

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

ANNIE LOIS GRANT, et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,

Defendants.

CASE NO. 1:22-CV-00122-SCJ

DEFENDANTS’ STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendants Brad Raffensperger, in his official capacity as Secretary of State; and State Election Board Members William S. Duffey, Sara Tindall Ghazal, Janice Johnston, Edward Lindsey, and Matthew Mashburn, also in their official capacities (collectively, “Defendants”) pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1 submit this Statement of Material Facts as to Which There is No Genuine Issue to be Tried.

1. Census data showed that the increase in the percentage of Black voters in Georgia from 2010 to 2020 was slightly more than two percentage points. Deposition of Blakeman Esselstyn [Doc. 179] (“Esselstyn Dep.”) at 103:18-104:4

2. Both chairs of the House and Senate committees with jurisdiction over redistricting sought to meet with all of their colleagues, both Republican and Democratic, to gain input on their areas of the state. Deposition of Gina Wright [Doc. 184] (“Wright Dep.”) at 68:17-69:7.

3. Consistent with past redistricting cycles, the joint House and Senate committees also held a series of “listening sessions” across the state to hear from citizens about maps, including several Zoom meetings. Deposition of John Kennedy [Doc. 186] (“Kennedy Dep.”) at 171:13-20, 194:1-195:10.

4. And for the first time in 2021, the General Assembly provided a public comment portal online, seeking comments from the public. Wright Dep. 252:20-253:4.

5. After holding a committee education day where a variety of stakeholder groups presented about map-drawing, the committees adopted guidelines to govern the map-drawing process. Kennedy Dep. 161:1-4; Deposition of Bonnie Rich [Doc. 187] (“Rich Dep.”) 214:19-215:7.

6. To prepare maps, Gina Wright, the director of the Joint Reapportionment Office, drafted “blind” maps for the House and Senate, essentially drawing based on her own knowledge of Georgia and the historic districts. Wright Dep. 45:15-25 (Senate map); 62:17-62:24 (House map).

7. The chairs of the House and Senate committees then met with Ms. Wright to adjust district boundaries based on the input they received from members and from others. Wright Dep. 54:3-20, 77:2-7 (Senate map); 197:2-6 (House map).

8. When Democrats requested changes, some of those changes were included. Wright Dep. 59:5-60:7 (Sen. Rhett).

9. Information about draft maps was also shared with members of the Democratic caucus, which had its own counsel and map-drawers. Wright Dep. 223:14-224:4, 226:11-17; Deposition of Derrick Jackson [Doc. 188] (“Jackson Dep.”) at 12:9-21.

10. The chairs and Ms. Wright also consulted with counsel about compliance with the Voting Rights Act. Wright Dep. 92:8-20.

11. While racial data was available, the chairs of each committee focused on past election data to evaluate the partisan impact of the new plans while drawing with awareness of Republican political performance. Wright Dep. 55:25-56:7; 140:3-11; 140:17-19; 257:21-258:1; 258:2-14.

12. The resulting Senate map reduced the number of split counties from the prior plan, did not pair any incumbents of either party who were running for re-election, and maintained the same number of majority-Black

districts as prior plans. Report of Blakeman Esselstyn, attached as Ex. A (“Esselstyn Report”), ¶ 40 n.10; Kennedy Dep. 106:4-11.

13. The state House maps also reduced the number of split counties, increased the number of majority-Black districts in metro Atlanta, and paired a small number of incumbents. Esselstyn Report, ¶¶ 59-61.

14. The Governor signed the plans on December 30, 2021, and they were used in the 2022 elections. Amended Complaint [Doc. 96, ¶ 40].

15. The SEB stated in its responses to interrogatories, that they “were not involved in the map-drawing process.” Responses to Interrogatories, attached as Ex. B, at Response No. 2.

16. Annie Lois Grant (“Grant”) is registered to vote in Greene County, Georgia. Deposition of Annie Lois Grant [Doc. 169] (“Grant Deposition”) at 13:6-11, 24:4-6.

17. Grant is a member of the Democratic Party. *Id.* at 26:20-22.

18. Grant has been Chair of the Greene County Democratic Party for 11 years. *Id.* at 26:25-27:9.

19. Grant is in her third term as a state committee member of the Democratic Party of Georgia. *Id.* at 27:18-24.

20. Grant has done volunteer work for campaigns of local Democratic candidates. *Id.* at 29:23-31:6, 31:19-32:25.

21. Grant has done volunteer work for campaigns of statewide Democratic candidates and for presidential Democratic candidates. *Id.* at 33:1-10.

22. Quentin T. Howell (“Howell”) resided in Milledgeville, Georgia, at the time of the filing of the initial Complaint in *Grant* on January 11, 2022. Deposition of Quentin T. Howell [Doc. 170] (“Howell Dep.”) at 17:22-24.

23. Howell is a member of the Baldwin County Democratic Party. *Id.* at 27:3-5.

24. Howell has served as Chairman of several committees of the Baldwin County Democratic Party over the past ten years. *Id.* at 43:11-22.

25. Howell is a member of the Georgia Association of Democratic Chairs. *Id.* at 27:6-7.

26. Howell is a member of the African-American Caucus of the Georgia Democratic Party. *Id.* at 27:10-12.

27. Howell is a member of the Central Georgia Democratic Coalition. *Id.* at 27:13-14.

28. Elroy Tolbert (“Tolbert”) is registered to vote in Bibb County, Georgia. Deposition of Elroy Tolbert [Doc. 175] (“Tolbert Deposition”) at 15:6-16.

29. Tolbert has been a member of the Democratic Party since he started voting. *Id.* at 17:12-16.

30. Tolbert participated in a Democratic Party voter registration drive in 2011 or earlier. *Id.* at 17:23-18:6.

31. Triana Arnold James (“James”) is registered to vote in Douglas County, Georgia. Deposition of Triana Arnold James [Doc. 171] (“James Deposition”) at 37:5-8.

32. James considers herself to be a member of the Democratic Party. *Id.* at 38:20-22.

33. In 2018, James ran for Lieutenant Governor in the Democratic primary, but she did not receive the nomination. *Id.* at 41:9-18.

34. In “2020/2021,” James ran for State Senate in the Democratic primary for Senate District 30, but she did not receive the nomination. *Id.* at 40:20-41:8.

35. Eunice Sykes (“Sykes”) is registered to vote in Henry County, Georgia. Deposition of Eunice Sykes [Doc. 174] (“Sykes Deposition”) at 10:24-25-11:1, 22:8-13, 23:7-9.

36. Sykes is a member of the Democratic Party. *Id.* at 26:9-13.

37. Elbert Solomon (“Solomon”) has been registered to vote in Spalding County since 2015. Deposition of Elbert Solomon [Doc. 173] (“Solomon Dep.”) at 25:8-12.

38. Solomon is a member of the Democratic Party. *Id.* at 27:18-20.

39. Solomon supports Democratic candidates in Georgia and in other states, such as his birth state of Mississippi. *Id.* at 30:8-13.

40. Solomon has voted for members of the Republican Party, but only when there were no members of the Democratic Party on the ballot in those elections. *Id.* at 30:14-20.

41. Dexter Wimbish (“Wimbish”) is registered to vote in Spalding County, Georgia. Deposition of Dexter Wimbish [Doc. 176] (“Wimbish Dep.”) at 29:9-12, 31:4-8.

42. Wimbish is a member of the Democratic Party of Spalding County. *Id.* at 20:2-7.

43. In 2021, Wimbish ran as a Democrat for election as district attorney for the Griffin Judicial District, but he did not win. *Id.* at 24:6-25:21.

44. Plaintiff Garrett Reynolds (“Reynolds”) has resided at his current address in Fayette County, Georgia for approximately 10 years. Deposition of Plaintiff Garrett Reynolds [Doc. 172] (“Reynolds Dep.”) at 12:5-16.

45. Reynolds has considered himself to be a member of the Democratic Party “[s]ince the day Donald Trump became president.” *Id.* at 30:21-31:5.

46. Reynolds has been a member of the Fayette County Democratic Committee since 2017. *Id.* at 19:9-25.

47. According to Reynolds, the goal of the Fayette County Democratic Committee “is to locate and elect [D]emocrats to public office.” *Id.* at 21:2-4.

48. According to Reynolds, he has never considered himself a member of the Republican Party and has not voted for a Republican Party candidate since 2000. *Id.* at 32:4-23.

49. Jacqueline Faye Arbuthnot tends to support Democrats rather than Republicans for office. Deposition of Jacqueline Faye Arbuthnot Vol. II [Doc. 166] (“Arbuthnot Dep.”) at 12:17-20

50. Jacquelyn Bush (“Bush”) is registered to vote in Fayette County, Georgia. Deposition of Jacquelyn Bush [Doc. 167] (“Bush Deposition”) at 16:11-17:10.

51. Bush is a member of the Democratic Party. *Id.* at 18:22-24.

52. Bush participated in a Democratic Party voter registration drive in 2008. *Id.* at 19:8-16.

53. Bush worked on a phone bank for the presidential campaign for Barack Obama in 2008. *Id.* at 20:8-11, 16-18.

54. Mary Nell Conner (“Conner”) is registered to vote in Henry County, Georgia. Deposition of Mary Nell Conner [Doc. 168] (“Conner Deposition”) at 14:23-15:14.

55. Conner has been a member of the Democratic Party since 2005. *Id.* at 16:10-14.

56. Plaintiffs began planning for this litigation before the Georgia maps were even complete—retaining experts to begin drawing alternative maps before the special session was over. Esselstyn Dep. 54:14-55:13.

57. Plaintiffs’ goal in offering their illustrative plans was to determine whether they could draw additional majority-Black districts beyond those drawn by the state plans. Esselstyn Dep. 63:19-64:1.

58. Map-drawers distinguish “majority-minority” from “majority-Black.” Majority-minority districts have a majority of non-white and Latino voters, while majority-Black districts are districts where Black voters as a single racial category constitute a majority of a district. Esselstyn Dep. 68:20-69:9

59. When Mr. Esselstyn was creating his illustrative maps, he turned on features in the software to indicate where Black individuals were

located, including using it to inform decisions about which populations were included and excluded from districts. Esselstyn Dep. 76:21-77:12, 77:20-77:25.

60. Mr. Esselstyn focused on areas with higher concentrations of Black voters for looking where additional districts could be drawn. Esselstyn Dep. 85:6-10.

61. Unlike the legislature, Mr. Esselstyn did not have any political data available to him. Wright Dep. 55:25-56:7; 140:3-11; 140:17-19; 257:21-258:1; 258:2-14; Esselstyn Dep. 229:23-230:1.

62. Mr. Esselstyn's county splits were often racial in nature. Report of John Morgan, attached as Ex. C ("Morgan Report"), ¶¶ 33, 54.

63. Mr. Esselstyn did not review any public comment until after drafting his preliminary injunction plans. Esselstyn Dep. 148:23-149:6.

64. Mr. Esselstyn's illustrative plans contained the maximum number of Black districts he drew for any legislative plan in Georgia. Esselstyn Dep. 64:2-17, 64:18-65:2.

65. Mr. Esselstyn created three additional majority-Black Senate districts in his expert report. Esselstyn Report, ¶ 27.

66. In order to create the additional Senate districts, Mr. Esselstyn modified 22 of the 56 state Senate districts. Esselstyn Report, ¶ 26.

67. To create Senate District 23, Mr. Esselstyn split counties based on race—in each case where a county is split, the higher-Black-percentage portion of the county is included in illustrative District 23, while the lower-Black-percentage portion of the county is outside of illustrative District 23. Esselstyn Dep. 141:24-142:3.

68. To create Senate District 25, Mr. Esselstyn could not recall why he decided to connect Clayton and Henry Counties in a single district. Esselstyn Dep. 149:24-150:14.

69. In creating Senate District 25, Mr. Esselstyn significantly altered Senate District 10 to include areas with significant white populations and lengthening the district to measure 43 miles from north to south. Morgan Report, ¶¶26-28.

70. As a result, the only county in Senate District 10 with a majority-Black voting age population is DeKalb County. Esselstyn Dep. 152:25-153:4.

71. To create Senate District 28, Mr. Esselstyn connected more-urban areas of Clayton County with more-rural areas in Coweta County. Esselstyn Dep. 153:10-154:1.

72. Mr. Esselstyn was not trying to ensure that Senate District 28 had areas in common with each other. Esselstyn Dep. 154:2-24.

73. Mr. Esselstyn also made changes to Senate District 35 that connected more-rural areas of Paulding County to Fulton County. Esselstyn Dep. 155:12-156:13.

74. The illustrative Senate plan has higher total population deviations than the enacted plan. Esselstyn Dep. 157:13-158:3.

75. Mr. Esselstyn did not report the compactness scores of districts that he changed, instead only reporting the average score for all districts, changed and unchanged. Esselstyn Dep. 158:23-159:7.

76. In his charts, Mr. Esselstyn did not include scores for other illustrative Senate districts that he altered. Esselstyn Dep. 160:15-23

77. The illustrative Senate plan also splits more counties and precincts than the enacted plan. Esselstyn Dep. 160:24-161:5.

78. Mr. Esselstyn created five additional majority-Black House districts in his expert report. Esselstyn Report, ¶ 48.

79. In order to create the additional House districts, Mr. Esselstyn modified 25 of the 180 state House districts. Esselstyn Report, ¶ 47.

80. Of the new districts created on Mr. Esselstyn's House plan, illustrative House Districts 64, 117, 145, and 149 are all less than 52% Black voting age population, with several barely above 50%. Esselstyn Report, ¶ 48, Table 5.

81. Illustrative House Districts 77 and 86 are both greater than 75% Black voting age population, which Mr. Esselstyn called accidental. Esselstyn Report, ¶ 48, Table 5; Esselstyn Dep. 176:6-25.

82. To create illustrative House District 64, Mr. Esselstyn connected parts of Paulding and Fulton counties but could not identify any basis for connecting those areas. Esselstyn Dep. 180:16-23.

83. To create illustrative House District 74, Mr. Esselstyn connected heavier concentrations of Black individuals in Clayton County with more heavily white portions of Fayette County, while lowering the compactness of the surrounding districts. Esselstyn Dep. 180:24-181:13; Morgan Report, ¶ 54.

84. To create illustrative House District 117, Mr. Esselstyn connected parts of districts from Clayton County to rural areas and was unable to identify any community that was being kept whole in District 117. Esselstyn Dep. 182:12-184:11, 185:5-8.

85. To create illustrative House Districts 145 and 149 in Macon, Mr. Esselstyn lowered the Black percentages of the existing Macon districts to make Black population available to run into other counties and raise the Black percentages in Districts 145 and 149. Morgan Report, ¶ 58; Esselstyn Dep. 187:8-19.

86. Mr. Esselstyn modified the split of Baldwin County from the House plan offered at the preliminary-injunction stage. Esselstyn Dep. 191:18-192:11

87. As a result, all four House districts that include portions of Macon are all very close to 50% Black voting age population. Esselstyn Dep. 188:21-25.

88. The illustrative House plan has higher total population deviations than the enacted plan. Esselstyn Dep. 195:7-24.

89. Mr. Esselstyn did not report the compactness scores of districts that he changed, instead only reporting the average score for all districts, changed and unchanged. Esselstyn Dep. 196:19-197:4.

90. In his charts, Mr. Esselstyn did not include scores for other illustrative House districts that he altered. Esselstyn Dep. 197:11-198:1.

91. The illustrative House plan also splits one more county and one more precinct than the enacted plan. Esselstyn Dep. 198:18-21.

92. Unlike Mr. Cooper in *Alpha Phi Alpha*, Mr. Esselstyn did not draw any new majority-Black House districts in east Georgia, Esselstyn Dep. 177:21-24, or in southwest Georgia. Esselstyn Dep. 177:14-20.

93. Unlike Mr. Esselstyn, Mr. Cooper only drew one additional majority-Black state House district in Macon (instead of two) and did not

draw an additional majority-Black district in western metro Atlanta. Report of William Cooper in *Alpha Phi Alpha*, attached as Ex. D (“Cooper Report”), ¶ 153.

94. Mr. Cooper and Mr. Esselstyn also located their new majority-Black Senate districts in metro Atlanta in different places, with Mr. Cooper drawing his District 28 without Coweta County and District 17 into DeKalb County as opposed to the placement on Mr. Esselstyn’s plans. Cooper Report, ¶¶ 85-86; Esselstyn Report, ¶ 27, Figure 4.

95. Mr. Esselstyn could identify practically nothing beyond the race of the voters in a number of his districts that united them. Esselstyn Dep. 141:24-142:3, 149:24-150:14, 153:10-154:1, 154:2-24, 180:16-23, 180:24-181:13, 182:12-184:11, 185:5-8, 187:8-19.

96. Dr. Palmer chose not to review any primary results in his report. Deposition of Maxwell Palmer [Doc. 183] (“Palmer Dep.”) Dep. 59:23-60:01; Deposition of John Alford [Doc. 178] (“Alford Dep.”) 29:07-30:01.

97. Dr. Palmer’s data still only demonstrate two material facts: The race of the candidate *does not* change voting behavior of Georgia voters; and the party of the candidate *does*. Alford Dep. 54:18-22.

Respectfully submitted this 20th day of March, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing Statement has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Bryan P. Tyson
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