

Grant, Annie Lois, et al.v. Raffensperger, Brad, E

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

ANNIE LOIS GRANT, et al.,

Plaintiffs,

vs.

CIVIL ACTION FILE

NO. 1:22-CV-00122-SCJ

BRAD RAFFENSPERGER, in
his official capacity as
the Georgia Secretary of
State, et al.,

Defendants.

DEPOSITION OF ELROY TOLBERT

Taken by Remote Conference

February 9, 2023

9:04 a.m.

Valerie N. Almand, RPR, CRR, CRC

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1 MS. CLAPP: Good morning, everyone. This
2 will be the deposition of Mr. Elroy Tolbert, taken
3 by Defendant Brad Raffensperger and members of the
4 state election board, for the purpose of discovery
5 and all purposes allowed under the Federal Rules
6 of Civil Procedure.

7 All objections except those going to the
8 form of the question and the responsiveness of the
9 answer are reserved until trial or the first use
10 of the deposition.

11 Are those stipulations agreeable to you,
12 Counsel?

13 MS. RUTAHINDURWA: Agreed.

14 MS. CLAPP: Great, thank you. And how do
15 you wish to handle signature?

16 MS. RUTAHINDURWA: We'll reserve
17 signature.

18 MS. CLAPP: Okay, thanks.

19 ELROY TOLBERT,
20 being duly sworn, was examined and testified as
21 follows:

22 EXAMINATION

23 BY MS. CLAPP:

24 Q. Mr. Tolbert, will you state your full
25 name for the record, please.

1 A. Elroy Tolbert.

2 Q. Great, thank you. My name is Hannah
3 Clapp. I'm an attorney with Taylor English Duma.
4 I represent the defendants in this matter.

5 The purpose of this deposition is not to
6 confuse you, so if I ask you a question that you
7 don't fully understand, can we agree that you will
8 let me know?

9 A. Yes, I will.

10 Q. Thank you. And for the court reporter,
11 please speak clearly and loud enough so that she
12 can be sure to -- so that she can hear you. Be
13 sure some say yes or no as opposed to uh-huh or
14 huh-uh, and try to give audible answers as opposed
15 to nodding your head up and down. It's important
16 that we don't speak at the same time, especially
17 since we're on Zoom, it makes it a little more
18 difficult, so please wait until I finish my
19 question before you answer.

20 If you need a break at any time, let me
21 know. You can wave, say something. I'm happy to
22 stop. But before we do that I ask that you answer
23 the last question that I asked you before we take
24 a break.

25 And we also ask that you don't have any

1 electronic devices available during your
2 deposition, including your cell phone, your email,
3 Facebook, don't life Tweet this or anything like
4 that. Certainly you'll need to keep Zoom open on
5 your computer, but do you agree to not have your
6 cell phone on or email, text messaging or any
7 social media open during your deposition?

8 A. I agree.

9 Q. Thank you. I'll go ahead and share my
10 screen. All right. Can you see my screen,
11 Mr. Tolbert?

12 A. Yes, I can.

13 Q. Okay, great, thank you. And do you
14 recognize this as your notice to take the
15 deposition of Elroy Tolbert?

16 A. Yes, I do.

17 (Defendants' Exhibit 1 marked)

18 BY MS. CLAPP:

19 Q. And are you familiar with this document?

20 A. Yes, I am.

21 Q. Okay, great, thank you. I have some
22 preliminary questions before we get into the meat
23 of the matter. Have you ever given any prior
24 testimony, whether that be in a deposition or a
25 trial?

1 A. Yes, I have.

2 Q. Okay. And how many times?

3 A. It's been several times.

4 Q. Several times, okay. Can you describe
5 those instances.

6 A. They were pertaining to my job. I'm a
7 retired law enforcement officer.

8 Q. Okay. Did those cases go to trial?

9 A. Maybe one.

10 Q. Maybe one. Can you give me a rough time
11 period that that testimony would have been?

12 A. That had to be about six years ago.

13 Q. Okay. That was the last one?

14 A. Yes.

15 Q. Okay. And what kind of cases were they?

16 A. To my recollection, it was a traffic
17 accident, I mean, where someone was killed.

18 Q. Oh, yikes, I'm sorry to hear that. Thank
19 you for your service. I know it's not an easy
20 line of work to be in.

21 A. Right.

22 Q. How long were you in law enforcement?

23 A. 36 years.

24 Q. Wow. And when did you retire?

25 A. 2019, September.

1 Q. Back to my preliminary questions --
2 sorry, I was trying to share my screen again.
3 Back to my preliminary questions, have you taken
4 any medications that would keep you from fully and
5 truthfully participating in today's deposition?

6 A. No, I have not.

7 Q. And do you have any medical conditions
8 that would keep you from fully and truthfully
9 participating in today's deposition?

10 A. No, I don't.

11 Q. Okay. Have you ever been involved in any
12 prior lawsuits, whether that be yourself or a
13 family member, related to any election-related
14 matters or cases?

15 A. No, I haven't.

16 Q. Have you made any prior claims, whether
17 that be you personally or a family member, with
18 any election-related claims?

19 A. No, I haven't.

20 Q. Have you ever been charged with a crime?

21 A. No, I haven't.

22 Q. Have you ever been arrested?

23 A. No, I haven't.

24 Q. Have you ever been convicted of a crime?

25 A. No.

1 Q. Have you discussed this case with anyone
2 other than your lawyer?

3 A. No, I haven't.

4 Q. Have you discussed the deposition with
5 anyone other than your lawyer?

6 A. No, I haven't.

7 Q. Did you review anything to prepare for
8 your deposition?

9 A. Repeat that question again.

10 Q. Did you review anything to prepare for
11 your deposition?

12 A. Yes, I did.

13 Q. What did you look at?

14 A. Just the paperwork you just showed me.

15 Q. Okay. What made you look at that
16 document?

17 A. I guess it was to get me familiarized. I
18 haven't seen it in quite awhile.

19 Q. Right. And did those documents help
20 refresh your recollection as to events you will
21 testify to here today?

22 A. Yes, it did.

23 Q. Do you have any documents or notes with
24 you today?

25 A. No, I don't.

1 Q. Do you have any notes or memos or other
2 documents that relate in any way to this case?

3 A. No, I don't.

4 Q. All right. Mr. Tolbert, can you state
5 your current address for the record.

6 A. [REDACTED]

7 Macon, Georgia [REDACTED]

8 Q. How long have you lived in Macon?

9 A. Since 1988.

10 Q. Have you always lived at that same
11 address?

12 A. No I haven't.

13 Q. And for the record, what county do you
14 live in?

15 A. Bibb, Macon-Bibb.

16 Q. You said that was [REDACTED]?

17 A. [REDACTED].

18 Q. Can you spell that?

19 A. [REDACTED]

20 Q. I want to make sure I'm referring to the
21 correct address when I ask about it. Where did
22 you live before the [REDACTED]?

23 A. [REDACTED]. That's also Macon.

24 Q. Is that the same county?

25 A. Yes.

1 Q. Okay. And when did you move from
2 [REDACTED] to your current address?

3 A. 2017.

4 Q. When did you move to the [REDACTED]
5 address?

6 A. 1999.

7 Q. All right. And how long have you lived
8 in Macon-Bibb County?

9 A. Since '88.

10 Q. What about the state of Georgia?

11 A. All my life.

12 Q. What other counties have you resided in
13 in Georgia?

14 A. Baldwin County.

15 Q. What time period was that?

16 A. That's where I was born.

17 Q. Okay. Makes it pretty easy. Some
18 plaintiffs have moved all around, so their
19 residential history was quite lengthy.

20 A. Right.

21 Q. And just to be clear for the record, have
22 you ever resided in any other state?

23 A. No, I haven't.

24 Q. And where are you testifying from today?

25 A. Macon.

1 Q. Is this the [REDACTED]
2 address?

3 A. Correct.

4 Q. Okay. And is there anyone there with you
5 today?

6 A. No.

7 Q. Okay. We'll start with your education.
8 Where did you go to high school?

9 A. Baldwin High School.

10 Q. And what year did you graduate?

11 A. 1981.

12 Q. What city is Baldwin High School in?

13 A. Milledgeville. Milledgeville, Georgia.

14 Q. Okay. And did you go to college after
15 that?

16 A. No, I didn't.

17 Q. And do you have any other education or
18 training?

19 A. Law enforcement training.

20 Q. Okay. What does that consist of?

21 A. Well, I took the training in FMCSA, the
22 Federal Motor Carrier Safety Alliance.

23 Q. Okay.

24 A. And peace officer certification, Georgia
25 peace officer certification. And also the Georgia

1 Department of Corrections certification.

2 Q. Got you. Who did you work with as law
3 enforcement?

4 A. Are you talking about what department?

5 Q. Yes, sir.

6 A. Department of public safety.

7 Q. Okay. What city were you working in?

8 A. I was in charge of 22 counties, so it
9 wasn't just one single. I had a whole territory.

10 Q. Okay. Can you generally describe what
11 territory that was.

12 A. It was the southwest.

13 Q. Okay. And was that for the entire time
14 you were in law enforcement? You said it was 37
15 years?

16 A. 36 years.

17 Q. 36 years.

18 A. It was about -- that was roughly around
19 15 years.

20 Q. Okay. What time period was that?

21 A. From 2004, I think, till I retired, 2000
22 and -- when was it, '19.

23 Q. Okay. What region were you working in
24 before 2004?

25 A. Central Georgia.

1 Q. And can you describe some of the duties
2 you had working for the department of public
3 safety.

4 A. I made traffic -- I made commercial -- I
5 mean traffic stops on commercial motor vehicles.

6 Q. Okay. Do you have any other work history
7 prior to your law enforcement work?

8 A. No, no more than just off-duty work.

9 Q. Okay.

10 A. Law enforcement off-duty work, security
11 work.

12 Q. What kind of off-duty work did you have?

13 A. Did security around the World Congress
14 Center, the Georgia Dome, different events such as
15 that.

16 Q. Okay.

17 A. Yeah. More like events.

18 Q. And when you were in law enforcement did
19 you have any supervisory authority?

20 A. No.

21 Q. And do you have any other training or
22 continuing education related to your law
23 enforcement work?

24 A. No.

25 Q. We kind of covered education and your

1 employment history all in one.

2 A. Good.

3 Q. All right. On to your voter registration
4 history. Are you registered to vote in Georgia?

5 A. Yes, I am.

6 Q. Do you remember where you registered to
7 vote?

8 A. In Bibb County.

9 Q. Okay. When did you register?

10 A. In '88.

11 Q. Okay. Have you ever registered anywhere
12 else?

13 A. No, I haven't.

14 Q. Are you registered to vote at your
15 current address?

16 A. Yes, I am.

17 Q. And do you know what district you resided
18 in before the recent redistricting took effect?

19 A. I can't remember right off of my head.
20 144, something like that.

21 Q. I think most people don't really know the
22 district numbers off the top of their heads. It's
23 something we can look into.

24 A. All right.

25 Q. Have you voted in each election since

1 you've been registered to vote in Georgia?

2 A. Yes, I have.

3 Q. So general elections?

4 A. Yes.

5 Q. Primary elections?

6 A. Yes.

7 Q. And what about special elections?

8 A. Yes.

9 Q. Okay. Do you know what precinct you
10 voted in for the November 2022 election?

11 A. I don't know the number. I know the
12 area.

13 Q. Yeah, the area works.

14 A. Area, it was in the, what we call the
15 north Macon area.

16 Q. Okay. Do you know like what building it
17 was? Was it a library or a church?

18 A. A church. It was in a church.

19 Q. Do you know the name of the church?

20 A. Mabel White was one of them, and I can't
21 think of the other church since I moved out here
22 on this side of town. They're both in church
23 locations.

24 Q. And do you know where you voted for the
25 runoff?

1 A. Do I know where I voted for the runoff?

2 Q. Yeah, where you voted for the runoff.

3 A. Where I voted?

4 Q. Yes, sir.

5 A. Like I said, one of those churches.

6 Mabel White, or either that other church since I
7 moved out here.

8 Q. Okay. And I know you said you've only
9 lived in Georgia, but have you ever voted in any
10 other state?

11 A. No.

12 Q. Okay. Do you consider yourself to be a
13 member of the Democratic party?

14 A. Yes, I am.

15 Q. And since when?

16 A. Since I started voting.

17 Q. And have you held any leadership position
18 in that party?

19 A. No, I haven't.

20 Q. Have you ever held any position or served
21 on any committee of the Democratic party?

22 A. No, I haven't.

23 Q. Have you participated in any activities
24 of the Democratic party?

25 A. Once.

1 Q. What would that have been?

2 A. I helped -- I tried to help register
3 voters.

4 Q. And when was that?

5 A. That had to be about at least 12 years
6 ago.

7 Q. Okay. Have you ever considered yourself
8 to be a member of the Republican party?

9 A. No.

10 Q. Is it fair to say you generally support
11 Democratic candidates for election in Georgia?

12 A. I do.

13 Q. Have you ever voted for a Republican
14 candidate?

15 A. Yes, I have.

16 Q. Do you remember who and when?

17 A. Yes, it was a governor election, it
18 was -- my mind just went blank then. Governor
19 Purdue.

20 Q. Okay. Do you remember what year that
21 was?

22 A. It was in the nineties.

23 Q. Okay. Have you ever been a member or
24 held a position in any other political party?

25 A. No, I haven't.

1 Q. Have you worked on any political
2 campaigns?

3 A. No.

4 Q. Have you ever been involved with any
5 voter advocacy groups?

6 A. No, I haven't.

7 Q. All right. When did you first learn
8 about this lawsuit?

9 A. A gentleman gave me a phone call, a
10 random phone call. They asked me would I be
11 interested.

12 Q. Do you remember who called you?

13 A. Not off the top of my head. I know it
14 was in June.

15 Q. This was June of 2022?

16 A. Yes.

17 Q. And when were you approached or contacted
18 by an attorney about the case?

19 A. Shortly after I got the phone call.

20 Q. And what made you decide to join and sue
21 the secretary of state?

22 A. When it was explained to me for the
23 reason.

24 Q. So on the same phone call?

25 A. Yes.

1 Q. Okay. And what are you hoping this
2 lawsuit accomplishes?

3 A. Fairness.

4 Q. Can you elaborate?

5 A. I just want it to be equal opportunity
6 for each -- I mean, for the Democratic party.

7 Q. In what way is equal opportunity not
8 available for the Democratic party?

9 A. Well, I seen times I go to the poll, I
10 didn't have nobody to represent my concerns, or --

11 Q. Okay. And when did you first communicate
12 with a lawyer about the case?

13 A. It was after that phone call.

14 Q. Okay. Do you remember who it was?

15 A. It's been some time back, so no, I don't.

16 Q. All right. And did you attend any
17 meetings to discuss this case before you had hired
18 an attorney?

19 A. No.

20 Q. And what research did you do concerning
21 the issues in this case and as to your attorneys?

22 A. No more than just read some of the stuff
23 that was emailed to me.

24 Q. Who emailed you stuff?

25 A. The guy -- the lawyer that I got in touch

1 with after the phone call.

2 Q. Okay. And what research did you do as to
3 your attorneys?

4 A. Research -- excuse me? What's that
5 question again?

6 Q. What research did you do as to your
7 attorneys? Like did you Google them? Did you
8 look at their bios on their website?

9 A. No, I didn't.

10 Q. Do you know if there's any kind of fee
11 contract between you and your attorneys?

12 A. No.

13 Q. And are you being paid or have you
14 received anything of value in return for your
15 participation as a plaintiff in this case?

16 A. No I haven't.

17 Q. Okay. I'm going to go ahead and share my
18 screen again. This is the complaint, marking this
19 as Exhibit 2.

20 (Defendant's Exhibit 2 marked)

21 BY MS. CLAPP:

22 Q. Have you ever seen this document before?

23 A. Yes, I have.

24 Q. When did you see it for the first time?

25 A. In an email.

1 Q. Do you know what time period that email
2 was sent to you?

3 A. It was well over about six, maybe six
4 months ago.

5 Q. Okay. So this case was filed in January
6 of 2022, and you were approached in June of 2022?

7 A. Somewhere around there.

8 Q. Okay. Somewhere around June of 2022.

9 A. Right.

10 Q. Okay. And have you read these documents
11 in full?

12 A. What's that question again? Have I what?

13 Q. Have you read this document in its
14 entirety?

15 A. Yes.

16 Q. Okay. And do you know the allegations
17 contained in the document?

18 A. Yes.

19 Q. All right. And did you reach out to any
20 legislator during the 2021 special session
21 concerning the redistricting issues raised in your
22 complaint?

23 A. No, I haven't.

24 Q. How about before or after the special
25 session?

1 A. No.

2 Q. Did you testify in the Georgia assembly
3 on the issues or any issues pertaining to
4 redistricting in 2021?

5 A. No, I haven't.

6 Q. Did you attend any hearings in the
7 Georgia legislature pertaining to redistricting?

8 A. No.

9 Q. And did you attend any other meetings
10 concerning redistricting in 2021?

11 A. No.

12 Q. Okay. Do you know what the term
13 "community of interest" means?

14 A. Do I know what?

15 Q. What the term "community of interest"
16 means.

17 A. No, I don't.

18 Q. Okay. Can you describe your community,
19 what your community is to you.

20 A. It's a small community. I am involved,
21 you know, with the community through youth. I try
22 to help the youth. It's just a small community.

23 Q. Okay. And where would you say you were
24 from?

25 A. Where I'm from?

1 Q. Yes, sir.

2 A. I'm from Milledgeville.

3 Q. And do you or have you participated in
4 any neighborhood or community associations?

5 A. Yes.

6 Q. What kinds of associations?

7 A. I am assistant basketball coach at a
8 local high school.

9 Q. How long have you been doing that?

10 A. Six years.

11 Q. Did you play basketball in high school?

12 A. Yes, I did.

13 Q. Pretty neat. Is this the first time back
14 being coaching?

15 A. Yes, since I -- six years ago I started.

16 Q. Okay.

17 A. Yeah.

18 Q. How's it going?

19 A. It's like a roller coaster.

20 Q. Like a roller coaster, that sounds about
21 right. If you're coaching high school kids it
22 can't be easy. And are you a member of any
23 faith-based group or organization?

24 A. Member of my church.

25 Q. And where is your church located?

1 A. Forest Hill Road, Macon, Georgia. I
2 don't know the ZIP right offhand but it's on
3 Forest Hill Road in Macon, Georgia.

4 Q. Okay. And what's the name of the church?

5 A. Lundy Chapel.

6 Q. Could you repeat that?

7 A. Lundy Chapel Baptist Church.

8 Q. How long have you been going to Lundy
9 Chapel?

10 A. I've been going to Lundy now about at
11 least six years or longer.

12 Q. Is it pretty close to your home?

13 A. Yes, it is.

14 Q. Okay. Do you regularly attend services
15 there?

16 A. Yes, I do.

17 Q. And are you involved with any activities
18 or groups at your church?

19 A. I'm the head of security.

20 Q. How long have you been head of security
21 there?

22 A. About three or four years now.

23 Q. Okay.

24 A. As long as I've been retired.

25 Q. And are you involved in any school

1 associations or activities other than basketball?

2 A. No, I'm not.

3 Q. What about a fraternity?

4 A. No, I'm not.

5 Q. And are you involved in any civic
6 organizations?

7 A. No, I'm not.

8 Q. And outside of work and church -- well, I
9 guess you're retired -- where do you spend most of
10 your time?

11 A. Home.

12 Q. Have you ever been prohibited from
13 registering to vote based on your race?

14 A. No.

15 Q. Have you ever been prohibited from
16 participating in the political process based on
17 your race?

18 A. No.

19 Q. Do you have any personal knowledge --
20 this is kind of a long question, so I'll say it
21 kind of slow: Do you have any personal knowledge
22 of discrimination by the government of Georgia
23 against members of a minority group related to
24 participation in the Democratic process?

25 A. No, I don't.

1 Q. In your opinion do black voters in
2 Georgia generally vote for Democratic candidates?

3 A. They do.

4 Q. Do you know if Georgia uses a majority
5 vote requirement in its elections?

6 A. Repeat that question again.

7 Q. Do you know if Georgia uses a majority
8 vote requirement in its elections?

9 A. No, I don't know.

10 Q. All right. Are you familiar with the
11 term "candidate slating process" as it's used in
12 elections?

13 A. No, I'm not.

14 Q. In your opinion does a lack of education
15 keep people of color from participating in Georgia
16 politics?

17 A. I would say sometimes.

18 Q. Can you elaborate?

19 A. I think some people don't know the
20 process, and they don't try to educate themselves
21 for the process.

22 Q. And by "process" are you referring to
23 voting in general?

24 A. Just research on the candidate.

25 Q. Okay.

1 A. Yeah.

2 Q. Do you have any personal experience of
3 this, whether that be friends or family?

4 A. Yes.

5 Q. Do you believe that a lack of employment
6 opportunities keep people of color from
7 participating in Georgia politics?

8 A. Repeat that again.

9 Q. Do you believe a lack of employment
10 opportunities keep people of color from
11 participating in Georgia politics?

12 A. No.

13 Q. Does a lack of access to health services
14 in your opinion keep people of color from
15 participating in Georgia politics?

16 A. No.

17 MS. RUTAHINDURWA: Objection -- oh,
18 sorry. Objection, speculation. Can you repeat
19 the question, sorry.

20 MS. CLAPP: Did you say you want me to
21 repeat the question?

22 MS. RUTAHINDURWA: Yeah, that was a
23 belated objection. I just want to keep the record
24 clean.

25 BY MS. CLAPP:

1 Q. Does a lack of access to health services
2 in your opinion keep people of color from
3 participating in Georgia politics?

4 MS. RUTAHINDURWA: Objection,
5 speculation. Can you answer if you know.

6 THE WITNESS: What was that?

7 MS. RUTAHINDURWA: You can answer, if you
8 know.

9 A. I don't know.

10 BY MS. CLAPP:

11 Q. Are you familiar with the term "racial
12 appeals" when used in the context of elections?

13 A. Yes.

14 Q. Have you personally seen campaigns in
15 Georgia characterized by racial appeals?

16 A. Yes.

17 Q. And what were those appeals?

18 A. I've seen some lack of -- in certain
19 areas, lack of volunteer help that makes the lines
20 longer in certain areas, in my opinion.

21 Q. Okay. And are there any other racial
22 appeals that you know of?

23 A. I've seen people, you know, they always
24 said you can't campaign close to the polling.

25 I've seen other ethnic groups campaigning close to

1 the polls for their candidacy.

2 Q. Okay. Have you seen the similar
3 treatment of Republican white and black
4 candidates?

5 A. Have I seen what, now?

6 Q. The similar treatment of Republican white
7 and black candidates?

8 A. To be honest with you, I haven't seen --
9 I haven't seen that on the Democratic side. I've
10 seen it on the Republican side.

11 Q. Okay. All right. Do you know how many
12 black people have run for office in Georgia?

13 A. No, I don't.

14 Q. Do you know how many black people have
15 been elected to public office in Georgia?

16 A. No, I don't.

17 Q. Did you know that the former chief
18 justice of the Georgia Supreme Court was black,
19 and that that position is an elected one?

20 A. No, I didn't know that.

21 Q. And are you aware that in 2021 Senator
22 Raphael Warnock, a black candidate, was elected
23 statewide to the United States Senate?

24 A. Yes, I do know that.

25 Q. And are you aware that Herschel Walker,

1 another black candidate, ran on the Republican
2 ticket and was elected by a wide margin in the
3 Republican primary by exclusively Republican
4 voters?

5 A. Yes, I do know that.

6 Q. Are you aware that the United States
7 Senate is a state-wide office and that both major
8 political parties are represented by people who
9 are black?

10 A. Repeat that again.

11 Q. Sure. Are you aware that the United
12 States Senate is a state-wide office and that both
13 major political parties are represented by people
14 who are black?

15 A. Yes.

16 Q. Okay. Are there any needs of the
17 minority people in Georgia that in your opinion
18 differ from white residents?

19 A. Yes.

20 Q. Can you elaborate?

21 A. Again, polling places. Some of them are,
22 how to put it, are well staffed, well represented,
23 in compared to some in the Democratic districts.

24 Q. Is your polling location not well
25 staffed?

1 A. I think it is.

2 Q. Do you have family or friends that, to
3 your knowledge, have problems with staffing --
4 have problems with staffing at their polling
5 locations?

6 A. Yes, I do.

7 Q. Okay. And what are the particular needs
8 of the minority community in Georgia -- sorry,
9 I'll rephrase the question. What are particular
10 needs of the minority community in Georgia in your
11 view.

12 A. Needs?

13 Q. Yes, sir.

14 A. In what way are you talking about?

15 Q. I mean, it can range from anything from
16 more access to like better healthcare, education,
17 just a variety of things.

18 A. All the above.

19 Q. All of the above. Okay. And what is
20 that opinion based on?

21 A. Just looking at the numbers, I mean, if
22 you look at the numbers, just like I'm a coach,
23 and just looking at the -- in the school system,
24 where they're located at. Some are well funded,
25 some are not.

1 Q. Do you see any correlation between the
2 well-funded schools and the not-well funded
3 schools?

4 A. Yes, I do.

5 Q. In what ways?

6 A. Just as an example, sponsorship. I see
7 some schools get sponsorship and some don't, and
8 according to their need.

9 Q. Sponsorship by whom?

10 A. Private.

11 Q. Like companies?

12 A. Yes.

13 Q. Okay.

14 MS. CLAPP: Okay, I think we're done or
15 at least I'm done. Makeba, did you have anything?

16 MS. RUTAHINDURWA: No, I'm good.

17 MS. CLAPP: Mr. Tolbert, thank you for
18 your time today. I appreciate you hopping on an
19 early Zoom call. I wish you the best with the
20 rest of your day.

21 (Deposition concluded at 9:42 a.m.)

22 (Signature reserved)

23

24

25

1 CERTIFICATE

2 STATE OF GEORGIA:

3 COUNTY OF FULTON:

4 I hereby certify that the foregoing
5 transcript was taken down, as stated in the caption,
6 and the colloquies, questions and answers were
7 reduced to typewriting under my direction; that the
8 transcript is a true and correct record of the
9 evidence given upon said proceeding.

10 I further certify that I am not a relative
11 or employee or attorney of any party, nor am I
12 financially interested in the outcome of this
13 action.

14 I have no relationship of interest in this
15 matter which would disqualify me from maintaining my
16 obligation of impartiality in compliance with the
17 Code of Professional Ethics.

18 I have no direct contract with any party
19 in this action and my compensation is based solely
20 on the terms of my subcontractor agreement.

21 Nothing in the arrangements made for this
22 proceeding impacts my absolute commitment to serve
23 all parties as an impartial officer of the court.

24 / 2023.

25 

Valerie Almand, CRR, RPR, CRC, B-531

VERITEXT LEGAL SOLUTIONS
FIRM CERTIFICATE AND DISCLOSURE

Veritext represents that the foregoing transcript as produced by our Production Coordinators, Georgia Certified Notaries, is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the certified court reporter in this case. Veritext further represents that the attached exhibits, if any, are a true, correct and complete copy as submitted by the certified reporter, attorneys or witness in this case, and that the exhibits were handled and produced exclusively through our Production Coordinators, Georgia Certified Notaries. Copies of notarized production certificates related to this proceeding are available upon request to litsup-ga@veritext.com.

Veritext is not taking this deposition under any relationship that is prohibited by OCGA 15-14-37(a)and(b). Case-specific discounts are automatically applied to all parties, at such time as any party receives a discount. Ancillary services such as calendar and financial reports are available to all parties upon request.

1 TO: Makeba Rutahindurwa, Esquire

2 Re: Signature of Deponent Elroy Tolbert

3 Date Errata due back at our offices: 30 days

4
5 Greetings: The deponent has reserved the right to
6 read and sign. Please have the deponent review the
7 attached PDF transcript, noting any changes or
8 corrections on the attached PDF Errata. The
9 deponent may fill out the Errata electronically or
10 print and fill out manually.

11
12 Once the Errata is signed by the deponent and
13 notarized, please mail it to the offices of Veritext
14 (below).

15
16 When the signed Errata is returned to us, we will
17 seal and forward to the taking attorney to file with
18 the original transcript. We will also send copies
19 of the Errata to all ordering parties.

20
21 If the signed Errata is not returned within the time
22 above, the original transcript may be filed with the
23 Court without the signature of the deponent.

24 Please send completed Errata to:

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20 Mansell Court

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1 ERRATA

2 I, the undersigned, do hereby certify that I have
3 read the transcript of my testimony, and that

4 ___ There are no changes noted.

5 ___ The following changes are noted:

6 Pursuant to Rule 30(7)(e) of the Federal Rules of
7 Civil Procedure and/or OCGA 9-11-30(e), any changes
8 in form or substance which you desire to make to
9 your testimony shall be entered upon the deposition
10 with a statement of the reasons given for making
11 them. To assist you in making any such corrections,
12 please use the form below. If additional pages are
13 necessary, please furnish same and attach.

14 Page _____ Line _____

15 Change_____

16 Page _____ Line _____

17 Change_____

18 Page _____ Line _____

19 Change_____

20 Page _____ Line _____

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22 Page _____ Line _____

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18 _____

19 Page _____ Line _____
Change_____

20 _____

21 DEPONENT'S SIGNATURE

22 Sworn to and subscribed before me this ____ day of
_____, _____.

23

24 _____
NOTARY PUBLIC

25 My Commission Expires:_____

[00122 - atlanta]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

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

ANNIE LOIS GRANT, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSBERGER, in his
official capacity as the Georgia
Secretary of State, *et al.*,

Defendants.

CIVIL ACTION FILE NO.
1:22-CV-00122-SCJ

**DEFENDANTS' NOTICE TO TAKE THE DEPOSITION
OF ELROY TOLBERT**

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, counsel for Defendants Brad Raffensperger, in his official capacity as Secretary of State of Georgia; William S. Duffey Jr., in his official capacity as chair of the State Election Board; and Matthew Mashburn, Sara Tindall Ghazal, Edward Lindsey, and Janice Johnston, will take the oral examination of Elroy Tolbert on Thursday, February 9, 2023, beginning at 9:00 a.m. and continuing thereafter until completed via Zoom videoconferencing through Veritext Legal Solutions. Details regarding the videoconferencing will be emailed to those participating once all arrangements are finalized.

EXHIBIT

1

The deposition shall be taken before a Notary Public or some other officer authorized by law to administer oaths for use at trial. The deposition will be taken by oral examination with a written and/or sound and visual record made thereof (*e.g.*, videotape, LiveNote, etc.). The deposition will be taken for the purposes of cross-examination, discovery, and for all other purposes permitted under the Federal Rules of Civil Procedure or any other applicable law.

This 2nd day of February, 2023.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2023, I caused a copy of the foregoing to be served by electronic mail on all counsel of record.

/s/ Bryan P. Tyson

Bryan P. Tyson

Attorney for Defendants

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

ANNIE LOIS GRANT; QUENTIN T.
HOWELL; ELROY TOLBERT; THERON
BROWN; TRIANA ARNOLD JAMES;
EUNICE SYKES; ELBERT SOLOMON;
and DEXTER WIMBISH;

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as the Georgia Secretary of State;
SARA TINDALL GHAZAL, in her
official capacity as a member of the State
Election Board; ANH LE, in her official
capacity as a member of the State Election
Board; EDWARD LINDSEY, in his
official capacity as a member of the State
Election Board; and MATTHEW
MASHBURN, in his 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 Senate Redistricting Act of 2021 (“SB 1EX”) and the Georgia House of Representatives Redistricting Act of 2021 (“HB 1EX”) on the ground that they violate Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301.

EXHIBIT

2

2. In undertaking the latest round of redistricting following the 2020 decennial census, the Georgia General Assembly diluted the growing electoral strength of the state’s Black voters and other 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 in the Georgia State Senate and Georgia House of Representatives.

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 population¹—in multiple legislative districts throughout the state, including two additional majority-Black State Senate districts in the southern Atlanta metropolitan area, one additional majority-Black State Senate district in the central Georgia Black Belt region, two

¹ 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.”

additional majority-Black House districts in the southern Atlanta metropolitan area, one additional majority-Black House district in the western Atlanta metropolitan area, and two additional majority-Black House districts anchored in Bibb County. These additional majority-Black legislative districts can be drawn without reducing the total number of districts in the region and statewide in which Black and other minority voters are able to elect their candidates of choice.

4. Rather than draw these State Senate and House districts as those in which Georgians of color would have the opportunity to elect their preferred candidates, the General Assembly instead chose to “pack” some Black voters into limited districts in these areas 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 additional legislative districts in which Black voters have opportunities to elect their candidates of choice.

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

7. Accordingly, Plaintiffs seek an order (i) declaring that SB 1EX and HB 1EX violate Section 2 of the Voting Rights Act; (ii) enjoining Defendants from

conducting future elections under SB 1EX and HB 1EX; (iii) requiring adoption of valid plans for new State Senate and House districts in Georgia that comport 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 Annie Lois Grant is a Black citizen of the United States and the State of Georgia. Ms. Grant is a registered voter and intends to vote in future legislative elections. She is a resident of Greene County and located in Senate District 24 and House District 124 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia State Senate despite strong electoral support for those candidates from other Black voters in her community. Ms. Grant 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 State Senate 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. Grant and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

12. Plaintiff Quentin T. Howell is a Black citizen of the United States and the State of Georgia. Mr. Howell is a registered voter and intends to vote in future legislative elections. He is a resident of Baldwin County and located in Senate District 25 and House District 133 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Howell resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in newly drawn State Senate and House districts 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. Howell and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

13. Plaintiff Elroy Tolbert is a Black citizen of the United States and the State of Georgia. Mr. Tolbert is a registered voter and intends to vote in future legislative elections. He is a resident of Bibb County and located in Senate District 18 and House District 144 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Tolbert 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 House 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. Tolbert and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

14. Plaintiff Theron Brown is a Black citizen of the United States and the State of Georgia. Ms. Brown is a registered voter and intends to vote in future legislative elections. She is a resident of Houston County and located in Senate District 26 and House District 145 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. Brown 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 House 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. Brown and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

15. 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 legislative elections. She is a resident of Douglas County and located in Senate District 30 and House District 64 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia 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 House 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 Georgia General Assembly.

16. Plaintiff Eunice Sykes is a Black citizen of the United States and the State of Georgia. Ms. Sykes is a registered voter and intends to vote in future

legislative elections. She is a resident of Henry County and located in Senate District 25 and House District 117 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. Sykes resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in newly drawn State Senate and House districts 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. Sykes and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

17. Plaintiff Elbert Solomon is a Black citizen of the United States and the State of Georgia. Mr. Solomon is a registered voter and intends to vote in future legislative elections. He is a resident of Spalding County and located in Senate District 16 and House District 117 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Solomon resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority

of eligible voters in newly drawn State Senate and House districts 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. Solomon and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

18. Plaintiff Dexter Wimbish is a Black citizen of the United States and the State of Georgia. Mr. Wimbish is a registered voter and intends to vote in future legislative elections. He is a resident of Spalding County and located in Senate District 16 and House District 74 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Wimbish resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in newly drawn State Senate and House districts 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. Wimbish and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

19. 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 legislative redistricting plans. *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 nonvoting 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).

20. 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).

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).

22. Defendant Edward Lindsey 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).

23. 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).

LEGAL BACKGROUND

24. 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.

25. 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).

26. 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).

27. 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.

28. 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).

29. The Senate Report on the 1982 amendments to the Voting Rights Act identified several non-exclusive 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.

30. 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

31. Between 2010 and 2020, Georgia’s population increased by more than 1 million people.

32. 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 Legislative Redistricting Plan

33. In enacting Georgia's new State Senate and House maps, the Republican-controlled General Assembly diluted the political power of the state's minority voters.

34. On November 9, 2021, the Georgia State Senate passed SB 1EX, which revised that chamber's district boundaries. The House passed SB 1EX on November 15.

35. On November 10, 2021, the Georgia House of Representatives passed HB 1EX, which revised that chamber's district boundaries; the State Senate passed HB 1EX on November 12.

36. On December 30, 2021, Governor Kemp signed SB 1EX and HB 1EX into law.

37. 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.

38. The Republican majority's refusal to draw districts that reflected the past decade's growth in the state's minority communities was noted by lawmakers.

Commenting on the new State Senate map, Senator Michelle Au observed, “It’s our responsibility to ensure the people in this room are a good reflection of the people in this state. This map before us does not represent the Georgia of today. It does not see Georgia for who we have become.” Senator Elena Parent remarked, “This map is designed to shore up the shrinking political power of the majority. As proposed, it fails to fairly reflect Georgians[’] diversity.”

39. Minority lawmakers in the House also objected to their chamber’s new map, noting that it packed minority voters and diluted their voting strength.

40. Rather than create additional State Senate and House districts in which Georgia’s growing minority populations would have the opportunity to elect candidates of their choice, the General Assembly did just the opposite: it packed and cracked Georgia’s minority voters to dilute their influence.

41. SB 1EX packs some Black voters into the southern Atlanta metropolitan area and cracks others into rural-reaching, predominantly white State Senate districts. Specifically, Black voters in the southwestern Atlanta metropolitan area are packed into Senate Districts 34 and 35 and cracked into Senate Districts 16, 28, and 30. In the southeastern Atlanta metropolitan area, Black voters are packed into Senate Districts 10 and 44 and cracked into Senate Districts 17 and 25. Two additional majority-Black State Senate districts could be drawn in the southern

Atlanta metropolitan area without reducing the total number of minority-opportunity districts in the enacted map.

42. SB 1EX also cracks Black voters in the Black Belt among Senate Districts 23, 24, and 25. An additional majority-Black State Senate district could be drawn in this area without reducing the total number of minority-opportunity districts in the enacted map.

43. HB 1EX packs some Black voters into the southern and western Atlanta metropolitan area and cracks others into rural-reaching, predominantly white districts. Specifically, Black voters in the western Atlanta metropolitan area are packed into House District 61 and cracked into House District 64. In the southern Atlanta metropolitan area, Black voters are packed into House Districts 69, 75, and 78 and cracked into House Districts 74 and 117. Two additional majority-Black House districts could be drawn in the southern Atlanta metropolitan area, and one additional majority-Black House district in the western Atlanta metropolitan area, without reducing the total number of minority-opportunity districts in the enacted map.

44. HB 1EX further packs Black voters into two House districts anchored in Bibb County—House Districts 142 and 143—even though two additional majority-Black House districts could be drawn in this area by uncracking House

Districts 133, 144, 145, 147, and 149, without reducing the total number of minority-opportunity districts in the enacted map.

45. This combination of cracking and packing dilutes the political power of Black voters in the Atlanta metropolitan area and central Georgia. The General Assembly could have instead created additional, compact State Senate and House districts 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.

46. Unless enjoined, SB 1EX and HB 1EX will deny Black voters throughout the state the opportunity to elect candidates of their choice.

47. The relevant factors and considerations readily require the creation of majority-Black districts under Section 2.

Racial Polarization

48. 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).

49. “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 the Democratic candidate.

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

51. 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

52. 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 Black Georgians continue to experience socioeconomic hardship and marginalization.

53. 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.

54. 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.

55. 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.

56. 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.

57. 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.”

58. 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.”

59. 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.

60. 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 legislative plans that reduced number of majority-minority districts).

61. 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, prohibiting any changes to Georgia’s election practices or procedures (including the enactment of new redistricting plans) 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.

62. 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.

63. 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”).

64. 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

65. 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.

66. 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, “Do 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.”

67. 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.

68. 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.”²

69. 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 Black member of Congress. State Senator Millar said, “I’ll be very blunt. These lines

² 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>.

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.”

70. 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.

71. 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.

72. 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.”

73. 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.

74. 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.

75. Racial appeals were apparent during local elections in Fulton County even within the last few months. 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.

76. 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

77. 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.

78. 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 voters in each of these groups to participate effectively in the political process.

79. 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.

80. 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.

81. 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.

82. 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.

83. 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 1EX Violates Section 2 of the Voting Rights Act

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

85. 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).

86. The Georgia State Senate 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.

87. Black Georgians in the southern Atlanta metropolitan area and the central Georgia Black Belt region are sufficiently numerous and geographically compact to constitute a majority of eligible voters in three additional State Senate districts, without reducing the number of minority-opportunity districts already included in the enacted map.

88. Under Section 2 of the Voting Rights Act, the General Assembly was required to create three additional State Senate districts in which Black voters in these areas would have the opportunity to elect their candidates of choice.

89. Black voters in Georgia, particularly in and around these areas, are politically cohesive. Elections in these areas reveal a clear pattern of racially polarized voting that allows blocs of white voters usually to defeat Black voters' preferred candidates.

90. The totality of the circumstances establishes that the current State Senate 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.

91. 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.

COUNT II:
HB 1EX Violates Section 2 of the Voting Rights Act

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

93. The Georgia House of Representative 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.

94. Black Georgians in the southern and western Atlanta metropolitan area and central Georgia are sufficiently numerous and geographically compact to constitute a majority of eligible voters in five additional House districts, without reducing the number of minority-opportunity districts already included in the enacted map.

95. Under Section 2 of the Voting Rights Act, the General Assembly was required to create five additional House districts in which Black voters in these areas would have the opportunity to elect their candidates of choice.

96. Black voters in Georgia, particularly in and around these areas, are politically cohesive. Elections in these areas reveal a clear pattern of racially polarized voting that allows blocs of white voters usually to defeat Black voters' preferred candidates.

97. The totality of the circumstances establishes that the current House 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.

98. 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 1EX and HB 1EX violate 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 Georgia State Senate districts as drawn in SB 1EX and the boundaries of the Georgia House of Representatives districts as drawn in HB 1EX, including an injunction barring Defendants from conducting any further legislative elections under the current maps;

C. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to order the adoption of a valid legislative redistricting plan that includes three additional Georgia State Senate districts and five additional Georgia House of Representatives districts in which Black voters would have opportunities to elect their preferred candidates, as required by

Section 2 of the Voting Rights Act, without reducing the number of minority-opportunity districts currently in SB 1EX and HB 1EX;

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: January 11, 2022

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**Pro hac vice application forthcoming*