No. 24-10230

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ALPHA PHI ALPHA FRATERNITY INC., a nonprofit organization on behalf of members residing in Georgia; SIXTH DISTRICT OF THE AFRICAN METHODIST EPISCOPAL CHURCH, a Georgia nonprofit organization; ERIC T. WOODS; KATIE BAILEY GLENN; PHIL BROWN; JANICE STEWART,

Plaintiffs-Appellants,

v.

SECRETARY, STATE OF GEORGIA.

Defendant-Appellee.

On Appeal from the United States District Court for the Northern District of Georgia, No. 1:21-cv-5337 (Hon. Steve C. Jones)

APPELLANTS' SUPPLEMENTAL APPENDIX

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INDEX OF APPENDIX

Doc. 333

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-05337-SCJ**
COAKLEY PENDERGRASS et al., **Plaintiffs,** **v.** **BRAD RAFFENSPERGER et al.,** **Defendants.**	**CIVIL ACTION FILE** **No. 1:21-CV-05339-SCJ**
ANNIE LOIS GRANT et al., **Plaintiffs,** **v.** **BRAD RAFFENSPERGER et al.,** **Defendants.**	**CIVIL ACTION FILE** **No. 1:22-CV-00122-SCJ**

OPINION AND MEMORANDUM OF DECISION

Winning Candidates in 2020 in Georgia House of Representatives

Percentage white registered voters in district	White Republicans[197]	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	O

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 unrebutted 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.

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 ±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 ±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.

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.

Doc. 354

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

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

PLAINTIFFS' OBJECTIONS TO DEFENDANT'S REMEDIAL PROPOSAL AND MEMORANDUM OF LAW

INTRODUCTION

Following a trial in which Plaintiffs proved illegal vote dilution under Section 2 of the Voting Rights Act in specific areas of Georgia, this Court gave Defendant very specific instructions. It identified specific areas of the State—south-metro Atlanta, west-metro Atlanta, and the area around Macon-Bibb—where vote dilution had been proven, and even delineated the boundaries of those areas by reference to particular clusters of districts in the enacted map. The Court ordered that a remedy must add new majority-Black districts *in those areas*.

Yet the 2023 Proposed Senate and House Plans leave the vote-dilution areas identified by the Court largely untouched. They provide no remedy for the vote dilution that was the subject of the September trial. They certainly do not "completely remedy" the violation, as the State was required to do. *United States v. Dallas Cnty. Comm'n*, 850 F.2d 1433, 1437-38 (11th Cir. 1988).

The numbers tell the story. For example, the 2023 Proposed Senate Plan increases the number of Black voters in Black-majority districts in the south-metro area as defined by the Court by a *net of only 3,000 voters*. A Senate district is nearly *180,000 people*, and the Court ordered Defendants to add *two* new majority-Black districts in the south-metro area. The inescapable conclusion is that the Proposed Plans do not come close to following the Court's order. Putting eyes on the 2023

Proposed Plans confirms the total failure of compliance: The State left Enacted Senate District 16, one of the central focuses of the September vote dilution trial, totally untouched; Enacted Senate District 17, another one of the key challenged districts in south-metro Atlanta, was renamed but retains almost the same geography, with a few Black-majority precincts shuffled in, and a few others shuffled out.

What the numbers and the maps show is that, instead of adding new majority-Black districts in the areas identified by the Court that were the subject of the trial and the Court's order, the 2023 Proposed Plans add "new" majority-Black districts anchored outside of the vote-dilution area, in places like Cobb County, north Dekalb County, and Gwinnett County—shifting around tens of thousands of Black voters in areas that have nothing to do with the geographically-defined vote dilution that Defendant was ordered to remedy. Those changes inflate the statewide number of Black-majority Senate and House districts, but they necessarily do not change the reality for Black voters in the areas, like south-metro Atlanta, identified by the Court.

The 2023 Proposed Plans fail to address the vote dilution found by this Court after trial. They instead perpetuate it. The Court should reject the 2023 Proposed Plans and take proper remedial action by appointing a Special Master or, in the alternative, entering Plaintiffs' proposed maps, which outperform the State's proposed plans on most every metric and comply with the Court's judgment.

PROCEDURAL BACKGROUND

Despite massive growth in the Black population, the General Assembly's 2021 Enacted Senate and House Plans kept the number of Black-majority districts essentially the same. Within hours of their passage, Plaintiffs challenged those plans under Section 2 of the Voting Rights Act. *See* ECF Nos. 1 & 26. After a six-day preliminary injunction hearing in February 2022, this Court held that Plaintiffs were likely to succeed on the merits in a number of areas, including with respect to Senate and House districts in the Metro Atlanta area, but nevertheless denied the motion. *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 587 F. Supp. 3d 1222, 1301 (N.D. Ga. 2022). The State held the 2022 elections using the unlawful maps.

Eighteen months later, following the Supreme Court's decision in *Allen v. Milligan*, 599 U.S. 1 (2023), which reaffirmed the *Gingles* vote-dilution framework for Section 2, this Court held a consolidated trial of multiple state legislative districting cases, including this case and *Grant v. Raffensperger*, No. 22-cv-122 (Jan. 11, 2022). Over the course of eight trial days in September, Plaintiffs proved the existence of vote dilution in specific, identified areas of Georgia's Senate and House maps, including and especially in the south-metro Atlanta area.

On October 26, 2023, the Court concluded that Plaintiffs had proven a lack of equal openness in Georgia's election system as a result of the challenged

congressional maps.[1] On December 1, 2023, after little debate and few opportunities for public comment, the State Senate passed the Georgia Senate Redistricting Act of 2023 ("SB1EX"), which revised that chamber's district boundaries on a near-party-line vote; the House in turn passed SB1EX on a party-line vote on December 5, 2023.[2] The House passed its own revised district lines on December 1, 2023 with the party-line passage of the Georgia House of Representatives Redistricting Act of 2023 ("HB1EX"). The State Senate followed suit, passing HB1EX along a party-line vote on December 5, 2023.[3] Governor Kemp signed SB1EX and HB1EX into law on December 8, 2023.

LEGAL STANDARD

At the remedial stage, this Court applies the same *Gingles* standard it considered at trial. However, "[w]hen ... the districting plan is offered as a replacement for one invalidated by the court," Plaintiffs no longer bear the burden

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[1] Jill Nolan, *Georgia special legislative session on tap for the holidays after judge tosses political maps*, Georgia Recorder (Oct. 27, 2023), https://georgiarecorder.com/2023/10/27/georgia-special-legislative-session-on-tap-for-the-holidays-after-judge-tosses-political-maps/.

[2] *See* Georgia General Assembly, SB1EX: Georgia Senate Redistricting Act of 2023, at https://www.legis.ga.gov/legislation/65851.

[3] *See* Georgia General Assembly, HB1EX: Georgia House of Representatives Redistricting Act of 2023, at https://www.legis.ga.gov/legislation/65850.

to prove a violation of the Voting Right Act. *See Wilson v. Jones*, 130 F. Supp. 2d 1315, 1322 (S.D. Ala. 2000), *aff'd sub nom. Wilson v. Minor*, 220 F.3d 1297 (11th Cir. 2000). Instead, the question is whether the proposed map perpetuates the violations identified by the Court after trial. Accordingly, the Court's liability findings are highly relevant to its review of a remedial plan. *See United States v. Dallas Cnty. Comm'n*, 850 F.2d 1433, 1438-39 (11th Cir. 1988).

A proposed remedial plan must "completely remedy the Section 2 violation." *Dillard v. Crenshaw Cnty.*, 831 F.2d 246, 252-53 (11th Cir. 1987); *accord Dallas Cnty. Comm'n*, 850 F.2d at 1437-38. It must "fully provide[] equal opportunity for minority citizens to participate and elect candidates of their choice." *Dallas Cnty. Comm'n*, 850 F.2d at 1437-38 (quoting S. Rep. No. 97-417, at 31 (1982)).

Moreover, a Section 2 violation in a particular area cannot be remedied by a plan that fails to account for the "vote-dilution injuries suffered by [the] persons" in that area. *Shaw v. Hunt*, 517 U.S. 899, 917 (1996). Therefore, a court must evaluate a proposed remedy under the *Gingles* standard to determine if it solves the Section 2 violation in the challenged areas. *Id.* "The requirement of a complete remedy means that we cannot accept a remedial plan that (1) perpetuates the vote dilution we found, or (2) only partially remedies it." *Singleton v. Allen*, 2023 WL 5691156, at *49-50 (N.D. Ala. Sept. 5, 2023) (citations and subsequent history omitted).

In addition, a Section 2 remedial plan should eschew districting considerations that may perpetuate vote dilution, like partisan gerrymandering, *cf. League of United Latin Am. Citizens v. Perry*, 457 F. Supp. 2d 716, 721 (E.D. Tex. 2006), "incumbency protection," *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 440-41 (2006), and core retention, *Allen v. Milligan*, 599 U.S. at 21. Although a remedial plan may "'be guided by the legislative policies underlying' a state plan – even one that was unenforceable," that guidance is limited by the extent to which those policies "'lead to violations of the Constitution or Voting Rights Act.'" *Perry v. Perez*, 565 U.S. 388, 393 (2012) (per curiam); *see also Dillard*, 831 F.2d at 249 ("[A]ny proposal to remedy a Section 2 violation must itself conform with Section 2.").

In the end, the Court has "not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future." *Louisiana v. United States*, 380 U.S. 145, 154 (1965). Here, that duty requires rejecting the State's proposal.

ARGUMENT

This Court heard testimony from 19 witnesses, reviewed 59 exhibits, and considered thousands of pages of briefs, expert reports, and post-trial proposed findings of fact and conclusions of law. It concluded that Georgia's 2021 Enacted

of the vote-dilution area identified by the Court. For example, and as noted, the 2023 Proposed Senate Plan's "new" Black-majority SD 17 (in Henry and Clayton Counties) is comprised almost entirely of 2021 Enacted SDs 10 and 44, both of which were already Black-majority districts, such that the vast majority of Black voters in this "new" district were already in a Black-majority district under the enacted plan. Cooper Decl. Ex. B at 2. The 2023 Proposed Senate Plan then shifts Senate Districts 10 and 44 up into north Dekalb County, displacing 2021 Enacted SD 42, a plurality-White (49.91%) district that is outside the vote-dilution area and unrelated to this case. In doing this, the 2023 Proposed Senate Plan moves 47,383 Black voters in north Dekalb County, where no vote dilution was alleged or found, into Black-majority districts. Cooper Decl. App'x 3 at 1. 2023 Proposed SD 28—the other "new" majority-Black district in Proposed Plan—plays the same shell game. The Black voters whom that district newly brings into a Black-majority district are almost entirely in Cobb County—well outside the Court's area of focus—and overall most of the Black voters in the district were already in Black-majority districts under the 2021 Enacted Plan. Cooper Decl. Ex. B at 3-4, App'x 3 at 1; *see also* Cooper Dec. Ex. B at 3-4.

The 2023 Proposed Senate Plan thus is not a lawful remedy. "If a § 2 violation is proved for a particular area," a remedy is required *for that area*; the harms suffered

by Black voters in that area is "not remedied by creating a safe majority-black district somewhere else in the State." *Shaw v. Hunt*, 517 U.S. 899, 917 (1996) (emphasis added); *accord League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 429 (2006). Allowing "new" Black-majority districts drawn outside the vote-dilution area to serve as a remedy would "impl[y] that the [vote dilution] claim, and hence the coordinate right to an undiluted vote (to cast a ballot equal among voters), belongs to the minority as a group and not to its individual members." *Shaw*, 517 U.S. at 917. That is not the law. *Id.*

The 2023 Proposed Senate Plan flouts those principles and this Court's clear directive. Black voters in Spalding County (including Griffin), in Tyrone or Fayetteville in Fayette County, or in much of Henry County (including portions of McDonough), receive no relief under the 2023 Proposed Senate Plan, and will remain unable to elect the candidate of their choice. 17,000 Black voters in neighboring Newton County are *removed* from a majority-Black district. *See* Cooper Decl. App'x 3 at 1. Rather than providing new opportunities for Black voters, the 2023 Proposed Senate Plan only moves Black voters from one majority-Black district to another while adding to Black-majority districts tens of thousands of Black voters from areas that are outside the vote-dilution area and were never at

issue at trial. This shell game necessarily fails to "completely remedy" the Section 2 violation. *E.g.*, *Dillard v. Crenshaw Cnty*, 831 F.2d 246, 252-53 (1987).

Nor can Defendant argue that any aspect of the 2023 Proposed Senate Plan was somehow necessary, or the best possible remedy. As William Cooper's remedial maps show, it was entirely possible to create two new majority-Black SDs in the vote dilution area. Mr. Cooper's Remedial Senate Plan changes the same number of overall districts, but in his Plan, the net number of Black voters who have been newly added to Black-majority SDs in the vote dilution area is 88,035. Cooper Decl. ¶ 21. The net number for that figure from outside the vote dilution area is *zero*. *Id*. The 2023 Proposed Senate Plan's intentional movement of Black voters outside of the area where the Court determined vote dilution is occurring, seemingly in order to hit racial targets for districts whose creation does not remedy vote dilution, is likely illegal. *See, e.g.*, *Cooper v. Harris*, 581 U.S. 285, 300-301 (2017); *see also Bush v. Vera*, 517 U.S. 952, 968-970 (1996) (plurality opinion) (race predominated when a legislature deliberately "spread[] the Black population" with no VRA compliance need). And in any case, it comes nowhere close to compliance with the Court's clear and specific order to add two additional majority-Black districts *in the identified area where unlawful vote dilution is occurring*.

II. The 2023 Proposed House Plan Also Fails to Remedy the Section 2 Violation

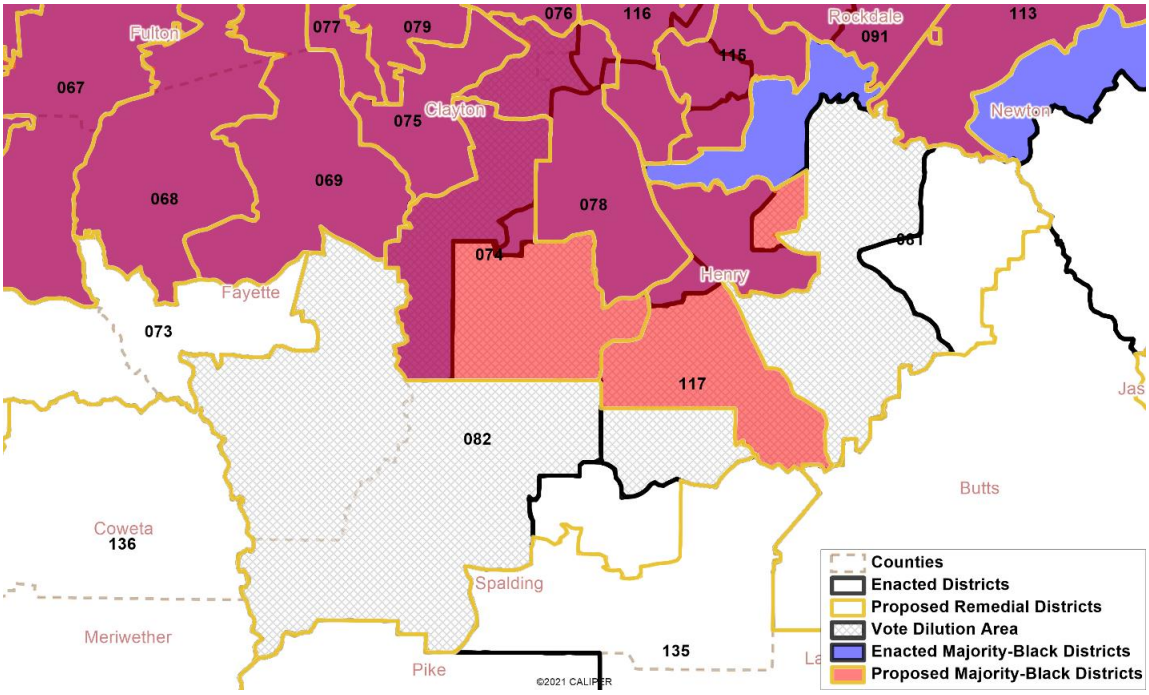
The 2023 Proposed House Plan is similarly non-compliant. As to the House, this Court identified three vote-dilution areas in south-metro Atlanta, western metro Atlanta, and Macon—the areas encompassed by Enacted House Districts ("HDs") 61, 64, 74, 78, 117, 133, 142, 143, 145, 147, and 149. *See Alpha Phi Alpha*, 2023 WL 7037537, at *144. After finding Section 2 violations in those three regions, it instructed the State to draw "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 districts in and around Macon-Bibb." *Id.* at *143.

Here too, the Court's Section 2 analysis was methodical and intensely local. It considered population changes, racial polarization, and the like in *those* areas, and it assessed vote dilution by looking at both sets of Plaintiffs' illustrative districts. *See Alpha Phi Alpha*, 2023 WL 7037537, at *10-13 (population changes), *83-*88 & *92-*98 (Metro Atlanta area), *104-*113 (Macon-Bibb area); 113-119 (racial polarization in areas of focus).

The Court found that the *Alpha Phi Alpha* and *Grant* Plaintiffs had collectively established Section 2 violations as to two districts in south-metro Atlanta, one district in western metro Atlanta, and two districts in central Georgia,

in and around Macon-Bibb. Specifically, in south-metro Atlanta, the Court identified the dilutive areas by reference to Cooper HD 74 (which consisted of Henry, Spalding, and the neighboring part of Clayton County) and Esselstyn HD 117 (in South Henry County). In western metro Atlanta, the Court found a Section 2 violation in the area covered by the *Grant* Plaintiffs' HD 64, across Douglas, Fulton, and Paulding Counties. *See Alpha Phi Alpha*, 2023 WL 7037537, at *92.

As with the Senate map, the General Assembly's responsibilities were clear. Because the voters in those delineated areas had been harmed by vote dilution, the remedy had to benefit those voters. But the 2023 Proposed House Plan does not comply with that directive. Start with south-metro Atlanta (depicted below). 2023 Proposed HDs 74 and 117 add portions of Henry County in the vote-dilution area into a new Black-majority district, but they also remove other portions of central Henry County (in blue) that had previously been included.



Cooper Decl. App'x 2 at 15.

The net BVAP increase in Black-majority districts for Henry County in the 2023 House Plan is 12,555—perhaps enough to create one new majority-Black district, but not enough for two. Cooper Decl. App'x 3 at 2. Meanwhile, the net increase of BVAP in Black-majority districts in Spalding and Fayette Counties is *zero*, and the net number in Newton County is negative. Cooper Decl. App'x 3 at 2. Across the south-metro Atlanta vote dilution area, a net 15,747 Black voters were moved into Black-majority districts, which is insufficient to bring any two of the existing non-majority-Black HDs in the vote dilution area above 50% BVAP. Cooper Decl. ¶ 42.

Doc. 370

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

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

PLAINTIFFS' REPLY BRIEF IN SUPPORT OF THEIR OBJECTIONS TO DEFENDANTS' REMEDIAL PROPOSAL

Make no mistake: The *Alpha Phi Alpha* Plaintiffs absolutely *do* contest whether the General Assembly's Proposed Plans create two additional Black-majority Senate Districts and two additional Black-majority House Districts in south-metro Atlanta, and one additional Black-Majority House District in west-metro Atlanta. Defendant's statement to the contrary on the first page of its brief is wrong.

Plaintiffs' objection is straightforward and compelled by the Voting Rights Act: The Proposed Plans do not create additional Black-majority opportunity districts in the areas where this Court determined that Black voters are being harmed by vote dilution in violation of Section 2. It does not matter that the Proposed Plans make changes in North Atlanta outside the vote-dilution areas identified by the Court. It does not matter that the Proposed Plans eliminate North Atlanta districts that were electing Democrats. What matters is that *the voters whose rights have been violated do not live in North Atlanta.*

A lawful remedial plan must create new opportunities for the Black voters who are being harmed by the vote dilution that was proven and found in south-metro Atlanta and other specific areas. Not just renumbered districts. New opportunities. The Proposed Plans do not do that, and the numbers, *which Defendant does not dispute*, prove this beyond any doubt. In the south-metro Counties that were a focus of trial and of this Court's intensely local appraisal and determination of vote dilution—counties like Fayette, Spalding, Henry, and Newton—the number of Black voters in Black-majority districts went up by less than

3,000 for the entire Proposed Senate Plan. By contrast, almost 100,000 Black voters in North Atlanta, where no vote dilution was alleged or found, were shuffled around in order to increase the total number of Black-majority districts and create the illusion of a remedy. The problem is not that these changes alter the political reality for Black voters in North Atlanta. The problem is that it maintains the status quo for Black voters in the south-metro Atlanta area.

Defendant does not even contest the point, arguing instead only that the configuration of the Proposed Plans served partisan goals. *See* Consol. Resp. to Pls.' Objs. Regarding Remedial Plans ("Def.'s Br.") at 50. That is unavailing. Partisan goals, "whatever [their] validity in the realm of politics, cannot justify" a Section 2 violation. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 441 (2006); *see also Perry v. Perez*, 565 U.S. 388, 393 (2012) (per curiam) (courts "should be guided by the legislative policies underlying a state plan ... to the extent those policies do not lead to violations of the Constitution or the Voting Rights Act." (quoting *Abrams v. Johnson*, 521 U.S. 74, 79 (1997)).

The fundamental problem with the Proposed Plans is not that they seek to achieve partisan goals, but that they do so while disregarding the Court's order to remedy vote dilution in south-metro and west-metro Atlanta. They do not remedy the harm *to Black voters in particular areas of Georgia* which this Court found. This Court should sustain Plaintiffs' objections and put a lawful remedy into place.

I. Defendant Misstates the Standard for VRA Injuries and Remedies

Defendant's basic conception of harm and remedy here is wrong. Defendant argues that the General Assembly need only "draw the additional majority-Black districts in the defined *regions*," Def.'s Br. at 27, regardless of whether the purported "additional" districts change anything for Black *voters*. Defendant touts the fact that "more Black individuals of voting age will now be included in majority-Black districts," even as he concedes that this is true almost entirely by dint of changes *outside the area where Black voters are injured by vote dilution*—and even though in that area there has been little more than a "reshuffling of Black voters from existing majority-Black districts." Def.'s Br. at 43. He even wrongly suggests that, by focusing on the harms the

Court found to Black voters in south-metro Atlanta, west-metro Atlanta, and the area around Macon-Bibb arising from vote dilution, Plaintiffs are "mov[ing] the goalposts." *Id.* at 43-44.

But these goal posts are set by black letter law. The scope of the harm dictates the scope of the remedy required. That is why "a district court's remedial proceedings bear directly on and are inextricably bound up in its liability findings," Def.'s Br. at 23 (citing *Wright v. Sumter Cty. Bd. Of Elections & Registration*, 979 F.3d 1282, 1302-03 (11th Cir. 2020)). And here, the Court found specific harms—violations of the Voting Rights Act impacting Black voters in "south-metro Atlanta," "west-metro Atlanta," and "in and around Macon-Bibb." Pls.' Objs. to Def.'s Remedial Proposal & Memo. of Law ("Pls.' Br."), at 4 (quoting *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 2023 WL 7037537, at *143 (N.D. Ga. Oct. 26, 2023)). The remedy must follow that harm.

The State's attempt to divorce the Court's liability findings—which were grounded in Plaintiffs' evidence and which focused on south-metro Atlanta, west-metro Atlanta, and the area around Macon-Bibb—and the Court's remedial findings is entirely at odds with both long-standing

principles of equity and the requirements of Section 2. Traditional principles of equity dictate that "the nature of the violation determines the scope of the remedy." *Mississippi State Chapter, Operation Push, Inc. v. Mabus*, 932 F.2d 400, 406 (5th Cir. 1991). Injunctive relief is by definition tailored "to fit the nature and extent of the ... violation established." *Haitian Refugee Ctr. v. Smith*, 676 F.2d 1023, 1041 (5th Cir. 1982). It is the very "essence of equity jurisdiction … to mould each decree to the necessities of the particular case." *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15 (1971) (internal quotation marks omitted). Thus, courts "should not, in the name of state policy, refrain from providing remedies fully adequate to redress … violations which have been adjudicated and must be rectified." *White v. Weiser*, 412 U.S. 783, 797 (1973).

Remedying violations of Section 2 requires application of these principles. The Senate Report that accompanied the 1982 Amendments to Section 2 emphasized "[t]he basic principle of equity that the remedy fashioned must be commensurate with the right that has been violated." and expected courts to "exercise [their] traditional equitable powers to

fashion ... relief so that it completely remedies the prior dilution of minority voting strength and fully provides equal opportunity for minority citizens to participate and to elect candidates of their choice." S. Rep. No. 97-417, at 31 (1982). Congress expected courts to "exercise [their] traditional equitable powers to fashion ... relief so that it completely remedies the prior dilution of minority voting strength and fully provides equal opportunity for minority citizens to participate and to elect candidates of their choice." *Id.*; *see also Singleton v. Allen*, No. 2:21-CV-1291-AMM, 2023 WL 5691156, at *73 (N.D. Ala. Sept. 5, 2023) (citing same). In Section 2 cases, the question is whether the remedial plan corrects the "original violation" found, *Dillard v. Crenshaw Cnty.*, 831 F.2d 246, 248 (11th Cir. 1987), which here includes harm from vote dilution to Black voters in south-metro Atlanta, west-metro Atlanta, and the area around Macon-Bibb, Pls.' Br. at 4.

Because the Proposed Plans do not remedy the harms suffered by *those specific* Black voters in *those specific* areas of Georgia, the Court cannot accept them. *Cf. United States v. Osceola Cnty.*, 474 F. Supp. 2d 1254, 1256 (M.D. Fla. 2006) (refusing to accept a jurisdiction's remedial

plan because it included two at-large seats that would be "completely out of reach of the Hispanic community" that the Court had found to be harmed by vote dilution); *United States v. Village of Port Chester*, 704 F. Supp. 2d 411, 450-52 (S.D.N.Y. 2010) (requiring that a jurisdiction implement an "education program and election day support for Spanish-speakers" so that a proposed remedial plan that introduced a new voting system would be fully understood by the Hispanic voters experiencing the Section 2 violation the court had found).

II. Defendant Mischaracterizes *Shaw v. Hunt*

Defendant's attempted reliance on *Shaw v. Hunt*, 517 U.S. 899 (1996), is misplaced. *See* Def.'s Br. at 28-30. While states do "retain broad discretion in drawing districts to comply with the mandate of §2," *Shaw*, 517 U.S. at 917 n.9, that discretion does not permit a state legislature to ignore the "intensely local appraisal" conducted by a district court when it comes to fashioning a remedy for proven violations of federal law. *See Allen v. Milligan*, 599 U.S. 1, 19 (2023) (citation omitted). The discretion owed to the state "has limits." *League of United Latin Am. Citizens*, 548 U.S. at 429.

The Supreme Court made clear in *Shaw*, moreover, that "[i]f a § 2 violation is proved for *a particular area,* . . . [t]he vote-dilution injuries suffered by the[] persons [residing in that area] are not remedied by creating a safe majority-black district somewhere else in the State." *Shaw*, 517 U.S. at 917 (emphasis added). The example provided in *Shaw* is illustrative: "[I]f a geographically compact, cohesive minority population lives in south-central to southeastern North Carolina," a remedial district that spans the north-central region of the state would not address the Section 2 violation because the "black voters of the south-central to southeastern region would still be suffering precisely the same injury that they suffered before [the misplaced remedial district] was drawn." *Id.* According to *Shaw*, a majority-Black district drawn elsewhere, away from where the Section 2 violation was found, cannot be

CERTIFICATE OF SERVICE

I hereby certify that on September 30, 2024, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court for the U.S. Court of Appeals for the Eleventh Circuit using the CM/ECF system, which will automatically send a notice of the electronic filing to all registered CM/ECF users who have entered an appearance in the case.

Dated: September 30, 2024 */s/ Ari Savitzky*
Ari Savitzky