burke, Butts, Columbia, Elbert, Emanuel, Glascock, Greene, Hancock, Hart, Jasper, Jefferson, Jenkins, Johnson, Jones, Lincoln, Mcduffie, Oglethorpe, Putnam, Richmond, Screven, Taliaferro, Twiggs, Warren, Washington, Wilkes, and Wilkinson counties and parts of Bibb, Henry, and Houston counties; and Senate Districts 10, 16, 17, 25, 28, 34, 35, 39, and 44, which include Baldwin, Butts, Clayton, Coweta, Fayette, Heard, Jasper, Jones, Lamar, Morgan, Pike, Putnam, and Spalding counties and parts of Bibb, DeKalb, Douglas, Fulton, Henry, Newton, and Walton counties.

266. Dr. Palmer employed a statistical method called Ecological Inference (“EI”) to derive estimates of the percentages of Black and white voters in the focus

areas that voted for each candidate in 40 statewide general elections between 2012 and 2022.

267. In all cases where Dr. Palmer used EI across the focus areas, the Black-preferred candidate was a Democrat.

268. Across the five focus areas, Black voters are extremely cohesive, with a clear candidate of choice in all 40 general elections Dr. Palmer examined.

269. On average, across the five focus areas, Black voters supported their candidates of choice with 98.5% of the vote in the 40 general elections Dr. Palmer examined.

270. Black voters are also cohesive in each of the districts that comprise the focus areas and contain 15 or more precincts, with an average estimated level of support for Black-preferred candidates of at least 92.5%.

271. White voters in the focus areas are highly cohesive in voting in opposition to Black-preferred candidates.

272. On average, white voters supported Black-preferred candidates in general elections with only 8.3% of the vote, and white voters in the focus areas supported Black-preferred candidates with a maximum of 17.7 percent of the vote.

273. Black-preferred candidates win almost every general election in the Black-majority districts that comprise the focus areas but lose almost every election in the non-Black-majority districts.

274. The endogenous election results from the 2022 general election show that Black-preferred State Senate and House candidates were defeated in every majority-white district and elected in every majority-Black district in the focus areas.

**G. Mr. Cooper's Illustrative State Senate and House Plans (*Alpha Phi Alpha*)**

275. Georgia's Black population is sufficiently numerous to allow for the creation of three additional majority-Black State Senate districts.

276. Georgia's Black population is sufficiently numerous to allow for the creation of five additional majority-Black State House districts.

277. The ideal population size for a State Senate district is 191,284.

278. The ideal population size for a State House district is 59,511.

279. *Alpha Phi Alpha* Plaintiffs' mapping expert, William Cooper, drew illustrative State Senate and House maps that include at least three additional majority-Black State Senate districts and at least five additional majority-Black House districts.

280. Mr. Cooper's Illustrative State Senate Plan includes three additional majority-Black State Senate districts compared to the enacted plan, for a total of at least 17 out of 56 districts.

281. Specifically, Senate Districts 17, 23, and 28 are not majority-Black in the enacted plan but are majority-Black in the illustrative state Senate plan.

282. Senate Districts 17, 23, and 28 each elected white Republicans in the 2022 general election.

283. Illustrative majority-Black State Senate district 28 is composed of adjacent portions of Fayette, Clayton, and Spalding Counties.

284. Illustrative majority-Black State Senate district 17 is composed of adjacent portions of Henry, Rockdale, and Dekalb Counties.

285. Illustrative majority-Black State Senate district 23 includes all of Baldwin, Burke, Glascock, Hancock, Jefferson, Jenkins, McDuffie, Taliaferro, Twiggs, Warren, Washington, and Wilkinson Counties and parts of Augusta-Richmond, and Wilkes Counties.

286. Mr. Cooper's illustrative House plan includes five additional majority-Black House districts compared to the enacted plan, for a total of at least 54 out of 180 districts.

287. House Districts 74, 117, 133, 145, and 171 are not majority-Black in the enacted plan but are majority-Black in the illustrative plan.

288. House Districts 74, 117, 133, 145, and 171 each elected white Republicans in the 2022 general election.

289. Illustrative majority-Black House district 74 is composed of portions of Clayton, Henry, and Spalding Counties.

290. Illustrative majority-Black House district 117 is composed of portions of Henry and Spalding Counties.

291. Illustrative majority-Black House district 133 is composed of Wilkinson, Hancock, Warren, Taliaferro, and portions of Baldwin and Wilkes Counties.

292. Illustrative majority-Black House district 145 is composed of portions of Macon-Bibb and Houston Counties.

293. Illustrative majority-Black House district 171 is composed of Mitchell County and portions of Dougherty and Thomas Counties.

294. Mr. Cooper prepared his illustrative Senate and House maps using Maptitude for Redistricting, a GIS software package commonly used by many local and state governing bodies for redistricting and other types of demographic analysis.

295. Mr. Cooper had access to geographic boundary files created from the U.S. Census 1990-2020 Topologically Integrated Geographic Encoding and Referencing (TIGER) files.

296. Mr. Cooper had access to population data from the 1990-2020 PL 94-171 data files published by the U.S. Census Bureau, which contains basic race and ethnicity data on the total population and voting-age population found in units of Census geography, including states, counties, municipalities, townships, reservations, school districts, census tracts, census block groups, precincts (called voting districts or “VTDs” by the Census Bureau) and census blocks.

297. Mr. Cooper also had access to incumbent addresses that he obtained from attorneys for the plaintiffs.

298. Mr. Cooper had access to shapefiles for the current and historical Georgia legislative plans available on the Legislative and Congressional Reapportionment Office’s website, and he obtained for the House, Senate, and Congressional plans in effect during the early 2000’s from the American Redistricting Project.



299. Mr. Cooper had access to the same guidelines that the Georgia House Legislative and Congressional Reapportionment Committee used in drawing his illustrative plans.

300. All of the districts in Mr. Cooper's illustrative plans are contiguous.

301. The Cooper Illustrative Senate Plan districts have a deviation relative range of -1.00% to 1.00%, compared to a range of -1.03% to 0.98% for the 2021 Senate Plan.

302. The Cooper Illustrative State House Districts have a deviation relative range of -1.49% to 1.49%, compared to a range of -1.40% to 1.34% for the 2021 House Plan.

303. The Illustrative Senate Plan Statistics and Illustrative House Plan Statistics set forth respectively in exhibits O-1 and AA-1 of the December 5, 2022 Report of William Cooper [*Alpha Phi Alpha* Dkt. Nos. 231-2, 231-4] are not disputed.

304. The County Population Components Reports for Mr. Cooper's Illustrative Senate and Illustrative House Plans, set forth respectively in exhibits O-2 and AA-2 of the December 5, 2022 Report of William Cooper [*Alpha Phi Alpha* Dkt. Nos. 231-2, 231-4], are not disputed.

305. The Political Subdivision Split Reports for Mr. Cooper’s Illustrative Senate and Illustrative House Plans, as set forth respectively in exhibits AH-1 and AH-4 of the December 5, 2022 Report of William Cooper [*Alpha Phi Alpha* Dkt. Nos. 231-1, 231-4], are not disputed.

306. The Compactness Reports for Mr. Cooper’s Illustrative Senate and Illustrative House Plans, as set forth respectively in exhibits S-1 and AG-1 of the December 5, 2022 Report of William Cooper [*Alpha Phi Alpha* Dkt. Nos. 231-3, 231-4], are not disputed.

307. Dr. Lisa Handley analyzed voting patterns by race in seven areas of Georgia where Mr. Cooper’s illustrative State Senate and House plans create more majority Black voting age population (BVAP) districts than the adopted State Senate and House plans.

308. Dr. Handley employed three different statistical techniques to estimate vote choices by race: homogeneous precinct analysis, ecological regression, and ecological inference (including a more recently developed version of ecological inference that she labeled “EI RxC”).

309. The first area Dr. Handley analyzed encompasses Mr. Cooper's Illustrative State Senate Districts 10, 17, and 43; adopted State Senate Districts 10, 17, and 43; and Dekalb, Henry, Morgan, Newton, Rockdale, and Walton counties.

310. The second area encompasses Mr. Cooper's Illustrative State Senate Districts 16, 28, 34, and 39; adopted State Senate Districts 16, 28, 34, and 44; and Clayton, Coweta, Douglas, Fayette, Heard, Henry, Lamar, Pike, and Spalding counties.

311. The third area encompasses Mr. Cooper's Illustrative State Senate Districts 22, 23, 26, and 44; adopted State Senate Districts 22, 23, 25, and 26; and Baldwin, Bibb, Burke, Butts, Columbia, Emanuel, Glascock, Hancock, Henry, Houston, Jasper, Jefferson, Jenkins, Johnson, Jones, Lamar, McDuffie, Monroe, Morgan, Putnam, Richmond, Screven, Taliaferro, Twiggs, Walton, Warren, Washington, Wilkes, and Wilkinson counties.

312. The fourth area encompasses Mr. Cooper's Illustrative State House Districts 74, 75, 78, 115, 116, 117, 118, 134, and 135; adopted State House Districts 74, 75, 78, 115, 116, 117, 118, 134, and 135; and Butts, Clayton, Fayette, Henry, Jasper, Lamar, Monroe, Pike, Putnam, Spalding, and Upson counties.

313. The fifth area encompasses Mr. Cooper's Illustrative State House Districts 128, 133, 144, and 155; adopted State House Districts 128, 133, 149, and 155; and Baldwin, Bibb, Bleckley, Dodge, Glascock, Hancock, Jefferson, Johnson, Jones, Laurens, McDuffie, Taliaferro, Telfair, Twiggs, Warren, Washington, Wilkes, and Wilkinson counties.

314. The sixth area encompasses Mr. Cooper's Illustrative State House Districts 152, 153, 171, 172, and 173; adopted State House Districts 152, 153, 171, 172, and 173; and Colquitt, Cook, Decatur, Dougherty, Grady, Lee, Mitchell, Seminole, Stewart, Terrell, Thomas, Tift, Webster, and Worth counties.

315. The seventh area encompasses Mr. Cooper's Illustrative State House Districts 142, 143, and 145; adopted State House Districts 142, 143, and 145; and Bibb, Crawford, Houston, Peach, and Twiggs counties.

316. Dr. Handley analyzed voting patterns by race in 16 recent statewide general and run-off elections from 2016 to 2022 in these seven areas.

317. The 16 statewide general elections include the 2022 general election contests for U.S. Senate, Governor, Commissioners of Agriculture, Insurance, and Labor, and the School Superintendent; the 2021 runoff for U.S. Senate (Special) and Public Service Commission District 4; the 2020 general elections for U.S. Senate

(Special); the Public Service Commission Districts 1 and 4; and the 2018 general election contests for Governor, Commissioner of Insurance and School Superintendent; the 2021 runoff for U.S. Senate and November 2020 general election for U.S. Senate.

318. Fourteen of the recent statewide general and general runoff elections Dr. Handley analyzed involved Black candidates.

319. In all cases where Dr. Handley analyzed voting patterns in these seven areas in 16 recent statewide general and run-off elections from 2016 to 2022, the Black-preferred candidate was a Democrat.

320. In these 16 recent statewide general and general runoff elections from 2016-2022, Black voters were highly cohesive in their support for their preferred candidate.

321. In these 16 recent statewide general and general runoff elections from 2016-2022, the average percentage of Black vote for the 16 Black-preferred candidates in the analyzed areas of interest was 96.1%.

322. In the same 16 recent statewide general and general runoff elections from 2016-2022, the average percentage of white vote for the 16 Black preferred candidates in the analyzed areas of interest was 11.2%.

323. The highest average white vote for any of the 16 Black preferred candidates in the statewide elections Dr. Handley analyzed in the areas of interest was 14.4% for US Senator Raphael Warnock in his 2022 general election bid for re-election against Herschel Walker.

324. Dr. Handley also analyzed 54 recent biracial state legislative general elections in the seven areas of interest.

325. In all cases where Dr. Handley analyzed voting patterns in 54 recent biracial state legislative general elections in the seven areas of interest, the Black-preferred candidate was a Democrat.

326. In these 54 state legislative general elections, Black voters were highly cohesive in their support for their preferred candidates.

327. In these 54 state legislative general elections, an average of 97.4% of Black voters supported their preferred Black state senate candidates and 91.5% supported their preferred Black state house candidate.

328. In the same 54 state legislative elections, an average of 10.1% of white voters supported the Black-preferred Black state senate candidates and 9.8% supported the Black-preferred Black state house candidates.

329. In the same 54 state legislative elections, all but one of the successful Black state legislative candidates were elected from majority Black districts; the one exception was elected from a district that was majority minority in composition.

330. In the seven areas of interest, Black voters were very cohesive in supporting their preferred candidates in general elections for statewide offices.

331. In the seven areas of interest, Black preferred candidates in general elections for statewide offices were Democrats.

332. In the seven areas of interest, white voters were very cohesive in supporting their preferred candidates in general elections for statewide offices.

333. In the seven areas of interest that Dr. Handley analyzed, white preferred candidates in general elections for statewide offices were Republicans.

334. In the seven areas of interest, large majorities of white and Black voters supported different candidates in general elections for statewide offices.

335. In the seven areas of interest, Black voters exhibit cohesive support for a single candidate in state legislative general elections.

336. In the seven areas of interest, white voters exhibit cohesive support for a single candidate in state legislative general elections.



337. In the seven areas of interest, Black and white voters supported different candidates in state legislative general elections.

338. In the seven areas of interest, Black voters cohesively support Black candidates in biracial general elections.

339. In the seven areas of interest, white voters cohesively support white candidates in biracial general elections.

340. Biracial general elections do not include candidates of the same race, such as the Warnock-Walker race.

341. In the seven areas of interest, white voters cohesively supported Black candidates who are Republicans in the two general elections in which such candidates received the Republican party nomination.

## **VII. Totality of Circumstances**

342. According to Census estimates, the unemployment rate among Black Georgians is 8.7 percent and the unemployment rate among white Georgians is 4.4 percent.

343. According to Census estimates, 32.2% of white Georgian households report an annual income above \$100,000.

344. According to Census estimates, the rate of Black Georgians living below the poverty line is 21.5% and the rate of white Georgians living below the poverty line is 10.1%.

345. According to Census estimates, the rate of Black Georgians receiving SNAP benefits is 22.7% and the rate of white Georgians receiving SNAP benefits is 7.7%.

346. According to Census estimates, 13.3% of Black adults in Georgia lack a high school diploma and 9.4% of white adults in Georgia lack a high school diploma.

347. According to Census estimates, 35% of white Georgians over the age of 25 have obtained a bachelor's degree or higher, and 24% of Black Georgians over the age of 25 have obtained a bachelor's degree.

348. The Georgia Legislative Black Caucus has 14 members in the Georgia State Senate and 41 members in the Georgia House of Representatives.

349. Georgia has had 77 governors, none of whom has been Black.

350. Senator Raphael Warnock is the first Black Georgian to serve Georgia in the U.S. Senate after more than 230 years of white senators.

351. More than 1.8 million voters participated in the Georgia 2022 General Primary Election for both parties.

352. Sen. Raphael Warnock received the highest number of votes in the statewide elections for U.S. Senate in the 2020 special election, the 2021 special election runoff, the 2022 general election, and the 2022 general election runoff.

353. President Joe Biden received the highest number of votes in the 2020 presidential election in Georgia.

354. Sen. Jon Ossoff finished second in the 2020 general election, but won the 2021 general election runoff for a six-year term in the U.S. Senate.

355. Sen. Raphael Warnock received 1,946,117 votes in the 2022 general election, while Herschel Walker received 1,908,442 votes.

356. Governor Brian Kemp received 2,111,572 votes in the 2022 general election, while Stacey Abrams received 1,813,673 votes.

357. Sen. Raphael Warnock received 1,820,633 votes in the 2022 general election runoff, while Herschel Walker received 1,721,244 votes.

358. President Biden, Sen. Ossoff, and Sen. Warnock are all candidates of choice of Black voters in Georgia.

359. The following five Black individuals serve in Congress from Georgia congressional districts: Congressman Sanford Bishop, Congressman Hank Johnson, Congresswoman Nikema Williams, Congresswoman Lucy McBath, Congressman David Scott.

360. 51.9% of Georgia's voting-eligible population voted in the November 2022 election.

361. Four Black individuals have been elected to statewide partisan office in Georgia since Reconstruction: Michael Thurmond, Thurbert Baker, David Burgess, and Raphael Warnock.

362. The following Black individuals have been elected to statewide nonpartisan offices in Georgia since Reconstruction: Robert Benham, Leah Ward-Sears, Harold Melton, Verda Colvin, John Ruffin, Clarence Cooper, Herbert Phipps, Yvette Miller, Clyde Reese.

**ATTACHMENT F-1**

***Pendergrass Plaintiffs' Witness List***

The *Pendergrass* Plaintiffs anticipate that the following witnesses will testify at trial:

<b>Witness</b>	<b>Previously Filed Report(s)/Declaration(s)</b>
William S. Cooper	ECF Nos. 174-1, 174-2
Dr. Maxwell Palmer	ECF Nos. 174-3, 174-4
Dr. Orville Vernon Burton	<a href="#"><u>ECF No. 174-5</u></a>
Dr. Loren Collingwood	<a href="#"><u>ECF No. 174-6</u></a>

The *Pendergrass* Plaintiffs anticipate that the following witnesses may testify at trial:

<b>Witness</b>	<b>Previously Filed Report(s)/Declaration(s)</b>
Dave Worley	N/A
Coakley Pendergrass	<a href="#"><u>ECF No. 201-1</u></a>
Triana Arnold James	<a href="#"><u>ECF No. 201-2</u></a>
Elliott Hennington	<a href="#"><u>ECF No. 201-3</u></a>
Robert Richards	<a href="#"><u>ECF No. 201-4</u></a>
Jens Rueckert	<a href="#"><u>ECF No. 201-5</u></a>
Ojuan Glaze	<a href="#"><u>ECF No. 201-6</u></a>
Former Rep. Erick Allen	N/A

Rep. Derrick Jackson	N/A
Former Sen. Jason Carter	N/A

## **ATTACHMENT F-2**

### ***Grant Plaintiffs' Witness List***

The *Grant* Plaintiffs anticipate that the following witnesses will testify at trial:

<b>Witness</b>	<b>Previously Filed Report(s)/Declaration(s)</b>
Blakeman Esselstyn	<a href="#"><u>ECF No. 191-1</u></a>
Dr. Maxwell Palmer	ECF Nos. 191-2, 191-3
Dr. Orville Vernon Burton	<a href="#"><u>ECF No. 191-4</u></a>
Dr. Loren Collingwood	<a href="#"><u>ECF No. 191-5</u></a>

The *Grant* Plaintiffs anticipate that the following witnesses may testify at trial:

<b>Witness</b>	<b>Previously Filed Report(s)/Declaration(s)</b>
Dave Worley	N/A
Annie Lois Grant	<a href="#"><u>ECF No. 218-1</u></a>
Quentin T. Howell	<a href="#"><u>ECF No. 218-2</u></a>
Elroy Tolbert	<a href="#"><u>ECF No. 218-3</u></a>
Garrett Reynolds	<a href="#"><u>ECF No. 218-8</u></a>
Triana Arnold James	<a href="#"><u>ECF No. 218-4</u></a>
Eunice Sykes	<a href="#"><u>ECF No. 218-5</u></a>
Elbert Solomon	<a href="#"><u>ECF No. 218-6</u></a>
Dexter Wimbish	<a href="#"><u>ECF No. 218-7</u></a>
Jacqueline Faye Arbuthnot	<a href="#"><u>ECF No. 218-9</u></a>
Jacquelyn Bush	<a href="#"><u>ECF No. 218-10</u></a>



Mary Nell Conner	N/A
Former Rep. Erick Allen	N/A
Rep. Derrick Jackson	N/A
Former Sen. Jason Carter	N/A
Marion Warren	N/A
Dr. Diane Evans	N/A
Fenika Miller	N/A

**ATTACHMENT F-3**

***Alpha Phi Alpha* Plaintiffs' Witness List**

The *Alpha Phi Alpha* Plaintiffs anticipate that the following witnesses will testify at trial:

<b>Witness</b>	<b>Previously Filed Report(s)/Declaration(s)</b>
William S. Cooper	<a href="#"><u>ECF No. 237-1</u></a>
Dr. Lisa Handley	<a href="#"><u>ECF No. 222 at 183-214</u></a>
Dr. Adrienne Jones	<a href="#"><u>ECF No. 239-7</u></a>
Dr. Traci Burch	Not previously filed
Dr. Jason Morgan Ward	ECF Nos. 242-6
Sherman Lofton Jr.	<a href="#"><u>ECF No. 26-15</u></a> ; 39-15; 70-2
Bishop Reginald Jackson	<a href="#"><u>ECF No. 26-16</u></a> ; 39-16; 70-1

The *Alpha Phi Alpha* Plaintiffs anticipate that the following witnesses may testify at trial:

<b>Witness</b>	<b>Previously Filed Report(s)/Declaration(s)</b>
Eric T. Woods	<a href="#"><u>ECF No. 26-14</u></a> ; 39-14
Katie Bailey Glenn	<a href="#"><u>ECF No. 26-11</u></a> ; 39-11
Phil Brown	<a href="#"><u>ECF No. 26-12</u></a> ; 39-12
Janice Stewart	<a href="#"><u>ECF No. 26-13</u></a> ; 39-13
Former Rep. Erick Allen	N/A

Rep. Derrick Jackson	N/A
Former Sen. Jason Carter	N/A
Marion Warren	N/A
Dr. Diane Williams	N/A
Fenika Miller	N/A
Dave Worley	N/A

**ATTACHMENT F-4**

**Defendants' Witness List**

Defendants anticipate that the following witnesses will testify at trial:

<b>Witness</b>	<b>Previously Filed Report(s)/Declaration(s)</b>
John Morgan	December 5, 2022 report in <i>Grant</i> and <i>Alpha Phi Alpha</i> ; January 23, 2023 report in all cases
Dr. John Alford	February 6, 2023 report in all cases
Ms. Gina Wright	Testifying as a fact witness
Blake Evans, Gabriel Sterling, or Ryan Germany	As representative of Secretary of State's office

Defendants anticipate that the following witnesses may testify at trial:

<b>Witness</b>	<b>Previously Filed Report(s)/Declaration(s)</b>
Sen. John Kennedy	N/A
Rep. Bonnie Rich	N/A
Lynn Bailey	Testifying as a fact witness

## *Pendergrass* Doc. 279

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

ALPHA PHI ALPHA FRATERNITY, ) DAY 2 - A.M. SESSION  
INC., ET AL., )  
PLAINTIFFS, )  
-VS- ) DOCKET NO. 1:21-CV-05337-SCJ  
BRAD RAFFENSPERGER, )  
DEFENDANT. )  

---

COAKLEY PENDERGRASS, )  
ET AL., )  
PLAINTIFFS, ) DOCKET NO. 1:21-CV-5339-SCJ  
-VS- )  
BRAD RAFFENSPERGER, ET AL., )  
DEFENDANTS. )  

---

ANNIE LOIS GRANT, ET AL., )  
PLAINTIFFS, ) DOCKET NO. 1:22-CV-00122-SCJ  
-VS- )  
BRAD RAFFENSPERGER, ET AL., )  
DEFENDANTS. )

TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE  
TUESDAY, SEPTEMBER 6, 2023

VIOLA S. ZBOROWSKI, CRR, CRC, CMR, FAPR  
OFFICIAL COURT REPORTER FOR THE HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT COURT  
ATLANTA, GEORGIA  
404-215-1479  
VIOLA\_ZBOROWSKI@GAND.USCOURTS.GOV

1 polarization might exist.

2 Q. And you didn't examine any primaries in either report;  
3 right?

4 A. No.

5 Q. And it's also your opinion that race and party cannot be  
6 separated for the purposes of your racial polarization  
7 analysis?

8 A. Yes.

9 Q. I want to make sure I have correctly how you define  
10 racially polarized voting, which I think you did a good job of  
11 already, but I just want to drill down on it.

12 So what I understand when you're analyzing is here  
13 predominantly the question of whether Black and white voters  
14 are polarized for purposes of racial polarization. In your  
15 view, determining racial polarization comes in three parts; is  
16 that fair?

17 A. Yes. I think about finding -- looking to see if Black  
18 voters are cohesive and then if white voters are cohesive, and  
19 then if they're supporting the same or different candidates.

20 Q. And cohesively, when you're using it there, means the  
21 large majority of Black voters are supporting the same  
22 candidate, or the large majority of white voters are  
23 supporting the same candidate?

24 A. Yes.

25 Q. And then you're concerned after that -- after you



## *Pendergrass* Doc. 281

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

ALPHA PHI ALPHA FRATERNITY, ) DAY 4 - P.M. SESSION  
INC., ET AL., )  
PLAINTIFFS, )  
-VS- ) DOCKET NO. 1:21-CV-05337-SCJ  
BRAD RAFFENSPERGER, )  
DEFENDANT. )

---

COAKLEY PENDERGRASS, )  
ET AL., )  
PLAINTIFFS, )  
-VS- ) DOCKET NO. 1:21-CV-5339-SCJ  
BRAD RAFFENSPERGER, ET AL., )  
DEFENDANTS. )

---

ANNIE LOIS GRANT, ET AL., )  
PLAINTIFFS, )  
-VS- ) DOCKET NO. 1:22-CV-00122-SCJ  
BRAD RAFFENSPERGER, ET AL., )  
DEFENDANTS. )

TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE  
FRIDAY, SEPTEMBER 8, 2023

VIOLA S. ZBOROWSKI, CRR, CRC, CMR, FAPR  
OFFICIAL COURT REPORTER FOR THE HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT COURT  
ATLANTA, GEORGIA  
404-215-1479  
VIOLA\_ZBOROWSKI@GAND.USCOURTS.GOV

1 Q. I'd like to turn to Senate Factor 7. Let's talk about  
2 the extent to which Black people have been elected to federal  
3 office in Georgia. In Georgia's history how many Black people  
4 have been elected to Congress?

5 A. 12.

6 Q. And how long is the period that we're talking about?

7 A. So we're talking about from the beginning off the state's  
8 history there have been 12 Black people sent to Congress from  
9 the state. Only one of them went to Congress before 1965.

10 The other 11 have been sent to Congress since 1965.

11 Q. So focusing on that period from 1965 to 2023, what  
12 percentage of the available congressional seats do those 11  
13 Black legislators occupy?

14 A. So those legislators have constituted approximately  
15 20 percent of the 364 congressional seats available to  
16 Georgia. And, you know, that calculation includes candidates  
17 or elected officials who served more than one term, like John  
18 Lewis. But it's still a very small swath in a state where  
19 Blacks are politically active and interested in being a part  
20 of the political environment in the state of Georgia.

21 Q. Roughly, what percentage of the Georgia population is  
22 Black?

23 A. Of the population?

24 Q. Yes.

25 A. About 33 percent.

1 Q. So let's turn to State office. How many Black people  
2 have been elected to statewide non-judicial office in the  
3 state's history?

4 A. We've had three people elected to statewide non-judicial  
5 office. Labor Commissioner Mike Thurmond, Public Service  
6 Commissioner David Burgess, and Attorney General Thurbert  
7 Baker. We have not had a Black lieutenant governor or  
8 governor in the state.

9 Q. Dr. Jones, why do you distinguish between judicial and  
10 non-judicial office here?

11 A. Well, these are candidates who are elected to office.  
12 And judicial candidates have also been elected, but in general  
13 they are appointed first. And so there's a benefit to  
14 incumbency that has an impact on the elections.

15 Q. Thank you.

16 And let's talk about the General Assembly in particular.  
17 On Pages 46 to 47 of your report, you contain a few tables  
18 containing the election results. Can you tell us what these  
19 tables show?

20 A. These tables basically show that it's impossible for a  
21 Black candidate to be elected in a majority white county in  
22 the state of Georgia. Or district.

23 Q. At what point does the white -- white population  
24 percentage in the district become so high that no candidate --  
25 no Black candidate was able to win in 2020?

## *Pendergrass* Doc. 285

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

ALPHA PHI ALPHA FRATERNITY, ) DAY 8 - A.M. SESSION  
INC., ET AL., )  
PLAINTIFFS, )  
-VS- ) DOCKET NO. 1:21-CV-05337-SCJ  
BRAD RAFFENSPERGER, )  
DEFENDANT. )

---

COAKLEY PENDERGRASS, )  
ET AL., )  
PLAINTIFFS, )  
-VS- ) DOCKET NO. 1:21-CV-5339-SCJ  
BRAD RAFFENSPERGER, ET AL., )  
DEFENDANTS. )

---

ANNIE LOIS GRANT, ET AL., )  
PLAINTIFFS, )  
-VS- ) DOCKET NO. 1:22-CV-00122-SCJ  
BRAD RAFFENSPERGER, ET AL., )  
DEFENDANTS. )

---

TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE  
THURSDAY, SEPTEMBER 14, 2023

VIOLA S. ZBOROWSKI, CRR, CRC, CMR, FAPR  
OFFICIAL COURT REPORTER FOR THE HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT COURT  
ATLANTA, GEORGIA  
404-215-1479  
VIOLA\_ZBOROWSKI@GAND.USCOURTS.GOV

1 A. No, it does not.

2 Q. Okay. And is that because it's actually not possible to  
3 establish the cause of voter behavior with the data and  
4 methods that statisticians and political scientists have  
5 available today?

6 A. I think it would -- with just the -- so there are  
7 different kinds of data that are available. So the kind of  
8 data that we use here, which is, you know, ecological and  
9 highly abstract data, cannot demonstrate cohesion in sort of  
10 its natural form.

11 Much of the work on things like individual-level surveys,  
12 exit polls, et cetera, also make it very difficult in a  
13 non-experimental setting to demonstrate causation. It really  
14 takes an experimental setting. So there is some work done in  
15 experimental settings, but this is not an area of inquiry that  
16 is -- scientific causation in the social sciences is very  
17 difficult to establish. This is not an area where there has  
18 been any work that's established that.

19 Q. And just to -- I apologize for interrupting you. I think  
20 you used the word "cohesion" in the first part of that. You  
21 were speaking to causation; is that correct?

22 A. Yes. Causation.

23 Q. Okay. And so because of those limitations, you have not  
24 offered an opinion in this case as to the cause of Black  
25 voters' behavior; correct?



1 A. Correct.

2 Q. Okay. And in your report in this case, you've not  
3 analyzed whether any state legislative district under the  
4 illustrative or enacted plans that are at issue in this case,  
5 create an opportunity for Black voters to elect the candidate  
6 of their choice; right?

7 A. I did not look at -- I didn't do any performance  
8 analysis.

9 Q. Okay. And as you mentioned before, you've not analyzed  
10 any of the Democratic -- you've not conducted -- excuse me.  
11 Sorry.

12 You've not conducted a statistical analysis of any of the  
13 Democratic primaries in Dr. Handley's area of interest; right?

14 A. That's correct.

15 Q. Okay. And so you haven't offered an opinion in your  
16 report in this case about whether primaries in those areas are  
17 preventing Black-preferred candidates from being elected to  
18 office in the areas that Dr. Handley analyzed; right?

19 A. I'm not sure in exactly those words. I don't believe the  
20 Democratic primary is racially polarized voting, so if that's  
21 -- you know, if that's what I conclude, I think that suggests  
22 what you're saying, the Democratic primaries are not --  
23 because they don't show racially polarized voting, are not --  
24 as Dr. Handley concludes, not a barrier to the nomination of  
25 Black candidates to these offices.

1 A. I would agree.

2 Q. And you agree with Dr. Palmer's conclusion in both Grant  
3 and Pendergrass that Black Georgians in the focus areas he  
4 looked at are politically cohesive?

5 A. Yes.

6 Q. And you would agree in the areas Dr. Palmer analyzed for  
7 both Pendergrass and Grant that white voters vote cohesively  
8 in a different direction than Black voters?

9 A. I agree.

10 Q. And you note in your report that the pattern of  
11 polarization is quite striking; isn't that correct?

12 A. Yes.

13 Q. And the pattern of polarization that you're referring to  
14 is the pattern observed between Black and white voters; right?

15 A. In the general elections, yes.

16 Q. White voter opposition to the Black-preferred candidate  
17 is remarkably stable?

18 A. It is.

19 Q. And you'd agree that the stability of that pattern of  
20 polarized voting across time and across office and across  
21 geography in Georgia is pretty remarkable; right?

22 A. It is.

23 Q. You mention in response to the Court's questions earlier  
24 today that school children start to recognize partisan  
25 differences at an early age.

1 Do you remember that?

2 A. That's correct.

3 Q. You would agree that school children start to recognize  
4 racial differences at an even earlier age; right?

5 A. I would agree, yes.

6 Q. Dr. Alford, you define racially polarized voting as clear  
7 cohesion on the minority group, typically in support of  
8 minority candidates, and a clear cohesion in the opposite  
9 direction, or bloc voting on behalf of the majority, that is,  
10 by white voters; correct?

11 A. That's, I think, a fair summary.

12 Q. In the conclusion of your report you opine, "What is  
13 observed here is cohesive Black voter support for Democratic  
14 candidates and white voter support for Republican candidates  
15 that the general election analysis reveals; not cohesive Black  
16 voter support for Black candidates and white voter support for  
17 white candidates"; is that right?

18 A. That is correct.

19 Q. And your opinion in this regard is based on your  
20 observations regarding the candidate's race and the  
21 candidate's party; right?

22 A. Correct.

23 Q. You did not examine the candidate's platforms on any  
24 issues?

25 A. Correct.

1 Q. You did not examine the political party's platforms on  
2 any issues?

3 A. Correct.

4 Q. You did not examine the history of voting-related  
5 discrimination in Georgia?

6 A. Correct.

7 Q. You did not examine the extent to which racial influences  
8 voting behavior in Georgia?

9 Oh, sorry. Let me rephrase.

10 You did not examine the extent to which race influences  
11 voting behavior in Georgia?

12 A. You're saying race influences voting behavior? Race of  
13 the voters?

14 Q. Correct. Race of the voters.

15 A. Maybe I'm misunderstanding. I think that's exactly what  
16 the tables show.

17 Q. You did not examine the extent to which race has informed  
18 party affiliation in Georgia?

19 A. Well, we had a discussion about it this morning, the  
20 report is -- nobody's examined it in any of the reports. So  
21 I'm not doing an independent examination of that.

22 Q. You did not examine whether political parties in Georgia  
23 used racial appeals to persuade voters to affiliate with them?

24 A. I did not.

25 Q. You did not examine the Dr. Burton's report in forming

1 any of the conclusions in your report?

2 A. I did not examine?

3 Q. Dr. Burton's reports in forming any of the conclusions in  
4 your report; right?

5 A. Correct.

6 MS. RUTAHINDURWA: One second.

7 No further questions. Thank you.

8 THE COURT: Thank you.

9 Redirect?

10 MR. JACOUTOT: Very brief, Your Honor.

11 THE COURT: Come on up.

12 REDIRECT EXAMINATION

13 BY MR. JACOUTOT:

14 Q. Good morning again, Dr. Alford.

15 A. I'm getting out of here this morning.

16 Q. So I just wanted to -- working backwards from the counsel  
17 that was questioning you. I think I heard you say you defined  
18 -- or let me just ask you this.

19 You define legally significant racial polarization as  
20 something more than merely differential bloc voting patterns  
21 among white and Black voters?

22 THE COURT: Hold on. I have an objection.

23 MS. RUTAHINDURWA: Yeah. Objection, Your Honor, to  
24 the extent it's legally significant, that calls for a legal  
25 conclusion.

1 THE COURT: Say your objection again? Your mic  
2 wasn't working.

3 MS. RUTAHINDURWA: Sorry, Your Honor.

4 He said "legally significant," and that calls for a  
5 legal conclusion.

6 THE COURT: You might want to rephrase it?

7 MR. JACOUTOT: Sure.

8 BY MR. JACOUTOT:

9 Q. You dispute the characterization of racial polarization  
10 that both -- or excuse me -- that Dr. Palmer had; correct?  
11 Based on his data, you dispute the conclusion?

12 A. We disagree about our conclusions, so I think it's -- I  
13 try to stick as closely as I can to what I see my function  
14 here as being. And that is to -- to make sure that it's  
15 abundantly clear what the plaintiffs have provided evidence of  
16 and what they have not provided evidence of so that the Court  
17 can make a decision based on what they provided evidence for.

18 So if -- if the Court believes, I'd ask Brennan, and a  
19 few fellow judges believe, that with -- at least with regard  
20 to Gingles, and probably my reading with regard to everything,  
21 that the issue of what was driving this, whether it was -- in  
22 any way driven by racial considerations, was not relevant. It  
23 was simply a factual issue about how groups are voting.

24 That's a factual issue that's established here by the  
25 plaintiffs, and I agree, these two groups are voting in very

1 different ways.

2 But I think it's important if we're going -- one of the  
3 issues I take with this is, I don't think that we're always  
4 careful enough when we throw around the term "racially  
5 polarized voting" to recognize that my colleagues in political  
6 science and people who read this in the paper, when a judge  
7 says voting in Georgia is racially polarized and so racially  
8 polarized that we have to overturn the state's action or the  
9 county's action or the school board's action, I think you need  
10 to carefully explain what it is you mean by that. Right?

11 Brennan's point was, don't get into this because if you  
12 get into this, it will, you know, open up an issue we don't  
13 want to open up. It's an issue we want to move away from.

14 And so if things are phrased carefully and stated  
15 carefully, you can avoid that. But I think they need to begin  
16 -- I think you need to begin by saying, the evidence provided  
17 by the plaintiffs shows that -- importantly, shows that the  
18 race of candidates is no longer an issue driving the behavior,  
19 the polarized behavior of voters in Georgia. I think that's a  
20 very important thing to say.

21 What goes beyond that into how you would characterize it  
22 -- the reason I don't like to say that that's racially  
23 polarized voting is because even though there's a narrow  
24 meaning of that term that suggests it's just about the racial  
25 groups, the broader meaning of that term, as I've often seen



*Pendergrass* Doc. 286

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

**ALPHA PHI ALPHA FRATERNITY  
INC., et al.,  
Plaintiffs,**

**v.**

**BRAD RAFFENSPERGER, in his official  
capacity as Secretary of State of Georgia,  
Defendant.**

---

**COAKLEY PENDERGRASS et al.,  
Plaintiffs,**

**v.**

**BRAD RAFFENSPERGER et al.,  
Defendants.**

---

**ANNIE LOIS GRANT et al.,  
Plaintiffs,**

**v.**

**BRAD RAFFENSPERGER et al.,  
Defendants.**

**CIVIL ACTION FILE**

**No. 1:21-CV-05337-SCJ**

**CIVIL ACTION FILE**

**No. 1:21-CV-05339-SCJ**

**CIVIL ACTION FILE**

**No. 1:22-CV-00122-SCJ**

**OPINION AND MEMORANDUM  
OF DECISION**

## **TABLE OF CONTENTS**

<b>OPINION AND MEMORANDUM OF DECISION .....</b>	<b>8</b>
<b>I. FINDINGS OF FACT .....</b>	<b>10</b>
A. PROCEDURAL HISTORY .....	13
1. Initial Filings .....	13
2. Preliminary Injunction.....	15
3. Discovery and Summary Judgment .....	18
4. Trial.....	19
5. Post-Trial Proceedings.....	21
B. THE NAMED PARTIES.....	21
1. Alpha Phi Alpha Plaintiffs .....	21
a) Alpha Phi Alpha Fraternity, Inc. ....	21
b) Sixth District African Methodist Episcopal Church .....	22
c) Individually-named Plaintiffs in the APA case.....	23
2. Pendergrass Plaintiffs .....	23
3. Grant Plaintiffs.....	24
4. Defendants.....	26
a) Brad Raffensperger.....	26
b) The State Election Board .....	27
C. HISTORY OF RACE AND VOTING IN GEORGIA.....	30
D. GEORGIA’S CHANGING DEMOGRAPHICS .....	32
1. Georgia’s Total Population .....	32
2. Metro Atlanta.....	34
3. The Black Belt.....	37
a) Eastern Black Belt Region .....	38
b) Metro-Macon Region.....	39
c) Southwestern Georgia Region .....	40
E. GEORGIA 2021 ENACTED PLANS.....	40
1. The 2021 Redistricting Process .....	40
a) Legislative activities .....	40

b)	Map drawing process.....	44
2.	Enacted Plan Statistics .....	47
a)	Congressional Plan .....	47
(1)	2012 Congressional plan .....	47
(2)	Enacted Congressional Plan .....	50
b)	State Senate Plan .....	52
c)	State House Plan .....	56
F.	ILLUSTRATIVE PLANS .....	61
1.	Credibility Determinations .....	61
a)	Mr. William S. Cooper .....	61
b)	Mr. Blakeman B. Esselstyn .....	65
c)	Mr. John B. Morgan .....	67
d)	Dr. Maxwell Palmer.....	72
e)	Dr. Lisa Handley .....	73
f)	Dr. John Alford.....	76
2.	Illustrative Congressional Plan .....	78
a)	First <i>Gingles</i> Precondition .....	78
(1)	Mr. Cooper’s process in drawing the maps .....	78
(2)	Illustrative Congressional Plan .....	81
b)	Second and Third <i>Gingles</i> Preconditions.....	93
3.	Cooper Legislative Plans .....	95
a)	Mr. Cooper’s process in drawing the maps .....	95
b)	Cooper Senate Plan.....	98
(1)	Empirical measures.....	99
(2)	Core retention .....	104
(3)	Incumbent pairing.....	105
(4)	Racial considerations .....	105
c)	Cooper House Plan.....	107
(1)	Empirical measures.....	108
(2)	Core retention .....	113

(3) Incumbent pairings.....	114
(4) Racial considerations .....	114
4. Esselstyn Legislative Plans.....	115
a) Mr. Esselstyn’s map drawing process .....	115
b) Esselstyn Senate Plan .....	117
(1) Empirical measures.....	118
(2) Core retention .....	126
(3) Incumbent Pairings.....	127
(4) Racial Considerations .....	128
c) Esselstyn House Plan .....	132
(1) Empirical measures.....	133
(2) Core retention .....	141
(3) Incumbent Pairings.....	141
(4) Racial Considerations .....	142
G. SECOND AND THIRD <i>GINGLES</i> PRECONDITIONS .....	142
1. Pendergrass: Dr. Palmer’s methodology .....	142
2. Alpha Phi Alpha: Dr. Handley’s methodology .....	145
3. Grant: Dr. Palmer’s methodology .....	151
H. GEORGIA’S HISTORY OF VOTING AND RECENT ELECTORAL DEVELOPMENTS.....	155
1. Credibility Determinations .....	155
a) Dr. Orville Vernon Burton.....	156
b) Dr. Loren Collingwood .....	158
c) Dr. Adrienne Jones .....	159
d) Dr. Traci Burch.....	161
e) Dr. Jason Morgan Ward.....	163
2. Analysis.....	164
<b>II. CONCLUSIONS OF LAW.....</b>	<b>164</b>
A. JURISDICTIONAL CONSIDERATIONS.....	164
1. Constitutional Standing.....	165
a) Claims by the Sixth District AME .....	166
b) Claims against the SEB.....	168

2.	Statutory Standing.....	170
B.	LEGAL STANDARDS.....	171
1.	First Gingles Precondition.....	171
2.	Second and Third Gingles Precondition .....	172
3.	Totality of the Circumstances: Senate Factors.....	172
C.	CONGRESSIONAL DISTRICT.....	173
1.	First Gingles Precondition.....	173
a)	Numerosity .....	174
b)	Compactness.....	179
2.	Second Gingles Precondition.....	201
3.	Third Gingles Precondition.....	205
4.	Totality of the Circumstances .....	209
a)	Totality of circumstances inquiry .....	210
b)	Senate Factor One and Three .....	213
c)	Senate Factor Two.....	233
d)	Senate Factor Five .....	242
e)	Senate Factor Six .....	250
f)	Senate Factor Seven .....	252
g)	Senate Factor Eights .....	258
h)	Senate Factor Nine .....	260
i)	Proportionality .....	262
j)	Demographic Changes .....	270
5.	Conclusions of Law .....	272
D.	LEGISLATIVE DISTRICTS .....	274
1.	First Gingles Precondition.....	275
a)	Racial predominance .....	275
b)	Metro Atlanta region.....	277
(1)	Alpha Phi Alpha.....	277
(2)	Grant .....	309
c)	Eastern Black Belt region .....	346
(1)	Alpha Phi Alpha.....	346

(2) Grant: Esselstyn SD-23 .....	364
d) Macon-Bibb region .....	375
(1) Alpha Phi Alpha: Cooper HD-145 .....	375
(2) Grant .....	382
e) Southwest Georgia region .....	396
(1) Alpha Phi Alpha: Cooper HD-171 .....	396
2. Second Gingles Precondition .....	408
a) Alpha Phi Alpha .....	408
b) Grant .....	413
3. Third Gingles Precondition .....	417
a) Alpha Phi Alpha .....	417
b) Grant .....	420
4. Totality of the Circumstances .....	426
a) Alpha Phi Alpha .....	429
(1) Totality of circumstances inquiry .....	429
(2) Senate Factors One and Three .....	430
(3) Senate Factor Two .....	451
(4) Senate Factor Five .....	458
(5) Senate Factor Six .....	465
(6) Senate Factor Seven .....	467
(7) Senate Factor Eight .....	472
(8) Senate Factor Nine .....	475
(9) Proportionality .....	477
(10) Conclusions of law .....	480
<b>b) Grant</b> .....	482
(1) Totality of circumstances inquiry .....	482
(2) Senate Factor Two .....	486
(3) Senate Factor Nine .....	489
(4) Proportionality .....	491
(5) Conclusions of Law .....	492
E. INJUNCTION FACTORS .....	493



1.	Irreparable Harm and Inadequate Remedies at Law .....	494
2.	Balance of Hardships and Public Interest .....	495
F.	AFFIRMATIVE DEFENSES .....	500
1.	Eleventh Amendment Immunity and Sovereign Immunity .....	501
2.	Section 2 Private Right of Action .....	506
3.	28 U.S.C. § 2284: Three-Judge Court.....	507
4.	Section 2's Constitutionality .....	508
G.	REMEDY .....	508
III.	CONCLUSION .....	511

## OPINION AND MEMORANDUM OF DECISION

The right to vote “is regarded as a fundamental political right, because [it is] preservative of all rights.” Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886).

The voting rights act has proven the most successful civil rights statute in the history of the nation because it has reflected the overwhelming consensus in this nation that the most fundamental civil right of all citizens-- the right to vote-- must be preserved at whatever cost and through whatever commitment required of the federal government.

S. REP. 97-417, 111, 1982 U.S.C.C.A.N. 177, 282. This past summer, Chief Justice Roberts confirmed that “the essence of a § 2 claim . . . [is] where an electoral structure operates to minimize or cancel out minority voters’ ability to elect their preferred candidates. Such a risk is greatest where minority and majority voters consistently prefer different candidates and where minority voters are submerged in a majority voting population that regularly defeat[s] their choices.” Allen v. Milligan, 599 U.S. 1, 17–18 (2023) (citing Thornburg v. Gingles, 478 U.S. at 30, 47–49 (1986)) (cleaned up).

In the three cases before the Court,<sup>1</sup> each set of Plaintiffs argues that their voting rights have been violated by the redistricting plans recently adopted by the State of Georgia in the wake of the 2020 Census. The Court thus approaches these cases “with caution, bearing in mind that these circumstances involve ‘one of the most fundamental rights of . . . citizens: the right to vote.’” Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs, 775 F.3d 1336, 1345 (11th Cir. 2015) (citations omitted).

After conducting a thorough and sifting review of the evidence in this case, the Court finds that the State of Georgia violated the Voting Rights Act when it enacted its congressional and legislative maps. The Court commends Georgia for the great strides that it has made to increase the political opportunities of Black voters in the 58 years since the passage of the Voting Rights Act of 1965. Despite these great gains, the Court determines that in certain areas of the State, the political process is not equally open to Black voters. For example, in the past

---

<sup>1</sup> In the interest of judicial economy, and to avoid confusion, the Court issues a single order that will be filed by the Clerk in each of the above-stated cases. Although the Court issues a single order, the Court has evaluated the merits of each case independently and reached its conclusions as follows.

decade, all of Georgia's population growth was attributable to the minority population, however, the number of majority-Black congressional and legislative districts remained the same.<sup>2</sup> In light of this fact and in conjunction with all of the evidence and testimony in this case, the Court determines that Georgia's congressional and legislative maps violate Section 2 of the Voting Rights Act and enjoins their use in any future elections.

## **I. FINDINGS OF FACT**

Having considered the evidence at trial, the Parties' presentations (pursuant to Federal Rule of Civil Procedure 52(c)), and closing arguments, this Court makes the following findings of fact.<sup>3</sup>

---

<sup>2</sup> This finding in no way requires that the number of majority-Black congressional or legislative district be proportionate to the Black population.

<sup>3</sup> The Court has used the term "findings of fact" for simplicity's sake, but the Court notes that some of the foregoing findings are also conclusions of law. Similarly, the "conclusions of law" section contains some findings of fact.

The Court divides its discussion of the factual findings into four parts. First, the Court explains the procedural history of the three cases and describes the named Parties. Second, the Court considers the history of race and voting in Georgia and its changing demographics. Third, the Court explains its findings of fact about the creation of the 2021 congressional, Senate, and House districting plans based on the testimony and evidence introduced at a coordinated trial of these actions. Fourth, the Court sets forth its findings regarding the Illustrative Plans.

For reference, the following citations are used for support for each of the findings below:

Citation <sup>4</sup>	Document Type
<u>APA</u> Doc. No. [ ]	Docket entry from <u>Alpha Phi Alpha</u>
<u>Grant</u> Doc. No. [ ]	Docket entry from <u>Grant</u>
<u>Pendergrass</u> Doc. No. [ ]	Docket entry from <u>Pendergrass</u>

---

<sup>4</sup> All citations are to the electronic docket unless otherwise noted, and all page numbers are those imprinted by the Court's docketing software.

Tr.	Transcript of the trial hearing held September 5-14, 2023 in all three cases. <sup>5</sup>
PI Tr.	<u>APA</u> Doc. Nos. [106]-[117]; <u>Pendergrass</u> Doc. Nos. [73]-[85]; <u>Grant</u> Doc. Nos. [68]-[79]
DX	Defendants' Exhibits
APAX	<u>Alpha Phi Alpha</u> Plaintiffs' Exhibits
GX	<u>Grant</u> Plaintiffs' Exhibits
PX	<u>Pendergrass</u> Plaintiffs' Exhibits
JX	Joint Exhibits
Stip.	Stipulations filed at <u>APA</u> Doc. No. [280], Attach. E.; <u>Grant</u> Doc. No. [243], Attach. E.; <u>Pendergrass</u> Doc. No. [231], Attach. E.
Jud. Not.	Court's Order taking judicial notice at <u>APA</u> Doc. No. [284], <u>Grant</u> Doc. No. [246], <u>Pendergrass</u> Doc. No. [234]

---

<sup>5</sup> The Court cites to the Official Certified Hearing Transcript for the Trial provided by the court reporter. This transcript has not yet been filed on the docket.

**A. Procedural History**

**1. *Initial Filings***

On December 30, 2021, Plaintiffs in the Alpha Phi Alpha case filed their Complaint against Brad Raffensperger, in his official capacity as Secretary of State of Georgia. APA Doc. No. [1]. On that same date, Plaintiffs in the Pendergrass case filed their Complaint against Raffensperger and the members of the State Election Board (the “SEB”). Pendergrass Doc. No. [1]. On January 11, 2022, Plaintiffs in the Grant case filed their Complaint against Raffensperger and the SEB. Grant Doc. No. [1]. All three Complaints alleged violations of Section 2 of the Voting Rights Act, as amended 52 U.S.C. § 10301.

On January 7, 2022, Plaintiffs in Alpha Phi Alpha Plaintiffs filed their Motion for a Preliminary Injunction. APA Doc. Nos. [26], [39]. <sup>6</sup> Pendergrass Plaintiffs filed their Motion for a Preliminary Injunction on January 12, 2022 (Pendergrass Doc. No. [32]) and the following day, the Grant Plaintiffs filed their Motion for Preliminary Injunction (Grant Doc. No. [19]).

---

<sup>6</sup> Alpha Phi Alpha Plaintiffs filed a *renewed* Motion for Preliminary Injunction on January 13, 2023. Doc. No. [39].



On January 14, 2022, Defendant Raffensperger filed his Motion to Dismiss the Alpha Phi Alpha Complaint (APA Doc. No. [43]) and Defendants Raffensperger and the State Election Board members filed their Motions to Dismiss the Pendergrass and Grant Complaints (Pendergrass Doc. No. [38], Grant Doc. No. [23]). Defendants' motions primarily advanced two arguments: (1) Section 2 did not create a private right of action, therefore, Plaintiffs could not bring their claims and (2) 28 U.S.C. § 2284(a) required the Alpha Phi Alpha and Grant Plaintiffs' claims be heard by a three-judge court. Id. The Parties then briefed the Motions to Dismiss and for Preliminary Injunction on an expedited basis (APA Doc. Nos. [45]–[47], [58], [59], Pendergrass Doc. Nos. [39], [40], [44], [45], Grant Doc. Nos. [24]–[25], [35], [37]).

The Court denied Defendants' Motions to Dismiss. APA Doc. No. [65], Pendergrass Doc. No. [50], Grant Doc. No. [43]. The Court concluded that the text of Section 2284 does not require a plaintiff to request a three-judge court for purely statutory challenges to the apportionment of congressional districts and statewide legislative bodies. Id. The Court further concluded that Plaintiffs could assert their claims because, for the past forty-five years, the Supreme Court and

lower courts have allowed private individuals to assert challenges under Section 2 of the Voting Rights Act. Id.

## ***2. Preliminary Injunction***

After denying the motions to dismiss, in February 2022, the Court convened a coordinated hearing on the motions for preliminary injunction. APA Doc. No. [127], Pendergrass Doc. No. [90], Grant Doc. No. [84].

On the first day of the preliminary injunction hearing, the United States Supreme Court granted the State of Alabama's motion to stay a three-judge district court's order granting a preliminary injunction in favor of a challenge to Alabama's congressional map under Section 2. Merrill v. Milligan, 142 S. Ct. 879 (2022). The Supreme Court then accepted certiorari and placed the case on its October 2022 term calendar. Id. Justice Kavanaugh, joined by Justice Alito, wrote separately to concur in the stay. See generally id. at 879–82. In his concurrence, Justice Kavanaugh first emphasized that the stay was not a ruling on the merits, but followed Supreme Court election-law precedent that established that federal courts generally “should not enjoin state election laws in the period close to an election.” Id. at 879 (citing Purcell v. Gonzalez, 549 U.S. 1 (2006)) (per curiam)).

The Court allowed the Parties in the cases *sub judice* to submit briefing and oral argument on the effect of the Milligan stay order. APA Doc. Nos. [97], [127]–[131], Pendergrass Doc. Nos. [65], [91]–[95], Grant Doc. Nos. [59], [85]–[89]. The Court thereafter decided to proceed with the preliminary injunction hearing. Over the course of the six-day preliminary injunction hearing—February 7 through February 14, 2022—the Court admitted various pieces of evidence and heard testimony from a variety of expert and fact witnesses. Id.

On February 28, 2022, the Court issued its Preliminary Injunction Order. The Court found a substantial likelihood of success on the merits in that additional majority-Black districts should have been drawn. The General Assembly should have drawn an additional majority-Black congressional district in the west-metro Atlanta (Pendergrass Plaintiffs); two additional majority-Black State Senate districts in south-metro Atlanta (Grant); two additional majority-Black State House districts in the south-metro Atlanta (Grant), and one additional majority-Black State House district in southwestern Georgia (Alpha Phi Alpha). Alpha Phi Alpha Fraternity, Inc. v. Raffensperger, 587 F. Supp. 3d 1222, 1243–320

(N.D. Ga. 2022).<sup>7</sup> In light of the Supreme Court’s decision to stay the Milligan case, the Court ultimately denied the preliminary injunction finding that the balance of harms and public interest weighed against granting the injunction. Id. at 1321–27. Specifically, the Court found based upon the evidence presented that “the public interest of the State of Georgia would be significantly undermined by altering the election calendar and unwinding the electoral process” as of the date of its ruling. Id. at 1324.

Pursuant to Federal Rule of Civil Procedure 65(a)(2), certain evidence that was received on the preliminary injunction motions (in a format admissible at trial) has become a part of the trial record.

---

<sup>7</sup> The Court did not find it necessary to rule on the substantial likelihood of success as to the Alpha Phi Alpha Plaintiffs’ Illustrative Senate Districts 17 and 28 and Illustrative House Districts 73, 110, and 111. Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1267–68. The Court also did “not find that the Grant and Alpha Phi Alpha Plaintiffs ha[d] established that they have a substantial likelihood of succeeding on the merits of their claims that a third State Senate District should have been drawn in the Eastern Black Belt or that additional House Districts should have been drawn in the western Atlanta metropolitan area, central Georgia, or in the Eastern Black Belt.” Id. at 1271 n.23.

### *3. Discovery and Summary Judgment*

Following the preliminary injunction hearing, all Plaintiffs amended their complaints and engaged in a nine-month discovery period. APA Doc. Nos. [133], [141], Pendergrass Doc. Nos. [96], [120], Grant Doc. No. [90], [96]. Following discovery, Defendants filed Motions for Summary Judgment in all three cases. APA Doc. No. [230], Pendergrass Doc. No. [175], Grant Doc. No. [190]. The Pendergrass and Grant Plaintiffs also filed Motions for Summary Judgment. Pendergrass Doc. No. [173], Grant Doc. No. [189]. On May 18, 2023, the Court heard argument on the pending motions. APA Doc. No. [260], Pendergrass Doc. No. [209], Grant Doc. No. [224]. At the conclusion of the hearing, the Court informed the Parties that it would not rule on the motions for summary judgment until after the Supreme Court issued its opinion for the Allen case.

On June 8, 2023, the Supreme Court issued a 5-4 decision in Allen, 599 U.S. 1, affirming the three-judge court's Grant of the preliminary injunction.<sup>8</sup> Chief

---

<sup>8</sup> The procedural history for the Allen case shows that the case name changed from Merrill v. Milligan to Allen v. Milligan based upon the expiration of the term of Alabama's Secretary of State and the swearing in of the successor.

Justice Roberts, writing for the majority, upheld the existing three-part framework developed in Gingles, 478 U.S. at 30 and found under a clear error review that the three-judge district court did not err in finding a substantial likelihood of success on a Section 2 violation. Id.<sup>9</sup>

Following the Supreme Court's Allen decision, the Parties provided supplemental briefing. APA Doc. Nos. [263], [264], Pendergrass Doc. Nos. [212], [214], Grant Doc. Nos. [227], [228]. The Court then denied all pending motions for summary judgment. APA Doc. No. [268], Pendergrass Doc. No. [215], Grant Doc. No. [229]. In all three cases, the Court found that issues of fact and credibility remained on all three Gingles preconditions as well as the totality of the circumstances. Id.

#### ***4. Trial***

The Parties then proceeded to trial on the merits of Plaintiffs' claims and Defendants' affirmative defenses. Although the Court did not consolidate the three cases, at the trial, the Court heard all three cases at once (utilizing

---

<sup>9</sup> For a thorough discussion of the Supreme Court's Allen decision, see APA Doc. No. [268].

coordinated hearing procedures). For the sake of clarity, the Court required the Parties to clearly state on the Record which testimony and which pieces of evidence were attributed to which case. APA Doc. No. [286], Pendergrass Doc. No. [236], Grant Doc. No. [248]. Over the course of the eight-day trial – spanning from September 5, 2023 through September 14, 2023 – the Court heard from 20 live witnesses and accepted testimony from 22 witnesses via deposition (APA Doc. No. [292], Pendergrass Doc. No. [243], Grant Doc. No. [254]).

At the conclusion of all three Plaintiffs’ presentations of evidence, Defendants moved for Judgment on Partial Findings of Fact pursuant to Federal Rule of Civil Procedure 52(c). APA Doc. No. [305], Pendergrass Doc. No. [255], Grant Doc. No. [264]. The Court verbally denied the motion. APA Doc. No. [306], Pendergrass Doc. No. [257], Grant Doc. No. [266]. Defendants then proceeded to present their case-in-chief. The Court heard closing arguments and took the matter under advisement. APA Doc. No. [308], Pendergrass Doc. No. [259], Grant Doc. No. [268].



### ***5. Post-Trial Proceedings***

Following the trial, all Parties submitted proposed findings of fact and conclusions of law for the Court's consideration. APA Doc. Nos. [317], [318], Pendergrass Doc. Nos. [268], [269], Grant Doc. Nos. [277], [278].<sup>10</sup> The Court has adopted and rejected portions of the Parties' submissions.

#### **B. The Named Parties**

##### **1. Alpha Phi Alpha Plaintiffs**

##### **a) Alpha Phi Alpha Fraternity, Inc.**

Alpha Phi Alpha Fraternity, Inc. is the first intercollegiate Greek-letter fraternity established for Black men. Stip. ¶ 51. Alpha Phi Alpha has programs to raise political awareness, register voters, and empower Black communities. Stip. ¶ 53. Alpha Phi Alpha has thousands of members throughout Georgia. Stip. ¶ 52.

---

<sup>10</sup> Under the Local Rules, counsel are "directed to submit a statement of proposed Findings of Fact and Conclusions of Law in nonjury cases." LR 16.4(B)(25), NDGa. The Court does not view these proposals as evidence or post-trial briefs. To the extent that any Party raised an argument in their Proposed Findings of Fact and Conclusions of Law that was not raised in the Pretrial Order or at trial, that argument will be disregarded.

Under the Enacted Legislative Plans, Alpha Phi Alpha has members who live in State Senate Districts 16, 17, and 23 and State House Districts 74, 114, 117, 128, 133, 134, 145, 171, and 173. Id. Harry Mays is a member of Alpha Phi Alpha Fraternity, Inc. Doc. No. [94], at 2 ¶ 4; Stip. ¶ 54. Mr. Mays resides in House District 117 under the State’s 2021 House Plan, and under Plaintiffs’ illustrative maps would reside in a new majority-Black House District. Id. ¶¶ 55–56.

**b) Sixth District African Methodist Episcopal Church**

The Sixth District of the African Methodist Episcopal Church (“Sixth District AME”) is a nonprofit religious organization. Stip. ¶ 57. The Sixth District AME is one of twenty districts of the AME Church and covers all of Georgia. Stip. ¶ 58. One of its core tenets is encouraging and supporting civic participation among its members through voter registration, transporting churchgoers to the polls, hosting “Get Out the Vote” efforts, and providing food, water and encouragement to people waiting in lines at the polls. Stip. ¶ 62.

Under the Enacted Legislative Plans, member-churches of the Sixth District AME are located in State Senate Districts 16, 17, and 23 and State House Districts 74, 114, 117, 128, 133, 134, 145, 171, and 173. Stip. ¶ 61. Plaintiff Phil S. Brown is a

member of the Lofton Circuit AME Church in Wrens, Georgia, and Plaintiff Janice Stewart is a member of the Saint Peter AME Church in Camilla, Georgia. Stip. ¶¶ 63–64.

**c) Individually-named Plaintiffs in the APA case**

Eric T. Woods is a Black resident of Tyrone, Georgia. Stip. ¶¶ 65, 66. Under the Enacted Legislative Plans, Mr. Woods is a registered voter in State Senate District 16. Stip. ¶¶ 67, 68. Katie Bailey Glenn is a Black resident of McDonough, Georgia. Stip. ¶¶ 70, 71. Under the Enacted Legislative Plans, Ms. Bailey is a registered voter in State Senate District 17. Stip. ¶¶ 72, 73. Phil S. Brown is a Black resident of Wrens, Georgia. Stip. ¶¶ 75, 76. Under the Enacted Legislative Plans, Mr. Brown is a registered voter in State Senate District 23. Stip. ¶¶ 77, 78. Janice Stewart is a Black resident of Thomasville, Georgia. Stip. ¶¶ 80, 81. Under the Enacted Legislative Plans, Ms. Stewart is a registered voter in State House District 173. Stip. ¶¶ 82, 83.

**2. Pendergrass Plaintiffs**

Coakley Pendergrass is a Black resident of Cobb County, Georgia. Stip. ¶¶ 1, 2. Under the Enacted Congressional Plan, Mr. Coakley is a registered voter in Congressional District 11. Stip. ¶ 3. Triana Arnold is a Black resident of

Douglas County, Georgia. Stip. ¶¶ 4, 5. Under the Enacted Congressional Plan, Ms. Arnold is a registered voter in Congressional District 3. Stip. ¶ 6. Elliott Hennington is a Black resident of Cobb County, Georgia. Stip. ¶¶ 7, 8. Under the Enacted Congressional Plan, Mr. Hennington is a registered voter in Congressional District 14. Stip. ¶ 9. Robert Richards is a Black resident of Cobb County, Georgia. Stip. ¶¶ 10, 11. Under the Enacted Congressional Plan, he is a registered voter in Congressional District 14. Stip. ¶ 12. Jens Rueckert is a Black resident of Cobb County, Georgia. Stip. ¶¶ 13, 14. Under the Enacted Congressional Plan, Mr. Rueckert is a registered voter in Congressional District 14. Stip. ¶ 15. Ojuan Glaze is a Black resident of Douglas County, Georgia. Stip. ¶¶ 16, 17. Under the Enacted Congressional Plan, Mr. Glaze is a registered voter in Congressional District 13. Stip. ¶ 18.

### 3. Grant Plaintiffs

Annie Lois Grant is a Black resident of Union Point, Georgia. Stip. ¶¶ 19, 20. Under the Enacted Legislative Plans, Ms. Grant is a registered voter in State Senate District 24 and State House District 124. Stip. ¶ 20. Quentin T. Howell is a Black resident of Milledgeville, Georgia. Stip. ¶¶ 21, 22. Under the Enacted

Legislative Plans, Mr. Howell is a registered voter in State Senate District 25 and State House District 133. Stip. ¶ 23. Elroy Tolbert is a Black resident of Macon, Georgia. Stip. ¶¶ 24, 25. Under the Enacted Legislative Plans, Mr. Tolbert is a registered voter in State Senate District 18 and State House District 144. Stip. ¶ 26. Triana Arnold James is a Black resident of Villa Rica, Georgia. Stip. ¶¶ 27, 28. Under the Enacted Legislative Plans, Ms. James is a registered voter in State Senate District 30 and State House District 64. Stip. ¶ 29. Eunice Sykes is a Black resident of Locust Grove, Georgia. Stip. ¶¶ 30, 31. Under the Enacted Legislative Plans, Ms. Sykes is a registered voter in State Senate District 25 and State House District 117. Stip. ¶ 33. Elbert Solomon is a Black resident of Griffin, Georgia. Stip. ¶¶ 33, 34. Under the Enacted Legislative Plans, Mr. Solomon is a registered voter in State Senate District 16 and State House District 117. Stip. ¶ 35.

Dexter Wimbish is a Black resident of Griffin, Georgia. Stip. ¶¶ 36, 37. Under the Enacted Legislative Plans, Mr. Wimbish is a registered voter in State Senate District 16 and State House District 74. Stip. ¶ 38. Garrett Reynolds is a Black resident of Tyrone, Georgia. Stip. ¶¶ 39, 40. Under the Enacted Legislative Plans, Mr. Reynolds is a registered voter in State Senate District 16 and State

House District 68. Stip. ¶ 41. Jacqueline Faye Arbuthnot is a Black resident of Powder Springs, Georgia. Stip. ¶¶ 42, 43. Under the Enacted Legislative Plans, Ms. Arbuthnot is a registered voter in State Senate District 31 and State House District 64. Stip. ¶ 44. Jacquelyn Bush is a Black resident of Fayetteville, Georgia. Stip. ¶¶ 45, 46. Under the Enacted Legislative Plans, Ms. Bush is a registered voter in State Senate District 16 and State House District 74. Stip. ¶ 47. Mary Nell Conner is a Black resident of Henry County, Georgia. Stip. ¶¶ 48, 49. Under the Enacted Legislative Plans, Ms. Conner is a registered voter in State Senate District 25 and State House District 117. Stip. ¶ 50.

#### *4. Defendants*

##### **a) Brad Raffensperger**

Brad Raffensperger is the Georgia Secretary of State. Stip. ¶ 85. The Secretary of State is a constitutional officer elected by Georgia voters every four years. Ga. Const. Art. 5, § 3, par. 1. Under Georgia law, the Secretary of State is required:

- (1) [t]o determine the forms of nomination petitions, ballots, and other forms;
- ....

(6) [t]o receive from the superintendent the returns of primaries and elections and to canvass and compute the votes cast for candidates and upon questions;

....

(13) [t]o prepare and furnish information for citizens on voter registration and voting; and

....

(15) [t]o develop, program, building, and review ballots for use by counties and municipalities on voting systems in use in the state.

O.C.G.A. § 21-2-50(a).

**b) The State Election Board<sup>11</sup>**

The State Election Board (“SEB”) was created by legislation codified in the Georgia’s Election Code, O.C.G.A. § 21-2-30(a). It consists of five members, including a representative of each of the two major political parties. Id. § 21-2-

---

<sup>11</sup> The Court notes for the record that Defendant Raffensperger is sued in his official capacity in all three lawsuits, the members of the SEB are sued in their official capacities in Pendergrass and Grant. As will be discussed below, the Court finds that the Pendergrass and Grant Plaintiffs did not introduce any evidence about the SEB’s ability to redress their injuries or that the injury is traceable to it. Thus, the Court ultimately finds that the Pendergrass and Grant Plaintiffs lack standing to sue the SEB. See Section II(A)(1)(b) *infra*. However, throughout this Opinion and Memorandum, the Court will collectively refer to all Defendants, even though the SEB is ultimately dismissed and was not sued by the Alpha Phi Alpha Plaintiffs. However, any relief will be directed to Secretary of State Raffensperger.



30(c). Sarah Tindall Ghazal, Janice Johnston, Edward Lindsey, and Matthew Mashburn serve as members of the SEB. Stip. ¶¶ 86–89.<sup>12</sup>

Under Georgia law, moreover, the SEB has a statutory duty to “formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” O.C.G.A. § 21-2-31(2). Georgia law also tasks the SEB with “investigat[ing] or authoriz[ing] the Secretary of State to investigate, when necessary or advisable[,] the administration of primary and election laws and frauds and irregularities in primaries and elections and to report violations of the primary and election laws either to the Attorney General or the appropriate district attorney . . . .” *Id.* § 21-2-31(5). Furthermore, the SEB is “vested with the power to issue orders, after the completion of appropriate proceedings, directing compliance with [the Election

---

<sup>12</sup> Defendants have filed a notice indicating that on September 1, 2023, the Honorable William S. Duffey, Jr., stepped down as a chair of the State Election Board. Pendergrass Doc. No. [270], Grant Doc. No. [279]. Because Duffey was sued in his official capacity, this resignation does not abate the action, but does lead to Duffey being terminated as a named-party under the applicable rules of civil procedure. See Fed. R. Civ. P. 21; 25(d).

Code] or prohibiting the actual or threatened commission of any conduct constituting a violation . . . .” Id. § 21-2-33.1(a).

Additionally, Georgia law tasks the SEB with oversight authority over the counties. See O.C.G.A. § 21-2-31(1) (“It shall be the duty of the [SEB] . . . [t]o promulgate rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials, as well as the legality and purity in all primaries and elections[.]”); id. at § 21-2-31(2) (“[t]o formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections”); id. at § 21-2-31(5) (“[t]o investigate, or authorize the Secretary of State to investigate, when necessary or advisable the administration of primary and election laws and frauds and irregularities in primaries and elections and to report violations of the primary and election laws either to the Attorney General or the appropriate district attorney who shall be responsible for further investigation and prosecution.”).

**C. History of Race and Voting in Georgia**

In 1965, Congress passed the Voting Rights Act (“VRA”). While the VRA has been amended several times, as originally adopted, Section 2 prohibited practices that denied or abridged the right to vote “on account of” race or color. See Allen, 599 U.S. at 11 n.1 (citing 42 U.S.C. § 1973 (1970 ed.)).

The Act was amended in 1982. Id. at 11. Section 4 of the VRA (the “coverage formula”) determined which jurisdictions were “covered” and were required to submit new voting procedures or practices for prior approval (“preclearance”) by the Department of Justice or a district court panel of three judges, pursuant to Section 5. See James D. Wascher, Recognizing the 50th Anniversary of the Voting Rights Act, Fed. Law., May 2015, at 41 (hereinafter, “Wascher”). The VRA thus “employed extraordinary measures to address an extraordinary problem.” Shelby Cnty. v. Holder, 570 U.S. 529, 534 (2013). Georgia was a covered jurisdiction because in the 1960s and early 1970s, the whole state had low voter registration or turnout and maintained tests or devices as prerequisites to voting (i.e., poll taxes, literacy tests, and grandfathering rules). Id. at 536–37 (28 C.F.R. pt. 51, App. (2012)).

During Georgia's last redistricting cycle in 2011, which was subject to preclearance under Section 5 of the Voting Rights Act, the Department of Justice ("DOJ") precleared Georgia's proposed State Senate, State House, and Congressional Plans. See Jud. Not.<sup>13</sup>

Following those determinations, in 2013, the Supreme Court held that the coverage formula was no longer constitutional because it had not been reformulated since 1975. Shelby Cnty., 570 U.S. at 538, 556–57. As a result, the State of Georgia is no longer a covered jurisdiction and is no longer required to send district plans or any proposed voting practices or procedural changes to the DOJ for preclearance. The 2020 redistricting cycle is the first in which Georgia was not required to seek preclearance before adopting its new congressional and legislative plans.

---

<sup>13</sup> The precleared plans were utilized in the 2012 election and will hereinafter be referred to as the "2012 Plans."

**D. Georgia's Changing Demographics**

**1. *Georgia's Total Population***

Between 2000 and 2010, Georgia's population increased by a little over 1.5 million people (from 8,186,453 to 9,687,653), which marked a population growth rate of 18.34%. PX 1, fig.3. The growth of the minority population accounted for approximately 14.85% of this growth rate, the Any-Part Black ("AP Black")<sup>14</sup> population alone accounted for 8.07%, and the white population accounted for approximately 3.48% of Georgia's growth rate. Id. During this time, the minority population increased by 1,215,941 people and had a growth rate of 34.66%. PX 1, fig.3. The AP Black population increased by 660,673 people and had a growth rate of 27.60%. Id. Meanwhile, Georgia's white population grew by 285,259 people and had a growth rate of 5.56%. Id. Following the 2010 Census, as a result of population growth, Georgia was apportioned a 14th Congressional

---

<sup>14</sup> "AP Black" is defined as the combined total of all persons who are single-race Black and persons who are two or more races and one of them is Black. Stip. ¶ 95. "[I]t is proper to look at *all* individuals who identify themselves as [B]lack" in their census responses, even if they "self-identify as both [B]lack and a member of another minority group," because the inquiry involved is "an examination of only one minority group's effective exercise of the electoral franchise." Georgia v. Ashcroft, 539 U.S. 461, 473 n.1 (2003).

District. Stip. ¶ 94. During this time, the growth of the minority population outpaced the white population by approximately 6 times and the Black population outpaced the white population by approximately 5 times.

In 2020, the United States Census Bureau conducted the 2020 Census. The Census results were provided to Georgia on August 21, 2021. Stip. ¶ 92. Between 2010 and 2020 Georgia's total population increased by over a million people to 10,711,908, which marked a population growth rate of 10.57%. Id. ¶ 93; PX 1, fig.3; Tr. 718:4-6. The growth of the minority population accounted for approximately 11.11% of this growth rate, the AP Black population alone accounted for 5.00%, and the white population accounted for approximately -0.53% of Georgia's growth rate. Id. Meaning, all of Georgia's population growth during the past decade is attributable to the growth of the minority population. PX 1 ¶ 14, fig.1, Tr. 718:7-15. During this time, the minority population increased by 1,076,019 people and had a growth rate of 25.18%. PX 1, fig.3. The AP Black population increased by 484,048 people and had a growth rate of 15.85%. Id. Meanwhile, Georgia's white population decreased by 51,764 people and had a negative growth rate of -0.9%. Id. Over the past two decades, Georgia's Black and

minority populations continued to have a double-digit rate of growth; whereas, in the last decade, the white population has begun to decline in Georgia.

In total numbers, Georgia's AP Black population increased by 484,048 people since 2010. Stip. ¶ 95; PX 1 ¶ 14, fig.3. Between 2010 and 2020 the AP Black population accounted for 47.26% of Georgia's total population growth. Stip. ¶¶ 96, 102; PX 1 ¶ 14 & fig.1. And the proportion of the AP Black population overall increased from 31.53% to 33.03% over the same period. Stip. ¶ 102; PX 1 ¶ 16. Meanwhile, Georgia's single-race white population decreased by 51,764 people and makes up 50.06% of Georgia's population, which is a razor thin majority of Georgia's population. Stip. ¶¶ 99, 102. Georgia's minority population now totals 49.94%. PX 1 ¶ 14 & fig.1.

## ***2. Metro Atlanta***

The Atlanta Metropolitan Statistical Area ("Atlanta MSA")<sup>15</sup> had a population growth of 803,087 persons between 2010 and 2020, which accounts

---

<sup>15</sup> The Atlanta MSA consists of the following 29 counties: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton,



for approximately 78.41% of Georgia's total population growth. Stip. ¶ 107; PX . 1 ¶ 14 & fig.1; id. ¶ 30 & fig.5. The AP Black population accounted for 409,927 of those persons, which amounts to 51.04% of the population growth in Atlanta and 40.02% of Georgia's population growth. Id. The AP Black population is 35.91% of the Atlanta MSA, which was an increase from 33.61% in 2010. Stip. ¶ 108. The AP Black population accounts for 34.86% of the Atlanta MSA's total voting age population. Stip. ¶ 110.

According to the 2020 Census, the Atlanta MSA has a total voting-age population of 4,654,322 persons, of whom 1,622,469 (34.86%) are AP Black. Stip. ¶ 110. The non-Hispanic white voting-age population is 4,342,333 (52.1%). PX 1 ¶ 31 & fig.6. And, the 11 ARC counties account for more than half (54.7%) of the statewide Black population. PX 1 ¶ 28.

Based on the 2020 Census, the combined Black population in Cobb, Fulton, Douglas, and Fayette Counties is 807,076 persons, more than necessary to

---

Paulding, Pickens, Pike, Rockdale, Spalding, and Walton. Stip. ¶ 106. The Atlanta Regional Commission ("ARC") is comprised of 11 core counties within the Atlanta MSA: Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, and Rockdale. Stip. ¶ 111.

constitute an entirely AP Black congressional district<sup>16</sup> — or a majority in two congressional districts. PX 1 ¶ 42 & fig.8. The population is 100,000 people more than needed to constitute an entirely AP Black Senate district<sup>17</sup> in this area, and nearly 5 entirely AP Black House Districts.<sup>18</sup> More than half (53.27%) of the total population increase in these four counties since 2010 can be attributed to the increase in the Black population. PX 1 ¶ 43.

The southeastern metro-Atlanta area has experienced similar growth patterns. In 2000, 18.51% of the population in the five-county Fayette-Spalding-Henry-Rockdale-Newton area was Black. Stip. ¶ 114; APAX 1, 25 & fig.7. By 2010, the Black population in that area more than doubled to reach 36.70% of the overall population, then grew to 46.57% in 2020. Id. Between 2000 and 2020, the Black population in this five-county South Metro Atlanta area quadrupled, from 74,249 to 294,914. Stip. ¶ 115. This area is now plurality Black. APAX 1, 25 & fig.7. Fayette and Spalding Counties have seen Black population increases of 54.5%

---

<sup>16</sup> The ideal population size of a congressional district is 765,136 people. Stip. ¶ 197.

<sup>17</sup> The ideal population size for a Senate district is 191,284 people. Stip. ¶ 277

<sup>18</sup> The ideal population size for a House district is 59,511 people. Stip. ¶ 278.

and 18.7%, respectively, since 2010. APAX 1, at 40 ¶ 97. Henry County's Black population has increased by 39.3% in the last decade, and Henry County is now plurality Black. Id. ¶ 102. As Mr. Cooper explained, in the 1990s, Henry County was not even "10 percent Black" but the county has "change[d] over time." Tr. 116:17-18.

Meanwhile, under the 2000 Census, the population in the 29-county Atlanta MSA was 60.42% non-Hispanic white, decreased to 50.78% in 2010, and decreased further to 43.71% in 2020. PX 1 ¶ 25 & fig.4. Between 2010 and 2020, the non-Hispanic white population in the Atlanta MSA decreased by 22,736 persons. Stip. ¶ 112; PX 1 ¶ 25 & fig.4; Tr. 721:19-23.

### ***3. The Black Belt***

The Black Belt refers to an area that runs across the southeastern United States. Stip. ¶ 118. The Black Belt, is in part, characterized by significant Black populations and a shared history of antebellum slavery and plantation agriculture. Id. Georgia's portion of the Black Belt runs across the middle of the State between Augusta and Southwest Georgia. Stip. ¶ 119. Unlike, the Atlanta MSA, it is not comprised of a specific set of whole counties.

**a) Eastern Black Belt Region**

The Georgia Department of Community Affairs (“GDCA”) has prepared regional commission maps, including of the Central Savannah River Area region. APAX 1, 13 ¶ 26; *id.* at 118-119, Ex. F. The Central Savannah River Area Counties include: Jenkins, Burke, Richmond, Jefferson, McDuffie, Wilkes, Taliaferro, Glascock, Warren, Washington, and Hancock. Ten of these 11 contiguous counties – excluding Glascock – are identified as part of Georgia’s Black Belt by the Georgia Budget and Policy Institute. APAX 1, 13-14 ¶ 27; DX 22, at 20-25; Stip. ¶¶ 120-123. Mr. Cooper defined this set of 11 counties as part of the “Eastern Black Belt.” APAX 1 ¶ 24. These same counties are consistent with Mr. Esselstyn’s understanding of the eastern portion of the Black Belt. GX 1 ¶ 19 & fig.1.

According to Mr. Cooper’s analysis, between 2000 and 2020, the total population in the Eastern Black Belt has remained relatively constant. APAX 1 ¶ 58 & fig.8. And, at least 40% of these eleven counties are AP Black and over the past two decades, their share of the population increased from 50.66% to 54.62%. Stip. ¶¶ 120, 122. Meanwhile, the white population decreased from 45.61% to

38.17% of the population over the same period. Stip. ¶ 123. In other words, the Black population in this area has become more concentrated over time, and now comprises a majority.

**b) Metro-Macon Region**

Metropolitan Macon is a seven-county region in Middle Georgia defined by the combined Metropolitan Statistical Areas (“MSAs”) of Macon-Bibb and Warner Robins. Stip. ¶ 124; APAX 1, at 15–16 ¶ 33. The Macon-Bibb MSA includes the counties of Twiggs, Macon-Bibb, Jones, Monroe, and Crawford. Stip. ¶ 124; APAX 1, at 16 n.14. The adjacent Warner Robins MSA encompasses Houston and Peach Counties. Stip. ¶ 124; APAX 1, 16 n.14. Three of the Macon-area counties are “identified as part of Georgia’s Black Belt” — Macon, Bibb, Peach, and Twiggs, encompassing about 59% of the Black population (177,269) in the seven-county region. APAX 1, 29; GX 1 ¶ 19 & fig.1. Between 2000 and 2020, the AP Black population increased from 36.89% to 41.67% of the Macon MSA. Stip. ¶ 126. Meanwhile, the white population decreased from 59.40% to 49.10% of the Macon MSA. Stip. ¶ 127.

**c) Southwestern Georgia Region**

The relevant counties in southwest Georgia include: Sumpter, Webster, Stewart, Quitman, Clay, Randolph, Terrell, Calhoun, Dougherty, Early, Baker, and Mitchell. Stip. ¶¶ 128–132. Twelve of the thirteen counties in Senate District 12—all but Miller County—are identified by the Georgia Budget and Policy Institute as Black Belt counties. APAX 1, 15 ¶ 32; DX 22, at 20–25. At least 40% of this region is AP Black, and all but Miller County is at least 40% AP Black. Stip. ¶ 128. Between 2000 and 2020, the population decreased in this area from 214,686 to 190,819 (11.12%). Stip. ¶ 130. While the AP Black and white populations have decreased over the past two decades, the share of the AP Black population increased from 55.33% to 60.6%, and the white population decreased from 42.36% to 33.83%. Stip. ¶¶ 131, 132.

**E. Georgia 2021 Enacted Plans**

**1. *The 2021 Redistricting Process***

**a) Legislative activities**

In the wake of the COVID-19 pandemic, the Georgia General Assembly underwent the constitutionally required process of redistricting. Article One, Section 2, Clause 3 of the United States Constitution provides:

“Representatives . . . shall be apportioned among the several States which may be included within the Union, according to their respective Numbers . . . . The actual Enumeration shall be made . . . every [ ] Term of ten Years, in such Manner as they shall by Law direct.” U.S. Const. art. I, §2, cl. 3.

In 2021 and prior to the public release of the redistricting plans, the House Legislative and Congressional Reapportionment and Senate Reapportionment and Redistricting Committees adopted guidelines. Stip. ¶¶ 134, 135. The general principles for drafting plans for the House Legislative and Congressional Reapportionment Committee are as follows:

### III. REDISTRICTING PLANS

#### A. GENERAL PRINCIPLES FOR DRAFTING PLANS

1. Each congressional district should be drawn with a total population of plus or minus one person from the ideal district size.
2. Each legislative district of the General Assembly should be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.
3. All plans adopted by the Committee will comply with Section 2 of the Voting Rights Act of 1965, as amended.
4. All plans adopted by the Committee will comply with the United States and Georgia Constitutions.
5. Districts shall be composed of contiguous geography. Districts that connect on a single point are not contiguous.
6. No multi-member districts shall be drawn on any legislative redistricting plan.
7. The Committee should consider:
  - a. The boundaries of counties and precincts;
  - b. Compactness; and
  - c. Communities of interest.
8. Efforts should be made to avoid the unnecessary pairing of incumbents.
9. The identifying of these criteria is not intended to limit the consideration of any other principles or factors that the Committee deems appropriate.

Stip. ¶ 134; JX 2, 3. The general principles for drafting plans for the Senate Reapportionment and Redistricting Committee are as follows:



### III. REDISTRICTING PLANS

#### A. GENERAL PRINCIPLES FOR DRAFTING PLANS

1. Each congressional district should be drawn with a total population of plus or minus one person from the ideal district size.
2. Each legislative district of the General Assembly should be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.
3. All plans adopted by the Committee will comply with Section 2 of the Voting Rights Act of 1965, as amended.
4. All plans adopted by the Committee will comply with the United States and Georgia Constitutions.
5. Districts shall be composed of contiguous geography. Districts that connect on a single point are not contiguous.
6. No multi-member districts shall be drawn on any legislative redistricting plan.
7. The Committee should consider:
  - a. The boundaries of counties and precincts;
  - b. Compactness; and
  - c. Communities of interest.
8. Efforts should be made to avoid the unnecessary pairing of incumbents.
9. The identifying of these criteria is not intended to limit the consideration of any other principles or factors that the Committee deems appropriate.

Stip. ¶ 135; JX 1, 3.

The redistricting process consisted of the following actions. Beginning on June 15, 2021 and between June and July of 2021, the Georgia General Assembly held nine in-person and two virtual joint public hearing committees on redistricting. Stip. ¶ 136. The joint redistricting committee released educational videos about the redistricting process. Stip. ¶ 137. The Georgia General Assembly created an online portal and received 1,000 comments from voters in 86 counties. Stip. ¶ 138.

On August 21, 2021, the Census Bureau released its detailed population data gathered from its 2020 canvassing efforts. Stip. ¶ 140. On August 30, 2021, the General Assembly's joint redistricting committees held a meeting with interest groups. Stip. ¶ 141. The National Conference of State Legislatures, American Civil Liberties Union of Georgia, Common Cause, Fair Districts GA, the Democratic Party of Georgia, and Asian-Americans Advancing Justice-Atlanta presented at the August 30, 2021 joint meeting. Stip. ¶ 142.

**b) Map drawing process**

Gina Wright, the Executive Director of the Georgia General Assembly's Office of Legislative and Congressional Reapportionment, testified at trial that

she drew Georgia's redistricting plans for Congress, State Senate, and State House in 2021. Tr. 1605:14-16. As a fact witness, the Court found Ms. Wright to be highly credible in her knowledge about Georgia's map drawing process. The Court also found Ms. Wright's testimony about various areas of the state to be credible and reliable.

Ms. Wright testified that generally she began drafting the new legislative plans by using blank maps, rather than starting from the existing plans. Tr. 1622:11-17; 1642:7-14. She then put the ideal population size, using the Census population, into the blank map. Tr. 1622:11-13. At times, she layered the new maps with the former map to see if she retained core districts. Tr. 1607:8-1621:18-22. Ms. Wright used the eyeball test and did not look at compactness scores when she drew the congressional and legislative districts. Tr. 1610:3-1611:12.

Once she drew the blind map, she gave the map to the chairmen of the House Legislative and Congressional Reapportionment and Senate Reapportionment and Redistricting Committees. Tr. 1623:4-6. Ms. Wright then made adjustments as requested by Senator Kennedy, chairman of the Senate

Reapportionment and Redistricting Committee, Representative Bonnie Rich, a former member of the House Reapportionment and Redistricting Committee, and other members, if requested. Tr. 1626:10–1627:1; 1641: 24–1642:1. Ms. Wright also incorporated the information she received from the public hearings when drawing the plans. Tr. 1627:2–13.

The Congressional map was drawn in a slightly different manner. Instead of starting with a blank map, Ms. Wright testified that the chairman asked her to draw a benchmark map that had a more specific framework than the State legislative plans. Tr. 1666:5–11. There was no testimony or further explanation about the specific framework that was requested to go into the benchmark map.

The Proposed 2021 Senate and House Plans were first released on November 2, 2021. Stip. ¶ 143. Following their release, the joint redistricting committees received public comment on the proposed maps. Stip. ¶ 146. On November 3, 2021, the General Assembly convened a special session, in part, to consider the proposed Senate and House Plans. Stip. ¶ 144. The House and Senate redistricting committees held multiple meetings during the special session. Stip. ¶ 145. During this time, the House and Senate redistricting committees

received public comment on the draft plans during their committee meetings.

Stip. ¶ 146.

On November 12, 2021, the General Assembly passed the 2021 Senate and House Plans (SB 1EX and HB 1EX, respectively) (collectively, the “Enacted Legislative Plans,” individually, the “Enacted Senate Plan” and “Enacted House Plan”). Stip. ¶ 147. On November 22, 2021, the General Assembly passed the 2021 Congressional Redistricting Plan (the “Enacted Congressional Plan”). Stip. ¶ 148. No Democratic members of the General Assembly or Black representatives voted in favor of the 2021 Enacted Congressional, Enacted Senate, or Enacted House Plans (collectively “the Enacted Plans”). Stip. ¶¶ 150, 151. On December 30, 2021, Governor Kemp signed the Enacted Plans into law. Stip. ¶ 149. The Enacted Plans were used in the 2022 Elections. Stip. ¶ 152.

## ***2. Enacted Plan Statistics***

### **a) Congressional Plan**

#### ***(1) 2012 Congressional plan***

The 2012 Congressional Plan was precleared under Section 5 of the VRA by the DOJ. See Jud. Not.; see also Attorney General Press Release, <https://law.georgia.gov/press-releases/2011-12-23/justice-approves-georgias->

redistricting-plans; Charles Bullock, The History of Redistricting in Georgia, 52 Ga. L. Rev. 1057, 1097–98 (Summer 2018).

Pursuant to the population increase shown in the 2010 Census results, for the first time, Georgia was apportioned an additional seat in the U.S. House of Representatives, making Georgia’s U.S. House of Representative delegation a total of 14 members. See United States Census Bureau, Historical Apportionment Data (1910-2020), <https://www.census.gov/data/tables/time-series/dec/apportionment-data-text.html> (last visited Sept. 15, 2023).<sup>19</sup>

The 2012 Congressional Plan contained four districts where the AP Black Voting Age Population (“AP BVAP”) was in the majority. Stip. ¶ 160. Three of those districts were located within the Atlanta MSA. Stip. ¶ 162. The 2012 Congressional Plan split 16 counties. Stip. ¶ 165. The average Reock Score<sup>20</sup> for

---

<sup>19</sup> The Court takes judicial notice of the Decennial Census data. See United States v. Phillips, 287 F.3d 1053, 1055 n.1 (11th Cir. 2002) (citing Hollis v. Davis, 941 F.2d 1471, 1474 (11th Cir. 1991) and Moore v. Comfed Savings Bank, 908 F.2d 834, 841 n.4 (11th Cir. 1990)) (taking judicial notice of the United States Census Bureau’s 1990 census figures); Grant Doc. No. [229], at 9 n.10 (taking judicial notice of 2020 U.S. Census figures).

<sup>20</sup> “The Reock test is an area-based measure that compares each district to a circle, which

the 2012 Congressional Plan is 0.45 and the average Polsby-Popper Score<sup>21</sup> is 0.26.

Stip. ¶ 168; PX 1, Ex. L-2.

District <sup>22</sup>	2012 Congressional Plan Reock Score	2012 Congressional Plan Polsby-Popper Score
1	0.40	0.23
*2	0.44	0.31
3	0.55	0.28
*4	0.54	0.27
*5	0.52	0.37
6	0.49	0.27
7	0.45	0.26
8	0.33	0.16
9	0.36	0.30
10	0.52	0.27
11	0.50	0.28
12	0.41	0.19
*13	0.38	0.16
14	0.45	0.31
<b>Mean</b>	<b>0.45</b>	<b>0.26</b>
<b>Max:</b>	<b>0.55</b>	<b>0.37</b>
<b>Min:</b>	<b>0.33</b>	<b>0.16</b>

---

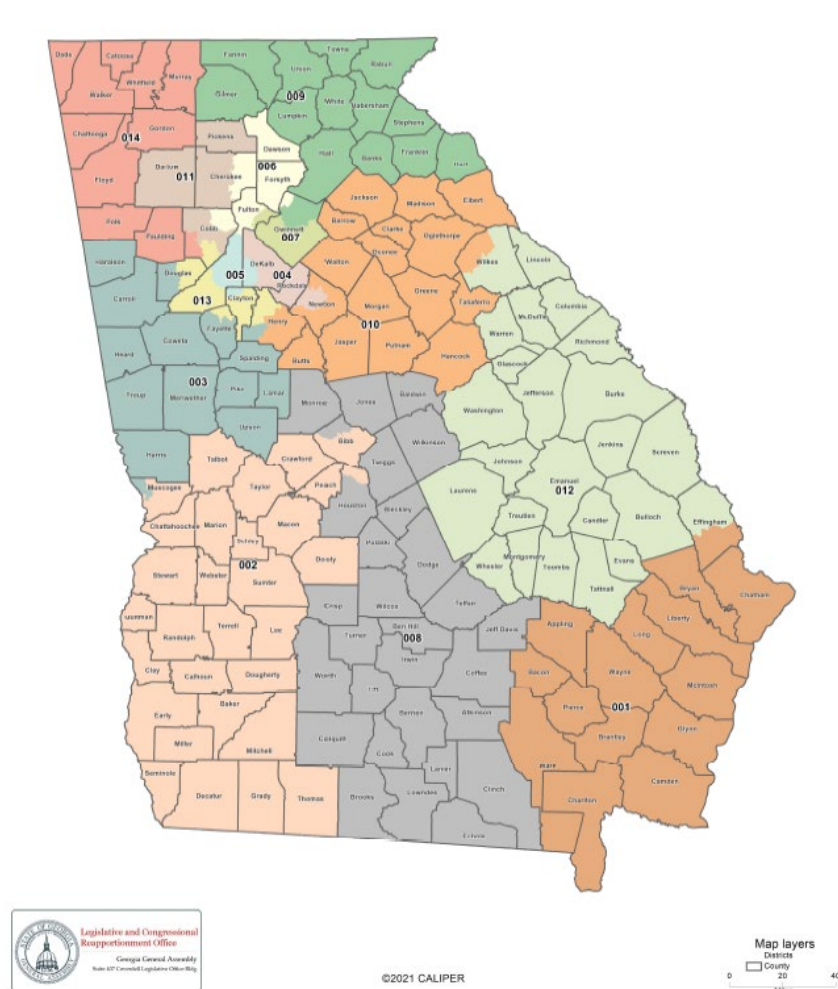
is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact.” Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1275 n.24 (citation omitted).

<sup>21</sup> “The Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter:  $4\pi\text{Area}/(\text{Perimeter}^2)$ . The measure is always between 0 and 1, with 1 being the most compact.” Id. at 1275 n.26.

<sup>22</sup> The asterisk (\*) denotes a majority AP Black district. Stip. ¶¶ 166, 167; Pendergrass Doc. Nos. [174-1], 61; [174-2], 25, 69.

(2) *Enacted Congressional Plan*

Pursuant to the 2020 Census, Georgia was apportioned 14 seats in the U.S. House of Representatives. Stip. ¶ 94. A colored version of the Enacted Congressional Plan was introduced into evidence at trial and is below.



PX 1, Ex. G.



The Enacted Congressional Plan contains four districts where the non-Hispanic Department of Justice Black citizen voting age population (“NH DOJ BCVAP”) <sup>23</sup> is in the majority—CD-2 (50.001%), CD-4 (58.46%), CD-5 (52.35%), and CD-13 (67.05%). Stip. ¶ 161; PX 1 ¶ 53 & fig.11. The AP BVAP, however, only exceeds 50% in 2 districts CD-4 (54.54%) and CD-13 (66.75%). The AP BVAP of CD-2 is 49.29% and CD-5 is 49.60%. PX 1, Ex. K-1. All but one of those districts is contained in the Atlanta MSA. Stip. ¶ 166; PX 1, Ex. J-2. The Enacted Congressional Plan splits 15 counties. Stip. ¶ 164. It also split 46 VTDs.<sup>24</sup> PX 1 ¶ 81. The average Reock Score for the 2021 Congressional Plan is 0.44 and the average Polsby-Popper Score is 0.27. Stip. ¶ 168; PX 1, Ex. L-3.

A table that shows the Reock and Polsby score comparisons is as follows:

---

<sup>23</sup> The “NH DOJ Black CVAP” category includes voting age citizens who are either NH single-race Black or NH Black and White. An “Any Part Black CVAP” category that would include Black Hispanics cannot be calculated from the 5-Year ACS Census Bureau Special Tabulation.” PX 1 ¶ 57 n.10.

<sup>24</sup> “‘VTD’ is a Census Bureau term meaning ‘voting tabulation district.’ VTDs generally correspond to precincts.” PX 1 ¶ 11 n.4.

District <sup>25</sup>	2021 Congressional Plan Reock Score	2021 Congressional Plan Polsby- Popper Score
1	0.46	0.29
*2	0.46	0.27
3	0.46	0.28
*4	0.31	0.25
*5	0.51	0.32
6	0.42	0.20
7	0.50	0.39
8	0.34	0.21
9	0.38	0.25
10	0.56	0.28
11	0.48	0.21
12	0.50	0.28
*13	0.38	0.16
14	0.43	0.37
<b>Mean</b>	<b>0.44</b>	<b>0.27</b>
<b>Max:</b>	<b>0.56</b>	<b>0.39</b>
<b>Min:</b>	<b>0.31</b>	<b>0.16</b>

PX 1, Ex. L-3.

**b) State Senate Plan**

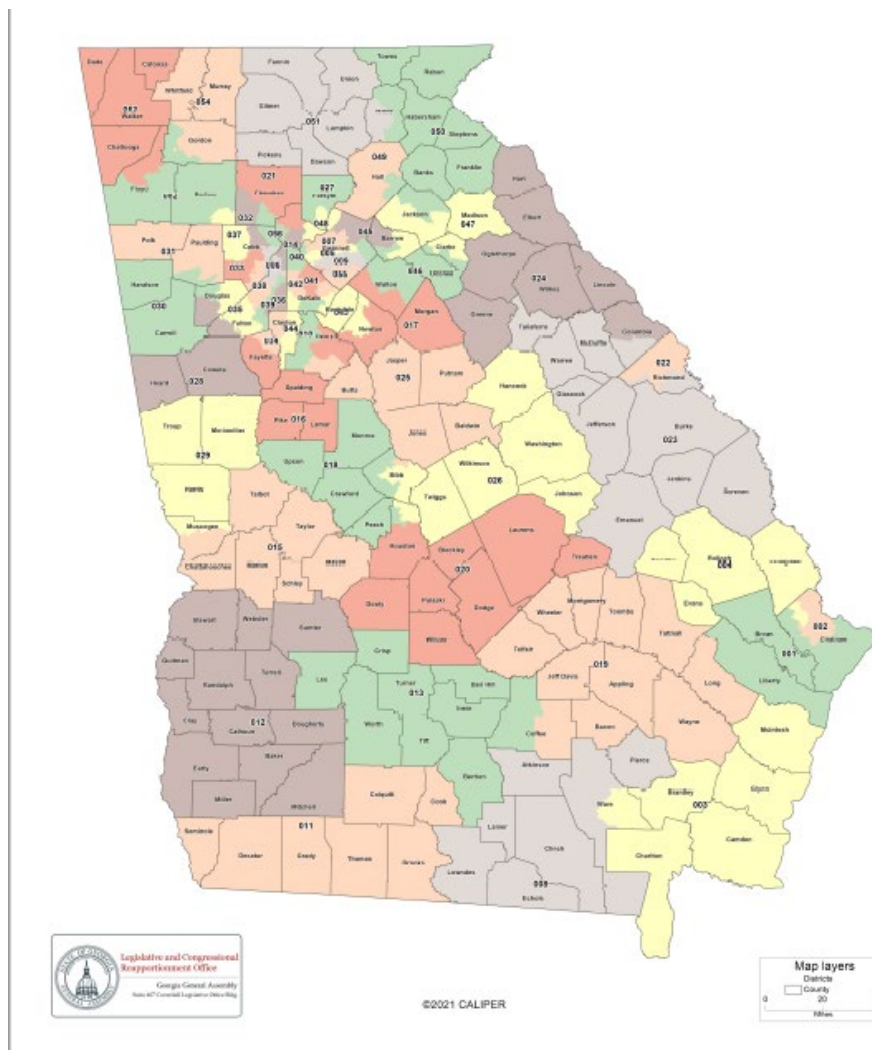
Under Georgia law, “[t]here shall be 56 members of the Senate. The General Assembly shall by general law divide the state into 56 Senate districts

---

<sup>25</sup> The asterisk (\*) denotes a majority AP Black district.

which shall be composed of a portion of a county or counties or a combination thereof and shall be represented by one Senator elected only by the electors of such district.” O.C.G.A. § 28-2-2; see also Ga. Const. art. III, § 2, ¶ I. The ideal population for a Senate district in 191,284 people. Stip. ¶ 277.

Below is the Enacted Senate Plan:



APAX 1, Ex. L.

Under the Enacted Senate Plan, the greatest population deviation is  $\pm 1.03\%$ . Id. The average population deviation is  $0.53\%$ . Id. The Enacted Senate Plan split 29 counties. APAX 1 ¶ 116; fig.21. It also split 40 VTDs. Id. The Enacted Senate Plan did not pair any incumbents who were running for reelection. Stip. ¶ 175.

The Enacted Senate Plan contains 14 Senate districts where the ABVAP is the majority of the population, ten of the districts are fully within the Atlanta MSA. Stip. ¶¶ 176, 186; APAX 1, Ex. M-1. This is a reduction of one majority-Black district in the Senate Plan as a whole. Stip. ¶¶ 173, 177 (indicating that the 2014 Senate Plan contained 15 majority-Black Senate Districts with 10 wholly within the Atlanta MSA). The following is a Table depicting the majority AP Black districts and the percentage of the districts that is AP BVAP.

District	% AP BVAP
10	71.46
12	57.97
15	54.00
22	56.50
26	56.99
34	69.54
35	71.90
36	51.34
38	65.30
39	60.70
41	62.61
43	64.33
44	71.34
55	65.97

APAX 1, M-1.

The Enacted Senate Plan has an average Reock score of 0.43 and Polsby-Popper Score of 0.27. Stip. 189; APAX 1, Ex. S-2. The maximum and minimum Reock scores are 0.68 and 0.14. Id. The maximum and minimum Polsby-Popper scores are 0.62 and 0.11. Id. The compactness scores for the majority-Black districts are as follows:

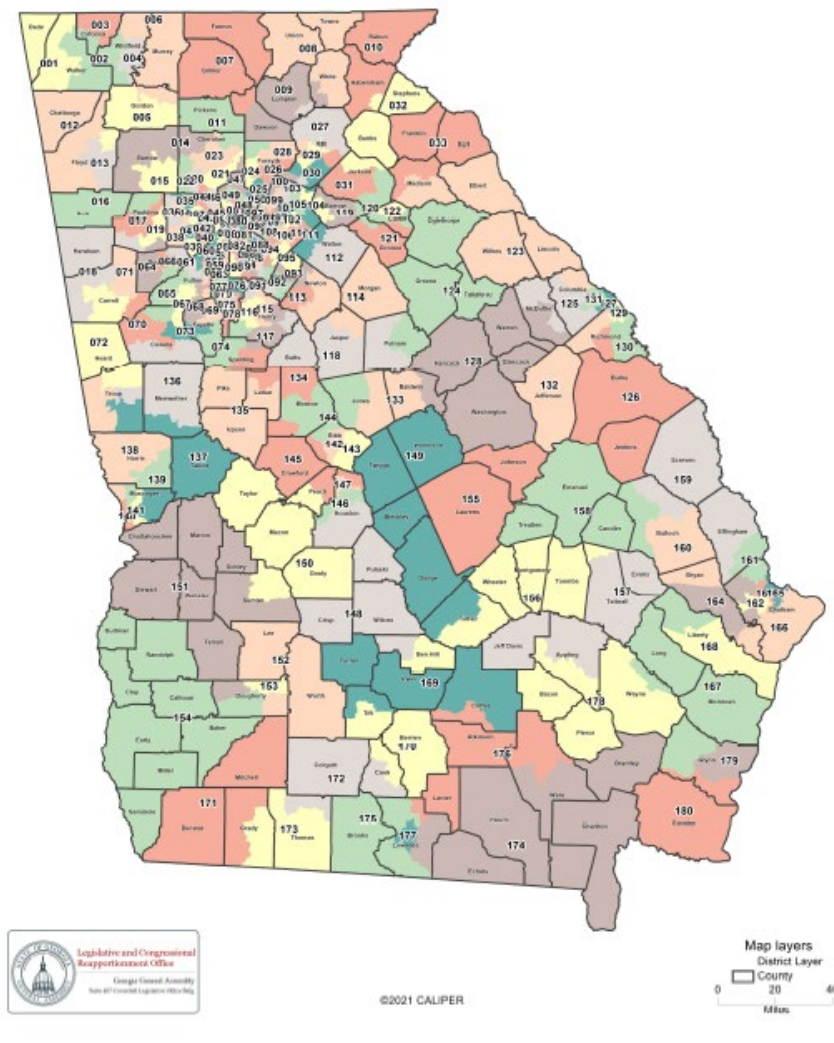
Districts	Reock Score	Polsby-Popper Score
10	0.37	0.27
12	0.53	0.28
15	0.56	0.33
22	0.39	0.34
26	0.47	0.21
34	0.40	0.32
35	0.42	0.18
36	0.25	0.28
38	0.47	0.21
39	0.14	0.11
41	0.31	0.21
43	0.56	0.27
44	0.19	0.18
55	0.25	0.23

APAX 1, S-2.

**c) State House Plan**

Under Georgia law, “[t]here shall be 180 members of the House of Representatives.” O.C.G.A. § 28-2-1(a)(1); see also Ga. Const. art. III, § 2, ¶ I. The Georgia Code further provides that: “[t]he General Assembly by general law shall divide the state into 180 representative districts which shall consist of either a portion of a county or a county or counties or any combination thereof and shall be represented by one Representative elected only by the electors of such district.” O.C.G.A. § 28-2-1 (a)(1)–(2); Stip. ¶ 179. The ideal population for a House district in 59,511. Stip. ¶ 278.

Below is the Enacted House Plan:



APAX 1, Ex. Y.

Under the Enacted Plan, the greatest population deviation of any district is  $\pm 1.40\%$ . Stip. ¶ 186; APAX 1, 116. The Enacted House Plan contains 49 House districts where the ABVAP is the majority of the population. Stip. ¶ 186; APAX

1, Ex. Z-1. Thirty-three of these districts are fully within the Atlanta MSA. Stip. ¶ 186; APAX 1, Exs. C,Y. This results in an addition of two majority-Black House districts overall and two in the Atlanta MSA. Stip. ¶¶ 180, 183. The Enacted House Plan split 69 Counties. APAX 1 ¶ 189; fig.37. It also split 179 VTDs. Id. The Enacted House Plan paired four sets of incumbents who ran for reelection in 2022. Stip. ¶ 182.

The following is a Table depicting the majority AP Black districts and the percentage of the districts that is AP BVAP.



<b>District</b>	<b>%AP Black</b>	<b>District</b>	<b>%AP Black</b>
38	54.23	90	58.49
39	55.29	91	70.04
55	55.38	92	68.79
58	63.04	93	65.36
59	70.09	94	69.04
60	63.88	95	67.15
61	74.29	113	59.53
62	72.26	115	52.13
63	69.33	116	58.12
65	61.98	126	54.47
66	53.41	128	50.41
67	58.92	129	54.87
68	55.75	130	59.91
69	63.56	132	52.34
75	74.40	137	52.13
76	67.23	140	57.63
77	76.13	141	57.46
78	71.58	142	59.52
79	71.59	143	60.79
84	73.66	150	53.56
85	62.71	153	67.95
86	75.05	154	54.82
87	73.08	165	50.33
88	63.35	177	53.88
89	62.54		

APAX 1, Z-1.

The Enacted House Plan has an average Reock score of 0.39 and Polsby-Popper Score of 0.28. Stip. ¶ 189; APAX 1, AG-2. The maximum and minimum

Reock scores are 0.66 and 0.12. Id. The maximum and minimum Polsby-Popper scores are 0.59 and 0.10. Id. The compactness scores for the majority-Black districts are as follows:

District	Reock Score	Polsby-Popper Score	District	Reock Score	Polsby-Popper Score
38	0.59	0.58	90	0.36	0.29
39	0.59	0.40	91	0.45	0.20
55	0.18	0.16	92	0.36	0.20
58	0.13	0.13	93	0.26	0.11
59	0.12	0.11	94	0.31	0.15
60	0.19	0.15	95	0.44	0.25
61	0.25	0.20	113	0.50	0.32
62	0.16	0.10	115	0.44	0.23
63	0.16	0.14	116	0.41	0.28
65	0.46	0.17	126	0.52	0.41
66	0.36	0.25	128	0.60	0.32
67	0.36	0.12	129	0.48	0.25
68	0.32	0.17	130	0.51	0.25
69	0.40	0.25	132	0.27	0.30
75	0.42	0.28	137	0.33	0.16
76	0.53	0.51	140	0.29	0.19
77	0.40	0.21	141	0.26	0.20
78	0.21	0.19	142	0.35	0.23
79	0.50	0.21	143	0.50	0.30
84	0.25	0.20	150	0.44	0.28
85	0.36	0.32	153	0.30	0.30
86	0.17	0.17	154	0.41	0.33
87	0.26	0.24	165	0.23	0.16
88	0.26	0.20	177	0.43	0.34
89	0.14	0.10			

Stip. ¶¶ 186, 189; APAX 1, Ex. S-3.

**F. Illustrative Plans**

**1. *Credibility Determinations***

The Court makes the following credibility determinations as it relates to the Gingles preconditions experts.

**a) Mr. William S. Cooper**

Both the Alpha Phi Alpha and the Pendergrass Plaintiffs engaged Mr. Cooper as an expert. APAX 1, PX 1. The Court qualified Mr. Cooper as an expert in redistricting demographics and use of Census data. Tr. 65:21–24, 67:10–11; 715:8–10, 717:3–4. Mr. Cooper earned his Bachelor of Arts in economics from Davidson College. APAX 1, Ex. A. Since the late 1980s, Mr. Cooper has testified as an expert trial witness on redistricting and demographics in federal courts in about 55 voting rights cases. Tr. 62:11–14; see also APAX 1, Ex. A. Over 25 of the cases led to changes in local election district plans and five resulted in changes to statewide legislative boundaries. APAX 1, Ex. A; see Rural West Tennessee African-American Affairs Council, Inc. v. McWherter, 877 F. Supp. 1096 (W.D. Tenn. 1995); Old Person v. Brown, 182 F. Supp. 2d 1002 (D. Mont. 2002); Bone Shirt v. Hazeltine, 336 F. Supp. 2d 976 (D.S.D. 2004); Alabama

Legislative Black Caucus v. Alabama, 231 F. Supp. 3d 1026 (M.D. Ala. 2017); and Thomas v. Reeves, 3:18-CV-441-CWR-FKB, 2021 WL 517038 (S.D. Miss. Feb. 11, 2021).

In Georgia alone, Mr. Cooper has testified as an expert on redistricting and demographics in four other federal cases: Cofield v. City of LaGrange, 969 F. Supp. 749 (N.D. Ga. 1997); Love v. Cox, No. CV 679-037, 1992 WL 96307 (S.D. Ga. Apr. 23, 1992); Askew v. City of Rome, 127 F.3d 1355 (11th Cir. 1997); Woodard v. Mayor and City Council of Lumber City, 676 F. Supp. 255 (S.D. Ga. 1987). Mr. Cooper also filed expert declarations or depositions in the following Georgia federal cases: Dwight v. Kemp, No. 1:18-cv-2869 (N.D. Ga. 2018); Georgia State Conference of the NAACP v. Gwinnett County, No. 1:16-cv-02852-AT (N.D. Ga. 2016); Georgia State Conference of the NAACP v. Fayette County, 950 F. Supp. 2d 1294 (N.D. Ga. 2013); Knighton v. Dougherty County, No. 1:02-CV-130-2(WLS) (M.D. Ga. 2002); Johnson v. Miller, 864 F. Supp. 1354 (S.D. Ga. 1994); Jones v. Cook County, 7:94cv73 (M.D. Ga. 1994). APAX 1, Ex. A.

Following the 2020 Decennial Census, three local governments adopted commission level plans that Mr. Cooper drafted. Id. And Jefferson County,

Alabama, adopted his proposed school board plans. Id. Mr. Cooper testified in seven redistricting trials or preliminary injunction hearings in 2022, including in these Actions. Id. In one of those cases, the Supreme Court affirmed the district court's finding that his congressional maps were sufficient to show a substantial likelihood of success on the first Gingles precondition. Allen, 599 U.S. at 12-24.

Finally, Mr. Cooper was qualified as a redistricting and demographics expert at the preliminary injunction hearing. Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1244. This Court found that "Mr. Cooper's testimony [was] highly credible . . . [and] that his methods and conclusions [we]re highly reliable, and ultimately that his work as an expert on the first Gingles precondition [wa]s helpful to the Court." Id. at 1244-45.

Mr. Cooper spent around six hours on the stand testifying as to his Illustrative Plans, including over three hours of cross-examination. On voir dire, Defense counsel questioned Mr. Cooper about his involvement in a 2012 Alabama redistricting case in which the three-judge court there stated in a 2017 memorandum of opinion and order that "plaintiffs' mapmakers came dangerously close to admitting that race predominated in at least some of the

districts in their plans.” Ala. Legis. Black Caucus, 231 F. Supp. 3d 1026 at 1046. Nevertheless, the three-judge court also “credit[ed] much of [Mr.] Cooper’s testimony” in an earlier 2013 opinion. Ala. Legis. Black Caucus v. Alabama, 989 F. Supp. 2d 1227, 1271–72 (M.D. Ala. 2013), rev’d on other grounds, Ala. Legis. Black Caucus v. Alabama, 575 U.S. 254 (2015).

During Mr. Cooper’s time on the stand, the Court was able to question and observe Mr. Cooper closely. Throughout his reports and hours of live testimony, his opinions were clear, consistent, and forthright, and he had no difficulty articulating the bases for his districting decisions. He was also forthright with the Court when discussing the characteristics of his illustrative plans and admitted that while the illustrative plans were acceptable for the first Gingles precondition, there would be other ways to draw maps at the remedial stage. E.g., Tr. 235:24–25.

Having reviewed Mr. Cooper’s expert report and evaluating his trial testimony, the Court again finds that Mr. Cooper is highly credible. Mr. Cooper has spent the majority of his career drawing maps for redistricting and demographic purposes, and he has accumulated extensive expertise (more so

than any other expert qualified in redistricting demographics in this case) in redistricting litigation, particularly in Georgia.

**b) Mr. Blakeman B. Esselstyn**

The Grant Plaintiffs proffered and the Court qualified Mr. Esselstyn as an expert in redistricting, demography, and geographic information systems. Tr. 464:2-5, 466:19-20. Mr. Esselstyn earned his Bachelor's degree in geology & geophysics and international studies from Yale University and a master's degree in computer and information technology from University of Pennsylvania. GX 1 ¶ 5. Mr. Esselstyn is the founder and principal of a consultancy called Mapfigure Consulting, which provides expert services in the areas of redistricting, demographics, and geographic information systems (GIS). Id. ¶ 1. He has served as a consulting expert in four redistricting cases. Id. ¶ 3. Mr. Esselstyn has developed 16 redistricting plans that have been enacted for use in elections by jurisdictions at various levels of government. Id. ¶ 4.

Mr. Esselstyn was a testifying expert witness in the following cases: Jensen v. City of Asheville, (N.C. Super. 2009); Hall v. City of Asheville, (No. 05CV53804, 2007 WL 9210091 (N.C. Super. June 17, 2007); and Arnold v. City of Asheville,

Buncombe Cnty., No. 02CV53945 (N.C. Super. Nov. 20, 2003). GX 1, Attach. A. On *voir dire*, Mr. Esselstyn acknowledged that he has never drawn a statewide map that was used in an election and that he has never drawn a map for any jurisdiction in Georgia. Tr. 465:20–25.

Following the 2020 Decennial Census, Mr. Esselstyn has been consulted as an expert for the plaintiffs in League of United Latin American Citizens v. Abbott, 3:21-CV-00259-DCG-JES-JVB (W.D. Tex. Oct. 18, 2021) and Rivera v. Schwab, 315 Kan. 877, 512 P.3d 168 (2022). GX 1, Attach. A.

Mr. Esselstyn was qualified as a redistricting and demographics expert at the preliminary injunction hearing. Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1245-46. This Court found that “Mr. Esselstyn’s testimony [was] highly credible . . . [and] that his methods and conclusions [we]re highly reliable, and ultimately that his work as an expert on the first Gingles precondition [wa]s helpful to the Court.” Id. at 1246.

Having reviewed Mr. Esselstyn’s expert report and evaluating his trial testimony, the Court again finds that Mr. Esselstyn is highly credible. The Court does note that Mr. Esselstyn was less forthcoming on cross-examination in the



trial than he was during the preliminary injunction hearing. However, the Court finds that Mr. Esselstyn's explanations were internally consistent and did not falter. Accordingly, the Court will give great weight to Mr. Esselstyn's testimony.

**c) Mr. John B. Morgan**

Defendant proffered and the Court qualified Mr. Morgan as its expert in redistricting and the analysis of demographic data in all three cases. Tr. 1748:8-11, 15-16. Mr. Morgan earned his Bachelor of Arts in history from the University of Chicago. DX 1 ¶ 2. Mr. Morgan worked on redistricting plans in the redistricting efforts and testified about demographics and redistricting following the 1990, 2000, 2010, and 2020 Censuses. Id. Over the course of his career, Mr. Morgan worked on statewide congressional and legislative redistrict plans in the following states: Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Michigan, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, and Wisconsin. DX 1. His plans have been adopted in whole or in part by various jurisdictions. Id.

Before this case, Mr. Morgan has provided expert reports and/or testified in seven cases. Id. (citing Egolf v. Duran, D-101-CV-2011-02, 2011 WL 12523985

(N.M. Dist. Dec. 28, 2011); Georgia State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs, 952 F. Supp. 2d 1360 (N.D. Ga. 2013); Page v. Va. Bd. of Elections, 3:13CV678, 2015 WL 3604029 (E.D. Va. June 5, 2015); Bethune-Hill v. Va. Bd. of Elections, 114 F. Supp. 3d 323 (E.D. Va. 2015); Vesilind v. Va. Bd. of Elecions, 813 S.E.2d 739 (2018); and Georgia State Conf. of the NAACP v. Gwinnet Cnty. Bd. of Elec.).<sup>26</sup>

Although Mr. Morgan has an extensive background in redistricting, the Court finds that other courts, including this one, have called Mr. Morgan's credibility into doubt. Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1247–48. Although, this Court's ultimate determination as to Mr. Morgan's credibility is not dependent on the determinations made by its sister courts, or by its determinations in the preliminary injunction hearing, the Court gives great weight to the determinations made in those cases.

In 2011, Mr. Morgan assisted Virginia with drawing its House of Delegates maps; and in that case, "[Mr.] Morgan testified . . . that he played a substantial

---

<sup>26</sup> Mr. Morgan's report does not provide a full citation for the NAACP case.

role in constructing the 2011 plan, which role included his use of the Maptitude software to draw district lines.” Bethune-Hill v. Virginia State Bd. of Elections, 326 F. Supp. 3d 128, 151 (E.D. Va. 2018). Ultimately, a three-judge court found that 11 of the House of Delegates districts were racial gerrymanders. Feb. 11, 2022, Afternoon PI Tr. 184:1–6; see also Bethune-Hill, 326 F. Supp. 3d at 137, 181.

Mr. Morgan served as both a fact and expert witness in Bethune-Hill. That court ultimately found that Mr. Morgan’s testimony was not credible. That court found that “Morgan’s testimony was wholly lacking in credibility. Th[is] adverse credibility finding [ ] [is] not limited to particular assertions of [this] witness [ ], but instead wholly undermine[s] the content of . . . Morgan’s testimony.” Bethune-Hill, 326 F. Supp. 3d at 174; Tr. 2101:7–2102:10; 2109:17–2110:7. Specifically, “Morgan testified in considerable detail about his reasons for drawing dozens of lines covering all 11 challenged districts, including purportedly race-neutral explanations for several boundaries that appeared facially suspicious.” Bethune-Hill, 326 F. Supp.3d at 151. That court found: “Morgan’s contention, that the precision with which these splits divided white and black areas was mere happenstance, simply is not credible.” Id. “[W]e

conclude that Morgan did not present credible testimony, and we decline to consider it in our predominance analysis.” Id. at 152.

Mr. Morgan also served as a testifying expert in Page v. Virginia State Bd. of Elections, No. 3:13CV678, 2015 WL 3604029 (E.D. Va. June 5, 2015). Tr. 2108:24–2109:11. That court found “Mr. Morgan, contends that the majority-white populations excluded . . . were predominately Republican . . . . The evidence at trial, however, revealed that Mr. Morgan’s analysis was based upon several pieces of mistaken data, a critical error . . . Mr. Morgan’s coding mistakes were significant to the outcome of his analysis[.]” Page, 2015 WL 3604029, at \*15 n.25; Tr. 2108:24–2109:11. Mr. Morgan explained that his error was caused because the attorneys asked him to produce an additional exhibit on the day of trial. Tr. 2109:12–16.

Additionally, in Georgia State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs, Mr. Morgan testified as an expert for the defense opposite Mr. Cooper, who testified as an expert for the plaintiffs. 950 F. Supp. 2d 1294, 1310–11 (N.D. Ga. 2013). In granting the motion for summary judgment, that court found that the plaintiffs successfully asserted a vote dilution claim. Id. at 1326.

Finally, Mr. Morgan admitted that he drew some plans for the 2011 North Carolina State Senate Maps. Tr. 2097:3–7. Ultimately, 28 districts in North Carolina’s 2011 State House and Senate redistricting plans were struck down as racial gerrymanders. Feb. 11, 2022, Afternoon PI Tr. 183:14–19; see also Covington v. North Carolina, 316 F.R.D. 117 (M.D.N.C. 2016), aff’d North Carolina v. Covington, 581 U.S.1015, (2017).

At the preliminary injunction hearing in the cases *sub judice*, the Court found that “Mr. Morgan’s testimony lack[ed] credibility, and the Court assign[ed] little weight to his testimony.” Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1247–48. During the course of his testimony, Mr. Morgan was impeached about reading Mr. Cooper’s reports before preparing his expert report and he offered contradictory testimony when he testified that he watched Mr. Cooper testify and then later testified that he was viewing exhibits for the first time, even though they were in Mr. Cooper’s report and they were displayed during Mr. Cooper’s testimony. Tr. 1959:5–1961:8; 2037:2–7.

Having observed Mr. Morgan’s testimony and demeanor during the course of the trial, the Court again assigns less weight to his testimony.

d) Dr. Maxwell Palmer

The Grant and Pendergrass Plaintiffs proffered and the Court qualified Dr. Palmer as an expert in redistricting and data analysis. Tr. 396:11–14, 397:8–9. Dr. Palmer earned his Bachelor of Arts in mathematics and government and legal studies from Bowdoin College. PX 2, 20. Dr. Palmer also earned his master’s and doctorate in political science from Harvard University. Id. Dr. Palmer currently serves as an associate professor at Boston University in the political science department, where he has been teaching since 2014. Id. Dr. Palmer has extensively published academic articles and books on a variety of topics, including gerrymandering and redistricting. Id. at 20–22.

Outside of this case, Dr. Palmer has offered consulting or expert testimony in the following cases: Bethune-Hill v. Virginia, 3:14-cv-00852-REP-AWA-BMK (E.D. Va. 2017); Thomas v. Bryant, 3:18-CV-411-CWR-FKB (S.D. Miss. 2018); Chestnut v. Merrill, 2:18-cv-00907-KOB (N.D. Ala. 2019); Dwight v. Raffensperger, 1:18-cv-2869-RWS (N.D. Ga. 2018); Bruni v. Hughs, 5:20-cv-35 (S.D. Tex. 2020); Caster v. Merrill, 2:21-cv-1536-AMM (N.D. Ala. 2021); Galmon v. Ardoin, 3:22-cv-214-SDD-SDJ (M.D. La. 2022). Id. at 27–28.

In the preliminary injunction hearing, in the cases *sub judice*, Dr. Palmer testified as an expert witness for the Grant and Pendergrass Plaintiffs. The Court “f[ound] that his methods and conclusions [we]re highly reliable, and ultimately that his work as an expert on the second and third Gingles preconditions [wa]s helpful to the Court.” Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1304.

Having reviewed Dr. Palmer’s demeanor and his testimony, Dr. Palmer’s testimony was internally consistent, and he maintained a calm demeanor throughout. The Court deems Dr. Palmer to be highly credible and his testimony is extremely helpful to the Court. Thus, the Court assigns great weight to his testimony.

**e) Dr. Lisa Handley**

The Alpha Phi Alpha Plaintiffs proffered and the Court qualified Dr. Handley as an expert in racial polarization analysis, minority vote dilution, and redistricting. Tr. 856:16–19, 861:11–12. Dr. Handley earned her doctorate in political science from George Washington University. APAX 5, 47. Dr. Handley serves as the president and co-founder of Frontier International Electoral

Consulting LLC. Id. Dr. Handley has extensively published academic articles and books on a variety of topics, including gerrymandering and redistricting. Id.

Since 2000, Dr. Handley has served as a consultant and expert witness for the following jurisdictions: Alaska, Arizona, Colorado, Connecticut, Florida, Kansas, Louisiana, Massachusetts, Maryland, Michigan, New Mexico, New York, and Rhode Island. Id. She has also served as a redistricting consultant for the ACLU and provided expert testimony in an Ohio partisan gerrymander challenge, Lawyers Committee for Civil Rights under Law in challenges to judicial elections in Texas and Alabama, the Department of Justice in Section 2 and Section 5 cases. Id.

Other than this case, Dr. Handley has been a testifying expert in the following cases: In re: 2011 Redistricting Cases, No.4FA-11-2209CI (Alaska Super. 2013); Texas v. U.S., 11-1303 (TBG-RMC-BAH) (D.D.C. 2011); Jeffers v. Beebe, 2:12CV00016 JLH (E.D. Ark. 2012); Perry v. Perez, SA-11-CV0360 (W.D. Tex. 2011); Lopez v. Abbott, 2:16-CV-303 (S.D. Tex. 2016); Alabama State Conf. of the NAACP v. Alabama, 2:16-CV-731-WKW (M.D. Ala. 2020); U.S. v. Eastpointe, 4:17-cv-10079 (E.D. Mich. 2017); New York v. U.S. Dep't of Commerce, 18-CV-



2921 (JMF), 18-CV-5025 (JMF) (S.D.N.Y. 2018); Ohio Phillip Randolph Inst. v. Householder, 1:18-cv-357 (S.D. Ohio 2018); League of Women Voters of Ohio, 2021-1449 (Ohio 2021); League of Women Voters of Ohio v. Ohio Redistricting Comm’n, 2021-1193 (Ohio 2021); Ark. State Conf. of the NAACP v. Ark. Bd. of Apportionment, 4:21-cv-1239-LPR (E.D. Ark. 2021). Id.

In the preliminary injunction hearing, in the cases *sub judice*, Dr. Handley testified as an expert witness for the Grant and Pendergrass Plaintiffs. The Court found that Dr. Handley’s testimony was truthful and reliable. Alpha Phi Alpha, 597 F. Supp. 3d at 1309.

At the trial, Dr. Handley’s methodology and conclusions about the existence of polarization were relatively unchallenged by Defendant.<sup>27</sup> Accordingly, the Court will rely on the findings in her report.

---

<sup>27</sup> In Alabama State Conference of the NAACP, the court stated that “the parameters for the elections [Dr. Handley] chose — only statewide elections with a black candidate running against a white candidate — exclude other relevant elections, thereby diminishing the credibility of her conclusions.” Ala. State Conf. of Nat’l Ass’n for Advancement of Colored People v. Alabama, 612 F. Supp. 3d 1232, 1274 (M.D. Ala. 2020); Tr. 857:4–859:16. The Court agrees that Dr. Handley’s dataset may limit the applicability and breadth of her conclusions, as Dr. Alford himself indicated. Tr. 2199.

f) Dr. John Alford

Defendants proffered and the Court qualified Dr. Alford as an expert on the second and third Gingles preconditions and Senate Factor Two. Tr. 2132:19–21, 2133:1. Dr. Alford earned his Bachelor of Science and Master of Public Administration from the University of Houston. DX 8, App. 1. He also achieved his masters and doctorate in political science from the University of Iowa. Id. Dr. Alford is a professor at Rice University of and has been teaching there since 1985. Id. Dr. Alford was an assistant professor at the University of Georgia between 1981 and 1985. Id. Dr. Alford has published academic articles and books on a variety of topics including voting. Id.

Dr. Alford has worked with local governments on districting plans and on VRA cases. Id. He has provided expert reports and testified as an expert witness in a variety of court cases. Id. Sister courts have found that Dr. Alford's methodology was unreliable. See Lopez v. Abbott, 339 F. Supp. 3d 589, 610 (S.D.

---

The scope of Dr. Handley's conclusions, however, is a question for the Court's analysis on the Gingles 2 and 3 preconditions and not a question of Dr. Handley's credibility as an expert witness. Accordingly, the Court relies on the findings in her report as they have been largely unchallenged by Defendants.

Tex. 2018) (crediting Dr. Handley’s testimony over Dr. Alford’s because “Dr. Alford’s testimony . . . focused on issues other than the ethnicity of the voters and their preferred candidates—which are the issues relevant to bloc voting”); Texas v. U.S., 887 F. Supp. 2d 133, 146–47 (D.D.C. 2012), vacated on other grounds, 570 U.S. 928 (2013) (critiquing Dr. Alford’s approach because he used an analysis that “lies outside accepted academic norms among redistricting experts[,]” and the Court, instead, relied heavily on Dr. Handley’s testimony), vacated on other grounds, 570 U.S. 928 (2013).

In the preliminary injunction hearing, in the cases *sub judice*, the Court found that Dr. Alford was credible, however “his conclusions were not reached through methodologically sound means and were therefore speculative and unreliable.” Alpha Phi Alpha Fraternity, Inc., 587 F. Supp. 3 at 1305–06.

The Court again finds that Dr. Alford was highly credible. However, Dr. Alford’s testimony primarily relates to partisan polarization and not racial polarization. Accordingly, the Court will give little weight to Dr. Alford’s testimony with respect to the Gingles preconditions because it does not effectively address that inquiry. The Court will give greater weight to

Dr. Alford's testimony with respect to Senate Factor Two, because there it is appropriate to inquire about the non-racial reasons explaining racially polarized voting.

## **2. *Illustrative Congressional Plan***

### **a) First Gingles Precondition**

Based on Georgia's demographics, Mr. Cooper concluded that "[t]he Black population in metro Atlanta is sufficiently numerous and geographically compact to allow for the creation of an additional majority-Black congressional district anchored in Cobb, Douglas, and Fulton Counties (CD-6 in the illustrative plan) consistent with traditional redistricting principles." PX 1 ¶ 10; see also id. ¶¶ 42, 86. Defendants' mapping expert Mr. Morgan agreed that his report "offers no opinion to dispute" this conclusion. Tr. 1954:1-12. Mr. Cooper drew an illustrative congressional plan (the "Illustrative Congressional Plan") that includes an additional majority-Black congressional district ("Illustrative CD-6") anchored in west-metro Atlanta. Stip. ¶ 190; PX 1 ¶ 55 & fig.12; Tr. 717:14-23.

#### **(1) *Mr. Cooper's process in drawing the maps***

At the preliminary injunction hearing, he testified that he was not asked to either "draw as many majority black districts as possible" or "draw every

conceivable way of drawing an additional majority black district.” Feb. 7, 2022, Morning PI Tr. 98:17–24. And if in his expert opinion an additional majority-Black district could not have been drawn, Mr. Cooper testified that he would have reported that to counsel, as he has “done [] in other cases.” Id. 98:25–99:24.

Mr. Cooper, in his report, declared that he analyzed population and geographic data from the Decennial Census and the American Community Survey (“ACS”). PX 1, Ex. B. He also used the geographic information system software package called Maptitude for Redistricting (“Maptitude”) and the geographic boundary files in Maptitude (created by the U.S. Census). Id. He evaluated incumbent addresses, Georgia’s current and historical legislative plans, Georgia’s 2000 House, Senate, and Congressional Plans. Id. The Court notes that Mr. Cooper was able to review the Enacted Congressional Plan’s compactness scores when he was drawing his Illustrative Congressional Plans. Id.

When he began drawing the Illustrative Congressional Plan, for trial, he testified that he started by using the plan he drew from the preliminary injunction. Tr. 727: 20–23. He then stated that some of the map stayed very similar, but when drawing his proposed Illustrative CD-6 he made specific changes

because “some concerns were raised about going further north into Acworth. And so for that reason, I’m taking local knowledge into account, I changed the district a bit to push the district in Cobb County further south.” Tr. 729: 4–7. He clarified that the local knowledge that he took into account was that of Ms. Wright. Id. at 13–16.

Mr. Cooper also testified that he considers race when creating an illustrative plan that would satisfy the first Gingles precondition because “[t]hat’s part of the inquiry.” Tr. 725:16–25. Specifically, when drawing the Illustrative Congressional Plan, Mr. Cooper displayed dots showing him where precincts with more than 30% Black population were located. Tr. 789:25–790:10, 823:25–824:7. Mr. Cooper explained that he “need[s] to show that the district would be over 50 percent Black voting age population, while adhering to traditional redistricting principles.” Id.; see also Feb. 7, 2022, Morning PI Tr. 48:4–15 (Mr. Cooper testifying at the preliminary injunction hearing that race “is something that one does consider as part of traditional redistricting principles” because “you have to be cognizant of race in order to develop a plan that respects communities of interest, as well as complying with the Voting Rights Act[.]

because one of the key tenets of traditional redistricting principles is the importance of not diluting the minority vote”).

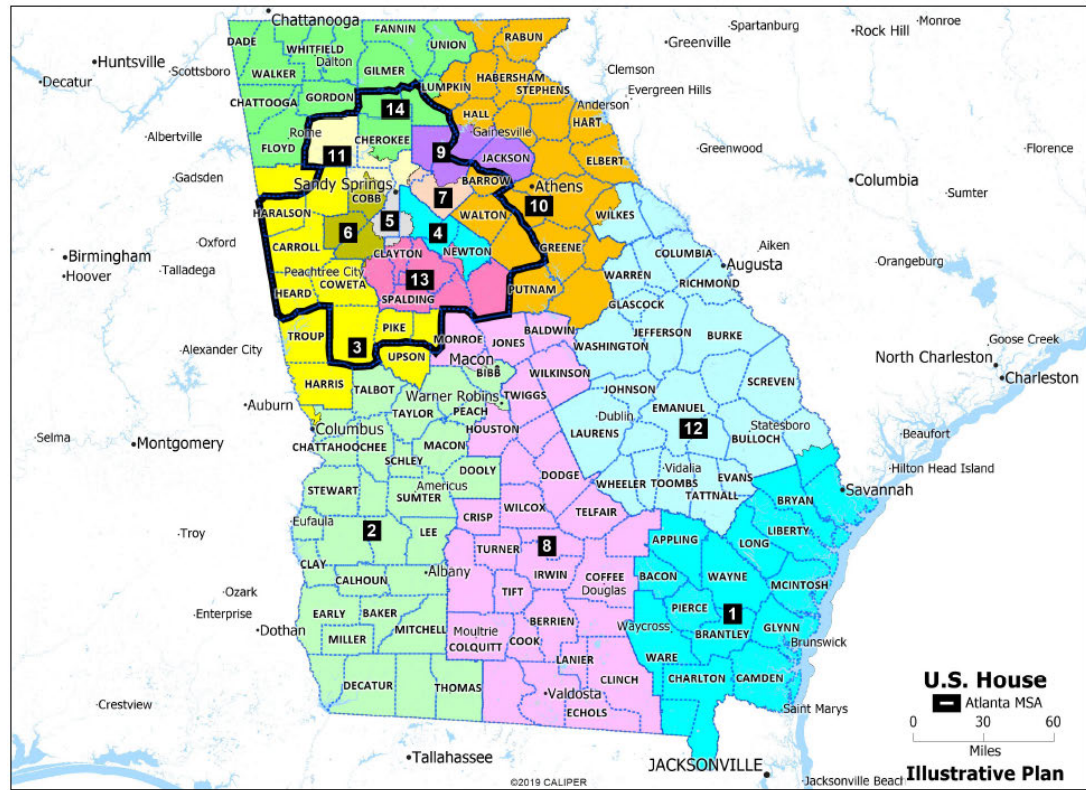
Mr. Cooper testified that race did not predominate in his drawing of the Illustrative Congressional Plan because he merely considered it along with the traditional redistricting principles that he was “constantly balancing.” Tr. 726:11–727:16. Indeed, Mr. Cooper explained that “in drafting this plan, [he] . . . attempted to balance all of the traditional redistricting principles so that no one principle predominates.” Tr. 822:19–24.

Mr. Cooper testified that he did not have election return data available to him when drawing the Illustrative Congressional Plan and that he did not review any public testimony from Georgia voters as part of the process for preparing the Illustrative Congressional Plan. Tr. 524:24–25, 819:13–15.

**(2) *Illustrative Congressional Plan***

**(a) Empirical Measures**

The Illustrative Congressional Plan contains an additional majority-Black congressional district in west-metro Atlanta.



PX 1, 82.



*i) numerosity*

Illustrative CD-6 is 50.23% AP BVAP. PX 1 ¶ 73 & fig.14. Under all metrics, the Black voting age population of Illustrative CD-6 exceeded 50%. Id.

**Figure 14**  
**BVAP and BCVAP Comparison: Illustrative Plan and 2021 Plan**

District*	Illustrative Plan				2021 Plan		
	% BVAP	% NH BCVAP	% NH DOJ BCVAP		% BVAP	% NH BCVAP	% NH DOJ BCVAP
1	28.17%	29.16%	29.67%		28.17%	29.16%	29.67%
2	49.29%	49.55%	50.001%		49.29%	49.55%	50.001%
3	20.47%	19.64%	20.02%		23.32%	22.53%	22.86%
4	52.77%	55.62%	56.37%		54.52%	57.71%	58.46%
5	49.60%	51.64%	52.35%		49.60%	51.64%	52.35%
6	50.23%	50.18%	50.98%		9.91%	9.72%	10.26%
7	29.82%	31.88%	32.44%		29.82%	31.88%	32.44%
8	30.04%	30.46%	30.76%		30.04%	30.46%	30.76%
9	11.66%	11.29%	11.74%		10.42%	10.03%	10.34%
10	14.31%	15.09%	15.39%		22.60%	22.11%	22.56%
11	13.67%	12.91%	13.48%		17.95%	17.57%	18.30%
12	36.72%	36.60%	37.19%		36.72%	36.60%	37.19%
13	51.13%	49.64%	50.34%		66.75%	66.36%	67.05%
14	5.17%	4.80%	5.19%		14.28%	13.19%	13.71%

\*Bold font identifies districts that are changed from the 2021 Plan configuration.

PX 1 ¶ 73 & fig.14.

*ii) population equality and contiguity*

It is undisputed that the population in all districts in the Illustrative Congressional Plan is plus-or-minus one person from the ideal district

population of 765,136. Stip. ¶ 197. It is also undisputed that all districts in the Illustrative Congressional Plan are contiguous. Stip. ¶ 198.

*iii) Compactness scores*

The Illustrative Congressional Plan has comparable, or slightly better, compactness scores as compared to the Enacted Congressional Plan. The mean Reock score for the Illustrative Congressional Plan is 0.43 and is 0.44 on the Enacted Plan. PX 1 ¶ 79 & fig.13. The mean Polsby-Popper scores are identical at 0.27. Id. Mr. Morgan does not dispute that the enacted and the illustrative plans have similar mean Reock scores and identical mean Polsby-Popper scores. Tr. 1948:22–1949:5. Accordingly, the Court finds that the Illustrative Congressional Plan is comparably as compact as the Enacted Congressional Plan.

With respect to the majority-Black districts, the Court finds that the Illustrative Congressional Plan scores generally fared better or were equal to the Enacted Congressional Plan.

PX	Illustrative Plan			Enacted Plan		1, L-1,
	Districts	Reock	Polsby-Popper	Reock	Polsby-Popper	
Exs.	001	0.46	0.29	0.46	0.29	
L-3.	002*	0.46	0.27	0.46	0.27	
	003	0.39	0.24	0.46	0.28	
	004*	0.28	0.22	0.31	0.25	
	005*	0.51	0.32	0.51	0.32	
	<b>006<sup>28</sup></b>	<b>0.45</b>	<b>0.27</b>	<b>0.42</b>	<b>0.20</b>	
	007	0.50	0.39	0.50	0.39	
	008	0.34	0.21	0.34	0.21	
	009	0.40	0.32	0.38	0.25	
	010	0.40	0.18	0.56	0.28	
	011	0.40	0.19	0.48	0.21	
	012	0.50	0.28	0.50	0.28	
	013*	0.44	0.29	0.38	0.16	
	014	0.48	0.34	0.43	0.37	
	<b>Mean:</b>	<b>0.43</b>	<b>0.27</b>	<b>0.44</b>	<b>0.27</b>	
	<b>Max:</b>	<b>0.51</b>	<b>0.39</b>	<b>0.51</b>	<b>0.39</b>	
	<b>Min:</b>	<b>0.28</b>	<b>0.18</b>	<b>0.31</b>	<b>0.16</b>	

Mr. Morgan’s report’s compactness measures are identical to Mr. Cooper’s. DX 4

¶ 22, chart 2. The districts that immediately surround Illustrative CD-6 are,

---

<sup>28</sup> The bolded data is for the proposed additional majority-Black district that is not a majority-Black district in the Enacted Congressional Plan. And any district that has an asterisk (\*) is a majority-Black district.

Illustrative CD-3, 5, 11, and 13. PX 1, Ex. H-2. Of the surrounding districts Illustrative and Enacted CD-5 have identical compactness scores, Illustrative CD-3 and 11 fare worse on both compactness measures than Enacted CD-3 and 11, and Illustrative CD-13 fares better on both compactness measures than Enacted CD-13. The Court notes that CD-5 and 13 are majority-Black districts on both the Enacted and Illustrative Congressional Plans, whereas CD-3 and CD-11 are majority-white districts. PX 1, Ex. H-2. Thus, the Court finds that Mr. Cooper lowered the compactness scores in neighboring majority-white districts when he drew the Illustrative Congressional Plan.

The Court concludes that the Illustrative Congressional Plan is comparably as compact as the Enacted Congressional Plan. The Illustrative Congressional Plan fares worse on the Reock measure by 0.01 points and had an identical Polsby-Popper score. PX 1, Exs. L-1, L-3. The Court finds that overall, the Plans are equivalently compact. With respect to the majority-Black districts, the Court finds that two of the districts (CD-2, and 5) have identical compactness scores, Illustrative CD-4 fares worse on both compactness scores by 0.03 points, Illustrative CD-13 fares better on the Reock score by 0.06 points and Polsby-

Popper by 0.13 points. Id. Finally, Illustrative CD-6 fares better on Reock by 0.03 points and 0.07 on Polsby-Popper. Id. The Court finds that that, generally, the majority-Black districts are equivalently, if not slightly more compact than the Enacted Congressional majority-Black districts.

*iv) political subdivision splits*

The Illustrative Congressional Plan splits the same number of counties as the Enacted Plan, but has fewer unique county splits, VTD splits, city and town splits, and unique cities and town splits. PX 1 ¶ 81 & fig.14.

**Figure 14**  
**County, VTD, and Municipal Splits: Illustrative Plan, 2012 Benchmark, and 2021 Plan (All Districts)**

	Split Counties*	County Splits*	2020 VTD Splits*	Split Cities/ Towns#	City/ Town Splits*
<b>Illustrative Plan</b>	15	18	43	37	78
<b>2012 Benchmark Plan</b>	16	22	43	40	85
<b>2021 Plan</b>	15	21	46	43	91

\*Excludes unpopulated areas

#Out of 531 municipalities (calculated by subtracting the number of whole cities in the Maptitude report from 531)

PX 1 ¶ 81 & fig.14.

Neither Defendants nor their experts have meaningfully suggested that the Illustrative Congressional Plan fails to respect city, town, and county lines. The

Court notes that, as with compactness, Mr. Cooper was able to evaluate the Enacted Congressional Plans political subdivision splits when he drew his Illustrative Congressional Plan. PX 1, Ex. B. Accordingly, the Court finds that the Illustrative Congressional Plan respected more political subdivisions than the Enacted Congressional Plan.

*v) findings of fact*

In sum, the Court finds that the Illustrative Congressional Plan meets or exceeds the Enacted Congressional Plan on compactness scores and political subdivision splits. The Illustrative Congressional Plan and the Enacted Congressional Plan have identical Polsby-Popper scores and the Illustrative Congressional Plan is 0.01 less compact on Reock than the Enacted Plan. PX 1 ¶ 79 & fig.13.

**(b) Core retention**

The Court also finds that the Illustrative Congressional Plan retained many of the cores of the districts in the Enacted Congressional Plan. The General Assembly did not enumerate core retention as a redistricting principle. JX 2. And Ms. Wright testified that when she draws the new Plans, she starts with a blank map and not from the existing Congressional Plan.

Generally, I like to create the new ideal size with the new census population that we have in the state. I plug that into a blank map. And then I just work with the data to create new districts. I don't usually start from the old and try to change it, I start blank, because that way I feel like it's easier for me to build a map rather than try to just move pieces that are already there.

I do use the existing district layer if I need to as a reference, to see if I'm retaining core districts and things like that. But I build that map out just as a balanced map population-wise first as a draft and a blind map to start with.

Tr. 1622:11-22.

Although not a requirement, the Court finds that the Illustrative Congressional Plan does retain the majority of the core districts of the Enacted Congressional Plan. DX 4, Ex. 7. Pursuant to the data provided by Mr. Morgan, the Court finds that approximately 74.6% of individual's district are unchanged from the Enacted Congressional Plan and the Illustrative Congressional Plan. Id.; Tr. 1944:22-1945:13; PX 1 ¶ 13. In other words, only 25.4% of Georgians would be affected if the General Assembly were to enact the Illustrative Congressional Plan. The following is a table derived from the data in Mr. Morgan's report and that exemplifies the number of individuals who remain in the same district under the

Illustrative Congressional Plan. As an initial note, the population size of each congressional district is either 765,137 or 765,136 persons. Stip. ¶ 197.

<b>District</b>	<b># of individuals whose district is unchanged</b>
001	765,137
002	765,137
003	528,200
004	736,485
005	765,137
006	19,006
007	765,137
008	765,136
009	403,191
010	488,385
011	372,724
012	765,136
013	374,470
014	475,707

DX 4, Ex. 7.

As the chart shows, in six of the district, no voter is impacted by the Illustrative Congressional Plan's changes (Illustrative CD-1, CD-2, CD-5, CD-7, CD-8, CD-12). And of the remaining eight changed districts, in only three of those districts (Illustrative CD-6, CD-11, and CD-13) does more than half of the population have a changed district. Illustrative CD-6 is the new majority-minority district and CD-11 and CD-13 are two districts that immediately



surround Illustrative CD-6. Accordingly, the Court finds that Illustrative Congressional Plan, does respect district cores from the Enacted Congressional Plan.

(c) **Racial predominance**

The Court further concludes that Mr. Cooper did not subordinate traditional districting principles in favor of racial considerations. Mr. Cooper was asked “to determine whether the African American population in Georgia is ‘sufficiently large and geographically compact’ to allow for the creation of an additional majority-Black congressional district in the Atlanta metropolitan area.” PX 1 ¶ 8 (footnotes omitted); Tr. 717:14–17. At the preliminary injunction hearing, he testified that he was not asked to either “draw as many majority black districts as possible” or “draw every conceivable way of drawing an additional majority black district.” Feb. 7, 2022, Morning PI Tr. 98:17–24. And if in his expert opinion an additional majority-Black district could not have been drawn, Mr. Cooper testified that he would have reported that to counsel, as he has “done [] in other cases.” Id. 98:25–99:24.

Mr. Cooper testified that he considers race when creating an illustrative plan that would satisfy the first Gingles precondition because “[t]hat’s part of the inquiry.” Tr. 725:16–25. Mr. Cooper explained that he “need[s] to show that the district would be over 50 percent Black voting age population, while adhering to traditional redistricting principles.” Id.; see also Feb. 7, 2022, Morning PI Tr. 48:4–15 (Mr. Cooper testifying at the preliminary injunction hearing that race “is something that one does consider as part of traditional redistricting principles” because “you have to be cognizant of race in order to develop a plan that respects communities of interest, as well as complying with the Voting Rights Act[,] because one of the key tenets of traditional redistricting principles is the importance of not diluting the minority vote”).

Mr. Cooper testified that race did not predominate in his drawing of the Illustrative Congressional Plan because he merely considered it along with the traditional redistricting principles that he was “constantly balancing.” Tr. 726:11–727:16. Indeed, Mr. Cooper explained that “in drafting this plan, [he] . . . attempted to balance all of the traditional redistricting principles so that no one principle predominates.” Tr. 822:19–24. Defendants’ expert does not even

contend that race predominated in the Illustrative Congressional Plan. Tr. 1952:23–1953:17; see generally DX 4.

The Court finds that race did not predominate in the drawing of the Illustrative Congressional Plan.

**b) Second and Third Gingles Preconditions**

The Court finds that that the minority group within Illustrative CD-6 is politically cohesive. Both Pendergrass Plaintiffs’ expert, Dr. Palmer, and Defendants’ expert, Dr. Alford, testified that ecological inference (“EI”) is a reliable method for conducting the second and third Gingles preconditions analyses. “Q. Dr. Alford, you agree that . . . the method of ecological inference Dr. Palmer applied is the best available method for estimating voting behavior by race; correct? A. Correct.” Tr. 2250:12–16; “Q. Do scholars and experts regularly use EI to examine racially polarized voting? A. Yes?” Tr. 401: 7–9. EI “estimates group-level preferences based on aggregate data.” PX 2 ¶ 13. The data analyzed under EI also includes confidence intervals, which measure the uncertainty of results. Id. at n. 12. “Larger confidence intervals reflect a higher

Nos. 23-13916 & 23-13921  
(consolidated with No. 23-13914)

---

**In the United States Court of Appeals  
for the Eleventh Circuit**

---

COAKLEY PENDERGRASS et al.,  
*Plaintiffs-Appellees,*

ANNIE LOIS GRANT et al.,  
*Plaintiffs-Appellees,*

v.

SECRETARY OF STATE OF GEORGIA,  
*Defendant-Appellant.*

---

On Appeal from the United States District Court  
for the Northern District of Georgia  
Nos. 1:21-cv-05339 & 1:22-cv-00122—Steve C. Jones, Judge

---

***PENDERGRASS AND GRANT APPELLEES’  
SUPPLEMENTAL APPENDIX  
VOLUME IV OF VI***

---

Joyce Gist Lewis	Abha Khanna	Michael B. Jones
Adam M. Sparks	Makeba Rutahindurwa	ELIAS LAW GROUP LLP
KREVOLIN & HORST, LLP	ELIAS LAW GROUP LLP	250 Mass. Ave NW,
One Atlantic Center	1700 Seventh Ave,	Suite 400
1201 W. Peachtree St. NW,	Suite 2100	Washington, DC 20001
Suite 3250	Seattle, WA 98101	(202) 968-4490
Atlanta, GA 30309	(206) 656-0177	
(404) 888-9700		

*Counsel for Plaintiffs-Appellees in Nos. 23-13916 & 23-13921*

## INDEX OF APPENDIX

### Docket No.

#### **Volume I**

Complaint .....	1
Order on Motions for Preliminary Injunction .....	97

#### **Volume II**

Order on Motions for Preliminary Injunction (cont.) .....	97
Declaration of William S. Cooper .....	174-1
Expert Report of Orville Vernon Burton .....	174-5
Expert Report of Loren Collingwood .....	174-6

#### **Volume III**

Expert Report of Loren Collingwood (cont.) .....	174-6
Expert Report of John R. Alford .....	174-8
Pretrial Order .....	231
Excerpts from Trial Transcript (9/6/2023 AM) .....	279
Excerpts from Trial Transcript (9/8/2023 PM) .....	281
Excerpts from Trial Transcript (9/14/2023 AM) .....	285
Order and Memorandum of Decision .....	286

#### **Volume IV**

Order and Memorandum of Decision (cont.) .....	286
--	-----

#### **Volume V**

Order and Memorandum of Decision (cont.) .....	286
Excerpts from Trial Transcript (9/11/2023 PM) .....	292

Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) .....	26
---	----

**Volume VI**

Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) (cont.).....	26
--	----

Certificate of Service

degree of uncertainty in the estimates, while smaller confidence intervals reflect less uncertainty.” Id.

Dr. Palmer conducted a racially-polarized voting analysis of Enacted CD-3, 6, 11, 13, and 14, both as a region (the “congressional focus area”) and individually. Stip. ¶ 214; PX 2 ¶ 7; Tr. 413:18–414:5.

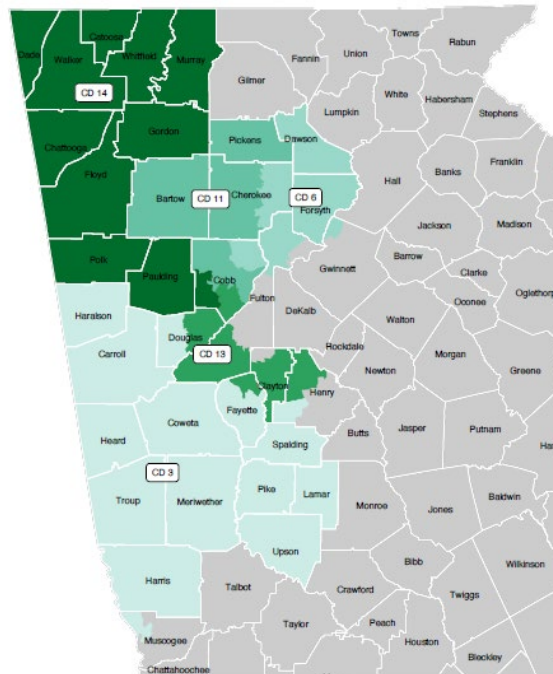


Figure 1: Map of the Focus Area

PX 2 ¶ 11 & fig.1.

Dr. Palmer evaluated Black and white voters’ choices in the congressional focus area for each candidate in 40 statewide elections between 2012 and 2022.

Stip. ¶ 217; PX 2 ¶¶ 13, 15. Dr. Palmer’s EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. PX 2 ¶ 11; Tr. 403:2–13.

Dr. Palmer first examined each racial group’s support for each candidate to determine if members of the group voted cohesively in support of a single candidate in each election. PX 2 ¶ 14. If a significant majority of the group supported a single candidate, he then identified that candidate as the group’s candidate of choice. Id. Dr. Palmer next compared the preferences of white voters to the preferences of Black voters. Id. He concludes that racially polarized voting existed when he found that Black voters and white voters support different candidates. Id.

### ***3. Cooper Legislative Plans***

#### **a) Mr. Cooper’s process in drawing the maps**

Mr. Cooper submitted an illustrative State Senate plan (the “Cooper Senate Plan”) and an illustrative State House plan (the “Cooper House Plan”) (collectively, the “Cooper Legislative Plans”) as a part of his expert report. APAX 1 ¶ 85 & fig.5; ¶ 151 & fig.27. When Mr. Cooper was retained as an expert, he was asked “to determine whether the African-American population in Georgia is



‘sufficiently large and geographically compact’ to allow for the creation, consistent with traditional redistricting principles, of additional majority-Black Senate and House districts[.]” APAX 1 ¶ 7; Tr. 67:23-68:1. At the preliminary injunction hearing, he testified that he was not asked to either “draw as many majority black districts as possible” or “draw every conceivable way of drawing an additional majority black district.” Feb. 7, 2022, Morning PI Tr. 98:17–24. And if in his expert opinion an additional majority-Black district could not have been drawn, Mr. Cooper testified that he would have reported that to counsel, as he has “done [] in other cases.” Id. 98:25–99:24.

Mr. Cooper, in his report, declared that he analyzed population and geographic data from the Decennial Census and the ACS. APAX 1, Ex. B. He also used Maptitude and its geographic boundary files (created by the U.S. Census). Id. He evaluated incumbent addresses, Georgia’s current and historical legislative plans, Georgia’s 2000s House, Senate, and Congressional Plans. Id. The Court notes that Mr. Cooper was able to review the Enacted Legislative Plan’s compactness scores when he was drawing the Cooper Legislative Plans. APAX 1, Ex. B ¶ 7.

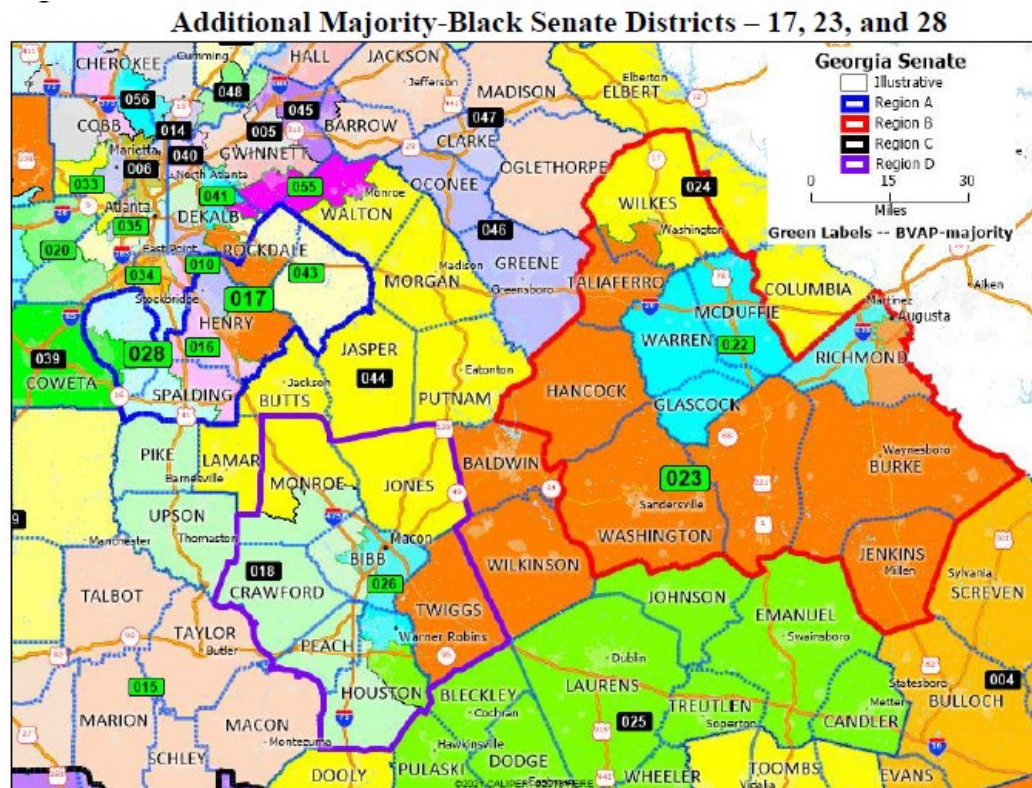
Mr. Cooper specifically testified in detail about how he followed the criteria in Georgia's districting guidelines when drawing the Cooper Legislative Plans. See, e.g., Tr. 89:15-91:9. Mr. Cooper testified that, with respect to Cooper Legislative Plans, he balanced all of the traditional redistricting principles, and that they "all went into the mix as I was drawing the [I]llustrative [P]lan." Tr. 90:16-19. He confirmed that he "balanced the traditional districting principles in drawing [the] illustrative districts," (Id. at 168:19-22), and he testified that none of the factors predominated over any others. Id. at 90:16-19; see also Id. at 107:18-20 ("Q. Mr. Cooper, did any factors get more weight than others when you were drawing your [I]llustrative [P]lans? A. I don't believe so."); Tr. 367:5-7 ("you really do have to balance, balance, balance. That's the name of the game.")).

Traditional redistricting principles, that he considered, include population equality, compactness, contiguity, respect for political subdivision lines like counties and voting tabulation districts ("VTDs," otherwise known as precincts), respect for communities of interest, and non-dilution of minority voting strength. See, e.g., Tr. 90:2-91:9. Mr. Cooper also testified that avoiding pairing incumbents

is a consideration that he takes into account, consistent with Georgia's adopted districting guidelines. See, e.g., Id. 128:5-7, 166:25:167:8, 225:15-24.

**b) Cooper Senate Plan**

The Cooper Senate Plan contains three additional majority-Black Senate Districts, two in south-metro Atlanta and one in the Eastern Black Belt, anchored in and around Augusta.



APAX 1 ¶ 85 & fig.15.

(1) *Empirical measures*

(a) numerosity

The AP BVAP population for the additional districts are as follows: Cooper SD-17 is 62.55%, SD-23 is 50.21%, SD-28 is 51.32%. APAX 1, Ex. O-1. All of Cooper's proposed illustrative Senate districts exceed 50% as do the districts that are majority-Black under the Enacted Senate Plan.

District	AP BVAP	District	AP BVAP
010	69.76%	028*	51.32%
012	57.97%	033	52.60%
015	54.00%	034	77.84%
016	56.52%	035	60.80%
017*	62.55%	036	51.34%
020	60.44%	038	54.25%
022	50.36%	041	64.57%
023*	50.21%	043	57.97%
026	52.81%	055	51.22%

(\*) denotes a new majority-Black district

APAX 1, Ex. O-1.

**(b) population equality and contiguity**

It is undisputed that the population deviation for the Cooper Senate Plan is  $\pm 1.00\%$  from the ideal district population size of 191,284 people. Stip. ¶¶ 277, 301. This is lower than the Enacted Senate Plan, which has a deviation range of -1.03% to +0.98%. Stip. ¶ 301. It is also undisputed that all districts in the Cooper Senate Plan are contiguous. Stip. ¶ 300.

**(c) compactness**

The Court finds that the Cooper Senate Plan and the Enacted Senate Plan, on the whole, are comparable. Mr. Cooper explained, the Cooper Legislative Plans “matched or beat the State’s plans on ... compactness measures[.]” Tr. 109:2-4. Mr. Cooper concluded that “[o]n balance, the Illustrative Senate Plan and 2021 Senate Plan score about the same on the widely referenced Reock and Polsby-Popper measures. If anything, the Illustrative Plan scores better inasmuch as its least compact district by Reock scores [0].22, compared to [0].17 for the 2021 Senate Plan.” APAX 1 ¶ 114.

Mr. Cooper’s expert report provided detailed compactness measures for the Enacted Senate Plan as follows:

**Compactness Scores**  
**Illustrative Senate Plan and 2014 Benchmark and 2021 Senate Plans**

	Reock			Polsby-Popper	
	Mean	Low		Mean	Low
<b>Illustrative Senate Plan</b>	.43	.22		.28	.14
<b>2014 Benchmark Senate Plan</b>	.43	.14		.27	.11
<b>2021 Senate Plan</b>	.42	.17		.29	.13

APAX 1 ¶ 114 & fig.20.

Dr. Morgan, Defendant’s mapping expert, concluded that the Cooper Senate Plan “still has mean compactness scores close to the enacted plan, with the mean compactness score on the Reock test higher and the mean compactness score on the Polsby-Popper test lower.” DX 2 ¶ 18.

The Court concludes that the Cooper Senate Plan is more compact than the Enacted Senate Plan on Reock by 0.01 points and less compact by 0.01 on Polsby-Popper. Id. Consistent with both Defendants’ and the Alpha Phi Alpha Plaintiffs’ experts, the Court finds that the compactness scores of the two plans are “similar.” Accordingly, the Court finds that the Cooper and Enacted Senate Plans are comparably compact with respect to the average and minimum scores.

With respect to the majority-Black districts, the Court finds that the additional majority-Black districts are all more compact than the least compact

district in the Enacted Senate Plan. The following table is derived from the data contained in Exhibits S-1 and S-3:

Enacted Districts			Illustrative Districts		
Districts	Reock	Polsby-Popper	Districts	Reock	Polsby-Popper
017	0.35	0.17	017	0.37	0.17
023	0.37	0.16	023	0.37	0.16
016 <sup>29</sup>	0.37	0.31	028	0.37	0.18

APAX 1, Exs. S-1, S-3.

The Court finds that generally, the majority-Black Senate districts performed identically to their corollary Enacted Senate Plan district, with the exception of Cooper SD-28, which has a lower Polsby-Popper score by 0.13 points. However, none of the compactness measures are below the least compact district's measures on the Enacted Senate Plan, in part because Cooper's Enacted Senate Plan's has a higher minimum compactness score than the Enacted Senate Plan. APAX 1 ¶ 114.

---

<sup>29</sup> Mr. Cooper testified that Cooper SD-28 correlates with Enacted SD-16. APAX 1 ¶ 99.



In sum, the Court finds that on the empirical compactness measures, the majority-Black districts in the Cooper Senate Plan are nearly identical to the compactness scores on the Enacted Senate Plan.

**(d) political subdivision splits**

The Cooper Senate Plan splits fewer political subdivisions than the Enacted Senate Plan and performs better across all metrics. APAX 1 ¶ 116 & fig.21.

**County and VTD Splits/Whole Municipalities –  
Illustrative Plan versus 2014 Benchmark and 2021 Senate Plans**

	Split Counties	Total County Splits*	2020 VTD Splits*	Single- County Whole City/Towns (478)#	Single and Multi County Whole City/ Towns (531#)	Total City/ Town Splits*
<b>Illustrative Senate</b>	28	57	38	437	464	166
<b>2014 Benchmark</b>	38	65	86	422	448	198
<b>2021 Senate</b>	29	60	40	434	463	169

\*Populated splits only  
# Higher is better

Id.

Neither Defendants nor their experts have meaningfully suggested that the Cooper Senate Plan fails to respect city, town, and county lines. Accordingly, the



Court finds that the Cooper Senate Plan respected more political subdivisions than the Enacted Senate Plan.

**(e) findings of fact on empirical measures**

In sum, the Court finds that the Cooper Senate Plan meets or exceeds the Enacted Senate Plan on population equality, compactness scores, and political subdivision splits. The Cooper Senate Plan's Reock score beats the Enacted Senate Plan's Reock score by 0.01 and the Enacted Senate Plan's Polsby-Popper score beats the Cooper Senate Plan's Polsby-Popper score by the same amount. APAX 1 ¶ 114 & fig.20. The Court thus finds that the compactness scores between the two plans are virtually identical.

**(2) *Core retention***

The Court also finds that the Cooper Senate Plan retained many of the cores of the districts in the Enacted Senate Plan. Georgia's Reapportionment Guidelines do not identify preservation of existing district cores as a "General Principles for Drafting Plans." See JX 1, JX2. The Cooper Senate Plan kept 21 Senate districts the same as the Enacted Senate Plan. DX 2 ¶ 17. And, if the General Assembly were to enact the Cooper Senate Plan, 82% of the Georgia

population would remain in the same district in the Enacted Senate Plan. Tr. 88:13-18.

**(3) *Incumbent pairing***

Georgia's redistricting guidelines provide that "efforts should be made to avoid unnecessary incumbent pairings." JX 1, 3; JX 2, 2. He testified that also sought to avoid incumbent pairings. Tr. 236:1-2. He used official incumbent address information that defense counsel provided in January 2022 and another potential database of incumbent address information that followed the November 2022 General Election. APAX 1 ¶ 12. Mr. Cooper testified, as he was drawing the Cooper Legislative Plans, "always in the back of my mind [I] was trying to avoid pairing incumbents." Tr. 236:1-2. The Cooper Senate Plan pairs six incumbents. The Enacted Senate Plan pairs four incumbents. DX 2 ¶ 16 & chart 2. The Court finds that two additional pairs of incumbents are paired under the Cooper Senate Plan than in the Enacted Senate Plan.

**(4) *Racial considerations***

Georgia's redistricting guidelines provide all plans must "comply with Section 2 of the Voting Rights Act[,], as amended." JX 1, at 3; JX 2, at 3. Mr. Cooper testified that non-dilution of minority voting strength means that "as you're

drawing a plan, you should make a point of not excluding the Black population in some areas where you might be able to draw a minority Black district or split one somehow or another into districts that don't necessarily have sufficient minority population to elect a candidate of choice or to overconcentrate Black voters in a single district when they could have been placed in two districts and perhaps have an opportunity in two districts instead of just one." Tr. 92:14-23.

Mr. Cooper testified that for purposes of non-dilution, "you have to at least be aware of where the minority population lives." Tr. 92:14-15. However, Mr. Cooper testified that while race is "out there and [he's] aware of it, . . . it didn't control how [the Illustrative Plans] were drawn." Tr. 108:7-11. He stated that he did not aim to draw any maximum or minimum number of Black-majority districts. Tr. 112:11-14; see also Tr. 197:23-24 ("My goal was not to draw the maximum number of majority Black districts"). When asked whether he was "trying to maximize the number of Black majority districts when [he] drew the [I]llustrative [P]lans?" Mr. Cooper responded, "Not at all." Tr. 358:9-12.

Mr. Cooper testified that when he draws maps, he sometimes uses "a little dot for precincts that are 30 percent or greater Black." Tr. 200:11-15. He testified

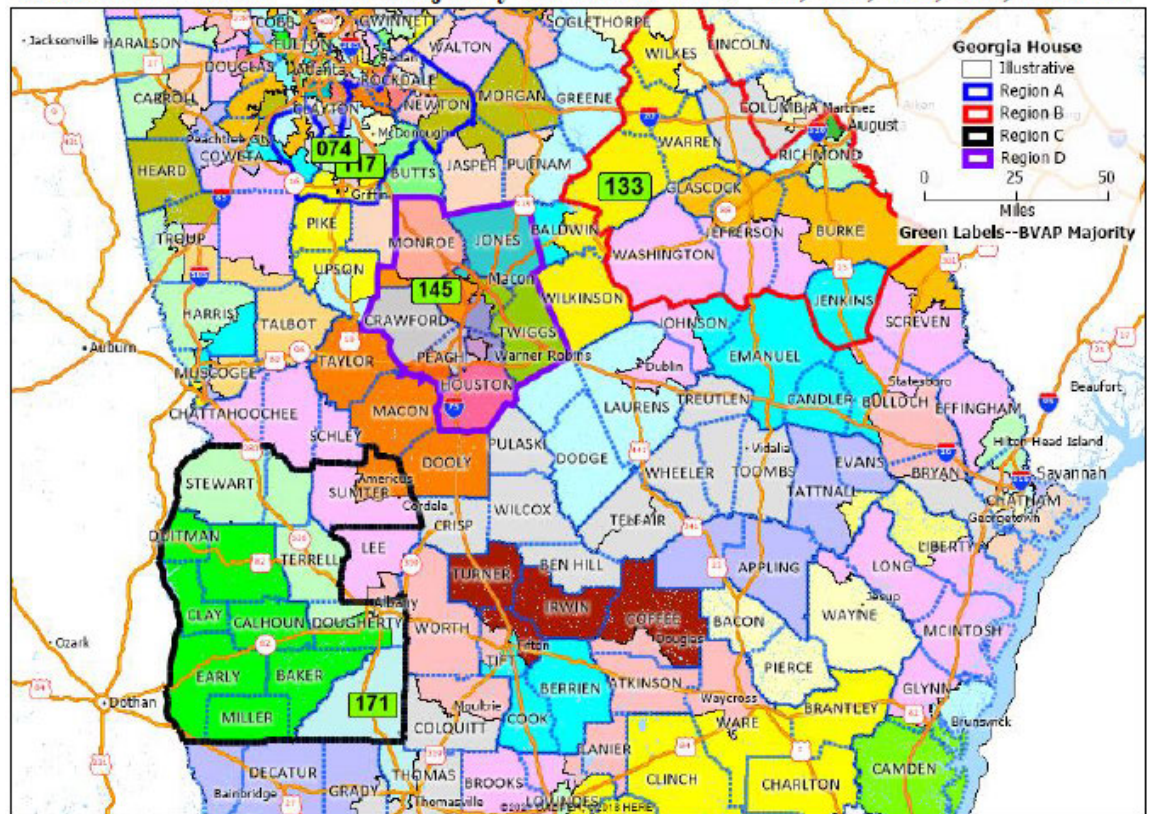
that he did not always use that feature. Tr. 93:23-94:2. Mr. Cooper repeatedly testified that “race did not predominate” in his drawing of the Illustrative Plans. Tr. 93:1, 108:4-11, 108:23-109:5, 168:15-18. When asked by the Court if race predominated, Mr. Cooper responded, “No. Because I also had to take into account these other factors, population equality, avoiding county splits, avoiding splitting municipalities. So it’s out there and I’m aware of it, but it didn’t control how these districts were drawn. Id. at 108:4-11.

Particularly in light of Mr. Cooper’s extensive experience and his testimony regarding the process he used in this case and his balancing of the various considerations, the Court finds that race did not predominate over the other traditional redistricting principles when he drew the Cooper Legislative Plans.

**c) Cooper House Plan**

The Cooper House Plan contains five additional majority-Black House Districts, two in south-metro Atlanta, one in the Eastern Black Belt, anchored in and around Augusta, one in and around Macon-Bibb, and one in southwest Georgia.

**Illustrative House – New Majority-Black Districts –74, 117, 133, 145, and 171**



APAX 1 ¶ 151 & fig.27.

(1) *Empirical measures*

(a) numerosity

The AP BVAP population for the additional districts are as follows: Cooper HD-74 is 61.49%, HD-117 is 54.64%, HD-133 is 51.97%, HD-145 is 50.20%, and HD-171 is 58.06%. APAX 1, Ex. AA-1. All of the districts in the Cooper House

Plan exceed 50% as do the districts that are majority-Black under the Enacted House Plan. Id.

**(b) population equality and contiguity**

It is undisputed that the population deviations in all districts in the Cooper House Plan are within  $\pm 1.49\%$  of the ideal district population size of 59,511 people. Stip. ¶¶ 278, 302. This is higher than the Enacted House Plan, which has a deviation range of  $-1.40\%$  to  $+1.34\%$ . Stip. ¶ 302. It is also undisputed that all districts in the Cooper House Plan are contiguous. Stip. ¶ 300.

**(c) compactness**

The Court finds that the Cooper House Plan and the Enacted House Plan, on the whole, are comparable. Mr. Cooper explained, the Cooper Legislative Plans “matched or beat the State’s plans on ... compactness measures[.]” Tr. 109:2-4. Mr. Cooper concluded that “[o]n balance, the Illustrative House Plan and 2021 Senate Plan score about the same on the widely referenced Reock and Polsby-Popper measures. If anything, the Illustrative Plan scores better inasmuch as its least compact district by Reock scores [0].16, compared to [0].12 for the 2021 House Plan.” APAX 1 ¶ 187.



Mr. Cooper's expert report provided detailed compactness measures for the Enacted Senate Plan as follows:

**Compactness Scores  
Illustrative House Plan versus  
2015 Benchmark and 2021 House Plans**

	Reock			Polsby-Popper	
	Mean	Low		Mean	Low
<b>Illustrative House Plan</b>	.39	.16		.27	.11
<b>2015 Benchmark House Plan</b>	.39	.13		.27	.09
<b>2021 House Plan</b>	.39	.12		.28	.10

APAX 1 ¶ 187 & fig.36.

Dr. Morgan, Defendant's mapping expert, concluded that the average compactness scores in the Cooper House Plan and the Enacted House Plan "are similar." DX 2 ¶ 47.

The Court concludes that the Cooper and Enacted House Plans have identical Reock scores, but the Cooper House Plan is less compact by 0.01 on Polsby-Popper. Id. Consistent with both Defendants' and the Alpha Phi Alpha Plaintiffs' experts, the Court finds that the compactness scores of the two plans are "similar." Accordingly, the Court finds that the Cooper and Enacted House Plans are comparably compact, with respect to the average and minimum scores.

With respect to the additional majority-Black districts, the Court finds that those districts are all more compact than the least compact district in the Enacted House Plan. The following table is derived from the data contained in Exhibits AG-1 and AG-2:

	Enacted Districts		Illustrative Districts	
Districts	Reock	Polsby-Popper	Reock	Polsby-Popper
074	0.50	0.25	0.63	0.36
117	0.41	0.28	0.41	0.26
133	0.55	0.42	0.26	0.20
145	0.38	0.19	0.25	0.22
171	0.35	0.37	0.28	0.20

APAX 1, Exs. AG-1, AG-2.

The Court finds that in the south metro-Atlanta districts, the majority-Black districts in the Cooper House Plan are comparable. For example, Cooper HD-74 beats Enacted HD-74 by 0.13 on Reock and 0.11 on Polsby-Popper. The Court finds that for the districts outside of Atlanta, the majority-Black districts in the Cooper House Plan generally fared worse than the Enacted House Plan's



majority-Black districts, with the exception of Cooper HD-145's Polsby-Popper score which is 0.03 more compact than Enacted HD-145. However, none of the compactness scores are below the least compact district's scores on the Enacted House Plan. APAX 1 ¶ 187 & fig.36.

**(d) political subdivisions**

The Cooper House Plan's political splits are comparable to the Enacted House Plan's. APAX 1 ¶ 189 & fig.37. The Cooper House Plan splits one less county. The plans have the same numbers of unique county and VTD splits. Id. The chart below depicts the total findings on political subdivision splits:

**County and VTD splits/Whole Municipalities  
Illustrative House Plan versus  
2015 Benchmark and 2021 House Plans**

	Split Counties	Total County Splits*	2020 VTD Splits*	Single- County Whole City/Towns (478)#	Single and Multi County Whole City/ Towns (538)#	Total City/ Town Splits*
<b>Illustrative House</b>	68	209	179	393	402	361
<b>2015 Benchmark</b>	73	215	268	381	402	378
<b>2021 House</b>	69	209	179	384	412	344

\*Populated splits only  
# Higher is better

Id.

Neither Defendant, nor his experts have meaningfully suggested that the Cooper House Plan fails to respect city, town, and county lines. Accordingly, the Court finds that the Cooper House Plan has comparable political subdivision splits to the Enacted House Plan.

(e) findings of fact on the empirical measures

In sum, the Court finds that the Cooper House Plan is comparable to the Enacted House Plan on population equality, compactness scores, and political subdivision splits.

(2) *Core retention*

The Court also finds that the Cooper House Plan retained many of the cores of the districts in the Enacted House Plan. Georgia's Reapportionment Guidelines do not identify as a traditional districting principle the goal to preserve existing district cores among "General Principles for Drafting Plans." See JX 1, JX2. The Cooper House Plan kept 87 House districts the same as the Enacted House Plan. DX 2 ¶ 47. If the General Assembly were to enact the Cooper House Plan, 86% of the Georgia population would remain in the same district in the Enacted House Plan. Tr. 88:13-18.

**(3) *Incumbent pairings***

Georgia’s redistricting guidelines provide that “efforts should be made to avoid unnecessary incumbent pairings.” JX 1, at 3; JX 2, at 3. Mr. Cooper testified that he also sought to avoid incumbent pairings. Tr. 236:1-2. Mr. Cooper used official incumbent address information that defense counsel provided in January 2022 and another potential database of incumbent address information that followed the November 2022 General Election. APAX 1 ¶ 12. Mr. Cooper testified that as he was drawing the Illustrative Plans, “always in the back of my mind [I] was trying to avoid pairing incumbents.” Tr. 236:1-2. Cooper House Plans pairs 25 incumbents. The Enacted House Plan pairs 20 incumbents. *Id.* at 25. Mr. Cooper paired five more incumbents than the Enacted House Plan.

**(4) *Racial considerations***

The evidence regarding Mr. Cooper’s racial considerations when drawing the Cooper House Plan is identical to the evidence regarding the drawing of the Cooper Senate Plan. Accordingly, the Court incorporates by reference its analysis of the Mr. Cooper’s racial consideration in the Cooper Senate Plan here. See Section I(F)(3)(b)(4) *supra*.

#### *4. Esselstyn Legislative Plans*

##### **a) Mr. Esselstyn's map drawing process**

As a part of his expert report, Mr. Esselstyn submitted an illustrative State Senate Plan (“Esselstyn Senate Plan”) and an illustrative State House Plan (“Esselstyn House Plan”) (collectively the “Esselstyn Legislative Plans”). Mr. Esselstyn testified that he was asked whether “the Black population in Georgia is sufficiently large and geographically compact to allow for the creation of additional majority Black districts in the legislative maps relative to the enacted maps while adhering to traditional redistricting principles.” Tr. 467: 11–15. To accomplish this inquiry, Mr. Esselstyn used data from the Census Bureau’s website, the Georgia General Assembly’s Legislative Congressional Reapportionment Office’s website, and the Georgia General Assembly’s Reapportionment Committees Guidelines. *Id.* ¶¶ 1–2. Mr. Esselstyn also drew upon his knowledge as a geologist for determining where “fall line cities” were located in Georgia. Tr. 529:12–530:1. Mr. Esselstyn did not have any political data or election return information available when drawing the illustrative plans. Tr. 524:19–25. He also did not review any public comments provided by Georgians at public hearings until after he drew his preliminary injunction plans,

and the Esselstyn Legislative Plans are very similar to his preliminary injunction plans. Tr. 530:2–8.

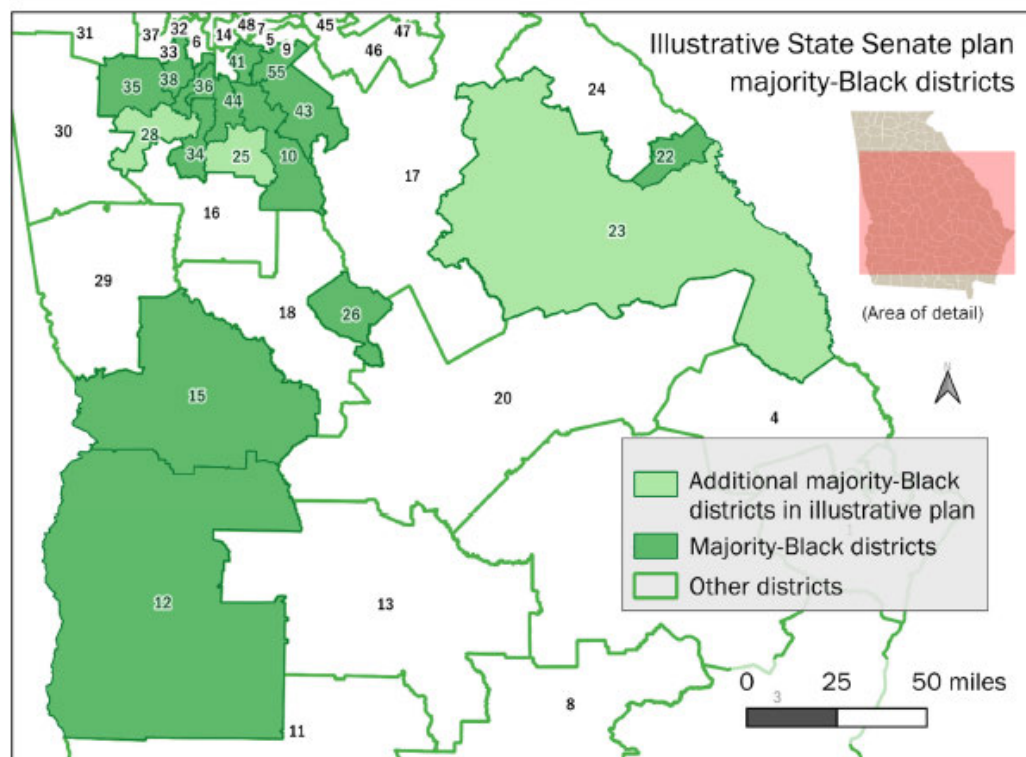
For the physical process of drawing his illustrative plans, Mr. Esselstyn primarily used the mapping software Maptitude, the same software used by the Georgia General Assembly. GX 2, Attach. B ¶ 4. Through Maptitude, he was able to import Census Bureau data files and the Enacted Legislative Plans. Id.

Maptitude shows statistics for the districts, such as compactness and population deviation. Id. Maptitude allows the map drawer to shade the map for racial demographics. Tr. 521:13–19. Mr. Esselstyn testified that “[a]t times” he would use the racial information to “inform decisions that he made about which parts of districts went in and out of a particular district.” Tr. 522:19–25. But, he stated that he did not always have it on when drawing the Esselstyn Legislative Plans. Tr. 587:18–24. He testified that the racial information “would have been one factor that [he] was considering in addition to other factors.” Tr. 522:24–25. Mr. Esselstyn testified that in determining where particular communities were located, he primarily relied on visible features that were displayed in the Maptitude software. Tr. 528:23–529:2.

**b) Esselstyn Senate Plan**

Analyzing these demographics and the Enacted Senate Plan, Mr. Esselstyn concluded that “[i]t is possible to create three additional majority-Black districts in the State Senate plan . . . in accordance with traditional redistricting principles.” GX 1 ¶ 13; Tr. 468:2–4. Two in south-metro Atlanta and one in the Eastern Black Belt. GX 1 ¶ 13. Meaning, the Esselstyn Senate Plan has 17 majority-Black State Senate districts using the AP BVAP metric. Stip. ¶ 231; GX 1 ¶ 27.

**Figure 4: Map of majority-Black districts in the illustrative State Senate plan.**



GX 1 ¶ 27 & fig.4.

(1) *Empirical measures*

(a) numerosity

The Esselstyn Senate Plan contains 17 majority-Black districts. GX 1 ¶ 27 & tbl. 1. The AP BVAP in all 17 districts exceed 50 percent. Id. Of the additional

**Table 1: Illustrative Senate plan majority-Black districts with BVAP percentages.**

District	BVAP%	District	BVAP%	District	BVAP%
10	61.10%	26	52.84%	39	60.21%
12	57.97%	28	57.28%	41	62.61%
15	54.00%	34	58.97%	43	58.52%
22	50.84%	35	54.05%	44	71.52%
23	51.06%	36	51.34%	55	65.97%
25	58.93%	38	66.36%		

majority-Black districts, the majority-Black population is 51.06%, 58.93%, and 57.28% respectively. Id.

**(b) population equality and contiguity**

It is undisputed that the districts in the Esselstyn Senate Plan are all contiguous. Stip. ¶ 258.

The overall deviation range on the Enacted Senate Plan is higher than the overall deviation range on the Enacted Senate Plan. Tr. 527:11–15; DX 3, Chart 3. However, the Court finds that the Esselstyn Senate Plan complies with the General Assembly’s population equality guidelines. Under the General Assembly’s redistricting guidelines “[e]ach legislative district of the General Assembly shall be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.” JX 2, 2.

Under the Esselstyn Senate Plan, all districts have a population deviation between  $\pm 1$  and 2%, with most within  $\pm 1\%$ . GX 1 ¶ 34. The district with the greatest deviation is + 1.90% and the district contains 194,919–3,635 persons more than the ideal population. GX 1, Attach. E. The average population deviation in Esselstyn’s Senate Plan is  $\pm 0.67\%$ . Id. The Court finds that on average, Mr. Esselstyn’s Senate Plan complies with the General Assembly’s guideline on population equality.



(c) Compactness scores

The Court finds that the Esselstyn Senate Plan and the Enacted Senate Plan, on the whole, are comparable. Mr. Esselstyn reported the average compactness scores for both the Enacted and Esselstyn Legislative Plans using five measures — Reock, Schwartzberg<sup>30</sup>, Polsby-Popper, Area/Convex Hull<sup>31</sup>, and Number of Cut Edges<sup>32</sup>. GX 1 ¶¶ 36, 57 & tbls.2, 6; see also Tr. 475:18–476:18 (Mr. Esselstyn’s testimony describing common measures of compactness).

---

<sup>30</sup> The Schwartzberg test is a perimeter-based measure that compares a simplified version of each district to a circle, which is considered to be the most compact shape possible. For each district, the Schwartzberg test computes the ratio of the perimeter of the simplified version of the district to the perimeter of a circle with the same area as the original district. This measure is usually greater than or equal to 1, with 1 being the most compact. GX 1, Attach. G.

<sup>31</sup> The Area/Convex Hull test computes the ratio of the district area to the area of the convex hull of the district (minimum convex polygon which completely contains the district). The measure is always between 0 and 1, with 1 being the most compact. GX 1, Attach. G.

<sup>32</sup> The Cut Edges test counts the number of edges removed (“cut”) from the adjacency (dual) graph of the base layer to define the districting plan. The adjacency graph is defined by creating a node for each base layer area. An edge is added between two nodes if the two corresponding base layer areas are adjacent — which is to say, they share a common linear boundary. If such a boundary forms part of the district boundary, then its corresponding edge is cut by the plan. The measure is a single number for the plan. A smaller number implies a more compact plan. GX 1, Attach. G.

Mr. Esselstyn concluded that the average compactness measures for the Enacted and Esselstyn Senate Plans “are almost identical.” GX 1 ¶ 36 & tbl.2; see also Id. at 79–91 (Mr. Esselstyn’s expert report providing detailed compactness measures for Enacted and Esselstyn Senate Plans); Tr. 485:19–21 (Mr. Esselstyn’s testimony describing compliance with compactness principle). Mr. Morgan agreed that the mean compactness scores were “very close.” Tr. 1843:19–1844:2. Mr. Esselstyn reported those measures as follows:

**Table 2: Compactness measures for enacted and illustrative State Senate plans.**

	Reock (average)	Schwartzberg (average)	Polsby- Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.42	1.75	0.29	0.76	11,005
Illustrative	0.41	1.76	0.28	0.75	11,003

GX 1 ¶ 36 & tbl. 2.

The Court concludes that the Esselstyn Senate Plan fares worse than the Enacted Senate Plan by 0.01 points on four of the five measures and has 2 fewer cut edges than the Enacted Senate Plan. Id. Consistent with both Defendants’ and the Grant Plaintiffs’ experts, the Court finds that the compactness scores of the

two plans are “very close.” Accordingly, the Court finds that the Esselstyn and Enacted Senate Plans are comparably compact.

The following chart is derived from the data in attachment H to Mr. Esselstyn’s report and depicts the compactness scores for the minority-Black districts in the Enacted and Esselstyn Senate Plans.

	Enacted Senate Plan		Esselstyn Senate Plan	
District	Reock	Polsby-Popper	Reock	Polsby-Popper
010	0.28	0.23	0.25	0.19
012	0.62	0.39	0.62	0.39
015	0.57	0.32	0.57	0.32
022	0.41	0.29	0.33	0.32
023*	0.37	0.16	0.34	0.17
025*	0.39	0.24	0.57	0.34
026	0.47	0.20	0.44	0.25
028*	0.45	0.25	0.38	0.19
034	0.45	0.34	0.31	0.21
035	0.47	0.26	0.59	0.42
036	0.32	0.30	0.32	0.30
038	0.36	0.21	0.37	0.20
039	0.17	0.13	0.18	0.13
041	0.51	0.30	0.51	0.30
043	0.64	0.35	0.49	0.25
044	0.18	0.19	0.33	0.24
045	0.35	0.30	0.35	0.30
<b>Mean:</b>	<b>0.41</b>	<b>0.26</b>	<b>0.41</b>	<b>0.27</b>
<b>Max:</b>	<b>0.64</b>	<b>0.39</b>	<b>0.62</b>	<b>0.42</b>
<b>Min:</b>	<b>0.17</b>	<b>0.13</b>	<b>0.18</b>	<b>0.13</b>

asterisk (\*) denotes a new majority-Black district

With respect to the majority-Black districts, the Court finds that the Esselstyn Senate Plan is equivalent if not better than the Enacted Senate Plan. On average, the two plans have identical Reock scores and the Esselstyn Senate Plan fares 0.01 better on the Polsby-Popper measure. GX 1, Attach. H.

With respect to the maximum and minimum scores, the Enacted Senate Plan has a district that is 0.02 better on Reock than the most compact district in the Esselstyn Senate Plan. Id. Conversely, on the Polsby-Popper measure, the Esselstyn Senate Plan's most compact district is 0.03 points more compact than the most compact district in the Enacted Senate Plan. Id. The least compact districts in both plans have identical Polsby-Popper scores and the Esselstyn Senate Plan's least compact district is more compact by 0.01 points. Id.

Finally, on the Reock measure, five of the majority-Black districts have identical scores, five districts are more compact in the Esselstyn Senate Plan, and seven districts are more compact in the Enacted Senate Plan. Id. On the Polsby-Popper measure, six of the majority-Black districts have identical scores, six

districts are more compact in the Esselstyn Senate Plan, and five are more compact on the Enacted Senate Plan.

In sum, the Court finds that on the empirical compactness measures, the majority-Black districts in the Enacted and Esselstyn Senate Plans are comparably compact.

**(d) political subdivisions**

The Court finds that on the whole, the Esselstyn Senate Plan's political subdivision splits are comparable to the Enacted Senate Plan's. The Esselstyn Senate Plan splits more counties and VTDs than the Enacted Senate Plan. Tr. 528:1-5; DX 3, Chart 3. Mr. Esselstyn noted that he split fewer counties than in the 2014 Georgia Legislative Plans. Tr. 487:15-21; GX 1 ¶ 40 & tbl.4. He reported the splits in the enacted and illustrative State Senate maps as follows:

**Table 4: Political subdivision splits for enacted and illustrative State Senate plans.**

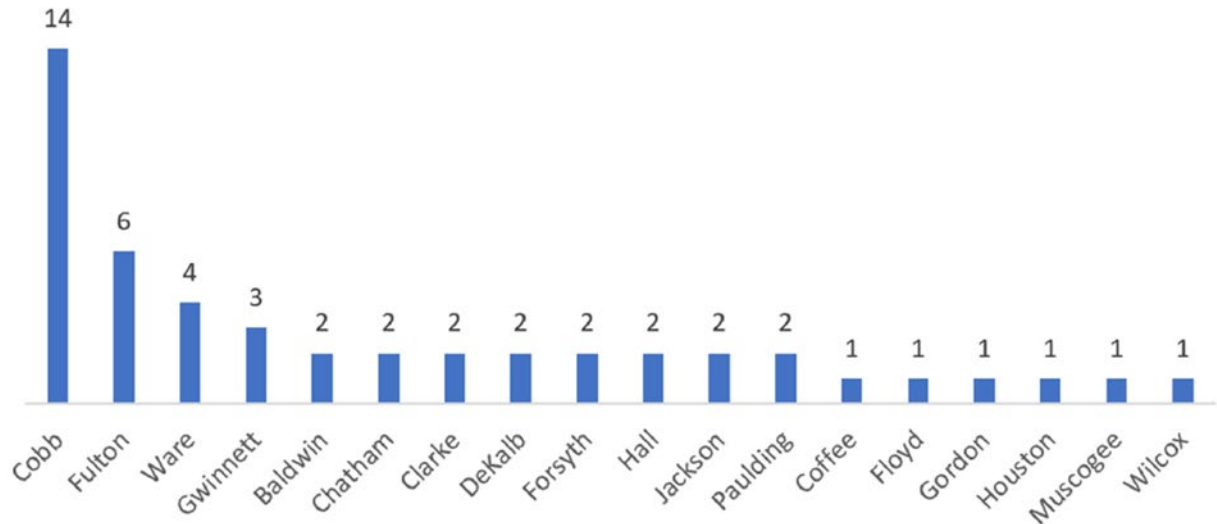
	Intact Counties	Split Counties	Split VTDs
Enacted	130	29	47
Illustrative	125	34	49

GX 1, ¶ 40 & tbl.4.

Mr. Esselstyn concluded that “[w]hile the creation of three additional majority-Black State Senate districts involved the division of additional counties and VTDs, the differences are marginal.” GX 1 ¶ 40 & tbl.4; see also Id. at 92–103 (Mr. Esselstyn’s expert report providing political subdivision splits for enacted and illustrative State Senate maps); Tr. 487:8–14 (Mr. Esselstyn’s testimony that the number of political subdivision splits in the illustrative and enacted Senate plans are “very similar”).

Mr. Morgan’s report confirms that the Esselstyn Senate Plan split the same counties as the Enacted Senate Plan. See DX 3 ¶ 35. Mr. Morgan also conceded that the ways in which the Esselstyn Senate Plan splits counties, at times, affected fewer people because he split smaller counties and united some of the bigger counties. See Tr. 1887:21–1891:1. Out of 2,698 VTDs statewide, only 49 are split in Esselstyn Senate Plan, and in only 18 of Georgia’s 159 counties. Doc. No. GX 1 ¶ 40 & tbl.4; Mr. Esselstyn’s report included a histogram depicting the VTD splits in the Esselstyn Senate Plan by county:

**Figure 10: VTD splits in illustrative State Senate plan by county.**



GX 1 ¶ 40 & fig.10.

**(e) findings of fact on the empirical measures**

In sum, the Court finds that the Esselstyn Senate Plan has greater population deviations than the Enacted Senate Plan; however, the Esselstyn Senate Plan has comparable compactness scores and political subdivision splits.

**(2) *Core retention***

The General Assembly Guidelines did not include maintaining existing State Senate district cores. JX 1, JX 2. Similarly, Ms. Wright testified that when drafting the Enacted Senate Plan, she starts with a blank map and builds out from

there. Tr. 1622:11–17; 1642:7–14. She does not start by using the most recent State Senate map. Id. Although not an enumerated guideline, the Court finds that the Esselstyn Senate Plan respects the core districts of the Enacted Senate Plan. Mr. Esselstyn used the Enacted Senate Plan as a starting point, and many of the districts are the same. Only 22 districts were modified, leaving the other 34 unchanged. Stip. ¶ 261; GX 1 ¶ 26; Tr. 485:3–5. As Mr. Morgan’s report confirms, nearly 90% of Georgia’s population would remain in their same numbered State Senate district under the Esselstyn Senate Plan. DX 3, Ex. 7. The Court finds that the Esselstyn Senate Plan retained the majority of the core districts from the Enacted Senate Plan.

### **(3) *Incumbent Pairings***

Based on the record, the Court concludes that the Esselstyn Senate Plan complies with the districting criterion of avoiding unnecessary pairings of incumbents. See JX1, JX2. At the preliminary injunction hearing, Mr. Esselstyn submitted an illustrative State Senate plan that he created without knowledge of incumbent addresses. GX 1 ¶ 42; Tr. 479:23–480:21. That plan paired two incumbents in the State Senate.



The Esselstyn Senate Plan, submitted at trial, pairs fewer incumbents than Mr. Esselstyn's initial plans. Currently, no incumbent State Senators are paired. GX 1 ¶ 42; Tr. 480:18–21.

Accordingly, the Court finds that Esselstyn Senate Plan respects the traditional redistricting principle of avoiding pairing incumbents because it paired no incumbents.

#### **(4) *Racial Considerations***

The Court further concludes that Mr. Esselstyn did not subordinate traditional districting principles in favor of race-conscious considerations. Mr. Esselstyn was asked “to determine whether there are areas in the State of Georgia where the Black population is ‘sufficiently large and geographically compact’ to enable the creation of additional majority-Black legislative districts relative to the number of such districts provided in the enacted State Senate and State House of Representatives redistricting plans from 2021.” GX 1 ¶ 9 (footnote omitted); see also Tr. 467:8–15 (Mr. Esselstyn's testimony confirming what he was asked to do in this case). Mr. Esselstyn testified that he was not asked to

maximize the number of majority-Black districts in the Enacted Legislative Plans.

Feb. 9, 2022, Afternoon PI Tr. 150:23–25.

Mr. Esselstyn testified that it was necessary for him to consider race as part of his analysis because “the Gingles 1 precondition is looking at whether majority Black districts can be created. And in order to understand whether districts are majority Black, one has to be able to look at statistics for those districts.” Tr. 471:9–17. See Feb. 9, 2022, Afternoon PI Tr. 155:15–156:2. (Mr. Esselstyn testifying that, under Section 2, “the key metric is whether a district has a majority of the Any Part Black population. So that means it has to be over 50 percent. And that means looking at a column of numbers in order to determine, to assess whether a district has that characteristic. You have to look at the numbers that measure the percentage of the population is Black.”).

Mr. Esselstyn emphasized that he took other considerations into account as well when drawing his illustrative plans, including population equality, compliance with the federal and Georgia constitutions, contiguity, and other traditional districting principles. Tr. 471:18–472:14.; Id. at 522:5–14 (“I’m constantly looking at the shape of the district, what it does for population

equality, . . . political subdivisions, communities of interest, incumbents, all that. So while yes, at times [race] would have been used to inform a decision, it was one of a number of factors.”).

Mr. Esselstyn confirmed that race did not predominate when he drew the Esselstyn Legislative Plans. Tr. 472:15–20. Although Mr. Morgan concluded that Mr. Esselstyn’s changes from the Enacted Senate Plan indicate that he prioritized race, the Court does not credit Mr. Morgan’s analysis or conclusions for several reasons.

First, Mr. Morgan conceded that he did not examine the extent to which Mr. Esselstyn’s changes were designed to satisfy traditional districting criteria like avoiding the unnecessary pairing of incumbents and preserving communities of interest. Tr. 1897:11–1899:3, 1923:21–1924:16. Mr. Morgan’s overarching conclusion about the prioritization of race over other factors is difficult to square with his failure to actually examine all of the relevant factors Mr. Esselstyn stated he considered in drawing his illustrative plans.

Second, Mr. Morgan’s analysis is methodologically inconsistent. For instance, the text of his expert report, which purports to compare the district in

the Enacted and Esselstyn Senate Plans, contains compactness scores for the enacted districts but makes no mention of the compactness scores for the corresponding illustrative districts. Tr. 1854:5–12.

Third, Mr. Morgan’s analysis of the new majority-Black districts is incomplete. The text of Mr. Morgan’s expert report provides no description or analysis whatsoever of Esselstyn SD-25, SD-28, HD-64, HD-117, HD-145 or HD-149. Tr. 1846:10–1847:6; Tr. 1896:21–23, 1922:22–25, 1923:1–15.

Fourth, Mr. Morgan’s conclusion regarding the role of race seems to fault the Esselstyn Legislative Plans for taking the same approach as the Enacted Legislative Plans. Specifically, Mr. Morgan criticizes Esselstyn Legislative Plans for “elongating” various districts when creating new majority-Black districts, e.g., Tr. 1811:25–1812:18, but conceded that the Enacted Legislative Plans do the same thing. Tr. 1927:4–1928:25. Ms. Wright also agreed that several districts in the Enacted Legislative Plans, including EnactedSD-10, SD-44, HD-36, and HD-60, are “elongated.” Tr. 1702:3–1704:1.

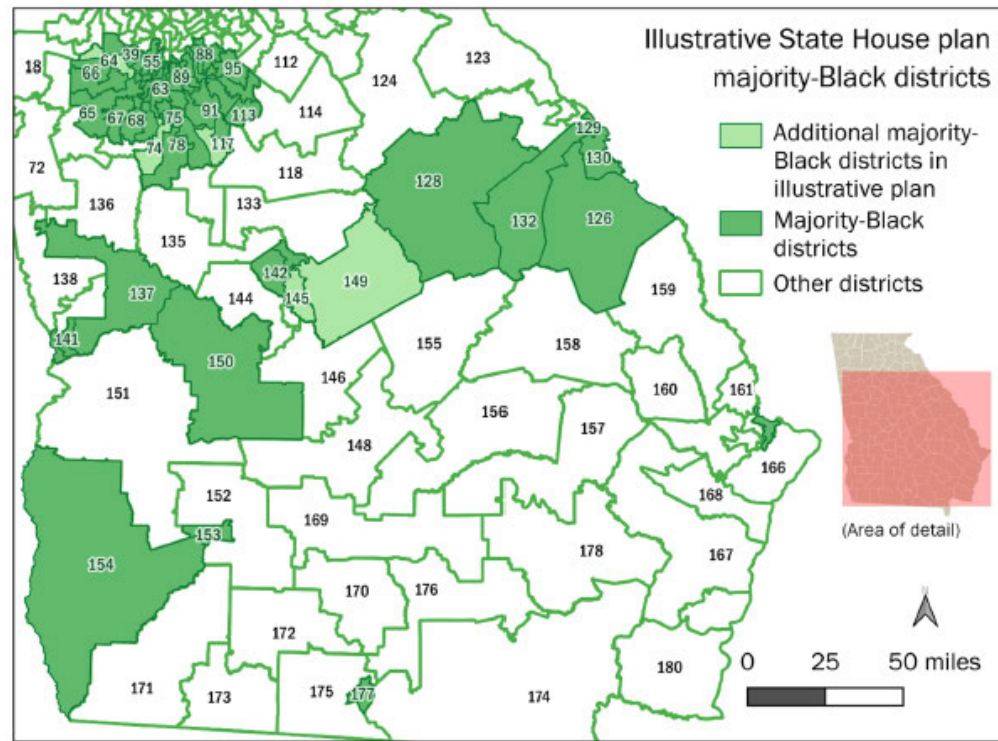
For these reasons, the Court is not persuaded by Mr. Morgan’s testimony and conclusions that race predominated when Mr. Esselstyn drew the Esselstyn

Legislative Plans. The Court finds that Mr. Esselstyn consistently testified that race did not predominate when he drew his plans. Rather, he made efforts to balance traditional redistricting principles when he made districting decisions. Thus, the Court finds that race did not predominate in the drawing of the Esselstyn Legislative Plans.

**c) Esselstyn House Plan**

Mr. Esselstyn concluded that it was possible to draw five additional majority-Black House districts in accordance with traditional redistricting principles. GX 1 ¶ 13.

**Figure 13: Map of majority-Black districts in the illustrative House plan.**



GX 1 ¶ 48 & fig.13.

(1) *Empirical measures*

(a) numerosity

Esselstyn'sThe Esselstyn House Plan contains 54 majority-Black districts.

GX 1 ¶ 48 & tbl. 5. The AP BVAP in all of these districts exceed 50 percent. Id.

The majority-Black population in the majority-Black districts is 50.24%, 53.94%, 51.56%, 50.38%, and 51.53% respectively. Id.

**Table 5: Illustrative House plan majority-Black districts with BVAP percentages.**

District	BVAP%	District	BVAP%	District	BVAP%	District	BVAP%
38	54.23%	69	62.73%	91	60.01%	137	52.13%
39	55.29%	74	53.94%	92	68.79%	140	57.63%
55	55.38%	75	66.89%	93	65.36%	141	57.46%
58	63.04%	76	67.23%	94	69.04%	142	50.14%
59	70.09%	77	76.13%	95	67.15%	143	50.64%
60	63.88%	78	51.03%	113	59.53%	145	50.38%
61	53.49%	79	71.59%	115	53.77%	149	51.53%
62	72.26%	84	73.66%	116	51.95%	150	53.56%
63	69.33%	85	62.71%	117	51.56%	153	67.95%
64	50.24%	86	75.05%	126	54.47%	154	54.82%
65	63.34%	87	73.08%	128	50.41%	165	50.33%
66	53.88%	88	63.35%	129	54.87%	177	53.88%
67	58.92%	89	62.54%	130	59.91%		
68	55.75%	90	58.49%	132	52.34%		

GX 1 ¶ 48 & tbl. 5.

**(b) population equality and contiguity**

It is undisputed that the districts in the Esselstyn House Plan are all contiguous. Stip. ¶ 258.

The Esselstyn House Plan’s overall population deviation is higher than the deviation range in the Enacted House Plan’s. Tr. 527:11–15; DX 3, Chart 3. However, the Court finds that the Esselstyn House Plan complies with the General Assembly’s population equality guidelines. Under the General Assembly’s redistricting guidelines state that “[e]ach legislative district of the

General Assembly shall be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.” JX 2, 2.

Under the Esselstyn House Plan, all districts have a population deviation between -1.94% and +1.91%, with a mean deviation of +0.64%. GX 1, Attach. J. The district with the greatest deviation is +1.91% and the district contains 58,358 people—1,153 persons less than the ideal population. GX 1, Attach. J. Comparatively, the Enacted House Plan has a population deviation range of -1.40 to +1.34%. GX 1, Attach. I. The Court finds that the Esselstyn House Plan has a greater deviation range than the Enacted House Plan, and on average, Mr. Esselstyn’s House Plan complies with the General Assembly’s guideline on population equality.

**(c) compactness scores**

The Court finds that the Esselstyn House Plan and the Enacted House Plan, on the whole, are comparable. Mr. Esselstyn reported the average compactness scores for both the Enacted and Esselstyn House Plans using five measures—Reock, Schwartzberg, Polsby-Popper, Area/Convex Hull, and Number of Cut



Edges. GX 1 ¶¶ 36, 57 & tbls.2, 6; see also Tr. 475:18–476:18 (Mr. Esselstyn’s testimony describing common measures of compactness).

Mr. Esselstyn further concluded that the average compactness measures for the Enacted and Esselstyn House Plans “are almost identical, if not identical.” GX 1 ¶ 57 & tbl. 6; see also Id. at 135–65 (Mr. Esselstyn’s expert report providing detailed compactness measures for enacted and illustrative House maps); Tr. 492:17–22 (Mr. Esselstyn’s testimony describing compliance with compactness principle). Mr. Esselstyn reported those measures as follows:

**Table 6: Compactness measures for enacted and illustrative House plans.**

	Reock (average)	Schwartzberg (average)	Polsby- Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.39	1.80	0.28	0.72	22,020
Illustrative	0.39	1.81	0.28	0.72	22,359

GX 1 ¶ 57 & tbl.6.

Mr. Morgan characterized the overall compactness scores of the Enacted and Esselstyn House Plans as “similar.” DX 3 ¶ 50. The Court concludes that the Esselstyn House Plan is identical on Reock, Polsby-Popper, and Area/Convex

Hull. Id. On the Schwartzberg measure, the Enacted Plan is 0.01 more compact and the Enacted House Plan cut 339 fewer edges. GX 1 ¶ 57 & tbl.6

Consistent with both Defendants’ and the Grant Plaintiffs’ experts, the Court finds that the compactness scores of the two plans are “similar.” Accordingly, the Court finds that the Esselstyn and Enacted House Plans are comparably compact. With respect to the maximum and minimum scores, the most compact district in the Enacted House Plan has a Reock score of 0.66 and the least compact district has a Reock Score of 0.12. GX 1, Attach. L. And on the Polsby-Popper measures, the most compact district has a score of 0.59 and the least compact district has a score of 0.10. The Esselstyn House Plan has the same metrics. Id.

With respect to the additional majority-Black districts, the Court finds that the additional majority-Black districts compactness scores all exceed 0.12 on Reock and 0.10 on Polsby-Popper, which are the lowest compactness scores in the Enacted House Plan. Id.

However, generally, the Court finds that the majority-Black House districts performed worse than the districts in the Enacted House Plan. However, none of

the compactness measures are below the least compact district's measures on the Enacted House Plan. The following table is derived from the data contained in attachment L to GX 1:

Districts	Enacted House Plan		Illustrative House Plan	
	Reock	Polsby-Popper	Reock	Polsby-Popper
064	0.37	0.36	0.22	0.22
074	0.50	0.25	0.30	0.19
117	0.41	0.28	0.40	0.33
145	0.38	0.19	0.34	0.21
149	0.32	0.22	0.46	0.28

In sum, the Court finds that on the empirical compactness measures, the majority-Black districts in the Esselstyn House Plan fall within the compactness score range of the Enacted House Plan.

**(d) political subdivisions**

The Court finds that on the whole, the Esselstyn House Plan's political subdivision splits are comparable to the Enacted House Plan's. The Enacted House Plan splits more counties and precincts than the Enacted House Plan. Tr. 528:1-5; DX 3, Chart 3.

Mr. Esselstyn concluded that “[w]hile the creation of three additional majority-Black State House districts involved the division of additional counties and VTDs, the differences are marginal.” GX 1 ¶ 39 & tbl.4; see also Id. at 92–103 (Mr. Esselstyn’s expert report providing political subdivision splits for the Enacted and Esselstyn House Plans); Tr. 487:8–14 (Mr. Esselstyn’s testimony that the number of political subdivision splits in the Esselstyn and Enacted House Plans are “very similar”). He reported the splits in the Enacted and Esselstyn House Plans as follows:

**Table 8: Political subdivision splits for enacted and illustrative House plans.**

	Intact Counties	Split Counties	Split VTDs
Enacted	90	69	185
Illustrative	89	70	186

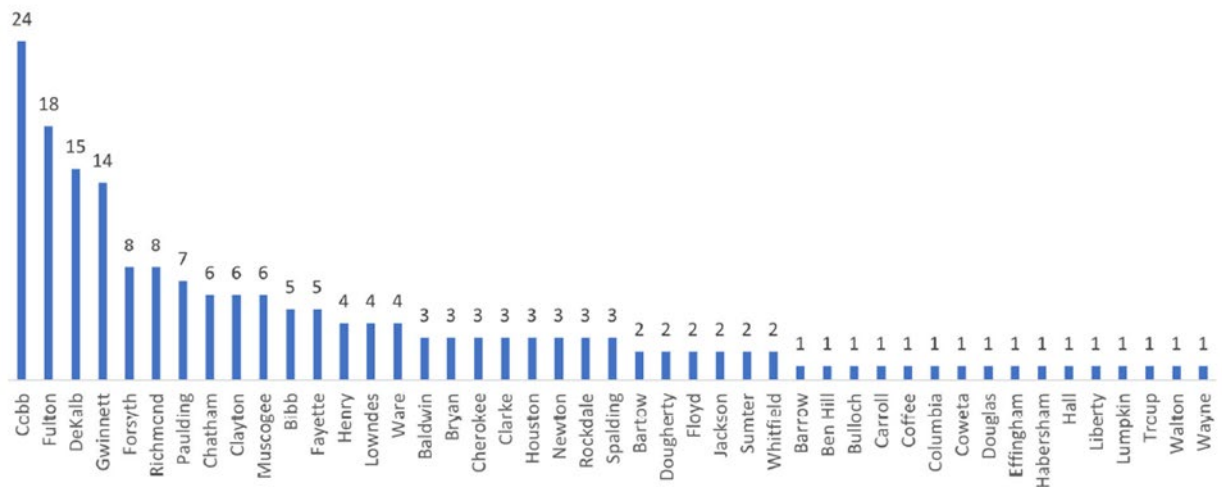
GX 1 ¶ 59 & tbl. 8.

The Esselstyn House Plan splits one more county and VTD than the Enacted House Plan. Notably, out of 2,698 VTDs statewide, only 186 are split in Esselstyn House Plan, and in only 45 of Georgia’s 159 counties. GX 1 ¶ 59 & tbl.8; Tr. 494:16–495:3. Mr. Morgan also found that the ways in which the Esselstyn House Plan splits counties, at times, fewer people are affected because he split

smaller counties and united some of the bigger counties. See Tr. 1887:21–1891:1.

Mr. Esselstyn’s report included a histogram depicting the VTD splits in the Esselstyn House Plan by county:

**Figure 18: VTD splits in illustrative State House plan by county.**



GX 1 ¶ 59 & fig.18.

**(e) findings of fact on the empirical measures**

In sum, the Court finds that the Esselstyn House Plan has a greater range of population deviations than the Enacted House Plan; however, the Esselstyn House Plan has comparable compactness scores and political subdivision splits.

**(2) Core retention**

The General Assembly Guidelines did not include maintaining existing State House district cores. JX 1, JX 2. Similarly, Ms. Wright testified that when drafting the Enacted House Plan, she starts with a blank map and builds out from there. 1622:11-17; 1642:7-14. She does not start by using the most recent State House map. Id. Although not an enumerated guideline, the Court finds that the Esselstyn House Plan respects the core districts of the Enacted House Plan. Mr. Esselstyn used the Enacted House Plan as a starting point and many of the districts are the same. Only 25 districts were modified, leaving the other 155 unchanged. Stip. ¶ 261; GX 1 ¶ 47; DX 3, Ex. 14. As Mr. Morgan's report confirms, nearly 94% of Georgia's population would remain in their same numbered State House district under the Esselstyn House Plan. DX 3, Ex. 7. The Court finds that the Esselstyn House Plan retained the majority of the core districts from the Enacted House Plan.

**(3) Incumbent Pairings**

Based on the record, the Court concludes that the Esselstyn House Plan complies with the districting criterion of avoiding unnecessary pairings of incumbents. See JX1, JX2. Mr. Esselstyn's preliminary injunction State House

plan was created without knowledge of incumbent addresses and paired 16 incumbents in the State House. GX 1 ¶ 61; Tr. 479:23–480:21.

The Esselstyn House Plan, submitted in his December 2022 expert report, pairs fewer incumbents than Mr. Esselstyn’s initial plans. The Esselstyn House Plan would pair a total of eight incumbents in the same districts—the same number of incumbents that the Enacted House Plan paired in the same districts. GX 1 ¶ 61; Tr. 480:14–21.

Accordingly, the Court finds that the Esselstyn House Plan pairs the same number of incumbents as the Enacted House Plan; therefore, it complies with the traditional redistricting principle of avoiding pairing incumbents.

#### **(4) *Racial Considerations***

The evidence regarding the Esselstyn Senate and House Plans was identical. Accordingly, the Court incorporates its racial predominance analysis from the Esselstyn Senate Plan Section. See Section I(H)(4)(b)(4) *supra*.

#### **G. Second and Third Gingles Preconditions**

##### **1. Pendergrass: Dr. Palmer’s methodology**

Dr. Palmer who served as Pendergrass and Grant Plaintiffs’ experts, evaluated the Black population’s cohesion and white voter bloc voting using EI.

PX 2, GX 2. Both Dr. Palmer and Defendants' expert, Dr. Alford, testified that ecological inference ("EI") is a reliable method for conducting the second and third Gingles preconditions analyses. "Q. Dr. Alford, you agree that . . . the method of ecological inference Dr. Palmer applied is the best available method for estimating voting behavior by race; correct? A. Correct." Tr. 2250:12-16; "Q. Do scholars and experts regularly use EI to examine racially polarized voting? A. Yes?" Tr. 401:7-9. EI "estimates group-level preferences based on aggregate data." PX 2 ¶ 13. The data analyzed under EI also includes confidence intervals, which measure the uncertainty of results. Id. at n. 12.

Dr. Palmer conducted a racially polarized voting analysis of Enacted CD-3, 6, 11, 13, and 14, both as a region (the "congressional focus area") and individually. Stip. ¶ 214; PX 2 ¶ 7; Tr. 413:18-414:5.



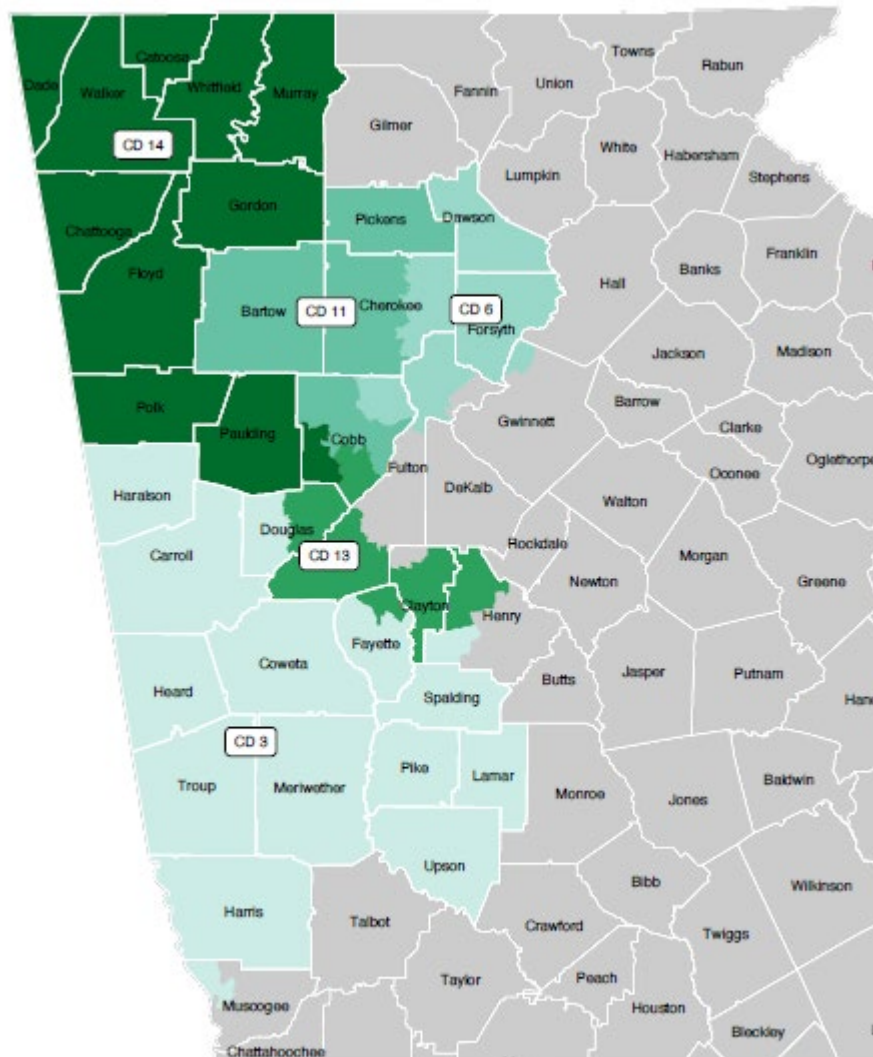


Figure 1: Map of the Focus Area

PX 2 ¶ 11 & fig.1.

Dr. Palmer evaluated Black and white voters' choices in the congressional focus area that voted for each candidate in 40 statewide elections between 2012

and 2022. Stip. ¶ 217; PX 2 ¶¶ 13, 15. Dr. Palmer's EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. PX 2 ¶ 11; Tr. 403:2-13.

Dr. Palmer first examined each racial group's support for each candidate to determine if members of the group voted cohesively in support of a single candidate in each election. PX 2 ¶ 14. If a significant majority of the group supported a single candidate, he then identified that candidate as the group's candidate of choice. Id. Dr. Palmer next compared the preferences of white voters to the preferences of Black voters. Id. He concluded that evidence of racially polarized voting is found when Black voters and white voters support different candidates. Id.

2. *Alpha Phi Alpha: Dr. Handley's methodology*

Dr. Handley, Alpha Phi Alpha's expert, analyzed voting patterns by race in seven areas of Georgia where the Cooper Legislative Plans created additional majority-Black districts. Tr. 861:21-25; APAX 5, 2; Stip. ¶ 307. As part of that analysis, she considered whether Black voters had the opportunity to elect

candidates of their choice in these areas under the Cooper Legislative Plans as compared to the Enacted Legislative Plans. See Tr. 862:22-863:5; APAX 5, 2, 12.

Dr. Handley stated that these seven areas in Georgia are where “districts that offered Black voters opportunities to elect their candidates of choice could have been drawn and were not drawn when you compare the illustrative to the adopted plan.” Tr. 861:21-25. Dr. Handley named these seven areas the Eastern Atlanta Metro Region, the Southern Atlanta Metro Region, East Central Georgia with Augusta, the Southeastern Atlanta Metro Region, Central Georgia, Southwest Georgia, and the Macon Region. See APAX 5, 8-9; Tr. 869:13-25.

The first area Dr. Handley analyzed—the Eastern Atlanta Metro Region—encompasses Cooper SD-10, SD-17, SD-43 and Enacted SD-10, SD-17, SD-43 (DeKalb, Henry, Morgan, Newton, Rockdale, and Walton Counties). Stip. ¶ 309; APAX 5, 8, 17-18. The second area—the Southern Atlanta Metro Region—encompasses Cooper SD-16, SD-28, SD-34, and SD-39 and Enacted SD-16, SD-28, SD-34, and SD-44 (Clayton, Coweta, Douglas, Fayette, Heard, Henry, Lamar, Pike, and Spalding Counties). Stip. ¶ 310; APAX 5, 8, 19-20.

The third area—the East Central Georgia Region—encompasses Cooper SD-22, SD-23, SD-26, and SD-44 and Enacted SD-22, SD-23, SD-25, and SD-26 (Baldwin, Bibb, Burke, Butts, Columbia, Emanuel, Glascock, Hancock, Henry, Houston, Jasper, Jefferson, Jenkins, Johnson, Jones, Lamar, McDuffie, Monroe, Morgan, Putnam, Richmond, Screven, Taliaferro, Twiggs, Walton, Warren, Washington, Wilkes, and Wilkinson Counties). Stip. ¶ 311; APAX 5, 9, 21-22. The fourth area—Southeastern Atlanta Metro Region—encompasses Cooper HD-74, HD-75, HD-78, HD-115, HD-116, HD-117, HD-118, HD-134, and HD-135 and Enacted HD-74, HD-75, HD-78, HD-115, HD-116, HD-117, HD-118, HD-134, and HD-135 (Butts, Clayton, Fayette, Henry, Jasper, Lamar, Monroe, Pike, Putnam, Spalding, and Upson Counties). Stip. ¶ 312; APAX 5, 9, 23-24. The fifth area—Central Georgia—encompasses Cooper HD-128, HD-133, HD-144, and HD-155 and Enacted HD-128, HD-133, HD-149, and HD-155 (Baldwin, Bibb, Bleckley, Dodge, Glascock, Hancock, Jefferson, Johnson, Jones, Laurens, McDuffie, Taliaferro, Telfair, Twiggs, Warren, Washington, Wilkes, and Wilkinson Counties). Stip. ¶ 313; APAX 5, 9, 26-27.

The sixth area—Southwest Georgia—encompasses Cooper HD-152, HD-153, HD-171, HD-172, and HD-173 and Enacted HD-152, HD-153, HD-171, HD-172, and HD-173 (Colquitt, Cook, Decatur, Dougherty, Grady, Lee, Mitchell, Seminole, Stewart, Terrell, Thomas, Tift, Webster, and Worth Counties). Stip. ¶ 314; APAX 5, 9, 28-29. The seventh area—the Macon Region—encompasses Cooper HD-142, HD-143, and HD-145 and Enacted HD-142, HD-143, and HD-145 (Bibb, Crawford, Houston, Peach, and Twiggs Counties). Stip. ¶ 315; APAX 5, 9, 30-31.

Dr. Handley employed three commonly used, well-accepted statistical methods to conduct her racially polarized voting analysis: homogeneous precinct

analysis,<sup>33</sup> ecological regression<sup>34</sup>, and EI.<sup>35</sup> Tr. 864:17-21, 868:10-12; APAX 5, 3-4; Stip. ¶ 308. With these three statistical methods, she calculated estimates of the percentage of Black and white voters who voted for candidates in recent statewide general elections and State legislative general elections in the seven areas. Tr. 863:21-864:25, 862:22-863:5. Dr. Handley uses homogeneous precinct analysis and ecological regression to check the estimates produced by EI. Tr. 868:7-9. When “they all come up with very similar estimates,” Dr. Handley testified that she can be confident in those estimates. Id.

---

<sup>33</sup> Homogeneous precinct analysis and ecological regression have been used for approximately 40 years. Tr. 864:17-20. These analytic tools were employed by the plaintiffs’ expert in Gingles and were accepted by the Supreme Court. APAX 5, 4; Gingles, 478 U.S. at 52–53, 80.

<sup>34</sup> Ecological regression (ER), uses information from all precincts, not simply the homogeneous ones, to derive estimates of the voting behavior of minorities and whites. If there is a strong linear relationship across precincts between the percentage of minorities and the percentage of votes cast for a given candidate, this relationship can be used to estimate the percentage of minority voters supporting the candidate. APAX 5, 3.

<sup>35</sup> Dr. Handley used two forms of EI called “King’s EI” and “EI RxC.” Tr. 873:18-21. APAX 5, 4-5. Defendant’s expert, Dr. John Alford, agrees that EI RxC is “the best of the statistical methods for estimating voting behaviors.” Tr. 2215:23-25.

Dr. Alford has “no concerns with [Dr. Handley’s] use of EI RxC in her most recent [December 23, 2022] report.” Tr. 2216:1-3. He “[does not] question her ability,” and agrees that “her new report, most recent report, relies on methods that . . . are acceptable.” Id. at 2220:21, 2216:13-17. Dr. Alford has “no concerns about the data that went into Dr. Handley’s statistical analysis in this case[.]” Tr. 2221:5-7.

Dr. Handley evaluated 16 recent (2016-2022) general and runoff statewide elections, including for U.S. Senate, Governor, School Superintendent, Public Service Commission, and Commissioners of Agriculture, Insurance, and Labor. APAX 5, 6; Stip. ¶¶ 316-317. She also looked at 54 recent (2016-2022) State legislative elections in the areas of interest, including 16 State Senate contests and 38 State House contests. Tr. 890:2-12; APAX 5, at 7-8; Stip. ¶ 324. All 2022 State legislative contests in the Enacted Legislative Plans identified as districts of interest were analyzed, even if the contest did not include at least one Black candidate. APAX 5, at 7-8. In addition, because there has only been one set of State legislative elections (2022) under the Enacted Plans, Dr. Handley also analyzed biracial State legislative elections conducted between 2016 and 2020 in

the State legislative districts under the previous State House and State Senate plans that are located within the seven areas of interest. Id.

Dr. Handley also examined 11 statewide Democratic primaries. Tr. 879:25-880:2. She examined those because “we have a two-part election system here and you have to make it through the Democratic primary to make it into the general election” and, in some jurisdictions, primaries are the operative barrier for Black-preferred candidates, so Dr. Handley “would always look at both.” Id. at 892:22-893:8. With regard to the areas of interest in this litigation, Dr. Handley concluded that the Democratic primaries were “not a barrier” for Black-preferred candidates to win elections, and Dr. Handley rested her opinions of racially polarized voting in the areas of interest on the general elections. Id. at 894:13-22. Dr. Handley did not evaluate whether Democratic primaries are the barrier to electing Black-preferred candidates outside the areas of interest. Id. at 894:23-895:1.

### 3. Grant: Dr. Palmer’s methodology

Dr. Palmer, who served as the Pendergrass Plaintiffs’ expert on political cohesion and voter polarization also served as the Grant Plaintiffs’ expert.



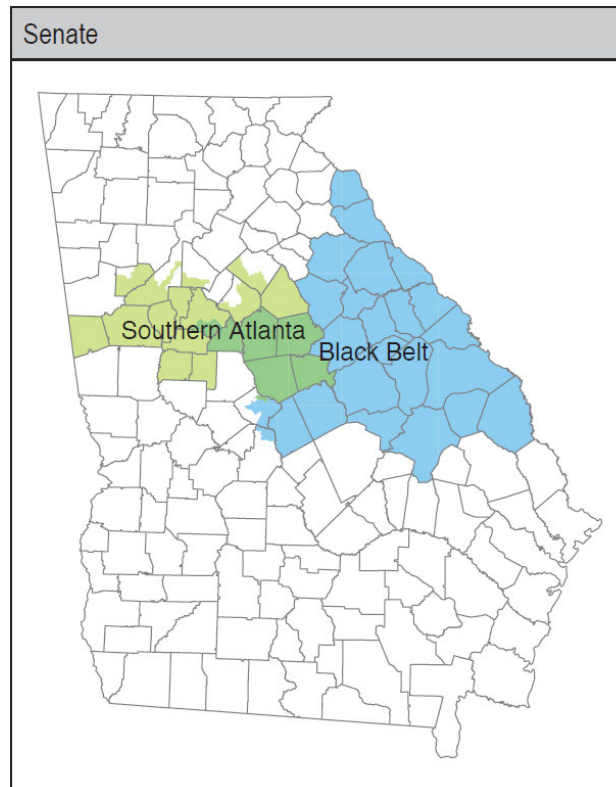
Dr. Palmer used the same EI method as that used in Pendergrass. Tr. 418:21–25.

Dr. Palmer conducted a racially polarized voting analysis of five different legislative focus areas. Stip. ¶ 262; GX 2 ¶ 10; Tr. 403:21–404:5. His EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. GX 2 ¶ 13; Tr. 403:2–13. Dr. Palmer analyzed two focus areas for the Enacted Senate Plan.

In the Black Belt, Dr. Palmer evaluated Enacted SD-22, SD-23, SD-24, SD-25, and SD-26 (“Palmer’s senate Black Belt focus area”). These districts include Baldwin, Burke, Butts, Columbia, Elbert, Emanuel, Glascock, Greene, Hancock, Hart, Jasper, Jefferson, Jenkins, Johnson, Jones, Lincoln, Mcduffie, Oglethorpe, Putnam, Richmond, Screven, Taliaferro, Twiggs, Warren, Washington, Wilkes, and Wilkinson Counties and parts of Bibb, Henry, and Houston Counties. Tr. 403:21–404:5; GX 2 ¶ 12; Stip. ¶ 265. In south-metro Atlanta Dr. Palmer evaluated Enacted SD-10, SD-16, SD-17, SD-25, SD-28, SD-34, SD-35, SD-39, and SD-44. These districts include Baldwin, Butts, Clayton, Coweta, Fayette, Heard, Jasper, Jones, Lamar, Morgan, Pike, Putnam, and Spalding Counties and parts of

Bibb, DeKalb, Douglas, Fulton, Henry, Newton, and Walton Counties.

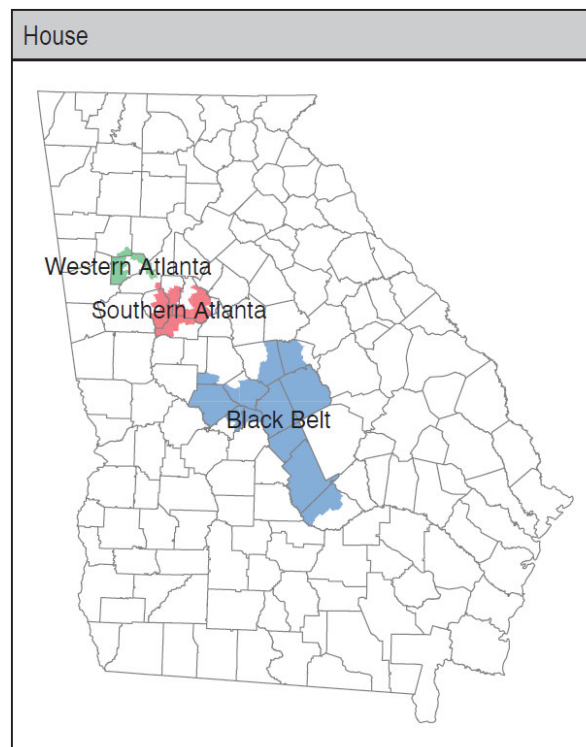
Tr. 403:21-404:5; GX 2 ¶ 12; Stip. ¶ 265.



GX 2 ¶ 12 & fig.1.

Dr. Palmer analyzed three focus areas for the State House Plan. In the Black Belt, Dr. Palmer evaluated Enacted HD-133, HD-142, HD-143, HD-145, HD-147, and HD-149. These districts include Bleckley, Crawford, Dodge, Twiggs, and Wilkinson Counties and parts of Baldwin, Bibb, Houston, Jones, Monroe, Peach, and Telfair Counties. Tr. 403:21-404:5; GX 2 ¶ 11; Stip. ¶ 264. In south-metro

Atlanta, Dr. Palmer evaluated Enacted HD-69, HD-74, HD-75, HD-78, HD-115, and HD-117. These districts include parts of Clayton, Fayette, Fulton, Henry, and Spalding Counties. Tr. 403:21–404:5; GX 2 ¶ 11; Stip. ¶ 264. Finally, in west-metro Atlanta, Dr. Palmer evaluated Enacted HD-61 and HD-64. These districts include parts of Douglas, Fulton, and Paulding Counties. Tr. 403:21–404:5; GX 2 ¶ 11; Stip. ¶ 264.



GX 2 ¶ 12 & fig.1.

Dr. Palmer first examined each racial group's support for each candidate to determine if members of the group voted cohesively in support of a single candidate in each election. GX 2 ¶ 16. If a significant majority of the group supported a single candidate, he then identified that candidate as the group's candidate of choice. Id. Dr. Palmer next compared the preferences of white voters to the preferences of Black voters. Id. He concluded that there was evidence of racially polarized voting when he found that Black voters and white voters support different candidates. Id. Defendants' expert, Dr. Alford, did not contest Dr. Palmer's methodology. Tr. 2145:23–2146:1, 2215:17–25.

#### H. Georgia's History of Voting and Recent Electoral Developments

##### 1. *Credibility Determinations*

The Court makes the following credibility determinations as it relates to the experts on the Senate Factors.

a) **Dr. Orville Vernon Burton**

The Grant and Pendergrass Plaintiffs<sup>36</sup> proffered and the Court qualified Dr. Burton as an expert on history of race discrimination and voting. Tr. 1419:14-17, 1424:8-9. Dr. Burton earned his undergraduate degree from Furman University in 1969 and his doctorate in American history from Princeton University in 1976. PX 4, 5. Dr. Burton has taught American history at various universities since 1971. Id. Currently, he serves as the Judge Matthew J. Perry Distinguished Professor of History and Professor of Global Black Studies, Sociology and Anthropology, and Computer Science at Clemson University. Id. at 6. Dr. Burton is the author or editor of more than 20 books and 300 articles. Id. Dr. Burton has received numerous awards based on his research. Id.

Dr. Burton also has connections to the state of Georgia. He was born in Madison County, Georgia and is a recognized authority on Morehouse College's

---

<sup>36</sup> The Parties consented to allow Dr. Burton's trial testimony, the portions of his report that were directly referenced in the trial, and PX 14, GX 15, DX 107 to apply across all three cases. Tr. 1464:10-23, 1505:11-1506:1.

former President Dr. Benjamin E. Mays. He has also written a book about an area in South Carolina that has strong ties to the city of Augusta, Georgia. Id. 6.

Dr. Burton has been retained as an expert witness and consultant in numerous voting rights case over the past forty years. Id. 7. Specifically, he was qualified as an expert on social and economic status, discrimination, historical intent in voting rights cases, and group voting behavior. Id. His testimony has been accepted and relied upon by various federal courts. Id. 7–8.

At the preliminary injunction, the Court found “Dr. Burton to be highly credible. His historical analysis was thorough and methodologically sound” and his “conclusions [were found] to be reliable.” Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1315. Having observed Dr. Burton’s demeanor and testimony, the Court finds that Dr. Burton’s testimony is highly credible. Dr. Burton answered all questions on direct-examination and cross-examination thoroughly. Dr. Burton engaged in an extensive colloquy with the Court on the history of voting and race that expounded upon information that was in his report. Accordingly, the Court finds that his testimony is highly credible and extremely

helpful to the Court. Thus, the Court will assign great weight to Dr. Burton's testimony.

**b) Dr. Loren Collingwood**

The Grant and Pendergrass Plaintiffs proffered and the Court qualified Dr. Collingwood as an expert in political science, applied statistics, and demography. Tr. 671:18–21, 673:5–7. Dr. Collingwood received his Bachelor of Arts from California State University, Chico in 2002 and his Ph.D. in political science with a concentration in political methodology and applied statistics from the University of Washington in 2012. PX 5, 2. Currently, he serves as an associate professor of political science at the University of New Mexico. Id. Previously, he was an associate professor of political science and co-director of civic engagement at the Center for Social Innovation at the University of California, Riverside. Id. He has published two books, 39 articles, and nearly a dozen book chapters on sanctuary cities, race/ethnic politics, election administration, and racially polarized voting. Id. Dr. Collingwood has served as an expert witness in seven redistricting cases. Id. He has also served as an expert witness in three other voting related cases. Id.

In the preliminary injunction order, the Court found that Dr. Collingwood was “qualified to opine as an expert on demographics and political science. The Court f[ound] Dr. Collingwood to be credible, his analysis methodologically sound, and his conclusions reliable.” Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1318.

Having observed Dr. Collingwood’s demeanor and testimony, the Court finds that his testimony was internally consistent and he was able to thoroughly answer questions on direct and cross examination. Thus, the Court finds Dr. Collingwood to be highly credible and will assign great weight to his testimony.

**c) Dr. Adrienne Jones**

The Alpha Phi Alpha Plaintiffs<sup>37</sup> proffered and the Court qualified Dr. Jones as an expert in history of voting rights, voting-related discrimination, race and politics, and Black political development, but not various sections of the

---

<sup>37</sup> The Parties consented to allow Dr. Jones’s trial testimony, the portions of her report that were directly referenced in the trial, and APAX 31, 266, DX 59 to apply across all three cases. Tr. 1244:10–1245:8, 1504:18–1505:10.



Civil Rights Act. Tr. 1149:8–11, 1158:2–5. Dr. Adrienne Jones received her Bachelor of Arts in Modern Culture and Media (Semiotics) from Brown University, her Juris Doctor from the University of California at Berkley, her Masters and Ph.D. in political science from City University of New York Graduate Center. APAX 2, 4. Currently, Dr. Jones is an assistant professor of political science at Morehouse College in Atlanta, Georgia where she teaches political science and also serves as the Pre-Law Director. Id. at 4. Dr. Jones has written a doctoral dissertation and two peer-reviewed articles on the Voting Rights Act. Id. She is currently writing a book on the VRA. Id.

In addition to this case, Dr. Jones served as an expert witness in Fair Fight Action v. Raffensperger, 634 F. Supp. 3d. 1128 (N.D. Ga. 2022), which was decided by this Court. In Fair Fight, the Court credited Dr. Jones’s testimony as it related to the historical backdrop pertinent to Section 2 of the VRA. Id. at 1171. The Court gave less weight to the testimony regarding matters that occurred after 1990 and present voting practices. Id.

Having observed Dr. Jones’s demeanor and testimony, the Court finds that her testimony was internally consistent and she was able to thoroughly answer

questions on direct and cross examination that relate to the topics that she was qualified. The Court notes that on *voir dire*, Dr. Jones's testimony regarding various aspects of the Civil Rights Act were inconsistent with current law. Accordingly, the Court assigns little to no weight to testimony about the legal requirements under the Civil Right Act, to which Dr. Jones was not qualified as an expert. As to the portions of Dr. Jones's testimony for which she was qualified to testify, the Court finds it highly credible and will assign great weight to that testimony.

**d) Dr. Traci Burch**

The Alpha Phi Alpha Plaintiffs proffered and the Court qualified Dr. Burch as an expert on in political science, political participation and barriers to voting. Tr. 1041:25-1042:2, 1046:9-13. Dr. Burch has been an associate professor of political science at Northwestern University and a research professor at the American Bar Foundation since 2007. Tr. 1035:4-9. Dr. Burch received her Ph.D. in government and social policy from Harvard University, and her undergraduate degree in politics from Princeton University. Tr. 1034:19-1035:3.

Dr. Burch has published numerous peer-reviewed publications and a book on political participation, including publications focusing on Georgia, and she teaches several courses related to voting and political participation. Tr. 1036:12-18, 1037:15-1038:2. Dr. Burch has received several prizes and awards, including national prizes, for her book and her dissertation. Tr. 1037:2-14. She has served as a peer reviewer for flagship scholarly journals in her field of political science. Tr. 1036:19-24. Dr. Burch's research and writing involves conducting data analysis on voter registration files and voter turnout data. Tr. 1038:8-1039:1.

Dr. Burch has previously testified as an expert in six other cases, including voting rights cases where she offered expert testimony relating to a Senate Factor or the Arlington Heights framework. Tr. 1039:4-1040:23. Dr. Burch was qualified to serve as an expert in all of the cases in which she has testified. Tr. 1040:24-1041:1.

In preparing her report, Dr. Burch relied on sources and methodologies that are consistent with her work as a political scientist. Tr. 1047:23-1048:9; APAX 6, at 4. The Court finds Dr. Burch credible, her methodology sound, and her

conclusions reliable. Accordingly, the Court credits Dr. Burch's testimony and conclusions.

**e) Dr. Jason Morgan Ward**

The Alpha Phi Alpha Plaintiffs proffered and the Court qualified Dr. Ward as an expert in the history of Georgia and the history of racial politics in Georgia. Tr. 1333:17-19, 1335: 3-7. Dr. Ward has been a professor of history and at Emory University since 2018. Tr. 1331:1-4. He received his Ph.D., M.Phil, and M.A. in history from Yale University, and his undergraduate degree in history with honors from Duke University. Tr. 1330:17-19. Dr. Ward wrote his dissertation on civil rights and racial politics during the mid-20th century. Tr. 1330:20-24.

Dr. Ward has published numerous peer-reviewed publications and two books about the history of racial politics and violence in the South, including Georgia. Tr. 1332:17-1333:10; APAX 4, at 28-29. Dr. Ward has taught courses on the history of the modern United States, civil rights, race and politics, political violence and extremism, including courses that cover the history of racial politics in Georgia. Tr. 1331:2 – 1332:16.

In preparing his report, Dr. Ward relied on sources and methodologies that he would typically employ as a historian undertaking a historical analysis. Tr. 1335:17-1336:3. The Court finds Dr. Ward credible, his methodology for historical analysis sound, and his conclusions reliable. Accordingly, the Court credits Dr. Ward's testimony and conclusions.

## ***2. Analysis***

Given the widely overlapping nature of the evidence adduced in the three different cases and to avoid confusion about what evidence applies to which case, the Court will address its factual findings as they relate to the Senate Factors and the totality of the circumstances below in the conclusion of law section.

## **II. CONCLUSIONS OF LAW**

### **A. Jurisdictional Considerations**

In the Pretrial Order, Defendants raised affirmative defenses regarding constitutional and statutory standing. APA Doc. No. [280] at 23; Grant Doc. No. [243], 26; Pendergrass Doc. No. [231], 28. The Court now addresses these affirmative defenses and determines that, with the exception of claims against the SEB, Plaintiffs in all three cases have standing to bring these suits.

### 1. *Constitutional Standing*

Article III of the United States Constitution limits the courts to hearing actual “Cases” and “Controversies.” U.S. Const. art. III, § 2; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 559–60 (1992). Overall, the standing requirement arising out of Article III seeks to uphold separation-of-powers principles and “to prevent the judicial process from being used to usurp the powers of the political branches.” Clapper v. Amnesty Int’l USA, 568 U.S. 398, 408 (2013) (citations omitted).

To establish standing, a plaintiff must show three things:

First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan, 504 U.S. at 560–61 (internal quotations, citations, and alterations omitted).

The standing challenges specifically identified by Defendant are as to (1) claims

by Plaintiff Sixth District AME (in Alpha Phi Alpha), and (2) claims against Defendant SEB (in Grant and Pendergrass).

**a) Claims by the Sixth District AME**

An organization may establish injury by invoking “associational standing,” which is established by proof that the organization’s members “would otherwise have standing to sue in their own right[.]” Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc., 528 U.S. 167, 181 (2000). The Parties stipulate that the Sixth District AME has more than 500 member-churches in Georgia and that the member-churches of the Sixth District AME have tens of thousands of members across Georgia. Stip. ¶¶ 59–60. Sixth District AME specifically has churches located in Enacted SD- 16, SD-17, and SD-23 as well as in Enacted HD-74, HD-114, HD-117, HD-128, HD-1h33, HD-134, HD-145, HD-171, and HD-173. Stip. ¶¶ 61.

While the Defendant presented no argument on the associational standing issue by motion or at trial, it did propose the following conclusion of law after conclusion of the trial:

This Court determines that Plaintiff Sixth District of the African Methodist Episcopal Church does not have

associational standing because it has not established that it has individual members who are voters impacted by the enacted redistricting plans, but rather its membership consists of member churches. Churches do not vote and thus cannot have an injury for the district in which the churches reside.

APA Doc. No. [317] ¶ 147. However, in that same filing, Defendant conceded that Alpha Phi Alpha (as a named Plaintiff) has associational standing and that the individual plaintiffs have standing as to the districts in which they reside. Id. ¶ 145. Therefore, as a jurisdictional matter, it is unnecessary for the court to determine whether Sixth District AME h has standing. See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264 n.9 (1977) (“Because of the presence of this plaintiff [who has demonstrated standing], we need not consider whether the other individual and corporate plaintiffs have standing to maintain the suit.”); Am. Civil Liberties Union of Ga. v. Rabun Cnty. Chamber of Comm., Inc., 698 F.2d 1098, 1108–09 (11th Cir. 1983) (“Because we have determined that at least these two individuals have met the requirements of Article III, it is unnecessary for us to consider the standing of the other plaintiffs in this action.”); see also Town of Chester v. Laroe Estates, Inc., 581 U.S. 433, 439 (2017) (“At least



one plaintiff must have standing to seek each form of relief requested in the complaint.”).

Here, it is unchallenged that the individual plaintiffs and Alpha Phi Alpha have constitutional standing to challenge the districts at issue in this suit. Alpha Phi Alpha Defendant’s single proposed conclusion of law regarding applicability of associational standing to the final plaintiff, Sixth District AME, thereby is insufficient for the Court to further consider Defendant’s affirmative defense as to this one plaintiff.

**b) Claims against the SEB**

In moving for summary judgment, the Grant and Pendergrass Defendants argued that the Grant and Pendergrass Plaintiffs’ injuries are not fairly traceable to or redressable by the SEB. Grant Doc. No. [190-1], 17-19; Pendergrass Doc. No. [175-1], 12-14. In denying the Motions for Summary Judgment, the Court acknowledged that Pendergrass and Grants Plaintiffs failed to adduce facts to support a finding of traceability of their injuries to the SEB. Nevertheless, when taking all inferences in the light most favorable to the Pendergrass and Grant Plaintiffs as nonmovants, the Court found that the broad language of the Georgia

statutes delineating the SEB's duties and roles in elections was sufficient to allow them to proceed to trial against the SEB. Grant Doc. No. [229], 28; Pendergrass Doc. No. [215], 26.

At trial, despite bearing the burden of proof and the Court's prompting in the summary judgement orders, Pendergrass and Grant Plaintiffs presented no evidence from which the Court could conclude that their injuries are traceable to the SEB.<sup>38</sup> Therefore, the Court concludes that the Grant and Pendergrass Plaintiffs lack standing to raise their claims against the SEB.<sup>39</sup>

---

<sup>38</sup> Unlike reliance on the standing of at least one other plaintiff to find that all named Plaintiffs in Alpha Phi Alpha have standing, there is no authority to support reliance on standing against one named defendant to support standing as to other defendants. Therefore, the Court's reasoning with regarding to claims by Sixth District AME in Alpha Phi Alpha does not apply to claims brought against SEB in Grant and Pendergrass.

<sup>39</sup> Because the Secretary of State is a named defendant in both Grant and Pendergrass, the absence of standing with regard to claims against the SEB does not alter the relief available to Plaintiffs. The Secretary of State is responsible for administering the elections, therefore, the Court can "enjoin the holding of elections pursuant to the [Enacted] plan . . . and subsequently require elections to be conducted pursuant to a [legal] apportionment system . . . ." Larios v. Perdue, 306 F. Supp. 2d 1190, 1199 (N.D. Ga. 2003).

## 2. *Statutory Standing*

The question of statutory standing turns on whether the “statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff’s position a right to judicial relief.” Warth v. Seldin, 422 U.S. 490, 500 (1975). The Supreme Court has clarified that the term “statutory standing” is “misleading, since the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction, i.e., the court’s statutory or constitutional power to adjudicate the case.” Lexmark Int’l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 128 n.4 (2014) (cleaned up). Under Lexmark, the question is whether the plaintiff “has a cause of action under the statute.” Id. at 128. The Court went on to explain that “a statutory cause of action extends only to plaintiffs whose interests fall within the zone of interests protected by the law invoked.” Id. at 129 (cleaned up).

In the cases before the Court, Defendants have done nothing more than assert an affirmative defense that Plaintiffs’ lack statutory standing. Because the question of statutory standing is not jurisdictional, the Court has no obligation to

delve into the issue without benefit of argument or evidence from Defendants. Moreover, the Court has already determined that a private right of action under Section 2 exists. See APA Doc. No. [65], 31–34; Grant Doc. No. [43], 30–33; Pendergrass Doc. No. [50], 17–20; see also Allen, 599 U.S. Ct. at 41 (affirming a preliminary injunction order, Singleton v. Merrill, 582 F. Supp. 3d 924, 1031–32 (N.D. Ala. 2022), which analyzed whether Section 2 provided a private right of action). Therefore, the Court has no difficulty concluding that Defendants have failed to carry their burden of establishing their affirmative defense based on statutory standing and rejects this affirmative defense.

**B. Legal Standards**

**1. First Gingles Precondition**

Under the first Gingles precondition, Plaintiffs must prove that the minority group exceeds 50% in the challenged area and that the minority group is sufficiently compact to draw a reasonably configured district. Wisc. Legis. v. Wisc. Elections Comm’n, 595 U.S. 398, 400, (2022). Ct. “A district will be reasonably configured . . . if it comports with traditional districting criteria, such as being contiguous and reasonably compact.” Allen, 599 U.S. at 18 (citing Ala. Legis. Black Caucus, 575 U.S. at 272). To determine whether Plaintiffs have met

the numerosity and compactness requirements, the Court must evaluate the specific challenged district and not the state as a whole. Cf. Ala. Legis. Black Caucus, 575 U.S. at 268 (“[T]he District Court’s analysis of racial gerrymandering of the State, [under [the Equal Protection Clause], ‘as a whole’ was legally erroneous.”).<sup>40</sup>

## **2. Second and Third Gingles Precondition**

The second Gingles precondition requires the Plaintiffs to show that “the minority group . . . is politically cohesive.” Gingles, 478 U.S. at 51. The third Gingles precondition requires the Plaintiffs to show that “the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances . . . usually to defeat the minority’s preferred candidate.” Id.

## **3. Totality of the Circumstances: Senate Factors**

In a Section 2 case, after evaluating the Gingles preconditions, the final assessment to determine whether vote dilution has actually occurred requires

---

<sup>40</sup> Although Alabama Legislative Black Caucus concerned constitutional redistricting challenges, the Supreme Court applied its analysis to a Section 2 challenge in Allen. Allen, 143 S. Ct. at 1503, 1519.

“assess[ing] the impact of the contested structure or practice on minority electoral opportunities on the basis of objective factors.” Gingles, 478 U.S. at 44 (citations omitted). To do so, the Court looks at the VRA’s 1982 Amendments’ Senate Report, which specifies the factors relevant for a Section 2 analysis. “The totality of circumstances inquiry recognizes that application of the Gingles factors is ‘peculiarly dependent upon the facts of each case.’” Allen, 599 U.S. at 19 (quoting Gingles, 478 U.S. at 79). The totality of the circumstances’ inquiry is fact intensive and requires weighing and balancing various facts and factors, which is generally inappropriate on summary judgment. See Rose v. Raffensperger, 1:20-cv-2921-SDG, 2022 WL 670080, at \*2 (N.D. Ga. Mar. 7, 2022) (“[T]he Court . . . cannot appropriately evaluate the totality of the circumstances before trial.”).

### C. Congressional District

The Court finds that Pendergrass Plaintiffs successfully carried their burden in establishing that an additional majority-minority congressional district could be drawn in the west-metro Atlanta.

#### 1. *First Gingles Precondition*

Pendergrass Plaintiffs have proven that they meet the first Gingles precondition. The first Gingles precondition requires plaintiffs to prove that the

“minority group [is] sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district.” Wisc. Legis., 595 U.S. at 402 (per curiam) (citing Gingles, 478 U.S. at 50–51). “A district will be reasonably configured . . . if it comports with traditional districting criteria, such as being contiguous and reasonably compact.” Allen, 599 U.S. at 18 (citing Ala. Legis. Black Caucus v. Alabama, 575 U.S., 254, 272 (2015)). The first Gingles precondition focuses on the “need[] to establish that the minority [group] has the potential to elect a representative of [their] own choice in some single-member district.” Grove v. Emison, 507 U.S. 25, 40 (1993).

**a) Numerosity**

First, Pendergrass Plaintiffs have shown, both at the preliminary injunction and trial that Georgia’s Black population is sufficiently large to constitute a majority in an additional congressional district in west-metro Atlanta. “[A] party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent.” Bartlett v. Strickland, 556 U.S. 1, 20 (2009).

Mr. Cooper drew an illustrative plan that contains an additional majority-Black congressional district in west-metro Atlanta that balanced traditional redistricting criteria. Mr. Cooper submitted a similarly configured district at the preliminary injunction. DX 154. The Court instantly discusses both configurations for the purpose of showing that the population in this area of the State is sufficiently numerous because a majority-Black congressional district can be drawn in more than one way, contrary to Defendants submissions. See Feb. 7, 2022, Morning PI Tr. 21:5:8 (“[W]hile these are illustrative plans, the way they are configured are so tight in terms of population, there’s not really a whole lot of different ways to configure[.]”); Tr. 1806:2–19 (Mr. Morgan discussing that various districts in the Illustrative Plans are barely over 50% and took population from existing majority-Black districts to achieve the numerosity requirement). Illustrative CD-6 submitted both at the preliminary injunction hearing and at the trial (which was configured in Mr. Cooper’s December 5, 2022 Report) have an AP BVAP of 50.23%. Stip. ¶ 192; DX 20, 51 fig.9; PX 1, 73, fig.14.



**Figure 9**  
**BVAP and BCVAP Comparison in the Eight Modified Districts:**  
**Illustrative Plan and 2021 Plan**

District	Illustrative Plan			2021 Plan	
	% BVAP	% NH BCVAP		% BVAP	% NH BCVAP
03	20.92%	20.40%		23.32%	22.82%
04	<b>52.40%</b>	<b>55.48%</b>		<b>54.52%</b>	<b>58.04%</b>
06	<b>50.23%</b>	<b>50.69%</b>		<b>9.91%</b>	<b>10.00%</b>
09	11.66%	11.66%		10.42%	10.38%
10	14.31%	15.38%		22.60%	22.56%
11	13.27%	13.30%		17.95%	18.09%
13	<b>51.40%</b>	<b>50.05%</b>		<b>66.75%</b>	<b>66.88%</b>
14	5.17%	5.14%		14.28%	13.38%

DX 154 ¶ 51 fig.9 (preliminary injunction).

**Figure 14**  
**BVAP and BCVAP Comparison: Illustrative Plan and 2021 Plan**

District*	Illustrative Plan				2021 Plan		
	% BVAP	% NH BCVAP	% NH DOJ BCVAP		% BVAP	% NH BCVAP	% NH DOJ BCVAP
1	28.17%	29.16%	29.67%		28.17%	29.16%	29.67%
2	49.29%	49.55%	50.001%		49.29%	49.55%	50.001%
3	<b>20.47%</b>	<b>19.64%</b>	<b>20.02%</b>		<b>23.32%</b>	<b>22.53%</b>	<b>22.86%</b>
4	<b>52.77%</b>	<b>55.62%</b>	<b>56.37%</b>		<b>54.52%</b>	<b>57.71%</b>	<b>58.46%</b>
5	49.60%	51.64%	52.35%		49.60%	51.64%	52.35%
6	<b>50.23%</b>	<b>50.18%</b>	<b>50.98%</b>		<b>9.91%</b>	<b>9.72%</b>	<b>10.26%</b>
7	29.82%	31.88%	32.44%		29.82%	31.88%	32.44%
8	30.04%	30.46%	30.76%		30.04%	30.46%	30.76%
9	11.66%	<b>11.29%</b>	<b>11.74%</b>		10.42%	10.03%	10.34%
10	14.31%	<b>15.09%</b>	<b>15.39%</b>		22.60%	<b>22.11%</b>	<b>22.56%</b>
11	<b>13.67%</b>	<b>12.91%</b>	<b>13.48%</b>		<b>17.95%</b>	<b>17.57%</b>	<b>18.30%</b>
12	36.72%	36.60%	37.19%		36.72%	36.60%	37.19%
13	<b>51.13%</b>	<b>49.64%</b>	<b>50.34%</b>		<b>66.75%</b>	<b>66.36%</b>	<b>67.05%</b>
14	<b>5.17%</b>	<b>4.80%</b>	<b>5.19%</b>		<b>14.28%</b>	<b>13.19%</b>	<b>13.71%</b>

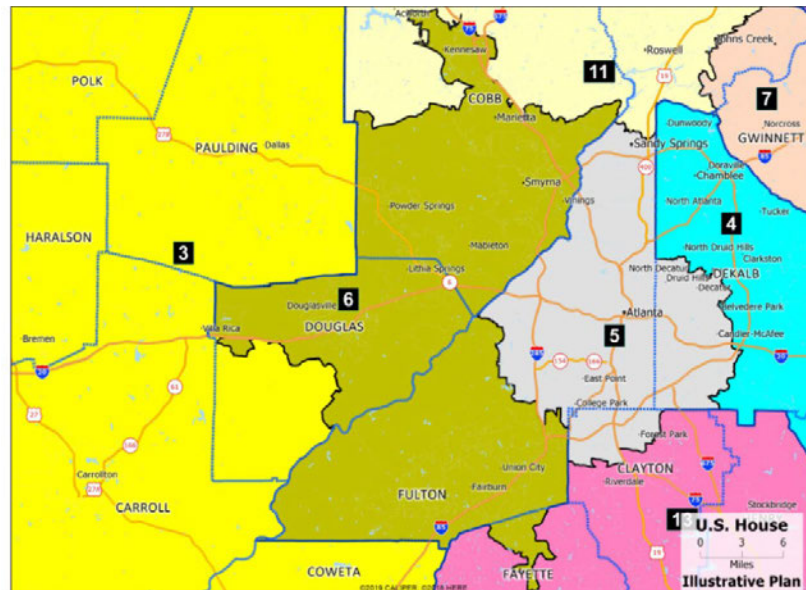
\*Bold font identifies districts that are changed from the 2021 Plan configuration.

PX 1 ¶ 73 fig, 14 (trial plan).

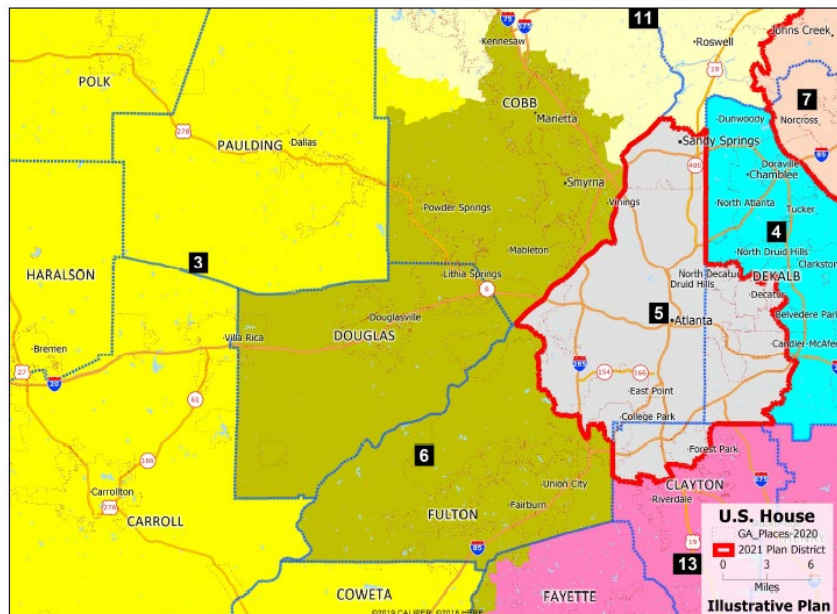
The fact that Mr. Cooper has now successfully created two districts in this area exceeding 50% BVAP (one for the preliminary injunction hearing and one for the trial) despite changing the boundaries of the illustrative district,<sup>41</sup> supports that the Black voting age population is sufficiently numerous in this area. Compare DX 20 ¶ 51, fig.9 (BVAP is 50.23%), with PX 1 ¶ 73, fig.14 (BVAP is 50.23%).

---

<sup>41</sup> Although both maps are similar, the primary differences between the two configurations of Illustrative CD-6 are that in the preliminary injunction map, (1) Illustrative CD-6 did not keep Douglas County whole and (2) the southeastern part of the district reached into Fayetteville. Compare DX 154, Ex. K, with PX 1, Ex. I-2.



DX 154, Ex. K (preliminary injunction).



PX 1, I-2 (trial).

Accordingly, the Court concludes that Plaintiffs have shown that Georgia's Black population is large enough to constitute a majority in an additional congressional district in west-metro Atlanta.

**b) Compactness**

The Court further concludes that Pendergrass Plaintiffs have shown that Georgia's Black population in west-metro Atlanta is geographically compact to comprise a majority of the voting age population in an additional congressional district. Under the compactness requirement of the first Gingles precondition, plaintiffs must show that it is "possible to design an electoral district[] consistent with traditional redistricting principles[.]" Davis v. Chiles, 139 F.3d 1414, 1425 (11th Cir. 1998). The compactness inquiry "refers to the compactness of the minority population, not . . . the compactness of the contested district." League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 433 (2006) (hereinafter "LULAC") (citing Bush v. Vera, 517 U.S. 952, 997 (1996)).

"A district that reaches out to grab small and apparently isolated minority communities' is not reasonably compact." Id. (citing Vera, 517 U.S. at 979). The relevant factors for compactness under the first Gingles precondition include:

population equality, contiguity, empirical compactness scores, the eyeball test for irregularities and contiguity, respect for political subdivisions, and uniting communities of interest. See Wesberry v. Sanders, 376 U.S. 1, 18 (1964) (population equality); LULAC, 548 U.S. at 433 (communities of interest); Vera, 517 U.S. at 959-60 (contiguity, eyeball test); Cooper v. Harris, 581 U.S. 285, 291, 312 (2017) (political subdivisions, partisan advantage, empirical compactness measures).

(1) *Empirical measures*

(a) population equality

Article I § 2 of the Constitution “requires congressional districts to achieve population equality ‘as nearly as is practicable.’” Abrams v. Johnson, 521 U.S. 74, 98 (1997) (quoting Wesberry, 376 U.S. at 7-8). This standard requires a mapmaker to “make a good-faith effort to achieve precise mathematical equality.” Karcher v. Daggett, 462 U.S. 725, 730 (1983) (internal quotation marks omitted) (quoting Kirkpatrick v. Preisler, 394 U.S. 526, 530-31 (1969)). A congressional plan achieves population equality when its districts are plus or minus one person. See Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1258 (finding that “Mr. Cooper’s Illustrative Congressional Map complies with the one-person, one-vote principle”

where he testified that “the districts are plus or minus one person” (internal quotation marks omitted)). It is undisputed that Mr. Cooper’s Illustrative Plan meets the population equality requirement and that the population deviations are limited to plus or minus one person from the ideal district population of 765,136. Stip. ¶ 197. Accordingly, the Court concludes that the Illustrative Congressional Plan achieves population equality.

**(b) contiguity**

Similarly, an illustrative district should not disregard traditional redistricting principles, such as contiguity. Allen, 599 U.S. at 18. A district is contiguous when it consists of “a single connected piece.” Lopez, 339 F. Supp. 3d at 607. As it is undisputed (Stip. ¶ 198), the Court concludes that all the districts in the Illustrative Congressional Plan are contiguous.

**(c) compactness scores**

The Court also finds that the Illustrative CD-6 is sufficiently compact using empirical measures. One way in which courts assess the compactness of the districts in an illustrative plan is by relying on “widely acceptable tests to determine compactness scores,” including “the Polsby-Popper measure and the Reock indicator,” Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections,



835 F. Supp. 2d 563, 570 (N.D. Ill. 2011). Mr. Cooper's Illustrative Congressional plan compares favorably on the empirical compactness scores to the Enacted Congressional Plan. The mean Reock score for the Illustrative Congressional Plan is 0.43 and is 0.44 on the Enacted Congressional Plan. PX 1, ¶ 79, fig.13. The mean Polsby-Popper score for the Illustrative Congressional Plan is 0.27 and the Enacted Congressional Plan is 0.27. Id. The Illustrative and Enacted Congressional Plans have identical Polsby-Popper scores and the Enacted Congressional Plan is 0.01 more compact using the Reock metric. Defendants' rebuttal mapping expert, Mr. Morgan, does not dispute that the Enacted and the Illustrative Congressional Plans have similar mean Reock scores and identical mean Polsby-Popper scores. Tr. 1948:22-1949:5. Accordingly, the Court finds that the Illustrative Congressional Plan is comparably as compact as the Enacted Congressional Plan.

With respect to the majority-Black districts, the Court finds that the Illustrative Congressional Plan compactness scores generally fared better or were equal to the Enacted Congressional Plan.

Districts	Illustrative Plan		Enacted Plan	
	Reock	Polsby-Popper	Reock	Polsby-Popper
004	0.28	0.22	0.31	0.25
005	0.51	0.32	0.51	0.32
<b>006*</b>	<b>0.45</b>	<b>0.27</b>	<b>0.42</b>	<b>0.20</b>
013	0.44	0.29	0.38	0.16

The asterisk (\*) denotes the additional majority-Black district.

PX 1, Exs. L-1, L-3. Mr. Morgan's report's compactness measures are identical to Mr. Coopers. DX 4 ¶ 22 & chart 2.

The Court finds that Illustrative CD-6, the challenged district, is 0.03 more compact on Reock and 0.07 more compact on Polsby-Popper. The Court finds that Plaintiffs have sufficiently shown that the Illustrative CD-6 is slightly more compact, on empirical measures than the Enacted CD-6.<sup>42</sup>

---

<sup>42</sup> Additionally, the Court finds that Illustrative CD-13 is 0.06 more compact on Reock and 0.13 more compact on Polsby-Popper than Enacted CD-13. Illustrative CD-5 and Enacted CD-5 have identical compactness scores and Enacted CD-4 is 0.03 more compact than Illustrative CD-4 on both compactness measures. Thus, the challenged



(d) political subdivisions

The Court also finds that Illustrative CD-6 “respected existing political subdivisions, such as counties, cities, and towns.” Allen, 599 U.S. at 20. Illustrative CD-6 splits the same number of counties as the Enacted Plan, but has fewer county, VTD, and city and town split. PX 1 ¶ 81 & fig.14.

**Figure 14**  
**County, VTD, and Municipal Splits: Illustrative Plan, 2012 Benchmark, and 2021 Plan (All Districts)**

	Split Counties*	County Splits*	2020 VTD Splits*	Split Cities/ Towns#	City/ Town Splits*
<b>Illustrative Plan</b>	15	18	43	37	78
<b>2012 Benchmark Plan</b>	16	22	43	40	85
<b>2021 Plan</b>	15	21	46	43	91

\*Excludes unpopulated areas

#Out of 531 municipalities (calculated by subtracting the number of whole cities in the Maptitude report from 531)

PX 1 ¶ 81, fig.14.

---

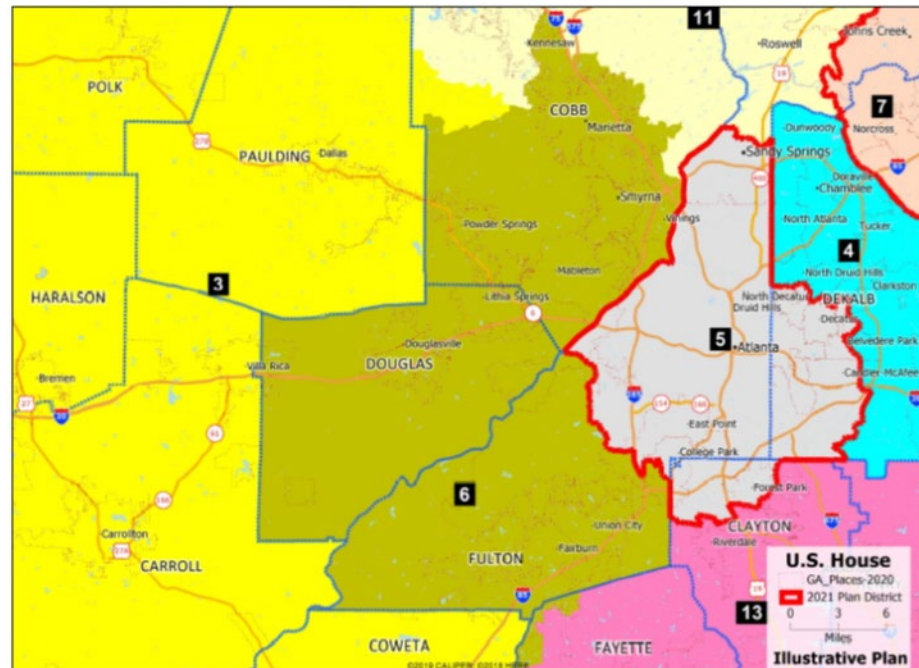
district, and the other majority-Black districts are comparably compact if not more compact than the Enacted majority-Black congressional districts.

Neither Defendants nor their experts have meaningfully suggested that the Illustrative Congressional Plan fails to respect city, town, and county lines. Accordingly, the Court finds that the Illustrative Congressional Plan respected more political subdivisions than the Enacted Congressional Plan.

(2) *Eyeball test*

The Court finds that Illustrative CD-6 is also visually compact. The eyeball test is commonly utilized to determine if a district is compact or not. See Allen, 599 U.S. at 60 n.10 (quoting Singleton, 582 F. Supp. 3d at 1011) (crediting the district court's findings that the illustrative maps were compact because they did not contain "tentacles, appendages, bizarre shapes or any other obvious irregularities"); Vera, 517 U.S. at 960 (crediting the district court's finding that the challenged district passed the eyeball test and was visually compact); Ala. State Conf. of NAACP v. Alabama, 612 F.Supp.3d at 1265 ("District 1 is contiguous and also passes the eyeball test for geographical compactness."); Comm. for a Fair & Balanced Map, 835 F. Supp. 2d at 571 (three-judge court) (stating that the district "passe[d] muster under the 'eyeball' test for compactness").

The Court finds that Illustrative CD-6 passes the eyeball test.



PX 1, Ex. I-2 (trial).

The district includes all of Douglas County, and portions of southern Fulton and southern Cobb Counties. Defendants’ mapping expert, Mr. Morgan, does not dispute the visual compactness of Illustrative CD-6, nor did he testify about the district’s visual compactness. DX 4. Unlike at the preliminary injunction, where there was questioning regarding the “fingers” into Fayetteville and Kennesaw to “pick-up” Black population, Illustrative CD-6 no longer reaches into Fayetteville. Doc. No. [73] 82:21–83:1, 86:6–12. At the trial, Defendants

elicited no testimony or questions about “fingers” branching off of Illustrative CD-6.

The Court finds that the district does not have any tentacles or appendages. Illustrative CD-6 is about 40 miles from top to bottom (Tr. 835:19–20), is contained in a relatively small area of the state and is completely within the metro-Atlanta counties. Accordingly, it lacks any similarities to the map in Miller, which spanned from metro Atlanta to Augusta, or LULAC, which stretched 300 miles along the southern border of Texas. Miller v. Johnson, 515 U.S. 900, 909 (1995); LULAC, 548 U.S. at 424. Thus, the Court finds that Illustrative CD-6 is visually compact.

### (3) *Communities of interest*

The Court also concludes Illustrative CD-6 respects communities of interest. A district that “reaches out to grab small and apparently isolated minority communities” is not reasonably compact. Vera, 517 U.S. at 979. Plaintiffs “may not ‘assum[e] from a group of voters’ race that they think alike, share the same political interests, and will prefer the same candidates at the polls.’” LULAC, 548 U.S. at 433 (quoting Miller, 515 U.S. at 920; Shaw v. Reno, 509 U.S.

630, 647 (1993)). LULAC instructs district courts to account for “the characteristics, needs, and interests” of the minority community in the contested area. Id. at 434.

There is no bright line test for determining whether a district combines communities with common interests or disparate communities. Ms. Wright, the General Assembly’s map drawer testified that “[c]ommunities of interest are very hard to measure.” Tr. 1617:8. They could include, “a school attendance zone, . . . an incorporated city or town, . . . share[d] resources[,] . . . the same water authority[,] . . . a religious community that attends one facility.” Id. at 1617:12–1618:22. LULAC provides some guidance on what courts should consider. “[R]ural and urban communities[ ] could share similar interests and therefore form a compact district if the areas are in reasonably close proximity.” 548 U.S. at 435. However, when “the only common index is race” this is not a Section 2 remedy. Id. In LULAC, the Supreme Court held that the challenged district did not contain a community of interest because the district court found an enormous geographical distance separated one portion of the district from the other and the minority communities in the district had disparate needs and interests. Id.

In this case, the Court finds that there is sufficient evidence that Illustrative CD-6 is made up of communities of interest and does not combine disparate minority communities. Mr. Cooper testified that when he draws districts he “ha[s] to look at communities of interest.” Tr. 726:19. He stated that he respects communities of interest because he “look[s] at political subdivisions, particularly towns and cities, and tr[ies] to keep those areas all together in one--in one district.” Tr. 740:13–15. Specifically for Illustrative CD-6, he looked at the federally described 29-county Atlanta MSA and the Georgia defined 11-county core Atlanta area. Tr. 741:18–742:1. He further concluded that Illustrative CD-6 is a community of interest because it is wholly contained in suburban Atlanta. Tr. 799:2–7.

Pendergrass Plaintiffs also submitted the testimonial evidence of former General Assembly members Mr. Allen and Mr. Carter. The Court credits this testimony with respect to communities of interest. Both witnesses have served as representatives of metro Atlanta communities and Mr. Allen’s former district is within Illustrative CD-6.

Mr. Allen, a former member of the Georgia House of Representatives and a Smyrna resident, agreed that his neighbors, the Black residents of Illustrative CD-6, face the same transportation-related challenges, specifically involving “access, congestion, [and] infrastructure.” Tr. 1009:9–13. He testified that “[a]s a resident of this area,” he knows that these communities rely on the same interstates. Id. at 1009:4–8. Residents of these areas attend some of the same places of worship. Id. at 1009:17–22. Mr. Allen also explained that the residents of Illustrative CD-6 share an interest in receiving services from Grady Hospital, the only Level One Trauma Center in Metro Atlanta. Id. at 1019:24–1020:3.

Former Georgia State Senator and candidate for Governor Jason Carter also testified that Illustrative CD-6 constitutes a community of interest. He stated that all areas of the district can be described as suburbs of Atlanta. Tr. 966:11–19. He testified that all parts of the district are within a 20-to-40-minute drive of downtown Atlanta, without traffic. Tr. 967:22–968:5. It is an area that is growing and increasingly diversifying. Tr. 967:13–17. The individuals in the area use similar roadways and are impacted by Atlanta traffic patterns. Tr. 966:22–967:10.

Finally, he testified that the Chattahoochee river runs through the middle of the district.

Neither Defendants' experts nor Ms. Wright provided testimony disputing that Illustrative CD-6 unites communities of interest. The Court finds that Illustrative CD-6 combines areas of suburban metro Atlanta. The communities are relatively close in proximity. They share traffic concerns and have a common waterway. The Court finds that Illustrative CD-6 does not combine disparate minority communities, like the challenged district in LULAC (which stretched across 300 miles on the Texas border) or in Miller (which spanned from Augusta to Atlanta). Accordingly, the Court finds that Illustrative CD-6 respects the traditional districting principles of maintaining communities of interest.

**(4) *Core retention***

Although not a typical traditional redistricting principle, the Court also finds that the Illustrative Congressional Plan retained many of the cores of the districts in the Enacted Congressional Plan. The Supreme Court recently called into question the importance of core retention for Section 2 Plaintiffs. "[T]his Court has never held that a State's adherence to a previously used districting plan



can defeat a § 2 claim. If that were the rule, a State could immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan.” Allen, 599 U.S. at 22. Additionally, Ms. Wright testified that when she draws the new Plans, she starts with a blank map and not from the existing congressional plan, and then “work[s] with the data to create new districts.” Tr. 1622:11–17. Ms. Wright admitted to using the existing district “as a reference” for other measures, such as retaining core districts. Tr. 1622:18–20.

To the extent that core retention is relevant as a traditional redistricting principle, the Court finds that the Illustrative Congressional Plan retains a majority of the population’s districts. See generally DX 4. Pursuant to the data provided by Mr. Morgan, the Court finds that approximately 74.6% of voters would have the same congressional district as they do under the Enacted Congressional Plan. Id. In other words, only 25.4% of Georgians would be affected if Illustrative CD-6 were enacted into law. The following is a table is derived from the data in Mr. Morgan’s Report and that exemplifies the number

of individuals who remain in the same district under the Illustrative Congressional Plan.

District	# of individuals whose district is unchanged
001	765,137*
002	765,137*
003	528,200
004	736,485
005	765,137*
006	19,006
007	765,137*
008	765,136*
009	403,191
010	488,385
011	372,724
012	765,136*
013	374,470
014	475,707

The asterisk (\*) denotes a district unchanged on the illustrative map

DX 4, Ex. 7.

The ideal population size of a congressional district is 765,136 (plus or minus one person). As the chart above shows, six of the districts remain unchanged (Illustrative CD-1, CD-2, CD-5, CD-7, CD-8, CD-12). In the eight

changed districts, only three districts (Illustrative CD-6, CD-11, and CD-13) change more than half of the population's congressional district. These changes logically follow from the fact that Illustrative CD-6 is the new majority-minority district and CD-11 and CD-13 are two districts immediately surrounding it. Accordingly, the Court finds that the Illustrative Congressional Plan substantially retains the Enacted Congressional Plan's district cores.

(5) *Racial considerations*

Finally, the Court concludes that race did not predominate in the drawing of the Illustrative Congressional Plan. Allen recognized that “[t]he question whether additional majority-*minority* districts can be drawn . . . involves a ‘quintessentially race-conscious calculus.’” 599 U.S. at 31 (plurality opinion) (quoting Johnson v. De Grandy, 512 U.S. 997, 1020 (1994)). Consequently, “[t]he contention that mapmakers must be entirely ‘blind’ to race has no footing in our § 2 case law. The line that we have long since drawn is between consciousness and predominance.” Id. at 33 (plurality opinion). Race does not predominate when a mapmaker “adhere[s] . . . to traditional redistricting criteria,” testifies that “race was not the predominant factor motivating his design process,” and

explains that he never sought to “maximize the number of majority-minority” districts. Davis, 139 F.3d at 1426; see also id. at 1425–26 (finding clear error with the district court’s finding of racial predominance based on an expert’s testimony that he was asked to draw additional majority-minority districts in an area with a high concentration of Black citizens).

During Defendants’ cross-examination of Mr. Cooper, questions were asked about whether race predominated when drawing the Illustrative Congressional Districts. Tr. 786:23–787:6. Mr. Cooper testified that he considered race among other traditional redistricting principles, balancing all considerations and did not allow any of them to predominate or subordinate the others. On this point, Mr. Cooper’s testimony is well summarized by the following:

I’m constantly balancing the traditional redistricting principles, which would include population equality, which must be plus or minus one or so in most states. I’m looking at the compactness of the district. The district has to be contiguous, it has to be connected with all parts. I have to look at communities of interest. I have to look at political subdivisions and try to keep those whole. And that’s sort of subsumed under communities of interest. And, finally, also I have to be cognizant of avoiding the dilution of the minority voting source.

Tr. 726:14–23.

As the Court noted above, Mr. Cooper's testimony was highly credible. Mr. Cooper expressly disclaimed that race predominated the drawing of any district, let alone Illustrative CD-6. Tr. 1744–2129; PX 1. It does not appear from the face of the Illustrative Congressional Plan that race predominated its creation. Compare PX 1, Ex. I-2 (creating an additional majority-minority district that is wholly contained within four counties), with Miller, 512 U.S. at 108–09 (a district that stretched from Augusta, Georgia to Atlanta, Georgia). The Court finds that the evidence shows that Mr. Cooper was aware of race when he drew the Illustrative Congressional Plan, but that race did not predominate the configuration of its districts. Accordingly, the Court finds that the Pendergrass Plaintiffs have sufficiently proven that race did not predominate over the drawing of the Illustrative Congressional Plan, or Illustrative CD-6.

**(6) *Possible remedy***

In Nipper, the Eleventh Circuit held that “the first threshold factor of Gingles [ ] require[s] that there must be a remedy within the confines of the state’s judicial model that does not undermine the administration of justice.” Nipper v. Smith, 39 F.3d 1494, 1531 (11th Cir. 1994). The Eleventh Circuit later clarified that

“[t]his requirement simply serves ‘to establish that the minority has the potential to elect a representative of its own choice from some single-member district.’” Burton v. City of Belle Glade, 178 F.3d 1175, 1199 (11th Cir. 1999) (quoting Nipper, 39 F.3d at 1530). Additionally, “[i]f a minority cannot establish that an alternate election scheme exists that would provide better access to the political process, then the challenged voting practice is not responsible for the claimed injury.” Id.; see also Brooks v. Miller, 158 F.3d 1230, 1239 (11th Cir. 1998) (holding that “[i]f the plaintiffs in a § 2 case cannot show the existence of an adequate alternative electoral system under which the minority group’s rights will be protected, then the case ends on the first prerequisite”).

Under Nipper, the question of remedy depends on whether the alternate scheme is a “workable remedy within the confines of the state’s system of government.” Nipper, 39 F.3d at 1533. For example, in Wright v. Sumter Cnty. Bd. of Elections and Registration, 979 F.3d 1282, 1304 (11th Cir. 2020), the Eleventh Circuit found that the first Gingles precondition had been met because the special master’s maps showed that at least three majority-Black districts could have been drawn in that area, meaning “that a meaningful remedy was available.”

The Court has already determined that there is Record evidence that the minority population in Illustrative CD-6 is sufficiently compact. As is stated above, the Court finds that Mr. Cooper's Illustrative Congressional Plans, both from the preliminary injunction hearing and the trial, prove it is possible to draw an additional majority-Black congressional district in west-metro Atlanta. PX 1, I-2, DX 154, Ex. K. The Illustrative Congressional Plan achieves population equality and each district is plus or minus one person. PX 1 ¶ 48. All of the districts are contiguous. Stip. ¶ 198. The Illustrative Congressional Plan is comparably as compact as the Enacted Plan. PX 1 ¶ 81 & fig.14. Visually speaking, Illustrative CD-6 is compact and does not contain any tentacles or appendages. See Section II(D)(2)(b)(3) *supra*. The Illustrative Congressional Plan unites communities of interest. See Section II(D)(2)(b)(4) *supra*. The Illustrative Congressional Plan leaves approximately 75% of the Enacted Plan intact. DX 4 at 48-50; Tr.1945:10-13. And there is substantial, un rebutted, evidence and testimony that race did not predominate the creation of the Illustrative Congressional Plan. Tr. 726:14-23.

Furthermore, Mr. Cooper testified that he used the General Assembly's guidelines to inform his decisions when drawing the Illustrative Congressional Plan. Tr. 818:18–20. Thus, the Court finds that the General Assembly could implement the Illustrative Congressional Plan, because Mr. Cooper used the legislative guidelines.

To the extent, that Defendants have argued that the General Assembly would have been barred from implementing this map because it impermissibly took race into consideration, the Supreme Court recently rejected this proposition. Allen, 599 U.S. at 1512 (plurality opinion), 1518. The Eleventh Circuit, moreover, has long held that the first Gingles precondition specifically requires that Plaintiffs' proposed maps consider race.<sup>43</sup> Davis, 139 F.3d at 1425–26.

---

<sup>43</sup> Additionally, the Supreme Court has stated that upon showing of racial predominance, the state must "satisfy strict scrutiny" by demonstrating that the race-based plan "is narrowly tailored to achieve a compelling interest"). In this context, narrow tailoring does not "require an exact connection between the means and ends of redistricting," but rather just "'good reasons' to draft a district in which race predominated over traditional districting criteria." Ala. Legis. Black Caucus, 231 F. Supp. 3d at 1064 (quoting Ala. Legis. Black Caucus, 575 U.S. at 278). Miller, 515 U.S. at 920. The U.S. Supreme Court has "assume[d], without deciding, that . . . complying with the Voting Rights Act was compelling." Bethune-Hill v. Va. State Bd. of Elections, 580



Here, the Court found that race did not predominate the drawing of the Illustrative Congressional Plan and therefore, the State could implement it without violating the Constitution. Accordingly, the Court finds that the Illustrative Congressional Plan satisfies Nipper's remedial requirement.

(7) *Conclusions of law*

In sum, the Court concludes that the Illustrative Congressional Plan meets or exceeds the Enacted Congressional Plan on all empirical measures. Accordingly, the Court finds that on the objective comparable measures, the Illustrative Congressional Plan is as compact as the Enacted Congressional Plan. The Court also finds that the Illustrative Congressional Plan is compact on the eyeball test, respects communities of interest, and retains the majority of the cores from the Enacted Congressional Plan. Finally, the Court finds that the Enacted Congressional Plan could be enacted as a possible remedy because it complies with traditional redistricting principles and race did not predominate in its

---

U.S. 178, 193 (2017). Indeed, the redistricting guidelines adopted by the General Assembly confirm that Georgia understands compliance with the Voting Rights Act to be a compelling state interest. See JX1-2.

creation. Accordingly, the Pendergrass Plaintiffs carried their burden in showing that the minority community in west-metro Atlanta is sufficiently large and compact to warrant drawing an additional majority-Black district. Accordingly, the Court finds that Pendergrass Plaintiffs have successfully proven the first Gingles precondition.

## **2. *Second Gingles Precondition***

The Court turns to the second and third Gingles preconditions. As the Court examined more thoroughly in its Order on the Pendergrass Motions for Summary Judgment (Pendergrass, Doc. No. [215], 48–65), to satisfy the second and third Gingles preconditions, plaintiffs must show (1) the existence of minority voter political cohesion and (2) that the majority votes as a bloc, usually to defeat the minority voter’s candidate of choice. As a part of these preconditions, plaintiffs do not have to prove that race is the sole or predominant cause of the voting difference between the minority and majority voting blocs, nor must plaintiffs disprove that other race-neutral reasons, such as partisanship, are causing the racial bloc voting.

The second Gingles precondition requires plaintiffs to show that “the minority group . . . is politically cohesive.” Gingles, 478 U.S. at 51. “The second [precondition], concern[s] the political cohesiveness of the minority group [and] shows that a representative of its choice would in fact be elected.” Allen, 599 U.S. at 19. Plaintiffs can establish minority cohesiveness by showing that “a significant number of minority group members usually vote for the same candidates.” Solomon v. Liberty Cnty., 899 F.2d 1012, 1019 (11th Cir. 1990) (Kravitch, J., specially concurring); see also Gingles, 478 U.S. at 56 (“A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and, consequently, establishes minority bloc voting within the context of § 2.” (internal citations omitted)). The Court finds that Pendergrass Plaintiffs have successfully proven that the minority group in the challenged area is politically cohesive.

Courts generally rely on statistical analyses to estimate the proportion of each racial group that voted for each candidate. See, e.g., Gingles, 478 U.S. at 52–54; Nipper, 39 F.3d at 1505 n.20. Courts have recognized ecological inference

(“EI”) as an appropriate analysis for determining whether a plaintiff has satisfied the second and third Gingles preconditions. *See, e.g., Rose v. Raffensperger*, 584 F. Supp. 3d 1278, 1294 (N.D. Ga. 2022); *Patino v. City of Pasadena*, 230 F. Supp. 3d 667, 691 (S.D. Tex. 2017); *Benavidez v. City of Irving*, 638 F. Supp. 2d 709, 723–24 (N.D. Tex. 2009); *Bone Shirt*, 336 F. Supp. 2d at 1003, *aff’d* 461 F.3d 1011 (8th Cir. 2006). Both Drs. Palmer and Alford testified that EI is a reliable method for conducting the second and third Gingles’ preconditions analyses. Tr. 2250:12–16; 401: 7–9.

Pendergrass Plaintiffs polarization expert, Dr. Palmer, concluded that in the 40 statewide general elections examined, in both the congressional focus area (i.e., Enacted CD-3, 6, 11, 13, and 14) and each congressional district, Black voters had clearly identifiable candidates of choice. Stip. ¶¶ 218, 220–21; PX 2 ¶ 16, tbl.1 & figs.2–3, 5; Tr. 414:25–416:13, 417:16–418:4. On average, Black voters supported their candidates of choice with 98.4% of the vote. Stip. ¶ 219; PX 2 ¶¶ 7,16. Defendants’ rebuttal expert on racially polarized voting, Dr. John Alford, does not dispute Dr. Palmer’s conclusions as to the second Gingles precondition. DX 8, 3; Tr. 2250:12–2251:9. Additionally, the Parties stipulated that “Black voters in

Georgia are extremely cohesive, with a clear candidate of choice in all 40 general elections Dr. Palmer examined.” Stip. ¶ 218.

The Court finds that the second Gingles precondition is satisfied here because Black voters in Georgia are extremely politically cohesive. See 478 U.S. at 49. “Bloc voting by blacks tends to prove that the [B]lack community is politically cohesive, that is, it shows that [B]lacks prefer certain candidates whom they could elect in a single-member, [B]lack majority district.” Id. at 68. Dr. Palmer’s analysis clearly demonstrates high levels of cohesiveness among Black Georgians in supporting their preferred candidates, both across the congressional focus area and in the individual districts that comprise it. In Allen, the Supreme Court credited the lower court’s finding of “very strong” Black voter cohesion in Alabama, with an average of 92.3%. 599 U.S. at 22. Here in Georgia, Black voter cohesion is even stronger, with an average of 98.4%.<sup>44</sup> Stip. ¶¶ 218–19.

---

<sup>44</sup> The record evidence does not dispute, and even reiterates, conclusions made in prior cases about political cohesion among Black Georgians. See, e.g., Wright, 301 F. Supp. 3d at 1313 (noting that, in ten elections for Sumter County Board of Education with Black candidates, “the overwhelming majority of African Americans voted for the same

Accordingly, the Court finds that Pendergrass Plaintiffs have successfully carried their burden and proven that Black voters in the challenged area are politically cohesive.

### 3. *Third Gingles Precondition*

The third Gingles precondition requires plaintiffs demonstrate that “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” Gingles, 478 U.S. at 51. “[A] white bloc vote that normally will defeat the combined strength of minority support plus white ‘crossover’ votes rises to the level of legally significant white bloc voting.” Id. at 56. This precondition “establishes that the challenged districting thwarts a distinctive minority vote at least plausibly on account of race.” Allen, 599 U.S. at 19 (cleaned up) (quoting Grove, 507 U.S. at 40). No specific threshold percentage is required to demonstrate bloc voting. Gingles, 478 U.S. at 56 (“The amount of white bloc voting that can generally ‘minimize or cancel’ black voters’ ability to

---

candidate”); Lowery v. Deal, 850 F. Supp. 2d 1326, 1329 (N.D. Ga. 2012) (“Black voters in Fulton and DeKalb counties have demonstrated a cohesive political identity by consistently supporting [B]lack candidates.”).

elect representatives of their choice . . . will vary from district to district.” (citation omitted)).

Pendergrass Plaintiffs’ polarization expert, Dr. Palmer, demonstrated (and the Parties have stipulated) that white voters in the congressional focus area usually vote as a bloc to defeat Black-preferred candidates. Stip. ¶¶ 222–227. In each congressional district examined and in the focus area as a whole, white voters had clearly identifiable candidates of choice for every election examined. Id. ¶ 223; PX 2 ¶ 17 & figs.2–4; Tr. 414:25–416:13, 417:16–418:4. In the 40 statewide general elections examined, white voters were highly cohesive in voting in opposition to the Black candidate of choice. Stip. ¶ 222. On average, Dr. Palmer found that white voters supported Black-preferred candidates with an average of just 12.4% of the vote. Id. ¶ 223. In other words, white voters on average supported their preferred candidates with an estimated vote share of 87.6%.<sup>45</sup>

---

<sup>45</sup> The Court notes that the Black preferred candidate in all of the examined races was the Democrat candidate and the white -preferred candidate was a Republican. Stip. ¶¶ 194, 215–16. The Court finds that the inquiry into whether partisanship is the motivating factor behind the polarization is not relevant to the Gingles precondition inquiry, but may be relevant to the overall totality of the circumstances. See Section II(D)(4)(b), *infra*.

Overall, Dr. Palmer found “strong evidence of racially polarized voting across the focus area” as a whole and in each individual congressional district he examined. PX 2 ¶¶ 7, 19; Tr. 398:17–21, 418:5–8. As a result of this racially polarized voting, candidates preferred by Black voters in the focus area have generally been unable to win elections outside of majority-Black districts. Tr. 419:11–420:2. Excluding the majority-Black Congressional District 13, white bloc voting defeated Black-preferred candidates in all 40 elections in the focus area that Dr. Palmer examined. Stip. ¶¶ 225, 227; PX 2 ¶ 22. Defendants have offered no evidence suggesting that this is no longer the case. To the contrary, just as with the second Gingles precondition, the parties have stipulated to satisfaction of the third Gingles precondition. Stip. ¶ 225.

The Court concludes that Dr. Palmer’s analysis demonstrates high levels of white bloc voting in the congressional focus area and in the individual districts that comprise it. The Court also finds that candidates preferred by Black voters are almost always defeated by white bloc voting except in those areas where they form a majority. The evidence of polarization is stronger in this case than it was in Allen: in Georgia, only 12.4% of white voters support Black-preferred



candidates, whereas in Alabama 15.4% of white voters supported Black-preferred candidates. Allen, 599 U.S. at 22. There the Supreme Court affirmed that there was “very clear” evidence of racially polarized voting. Id. Thus, this Court likewise finds “very clear” evidence of racially polarized voting in the challenged district.<sup>46</sup> Accordingly, the Court concludes that Pendergrass Plaintiffs’ evidence demonstrates that white voters vote in opposition to and typically defeat Black preferred candidates and thus Pendergrass Plaintiffs have carried their burden as to the third Gingles precondition.

\* \* \* \*

---

<sup>46</sup> Again, the evidence in this case does not dispute, and even reiterates, conclusions made in prior cases about racially polarized voting. See, e.g., Fair Fight Action, 634 F. Supp. 3d at 1247 (finding racial polarization in Georgia voting); Whitest v. Crisp Cnty. Bd. of Educ., No. 1:17-CV-109 LAG, 2021 WL 4483802, at \*3 (M.D. Ga. Aug. 20, 2021) (“African Americans in Crisp County are politically cohesive in elections for members of the Board of Education, but the white majority votes sufficiently as a bloc to enable it to defeat the candidates preferred by Black voters in elections for members of the Board of Education.”); Wright, 301 F. Supp. 3d at 1317 (finding that “[t]he third Gingles factor is satisfied” after concluding that “there can be no doubt black and white voters consistently prefer different candidates” and that “white voters are usually able to the defeat the candidate preferred by African Americans”).

The Court concludes that the Pendergrass Plaintiffs have carried their burden in proving the three Gingles preconditions. Accordingly, the Court now turns to the totality of the circumstances inquiry.

#### **4. *Totality of the Circumstances***

The Court must determine whether Georgia's political process is equally open to the affected Black voters. Wright, 979 F.3d at 1288 (“[I]n the words of the Supreme Court, the district court is required to determine, after reviewing the ‘totality of the circumstances’ and, ‘based upon a searching practical evaluation of the past and present reality, whether the political process is equally open to minority voters.’” (quoting Gingles, 478 U.S. at 79)); Solomon v. Liberty Cnty. Com’rs, 166 F.3d 1135, 1148 (11th Cir. 1999), vacated 206 F.3d 1054 (acknowledging that the Third, Fifth, and Tenth Circuits have found it to be “unusual” or “rare” if a plaintiff can establish the Gingles preconditions, but fail to establish a Section 2 violation on the totality of the circumstances (quoting Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ., 4 F.3d 1103, 1135 (3d Cir. 1993); Sanchez v. Colorado, 97 F.3d 1303, 1322 (10th Cir. 1996)) (citing Clark v. Calhoun Cnty., 21 F.3d 92, 97 (5th Cir. 1994)).

a) **Totality of circumstances inquiry: purpose and framework**

For a Section 2 violation to be found, the Court must conduct “an intensely local appraisal” of the electoral mechanism at issue, as well as a “searching practical evaluation of the ‘past and present reality.’” Allen, 599 U.S. at 19 (citing Gingles, 478 U.S. at 79). The purpose of this appraisal is to determine the “essential inquiry” of a Section 2 case, which is “whether the political process is *equally open* to minority voters.” Ga. State Conf. of the NAACP, 775 F.3d at 1342 (emphasis added) (quoting Gingles, 478 U.S. at 79). Put differently, the totality of the circumstances inquiry ensures that violations of Section 2 may only be found when “members of the protected class have *less opportunity* to participate in the political process.” Chisom v. Roemer, 501 U.S. 380, 397 (1991) (emphasis added).

Over the last fifty years Georgia has become increasingly more politically open to Black voters and in recent elections Black candidates have enjoyed success—five of Georgia’s representatives to the United States House of Representatives and one of its Senators are Black. Although the Court commends the progress that Georgia has made since 1965, when weighing the Senate Factors, the Court finds that the Enacted Congressional Plan dilutes Black voting power

in west-metro Atlanta. The Enacted Congressional Plan in west metro-Atlanta has resulted in Black voters having less of an opportunity to participate equally in the political process than white voters. Gingles, 478 U.S. at 79; Chisom, 501 U.S. at 397. The whole of the evidence shows that the political process is not currently *equally* to Black Georgians in west-metro Atlanta – Black voters still suffer from *less* opportunity to partake in the political process in the area than white voters. Thus, given the consideration of the factors named *infra*, the Court determines that the totality of the circumstances inquiry supports finding a Section 2 violation in this case and that an additional majority-minority congressional district must be drawn in the western-metro Atlanta area.

Turning to the legal framework guiding the totality of the circumstances inquiry: the totality inquiry focuses on a number of non-comprehensive and non-exclusive Senate Factors. Ga. State Conf. of the NAACP, 775 F.3d at 1342. The Senate Factors include: (1) “the history of voting-related discrimination in the State or political subdivision”; (2) “the extent to which voting in the elections of the State or political subdivision is racially polarized”; (3) “the extent to which the State or political subdivision has used voting practices or procedures that

tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting”; (4) “the exclusion of members of the minority group from the candidate slating processes”; (5) “the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process”; (6) “the use of overt or subtle racial appeals in political campaigns”; and (7) “the extent to which members of the minority group have been elected to public office in the jurisdiction.” Gingles, 478 U.S. at 44–45. Furthermore, “[t]he [Senate] Report notes also that evidence demonstrating [8] that elected officials are unresponsive to the particularized needs of the members of the minority group and [9] that the policy underlying the State’s . . . use of the contested practice or structure is tenuous may have probative value.” Gingles, 478 U.S. at 45.

The Court now will consider and weigh each of these factors in addition to the proportionality of Black citizens to majority-Black districts and the State’s changing demographics. Again, the Court ultimately concludes that the totality

of the circumstances’ inquiry weighs in favor of finding a Section 2 violation in the Pendergrass Plaintiffs’ case.<sup>47</sup>

b) **Senate Factor One and Three: historical evidence of discrimination and State’s use of voting procedures enhancing opportunity to discriminate**

The Court first turns to Georgia electoral practices, both past and present, that bear on discrimination against Black voters under Senate Factors One and Three.<sup>48</sup> Senate Factor One focuses on “the extent of any history of official discrimination in the state . . . that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process[.]” Gingles, 478 U.S. at 36-37. Senate Factor Three “considers ‘the extent to which the State or political subdivision has used voting practices or procedures

---

<sup>47</sup> Although Dr. Jones was solely retained as an expert in the Alpha Phi Alpha case, the Court notes that at the trial, the Parties consented to adopt the testimony of Dr. Jones into the Pendergrass Plaintiffs’ case-in-chief. Tr. 1244:10–1245:8, 1589:3–1591:21. Thus, the Court may rely on Dr. Jones’s trial testimony any portions of her report that were directly referenced at trial.

<sup>48</sup> The Court considers both Senate Factors One and Three together because there is significant overlap in the trial evidence for the two factors. Cf., e.g., Singleton, 582 F. Supp. 3d at 1020, aff’d sub nom. Allen, 599 U.S. 1 (considering Senate Factors One, Three, and Five together).

that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting.” Wright, 979 F.3d at 1295 (quoting Gingles, 478 U.S. at 44–45).

The Court finds that Pendergrass Plaintiffs have shown evidence of both past and present history in Georgia that the State’s voting practices disproportionately affect Black voters. Per guidance from binding authorities, the Court is careful in this analysis to assess both past *and present* efforts that have caused a disproportionate impact on Black voters. Indeed, “past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful.” Greater Birmingham Ministries v. Sec’y of State for Ala., 992 F.3d 1299, 1325 (11th Cir. 2021) (quoting Mobile v. Bolden, 446 U.S. 55, 74 (1980)); see also Abbott v. Perez, 585 U.S. ----, 138 S. Ct. 2305, 2324 (2018) (explaining that “the presumption of legislative good faith [is] not changed by a finding of past discrimination”).

While present evidence of disproportionate impact is necessary, the Court’s reading of recent decisions is that past discrimination and

disproportionate effects cannot be overlooked. To be sure, the Supreme Court recently opined that Section 2 looks at both the *past* and present realities of Georgia's electoral mechanism by recounting Alabama's history of past discrimination from the Reconstruction Era. Allen, 599 U.S. at 19; see also id. at 14 ("For the first 115 years following Reconstruction, the State of Alabama elected no [B]lack Representatives to Congress."). In the wake of the Allen decision, Chief Judge Pryor recently clarified that "[p]ast discrimination *is relevant*" even if it is "one evidentiary source" that is "not to be outweighed." League of Women Voters of Fla. Inc. v. Fla. Sec'y of State, 81 F.4th 1328, 1332 (11th Cir. 2023) (Pryor, C.J., concurring in denial of rehearing en banc) (emphasis added) (quoting Abbott, 138 S. Ct. at 2325); see also id. ("Allen cited the 'extensive history of repugnant racial and voting-related discrimination' in Alabama as relevant to whether the political process today is 'equally open' to minority voters." (quoting Allen, 599 U.S. at 22)). Accordingly, the Court takes these cues from both recent Supreme Court and Eleventh Circuit jurisprudence and evaluates Georgia's practices of discrimination *past and present* as relevant evidence in the totality of the circumstances inquiry.



(1) *Historical evidence of discrimination broadly*

“Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather than the exception.” Wright, 301 F. Supp. 3d at 1310 (citation omitted). “African-Americans have in the past been subject to legal and cultural segregation in Georgia[.]” Cofield, 969 F. Supp. at 767. “Black residents did not enjoy the right to vote until Reconstruction. Moreover, early in this century, Georgia passed a constitutional amendment establishing a literacy test, poll tax, property ownership requirement, and a good-character test for voting. This act was accurately called the ‘Disfranchisement Act.’ Such devices that limited black participation in elections continued into the 1950s.” Id.

In this case, one of Pendergrass Plaintiffs’ expert witnesses opined that “[t]hroughout the history of the state of Georgia, voting rights have followed a pattern where after periods of increased nonwhite voter registration and turnout, the state has passed legislation, and often used extralegal means, to

disenfranchise minority voters.” PX 4, 10; Tr. 1428:3–24. Another expert witness testified, Georgia has “used basically every expedient . . . associated with Jim Crow to prevent Black voters from voting in the state of Georgia.” Tr. 1161:20–1162:11.

During the trial, Defendants stipulated “up until 1990 we had historical discrimination in Georgia.” Tr. 1524:14–15. Thus, the un rebutted testimony and the extensive accounts of Georgia’s history of discrimination in Pendergrass Plaintiffs’ expert reports demonstrate that Georgia’s discriminatory history—including in voting procedures—spans from the end of the Civil War onward and have uncontrovertibly burdened Black Georgians. See, e.g. Tr. 1429:11–21.

(2) *Georgia practice from the passage of the VRA to 2000*

Congress enacted the Voting Rights Act of 1965 to address these discriminatory practices. One of the Voting Rights Act’s provisions was the preclearance requirement that prohibited certain jurisdictions with well-documented practices of discrimination—including Georgia—from making

changes to their voting laws without approval from the federal government. PX 4, 36; Tr. 1436:11–1437:6.

The Voting Rights Act, however, “did not translate to instant success” for Black political participation. PX 4, 36. Among states subject to preclearance in their entirety, Georgia ranked second only to Alabama in the disparity in voter registration between its Black and white citizens by 1976. Id.; Tr. 1437:10–1438:3. These continued disparities following the VRA were at least caused because “Georgia resisted the Voting Rights Act . . . [and] for a period, it refused to comply[.]” Tr. 1163:9–1164:1. For example, a study found that local jurisdictions in Georgia and Mississippi “went ahead with election changes despite a pending preclearance request.” PX 4, 39. Even still, from 1965 to 1981, the Department of Justice objected to more than 200 changes submitted by Georgia, more than any other state in the country. Id.

Georgia’s history of discrimination against Black voters did not end in 1981. When the VRA was reauthorized in 1982, the Senate Report specifically cited to Georgia’s discriminatory practices that diminished the voting power of Black

voters. S. Rep. 97-417, at 10, 13 (1982). During the 1990 redistricting cycle, twice the DOJ rejected the State's reapportionment plans. PX 4, 42.

During the process of reauthorization of the Voting Rights Act in 2006, Georgia legislators "took a leadership position in challenging the reauthorization of the [A]ct." Tr. 1164:2-17. As Dr. Jones reminds us, "Georgia's resistance to the VRA is consistent with its history of resisting the expansion of voting rights to Black citizens at every turn." APAX 2, 9. Even following the 2000 Census, the district court in the District of Columbia refused to preclear the General Assembly's Senate plan because the court found "the presence of racially polarized voting" and that "the State ha[d] failed to demonstrate by a preponderance of the evidence that the reapportionment plan for the State Senate will not have a retrogressive effect." Georgia v. Ashcroft, 195 F. Supp. 2d 25, 94 (D.D.C. 2002), affirmed by King v. Georgia, 537 U.S. 1100 (2003).

**(3) *More recent voting practices with a disproportionate impact on Black voters***

The Court concludes that Pendergrass Plaintiffs submitted evidence about more recent practices in Georgia which disproportionately impact Black voters and have resulted in a discriminatory effect. These practices include polling place

closures, voter purges, and the Exact Match requirement. Pendergrass Plaintiffs' also continually rely on the Georgia's General Assembly passage of SB 202 following the 2020 presidential election as evidence of recent and present discrimination disproportionately affecting Black voters.<sup>49</sup>

Following Shelby County and the end of pre-clearance, the U.S. Commission on Civil Rights, found that Georgia had adopted five of the most common restrictions that impose roadblocks to the franchise for minority voters: (1) voter ID laws, (2) proof of citizenship requirements, (3) voter purges, (4) cuts in early voting<sup>50</sup>, and (5) widespread polling place closures. PX 4, 48–49 (citing

---

<sup>49</sup> On the Record, Dr. Burton clearly stated and the Court would like to reiterate, this Order, in no way states or implies that the General Assembly or Georgia Republicans are racist. Tr. 1473:18–1474:9. As articulated by Dr. Burton, “[n]o. I’m not saying that the legislature is [racist]—I am saying that some of the legislation that comes out has a disparity—it affects Black citizens differently than white citizens to the disadvantage of Black citizens, but I am not saying that they are racist. But the effect has a disparate impact among whites and Blacks and other minorities.” Tr. 1474:4–9. Section 2 of the VRA does not require the Court to find that the General Assembly passed the challenged maps to discriminate against Black voters, or that the General Assembly is racist in any way. Nothing in this Order should be construed to indicate otherwise.

<sup>50</sup> While it may have been true at the time of this report that Georgia had made cuts to early voting, the Court acknowledges Mr. Germany’s trial testimony was that SB 202 increased early voting opportunities by adding two mandatory Saturdays and expressly permitted counties to hold early voting on Sundays, at their discretion. Tr. 2269:9–21.

U.S. Commission on Civil Rights, An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Enforcement Report (Washington, 2018), 369). No other State has engaged in all five practices. PX 4, 49.

The Court ultimately weighs the evidence submitted and determines that the present evidence of Georgia's voting practices show they had a disproportionately negative impact on Black voters. The Court proceeds by assessing Pendergrass Plaintiffs' evidence of (a) Georgia's practice of closing polling places, (b) Georgia's Exact Match requirement and purging of its registration lists, (c) the General Assembly's passage of SB 202, and (d) the State's rebuttal evidence of open and fair election procedures.<sup>51</sup> The Court finally (e) renders its conclusion of law on this Senate Factor.

---

<sup>51</sup> The Court may evaluate statewide evidence to determine whether Black voters have an equal opportunity in the election process. LULAC, 548 U.S. at 438 (2006) ("[S]everal of the [ ] factors in the totality of circumstances have been characterized with reference to the State as a whole."); see also Allen, 599 U.S. at 22 (crediting the three-judge court's findings of lack of equal openness with respect to statewide evidence (citing Singleton, 582 F. Supp. 3d at 1018-1024); Gingles, 478 U.S. at 80 (crediting district court's findings of lack of equal opportunity that was supported by statewide evidence (citing Gingles v. Edmisten, 590 F. Supp. 345, 359-75 (E.D.N.C. 1984))).

(a) polling place closures

The Court finds that there is compelling evidence that Georgia's recent closure of numerous polling places disproportionately impacts Black voters. In the wake of the Supreme Court's decision in Shelby County, "'dozens of polling places' were 'closed, consolidated, or moved.'" PX 4, 49 (citing Kristina Torres, "Cost-Cutting Raises Voter Access Fears," Atlanta Journal Constitution, (Oct. 13, 2016); Kristina Torres, "State Monitored For Voting Rights Issues," Atlanta Journal Constitution, (Jun. 20, 2016)).

By 2019, the Leadership Conference Education Fund determined that Georgia had closed over 200 polling locations since June of 2012, despite the significant growth in Georgia's population. PX 4, 50. "A 2020 study found that 'about two-thirds of the polling places that had to stay open late for the June primary to accommodate waiting voters were in majority-Black neighborhoods, even though they made up only about one-third of the state's polling places.'" Id. (citing Stephen Fowler, "Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours? Their Numbers Have Soared, and Their Polling Places Have Dwindled," ProPublica, <https://www.propublica.org/article/why-do->

nonwhite-georgia-voters-have-to-wait-in-line-for-hours-their-numbers-have-soared-and-their-polling-places-have-dwindled, (Oct. 17, 2020)).

Specifically, in the challenged area (i.e., around Illustrative CD-6), “[i]n 2020, the nine counties in metro Atlanta that had nearly half of the registered voters (and the majority of the Black voters in the state)[, but] had only 38% of the state’s polling places.” PX 4, 51 (citing Fowler, “Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours?”). In 2020, Union City, which is within Illustrative CD-6 and has a Black voting age population of 88%, had wait times as long as five hours. PX 4, 51 (citing Mark Niese and Nick Thieme, “Fewer Polls Cut Voter Turnout Across Georgia,” Atlanta Journal Constitution (Dec. 15, 2009); Fowler, “Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours?”).

At trial, Dr. Burton testified about his findings as to polling place closures and his conclusion that they disproportionately impacted Black voters. Tr. 1432:21–25; 1441:2–21. These conclusions were not raised on cross examination. Tr. 1465:6–1494:14.

The Court concludes that Pendergrass Plaintiffs’ evidence of polling place closures—and, notably, in west-metro Atlanta where Pendergrass Plaintiffs



propose Illustrative CD-6 be drawn as an additional majority-minority district—is recent evidence of a voting practice with a disproportionate impact on Black voters.

(b) exact match and registration list purges

Pendergrass Plaintiffs’ evidence also shows Georgia’s voting practices include roadblocks to the voting efforts of minority voters in the form of the Exact Match system and the State’s purging of voter registration lists. PX 4, 49–51 (citing U.S. Commission on Civil Rights, An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Enforcement Report (Washington, 2018), 369).

These practices, however, have been determined in prior decisions by the Court to *not* be illegal under federal law. The prior decisions upholding the Exact Match requirement and registration list purges certainly impact the weight to afford these voting practices. However, in this case, the evidence shows—without contradicting the prior legal determinations—that these practices have a *disproportionate effect* on Black voters for purposes of the instant totality of the circumstances inquiry. Specifically, when these prior decisions are considered in

the light of the legal frameworks at issue, the Court finds that these practices can be used as evidentiary support of a disproportionate discriminatory impact on Black voters in Georgia without contradicting or minimizing the prior decisions upholding Georgia's laws.

Specifically, Georgia's Exact Match procedure was determined to not violate VRA's Section 2 because when the burden on voters, the disparate impact, and the State's interest in preventing fraud were considered together, the weighing of these considerations counseled against finding a violation. Fair Fight Action, 634 F. Supp. 3d at 1246. The Exact Match decision in Fair Fight relied on the Brnovich decision and emphasized that "the modest burdens allegedly imposed by [the Exact Match law], the small size of the disparate impact [on Georgia voters as a whole], and the State's justifications" did not support a Section 2 violation. Id. at 1245 (citing Brnovich v. Democratic Nat'l Comm., 594 U.S. ----, 141 S. Ct. 2321, 2346 (2021)). Even without a Section 2 violation, however, the Court found that the Exact Match requirement disproportionately impacted Black voters given that: Black voters were a smaller portion of the electorate but as of January 2020, 69.4% of individuals flagged as "missing identification

required” were African American, and 31.6% of the voters flagged for pending citizenship 31.6% were African American, whereas white voters only accounted for 20.9%. Fair Fight Action, 634 F. Supp. 3d at 1160, 1162; Tr. 1283:3–10. The Court’s decision in Fair Fight itself acknowledged that the Exact Match practice in Georgia has a *discriminatory impact* on Black voters – the inquiry specifically at issue here. When the Court considers Fair Fight’s determination in the light of the Civil Rights’ Commission’s report that generally Exact Match practices are a roadblock to minority voters, the Court concludes that this modern practice in Georgia supports that Georgia’s modern voting practices have a discriminatory effect on Black voters.

The same Fair Fight case also resolved on summary judgment (in favor of the State) claims that purges of voter registration lists violated the Constitution. Fair Fight Action, Inc. v. Raffensperger, No. 18-cv-5391, 2021 WL 9553856 (N.D. Ga. Mar. 31, 2021). The Anderson-Burdick framework governed this summary judgment resolution and notably did not require any showing or determination of racial discrimination. Id. Instead, the Court’s task was to balance the voter’s burden with the State’s interest in complying with federal law (i.e., the National

Voter Registration Act). 2021 WL 9553856, \*at 15–18. The Court’s weighing of these considerations does not instantly preclude a finding that Georgia’s voter purges have a disproportionate impact on Black voters for purposes of the totality of the circumstances inquiry here. This is especially the case in the light of the expert evidence that these voter purges have minimized the “electoral influence of minority voters and particularly of Black Georgians.” PX 4, 2. Thus, the Court finds that, while not illegal under Anderson-Burdick, the voter purges provide some evidence of modern practices with disproportionate discriminatory impact on Black voters in Georgia.

Accordingly, while the Court is cognizant of the prior decisions upholding the Exact Match and registration list purges in Georgia, the Court still finds that these voting practices are *some* evidence indicating a disproportionate impact on Black voters.

(c) **SB 202’s disparate impact**

The Pendergrass Plaintiffs also cite to Georgia’s passage of SB 202 as evidence of modern discrimination. The General Assembly passed SB 202 following the 2020 Presidential election. PX 4, 53–56; Tr. 1474:10–1481:1. A

challenge to SB 202 is pending in the Northern District of Georgia and has not been resolved at the time the Court enters this Order.<sup>52</sup> In re SB 202, 1:21-mi-55555 (N.D. Ga. Dec. 23, 2021). The Court acknowledges that the evidence presented in that case is not presently before this Court.<sup>53</sup> Given this pending challenge to SB 202, the Court proceeds cautiously in an effort of judicial restraint, which counsels against the Court preemptively making any findings that could lead to inconsistent rulings or implicate the ultimate determination of the legality of SB 202.

---

<sup>52</sup> The Court notes that on October 11, 2023, the district court hearing the case ruled on a pending motion for preliminary injunction that involves Section 2 and constitutional challenges to several provisions in SB 202. In re SB 202, 1:21-mi-55555, ECF No. 686 (N.D. Ga. Oct. 11, 2023). The court denied the plaintiffs motions for preliminary injunction and found that there was not a substantial likelihood of success on the merits of any of their claims. Id. at 61. No rulings in that case are binding on this Court. McGinley v. Houston, 361 F.3d 1328, 1331 (11th Cir. 2004) (“[A] a district judge’s decision neither binds another district judge nor binds him”). However, the Court is cautious in its discussion of SB 202 to avoid inconsistent rulings and creating confusion.

<sup>53</sup> To be abundantly clear, this Court does not have a challenge to SB 202 before it. Plaintiffs’ experts have provided evidence regarding potential motivations behind SB 202 and the impact that its passage had on Black voters. APAX 2; PX 4; GX 4. And Defendants provided counter evidence. See Tr. 2261–2307 (testimony of Ryan Germany). The Court evaluates solely the evidence adduced in this case.

With these qualifications in mind, the Court cannot ignore that evidence on SB 202 has been presented by the Plaintiffs as proof of present discriminatory practices in Georgia's treatment of Black voters. PX 4, 53–55, Tr. 1474:10–1481:1.<sup>54</sup> Defendants likewise provided rebuttal testimony. See generally Tr. 2261–2307. The Court, treading cautiously, tethers its findings regarding SB 202 to the testimony and evidence provided by Pendergrass Plaintiffs' experts *for purposes of the totality of the circumstances inquiry on the Senate Factors*. Namely, the Court considers the passage of SB 202, once again, as some evidence of practices with a disproportionate impact on Black voters. This determination is made with the conclusion of Dr. Burton, Pendergrass Plaintiffs' expert, in mind: "[t]he history of Georgia demonstrates a clear pattern" (PX 4, 4), where "periods of increased nonwhite voter registration and turnout" have been followed by the state

---

<sup>54</sup> Drs. Burton and Jones concluded that certain portions of SB 202 have an actual or perceived negative impact on Black voters. See Tr. 1185:17–1186:16 (Dr. Jones opining that Black voters increased use of absentee ballots and their use of drop boxes correlated with the passage of SB 202); Tr. 1445: 1–25 (Dr. Burton opining that certain provisions of SB 202 were put in place because of the gains made by Black voters in the electorate).

[passing] legislation” to deter minority voters. PX 4, 10. Dr. Burton specifically cites the passage of SB 202 as evidence of this pattern. PX 4, 10.

Accordingly, the Court considers SB 202 as evidence of a current manifestation of a historical pattern that following an election, the General Assembly responsively passes voting laws that disproportionately impact Black voters in Georgia.

**(4) *Defendant’s rebuttal evidence***

The Court now turns to Defendants’ rebuttal evidence. To begin, Defendants submit no rebuttal expert or report to Dr. Burton’s report and testimony. Tr. 1425:8–16. In fact, Defendants do not affirmatively rebut the aforementioned evidence with their own evidence. Instead, Defendants cross-examined Dr. Jones on the prior legal determinations that the Exact Match and list maintenance procedures utilized by Georgia. Tr. 1251:16–19. As the Court has already determined, it considers these prior judicial decisions as part of its weighing of this evidence. It also has assessed the basis for these prior decisions and has determined that it is not inconsistent with these prior rulings to now find that these voting practices have a discriminatory impact on Black voters for

purposes of the instant totality of the circumstances. See Section II(C)(4)(b)(3)(b) *supra*.

Defendants also, through lay witness testimony, submitted that Georgia has implemented legislation to make it easier for all voters to participate.<sup>55</sup> In favor of Defendants on these factors, the Court considers Mr. Germany's testimony about SB 202 indicates that the motive for passing the law was to alleviate stress on the electoral system and increase voter confidence. Tr. 2265:5–23. Moreover, SB 202, among other things, expanded the number of early voting days in Georgia. Tr. 1476:7–9. There's evidence that Georgia employs no-excuse absentee voting (Tr. 1476:10–13), automatic voter registration through the Department of Driver Services (Tr. 2263:12–20) and voters to register the vote using both paper registration and online voter registration (Tr. 2263:14–23).

---

<sup>55</sup> The Court notes that on cross-examination Mr. Germany explained that SB 202 received numerous complaints; however, he is unable to quantify whether those complaints primarily came from Black voters because the Secretary of State's Office does not analyze the impact of the legislation on particular categories of voters—i.e., white voters v. Black voters. In his opinion, that analysis is not helpful to the overall goal to “make it easy for everyone, regardless of race.” Tr. 2283:2–2285:5.



Georgia offers free, state-issued, identification cards that voters can use to satisfy Georgia's photo ID laws. Tr. 2264:15–22.

Additionally, the Court has also been presented with additional evidence that immediately prior to Shelby County, the DOJ precleared Georgia's 2011 Congressional Plan. Tr. 1471:14–17. Moreover, following the passage of SB 202, Georgia experienced record voter turnout in the 2022 midterm election cycle. Tr. 1480:3–9.

(5) *Conclusion on Senate Factors One and Three*

In sum, the majority of the evidence before the Court shows that Georgia has a long history of discrimination against Black voters. This history has persisted in the wake of the VRA and even into the present through various voting practices that disproportionately effect Black voters. Pendergrass Plaintiffs have provided concrete recent examples of the discriminatory impact of recent Georgia practices, some specifically in the challenged area of Illustrative CD-6.

Defendants have submitted some recent evidence of Georgia increasing the access and availability of voting. The evidence even shows that *overall* voter

turnout has increased in the most recent national election.<sup>56</sup> These efforts are commendable, and the Court is encouraged by these developments. In the Court’s view, however, it is insufficient rebuttal evidence. Thereby, *in toto*, the Court concludes that Georgia has a history – uncontrovertibly in the past, and extending into the present – of voting practices that disproportionately impact Black voters. Thus, Senate Factors One and Three, on the whole, weigh in favor of finding a Section 2 violation.

**c) Senate Factor Two: racial polarization**

The second Senate Factor assesses “the extent to which voting in the elections of the State or political subdivision is racially polarized.” Wright, 979 F.3d at 1305 (quoting LULAC, 548 U.S. at 426). As indicated in the Pendergrass Summary Judgment Order (Doc. No. [215], 97), polarization is a factor to be considered in the totality of circumstances inquiry, in addition to the second and third Gingles preconditions. Pursuant to persuasive authority, the

---

<sup>56</sup> As discussed in greater detail, *infra*, Black voter turnout rate decreased by 15 points from the 2020 election cycle to the 2022 election cycle and recorded the lowest voter turnout rate in a decade. See Section II(D)(4)(e)(1) *infra*.

Court finds that when a Defendant has raised a race-neutral reason for the polarization, the Court must look beyond the straight empirical conclusions of polarization. See Nipper, 39 F.3d at 1524 (plurality opinion) (finding that Defendants may rebut evidence of polarization by showing racial bias is based on nonracial circumstances); Uno v. City of Holyoke, 72 F.3d 973, 983 (1st Cir. 1995) (stating that an inference of racial polarization “will endure *unless* and *until* the defendant adduces credible evidence tending to prove the detected voting patterns can most logically be explained by factors unconnected to the intersection of race with the electoral system.”).

Defendants have consistently argued that partisanship is a race-neutral explanation for polarization of voters in Georgia. See, e.g., Tr. 2410:18–2411:14. In an intentional discrimination context, the Eleventh Circuit cautioned courts “against conflating discrimination on the basis of party affiliation on the basis of race . . . . [e]vidence of *race-based* discrimination is necessary to establish a constitutional violation.” League of Women Voters of Fla. Inc. v. Fla. Sec’y of State, 66 F.4th 905, 924 (11th Cir. 2023) (emphasis in original) (citing Brnovich, 141 S. Ct. at 2349). However, Chief Justice Roberts recently confirmed that a

Section 2 violation “occurs where an ‘electoral structure operates to minimize or cancel out’ minority voters’ ‘ability to elect their preferred candidates.’ Such as risk is greatest ‘where minority and majority voters consistently prefer different candidates’ and where minority voters are submerged in a majority voting population that ‘regularly defeat[s]’ their choices.” Allen, 599 U.S. at 1, 17–18.

The Court acknowledges that whether voter polarization is on account of partisanship and race is a difficult issue to disentangle. During an extended colloquy with the Court, Dr. Alford testified that “voting behavior is complicated” and that in his view democracy is about “voting for a person that follows their philosophy or they think is going to respond to their needs.” Tr. 2182:4–5; 2183:4–8. He went on to clarify that party identity and affiliation is exceptionally strong this country and starts at a young age. Tr. 2183:8–2184:6.

Dr. Alford concluded that, from the empirical evidence presented by Pendergrass Plaintiffs, one cannot causally determine whether the data is best explained by party affiliation or racial polarization. He specifically testified that:

[T]he kind of data that we use here, which is, you know ecological and highly abstract data, cannot demonstrate cohesion in sort of its natural form.

Much of the work on things like individual-level surveys, exit polls, et cetera, also make it very difficult in a non-experimental setting to demonstrate causation. It really takes an experimental setting. So there is some work done in experimental settings, but this is not an area of inquiry that is—scientific causation in the social sciences is very difficult to establish. This is not an area where there has been any work that’s established that.

Tr. 2226:7–18.

The Court is not in a position to resolve the global question of what causes voter behavior. Such question is empirically driven, and one in which the expert political scientists and statisticians did not agree. The Court can, however, assess the *evidence* of polarization presented at trial. In doing so, the Court determines that the Pendergrass Plaintiffs shown sufficient evidence of racial polarization in Georgia voting.

The Pendergrass Plaintiffs present Dr. Palmer’s report, indicating strong evidence of racial polarization in voting. PX 2; see also Section II(C)(2)–(3) *supra*. Plaintiffs also offered testimony about the strong connection between race and partisanship as it currently exists in Georgia. Tr. 424:5–8 (affirming that “race and party cannot be separated for the purpose of [Dr. Palmer’s] racial polarization analysis”); 1460:11–15 (“[O]ne party is highly supporting . . . issues that are most

important to minorities, particularly African Americans. And another party is not getting a good grade on how they're voting for them."); PX 4, 74 (indicating the "opposing positions that member's of Georgia's Democratic and Republican parties take on issues inexplicably linked to race.").

Defendants also argued that there must be evidence that voter's change their behavior based on the candidate to show that the polarization is race-based. Tr. 2409:25–2410:9. The Court finds that this is not a necessary precondition to determining whether voting is polarized on account of race. Race of a candidate is not dispositive for a polarization inquiry. DeGrandy, 512 U.S. at 1027 ("The assumption that majority-minority districts elect only minority representatives, or that majority-white districts elect only white representatives, is false as an empirical matter. And on a more fundamental level, the assumption reflects the demeaning notion that members of the defined racial groups ascribe to certain minority views that must be different from those of other citizens." (citation omitted)). The Court, however, finds that an assessment of the success of Black candidates in reference to different percentages of white voters, is good evidence that partisanship is not the best logical explanation of racial voting patterns in

Georgia. Cf. Johnson v. Hamrick, 196 F.3d 1216, 1221–22 (11th Cir. 1999) (“We do not mean to imply that district courts *should* give elections involving [B]lack candidates more weight; rather, we merely note that in light of existing case law district courts may do so without committing clear error.”).

Assuming *arguendo* that evidence of voter behavior in relation to the race of the candidate were required, Pendergrass Plaintiffs have provided evidence showing racial polarization based on the race of the candidate. Pendergrass Plaintiffs offer the expert opinions and testimony of Dr. Burton, who assessed the success of Black candidates in the light of the percentage of white voters in the district.

The following chart showcases his findings:

Winning Candidates in 2020 in Georgia House of Representatives

Percentage white registered voters in district	White Republicans <sup>197</sup>	Black Democrats	White Democrats
Under 40%	0	48	7
40–46.2%	1	3	2
46.2–54.9	11	1	6
55–62.4%	23	0	5
Over 62.4%	68	0	0

Winning Candidates in 2020 in Georgia State Senate

Percentage white registered voters in district	White Republicans	Black Democrats	White Democrats
Under 47%	0	16	1
47–54.9%	3	0	3
Over 55%	51	0	0

PX 4, 56 (footnote content omitted).

There is a meaningful difference in Black candidate success depending on the percentage of white voters in a district. When the white voter percentage is lowest, Black Democratic candidates have the most success. However, as the percentage of white voters increases, Black elected officials decreased. Id. And, when the white voter percentage reaches 47% (for the State Senate) or 55% (for



the State House) of the electorate no Black candidates are elected, even though white Democrats do achieve some success. PX 4, 56. These findings are consistent with Dr. Palmer’s un rebutted findings about the challenged districts: Black voters voted for the same candidate, on average, 98.4% of the time and white voters voted for a different candidate, on average, 87.6% of the time. Stip. ¶ 223.

In contrast to Pendergrass Plaintiffs’ evidence, Defendants’ expert, Dr. Alford, rendered only descriptive conclusions based on Dr. Palmer’s data set and, most importantly, did not offer additional support for a conclusion that voter behavior was caused by partisanship rather than race. DX 8. To be sure, Defendants did not offer any further evidence—quantitative or qualitative—in support of their theory that partisanship, not race, is controlling voting patterns in Georgia.

While the Court acknowledges that the Black preferred candidate was the Democrat in all elections reviewed, the Court also finds that there is not sufficient evidence to show that Black people myopically vote for the Democrat candidate. The Court specifically asked Dr. Alford, “[a]re you saying that whites folks will vote for Republicans just because they’re Republicans, and Blacks folks will vote

for Democrats just because they're Democrat?" Tr. 2180:23-25. Dr. Alford responded by answering, "I've spent a lifetime trying to understand voting behavior and, I would never say something as simple as that. It's much more complicated than that." Tr. 2181:1-3. The Court agrees that it is too simple to find that partisanship is the moving force behind a Black voter's choice of candidate. The history provided to the Court shows the complicated history between the current Republican Party and Black citizens. See Tr. 1444:23-1448:21 (explaining the history of politics in Georgia, and nationwide, as it relates to race and partisan affiliation).

Finally, even Defendant's expert agreed that candidate choices and Black political alignment with the Democratic party is not just based on the party label.

The Court: So could it be said that voters are not necessarily voting for the party; they're voting for a person that follows their philosophy or they think is going to respond to their needs?

[Dr. Alford]: That's -- with my view, that's what democracy is about. That's what's going on. It is the case that in the United States, unlike in most other democracies, party identity is also really important, that we identify with a party.

Tr. 2183:4–12. Given all the evidence before the Court, the Court finds that there is significant evidence that “minority and majority voters consistently prefer different candidates”, and because “minority voters are submerged into a majority voting population that ‘regularly defeat[s]’ their choice,” Georgia’s “electoral structure operates to minimize or cancel out’ [Black] voters’ ‘ability to elect their preferred candidates.’” Allen, 559 U.S. at 17–18.

In light of the foregoing evidence, the Court finds that Senate Factor Two weighs heavily in favor of finding a Section 2 violation.

**d) Senate Factor Five:<sup>57</sup> socioeconomic disparities**

Senate Factor Five considers socioeconomic disparities between Black and white voters and these disparities’ impact on Black voter participation. The Eleventh Circuit recognized in binding precedent that “disproportionate educational, employment, income level, and living conditions arising from past discrimination tend to depress minority political participation.” Wright, 979 F.3d

---

<sup>57</sup> Senate Factor 4—a history of candidate slating for congressional elections—is not at issue because Georgia’s congressional elections do not use a slating process. Doc. No. [173-1], 32; see also Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1317.

at 1294 (quoting United States v. Marengo Cnty. Comm’n, 731 F.2d 1546, 1568 (1984)). “Where these conditions are shown, and where the level of [B]lack participation is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation.” Id. (quoting Marengo Cnty., 731 F.2d at 1568-69); United States v. Dallas Cnty. Comm’n, 739 F.2d 1529, 1537 (11th Cir. 1984) (“Once lower socio-economic status of [B]lacks has been shown, there is no need to show the causal link of this lower status on political participation.”)).

**(1) *Black voter participation***

The Court finds that, as a quantitative matter, Black voters participate less than white voters in Georgia’s elections. Pendergrass Plaintiffs’ expert, Dr. Collingwood, in evaluating Black and white voter turnout used the data from the Secretary of State’s website, which records the actual number of registrations and votes cast by racial group. Tr. 684:2–10.

Dr. Collingwood’s data shows that in the 2022 election cycle Black voters had a 45% turnout rate and white voters had a 58.3% turnout rate—a 13.3% gap. PX 6, 8. The 2020 election recorded similar results, where Black voter turnout was

60% and white voter turnout was 72.6%, a 12.6% difference. Id. By contrast in 2018 Black voter turnout was 53.9% and white voter turnout was 62.2%, which is only a 8.3% difference and 2012, which recorded the smallest gap, Black voters turned out at 72.6% and white voters turned out at 75.7%. Id. Using the precinct specific data, in 2020 white voters had a higher turnout in 79.2% of precincts and in 2022 that increased to 81.0%. PX 6, 14. Based on this data, Dr. Collingwood concluded that overall Black voter turnout has decreased over the last 6–8 years. Id.; Tr. 684:23–25.

Specifically, in the challenged district, Dr. Collingwood found that in the 2020 election, the percentage of Black voter turnout did not exceed the percentage of white voter turnout in any county.<sup>58</sup> In the counties affected most by the Illustrative Congressional Plan (Cobb, Fulton, Douglas, and Fayette), the percentage of white voter turnout exceeded the percentage of Black voter turnout. Id.; PX 6, 16.

---

<sup>58</sup> In 2022 the percentage of Black voter turnout slightly exceeded white turnout in Clayton, Henry, and Rockdale counties. PX 6, 16.

In addition to voter turnout rates, Dr. Collingwood provided statistical evidence that white voters had higher participation rates in the political process outside of casting a ballot more than Black voters. White voters had higher participation than Black voters in attending local political meeting (5.92% of white voters, 3.51% Black voters); putting up political signs (17.95% white voters, 6.46% Black voters), working for a candidate's campaign (3.65% white voters, 1.84% Black voters); contacting a public official (21.01% white voters, 8.84% Black voters), and donating money to political campaigns (24.36% white voters, 13.63% Black voters). PX 6, 36-37, tbls. 4-6, 8, 9; Tr. 700:6-701:20, 702:8-24. Some of these metrics present relatively comparable white voter participation and Black voter participation (i.e., attending local political meetings, working for political campaigns). Dr. Collingwood testified that under ordinary methods, these close percentages still are statistically significant.<sup>59</sup> Tr. 700:11-15. The Court credits Dr. Collingwood's conclusions and finds that white voters tend to engage more with the political process than Black voters across various metrics.

---

<sup>59</sup> Defendants did not rebut these findings regarding Black voter participation in the political process.

Defendants did not put forth rebuttal evidence contesting that Black voter participation in the political process was lower than white voters. Defendants also did not challenge or rebut the accuracy of Dr. Collingwood’s findings on voter turnout, but rather questioned whether they were sufficient to prove lower percentages of Black voter participation. Tr. 695:5–13; 700:6–704:10. Defendants argue that voter turnout depends on voter mobilization, which can be explained largely by the candidates on the ballot. See Tr. at 694:9–696:13. At the trial, Defendants questioned Dr. Collingwood about the significance of particular Black candidates appearing on the ballot—i.e., President Obama in 2012 and Stacy Abrams in 2018. Tr. 695:5–21. Dr. Collingwood agreed that the particular candidate on the ballot could have some effect. Tr. 695:5–21.

The Court understands Defendants argument to be that voter turnout is not suppressed because Black voters are actively *choosing not* to vote, unless an “exciting” candidate is running for office. To prove this point, Defendants cited to discrete elections of Black candidates where voter turnout was high for both

Black and white voters.<sup>60</sup> However, Defendants provide no empirical evidence to support this conclusion; rather, the only evidence on this point is a hypothetical question asked to Pendergrass Plaintiffs' expert. The Court is not persuaded by this argument.

Even assuming that Defendants' theory of voter mobilization could be a valid legal argument rebutting statistical evidence of suppressed Black voter turnout, Defendants submitted little-to-no evidence connecting lower Black voter turnout to a lack of motivation to vote. Some nonempirical testimonial evidence on cross examination that the candidates on a ballot impact voter turnout is insufficient to rebut the expert statistical evidence presented by Pendergrass Plaintiffs that Black voter turnout is, on the whole and across elections,

---

<sup>60</sup> To the extent that Defendants rely on the 2012 presidential election and the 2018 gubernatorial election because of the race of the candidate, the Court determines that the whole of the evidence does not support that the race of the candidate explains voter turnout. Specifically, in 2020, where the disparity in voter turnout was 12.6%, Senator Warnock was running for the U.S. Senate and became the first Black Senator in Georgia's history. Jud. Not., 11. Similarly, in 2022, where the disparity in voter turnout was 13.3%, Stacey Abrams ran for Governor and Senator Warnock ran against Herschel Walker for U.S. Senate. *Id.* In both of the 2020 election contests, Black candidates were at the top of the ballot, like in the 2012 and the 2018 elections, but turnout gap was greater than in the preceding election.



disproportionately lower than white voter turnout, and that Black voters participate less in the political process than white voters. Thus, the Court concludes that Pendergrass Plaintiffs submitted evidence that Black Georgians participate in the political process, both generally and in voter turnout, less than white voters.

(2) *Socio-economic disparities*

The Court also concludes that there is sufficient evidence in the Record to show disproportionate educational, employment, income level, and living conditions arising from past discrimination. Census estimates provide: the unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%); white households are twice as likely as Black households to report an annual income above \$100,000; Black Georgians are more than twice as likely – and Black children, in particular, are more than three times as likely – to live below the poverty line; Black Georgians are nearly three times more likely than white Georgians to receive SNAP benefits; Black adults are more likely than white adults to lack a high school diploma (13.3% as compared to 9.4%); 35% of white Georgians over the age of 25 have obtained a bachelor's degree or higher,

compared to only 24% of Black Georgians over the age of 25. PX 6, 4 & tbl.1; Stip. ¶ 342–347. Additionally, Black Georgians are more likely to report a disability than white Georgians (11.8% compared to 10.9%) and are more likely to lack health insurance (18.9% compared to 14.2%, among 19-to-64-year-olds). PX 6 at 4. Defendant did not meaningfully contest this evidence. Thereby, the Court concludes that this evidence is more than sufficient to show socioeconomic disparities exist between Black and white Georgians.

**(3) Conclusion on Senate Factor Five**

Under binding precedent, Pendergrass Plaintiffs have proven that rates of Black voter political participation are depressed as compared to white voters participation. The aforementioned evidence also shows that Black Georgians suffer from significant socioeconomic disparities, including educational attainment, unemployment rates, income levels, and healthcare access. When both of these showings have been made, the law does not require a causal link be proven between the socioeconomic status and Black voter participation. Wright,

979 F.3d at 1294 (citing Marengo Cnty. Comm’n, 731 F.2d at 1568).<sup>61</sup> Accordingly, the Court concludes that the socioeconomic evidence and the lower rates of Black voter participation support a finding that Senate Factor Five weighs heavily in favor of a Section 2 violation.

e) **Senate Factor Six: racial appeals in Georgia’s political campaigns**

Senate Factor Six “asks whether political campaigns in the area are characterized by subtle or overt racial appeals.” Wright, 979 F.3d at 1296 (quoting Gingles, 478 U.S. at 45). Courts have continually affirmed district courts’ findings of “overt and blatant” as well as “subtle and furtive” racial appeals. Gingles, 478 U.S. at 40; see also Allen, 599 U.S. at 22–23. However, in the Alabama district court proceedings, which preceded the Allen appeal, the trial court had assigned less weight to the evidence of racial appeals because the plaintiffs had only shown three examples of racial appeals in recent campaigns, but did not submit

---

<sup>61</sup> While not required as a matter of law, as a matter of social science, Dr. Collingwood’s report indicates that the academic literature “demonstrates a strong and consistent link between socioeconomic status [ ] and voter turnout.” PX 6, 7. He describes this link in terms of resources causally driving behavior. Id. At trial, Dr. Collingwood also testified to the same. Tr. 688:15–689:3.

“any systematic or statistical evaluation of the extent to which political campaigns are *characterized* by racial appeals” and thus the court could not evaluate if these appeals “occur frequently, regularly, occasionally, or rarely.” Singleton, 582 F. Supp. 3d at 1024.

Similarly here, the Court finds that there is evidence of isolated racial appeals in recent Georgia statewide campaigns.<sup>62</sup> However, there is no evidence for the Court to determine if these appeals *characterize* political campaigns in Georgia. Thus, while Pendergrass Plaintiffs submitted at least six instances<sup>63</sup> in

---

<sup>62</sup> None of the evidence of racial appeals occurred in congressional races.

<sup>63</sup> Pendergrass Plaintiffs have provided evidence of six racial appeals used in recent Georgia elections across the past few election cycles:

In the 2018 gubernatorial election, then-Secretary of State Kemp, (now twice-elected Governor) used a social media campaign to associate Stacey Abrams with the Black Panther Party and ran a commercial advertisement where he discussed rounding up illegal immigrants in his pickup truck. PX 4, 67; Tr. 1364:12–16.

In the 2020 U.S. Senatorial election, then-Senator Kelly Loeffler ran an ad against “a dangerous Raphael Warnock,” whose skin had been darkened, and who was also associated with communism, protests, and civil unrest. Tr. 1193:19–1195:5; APAX 31; APAX 2, 39.

In 2022, during the senatorial race between Senator Warnock and Herschel Walker, Mr. Walker ran an advertisement that aimed to distinguish “between the Black candidate and himself” as the Republican candidate, in order to “associate himself with

recent elections where racial appeals were invoked – which is some evidence of political campaigns being characterized by racial appeals – the Court cannot meaningfully evaluate whether these appeals “occur frequently, regularly, occasionally, or rarely” and thereby does not afford great weight to this factor. Singleton, 582 F. Supp. 3d at 1024.

**f) Senate Factor Seven: minority candidate success**

Senate Factor Seven “focuses on ‘the extent to which members of the minority group have been elected to public office in the jurisdiction.’” Wright, 979 F.3d at 1295 (quoting LULAC, 548 U.S. at 426). Unlike the second and third Gingles preconditions, the Court now must specifically look at the success of *Black* candidates, not just the success of Black preferred candidates. Assessing the

---

the white voter [and] mak[e] the Black candidate look menacing and problematic . . . .” Tr. 1198:1–1199:10; APAX 2, 43–44.

Also in 2022, in the Republican primary for governor, former Senator David Purdue stated in an interview, that Abrams was “demeaning her own race” and should “go back where she came from.” PX 4, 70 (citing Ewan Palmer, “David Perdue Doubles Down on ‘Racist’ Stacey Abrams Remarks in TV Interview,” *Newsweek*, (May 24, 2022), <https://www.newsweek.com/david-perdue-racist-stacey-abrams-go-back-georgia-1709429>). Later, in the general gubernatorial election, Governor Kemp darkened Abrams’s face in ads and repeatedly attacked Abrams in the general election as “upset and mad,” evoking the trope and dog whistle of the “angry Black Woman.” PX 4, 70.

results of Georgia's recent elections, the Court finds that Black candidates have achieved little success, particularly in majority-white districts.

As a population, Black Georgians have historically been and continue to be underrepresented by Black elected officials across Georgia's statewide offices. Georgia has never elected a Black governor (Stip. ¶ 349) and Black candidates have otherwise only had isolated success in statewide partisan elections in the last 30-years. Specifically, in 2000, David Burgess was elected Public Service Commissioner, in 2002 and 2006 Mike Thurmond was elected to Labor Commissioner, and in 1998, 2002, and 2006 Thurbert Baker was elected Georgia Attorney General.<sup>64</sup> Stip. ¶361. Most recently, after 230 years of exclusively white Senators, Senator Raphael Warnock was twice elected to U.S. Senate and in his most recent election he defeated a Black candidate. Jud. Not., 11. Finally, nine

---

<sup>64</sup> The Court takes judicial notice of the elections that each candidate successfully won. See Scott v. Garlock, 2:18-cv-981-WKW-WC, 2019 WL 4200400, at \*3 n. 4 (M.D. Ala. July 31, 2019) (taking judicial notice of the publicly filed election results).

Black individuals have been elected to statewide nonpartisan office in Georgia.<sup>65</sup>

Stip. ¶ 362.

In Georgia's congressional elections, only 12 Black candidates have ever been elected to the Congress. Tr. 1201:1-5. Five Black individuals serve in the United States House of Representatives from Georgia's current congressional districts. Stip. ¶ 359. Four of these Black congresspersons are elected in majority-Black districts. PX 1, K-1. The other Black Representative, Congresswoman Lucy

---

<sup>65</sup> The Court takes judicial notice of the following election results. Justice Robert Benham was elected to Georgia Court of Appeals in 1984 and was re-elected to the Georgia Supreme Court Justice five times following his 1989 appointment until his 2020 retirement. Justice Leah Ward-Sears was re-elected to the Georgia Supreme Court after her appointment in 1992 and served until her retirement in 2009. Justice Harold Melton was re-elected to the Georgia Supreme Court following his appointment in 2005 and served until his retirement in 2021. Justice Verda Colvin was appointed to the Georgia Supreme Court in 2021 and was re-elected in 2022. Judge John Ruffin was re-elected to the Georgia Court of Appeals following his appointment in 1994 and served until his retirement in 2008. Judge Clarence Cooper served as a judge on the Georgia Court of Appeals from 1990 until 1994 when he was appointed to the Northern District of Georgia. Judge Herbert Phipps was appointed to the Georgia Court of Appeals in 1999 and was re-elected twice before his retirement in 2016. Judge Yvette Miller was appointed to the Georgia Court of Appeal is 1999, has been re-elected since and continues to serve in this role. Judge Clyde Reese was appointed to the Georgia Court of Appeals in 2016 and was re-elected in 2018, where he served until his death in 2022.

McBath, represents Congressional District 7, which is a majority-minority district where the white voting age population is 32.78%.<sup>66</sup> PX 1, Ex. G.

In State legislative districts, the Georgia Legislative Black Caucus has only 14 members in the Georgia State Senate (25%) and 41 members in the Georgia House of Representatives (less than 23%).<sup>67</sup> Stip. ¶ 348. As shown Section II(C)(4)(f) *supra*, Pendergrass Plaintiffs' expert, Dr. Burton, submits a chart showing that in the 2020 and 2022 legislative elections, Black candidates had little-to-no success when they did not make up the majority of a district.<sup>68</sup> Specifically, Black candidates in the 2020 legislative elections did not have any success when they did not make up at least 45.1% of a House District or 53.8% of a Senate District.

---

<sup>66</sup> Congresswoman McBath first defeated white candidate Karen Handel in the 2018 Congressional District 6 election, in a district that had a white voting age population of 58.11%. Jud. Not., pp. 9–11; Stip. ¶ 167; PX 1, 64, Ex. F.

<sup>67</sup> The Enacted Senate Plan contains 14 majority-Black districts. Stip. ¶ 186; APAX 1, M-1. The Enacted House Plan contains 49 majority-Black districts. Stip. ¶¶ 183, 186, APAX 1, Z-1.

<sup>68</sup> The Court notes that Erick Allen was elected to Georgia House District 40 in 2018 and re-elected in 2020. Tr. 1012:2–12. House district 40 was not a majority-Black district in 2018 or 2020. Id.



Winning Candidates in 2020 in Georgia House of Representatives

Percentage white registered voters in district	White Republicans <sup>197</sup>	Black Democrats	White Democrats
Under 40%	0	48	7
40–46.2%	1	3	2
46.2–54.9	11	1	6
55–62.4%	23	0	5
Over 62.4%	68	0	0

Winning Candidates in 2020 in Georgia State Senate

Percentage white registered voters in district	White Republicans	Black Democrats	White Democrats
Under 47%	0	16	1
47–54.9%	3	0	3
Over 55%	51	0	0

PX 4, 56.

Although the Court finds that Black candidates have achieved some success in statewide elections following 2000, the Court nonetheless finds that this factor weighs heavily in favor of Pendergrass Plaintiffs. The Supreme Court in Gingles, when discussing the success of a select few Black candidates, cautioned courts in conflating the success of few as dispositive. Gingles, 478 U.S.

at 76 (“Nothing in the statute or its legislative history prohibited the court from viewing with some caution black candidates’ success in the 1982 election, and from deciding on the basis of all the relevant circumstances to accord greater weight to blacks’ relative lack of success over the course of several recent elections.”).

In short, since Reconstruction, Georgia has only elected *four* Black candidates in statewide partisan elections: Mike Thurmond, Thurbert Baker, David Burgess, and Raphael Warnock. Stip. ¶ 361. For statewide non-partisan elections, Georgia has elected nine successful Black candidates: Robert Benham, Leah Ward-Sears, Harold Melton, Verda Colvin, John Ruffin, Clarence Cooper, Herbert Phipps, Yvette Miller, Clyde Reese. Stip. ¶ 362. Georgia has sent twelve successful Black candidates to the U.S. House of Representatives. Tr. 1201:1–5. Currently, the Georgia Legislative Black Caucus has 55 members in the Georgia General Assembly (of 236 total members). Stip. ¶ 348.

The Court concludes that these isolated successes of Black candidates show that the Black population is underrepresented in Georgia’s statewide elected offices. This conclusion is even stronger in majority-white districts.

To be sure, Dr. Burton acknowledged, that some academic scholarship indicates “the future electoral prospects of African American statewide nominees in growth states such as Georgia are indeed promising.” Tr. 1470:2–24. The Court is likewise hopeful about the prospects of increased enfranchisement of all voters and for the potential success of minority candidates in Georgia. However, Dr. Burton also emphasized that, specifically in Georgia, dating back to Reconstruction, “when these things happen, then you get more legislation from whichever party is in power that works to sort of disenfranchise or at least dilute or make the vote count less.” Tr. 1470:12–24. The optimism about Georgia’s future elections does not rebut the contrary evidence of the present lack of success of Black candidates; accordingly, the Court finds that Senate Factor Seven weighs heavily in favor of finding a Section 2 violation.

**g) Senate Factor Eight: responsiveness to Black residents**

Senate Factor Eight considers whether elected officials are responsive to the particularized needs of Black voters. A lack of responsiveness is “evidence that minorities have insufficient political influence to ensure that their desires are considered by those in power.” Marengo Cnty. Comm’n, 731 F.2d at 1572. The

Eleventh Circuit noted that “although a showing of unresponsiveness might have some probative value a showing of responsiveness would have very little.” Id. Pendergrass Plaintiffs’ expert, Dr. Collingwood, discussed the existence of significant socioeconomic disparities between Black and white Georgians, which he concluded contributed to the lower rates at which Blacks engage their elected representatives. PX 5, 34, 37. He further explained, “such clear disadvantages in healthcare, economics, and education” demonstrates that “the political system is relatively unresponsive to Black Georgians.” Id. at 4; see also id. at 7 (“If the [political] system did respond, we would expect to see fewer gaps in both health and economic indicators and a reduction in voter turnout gaps.”); Tr. 675:14–24. Dr. Collingwood also testified that lower Black voter turnout “typically means that elected officials as a whole are going to be less responsive to you” and thus perpetuates “these same gaps [i]n [] economic, health, [and] educational outcomes.” Tr. 690:2–20.

The Court finds that the arguments regarding socioeconomic disparities are not particularly helpful in determining whether Georgia’s elected officials are responsive to Black Georgians. At the trial, a number of Pendergrass Plaintiffs’

lay witnesses testified about socioeconomic issues affecting Black voters, but also admitted that these issues are not exclusive to the Black population. Tr. 657:23–658:4; 1014:16–1015:4, 1016:1–8, 1016:18–24, 1016:25–1017:8; 639:24–640:25.

Ultimately, there is an absence of evidence regarding the level of responsiveness of Georgia’s elected representatives to Black voters and white voters. Due to the lack of evidence, the Court finds that Senate Factor Eight does not weigh in favor of finding a Section 2 violation. See Greater Birmingham Ministries, 992 F.3d at 1334 (finding that failure to consider amendments to a particular piece of legislation does not show that legislatures were unresponsive to the needs of minority voters).

**h) Senate Factor Nine: justification for the Enacted Congressional Plan**

The Court considers Defendants’ justification for the Enacted Congressional Plan and finds that this factor weighs in favor of Defendants and thus weights against finding a Section 2 violation. The “final Senate Factor considers whether the policy underlying Georgia’s use of the voting standard, practice, or procedure at issue is ‘tenuous.’” Rose v. Raffensperger, 619 F. Supp. 3d 1241, 1267 (N.D.2022) (quoting Senate Report at 29, 1982 USCCAN 207).

“Under our cases, the States retain a flexibility that federal courts enforcing § 2 lack . . . deference is due to their reasonable fears of, and to their reasonable efforts to avoid, § 2 liability.” Vera, 517 U.S. at 978.

At the trial, Ms. Wright testified that the Enacted Congressional Plan began with the creation of a blank map that largely balanced population that then could be modified based on input from legislators. Tr. 1665:2–1666:14. Ms. Wright also relied on information obtained from the public hearings on redistricting. Tr. 1668:24–1670:5. Political performance was an important consideration in the design of the Enacted Congressional Plan. Tr. 1668:20–23. In Enacted CD-6 specifically, Ms. Wright emphasized and explained that the four-way split of Cobb Count was because Cobb County was better able to handle a split of a congressional district than a smaller nearby county. Tr. 1671:5–1672:4. She further testified that the inclusion of parts of west Cobb County in Enacted CD-14 was because of population and political considerations, namely putting a democratic area into District 14 instead of District 11 (which was more political competitive). Tr. 1673:6–1674:2.

The Court finds that Defendants' evidence that the Enacted Congressional Plan was drawn to further partisan goals is a sufficient, non-tenuous justification for this Senate Factor. The Supreme Court has held that partisan gerrymandering is outside of the reach of the federal courts and "[f]ederal judges have no license to reallocate political power between the two major political parties, with no plausible Grant of authority in the Constitution, and no legal standards to limit and direct their decisions." Rucho v. Common Cause, 588 U.S. ----, 139 S. Ct. 2484, 2507 (2019). Accordingly, the Court finds that Defendants' justification, supported by Ms. Wright's testimony, that the General Assembly drew the congressional plan to capitalize on a partisan advantage is sufficient for Senate Factor Nine to not weigh in favor of a Section 2 violation.<sup>69</sup>

**i) Proportionality**

Finally, Defendants argued that Georgia's Black congressional delegation is proportional to Georgia's Black voting age population, which shows that

---

<sup>69</sup> Consistent with the operative legal standards, this factor must be accorded less weight to Senate Factor Nine in a Section 2 case given that Section 2 is an effects test and that a legislatures' intent in drawing map is irrelevant.

Georgia’s political process is equally open to Black voters. Tr. 52:16–17; 2392:12–2393:1. However, De Grandy, the Supreme Court expressly rejected proportionality as a safe harbor for Section 2 violations. De Grandy, 512 U.S. at 1017–18 (“Proportionality . . . would thus be a safe harbor for any districting scheme. The safety would be in derogation of the statutory text and its considered purpose, however, and of the ideal that the Voting Right Act of 1965 attempts to foster.”). De Grandy did find, however, that proportionality is helpful in determining the “apparent[]” political effectiveness, based solely on an analysis of district makeups. Id. at 1014.

According to the 2020 Census population statistics,<sup>70</sup> under the Enacted Congressional Plan, four of Georgia’s U.S. House Congressional districts are

---

<sup>70</sup> The Parties have stipulated to the data for the 2021 Enacted Plan contained in Dr. Cooper’s report at Exhibit K-1. See PX 1, Exs. K-1. Exhibit K-1 reflects the 2020 Census population statistics. PX 1 ¶¶ 38, 62. The Court notes that under the various data sets, the number of majority-Black districts fluctuates between 2 and 4 districts. Using the NH DOJ CVAP and total AP Black numbers there are four majority-Black districts. PX 1, Exs. G, K-1. However, using the AP BVAP percentages only two districts are majority-Black CD-4 (54.52%), CD-13 (66.75%). PX 1, Ex. K-1. Enacted CD-2 has an AP BVAP of 49.29% and CD-5 has an AP BVAP of 49.60%. Id.



majority-Black districts, using the total AP Black population. (CD- 2, 4, 5, 13) (or 28.6% of the congressional districts<sup>71</sup>) and one additional majority-minority district (CD-7) (for, a total of 5 majority-minority districts, which is 35.7% of the

---

District	18+ Pop	18+ SR Black	% 18+ SR Black	18+ AP Black	% 18+ AP Black	18+ Latino	% 18+ Latino	18+ NH White	% 18+ NH White
001	589266	157770	26.77%	166025	28.17%	39938	6.78%	440636	57.59%
002	587555	281564	47.92%	289612	49.29%	30074	5.12%	305611	39.94%
003	586319	130099	22.19%	136708	23.32%	31274	5.33%	492494	64.37%
004	589470	308266	52.30%	321379	54.52%	59670	10.12%	197536	25.82%
005	621515	295885	47.61%	308271	49.60%	41432	6.67%	273819	35.79%
006	574797	50334	8.76%	56969	9.91%	52353	9.11%	487400	63.70%
007	566934	157650	27.81%	169071	29.82%	120604	21.27%	225905	29.52%
008	585857	170421	29.09%	175967	30.04%	35732	6.10%	443123	57.91%
009	592520	56416	9.52%	61747	10.42%	76361	12.89%	495078	64.70%
010	588874	126798	21.53%	133097	22.60%	38336	6.51%	486487	63.58%
011	595201	98212	16.50%	106811	17.95%	66802	11.22%	469264	61.33%
012	588119	207872	35.35%	215958	36.72%	28628	4.87%	398843	52.13%
013	574789	370024	64.38%	383663	66.75%	60467	10.52%	125106	16.35%
014	579058	77108	13.32%	82708	14.28%	61247	10.58%	520854	68.07%
Total	8220274	2488419	30.27%	2607986	31.73%	742918	9.04%	5362156	65.23%

PX 1, Ex. K-1.

The Parties have stipulated that the 2021 Enacted Plan contains 3 majority-Black congressional districts in the Atlanta MSA. Stip. ¶ 162. Enacted CD-2 is not in the MSA, but according to the Census data in the aforementioned exhibits, has an AP Black population that exceeds 50%. See PX 1, Ex. K-1 (showing CD-2 with an AP Black of 51.39%) & Ex. G (showing CD-2 with a non-Hispanic Black population of 49.03%). For purposes of this Order, the Court will use the total AP Black statistics for determining whether a district is majority-Black, because these are the statistics that were seemingly contemplated in the Parties' stipulations.

<sup>71</sup> 4/14 is approximately 28.6%.

congressional districts<sup>72</sup>). See PX 1, Ex. K-1 (reproduced below). Thus, under the Enacted Congressional Plan, 28.57% of Georgia's Congressional Districts are

**Georgia U.S. House -- 2020 Census -- Enacted Plan**

District	Population	Deviation	% Deviation	AP Black	% AP Black	Latino	% Latino	NH White	% NH White
001	765137	1	0.00%	230783	30.16%	59328	7.75%	440636	57.59%
002	765137	1	0.00%	393195	51.39%	45499	5.95%	305611	39.94%
003	765136	0	0.00%	188947	24.69%	48285	6.31%	492494	64.37%
004	765135	-1	0.00%	423763	55.38%	88947	11.63%	197536	25.82%
005	765137	1	0.00%	392822	51.34%	56496	7.38%	273819	35.79%
006	765136	0	0.00%	78871	10.31%	78299	10.23%	487400	63.70%
007	765137	1	0.00%	239717	31.33%	181851	23.77%	225905	29.52%
008	765136	0	0.00%	241628	31.58%	54850	7.17%	443123	57.91%
009	765137	1	0.00%	87130	11.39%	117758	15.39%	495078	64.70%
010	765135	-1	0.00%	184137	24.07%	58645	7.66%	486487	63.58%
011	765137	1	0.00%	143404	18.74%	99794	13.04%	469264	61.33%
012	765136	0	0.00%	294961	38.55%	43065	5.63%	398843	52.13%
013	765137	1	0.00%	520094	67.97%	93554	12.23%	125106	16.35%
014	765135	-1	0.00%	118694	15.51%	97086	12.69%	520854	68.07%
<b>Total</b>	<b>10711908</b>		<b>0.00%</b>	<b>3538146</b>	<b>33.03%</b>	<b>1123457</b>	<b>10.49%</b>	<b>5362156</b>	<b>50.06%</b>

majority-Black and 35.71% are majority-minority, and 64.29% are majority-white.

Id.

The Black voting age population in Georgia is 31.73%, total minority voting age population is 47.18%, and the white voting age population is 52.82%. PX 1

---

<sup>72</sup> 5/14 is approximately 35.7%. Conversely, with the added majority Black district in the Illustrative Congressional Plan, the proportion of majority-white districts drops to approximately 64.3% (i.e., 9 of 14 districts), which is closer to the proportion of the white population in Georgia (55.7%) (see PX 1 ¶ 18 & fig.2).

¶ 18, fig.2. Under the Enacted Congressional Plan, the only group that has representation that is equal to or exceeds their proportion of the State's population is white voters, who receive 64.29% of the districts, but only make up 55.7% of the electorate.

The Illustrative Congressional Plan, however, reaches near proportional representation. The addition of one majority-Black district brings the proportion of Black congressional districts to 35.7% (i.e., 5 of 14 congressional districts), which is close to the 33.3% AP Black voting age population in the State (PX 1 ¶ 18 & fig.2.). The additional Illustrative CD-6, moreover, brings the number of majority-minority congressional districts to 6, which is approximately 42.9% of the 14 congressional districts and close to the 44.3% of the total minority voting age population (PX 1 ¶ 18 & fig.2). And 57.14% of Georgia's congressional districts will be majority-white districts and close to the 52.82% of the total white voting age population. Id.

The Court understands that Defendants are arguing that the recent election of five Black Congresspersons to the U.S. House of Representatives (35.7% of Georgia's congressional delegation) is proportionate to the percentage of

Georgia's Black residents (33.03%); therefore, Georgia's political system is equally open to Black voters. As is clear from the text of Section 2, "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in their population." 52 U.S.C. § 10301(b). Furthermore, it is abundantly clear that it is reversible error for the District Court to attempt to maximize the number of majority-minority districts. DeGrandy, 512 U.S. at 1000; Miller, 515 U.S. at 926–27. However, the existence of near proportional representation or a remedy that results in proportional representation, in and of itself, is not reversible error because "proportionality is not dispositive." DeGrandy, 512 U.S. at 1000; see also Allen, 599 U.S. at 26–30, 42 (affirming three-judge court's finding of a Section 2 violation, even though the remedy would result in proportional representation). Having considered the evidence provided in support of and to rebut the Senate Factors and after conducting a "careful[] and searching review [of] the totality of the circumstances," the Court finds that Black voters do not have equal access to the political process in the challenged area. DeGrandy, 512 U.S. at 1026 (O'Connor, J., concurring).

The Supreme Court recently confirmed that:

what must be shown to prove a § 2 violation[,] [ ] requires consideration of the totality of circumstances in each case and demands proof that the political processes leading to nomination or election in the State or political subdivision are not *equally open* to participation by members of a protected class *in that its members have less opportunity* than other members of the electorate to participate in the political process and to elect representatives of their choice.

Brnovich, 141 S. Ct. at 2332 (cleaned up) (emphasis in original). The Court has reviewed all of the evidence before it, and even with Georgia’s election of five Black congresspersons, the Black voters in the area of the challenged congressional districts do not have an equal opportunity to participate. As Justice O’Connor opined, “the presence of proportionality [does not] prove the absence of dilution.” DeGrandy, 512 U.S. at 1026.

This past summer, the Supreme Court was again confronted with the question of proportionality. Allen, 599 U.S. at 26–30. In Justice Thomas’s dissent, he opined that it is error to use proportionality as a benchmark for a Section 2 violation.” Allen, 599 U.S. at 71–73 (Thomas, J., dissenting). Justice Kavanaugh specifically addressed this issue and explained that Gingles “does not mandate a

proportional number of majority-minority districts.” Allen, 559 U.S. at 43 (Kavanaugh, J., concurring). Rather, a Section 2 violation occurs only when (1) the redistricting maps split the minority community and (2) a reasonably configured district could be drawn in that area. Id. He concluded that “[i]f Gingles required proportional representation, then States would be forced to group together geographically dispersed minority communities in unusually shaped districts. Id. That is not the case here, as is evidenced above, Illustrative CD-6 is more compact on objective measures than Enacted CD-6, and the district is in a relatively small area of the State. See Section II(C)(1)(b)–(c) *supra*.

Consistent with DeGrandy, Brnovich, and Allen, the Court finds that if there is sufficient evidence of minority voter dilution under the totality of the circumstances, taking into consideration the Senate Factors, then proportionality cannot immunize the State from a Section 2 challenge. In other words, proportionality is neither a benchmark for plaintiffs, nor a safe harbor for States.

Accordingly, the Court finds that proportionality neither weighs in favor of Defendants, nor weighs against finding a Section 2 violation.<sup>73</sup>

j) **Demographic Changes**

Finally, the Court considers Georgia's demographic changes as part of its totality of the circumstances analysis. See Singleton, 582 F. Supp. 3d at 977. The greatest population growth since the last Decennial Census was in metro-Atlanta. PX 1 ¶ 25 & fig.4. More than half (53.27%) of the population increase in the counties included in Illustrative CD-6 results from the increased Black population. Id. ¶ 42 & fig.8. And, in all but Fulton County, the Black population accounts for most of the population changes. Id. The Enacted Congressional Plan does not account for the growth in the Black population in this area.

---

<sup>73</sup> Achieving proportional representation is not a factor to weigh against finding a Section 2 violation. De Grandy was evaluating proportionality under the Enacted Congressional Plan, not the remedial plan. Its statement that proportionality cannot prove a Section 2 case does not readily extend to say that achieving proportionality weighs *against* a Section 2 case. Id. at 1000. See Allen, 599 U.S at 26–30; see also id. at 71–73 (Kavanaugh, J., concurring).



**Figure 8**  
**Four-County Area: 2010 Census to 2020 Census Population and Black**  
**Population Changes**

	2020 Population	2020 Black Population	2010–2020 Population Change	2010–2020 Black Population Change	Black Population Change as Percentage of Total Change
Cobb	766,149	223,116	78,071	42,151	53.99%
Douglas	144,237	74,260	11,834	20,007	169.06%
Fayette	119,194	32,076	12,627	9,578	75.85%
Fulton	1,066,710	477,624	146,129	60,732	41.56%
<b>Total</b>	<b>2,096,290</b>	<b>807,076</b>	<b>248,661</b>	<b>132,468</b>	<b>53.27%</b>

PX 1 ¶ 42 & fig.8; Id. ¶ 43.

In Allen, the three-judge court noted that, over the past decade, the Black population grew by 6.53%, and the white population’s share of Alabama’s total population decreased by 3.92%. Singleton, 582 F. Supp. 3d at 977. The Black population’s growth in Georgia, as a whole, and in metro-Atlanta, specifically, is greater than the demographic changes in Alabama. In fact, during the same period, Georgia’s Black population grew by 15.84% and accounted for 5.00% percent of Georgia’s population growth, while the white population’s share of the State’s total population decreased by 5.82%. PX 1 ¶ 14 & fig.1. In metro-Atlanta alone, the Black population is responsible for 51.04% of Atlanta MSA’s



population growth, and their population share increased by 2.30%. PX 1 ¶ 30 & fig.5. Conversely, the white population in the Atlanta MSA decreased by 2.83%, their share of the population decreased by 7.08%. Id. Meaning, that the demographic shifts in Georgia – as a whole and in the area where the proposed majority-minority district is located – are greater than those in Alabama, where a Section 2 violation was found and affirmed.

Despite the growth in the Black population in the affected areas and the voter polarization between white and Black Georgians, see Section II(C)(2)(4)(c) *supra*, the Enacted Congressional Plan did not increase the number of majority-Black districts in the Atlanta metro area. By failing to do so, the Enacted Congressional Plan in effect dilutes and diminishes the Black population's voting power in that area of the State. Accordingly, the Court finds that the population changes in metro-Atlanta weigh heavily in favor of finding a Section 2 violation.

### *5. Conclusions of Law*

The Court finds that the Pendergrass Plaintiffs have met their burden in establishing that (1) the Black community in the west-metro Atlanta metro area is sufficiently numerous and compact to constitute an additional majority-Black

district; (2) the Black community is politically cohesive; and (3) that the white majority votes as a bloc to typically defeat the Black-preferred candidate. The Court also finds that in evaluating the totality of the circumstances, Georgia's electoral system is not equally open to Black voters. Specifically, the Court finds that Senate Factors One, Two, Three, Five, and Seven weigh in favor of showing the present realities of lack of opportunity for Black voters. The Court also finds that Senate Factor Six weighs slightly in favor finding a Section 2 violations. Additionally, the growth of Georgia's Black population in metro-Atlanta while the white population decreased weighs in favor of a Section 2 violation.

Only Senate Factors Four, Eight<sup>74</sup> and Nine do not weigh in favor of finding a Section 2 violation. The Court also finds that proportionality does not weigh against finding a Section 2 violation.

In sum, the Court finds that the majority of the totality of the circumstances' evidence weighs in favor of finding a Section 2 violation. Because Pendergrass

---

<sup>74</sup> The Eleventh Circuit found that Senate Factor Eight is given little weight. Marengo Cnty. Comm'n, 731 F.2d at 1572. And the Court gives less weight to Senate Factor Nine because this is not an intentional discrimination case.

Plaintiffs have carried their burden of proof on all of the legal requirements, the Court concludes that SB 2EX violates Section 2 of the Voting Rights Act.

**D. Legislative Districts**

The Court will now discuss the State legislative districts (i.e., State Senate and State House districts). First, the Court will discuss the first Gingles precondition for all illustrative legislative districts. This portion of the Section is divided into different regions of the State (i.e., metro Atlanta, eastern Black Belt, Macon-Bibb, and southwest Georgia). For the regions where both the Alpha Phi Alpha Plaintiffs and the Grant Plaintiffs challenged districts, the Court will first make its findings as to all of the Alpha Phi Alpha illustrative districts and will then make findings as to all of the Grant illustrative districts. For the illustrative districts that survive the first Gingles precondition, the Court will then evaluate them under the second and third Gingles preconditions (Alpha Phi Alpha first and then Grant). For the illustrative districts that survive all three Gingles precondition, the Court will then turn and evaluate whether the political process is equally open to Black voters in those areas (again, Alpha Phi Alpha first and Grant second).

**1. First Gingles Precondition**

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden in proving the first Gingles precondition in three of the proposed district in south-metro Atlanta (i.e., Cooper SD-17, SD-28, and HD-74). The Alpha Phi Alpha Plaintiffs have not met their burden in proving the first Gingles precondition in one of the House district in south-metro Atlanta, the districts in the Eastern Black Belt, in and around Macon-Bibb, or southwest Georgia (Cooper SD-23, HD-133, HD-117, HD-145, HD-171).

The Court finds that the Grant Plaintiffs have met their burden in proving the first Gingles precondition in the south-metro Atlanta Senate districts, two House districts in metro Atlanta, and two House districts in the Macon-Bibb region (i.e., Esselstyn SD-25, SD-28, HD-64, HD-117, HD-145, and HD-149). The Grant Plaintiffs have not met their burden in proving the first Gingles precondition as to the proposed district in the eastern Black Belt, or one proposed district in south-metro Atlanta (Esselstyn SD-23, HD-74).

**a) Racial predominance**

The Court begins its discussion of the illustrative districts by finding that race did not predominate in the drawing of either the Cooper or Esselstyn

Legislative Plans. In a Section 2 case “the question [of] whether additional majority-minority districts can be drawn . . . involves a ‘quintessentially race-conscious calculus.” Allen, 599 U.S. at 31 (plurality opinion) (quoting DeGrandy, 512 U.S. at 1020). “The line that [has] long since [been] drawn is between consciousness and predominance.” Id. at 33 (plurality opinion). Race does not predominate when a mapmaker “adhere[s] . . . to traditional redistricting criteria,” testifies that “race was not the predominate factor motivating his design process,” and explains that he never sought to “maximize the number of majority-minority” districts. Davis, 139 F.3d at 1426.

Both Mr. Cooper and Mr. Esselstyn testified at the trial and preliminary injunction that they were aware of race when drawing their illustrative legislative plans, but that race did not outweigh any of the other traditional redistricting principles. See Tr. 108:4–11 (Mr. Cooper testifying that he is “aware of [race], but it didn’t control how these districts were drawn); Tr. 522:5–14 (“I’m constantly looking at the shape of the district, what it does for population equality, . . . political subdivisions, communities of interest, incumbents, all that. So while yes, at time [race] would have been used to inform a decision, it was one

of a number of factors.”); Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1244 (crediting Mr. Cooper’s testimony that race did not predominate when he drew his illustrative maps); id. at 1245–46 (crediting Mr. Esselstyn’s testimony that race was but one factor he considered when drawing his illustrative maps). The Court again finds that Mr. Cooper and Esselstyn testified credibly that race did not predominate when they drew their illustrative legislative plans. Accordingly, the Court finds that race did not predominate in the creation of the Cooper Legislative Plan or the Esselstyn Legislative Plan.

The Court will now determine whether the Black community is sufficiently numerous and compact in each of the proposed legislative districts.

**b) Metro Atlanta region**

**(1) Alpha Phi Alpha**

**(a) numerosity**

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden in showing that the Black voting age population in metro Atlanta is large enough to create two additional majority-Black Senate districts and two majority-Black House districts in south-metro Atlanta. “[A] party asserting § 2 liability must

show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent.” Bartlett, 556 U.S. at 20.

It is undisputed that Cooper SD-17 and SD-28 have an AP BVAP of 62.55% and 51.32%, respectively, both of which exceed the 50% threshold required by Gingles. APAX 1, Ex. O-1. It is also undisputed that Cooper HD-74, and HD-117 have an AP BVAP of 61.49% and 54.64%, respectively. APAX 1, Ex. AA-1.

Based on these numbers, the Court finds that the Alpha Phi Alpha Plaintiffs have met their burden with respect to the numerosity prong of the first Gingles precondition in all additional majority-Black districts that Mr. Cooper proposed in metro Atlanta (i.e., SD-17, SD-28, HD-74, and HD-117).

**(b) Compactness**

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden to show that the minority community is sufficiently compact to warrant the creation of two additional majority-Black State Senate (Cooper SD-17 and SD-28) and one majority-Black House district (Cooper HD-74) in south-metro Atlanta.

The standards governing the compactness inquiry for these additional districts is the same as the compactness inquiry in the Pendergrass case. See

Section II(C)(1)(b) *supra*. The Court must consider if the illustrative proposed districts adhered to traditional redistricting principles, namely: population equality, contiguity, empirical compactness scores, the eyeball test for irregularities and contiguity, respecting political subdivisions, and uniting communities of interest. See id.

*i) Cooper SD-17*

The Court finds that Cooper SD-17 is reasonably compact. The Court notes that Cooper SD-17 is in the same area as Enacted SD-17. APAX 1 ¶ 104 (“a majority-Black Senate District 17 can be drawn in the vicinity of 2021 Senate District 17”).

**((a)) empirical measures**

**((1)) *population equality***

The Court finds that Cooper SD-17 is not malapportioned. See Reynolds v. Sims, 377 U.S. 533, 577 (1964) (requiring “an honest and good faith effort to construct districts . . . of nearly equal population as practicable.”); Brown v. Thomson, 462 U.S. 835, 842 (1983) (finding “minor deviations” do not violate the Fourteenth Amendment). The General Assembly’s “General Principles for Drafting Plans” specifies that “[e]ach legislative district . . . should be drawn to



achieve a total population that is substantially equal as practicable.” Stip. ¶ 135; JX 2, 2.

The ideal population size of a State Senate district is 191,284. Stip. ¶ 277. The General Assembly did not enumerate a specific deviation range that is acceptable for the State Senate districts. However, relying on the Enacted Senate Plan as a rough guide, an acceptable population deviation range is between -1.03% and +0.98% is acceptable. APAX 1, Ex. M-1. Cooper SD-17 has a population deviation of +0.002%, which is 35 people from perfect correlation. APAX 1, Ex. O-1. Cooper SD-17 achieves better population equality than Enacted SD-17, which has a population deviation of +0.67%. APAX 1, Ex. M-1. Thus, the Court finds that Cooper SD-17 achieves population equality that is consistent with the General Assembly’s Redistricting Guidelines and traditional redistricting principles.

***((2)) contiguity***

The Parties stipulated that Cooper SD-17 is a contiguous district. Stip. ¶ 300. Hence, the Court finds that Cooper SD-17 complies with the traditional redistricting principle of contiguity.

**((3)) compactness scores**

The Court finds that Cooper SD-17 is more compact than Enacted SD-17. In reaching this conclusion, the Court, as it did in the Pendergrass case, looks to the objective compactness scores of the Polsby-Popper and the Reock indicators.

Using the Reock measure, Cooper SD-17 is 0.37 compared with Enacted SD-17, which is 0.35. GX 1, Attach. H. As such, Cooper SD-17 is 0.02 points more compact under the Reock indicator. When using the Polsby-Popper measure, Cooper SD-17 is 0.17 as is the Enacted SD-17, i.e., the two districts have identical Polsby-Popper scores. Id. Hence, the Court finds that on the empirical compactness measures, Cooper SD-17 fares better than or is identical to Enacted SD-17. Accordingly, the Court finds that Cooper SD-17 is slightly more compact when compared to Enacted SD-17.

**((4)) political  
subdivisions**

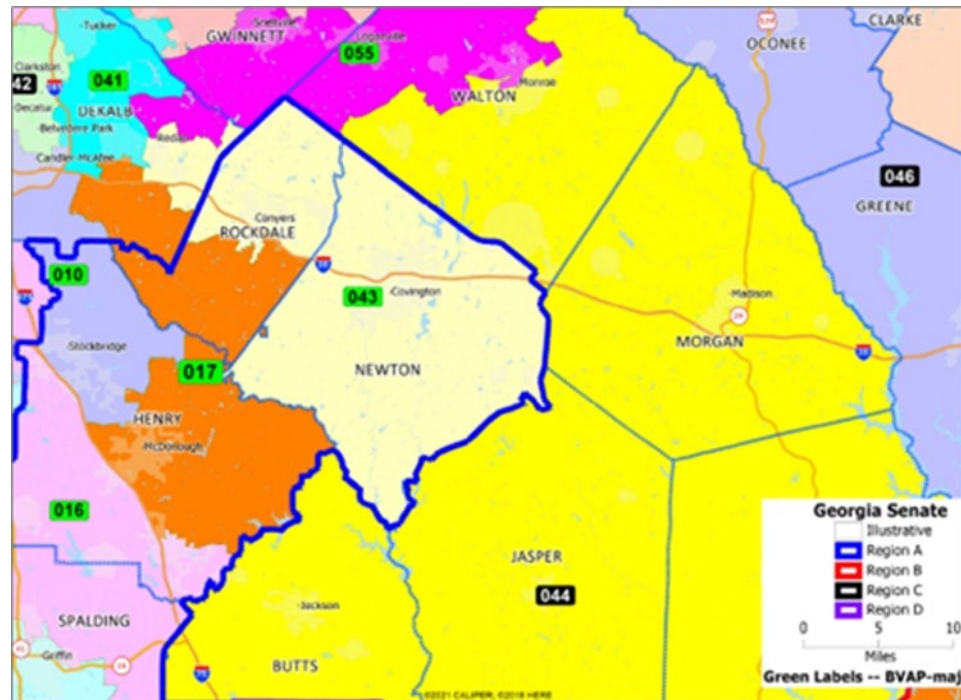
The Court also finds that Cooper SD-17 generally respected political subdivisions. That proposed district consists of portions of DeKalb, Henry, and Rockdale Counties. APAX 1 ¶ 105 & fig.17D. Enacted SD-17 also split three counties—Henry, Newton and Rockdale. APAX 1 ¶ 102 & fig.17C. Thus, the

Court finds that both Cooper SD-17 and Enacted SD-17 split the same number of counties. Although the county splits remain the same, the Court notes that Cooper SD-17 splits more VTDs (4) than Enacted SD-17 (none). APAX 1, Exs. T-1, T-3. There was no testimony that Cooper SD-17 split municipalities, even though there was testimony regarding the municipalities that were included in the district, such as McDonough in Henry County and Stonecrest in DeKalb County. Tr. 117:5–11.

Although Cooper SD-17 splits more VTDs, the Court finds that generally, SD-17 respects political subdivisions because he split the same number of counties and seemingly kept municipalities intact.

**((b)) eyeball test**

The Court finds that Cooper SD-17 is visually compact under the eyeball test:



APAX 1 ¶ 105 & fig.17D.

Moreover, using the mapping tool provided by Mr. Esselstyn, the Court finds that the district at its most distant points is less than 30 miles in length. *Id.* Cooper SD-17 has no appendages or tentacles. *Id.* And there is no contrary evidence or testimony in the Record. In fact, Mr. Morgan testified that Cooper SD-17 is “geographically more compact in the sense that it doesn’t go quite the distance as the enacted District 17 . . . [g]eographically, generally, yes, it appears more compact.” Tr. 2027:11–24. Accordingly, the Court finds that Cooper SD-17 is visually compact.

**((c)) communities of interest**

The Court finds that Cooper SD-17 respects communities of interest. Cooper SD-17 includes neighboring parts of south DeKalb, Henry, and Rockdale Counties, connecting the nearby communities of Stonecrest, Conyers, and McDonough. APAX 1, 45-6 ¶¶ 104-5 & fig.17D. Both Cooper SD-17 and Enacted SD-17 overlap in and around McDonough in Henry County. Id. at 44, 46.

Mr. Cooper testified that he is familiar with this area of Georgia because he has drawn districting maps for Henry County before, dating back to 1991 and most recently in the 2018 Dwight v. Kemp case. Tr. 116:12-24. He also testified that the communities in Cooper SD-17 are primarily suburban or exurban. Tr. 116:6-8. And, the distance between the portions of the district in south DeKalb and south Henry Counties are probably a 10-minute drive from one another. Tr. 231:14-20. Furthermore, he testified that in configuring the district in this manner, he was able to keep Newton County, whole (rather than split it, as the Enacted Senate Plan does) and include it in Cooper SD-43, which is compact and majority-Black. APAX 1, 48 & fig.17F.

Moreover, Mr. Cooper examined ACS data showing that the counties included in Cooper SD-17 share certain socioeconomic characteristics, such as similar educational attainment rates among Black residents in Henry, Rockdale, and DeKalb Counties. APAX 1 ¶¶ 127-128 & Ex. CD at 21-22.

The testimony of Mr. Lofton, who lives in McDonough, bolsters Mr. Cooper's testimony. Mr. Lofton testified regarding the interconnectedness of the different counties in south-metro Atlanta, including competing against one another in sports. Tr. 1306:23-25 ("I visited Rockdale even from high school. We used to compete against Rockdale County Heritage High School when I was in high school. We were [in] the same region."). Mr. Lofton testified about the similarities and connections between DeKalb, Stonecrest, Conyers and McDonough. Tr. 1308:16-22 (discussing the "major thoroughfares" connecting DeKalb, Rockdale, and Henry Counties that people drive up and down "all day."); Id. at 1308:23-1309:8 (discussing travelling between McDonough, Stonecrest, Conyers, and Covington for shopping and dining "because they're not terribly far out of the way."). He also testified that Henry, Rockdale, and

DeKalb Counties are getting more diverse and “on par” with one another. Id. at 1298:16-20, 1306:16-1307:8, 1308:4-7.

In sum, the Court finds that Cooper SD-17 is a small district contained wholly within metro Atlanta, unlike the districts in LULAC and Miller. There was extensive testimony from Mr. Cooper and a resident of McDonough about the interrelatedness of the communities in the district. Furthermore, Mr. Cooper’s report details the shared socio-economic characteristics of the voters living in the district. In all the Court finds that this testimony shows that the district preserves existing communities of interest.

**((d)) conclusions of law**

The Court determines that the Alpha Phi Alpha Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Cooper SD-17 to constitute an- additional majority-Black district. The Court finds that Cooper SD-17 complies with the traditional redistricting principles of population equality, contiguity, compactness, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain

any appendages or tentacles. Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have carried their burden in meeting the first Gingles precondition in the area contained in Cooper SD-17.

*ii) Cooper SD-28*

The Court finds also that the Alpha Phi Alpha Plaintiffs have shown that it is possible to draw an electoral district consistent with traditional redistricting principles in the area encompassed by Cooper SD-28. As an initial note, Mr. Cooper explained that Cooper SD-28 is in the same general area as, and correlates with, Enacted SD-16. APAX 1 ¶ 99 (“a majority-Black District 28 [ ] can be drawn in the vicinity of 2021 Senate District 16”).

**((a)) empirical measures**

**((1)) *population equality***

The Court finds that Cooper SD-28 achieves relative population equality. As stated above, the General Assembly did not enumerate a specific acceptable deviation range for the State Senate Districts. However, relying on the Enacted Plan as a guide, a population deviation range between -1.03% and +0.98% is acceptable. APAX 1, Ex. M-1. In comparison, Cooper SD-28 has a population deviation of -0.73%, which is within range of the population deviations in the



Enacted Senate Plan. APAX 1, Ex. O-1. The Court finds that Cooper SD-28 is consistent with the General Assembly's Redistricting Guidelines, and traditional redistricting principles.

**((2)) *contiguity***

The Parties stipulated that Cooper SD-28 is a contiguous district. Stip. ¶ 300. Hence, the Court finds that Cooper SD-28 complies with the traditional redistricting principle of contiguity.

**((3)) *compactness scores***

The Court finds Cooper SD-28's compactness scores are within the range of compactness scores found in the Enacted Senate Plan. APAX 1, Exs. S-1, S-3. Cooper SD-28 and Enacted SD-16 have identical Reock scores of 0.37. Enacted SD-16 is more compact on the Polsby-Popper measure with a score of 0.31, while Cooper SD-28 has a Polsby-Popper score of 0.18. APAX 1, Exs. S-1, S-3.

Although Enacted SD-16 is more compact on the Polsby-Popper measure, Cooper SD-28 is within the range of compactness scores found in the Enacted Senate Plan. Specifically, the Enacted Senate Plan has a minimum Polsby-Popper score of 0.13. APAX 1, Ex. S-3. Cooper SD-28's Polsby-Popper score (0.18) exceeds the minimum threshold Polsby-Popper score found in the Enacted Senate Plan.

Id. Accordingly, the Court finds that Cooper SD-28 falls within the range of compactness scores found in the Enacted Senate Plan and therefore constitutes a compact district for purposes of the first Gingles precondition.

((4)) *political  
subdivisions*

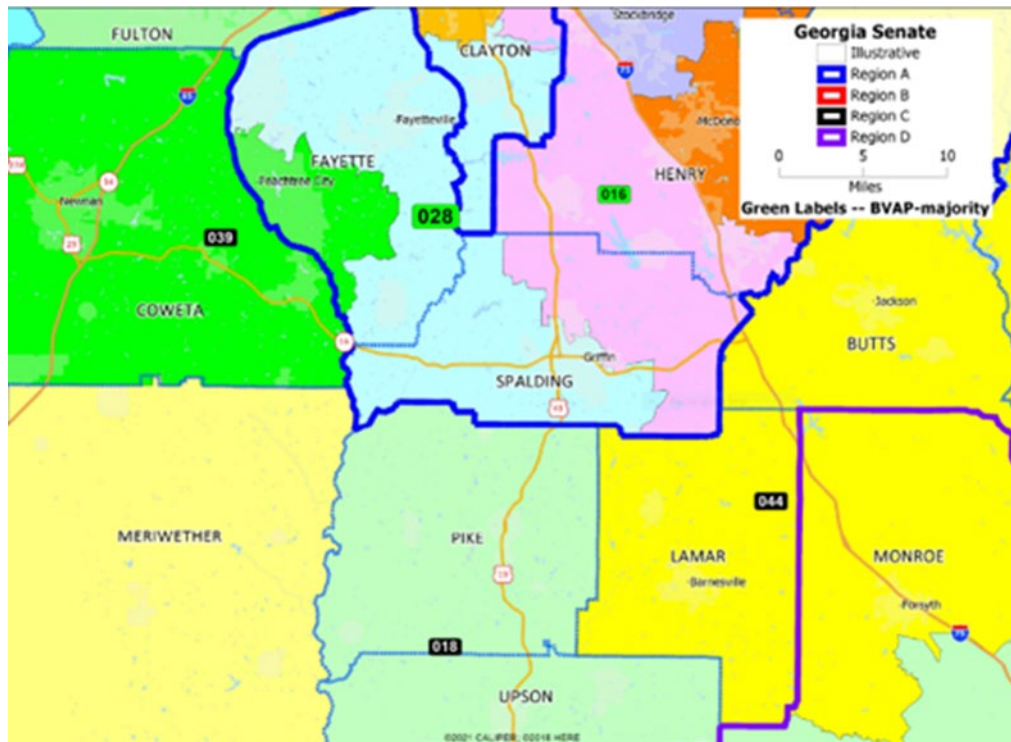
The Court finds that Cooper SD-28 generally respects political subdivisions. The Court notes that Cooper SD-28 does have more political subdivision splits than Enacted SD-16. Cooper SD-28 contains portions of Fayette, Spalding, and Clayton Counties, resulting in three county splits. APAX 1 ¶ 99. Enacted SD-16 splits only Fayette County, and keeps Spalding, Pike, and Lamar Counties whole. Additionally, Cooper SD-28 splits two VTDs, whereas Enacted SD-16 splits none. APAX 1, Exs. T-1, T-3. Mr. Cooper testified, “[y]ou can see that I separated or made the boundary for District 28, which is the new majority Black district, following the municipal lines of Griffin, which can be kind of odd shaped in places.” Tr. 114:4-7; APAX 11, at 41 ¶ 99 & fig.17B; see also Id. Ex. T-1 (listing a single split VTD in Fayette County and one in Spalding County).

Although those increased splits do exist, Mr. Cooper testified that he was able to keep municipalities whole. Specifically, when drawing these districts, he

was able to keep the city of Griffin wholly within Cooper SD-28 and Peachtree City was kept wholly within Cooper SD-39. APAX 1 ¶ 99 & fig.17A; Tr. 114:1-7, 238:4-7. Mr. Cooper explained that some of his mapping decisions, were made to comply with population equality. See Tr. 238:23-239:3 (“once you pick up Griffin and some of the area between Spalding and Fayetteville, there’s a lot of population as you approach Fayetteville. So, from one person one voter standpoint you could not include Peachtree City in District 28.”). The Court credits Mr. Cooper’s testimony regarding decisions for drawing boundary lines. Therefore, the Court finds that Cooper SD-28 respects political subdivisions.

**((b)) eyeball test**

The Court finds that Cooper SD-28 is visually compact under the eyeball test:



APAX 1 ¶ 99 & fig.17A.

Using the mapping tool, the Court finds that at its most distant points, Cooper SD-28 is approximate 30 miles long. *Id.* Mr. Morgan testified that north to south the district is 24 miles long. Tr. 1982:7–12. Cooper SD-28 does not contain any tentacles or appendages. Mr. Cooper also testified that when looking at the district, one can see that “[t]he towns and cities are – suburbs are all very close together.” Tr. 113:18–21. The Court agrees with Mr. Cooper’s assessment, the district itself visually encompasses a small geographic area. Defendant submits

no evidence or testimony in the Record suggesting that Cooper SD-28 is not visually compact. See generally DX 1; Tr. 1896:13-23. Accordingly, the Court concludes that Cooper SD-28 is visually compact.

**((c)) communities of interest**

Mr. Cooper testified that the areas of Fayette and Spalding County that he included in Cooper SD-28 are growing, becoming more diverse and suburban, and thus more similar to Clayton County. Tr. 113:6-114:18; see also Tr. 242:15-24. He noted that these parts of Spalding and Fayette Counties are experiencing population growth and change as well as suburbanization, which warranted grouping them with Clayton County. Tr. 113:6-114:18. Moreover, he explained that the areas he connected are similarly suburban and exurban in nature, in comparison to the more rural and predominantly white Pike and Lamar Counties, which were not included in Cooper SD-28. Tr. 113:24-25 (“Yes. This area is predominantly a suburban/exurban. So the area matches up socioeconomically, I believe.”).

Mr. Cooper also explained why it made sense to not include western Fayette County in Illustrative District 28, highlighting the differences between Peachtree City and Griffin. Tr. 114:19-115:5

THE COURT: What are the commonalities of the people in Griffin and Peachtree City?

THE WITNESS: Well, the -- Griffin and Peachtree City are quite different, frankly.

THE COURT: They are.

THE WITNESS: Peachtree City is predominantly white. Just kind of sprung up there I think in the 1980s. They drive around in golf carts. I mean, that's --.

THE COURT: Yeah.

THE WITNESS: Yeah. And so it doesn't really fit with Griffin exactly, which is one of the reasons why I didn't include it in District 28. It is the western part of Fayette County.

Tr. 1311:21-1312:13.

Additionally, Mr. Cooper examined ACS data showing that the counties included in Cooper SD-28—namely, Fayette, Spalding, and Clayton—share socioeconomic commonalities. Specifically, Fayette, Spalding, and Clayton Counties share certain socioeconomic characteristics, as all have a relatively high proportion of Black residents in the labor force. APAX 1, at 56 ¶ 125, Ex. CD, at 53-55.

The testimony of Mr. Lofton, a lifelong metro Atlantan, and a long-time resident of Henry County with connections in Fayette, Clayton, and DeKalb Counties, was consistent with Mr. Cooper's. Mr. Lofton attested to the interconnectedness of the communities included in Cooper SD-28. For example, as Mr. Lofton explained, if you visit shopping centers in Griffin you will see Fayette and Clayton car tags. Tr. 1302:9-11. Mr. Lofton also testified that areas covered by Cooper SD-28 share common places of worship and that Black communities in the area share certain socioeconomic characteristics, like similar educational attainment. Id. at 1309:25-1310:9. Gina Wright, who testified that she was familiar with the area, agreed that the area of South Clayton County that is included in Cooper SD-28 is suburban. Id. at 1685:2-20.

Thus, the Court finds that Cooper SD-28 is a small district contained wholly within metro Atlanta and has no resemblance to the districts in LULAC and Miller. Mr. Cooper testified extensively about the communities that are contained within the district, the shared socio-economic factors, and the characteristics that unite them. Additionally, Mr. Lofton, with his lifelong experience as a resident in the area, explained how the communities interact with

one another. The Court finds that the size of the district coupled with the witness testimony shows Cooper SD-28 preserves communities of interest.

**((d)) conclusions of law**

The Court finds that the Alpha Phi Alpha Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Cooper SD-28 to constitute an additional majority-Black district. The Court finds that Cooper SD-28 complies with the traditional redistricting principles of population equality, contiguity, compactness, respect for political subdivisions, and preservation communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have carried their burden on the first Gingles precondition in the area encompassed by Cooper SD-28

***iii) Cooper HD-74***

The Court finds that Cooper HD-74 is reasonably compact. The Court notes that Cooper SD-17 is in the area of Enacted HD-74. APAX 1 ¶ 162.



((a)) empirical measures

((1)) *population equality*

The Court finds that Cooper HD-74 is not malapportioned. See Reynolds, 377 U.S. at 577 (requiring “an honest and good faith effort to construct districts . . . of nearly equal population as practicable.”); Brown, 462 U.S. at 842 (finding “minor deviations” are not violative of the Fourteenth Amendment). The General Assembly’s “General Principles for Drafting Plans” specifies that “[e]ach legislative district . . . should be drawn to achieve a total population that is substantially equal as practicable.” Stip. ¶ 135; JX 2, 2.

The ideal population size of a State House District is 59,511. Stip. ¶ 278. The General Assembly did not enumerate the deviation range for State House Districts. However, relying on the Enacted House Plan as a rough guide, a population deviation range between -1.40% and +1.34% is acceptable. APAX 1, Z-1. Cooper HD-74 has a population deviation of +0.78%. APAX 1, Ex. AA-1. Cooper HD-74 achieves better population equality than Enacted HD-74, which has a population deviation of -0.93%. APAX 1, Ex. M-1. Thus, the Court finds that Cooper HD-74 achieves population equality that is consistent with the General Assembly’s Redistricting Guidelines and traditional redistricting principles.

*((2)) contiguity*

The Parties stipulated that Cooper HD-74 is a contiguous district. Stip. ¶ 300. Hence, the Court finds that Cooper HD-74 complies with the traditional redistricting principle of contiguity.

*((3)) compactness scores*

The Court finds that Cooper HD-74 is more compact than Enacted HD-74. In reaching this conclusion, the Court, as it did in the Pendergrass case, looks at the objective compactness scores of the Polsby-Popper and Reock measures.

Using the Reock indicator, Cooper HD-74 measures 0.63 as compared to Enacted HD-74 which measures 0.50. APAX 1, Exs. AG-1, AG-2. This means that on the Reock measure, Cooper HD-74 is 0.13 points more compact than Enacted HD-74. Id. Using the Polsby-Popper measure, Cooper HD-74 has an 0.11 compactness advantage: Cooper HD-74 is 0.36 and Enacted HD-74 is 0.25. Id. Hence, the Court finds that on the empirical compactness scores, Cooper HD-74 fares better than Enacted HD-74.

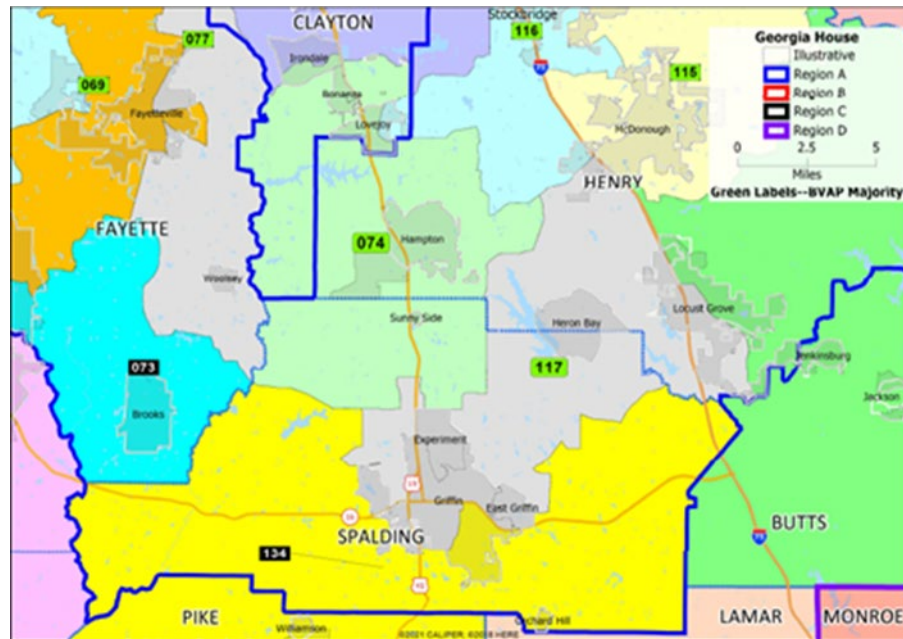
Accordingly, the Court finds that Cooper HD-74 is more compact when compared to Enacted HD-74.

**((4)) *political  
subdivisions***

The Court also finds that Cooper HD-74 exhibits respect for political subdivisions more so than Enacted HD-74. Cooper HD-74 consists of portions of Clayton, Henry and Spalding Counties. APAX 1 ¶ 164 & fig.29. Enacted HD-74 also split three counties – Fayette, Harris, and Spalding. APAX 1 ¶ 162 & fig.28. Yet Cooper HD-74 split fewer VTDs than Enacted HD-74. Enacted HD-74 split five VTDs while Cooper HD-74 split only two. APAX 1, Exs. AH-1, AH-3. There is no testimony or opinion that Cooper HD-74 split municipalities. In fact, Mr. Morgan, Defendant’s mapping expert, agreed that it includes the “panhandle of Clayton, which is not included in the enacted District 74.” Tr. 2049: 10–12. Thus, the Court finds that Mr. Cooper respected political subdivisions when drawing Cooper HD-74.

**((b)) eyeball test**

The Court finds that Cooper SD-17 is visually compact under the eyeball test:



APAX 1 ¶ 164 & fig.29.

Using the mapping tool provided by Mr. Esselstyn, the Court finds that the district at its most distant points is less than 15 miles in length. *Id.* Cooper HD-74 has no appendages or tentacles. *Id.* Mr. Cooper testified that the district “couldn’t be more compact.” Tr. 122:18. And, Mr. Morgan testified that Cooper HD-74 is “a smaller geographic area and it contains the panhandle of Clayton, which is not included in the enacted District 74.” Tr. 2027:11–24. The Court agrees with both mapping experts, Cooper HD-74 is a very compact district, visually. Accordingly, the Court finds that Cooper HD-74 passes the eyeball test.

**((c)) communities of interest**

The Court finds that Cooper HD-74 respects communities of interest. Cooper HD-74 unites nearby, adjacent communities on either side of the line between south Clayton and Henry Counties. APAX 1 ¶ 198. As Mr. Cooper testified, “the distance[] there to get from one part of the district to the other are . . . maybe a 20-minute drive at most, unless you’re going during rush hour traffic or something.” Tr. 272:24-273:2.

Mr. Cooper testified that the communities included in the district are “largely suburban” in nature. Tr. 273:17-22. Consistent with that, Mr. Cooper’s examination of the ACS data shows that the counties included in Cooper HD-74 share a similar proportion of population in the labor force (71.0%, 58.2%, and 69.5% respectively). APAX 1 ¶ 198. Mr. Lofton’s testimony was consistent, testifying that Black communities in south-metro Atlanta are “middle class, upper middle class, professional, college educated. A lot of families, single families.” Tr. 1309:25-1310:4.

The Court finds that Cooper HD-74 complies with the traditional redistricting principle of preserving communities of interest. Defendant’s expert

admitted that Mr. Cooper's district is geographically compact. This district in no way resembles the districts in Miller and LULAC that stretched across large swaths of their respective States. There is un rebutted testimony that the voters in this area have similar socio-economic characteristics. Accordingly, the Court finds that Cooper HD-74 complies with the traditional redistricting principle of preserving communities of interest.

**((d)) conclusions of law**

The Court determines that the Alpha Phi Alpha Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Cooper HD-74 to constitute an additional majority-Black district. The Court finds that Cooper HD-74 complies with the traditional redistricting principles of population equality, contiguity, compactness scores, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have carried their burden in meeting the first Gingles precondition as to the area contained in Cooper HD-74.

*iv) Cooper HD-117*

The Court next finds that the Alpha Phi Alpha Plaintiffs have not shown that it is possible to draw an electoral district consistent with traditional redistricting principles in the area encompassed by Cooper HD-117. As an initial note, Mr. Cooper explained that Cooper HD-117 is in the same general area, and correlates with, Enacted HD-117. APAX 1 ¶ 165 (“another majority-Black House District can be drawn around where District 117 in the 2021 House Plan is drawn”).

**((a)) empirical measures**

**((1)) *population equality***

The Court finds that Cooper HD-117 is not malapportioned. As stated above, the General Assembly did not enumerate the deviation range for the State Senate Districts. However, using the Enacted House Plan as a guide a population deviation range of  $\pm 1.40\%$  is acceptable. Stip. ¶ 302. In comparison, Cooper SD-28 has a population deviation of  $-1.38\%$ , which is within the deviation found in the Enacted House Plan. APAX 1, Ex. AA-1. The Court does note that Enacted HD-117 has a lower population deviation-- $+1.04\%$ . The population deviation of Cooper HD-117 is higher than its enacted corollary, and it is barely within the

range of population deviations approved by the Georgia General Assembly when it passed the Enacted House Plan. Although the Court finds that Cooper HD-117 is not malapportioned, the Court also finds that it respects the traditional redistricting principle of population equality less than Enacted HD-117.

**((2)) *contiguity***

The Parties stipulated that Cooper HD-117 is a contiguous district. Stip. ¶ 300. Hence, the Court finds that Cooper HD-117 complies with the traditional redistricting principle of contiguity.

**((3)) *compactness scores***

The Court finds Cooper HD-117's compactness scores are either identical or very close to the compactness scores found in the Enacted House Plan. APAX 1, Exs. AG-1, AG-2. Cooper HD-117 and Enacted HD-117 have identical Reock scores of 0.41. Id. Enacted HD-117 is slightly more compact on the Polsby-Popper measure with a score of 0.28 while Cooper HD-117 has a Polsby-Popper score of 0.26. APAX 1, Exs. AG-2, AG-3. In sum, , the districts have identical Reock scores, but Enacted HD-117 is slightly more compact on the Polsby-Popper measure.

Despite a disadvantage of 0.02 points on the Polsby-Popper measure, Cooper HD-117 is well within the range of compactness scores of the Enacted



House Plan. Specifically, the Enacted Senate Plan has a minimum Polsby-Popper score is 0.10. APAX 1, Ex. AG-2. Cooper HD-117's Polsby-Popper score (0.26) far exceeds the lowest threshold Polsby-Popper score found in the Enacted House Plan. Id. Accordingly, the Court finds that Cooper HD-117 has identical or near identical compactness scores as Enacted HD-117, and Cooper HD-117 falls comfortably within the range of compactness scores in the Enacted House Plan. Therefore, Cooper HD-117 constitutes a compact district for purposes of the first Gingles precondition.

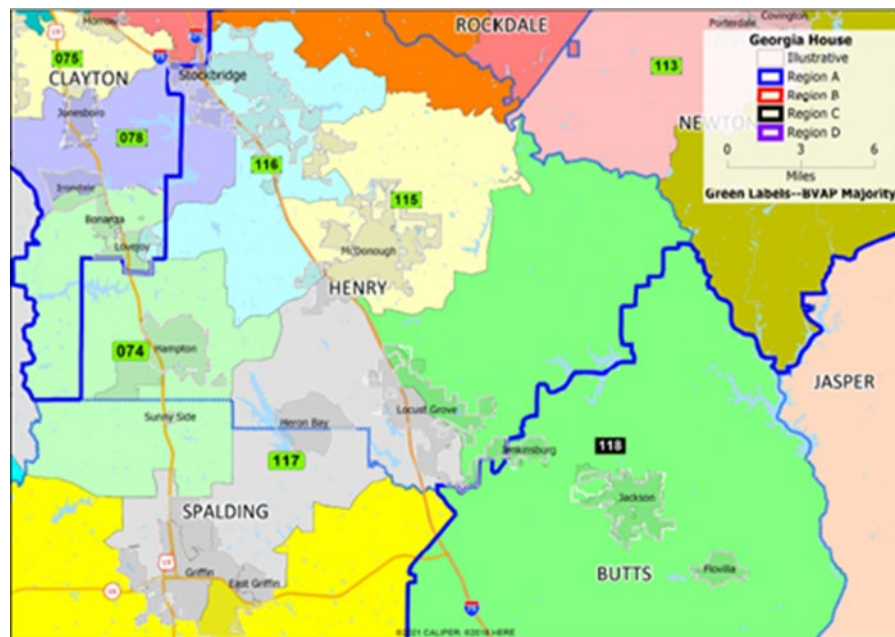
((4)) *political  
subdivisions*

In considering respect for the preservation of political subdivisions, Cooper HD-117 fares worse than Enacted HD-117. For example, Cooper HD-117 has more political subdivision splits than Enacted HD-117. Both districts split Henry and Spalding Counties. APAX 1 ¶ 165 & fig.29A; ¶ 167 & fig.29C. But, Cooper HD-117 splits six VTDs, while Enacted HD-117 splits only one. APAX 1, Exs. AH-1, AH-3. Mr. Cooper testified, “[y]ou can see that I separated or made the boundary for District 28, which is the new majority Black district, following the municipal lines of Griffin, which can be kind of odd shaped in places.”

Tr. 114:4-7; APAX 11, at 41 ¶ 99 & fig.17B; see also id. at T-1 (listing a single split VTD in Fayette County and one in Spalding County). Mr. Cooper also testified that he did not keep the cities of Griffin or Locust Grove intact. Tr. 276:22-277:1. The Court finds that on balance, Cooper HD-117 reflects less respect for political subdivisions than Enacted HD-117.

**((b)) eyeball test**

The Court finds that Cooper HD-117 is visually compact under the eyeball test:



APAX 1 ¶ 198, Ex. AC-1.

Using the mapping tool, the Court finds that at its most points, Cooper HD-117 is less than 20 miles long. Id. Cooper HD-117 does not contain any tentacles or appendages. Defendant's own mapping expert agreed that Cooper HD-117 and Enacted HD-117 are both fairly compact. Tr. 2051:20-2052:1. ("Q. And illustrative 117 and enacted 117 are similarly compact? A. On compactness scores or just looking at it? Q. Both. A. I mean, it's hard to say whether it would be that way on compactness scores. But looking at it, they're both fairly compact, yes. They're not a great distance between anything."). Consistent with Defendant's mapping expert, the Court concludes that Cooper HD-117 is visually compact.

**((c)) communities of interest**

Cooper HD-117 unites communities that are geographically proximate to one another. Cooper HD-117 is in an area that includes adjacent portions of South Henry County around Locust Grove and a portion of Spalding County, including much of Griffin (Spalding County's seat and largest city) which is majority-Black. APAX 1 ¶ 198 & Ex. AC-2.

Mr. Cooper testified that “everyone” in Cooper HD-117 “lives close by.” Tr. 123:17. Again, Defendant’s mapping expert agreed, testifying that Griffin and Locust Grove are “close.” Tr. 1794:23. When specifically asked about the connection between Griffin and Locust Grove, Mr. Cooper testified that “they are in an exurban area of Metro Atlanta.” Tr. 277:25. Further Mr. Cooper noted that the area has a “somewhat younger population” (Tr. 123:24) and has a similar Black labor force participation rate. APAX 1 ¶ 198.

Mr. Lofton’s testimony was consistent with respect to the proximity and connections between the communities in Cooper HD-117. For example, he testified about the shared commercial centers used by residents of the area, such as Tanger Outlets, and about how Highways 138 and 155 are important transportation corridors that unite the district. Tr. 1308:20-1309:8.

Thus, the Court finds that Cooper HD-117 is a small district contained wholly with metro Atlanta and has no resemblance to the districts in LULAC and Miller. Mr. Cooper testified about the communities that are contained within the district, the shared socio-economic factors, and the characteristics that unite them. Additionally, Mr. Lofton, with his lifelong experience as a resident in the area,

explained how the communities interact with one another. The Court finds that the size of the district coupled with the witness testimony shows Cooper HD-117 preserves communities of interest.

**((d)) conclusions of law**

The Court finds that the Alpha Phi Alpha Plaintiffs have not carried their burden in establishing that the Black community is sufficiently compact in Cooper HD-117 to constitute an additional majority-Black district. Although Cooper HD-117 complies with the traditional redistricting principles of contiguity, compactness scores, and preservation of communities of interest, the Court finds that it split more political subdivisions than Enacted HD-117. Additionally, the district's population deviation is both higher than Enacted HD-117 and is barely within the range of the Enacted House Plan's population deviations.

Although there is no requirement that an illustrative district match or perform better than the correlating enacted district,<sup>75</sup> the Court finds that the higher deviation coupled with the splitting of an additional four VTDs as well as two municipalities leads to a finding that the district could not be drawn in accordance with traditional redistricting principles.

Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have not carried their burden on the first Gingles precondition in the area encompassed by Cooper HD-117.

(2) Grant

The Court finds that the Grant Plaintiffs have met their burden in proving the three Gingles preconditions in relation to the challenged Senate districts in metro Atlanta and two of the challenged House districts in metro Atlanta.

---

<sup>75</sup> See Wright v. Sumter Cnty. Bd. of Elections & Registration, 301 F. Supp. 3d 1297, 1326 (M.D. Ga. 2018), aff'd, 979 F.3d 1282 (11th Cir. 2020) (opining that an illustrative plan can be “far from perfect” in terms of compactness yet satisfy the first Gingles precondition).

(a) numerosity

The Court finds that Grant Plaintiffs have met their burden in showing that the Black voting age population in metro Atlanta is large enough to create two additional majority-Black Senate districts, two majority-Black House districts in south metro Atlanta, and one additional majority-Black House district in western metro Atlanta. “[A] party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent.” Bartlett, 556 U.S. at 20.

It is undisputed that Esselstyn SD-25 and SD-28 have an AP BVAP of 58.93% and 57.28%, respectively, both of which exceed the 50% threshold required by Gingles. GX 1 ¶ 27 & tbl.1; Stip. ¶ 234.

**Table 1: Illustrative Senate plan majority-Black districts with BVAP percentages.**

District	BVAP%	District	BVAP%	District	BVAP%
10	61.10%	26	52.84%	39	60.21%
12	57.97%	28	57.28%	41	62.61%
15	54.00%	34	58.97%	43	58.52%
22	50.84%	35	54.05%	44	71.52%
23	51.06%	36	51.34%	55	65.97%
25	58.93%	38	66.36%		

It is also undisputed that Esselstyn HD-64, HD-74, and HD-117 have an AP BVAP of 50.24%, 53.94%, and 51.56%, respectively. Stip. ¶ 239, GX 1 ¶ 48 & tbl.5.

**Table 5: Illustrative House plan majority-Black districts with BVAP percentages.**

District	BVAP%	District	BVAP%	District	BVAP%	District	BVAP%
38	54.23%	69	62.73%	91	60.01%	137	52.13%
39	55.29%	74	53.94%	92	68.79%	140	57.63%
55	55.38%	75	66.89%	93	65.36%	141	57.46%
58	63.04%	76	67.23%	94	69.04%	142	50.14%
59	70.09%	77	76.13%	95	67.15%	143	50.64%
60	63.88%	78	51.03%	113	59.53%	145	50.38%
61	53.49%	79	71.59%	115	53.77%	149	51.53%
62	72.26%	84	73.66%	116	51.95%	150	53.56%
63	69.33%	85	62.71%	117	51.56%	153	67.95%
64	50.24%	86	75.05%	126	54.47%	154	54.82%
65	63.34%	87	73.08%	128	50.41%	165	50.33%
66	53.88%	88	63.35%	129	54.87%	177	53.88%
67	58.92%	89	62.54%	130	59.91%		
68	55.75%	90	58.49%	132	52.34%		

Based on these numbers, the Court finds that the Grant Plaintiffs have met their burden with respect to the numerosity prong of the first Gingles precondition in all additional majority-Black districts that Mr. Esselstyn proposed in metro Atlanta (i.e., SD-25, SD-28, HD-64, HD-74, and HD-117).

**(b) compactness**

The Court finds that the Grant Plaintiffs have also met their burden to show that the minority community is sufficiently compact to warrant the creation of two additional majority-Black State Senate districts in south-metro Atlanta. They have also met their burden in showing that one additional compact



majority-Black district can be drawn in south metro Atlanta and one can be drawn in west-metro Atlanta. The Grant Plaintiffs have not met their burden with respect to Esselstyn HD-74, in south-metro Atlanta.

The standards governing the compactness inquiry for these additional proposed State Senate Districts is the same as the compactness inquiry undertaken in the Pendergrass case. See Section II(C)(1)(b) *supra*. The Court must consider if the illustrative proposed districts adhered to traditional redistricting principles, namely: population equality, contiguity, empirical compactness scores, the eyeball test for irregularities and contiguity, respect for political subdivisions, and preserving communities of interest. See Section II(C)(1)(b) *supra*.

*i) Esselstyn SD-25*<sup>76</sup>

The Court finds that the minority community in Esselstyn SD-25 is sufficiently compact.

---

<sup>76</sup> Esselstyn's State Senate districts in metro-Atlanta do not correlate to any of the enacted State Senate districts. Compare GX 1 ¶ 27 & fig. 4, with GX 1, attach D. Accordingly, the Court will compare the Esselstyn State Senate districts to the overall Enacted Senate Plan's statistics.

**((a)) empirical measures**

**((1)) *population equality***

The Court finds that Esselstyn SD-25 is not malapportioned. See Reynolds, 377 U.S. at 577 (requiring “an honest and good faith effort to construct districts . . . of nearly equal population as practicable.”); Brown, 462 U.S. at 842 (“minor deviations” are not violative of the Fourteenth Amendment). The General Assembly’s “General Principles for Drafting Plans” specifies that “[e]ach legislative district . . . should be drawn to achieve a total population that is substantially equal as practicable.” Stip. ¶ 135; JX 2, 2.

The ideal population size of a State Senate District is 191,284. Stip. ¶ 277. The General Assembly did not enumerate a specific acceptable deviation range for the State Senate Districts. However, using the Enacted Plan as a rough guide, a population deviation range between -1.03% and -0.98% is acceptable. GX 1, Attach. E. Esselstyn SD-25 has a population deviation of +0.74%. GX 1, Attach. F. This deviation falls squarely within the range of deviations in the Enacted Senate Plan. Thus, the Court finds that Esselstyn SD-25 achieves population equality that is consistent with the General Assembly’s Redistricting Guidelines and traditional redistricting principles.

*((2)) contiguity*

The Parties stipulated that Esselstyn SD-25 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn SD-25 complies with the traditional redistricting principle of contiguity.

*((3)) compactness scores*

The Court finds that Esselstyn SD-25 is more compact than Enacted SD-25. In reaching this conclusion, the Court, as it did in the Pendergrass case, looks at the objective compactness scores of the Polsby-Popper measure and Reock indicator.

Using the Reock indicator, Esselstyn's SD-25 is 0.57 as compared to the Enacted Senate Plan, which has an average Reock score of 0.42. GX 1, Attach. H. Thus, under the Reock measure, Esselstyn SD-25 is 0.15 points more compact than Enacted Senate Plan's average Reock score. Under the Polsby-Popper measure, Esselstyn's SD-25 is 0.34, and the Enacted Senate Plan has an average score of 0.29, a 0.05 point advantage for Esselstyn's SD-25 on this measure. Id. Hence, the Court finds that upon application of the empirical compactness measures, Esselstyn SD-25 fares better than the Enacted Senate Plan's average compactness scores.

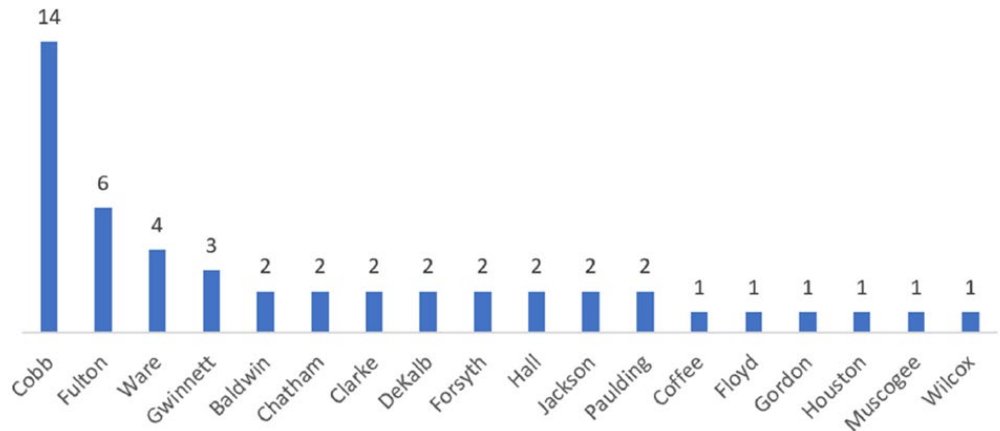
The State's mapping expert, Mr. Morgan, agreed that Esselstyn SD-25 is significantly more compact than Enacted SD-25. Tr. 1850:8–11. Mr. Morgan conceded, furthermore, that Esselstyn SD-25 is more compact on the Reock and Polsby-Popper scale than *all* of the districts implicated by in the Enacted Senate Plan, except for one with an identical Polsby-Popper score. Tr. 1895:17–1896:1.

In sum, the Court finds that Esselstyn SD-25 is sufficiently compact w.

((4)) *political  
subdivisions*

The Court also finds that in creating Esselstyn SD-25, Mr. Esselstyn respected political subdivisions. Esselstyn SD-25 consists of portions of Henry and Clayton Counties. GX 1 ¶ 30 & fig.6. Additionally, Esselstyn SD-25 does not split any VTDs. GX 1 ¶ 40 & fig.10. See below for a graphic depiction of the Esselstyn Senate Plan's VTD splits:

**Figure 10: VTD splits in illustrative State Senate plan by county.**

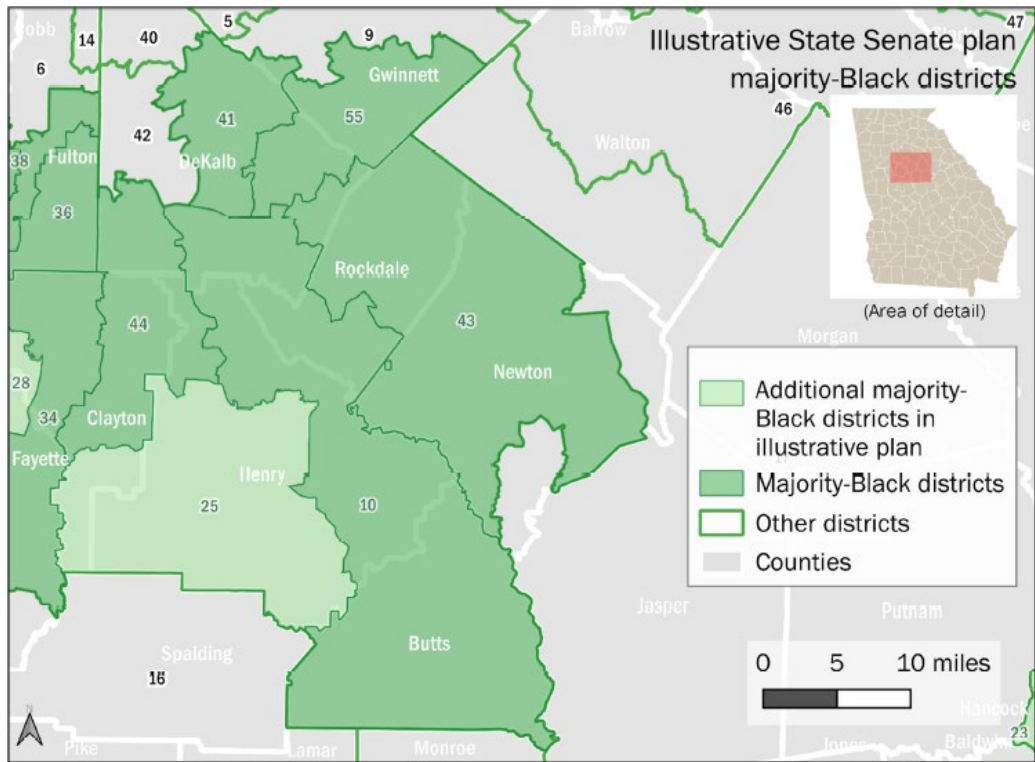


GX 1 ¶ 40 & fig.10.

Mr. Esselstyn also testified that he made an effort to keep municipalities intact. Tr. 544:8-12 (testifying that McDonough is mostly intact, and that Locust Grove, Hampton, Bonanza and Lovejoy are kept intact). Accordingly, the Court finds that Esselstyn SD-25 reflects a respect for political subdivisions.

**((b)) eyeball test**

The Court finds that Esselstyn SD-25 is visually compact under the eyeball test:



GX 1 ¶ 30 & fig.6.

Using the mapping tool provided by Mr. Esselstyn, the Court finds that the district at its most distant points is approximately 20 miles in length. Id. Esselstyn SD-25 has no appendages or tentacles. Id. There is no contrary evidence or testimony in the Record. In fact, Mr. Morgan’s report includes no analysis on the visual compactness of Esselstyn SD-25. Accordingly, the Court finds that Esselstyn SD-25 is visually compact.

**((c)) communities of interest**

The Court finds that Esselstyn SD-25 demonstrates respect for communities of interest. Mr. Esselstyn testified that the district is in metro Atlanta. Tr. 484:5–9. He also explained that he combined Henry and Clayton Counties because they are adjacent to one another. Tr. 544:1–7.

On cross-examination, Mr. Esselstyn admitted that he was unable to articulate a community of interest that connects south Clayton County with Locust Grove. Tr. 546:16–21. the Grant Plaintiffs, however, supplemented this testimony with testimony from Jason Carter, a former member of the State Senate and 2014 candidate for Governor of Georgia. Mr. Carter noted that Mr. Esselstyn’s districts in south metro Atlanta are “suburban and exurban,” “clearly [] fast-growing, . . . Atlanta commuter communit[ies] that ha[ve] all of the traffic concerns and the concerns of . . . expanding schools and massive population boom.” Id. at 953:20–954:3. See also id. at 958:9–19 (similar); id. at 959:6–19 (similar); id. at 962:1–965:17 (similar). Addressing their shared interests, Mr. Carter explained that residents of these areas need their government officials to be responsive to their “transportation, education, [and] healthcare” needs. Id.

at 955:7–21. In the same vein, Eric Allen, 2020 candidate for Lt. Governor, testified that the residents of Esselstyn SD-25 share similar entertainment districts, hospitals, transit systems, education systems, employment, and all travel on I-75, I-285, I-20, and I-85. Tr. 1000:18–1001:2. In fact, the State’s own map drawer, Ms. Wright, testified in connection with Enacted SD-28 and said that it was important to keep the city of Locust Grove wholly within that district (Tr. 1634:3–6), which Mr. Esselstyn accomplished (Tr. 546:16–21).

In sum, the Court finds that Esselstyn SD-25 is a small district contained wholly within metro Atlanta. It is comprised of two adjacent counties. The communities share the same concerns with transportation routes and have both experienced recent major population growth. Additionally, the Court finds that this district is not long and sprawling, like the districts in LULAC and Miller that stretched across large portions of the States and combined disparate minority populations. Rather, as is evidenced by the size of the district and the trial testimony, Esselstyn SD-25 preserves communities of interest.



**((d)) conclusions of law**

The Court determines that the Grant Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Esselstyn SD-25 to constitute an additional majority-Black district. The Court finds that Esselstyn SD-25 complies with the traditional redistricting principles of population equality, contiguity, compactness, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Grant Plaintiffs have carried their burden in meeting the first Gingles precondition in the area contained in Esselstyn SD-25.

***ii) Esselstyn SD-28<sup>77</sup>***

The Court finds also that Grant Plaintiffs have shown that it is possible to draw a reasonably compact electoral district consistent with traditional redistricting principles in the area encompassed by Esselstyn SD-28.

---

<sup>77</sup> As stated *supra*, the Court compares Esselstyn SD-28 to the Enacted Senate Plan as a whole. See Section II(D)(1)(b)(2)(b)(i) *supra*.

**((a)) empirical measures**

**((1)) *population equality***

The Court finds that Esselstyn SD-28 achieves relative population equality. As stated above, the General Assembly did not enumerate a specific acceptable deviation range for the Enacted Senate Plan. However, using the Enacted Plan as a guide, a population deviation range between -1.03% and -0.98% is acceptable. GX 1, Attach. D. Accordingly, the Court finds that Esselstyn SD-28 is within the acceptable range of population deviations approved by the Georgia General Assembly when it passed the Enacted Senate Plan. Thus, it achieves population equality that is consistent with the Enacted Senate Plan, the General Assembly's Redistricting Guidelines, and traditional redistricting principles.

**((2)) *contiguity***

The Parties stipulated that Esselstyn SD-28 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn SD-28 complies with the traditional redistricting principle of contiguity.

**((3)) *compactness scores***

The Court finds Esselstyn SD-28's compactness scores, while lower on a side-by-side comparison with the Enacted Senate Plan, are within the acceptable

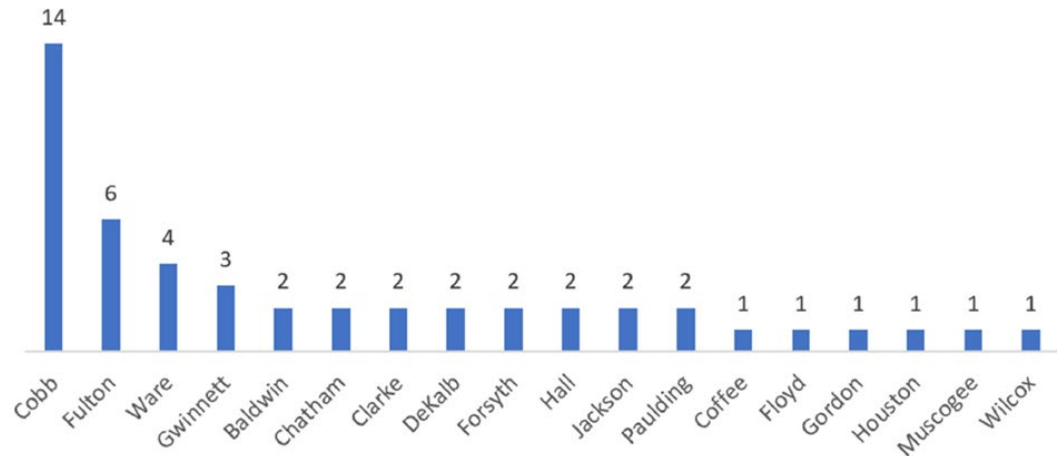
range of compactness scores found in the Enacted Senate Plan. GX 1, Attach. H. Esselstyn SD-28 has a Reock score of 0.38 and a Polsby-Popper score of 0.19. Id. The Enacted Senate Plan has an average Reock score of 0.42 and Polsby-Popper score of 0.29. Accordingly, the Enacted Senate Plan's average compactness scores beats Esselstyn SD-28 on all empirical measures—0.05 points on Reock and 0.10 on Polsby-Popper.

Despite a lower compactness score under both empirical measures, Esselstyn SD-28 is within the range of compactness scores found in the Enacted Senate Plan. Specifically, the Enacted Senate Plan has a minimum Reock score of 0.17. GX 1, Attach. H. Esselstyn SD-28's Reock score (0.38) far exceeds that minimum threshold Reock score in the Enacted Senate Plan. Id. Similarly, the Enacted Senate Plan's minimum Polsby-Popper score is 0.13. Id. Esselstyn SD-28's Polsby-Popper score (0.19) exceeds, albeit slightly, the minimum threshold Polsby-Popper score in the Enacted Senate Plan. Id. Accordingly, the Court finds that Esselstyn SD-28 falls within the range of compactness scores in the Enacted Senate Plan and therefore constitutes a compact district for purposes of the first Gingles precondition.

**((4)) *political  
subdivisions***

The Court finds that Esselstyn SD-28 exhibits respect for political subdivisions. Esselstyn SD-28 contains portions of Clayton, Coweta, Fayette, and Fulton Counties. GX 1 ¶ 31.

**Figure 10: VTD splits in illustrative State Senate plan by county.**



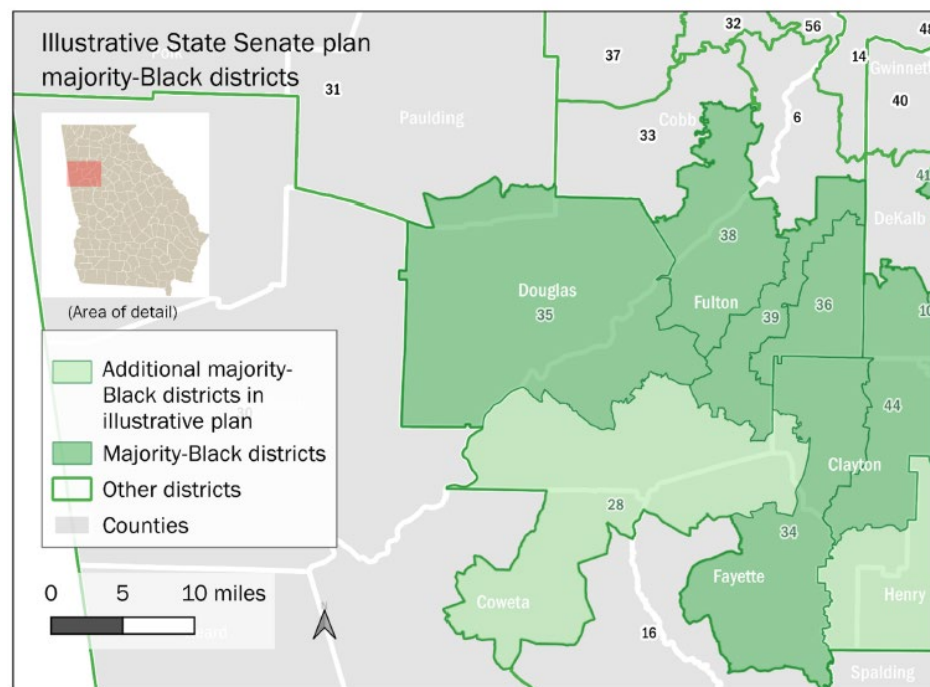
GX 1 ¶ 40 & fig.10. As this chart shows, the only county that is included within Esselstyn SD-28 with VTD splits is Fulton County. Put differently, Esselstyn SD-28 does not split any VTDs in Coweta, Clayton, and Fayette Counties, which make up the majority of the district. *Id.*; at ¶ 31 & fig.7. Even though Esselstyn SD-28 splits the city of Newnan, 90% of the city is contained within a single

district. Tr. 549:2-5, 550:25-551:9. Esselstyn, moreover, did not split any VTDs in Newnan, which is in Coweta County, itself. GX 1 ¶ 40 & fig.10.

Based on the foregoing, the Court finds that Esselstyn SD-28 exhibits a respect for political subdivisions.

**((b)) eyeball test**

The Court finds that Esselstyn SD-28 is visually compact under the eyeball test:



GX 1 ¶ 31 & fig.7.

Using the mapping tool, the Court finds that at its most distant points, Esselstyn SD-28 is approximate 25 miles long. Id. Esselstyn SD-28 does not contain any tentacles or appendages. Defendants submit no evidence or testimony in the Record suggesting that Esselstyn SD-28 is not visually compact. See generally DX 3; Tr. 1896:13-23. Accordingly, the Court concludes that Esselstyn SD-28 is visually compact.

**((c)) communities of interest**

The Court finds that Esselstyn SD-28 respects communities of interest. Because Esselstyn SD-25 and SD-28 are in close proximity to one another, much of the testimony adduced about SD-28 was also discussed in relation to Esselstyn SD-25. See Tr. 484:5–9 (Mr. Esselstyn testimony); see also generally id. 953:20–965:17 (Mr. Carter testimony). The Court thereby incorporates its general analysis on communities of interest in south-metro Atlanta from Esselstyn SD-25 above into this section on Esselstyn SD-28. See Section II(D)(1)(2)(b)(i)(c) *supra*.

Specific to Esselstyn SD-28, Mr. Esselstyn testified that he drew the district to best keep together municipalities in Fulton County, and specifically to keep 90% of Newnan intact. Tr. 548:20–549:24. Similar to Locust Grove, Mr. Esselstyn

admitted that he was unable to articulate a community of interest that connects the city of Newnan with Fulton and Clayton Counties (Tr. 548:20–549:1). Again, however, the Grant Plaintiffs’ supplemented this testimony with testimony from Mr. Allen, who testified that all of Esselstyn SD-28 is within metro Atlanta. Tr. 1002:18–20. He also mentioned that the area was serviced by the same healthcare systems (i.e., Emory Hospital and Grady Hospital) and relied on the same interstates for transportation. Id. at 1002:21–1003:5. Additionally, the State’s map drawer, Ms. Wright, who is herself a resident of nearby Henry County (Tr. 1653:17–21), testified about the general communities in this area. In reference to the Enacted Senate Plan, Ms. Wright testified that it makes sense to group Coweta and Fayette Counties in a single district because the counties “are commonly sharing resources and things like that.” Tr. 1656:18–21.

Thus, the Court finds that Esselstyn SD-28 is a small district contained wholly within metro Atlanta. Its communities share the same concerns with transportation routes and have experienced recent major population growth. Additionally, the Court finds that this district is not long and sprawling, like the districts in LULAC and Miller that stretched across large portions of their

respective States and combined disparate minority populations. Rather, as is evidenced by the size of the district and the trial testimony, Esselstyn SD-28 preserves communities of interest.

**((d)) conclusions of law**

The Court finds that the Grant Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Esselstyn SD-28 to constitute an additional majority-Black district. The Court finds that Esselstyn SD-28 complies with the traditional redistricting principles of population equality, contiguity, compactness scores, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Grant Plaintiffs have carried their burden on the first Gingles precondition in the area encompassed by Esselstyn SD-28.

***iii) Esselstyn HD-64***

The Court finds that the Grant Plaintiffs have shown that it is possible to draw a State House district consistent with traditional redistricting principles in the area encompassed by Esselstyn HD-64.



**((a)) Empirical measures**

**((1)) *population equality***

The Court finds that Esselstyn HD-64 achieves better population equality than Enacted HD-64. Enacted HD-64 has a population deviation of -0.88%, whereas Esselstyn HD-64 has a population deviation of +0.23%. GX 1, attaches. I, J. Accordingly, Esselstyn HD-64 achieves population equality consistent with the General Assembly's Guidelines and traditional redistricting principles.

**((2)) *contiguity***

The Parties stipulated that Esselstyn HD-64 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn HD-64 complies with the traditional redistricting principle of contiguity.

**((3)) *compactness scores***

The Court finds that Esselstyn HD-64's compactness score is within the range of scores achieved by the Enacted House Plan. Esselstyn HD-64 has a compactness measure of 0.22 on both metrics. GX 1, Attach. L. Enacted HD-64 has a Reock score of 0.38 and Polsby-Popper score of 0.36. *Id.* While Esselstyn HD-64 is less compact than Enacted HD-64 using empirical measures, the proposed district is still within the range of acceptable range of compactness

scores found in the Enacted House Plan (i.e., a minimum Reock score of 0.12 and a minimum Polsby-Popper score of 0.10). Id. Accordingly, the Court finds that Esselstyn HD-64 is reasonably compact in terms of empirical scoring.

((4)) *political  
subdivisions*

The Court finds that Esselstyn HD-64 respects political subdivisions. Esselstyn HD-64 consists of portions of Douglas, Fulton, and Paulding Counties. GX 1 ¶ 49. Esselstyn HD-64 splits one more county than Enacted HD-64, which includes only portions of Douglas and Paulding Counties. GX 1, Attach. I. When comparing the VTD splits in Enacted HD-64 and Esselstyn HD-64, they both split only one VTD (in Paulding County). GX 1, Attach. L.<sup>78</sup> Additionally, Mr. Esselstyn testified he was able to keep Lithia Springs intact, which is an incorporated community. Tr. 562:4-13.

Defendants' mapping expert, Mr. Morgan, did not opine about Esselstyn HD-64 in his report. DX 3. However, at the trial, he testified that Esselstyn HD-

---

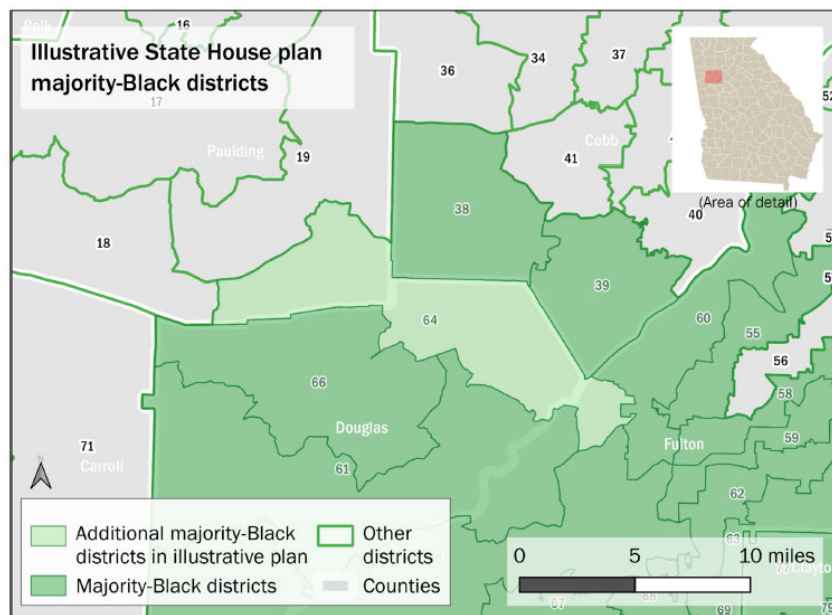
<sup>78</sup> The statistics for the VTD splits can be found on page 14 of subdivision of the Political Subdivisions Chart entitled GA House Enacted and page 14 of Political Subdivisions Chart entitled GA House Illustrative. GX 1, Attach. L.

64 contains the same Fulton and Douglas County precincts as Enacted HD-61. Tr. 1826:17–21. Outside of this testimony, Mr. Morgan offered no opinion about whether Esselstyn HD-64 exhibited respect for existing political subdivisions.

The Court finds that not only are Esselstyn HD-64 subdivision splits consistent with Enacted HD-64, but Esselstyn HD-64 on the whole respects political subdivisions.

**((b)) eyeball test**

The Court finds that Esselstyn HD-64 is visually compact:



GX 1 ¶ 49 & fig.14.

Mr. Esselstyn testified that he modeled the shape of Esselstyn HD-64 on the shape of Enacted HD-61. Tr. 560:14–24. Visually, the Court finds that Esselstyn HD-64 does not have appendages or tentacles. Esselsyn HD-64 is relatively small in size. In fact, when measured with the mapping tool, it is less than 20 miles at its most distant points. GX 1 ¶ 49 & fig.14.

Because of these considerations and the fact that Defendants do not meaningfully dispute the visual compactness of this district, the Court finds that Esselstyn HD-64 is visually compact.

((c)) communities of interest

The Court finds that Esselstyn HD-64 preserves communities of interest and does not combine disparate communities. As an initial note, the Court finds that Esselstyn HD-64 is in the same relative area as Illustrative CD-6. Both proposed districts combine areas in-and-around Fulton and Douglas Counties.<sup>79</sup> GX 1 ¶ 49. As the Court stated above, it found that Illustrative CD-6 preserved communities of interest. See Section II(C)(1)(b)(3) *supra*.

---

<sup>79</sup> Esselstyn HD-64 also contains parts of Pauling County, and Illustrative CD-6 combines areas in Cobb and Fayette Counties.

Specific to Esselstyn HD-64, Mr. Allen explained that the residents of this west-metro Atlanta district have shared interests. Tr. 1004:1–10. They rely on the same roadways and face many of the same transportation-related challenges. Id. at 1004:11–22. They rely on the same healthcare systems and share an interest in preserving access to Grady Hospital, the only Level One Trauma Center in the metro area. Id. at 1005:1–24. Accordingly, the Court finds that Esselstyn HD-64 preserves existing communities of interest.

**((d)) conclusions of law**

The Court finds that the Grant Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Esselstyn HD-64 to constitute an additional majority-Black district. The Court finds that Esselstyn HD-64 complies with the traditional redistricting principles of population equality, contiguity, compactness, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Grant

Plaintiffs have carried their burden in meeting the first Gingles precondition in the area encompassed by Esselstyn HD-64.

*iv) Esselstyn HD-74*

The Court finds that Grant Plaintiffs have not shown that it is possible to draw a legislative district consistent with traditional redistricting principles in the area encompassed by Esselstyn HD-74.

**((a)) empirical measures**

**((1)) *population equality***

The Court finds that Esselstyn HD-74's population deviation of -1.84% is greater than any district in the Enacted House Plan (-1.40% and +1.34%). Esselstyn HD-74 is nearly one point greater than the deviation of Enacted HD-74 (-0.93%). GX 1, attachs. J, I. ; Stip. ¶ 278. Mr. Esselstyn admitted that it was one of the most underpopulated districts on his House Plan. Tr. 567:23–568:6. “[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable.” Reynolds, 377 U.S. at 577.

[M]inor deviations from mathematical equality among State legislative districts are insufficient to make out a prima facie case . . . under the Fourteenth

Amendments . . . . Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations. Brown, 462 U.S. at 842 (quoting Reynolds, 377 U.S. at 577) (quotation marks omitted). More recently, the Supreme Court held that population deviations that are below 10 percent are not entitled to a safe harbor. Cox v. Larios, 542 U.S. 947, 949 (2004). Specifically, “the equal-population principle remains the only clear limitation on improper districting practices, and we must be careful not to dilute its strength.” Id. at 949–50. In 2004, that three-judge court noted that with technology it is possible to have perfect population equality. Larios v. Cox, 300 F. Supp. 2d 1320, 1341 (N.D. Ga. 2004). In 1991, a court in the Northern District of Illinois similarly remarked that “[t]he use of increasingly sophisticated computers in the congressional map drawing process has reduced population deviations to nearly infinitesimal proportions.” Harstert v. State Bd. of Elections, 777 F. Supp. 634, 643 (N.D. Ill. 1991).

Although perfect population deviation is not a requirement by the Supreme Court or the Georgia General Assembly, “[e]ach legislative district of the General Assembly shall be drawn to achieve a total population that is

substantially equal as practicable, considering the principles listed below.” JX 2, 2. The Court finds that Esselstyn HD-74 achieves population equality less so than Enacted HD-74. Using the Georgia Enacted House Plan as a guide, the accepted population deviation range is  $\pm 1.40\%$ . Esselstyn HD-74, at  $-1.84\%$ , is significantly greater than that range.

**((2)) *contiguity***

The Parties stipulated that Esselstyn HD-74 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn HD-74 complies with the traditional redistricting principle of contiguity.

**((3)) *compactness scores***

The Court finds that the Esselstyn HD-74’s compactness scores are within the acceptable range of compactness scores on the overall Enacted House Plan. Esselstyn HD-74 has a Reock score of 0.30 and a Polsby-Popper score of 0.19. GX 1, Attach. L. The Court notes that Enacted HD-74 performs better on the Reock measure (0.50) as well as the Polsby-Popper measure (0.25). *Id.* The Court notes Esselstyn HD-74’s scores do not fall below the minimum compactness scores for the Enacted Plan—0.12(on Reock) and 0.10 (on Polsby-Popper). *Id.* In sum, the Court finds that Esselstyn HD-74 is less compact than Enacted HD-74.



**((4)) *political  
subdivisions***

The Court finds that Esselstyn HD-74 generally exhibited respect for communities of interest. The Court notes that Esselstyn HD-74 splits one less county than Enacted HD-74. GX 1 ¶ 50 & fig.15 (Esselstyn HD-74 is contained in Clayton and Fulton Counties); GX 1, Ex. I (Enacted HD-74 is contained in Fayette, Henry, and Spalding Counties).

However, at the trial Mr. Esselstyn testified that he split Peachtree City. Tr. 567:6-13; 1657:22-23. It is worth noting that the Enacted House Plan also split Peachtree City. Id. Esselstyn HD-74 testified that he was able to keep the communities of Irondale, Brooks, and Woolsey “if not entirely intact, almost entirely intact,” but conceded that Irondale is not an incorporated municipality. Tr. 566:22-567:5.

Finally, Esselstyn HD-74 split fewer VTDs than Enacted HD-74. Enacted HD-74 split four VTDs, one in Fayette and three in Spalding Counties (GX 1, Ex. L),<sup>80</sup> whereas Esselstyn HD-74 split only one VTD in Clayton County (id.).

Based on the foregoing, the Court finds that Esselstyn HD-74 reflects respect for political subdivisions.

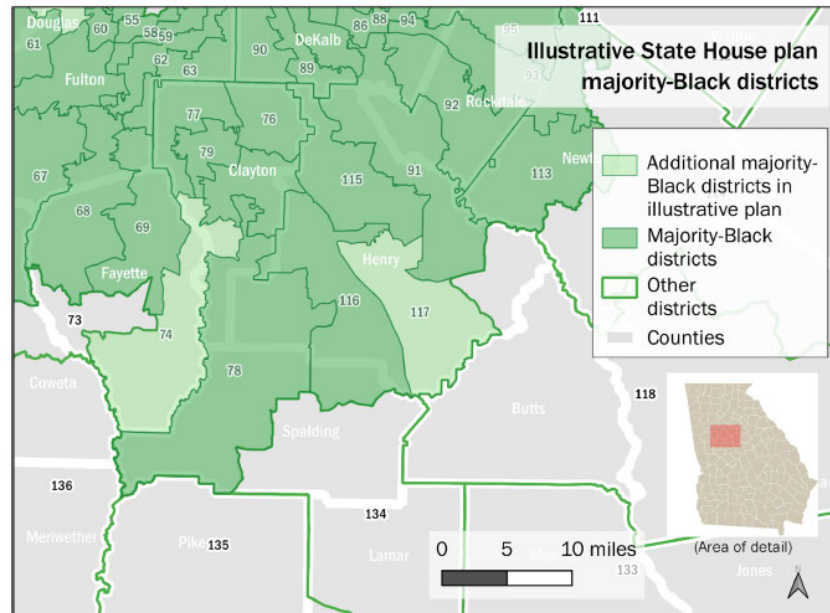
**((b)) eyeball test**

The Court finds that Esselstyn HD-74 is visually compact:

---

<sup>80</sup> The statistics for the VTD splits can be found on pages 11 and 15 of subdivision of the Political Subdivisions Chart entitled GA House Enacted and page 2 of Political Subdivisions Chart entitled GA House Illustrative. GX 1, Attach. L.

**Figure 15: Map of southern Metro Atlanta area of illustrative plan with majority-Black House districts indicated.**



GX 1 ¶ 50 & fig.15.

Esselstyn HD-74 does not have appendages or tentacles. Using the mapping tool, Esselstyn HD-74 is approximately 20 miles in length at its most distant points.

Defendants do not meaningfully dispute the visual compactness of this district. Accordingly, the Court finds that Esselstyn HD-74 is visually compact.

**((c)) communities of interest**

The Court finds that Esselstyn HD-74 combines rural, urban, and suburban populations. In fact, Mr. Esselstyn testified that the proposed district contained

rural, urban, and suburban populations. Tr. 566:22–24. Mr. Carter’s testimony about the communities of interest in this district was generally the same as his testimony about the communities of interest in Esselstyn HD-117, SD-25, and SD-28 because they are in the same relative region of the state. However, on cross-examination, Mr. Carter agreed that the parts of south Fayette County included in Esselstyn HD-74 were exurban, if not rural, compared with other parts of the district. Tr. 987:2–16.

The Court finds that the testimony specific to Esselstyn HD-74 shows that it combined widely diverse communities into a district. Accordingly, the Court finds that Esselstyn HD-74 combines disparate communities into one district.

**((d)) conclusions of law**

The Court has determined that the Grant Plaintiffs have not carried their burden in establishing that the Black community in Esselstyn HD-74 is sufficiently numerous and compact to constitute an additional majority-Black district. Although the Black population in Esselstyn HD-74 exceeds 50%, the Court finds that it does so by having one of the most underpopulated districts in the Esselstyn House Plan. Tr. 567:23–568:6. Additionally, the Court finds that

although the district is visually compact, it is significantly less compact than Enacted HD-74 in other ways. Furthermore, Mr. Esselstyn admitted and Mr. Carter agreed that the district combines urban, suburban, and rural communities. Neither witness was able to explain the commonalities that the voters in Esselstyn HD-74 share, except for the general commonalities that all metro Atlanta voters share. Accordingly, the Court concludes that the Grant Plaintiffs have not carried their burden in meeting the first Gingles precondition in the area drawn by Esselstyn HD-74.

*v) Esselstyn HD-117*

The Court finds that the Grant Plaintiffs have shown that it is possible to draw a legislative district consistent with traditional redistricting principles in the area encompassed by Esselstyn HD-117.

**((a)) Empirical measures**

**((1)) *population equality***

The Court finds that Esselstyn and Enacted HD-117 have comparable population deviations. Esselstyn HD-117 has a population deviation of +1.06% whereas Enacted HD-117 has a population deviation of +1.04%. GX 1, Attachs. I, J. The Court finds that the difference in population deviations between the two

Nos. 23-13916 & 23-13921  
(consolidated with No. 23-13914)

---

**In the United States Court of Appeals  
for the Eleventh Circuit**

---

COAKLEY PENDERGRASS et al.,  
*Plaintiffs-Appellees,*

ANNIE LOIS GRANT et al.,  
*Plaintiffs-Appellees,*

v.

SECRETARY OF STATE OF GEORGIA,  
*Defendant-Appellant.*

---

On Appeal from the United States District Court  
for the Northern District of Georgia  
Nos. 1:21-cv-05339 & 1:22-cv-00122—Steve C. Jones, Judge

---

***PENDERGRASS AND GRANT APPELLEES’  
SUPPLEMENTAL APPENDIX  
VOLUME V OF VI***

---

Joyce Gist Lewis	Abha Khanna	Michael B. Jones
Adam M. Sparks	Makeba Rutahindurwa	ELIAS LAW GROUP LLP
KREVOLIN & HORST, LLP	ELIAS LAW GROUP LLP	250 Mass. Ave NW,
One Atlantic Center	1700 Seventh Ave,	Suite 400
1201 W. Peachtree St. NW,	Suite 2100	Washington, DC 20001
Suite 3250	Seattle, WA 98101	(202) 968-4490
Atlanta, GA 30309	(206) 656-0177	
(404) 888-9700		

*Counsel for Plaintiffs-Appellees in Nos. 23-13916 & 23-13921*

## INDEX OF APPENDIX

### Docket No.

#### **Volume I**

Complaint .....	1
Order on Motions for Preliminary Injunction .....	97

#### **Volume II**

Order on Motions for Preliminary Injunction (cont.) .....	97
Declaration of William S. Cooper .....	174-1
Expert Report of Orville Vernon Burton .....	174-5
Expert Report of Loren Collingwood .....	174-6

#### **Volume III**

Expert Report of Loren Collingwood (cont.) .....	174-6
Expert Report of John R. Alford .....	174-8
Pretrial Order .....	231
Excerpts from Trial Transcript (9/6/2023 AM) .....	279
Excerpts from Trial Transcript (9/8/2023 PM) .....	281
Excerpts from Trial Transcript (9/14/2023 AM) .....	285
Order and Memorandum of Decision .....	286

#### **Volume IV**

Order and Memorandum of Decision (cont.) .....	286
--	-----

#### **Volume V**

Order and Memorandum of Decision (cont.) .....	286
Excerpts from Trial Transcript (9/11/2023 PM) .....	292

Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) .....	26
---	----

**Volume VI**

Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) (cont.).....	26
--	----

Certificate of Service



districts is not legally significant. Additionally, the Court finds that Esselstyn HD-117's population deviation is within the range of population deviations found in the Enacted House Plan (-1.40% and 1.34%). Id. at Attach. I. Accordingly, the Court finds that Esselstyn HD-117 complies with traditional redistricting principle of population equality.

**((2)) *contiguity***

The Parties stipulated that Esselstyn HD-117 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn HD-117 complies with the traditional redistricting principle of contiguity.

**((3)) *compactness scores***

The Court finds that Esselstyn and Enacted HD-117 are comparably compact. Esselstyn HD-117 has a Reock score of 0.40 and a Polsby-Popper score of 0.33. GX 1, Attach. L. Enacted HD-117 has a Reock score of 0.41 and a Polsby-Popper score of 0.28. Id. Thus, Enacted HD-117 is more compact on the Reock measure (by 0.01 points), and Esselstyn HD-117 is more compact on the Polsby-Popper score (by 0.05 points). Generally, however, the two districts are roughly equal in terms of objective compactness scores. The Court also finds that Esselstyn HD-117 performs better than the Enacted House Plan's average

compactness scores (0.39 on Reock and 0.28 on Polsby-Popper). Id. Accordingly, the Court finds that Esselstyn HD-117 is compact as compared to Enacted HD-117 and overall qualifies as a compact district.

((4)) *political  
subdivisions*

The Court finds that Esselstyn HD-117 demonstrates respect for political subdivisions. Esselstyn HD-117 is wholly within Henry County, meaning it does not split any counties (GX 1 ¶ 50 & fig.15), whereas Enacted HD-117 consists of Henry and Spalding Counties (GX 1, Ex. I). Accordingly, Esselstyn HD-117 splits one less county than Enacted HD-117.

Conversely, however, Mr. Esselstyn split the city of McDonough, even though he kept the core of the city whole. Tr. 571:19–25. Mr. Esselstyn also split the city of Locust Grove, by using I-75 as a boundary.<sup>81</sup> Tr. 571:16–21. Finally,

---

<sup>81</sup> Mr. Esselstyn, however, crossed over I-75 in another district. Tr. 571:16–21

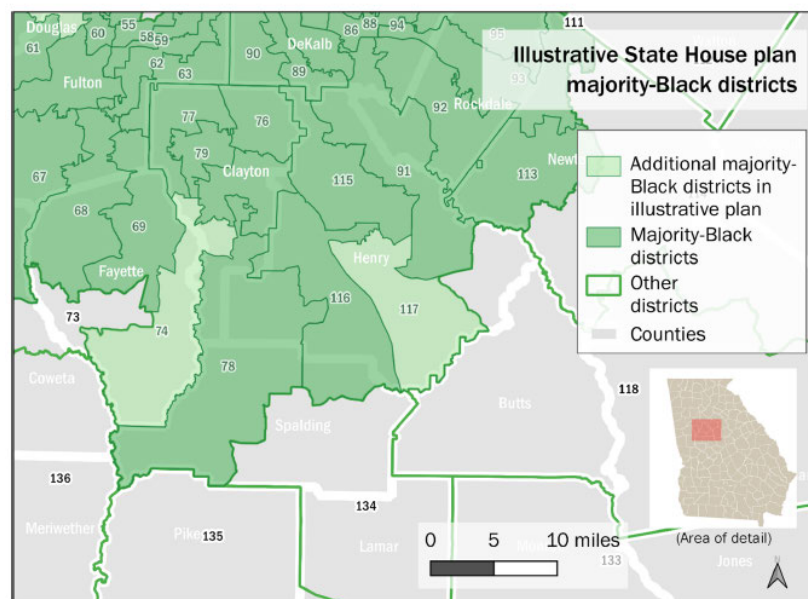
Esselstyn HD-117 splits two VTDs in Henry County, whereas the Enacted HD-117 split only one VTD in Henry County. GX 1, Ex. L.<sup>82</sup>

Given the above evidence, the Court finds that Mr. Esselstyn, generally, respected political subdivisions in creating Esselstyn HD-117.

**((b)) Eyeball test**

The Court finds that Esselstyn HD-117 is visually compact:

**Figure 15: Map of southern Metro Atlanta area of illustrative plan with majority-Black House districts indicated.**



---

<sup>82</sup> The statistics for the VTD splits can be found on page 13 of subdivision of the Political Subdivisions Chart entitled GA House Enacted and page 13 of Political Subdivisions Chart entitled GA House Illustrative. GX 1, Attach. L.

GX 1 ¶ 50 & fig.15.

Esselstyn HD-117 does not have appendages or tentacles. Using the mapping tool, Esselstyn HD-117 is approximately 15 miles at its most distant points. Defendants do not meaningfully dispute the visual compactness of this district. Accordingly, the Court finds that Esselstyn HD-117 is visually compact.

**((c)) Communities of interest**

The Court finds that Esselstyn HD-117 respects communities of interest. The testimony about HD-117 is virtually identical to the testimony regarding Esselstyn HD-74 because both districts are relatively close in proximity. See Section II(D)(1)(b)(2)(i)(c), id. at (ii)(c), id. at (iii)(c) *supra* (HD-74 and in Senate districts for south metro). There is no evidence or testimony opining or showing that Esselstyn HD-117 includes disparate communities.

The Court does not find Mr. Esselstyn’s split of McDonough and Locust Grove to constitute a failure in preserving communities of interest. Mr. Esselstyn testified that when drawing the district, he made his best effort to keep the core of McDonough whole and only the “fringes of McDonough [ ] are outside of District 117.” Tr. 570: 22–25. And Locust Grove is divided based on the I-75

boundary. Tr. 571:16–19. The Court credits Mr. Esselstyn’s explanations for the reasons why McDonough and Locust Grove were not kept intact and finds that they are sufficient for purposes of showing that Mr. Esselstyn preserved communities of interest.

In sum, the Court finds that Esselstyn HD-117 is a small district contained wholly within metro Atlanta. The communities share the same concerns with transportation routes and have experienced recent major population growth. Additionally, the Court finds that this district is not long and sprawling, like the districts in LULAC and Miller that stretched across large portions of their respective States and combined disparate minority populations. Rather, as is evidenced by the size of the district and the trial testimony, Esselstyn HD-117 preserves communities of interest.

**((d)) Conclusions of law**

The Court finds that the Grant Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Esselstyn HD-117 to constitute an additional majority-Black district. The Court finds that Esselstyn HD-117 complies with the traditional redistricting principles

of population equality, contiguity, compactness, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Grant Plaintiffs have carried their burden in meeting the first Gingles precondition in the area drawn by Esselstyn HD-117.

**c) Eastern Black Belt region**

**(1) Alpha Phi Alpha**

The Court finds that the Alpha Phi Alpha Plaintiffs have not met their burden in establishing that the Black community in the eastern Black Belt sufficiently large and geographically compact to constitute an additional majority-Black Senate or House district.

**(a) numerosity**

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden in showing that the Black voting age population in the eastern Black Belt is large enough to constitute an additional majority-Black district. Bartlett, 556 U.S. at 20 (“[A] party asserting § 2 liability must show by a preponderance of the evidence

that the minority population in the potential election district is greater than 50 percent.”).

Cooper SD-23 has an AP BVAP of 50.21%, which slightly exceeds the 50% threshold required by Gingles. APAX 1, 227 & Ex. O-1. As the Court discusses further below, it is significant that Mr. Cooper removed Black population from SD-22 to create SD-23, which resulted in two underpopulated districts that meet the 50% majority-Black threshold by only slight margins. Tr. 257:1-4.

The Black voting age population in the eastern Black Belt is also large enough to constitute an additional majority-Black House district. Cooper HD-133 has an AP BVAP of 51.97%, which exceeds the 50% threshold required by Gingles APAX 1, Ex. AA-1. Thus, Cooper HD-133 meets the first Gingles precondition’s numerosity requirement.

**(b) compactness**

The Court concludes that neither Cooper SD-23 nor Cooper HD-133 are, on the whole, compact pursuant to the standards for the first Gingles precondition in the Alpha Phi Alpha Plaintiffs’ case.

*i) Cooper SD-23*

**((a)) empirical measures**

**((1)) *population equality***

The ideal population size of a State Senate District is 191,284 people. Stip.

¶ 277. Cooper SD-23 has a population of 190,081 people, which constitutes a population deviation of -0.63%. APAX 1, Ex. O-1. The neighboring majority-Black district, SD-22, is also underpopulated—its population is 189,518, which constitutes a population deviation of -0.92%. APAX 1, Ex. O-1. Conversely, Enacted SD-23 is slightly underpopulated with a population of 190,344, with a population deviation of only -0.49%. APAX 1, Ex. M-1. For its part, Enacted SD-22 is overpopulated with a population of 193,163 and a population deviation of +0.98%. Id.

The Supreme Court has indicated a strong preference for “population equality with little more than *de minimis* variation.” Connor v. Finch, 431 U.S. 407, 414 (1977) (internal quotation mark omitted) (quoting Chapman v. Meier, 420 U.S. 1, 27 (1975)). While the Equal Protection Clause does not require that Legislative Districts meet perfect population deviations, with the advent of technology, it seems that  $\pm 10\%$  deviation is no longer a safe harbor for proposed districts. See



Section II(D)(1)(b)(2)(b)(iii)(a)(1) supra (Esselstyn HD-74); see also JX 2, 2 (stating a guideline that “[e]ach legislative district of the General Assembly shall be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.”).

The Court finds that Cooper SD-23 itself is not malapportioned. To create the district, however, Mr. Cooper reduced the population in SD-22 to nearly the lowest deviation on the Cooper Senate Plan. Tr. 254:14-255:3, 1783:10-14. Therefore, the Court concludes it is significant that Mr. Cooper’s creation of SD-23 required creating increasing the population deviation in SD-22, so that it is barely within Mr. Cooper’s  $\pm 1.00\%$  deviation guidepost. Stop. ¶ 301, APAX 1 ¶ 111. Moreover, even though the General Assembly did not enumerate a specific population deviation range for the Legislative Districts, the Court finds Cooper SD-23 performs worse on the population equality metric than Enacted SD-23. JX 2, 2; APAX 1, Exs. O-1, M-1. Accordingly, the Court finds that the evidence shows that Cooper SD-23 achieves the traditional redistricting principle of population equality less so than Enacted SD-23.

**((2)) *contiguity***

The Parties stipulated that Cooper SD-23 is a contiguous district. Stip. ¶ 300. Therefore, the Court finds that Cooper SD-23 complies with the traditional redistricting principle of contiguity.

**((3)) *compactness scores***

Under the objective Reock and Polsby-Popper measures, Cooper SD-23 and Enacted SD-23 are comparably compact. In fact, they achieve the same scores: Enacted SD-23 has a Reock score of 0.37 and a Polsby-Popper score of 0.16. APAX 1, Ex. S-3. Likewise, Cooper's SD-23 has a Reock score 0.37 and a Polsby-Popper 0.16. *Id.*, Ex. S-1. Thus, the Court considers Cooper's SD-23 to be comparably compact to Enacted SD-23.

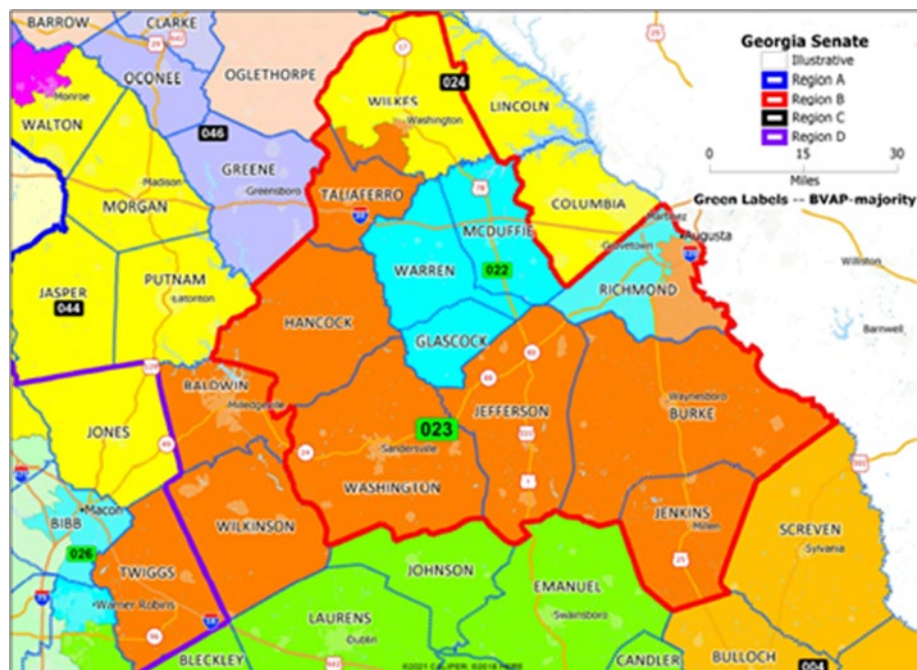
**((4)) *political subdivisions***

Both Enacted SD-23 and Cooper SD-23 split two counties: Enacted SD-23 splits Richmond and Columbia Counties while Cooper SD-23 splits Richmond and Wilkes Counties. Tr. 119: 4-13. However, Cooper SD-23 splits the City of Washington (Tr. 258:24 – 259:2), whereas Enacted SD-23 does not. APAX 1 ¶ 107 & fig.18 (the city of Washington is in Wilkes County and all of Wilkes County is

within Enacted SD-24). Additionally, Cooper SD-23 splits two VTDs in Wilkes County, whereas Enacted SD-23 splits none. APAX 1, Exs. T-1, T-3. Thus, the Court concludes that Cooper SD-23 does not exhibit respect for political subdivisions as well as Enacted SD-23.

**((b)) eyeball test**

The Court concludes that Cooper SD-23 does not pass the eyeball test for visual compactness:



APAX 1 ¶ 108 & fig.19A.

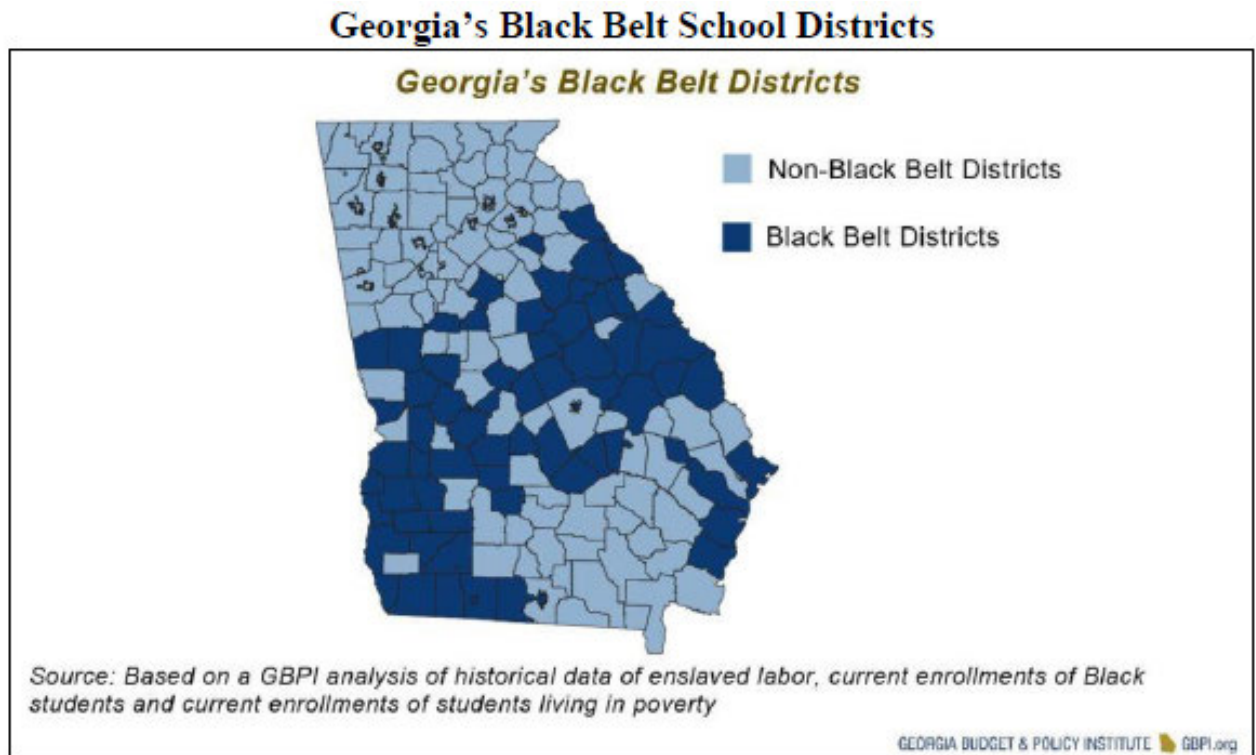
Cooper SD-23 is an oddly shaped, sprawling district that spans north to south from Wilkes County to Jenkins County and east to west from Twiggs County to Burke County. APAX Ex. 1, fig.19A. Milledgeville in Baldwin County (western part of the district) is more than 100 miles from Augusta in Richmond County (eastern part of the district). DX 2 ¶ 36. Based on the foregoing, Cooper SD-23 is not visually compact.

Admittedly, Enacted SD-23 is also large and sprawling, albeit in a different way than Cooper SD-23. However, as a majority-white district, Enacted SD-23 is not subject to Gingles' compactness requirements. LULAC, 548 U.S. at 430–31 (“[T]here is no § 2 right to a district that is not reasonably compact, the creation of a noncompact district does not compensate for the dismantling of a compact opportunity district.” (citing Abrams, 521 U.S. at 91–92)). In other words, the large and sprawling nature of Enacted SD-23 does not alleviate the concerns with the shape and size of Cooper SD-23. Moreover, plaintiffs, who have alleged a Section 2 violation, have the burden to show that the minority community is sufficiently compact to create the proposed majority-minority district. Based on

the foregoing, the Court concludes Alpha Phi Alpha Plaintiffs have not met their burden to show visual compactness.

**((c)) communities of interest**

The Court furthermore finds that the Alpha Phi Alpha Plaintiffs have not carried their burden in showing that Cooper SD-23 unites communities of interest. Mr. Cooper stated that the “Black Belt” formed a community of interest in relation to Cooper SD-23. Tr. 267:12–22. But when asked to define the factors that unite the Black communities in Cooper SD-23, Mr. Cooper only vaguely referenced “cultural and historical factors,” a response the Court finds unpersuasive. First, the Black Belt is a wide region that “stretches from one side of the State to another and “that is a pretty significant amount of distance to define as one community.” Tr. 1619:6-9.

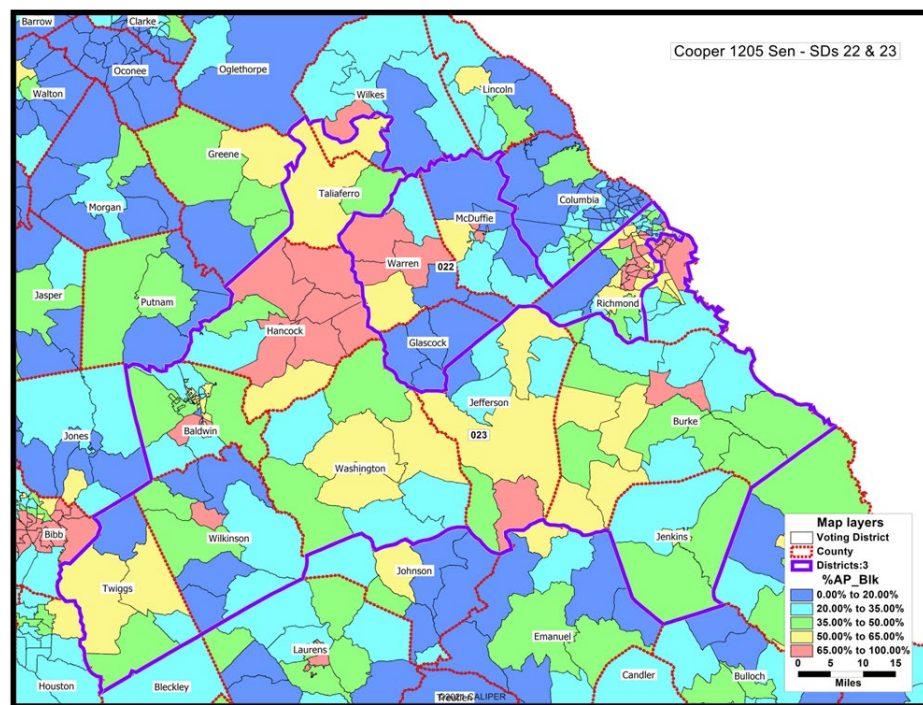


APAX 1 ¶ 18 & fig.1.

Ms. Wright, the State's map drawer, testified that there is a natural barrier in the area of the Ogeechee River that runs through Warren, Glascock, and Jefferson Counties, which runs through the center of Cooper SD-23. Tr. 1639:12-1640:1. She also testified that Augusta is a more urban area, whereas the surrounding counties are rural. Tr. 1639:12-14; 1695:25-1696:8.

With respect to the demographic makeup of the district, Mr. Morgan, Defendant's mapping expert, described Cooper SD-23 as a district that "connects

separate enclaves of Black population.” DX 2 ¶ 35. The Court agrees. For example, Cooper SD-23 links Black population from Milledgeville in Baldwin County to the Black population residing more than 100 miles away in Augusta. Id. Furthermore, Mr. Cooper conceded that Cooper SD-23 includes counties from different regions and splits a regional commission. Tr. 260:23–261:13.



DX 2 ¶ 34 & Ex. 23.

The Court finds that, although communities of interest are hard to define, the distance between the Black population in Cooper SD-23 coupled with the



sprawling geographic nature of the district indicates that there is not a unified community of interest in Cooper SD-23. Mr. Cooper’s vague reference to shared historical and cultural similarities of the Black Belt is insufficient to establish communities of interest. The Black Belt runs across the southeastern United States, and in Georgia, it spans from Augusta, near the South Carolina border to the southwest corner of the State near Alabama and Florida. Stip. ¶ 118; GX 1 ¶ 19 & fig.1. The Court finds that portions of Cooper SD-23 are both urban and rural and that a river divides the proposed district.

The Court also finds that the lay witness testimony does not sufficiently prove that Cooper SD-23 preserves communities of interest. Dr. Diane Evans,<sup>83</sup> who lives in Jefferson County – at the heart of Cooper SD-23 – testified about communities in the proposed district that share numerous interests. She said that Black residents in the eastern section of the Black Belt attend the same houses of worship and share church leadership. Tr. 627:19-628:6. She identified other common interests shared by the Black residents in the area such as sports, and

---

<sup>83</sup> The Court granted Plaintiffs’ motion to incorporate Dr. Evans’s testimony as part of the Alpha Phi Alpha record. Tr. 633:18-634:10.



farming; she said they also have similar policy concerns regarding high school dropout rates and education. Id. at 625:3-8, 629:22-630:13.

While the Court finds Dr. Evans to be highly credible, the Court also finds that the evidence presented at trial is not enough to show that the Black communities in Esselstyn SD-23 are part of a community of interest. Although there is some evidence of shared concerns over high rates of gun violence and low high school graduation rates, it is unclear how these commonalities unite the widely dispersed Black communities in the proposed district. Additionally, given the widely dispersed nature of the pockets of high concentration of Black people, the evidence is insufficient to show that all of the communities in this area share these same concerns.

Although the three-judge court in Singleton found a community of interest in Alabama's Black Belt, the evidence in this case differs. There, the three-judge court found that "Black voters in the Black Belt share common 'political beliefs, cultural values, and economic interests.'" Singleton, 582 F. Supp. 3d at 953. The Court finds that there is not sufficient evidence in the Record for it to conclude that the Black community in this region constitutes a community of interest.

Accordingly, the Court finds that Cooper SD-23 does not preserve communities of interest.

**((d)) conclusions of law**

The Court concludes that the Black community is not sufficiently compact in Cooper SD-23. This conclusion is based on (a) the underpopulation of Cooper SD-23 (and its ripple effect of reducing the population in Cooper SD-22), (b) Cooper SD-23's treatment of political subdivisions, (c) a lack of visual compactness, and (d) Cooper SD-23's unification of geographically distant disparate black populations without preserving articulable communities of interest.

Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have not carried their burden in meeting the first Gingles precondition as to Cooper SD-23. The three Gingles requirements are necessary preconditions, intended "to help courts determine which claims could meet the totality-of-the-circumstances standard for a § 2 violation." Bartlett, 556 U.S. at 21. Failure to prove any one of the preconditions is fatal to a plaintiff's Section 2 claim. Greater Birmingham Ministries, 992 F.3d at 1332. Because the Alpha Phi Alpha Plaintiffs have not

successfully carried their burden in establishing that the Black community in the eastern Black Belt is sufficiently compact, they have failed to demonstrate that the Enacted Senate Plan violates Section 2 with respect to the area of Cooper SD-23.

*ii) Cooper HD-133*

As with Cooper SD-23, the Court concludes, based on the following measures of compactness, that Cooper HD-133 does not satisfy the first Gingles' precondition's compactness requirement either.

**((a)) empirical measures**

**((1)) *population equality***

The ideal population size of a State House District is 59,511 people. Stip. ¶ 278. Cooper HD-133 and Enacted HD-133 have identical population deviations of -1.33%. APAX 1, Exs. Z-1, AA-1. Accordingly, the Court finds that the population of Cooper HD-133 complies with the General Assembly's guidelines and the traditional redistricting principle for population equality.

**((2)) *contiguity***

The Parties stipulated that Cooper HD-133 is a contiguous district. Stip. ¶ 300. Therefore, the Court finds that Cooper HD-133 complies with the traditional redistricting principle of contiguity.

**((3)) *compactness scores***

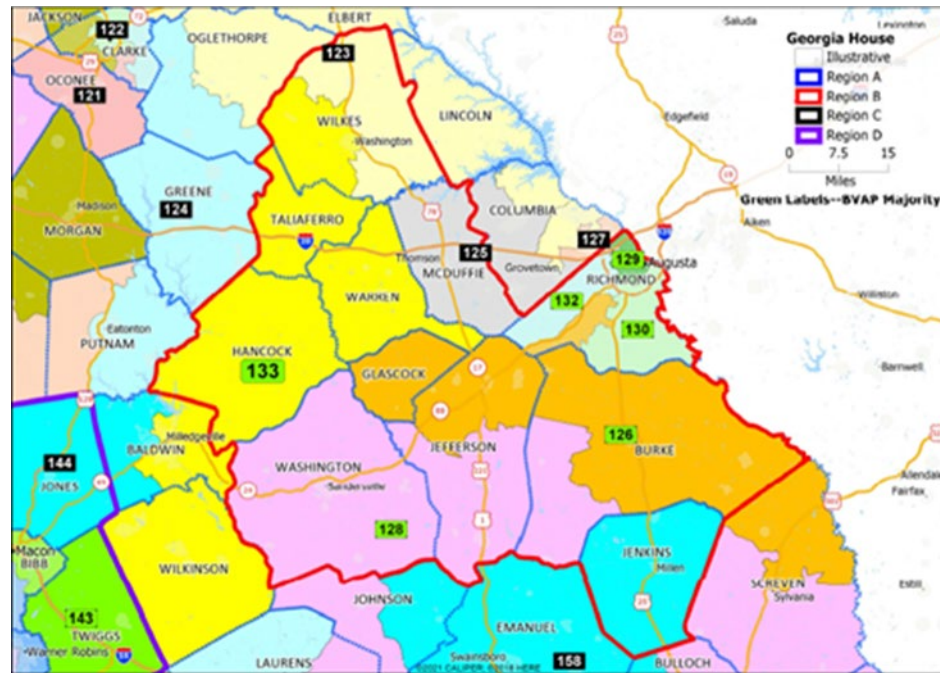
Under the Reock and Polsby-Popper measures, Cooper HD-133 is much less compact than Enacted HD-133: Enacted HD-133 has a Reock score of 0.55 and a Polsby-Popper score of 0.42, whereas Cooper's HD-133 has a Reock score 0.26 and a Polsby-Popper 0.20. DX 2, 25 & Chart 7. Accordingly, the Court concludes that Cooper HD-133 is not comparably compact to Enacted HD-133. The Court does note, however that both of these compactness scores are within the range of compactness scores found in the Enacted House Plan, i.e., minimum Reock score is 0.12 and minimum Polsby-Popper score is 0.10. APAX 1, Ex. AG-2. Although Cooper HD-133 exceeds the minimum threshold, the Court finds that, compared to Enacted HD-133, it performs far worse on compactness measures.

**((4)) *political  
subdivisions***

Evidence at trial established that Mr. Cooper sacrificed preservation of political subdivisions, including counties and precincts, in creating Cooper HD-133. Mr. Cooper testified that there are more splits in this area of the Cooper House Plan than in other illustrative plans he has drawn. Tr. 282:3-4. Also, Cooper HD-133 split *nine* precincts – again, more than any other district on the Cooper House Plan. DX 2 ¶ 62; APAX 1, T-1, T-3. Furthermore, to create Cooper HD-133, Mr. Cooper made changes to Enacted HD-128 – a majority-Black district – that resulted in additional split counties in that area. Tr. 282:13-19. Likewise, the creation of Cooper HD-133 required changes to Enacted HD-126 that resulted in additional county splits in that district. Tr. 283:23-284:11. Thus, the Court determines that Cooper HD-133 does not respect political subdivisions, either itself in the proposed district, or in the districts experiencing the ripple effect of Mr. Cooper’s changes to the area.

**((b)) eyeball test**

The Court concludes that Cooper HD-133 does not pass the eyeball test:



APAX 1 ¶ 169 & fig.31.

Cooper HD-133 is a long district that stretches from Wilkes County in the north, narrows around Milledgeville, and then widens out to Wilkinson County in the south. DX 2, 75 fig.31. According to Mr. Morgan, Defendants' mapping expert, Cooper HD-133 stretches north to south for 90 miles to pick up Black population from Milledgeville. DX 2 ¶ 61. In these ways, Cooper HD-133 stands in stark contrast to Enacted HD-133, which covers a much smaller geographic area. See DX 2, 74 fig.30. Thus, the Court concludes that Cooper HD-133 is not visually compact.

**((c)) communities of interest**

Finally, the Court finds that the Alpha Phi Alpha Plaintiffs have not carried their burden in showing that Cooper HD-133 unites communities of interest. Mr. Cooper identified the “Black Belt” as a community of interest that joined the various counties within Cooper HD-133. Tr. 280:23 – 25. He further stated that the counties in Cooper HD-133 are rural in nature, and with the exception of Glascock County, are significantly Black. Id. at 281:3-8.

The Court finds that, although communities of interest are hard to define, Alpha Phi Alpha Plaintiffs have not produced sufficient evidence show that this 90-mile district preserves communities of interest as opposed to combining disparate communities. This is true even in light of Dr. Evan’s testimony, which is incorporated here (see Section II(D)(1)(c)(1)(b)(i)(c) *supra*). Without more, the Court cannot conclude that Cooper HD-133 preserves communities of interest.

**((d)) conclusions of law**

The Court concludes that the Black community is not sufficiently compact in Cooper HD-133. This conclusion is based on the following findings of fact: compared to Enacted HD-133 Cooper HD-133 splits more VTDs, and added numerous county splits in the area. Additionally, the creation of Cooper HD-133

led to increased VTD splits in neighboring districts. Cooper HD-133, moreover, is not visually compact and unites Black populations whose only commonalities are being in the Black Belt in mostly rural areas—an insufficient showing of communities of interest.

Accordingly, the Court concludes that the Alpha Phi Alpha Plaintiffs have not carried their burden in meeting the first Gingles precondition as to Cooper HD-133. Like with Cooper SD-23, *supra*, failure to prove any one of the preconditions is fatal to Plaintiffs’ Section 2 claim. Greater Birmingham Ministries, 992 F.3d at 1332. Accordingly, Alpha Phi Alpha Plaintiffs have failed to demonstrate that the Enacted House Plan violates Section 2 with respect to that area of the State.

(2) Grant; Esselstyn SD-23

The Court finds that the Grant Plaintiffs failed to prove that the Black community is not sufficiently compact to constitute an additional majority-Black Senate district in the Eastern Black Belt region.

(a) numerosity

The Court finds that the Grant Plaintiffs have met their burden in showing that the Black voting age population in the eastern Black Belt is large enough to



constitute an additional majority-Black district. It is undisputed that Esselstyn SD-23 has an AP BVAP of 51.06%, which exceeds the 50% threshold required by Gingles. GX 1 1 ¶ 27 & tbl.1; Stip. ¶ 234.

**(b) compactness**

Based on a review of traditional redistricting principles, the Court finds that the minority community is not sufficiently compact to warrant the creation of an additional majority-Black district in the eastern Black Belt as found in Esselstyn SD-23. Additionally, Esselstyn SD-23 fails to respect the other traditional redistricting principles (visual compactness and preservation of communities of interest).

*i) empirical measures*

**((a)) population equality**

The Court finds that Esselstyn SD-23 is not malapportioned. Nevertheless, as explained below, the Court finds that Esselstyn SD-23 has the *greatest* population deviation of any district in the Esselstyn and Enacted Senate Plans.

The ideal population size of a State Senate District is 191,284 people. Stip. ¶ 277. Esselstyn SD-23 has a population of 188,095 people, which amounts to a population deviation of -1.67%. GX 1, attach E. Esselstyn SD-23 is the most

underpopulated district in either the Esselstyn or Enacted Senate Plan. Additionally, the Court finds that neighboring majority-Black district, SD-22 is underpopulated under the Esselstyn Senate Plan. Esselstyn SD-22 has a population of 188,930, which is a population deviation of -1.23%. GX 1, attach E. In the Enacted Senate Plan, conversely, Enacted SD-23 is slightly underpopulated with a population of 190,344 (a population deviation of -0.49%), and Enacted SD-22 is overpopulated with a population of 193,163 (a population deviation of +0.98%). GX 1, Attach. D.

Although the General Assembly did not enumerate a specific deviation range for the Legislative Districts, the Court finds that the population of Esselstyn SD-23 does not comply with the guideline that “[e]ach legislative district of the General Assembly shall be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.” JX 2, 2. Additionally, in creating Esselstyn SD-23, Mr. Esselstyn did not keep his deviations within the range of the Enacted Senate Plan, which is  $\pm 1.03\%$ . Cf. Stip. ¶ 301 (indicating the 2021 Senate Plan’s population deviation range in comparison to Mr. Cooper’s population deviation range). Thereby, for all these

reasons, Esselstyn SD-23 fails to achieve population equality to the same degree as any district in the Enacted Senate Plan.

**((b)) contiguity**

The Parties stipulated that Esselstyn SD-23 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn SD-23 complies with the traditional redistricting principle of contiguity.

**((c)) compactness scores**

Under the Reock and Polsby-Popper measures, Esselstyn SD-23 and Enacted SD-23 are comparably compact. Enacted SD-23 has a Reock score of 0.37 and a Polsby-Popper score of 0.16. GX 1, Attach. H. Esselstyn SD-23 has a Reock score 0.34 and a Polsby-Popper 0.17. Id. Thus, Enacted SD-23 is 0.03 points more compact on the Reock measure, but Esselstyn SD-23 is 0.01 points more compact on Polsby-Popper. On the whole, the Court finds that the Enacted and Esselstyn SD-23 are comparably compact.

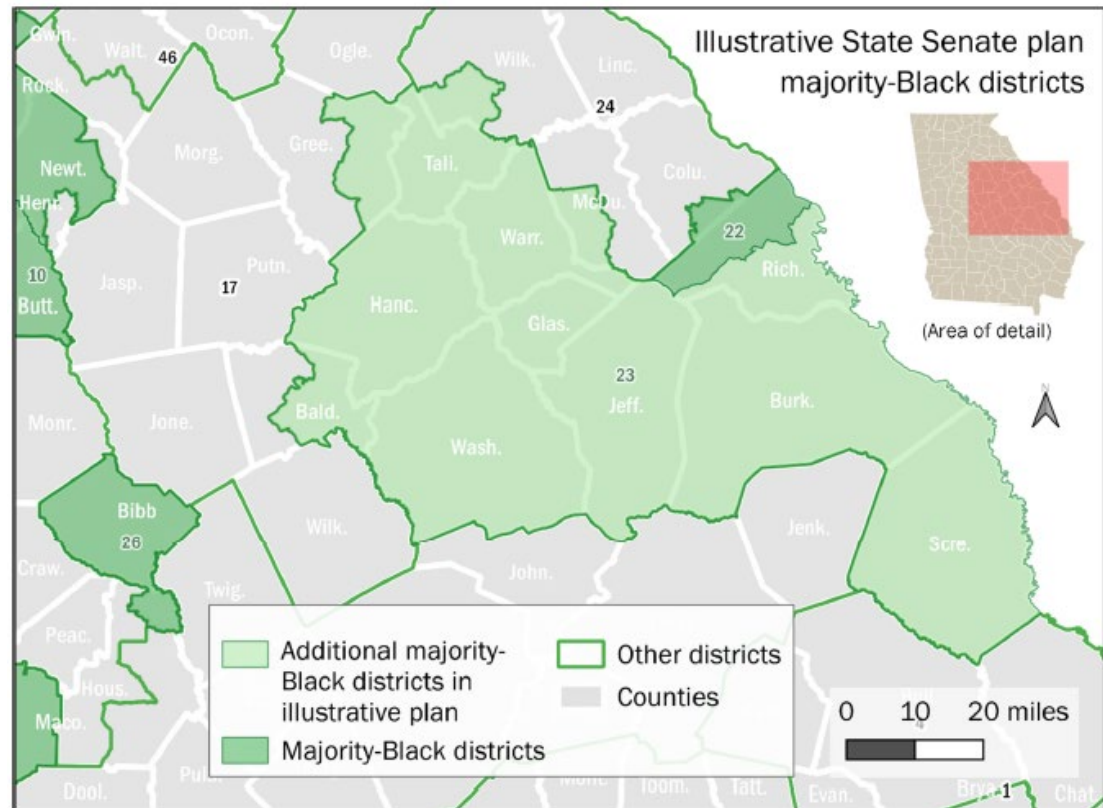
**((d)) political subdivisions**

The Court finds that Esselstyn SD-23 split more counties than Esselstyn SD-23. Enacted SD-23 splits Richmond and Columbia Counties but otherwise keeps nine counties whole. DX 3 ¶ 31. Meanwhile, Esselstyn SD-23 split more

counties than any other district on the Esselstyn Senate Plan. DX 3 ¶¶ 33, 36. Specifically, Esselstyn SD-23 splits Richmond, McDuffie, Wilkes, Greene, and Baldwin Counties. GX 1 ¶ 29; Tr. 536:22–237:5, 1818:7–13. As part of Esselstyn SD-23’s ripple effect, Esselstyn SD-22 includes more counties than Enacted SD-22. DX 3 ¶ 31. Enacted SD-22, which is a majority-Black district, is wholly within Richmond County. Id. Under the Esselstyn Senate Plan, however, Esselstyn SD-22 includes parts of Richmond and Columbia Counties. Based on the foregoing, the Court overall finds that it does not respect political subdivisions.

*ii) eyeball test*

The Court finds that Esselstyn SD-23 is not visually compact and does not pass the eyeball test:



GX 1 ¶ 29 & fig.5.

Esselstyn SD-23 is a long sprawling district that spans from Wilkes and Greene counties in the north, down to Screven County in the south. DX 3, 16. Additionally, Esselstyn SD-23 starts in Augusta in the east and stretches to Milledgeville in the west. GX 1 ¶ 29 & fig.5. From the Augusta portion of the district to Milledgeville, the district is approximately 80 miles using the mapping tool. Tr. 1854:18-22. It is more than 100 miles from Greene County to Screven

County. GX 1 ¶ 29 & fig.5. The Court finds that Esselstyn SD-23 it is not visually compact.

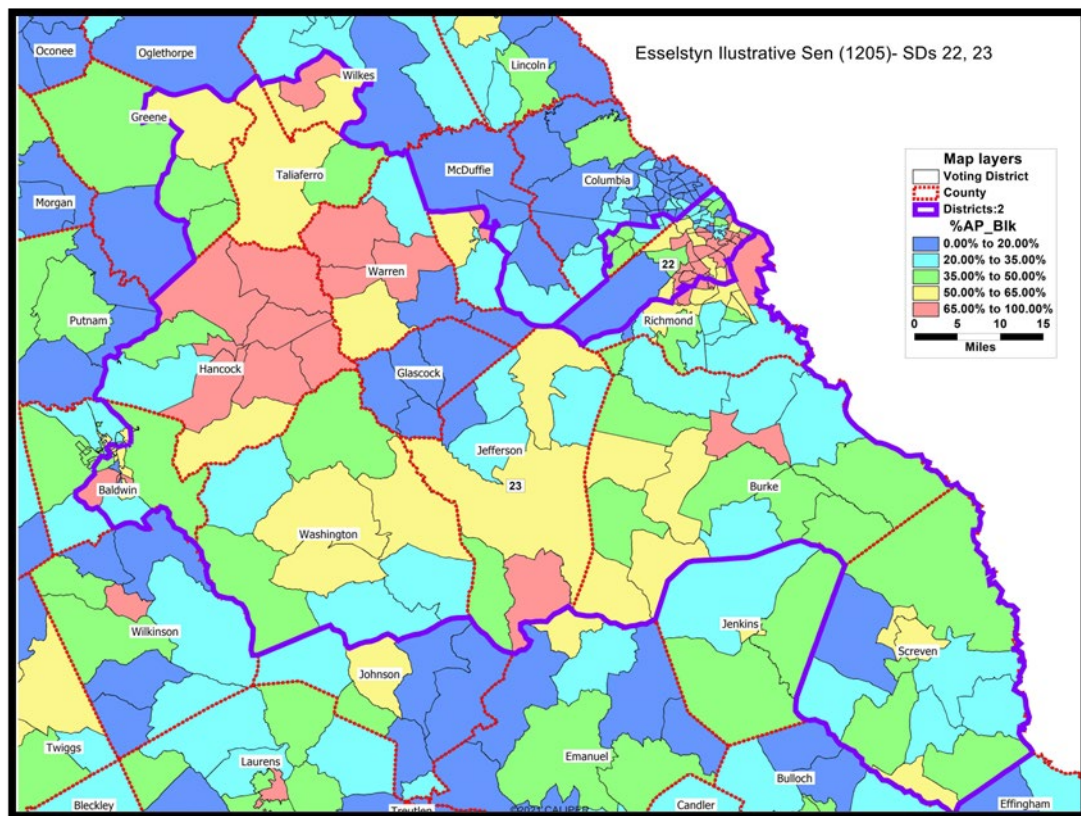
As with the Alpha Phi Alpha case's proposed Senate district in this area, the Court acknowledges that Enacted SD-23 is also large and sprawling. GX 1 ¶ 29 & fig.2. However, for purposes of a Section 2 violation, the large and sprawling nature of Enacted SD-23, a non-remedial district, does not alleviate the concerns with the shape and size of Esselstyn SD-23. See LULAC, 548 U.S. at 430-31. Enacted SD-23 is a majority-white district that was not required to comply with Gingles' compactness requirements. The Grant Plaintiffs, who have alleged a Section 2 violation, however, must show that the minority community is sufficiently compact to create a majority-minority district. Upon review of Esselstyn SD-23, the Court finds that the proposed district is not visually compact.

*iii) communities of interest*

The Court finds that the Grant Plaintiffs have not carried their burden in showing that Esselstyn SD-23 unites communities of interest. Rather, the evidence shows that the areas of high Black concentration in Esselstyn SD-23 are

spread out across the district and have large areas of intervening white population.

Mr. Esselstyn was unable to identify any community of interest shared by the counties and portions of counties in Esselstyn SD-23. Tr. 539:11-23. The district combines geographically separate Black populations in McDuffie and Wilkes Counties and in Milledgeville. Tr. 540:15-541:13.



DX 3, Ex. 29.



Esselstyn SD-23's disparate Black population, moreover, is separated by an intervening white population. The Black population is concentrated in distinct areas of Augusta, the middle of Burke County, south Jefferson County, Hancock and Warren Counties, Milledgeville, and north Wilkes County. Id. As the map shows, between those pockets within the district, the Black population ranges between 0 and 35%. Id. Thereby, the concentrations of Black population in Esselstyn SD-23 are not in close proximity to one another.

In defining what constitutes a community of interest, Mr. Esselstyn explained, "[t]here's not a simple definition for communities of interest in my mind because they can vary a lot. They can be made up of a large number of counties. Like the Black Belt could be considered a community of interest." Tr. 479:19-23. Ms. Wright testified that she does not consider the Black Belt to be a community of interest, however, because it stretches from one side of the State to the other and "that is a pretty significant amount of distance to define as one community." Tr. 1619:6-9.

The Court finds that Mr. Esselstyn's definition that the "Black Belt" alone is insufficient to constitute a community of interest. There is not a unified



community of interest in Esselstyn SD-23 given the distance separating the Black populations in Esselstyn SD-23 and the large distance the district spans. As discussed above, the Court also does not find that Dr. Evan's testimony sufficiently establishes that there is a unified community of interest in the area drawn by Esselstyn SD-23. See Section II(D)(1)(b)(1)(b)(iii) *supra*. The Black Belt runs across the southeastern United States, and in Georgia, it spans from Augusta, near the South Carolina border, and to the southwest corner of the State near Alabama and Florida. Stip. ¶ 118; GX 1 ¶ 19 & fig.1. Tr. 1639:12-1640:1; 1695:25-1696:8.

Again, although the counties in this region do share commonalities, such as high rates of gun violence and low high school graduation rates, it is unclear how these commonalities unite the widely dispersed Black communities in the proposed district. Furthermore, the State's map drawer, Ms. Wright testified about geographic boundaries in this region and said that portions of the region are urban, portions are rural, and portions are more suburban. Tr. 1640:12-1641:1.

Pursuant to the evidence presently before this Court, it finds that Esselstyn SD-23 does not preserve communities of interest, but rather unites distinct Black communities within the eastern portion of the Black Belt.

*iv) conclusions of law*

The Court finds that the Black community is not sufficiently compact in Esselstyn SD-23. The Court finds that Esselstyn SD-23 is underpopulated and has the greatest population deviation of any district in either the Enacted or Esselstyn Senate Plans. Esselstyn SD-23 does not respect political subdivisions, and its creation accounts for the increased county splits in the Esselstyn Senate Plan as a whole. The district is not visually compact and unites disparate Black populations with intervening white populations.

Accordingly, the Court finds that the Grant Plaintiffs have not carried their burden in meeting the first Gingles precondition in the area drawn by Esselstyn SD-23. Failure to prove any one of the preconditions is fatal to plaintiffs' Section 2 claim. Because the Grant Plaintiffs have not successfully carried their burden in establishing that the Black community is sufficiently compact to warrant the

creation of an additional majority-Black State Senate district in the eastern Black Belt, the Court concludes there is no Section 2 violation in this region.

**d) Macon-Bibb region**

**(1) Alpha Phi Alpha: Cooper HD-145**

The Court finds that the Alpha Phi Alpha Plaintiffs have not met their burden in establishing that an additional majority-Black House district can be drawn in or around Macon-Bibb.

**(a) numerosity**

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden in showing that the Black voting age population in and around Macon-Bibb is large enough to create a majority-Black House districts. “[A] party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent.” Bartlett, 556 U.S. at 20.

It is undisputed that Cooper HD-145 has an AP BVAP of 50.20%. APAX 1, AA-1. Accordingly, the Court finds that Black population is sufficiently numerous in Cooper HD-145.

**(b) compactness**

The Court finds, however, that the Alpha Phi Alpha Plaintiffs have not shown that it is possible to draw an electoral district consistent with traditional redistricting principles in the area encompassed by Cooper HD-145. As an initial note, Mr. Cooper explained that Cooper HD-145 is in the same general area, and correlates with, Enacted HD-145. APAX 1 ¶ 181-82 & fig.34.

*i) empirical measures*

**((a)) population equality**

The Court finds that Cooper HD-145 is not malapportioned, but Cooper HD-145's population deviation is double the deviation of Enacted HD-145. As stated above, the General Assembly did not enumerate an acceptable deviation range for State Senate Districts. However, using the Enacted House Plan as a guide, a population deviation range between  $\pm 1.40\%$  is acceptable. Stip. ¶ 302. In comparison, Cooper SD-28 has a population deviation of  $+1.18\%$ . APAX 1, Ex. AA-1. The Court does note that Enacted HD-145's population deviation is half that at  $+0.59\%$ . APAX 1, Ex. Z-1. Thus, the Court finds that this district does not comply with the traditional redistricting principle of population equality as well as Enacted HD-145.

**((b)) contiguity**

The Parties stipulated that Cooper HD-145 is a contiguous district. Stip. ¶ 300. Hence, the Court finds that Cooper HD-145 complies with the traditional redistricting principle of contiguity.

**((c)) compactness scores**

The Court finds Cooper HD-145's compactness scores are comparable to Enacted HD-145. APAX 1, Exs. AG-1, AG-2. Enacted HD-145 has a higher Reock Score (0.38) than Cooper HD-145 (0.25), but Cooper HD-145 has a higher Polsby-Popper Score (0.22) than Enacted HD-145 (0.19). Id.

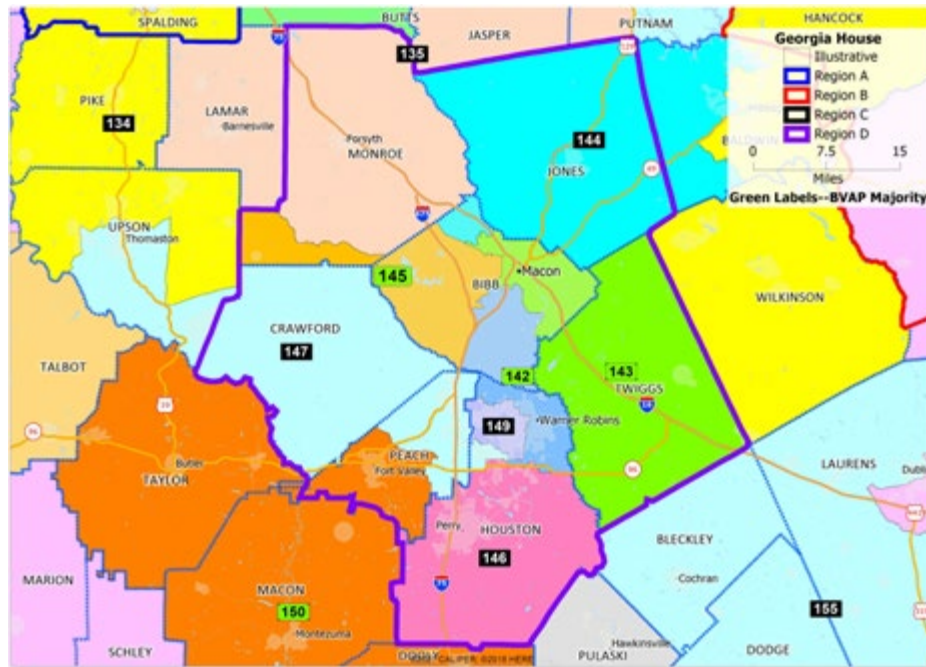
Although Enacted HD-145 is more compact on the Reock measure, Cooper HD-145 is well within the range of compactness scores of the Enacted House Plan. Specifically, the Enacted House Plan has a minimum Reock score of 0.12. APAX 1, Ex. AG-2. Cooper HD-145's Reock score (0.25) far exceeds the minimum threshold Reock score. Id. Accordingly, the Court finds that Cooper HD-145 constitutes a compact district for purposes of the first Gingles precondition, though, less so than Enacted HD-145.

**((d)) political subdivisions**

The Court finds that Cooper HD-145 demonstrates a respect for political subdivisions more so than Enacted HD-145. Cooper HD-145 is contained within portions of two counties – Bibb and Monroe. APAX 1 ¶ 183 & fig.35, Ex. AH-1. Meanwhile, Enacted HD-145 contains portions of Bibb, Houston, Monroe, Paulding Counties, and all of Crawford County. APAX 1 ¶ 181–82 & fig.34, Ex. AH-3. Thus, Cooper HD-145 splits half of the Counties that Enacted HD-145 splits. Both districts split the same number of VTDs, three. APAX 1, Exs. AH-1, AH-3. Mr. Cooper testified that in Monroe County he followed county and VTD lines. *Id.* at 167:10-12. Accordingly, the Court finds that Cooper HD-145 exhibits respect for political subdivisions more so than Enacted HD-145.

***ii) eyeball test***

The Court finds that Cooper HD-145 is not visually compact under the eyeball test:



APAX 1 ¶ 198 & fig.35.

Using the mapping tool, the Court finds that at its most distant points, Cooper HD-145 is less than 30 miles long. *Id.* Despite its small size, the district does contain a tentacle. The majority of the district is contained within the western half of Bibb County, but one thin line extends into Monroe County. *Id.* When asked why the district extended into Monroe County, Mr. Cooper explained that his decision to include portions of Monroe County was because it has “a very small population. And [he] made that decision to make sure we has

a district that was within plus or minus 1.5 percent, taking into account where incumbents live in Macon-Bibb.” Id. 16–19.

Although the Court credits Mr. Cooper’s testimony regarding the reasons for extending the district in this manner, the Court still finds that the district does not pass the eyeball test.

*iii) communities of interest*

Mr. Cooper testified that Cooper HD-145 stays entirely within the Macon-Bibb MSA. Tr. 166:19-20. Mr. Cooper’s report also demonstrated commonalities shared by the portion of the district that is within Bibb County. About 91% of all persons and 96% of Black persons in Cooper HD-145 are Macon-Bibb residents. APAX 1 ¶ 201. One-third of the Black population and nearly half (47.5%) of Black children in Macon-Bibb live in poverty. Id. By contrast, 11.6% of the white population in Macon-Bibb and 14.1% of white children live in poverty. Id. The Court finds that there is evidence in the Record of the commonalities in the communities in Bibb County, but there is nothing about Monroe County.

On cross-examination, Mr. Cooper was unable to provide an explanation of the connections between the communities in downtown Macon and Monroe



County. Tr. 288:13–15. The Court credits Mr. Cooper’s non-racial reasons for extending the district into Monroe County (population equality, incumbency protection, and avoidance of VTD splits). The Court finds, however, that this testimony does not remedy the lack of evidence about the commonalities between Monroe County and the rest of the district (even if that portion is only a small part of the districts composition).

Accordingly, the Court finds that Cooper HD-145 does not comply with the traditional redistricting principle of preserving communities of interest.

*iv) conclusions of law*

The Court finds that the Alpha Phi Alpha Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous to constitute an additional majority-Black district. The proposed district is not compact, however. Although, Cooper HD-145 complies with traditional redistricting principles of contiguity, empirical compactness scores, and respect for political subdivisions, the Court finds that the district fails to comply with population equality to the same degree as Enacted HD-145, and it united disparate communities. Additionally, the Court finds that the district is not

visually compact, it contains a tentacle that stretches into Monroe County, and the Record is devoid of any evidence showing a connection between this portion of the district and Bibb County. Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have not carried their burden on the first Gingles precondition in the area encompassed by Cooper HD-145.

(2) Grant

Based on the following analysis, the Court finds that the Grant Plaintiffs have met their burden in establishing that the Black community was sufficiently numerous and compact to create two additional majority-Black districts in the Macon-Bibb region.

(a) numerosity

The Court finds that the Grant Plaintiffs have met their burden in showing that the Black voting age population in the area around Macon-Bibb is large enough to create two majority-Black House districts in the region. Bartlett, 556 U.S. at 20 (“[A] party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent.”). It is undisputed that the proposed House districts – Esselstyn

HD-145 and HD-149 – have AP BVAP of 50.38% and 51.53%, respectively. Stip.

¶ 239, GX 1 ¶ 48 & tbl.5.

**Table 5: Illustrative House plan majority-Black districts with BVAP percentages.**

District	BVAP%	District	BVAP%	District	BVAP%	District	BVAP%
38	54.23%	69	62.73%	91	60.01%	137	52.13%
39	55.29%	74	53.94%	92	68.79%	140	57.63%
55	55.38%	75	66.89%	93	65.36%	141	57.46%
58	63.04%	76	67.23%	94	69.04%	142	50.14%
59	70.09%	77	76.13%	95	67.15%	143	50.64%
60	63.88%	78	51.03%	113	59.53%	145	50.38%
61	53.49%	79	71.59%	115	53.77%	149	51.53%
62	72.26%	84	73.66%	116	51.95%	150	53.56%
63	69.33%	85	62.71%	117	51.56%	153	67.95%
64	50.24%	86	75.05%	126	54.47%	154	54.82%
65	63.34%	87	73.08%	128	50.41%	165	50.33%
66	53.88%	88	63.35%	129	54.87%	177	53.88%
67	58.92%	89	62.54%	130	59.91%		
68	55.75%	90	58.49%	132	52.34%		

Thus, the Court finds that the Grant Plaintiffs have met their burden with respect to the numerosity prong of the first Gingles precondition for the additional two majority-Black House districts that Mr. Esselstyn proposed in the Macon-Bibb region.

**(b) compactness**

The Court also finds that Mr. Esselstyn drew two additional majority-Black districts in the Macon-Bibb region that are sufficiently compact and that comply with traditional redistricting principles.

*i) Esselstyn HD-145*

The Court finds that the Grant Plaintiffs have shown that it is possible to draw a legislative district consistent with traditional redistricting principles in the area encompassed by Esselstyn HD-145.

**((a)) empirical measures**

**((1)) *population equality***

The Court finds that Esselstyn HD-145 achieves population equality better than Enacted HD-145. Esselstyn HD-145 has a population deviation of -0.26%, whereas Enacted HD-145 has a population deviation of +0.59%. GX 1, attaches. I, J. Accordingly, the Court finds that Esselstyn HD-145 achieves relative population equality better than the Enacted HD-145 and complies with the General Assembly's population equality guidelines and traditional redistricting principles.

**((2)) *contiguity***

The Parties stipulated that Esselstyn HD-145 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn HD-145 complies with the traditional redistricting principle of contiguity.

**((3)) compactness scores**

The Court finds that Enacted HD-145 and Esselstyn HD-145 are comparably the same under empirical compactness measures. Enacted HD-145 has a Reock score of 0.38 and a Polsby-Popper score of 0.19. GX 1, Attach. L. Esselstyn HD-145 has a Reock score of 0.34 and a Polsby-Popper score of 0.21. Id. Accordingly, Enacted HD-145 performs better on the Reock measure (by 0.04 points) and Esselstyn HD-145 performs better on the Polsby-Popper measure (by 0.02 points). The Court finds that Enacted HD-145 and Esselstyn HD-145 are therefore comparably compact based on these objective compactness measures.

**((4)) political subdivisions**

The Court finds that Esselstyn HD-145 demonstrates respect for political subdivisions. Esselstyn HD-145 contains portions of Bibb and Houston Counties. GX 1 ¶ 51 & fig.16. Enacted HD-145 contains portions of Bibb, Houston, Monroe, and Peach Counties. GX 1, Ex. L. As such, Esselstyn HD-145 contains two fewer county splits than Enacted HD-145. Moreover, Esselstyn HD-145 splits two VTDs

(one in Houston and one in Bibb Counties)<sup>84</sup> while Enacted HD-145 splits four VTDs (one in Bibb and three in Houston Counties). GX 1, Ex. L. Accordingly, Esselstyn HD-145 splits fewer VTDs than Enacted HD-145, a factor that supports a finding that Esselstyn HD-145 exhibits respect for political subdivisions based on objective metrics.

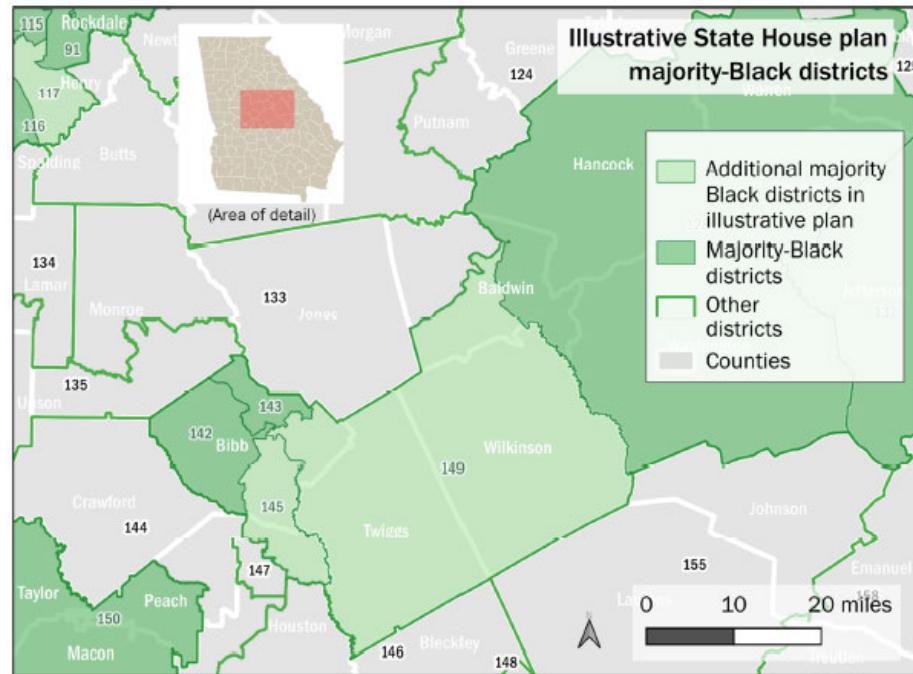
**((b)) eyeball test**

The Court finds that Esselstyn HD-145 is visually compact:

---

<sup>84</sup> The statistics for the VTD splits can be found on pages 7 and 13 of subdivision of the Political Subdivisions Chart entitled GA House Enacted and pages 8 and 13 of Political Subdivisions Chart entitled GA House Illustrative. GX 1, Attach. L.

**Figure 16: Map of central Black Belt region of illustrative plan with majority-Black House districts indicated.**



GX 1 ¶ 51 & fig.16.

Esselstyn HD-145 does not have appendages or tentacles. Vera, 517 U.S. at 962-63. Using the mapping tool, Esselstyn HD-145 is less than 20 miles in length at its most distant points. There is no evidence in the Record that suggests that Esselstyn HD-145 is not visually compact. Accordingly, the Court concludes that Esselstyn HD-145 is visually compact.

**((c)) communities of interest**

The Court also finds that Esselstyn HD-145 demonstrates respect for communities of interest. Mr. Esselstyn testified that HD-145 preserves communities of interest because it combines populations from adjacent counties in communities that are highly developed. Tr. 578:22–579:10. For example, Esselstyn HD-145 keeps an entire Air Force base intact. Tr. 578:4–7.

Commenting on Mr. Esselstyn’s HD-145, Ms. Fenika Miller, a lifelong Houston County resident and community organizer, identified several needs and interests shared by the Black residents in this area. Tr. 644:3–646:3. Ms. Miller observed that North Houston County and South Bibb County both lack certain public services and accommodations. Tr. 654:16–655:6. North Houston County has one grocery store, no public transportation, and lacks parks and recreation services. Tr. 654:16–22. “And for South Bibb, that would be the same . . . It used to be a thriving community and now most of those businesses have shuttered. And, typically, most of the shopping and the growth have moved.” Tr. 654:23–655:2.



The Court finds that Esselstyn HD-145 is a small district contained in and around Macon. The communities share the same infrastructural concerns. Additionally, the Court finds that Esselstyn HD-145 is not long and sprawling, and, as is evidenced by the size of the district and the trial testimony, preserves communities of interest.

**((d)) conclusions of law**

The Court finds that the Grant Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Esselstyn HD-145 to constitute an additional majority-Black district. The Court finds that Esselstyn HD-145 complies with the traditional redistricting principles of population equality, contiguity, compactness scores, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Grant Plaintiffs have carried their burden in meeting the first Gingles precondition in the area drawn by Esselstyn HD-145.

*i) Esselstyn HD-149*

The Court finds that the Grant Plaintiffs have shown that it is possible to draw a legislative district consistent with traditional redistricting principles in the area of Esselstyn HD-149.

**((a)) empirical measures**

**((1)) *population equality***

The Court finds that Esselstyn HD-149 performs significantly better on population equality than Enacted HD-149—Esselstyn HD-149's population deviation is -0.20%, whereas Enacted HD-149's population deviation is -1.04%. GX 1 ¶¶ 46, 53 & attaches. I, J. Thus, the Court finds that Esselstyn HD-149 complies with the principle of population equality.

**((2)) *contiguity***

The Parties stipulated that Esselstyn HD-149 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn HD-149 complies with the traditional redistricting principle of contiguity.

**((3)) *compactness scores***

Esselstyn HD-149 is also more compact on both compactness measures than Enacted HD-149. Esselstyn HD-149 has a Reock score of 0.44 and a Polsby-

Popper score of 0.28. GX 1, Attach. L. Enacted HD-149 has a Reock score of 0.32 and a Polsby-Popper score of 0.22. Id. Accordingly, the Court finds that Esselstyn HD-149 is reasonably compact as it compares to Enacted HD-149 under the objective compactness measures.

((4)) *political  
subdivisions*

The Court finds that Esselstyn HD-149 respects political subdivisions. Esselstyn HD-149 includes all of Twiggs and Wilkinson Counties and portions of Baldwin and Bibb Counties<sup>85</sup>. GX 1 ¶ 51 & fig.16. Enacted HD-149 includes all of Wilkinson, Twiggs, Bleckley, and Dodge Counties and a portion of Telfair County. GX 1, Attach. I. Thus, both plans are primarily made up of whole counties – Esselstyn HD-149 splits two counties and Enacted HD-149 splits one.

However, Esselstyn HD-149 has more VTD splits than Enacted HD-149 – Esselstyn HD-149 splits three VTDs in Baldwin and one in Bibb, whereas there

---

<sup>85</sup> The Court notes that although Esselstyn HD-149 splits Bibb County, this split does not show less respect for communities of interest than the Enacted House Plan. Both the Enacted and Esselstyn House Plans split Bibb County four ways (Enacted HD-142, Hd-143, HD-144, and HD-145) and (Esselstyn HD-142, HD-143, HD-145, and HD-149). GX 1, Attach. L.

are no VTD splits in Enacted HD-149. GX 1, Attach. L.<sup>86</sup> Mr. Esselstyn testified that these splits can be partially explained by his decision to keep Mercer University mostly intact (with an exception for one portion excluded because it would have split another VTD), as well as keeping the core of Milledgeville, Georgia College, and a Native American historical site intact. Tr. 491:3–13, 580:7–11. Although Esselstyn HD-149 contains more VTD splits than Enacted HD-149, the Court finds Mr. Esselstyn’s explanations for keeping other specific subdivisions intact (i.e., colleges, landmarks, the cores of towns) to be credible. Accordingly, the Court finds that Mr. Esselstyn generally respected political subdivisions when he drafted Esselstyn HD-149.

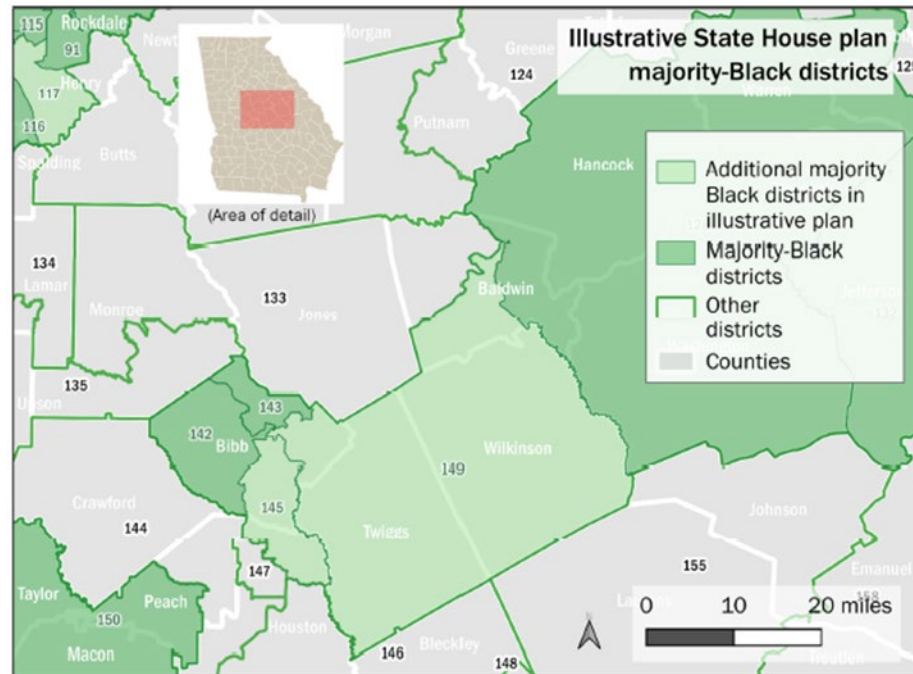
**((b)) eyeball test**

The Court also finds that Esselstyn HD-149 is visually compact:

---

<sup>86</sup> The statistics for the VTD splits can be found on pages 7–8 of Political Subdivisions Chart entitled GA House Illustrative.

**Figure 16: Map of central Black Belt region of illustrative plan with majority-Black House districts indicated.**



GX 1 ¶ 51 & fig.16.

Visually, the Court finds that Esselstyn HD-149 does not have appendages or tentacles. Using the mapping tool, Esselstyn HD-149 is approximately 50 miles long at its most distant points. Although generally a larger district than others at issue in this Order, Esselstyn HD-145 is still significantly smaller than Enacted

HD-149, which is, at its most distant points, approximately 80 miles apart. GX 1, Attach. I.<sup>87</sup>

There is no evidence in the Record disputing the visual compactness of Esselstyn HD-149 and thereby the Court finds Esselstyn HD-149 is visually compact.

**((c)) communities of interest**

The Court finds that Esselstyn HD-149 respects communities of interest. Mr. Esselstyn testified that one commonality between all the individuals in Esselstyn HD-149 is that they are within the same Enacted Senate District (Enacted SD 25). Tr. 582:9–16. Additionally, a prior State House candidate from the area, Ms. Miller, testified that Esselstyn HD-149 contains rural communities that have few shopping areas, food security concerns, and no hospitals (individuals have to drive to either Macon or Milledgeville to go to the hospital).

---

<sup>87</sup> The Court measured the distance using the diagonal beginning at the top of Wilkinson County to the portion of Telfair County that borders Ben Hill County. GX 1, Attach. I. This measurement cuts across part of Laurens County in the neighboring district, Enacted HD-155. If the Court were to take the same measurement and avoid cutting across Enacted HD-155, however, the length of Enacted HD-149 would be longer.

Tr. 653:18–25. This district also contains two places of higher education: Mercer University at one end of the district (in Bibb County) and Georgia College at the other (in Baldwin County, i.e., Milledgeville). Tr. 491:3–7, 579:21–58:7; see also Tr. 1898:2–16.

The Court finds that Esselstyn HD-149 adequately preserves communities of interest. The majority of the district is rural and shares the same infrastructure concerns. The district is not long and sprawling. Accordingly, Esselstyn HD-149 preserves communities of interest for purposes of the first Gingles precondition.

**((d)) conclusions of law**

The Court finds that the Grant Plaintiffs have carried their burden in establishing that the Black community in Esselstyn HD-149 is sufficiently numerous and compact to create an additional majority-Black district. The Court finds that Esselstyn HD-149 complies with the traditional redistricting principles of population equality, contiguity, compactness, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, does not contain any appendages or tentacles.

Accordingly, the Court finds that the Grant Plaintiffs have carried their burden in showing the first Gingles precondition in the area drawn by Esselstyn HD-149.

e) Southwest Georgia region

(1) Alpha Phi Alpha: Cooper HD-171

The Court finds that Alpha Phi Alpha Plaintiffs have not carried their burden with respect to establishing that an additional compact majority-Black district in southwest Georgia could be drawn. To begin, the Court notes that following the preliminary injunction hearing, the Court concluded that the Alpha Phi Alpha Plaintiffs had a substantial likelihood of success in proving a Section 2 violation in this area of the State. Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1293–1302. “A substantial likelihood of success on the merits requires a showing of only *likely* or probable, rather than *certain* success.” Schiavo Ex. rel. Schindler v. Schiavo, 403 F.3d 1223, 1232 (11th Cir. 2005). At trial, conversely, the plaintiffs have the higher burden of proving every aspect of their case by *a preponderance of the evidence*. See Mo. State Conf. of the NAACP v. Ferguson-Florissant Sch. Dist., 894 F.3d 924, 930 (8th Cir. 2018).

In conducting a thorough and sifting analysis of the evidence provided at the trial, the Court finds that while the Alpha Phi Alpha Plaintiffs met the lower



threshold of proof at the preliminary injunction phase, they were unable to clear the hurdle of preponderance of the evidence at the trial. Accordingly, the Court finds that with the evidence currently before it, Alpha Phi Alpha Plaintiffs were unable to show by a preponderance of the evidence that an additional compact majority-Black district could be drawn in southwest Georgia.

**(a) numerosity**

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden in showing that the Black voting age population in southwest Georgia is large enough to create an additional majority-Black House district. It is undisputed that Cooper HD-171 has an AP BVAP of 58.06%. APAX 1, AA-1. Accordingly, the Court finds that the Black population is sufficiently numerous to constitute an additional majority-Black district in southwest Georgia.

**(b) compactness**

The Court finds that the Alpha Phi Alpha Plaintiffs have not shown that it is possible to draw an additional majority-Black House district in the area drawn by Cooper HD-171 consistent with traditional redistricting principles. As an initial note, Mr. Cooper explained that the district is drawn in the same general area as Enacted HD-153 and HD-171. APAX 1, ¶ 176 & fig.32. This differs from

the preliminary injunction, where it was only compared to House District 153. Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1295–96. Thus, the Court considers the differences between the districts proposed by the Alpha Phi Alpha Plaintiffs in its instant compactness analysis.

*i) empirical measures*

**((a)) population equality**

The Court finds that Cooper HD-171 achieves relative population equality. As stated above, the General Assembly did not enumerate the deviation range for the State House Districts. However, using the Enacted House Plan as a guide, the Enacted House Plan has a population deviation range between  $\pm 1.40\%$ . Stip. ¶ 302. In comparison, Cooper HD-171 has a population deviation of  $+1.38\%$ , which is within the population deviation of the Enacted House Plan. APAX 1, Ex. AA-1. However, of any of Mr. Cooper’s illustrative districts, this district departs the most from the population deviation in the Enacted Plan. Enacted HD-171 has a population deviation of  $-0.46\%$ , meaning that it is almost 1 percentage point closer to achieving perfect population deviation than Cooper HD-171. APAX 1, Ex. Z-1. Although Cooper HD-171’s population deviation is within the acceptable

range of, the Court finds that its wide disparity in comparison to the Enacted Plan is of concern.

Thus, while HD-171 district is consistent with the population deviations in Enacted House Plan, the Court finds that it does not respect population equality nearly to the same degree as Enacted HD-171.

**((b)) contiguity**

The Parties stipulated that Cooper HD-171 is a contiguous district. Stip. ¶ 300. Hence, the Court finds that Cooper HD-171 complies with the traditional redistricting principle of contiguity.

**((c)) compactness scores**

The Court finds that Enacted HD-171 performs better on both compactness measures than Cooper HD-171. Enacted HD-171 has a Reock score of 0.35 and a Polsby-Popper score of 0.37. APAX 1, Ex. AG-2. Cooper HD-171 has a Reock score of 0.28 and a Polsby-Popper score of 0.20. APAX 1, Ex. AG-1.

At the preliminary injunction, the Court found that Mr. Cooper's illustrative district in this region had comparable compactness scores to its corollary. Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1296. However, at the preliminary injunction, Mr. Cooper submitted an illustrative district that

compared to Enacted HD-153, not HD-171. Id. Enacted HD-153 has a Reock score of 0.30 and a Polsby-Popper score of 0.30, which are higher, but much closer to Cooper HD-171's scores of 0.28 and 0.20, respectively. Id., APAX 1, Exs. AG-1, AG-2. However, Mr. Cooper has now changed the configuration of his illustrative district in this region, and now it correlates with Enacted HD-171, which has higher compactness scores in comparison.

Accordingly, the Court finds that Cooper HD-171 is not as compact as Enacted HD-171, nor are the compactness scores as comparable to its corollary district as they were on the preliminary injunction evidence.

**((d)) political subdivisions**

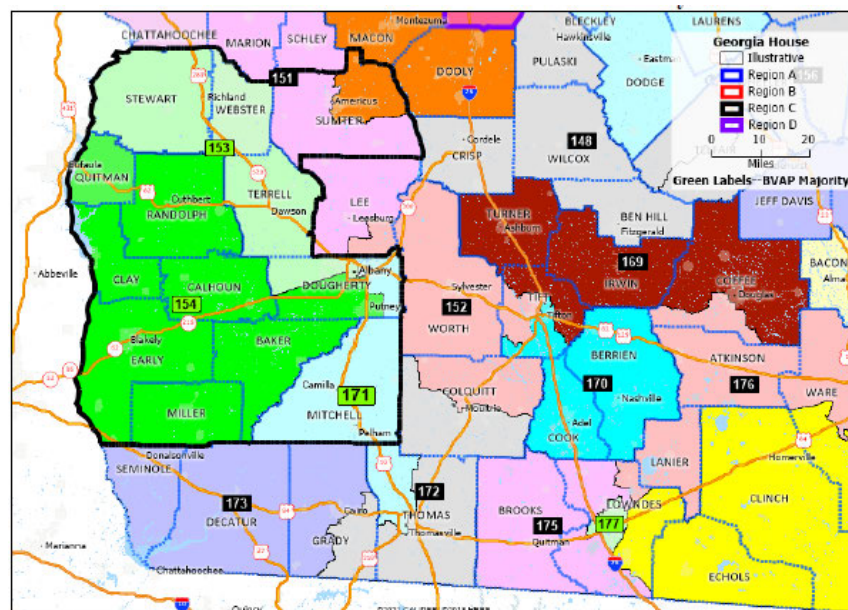
The Court finds that Cooper HD-171 does not respect political subdivisions as well as Enacted HD-171. Cooper HD-171 splits two counties (Dougherty and Thomas) and keeps Mitchell County whole; whereas, Enacted HD-171 only splits Grady County and keeps Decatur and Mitchell Counties whole. APAX 1 ¶¶ 175, 177 & figs.32, 33. Cooper HD-171 splits seven VTDs, but Enacted HD-171 splits only one. APAX 1, Exs. AH-1, AH-3. Additionally, in drawing Cooper HD-171,

Mr. Cooper created a split in neighboring Lee County, which was kept whole in the Enacted House Plan. Tr. 290:23–291:12.<sup>88</sup>

Accordingly, the Court finds that Cooper HD-171 fails to respect political subdivisions as well as Enacted HD-171.

*ii) eyeball test*

The Court finds that Cooper HD-171 is visually compact under the eyeball test:



<sup>88</sup> Mr. Cooper testified that the split of Lee County was to eliminate a four way split of Dougherty County. Tr. 290:10–12. Under the Cooper House Plan, Dougherty County is split between three districts (Cooper HD-153, HD-154, and HD-171).

APAX 1 ¶ 177 & fig.33.

Using the mapping tool, the Court finds that at its most distant points, Cooper HD-171 is less than 60 miles long, which is consistent with the surrounding districts in the Enacted House Plan. Id. Ms. Wright testified that because of the decreases in population in the southern portion of the State, the map drawers had to collapse (i.e., consolidate) the prior districts to account for the population changes. Tr. 1623:17–12.

Cooper HD-171 does not contain any tentacles or appendages. In reviewing Cooper HD-171 the Court finds that it is visually compact, and thus passes the eyeball test.

*iii) communities of interest*

The Court finds Cooper HD-171 preserves communities of interest. Mr. Cooper offered extensive testimony regarding the connections between the communities included in Cooper HD-171, and the Court also received documentary evidence on point. Mr. Cooper pointed out that US-19 and the historic Dixie Highway run as a corridor through Mitchell County between Albany and Thomasville. APAX 1 ¶ 178. The communities along that corridor,

such as Albany, Camilla, Pelham, Meigs, and Thomasville, work together under the auspices of the Southwest Georgia Regional Commission, including to designate the Dixie Highway as a state-recognized scenic byway. Tr. 128:18-129:19, 294:23–295:4; APAX 54 (Corridor Management Plan); APAX 325 (Designation of Historic Dixie Highway Scenic Byway).

Mr. Cooper testified further about the connection between Thomasville and Albany: “there are commonalities between the Black population in Thomasville and the Black population in Albany. The two towns are only about 60 miles apart. It takes you about an hour to get there along Highway 9. They’re in the same high school football leagues.” Tr. 128:22-129:1. Bishop Reginald T. Jackson of the Sixth District AME also testified that Dougherty, Mitchell, and Thomas Counties—all included in Cooper HD-171—share certain similarities, including more “rural and agrarian” communities, similar education attainment levels, and income levels “at the lower end of middle class.” Tr. 382:12–19, 383:11–384:2. Further evidencing the connections between the communities in Cooper HD-171, Plaintiff Janice Stewart lives in Thomasville, but attends church

at Saint Peter AME Church in Camilla, Georgia (in Mitchell County). Stip. ¶¶ 64, 80-81.

Thus, the Court finds that there is sufficient testimony and evidence to show the Black community in Cooper HD-171 interacts with one another and shares a number of similar concerns. Mr. Cooper testified extensively about the communities that are contained within the district, the shared socio-economic factors, and the characteristics that unite them and Plaintiffs submitted lay witness testimonial evidence of the same. Accordingly, the Court finds that Cooper HD-171 preserves communities of interest.

*iv) conclusions of law*

Ultimately, the Court concludes that the Alpha Phi Alpha Plaintiffs have not met their burden in showing that a compact majority-Black district could be drawn in southwest Georgia. Although the Alpha Phi Alpha Plaintiffs were able to show that the district preserved communities of interest and was visually compact, the district fared far worse on all the objective measures of compactness than Enacted HD-171. Cooper HD-171 had the greatest population deviation disparity of any of Mr. Cooper's illustrative districts. The district is significantly



less compact on both compactness measures. Additionally, the district split more counties than Enacted HD-171 and had the most political subdivision splits of any of Mr. Cooper's new majority-Black districts.

Of all of the illustrative districts submitted in these cases, no other illustrative district performed worse on all objective measures. Even Esselstyn HD-74 and Esselstyn SD-23, in the companion Grant case, and Cooper SD-23, Cooper HD-133, and Cooper HD-145 performed equally or better on at least one objective measure. Moreover, the disparity in the performance on objective measures is stark here and does not lend to a finding that Cooper HD-171 is a reasonably compact district, consistent with traditional redistricting principles. Accordingly, the Court concludes that in southwest Georgia, the Alpha Phi Alpha Plaintiffs did not meet their burden under the first Gingles precondition.

\* \* \* \*

In sum, the Court makes the following conclusions with respect to the first Gingles preconditions.

The Alpha Phi Alpha Plaintiffs have proven by a preponderance of the evidence that Black community is sufficiently numerous and compact to create:

- Two additional majority-Black Senate districts in south-metro Atlanta, and
- One additional majority-Black House district in south-metro Atlanta, in the area depicted in Cooper HD-74.

The Grant Plaintiffs have proven by a preponderance of the evidence that the Black community is sufficiently numerous and compact to create:

- Two additional majority-Black Senate districts in south-metro Atlanta,
- One additional majority-Black House district in south-metro Atlanta, in the area depicted in Esselstyn HD-117,
- One additional majority-Black House district in west-metro Atlanta, and
- Two additional majority-Black house districts in the Macon-Bibb region.

Conversely, the Alpha Phi Alpha Plaintiffs have *NOT* proven by a preponderance of the evidence that the Black community is sufficiently numerous and compact to create:

- One additional majority-Black Senate district in the eastern Black Belt region,
- One additional majority-Black House district in south-metro Atlanta, in the area depicted in Cooper HD-117,

- One additional majority-Black House district in the eastern Black Belt region,
- One additional majority-Black House district around the Macon-Bibb region, or
- One additional majority-Black district in southwest Georgia.

The Grant Plaintiffs have *NOT* proven by a preponderance of the evidence that the Black community is sufficiently numerous and compact to create:

- One additional majority-Black Senate district in the eastern Black Belt region, or
- One additional majority-Black House district in south-metro Atlanta, in the area depicted in Esselstyn HD-74.

The Court now determines whether the Alpha Phi Alpha and Grant Plaintiffs have satisfied the remaining two Gingles preconditions, in the areas where they successfully proved the first Gingles precondition.

## 2. *Second Gingles Precondition*

The Court finds that the Alpha Phi Alpha and Grant Plaintiffs have each proven the second Gingles precondition for all their remaining proposed majority-Black districts.

### a) Alpha Phi Alpha

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden in establishing the second Gingles precondition in the relevant areas. Dr. Handley evaluated 16 recent (2016-2022) general and runoff statewide elections, including for U.S. Senate, Governor, School Superintendent, Public Service Commission, and Commissioners of Agriculture, Insurance, and Labor. APAX 5, 5; Stip. ¶¶ 316-317. She also looked at 54 recent (2016-2022) State legislative elections in the areas of interest, including 16 State Senate contests and 38 State House contests. Tr. 890:2-12; APAX 5, 7-8; Stip. ¶ 324.

All 2022 State legislative contests in the Enacted Plans identified as districts of interest were analyzed, even if the contest did not include at least one Black candidate. APAX 5, 7-8. In addition, because there has only been one set of State legislative elections under the Enacted Plans (in 2022), Dr. Handley also analyzed biracial State legislative elections held between 2016 and 2020 in the State

legislative districts under the previous State House and State Senate plans in the seven areas of interest. Id.

Dr. Handley focused on elections that include at least one Black candidate, an approach that multiple courts have endorsed in other cases because they are the most probative for measuring racial polarization. Tr. 871:3-6, 872:11-14; see also id. at 871:10-14 (“[I]f I have enough contests that include Black candidates, I focus on those, because the courts have made it clear and because we want to make sure that Black voters are able to elect Black candidates of choice and not just white candidates of choice, if that’s what they choose to do.”); Robinson, 605 F. Supp. 3d at 801 (crediting Dr. Handley’s opinion that “courts consider election contests that include minority candidates to be more probative than contests with only White candidates, because this approach recognizes that it is not sufficient for minority voters to be able to elect their preferred candidate only when that candidate is White”); United States v. City of Eastpointe, 378 F. Supp. 3d 589, 610 (E.D. Mich. 2019) (“These [white-only] elections are, however, less probative because the fact that black voters also support white candidates acceptable to the majority does not negate instances in which a white voting majority operates to

defeat the candidate preferred by black voters when that candidate is a minority.”); United States v. City of Euclid, 580 F. Supp. 2d 584, 598 (N.D. Ohio 2008) (“These contests are probative of racial bloc voting because they . . . featured African–American candidates.”).

Courts, including the Eleventh Circuit, agree that reviewing biracial elections is probative of the polarization inquiry. Davis, 139 F.3d at 1417 n.5 (“[E]vidence drawn from elections involving black candidates is more probative in Section Two cases[.]”); Wright, 301 F. Supp. 3d at 1313 (“While still relevant, elections without a black candidate are less probative in evaluating the Gingles factors.”); see also Tr. 871:5-6; Tr. 2222:11-15. However, the Court wants to make clear, that a Section 2 violation does not require Black voters to vote for Black candidates and white voters to vote in opposition to Black candidates. See DeGrandy, 512 U.S. at 1027 (explaining that this assumption is empirically false).

As the Court addressed in its credibility determinations, the Court agrees with the Alabama State Conference of the NAACP court that although elections with Black and white candidates may be the most helpful in determining polarization, the manner in which Dr. Handley chose her data set makes her

findings less reliable. Ala. State Conf. of NAACP, 612 F. Supp. 3d at 1274. However, the Court notes that the Parties stipulated to her findings and Defendants' expert did not take issue with her data set. Stip. ¶¶ 318–341; 2199:11–2200:4

That Black voters in the seven areas of interest are politically cohesive is not contested. In fact, Defendant stipulated that in the 16 recent statewide general and general runoff elections from 2016-2022, Black voters were “highly cohesive” in their support for their preferred candidate. Stip. ¶¶ 320 (“In these 16 statewide general and general runoff elections from 2016-2022, Black voters were highly cohesive in their support for their preferred candidate.”), 330 (“In the seven areas of interest, Black voters were very cohesive in supporting their preferred candidates in general elections for statewide offices.”). As Dr. Handley concluded and Defendant stipulated, Black-preferred candidates typically received 96.1% of the Black vote in statewide races in these areas and only 11.2% of the White vote. Stip. ¶¶ 321, 322.

Dr. Handley's analysis of State legislative general elections in the areas of interest also found “starkly racially polarized” voting. Tr. 862:4-6; APAX 5, 7. As

with the statewide general elections, “Black voters were very cohesive in support of their preferred candidates and white voters bloc voted against these candidates.” Tr. 890:19-21. Again, this is not contested—the Parties stipulated that, in State legislative general elections, Black voters were highly cohesive in their support for their preferred candidate. Stip. ¶¶ 326 (“In these 54 State legislative elections, Black voters were highly cohesive in their support for their preferred candidates.”), 335 (“In the seven areas of interest, Black voters exhibit cohesive support for a single candidate in State legislative general elections.”).

In all but one of the 54 State legislative elections that Dr. Handley analyzed (i.e., 98.1%) were starkly racially polarized, with Black candidates receiving a very small share of the white vote and the overwhelming support of Black voters. See Tr. 890:16-21; APAX 5, 7. As Dr. Handley concluded and the Parties stipulated, on average, over 97% of Black voters supported their preferred Black State Senate candidates and over 91% supported their preferred Black State House candidates. Stip. ¶ 327.

Defendant’s expert, Dr. Alford, agreed “with [Dr. Handley’s] analysis that Black voters in general elections in the areas of Georgia that she analyzed are very



cohesive in their support for a single preferred candidate.” Tr. 2224:14-18. Consistent with the uncontested evidence, the Court finds that Black voters in the seven areas of Georgia that Dr. Handley analyzed are highly cohesive in supporting a single preferred candidate.<sup>89</sup> Moreover, the Black voter cohesion is stronger in the relevant areas (between 91 and 98%) than in the voter cohesion in Alabama (92.3%), which the Supreme Court agreed with the three-judge court was “very clear.” Allen, 599 U.S. at 22. Accordingly, the Alpha Phi Alpha Plaintiffs have satisfied the second Gingles precondition in the relevant areas.

**b) Grant**

The Court finds that the Grant Plaintiffs have proven the second Gingles precondition as well. The Grant Plaintiffs’ expert in racial polarization, Dr. Palmer, determined that Black voters had a clearly identifiable candidate of

---

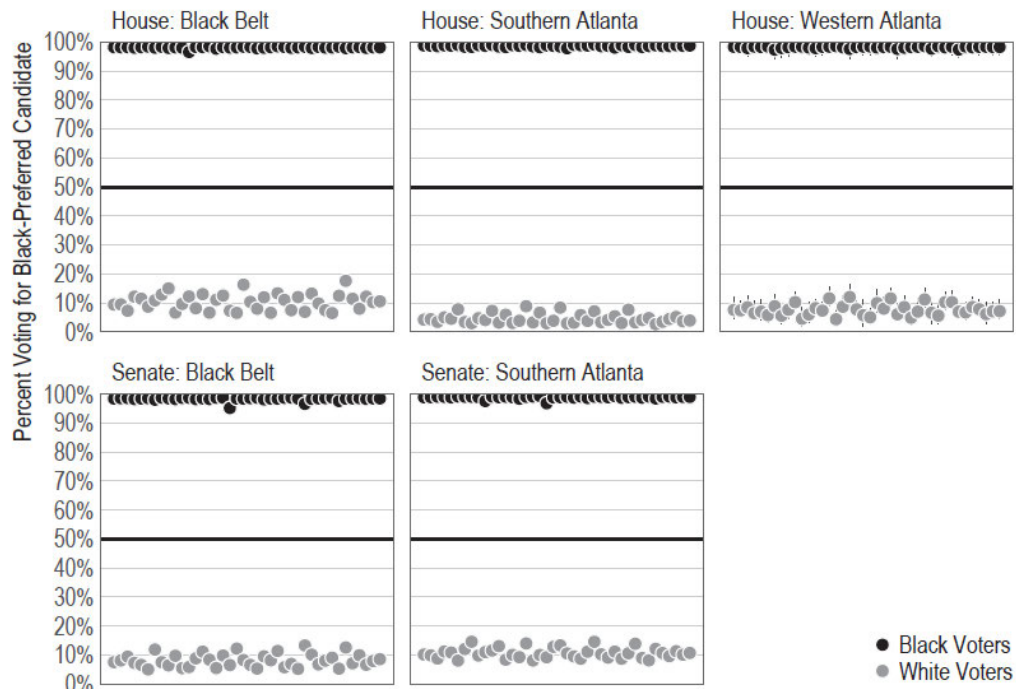
<sup>89</sup> The Court notes that Dr. Alford opined that the Black preferred candidate was always the Democrat. See, e.g., Tr. 2144:11-25; see also Stip. ¶¶ 319, 325, 331. As noted above and in the Court’s summary judgment order (APA Doc. No. [268]), the Court found that partisan affiliation is not relevant to the second and third Gingles preconditions. Accordingly, Dr. Alford’s conclusions regard partisanship are not relevant, here. However, the Court will consider his conclusions as a part of Senate Factor Two. See Section (D)(4)(b)(3) *infra*.

choice in every election examined, across the focus areas and in each State Senate and House district. Stip. ¶¶ 268, 270; GX 2 ¶ 18, tbl.1 & figs.2–4. On average, Black voters supported their candidates of choice with 98.5% of the vote. Stip. ¶ 269; GX 2 ¶ 18.

Table 1: Average Support for Black-Preferred Candidates by Voters’ Race

	Focus Area	Black Voters	White Voters
House	Black Belt	98.1%	10.4%
	Southern Atlanta	98.7%	4.6%
	Western Atlanta	98.2%	7.7%
Senate	Black Belt	98.4%	8.2%
	Southern Atlanta	98.9%	10.7%

GX 2 ¶ 18 & tbl. 1.



GX 2 ¶ 18 & fig.2.

Defendants’ racially polarized voting expert, Dr. Alford, does not dispute Dr. Palmer’s conclusions as to the second Gingles precondition. DX 8, 2-5; Tr. 2251:2-5. However, Dr. Alford notes that in all of the races examined by Dr. Palmer, the Black voters’ candidate of choice was the Democrat candidate. DX 8, 4. As the Court discussed extensively in its Order on the cross-motions for summary judgment, the second and third Gingles preconditions are results based inquiries that do not require plaintiffs to prove that race cause the polarization or

disprove that party caused the polarization. See Grant Doc. No. [229], 51–57. Thus, Dr. Alford’s suggestions about the cause and effect of racial polarization are not persuasive for the Gingles preconditions.

As the data above shows, Black voters in south-Metro and west-Metro Atlanta support the same candidate more than 98% of the time and in the Macon-Bibb region, Black voters supported the same candidate 98.1% of the time. GX 2 ¶ 18 & tbl.1. “Bloc voting by [B]lacks tends to prove that the [B]lack community is politically cohesive, that is, it shows that [B]lacks prefer certain candidates whom they could elect in a single-member, [B]lack majority district.” Gingles, 478 U.S. at 68. As was noted above, Dr. Palmer’s data shows that Black voter cohesion is greater in these areas than it is in Alabama (92.3%), where the Supreme Court credited the lower court’s finding of “very strong” Black voter cohesion. Allen, 599 U.S. at 22. Accordingly, the Court finds that the Grant Plaintiffs have satisfied their burden on the second Gingles precondition. Based on the stipulated facts, expert reports, and testimony provided in this case, the Court concludes that Black voters in the focus areas are politically cohesive.

### 3. *Third Gingles Precondition*

The Court also finds that the Alpha Phi Alpha and Grant Plaintiffs have proven the third Gingles precondition for all the legislative districts remaining.

#### a) Alpha Phi Alpha

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden in establishing the third Gingles precondition in their remaining proposed legislative districts. Dr. Handley concluded that the starkly racially polarized voting in the areas that she analyzed “substantially impedes” the ability of Black voters to elect candidates of their choice to the Georgia General Assembly unless districts are drawn to provide Black voters with this opportunity. See APAX 5, 22; see also Tr. 892:15-21.

Specifically, in the seven areas of interest, white voters consistently bloc voted to defeat the candidates supported by Black voters. See APAX 5, 21-22. Indeed, Dr. Handley testified that, in general elections, due to White bloc voting, candidates preferred by Black voters were consistently unable to win elections and will likely continue to be unable to win elections outside of majority-Black districts. See Tr. 890:16-21 (noting that in 53 out of 54 State legislative contests, “Black voters were very cohesive in support of their preferred candidates and

white voters bloc voted against these candidates); cf. Tr. 863:9-11 (“In each of the areas, the districts that provided Black voters with an opportunity to elect were districts that were at least 50 percent Black in voting age population.”).

Dr. Handley testified that white voters voted as a bloc against Black-preferred candidates in all the 16 general elections that she analyzed. Tr. 862:4-14, 877:14-21. As Dr. Handley concluded and Defendant stipulated, Black-preferred candidates typically received only 11.2% of the white vote. Stip. ¶¶ 321, 322. Similarly, in the State legislative elections Dr. Handley analyzed, the Black-preferred candidate on average secured the support of only 10.1% of white voters in State Senate races and 9.8% of white voters in State House races. Stip. ¶ 328.

This pattern of white bloc voting against Black-preferred candidates is not contested. In fact, the Parties stipulated that white voters were “very cohesive” in their support for their preferred candidates in both statewide and State legislative general elections (Stip. ¶¶ 332, 336), and that the candidates preferred by white voters in the seven areas of interest are voting against the candidates preferred by Black voters (Stip. ¶ 337).

Defendant's expert, Dr. Alford, similarly agreed that "with small exceptions, white voters are highly cohesive" in "the general elections that Dr. Handley analyzed across the areas of interest in Georgia," and that, in these general elections, "large majorities of Black and white voters are supporting different candidates." Tr. 2224:25-2225:9; see also DX 8, 6.

Due to the low level of white support for Black-preferred candidates, Dr. Handley found that blocs of white voters in the areas of interest were able to consistently defeat Black-preferred candidates in State legislative general elections, except where the districts were majority Black. APAX 5, 22; Tr. 891:5-7 ("Black-preferred Black candidates were successful only in districts that were majority Black in the elections that I looked at."). As Dr. Handley testified and Defendant stipulated, all but one of the successful Black State legislative candidates in the contests that Dr. Handley analyzed were elected from majority Black districts—the one exception being a district that was majority minority in composition. Stip. ¶ 329; Tr. 891:13-21.

"Because voting is starkly polarized in general elections," Dr. Handley concluded that "without drawing districts that provide Black voters with an

opportunity to elect [their candidate of choice] districts in the areas examined will not elect Black-preferred candidates.” Tr. 906:5-8. The Court finds that the uncontested evidence shows white voters in the relevant areas only vote for the Black-preferred candidate between 9.8% to 11.2% of the time. White voters in Georgia vote in opposition to the Black-preferred candidate at a higher rate than in Alabama (where 15.4% of white voters supported the Black-preferred candidate) where the Supreme Court affirmed the three-judge court’s finding of “very clear” racial polarization. Allen, 599 U.S. at 22. Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have met their burden and proved that white voters bloc vote in opposition to the Black-preferred candidate. In other words, in the relevant areas, the Black-preferred candidate will typically be defeated by white voters in majority-white districts.

**b) Grant**

The Court also finds that the Grant Plaintiffs carried their burden on the third Gingles precondition. The Grant Plaintiffs’ expert, Dr. Palmer, demonstrated that white voters in the legislative focus area usually vote as a bloc to defeat Black-preferred candidates. This too has been stipulated by the Parties.



Stip. ¶¶ 271–74. In each legislative district examined and in the focus areas as a whole, white voters had clearly identifiable candidates of choice for every election examined. GX 2 ¶ 18 & fig.2; Tr. 404:20–405:18.

In the elections Dr. Palmer examined, white voters were highly cohesive in voting in opposition to the Black-preferred candidate. Stip. ¶ 271. On average, Dr. Palmer found that white voters supported Black-preferred candidates with only 8.3% of the vote. Id. ¶ 272; see also GX 2 ¶ 18. In other words, on average, 91.7% of the time white voters voted against the Black-preferred candidate.

Dr. Palmer then calculated in the success of Black preferred candidates in districts under the Enacted Plan. GX 2 ¶ 21. In the races examined, Dr. Palmer concluded that the Black-preferred candidate was only successful in majority-Black districts. GX 2 ¶ 21 & fig.4.

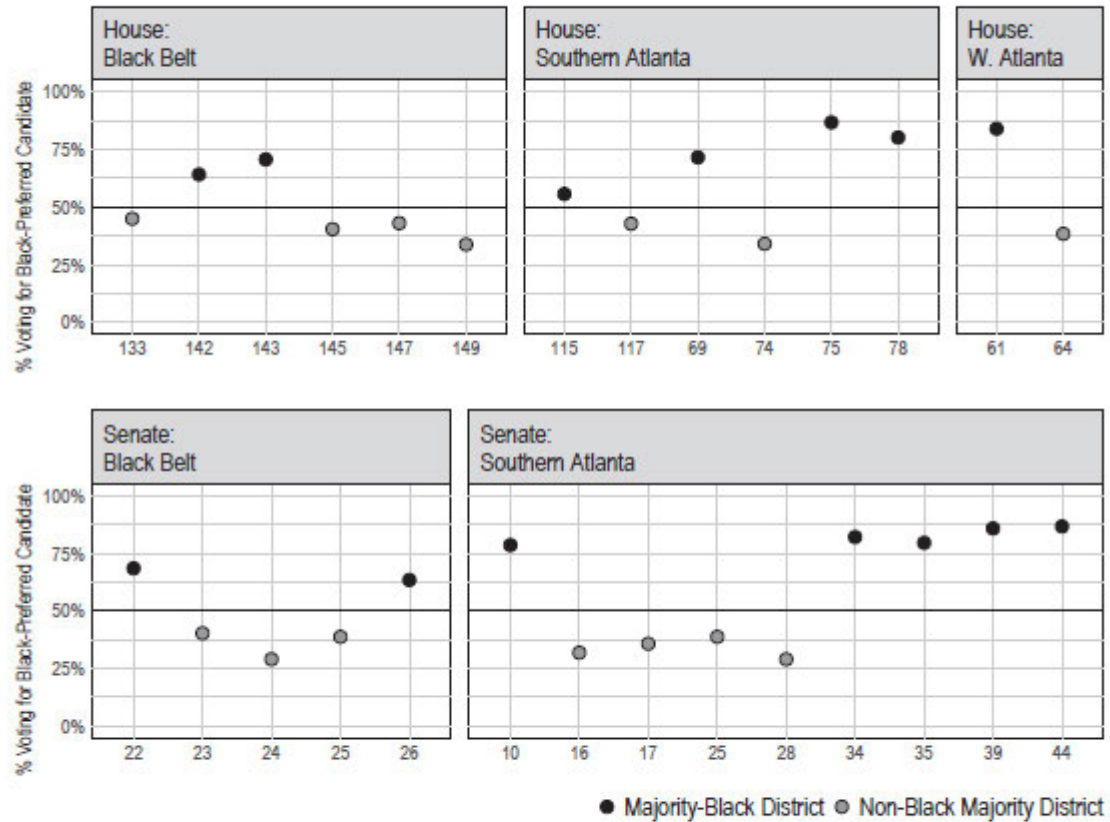


Figure 4: Average Performance of Black-Preferred Candidates by District

GX 2 ¶ 18 & fig.4. When he performed the same analysis with Mr. Esselstyn's illustrative majority-Black districts, he found that the Black-preferred candidate would have been successful in all of the elections that he analyzed. GX 2 ¶¶ 23, 25 & fig.5.

Overall, Dr. Palmer found “strong evidence of racially polarized voting across the areas . . . examined.” GX 2 ¶ 7; see also GX ¶¶ 18–19; Tr. 398:10–16, 407:17–21. As a result of this racially polarized voting, candidates preferred by Black voters have generally been unable to win elections in the focus areas if not in a majority-Black district. Tr. 408:9–409:12; GX 2 ¶¶ 20–21 & fig.4. Dr. Palmer concluded that “Black-preferred candidates win almost every election in the Black-majority districts, but lose almost every election in the non-Black-majority districts.” GX 2 ¶ 21. Defendants’ expert Dr. Alford does not dispute Dr. Palmer’s conclusions as to the third Gingles precondition. DX 8, 2–3; Tr. 2251:6–9. However, Dr. Alford opined once more that in all of the elections that Dr. Palmer reviewed, the Black-preferred candidate was a Democrat and the white-preferred candidate was a Republican. DX 8, 3–5. The Court does not find Dr. Alford’s conclusion relevant to the Gingles preconditions because it relates to the *causes* and not the *effects* of voter behavior. See Section II(D)(1)(b)(2) *supra*.

Using the returns from the 31 statewide elections, Dr. Palmer also analyzed whether Black voters in Mr. Esselstyn’s additional majority-Black State Senate and House districts could elect their candidates of choice. GX 2 ¶¶ 22, 24, 25. He

specifically concluded that “[i]n House Districts 64, 74, and 149, and Senate Districts 23, 25, and 28, the Black-preferred candidate won a larger share of the vote in all 40 statewide elections. In House District 117, the Black-preferred candidate won all 19 elections since 2018.” GX 2 ¶ 24 & tbl.9. Dr. Alford does not dispute Dr. Palmer’s performance analysis of Esselstyn’s Legislative Plan. Tr. 2250:20–22.

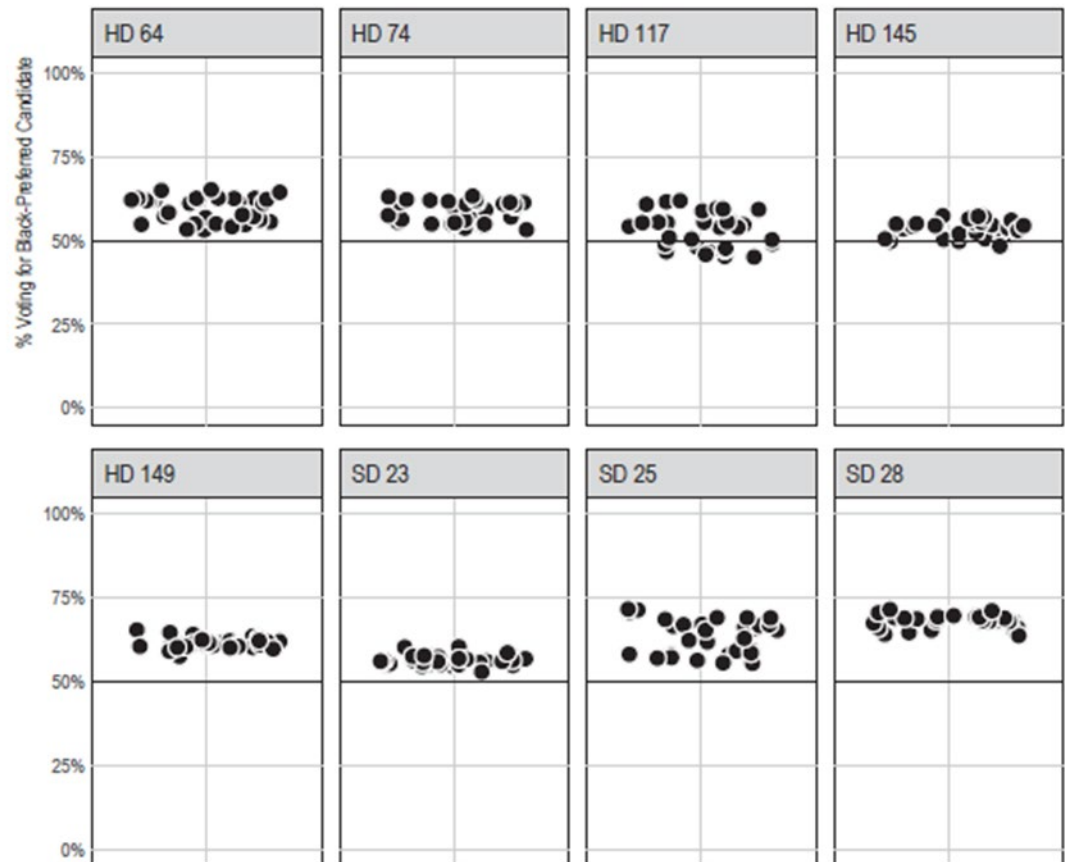


Figure 5: Vote Shares of Black-Preferred Candidates in Under the Illustrative Maps

PX 2 ¶ 25 & fig.5.

Again, the evidence of polarization is stronger in this case than it was in Allen: in the focus areas the highest average support of white voters for the Black-preferred candidate was 10.7%, whereas in Alabama 15.4% of white voters

supported the Black-preferred candidates – which was “very clear” evidence of racially polarized voting. Allen, 599 U.S. at 22. Based on the stipulated facts, expert reports, and testimony provided in this case, the Court concludes that white voters in Esselstyn SD-25, SD-28, HD-64, HD-74, HD-145, and HD-149 “very clearly” vote as a bloc to defeat Black-preferred candidates. Accordingly, the Court finds that the Grant Plaintiffs have satisfied their burden in proving the third Gingles precondition.

\* \* \* \*

The Court finds that in Cooper SD-17, SD-28, HD-74, HD-117 and Esselstyn SD-25, SD-28, HD-64, HD-117, HD-145, and HD-149, the Alpha Phi Alpha and Grant Plaintiffs, respectively, have proven all three Gingles preconditions by a preponderance of the evidence. Thus, the Court will evaluate whether, under the totality of the circumstances, the political process is equally open to Black voters in these areas.

#### **4. *Totality of the Circumstances***

The Court now turns to the totality of the circumstances inquiry to determine if Georgia’s political process is equally open to the affected Black

voters. Wright, 979 F.3d at 1288 (“[I]n the words of the Supreme Court, the district court is required to determine, after reviewing the ‘totality of the circumstances’ and, ‘based upon a searching practical evaluation of the past and present reality, whether the political process is equally open to minority voters.’” (quoting Gingles, 478 U.S. at 79))).

For the proposed districts where Plaintiffs satisfied the Gingles preconditions, the Court must now determine if the electoral system is equally open to them. Put differently, the Court must determine if the Black voters in these areas have less of an opportunity to elect a candidate of their choice based on race. Wright, 979 F.3d at 1288.

Again, the Court notes that Georgia has made great strides since the passage of the Voting Rights Act to give Black voters more of an equal opportunity to participate in the political process. For example, Georgia’s current congressional delegation has five Black representatives to the U.S. House of Representatives and one Black senator. However, the Court acknowledges that as far as the State General Assembly’s representation is concerned, the numbers

are less proportional.<sup>90</sup> See GX 1 ¶¶ 22 (indicating the Enacted State Senate Plan contains 14 majority-Black districts out of 56 districts, or 25%), 45 (indicating the Enacted State House Plan contains 49 majority-Black districts out of 180 districts,<sup>91</sup> or approximately 27.2%).

Like the Pendergrass case, however, the whole of the evidence in the Alpha Phi Alpha and Grant Plaintiffs' case for the totality of the circumstances inquiry shows that, while promising gains have been made in the State of Georgia, the political process is not currently *equally* open to Black Georgians. When evaluating the Senate Factors, the evidence shows that Black voters have *less* of opportunity to partake in the political process than white voters. Thus, the Court determines that the totality of the circumstances inquiry supports finding a Section 2 violation in the Alpha Phi Alpha and the Grant Plaintiffs' case.

---

<sup>90</sup> The Court's reference to proportionality here is only to support a general observation regarding the trajectory of minority voters' equal access to the political system in Georgia.

<sup>91</sup> The Georgia Legislative Black Caucus, however, only has 41 members in the Georgia House of Representatives. Stip. ¶ 348.



a) Alpha Phi Alpha

The Court finds that the Alpha Phi Alpha Plaintiffs have proven that, under the totality of the circumstances, Georgia's electoral system is not equally open to Black voters in the districts meeting the Gingles preconditions (i.e., Cooper SD-17, SD-28, SD-74).

(1) *Totality of circumstances inquiry: purpose and framework*

To reiterate, for a Section 2 violation to be found, the Court must conduct “an intensely local appraisal” of the electoral mechanism at issue, as well as a “searching practical evaluation of the ‘past and present reality.’” Allen, 599 U.S. at 19 (citing Gingles, 478 U.S. at 79). The purpose of this appraisal is to determine the “essential inquiry” of a Section 2 case, which is “whether the political process is *equally open* to minority voters.” Ga. State Conf. of the NAACP, 775 F.3d at 1342 (emphasis added) (quoting Gingles, 478 U.S. at 79). Put differently, the totality of the circumstances inquiry ensures that violations of Section 2 may only be found when “members of the protected class have *less opportunity* to participate in the political process.” Chisom, 501 U.S. at 397 (emphasis added).

The legal framework for the totality of the circumstances inquiry is the same applied in the Pendergrass case. In short, in this analysis the Court considers the relevant Senate Factors—Georgia’s history of discrimination and its voting practices enhancing the opportunity for discrimination, racial polarization in elections, socioeconomic factors, use racial appeals, Black-candidate success in elections, elected officials’ responsiveness to the Black community, and the State’s policy justification for the enacted map. Gingles, 478 U.S. at 44–45. The Court also considers the proportionality achieved by the Enacted Legislative Plans. The Court ultimately concludes that the totality of the circumstances’ inquiry weighs in favor of finding a Section 2 violation in the Alpha Phi Alpha case.

(2) *Senate Factors One and Three: historical evidence of discrimination and State’s use of voting procedures enhancing opportunity to discriminate*

The Court first turns to Georgia electoral practices, both past and present, that bear on discrimination against Black voters under Senate Factors One and

Three.<sup>92</sup> Senate Factor One focuses on “[t]he extent of any history of official discrimination in the state . . . that touched the right of the members of minority group to register, to vote, or otherwise to participate in the democratic process[.]” Gingles, 478 U.S. at 36–37. Senate Factor Three “considers ‘the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting.’” Wright, 979 F.3d at 1295 (quoting Gingles, 478 U.S. at 44–45).

The Court finds that the Alpha Phi Alpha Plaintiffs have presented evidence of both past and present history in Georgia that the State’s voting practices disproportionately effect Black voters. Like in the Pendergrass case, the Court is careful in this analysis to assess both *past and present* efforts that have caused a disproportionate impact on Black voters. Allen, 599 U.S. at 19. Both

---

<sup>92</sup> Like in the Pendergrass case, the Court considers both Senate Factors One and Three together because there is significant overlap in the trial evidence for the two factors. Cf., e.g., Singleton, 582 F. Supp. 3d at 1020 (considering Senate Factors One, Three, and Five together).

types of evidence are relevant because certainly “past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful.” Greater Birmingham Ministries, 992 F.3d at 1325 (quoting Bolden, 446 U.S. at 74). But past discrimination and disproportionate effects cannot be completely overlooked. See Allen, 599 U.S. at 14, 19 (assessing a history of discrimination in Alabama following Reconstruction); League of Women Voters, 81 F.4th at 1333 (asserting that “[p]ast discrimination *is relevant*” and citing to Allen). Accordingly, taking these statements from recent Supreme Court and Eleventh Circuit cases, the Court and evaluates Georgia’s practices of discrimination *past and present* as relevant evidence in the totality of the circumstances inquiry.

(a) historical evidence of discrimination broadly

Courts have continuously found that Georgia has a history of discrimination. Wright, 301 F. Supp. 3d at 1310 (“Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather

than the exception.”); Cofield, 969 F. Supp. at 767 (“African-Americans have in the past been subject to legal and cultural segregation in Georgia[.]”); id. (“Black residents did not enjoy the right to vote until Reconstruction. Moreover, early in this century, Georgia passed a constitutional amendment establishing a literacy test, poll tax, property ownership requirement, and a good-character test for voting. This act was accurately called the ‘Disfranchisement Act.’ Such devices that limited black participation in elections continued into the 1950s.”).

During the trial, Defendant stipulated that “up until 1990 we had historical discrimination in Georgia.” Tr. 1524:14–15. Alpha Phi Alpha Plaintiffs’ experts conclusions are consistent with this assertion. Plaintiffs’ expert Dr. Ward concluded that “Georgia has a long history of state-sanctioned discrimination against Black voters that extended beyond written law to harassment, intimidation and violence.” APAX 4, 1.<sup>93</sup> Another expert in these cases,

---

<sup>93</sup> The numbering in Dr. Ward’s report resets after the first two pages. As the substance of Dr. Ward’s report starts on the second page 1, the Court intends for its citations to refer to the pages of Dr. Ward’s substantive findings and conclusions.

Dr. Burton<sup>94</sup> opined that “[t]hroughout the history of the state of Georgia, voting rights have followed a pattern where after periods of increased nonwhite voter registration and turnout, the state has passed legislation, and often used extralegal means, to disenfranchise minority voters.” PX 4 at 10; see also Tr. 1428:3–24. The Alpha Phi Alpha Plaintiffs’ expert, Dr. Jones, also testified that Georgia has “used basically every expedient . . . associated with Jim Crow to prevent Black voters from voting in the state of Georgia.” Tr. 1162:9–11.

This un rebutted testimony and the extensive accounts of Georgia’s history of discrimination in Alpha Phi Alpha Plaintiffs’ expert reports demonstrate that Georgia’s history—including its voting procedures— spans from the end of the Civil War onward. See, e.g. Tr. 1431:13–17; APAX 2, 7; APAX 4, 3–13. This history has uncontrovertibly burdened Black Georgians. Id.

---

<sup>94</sup> The Parties agreed and the Court permitted Alpha Phi Alpha Plaintiffs to incorporate Dr. Burton’s trial testimony and portions of his expert report that were directly testified about into the Alpha Phi Alpha case. Tr. 1464:11–25.

(b) Georgia practice from the passage of the VRA to 2000

Congress enacted the Voting Rights Act of 1965 to address these discriminatory practices. One of the Voting Rights Act's provisions was the preclearance requirement, which mandated certain jurisdictions with well-documented practices of discrimination (including Georgia) to get approval from the federal government before making changes to their voting laws. 52 U.S.C. § 10304 .

The Voting Rights Act, however, did not instantly translate into equal voting in Georgia. In fact, Dr. Jones opined that “Georgia resisted the VRA from its inception.” APAX 2, 8. In the early years following the passage of the VRA, “Georgia refused to submit new laws for preclearance.” Id. Specifically, between 1965 and 1967, Georgia submitted only one proposed change to DOJ for preclearance. Id. Among states subject to preclearance in their entirety, Georgia ranked second only to Alabama in the disparity in voter registration between its Black and white citizens in 1976. Tr. 1437:10–1438:3. These continued disparities following the VRA were at least caused because “Georgia resisted the Voting Rights Act [and] for a period, it refused to comply.” Tr. 1163:9–17. Even still, from

1965 to 1981, the Department of Justice objected to more than 200 changes submitted by Georgia, which accounted for almost one-third of DOJ's objections for *all* states during that period. APAX 2, 8–9.

Georgia's history of discrimination against Black voters did not end in 1981. When the VRA was reauthorized in 1982, the Senate Report specifically cited to Georgia's discriminatory practices that diminished the voting power of Black voters. S. Rep. 97-417, 9th Cong. 2d Sess. 10, 13 (1982). During the 2006 reauthorization process of the Voting Rights Act, Georgia legislators "took a leadership position in challenging the reauthorization of the [A]ct." Tr. 1164:2–17. As Dr. Jones reminds us, "Georgia's resistance to the VRA is consistent with its history of resisting the expansion of voting rights to Black citizens at every turn." APAX 2, 9. Even following the 2000 Census, the district court in the District of Columbia refused to preclear the General Assembly's Senate plan because the court found "the presence of racially polarized voting" and that "the State ha[d] failed to demonstrate by a preponderance of the evidence that the reapportionment plan for the State will not have a retrogressive effect." Ashcroft, 195 F. Supp. 2d at 94.



(c) more recent voting practices with a disproportionate impact on Black voters

The Court moreover concludes that the Alpha Phi Alpha Plaintiffs submitted evidence of more recent practices in Georgia which disproportionately impact Black voters and have resulted in a discriminatory effect. These practices include county at-large voting systems, polling place closures, voter purges, and the Exact Match requirement. The Alpha Phi Alpha Plaintiffs also rely on the Georgia General Assembly's passage of SB 202 following the 2020 presidential election as evidence of recent and present practice disproportionately affecting Black voters.<sup>95</sup>

---

<sup>95</sup> The Court reiterates that Dr. Burton clearly denied that the General Assembly or Georgia Republicans are racist. Tr. 1473:18–1474:9. As articulated by Dr. Burton, “I am not saying that the legislature is [racist]—I am saying that some of the legislation that comes out has a disparity—it affects Black citizens differently than white citizens to the disadvantage on Black citizens, but I am not saying that they are racist. But the effect has a disparate impact among whites and Blacks and other minorities.” Tr. 1474:4–9. Section 2 of the VRA does not require the Court to find that the General Assembly passed the challenged maps to discriminate against Black voters, or that the General Assembly is racist in any way. Nothing in this Order should be construed to indicate otherwise.

As in *Pendergrass*, the evidence in the Alpha Phi Alpha case shows that following Shelby County and the end of pre-clearance, the U.S. Commission on Civil Rights found that Georgia had adopted five of the most common restrictions that impose roadblocks to the franchise for minority voters: (1) voter ID laws, (2) proof of citizenship requirements, (3) voter purges, (4) cuts in early voting<sup>96</sup>, and (5) widespread polling place closures. Tr. 1442:3–12 (referencing PX 4, 48–49). No other State has engaged in all five practices. *Id.* (referencing PX 4, 48–49).

The Court ultimately weighs the evidence submitted and determines that the evidence of Georgia’s present voting practices disproportionately impact Black voters. The Court proceeds by assessing the Alpha Phi Alpha Plaintiffs’ evidence of (i) at-large voting practices, (ii) Georgia’s practice of closing polling places, (iii) Georgia’s Exact Match requirement, (iv) the General Assembly’s passage of SB 202, and (v) the State’s rebuttal evidence of open and fair election

---

<sup>96</sup> While it may have been true at the time of this report that Georgia had made cuts to early voting, the Court acknowledges Mr. Germany’s trial testimony was that SB 202 increased early voting opportunities by adding two mandatory Saturdays and expressly permitted counties to hold early voting on Sundays at their discretion. Tr. 2269:8–21.

procedures.<sup>97</sup> The Court finally (vi) renders its conclusion of law on this Senate Factor.

*i) at-large voting*

One example of a recent discriminatory practice that Dr. Jones relied on was recent use of at-large voting systems in Georgia. APAX 2, 10–12. It is undisputed that as a state, Georgia does not use at-large voting systems. However, some counties do. In fact, as recently as 2015, a federal court, under Section 2, enjoined Fayette County’s use of at-large voting methods for electing members to the Fayette County Board of Commissioners and Board of Education. Id. (citing Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs, 118 F. Supp. 3d 1338, 1339 (N.D. Ga. 2015)). Following the enactment of the remedial maps, a Black candidate was elected for the first time to the Fayette County Board

---

<sup>97</sup> The Court may evaluate statewide evidence to determine whether Black voters have an equal opportunity in the election process. LULAC, 548 U.S. at 438 (“[S]everal of the [ ] factors in the totality of circumstances have been characterized with reference to the State as a whole.”); see also Allen, 599 U.S. at 22 (crediting the three-judge court’s finding lack of equal openness with respect to state wide evidence (citing Singleton, 582 F. Supp. 3d at 1018–24); Gingles, 478 U.S. at 80 (crediting district court’s findings of lack of equal opportunity that was supported by statewide evidence)).

of Commissioners. APAX 2, 11. This evidence was un rebutted. The Court notes that Cooper SD-28 even contains a portion of Fayette County. APAX 1 ¶ 99. The Court finds that the 2015 district court opinion finding that Fayette County's use of at-large voting violated Section 2 is particularly persuasive in showing recent discriminatory practices in voting given that this county is a part of one of the challenged areas.

*ii) polling place closures*

The Court finds that there is also compelling evidence that Georgia's recent closure of numerous polling places disproportionately impacts Black voters. Between 2012 and 2018, Georgia closed 214 voter precincts, "decreasing the number of precincts in many minority majority neighborhoods." APAX 2, 29 (citing Patrik Jonsson, "Voting After Shelby: How a 2013 Supreme Court Ruling Shaped the 2018 Election," Christian Science Monitor, November 21, 2018, <https://www.csmonitor.com/USAJustice/2018/1121/Voting-after-Shelby-How-a-2013-Supreme-Court-ruling-shaped-the-2018-election>; The Leadership Conference on Civil and Human Rights, "Democracy Diverted: Polling Place Closures and the Right to Vote," at 32, September 2019,

<https://civilrights.org/democracy-diverted/>). In five of the counties where the polls were closed Black turnout was under 50% in 2020, when it had been between 61.36% and 77.50% in the 2018 election. APAX 2, 29–30 (citing Mark Niese and Maya T. Prabhu, “Voting Locations Closed across Georgia after Supreme Court Ruling,” The Atlanta Journal-Constitution, April 31, 2018, <https://www.ajc.com/news/state--regional-govt--politics/votingprecincts-closed-across-georgia-since-election-oversight-1iftedJbBkHxpflirn0Gp9pKu7dfrN/>; Georgia Secretary of State, “Elections,” 2018. <https://sos.ga.gov/index.php/elections>.)

A 2020 study found that “about two-thirds of the polling places that had to stay open late for the June primary to accommodate waiting voters were in majority-Black neighborhoods, even though they made up only about one-third of the state’s polling places.” APAX 2, 30 (citing Stephen Fowler, “Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours?,” ProPublica (Oct. 17, 2020), <https://www.propublica.org/article/why-do-nonwhite-georgia-voters-have-to-wait-in-line-for-hours-their-numbers-have-soared-and-their-polling-places-have-dwindled>). Additionally, on average, the “wait time after 7 p.m.

across Georgia was 51 minutes in polling places that were 90% or more nonwhite, but only 6 minutes in polling places that were 90% white.” Id. The study that Dr. Jones cited for these statements is the same as the one cited by Dr. Burton that found that “[i]n 2020, the nine counties in metro Atlanta that had nearly half of the registered voters (and the majority of the Black voters in the state)[, but] had only 38% of the state’s polling places.” PX 4, 50 n.173. Notably, at trial, both Drs. Jones and Burton testified consistently about polling place closures and that they disproportionately impacted Black voters. Tr. 1432:21–25; 1440:16–1441:21; 1347:10–1348:9.

The Court concludes that the Alpha Phi Alpha Plaintiffs’ evidence of polling place closures—and, notably, in metro-Atlanta where some of the challenged districts are located—is recent evidence of a voting practice with a disproportionate impact on Black voters.

*iii) exact match*

The Alpha Phi Alpha Plaintiffs’ evidence also shows Georgia’s voting practices include roadblocks to the voting efforts of minority voters in the form

of the Exact Match system and the State's purging of voter registration lists.<sup>98</sup> APAX 2, 23–28.

These practices, however, have been determined in prior decisions by the Court to *not* be illegal under federal law. The prior decisions upholding the Exact Match requirement and registration list purges certainly impact the weight to afford these voting practices. However, in this case, the evidence shows—without contradicting the prior legal determinations—that these practices have a *disproportionate effect* on Black voters for purposes of the instant totality of the circumstances' inquiry. Specifically, when these prior decisions are considered in the light of the legal frameworks at issue, the Court finds that these practices can be used as evidentiary support of a disproportionate discriminatory impact on Black voters in Georgia without contradicting or minimizing the prior decisions upholding Georgia's laws.

---

<sup>98</sup> In light of the Court's ruling allowing Dr. Burton's testimony and specific references to his report to be incorporated into the Alpha Phi Alpha case (1464:11-25), the Court may rely on Dr. Burton's report's analysis of the Commission's report in the Alpha Phi Alpha case. See Tr. 1441:25–1442:15 (Dr. Burton referencing his report and testifying about the U.S. Commission on Civil Rights, An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Enforcement Report (Washington, 2018), 369).

Specifically, Georgia’s Exact Match procedure was determined to not violate VRA’s Section 2 because when the burden on voters, the disparate impact, and the State’s interest in preventing fraud were considered together, the weighing of these considerations counseled against finding a violation. Fair Fight Action, 634 F. Supp. 3d at 1246. The Exact Match ruling in Fair Fight relied on the Brnovich decision and emphasized that “the modest burdens allegedly imposed by [the Exact Match law], the small size of the disparate impact, and the State’s justifications” did not support a Section 2 violation. Id. at 1245–46 (quoting Brnovich, 141 S. Ct. at 2346). Even without a Section 2 violation, however, the Court found that the Exact Match requirement disproportionately impacted Black voters given that: Black voters were a smaller portion of the electorate but as of January 2020, 69.4% of individuals flagged as “missing identification required” were African American, and 31.6% of the voters flagged for pending citizenship 31.6% were African American, whereas white voters only accounted for 20.9%. Fair Fight Action, 634 F. Supp. 3d at 1160, 1162; Tr. 1283:3–10. Thus, the Court’s decision in Fair Fight itself acknowledged that the Exact Match practice in Georgia has a *discriminatory impact* on Black voters—which is the



inquiry specifically at issue here. When the Court considers Fair Fight's determination in the light of the Civil Rights' Commission's report that generally Exact Match practices are a roadblock to minority voters, the Court concludes that this modern practice in Georgia supports that Georgia's modern voting practices have a discriminatory effect on Black voters.

*iv) SB 202's disproportionate impact*

The Alpha Phi Alpha Plaintiffs also cite to Georgia's passage of SB 202 as evidence of modern discrimination. The General Assembly passed SB 202 following the 2020 Presidential election. APAX 2, 28–29; Tr. 1182:1–9. A challenge to SB 202 is pending in the Northern District of Georgia and has not been resolved at the time the Court enters this Order.<sup>99</sup> In re SB 202, 1:21-mi-55555 (N.D. Ga.

---

<sup>99</sup> The Court notes that on October 11, 2023, the district court assigned the SB 202 case ruled on a pending motion for preliminary injunction that involves Section 2 and constitutional challenges to several provisions in SB 202. In re SB 202, 1:21-mi-55555, ECF No. 686 (N.D. Ga. Oct. 11, 2023). The court denied the plaintiffs' motions for preliminary injunction and found that there was not a substantial likelihood of success on the merits of any of their claims. Id. at 61. No rulings in that case are binding on this Court. McGinley, 361 F.3d at 1331 (“[A] district judge’s decision neither binds another district judge[.]”). However, the Court is cautious in its discussion of SB 202 to avoid inconsistent rulings and creating confusion.

Dec. 23, 2021). The Court acknowledges that the evidence presented in that case is not presently before this Court.<sup>100</sup> Given this pending challenge to SB 202, the Court proceeds cautiously in an effort of judicial restraint, which counsels against the Court preemptively making any findings that could lead to inconsistent rulings with decisions already made or implicating the ultimate determination of the legality of the law.

With these qualifications in mind, the Court cannot ignore that evidence on SB 202 has been presented by the Plaintiffs as proof of present discriminatory practices in Georgia's treatment of Black voters. See, e.g., APAX 2, 28–29.<sup>101</sup> Defendants likewise provided rebuttal testimony. See generally Tr. 2261–2307. The Court, treading cautiously, tethers its findings regarding SB 202 to the

---

<sup>100</sup> To be abundantly clear, this Court does not have a challenge to SB 202 before it. Plaintiffs' experts have provided evidence regarding potential motivations behind SB 202 and the impact that its passage had on Black voters. See APAX 2, PX 4, GX 4. And Defendants provided counter evidence. See generally Tr. 2261–2307 (testimony of Ryan Germany). The Court evaluates solely the evidence adduced in this case.

<sup>101</sup> Drs. Burton and Jones concluded that certain portions of SB 202 have an actual or perceived negative impact on Black voters. See Tr. 1185:17–1186:16 (Dr. Jones opining that Black voters increased use of absentee ballots and their use of drop boxes correlated with the passage of SB 202); Tr. 1445: 1–25 (Dr. Burton opining that certain provisions of SB 202 were put in place because of the gains made by Black voters in the electorate).

testimony and evidence advanced by the Alpha Phi Alpha Plaintiffs' experts *for purposes of the totality of the circumstances inquiry on the Senate Factors*. Namely, the Court considers the passage of SB 202, once again, as some evidence of practices with a disproportionate impact on Black voters. This conclusion is made with the expert conclusion of Dr. Burton in mind that "in Georgia [it] was the pattern that every time . . . that Black citizens made gains in some way or another or were being successful, that the party in power in the state, whether it's Democrat or Republican, found ways or came up with ways to either disenfranchise, but particularly dilute or in some way make less effective the franchise of Black citizens than those of white citizens." Tr. 1428:9–21. Dr. Burton specifically cites the passage of SB 202 as evidence of this pattern in his trial testimony (Tr. 1442:16–1444:25), which was incorporated by the Alpha Phi Alpha Plaintiffs in their case (Tr. 1464:10–25).

Accordingly, the Court considers SB 202 as evidence of a current manifestation of a historical pattern that following an election, the General Assembly responsively passes voting laws that disproportionately impact Black voters in Georgia.

**(d) Defendant's rebuttal evidence**

The Court now turns to Defendants' rebuttal evidence. Defendants do not affirmatively rebut the Alpha Phi Alpha Plaintiffs' expert evidence with their own expert evidence. Instead, Defendants cross-examined Drs. Jones and Burton on the prior legal determinations upholding some of the voting practices raised. See, e.g., Tr. 1251:16–19. The Court, however, has already determined that it is not inconsistent with these prior rulings to now find that these voting practices have a discriminatory impact on Black voters for purposes of the instant totality of the circumstances. See Section II(D)(4)(a)(2)(iii) *supra* exact match section.

Defendants instead, through lay witness testimony, submitted that Georgia has implemented legislation to make it easier for all voters to participate.<sup>102</sup> In favor of Defendants on these factors, the Court considers Mr. Germany's testimony about SB 202. Mr. Germany indicates that the motive

---

<sup>102</sup> The Court notes that on cross-examination Mr. Germany explained that SB 202 received numerous complaints; however, he is unable to quantify whether those complaints primarily came from Black voters because the Secretary of State's Office does not analyze the impact of the legislation on particular categories of voters—i.e., white voters v. Black voters. In his opinion, that analysis is not helpful to the overall goal to “make it easy for everyone, regardless of race.” Tr. 2283:2–2285:5.

for passing the law was to alleviate stress on the electoral system and increase voter confidence. Tr. 2265:3–23. Moreover, SB 202, among other things, expanded the number of early voting days in Georgia. Tr. 1476:7–9, 2269:8–21. Mr. Germany testified that Georgia employs no-excuse absentee voting (Tr. 2268:9–16) and was the second state in the country to implement automatic voter registration through the Department of Driver Services, which also allows voters to register the vote using both paper registration and online voter registration (Tr. 2263:12–20). Georgia furthermore offers free, state-issued, identification cards that voters can use to satisfy Georgia’s photo ID laws. Tr. 2264:15–22.

The Court has also been presented additional evidence that immediately prior to Shelby County, the DOJ precleared Georgia’s 2011 Congressional Plan. Tr. 1471:14–20. Moreover, following the passage of SB 202, Georgia experienced record voter turnout in the 2022 midterm election cycle. Tr. 1480:3–8.

(e) **conclusion on Senate Factors One and Three**

In sum, the majority of the evidence before the Court shows that Georgia has a long history of discrimination against Black minority voters. This history

has persisted in the wake of the VRA and even into the present through various voting practices that disproportionately affect Black voters. The Alpha Phi Alpha Plaintiffs have provided concrete recent examples of the discriminatory impact of recent Georgia practices, some specifically in the area of the districts proposed.

Defendants conversely have submitted some recent evidence of Georgia increasing the access and availability of voting. The evidence even shows that *overall* voter turnout has increased in the most recent national election.<sup>103</sup> These efforts are commendable, and the Court encourages these developments. In the Court's view, however, it is insufficient rebuttal evidence. Thereby, *in toto*, the Court concludes that Georgia has a history – uncontrovertibly in the past, and extending into the present – of voting practices that disproportionately impact Black voters. Thus, Senate Factors One and Three on the whole weigh in favor of finding a Section 2 violation.

---

<sup>103</sup> As discussed in greater detail, *infra*, Black voter turnout rate decreased by 15 points from the 2020 election cycle to the 2022 election cycle and recorded the lowest voter turnout rate in a decade. See Section II(D)(4)(e)(1) *infra*.

(3) *Senate Factor Two: racial polarization*

The second Senate Factor assesses “the extent to which voting in the elections of the State or political subdivision is racially polarized.” Wright, 979 F.3d at 1305 (quoting LULAC, 548 U.S. at 426). As indicated in the Alpha Phi Alpha Summary Judgment Order, polarization is a factor to be considered in the totality of circumstances inquiry, in addition to the second and third Gingles preconditions. Alpha Phi Alpha Doc. No. [268], 44. Pursuant to persuasive authority, the Court finds that when a Defendant has raised a race-neutral reason for the polarization, the Court must look beyond the straight empirical conclusions of polarization. See Nipper, 39 F.3d at 1524 (plurality opinion) (finding that Defendants may rebut evidence of polarization by showing racial bias is based on nonracial circumstances); Uno, 72 F.3d at 983 (asserting the evidence of racial polarization on the second and third Gingles preconditions “will endure *unless* and *until* the defendant adduces credible evidence tending to prove the detected voting patterns can most logically be explained by factors unconnected to the intersection of race with the electoral system.”).

Defendants have consistently argued that partisanship is a race-neutral explanation for polarization of voters in Georgia. See, e.g., Tr. 2410:18–2411:14. In an intentional discrimination context, the Eleventh Circuit cautioned courts “against conflating discrimination on the basis of party affiliation with discrimination on the basis of race . . . . [e]vidence of *race-based* discrimination is necessary to establish a constitutional violation.” League of Women Voters, 66 F.4th at 924.

The Court acknowledges that whether voter polarization is on account of partisanship or race is a difficult question to disentangle. During an extended colloquy with the Court, Dr. Alford testified that “voting behavior is very complicated” and that in his view democracy is about “voting for a person that follows their philosophy or they think is going to respond to their needs.” Tr. 2182:4–5; 2183:4–8. He went on to clarify that party identity and affiliation is exceptionally strong in this country and starts at a young age. Tr. 2183:8–2184:6.

Dr. Alford concluded that, from the empirical evidence presented by the Alpha Phi Alpha Plaintiffs, one cannot causally determine whether the data is best explained by party affiliation or racial polarization. He specifically testified:



[T]he kind of data that we use here, which is, you know ecological and highly abstract data, cannot demonstrate cohesion in sort of its natural form.

Much of the work on things like individual-level surveys, exit polls, et cetera, also make it very difficult in a non-experimental setting to demonstrate causation. It really takes an experimental setting. So there is some work done in experimental settings, but this is not an area of inquiry that is—scientific causation in the social sciences is very difficult to establish. This is not an area where there has been any work that’s established that.

Tr. 2226:7–18.

The Court is not in a position to resolve the global question of what causes voter behavior. Such question is empirically driven, and one in which expert political scientists and statisticians do not agree. The Court can, however, assess the *evidence* of polarization presented at trial. In doing so, the Court determines that the Alpha Phi Alpha Plaintiffs have shown sufficient evidence of racial polarization in Georgia voting for this factor to weigh in favor of finding a Section 2 violation.

First, the Alpha Phi Alpha Plaintiffs present Dr. Handley’s report, indicating strong evidence of racial polarization in voting. APAX 5. Plaintiffs also offered testimony about the strong connection between race and partisanship as

it currently exists in Georgia. Dr. Handley testified that Black and white voters have, for over decades, realigned their partisan affiliations based on the political parties' positions with respect to racial equality and civil rights. See Tr. 885:1-886:7. See also APAX 10, 4 ("Researchers have traced Southern realignment—the shift of white voters from overwhelming support for the Democratic party to nearly equally strong support for the Republican party—to the Democratic party's support for civil rights legislation beginning in the 1960s.").

This testimony was supported by various experts in the case. Dr. Burton testified that in the 1960s there was a "huge shift of African-Americans from the party of Lincoln, the Republican party, to the Democratic party and the shift of white conservatives from the Democratic party to the Republican party." Tr. 1445:4-7. Dr. Ward testified that race has consistently been the best predictor of partisan preference since the end of the Civil War. Tr. 1343:14-25. Dr. Ward explained that racially polarized voting has "been the predominant trend through political eras and political cycles" and even though "Black party preference has shifted dramatically from reconstruction to the present, [] more

often than not, that party preference is dramatic and demonstrable.” Tr. 1343:17-20.

Moreover, Dr. Ward described how the composition and positions of political parties in Georgia were forged in response to the history of Black political participation. APAX 4, 3, 19-20. Dr. Burch’s testimony regarding political science studies of the Black Belt is consistent: “living in Black belt areas with . . . legacies of slavery predict white partisan identification and racial attitudes.” APAX 6, 33.

Empirically, Dr. Burton testified about the success of Black candidates in the light of the percentage of white voters in the district.<sup>104</sup> The following chart was displayed during the trial and presents his findings:

---

<sup>104</sup> Race of a candidate is not dispositive for a polarization inquiry. DeGrandy, 512 U.S. at 1027 (“The assumption that majority-minority districts elect only minority representatives, or that majority-white districts elect only white representatives, is false as an empirical matter. And on a more fundamental level, the assumption reflects the demeaning notion that members of the defined racial groups ascribe to certain minority views that must be different from those of other citizens.” (Kennedy, J, concurring in part) (citation omitted)). The Court, however, finds that an assessment of the success of Black candidates in reference to different percentages of white voters, is good evidence that partisanship is not the best logical explanation of racial voting patterns in Georgia.

Winning Candidates in 2020 in Georgia House of Representatives

Percentage white registered voters in district	White Republicans <sup>197</sup>	Black Democrats	White Democrats
Under 40%	0	48	7
40–46.2%	1	3	2
46.2–54.9	11	1	6
55–62.4%	23	0	5
Over 62.4%	68	0	0

Winning Candidates in 2020 in Georgia State Senate

Percentage white registered voters in district	White Republicans	Black Democrats	White Democrats
Under 47%	0	16	1
47–54.9%	3	0	3
Over 55%	51	0	0

PX 4, 56 (footnote content omitted).

Clearly there is a meaningful difference in Black candidate success depending on the percentage of white voters in a district. When the white voter

---

Cf. Johnson, 196 F.3d at 1221–22 (“We do not mean to imply that district courts *should* give elections involving [B]lack candidates more weight; rather, we merely note that in light of existing case law district courts may do so without committing clear error.”).

percentage is lowest, Black Democratic candidates have the most success. This effect inverts as the percentage of white voters increases, culminating in *no* Black Democrat candidate success (regardless of party) when the white voter percentage reaches 47% (for the State Senate) or 55% (for the State House). PX 4, 56. These findings are consistent with Dr. Palmer's un rebutted findings about the challenged districts: Black voters voted for the same candidate, on average, 98.4% of the time and white voters voted for a different candidate, on average, 87.6% of the time. Stip. ¶¶ 219, 223.

In contrast to this evidence, Defendants' expert, Dr. Alford, provided the Court with data from the most recent Republican primary election where Herschel Walker was a candidate and received 60% of both Black and white voters votes. DX 8, 9 & tbl. 1; Tr. 2209:3-13. He qualified that the number of Black voters who voted in the Republican primary was small, therefore, he could not conclude that Mr. Walker was the Black-preferred candidate. Tr. 2237:18-19. But rather, the data showed that white voters did not vote as a bloc to defeat Walker's candidacy. Tr. 2237:19-21. His remaining analysis involved descriptive conclusions based on Dr. Handley's data set and, most importantly, did not offer

additional support for a conclusion that voter behavior caused by partisanship rather than race. See generally DX 8.

In light of the foregoing evidence, the Court finds that Senate Factor Two weighs heavily in favor of finding a Section 2 violation.

(4) *Senate Factor Five:* <sup>105</sup> *socioeconomic disparities*

Senate Factor Five considers socioeconomic disparities between Black and white voters and these disparities' impact on Black voter participation. The Eleventh Circuit recognized in binding precedent that "disproportionate educational, employment, income level, and living conditions arising from past discrimination tend to depress minority political participation." Wright, 979 F.3d at 1294 (quoting Marengo Cnty. Comm'n, 731 F.2d at 1568). "Where these conditions are shown, and where the level of black participation is depressed, plaintiffs need not prove any further causal nexus between their disparate socioeconomic status and the depressed level of political participation." Id. (quoting

---

<sup>105</sup> Senate Factor Four—a history of candidate slating—is not at issue because Georgia does not use a slating process. Alpha Phi Alpha Fraternity, Inc., 587 F. Supp. 3d at 1317.

Marengo Cnty., 731 F.2d at 1568-69); Dallas Cnty. Comm’n, 739 F.2d at 1537 (“Once lower socio-economic status of [B]lacks has been shown, there is no need to show the causal link of this lower status on political participation.”)).

**(a) Black voter participation**

The Court finds that the Alpha Phi Alpha Plaintiffs have shown that Black voters have lower voter turnout rates than white voters. Dr. Burch testified that in the 2020 statewide general election that white voters had a turnout rate of 67.4%. Tr. 1051:7–12. Depending on whether she calculated the voting age population for SR Black<sup>106</sup> or Black alone and in combination<sup>107</sup>, or registered Black voter turnout<sup>108</sup> ranged between 53.7% to 55.8%. Meaning, that that the disparity between white and Black voter turnout ranged from 11.6 to 13.7%. APAX 6, 6–7; Tr. 1051:7–18. Specifically, in the metro Atlanta clusters, Dr. Burch calculated that in the 2020 election, the east Atlanta cluster had a voter turnout

---

<sup>106</sup> Voter turnout for SR BVAP is 55.8%. APAX 6, 6–7. The white voting age population’s turnout rate was 67.4%; thus, there was a 11.6% turnout gap. Id.; Tr. 1051:13–16.

<sup>107</sup> Voter turnout for SR BVAP is 53.7%. APAX 6, 6–7. The white voting age population’s turnout rate was 67.4%; thus, there was a 13.7% turnout gap. Id.

<sup>108</sup> Black registered voter turnout was 60.0% and white registered voter turnout was 72.6%; thus, there was a 12.6% turnout gap. Id.; Tr. 1051:16–18.

gap between 11.8% and 14.6%, the southwest Atlanta cluster had a voter turnout gap between 9.2% and 12.4%, and southeast Atlanta cluster had a voter turnout gap between 10.1% and 13.0%. APAX 6, 10 & figs. 1-3.

In the 2022 general election, again, statewide white voter turnout exceeded Black voter turnout between 11.1% and 13.3%. <sup>109</sup> Tr. 1052:6-13. Dr. Burch determined that the turnout gap also persisted across the county clusters at issue in this case for both 2020 and 2022 general election data. Tr. 1051:22-1052:2 (“So with respect to the county clusters, I saw a pretty sizable turnout gap in 2020 for almost all of the county clusters that I analyzed no matter how I calculated it. And I think the lowest gap was I think – in 2020 was 8.9 percentage points. So even with those county clusters it was a sizable gap.”); *id.* at 1052: 16-18 (“Again, in 2022, we still see gaps even in all of the turnout clusters—in all of the county

---

<sup>109</sup> Voter turnout for SR BVAP was 42.3%. APAX 6, 10. The white voting age population’s turnout rate was 53.4%; thus, there was a 11.1% turnout gap. *Id.* Voter turnout for SR BVAP was 41.4%. *Id.* The white voting age population’s turnout rate was 53.4%; thus, there was a 12.0% turnout gap. *Id.* Black registered voter turnout was 45.0% and white registered voter turnout was 58.3%; thus, there was a 13.3% turnout gap. *Id.*



clusters, Black voters still vote less than white voters in those clusters.”)<sup>110</sup>; APAX 6, 7–10, 11–13.

Defendants did not put forth rebuttal evidence contesting that Black voter participation in the political process was lower than white voters. Defendants also did not challenge or rebut the accuracy of Dr. Burch’s findings on voter turnout, but rather questioned the choices that she made when considering which elections to consider and what counties were included in which clusters. Tr. 1106:16–1115:6. On cross-examination, Defendant did not rebut that there is a voter turnout gap between white and Black voters in Georgia.

The Court also understands Defendant to argue that Black voter turnout is, at least, in part motivated by voter excitement for the candidate. Tr. 1114:1–22. The Court is not persuaded by this argument. Even assuming that Defendant’s theory of voter mobilization could be a valid legal argument rebutting statistical

---

<sup>110</sup> Specifically, in the metro Atlanta clusters, Dr. Burch calculated that in the 2022 election, the east Atlanta cluster had a voter turnout gap between 10.8% and 13%, the southwest Atlanta cluster had a voter turnout gap between 3.2% and 9.1%, and southeast Atlanta cluster had a voter turnout gap between 5.7% and 10.1%. APAX 6, 11–13 & figs. 4–6.

evidence of depressed Black voter turnout, Defendants submitted no evidence connecting lower Black voter turnout to a lack of motivation to vote. Some nonempirical testimonial evidence on cross examination that the candidates on a ballot impact voter turnout is insufficient to rebut the expert statistical evidence presented by the Alpha Phi Alpha Plaintiffs that Black voter turnout is, on the whole and across elections, disproportionately lower than white voter turnout, and that Black voters participate less in the political process than white voters. Thus, the Court concludes that the Alpha Phi Alpha Plaintiffs submitted evidence that Black Georgians participate in the political process, both generally and in voter turnout, less than white voters.

**(b) socio-economic disparities**

The Court also concludes that there is sufficient evidence in the Record to show disproportionate educational, employment, income level, and living conditions arising from past discrimination. Black Georgians suffer disparities in socioeconomic status, including in the areas of education, employment, and income. APAX 6, 13-21. As Defendant acknowledged, with respect to “[s]ocioeconomic disparities[,] I don’t think you’ll find a lot of disagreement from

the parties here. The census numbers are what they are.” Tr. 49:4-6. According to Census estimates, the unemployment rate among Black Georgians is 8.7% and the unemployment rate among white Georgians is 4.4%. Stip. ¶ 342.

The Census estimates that 21.5% of Black Georgians are living below the poverty compared to 10.1% of white Georgians. Stip. ¶ 344. Black Georgians also receive SNAP benefits at a higher rate than white Georgians, with 22.7% of Black Georgians receiving SNAP benefits compared to 7.7% of white Georgians. Id. ¶ 345.

According to Census estimates, 13.3% of Black adults in Georgia lack a high school diploma, compared to 9.4% of white adults in Georgia. Stip. ¶ 346. 35% of white Georgians over the age of 25 have obtained a bachelor’s degree or higher, compared to only 24% of Black Georgians over the age of 25. Id. ¶ 347. The rate of poverty for Black Georgians is more than twice that of white Georgians. Tr. 1059:2-4. The median income for Black Georgian households is about \$25,000 less than that of white Georgian households. Tr. 1059:4-6. Black Georgians experience poverty rates more than double those of white Georgians. APAX 6, 19.

Black Georgians fare worse than white Georgians in terms of various health outcomes, such as infant mortality, hypertension, diabetes, obesity, overall mortality rates, and cancer. APAX 6, 31-33; Tr. 1063:22-1064:7. Black Georgians between the age of 19-64 years old are more likely to lack health insurance than white Georgians in the same age demographic, which affects access to health care and health outcomes. APAX 6, 32; Tr. 1064:11-16.

The Court concludes that the Alpha Phi Alpha Plaintiffs have adduced sufficient evidence to show that socio-economic disparities between white and Black Georgians, where Black Georgians are generally impacted more negatively than white Georgians on a number of metrics.

**(c) conclusions on Senate Factor Five**

Under binding precedent, the Alpha Phi Alpha Plaintiffs have proven that rates of Black voter political participation are depressed as compared to white voters participation. The aforementioned evidence also shows that Black Georgians suffer from significant socioeconomic disparities, including educational attainment, unemployment rates, income levels, and healthcare access. When both of these showings have been made, the law does not require a

causal link be proven between the socioeconomic status and Black voter participation. Wright, 979 F.3d at 1294.<sup>111</sup> Accordingly, the Court concludes that the socioeconomic evidence and the lower rates of Black voter participation support a finding that Senate Factor Five weighs heavily in favor of a Section 2 violation.

(5) *Senate Factor Six: racial appeals in Georgia's political campaigns*

Senate Factor Six “asks whether political campaigns in the area are characterized by subtle or overt racial appeals.” Wright, 979 F.3d at 1296. Courts have continually affirmed district courts’ findings of “overt and blatant” as well as “subtle and furtive” racial appeals. Gingles, 478 U.S. at 40; see also Allen, 599 U.S. at 22–23. However, in the Alabama district court proceedings, preceding the Allen appeal, the trial court assigned less weight to the evidence of racial appeals because the plaintiffs had only shown three examples of racial appeals in recent campaigns, but did not submit “any systematic or statistical evaluation of the

---

<sup>111</sup> While not required as a matter of law, as a matter of social science, Dr. Burch’s report indicates that the academic literature demonstrates a strong and consistent link between socioeconomic status and voter turnout. Tr. 1055:4–10.

extent to which political campaigns are *characterized* by racial appeals” and thus the court could not be evaluate if these appeals “occur frequently, regularly, occasionally, or rarely.” Singleton, 582 F. Supp. 3d at 1024 (emphasis added).

Similarly here, the Court finds that there is evidence of isolated racial appeals in recent Georgia statewide campaigns. However, there is no evidence for the Court to determine if these appeals *characterize* political campaigns in Georgia. Thus, while the Alpha Phi Alpha Plaintiffs submitted evidence of discrete instances<sup>112</sup> in recent elections where racial appeals were invoked—

---

<sup>112</sup> The Alpha Phi Alpha Plaintiffs have provided the following evidence of racial appeals used in recent Georgia elections across the past few election cycles:

In the 2018 gubernatorial election, then-Secretary of State Kemp, (now twice-elected Governor) used a social media campaign to associate Stacey Abrams with the Black Panther Party and ran a commercial advertisement where he discussed rounding up illegal immigrants in his pickup truck. APAX 2, 38; Tr. 1364:12–16.

In the 2020 U.S. Senatorial election, then-Senator Kelly Loeffler ran a campaign ad against “a dangerous Raphael Warnock,” whose skin had been darkened, and who was also associated with communism, protests, and civil unrest. Tr. 1193:19–1195:5; APAX 31; APAX 2, 39.

In 2022, during the senatorial race between Senator Warnock and Herschel Walker, Mr. Walker ran an advertisement that aimed to distinguish “between the Black candidate and himself” as the Republican candidate, in order to “associate himself with the white voter [and] mak[e] the Black candidate look menacing and problematic . . .”

which is “some evidence” of political campaigns being characterized by racial appeals – the Court cannot meaningfully evaluate whether these appeals “occur frequently, regularly, occasionally, or rarely” and thereby does not afford great weight to this factor. Singleton, 582 F. Supp. 3d at 1024.

(6) *Senate Factor Seven: minority candidate success*

Senate Factor Seven “focuses on ‘the extent to which members of the minority group have been elected to public office in the jurisdiction.’” Wright, 979 F.3d at 1295 (quoting LULAC, 548 U.S. at 426). Unlike the second and third Gingles preconditions, the Court now must specifically look at the success of *Black* candidates, not just the success of Black preferred candidates. Assessing the results of Georgia’s recent elections, the Court finds that Black candidates have achieved little success, particularly in majority-white districts.

---

Tr. 1198:9–1199:4; APAX 2, 43–44.

Also in 2022, in the Republican primary for governor, former Senator David Purdue stated in an interview, that Abrams was “demeaning her own race” and to let her “go back where she came from.” APAX 2, 38 (quoting Reid J. Epstein, “David Perdue Makes Racist Remarks about Stacey Abrams as He Ends a Lackluster Campaign, N.Y. Times, (May 23, 2022), <https://www.nytimes.com/2022/05/23/us/politics/david-perdue-staceyabrams-racist-remarks.html>).

As a population, Black Georgians have historically been and continue to be underrepresented by Black elected officials across Georgia's statewide offices. Georgia has never elected a Black governor (Stip. ¶ 349) and Black candidates have otherwise only had isolated success in statewide partisan elections in the last 30-years. Specifically, in 2000, David Burgess was elected Public Service Commissioner, in 2002 and 2006 Mike Thurmond was elected to Labor Commissioner, and in 1998, 2002, and 2006 Thurbert Baker was elected Georgia Attorney General.<sup>113</sup> Stip. ¶ 361. Most recently, after 230 years of exclusively white Senators, Senator Raphael Warnock was twice elected to U.S. Senate and in his most recent election he defeated a Black candidate. APA Doc. No. [284], 11. Finally, nine Black individuals have been elected to statewide nonpartisan office in Georgia. Stip. ¶ 362.

In Georgia's congressional elections, only 12 Black candidates have ever been elected to the Congress. Tr. 1201:1-5. Five Black individuals serve in the

---

<sup>113</sup> The Court takes judicial notice of the specific elections that each candidate successfully won. See Scott, 2019 WL 4200400, at \*3 n. 4 (taking judicial notice of the publicly filed election results); see also n.65 *supra*.



United States House of Representatives from Georgia's current congressional districts. Stip. ¶ 359. Four of these Black congresspersons are elected in majority-Black districts. PX 1, K-1. The other Black Representative, congresswoman Lucy McBath, represents Congressional District 7.

In State legislative districts, the Georgia Legislative Black Caucus has only 14 members in the Georgia State Senate (25%) and 41 members in the Georgia House of Representatives (less than 23%).<sup>114</sup> Stip. ¶ 348. As incorporated in the Alpha Phi Alpha case, Dr. Burton's testimony referred to the 2020 and 2022 legislative elections, where Black candidates had little to no success when they did not make up the majority of a district.<sup>115</sup> Specifically, Black candidates in the 2020 legislative elections did not have any success when they did not make up at least 45.1% of a House District or 53.8% of a Senate District.

---

<sup>114</sup> The Enacted Senate Plan contains 14 majority-Black districts. Stip. ¶¶ 176, 186; APAX 1, M-1. The Enacted House Plan contains 49 majority-Black districts. Stip. ¶¶ 183, 186, APAX 1, Z-1.

<sup>115</sup> Erick Allen was elected to Georgia House District 40 in 2018 and re-elected in 2020, even though House District 40 was not a majority-Black district in 2018 or 2020. Tr. 1012:2-12.

Winning Candidates in 2020 in Georgia House of Representatives

Percentage white registered voters in district	White Republicans <sup>197</sup>	Black Democrats	White Democrats
Under 40%	0	48	7
40–46.2%	1	3	2
46.2–54.9	11	1	6
55–62.4%	23	0	5
Over 62.4%	68	0	0

Winning Candidates in 2020 in Georgia State Senate

Percentage white registered voters in district	White Republicans	Black Democrats	White Democrats
Under 47%	0	16	1
47–54.9%	3	0	3
Over 55%	51	0	0

PX 4, 56.

Although the Court finds that Black candidates have achieved some success in statewide elections following 2000, the Court ultimately concludes Senate Factor Seven weighs heavily in favor of the Alpha Phi Alpha Plaintiffs. The Supreme Court in Gingles, when discussing the success of a select few Black

candidates, cautioned courts in conflating the success of a few minority candidates as dispositive. Gingles, 478 U.S. at 76.

In short, since Reconstruction, Georgia has only elected *four* Black candidates in statewide partisan elections: Mike Thurmond, Thurbert Baker, David Burgess, and Raphael Warnock. Stip. ¶ 361. For statewide non-partisan elections, Georgia has elected nine successful Black candidates: Robert Benham, Leah Ward-Sears, Harold Melton, Verda Colvin, John Ruffin, Clarence Cooper, Herbert Phipps, Yvette Miller, Clyde Reese. Stip. ¶ 362. Georgia has sent twelve successful Black candidates to the U.S. House of Representatives. Tr. 1201:1–5. Currently, there are 55 members of the Georgia General Assembly that are in Georgia’s Legislative Black Caucus (of 236 total members), and all are elected from majority-minority districts. Stip. ¶ 348; APA Doc. No. [284], 8–9. The Court concludes that these isolated successes of Black candidates show that the Black population is underrepresented in Georgia’s statewide elected offices. This conclusion is even stronger in majority-white districts.

To be sure, Dr. Burton acknowledged, and even affirmed that some academic scholarship indicates that “the future electoral prospects of African-

American statewide nominees in growth states such as Georgia are indeed promising.” Tr. 1470:2–24. The Court likewise is hopeful about the prospects increased enfranchisement of all voters and for the potential success of minority candidates in Georgia. However, Dr. Burton also emphasized that, specifically in Georgia, dating back to Reconstruction increased minority success led to “more legislation from whichever party is in power [to] disenfranchise or at least dilute or make the vote count less.” Tr. 1470:14–16. Accordingly, the optimism about Georgia’s future elections does not rebut the contrary evidence of the present success of Black candidates; accordingly, the Court finds that Senate Factor Seven weighs heavily in favor of finding a Section 2 violation.

(7) *Senate Factor Eight: responsiveness to Black residents*

Senate Factor Eight considers whether elected officials are responsive to the particularized needs of Black voters. A lack of responsiveness is “evidence that minorities have insufficient political influence to ensure that their desires are considered by those in power.” Marengo Cnty. Comm’n, 731 F.2d at 1572. The Eleventh Circuit noted that “although a showing of unresponsiveness might have some probative value a showing of responsiveness would have very little.”

Id. Alpha Phi Alpha Plaintiffs' expert, Dr. Burch, discussed the existence of significant socioeconomic disparities between Black and white Georgians, which he concluded contributed to the lower rates at which Blacks engage their elected representatives. APAX 6, 36. Id.

The Court cannot from the evidence before it find that its passage was due to the responsiveness or lack thereof to Black voters. There is no evidence that shows that a particular legislator received a complaint about pieces of legislation and ignored it. Accordingly, the Court finds that evidence about legislation is not persuasive.

Dr. Burch also concluded that socioeconomic disparities such as: education, residential conditions, incarceration rates, and healthcare concerns demonstrate that the Georgia legislature is not responsive to the Black community. APAX 6, 34. A number of lay witnesses testified about socioeconomic issues affecting Black voters. Tr. 639:24-640:25, Eric Woods Dep. Tr. 53:8-54:1; Phil Brown Dep.

Tr. 67:12-68:1.<sup>116</sup> However, there is evidence that concerns about healthcare access, education, property taxes, and gun safety are not unique to Black citizens. Tr. 639:24–640:25.

The Court finds that the arguments regarding socioeconomic disparities are not particularly helpful in determining whether Georgia’s elected officials are responsive to Black Georgians. The Court finds that although there is evidence about concerns that Black voters have, there is not sufficient evidence that their representatives are not responsive to their needs.<sup>117</sup>

---

<sup>116</sup> The Parties submitted designations, counter designations, and objections to the named Plaintiffs’ depositions to the Court prior to the start of the Trial. APA Doc. No. [275], Pendergrass Doc. No. [223], Grant Doc. No. [232]. At the Pretrial Conference, the Parties agreed to the admission of these depositions following the Court’s ruling on the objections. APA Doc. No. [285], Pendergrass Doc. No. [274], Grant Doc. No. [247]. The Court issued rulings on the deposition objections and they are part of the Record. APA Doc. No. [292], Pendergrass Doc. No. [243], Grant Doc. No. [254].

<sup>117</sup> The Court notes that Dr. Evans testified that she attempted to call her State Senator, Representative, and county commissioner about redistricting concerns and her calls were generally unanswered. Tr.637:7–19. The Court acknowledges that Dr. Evans’s representatives were unresponsive in this instance; however, the Court cannot extrapolate from this isolated occurrence that, as a whole, Georgia’s elected officials are unresponsive to Black voters.

Ultimately, there is an absence of evidence regarding the level of responsiveness of Georgia's elected representatives to Black voters and white voters. Due to the lack of evidence, the Court finds that Senate Factor Eight does not weigh in favor of finding a Section 2 violation. See Greater Birmingham Ministries, 992 F.3d at 1334 (finding that failure to consider amendments to a particular piece of legislation does not show that legislatures were unresponsive to the needs of minority voters).

(8) *Senate Factor Nine: justification for the Enacted Congressional Plan*

The Court finds that the State's justification for the Enacted State Legislature Plans factor favors Defendants and thus weighs against finding a Section 2 violation.

At the trial, Ms. Wright testified that the Enacted Congressional Plan began with the creation of a blank map that largely balanced population that then could be modified based on input from legislators. Tr. 1622:11-13. Ms. Wright also relied on information obtained from the public hearings on redistricting. Tr. 1668:24-1670:5. Political performance was an important consideration in the design of the Enacted Congressional Plan. Tr. 1669:20-23. In Enacted CD-6

specifically, Ms. Wright justified that the four-way split of Cobb County by asserting that Cobb County was better able to handle a split of a congressional district than a smaller nearby county. Tr. 1672:9–1673:4. She further testified that the inclusion of parts of west Cobb County in Enacted CD-14 was because of population and political considerations, namely putting a democratic area into District 14 instead of District 11 (which was more political competitive). Tr. 1674:6–1675:2.

Similarly, for the Enacted House Plan, Ms. Wright started with a blank map and the ideal district size given the population changes. Tr. 1642:7–23. Initially, she did not consider incumbency and instead drew a map based solely on population. Tr. 1642:15–18. Ms. Wright then integrated information from public hearings regarding the public’s preferences. Tr. 1643–46. In the Macon-Bibb area, specifically, she testified that there were comments about wanting to keep House Districts 142 and 143, majority-Black districts, in Macon-Bibb because the representatives were well-liked in the community. Tr. 1659:6–15. Eventually, she drafted the maps to avoid incumbency pairings and county splits. Tr. 1448:9–21. Ms. Wright testified that the growth in Georgia was concentrated



in the north (i.e., metro-Atlanta), which caused districts to be moved from the south into that area. Tr. 1469:16–19. Again, political performance was an important consideration in drafting the Enacted State House Plan. Tr. 1468:5–8.

The Alpha Phi Alpha Plaintiffs do not challenge that this is the process the State used to draw the Enacted Legislative Plans. Accordingly, the Court finds Defendants’ evidence that the Enacted Legislative Plans were drawn to further partisan goals to be a sufficient, non-tenuous justification. Accordingly, Senate Factor Nine does not weigh in favor of a Section 2 violation.<sup>118</sup>

**(9) *Proportionality***

Finally, the Court determines that proportionality does not weigh against finding a Section 2 violation in the Alpha Phi Alpha Plaintiffs’ case. Currently, 25% of the State Senate and 27.2% of the State House elect members from majority-Black districts and the AP Black population is 33.03% of the State. APAX 1 ¶¶ 15, 17, 41

---

<sup>118</sup> As in the Pendergrass case, however, this factor will be accorded less weight given that, in Alpha Phi Alpha Plaintiffs’ Section 2 case, a legislature’s intent in drawing map is irrelevant.

Defendant argued, however, that Black voters have proportional representation in the General Assembly because 43% of the State House and 41% of the State Senate are Democrats, which is the Black-preferred candidate. Tr. 36:16–23. The Court categorically rejects Defendant’s argument. First, the Court finds that there is no empirical evidence to suggest that every Democrat member of the General Assembly is a Black-preferred candidate.<sup>119</sup> This suggestion, absent supporting empirical evidence, leans dangerously close to “the demeaning notion that members of the defined racial group ascribes to certain minority views that must be different from those of other citizens.” DeGrandy, 512 U.S. at 1027.

Furthermore, the number of Black-preferred candidates who are successfully elected is not the proper consideration for proportionality. As the Court’s summary judgment order in the Pendergrass case reflects, the proper metric for determining proportionality is the number of majority-Black districts

---

<sup>119</sup> Although the Black-preferred candidate in all of the races examined by Dr. Handley were Democrats, Dr. Handley’s research was confined to specific areas of the State and she did not evaluate whether all current Democrat members of the General Assembly were the Black-preferred candidate. Stip. ¶¶ 309–15.

in proportion to the Black population, *not* the number of Black-preferred candidates elected. Pendergrass Doc. No. [215], 72; see also De Grandy, 512 U.S. at 1014 n.11 (“‘Proportionality’ as the term is used here links the number of majority-minority voting districts to minority members’ share of the relevant population . . . This proviso speaks to the success of minority candidates, as distinct from the political or electoral power of minority voters.”).

Here, therefore, the relevant numbers to consider in the proportionality analysis are the number of majority-minority districts in the Enacted Legislative Plans. Only 25% of the State Senate districts are majority-Black (14 districts of 56 districts total). APAX 1 ¶ 15. In the State House, 27.2% of the districts are majority-Black (49 districts of the 180 districts total).<sup>120</sup> APAX 1 ¶ 17. The Alpha Phi Alpha Plaintiffs’ additional two State Senate districts that survive the Gingles preconditions bring the proportion of majority-Black Senate districts only to 28.6% of the total districts.<sup>121</sup> And the Alpha Phi Alpha Plaintiffs’ additional one

---

<sup>120</sup> However, the Georgia Legislature’s Black Caucus has only 41 members in the State House. Stip. ¶ 348.

<sup>121</sup>  $16/56 = \text{approximately } 28.6\%$ .

House district similarly only increases the proportion of majority-Black districts to be 27.8% of the total.<sup>122</sup> These proportions fall below both the AP Black population in the State (33.03% (Stip. ¶ 97)) and the AP Black voting age population (31.73% (Stip. ¶ 104)). Thus, proportionality is not achieved in the State House or State Senate, under the Enacted Plan or with the addition of two State Senate districts and one State House district. Thus, the Court concludes that proportionality does not weigh against the Alpha Phi Alpha Plaintiffs.

*(10) Conclusions of law*

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden in establishing that (1) the Black community in south-metro Atlanta is sufficiently numerous and compact to constitute two additional majority-Black Senate districts and one additional majority-Black House district; (2) the Black community is politically cohesive in this area; and (3) that the white majority votes as a bloc to typically defeat the Black communities' preferred candidate in these areas. The Court also finds that in evaluating the Senate Factors, Georgia's

---

<sup>122</sup> 50/180 = approximately 27.8%

electoral system is not equally open to Black voters in these regions of the State. Specifically, the Court finds that Senate Factors One, Two, Three, Five, and Seven weigh in favor of showing the present realities of a lack of opportunity for Black voters. The Court also finds that Senate Factor Six weighs slightly in favor finding a Section 2 violation. Thereby, only Senate Factors Four, Eight<sup>123</sup> and Nine did not weigh in favor of finding a Section 2 violation. The Court also found that proportionality does not weigh against the Alpha Phi Alpha Plaintiffs. In sum, the Court finds that a majority of the totality of the circumstances evidence weighs in favor of finding a Section 2 violation in the proposed districts in metro Atlanta. Because the Alpha Phi Alpha Plaintiffs have carried their burden of proof on all of the legal requirements, the Court concludes that SB 1EX and HB 1EX violate Section 2 of the Voting Rights Act.

---

<sup>123</sup> Senate Factor Eight is given little weight. Marengo Cnty. Comm'n, 731 F.2d at 1572.

b) Grant

(1) *Totality of circumstances inquiry standards and incorporation of the Pendergrass Case's Analysis on Senate Factors One, Three, Five<sup>124</sup>, Six, Seven, and Eight*

The standards governing the Court's totality of the circumstances inquiry are the same in Grant Plaintiffs' case as they were in Pendergrass Plaintiffs' case. See Section II(C)(4) *supra*. Hence, the Court considers the aforementioned Senate Factors to determine if Grant Plaintiffs met their burden to show that the political process is not equally open to minority voters in Georgia.

Moreover, the totality of the circumstances evidence in both the Pendergrass case and the Grant case is largely the same. The expert reports

---

<sup>124</sup> The evidence on Senate Factor Five is largely the same for the Atlanta and Macon-Bibb region. However, Dr. Collingwood did provide specific evidence that he concluded that the "trend" in the Black Belt region "is very similar to the overall statewide trend for both the 2020 and 2022 general elections." Rep at 20. Dr. Collingwood furthermore determined that "whites vote at higher rates than [ ] Blacks in the clear majority of the precincts." Rep at 22. These findings are consistent with his findings in the metro Atlanta region where Black voters, generally, had lower turnout rates than white voters. Accordingly, the Court finds that Senate Factor Five weighs in favor of a Section 2 violation in Macon-Bibb region with the same force as the districts in the metro Atlanta region.

submitted (i.e., Dr. Burton<sup>125</sup> and Dr. Collingwood<sup>126</sup>) are identical in the two cases. At trial, Pendergrass Plaintiffs and Grant Plaintiffs simultaneously questioned and cross-examined the totality of circumstances witnesses. For a number of the Senate Factors, moreover, the evidence submitted would be considered by the Court in an identical manner. Accordingly, to avoid needless duplication, the Court hereby incorporates *in toto* its analysis in the Pendergrass case, *supra*, on Senate Factors Three, Five<sup>127</sup>, Six, Seven, and Eight.<sup>128</sup>

The Court also incorporates Senate Factor One, see Section II(C)(4)(a) *supra*, with the following alterations to its analysis regarding polling place closures:

---

<sup>125</sup> In Pendergrass, Dr. Burton's report is designated PX 4. In Grant, it is designated GX 4. The report's content and page numbers, however, do not change between the cases.

<sup>126</sup> In Pendergrass, Dr. Collingwood's report is designated PX 5. In Grant, it is designated GX 5. Again, the content and pages numbers in the report are identical in the cases.

<sup>127</sup> As noted in the Pendergrass case, for Senate Factor Five's consideration of minority voter participation in the political process, in 2022, voter turnout in Clayton, Henry, and Rockdale counties "slightly exceeded" white voter turnout. GX 5, 16. While these counties are directly implicated in the districts satisfying the Gingles preconditions in Grant Plaintiffs' Illustrative plan, the Court does not find this "slight" evidence to outweigh the strong evidence otherwise that Black Georgians participate less than white Georgians in the political process. See Section II(C)(4)(d) *supra*.

<sup>128</sup> Again, Senate Factor Four – a history of candidate slating for elections – is not at issue because Georgia's elections do not use a slating process.

With respect to the legislative districts in the metro Atlanta region, the Court in Pendergrass credited Dr. Burton's findings discussing polling place closures in Union City, Georgia. GX 4, 51. Union City, Georgia is located in the southwestern portion of the Fulton County. Both Esselstyn HD-64, and SD-28 have portions of their districts that are in southwest Fulton County. GX 1 ¶ 31 & fig.7; ¶ 49 & fig.14. Unlike Illustrative CD-6, which clearly shows city designations, Esselstyn HD-64 and SD-28 do not delineate which cities are contained within a specific district. Compare PX 1 ¶ 46 & fig.10, with GX 1 ¶ 31 & fig.7; ¶ 49 & fig.14. Thus, the Court will not rely on the specific evidence of polling place closures in Union City as evidence of discrimination in the specific districts. However, this evidence is relevant because it shows disproportionate impact of polling place closures in the vicinity of the illustrative districts. Thus, the evidence of the polling place closures in Union City is relevant, but less persuasive with respect to Mr. Esselstyn's Atlanta districts than it was with respect to Illustrative CD-6.



The Court also finds that there is evidence that 38% of the State's polling places are in metro Atlanta, meanwhile nearly half of Georgia's voters and the majority of Black voters are registered to vote in metro Atlanta. GX 4, 51.

In the Macon-Bibb region, Dr. Burton discusses the number of polling places dropping in Macon-Bibb county from forty to thirty-two. GX 4, 49. These closures took place in primarily Black neighborhoods. Id. He also cites to a 2020 study that found that "about two-thirds of the polling places that had to stay open late for the June primary to accommodate waiting voters were in majority-Black neighborhoods, even though they made up only about one-third of the state's polling places." GX 4, at 50 (citing Fowler, "Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours?"). Defendants did not rebut this evidence.

The Court finds that a reasonable inference can be drawn to find that within the last decade that polling place closures, like those in Macon-Bibb County disproportionately impacted Black voters. Macon-Bibb closed 20% of their polling places, primarily in majority-Black neighborhoods. Also, in the June 2020 primary, polling places that were in predominately Black neighbors disproportionately were forced to stay open late.

Accordingly, the Court finds that there is evidence supporting the reasonable inference that the large number of closed polling places in the metro Atlanta and the Macon-Bibb regions disproportionately impacts Black voters. Thus, the Court finds that the evidence of polling place closures supports a conclusion that there are present realities of discrimination in voting for Senate Factor One.

The Court will separately address Senate Factors Two (racial polarization) and Nine (justification for the Enacted State House and Senate Plans) as well as the proportionality analysis, because the evidence presented on these factors differ, even if ever-so-slightly, between the cases. Ultimately, like in the Pendergrass case, the Court concludes that the totality of the circumstances inquiry weighs in favor of finding a Section 2 violation in the Grant Plaintiffs' case.

**(2) *Senate Factor Two: racial polarization***

The evidence presented in Grant Plaintiffs' case on racial polarization again draws on the *cause* of polarization: race or partisanship. Defendants have consistently argued that partisanship is a race-neutral explanation for

polarization of voters in Georgia. See, e.g., Tr. 2410:18–2411:14. Like in the Pendergrass case, the Court acknowledges that whether voter polarization is on account of partisanship and race is a difficult question to answer and again the Court focuses on the evidence before it of polarization in the Grant Plaintiffs’ case. See Section II(C)(4)(b) *supra*.

Grant Plaintiffs’ polarization expert indicated that “there is . . . strong evidence of racially polarized voting within the districts comprising the five focus areas [(i.e., the areas near-and-around the proposed Illustrative districts)].” GX 2 ¶ 19; see also id. (“There is consistent evidence of racially polarized voting in every House district analyzed, and in 12 of the 14 Senate districts. Voting is generally less polarized in Senate District 44, and not polarized in Senate District 39.”).

In addressing Defendants’ polarization argument, Plaintiffs also offered testimony about the strong connection between race and partisanship as it

currently exists in Georgia.<sup>129</sup> Tr. 424:5–8 (affirming that “race and party cannot be separated for the purpose of [Dr. Palmer’s] racial polarization analysis”); 1460:11–15 (“[O]ne party is highly supporting . . . issues that are most important to minorities, particularly African Americans. And another party is not getting a good grade on how they’re voting for them.”); GX 4, 75–76 (indicating the “opposing positions that members of Georgia’s Democratic and Republican parties take on issues inexplicably linked to race.”).

In contrast to Grant Plaintiffs’ evidence, Defendants’ expert, Dr. Alford, only rendered descriptive conclusions based on Dr. Palmer’s data set and, most importantly, did not offer additional support for a conclusion that voter behavior was caused by partisanship rather than race. DX 8. To be sure, Defendants did not offer any quantitative or qualitative evidence to support their theory that partisanship, not race, is controlling voting patterns in Georgia. Based on this

---

<sup>129</sup> The Court also finds Dr. Burton’s assessment that the success of Black candidates depends on the percentage of white voters in a district to be persuasive in Grant Plaintiffs’ case on this Senate Factor. See supra Pendergrass.

evidence, the Court finds that Senate Factor Two weighs in favor of finding a Section 2 violation.

**(3) *Senate Factor Nine: justification for the Enacted Legislative Plans***

The Court finds that the State's justification for the Enacted State Legislature Plans factor weighs in favor of Defendants and thus weighs against finding a Section 2 violation.

At the trial, Ms. Wright testified that she began drawing the Enacted Senate Plan by determining the new ideal district size given the population changes and then starting with a blank map. Tr. 1621. She used a visual layer of existing districts in an attempt to retain the core districts. Tr. 1621. From here, Ms. Wright collapsed and built districts based on the population changes. Tr. 1623. She did not pair incumbents seeking reelection and avoided county splits. Tr. 1627. She tried to accommodate elected officials' requests. Tr. 1631. Admittedly, political performance was an important consideration in drafting the Enacted State Senate Plan. Tr. 1626.

Similarly, for the Enacted House Plan, Ms. Wright started with a blank map and the ideal district size given the population changes. Tr. 1641. Initially,

she did not consider incumbency and instead drew a map based solely on population. Tr. 1641. Ms. Wright then integrated information from public hearings regarding the public's preferences. Tr. 1643–46. In the Macon-Bibb area, specifically, she testified that there were comments about wanting to keep House districts 142 and 143, majority-Black districts, in Macon-Bibb because the representatives were well-liked in the community. Tr. 1658:6–15. Eventually, she drafted the maps to avoid incumbency pairings and county splits. Tr. 1467. Ms. Wright testified that the growth in Georgia was concentrated in the north (i.e., metro-Atlanta), which caused districts to be moved from the south into that area. Tr. 1468. Again, political performance was an important consideration in drafting the Enacted State House Plan. Tr. 1467.

Grant Plaintiffs do not contest Ms. Wright's testimony on the process the State used to draw the Enacted maps and the Court has found Ms. Wright to be highly credible. Accordingly, the Court finds Defendants' evidence that the Enacted State House and Senate Plans were drawn to further partisan goals to be

a sufficient, non-tenuous justification. Accordingly, Senate Factor Nine does not weigh in favor of a Section 2 violation.<sup>130</sup>

**(4) *Proportionality***

Finally, the Court determines that, even more so than in Pendergrass Plaintiffs' case, proportionality does not weigh against finding a Section 2 violation in Grant Plaintiffs' case. In the Grant case, Defendants focus on the representation of Black *preferred* candidates as part of their proportionality analysis, submitting that both of Georgia's U.S. Senators are Black-preferred (and one himself is Black) and that 35.7% of the U.S. House of Representatives from Georgia are Black and Black-preferred. In the Georgia General Assembly, 43% of the members of the House of Representatives are Black-preferred (i.e., Democrats) and 41% of the Senators are Black-preferred (i.e., Democrats).

The argument about proportionality and the evidence submitted relate equally to Alpha Phi Alpha and Grant. Accordingly, the Court incorporates its analysis of proportionality in Alpha Phi Alpha (Section II(D)(4)(a)(9)) as fully set

---

<sup>130</sup> As in the Pendergrass case, however, this factor will be accorded less weight given that, in Grant Plaintiffs' Section 2 case, a legislature's intent in drawing map is irrelevant.

forth herein. Ultimately, the Court concludes that proportionality does not weigh against a Section 2 violation in the Grant Plaintiffs' case.

**(5) *Conclusions of Law***

The Court finds that Grant Plaintiffs have met their burden in establishing that (1) the Black community in the western-Atlanta metro area is sufficiently numerous and compact to constitute an additional majority-Black House district, in the Black community in southwestern Atlanta metro area is sufficiently numerous and compact to create one additional majority-Black House districts and two additional majority-Black Senate districts, and the Black community in the Macon-Bibb region is sufficiently numerous and compact to create two additional majority-Black House districts; (2) the Black community is politically cohesive in these areas; and (3) that the white majority votes as a bloc to typically defeat the Black communities' preferred candidate in these areas. The Court also finds that in evaluating the Senate Factors, Georgia's electoral system is not equally open to Black voters in these regions of the State. Specifically, the Court finds that Senate Factors One, Two, Three, Five, and Seven weigh in favor of showing the present realities of lack of opportunity for Black voters. The Court



also finds that Senate Factor Six weighs slightly in favor finding a Section 2 violation. Accordingly, only Senate Factors Four, Eight<sup>131</sup> and Nine did not weigh in favor of finding a Section 2 violation. The Court also found that proportionality does not weigh against Grant Plaintiffs. In sum, the Court finds that a majority of the totality of the circumstances evidence weighs in favor of finding a Section 2 violation in the proposed districts in the metro Atlanta and Macon-Bibb regions. Because Grant Plaintiffs have carried their burden of proof on all of the legal requirements, the Court concludes that SB 1EX and HB 1EX violate Section 2 of the Voting Rights Act.

**E. Injunction Factors**

To obtain a permanent injunction, Plaintiffs must demonstrate (1) that they have suffered an irreparable injury; (2) that remedies available at law are inadequate to compensate for that injury; (3) that, considering the balance of hardships between Plaintiffs and Defendants, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

---

<sup>131</sup> The Eleventh Circuit found that Senate Factor Eight is given little weight. Marengo Cnty. Comm'n, 731 F.2d at 1572.

eBay Inc. v. MercExchange, LLC, 547 U.S. 388, 391 (2006). “[W]hether a permanent injunction is appropriate . . . turns on whether [Plaintiffs] can establish by a preponderance of the evidence that this form of equitable relief is necessary.” Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173, 1182 n.10 (11th Cir. 2007). “The decision to grant or deny permanent injunctive relief is an act of equitable discretion by the district court.” eBay Inc., 547 U.S. at 391. However, the Supreme Court has held that “[a]n injunction should issue only if the traditional four-factor test is satisfied.” Monsanto Co. v. Geertson Seed Farms, 561 U.S. 139, 157 (2010).

**1. *Irreparable Harm and Inadequate Remedies at Law***

The Eleventh Circuit has explained that an injury is irreparable “if it cannot be undone through monetary remedies.” Cunningham v. Adams, 808 F.2d 815, 821 (11th Cir. 1987) (citation omitted). It has also been held that “[a]bridgement or dilution of a right so fundamental as the right to vote constitutes irreparable injury.” Cardona v. Oakland Unified Sch. Dist., 785 F. Supp. 837, 840 (N.D. Cal. 1992); see also League of Women Voters of N.C. v. North Carolina, 769 F.3d 224,

247 (4th Cir. 2014) (“Courts routinely deem restrictions on fundamental voting rights irreparable injury.”) (citations omitted).

In view of this Court’s finding, *supra*, that the Enacted Plans violate Section 2 of the Voting Rights Act,<sup>132</sup> this Court further finds that Plaintiffs have met their burden of establishing by the preponderance of the evidence that the resulting injury of having to vote under unlawful plans cannot be undone through any form of monetary or post-election relief. See League of Women Voters, 769 F.3d at 247 (“[O]nce the election occurs, there can be no do-over and no redress.”). Defendants also do not contend that adequate legal remedies are available.

## 2. *Balance of Hardships and Public Interest*

The last two requirements for a permanent injunction involve a balancing of the equities between the Parties and the public. eBay Inc., 547 U.S. at 391.

“Where the government is the party opposing the . . . injunction, its interest and harm—the third and fourth elements—merge with the public

---

<sup>132</sup> See generally Section II(D)–(F) *supra*.

interest.” Florida v. Dep’t of Health & Hum. Servs., 19 F.4th 1271, 1293 (11th Cir. 2021). (citation omitted).<sup>133</sup> All Defendants in each of the cases at issue were named in their official capacities as governmental actors and oppose the permanent injunction. Therefore, the Court will address the third and fourth permanent injunction factors together in a merged format in accordance with applicable authority. See Swain v. Junior, 961 F.3d 1276, 1293 (11th Cir. 2020) (indicating that the balance of the equities and public interest factors “‘merge’ when, as here, ‘the Government is the opposing party’” (quoting Nken v. Holder, 556 U.S. 418, 435 (2009))).

---

<sup>133</sup> The Court recognizes that the Florida case, cited above, involved a preliminary injunction determination and that a permanent, rather than preliminary injunction is at issue in the cases *sub judice*. Nevertheless, considering the overlapping language in the permanent injunction and preliminary injunction standards (as set forth in the Court’s preliminary injunction order), it appears to the Court that this principle of merging the government’s interest and harm with the public interest applies equally in the permanent injunction context. See Amoco Prod. Co. v. Vill. of Gambell, AK, 480 U.S. 531, 546 n.12 (1987) (“The standard for a preliminary injunction is essentially the same as for a permanent injunction with the exception that the plaintiff must show a likelihood of success on the merits rather than actual success.”).

Thus, the Court proceeds to the issue of whether the threatened injuries to Plaintiffs outweigh the harm that the permanent injunction would cause Defendants and the public.

As an initial matter, the Court notes that Defendants offered little to no evidence or argument at trial regarding what harm, if any, the public would suffer if a permanent injunction were to be issued. The State also offered no evidence or argument of what hardships it would suffer if it was enjoined from using the redistricting plans at issue. However, it is without doubt that the State would have to endure the cost of a special session of the General Assembly to create new redistricting plans. Nevertheless, placing an actual value on the monetary hardship would be a matter of speculation because the State has not specified its anticipated costs.

At the preliminary injunction phase, the State did offer specific evidence of harm and hardship. “More specifically, the evidence at the preliminary injunction hearing showed that elections are complex and election calendars are finely calibrated processes, and significant upheaval and voter confusion can result if changes are made late in the process.” Alpha Phi Alpha Fraternity, 587

F. Supp. 3d at 1324. This Court found that based upon that evidence “the public interest of the State of Georgia would be significantly undermined by altering the election calendar and unwinding the electoral process at this point.” Id. Similar temporal concerns are not at issue at the present stage of these cases.

This Court acknowledges that the Supreme Court has held that court orders affecting elections “can themselves result in voter confusion and consequent incentive to remain away from the polls[,]” and that “[a]s an election draws closer, that risk will increase.” Purcell, 549 U.S. at 4–5 (per curiam). But even by issuing an injunction in October 2023 in these three cases, this Court is not “alter[ing] the election rules on the eve of an election” for the Congressional, State House, and Senate districts subject to elections set for November 2024. Republican Nat’l Comm. v. Democratic Nat’l Comm., 598 U.S. ----, 140 S. Ct. 1205, 1207 (2020). Therefore, the risk articulated in the Purcell jurisprudence is *de minimis* where, as here, the State has not alleged any harm which would result due to a shortly impending election. The Court also notes when the Court inquired as to if there is a “cutoff date” for the Secretary of State to prepare for the 2024 General Election in the event of an injunction, Defense Counsel

represented in a pretrial conference call that there is no “magic day.” Grant Doc. No. [255], Tr. 16:15–16. Counsel further indicated that to give the “county officials time to get information entered into the voter registration database,” the new maps should be in place by “late January, early February.” APA Doc. No. [293], Tr. 16:15–22; see also Doc. No. [285], Pendergrass, Doc. Nos. [285], [296], Grant Doc. Nos. [247], [255].

Where, as here, a permanent injunction would require a government defendant merely to comply with federal law, both the balance of hardships between the parties and the public interest weigh in favor of its issuance. See, e.g., Project Vote/Voting For Am., Inc. v. Long, 813 F. Supp. 2d 738, 744 (E.D. Va. 2011), aff’d and remanded, 682 F.3d 331 (4th Cir. 2012) (“The balance of hardships does not weigh in favor of the defendants, as a permanent injunction will simply compel the defendants to comply with their responsibilities under the NVRA and, thus, will prevent them from denying the public of a statutory right.”).

Further, an injunction issued to prevent the continuous denial by the State of a statutorily-guaranteed right is necessarily in the public interest. “[I]t would not be equitable or in the public’s interest to allow the state to violate the

requirements of federal law, especially when there are no adequate remedies available.” Montana Med. Ass’n v. Knudsen, 591 F. Supp. 3d 905, 917 (D. Mont. 2022) (cleaned up); see also id. (noting that “it is inherently against the public interest” to allow any State’s laws to violate federal law).

Congress has also recognized that the public is benefitted when voting rights are enforced. Cf. Torres v. Sachs, 69 F.R.D. 343, 347 (S.D. N.Y. 1975) (construing 42 U.S.C. § 1973l(e), voting rights enforcement proceedings).

Lacking direct evidence of how the State faces a legally cognizable hardship, or how its enjoinder would be contrary to the public interest, the balance of the final two factors weighs in favor of permanently enjoining the State’s usage of the redistricting plans at issue in these three cases.

#### **F. Affirmative Defenses**

In this section, the Court addresses Defendants’ affirmative defenses. While these defenses were not specifically argued by Defendants during the bench trial, they were set forth in the Pretrial Order. Grant Doc. No. [243], 26; Pendergrass Doc. No. [231], 28-29; APA Doc. No. [280], 23-24. The affirmative defenses raised in each case are the same: (1) that Eleventh Amendment and



sovereign immunity bars these cases, (2) that there is no private right of action under Section 2, (3) that these cases should be heard by a three-judge court, and (4) that to afford the Plaintiffs the requested relief requires interpreting the VRA in a way that violates the Constitution.<sup>134</sup> As notated below, the Court has previously rejected Defendants' affirmative defenses regarding Section 2's private right of action and that a three-judge court is required in these cases. APA Doc. No. [65], 6-34; Grant Doc. No. [43], 7-33; Pendergrass Doc. No. [50], 6-20. The Court now considers each of these affirmative defenses below.

**1. *Eleventh Amendment Immunity and Sovereign Immunity***

The Eleventh Amendment to the United States Constitution prohibit suits against a State by a citizen of that State. Hans v. Louisiana, 134 U.S. 1, 10-15 (1890)). Under the Fourteenth and Fifteenth Amendments, however, Congress can abrogate States' sovereign immunity to redress discriminatory state action when Congress unequivocally expresses the intent to do so. Ala. State Conference

---

<sup>134</sup> Defendants also raised affirmative defenses regarding constitutional and statutory standing. Grant Doc. No. [243] at 26; Pendergrass Doc. No. [231] at 28; APA Doc. No. [280] at 23. However, these issues have been addressed above. See Section I(A)*supra*.

of the Nat'l Ass'n for the Advancement of Colored People v. Alabama, 949 F.3d 647, 649–50, 654–55 (11th Cir. 2020), judgment vacated as moot, 141 S. Ct. 2618 (2021) (hereinafter “Alabama NAACP”). The Eleventh Circuit held that the VRA does just that:

By design, the VRA was intended to intrude on state sovereignty to eradicate state-sponsored racial discrimination in voting. Because the Fifteenth Amendment permits this intrusion, [the State] is not immune from suit under § 2 of the VRA. Nor is § 2 any great indignity to the State. Indeed, “it is a small thing and not a great intrusion into state autonomy to require the [S]tates to live up to their obligation to avoid discriminatory practices in the election process.”

Id. at 655 (footnote omitted) (second alteration in original) (quoting Marengo Cnty. Comm’n, 731 F.2d at 1561).

Alabama NAACP also noted that the Fifth and Sixth Circuits, and a three-judge panel in this district, have reached the same conclusion. Id. at 651 (citing OCA-Greater Houston v. Texas, 867 F.3d 604, 614 (5th Cir. 2017); Mixon v. Ohio, 193 F.3d 389, 398–99 (6th Cir. 1999); Ga. State Conf. of NAACP v. Georgia, 269 F. Supp. 3d 1266, 1274-75 (N.D. Ga. 2017)).

Of course, the Court recognizes that Alabama NAACP is no longer controlling because the judgment was ultimately vacated as moot. Ala. State Conf. of the NAACP, 141 S. Ct. 2618. Nevertheless, the analysis contained in the opinion is persuasive. See, e.g., Friends of the Everglades v. S. Fla. Water Mgmt. Dist., 570 F.3d 1210, 1218 (11th Cir. 2009) (“We are free to give statements in a vacated opinion persuasive value if we think they deserve it.”); Tallahassee Branch of NAACP v. Leon Cnty., 827 F.2d 1436, 1440 (11th Cir. 1987) (noting that court was free to consider a vacated opinion as persuasive even though not binding).

In Kimel v. Florida Board of Regents, the Supreme Court held that, to abrogate a State’s sovereign immunity, Congress must (1) make its intention to do so “unmistakably clear in the language of the statute” and (2) act pursuant to a valid Grant of constitutional authority. 528 U.S. 62, 73 (2000) (cleaned up); accord Alabama NAACP, 949 F.3d at 650 (citing Bd. of Trs. of Univ. of Ala. v. Garrett, 531 U.S. 356, 363 (2001)). However, “an express abrogation clause is not required. Instead, a court may look to the entire statute, and its amendments, to determine whether Congress clearly abrogated sovereign immunity.” Alabama

NAACP, 949 F.3d at 650 (citing, *inter alia*, Kimel, 528 U.S. at 76 (“[O]ur cases have never required that Congress make its clear statement in a single section or in statutory provisions enacted at the same time.”))).

Alabama NAACP concluded that the first part of this test was met because the VRA explicitly permits private parties to sue to enforce its provisions, which prohibit States and political subdivisions from imposing practices or procedures that abridge a citizen’s right to vote on account of race. 949 F.3d at 651–52. Specifically, the Eleventh Circuit stated:

The VRA, as amended, clearly expresses an intent to allow private parties to sue the States. The language of § 2 and § 3, read together, imposes direct liability on States for discrimination in voting and explicitly provides remedies to private parties to address violations under the statute. . . . It is implausible that Congress designed a statute that primarily prohibits certain state conduct, made that statute enforceable by private parties, but did not intend for private parties to be able to sue States.

Id. at 652. This Court agrees.

As to the second part of the Kimel test, Alabama NAACP concluded that Congress can abrogate a State’s sovereign immunity pursuant to its powers under the Fourteenth Amendment to “redress discriminatory state action.” 949

F.3d at 649; see also id. at 654 (“While Congress may not abrogate a State’s immunity when acting pursuant to its Article I powers, it may do so under its enforcement powers pursuant to § 5 of the Fourteenth Amendment. . . . [I]f § 5 of the Fourteenth Amendment permits Congress to abrogate state sovereign immunity, so too must § 2 of the Fifteenth Amendment.”).

Notably, even though no longer controlling, Alabama NAACP was not the first Eleventh Circuit case to conclude that Congress acted pursuant to a valid Grant of authority under the Fourteenth and Fifteenth Amendments in adopting Section 2. In determining that Section 2 was a proper exercise of that Grant of authority, Alabama NAACP relied on the prior Eleventh Circuit decision in Marengo County. In Marengo County, the United States and private citizens challenged a county’s at-large system of electing commissioners under the Fourteenth and Fifteenth Amendments, as well as Section 2. 731 F.2d at 1552. In considering the Section 2 claims, the Eleventh Circuit made clear that “[t]he Civil War Amendments overrode state autonomy apparently embodied in the Tenth and Eleventh Amendments.” Id. at 1560–61 (citations omitted). The Fourteenth and Fifteenth Amendments thus provided direct authority for Congress to

abrogate any sovereign immunity to which States might otherwise have been entitled under the Eleventh Amendment.

Given the aforementioned, the Court comfortably concludes that Section 2 is a valid expression of congressional enforcement power under the Fourteenth and Fifteenth Amendments. Hence Defendants affirmative defenses asserting sovereign immunity and Eleventh Amendment immunity are without merit.

## *2. Section 2 Private Right of Action*

In adjudicating Defendants' Motions to Dismiss, the Court rejected their contentions that there is no private right of action under Section 2 of the VRA. APA Doc. No. [65], 31-34; Grant Doc. No. [43], 30-33; Pendergrass Doc. No. [50], 17-20. Defendants maintain their contentions to perfect the record on appeal, but otherwise have offered no new arguments or evidence in favor of this defense. Thereby, the Court incorporates in this Order its prior conclusions of law from the Orders on Defendants' Motions to Dismiss. APA Doc. No. [65], 31-34; Grant Doc. No. [43], 30-33; Pendergrass Doc. No. [50], 17-20. The Court also acknowledges that recently, the Supreme Court affirmed an Alabama three-judge court's preliminary injunction, which found that the private plaintiffs had a

substantial likelihood of success in proving that Alabama congressional map violated Section 2. Allen, 143 S. Ct. 1487.<sup>135</sup> Accordingly, the Court rejects Defendants' argument and affirmative defense that Section 2 does not contain a private right of action.

3. *28 U.S.C. § 2284: Three-Judge Court*

In the Court's Orders denying Defendants' Motions to Dismiss the Court also addressed in great detail Defendants' affirmative defenses that Plaintiffs' claims require adjudication by a three-judge court. APA Doc. No. [65], 6-31; Grant Doc. No. [43], 7-28; Pendergrass Doc. No. [50], 6-17. Defendants maintain their assertions for purposes of appeal, but again have not raised new arguments or evidence in support of this affirmative defense. Thus, the Court incorporates its prior analysis from its Orders on the Motions to Dismiss into this Order and rejects Defendants' contentions and affirmative defense that these cases ought to

---

<sup>135</sup> Although the Supreme Court did not comment on the private right of action issue, it affirmed a preliminary injunction order that analyzed whether Section 2 created a private right of action. Allen, 143 S. Ct. at 1517; Singleton, 582 F. Supp. 3d at 1031-32.

have been heard by a three-judge court. APA Doc. No. [65], 6-31; Grant Doc. No. [43], 7-28], Pendergrass Doc. No. [50], 6-17.

#### **4. *Section 2's Constitutionality***

In Attachment D to the Pretrial Order, Defendants assert as an affirmative defense in each case that “[t]o Grant the relief Plaintiffs seek, the Court must interpret the Voting Rights Act in a way that violates the U.S. Constitution.” APA Doc. No. [280], 24; Grant Doc. No. [243], 26; Pendergrass Doc. No. [231], 29. Defendants offered no argument or support for this assertion through motion practice or at trial. To the extent that Defendants are arguing generally that Section 2 of the VRA is unconstitutional, the Supreme recently rejected the same argument urged by the State of Alabama in Allen v. Milligan, 599 U.S. 1, 41, (2023). Accordingly, the Court concludes that there is no merit to the affirmative defenses challenging the constitutionality of Section 2 in the cases pending in this Court.

#### **G. Remedy**

As correctly noted by Defense Counsel in his closing argument at trial, the parameters and the instructions around what the State of Georgia is supposed to do to comply with Section 2 of the VRA is a critical part of this Court’s order, now



that the Court has found in favor of Plaintiffs. Tr. 2394:1–14. The remedy involves an additional majority-Black congressional district in west-metro Atlanta; two additional majority-Black Senate districts in south-metro Atlanta; two additional majority-Black House districts in south-metro Atlanta, one additional majority-Black House district in west-metro Atlanta, and two additional majority-Black House districts in and around Macon-Bibb.<sup>136</sup>

The Court is conscious of the powerful concerns for comity involved in interfering with the State’s legislative responsibilities. As the Supreme Court has repeatedly recognized, “redistricting and reapportioning legislative bodies is a legislative task with the federal courts should make every effort not to preempt.” Wise v. Lipscomb, 437 U.S. 535, 539 (1978). As such, it is “appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet” the requirements of Voting Rights Act “by adopting a substitute measure rather than for the federal court to devise . . . its own plan.” Id. at 540. The State cannot

---

<sup>136</sup> The Court notes that there is significant overlap in the metro Atlanta districts drawn by Mr. Cooper and Mr. Esselstyn. The Court **ORDERS** the above remedy collectively for Alpha Phi Alpha and Grant Plaintiffs.

remedy the Section 2 violations described herein by eliminating minority opportunity districts elsewhere in the plans.

The Court also recognizes that Plaintiffs and other Black voters in Georgia whose voting rights have been injured by the violation of Section 2 of the Voting Rights Act have suffered significant harm. Those citizens are entitled to vote as soon as possible for their representatives under a lawful apportionment plan. Therefore, the Court will require that new legislative maps be drawn forthwith to remedy the Section 2 violation.

The Court will provide the General Assembly the opportunity to adopt a remedial Congressional plan, Senate plan, and House plan by December 8, 2023, and consistent with, this Order.

This Court retains jurisdiction to determine whether the remedial plans adopted by the General Assembly remedy the Section 2 violations by incorporating additional legislative districts in which Black voters have a demonstrable opportunity to elect their candidates of choice.

An acceptable remedy must “completely remed[y] the prior dilution of minority voting strength and fully provide[] equal opportunity for minority

citizens to participate and to elect candidates of their choice.” United States v. Dallas Cnty. Comm’n, 850 F.2d 1433, 1437–38 (11th Cir. 1988) (quoting S.REP. No. 97-417, at 31 (1982)); see also Dillard v. Crenshaw Cnty., 831 F.2d 246, 252–53 (11th Cir. 1987) (“This Court cannot authorize an element of an election proposal that will not with certitude completely remedy the Section 2 violation.”). This will require the Court to evaluate a remedial proposal under the Gingles standard to determine whether it provides Black voters with an additional opportunity district. Id.

In the event that the State is unable or unwilling to enact remedial plans by December 8, 2023 that satisfy the requirements set forth above, the Court will proceed to draw or adopt remedial plans.

### **III. CONCLUSION**

Having held a non-jury trial and considered the evidence and arguments of the Parties, based on the Court’s holistic analysis and searching local appraisal of the facts under the Section 2 standard of the Voting Rights Act, the Court finds and concludes that:

Pendergrass and Grant Plaintiffs lack standing to bring suit against the members of the State Election Board; thus, Sarah Tindall Ghazal, Janice W. Johnston, Edward Lindsey, and Matthew Mashburn are **DISMISSED** from this case.<sup>137</sup>

Alpha Phi Alpha Plaintiffs have carried their burden of demonstrating a lack of equal openness in Georgia's election system as a result of the challenged redistricting plans, SB 1EX and HB 1EX, SB 1EX and HB 1EX, as to the following enacted districts/areas: Enacted Senate Districts 10, 16, 17, 34, 43, 44, and Enacted House Districts 74 and 78.<sup>138</sup> Alpha Phi Alpha Plaintiffs have not met their burden as to the remaining challenged districts.

---

<sup>137</sup> As stated herein, the Clerk is **DIRECTED** to terminate William Duffey, Jr. as a named party based upon his September 1, 2023 resignation from the State Election Board.

<sup>138</sup> These districts are derived from Alpha Phi Alpha Plaintiffs' Complaint (APA Doc. No. [141]) and Mr. Cooper's expert report (APAX 1).

Pendergrass Plaintiffs have carried their burden of demonstrating a lack of equal openness in Georgia's election system as a result of the challenged redistricting plan, SB 2EX, as to the following enacted district/ areas: Enacted Congressional Districts 3, 6, 11, 13, and 14.

Grant Plaintiffs have carried their burden of demonstrating a lack of equal openness in Georgia's election system as a result of the challenged redistricting plans, SB 1EX and HB 1EX, SB 1EX and HB 1EX, as to the following enacted districts/areas: Enacted Senate Districts 10, 16, 17, 25, 28, 30, 34, 35, 44, and Enacted House Districts 61, 64, 78, 117, 133, 142, 143, 145, 147, and 149.<sup>139</sup> Grant Plaintiffs have not met their burden as to the remaining challenged districts.

---

<sup>139</sup> These districts are derived from Grant Plaintiffs' Complaint (Grant Doc. No. [118]) and Mr. Esselstyn's expert report (GX 1).

This Court further concludes that declaratory and permanent injunctive relief are appropriate. The Court, therefore, **DECLARES** the rights of the parties as follows.

SB 2EX violates Section 2 of the Voting Rights Act as to the following districts/areas: Enacted Congressional Districts 3, 6, 11, 13, and 14.

SB 1EX violates Section 2 of the Voting Rights Act as to the following areas/districts: Enacted Senate Districts 10, 16, 17, 25, 28, 30, 34, 35, 43, and 44.

HB 1EX violates Section 2 of the Voting Rights Act as to the following areas/districts: Enacted House Districts 61, 64, 74, 78, 117, 133, 142, 143, 145, 147, and 149.

The Court **PERMANENTLY ENJOINS** Defendant Raffensperger, as well as his agents and successors in office, from using SB 2EX, SB 1EX, and HB 1EX in any future election.

The Court's injunction affords the State a limited opportunity to enact new plans that comply with the Voting Rights Act by **DECEMBER 8, 2023**. This timeline balances the relevant equities and serves the public interest by providing

the General Assembly with its rightful opportunity to craft a remedy in the first instance, while also ensuring that, if an acceptable remedy is not produced, there will be time for the Court to fashion one—as the Court will not allow another election cycle on redistricting plans that the Court has determined on a full trial record to be unlawful.

The Court is confident that the General Assembly can accomplish its task by **DECEMBER 8, 2023**: the General Assembly enacted the Plans quickly in 2021; the Legislature has been on notice since at least the time that this litigation was commenced nearly 22 months ago that new maps might be necessary; the General Assembly already has access to an experienced cartographer; and the General Assembly has an illustrative remedial plan to consult.

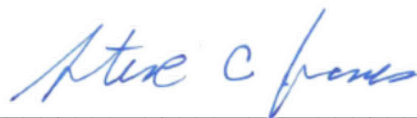
Pursuant to Federal Rule of Civil Procedure 58, the Clerk is **DIRECTED** to enter judgment in favor of the Alpha Phi Alpha Plaintiffs (in Civil Action No. 1:21-cv-05337), Pendergrass Plaintiffs (in Civil Action No. 1:21-cv-05339), and Grant Plaintiffs (in Civil Action No. 1:22-cv-00122) and against Brad Raffensperger. Attorneys' fees and costs are also awarded to each set of Plaintiffs pursuant to 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988.

After entry of judgment, the Clerk is **DIRECTED** to close these three cases. The Court will retain jurisdiction over these matters for oversight and further remedial proceedings, if necessary.

\* \* \* \* \*

The Court reiterates that Georgia has made great strides since 1965 towards equality in voting. However, the evidence before this Court shows that Georgia has not reached the point where the political process has equal openness and equal opportunity for everyone. Accordingly, the Court issues this Order to ensure that Georgia continues to move toward equal openness and equal opportunity for everyone to participate in the electoral system.

**IT IS SO ORDERED** this 26th day of October, 2023.



---

**HONORABLE STEVE C. JONES**  
**UNITED STATES DISTRICT JUDGE**



## *Pendergrass* Doc. 292

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

ALPHA PHI ALPHA FRATERNITY, ) DAY 5 - P.M. SESSION  
INC., ET AL., )  
PLAINTIFFS, )  
-VS- ) DOCKET NO. 1:21-CV-05337-SCJ  
BRAD RAFFENSPERGER, )  
DEFENDANT. )  

---

COAKLEY PENDERGRASS, )  
ET AL., )  
PLAINTIFFS, )  
-VS- ) DOCKET NO. 1:21-CV-5339-SCJ  
BRAD RAFFENSPERGER, ET AL., )  
DEFENDANTS. )  

---

ANNIE LOIS GRANT, ET AL., )  
PLAINTIFFS, )  
-VS- ) DOCKET NO. 1:22-CV-00122-SCJ  
BRAD RAFFENSPERGER, ET AL., )  
DEFENDANTS. )

TRANSCRIPT OF BENCH TRIAL  
BEFORE THE HONORABLE STEVE C. JONES  
UNITED STATES DISTRICT JUDGE  
MONDAY, SEPTEMBER 11, 2023

STENOGRAPHICALLY RECORDED BY:

PENNY PRITTY COUDRIET, RPR, RMR, CRR  
OFFICIAL COURT REPORTER  
UNITED STATES DISTRICT COURT  
ATLANTA, GEORGIA

1 sure we start on page 2.

2 Yes.

3 Q. So at a high level, what did you conclude about the  
4 history of voting-related discrimination in Georgia?

5 A. That it begins as -- well, it begins before the end of  
6 slavery, but with the end of the enslaving of people, you have  
7 discriminatory actions, particularly against Black people, and  
8 it continues.

9 One of the things that struck me in studying Georgia was  
10 the pattern that every time, such as Reconstruction or the  
11 People's Party movement, commonly called the Populist Party,  
12 P-O-P-U-L-I-S-T, where Black and white farmers came together.  
13 Then with the advancements made with both the World War II,  
14 the end of the white primary, the Civil Rights Movement, the  
15 Voting Rights Act, every time that Black citizens made gains  
16 in some way or another or were being successful, that the  
17 party in power in the state, whether it's Democrat or  
18 Republican, found ways or came up with ways to either  
19 disenfranchise, but particularly dilute or in some ways make  
20 less effective the franchise of Black citizens than those of  
21 white citizens.

22 And it was striking to me this continued pattern, again,  
23 no matter who was in charge, whether it was Democrats or  
24 Republicans.

25 Q. And what did you conclude about racially polarized voting

1 Q. And on pages 53 or 54, and I pulled up on the screen as  
2 well, this is where you discuss the statistics relating to  
3 ballot drop boxes; is that right?

4 A. Yes.

5 Q. Section D on page 55 of your report talks about the  
6 electoral success of Black candidates. You provide a table  
7 about winning candidates in the 2020 Georgia House and State  
8 Senate races.

9 Can you explain for the Court what the table shows?

10 A. It shows that Black people or citizens or candidates are  
11 really not elected unless they have Black majority districts  
12 or close to it.

13 Q. And at what percentage of white registered voters in a  
14 district does the number go from -- go to zero?

15 A. Rephrase the question for me again.

16 Q. Yeah.

17 So fair to say in the Georgia House of Representatives,  
18 if the percentage of white registered voters in a district is  
19 over 55 percent, no Black candidate would be elected into that  
20 district?

21 A. That's right. And even from 46.2 to 54.9, you had one  
22 Black Democrat elected.

23 Q. You talk about what is called the, quote, Great White  
24 Switch on page 58. Can you describe what the Great White  
25 Switch was?

1 A. Sure. That was a term that Earl and Merle Black, two  
2 twin political scientists, one taught right here at Emory  
3 University, the other taught at Rice University, talked about  
4 in the 1960s the huge shift of African-Americans from the  
5 party of Lincoln, the Republican party, to the Democratic  
6 party and the shift of white conservatives from the Democratic  
7 party to the Republican party.

8 A lot of people forget, you know, the 1960 election,  
9 Daddy King was a Republican and was probably supporting Nixon  
10 until the famous phone call came when Martin Luther King, Jr.  
11 was in jail, but there was that -- that was a really pivotal  
12 moment. And Georgia's critical in that about what happens.

13 THE COURT: Do you think it was '60 rather than '64?

14 THE WITNESS: It actually begins a little earlier.  
15 You probably won't be going into this, but I think '64 is  
16 critical. And I can explain that later, because it really  
17 starts in '48 when Strom Thurmond runs on what is commonly  
18 called the Dixiecrats. And he takes -- or the party uses the  
19 confederate flag commitment to segregation. So that changes  
20 everything. And then that plays back into Georgia with the  
21 flag wars of 2002, you know.

22 THE COURT: How did the fact that Truman's decision  
23 on integrating the military --

24 THE WITNESS: Well, that's it. It was '48. And  
25 that's why Thurmond and the third party runs. And it's very

1 interesting because, you know, Thurmond (sic) has it on the  
2 left with the Wallace and the progressives, and he has Strom  
3 Thurmond on the right, so no one thought he could pull it off.

4 And it's -- he integrates the military, but he also  
5 does that Civil Rights Commission, and that's often overlooked  
6 at how critical that was for America to start looking at race  
7 and what race was about in American politics. So that really  
8 starts it. Then Strom Thurmond is the -- really the first to  
9 leave the Democratic party, powerful Democrat, to go into the  
10 Republican party.

11 And then you have the '64 election where you have a  
12 major candidate, a non-Southerner, saying, let's go hunting  
13 where the ducks are. Let's don't, you know, try to attract  
14 Black people, let's don't go for Black voters, we can go for  
15 white voters.

16 And then you have -- after Strom Thurmond had run, it  
17 is his campaign manager, Harry Dent, who goes with Richard  
18 Nixon. And you have Kevin Phillips with his book on the  
19 Southern Strategy, they put it in. And then Nixon says, you  
20 know, let's don't go for the Jews or the Blacks. And it's a  
21 big shift there. And then Lee Atwater sort of explains the  
22 racial appeal and how that all appeals -- appears into it.

23 For me, it's a sad story for someone who loves  
24 Lincoln and that great Republican party that was committed to  
25 equal rights. And we forget that the Civil Rights Act, the

1 Voting Rights Act, the renew- -- were bipartisan. But we have  
2 to understand how we got there. And that's what I try to do  
3 in my report, is explain it.

4 And I think Lee Atwater's sort of confession about  
5 what he was doing -- and Lee Atwater, of course, had worked  
6 with Harry Dent, so you trace it, to me, back really to that  
7 '48. Now, Dan Carter would say it's a lot of George Wallace,  
8 but I think it really starts with Thurmond and Truman.

9 THE COURT: So it starts to slide in '48, it goes  
10 down, '60, and then '64, all the way to --

11 THE WITNESS: That's right. And Nixon was -- you  
12 know, in the Eisenhower Administration, Nixon was viewed as  
13 someone who was good on race issues, perhaps better a lot of  
14 people thought at that time, particularly Black people, than  
15 Kennedy. So it was a pretty critical moment when Robert  
16 Kennedy called Coretta Scott King when Martin Luther King was  
17 in jail.

18 I have a good friend, Reverend Butler, who was in  
19 jail with -- here with Martin Luther King, Jr. when he got  
20 that phone call, which is a great story, but I can tell it to  
21 you later.

22 THE COURT: I'll take you up on that.

23 BY MS. RUTAHINDURWA:

24 Q. So you mentioned Lee Atwater in that conversation with  
25 Your Honor. Can you just describe for the Court the Southern

1 Strategy and the use of racial appeals in political campaigns?

2 A. Yes. Well, the Southern Strategy was the idea that you  
3 would identify the Democratic party as a party of Black  
4 people, encouraging white people to leave. I -- I -- you  
5 know, we look back at it now, but I think at the time, having  
6 lived through it, people didn't quite understand how much of a  
7 strategy that became because of a -- it became as a way to  
8 move forward.

9 And, of course, Georgia is central to that, both the  
10 Reagan campaign, where Reagan runs against Jimmy Carter and  
11 uses these racial appeal -- you know, the racial code words  
12 like strapping young Black (sic) and welfare queen. And then  
13 Newt Gingrich's new book out by Dana Milbank paints Gingrich  
14 as really central to this sort of Southern Strategy.

15 But it goes further back. The idea of law and order,  
16 antibusing for integration purposes. And it's complex. It's  
17 not just one thing. People are not just one thing. They have  
18 different and varied interests.

19 Physical conservatism is a good value for a lot of  
20 people, but these other things were what was used to come  
21 there -- I'm sorry.

22 THE COURT: No, no. I was listening to you. I've  
23 been told by my team that I ask too many questions when I get  
24 tired, so I'm going to be quiet and let her finish her  
25 questions. They're already sending me notes.



1 have voting rights.

2 THE COURT: He becomes President in '63. He passes  
3 the 1964 Civil Rights Act. He passes the 1965 Voter Rights  
4 Act. He passes the 1965 House Act.

5 So if you look at him in the '50s, he's probably  
6 going to fall at the bottom of pro civil rights matters. So  
7 how much of this is politics and how much of this is real?

8 THE WITNESS: Well, I think what we have is real.  
9 Now, that doesn't mean they agree with it. They're voting  
10 that way, and that is that record. So I am reporting the  
11 record of how they voted. And when you look at it by party,  
12 you see that one party is highly supporting what the NAACP  
13 sees as the issues that are most important to minorities,  
14 particularly African-Americans. And another party is not  
15 getting a very good grade on how they're voting for them.

16 So that's what it tells me, whatever their  
17 motivation, you know, and that's not something you can --  
18 that's easy to get at unless they tell us. I mean, we're  
19 trained as historians, probably better than anybody else, to  
20 look at motivation, to come to conclusions of it. But you  
21 have a good point.

22 I will defend Johnson a little bit, but this is not  
23 here or there. No. No. Not -- in his earlier thing. It's  
24 in the real -- you know, it's why I understand why the  
25 Republican party now is doing some of the things it's doing.

1 across the state.

2 Moving to *Gingles* 2 and 3, Dr. Palmer didn't even  
3 look at primaries. He doesn't believe race and party can be  
4 separated.

5 As I already said, Dr. Burton testified he doesn't  
6 believe race and party can be separated.

7 Dr. Collingwood didn't look at those issues either.

8 So, Your Honor, that gets us to the totality piece of  
9 the puzzle. And this is where we've had a lot of discussion  
10 the past few days. I'm just going to hit some high points  
11 here on these.

12 On the history of discrimination we've had a lot of  
13 older history. The primary recent history we've had is  
14 SB 202. I'd be happy to stipulate on behalf of the State up  
15 until 1990 we had historical discrimination in Georgia. But  
16 looking at SB 202 there's no order from Judge Boulee regarding  
17 intentional racial discrimination. Those issues are still  
18 being litigated. And it does seem a little odd to try to kind  
19 of have an mini trial on what Senate Bill 202 does or doesn't  
20 do and whether it fits into a history of discrimination in  
21 this case, especially when there's not been an order on that  
22 front.

23 Under racial polarization, now we have the question  
24 of what did the plaintiffs present here that is different.  
25 And ultimately the plaintiffs haven't given you information

*Pendergrass v. Secretary, State of Georgia,*  
No. 23-13916 (11th Cir. Feb. 7, 2024)  
Doc. 26

No. 23-13914  
(consolidated with Nos. 23-13916 & 23-13921)

---

In the  
**United States Court of Appeals**  
**for the Eleventh Circuit**

---

Alpha Phi Alpha Fraternity, Inc., et al.,  
*Plaintiff-Appellees,*

v.

Secretary of State of Georgia,  
*Defendant-Appellant.*

---

On Appeal from the United States District Court for the  
Northern District of Georgia, Atlanta Division.  
No. 1:21-cv-05337 — Steve C. Jones, *Judge*

---

**BRIEF OF THE SECRETARY OF STATE OF  
GEORGIA**

---

Bryan P. Tyson  
Bryan F. Jacoutot  
Diane F. LaRoss  
*Special Asst. Att'ys General*

Taylor English Duma LLP  
1600 Parkwood Circle  
Suite 200  
Atlanta, Georgia 30339  
(678) 336-7249  
btyson@taylorenghish.com

Christopher M. Carr  
*Attorney General of Georgia*

Stephen J. Petrany  
*Solicitor General*

Paul R. Draper  
*Deputy Solicitor General*

Office of the Georgia  
Attorney General  
40 Capitol Square, SW  
Atlanta, Georgia 30334  
(404) 458-3408  
spetrany@law.ga.gov

*Counsel for the Secretary of State of Georgia*

---

No. 23-13916  
(consolidated with Nos. 23-13914 & 23-13921)

---

In the  
**United States Court of Appeals**  
**for the Eleventh Circuit**

---

Coakley Pendergrass, et al.,  
*Plaintiff-Appellees,*

v.

Secretary of State of Georgia,  
*Defendant-Appellant.*

---

On Appeal from the United States District Court for the  
Northern District of Georgia, Atlanta Division.  
No. 1:21-cv-05339 — Steve C. Jones, *Judge*

---

**BRIEF OF THE SECRETARY OF STATE OF  
GEORGIA**

---

Bryan P. Tyson  
Bryan F. Jacoutot  
Diane F. LaRoss  
*Special Asst. Att'ys General*

Taylor English Duma LLP  
1600 Parkwood Circle  
Suite 200  
Atlanta, Georgia 30339  
(678) 336-7249  
btyson@taylorenghish.com

Christopher M. Carr  
*Attorney General of Georgia*

Stephen J. Petrany  
*Solicitor General*

Paul R. Draper  
*Deputy Solicitor General*

Office of the Georgia  
Attorney General  
40 Capitol Square, SW  
Atlanta, Georgia 30334  
(404) 458-3408  
spetrany@law.ga.gov

*Counsel for the Secretary of State of Georgia*

---

No. 23-13921  
(consolidated with Nos. 23-13914 & 23-13916)

---

In the  
**United States Court of Appeals**  
**for the Eleventh Circuit**

---

Annie Lois Grant, et al.,  
*Plaintiff-Appellees,*

v.

Secretary of State of Georgia,  
*Defendant-Appellant.*

---

On Appeal from the United States District Court for the  
Northern District of Georgia, Atlanta Division.  
No. 1:22-cv-00122 — Steve C. Jones, *Judge*

---

**BRIEF OF THE SECRETARY OF STATE OF  
GEORGIA**

---

Bryan P. Tyson  
Bryan F. Jacoutot  
Diane F. LaRoss  
*Special Asst. Att'ys General*

Taylor English Duma LLP  
1600 Parkwood Circle  
Suite 200  
Atlanta, Georgia 30339  
(678) 336-7249  
btyson@taylorenghish.com

Christopher M. Carr  
*Attorney General of Georgia*

Stephen J. Petrany  
*Solicitor General*

Paul R. Draper  
*Deputy Solicitor General*

Office of the Georgia  
Attorney General  
40 Capitol Square, SW  
Atlanta, Georgia 30334  
(404) 458-3408  
spetrany@law.ga.gov

*Counsel for the Secretary of State of Georgia*

---

*Alpha Phi Alpha Fraternity v. Sec'y of State of Ga.*, No. 23-13914;

*Pendergrass v. Sec'y of State of Ga.*, No. 23-13916;

*Grant v. Sec'y of State of Ga.*, No. 23-13921

**CERTIFICATE OF INTERESTED PERSONS AND  
CORPORATE DISCLOSURE STATEMENT**

I hereby certify that the following persons and entities may  
have an interest in the outcome of this case:

Albert M. Pearson LLC, Counsel for Amicus;

Allensworth, Robert M., Attempted Amicus;

Alpha Phi Alpha Fraternity, Inc., *APA* Plaintiff;

Adegbile, Debo, Counsel for *APA* Plaintiffs;

Allen, De'Ericka, Counsel for *APA* Plaintiffs;

American Civil Liberties Union Foundation, Inc., Counsel for  
Plaintiffs;

Arbuthnot, Jacqueline Faye, *Grant* Plaintiff;

Bokat-Lindell, Noah B., Counsel for Intervenor U.S. Department  
of Justice;

Boone, Robert, Counsel for *APA* Plaintiffs;

Bowles, Jasmine, Amicus;

Boyle, Jr., Donald P., Counsel for Defendant;

Brown, Phil, *APA* Plaintiff;

Brown, Theron, *Grant* Plaintiff;

Bush, Jacquelyn, *Grant* Plaintiff;

Calvo-Friedman, Jennessa, Former Counsel for *APA* Plaintiffs;

*Alpha Phi Alpha Fraternity v. Sec'y of State of Ga.*, No. 23-13914;

*Pendergrass v. Sec'y of State of Ga.*, No. 23-13916;

*Grant v. Sec'y of State of Ga.*, No. 23-13921

Carr, Christopher M., Counsel for Defendant;

Cheung, Ming, Counsel for *APA* Plaintiffs;

Common Cause, Amicus;

Conner, Mary Nell, *Grant* Plaintiff;

Crowell & Moring LLP, Counsel for Amicus;

Data, Sonika, Counsel for *APA* Plaintiffs;

Draper, Paul, Counsel for Defendant;

Georgia Department of Law, Counsel for Defendant;

Davis, Alexander S., Counsel for Amicus;

Dechert LLP, Counsel for Amicus;

DiGiuseppe, Marisa A., Counsel for *APA* Plaintiffs;

Dixit, Anuj, Counsel for *APA* Plaintiffs;

Douglas, Maura, Counsel for *APA* Plaintiffs;

Duffey, Jr., William S., Former Defendant in *Grant* and  
*Pendergrass*;

Election Law Clinic at Harvard Law School, Amicus;

Elias Law Group LLP, Counsel for *Grant* and *Pendergrass*  
Plaintiffs;

Fair Districts GA, Amicus;

Flynn, Erin H., Counsel for Intervenor;



*Alpha Phi Alpha Fraternity v. Sec'y of State of Ga.*, No. 23-13914;

*Pendergrass v. Sec'y of State of Ga.*, No. 23-13916;

*Grant v. Sec'y of State of Ga.*, No. 23-13921

Ford, Christina Ashley, Counsel for *Grant* and *Pendergrass*  
Plaintiffs;

Freeman, Daniel J., Counsel for Intervenor;

GALEO Latino Community Development Fund, Inc., Amicus;

Garabadu, Rahul, Former Counsel for *APA* Plaintiffs;

Geaghan-Breiner, Charlotte, Counsel for *APA* Plaintiffs;

Genberg, Jack, Counsel for Amicus;

Georgia Coalition for the People's Agenda, Amicus;

Georgia State Conference of the NAACP, Amicus;

Ghazal, Sara Tindall, Former Defendant in *Grant* and  
*Pendergrass*;

Glaze, Ojuan, *Pendergrass* Plaintiff;

Glenn, Katie Bailey, *APA* Plaintiff;

Grant, Annie Lois, *Grant* Plaintiff;

Graves, Cheryl, Amicus;

Greenbaum, Jon, Counsel for Amicus;

Greenwood, Ruth M., Counsel for Amicus;

Hamilton, Kevin J., Former Counsel for *Grant* and *Pendergrass*  
Plaintiffs;

Harrison, Keith, Counsel for Amicus;

Hawley, Jonathan Patrick, Counsel for *Grant* and *Pendergrass*  
Plaintiffs;

*Alpha Phi Alpha Fraternity v. Sec'y of State of Ga.*, No. 23-13914;

*Pendergrass v. Sec'y of State of Ga.*, No. 23-13916;

*Grant v. Sec'y of State of Ga.*, No. 23-13921

Heard, Bradley E., Counsel for Amicus;

Heaven, Astor H.L., Counsel for Amicus;

Hennington, Elliott, *Pendergrass* Plaintiff;

Hessel, Daniel J., Counsel for Amicus;

Houk, Julie M., Counsel for Amicus;

Howell, Quentin T., *Grant* Plaintiff;

Isaacson, Cory, Counsel for *APA* Plaintiffs;

Ivey, Marvis McDaniel, Amicus;

Jacoutot, Bryan F., Counsel for Defendant;

Jackson, Toni Michelle, Counsel for Amicus;

James, Triana Arnold, *Grant* and *Pendergrass* Plaintiff;

Jamieson, Nathan, Counsel for Amicus;

Johnston, Janice W., Former Defendant in *Grant* and  
*Pendergrass*;

Jones, Michael Brandon, Counsel for *Grant* and *Pendergrass*  
Plaintiffs;

Jones, Steve C., Judge, U.S. District Court, Northern District of  
Georgia;

Kastorf Law LLP, Counsel for Amicus;

Kastorf, Kurt, Counsel for Amicus;

Khanna, Abha, Counsel for *Grant* and *Pendergrass* Plaintiffs;

*Alpha Phi Alpha Fraternity v. Sec'y of State of Ga.*, No. 23-13914;

*Pendergrass v. Sec'y of State of Ga.*, No. 23-13916;

*Grant v. Sec'y of State of Ga.*, No. 23-13921

Kim, Eliot, Former Counsel for *APA* Plaintiffs;

Kim, Taeyoung, Counsel for *APA* Plaintiffs;

Krevolin & Horst LLC, Counsel for *Grant* and *Pendergrass* Plaintiffs;

Lakin, Sophia Lin, Counsel for *APA* Plaintiffs;

LaRoss, Diane F., Counsel for Defendant;

Lawyers' Committee for Civil Rights Under Law, Counsel for Amicus;

Le, Anh, Former Defendant in *Grant* and *Pendergrass*;

League of Women Voters of Georgia, Amicus;

Lee, Theresa J., Counsel for Amicus;

Lewis, Joyce Gist, Counsel for *Grant* and *Pendergrass* Plaintiffs;

Lindsey, Edward, Former Defendant in *Grant* and *Pendergrass*;

Love-Olivo, Cassandra Nicole, Counsel for Amicus;

Mashburn, Matthew, Former Defendant in *Grant* and *Pendergrass*;

May, Caitlyn Felt, Counsel for *APA* Plaintiffs;

McGowan, Charlene, Former Counsel for Defendant;

Miller, Alex W., Counsel for *APA* Plaintiffs;

Miller, Kelsey A., Counsel for *APA* Plaintiffs;

Mitchell, Cassandra, Counsel for *APA* Plaintiffs;

*Alpha Phi Alpha Fraternity v. Sec'y of State of Ga.*, No. 23-13914;

*Pendergrass v. Sec'y of State of Ga.*, No. 23-13916;

*Grant v. Sec'y of State of Ga.*, No. 23-13921

O'Donnell, Courtney, Counsel for Amicus;

Osher, Daniel C., Former Counsel for *Grant* and *Pendergrass*  
Plaintiffs;

Paradise, Loree Anne, Former Counsel for Defendant;

Pearson, III, Albert Matthews, Counsel for Amicus;

Pendergrass, Coakley, *Pendergrass* Plaintiff;

Perkins Coie LLP, Former Counsel for *Grant* and *Pendergrass*  
Plaintiffs;

Perkins, Brianne, Amicus;

Petrany, Stephen J., Solicitor General, Counsel for Defendant;

Raffensperger, Brad, Defendant in his official capacity as  
Secretary of State of Georgia;

Reynolds, Garrett, *Grant* Plaintiff;

Richards, Roberts, *Pendergrass* Plaintiff;

Rollins-Boyd, David, Counsel for Amicus;

Rosenberg, Ezra D., Counsel for Amicus;

Rueckert, Jens, *Pendergrass* Plaintiff;

Ruiz Toro, Juan M., Counsel for *APA* Plaintiffs;

Rutahindurwa, Makeba, Counsel for *Grant* and *Pendergrass*  
Plaintiffs;

Savitsky, Ari J., Counsel for *APA* Plaintiffs;

Shaw, Abigail, Former Counsel for *APA* Plaintiffs;

*Alpha Phi Alpha Fraternity v. Sec'y of State of Ga.*, No. 23-13914;

*Pendergrass v. Sec'y of State of Ga.*, No. 23-13916;

*Grant v. Sec'y of State of Ga.*, No. 23-13921

Sivaram, Anuradha, Former Counsel for *APA* Plaintiffs;

Sixth District of the African Methodist Episcopal Church, *APA* Plaintiff;

Solomon, Elbert, *Grant* Plaintiff;

Southern Poverty Law Center, Counsel for Amicus;

Sparks, Adam M., Counsel for *Grant* and *Pendergrass* Plaintiffs;

Smith, Casey Katherine, Counsel for *APA* Plaintiffs;

Steiner, Neil, Counsel for Amicus;

Stewart, Janice, *APA* Plaintiff;

Stewart, Michael Elliot, Counsel for Intervenor;

Strickland, Frank B., Counsel for Defendant;

Sullivan, Rebecca N., Former Defendant in *Grant* and *Pendergrass*;

Sykes, Eunice, *Grant* Plaintiff;

Taylor English Duma LLP, Counsel for Defendant;

Thomas, Ursula, Amicus;

Tolbert, Elroy, *Grant* Plaintiff;

Tsai, Denise, Counsel for *APA* Plaintiffs;

Tyson, Bryan P., Counsel for Defendant;

United States Department of Justice, Intervenor;

Varghese, George P., Counsel for *APA* Plaintiffs;

*Alpha Phi Alpha Fraternity v. Sec'y of State of Ga.*, No. 23-13914;

*Pendergrass v. Sec'y of State of Ga.*, No. 23-13916;

*Grant v. Sec'y of State of Ga.*, No. 23-13921

Vaughan, Elizabeth Marie Wilson, Former Counsel for Defendant;

Webb, Bryan K., Counsel for Defendant;

Weigel, Daniel H., Counsel for Defendant;

Weitzman, Samuel, Former Counsel for *APA* Plaintiffs;

White, Graham, Former Counsel for *Grant* and *Pendergrass*  
Plaintiffs;

Willard, Russell D., Counsel for Defendant;

Williams, Ayana, Former Counsel for *APA* Plaintiffs;

Williams, H. Benjamin, Amicus;

Williams, Edward Henderson, Counsel for *APA* Plaintiffs;

Wilmer Cutler Pickering Hale and Dorr LLP, Counsel for *APA*  
Plaintiffs;

Wimbish, Dexter, *Grant* Plaintiff;

Woods, Eric T., *APA* Plaintiff;

Young, Sean Jengwei, Former Counsel for *APA* Plaintiffs;

Zabel, Joseph D., Former Counsel for *APA* Plaintiffs.

/s/ Stephen J. Petrany

Stephen J. Petrany

## **STATEMENT REGARDING ORAL ARGUMENT**

The Secretary requests oral argument. The record and legal issues are extensive and oral argument could help the Court in resolving the appeals.

## TABLE OF CONTENTS

	Page
Statement Regarding Oral Argument .....	i
Table of Authorities .....	iv
Jurisdiction.....	x
Statement of Issues.....	1
Introduction.....	2
Statement of the Case.....	5
A. Factual Background.....	5
1. Georgia electoral information.....	5
2. The 2021 redistricting process.....	7
B. Proceedings Below.....	8
C. Standard of Review .....	14
Summary of Argument .....	14
Argument.....	18
I. Plaintiffs failed to prove a § 2 violation. ....	18
A. Plaintiffs did not prove that they have lesser opportunity “on account of race.” .....	19
1. To prove vote dilution “on account of race,” Plaintiffs must show racial, not partisan, bloc voting.....	21
2. The evidence here shows ordinary partisanship, not racial bloc voting.....	29
B. Black voters enjoy equal opportunity and broad success in Georgia elections.....	35



**TABLE OF CONTENTS**  
**(continued)**

	<b>Page</b>
II. The district court’s race-based remedy is not justified by present-day circumstances. ....	43
A. Prophylactic legislation must reflect current conditions, but Congress has not updated § 2 in half a century. ....	44
B. In any event, political conditions today no longer justify § 2’s racialized remedy. ....	52
III. There is no private cause of action to enforce § 2. ....	57
A. The Act’s text and structure show that Congress did not create a private cause of action. ....	58
B. The district court’s arguments to the contrary are unavailing. ....	61
Conclusion .....	64

## TABLE OF AUTHORITIES

	Page(s)
<b>Cases</b>	
<i>Ala. Ass’n of Realtors v. Dep’t of Health &amp; Human Servs.</i> , 141 S. Ct. 2485 (2021) .....	61
<i>Alexander v. Sandoval</i> , 532 U.S. 275 (2001) .....	58, 60
<i>Allen v. Cooper</i> , 140 S. Ct. 994 (2020) .....	46, 51
<i>Allen v. Milligan</i> , 599 U.S. 1 (2023) .....	17, 43, 45, 47, 50
<i>Ark. State Conf. NAACP v. Ark. Bd. of Apportionment</i> , 86 F.4th 1204 (8th Cir. 2023).....	57, 61-63
<i>Baird v. Consol. City of Indianapolis</i> , 976 F.2d 357 (7th Cir. 1992) .....	3
<i>Board of Trustees v. Garrett</i> , 531 U.S. 356 (2001) .....	51
<i>Bolden v. City of Mobile</i> , 423 F. Supp. 384 (S.D. Ala. 1976).....	24-25, 34, 38
<i>Bolden v. City of Mobile</i> , 571 F.2d 238 (5th Cir. 1978) .....	25
<i>Brnovich v. Democratic Nat’l Comm.</i> , 141 S. Ct. 2321 (2021) .....	2, 40-41, 53, 57, 62
<i>Cannon v. Univ. of Chicago</i> , 441 U.S. 677 (1979) .....	59

<i>City of Boerne v. Flores</i> , 521 U.S. 507 (1997) .....	16, 43, 45-46, 48
<i>City of Mobile v. Bolden</i> , 446 U.S. 55 (1980) .....	19, 22, 24-25, 36, 44
<i>City of Rome v. United States</i> , 446 U.S. 156 (1980) .....	4, 16, 44
<i>Clarke v. City of Cincinnati</i> , 40 F.3d 807 (6th Cir. 1994) .....	27
<i>Cooper v. Harris</i> , 137 S. Ct. 1455 (2017) .....	35
<i>Crawford v. Marion Cnty. Election Bd.</i> , 553 U.S. 181 (2008) .....	36
<i>Egbert v. Boule</i> , 596 U.S. 482 (2022) .....	59
<i>Gonzalez v. City of Aurora</i> , 535 F.3d 594 (7th Cir. 2008) .....	15, 34
<i>Goosby v. Town Bd. of Hempstead</i> , 180 F.3d 476 (2d Cir. 1999).....	27, 33
<i>Greater Birmingham Ministries v. Sec’y of Ala.</i> , 992 F.3d 1299 (11th Cir. 2021) .....	21, 44, 50
<i>Gregory v. Ashcroft</i> , 501 U.S. 452 (1991) .....	27
<i>Grutter v. Bollinger</i> , 539 U.S. 306 (2003) .....	56
<i>Holder v. Hall</i> , 512 U.S. 874 (1994) .....	20

<i>J.I. Case Co. v. Borak</i> , 377 U.S. 426 (1964) .....	58
<i>Johnson v. De Grandy</i> , 512 U.S. 997 (1994) .....	3, 22, 43
<i>Krahalios v. Nat’l Fed’n of Fed. Emps., Local 1263</i> , 489 U.S. 527 (1989) .....	59
<i>League of United Latin Am. Citizens, Council No. 4434</i> <i>v. Clements</i> , 999 F.2d 831 (5th Cir. 1993) .....	4, 27, 31, 33
<i>League of United Latin Am. Citizens v. Perry</i> , 548 U.S. 399 (2006) .....	14, 21, 39, 44
<i>Marks v. United States</i> , 430 U.S. 188 (1977) .....	28
<i>Mass. Mut. Life Ins. Co. v. Russell</i> , 473 U.S. 134 (1985) .....	60
<i>Morse v. Republican Party of Va.</i> , 517 U.S. 186 (1996) .....	58, 62-63
<i>Nat’l Ass’n of the Deaf v. Florida</i> , 980 F.3d 763 (11th Cir. 2020) .....	46, 57
<i>Nev. Dep’t of Hum. Res. v. Hibbs</i> , 538 U.S. 721 (2003) .....	19-20, 46, 51
<i>Nipper v. Smith</i> , 39 F.3d 1494 (11th Cir. 1994) .....	27
<i>Nw. Austin Mun. Util. Dist. No. One v. Holder</i> , 557 U.S. 193 (2009) .....	16-17, 47, 52
<i>Rapanos v. United States</i> , 547 U.S. 715 (2006) .....	61

<i>Roberts v. City of Shreveport</i> , 397 F.3d 287 (5th Cir. 2005) .....	37
<i>Rucho v. Common Cause</i> , 139 S. Ct. 2484 (2019) .....	20
<i>Shaw v. Reno</i> , 509 U.S. 630 (1993) .....	56
<i>Shelby County v. Holder</i> , 570 U.S. 529 (2013) .....	17, 43, 47-49, 51-52, 54, 56, 60
<i>South Carolina v. Katzenbach</i> , 383 U.S. 301 (1966) .....	48
<i>Students for Fair Admissions, Inc. v. President &amp; Fellows of Harvard Coll.</i> , 600 U.S. 181 (2023) .....	55-57
<i>Thornburg v. Gingles</i> , 478 U.S. 30 (1986) ..	3, 10, 14-15, 18, 20, 22-24, 28, 31, 33, 35, 41
<i>United States v. Marengo Cnty. Comm’n</i> , 731 F.2d 1546 (11th Cir. 1984) .....	36
<i>Uno v. City of Holyoke</i> , 72 F.3d 973 (1st Cir. 1995).....	15, 26-27, 31
<i>Veasey v. Abbott</i> , 830 F.3d 216 (5th Cir. 2016) .....	38, 50
<i>Whitcomb v. Chavis</i> , 403 U.S. 124 (1971) .....	3, 24
<i>White v. Regester</i> , 412 U.S. 755 (1973) .....	3, 18
<i>Whitman v. Am. Trucking Ass’n</i> , 531 U.S. 457 (2001) .....	64

<i>In re Wild</i> , 994 F.3d 1244 (11th Cir. 2021) .....	59, 63
<i>Wis. Legislature v. Wis. Elections Comm’n</i> , 595 U.S. 398 (2022) .....	47
<i>Wright v. Sumter Cnty. Bd. of Elections &amp; Registration</i> , 979 F.3d 1282 (11th Cir. 2020) .....	26

## **Statutes, Legislation, and Constitutional Provisions**

52 U.S.C. § 10301 .....	4, 15, 18-19, 21-22, 26, 34-35, 42, 44, 58
52 U.S.C. § 10302 .....	60, 63
52 U.S.C. § 10308 .....	60, 63
52 U.S.C. § 10310 .....	60
Ga. Congressional Redistricting Act of 2023, § 2, S.B. 3EX, Gen. Assemb. Spec. Sess. (Ga. 2023) .....	13
Ga. House of Representatives Redistricting Act of 2023, § 2, H.B. 1EX, Gen. Assemb. Spec. Sess. (Ga. 2023) .....	13
Ga. Senate Redistricting Act of 2023, § 2, S.B. 1EX, Gen. Assemb. Spec. Sess. (Ga. 2023) .....	13
Pub. L. 89-110, § 2, 79 Stat. 437 (1965) .....	50
Pub. L. 97-205, § 3, 96 Stat. 131 (1982) .....	50
U.S. Const. amend. XV .....	44

## **Other Authorities**

Dep’t of Commerce, Census Bureau, <i>Reported Voting and Registration of the Total Voting-Age Population, by Sex, Race and Hispanic Origin, for States: November 2022</i> (Table 4b) .....	52
--	----

Ga. Sec'y of State, <i>Data Hub – November 8, 2022</i> <i>General Election</i> .....	39
H.R. Rep. No. 109-478 (2006) .....	52-53
Model Penal Code § 2.02.....	28
Model Penal Code § 2.03.....	28
Restatement (Second) of Torts § 8A.....	28
Restatement (Second) of Torts § 9.....	28
S.Rep. No. 97-417 (1982) .....	19, 23

## JURISDICTION

Plaintiff-Appellees, in three separate actions, sued the Georgia Secretary of State under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. The district court had subject-matter jurisdiction under 28 U.S.C. § 1331. The district court considered all three cases in one “coordinated” trial and entered a single final decision on October 26, 2023. *See* Docs. 224 & 333, No. 1:21-cv-05337; Docs. 169 & 286, No. 1:21-cv-05339; Docs. 185 & 294, No. 1:22-cv-00122.

The Secretary filed timely notices of appeal on November 22, 2023. *See* Doc. 341, No. 1:21-cv-05337; Doc. 302, No. 1:21-cv-05339; Doc. 302, No. 1:22-cv-00122. This Court has appellate jurisdiction under 28 U.S.C. § 1291. On January 16, 2024, the Clerk of Court consolidated the appeals. *See* ECF 20, No. 23-13914; ECF 25, No. 23-13916; ECF 21, No. 23-13921.<sup>1</sup>

---

<sup>1</sup> The Secretary has filed an identical opening brief in all three cases.



## STATEMENT OF ISSUES

1. Whether Georgia's electoral districts violate § 2 of the Voting Rights Act, even though black and black-preferred candidates are remarkably successful in Georgia and are limited only by the same partisan politics as all candidates.
2. Whether § 2 of the Voting Rights Act, as interpreted by the district court to require racial gerrymandering, is unconstitutional because it is no longer congruent or proportional to the illegality (intentional racial discrimination) it purports to address.
3. Whether § 2 of the Voting Rights Act provides a private cause of action.

## INTRODUCTION

Black candidates in Georgia enjoy remarkable success. Black voters make up 31.7% of the voting-age population, yet black candidates have won 50% of Georgia’s U.S. Senate seats, 35.7% of Georgia’s congressional seats, and approximately 25% of the seats in the state General Assembly. Expanding to candidates *preferred* by black voters reveals even more success, including *both* U.S. Senate seats, the State’s electoral votes for the presidency in 2020, and roughly 41% of the seats in the General Assembly.

Nevertheless, the district court here held that Georgia must redraw its districts for Congress and the state General Assembly because Georgia’s maps supposedly dilute black votes in violation of § 2 of the Voting Rights Act. Section 2 guarantees voters “equal opportunity” to participate in elections and elect candidates of their choice. *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2338 (2021). Yet despite the obvious fact that black voters have no problem electing candidates in Georgia, the district court, in the guise of ensuring “equal opportunity,” ordered Georgia to racially gerrymander its maps.

That outcome is beyond the pale, for numerous independent reasons. To start, a vote dilution claim is based on the theory that a racial minority has been “submerg[ed]” into a large electoral

district, *Thornburg v. Gingles*, 478 U.S. 30, 46 (1986), to “invidiously ... cancel out or minimize the voting strength of racial groups,” *White v. Regester*, 412 U.S. 755, 765 (1973) (citations omitted). But no one can pretend that is what happened here. At most, Georgia enacted maps that were intended to serve various *partisan* goals. But if black voters suffer electoral losses because their preferred candidates are *Democrats*, they are in the exact same position as white voters, Asian-American voters, Latino voters, and anyone else who prefers Democrats. Section 2 is “meant to hasten the waning of racism in American politics,” *Johnson v. De Grandy*, 512 U.S. 997, 1020 (1994); it “does not guarantee that nominees of the Democratic Party will be elected, even if black voters are likely to favor that party’s candidates,” *Baird v. Consol. City of Indianapolis*, 976 F.2d 357, 361 (7th Cir. 1992).

In *Whitcomb v. Chavis*, 403 U.S. 124, 154 (1971)—a foundational case that § 2, as amended, is intended to codify—the Supreme Court rejected a vote dilution claim where partisanship explained electoral outcomes. “[A]re poor [blacks] ... any more underrepresented than poor ... whites who also voted Democratic and lost ... ? We think not.” *Id.* at 154. The district court’s ruling here depends on the idea that black voters in Georgia in 2024 are

worse off than *black voters in Indiana in the 1960s*. That is nonsense. Where “divergent voting patterns among white and minority voters are best explained by partisan affiliation,” a plaintiff has not established the necessary “racial bloc voting,” and so there is no vote dilution. *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 861 (5th Cir. 1993) (en banc).

Even setting aside that fundamental legal error, the district court’s analysis of the “totality of the circumstances” does not withstand scrutiny. 52 U.S.C. § 10301(b). The question under § 2 is whether a minority has less “opportunity” than members of the majority to “participate in the political process” and “elect representatives of their choice.” *Id.* Georgia—where black candidates are broadly successful, and black-preferred candidates more successful still—cannot possibly fit that bill.

If, somehow, § 2 really did provide for liability in this case, it would be unconstitutional. Section 2 is a “prophylactic” statute meant to promote the Fifteenth Amendment’s prohibition of intentional discrimination in voting. *City of Rome v. United States*, 446 U.S. 156, 173 (1980). But Congress has not established evidence tending to show that § 2, as interpreted by the district court, is a congruent and proportional response to any intentional

discrimination by the States in more than forty years. Prophylactic legislation that demands the use of racial gerrymandering cannot go on indefinitely without any Congressional update to account for changed conditions. And if this case demonstrates anything, it is that conditions have changed. Georgia of 2024 is not Georgia of 1965 or even 1982. The Court should reverse the judgment below.

## STATEMENT OF THE CASE

Plaintiff-Appellees filed three separate suits challenging Georgia's enacted 2021 electoral maps under § 2 of the Voting Rights Act. The district court ruled in their favor, and Defendant Secretary of State of Georgia appealed. This Court consolidated the cases for appeal.

### A. Factual Background

#### 1. Georgia electoral information.

Georgia regularly nominates and elects racial and ethnic minorities to political office. Roughly 53% of Georgia voters are white, 31.7% are black, and the remainder include other racial and ethnic minorities of various backgrounds. Doc. 333 at 265.<sup>2</sup>

---

<sup>2</sup> Unless otherwise indicated, record citations refer to the docket in *Alpha Phi Alpha Fraternity, Inc. et al. v. Raffensperger*, No. 1:21-cv-05337.

Black Georgians occupy many state offices. Georgia's Congressional delegation is comprised of 35.7% black members, and its state houses include roughly 25% black members. Doc. 333 at 255, 266.

Georgia's most recent federal Senate election saw two black men face off: Herschel Walker won the 2022 Republican primary over then-incumbent Agriculture Commissioner, Gary Black, who is white and who had been successfully elected in past statewide elections. Doc. 276 at 5. Herschel Walker received the highest number of primary votes in every county in Georgia. *Id.* Senator Raphael Warnock, a Democrat, defeated Herschel Walker in the general election after having also won in 2021. *Id.*; Doc. 270-5 at 55.

Georgia's other statewide offices are also peopled with black and other minority officials. On the five-member Public Service Commission is Fitz Johnson, a black Republican who won the 2022 Republican nomination with 1,007,354 votes in an uncontested primary election. Doc. 276 at 5. The state Insurance Commissioner is a Latino Republican. *Id.* The state Supreme Court, whose justices are elected in non-partisan elections, includes a black woman and an Asian-American woman, both of whom have won statewide elections. *Id.*; Doc. 270-5 at 56; Doc. 333

at 254 n.65. The recent past includes other examples, including former Chief Justice Melton (who served on the Supreme Court from 2005 to 2021) and former Attorney General Thurbert Baker (who served from 1997 to 2011), both black men. Doc. 270-5 at 56; Doc. 333 at 253-254 & n.65.

When looking at black-*preferred* candidates, regardless of race, the numbers go even higher. Forty-one percent of the General Assembly is black-preferred (all Democrats), both U.S. Senators are black-preferred (again, Democrats), and Georgia voted for Joe Biden as President (again, a Democrat). Doc. 333 at 491.

## **2. The 2021 redistricting process.**

On August 21, 2021, the Census Bureau released the population counts that Georgia and other states use to redraw their legislative districts. Doc. 270-5 at 20. The Georgia General Assembly and its relevant committees engaged in extensive public processes to prepare for redistricting. Doc. 333 at 44, 46-47 (detailing, *inter alia*, nine in-person and two virtual joint committee meetings, with online portals for comments). The committees adopted guidelines for redistricting, including minimal population deviation, compliance with state and federal

law, contiguous geography, avoiding the pairing of incumbents, and so forth. *Id.* at 42-43.

Georgia enacted plans for federal and state legislative districts, although not a single member of the Democratic party voted for them. *Id.* at 47. That was not surprising, since the districts were adjusted to achieve some partisan goals for the Republican majority. *See id.* at 260-62, 475-76, 489-91. The plans were used in the 2022 elections. *Id.* at 47.

The 2021 Congressional plan includes 14 districts. *Id.* at 50. Two are majority-black districts and two have greater than 49% black-voting-age population. *Id.* at 51. Under the plan, Georgians elected 5 black Democratic members of Congress in the 2022 general election out of the 14 districts. *Id.* at 468-69.

The 2021 state Senate plan includes 56 districts. *Id.* at 52-53. The plan includes 14 majority-black districts, *id.* at 54, and elected 14 black state senators, *id.* at 469. The 2021 state House plan includes 180 districts. *Id.* at 56. It includes 49 majority-black districts, *id.* at 57, and elected 41 black representatives. *Id.* at 469.

## **B. Proceedings Below**

Plaintiff-Appellees—various organizations and some individuals—filed three cases in late 2021 and early 2022, alleging



that the enacted plans dilute black voters' political power in violation of § 2 of the Voting Rights Act. *See id.* at 13. They sought to force Georgia to redraw its maps to include an additional majority-black congressional district, three additional majority-black state Senate districts, and five additional majority-black state House districts. *See id.* at 98, 107, 132, 175.

Defendant-Appellant Secretary of State moved to dismiss the complaints on a number of grounds, including that § 2 does not provide a private right of action. Doc. 333 at 14. The district court denied those motions, holding in cursory fashion that, although the Supreme Court has not actually resolved the issue, lower courts "have never denied a private plaintiff the ability to bring a [§] 2 claim." Doc. 65 at 34; Doc. 50 at 20, No. 1:21-cv-05339; Doc. 43 at 33, No. 1:22-cv-00122.

After discovery, the Secretary moved for summary judgment, arguing that Plaintiffs could not establish a fundamental prerequisite for a § 2 claim: "racial bloc voting." Doc. 230-1 at 18-32; Doc. 175-1 at 17-30, No. 1:21-cv-05339; Doc. 190-1 at 21-34, No. 1:22-cv-00122. Although the evidence showed that majority and black voters voted differently, there was no evidence this had anything to do with race; the patterns were caused by partisan preference. *Id.* But the district court held that even if different

voters simply prefer different political parties, there is still racial bloc voting if the majority votes differently than the minority. Doc. 268 at 38-46; Doc. 215 at 48-56, No. 1:21-cv-05339; Doc. 229 at 49-57, No. 1:22-cv-00122.

On October 26, 2023, after trial, the district court issued an order holding that Georgia must redraw its maps to include an additional majority-black congressional district, two additional majority-black state Senate districts, and five additional majority-black state House districts. Doc. 333 at 509. The district court held that, with respect to the required districts, Plaintiffs had established the three *Gingles* preconditions. *Gingles*, 478 U.S. at 50-51 (requiring a large and compact minority group, cohesive minority voting, and racial bloc voting by the majority that defeats the minority). First, they had established that Georgia *could* draw relatively compact, additional, black-majority districts. Doc. 333 at 200-01, 275. Second, Plaintiffs had established that black voters voted cohesively, because large majorities of black voters always prefer Democrats. *Id.* at 203-04, 408-17. Third, because the court had already held that Plaintiffs have no burden to show “bloc voting” that is actually based on race—as opposed to partisanship or some other reason—the court held that Plaintiffs had satisfied the third *Gingles* prerequisite. *Id.* at 205-08, 417-26.

Turning to the “totality of the circumstances,” the district court proceeded to find that some factors (drawn from the Senate Committee Report on § 2’s amendment in 1982) favored the State but most favored Plaintiffs. *Id.* at 209-74, 426-93.

- With respect to Factor 1, whether the jurisdiction has a history of “intentional discrimination,” the court held that Georgia does, even while acknowledging that Georgia’s official discrimination ended many decades ago. *Id.* at 216-19, 232-33; 431-36, 449-50.
- With respect to Factor 2, racially polarized voting, the district court held that, although the evidence showed that the minority always prefers the Democratic candidate (regardless of race) and the majority always prefers the Republican candidate (again, regardless of race), race and party are too difficult to “disentangle,” so Factor 2 favors Plaintiffs. *Id.* at 233-42, 451-58, 486-89.
- On Factor 3, whether the jurisdiction has used “practices or procedures that tend to enhance the opportunity for discrimination,” the district court pointed to a few laws that supposedly demonstrate “disparate impact”—like

voter ID laws—and held that this factor favors Plaintiffs. *Id.* at 219-33, 431, 437-50, 484-86.

- On Factor 4, the exclusion of minorities from candidate slating processes, the district court found there were no such processes. *Id.* at 242 n.57, 458 n.105.
- On Factor 5, socioeconomic differences that hinder the ability to participate, the district court noted that black Georgians suffer from some socioeconomic deficits. *Id.* at 248-49, 462-64. It also held that black Georgians are hindered in their ability to participate, even though black voters are registered at similar rates to majority voters and are close in terms of actual turnout, with many elections being virtually identical. *Id.* at 242-50, 459-62, 464-65.
- On Factor 6, the district court acknowledged that campaigns are not characterized by racial appeals. *Id.* at 250-52, 465-67.
- On Factor 7, the extent of minority success, the district court acknowledged that black candidates have achieved enormous success in Georgia. *Id.* at 253-56, 468-69. But the district court saw this success as “isolated” and “underrepresent[ative]” and held that this factor “strong[ly]” favors Plaintiffs. *Id.* at 257, 471-72.

- On Factor 8, the district court found no lack of responsiveness to the particularized needs of the black community. *Id.* at 258-60, 472-75.
- On Factor 9, the district court explicitly found that the maps were *not* racially discriminatory but instead designed to further partisan goals. *Id.* at 260-62, 475-77, 489-91.

The district court mixed these factors together and determined that, despite the across-the-board success of black and black-preferred candidates in Georgia, political participation and opportunity in Georgia is not “equally open” to black voters. *Id.* at 273-74, 480-83, 492-93. The court permanently enjoined use of the enacted maps. *Id.* at 514-15.<sup>3</sup>

---

<sup>3</sup> The General Assembly enacted remedial redistricting plans, subsequently approved by the district court, in November 2023. Those plans revert to the 2021 versions if the Secretary succeeds in this appeal. See Ga. House of Representatives Redistricting Act of 2023, § 2, H.B. 1EX, Gen. Assemb. Spec. Sess. (Ga. 2023), <https://bit.ly/3SeGUGF>; Ga. Senate Redistricting Act of 2023, § 2, S.B. 1EX, Gen. Assemb. Spec. Sess. (Ga. 2023), <https://bit.ly/48YptBq>; Ga. Congressional Redistricting Act of 2023, § 2, S.B. 3EX, Gen. Assemb. Spec. Sess. (Ga. 2023), <https://bit.ly/3vUTUcT>.

### C. Standard of Review

In a § 2 case, the Court reviews legal questions *de novo* and factual questions for clear error. *Gingles*, 478 U.S. at 78-79.

## SUMMARY OF ARGUMENT

The district court held that § 2 does not require evidence of *race*-based bloc voting and that black voters do not have equal opportunity under the totality of the circumstances. It held that its interpretation of § 2 was constitutional. And it held that Plaintiffs have a private right of action under § 2. Each of these errors require reversal.

**I.A.** To prevail on their § 2 vote dilution claims, Plaintiffs must prove that minority voters in Georgia fail to elect their preferred candidates because the majority votes as a “racial bloc” to defeat them. *Gingles*, 478 U.S. at 51. That means exactly what it says: the majority must vote as a *racial* bloc, not a *partisan* bloc. If black voters prefer Democrats who lose because the majority simply prefers Republicans (regardless of race), then black voters have the same “opportunity” as anyone else “to elect representatives of their choice.” *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 425, 428 (2006) (quotation omitted).

Simply put, voting is not racially polarized merely because “the majority of white voters vote for different candidates than the majority of blacks.” *Gingles*, 478 U.S. at 83 (White, J., concurring); *see also id.* at 101 (“I agree with Justice White.”) (O’Connor, J., concurring). All courts to examine the issue have required proof of racial bloc voting as opposed to ordinary partisan polarization.

If it were otherwise, the statute would be a partisan tool, not a hedge against racial discrimination. Districts where Democrats win would be fine because black voters prefer Democrats, but districts where Republicans win (even *black* Republicans) would draw scrutiny for the same reason. Inevitably, this would require proportional representation, *Uno v. City of Holyoke*, 72 F.3d 973, 982 (1st Cir. 1995), which the statute emphatically rejects, 52 U.S.C. § 10301(b). Section 2 mandates equal voting opportunity, “not a process that favors one group over another.” *Gonzalez v. City of Aurora*, 535 F.3d 594, 598 (7th Cir. 2008).

Under the correct standard, Plaintiffs cannot establish a § 2 violation. They did not even try to prove that voting patterns in Georgia were driven by race rather than ordinary partisanship. They found that black and white Georgians tend to vote for different candidates but did not explain why. Doc. 386 at 5-6. That makes sense because the evidence proved that partisan preference

is the causal variable. The majority supports white and black candidates at identical rates. Black-preferred candidates enjoy immense success, but where they lose, they lose because the majority prefers Republicans, which is entirely legal.

**B.** Even setting aside that basic error, Plaintiffs failed to establish vote dilution. The totality of the circumstances shows that black Georgians face no barriers to participating in the political process. The district court found otherwise only because it misapplied the Senate Factors: it confused disparate impact for intentional discrimination, it again ignored evidence that polarization is driven by partisanship rather than race, and it stunningly found that black Georgians have had only “isolated” political success when they are in fact widely represented in state and federal offices. By any reasonable standard, Georgia is a beacon of voting equality and openness.

**II.** If § 2 actually requires explicit race-based remedies even in the circumstances of this case, it is unconstitutional. Prophylactic legislation must remain congruent and proportional to the constitutional harm (here, intentional race discrimination) it aims to deter. *City of Rome*, 446 U.S. at 173-75; *City of Boerne v. Flores*, 521 U.S. 507, 520 (1997). Critically, because § 2 “imposes current burdens,” it “must be justified by current needs.” *Nw.*



*Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009).

Even if § 2 was congruent and proportional when amended four decades ago, it is not today. The “authority to conduct race-based redistricting cannot extend indefinitely into the future.” *Allen v. Milligan*, 599 U.S. 1, 45 (2023) (Kavanaugh, J., concurring). If Congress wants to continue § 2—at least as interpreted by the district court—it must “updat[e]” the law to “ensure” that it “speaks to current conditions.” *Shelby County v. Holder*, 570 U.S. 529, 557 (2013). But Congress has not revisited the statute in the last 40 years, and that alone makes it unconstitutional.

Moreover, the country has “changed dramatically” in the last 40 years. *Id.* at 547. “[M]inority candidates hold office at unprecedented levels,” *Nw. Austin*, 557 U.S. at 202, and black Americans register and vote at rates similar to the majority. Even the district court “commend[ed]” Georgia for its success in “increasing the access and availability of voting.” Doc. 333 at 232-33. There is no justification for imposing a broad, race-based remedy to solve a phantom problem.

**III.** Lastly, Plaintiffs do not have a private cause of action to begin with. Section 2 provides no such right, and courts long ago

exited the business of reading such rights into statutes. It makes perfect sense that private individuals can sue to stop *actual* constitutional violations via § 1983, while only the Attorney General can sue regarding the purely prophylactic expense of § 2, and that is what the text provides.

## ARGUMENT

### I. Plaintiffs failed to prove a § 2 violation.

A claim for vote dilution is a claim that minority voters are “submerg[ed],” *Gingles*, 478 U.S. at 46, in a voting district to “invidiously ... cancel out or minimize the[ir] voting strength,” *Regester*, 412 U.S. at 765 (citations omitted). To prove such a claim, Plaintiffs must establish the three *Gingles* preconditions: (1) a sufficiently large and geographically compact minority, (2) that is politically cohesive, and (3) “racial bloc voting” (also known as “racially polarized voting”) that prevents minority voters from having an equal opportunity to elect their preferred candidates. 478 U.S. at 50-51, 52 n.18. Plaintiffs must also prove that the “totality of the circumstances” shows discriminatory results. 52 U.S.C. § 10301(b).

Plaintiffs proved neither. *First*, Plaintiffs did not even try to establish that *race*, rather than ordinary partisan politics, explains voting patterns in Georgia, nor could they. So they

cannot prove the third *Gingles* precondition: racial bloc voting. *Second*, even assuming that a failure to prove racial causation is somehow less than dispositive, the district court made numerous legal and factual errors in examining the totality of the circumstances. Black-preferred candidates won the presidential electoral college votes, both Senate seats, and large portions of the Congressional and state legislative seats, and nothing suggests black voters face any meaningful barriers to voting. If that is not “equal opportunity,” it is hard to understand what is.

**A. Plaintiffs did not prove that they have lesser opportunity “on account of race.”**

Section 2 of the Voting Rights Act prohibits the use of any “practice” or “procedure” that “results in [the] denial or abridgement of the right ... to vote on account of race.” 52 U.S.C. § 10301(a). Section 2 goes beyond the Fifteenth Amendment, which covers only intentional discrimination. *City of Mobile v. Bolden*, 446 U.S. 55, 65 (1980) (plurality). Indeed, Congress specifically amended § 2 to codify a “results test” after this Court held that the Fifteenth Amendment reaches only intentional discrimination. *See* S.Rep. No. 97-417, at 2 (1982). Thus, § 2 is “prophylactic.” *Nev. Dep’t of Hum. Res. v. Hibbs*, 538 U.S. 721,

727-28 (2003). It prohibits conduct that is not itself a violation of the Fifteenth Amendment in order to deter *actual* violations. *Id.*

Here, for instance, Plaintiffs allege vote dilution. The crux of their claim is not that they face intentional discrimination—which would be covered by the Fifteenth Amendment—but that they have been “submerge[ed]” within a majority that votes as a “racial bloc” against them. *Gingles*, 478 U.S. at 46, 49-52.

Nevertheless, a § 2 vote dilution claim, even where it reaches beyond the Fifteenth Amendment’s ban on intentional discrimination, still requires bloc voting *caused* by race. It is not enough that some voters simply fail to win elections. After all, in a majoritarian system, “numerical minorities lose elections.” *Holder v. Hall*, 512 U.S. 874, 901 (1994) (Thomas, J., concurring). And federal courts are “not responsible for vindicating generalized partisan preferences.” *Rucho v. Common Cause*, 139 S. Ct. 2484, 2501 (2019) (quotation omitted). So if voting patterns are simply *partisan* in nature—the majority votes for Republicans and the minority prefers Democrats—there is no vote dilution.

But Plaintiffs did not even *try* to disentangle race from ordinary partisanship, and all the evidence in this case points to partisan disagreement, not racial causation. The majority simply prefers Republicans, regardless of race.

**1. To prove vote dilution “on account of race,” Plaintiffs must show racial, not partisan, bloc voting.**

The text of § 2, judicial precedent, relevant constitutional principles, and common sense all establish that there is no *racial* bloc voting where, as here, voting patterns are readily explained by race-neutral partisan politics. The district court disagreed, but it relied on a plain misreading of *Gingles* and confused causation with intent.

a. Section 2’s text explicitly requires racial causation because it applies only to injury “*on account of race or color.*” 52 U.S.C. § 10301(a) (emphasis added). Plaintiffs must show that the political process is “not *equally open* ... in that its members have less opportunity *than other members of the electorate* to participate in the political process and to elect representatives of their choice.” *Id.* at § 10301(b) (emphasis added). Putting that together, Section 2 requires plaintiffs to show that a “challenged law ... caused” them, “on account of race,” to have less opportunity than members of other races. *Greater Birmingham Ministries v. Sec’y of Ala.*, 992 F.3d 1299, 1330 (11th Cir. 2021) (quoting 52 U.S.C. § 10301(a)).

The text plainly does not “guarantee” partisan victories or “electoral success.” *LULAC*, 548 U.S. at 428 (citation omitted). If black voters’ preferred candidates lose elections for non-racial

reasons, then they have exactly the same opportunity as “other members of the electorate.” 52 U.S.C. § 10301(b). As Justice Marshall framed it, a voting system does not racially discriminate if the minority “community’s lack of success at the polls was the result of partisan politics.” *Bolden*, 446 U.S. at 109 (Marshall, J., dissenting). Section 2 does not, in other words, relieve minorities of the “obligation to pull, haul, and trade to find common political ground.” *De Grandy*, 512 U.S. at 1020.

Precedent and history confirm that § 2 requires racial, not partisan, bloc voting. Start with *Gingles*—the seminal vote-dilution precedent decided in the wake of the 1982 amendment to § 2—where the Supreme Court explicitly held that § 2 plaintiffs must prove “racial bloc voting.” 478 U.S. at 46. Justice Brennan’s plurality opinion argued that a mere difference in voter preference between minority and majority was sufficient to establish racial bloc voting (or “racially polarized voting”). *Id.* at 61-74. But a majority of the Court explicitly rejected that view, insisting that § 2 plaintiffs must show a *racial* explanation for voting patterns in order to establish *racial* polarization.

Justice White—who in all other respects joined Justice Brennan’s opinion—wrote separately to specify that he did “not agree” with the plurality that “there is polarized voting” merely

because “the majority of white voters vote for different candidates than the majority of the blacks.” *Id.* at 83 (White, J., concurring). Justice White gave an example where six white and two black Democrats ran against six white and two black Republicans; under the plurality view, there would be polarized voting if the Republicans win while “80% of the blacks in the predominantly black areas vote Democratic.” *Id.* But that would be “interest-group politics rather than ... racial discrimination.” *Id.*

Justice O’Connor, writing for herself and three others, “agree[d] with Justice White” that § 2 plaintiffs must do more than simply show that black and white voters prefer different candidates. *Id.* at 101; *see also id.* at 100 (noting that “[o]nly three Justices of the Court join[ed]” Justice Brennan’s view on how § 2 plaintiffs can show “racially polarized voting”). She explained that a rule ignoring racial causation would “give no effect whatever to [Congress’s] repeated emphasis on ‘intensive racial politics,’ on ‘racial political considerations,’ and on whether ‘racial politics ... dominate the electoral process.’” *Id.* at 101 (quoting S.Rep. No. 97-417 at 33-34). And it would fly in the face of precedent requiring that courts differentiate between cases where “racial animosity” drives voting patterns and cases where the partisan preferences of racial groups simply “diverge.” *Id.* at 100-01.

Justice O'Connor pointed to *Whitcomb*, which explicitly rejected the idea that there can be vote dilution where a racial minority loses elections for partisan reasons. 403 U.S. at 152-55. *Whitcomb* is one of two vote-dilution cases that the amended § 2 was “intended to codify.” *Gingles*, 478 U.S. at 83 (O'Connor, J., concurring). And in *Whitcomb*, black voters in the “ghetto” area of Marion County, Indiana, lost elections because they “vote[d] predominantly Democratic” in a district that favored Republicans. 403 U.S. at 153. “[H]ad the Democrats won,” black voters “would have had no justifiable complaints about representation.” *Id.* at 152. And the fact that *Democrats* lost elections was insufficient to show vote dilution. Black voters were no “more underrepresented than poor ghetto whites who also voted Democratic and lost.” *Id.* at 154.

Another key historical precedent is *City of Mobile v. Bolden*, 446 U.S. 55 (1980). The trial court in *Bolden* succinctly explained that § 2 is concerned with “polarization in the white and black voting,” which meant “white voting for white and black for black if a white [candidate] is opposed to a black [candidate], or if the race is between two white candidates and one is ... identified with sponsoring particularized black needs.” 423 F. Supp. 384, 388 (S.D. Ala. 1976). The court understood racial polarization as a



form of “white backlash” against “the black candidate or the white candidate identified with the blac[k] [community].” *Id.* On appeal, the Fifth Circuit and the Supreme Court did not challenge the district court’s understanding of racial polarization. *See* 571 F.2d 238, 243 (5th Cir. 1978); 446 U.S. at 71.

The Supreme Court ultimately reversed for the separate reason that the Fifteenth Amendment (and by extension, the unamended § 2) concerns “discriminatory purpose,” 446 U.S. at 62, but it was precisely to *reinstate* the understanding of the district court that Congress amended § 2. Congress wanted to return to the understanding of *Whitcomb*, *Regester*, and the *Bolden* district court. *See* S.Rep. at 2, 22, 24 n.88. Thus, Congress picked the understanding of racial bloc voting that requires *racial causation*. It just rejected the notion that there must be discriminatory legislative *intent*.

Common sense and canons of construction confirm that § 2 *must* require plaintiffs to establish polarization in terms of race, not partisanship. If § 2 requires only divergent voting patterns, the statute would be a one-way partisan ratchet. Districts in which Democrats form a majority would be legal because black voters’ preferred candidates (Democrats) will routinely win. But districts with Republican majorities would violate § 2 simply

because the majority (regardless of its racial composition) has a different ideological preference than a black minority. Section 2 cannot be rationally interpreted to prohibit election schemes where Republicans win but bless virtually identical jurisdictions where Democrats win.

The district court's view would also eviscerate another aspect of § 2: its emphatic rejection of a right to proportionality. *See* 52 U.S.C. § 10301(b). If minority voters could establish racially polarized voting without proving any racial causality, it would “facilitat[e] a back-door approach to proportional representation.” *Uno*, 72 F.3d at 982. Virtually anywhere that a racial minority votes cohesively, § 2 would demand separate majority-minority districts to ensure minority voters elect their preferred candidates. Of course, the *Gingles* preconditions, including racial bloc voting, are not sufficient to establish liability, but “only [in] the very unusual case” will a plaintiff satisfy the “*Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances.” *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1304 (11th Cir. 2020) (quotation omitted).

The district court's interpretation would at least raise serious doubts about § 2's constitutionality, as Congress lacks authority to

simply prefer one political party, *see infra* Part II. That is doubly true where the district court’s interpretation “upset[s] the usual constitutional balance of federal and state powers.” *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991). The text of § 2 does not suggest, much less require, the district court’s counter-intuitive reading, and this Court should reject it.

Given all this, it should be no surprise that other circuits reject the district court’s view. Numerous Circuits have held or indicated that racial bloc voting requires proof that “race, not ... partisan affiliation, is the predominant determinant of political preference.” *Clements*, 999 F.2d at 855 (quotation omitted); *see also Uno*, 72 F.3d at 981; *Goosby v. Town Bd. of Hempstead*, 180 F.3d 476, 496 (2d Cir. 1999) (favorably citing *Clements*); *Clarke v. City of Cincinnati*, 40 F.3d 807, 812 (6th Cir. 1994); *see also Nipper v. Smith*, 39 F.3d 1494, 1524 (11th Cir. 1994) (en banc) (opinion of Tjoflat, J.) (explaining that § 2 requires patterns of voting attributable to race, not partisanship). This Court should do the same.

**b.** The district court relied on two erroneous rationales to hold that racial polarization does not require racial causation. First, the district court simply misread *Gingles*, asserting that Justice O’Connor “agreed that the reasons that [b]lack voters and white

voters vote differently are irrelevant to proving the existence of the second and third *Gingles* preconditions.” Doc. 268 at 41. But that is blatantly wrong. Justice Brennan’s opinion—which was only a plurality on this point precisely because Justice White refused to join this section—was the *only* one to conclude that “the reasons black and white voters vote differently have no relevance to the central inquiry of § 2.” 478 U.S. at 63. Justice O’Connor specifically rejected Justice Brennan’s view and “agreed with Justice White.” *Id.* at 101 (O’Connor, J., concurring). Regardless, Justice O’Connor rejected the entire project of Justice Brennan’s opinion. *See generally id.* at 84-105. So even if there were uncertainty as to her view on this point, there is no *Marks*-based counting that could benefit Plaintiffs. *See Marks v. United States*, 430 U.S. 188, 193 (1977).

Second, the district court mistakenly reasoned that § 2 must not require evidence that divergent voting patterns are caused by race because “the [§] 2 analysis is an effects test,” not an intent test. Doc. 268 at 42. That is a red herring because intent and causation are entirely distinct concepts. One is about a mental state, the other is about whether A led to B. *See, e.g.,* Restatement (Second) of Torts §§ 8A, 9 (1965) (separate definitions for “Intent” and “Legal Cause”); Model Penal Code §§ 2.02(2), 2.03(1) (distinct

*mens rea* and causation requirements for criminal liability).

Section 2 does not require intentional racial discrimination, but it does require racial *causation*—if it did not, it would be utterly incoherent.

**2. The evidence here shows ordinary partisanship, not racial bloc voting.**

Plaintiffs never tried to establish that race, rather than ordinary partisanship, is the cause of divergent voting patterns in Georgia. Even if it were the Secretary's burden to produce evidence on this score, he easily satisfied it. To the extent the district court concluded otherwise—and the district court barely examined the question, since it did not believe it necessary—the district court plainly erred.

a. In their briefing and statements at trial, Plaintiffs repeatedly and explicitly disclaimed any obligation to distinguish racial polarization from ordinary partisan preference. *See* Doc. 244 at 30, 32-38 & Doc. 325 at 18-19, 30-31, No. 1:21-cv-05337; Doc. 173-1 at 29-30, Doc. 189 at 19-21, & Doc. 295 at 20-24, No. 1:21-cv-05339; Doc. 189-1 at 26-27, No. 1:22-cv-00122. Not surprisingly, then, Plaintiffs did not produce any evidence that polarization in Georgia is attributable to race rather than party.

One of their polarization experts, Dr. Palmer, testified that his investigation did not discern the “explanations for the voting patterns” he identified; such an inquiry was “beyond the scope of [his] report[s].” Doc. 326 at 94. Plaintiffs’ other polarization expert, Dr. Handley, testified similarly. Her analysis revealed that white voters generally prefer Republicans and black voters prefer Democrats but did not address the critical issue of causation. Doc. 385 at 102, 105. “[N]othing in [her] report,” she conceded, “explains why the voting patterns [she] analyzed are occurring” or otherwise “speaks to causation.” Doc. 386 at 5-6.

If anything, Dr. Handley’s testimony indicated that polarization in Georgia is the result of partisanship, not race. She acknowledged, for instance, that black voters *always* support Democratic candidates, regardless of a candidate’s race. Doc. 385 at 102-03. And her analysis of Democratic primaries—where the effects of partisanship are reduced—showed they are “not a barrier” to black candidates in Georgia. *Id.* at 120. Even when white voters slightly preferred different Democratic primary candidates, white Democrats support the black-preferred nominee in the general election just as enthusiastically as they do white-preferred Democratic nominees. Doc. 332 at 33-34. Contrast that

with *Gingles*, where white Democrats voted against black-preferred candidates *of their own party*. 478 U.S. at 59.

The district court, for its part, made clear that it would not attempt to distinguish race from partisanship. *See, e.g.*, Doc. 333 at 236. Indeed, the district court seemed to think that doing so was impossible, relying on the assertion that race is the best *predictor* of partisan preference. *See, e.g., id.* at 454. But correlation is not causation, and the fact that one factor can predict another does not mean it *causes* it.

Distinguishing race from partisanship is the only way to differentiate cases of actual “racial animosity” from cases where the partisan preferences of racial groups merely “diverge.” *Gingles*, 478 U.S. at 100 (O’Connor, J., concurring). Plaintiffs have not even “attempted to establish proof of racial bloc voting by demonstrating that race, not ... partisan affiliation, is the predominant determinant of political preference.” *Clements*, 999 F.2d at 855 (quotation omitted). This failure alone demands reversal.

**b.** Even if the Secretary shouldered some burden of production on the issue of polarization, *cf. Uno*, 72 F.3d at 983, he satisfied that burden here. And of course, the ultimate “burden of proof at all times remains with the plaintiffs.” *Id.*

Most critically, there is *no distinction* in vote share when the race of the candidate changes, as opposed to the *party* of the candidate. In recent statewide elections, every Democratic nominee received at least 95.5% of the black vote, regardless of the candidate's race. Doc. 34-2 at 14, No. 1:21-cv-05339. And the Democratic nominee (a.k.a. the black-preferred candidate) received, on average, 11.2% of the white vote if they were black and 11.8% of the white vote if they were white. *Id.* In other words, white support for non-Republican candidates is virtually identical, no matter the race of the candidate. And white voters cohesively support black candidates when they are Republicans—a point to which Plaintiffs stipulated. Doc. 270-5 at 53. Defendant's expert Dr. Alford was able to easily and correctly conclude that “party” is “a bigger factor than race.” Doc. 332 at 12, No. 1:22-cv-05337.

Perhaps the best indication that voting in Georgia is motivated by partisanship, not race, is an examination of the 2021 and 2022 U.S. Senate elections. In the 2021 runoff election, both the Democrat (Jon Ossoff) and the Republican (David Perdue) were white. According to Dr. Handley, across the different regions considered in her report, Ossoff received an average of 12.1% of the white vote and Perdue received 87.9%. *See* Doc. 229 at 365-83. In the 2022 election, the Democrat (Raphael Warnock)



and Republican (Herschel Walker) were both black. Warnock received an average of 14.4% of the white vote and Walker received 84.8%. *Id.* at 364-82. That means white support for the Republican, and white opposition to the Democrat, was functionally identical in both elections, regardless of the candidate's race.

This evidence is critical because identical support for candidates of different races is one of the tell-tale signs of partisan, as opposed to racial, bloc voting. That was the entire point of Justice White's concurrence in *Gingles*. See 478 U.S. at 83 (White, J., concurring); see also *id.* at 101 (O'Connor, J., concurring) ("I agree with Justice White."). Comparing majority support for candidates of different races is a crucial mechanism for distinguishing between "racial discrimination" and everyday "interest-group politics." *Id.* at 83 (White, J., concurring). *Gingles* itself was based on evidence that "most white voters were extremely reluctant to vote for black candidates." *Id.* at 54. But where, as here, voters "support[ed] minority candidates ... at levels equal to or greater than those of [non-minority] candidates," the "proper" conclusion is that polarization is driven by "partisan affiliation." *Goosby*, 180 F.3d at 496 (quoting *Clements*, 999 F.2d

at 861). There is no “white backlash” to be found here. *Bolden*, 423 F. Supp. at 388.

To the extent the district court tried to establish that race, rather than partisanship, causes voting patterns in Georgia, it pointed only to testimony indicating that black candidates for the state legislature in 2020 were less likely to be elected in districts with more white voters. Doc. 333 at 455-57. But that is just another way of saying white and black voters tend to prefer different candidates, and it says nothing about whether those voting patterns are partisan or racial in nature. It restates something we already know to be true: where Democrats of any race run in Republican strongholds, they are going to lose. That means Democrats of *all* backgrounds—white, black, Asian-American, Latino, etc.—are likely to lose. But § 2 requires an “electoral process ‘equally open’ to all, not a process that favors one group over another.” *Gonzalez*, 535 F.3d at 598. If everyone is in the same boat, black voters have precisely the same “opportunity” as everyone else. 52 U.S.C. § 10301.

\* \* \*

“Unless courts ‘exercise extraordinary caution’ in distinguishing race-based redistricting from politics-based redistricting, they will invite the losers in the redistricting process

to seek to obtain in court what they could not achieve in the political arena.” *Cooper v. Harris*, 137 S. Ct. 1455, 1490 (2017) (Alito, J., concurring in part and dissenting in part) (citation omitted). This Court should reject that outcome here.

**B. Black voters enjoy equal opportunity and broad success in Georgia elections.**

Even setting aside the race/partisanship issue, Plaintiffs failed to establish vote dilution. They did not prove that black voters in Georgia have “less opportunity” to participate and elect “on account of race.” 52 U.S.C. § 10301. Black voters have no barriers to participation and show extraordinary success—usually punching above their weight. The district court could only hold otherwise by making numerous errors of law and fact as it examined the Senate Report Factors.

Senate Factors 1 & 3. The district court analyzed these two factors—“a history of voting-related [official] discrimination” and “voting practices ... [that] enhance the opportunity for discrimination” together, *Gingles*, 478 U.S. at 44-45, and it erred as a matter of law. No one doubts that, in the long past, Georgia engaged in official discrimination—the Secretary stipulated as much. Doc. 387 at 128. “But past discrimination cannot, in the manner of original sin, condemn governmental action that is not

itself unlawful.” *Bolden*, 446 U.S. at 74. And with respect to anything from the past *four decades*, the district court came up empty.

So instead, the district court changed the rules, looking to policies that (supposedly) have a “disparate impact” on black voters. Doc. 333 at 225, 227, 437 n.95, 444; *see also id.* at 214, 219, 224, 229, 431, 437, 442, 447, 484 (“disproportionate impact”). That was error; the question is whether the jurisdiction has engaged in “pervasive purposeful discrimination,” not policies that (arguably) have a disparate impact. *United States v. Marengo Cnty. Comm’n*, 731 F.2d 1546, 1567 (11th Cir. 1984).

This case is a good example as to *why* courts do not look to supposed “disparate impacts”—these questions inevitably turn into policy disputes. For example, the district court faulted Georgia for enacting voter ID laws, enacting laws regulating absentee and early voting, and updating voter registration lists. Doc. 333 at 224-30. But not only are these laws plainly legal, *see, e.g., Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008), this same district court *upheld* many of them against legal challenge, *see* Doc. 333 at 224, 443. The district court attempted to explain this discrepancy, *id.* at 225-27, 443-45, but it makes no sense. To say that these laws are legal but somehow evince a

“history of official discrimination” is incoherent. Factor 1 is concerned with *intentional discrimination*, not disagreements on election-administration policies.

Likewise, Factor 3 looks to electoral devices that can “enhance the opportunity for discrimination,” like “unusually large election districts, majority vote requirements, [or] anti-single shot provisions.” S.Rep. at 29. But the district court did not rely on any of these sorts of devices. And how could it? The record shows that a majority-vote requirement in 2020 led to the election of the black-preferred U.S. Senate candidate, Jon Ossoff, who would have otherwise lost. Doc. 270-5 at 55.

At best, the district court looked to isolated incidents. It criticized polling place closures—as reported by newspapers—in the 2020 primary. Doc. 333 at 222-24, 440-42. These declarations from newspapers are inadmissible and the court should have excluded them. *Roberts v. City of Shreveport*, 397 F.3d 287, 295 (5th Cir. 2005) (“[N]ewspaper articles [are] classic, inadmissible hearsay.”). In any event, the articles reveal little about Georgia’s typical election practices because the June 2020 primary was unique in modern American history. Even assuming Georgia’s response to COVID was not perfect, that hardly establishes that Georgia’s modern election practices tend to “enhance the

opportunity for discrimination against the minority group.” S.Rep. at 29.

Likewise, the court pointed to the at-large electoral system for Fayette County elections, successfully challenged in 2015. Doc. 333 at 439-40. But Fayette County can hardly speak for the State. *See Veasey v. Abbott*, 830 F.3d 216, 232 (5th Cir. 2016) (en banc) (explaining that the “actions of ... one county” do not reflect the whole of “a geographically vast, highly populous, and very diverse state”). Even if it could, that is a single example of a supposedly problematic electoral device over *decades* of Georgia history, and it does nothing to “enhance the opportunity for discrimination” in the State’s enacted districting maps.

Senate Factor 2. Even if the partisan causation of voting patterns is not dispositive, it critically undermines any claim of racial polarization. *See supra* § I.A. There is no evidence *at all* that majority voters change their votes in some sort of “backlash” against black candidate success. *Bolden*, 423 F. Supp. at 388. If majority voters were concerned about the success of black and black-preferred U.S. Senate candidates, their response—nominating *two* black U.S. Senate candidates in 2022—is inexplicable. The district court obviously erred in concluding that Factor 2 favors Plaintiffs.

Senate Factor 4. The district court acknowledged that no party uses a slating process that could injure minority voters. Doc. 333 at 242 n.57, 458 n.105, 483 n.128.

Senate Factor 5. The district court relied on small statistical disparities to conclude that black voters were “hinder[ed]” in the political process, Doc. 333 at 212, 243-45, 459-61, and even those small disparities are overstated because the district court legally erred in its chosen comparators. The district court compared black voter turnout to *white* voter turnout to conclude that black voters are at a disadvantage, but the court should have compared black voter turnout to *majority* voter turnout. Section 2 asks whether a minority is deprived as compared to the *majority*, not the plurality or some fraction of the majority. *See, e.g., LULAC*, 548 U.S. at 444 (examining whether “Anglos and Latinos” in the majority would defeat black candidates). To take one example, the district court noted a 13.3-point gap between black and white voter turnout in the 2022 general election, but the gap between black and *non-black* turnout was only 7.9 points. *See* Doc. 333 at 244; Ga. Sec’y of State, *Data Hub – November 8, 2022 General Election*, available at <https://bit.ly/3wbMPoi>. “Properly understood, the statistics show only a small disparity that provides little support for concluding that [Georgia’s] political processes are not equally open.”

Nos. 23-13916 & 23-13921  
(consolidated with No. 23-13914)

---

**In the United States Court of Appeals  
for the Eleventh Circuit**

---

COAKLEY PENDERGRASS et al.,  
*Plaintiffs-Appellees,*

ANNIE LOIS GRANT et al.,  
*Plaintiffs-Appellees,*

v.

SECRETARY OF STATE OF GEORGIA,  
*Defendant-Appellant.*

---

On Appeal from the United States District Court  
for the Northern District of Georgia  
Nos. 1:21-cv-05339 & 1:22-cv-00122—Steve C. Jones, Judge

---

***PENDERGRASS AND GRANT APPELLEES’  
SUPPLEMENTAL APPENDIX  
VOLUME VI OF VI***

---

Joyce Gist Lewis	Abha Khanna	Michael B. Jones
Adam M. Sparks	Makeba Rutahindurwa	ELIAS LAW GROUP LLP
KREVOLIN & HORST, LLP	ELIAS LAW GROUP LLP	250 Mass. Ave NW,
One Atlantic Center	1700 Seventh Ave,	Suite 400
1201 W. Peachtree St. NW,	Suite 2100	Washington, DC 20001
Suite 3250	Seattle, WA 98101	(202) 968-4490
Atlanta, GA 30309	(206) 656-0177	
(404) 888-9700		

*Counsel for Plaintiffs-Appellees in Nos. 23-13916 & 23-13921*



## INDEX OF APPENDIX

### Docket No.

### **Volume I**

Complaint .....	1
Order on Motions for Preliminary Injunction .....	97

### **Volume II**

Order on Motions for Preliminary Injunction (cont.) .....	97
Declaration of William S. Cooper .....	174-1
Expert Report of Orville Vernon Burton .....	174-5
Expert Report of Loren Collingwood .....	174-6

### **Volume III**

Expert Report of Loren Collingwood (cont.).....	174-6
Expert Report of John R. Alford.....	174-8
Pretrial Order .....	231
Excerpts from Trial Transcript (9/6/2023 AM).....	279
Excerpts from Trial Transcript (9/8/2023 PM).....	281
Excerpts from Trial Transcript (9/14/2023 AM).....	285
Order and Memorandum of Decision .....	286

### **Volume IV**

Order and Memorandum of Decision (cont.) .....	286
--	-----

### **Volume V**

Order and Memorandum of Decision (cont.) .....	286
Excerpts from Trial Transcript (9/11/2023 PM).....	292

Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) .....	26
---	----

**Volume VI**

Brief of the Secretary of State of Georgia, <i>Pendergrass v. Secretary, State of Georgia</i> , No. 23-13916 (11th Cir. Feb. 7, 2024) (cont.).....	26
--	----

Certificate of Service

*Brnovich*, 141 S. Ct. at 2345. And when it comes to voter *registration*, there is no disparity to speak of. Around 98% of *all* eligible voters are registered. Doc. 332 at 103.

Senate Factor 6. The district court acknowledged that campaigns in Georgia are not characterized by racial appeals, yet even here it succumbed to describing partisan activity as racial in nature. To use just one example, it classified a Governor Kemp ad—in which he promised to round up illegal immigrants in his truck—as “racial” in nature, apparently on the basis that opposing illegal immigration is not an acceptable point of view. Doc. 333 at 251 & n.63, 466 & n.112; *but see Brnovich*, 141 S. Ct. at 2349 (“[P]artisan motives are not the same as racial motives.”). The district court did not afford “great weight” to Factor 6, Doc. 333 at 252, 467, but it still veered into misplaced criticism of partisan campaign ads.

Senate Factor 7. To repeat: Georgia’s black voting age population is 31.7%. Doc. 333 at 265. Black candidates make up 35.7% of Georgia’s congressional delegation. *Id.* at 266. They make up 50% of the Senate delegation. *Id.* at 491. Both nominees for U.S. Senate in 2022 were black. Black candidates make up roughly 25% of the General Assembly. Doc. 333 at 255. They routinely win state-wide office. *Id.*; *see also supra* at 6-7.

Stunningly, against this backdrop, the district court declared that black Georgians have experienced only “isolated” success and they “continue to be underrepresented.” Doc. 333 at 253, 468.

The district court’s conclusion here is, for lack of a better term, preposterous. Black Georgians occupy huge swaths of Georgia’s elected offices: slightly above proportional in federal offices, slightly below in state offices. To conclude otherwise, the district court had to resort to “misleading ... statistics.” *Brnovich*, 141 S. Ct. at 2345. For example, it noted that “only 12 Black candidates” have been elected to Congress, but that overlooks that numerous candidates served in Congress for *decades*, like John Lewis and Sanford Bishop. Doc. 333 at 254, 468. These long-serving, repeatedly re-elected representatives are a sign of political strength, not weakness. Likewise, the district court minimized the number of statewide offices that black candidates have successfully obtained, but again, many of these candidates won repeatedly, like former Attorney General Thurbert Baker. *Id.* at 253, 468.

Courts have often called Factor 7 the “most important” factor; if minority candidates are constantly winning elections, there can be no serious claim of vote dilution. *Gingles*, 478 U.S. at 48 n.15. That is obviously the case in Georgia, and there is no clearer

example of the district court’s plain errors than its backwards understanding of Factor 7.

Additional factors. The district court acknowledged that there was no evidence that Georgia officeholders fail to respond to particularized concerns of the black community, and, critically, it found that the policies underlying the enacted maps were *partisan*, not *racial* in nature. Doc. 333 at 260-62, 475-76, 489-91. In other words, the maps are *not* intentionally discriminatory or anywhere close—they were designed to, in certain instances, “capitalize on a partisan advantage.” *Id.* at 262.

Finally, to the extent proportionality is relevant, the district court’s conclusion that black Georgians *lack* proportional representation is simply false. *Id.* at 265-66. By pure proportionality, black Georgians are slightly “overrepresented” in federal offices and slightly “underrepresented” in state offices. *See supra* at 40-41. And black-*preferred* candidates (Democrats) are “overrepresented” across the board. Doc. 333 at 491.

\* \* \*

It is easy to get bogged down in details, but at bottom the totality analysis is supposed to determine whether minority voters “have less opportunity” to “participate” and “elect.” 52 U.S.C. § 10301(b). Black voters have broad success in electing their

preferred candidates and black candidates. There are no barriers to registration and voting, which are extraordinarily easy in Georgia. Section 2 is “meant to hasten the waning of racism in American politics.” *De Grandy*, 512 U.S. at 1020. The district court found no racism in this case, and this Court should reverse.

## **II. The district court’s race-based remedy is not justified by present-day circumstances.**

If § 2 requires what the district court ordered—racial gerrymandering to solve a nonexistent problem—it is unconstitutional as applied. Prophylactic statutes like § 2 must be justified by the problem they address. *See City of Boerne*, 521 U.S. at 520. And they must be justified by conditions *today*, not when they were enacted. *Shelby County*, 570 U.S. at 536. So even if Congress at some point possessed authority to require electoral racial segregation as a remedy for purported vote dilution, that “authority ... cannot extend indefinitely into the future.” *Milligan*, 599 U.S. at 45 (Kavanaugh, J., concurring).

If Congress wants to continue demanding that Georgia and other states racially segregate their voters, *Congress* must explain that decision with detailed, current evidence justifying such a heavy intrusion on state authority. But Congress has not even attempted to do so since 1982 (arguably 1965), and this “sordid

business” must stop, *LULAC*, 548 U.S. at 511 (Roberts, C.J., concurring in part and dissenting in part), at least in cases where there is no evidence of any actual constitutional violation.

**A. Prophylactic legislation must reflect current conditions, but Congress has not updated § 2 in half a century.**

1. Congress enacted § 2 of the Voting Rights Act under its “power to enforce the [Fifteenth Amendment] by appropriate legislation.” U.S. Const. amend. XV, § 2; *City of Rome*, 446 U.S. at 179. Of course, the Fifteenth Amendment prohibits only “purposeful discrimination.” *Bolden*, 446 U.S. at 72. Section 2 goes further, prohibiting not intentional discrimination but anything that “results” in the denial or abridgement of the right to vote “on account of race or color.” 52 U.S.C. § 10301(a). Courts have interpreted that prohibition to reach far beyond the bounds of intentional discrimination. *See, e.g., Greater Birmingham Ministries*, 992 F.3d at 1328-29.

Here, for instance, Plaintiffs allege vote dilution. Of course, if a legislature *intentionally* places racial groups in particular districts to reduce their voting power, that is outright racial gerrymandering. To the extent § 2’s targets such circumstances, where jurisdictions really do sort voters into districts “on account

of race,” it simply replicates the Constitution’s ban on racial gerrymanders.

But courts have instead understood the results test to require a complicated multi-factor balancing test, examining disparate facts like the socioeconomic status of a minority group, the jurisdiction’s “history” of official discrimination, and the policy justifications for the legislature’s choices—none of which has any obvious bearing on intentional, present-day discrimination. *See supra* at 35-43. Courts are supposed to find that a legislative map “results” in vote dilution if, through some unclear alchemy, these various factors demonstrate that it does. All while being careful not to require *proportional* representation, which § 2 explicitly disclaims.

And the remedy § 2 imposes differs drastically from the remedy imposed for actual racial gerrymandering. Courts remedy racial gerrymandering by ordering jurisdictions to redraw districts without regard for race. Section 2, by contrast, *requires* assigning voters to districts based on their race to increase the number of majority-minority districts. *Milligan*, 599 U.S. at 30-31.

To be sure, Congress can, within narrow guardrails, prohibit state action that is not itself a violation of the Fifteenth Amendment’s substantive provisions. *City of Boerne*, 521 U.S. at



517-18. It may bar “a somewhat broader swath of conduct” in order to deter *actual* constitutional violations. *Hibbs*, 538 U.S. at 727. But “so-called prophylactic legislation” may not “substantively redefine the States’ legal obligations.” *Id.* at 727-28 (quotation omitted). Congress cannot use the power to enforce the Amendment to “alte[r] the meaning.” *City of Boerne*, 521 U.S. at 519. So, to ensure such legislation remains within its constitutional bounds, it must be congruent and proportional to the constitutional violations it purports to deter. *Id.* at 520.

Congruence and proportionality require Congress to compile evidence of pervasive unconstitutional conduct by the states and then craft an “appropriately limited response” to address that particular pattern of misconduct. *Nat’l Ass’n of the Deaf v. Florida*, 980 F.3d 763, 771, 773 (11th Cir. 2020); *see also Allen v. Cooper*, 140 S. Ct. 994, 1004 (2020). And “[t]he appropriateness of remedial measures must be considered in light of the evil presented,” *City of Boerne*, 521 U.S. at 530, so a heavy-handed remedy is justified only if the pattern of misconduct it aims to address is itself severe and pervasive.

Section 2, to the extent it requires sorting voters into electoral districts based solely on their race, is an especially heavy-handed remedy. “[D]istricting maps that sort voters on the basis of race

are by their very nature odious.” *Wis. Legislature v. Wis. Elections Comm’n*, 595 U.S. 398, 401 (2022) (quotation omitted). The Supreme Court, though, has indicated that § 2, as a tool for combatting unconstitutional racial gerrymandering, was within Congress’s “remedial authority” when it was enacted in 1965. *Milligan*, 599 U.S. at 41.

But just because § 2 was justified when it was enacted in 1965—or when it was last amended in 1982—does not mean it remains so today. Because “the Act imposes current burdens,” it “must be justified by current needs.” *Nw. Austin*, 557 U.S. at 203. Political and social conditions change over time, and conditions at the time of enactment—no matter how dire—cannot justify race-based remedies forever. *See Shelby County*, 570 U.S. at 547 (since the Act was passed, “things have changed dramatically”). Congruence and proportionality, in other words, are time-dependent inquiries that require contemporary evidence of pervasive unconstitutional state action. The question is *not* whether a remedy was permissible when the statute was enacted; “[t]he question is whether [the statute’s] extraordinary measures ... *continue* to satisfy constitutional requirements.” *Id.* at 536 (emphasis added).

The Supreme Court has demonstrated these points both in and outside the elections context. In *City of Boerne*, for instance, the Court held that the Religious Freedom Restoration Act was not adequately “confined” in part because it lacked a “termination date or termination mechanism.” 521 U.S. at 532. The Court observed that such mechanisms, although not necessarily required, “tend to ensure Congress’s means are proportionate.” *Id.* at 533. That is just another way of saying that a legislative act must be congruent and proportional over time, not just at the exact moment it is passed.

In an even more on-point example, the Supreme Court held invalid portions of the Voting Rights Act that relied on outdated evidence—even after it found that same evidence constitutionally sufficient in earlier cases. In *South Carolina v. Katzenbach*, 383 U.S. 301, 337 (1966), the Supreme Court upheld § 5’s preclearance requirement against constitutional attack. It was an “extraordinary measur[e],” but the nation faced “an extraordinary problem.” *Shelby County*, 570 U.S. at 534. Decades later, the factual ground had shifted. In *Shelby County*, the Court held the preclearance requirement’s coverage formula unconstitutional precisely because it was based on outdated evidence. *Id.* at 556-57. “At the time [of enactment], the coverage formula—the means of

linking the exercise of the unprecedented authority with the problem that warranted it—made sense.” *Id.* at 546. But “[n]early 50 years later, things ha[d] changed dramatically.” *Id.* at 547. “Voter turnout and registration rates ... approach[ed] parity. Blatantly discriminatory evasions of federal decrees [were] rare. And minority candidates [held] office at unprecedented levels.” *Id.* at 540 (quotation omitted). There was no longer a justification for the extreme prophylactic measure Congress had chosen: § 5 imposed “substantial federalism costs” based on data from 1965, but “history did not end in 1965.” *Id.* at 540, 552 (quotation omitted). Simply put, “while any racial discrimination in voting is too much, Congress must ensure that the legislation it passes to remedy that problem speaks to current conditions.” *Id.* at 557. That is because the Fifteenth Amendment “is not designed to punish for the past; its purpose is to ensure a better future.” *Id.* at 553.

**2.** Using the same constitutional test here, the district court’s application of § 2 is plainly invalid. To require racial gerrymandering as a remedy for purported vote dilution, Congress must adduce evidence that states *today* continue to engage in pervasive racial gerrymandering for the purpose of suppressing minority votes. It may not rely on a long-past history that has no

bearing on present-day political conditions. *See Veasey*, 830 F.3d at 232; *Greater Birmingham Ministries*, 992 F.3d at 1325.

But, as multiple members of the Supreme Court have suggested, that is precisely what § 2 does in the vote dilution context. It relies on a “generalized assertion of past discrimination [to] justify race-based redistricting” today. *Milligan*, 599 U.S. at 84 (Thomas, J., dissenting) (quotation omitted); *id.* at 45 (Kavanaugh, J., concurring) (echoing Justice Thomas’s concern). And it has no built-in “termination date” or logical endpoint; rather, it purports to govern state districting practices indefinitely. *Id.* at 83 (Thomas, J., dissenting) (quotation omitted).

Consider that the evidence Congress mustered in support of § 2 is, at this point, more than four decades old. *See* Pub. L. 97-205, § 3, 96 Stat. 131 (1982). And that’s just the 1982 amendment; the original version of the statute was enacted almost *60 years ago* in 1965. *See* Pub. L. 89-110, § 2, 79 Stat. 437 (1965). The Supreme Court’s treatment of the statute is likewise dated. *See Milligan*, 599 U.S. at 41 (the Court last considered § 2’s propriety “over 40 years ago,” before the results test was adopted). In practical terms, this means the evidence supposedly justifying § 2 is older than the evidence the Supreme Court found too outdated to

support the Act's coverage formula in *Shelby County*, 570 U.S. at 538, 556 (roughly 40 years old).

That alone is enough to render the statute unconstitutional. Congress has an obligation to “ensure” that prophylactic legislation “speaks to current conditions.” *Shelby County*, 570 U.S. at 557. It must “updat[e]” legislation to reflect changes on the ground. *Id.* And that requires compiling contemporary evidence and making the findings necessary to the statute's factual premises. Congress “cannot rely simply on the past.” *Id.* at 553.

That remains true even if present-day conditions actually do, in theory, justify continued application of the statute. Courts will not search for their own evidence justifying continued application; their role is limited to evaluating the “evidence before Congress.” *Hibbs*, 538 U.S. at 738; *see also Allen*, 140 S. Ct. at 1004 (“That assessment usually ... focuses on the legislative record.”); *Board of Trustees v. Garrett*, 531 U.S. 356, 370-71 (2001) (focusing on evidence “submitted ... directly to Congress” and its corresponding “legislative findings”). So if Congress wishes to continue § 2, it must do the necessary work. Where it has not, courts are left “with no choice but to declare [the statute] unconstitutional.” *Shelby County*, 570 U.S. at 557.

**B. In any event, political conditions today no longer justify § 2’s racialized remedy.**

1. That § 2 is premised on “decades-old data” is already fatal, *Shelby County*, 570 U.S. at 551, but even if it weren’t, it is clear from the evidence we have about political conditions today that race-based redistricting under § 2 is no longer justified. As with the coverage formula rejected in *Shelby County*, “things have changed dramatically,” 570 U.S. at 547, and § 2’s racialized remedy for vote dilution no longer bears any reasonable relationship to the situation on the ground.

Across the nation, minority communities today enjoy considerable political success. “[M]inority candidates hold office at unprecedented levels.” *Nw. Austin*, 557 U.S. at 202. Back in 2006, Congress itself—reflecting on progress made since the Voting Rights Act was enacted—noted “significant increases in the number of African-Americans serving in elected offices,” including a 1,000 percent increase in the six states, Georgia among them, originally covered by the Act’s preclearance requirements. H.R. Rep. No. 109-478 at 18 (2006). In those six states, voter registration and participation rates today are roughly equal for white and black voters; in some cases, black rates *exceed* white rates. See Dep’t of Commerce, Census Bureau, *Reported Voting and Registration of the Total Voting-Age Population, by Sex, Race*

*and Hispanic Origin, for States: November 2022* (Table 4b), available at <https://bit.ly/3tx312Q>. That, of course, is a drastic improvement over the large gaps in registration rates—as high as 63.2 points—in those states in 1965. *See* H.R. Rep. No. 109-478 at 12.

The evidence in this case proves much the same for Georgia, as noted above. *Supra* Part I.B. The extensive success of black and black-preferred candidates is the furthest thing from “isolated.” Doc. 333 at 257. Black Georgians are thoroughly represented in the State’s politics, a testament to the fact that voting in Georgia is “equally open” to all. *Brnovich*, 141 S. Ct. at 2338.

The district court’s decision does not reflect this present-day reality. Indeed, when it surveyed the history of racial discrimination in Georgia’s voting practices, the court found no instance of intentional discrimination more recent than the early 20th century. Doc. 333 at 216-17. The court even acknowledged that intentional discrimination does not characterize Georgia today and “commend[ed]” the State for its success in “increasing the access and availability of voting.” *Id.* at 232-33; *see also id.* at 258 (noting that the success of black candidates in Georgia is “promising”). The court had to rely on early history—Georgia in



the “Reconstruction Era,” not Georgia today—to justify its order. *Id.* at 214-15; *see also id.* at 258, 431-32, 472.

And in a maneuver that does as much as anything to show that either the district court was wrong or § 2 is unconstitutional, the court faulted Georgia legislators for their supposed “leadership position in challenging the [2006] reauthorization of the [Voting Rights Act].” *Id.* at 219 (quotation omitted). Without any evidence, the district court assumed Georgia opposed reauthorization to “resis[t] the expansion of voting rights to Black citizens.” *Id.* (quotation omitted). But there are many principled reasons to oppose the Act’s reauthorization, including the belief that courts often interpret it to require racial segregation to benefit one political party—as the district court did here. *See also, e.g., Shelby County*, 570 U.S. at 540 (noting that the Act “imposes substantial federalism costs” (quotation omitted)). If opposition to the district court’s view of the Voting Rights Act is *itself* evidence supporting § 2 liability, it only proves the point that the Act is unconstitutional as applied.

Most fatally, the district court found no evidence that Georgia, or any state, continues to engage in intentional racial gerrymandering, the wrong that race-based redistricting under § 2 purports to deter. In this case, the district court explicitly *found*

that the enacted maps were the result of partisan politics, not intentional racial discrimination. Doc. 333 at 260-62, 475-77, 489-91. But partisan gerrymandering is not racial gerrymandering. *See supra* § I.A.1. If the district court’s erroneous understanding of § 2 is correct, it is simply not constitutional as applied.

2. If, on the other hand, § 2 has not yet achieved its laudable goals, it is unclear when its explicitly racial remedies would ever become obsolete. When will it end? If the overwhelming success of black and black-preferred candidates in Georgia isn’t sufficient to render explicitly racial remedies unnecessary, what would be? If the unprecedented and irrefutable access to registration and the polls aren’t sufficient, what would be? Black voters in Georgia strongly prefer one political party, and they have enormous influence in that political party; again, if this isn’t enough to make racial gerrymandering obsolete, what would be? As the Supreme Court reiterated last term, racial classifications of *any kind* must be temporary. *Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 212 (2023). But on the district court’s interpretation, § 2 will continue to sort voters based on race with “no end ... in sight.” *Id.* at 213.

Statutes that classify Americans based on race, like § 2, “are by their very nature odious” to the Constitution’s promise of equal

protection. *Shaw v. Reno*, 509 U.S. 630, 643 (1993) (quotation omitted). So any race-based policy, if it is constitutional at all, “must have a logical endpoint.” *Grutter v. Bollinger*, 539 U.S. 306, 342 (2003). The alternative—permanent racial preferences—necessarily violates the “fundamental equal protection principle.” *SFFA*, 600 U.S. at 212 (quotation omitted).

Neither Congress nor anyone else has explained how much time must pass, or what metric must be achieved, before § 2 will stop sorting voters into districts based on their race. *Cf. id.* at 214 (“[I]t is unclear how courts are supposed to measure any of these goals.”). If the drastic improvements Georgia has already made—equal or approaching-equal rates of voter participation, unprecedented numbers of black representatives, easy access to the ballot—are not enough, it’s hard to see what would be. The Voting Rights Act certainly played a role in bringing about this preferable state of affairs, *see Shelby County*, 570 U.S. at 548, but that is a reason to say “job well done,” not a reason to continually expand the Act’s scope to reach conditions further and further removed from the imaginations of those who enacted it.

On the other hand, if a half-century of race-based redistricting has *not* alleviated the problem Congress set out to address, it is difficult to see how the statute is an “appropriate

response” to that problem. *Nat’l Ass’n of the Deaf*, 980 F.3d at 771 (quotation omitted). Either the Act has accomplished its goals (in which case the statutorily imposed racial segregation must end) or it has failed to do so in over half a century (in which case that “remedy” has proved futile).

The Constitution does not permit such an endeavor to go on forever without explanation. Congress must explain its choices with contemporary evidence. And “at some point,” every government-enforced racial classification “must end.” *SFFA*, 600 U.S. at 212.

\* \* \*

All of this can be avoided. If the Court holds that the district court erred here, that is enough. But if § 2 actually requires racial gerrymandering to create black-majority districts in modern-day Georgia, it has gone far beyond its constitutional prerogative.

### **III. There is no private cause of action to enforce § 2.**

Courts have frequently assumed a private right to enforce § 2, but it remains an “open question.” *Brnovich*, 141 S. Ct. at 2350 (Gorsuch, J., concurring). The Eighth Circuit, in the only thoroughly reasoned opinion on the issue, recently held that no private cause of action exists. *See Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204 (8th Cir. 2023). This Court

should reach the same conclusion. Section 2 provides no express cause of action for private plaintiffs, and the text and structure of the Voting Rights Act make it clear that Congress did not intend to implicitly create one. Nor may courts judicially “create one, no matter how desirable that might be as a policy matter.” *Alexander v. Sandoval*, 532 U.S. 275, 286-87 (2001).

**A. The Act’s text and structure show that Congress did not create a private cause of action.**

“Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress.” *Sandoval*, 532 U.S. at 286 (citation omitted). So the Court must look to “the statute Congress has passed” to determine whether plaintiffs have a cause of action. *Id.* And as with all statutory interpretation, text and structure are key. *Id.* at 288.

Section 2 itself contains no express cause of action. *Morse v. Republican Party of Va.*, 517 U.S. 186, 232 (1996) (plurality); 52 U.S.C. § 10301. Plaintiffs’ claims thus fail unless they can show that the Act impliedly confers a cause of action. In a bygone era, federal courts would liberally read causes of action into statutes to effectuate the courts’ loose view of “congressional purpose.” *J.I. Case Co. v. Borak*, 377 U.S. 426, 433 (1964). But the Supreme Court has long since “sworn off the habit.” *Sandoval*, 532 U.S. at

287; *see also Egbert v. Boule*, 596 U.S. 482, 491 (2022) (repudiating “the heady days in which [the] Court assumed common-law powers to create causes of action” (quotation omitted)). “[C]reating a cause of action is a legislative endeavor,” requiring a careful cost-benefit analysis for which courts are ill-equipped. *Egbert*, 596 U.S. at 491.

And Congress knows this. It is “undoubtedly aware” that federal courts will not discover causes of action where it has not specified one. *Krahalios v. Nat’l Fed’n of Fed. Emps., Local 1263*, 489 U.S. 527, 536 (1989). The Supreme Court’s decisions, many of which preceded the 1982 amendment to § 2, have “apprise[d]” Congress “that the ball” is “in its court.” *Cannon v. Univ. of Chicago*, 441 U.S. 677, 718 (1979) (Rehnquist, J., concurring) (collecting cases). Accordingly, federal courts today demand “clear evidence of congressional intent” before they will recognize a cause of action, *In re Wild*, 994 F.3d 1244, 1255 (11th Cir. 2021) (en banc). And if there is “even a single sound reason” to think Congress did not intend a private cause of action, the court “must refrain from creating” one. *Egbert*, 596 U.S. at 491 (quotation omitted and alteration adopted).

The textual evidence here shows that Congress specifically did *not* create a private cause of action to enforce § 2. Instead, in

§ 12 of the Act, Congress expressly empowered the Attorney General to enforce § 2 and the Act’s other provisions through criminal and civil actions. 52 U.S.C. § 10308(c). But § 12, like § 2, says nothing about private plaintiffs or private remedies. And that omission is critical. “The express provision of one [cause of action] suggests that Congress intended to preclude others.” *Sandoval*, 532 U.S. at 290.

The inclusion of another cause of action is entitled to such great weight that it may “preclude[e]” a “private right of action even though other aspects of the statute ... suggest the contrary.” *Id.* (citation omitted). Remember, the Voting Rights Act is a multi-pronged statute with a detailed enforcement process. *See* 52 U.S.C. §§ 10302, 10308, 10310. When Congress, in such a “comprehensive legislative scheme,” opts to specify public enforcement, the only permissible inference is that the private remedy was “deliberately omitted.” *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 147 (1985) (quotation omitted).

Federalism concerns and clear statement rules point the same way. If § 2 authorizes a broad category of individuals to upset a state’s redistricting process through private lawsuits, that would represent a significant intrusion upon states’ traditional authority to regulate elections. *See Shelby County*, 570 U.S. at 543. And

when Congress intends to invade an area of “quintessential” state power, “[w]e ordinarily expect a clear and manifest statement” expressing that intent. *Rapanos v. United States*, 547 U.S. 715, 738 (2006) (plurality) (quotation omitted); see also *Ala. Ass’n of Realtors v. Dep’t of Health & Human Servs.*, 141 S. Ct. 2485, 2489 (2021).

“If the 1965 Congress ‘clearly intended’ to create a private right of action, then why not say so in the statute? If not then, why not later, when Congress amended § 2?” *Ark. State Conf. NAACP*, 86 F.4th at 1214. The readily apparent reason is that Congress vested enforcement power in the Attorney General, not private parties.

**B. The district court’s arguments to the contrary are unavailing.**

Neither the district court nor Plaintiffs offered any compelling reason to recognize a private cause of action under § 2. The district court, for its part, gave the issue very little attention. See Doc. 65 at 31-34. Though it ultimately concluded that § 2 does create a private cause of action, it neglected to address the substance of the Secretary’s arguments or independently analyze the text of the Voting Rights Act. See *id.*



Instead, the district court uncritically deferred to a series of decisions from other district courts. *See* Doc. 65 at 32-33. But those decisions themselves failed to seriously engage with the merits of the private-cause-of-action debate, instead relying on the many times courts have simply *assumed* a private cause of action. *See id.* (collecting cases).

The district court also erroneously relied on *Morse*, 517 U.S. at 232. *See* Doc. 65 at 33. As the Eighth Circuit explained, *Morse* was a deeply fractured decision that considered the private enforceability of § 10 of the Voting Rights Act, not § 2. *Ark. State Conf. NAACP*, 86 F.4th at 1215-16. To the extent certain justices referred to a “private right of action under Section 2,” *Morse*, 517 U.S. at 232 (quotation omitted), that was a mere “background assumptio[n],” and the various opinions offered no explanation as to *why* § 2 would be privately enforceable. *Ark. State Conf. NAACP*, 86 F.4th at 1215-16. The statements were “mere dicta at most.” *Id.* at 1215; *see also Brnovich*, 141 S. Ct. at 2350 (Gorsuch, J., concurring) (noting that the Court has not decided the question).

Plaintiffs, for their part, tried to find a cause of action in § 3 of the Act. *See* Doc. 47 at 24-25. Section 3 authorizes various remedies, like appointing federal observers and suspending

discriminatory voting tests, “[w]henver the Attorney General or an aggrieved person institutes a proceeding under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment.” 52 U.S.C. § 10302(a).

But § 3 undermines Plaintiffs’ view. Unlike § 12, which explicitly empowers the Attorney General to enforce the Act’s substantive provisions through civil actions, § 3 does not authorize anyone to file a lawsuit. *Compare* § 10302(a) (§ 3) *with* § 10308(d) (§ 12). It references suits brought by “aggrieved person[s],” but it does not *create* a cause of action on their behalf. It merely recognizes private causes of action that *already* existed when that term was added to the statute in 1975, like constitutional challenges under 42 U.S.C. § 1983, “suits under § 5,” or any other causes of action “that [the Court] might recognize in the future.” *Morse*, 517 U.S. at 289 (Thomas, J., dissenting); *see also Ark. State Conf. NAACP*, 86 F.4th at 1211 (same).

Plus, if the plaintiffs’ reading is correct, § 3 would create a private cause of action not just for § 2 but for *all* voting rights statutes. *See* 52 U.S.C. § 10302 (referring to actions “under any statute”). That blank-check interpretation would upend the general principle that Congress must clearly and specifically express its intent to create a cause of action. *In re Wild*, 994 F.3d

at 1255. Congress did not hide such a large elephant in such a small mousehole. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).

## CONCLUSION

This Court should reverse the judgment below.

Respectfully submitted.

Bryan P. Tyson  
Bryan F. Jacoutot  
Diane F. LaRoss  
*Special Asst. Att'ys General*  
Taylor English Duma LLP  
1600 Parkwood Circle  
Suite 200  
Atlanta, Georgia 30339  
(678) 336-7249  
btyson@taylorenghish.com

/s/ Stephen J. Petrany  
Christopher M. Carr  
*Attorney General of Georgia*  
Stephen J. Petrany  
*Solicitor General*  
Paul R. Draper  
*Deputy Solicitor General*  
Office of the Georgia  
Attorney General  
40 Capitol Square, SW  
Atlanta, Georgia 30334  
(404) 458-3408  
spetrany@law.ga.gov

*Counsel for the Secretary of State of Georgia*

## **CERTIFICATE OF COMPLIANCE**

This document complies with the type-volume limitation of Rule 32(a)(7)(B) of the Federal Rules of Appellate Procedure because it contains 12,971 words as counted by the word-processing system used to prepare the document.

/s/ Stephen J. Petrany  
Stephen J. Petrany

### **CERTIFICATE OF SERVICE**

I hereby certify that on February 7, 2024, I served this brief by electronically filing it with this Court's ECF system, which constitutes service on all attorneys who have appeared in this case and are registered to use the ECF system.

/s/ Stephen J. Petrany  
Stephen J. Petrany

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that, on April 12, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: April 12, 2024

Abha Khanna

*Counsel for Plaintiffs-Appellees in  
Nos. 23-13916 & 23-13921*