

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

ANNIE LOIS GRANT; QUENTIN T.
HOWELL; ELROY TOLBERT; TRIANA
ARNOLD JAMES; EUNICE SYKES;
ELBERT SOLOMON; DEXTER
WIMBISH; GARRETT REYNOLDS;
JACQUELINE FAYE ARBUTHNOT;
JACQUELYN BUSH; and MARY NELL
CONNER,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as the Georgia Secretary of State;
WILLIAM S. DUFFEY, JR., in his official
capacity as chair of the State Election
Board; MATTHEW MASHBURN, in his
official capacity as a member of the State
Election Board; SARA TINDALL
GHAZAL, 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 JANICE W. JOHNSTON, in
her official capacity as a member of the
State Election Board,

Defendants.

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

**STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

TABLE OF CONTENTS

I.	First <i>Gingles</i> Precondition: Numerosity and Compactness.....	1
A.	Numerosity	1
1.	Demographic Developments.....	1
2.	Enacted State Senate Plan.....	4
3.	Illustrative State Senate Plan	5
4.	Enacted House Plan	11
5.	Illustrative House Plan.....	12
B.	Geographic Compactness	18
1.	Illustrative State Senate Plan	20
a.	Population Equality	20
b.	Contiguity	20
c.	Compactness.....	21
d.	Preservation of Political Subdivisions.....	25
e.	Preservation of Communities of Interest.....	25
f.	Incumbent Pairings	26
g.	Core Retention	26
2.	Illustrative House Plan	27
a.	Population Equality	27
b.	Contiguity	27

c.	Compactness	28
d.	Preservation of Political Subdivisions	30
e.	Preservation of Communities of Interest	30
f.	Incumbent Pairings	32
g.	Core Retention	32
II.	Second <i>Gingles</i> Precondition: Political Cohesion	32
III.	Third <i>Gingles</i> Precondition: Bloc Voting	39
IV.	Totality of Circumstances	43
A.	Senate Factor One: History of Voting-Related Discrimination	43
1.	Political Violence Against Black Georgians	43
2.	Pre-Voting Rights Act	45
3.	Post-Voting Rights Act	47
4.	Redistricting-Related Discrimination	50
B.	Senate Factor Two: Racially Polarized Voting	53
1.	Quantitative Evidence	53
2.	Qualitative Evidence	55
C.	Senate Factor Three: Discriminatory Voting Procedures	60
D.	Senate Factor Four: Candidate Slating	61
E.	Senate Factor Five: Contemporary Socioeconomic Disparities	62
F.	Senate Factor Six: Racial Appeals in Georgia Campaigns	65

G.	Senate Factor Seven: Underrepresentation of Black Georgians in Elected Office	72
H.	Senate Factor Eight: Official Nonresponsiveness.....	73
I.	Senate Factor Nine: Absence of Justification for Enacted Legislative Plans	73
J.	Proportionality	73

Pursuant to Federal Rule of Civil Procedure 56 and LR 56.1(B)(1), NDGa, Plaintiffs ANNIE LOIS GRANT, QUENTIN T. HOWELL, ELROY TOLBERT, TRIANA ARNOLD JAMES, EUNICE SYKES, ELBERT SOLOMON, DEXTER WIMBISH, GARRETT REYNOLDS, JACQUELINE FAYE ARBUTHNOT, JACQUELYN BUSH, and MARY NELL CONNER file this statement of undisputed material facts in support of their motion for partial summary judgment.

The following facts are undisputed and constitute all material facts necessary to a determination in favor of Plaintiffs’ motion.

I. First *Gingles* Precondition: Numerosity and Compactness

A. Numerosity

1. Demographic Developments

1. Georgia’s population increased by more than one million people between the 2010 and 2020 censuses, from 9,687,653 to 10,711,908—an increase of approximately 10.6%. Ex. 1 (“Esselstyn Report”) ¶ 14.¹

2. According to the 2020 census, 33% of Georgia’s population (essentially one-third) identified as “Black or African American alone or in combination.” Esselstyn Report ¶ 15.

¹ All exhibits are attached to the Declaration of Jonathan P. Hawley, filed concurrently with Plaintiffs’ motion.

3. The increase in the any-part Black population between 2010 and 2020 outpaced the growth in the state as a whole, increasing by approximately 15.8%. Esselstyn Report ¶ 15.

4. Georgia's population identifying as white and neither Hispanic nor multiracial decreased by 1.0% between 2010 and 2020. Esselstyn Report ¶ 16.

5. In 2010, non-Hispanic white Georgians constituted 55.9% of the state's population; following the 2020 census, the non-Hispanic white population constitutes a majority of the state's population at 50.1%. Esselstyn Report ¶ 16.

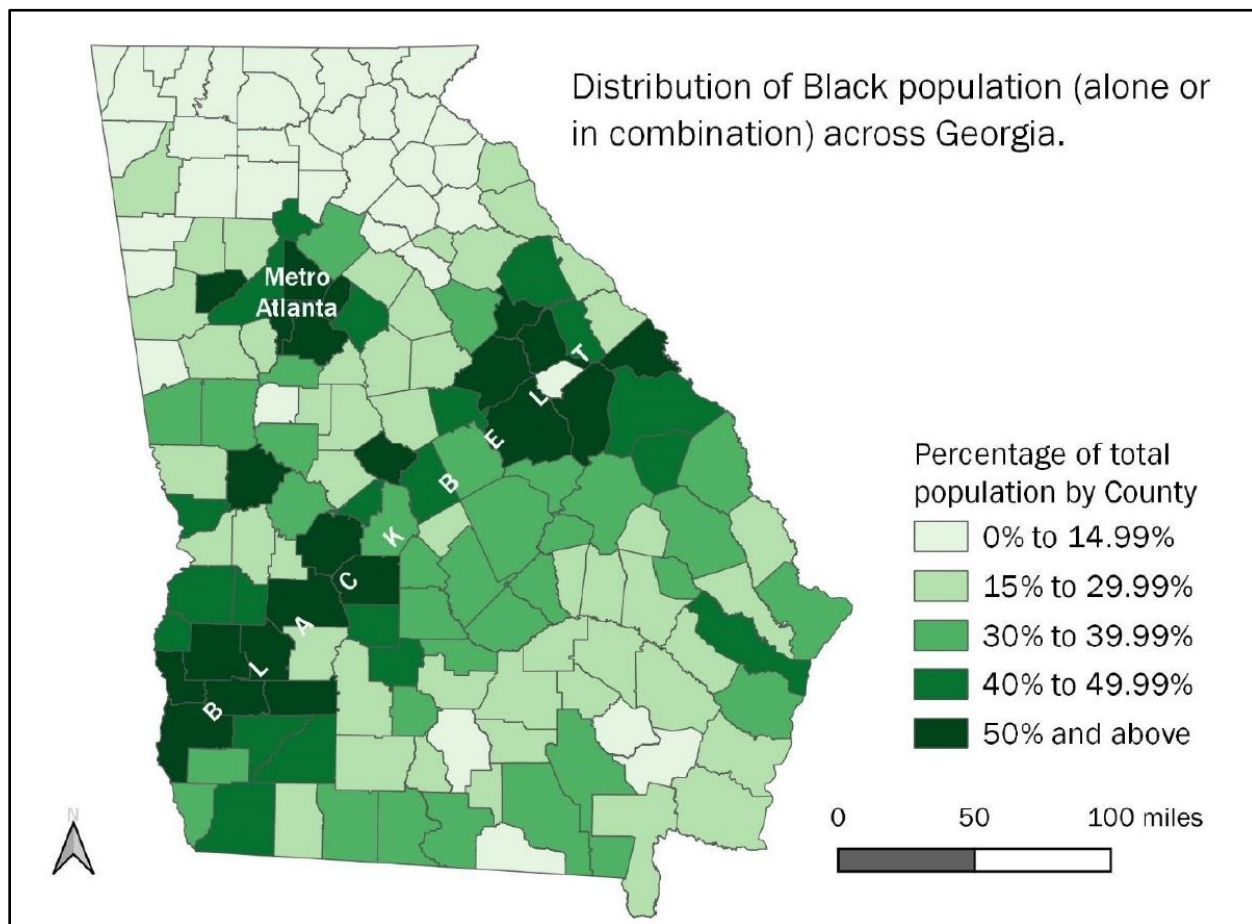
6. The Black voting-age population increased by 21.8% from 2010 to 2020. Esselstyn Report ¶ 17.

7. In 2020, the Black voting-age population made up 31.7% of the voting-age population, an increase from 29.7% in 2010. Esselstyn Report ¶ 17.

8. The non-Hispanic single-race white proportion of the voting-age population decreased from 59.0% in 2010 to 52.8% in 2020. Esselstyn Report ¶ 17.

9. Approximately half of Georgia's Black population lives in six of the state's 159 counties, all of which are in the Atlanta metropolitan area; these six counties are, in order of decreasing Black population, Fulton, DeKalb, Gwinnett, Cobb, Clayton, and Henry. Esselstyn Report ¶ 18, attach. C.

10. The counties in Georgia where the percentage of Black residents generally tends to be highest can be grouped into two main categories: the Atlanta metropolitan area and the so-called “Black Belt”:



Esselstyn Report ¶ 19, fig.1.

11. Although some accounts explain that the origin of the term “Black Belt” in the American South stems from descriptions of the soil, modern classifications of which counties are in this region can hinge on the percentage of the Black population. Esselstyn Report ¶ 19 & n.5.

12. In Georgia, this belt of counties, most of which are rural, constitutes a wide band from the southwest corner of the state to the central part of the South Carolina border near Augusta-Richmond County. Esselstyn Report ¶ 19, fig.1.

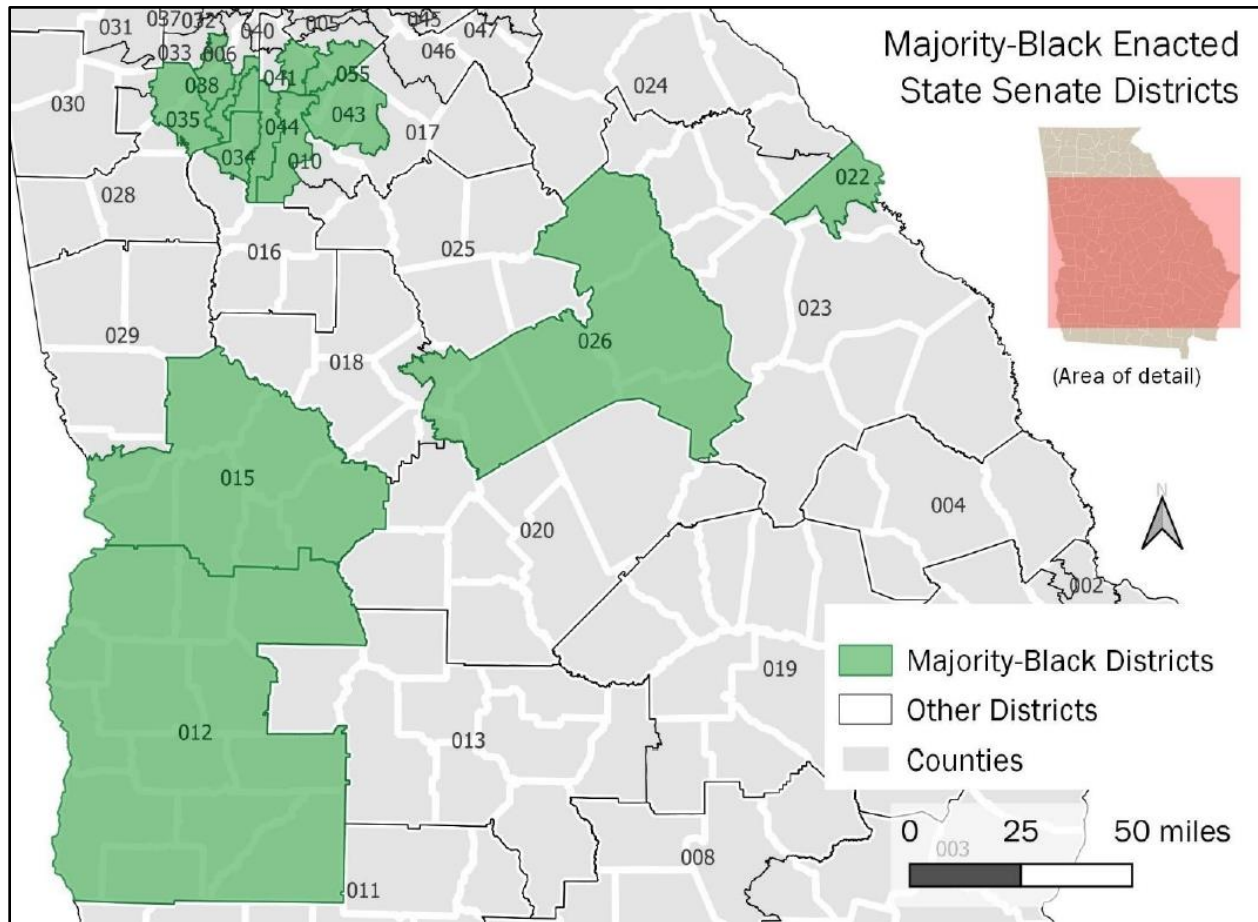
2. Enacted State Senate Plan

13. On December 30, 2021, Governor Brian Kemp signed the enacted maps for the Georgia State Senate and Georgia House of Representatives into law. Esselstyn Report ¶¶ 21, 44.

14. The State Senate plan includes 56 districts, each with a population near 191,284 (one-fifty-sixth of Georgia's total population). Esselstyn Report ¶ 21.

15. Of the 56 enacted State Senate districts, 14 are majority-Black in terms of the any-part Black voting-age population. Esselstyn Report ¶ 22 & n.6, attach. D.

16. Ten of the enacted State Senate plan's majority-Black districts are in the Atlanta metropolitan area, while four are in the Black Belt region:



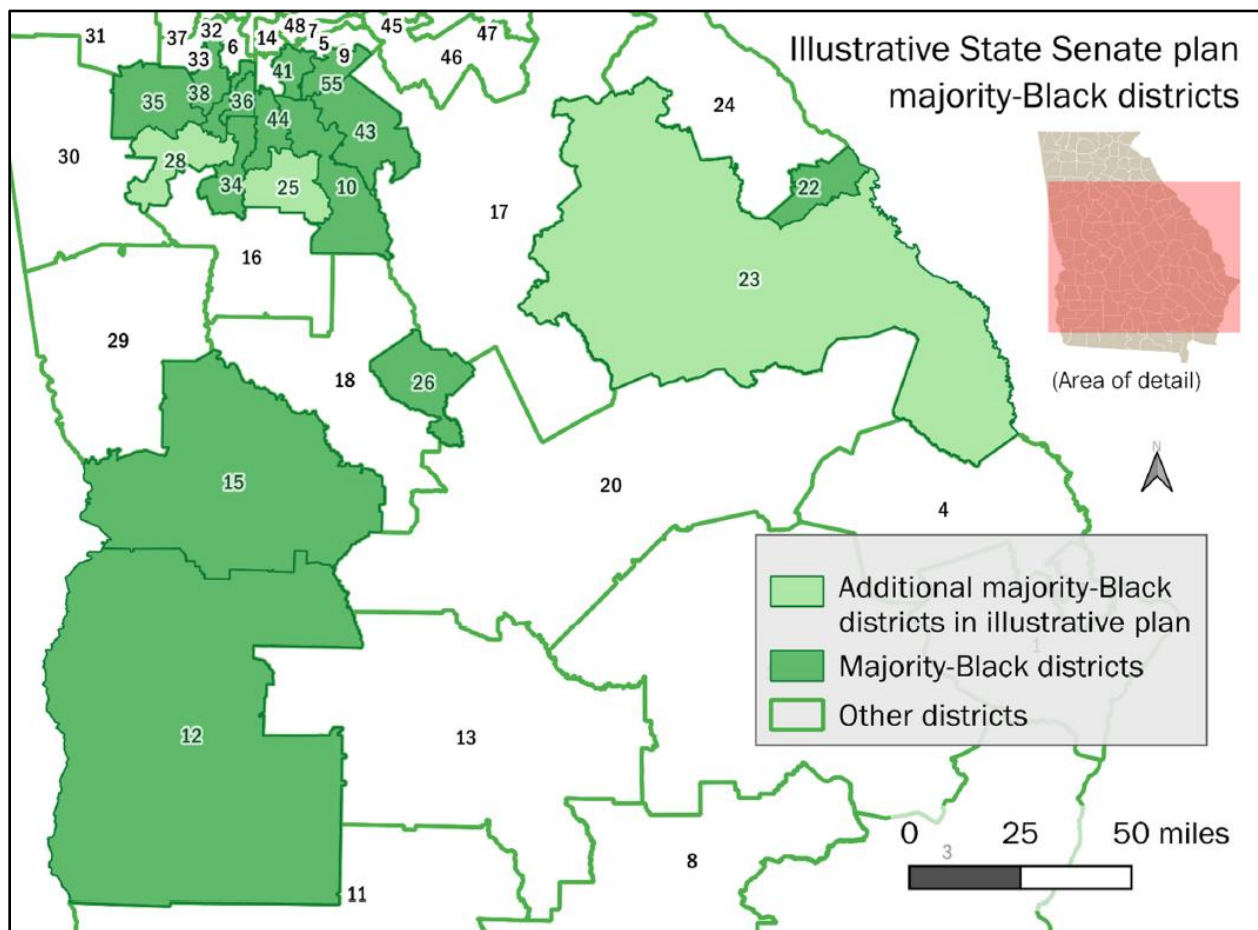
Esselstyn Report ¶ 22, fig.3.

3. Illustrative State Senate Plan

17. As Plaintiffs' mapping expert, Blakeman B. Esselstyn, concluded—and Defendants' mapping expert, John Morgan does not dispute—Georgia's population is sufficiently numerous to create three additional majority-Black districts in the State Senate plan. Esselstyn Report ¶¶ 13, 63; Ex. 8 ("Morgan Dep.") at 73:17–75:4

(not disputing that it is possible to draw three additional majority-Black State Senate districts given size of Georgia's Black population).

18. Mr. Esselstyn prepared an illustrative State Senate plan with three additional majority-Black districts—illustrative Senate Districts 23, 25, and 28—for a total of 17 majority-Black State Senate districts:



Esselstyn Report ¶ 27, fig.4, tbl.1; Morgan Dep. 73:9–16 (agreeing that Mr. Esselstyn's illustrative State Senate plan includes three more majority-Black districts than enacted plan).

19. The following table reports the Black voting-age populations of the 17 majority-Black districts in Mr. Esselstyn's illustrative State Senate plan:

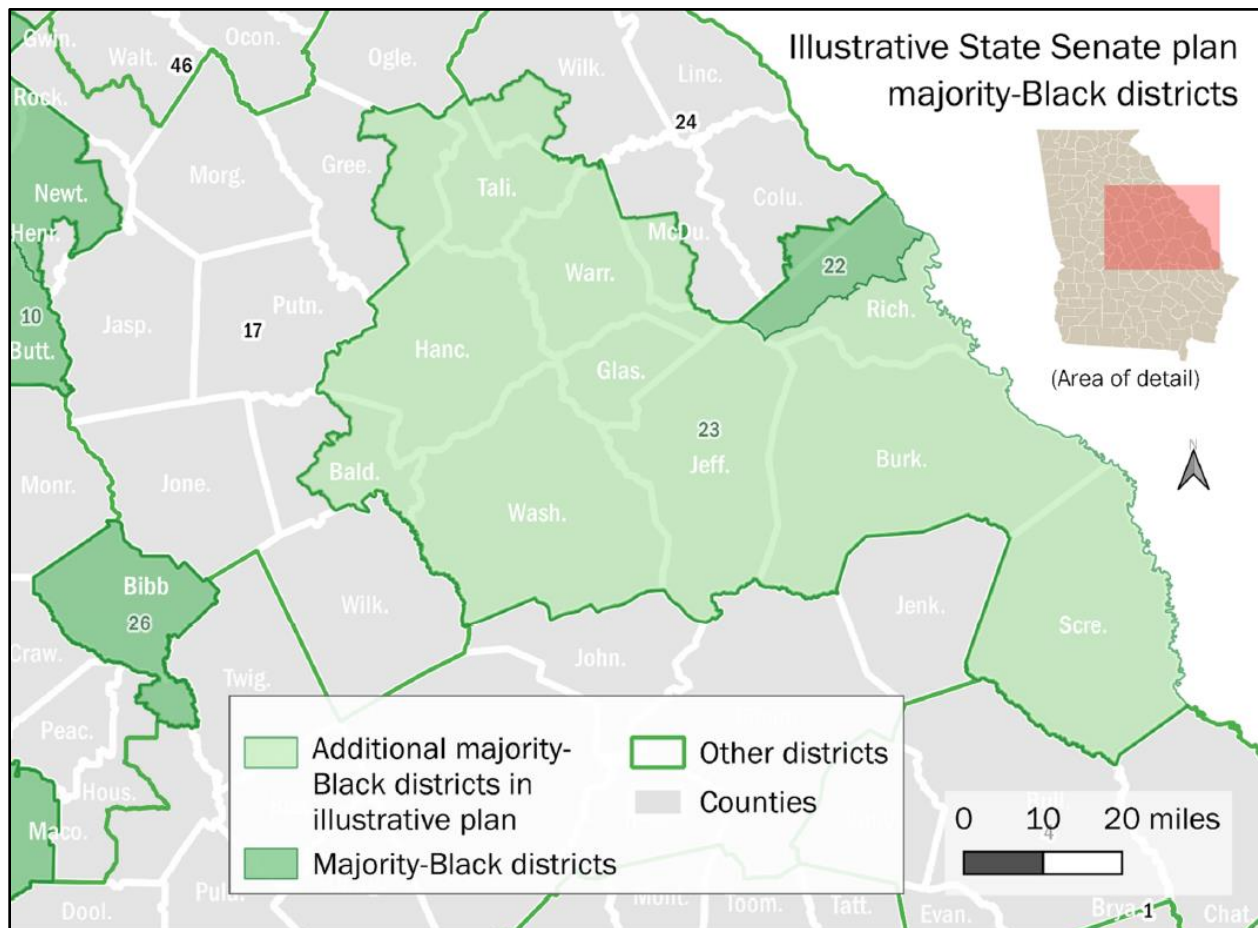
District	BVAP%	District	BVAP%	District	BVAP%
10	61.10%	26	52.84%	39	60.21%
12	57.97%	28	57.28%	41	62.61%
15	54.00%	34	58.97%	43	58.52%
22	50.84%	35	54.05%	44	71.52%
23	51.06%	36	51.34%	55	65.97%
25	58.93%	38	66.36%		

Esselstyn Report ¶ 27, tbl.1; Morgan Dep. 74:11–16 (not disputing Mr. Esselstyn's demographic statistics).

20. Mr. Esselstyn's illustrative State Senate plan has additional majority-Black districts in part because Black voters were more heavily concentrated in certain metro Atlanta districts under the enacted plan. Esselstyn Report ¶ 28.

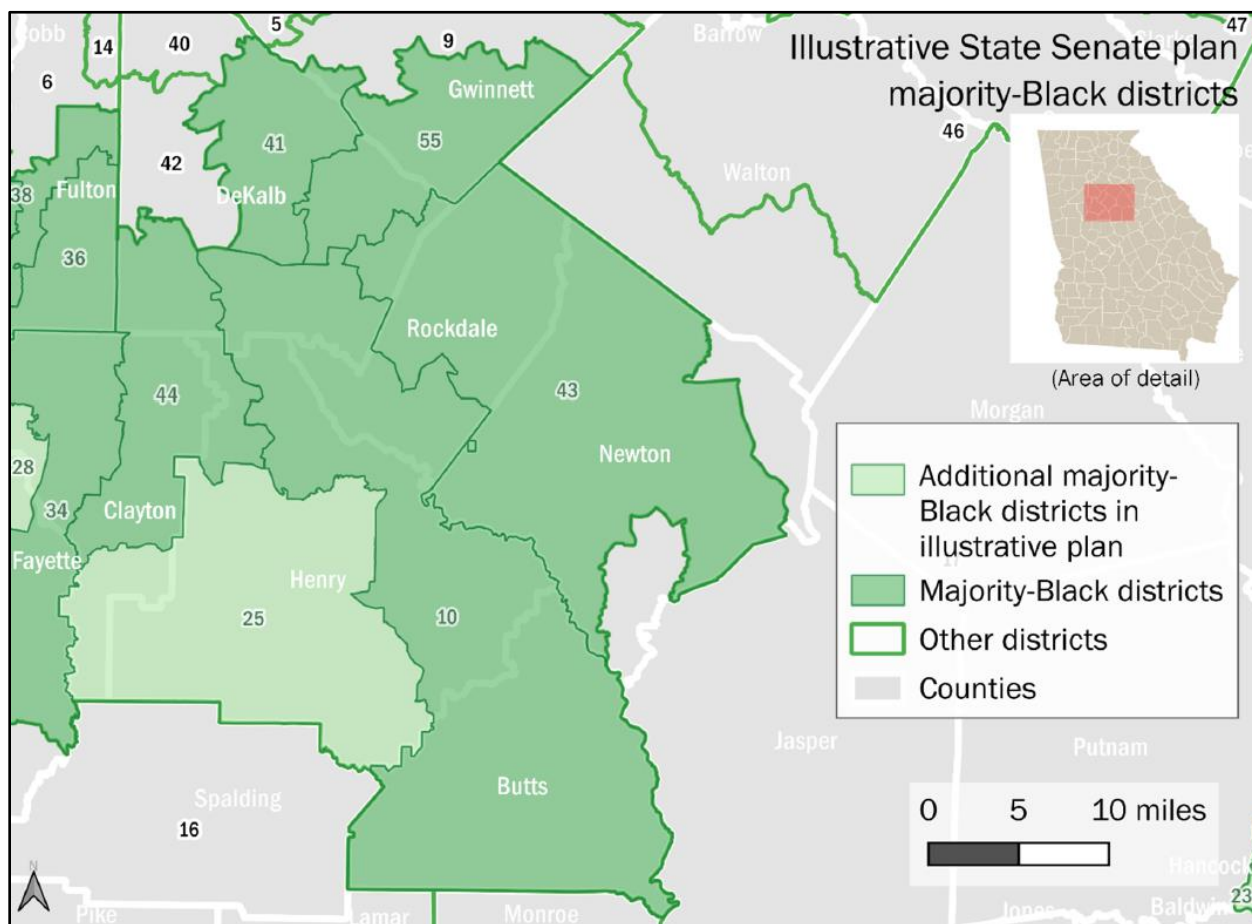
21. Mr. Esselstyn's illustrative Senate District 23, located in the eastern Black Belt, includes all of Burke, Glascock, Hancock, Jefferson, Screven, Taliaferro,

Warren, and Washington counties and parts of Baldwin, Greene, McDuffie, Augusta-Richmond, and Wilkes counties:



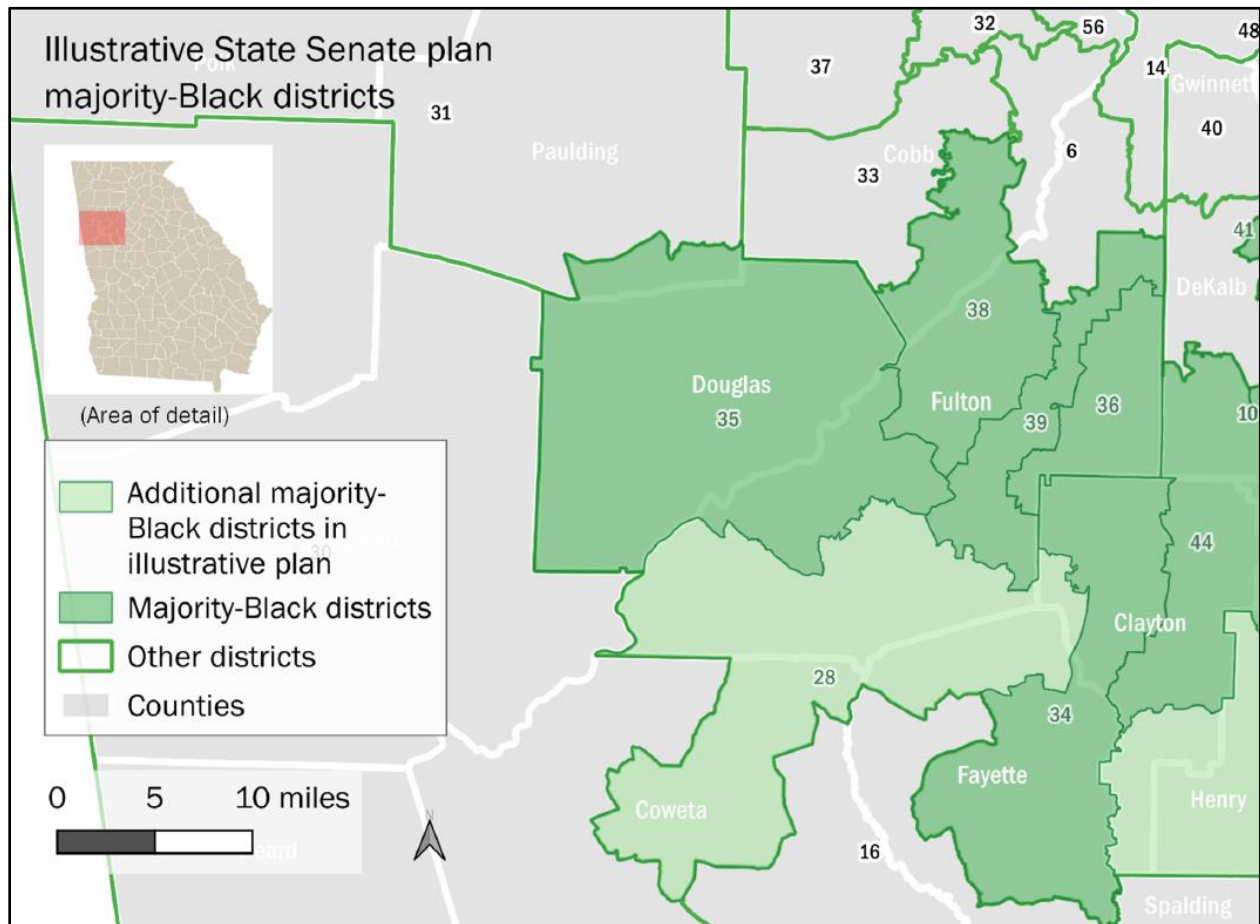
Esselstyn Report ¶ 29, fig.5.

22. Mr. Esselstyn's illustrative Senate District 25, located in the southeastern Atlanta metropolitan area, is composed of portions of Clayton and Henry counties:



Esselstyn Report ¶ 30, fig.6.

23. Mr. Esselstyn’s illustrative Senate District 28, located in the southwestern Atlanta metropolitan area, is composed of portions of Clayton, Coweta, Fayette, and Fulton counties:



Esselstyn Report ¶ 31, fig.7.

24. Plaintiffs’ racially polarized voting expert, Dr. Maxwell Palmer, analyzed the performance of Black-preferred candidates in Mr. Esselstyn’s illustrative State Senate plan. Ex. 2 (“Palmer Report”) ¶¶ 22–23.

25. In the 31 statewide races from 2012 through 2021, the Black-preferred candidate won a larger share of the vote in Mr. Esselstyn's illustrative Senate Districts 23, 25, and 28. Palmer Report ¶ 24, fig.5, tbl.9.

26. Under Mr. Esselstyn's illustrative State Senate plan, the preexisting majority-Black districts from which Mr. Esselstyn's additional majority-Black districts were drawn will continue to perform for Black-preferred candidates with similar or higher vote shares. Palmer Report ¶ 25.

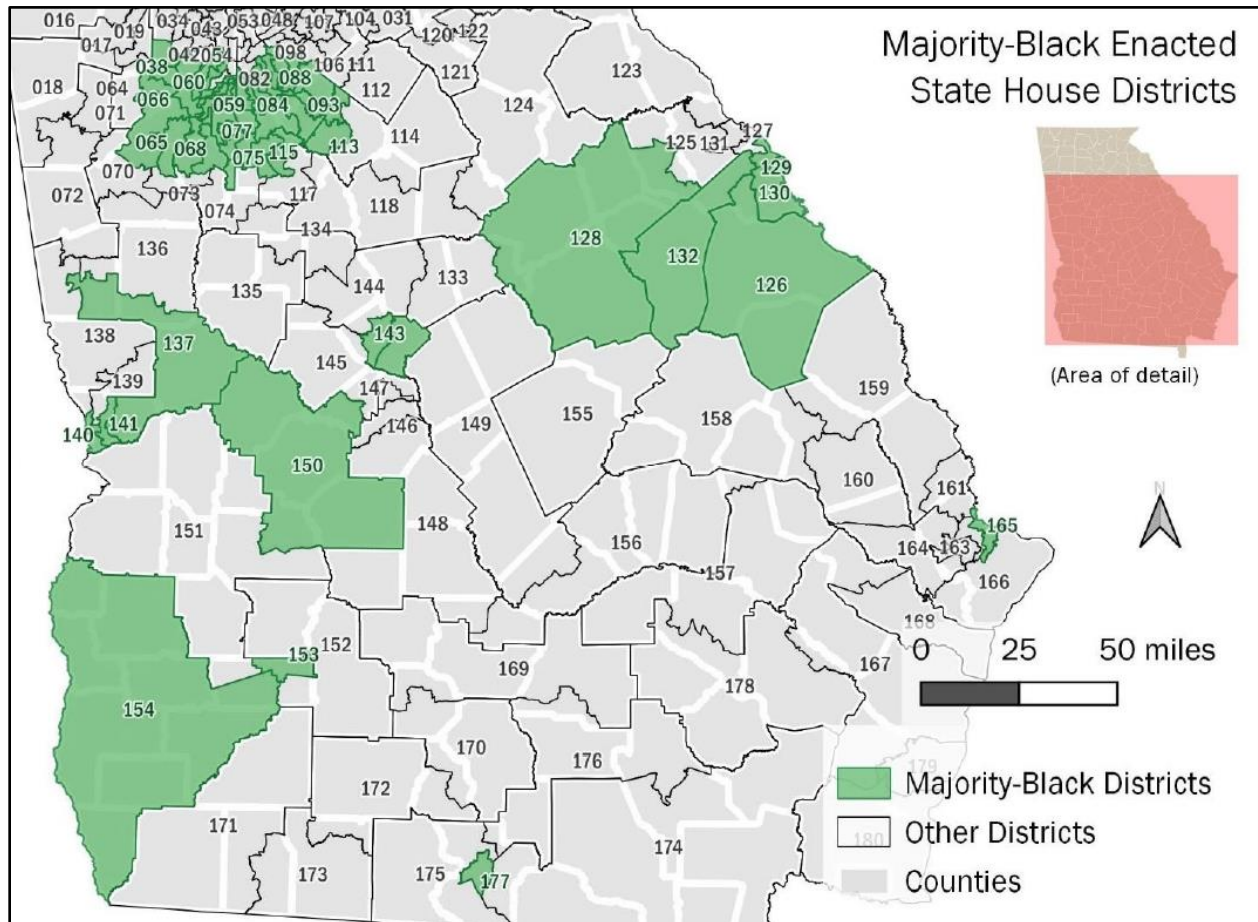
4. Enacted House Plan

27. The House plan includes 180 districts, each with a population near 59,511 (one-one-hundred-eightieth of Georgia's total population). Esselstyn Report ¶ 44.

28. Of the 180 enacted House districts, 49 are majority-Black in terms of the any-part Black voting-age population. Esselstyn Report ¶¶ 22 n.6, 45, attach. I.

29. Thirty-four of the enacted House plan's majority-Black districts are in the Atlanta metropolitan area, while 13 are in the Black Belt region, one is within

Chatham County (anchored in Savannah), and one is in Lowndes County (anchored in Valdosta):



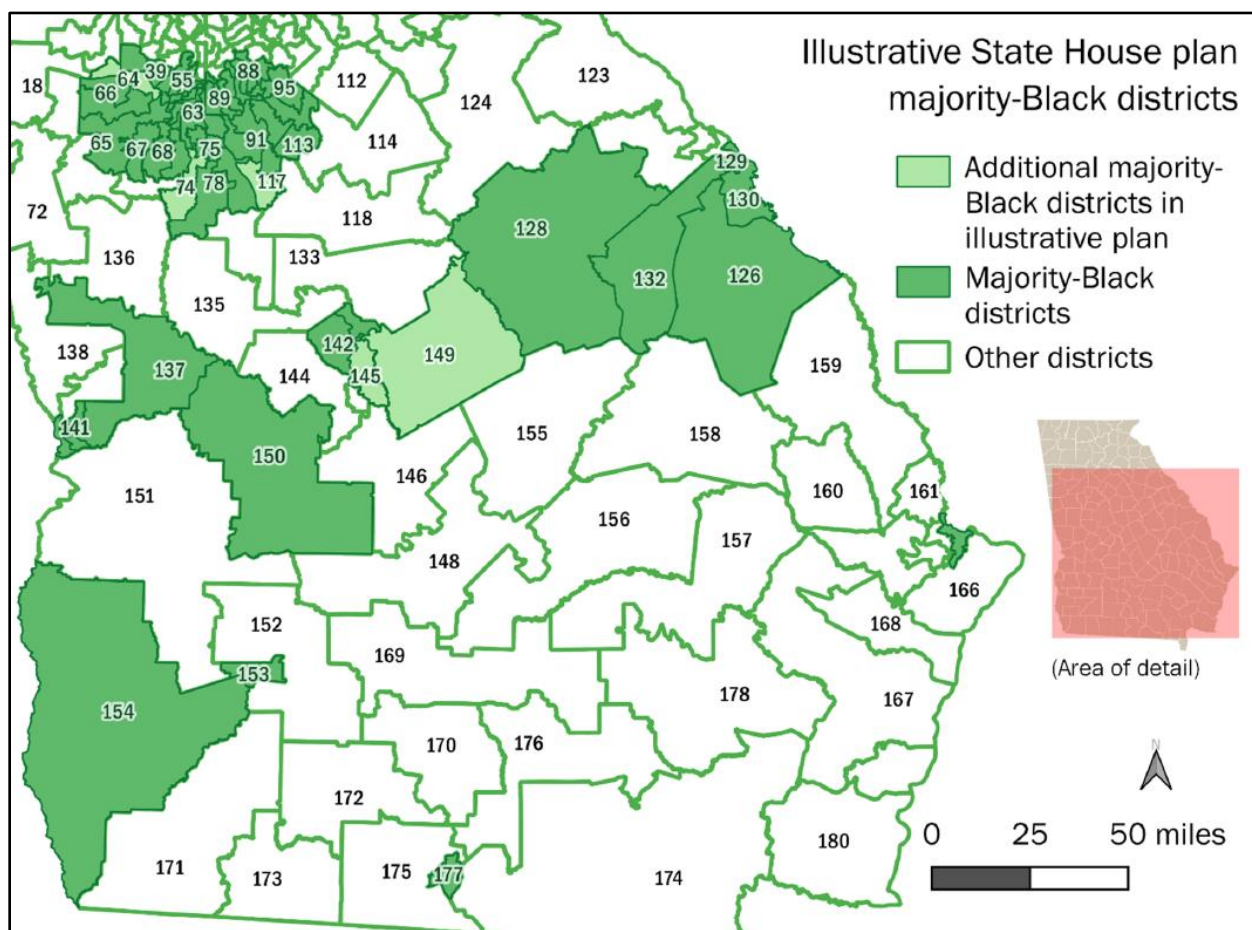
Esselstyn Report ¶ 45, fig.12.

5. Illustrative House Plan

30. As Mr. Esselstyn concluded—and Mr. Morgan does not dispute—Georgia’s Black population is sufficiently numerous to create five additional majority-Black districts in the House plan. Esselstyn Report ¶¶ 13, 63; Morgan Dep.

164:8–165:14, 197:15–19 (not disputing that it is possible to draw five additional majority-Black House districts given size of Georgia’s Black population).

31. Mr. Esselstyn prepared an illustrative House plan with five additional majority-Black districts—illustrative House Districts 64, 74, 117, 145, and 149—for a total of 54 majority-Black House districts:



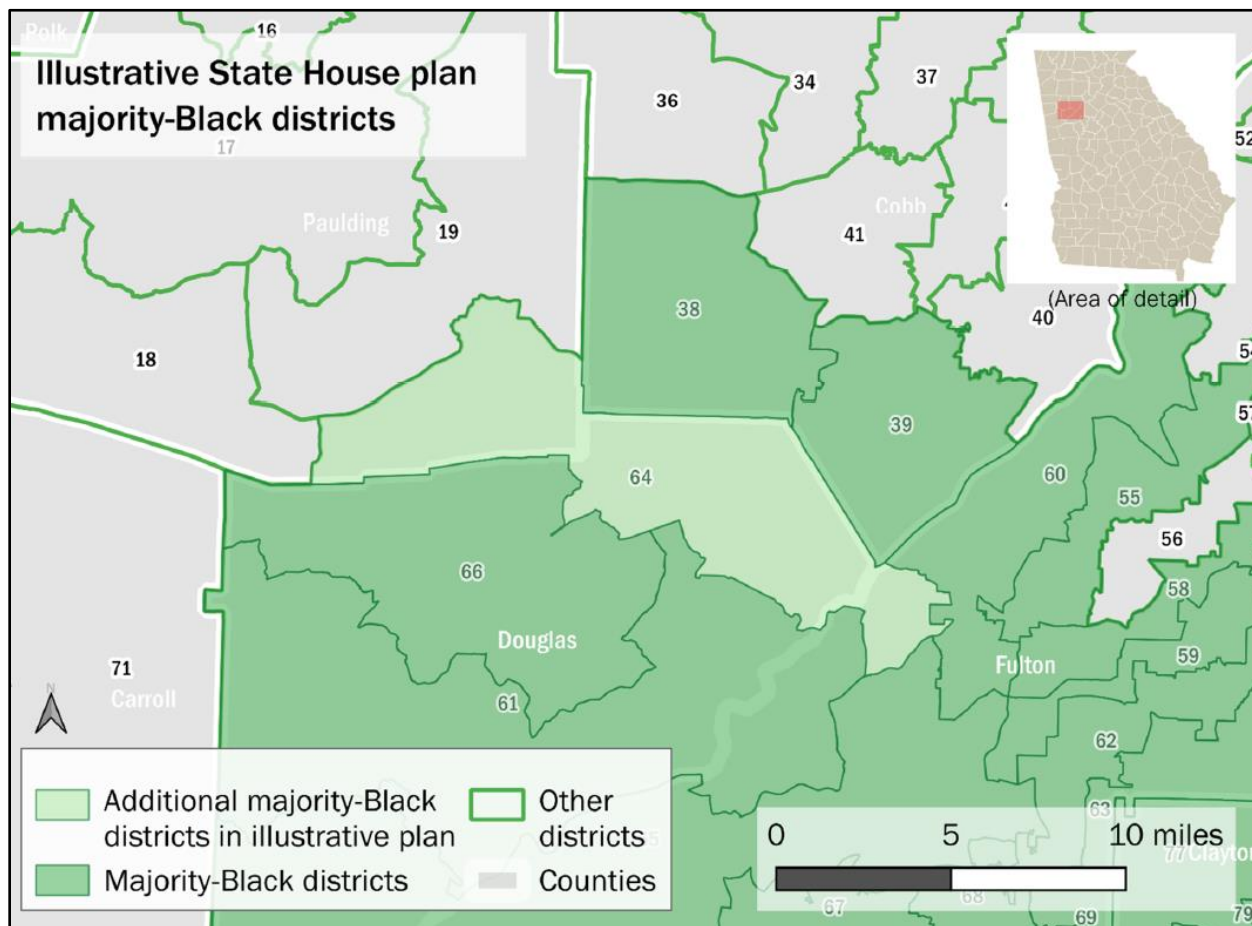
Esselstyn Report ¶ 48, fig.13, tbl.5.

32. The following table reports the Black voting-age populations of the 54 majority-Black districts in Mr. Esselstyn's illustrative House plan:

District	BVAP%	District	BVAP%	District	BVAP%	District	BVAP%
38	54.23%	69	62.73%	91	60.01%	137	52.13%
39	55.29%	74	53.94%	92	68.79%	140	57.63%
55	55.38%	75	66.89%	93	65.36%	141	57.46%
58	63.04%	76	67.23%	94	69.04%	142	50.14%
59	70.09%	77	76.13%	95	67.15%	143	50.64%
60	63.88%	78	51.03%	113	59.53%	145	50.38%
61	53.49%	79	71.59%	115	53.77%	149	51.53%
62	72.26%	84	73.66%	116	51.95%	150	53.56%
63	69.33%	85	62.71%	117	51.56%	153	67.95%
64	50.24%	86	75.05%	126	54.47%	154	54.82%
65	63.34%	87	73.08%	128	50.41%	165	50.33%
66	53.88%	88	63.35%	129	54.87%	177	53.88%
67	58.92%	89	62.54%	130	59.91%		
68	55.75%	90	58.49%	132	52.34%		

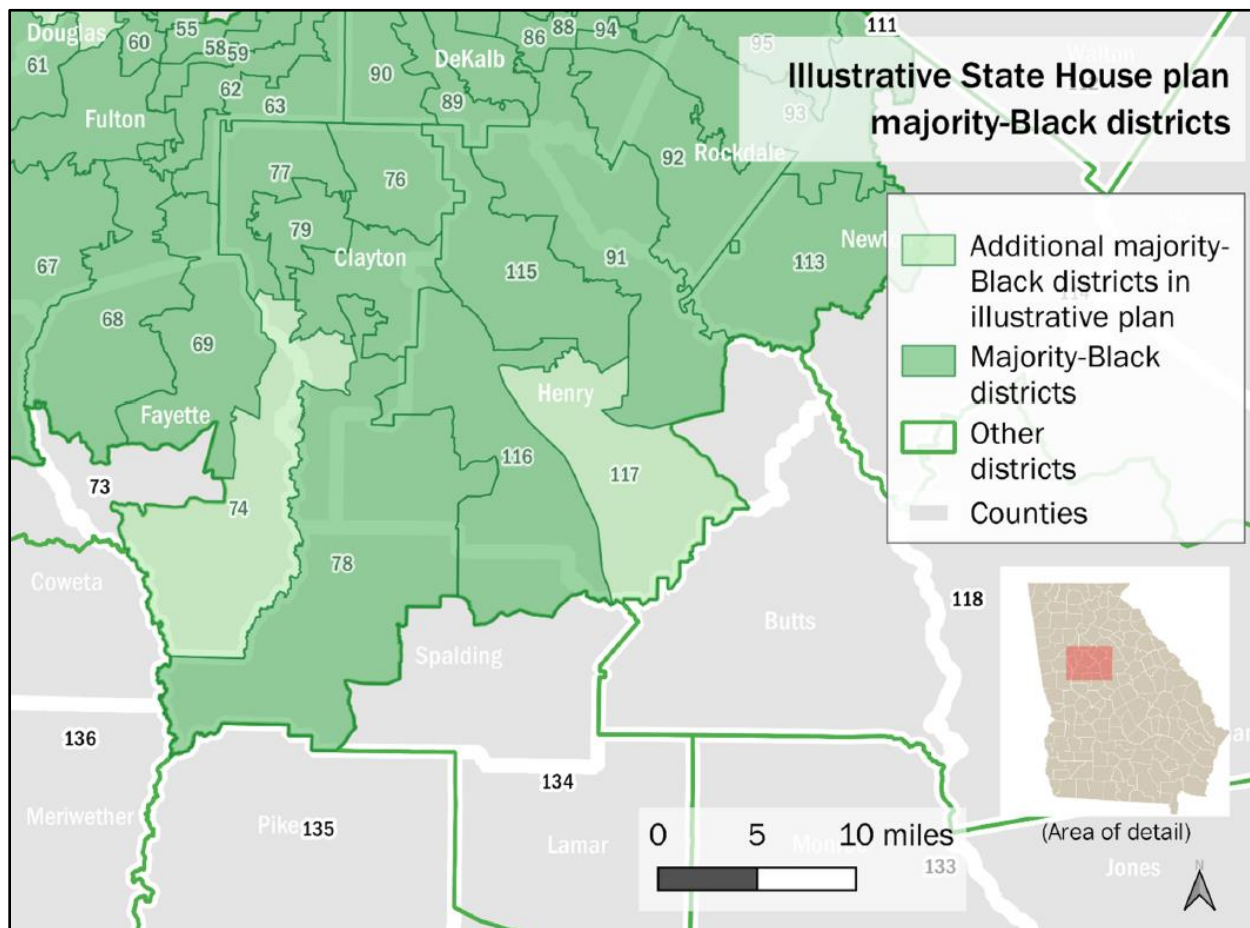
Esselstyn Report ¶ 48, tbl.5; Morgan Dep. 74:11–16 (not disputing Mr. Esselstyn's demographic statistics).

33. Mr. Esselstyn's illustrative House District 64, located in the western Atlanta metropolitan area, is composed of portions of Douglas, Fulton, and Paulding counties:



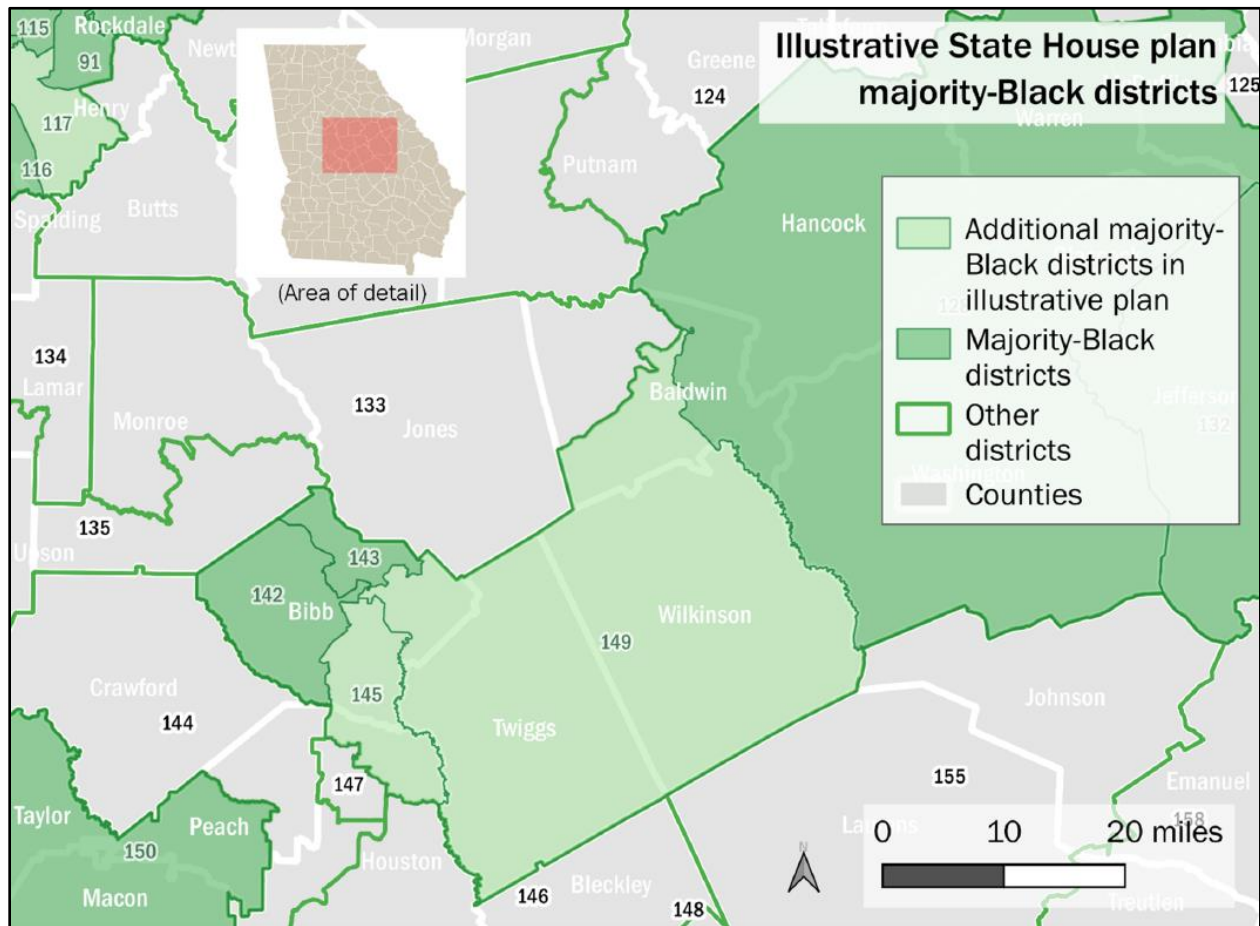
Esselstyn Report ¶ 49, fig.14.

34. Mr. Esselstyn's illustrative House Districts 74 and 117, located in the southern Atlanta metropolitan area, are composed of portions of Clayton, Fayette, and Henry counties:



Esselstyn Report ¶ 50, fig.15.

35. Mr. Esselstyn's illustrative House Districts 145 and 149, located in the central Black Belt region, are composed of portions of Baldwin, Macon-Bibb, and Houston counties and all of Twiggs and Wilkinson counties:



Esselstyn Report ¶ 51, fig.16.

36. Dr. Palmer analyzed the performance of Black-preferred candidates in Mr. Esselstyn's illustrative House plan. Palmer Report ¶¶ 22–23.

37. In the 31 statewide races from 2012 through 2021, the Black-preferred candidate won a larger share of the vote in Mr. Esselstyn's illustrative House Districts 64, 74, and 149. Palmer Report ¶ 24, fig.5, tbl.9.

38. In the 31 statewide races from 2012 through 2021, the Black-preferred candidate won all 19 elections since 2018 in Mr. Esselstyn's illustrative House District 117. Palmer Report ¶ 24, fig.5, tbl.9.

39. In the 31 statewide races from 2012 through 2021, the Black-preferred candidate won all 19 elections since 2018, and 27 of the 31 elections overall, in Mr. Esselstyn's illustrative House District 145. Palmer Report ¶ 24, fig.5, tbl.9.

40. Under Mr. Esselstyn's illustrative House plan, the preexisting majority-Black districts from which Mr. Esselstyn's additional majority-Black districts were drawn will continue to perform for Black-preferred candidates with similar or higher vote shares. Palmer Report ¶ 25.

B. Geographic Compactness

41. As Mr. Esselstyn concluded, it is possible to create at least two additional majority-Black districts in the State Senate plan and at least four additional majority-Black districts in the House plan in accordance with traditional redistricting principles. Esselstyn Report ¶¶ 13, 63; Morgan Dep. 202:10–14

(agreeing that it is possible to create additional majority-Black House districts in accordance with traditional redistricting principles).

42. In drafting his illustrative State Senate and House plans, Mr. Esselstyn balanced a number of considerations, and there was no one dominant factor or metric. Esselstyn Report ¶ 25.

43. One of Mr. Esselstyn’s guiding principles was to minimize changes to the enacted plan while adhering to other neutral criteria. Esselstyn Report ¶¶ 26, 47.

44. Modifying one district necessarily requires changes to districts adjacent to the original modification, and harmonizing those changes with traditional redistricting criteria (such as population equality and intactness of counties) often results in cascading changes to other surrounding districts. Esselstyn Report ¶ 26.

45. The general guidelines for drafting legislative plans adopted by the redistricting committees of the State Senate and House during the 2021 cycle included the following: population equality (with “[e]ach legislative district . . . drawn to achieve a total population that is substantially equal as practicable,” given the other enumerated criteria), contiguity, compactness, consideration of the boundaries of counties and precincts, consideration of communities of interest, and avoiding the unnecessary pairing of incumbents. Esselstyn Report ¶¶ 33, 54, attachs. F & K.

46. Mr. Esselstyn drew his illustrative State Senate and House plans to comply with and balance the General Assembly's adopted guidelines. Esselstyn Report ¶ 33.

1. Illustrative State Senate Plan

a. Population Equality

47. In Mr. Esselstyn's illustrative State Senate plan, most district populations are within plus-or-minus 1% of the ideal, and a small minority are within between plus-or-minus 1% and 2%. Esselstyn Report ¶ 34, attach. H.

48. No district in Mr. Esselstyn's illustrative State Senate plan has a population deviation of more than 2%. Esselstyn Report ¶ 34, attach. H.

49. Under the enacted State Senate plan, the relative average population deviation is 0.53%; under Mr. Esselstyn's illustrative plan, the relative average deviation is 0.67%. Esselstyn Report ¶ 34, attach. H.

b. Contiguity

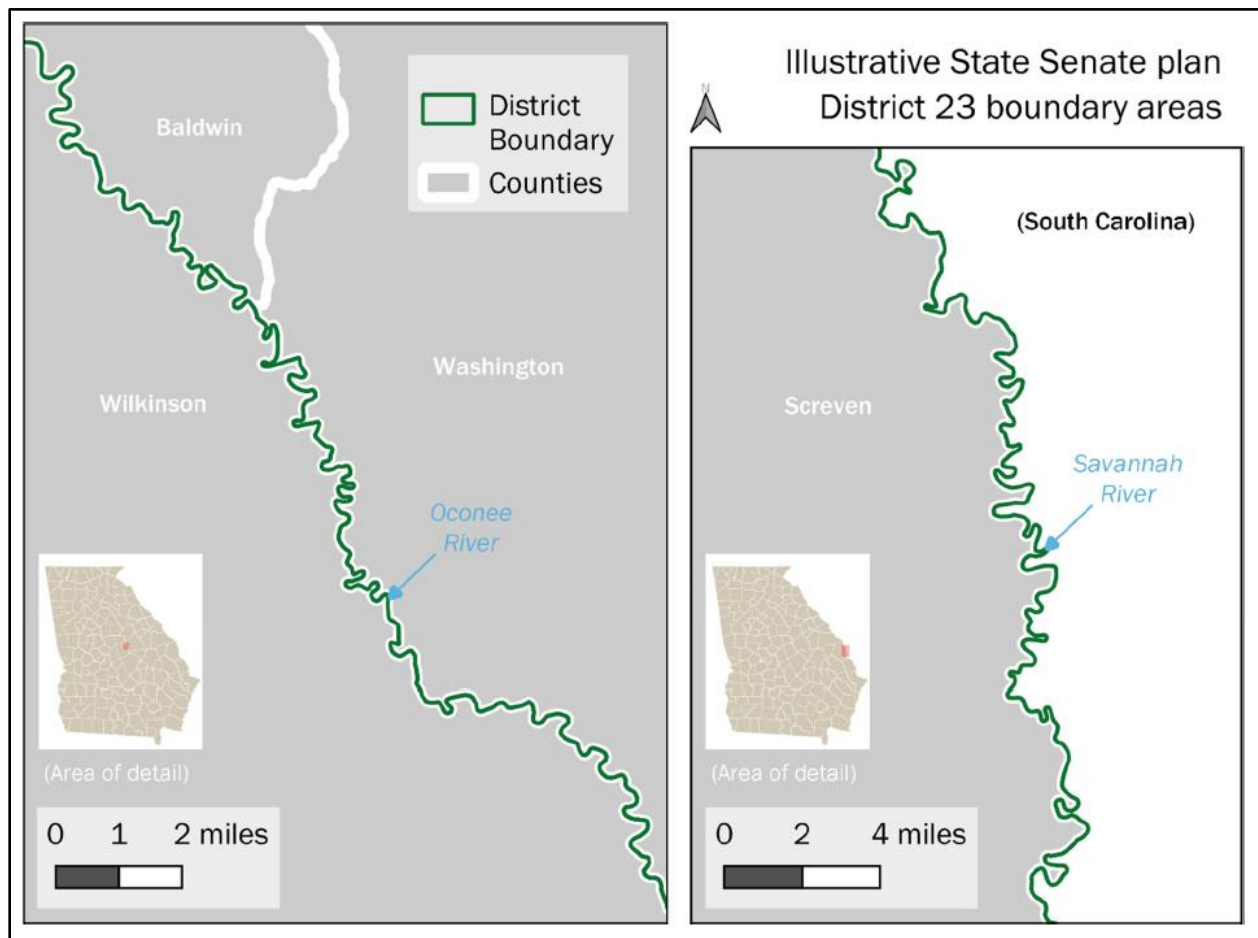
50. The districts in Mr. Esselstyn's illustrative State Senate plan satisfy the contiguity requirement in the same manner as the enacted plan. Esselstyn Report ¶ 35.

c. Compactness

51. Numerous measures exist for quantifying compactness of districts: The Reock, Polsby-Popper, and Area/Convex Hull measures all provide scores between zero and one, with scores closer to one (i.e., *higher* values) indicating more compactness; the Schwartzberg measure provides scores greater than or equal to one, with scores closer to one (i.e., *lower* values) indicating more compactness; and for the Number of Cut Edges—which is only meaningful for comparing entire plans, not individual districts—a lower score indicates more compactness. Esselstyn Report ¶ 36 & n.9, attach. G.

52. Different compactness measures weight boundary features in different ways, and a district's relative compactness might vary based on which measure is used; for example, the Polsby-Popper measure, which considers a district's perimeter in its formula, heavily penalizes a district if it has a wiggly border, even if the district's overall shape is not stringy or convoluted—as is the case with Mr.

Esselstyn's illustrative Senate District 23, the boundary of which at places follows serpentine county boundaries that themselves follow significant rivers:



Esselstyn Report ¶ 38, fig.9.

53. The following table reports compactness measures for the enacted State Senate plan and Mr. Esselstyn's illustrative plan:

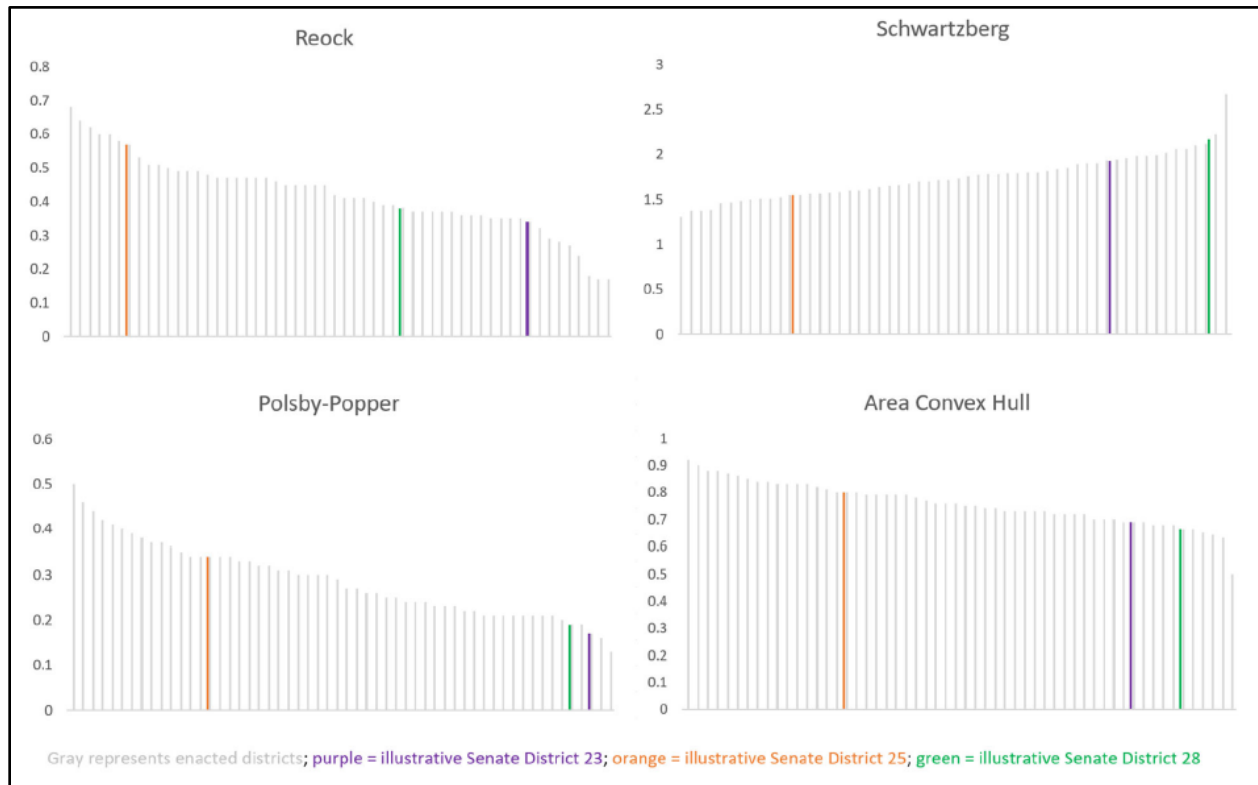
	Reock (average)	Schwartzberg (average)	Polsby- Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.42	1.75	0.29	0.76	11,005
Illustrative	0.41	1.76	0.28	0.75	11,003

Esselstyn Report ¶ 36, tbl.2; Morgan Dep. 90:6–17 (agreeing that Mr. Esselstyn's illustrative plan has similar mean compactness to enacted plan using Reock and Polsby-Popper measures).

54. The compactness scores of the three additional majority-Black districts in Mr. Esselstyn's illustrative State Senate plan—Senate Districts 23, 25, and 28—all fall within the range of compactness scores of the districts in the enacted plan using the Reock, Schwartzberg, Polsby-Popper and Area/Convex Hull measures. Esselstyn Report ¶ 37, attach. H.

55. The following charts depict the compactness scores of the three additional majority-Black districts in Mr. Esselstyn's illustrative State Senate plan and the compactness scores of the districts in the enacted plan; the gray lines represent the compactness scores of each of the enacted districts, in sorted order, and

the purple, orange, and green lines represent the scores of illustrative Senate Districts 23, 25, and 28, respectively:



Esselstyn Report ¶ 37, fig.8.

56. The following table reports the associated compactness scores:

	Measures of Compactness			
	Reock	Schwartzberg	Polsby-Popper	Area/Convex Hull
Enacted plan least compact score	0.17	2.67	0.13	0.50
Enacted plan median score	0.415	1.725	0.28	0.755
Illustrative District 23 score	0.34	1.93	0.17	0.69
Illustrative District 25 score	0.57	1.55	0.34	0.80
Illustrative District 28 score	0.38	2.17	0.19	0.66

Esselstyn Report ¶ 37, tbl.3.

d. Preservation of Political Subdivisions

57. The following table compares political subdivision splits between the enacted State Senate plan and Mr. Esselstyn's illustrative plan:

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

Esselstyn Report ¶ 39, tbl.4, attach. H.

e. Preservation of Communities of Interest

58. While communities of interest can be larger than a county or smaller than a college campus, and individuals might have different opinions about their exact geographic extents, in drawing his illustrative State Senate and House plans, Mr. Esselstyn generally referred to recognizable entities visible in the Maptitude for

Redistricting software interface (such as municipalities and landmark areas), as well as areas and communities described by Georgians (either in his personal conversations or in statements made in public hearings). Esselstyn Report ¶ 41.

59. Mr. Esselstyn's illustrative State Senate plan includes all of Douglas County in one majority-Black State Senate district, rather than dividing it between two districts as it is in the enacted plan. Esselstyn Report ¶ 31 n.8.

60. Mr. Esselstyn's illustrative State Senate plan maintains Macon-Bibb County in a single majority-Black district, consistent with recommendations made during the public hearing in Macon on July 29, 2021, whereas Macon-Bibb County is divided in the enacted plan. Esselstyn Report ¶ 29 n.7.

61. Mr. Esselstyn's illustrative State Senate plan keeps the two campuses of Georgia College together in the same district. Esselstyn Report ¶ 41.

f. Incumbent Pairings

62. Mr. Esselstyn's illustrative State Senate plan would not pair any incumbent senators in the same district. Esselstyn Report ¶ 42.

g. Core Retention

63. In Mr. Esselstyn's illustrative State Senate plan, 22 of the enacted districts were modified, leaving the other 34 unchanged. Esselstyn Report ¶ 26.

2. Illustrative House Plan

a. Population Equality

64. In Mr. Esselstyn's illustrative House plan, most district populations are within plus-or-minus 1% of the ideal, and a small minority are within between plus-or-minus 1% and 2%. Esselstyn Report ¶ 55, attach. L.

65. No district in Mr. Esselstyn's illustrative House plan has a population deviation of more than 2%. Esselstyn Report ¶ 55, attach. L.

66. Under the enacted House plan, the relative average population deviation is 0.61%; under Mr. Esselstyn's illustrative plan, the relative average deviation is 0.64%. Esselstyn Report ¶ 55, attach. L.

b. Contiguity

67. The districts in Mr. Esselstyn's illustrative House plan satisfy the contiguity requirement in the same manner as the enacted plan. Esselstyn Report ¶ 56.

c. Compactness

68. The following table reports compactness measures for the enacted House plan and Mr. Esselstyn's illustrative plan:

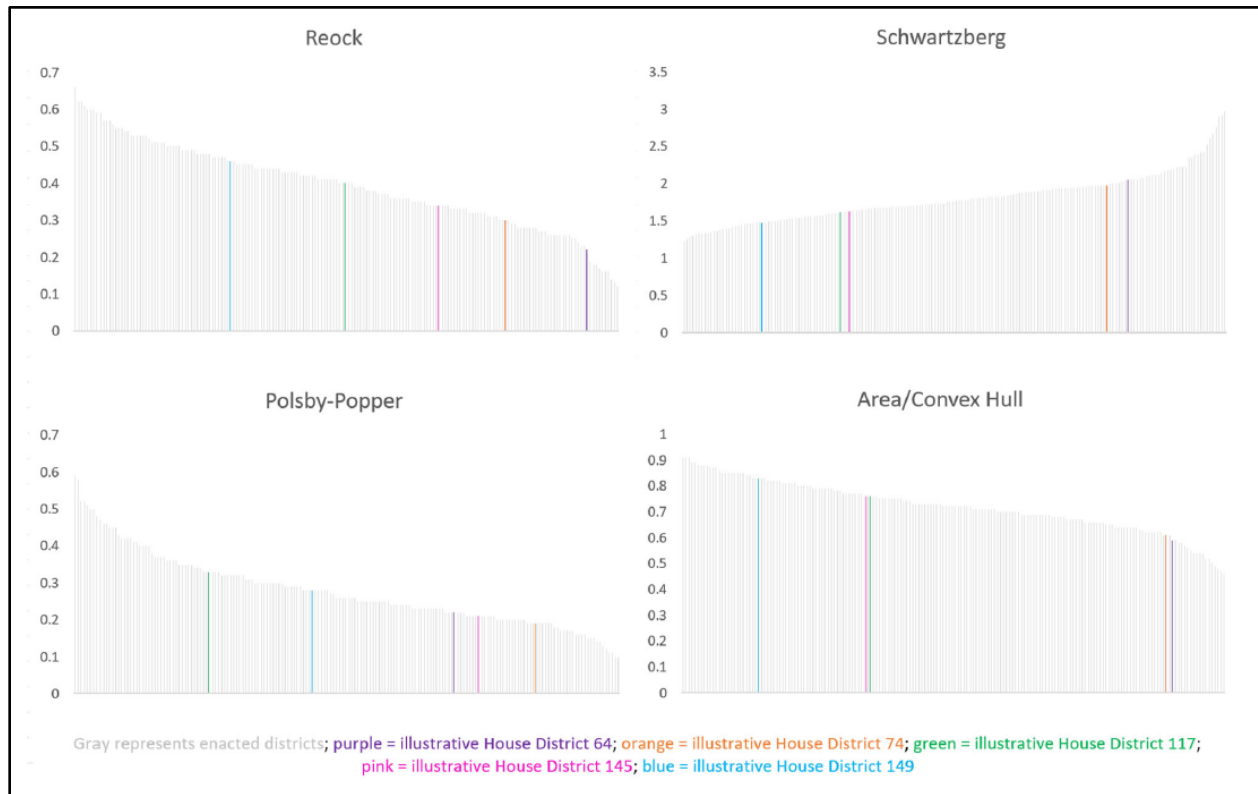
	Reock (average)	Schwartzberg (average)	Polsby- Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.39	1.80	0.28	0.72	22,020
Illustrative	0.39	1.81	0.28	0.72	22,359

Esselstyn Report ¶ 57, tbl.6; Morgan Dep. 168:6–11 (acknowledging that Mr. Esselstyn's illustrative House plan has Reock and Polsby-Popper scores identical to enacted plan to two decimal places).

69. The compactness scores of the five additional majority-Black districts in Mr. Esselstyn's illustrative House plan—House Districts 64, 74, 117, 145, and 149—all fall within the range of compactness scores of the districts in the enacted plan using the Reock, Schwartzberg, Polsby-Popper and Area/Convex Hull measures. Esselstyn Report ¶ 58, attach. L.

70. The following charts depict the compactness scores of the five additional majority-Black districts in Mr. Esselstyn's illustrative House plan and the compactness scores of the districts in the enacted plan; the gray lines represent the compactness scores of each of the enacted districts, in sorted order, and the purple,

orange, green, pink, and blue lines represent the scores of illustrative House Districts 64, 74, 117, 145, and 149, respectively:



Esselstyn Report ¶ 58, fig.17.

71. The following table reports the associated compactness scores:

	Measures of Compactness			
	Reock	Schwartzberg	Polsby-Popper	Area/Convex Hull
Enacted plan least compact score	0.12	2.98	0.10	0.46
Enacted plan median score	0.40	1.765	0.26	0.72
Illustrative District 64 score	0.22	2.05	0.22	0.59
Illustrative District 74 score	0.30	1.98	0.19	0.61
Illustrative District 117 score	0.40	1.62	0.33	0.76
Illustrative District 145 score	0.34	1.63	0.21	0.76
Illustrative District 149 score	0.46	1.48	0.28	0.83

Esselstyn Report ¶ 58, tbl.7.

d. Preservation of Political Subdivisions

72. The following table compares political subdivision splits between the enacted House plan and Mr. Esselstyn’s illustrative plan:

	Intact Counties	Split Counties	Split VTDs
Enacted	90	69	185
Illustrative	89	70	186

Esselstyn Report ¶ 59, tbl.8, attach. L.

e. Preservation of Communities of Interest

73. Mr. Esselstyn’s illustrative House plan, like the enacted plan, divides Macon-Bibb County into four districts—two of which (illustrative House Districts 142 and 143) are wholly contained in Macon-Bibb County. Esselstyn Report ¶ 51.

74. The orientation of illustrative House Districts 142 and 143 ensures that the northern portions of Macon-Bibb County stay in a Macon-Bibb County district with portions of Macon, rather than being put in a district with a more rural neighboring county like Monroe; this type of arrangement was specifically recommended during public comment at a Joint Reapportionment Committee hearing. Esselstyn Report ¶ 51 & n.13.

75. Twiggs and Wilkinson counties—described by Gina Wright, the Executive Director of the General Assembly’s Legislative and Congressional Reapportionment Office, as “constitut[ing] a single community of interest”—are included in their entirety in Mr. Esselstyn’s illustrative House District 149. Esselstyn Report ¶ 51 & n.12 (alteration in original) (quoting ECF No. 55 at 9).

76. Illustrative House District 149 generally follows the orientation of the Georgia Fall Line geological feature, which brings with it shared economic, historic, and ecological similarities. Esselstyn Report ¶ 52 & n.14.

77. Macon and Milledgeville, parts of which are in illustrative House District 149, are both characterized as “Fall Line Cities” and were identified in public comment before the General Assembly’s Joint Reapportionment Committee as two cities that should be kept in the same district. Esselstyn Report ¶ 52 & nn.15–16.

78. Mr. Esselstyn’s illustrative House plan keeps the two campuses of Georgia College together in the same district. Esselstyn Report ¶ 60.

f. Incumbent Pairings

79. Mr. Esselstyn’s illustrative House plan would pair a total of eight incumbents in the same districts—the same number of incumbent pairings reported for the enacted plan in the declaration submitted by Defendants’ mapping expert, John Morgan, during the preliminary injunction proceedings in this matter. Esselstyn Report ¶ 61 & nn.17–18.

g. Core Retention

80. In Mr. Esselstyn’s illustrative House plan, 25 of the enacted districts were modified, leaving the other 155 unchanged. Esselstyn Report ¶ 47.

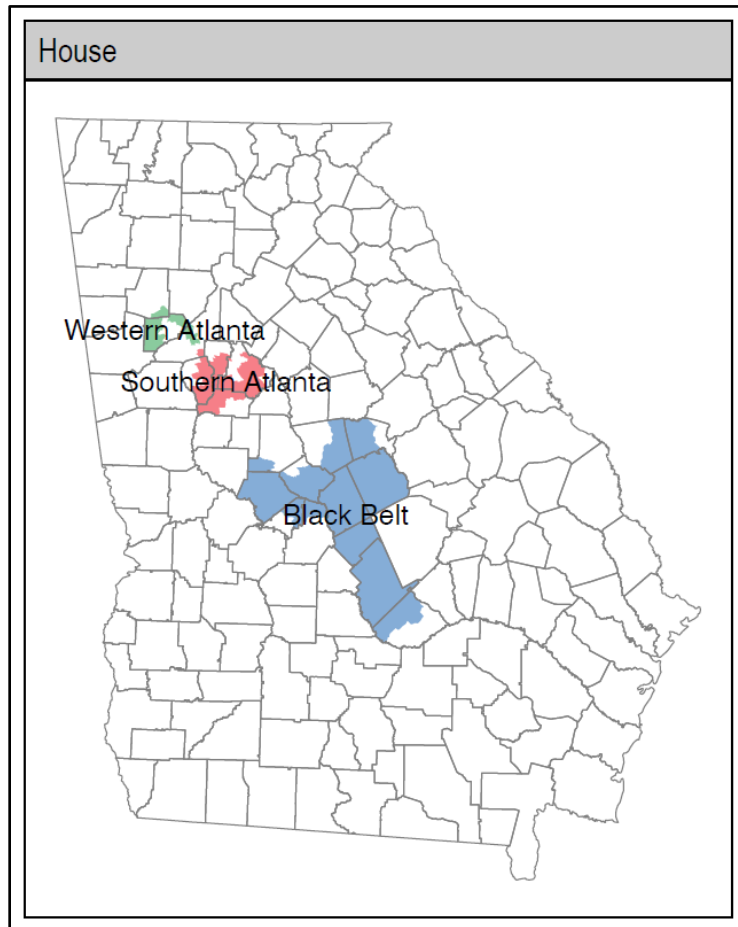
II. Second *Gingles* Precondition: Political Cohesion

81. Dr. Palmer conducted racially polarized voting analyses across five different focus areas, comprising the districts from which Mr. Esselstyn’s additional majority-Black legislative districts were drawn. Palmer Report ¶ 10.

82. Dr. Palmer examined the following areas of the enacted House plan:

- *Black Belt*: House Districts 133, 142, 143, 145, 147, and 149, which include Bleckley, Crawford, Dodge, Twiggs, and Wilkinson counties and parts of Baldwin, Bibb, Houston, Jones, Monroe, Peach, and Telfair counties;

- *Southern Atlanta*: House Districts 69, 74, 75, 78, 115, and 117, which include parts of Clayton, Fayette, Fulton, Henry, and Spalding counties; and
- *Western Atlanta*: House Districts 61 and 64, which include parts of Douglas, Fulton, and Paulding counties.

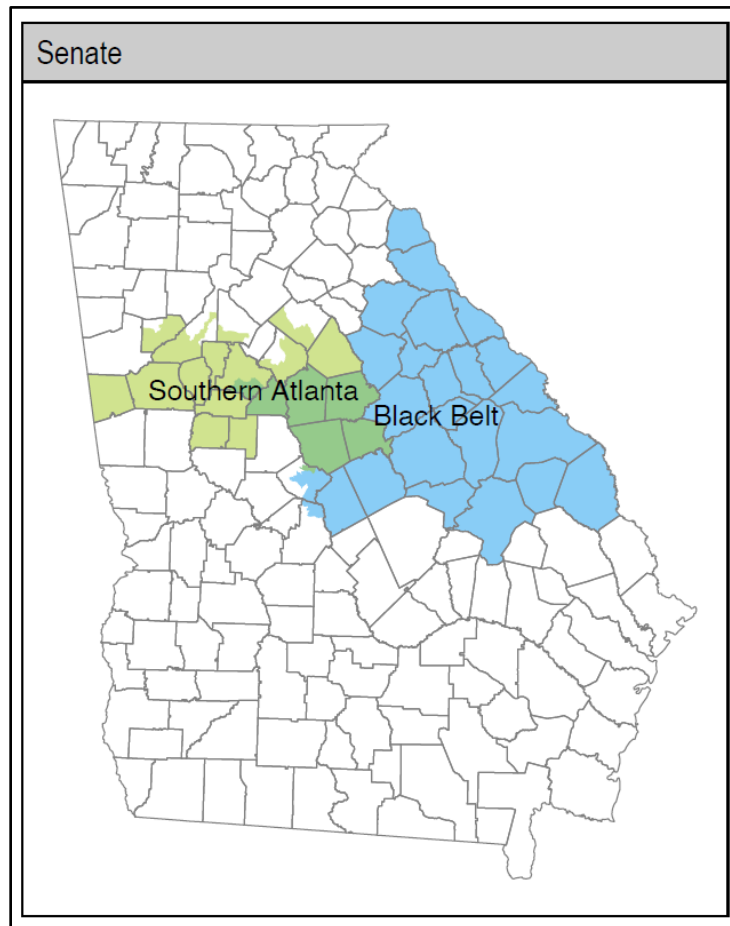


Palmer Report ¶ 11, fig.1.

83. Dr. Palmer examined the following areas of the enacted State Senate plan:

- *Black Belt*: Senate Districts 22, 23, 24, 25, and 26, which include Baldwin, Burke, Butts, Columbia, Elbert, Emanuel, Glascock, Greene, Hancock, Hart, Jasper, Jefferson, Jenkins, Johnson, Jones, Lincoln, Mcduffie, Oglethorpe, Putnam, Richmond, Screven, Taliaferro, Twiggs, Warren, Washington, Wilkes, and Wilkinson counties and parts of Bibb, Henry, and Houston counties; and
- *Southern Atlanta*: Senate Districts 10, 16, 17, 25, 28, 34, 35, 39, and 44, which include Baldwin, Butts, Clayton, Coweta, Fayette, Heard, Jasper, Jones,

Lamar, Morgan, Pike, Putnam, and Spalding counties and parts of Bibb, DeKalb, Douglas, Fulton, Henry, Newton, and Walton counties.



Palmer Report ¶ 12, fig.1.

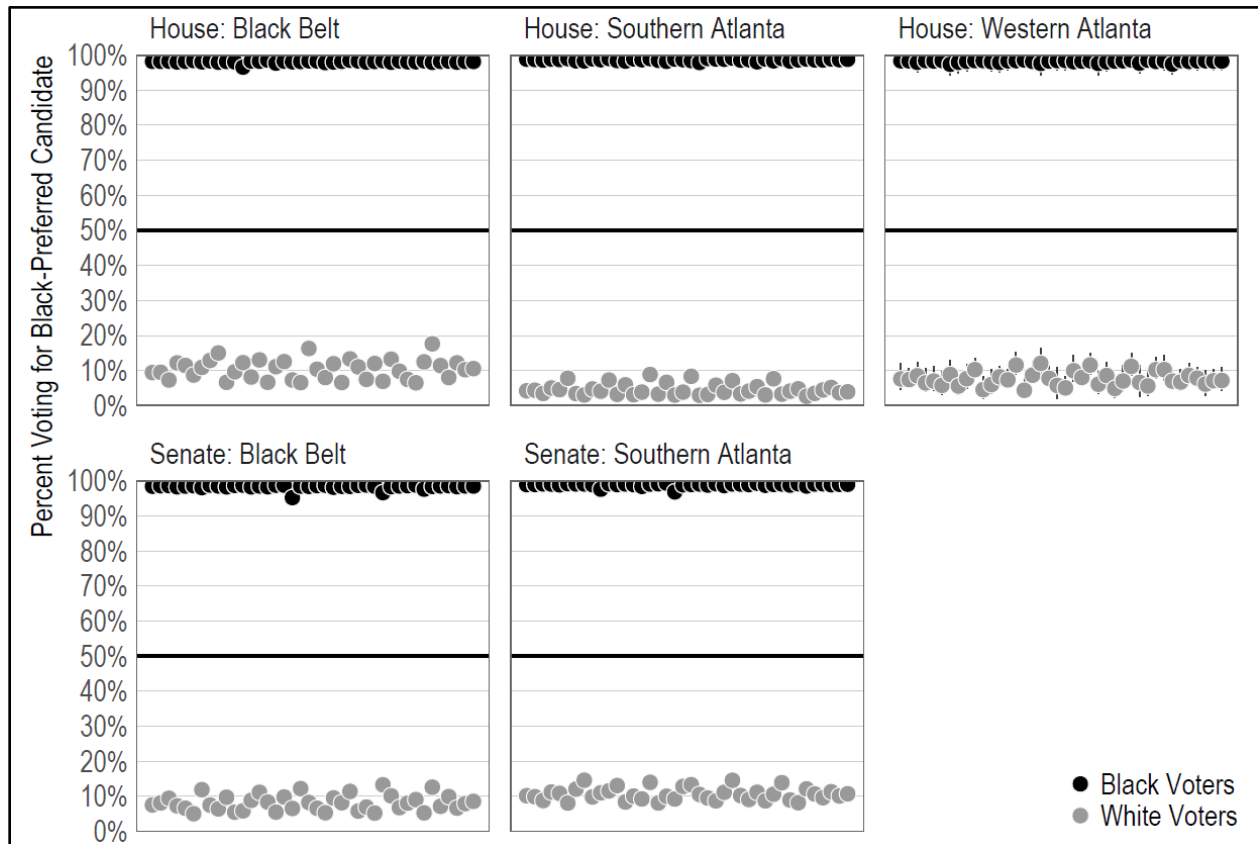
84. Dr. Palmer employed a statistical method called Ecological Inference (“EI”) to derive estimates of the percentages of Black and white voters in the focus areas that voted for each candidate in 40 statewide elections between 2012 and 2022. Palmer Report ¶¶ 10, 15; Ex. 9 (“Alford Dep.”) at 36:11–37:12 (agreeing that EI is

best available method for estimating voting behavior by race and with Dr. Palmer's methodology and results).

85. Dr. Palmer's EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. Palmer Report ¶ 13.

86. Dr. Palmer's EI process proceeded as follows: First, he examined each racial group's support for each candidate to determine if members of the group voted cohesively in support of a single candidate in each election and, if a significant majority of the group supported a single candidate, then identified that candidate as the group's candidate of choice; and second, he compared the preferences of white voters to the preferences of Black voters. Palmer Report ¶ 16.

87. Black voters in the focus areas are extremely cohesive, with a clear candidate of choice in all 40 elections Dr. Palmer examined:



Palmer Report ¶ 18, fig.2, tbls.1, 2, 3, 4, 5, & 6; Ex. 3 (“Suppl. Palmer Report”) ¶ 6, fig.1, tbl.1; Ex. 7 (“Alford Report”) at 3 (“Black voter support for their preferred candidate is typically in the 90 percent range and scarcely varies at all across the ten years examined from 2012 to 2022. Nor does it vary in any meaningful degree from the top of the ballot elections for U.S. President to down-ballot contests like Public Service Commissioner.”); Alford Dep. 37:13–15 (agreeing with Dr. Palmer’s conclusion that Black Georgians are politically cohesive).

88. The estimates for support for Black-preferred candidates by Black voters are all significantly above 50% across the five focus areas:

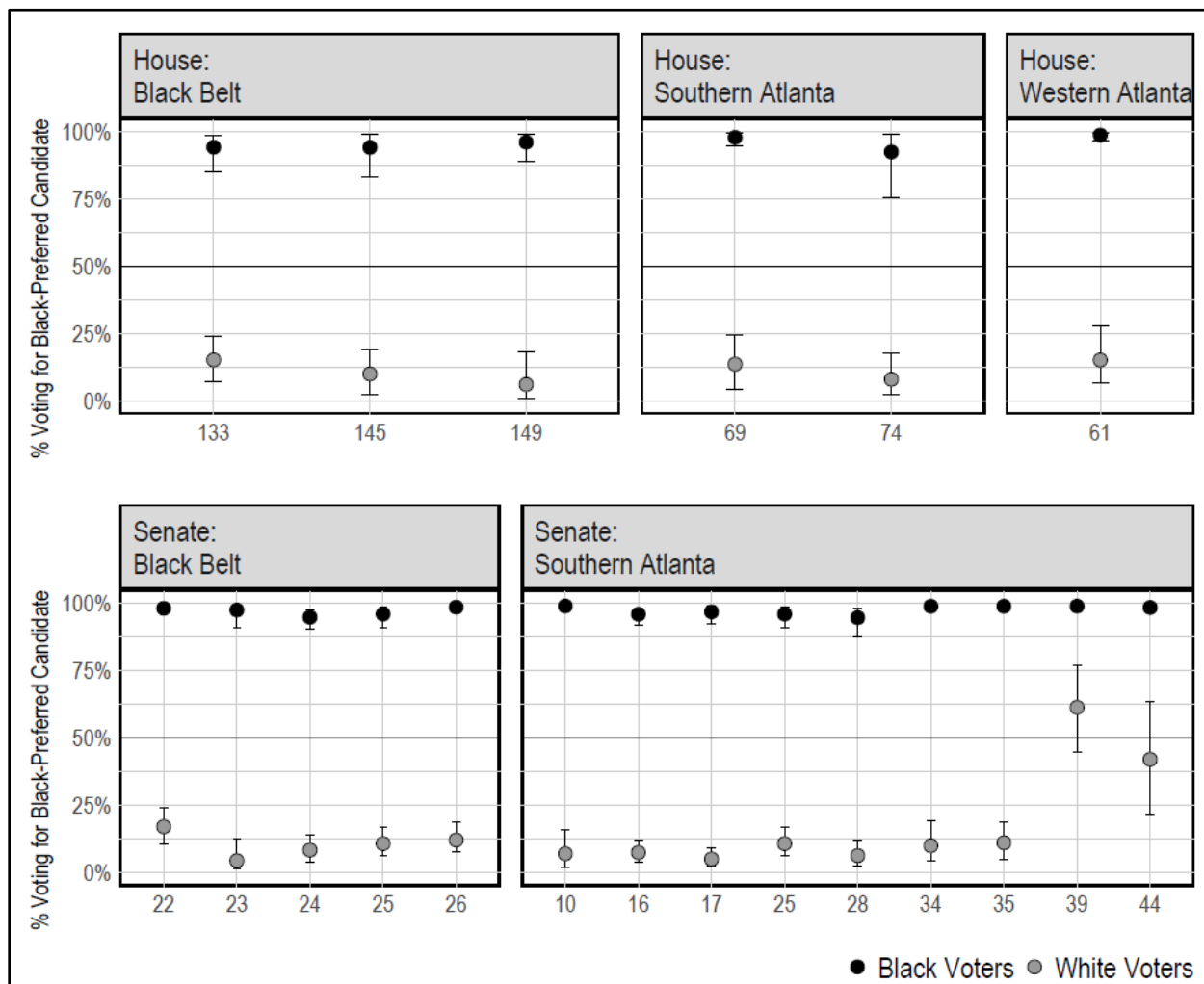
	Focus Area	Black Voters	White Voters
House	Black Belt	98.1%	10.4%
	Southern Atlanta	98.7%	4.6%
	Western Atlanta	98.2%	7.7%
Senate	Black Belt	98.4%	8.2%
	Southern Atlanta	98.9%	10.7%

Palmer Report ¶ 16, tbl.1.

89. On average, across the five focus areas, Black voters supported their candidates of choice with 98.5% of the vote in the 40 elections Dr. Palmer examined.

Palmer Report ¶ 18.

90. Black voters are also cohesive in each of the districts that comprise the focus areas and contain 15 or more precincts, with an average estimated level of support for Black-preferred candidates of at least 92.5%:



Palmer Report ¶ 19 & nn.14–15, fig.3, tbl.7.

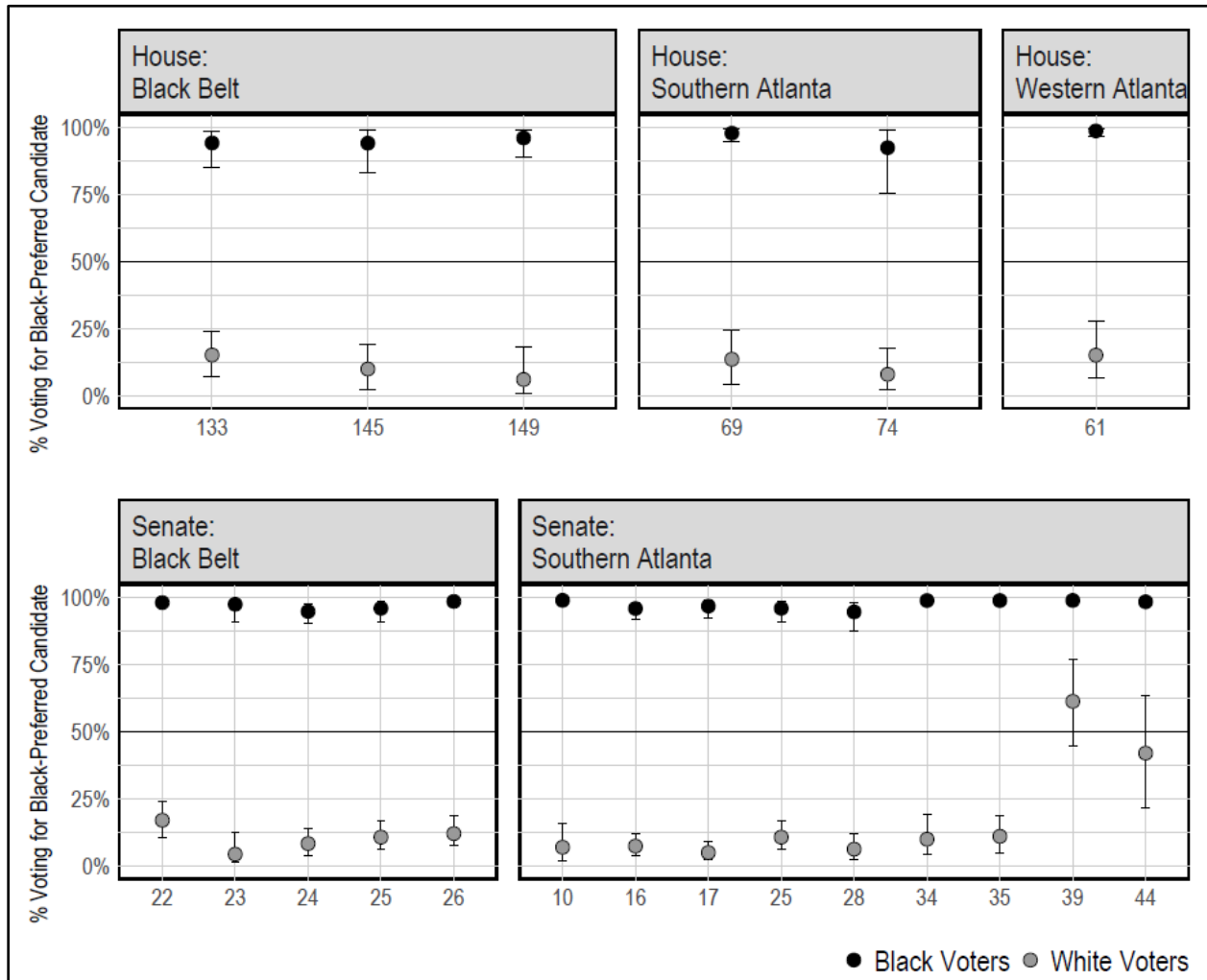
III. Third *Gingles* Precondition: Bloc Voting

91. White voters across the five focus areas are highly cohesive in voting in opposition to the Black-preferred candidate in every election Dr. Palmer

examined. Palmer Report ¶ 18, fig.2, tbl.1; Suppl. Palmer Report ¶ 6, fig.1, tbl.1; Alford Report 3 (noting that “estimated white voter opposition to the Black-preferred candidate is typically above 80 percent” and is “remarkably stable”); Alford Dep. 38:20–39:8 (agreeing that white voters generally vote in opposition to Black voters, which can operate to defeat minority-preferred candidates).

92. On average, across the five focus areas, white voters supported Black-preferred candidates with only 8.3% of the vote, and in no election that Dr. Palmer examined did this estimate exceed 17.7%. Palmer Report ¶ 18.

93. Of the districts in the focus areas that contain 15 or more precincts, white voters are cohesive in voting in opposition to Black-preferred candidates in each House district and in 12 of 14 State Senate districts:



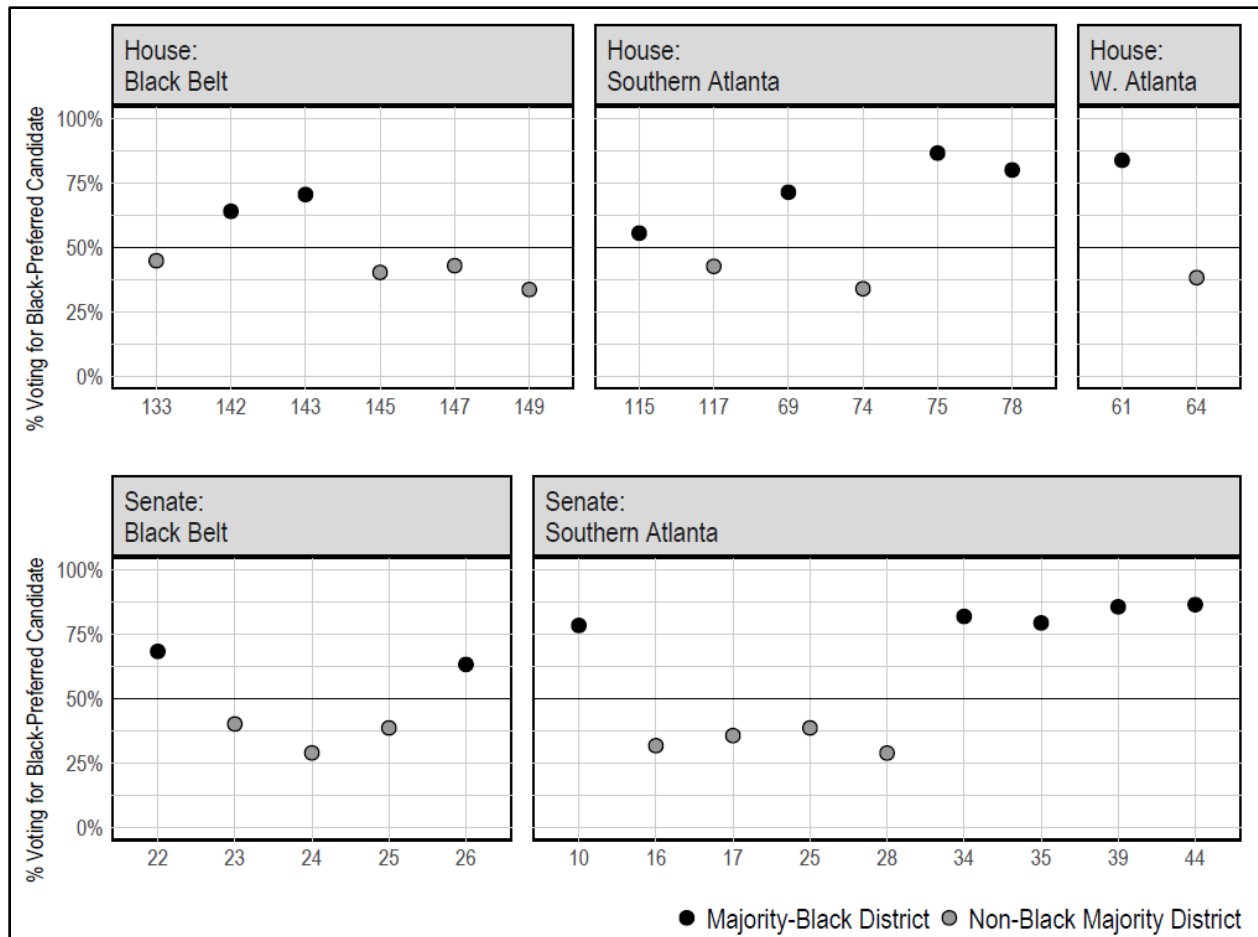
Palmer Report ¶ 19 & nn.14–15, fig.3, tbl.7.

94. On average, white-preferred candidates prevailed in the elections Dr. Palmer examined in two of the three focus areas; in the other three focus areas, Black-preferred candidates were able to prevail on average only due to the high

support for Black-preferred candidates in majority-Black districts. Palmer Report ¶ 20, tbl.8.

95. In the districts that comprise the five focus areas, Black-preferred candidates win almost every election in majority-Black districts but lose almost every election in non-majority-Black districts. Palmer Report ¶ 21.

96. On average, in the districts that comprise the five focus areas, Black-preferred candidates prevail only in majority-Black districts:



Palmer Report ¶ 21, fig.4.

97. These findings were confirmed by the endogenous election results from the 2022 general election, in which Black-preferred State Senate and House candidates were defeated in every majority-white district and elected in every majority-Black district in the focus areas. Suppl. Palmer Report ¶ 5, tbl.2.

IV. Totality of Circumstances

A. Senate Factor One: History of Voting-Related Discrimination

98. Georgia has an extensive and well-documented history of discrimination against its Black citizens that has touched upon their right to register, vote, and otherwise participate in the political process; as Dr. Orville Vernon Burton explained, throughout the history of the state of Georgia, voting rights have followed a pattern where after periods of increased nonwhite voter registration and turnout, the State has passed legislation, and often used extralegal means, to disenfranchise minority voters. Ex. 4 (“Burton Report”) at 10.

1. Political Violence Against Black Georgians

99. Between 1867 and 1872, at least one quarter of the state’s Black legislators were jailed, threatened, bribed, beaten, or killed. Burton Report 14.

100. This violence, often perpetrated by the Ku Klux Klan, enabled white Georgians to regain control of the levers of power in the state. Burton Report 14–17.

101. After seizing control of the state legislature through a campaign of violence and intimidation, white Democrats called a new constitutional convention chaired by the former Confederate secretary of state; that convention resulted in the Constitution of 1877, which effectively barred Black Georgians from voting through the implementation of a cumulative poll tax. Burton Report 17.

102. Violence, and the threat of it, was constant for many Black Georgians as white Democrats controlled the state in the late-19th and first part of the 20th centuries. Burton Report 23.

103. In addition to mob violence, Black Georgians endured a form of state-sanctioned violence through debt peonage and the convict lease system, which effectively amounted to “slavery by another name.” Burton Report 24.

104. Violence against Black Georgians surged after the First World War, with many white Georgians holding “a deep antipathy” toward Black veterans. Burton Report 25.

105. Between 1875 and 1930, there were 462 lynchings in Georgia; only Mississippi had more reported lynchings during that time. Burton Report 26.

106. These lynchings “served as a reminder for Black Georgians who challenged the status quo, and in practice lynchings did not need to be directly

connected to the right to vote to act as a threat against all Black Georgians who dared to participate in the franchise.” Burton Report 26.

2. Pre-Voting Rights Act

107. “While Georgia was not an anomaly, no state was more systematic and thorough in its efforts to deny or limit voting and officeholding by African-Americans after the Civil War.” Burton Report 10 (quoting Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia* 2–3 (2003)).

108. Although Georgia’s 1865 constitution abolished slavery, it limited the franchise to white citizens and barred Black Georgians from holding elected office. Burton Report 11.

109. The federal government forced Georgia to extend the right to vote to Black males in 1867, but the State responded with a series of facially neutral policies that had the intent and effect of “render[ing] black participation in politics improbable.” Burton Report 12, 18.

110. Georgia’s 1877 constitution, for example, did not explicitly disenfranchise Black citizens but made it practically impossible for Black Georgians to vote by implementing a cumulative poll tax for elections, such that a potential voter had to pay all previous unpaid poll taxes before casting a ballot. Burton Report 17.

111. Relatedly, Georgia prohibited Black voters from participating in Democratic Party primaries; because Georgia was a one-party Democratic state, the “white primary” effectively eliminated Black participation in the state’s politics. Burton Report 19.

112. In 1908, Georgia enacted the Felder-Williams Bill, which broadly disenfranchised many Georgians but contained numerous exceptions that allowed most white citizens to vote, including owning 40 acres of land or 500 dollars’ worth of property; being able to write or to understand and explain any paragraph of the U.S. or Georgia constitution; and being “persons of good character who understand the duties and obligations of citizenship.” Burton Report 20 (quoting McDonald, *supra*, at 41).

113. In conjunction with the Felder-Williams Bill, Georgia enacted a voter-registration law allowing any citizen to contest the right of registration of any person whose name appeared on the voter list. Burton Report 21.

114. These laws “were devastatingly effective at eliminating both Black elected officials from seats of power and Black voters from the franchise”: At the time of the Felder-Williams Bill, there were 33,816 Black Georgians registered to vote, while two years later, only 7,847 Black voters were registered—a decrease of more than 75%. Burton Report 22.

115. From 1920 to 1930, the combined Black vote total in Georgia never exceeded 2,700, and by 1940, the total Black registration in Georgia was still only approximately 20,000, around 2–3% of eligible Black voters. Burton Report 22.

116. By contrast, less than 6% of white voters were disenfranchised by Georgia’s new election laws. Burton Report 22.

3. Post-Voting Rights Act

117. Congress enacted the Voting Rights Act of 1965 to address these discriminatory practices; among its provisions was the preclearance requirement that prohibited certain jurisdictions with well-documented practices of discrimination—including Georgia—from making changes to their voting laws without approval from the federal government. Burton Report 36.

118. The Voting Rights Act, however, did not translate into instant success for Black political participation in Georgia. Burton Report 36.

119. Among states subject to preclearance in their entirety, Georgia ranked second only to Alabama in the disparity in voter registration between its Black and white citizens by 1976, and these disparities were directly attributable to Georgia’s continued efforts to enact policies designed to circumvent the Voting Rights Act’s protections and suppress the rights of Black voters. Burton Report 36.

120. Between 1965 and 1980, nearly 30% of the U.S. Department of Justice’s objections to voting-related changes under Section 5 were attributable to Georgia—more than any other state in the country. Burton Report 3, 39.

121. When Congress reauthorized the Voting Rights Act in 1982, it specifically cited systemic abuses by Georgia officials intended to obstruct Black voting rights. Burton Report 3, 42.

122. Throughout the first two decades of the 21st century, the State initiated investigations of Black candidates and organizations dedicated to protecting the franchise rights of Georgia’s minority voters; investigations into alleged voter fraud in the predominantly Black City of Quitman and the efforts of the New Georgia Project and the Asian American Legal Advocacy Center ended without convictions or evidence of wrongdoing. Burton Report 45–46.

123. After the U.S. Supreme Court effectively ended the Voting Rights Act’s preclearance requirement in *Shelby County v. Holder*, 570 U.S. 529 (2013), Georgia was the only former preclearance state that proceeded to adopt “all five of the most common restrictions that impose roadblocks to the franchise for minority voters, including (1) voter ID laws, (2) proof of citizenship requirements, (3) voter purges, (4) cuts in early voting, and (5) widespread polling place closures.” Burton Report 48–49.

124. In 2015, for example, Georgia began closing polling places in primarily Black neighborhoods. Burton Report 49.

125. By 2019, 18 counties in Georgia closed more than half of their polling places and several closed almost 90%, depressing turnout in affected areas and leading to substantially longer waiting times at the polls. Burton Report 50.

126. According to one study, in 2020, about two-thirds of the polling places that had to stay open late for the June primary to accommodate waiting voters were in majority-Black neighborhoods, even though they made up only about one-third of the state's polling places. Burton Report 50.

127. Georgia also engaged in “systematic efforts to purge the voting rolls in ways that particularly disadvantaged minority voters and candidates” in the aftermath of *Shelby County*. Burton Report 50.

128. In the period from 2012 to 2018, Georgia removed 1.4 million voters from the eligible voter rolls—purges that disproportionately impacted Black voters. Burton Report 50–51.

129. Following significant increases in Black voter turnout, Georgia enacted Senate Bill (“SB”) 202 in the spring of 2021, which targeted methods of voting that Black voters used extensively in the 2020 general election; among other things, SB 202 (1) increases identification requirements for absentee voting, (2) bans state

and local governments from sending unsolicited absentee-ballot applications, (3) limits the use of absentee-ballot drop boxes, (4) bans mobile polling places (except when the governor declares an emergency), and (5) prohibits anyone who is not a poll worker from giving food or drink to voters in line to vote. Burton Report 53.

130. The growth of Georgia’s nonwhite population over the past 20 years and the corresponding increase in minority voting power has, as Dr. Burton explained, “provide[d] a powerful incentive for Republican officials at the state and local level to place hurdles in the path of minority citizens seeking to register and vote.” Burton Report 60.

4. Redistricting-Related Discrimination

131. Georgia’s legislative and congressional districts were grievously malapportioned in the years preceding the enactment of the Voting Rights Act. Burton Report 32.

132. In 1957, the Atlanta-based Congressional District 5 was the second-most populous congressional district in the United States, with an estimated population of 782,800—about twice the size of the average congressional district. Burton Report 32.

133. By 1960, Fulton County was the most underrepresented county in a state legislature of any county in the United States; DeKalb County was the third-most-underrepresented county. Burton Report 32.

134. Georgia's redistricting plans were subject to the Voting Rights Act's preclearance requirement, and in the 40 years following its enactment, Georgia did not complete a redistricting cycle without objection from the U.S. Department of Justice. Burton Report 40–44.

135. The Atlanta metropolitan area was often the focal point of Georgia's efforts to suppress Black political influence through redistricting; for example, the U.S. Department of Justice rejected Georgia's 1971 congressional plan, which cracked voters throughout Congressional Districts 4, 5, and 6 to give the Atlanta-based Congressional District 5 a substantial white majority. Burton Report 40; *Georgia v. United States*, 411 U.S. 526, 541 (1973) (affirming that Georgia's 1972 reapportionment plan violated Section 5 of Voting Rights Act).

136. The U.S. Department of Justice also rejected the congressional redistricting plan passed by Georgia following the 1980 census, which contained white majorities in nine of the state's 10 congressional districts, even though Georgia's population was nearly 30% Black. Burton Report 40; *Busbee v. Smith*, 549 F. Supp. 494, 517 (D.D.C. 1982) (three-judge court) (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); Ex. 10 (1982 objection letter from U.S. Department of Justice asserting that “the proposed [congressional] plan divides an apparently cohesive black community of Fulton and DeKalb Counties”).

137. During the 1990 redistricting cycle, the U.S. Department of Justice twice rejected Georgia’s state reapportionment plan before finally approving the third submission. Burton Report 42; Ex. 11 (1992 objection letter from U.S. Department of Justice asserting that “the submitted [congressional] plan minimizes the electoral potential of large concentrations of black population in several areas of the state”).

138. During the 2000 redistricting cycle, the U.S. District Court for the District of Columbia refused to preclear Georgia’s State Senate redistricting plan, which decreased the Black voting-age population in the districts surrounding Chatham, Albany, Dougherty, Calhoun, Macon, and Bibb counties. Burton Report 43.

139. In 2015, after *Shelby County*, the General Assembly engaged in mid-cycle redistricting, reducing the Black and Latino voting-age populations in House

Districts 105 and 111, both of which had become increasingly diverse over the prior half-decade. Burton Report 40, 44.

B. Senate Factor Two: Racially Polarized Voting

1. Quantitative Evidence

140. Dr. Palmer found strong evidence of racially polarized voting across the focus areas he examined and within the State Senate and House districts comprising them. Palmer Report ¶¶ 7, 18–19; Suppl. Palmer Report ¶ 4; Alford Report 3 (“As evident in Dr. Palmer’s [reports], the pattern of polarization is quite striking.”); Alford Dep. 44:8–16, 45:10–12 (“This is clearly polarized voting, and the stability of it across time and across office and across geography is really pretty remarkable.”).

141. Black voters in the focus areas are extremely cohesive, with a clear candidate of choice in all 40 elections Dr. Palmer examined. Palmer Report ¶ 18, fig.2, tbls.1, 2, 3, 4, 5, & 6; Suppl. Palmer Report ¶ 6, fig.1, tbl.1; Alford Report 3 (“Black voter support for their preferred candidate is typically in the 90 percent range and scarcely varies at all across the ten years examined from 2012 to 2022. Nor does it vary in any meaningful degree from the top of the ballot elections for U.S. President to down-ballot contests like Public Service Commissioner.”); Alford Dep.

37:13–15 (agreeing with Dr. Palmer’s conclusion that Black Georgians are politically cohesive).

142. The estimates for support for Black-preferred candidates by Black voters are all significantly above 50% across the five focus areas. Palmer Report ¶ 16, tbl.1.

143. On average, across the five focus areas, Black voters supported their candidates of choice with 98.5% of the vote in the 40 elections Dr. Palmer examined. Palmer Report ¶ 18.

144. Black voters are also cohesive in each of the districts that comprise the focus areas and contain 15 or more precincts, with an average estimated level of support for Black-preferred candidates of at least 92.5%. Palmer Report ¶ 19 & nn.14–15, fig.3, tbl.7.

145. White voters across the five focus areas are highly cohesive in voting in opposition to the Black-preferred candidate in every election Dr. Palmer examined. Palmer Report ¶ 18, fig.2, tbl.1; Suppl. Palmer Report ¶ 6, fig.1, tbl.1; Alford Report 3 (noting that “estimated white voter opposition to the Black-preferred candidate is typically above 80 percent” and is “remarkably stable”); Alford Dep. 38:20–39:8 (agreeing that white voters generally vote in opposition to Black voters, which can operate to defeat minority-preferred candidates).

146. On average, across the five focus areas, white voters supported Black-preferred candidates with only 8.3% of the vote, and in no election that Dr. Palmer examined did this estimate exceed 17.7%. Palmer Report ¶ 18.

147. Of the districts in the focus areas that contain 15 or more precincts, white voters are cohesive in voting in opposition to Black-preferred candidates in each House district and in 12 of 14 State Senate districts. Palmer Report ¶ 19 & nn.14–15, fig.3, tbl.7.

2. Qualitative Evidence

148. Dr. Burton explored the relationship between race and partisanship in Georgia politics. Burton Report 57–62.

149. As Dr. Burton explained, “[s]ince Reconstruction, conservative whites in Georgia and other southern states have more or less successfully and continuously held onto power. While the second half of the twentieth century was generally marked by a slow transition from conservative white Democrats to conservative white Republicans holding political power, the reality of conservative white political dominance did not change.” Burton Report 57.

150. Notably, the Democratic Party’s embrace of civil rights legislation—and the Republican Party’s opposition to it—was the catalyst of this political transformation, as the Democratic Party’s embrace of civil rights policies in the mid-

20th century caused Black voters to leave the Republican Party (the “Party of Lincoln”) for the Democratic Party. Burton Report 57–58.

151. In turn, the Democratic Party’s embrace of civil rights legislation sparked what Earl Black and Merle Black describe as the “Great White Switch,” in which white voters abandoned the Democratic Party for the Republican Party. Burton Report 58.

152. The 1948 presidential election illustrated this phenomenon: South Carolina Governor J. Strom Thurmond mounted a third-party challenge to Democratic President Harry Truman in protest of Truman’s support for civil rights, including his integration of the armed forces. Thurmond ran on the ticket of the so-called Dixiecrat Party, which claimed the battle flag of the Confederacy as its symbol. Thurmond’s campaign ended Democratic dominance of Deep South states by winning South Carolina, Alabama, Mississippi, and Louisiana. Burton Report 58.

153. This trend continued into the 1964 and 1968 elections. In 1964, the Republican nominee, Barry Goldwater, won only six states in a landslide defeat to President Lyndon B. Johnson: his home state of Arizona and all five states comprising the Deep South (South Carolina, Georgia, Alabama, Mississippi, and Louisiana). Goldwater was the first Republican presidential candidate to win Georgia’s electoral votes. Burton Report 58.

154. Goldwater told a group of Republicans from Southern states that it was better for the Republican Party to forgo the “Negro vote” and instead court white Southerners who opposed equal rights. Burton Report 59.

155. Four years later, Georgia’s electoral votes were won by George Wallace, another third-party presidential candidate who ran on a platform of vociferous opposition to civil rights legislation. Burton Report 58.

156. The effectiveness of what was called the “Southern strategy” during Richard Nixon’s presidency had a profound impact on the development of the nearly all-white modern Republican Party in the South. Burton Report 59.

157. Matthew D. Lassiter, an historian of the Atlanta suburbs, observed that “the law-and-order platform at the center of Nixon’s suburban strategy tapped into Middle American resentment toward antiwar demonstrators and black militants but consciously employed a color-blind discourse that deflected charges of racial demagoguery.” Burton Report 60 (quoting Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* 234 (2006)).

158. As Dr. Burton concluded, “[w]hite southerners abandoned the Democratic Party for the Republican Party because the Republican Party identified itself with racial conservatism. Consistent with this strategy, Republicans today

continue to use racialized politics and race-based appeals to attract racially conservative white voters.” Burton Report 59.

159. Georgia is a flash point of this modern strategy: According to Dr. Peyton McCrary, an historian formerly with the U.S. Department of Justice, “[i]n Georgia politics since 2002, state government is dominated by the Republican Party, the party to which now most non-Hispanic white persons belong. The greatest electoral threat to the Republican Party and Georgia’s governing elected officials is the growing number of African American, Hispanic, and Asian citizens, who tend strongly to support Democratic candidates. The increase in minority population and the threat of increasing minority voting strength provides a powerful incentive for Republican officials at the state and local level to place hurdles in the path of minority citizens seeking to register and vote. That is what has happened.” Burton Report 60 (quoting Expert Rep. of Dr. Peyton McCrary at 8, *Fair Fight Action v. Raffensperger*, No. 1:18-cv-05391-SCJ (N.D. Ga. Apr. 24, 2020), ECF No. 339)).

160. Dr. Burton explained that racial bloc voting “is so strong, and race and partisanship so deeply intertwined, that statisticians refer to it as multicollinearity, meaning one cannot, as a scientific matter, separate partisanship from race in Georgia elections.” Burton Report 61.

161. Dr. Burton further noted that while “Republicans nominated a Black candidate—Herschel Walker, a former University of Georgia football legend—to challenge Senator Raphael Warnock in the 2022 general election for U.S. Senate,” “Walker’s nomination only underscores the extent to which race and partisanship remain intertwined. Republican leaders in Georgia admittedly supported Walker because they wanted to ‘peel[] off a handful of Black voters’ and ‘reassure white swing voters that the party was not racist.’” Burton Report 61 (quoting Cleve R. Wootson Jr., *Herschel Walker’s Struggles Show GOP’s Deeper Challenge in Georgia*, Wash. Post, <https://www.washingtonpost.com/politics/2022/09/22/herschel-walker-georgia-black-voters> (Sept. 22, 2022)).

162. The significant impact of race on Georgia’s partisan divide can be further seen in the opposing positions taken by officeholders in the two major political parties on issues inextricably linked to race; for example, the Democratic and Republican members of Georgia’s congressional delegation consistently oppose one another on issues relating to civil rights, based on a report prepared by the NAACP. Burton Report 74–75.

163. The Pew Research Center found a similar divergence on racial issues between Democratic and Republican voters nationwide. Burton Dec. 75–76.

164. In a poll of 3,291 likely Georgia voters conducted just before the 2020 election, among voters who believed that racism was the most important issue facing the country, 78% voted for Joe Biden and 20% voted for Donald Trump; among voters who believed that racism was “not too or not at all serious,” 9% voted for Biden and 90% voted for Trump; and among voters who believe that racism is a serious problem in policing, 65% voted for Biden and 33% voted for Trump. Burton Report 76.

C. Senate Factor Three: Discriminatory Voting Procedures

165. Georgia—from the end of the Civil War to the present day—has enacted a wide variety of discriminatory voting procedures that have burdened Black Georgians’ right to vote, including unusually large election districts and majority-vote requirements. Burton Report 11–55.

166. Georgia deliberately malapportioned its legislative and congressional districts to dilute the votes of Black Georgians throughout the 20th century; in 1957, for example, Georgia’s Congressional District 5—consisting of Fulton, DeKalb, and Rockdale counties—was the second-most-populous congressional district in the United States. Burton Report 31.

167. By 1960, Fulton County was the most underrepresented county in its state legislature of any county in the United States; DeKalb County was the third-most-underrepresented county. Burton Report 31.

168. After enactment of the Voting Rights Act, numerous Georgia counties with sizeable Black populations shifted from voting by district to at-large voting, ensuring that the white population could elect all representatives in the voting district at issue. Burton Report 32–33.

169. Georgia also adopted a majority-vote requirement, “numbered-post voting,” and staggered voting in the 1960s and 1970s to limit Black voting strength. Burton Report 34.

170. These efforts have persisted well into the 21st century: Georgia shuttered polling places in predominantly Black communities beginning in 2015, perpetrated extensive purges from the state’s voter-registration rolls that disproportionately affected Black voters from 2012 to 2018, and enacted SB 202 in the spring of 2021, which restricted methods of voting used by Black Georgians to vote in record numbers during the 2020 election. Burton Report 49–55.

D. Senate Factor Four: Candidate Slating

171. Georgia has no history of candidate slating for legislative elections. ECF No. 91 at 211.

E. Senate Factor Five: Contemporary Socioeconomic Disparities

172. Dr. Loren Collingwood concluded that, “[o]n every metric, Black Georgians are disadvantaged socioeconomically relative to non-Hispanic White Georgians,” disparities that “have an adverse effect on the ability of Black Georgians to participate in the political process, as measured by voter turnout and other forms of political participation.” Ex. 5 (“Collingwood Report”) at 3.

173. The data show a significant relationship between turnout and disparities in health, employment, and education; as health, education, and employment outcomes increase, so does voter turnout in a material way. Collingwood Report 3.

174. The unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%). Collingwood Report 4.

175. White households are twice as likely as Black households to report an annual income above \$100,000. Collingwood Report 4.

176. Black Georgians are more than twice as likely as white Georgians to live below the poverty line—and Black children more than three times as likely. Collingwood Report 4.

177. Black Georgians are nearly three times more likely than White Georgians to receive SNAP benefits. Collingwood Report 4.

178. Black adults are more likely than white adults to lack a high school diploma—13.3% as compared to 9.4%. Collingwood Report 4.

179. Thirty-five percent of white Georgians over the age of 25 have obtained a bachelor's degree or higher, compared to only 24% of Black Georgians over the age of 25. Collingwood Report 4.

180. These racial disparities across economics, health, employment, and education hold across nearly every county in the state. Collingwood Report 4–6.

181. Extensive literature in the field of political science demonstrates a strong and consistent link between socioeconomic status and voter turnout. Collingwood Report 7.

182. In general, voters with higher income and education are disproportionately likely to vote and participate in American politics. Collingwood Report 7.

183. In elections between 2010 and 2020, Black Georgians consistently turned out to vote at lower rates than white Georgians—a gap of at least 3.1 percentage points (during the 2012 general election) that reached its peak of 13.3 percentage points during the 2022 general election. Collingwood Report 7–8.

184. This trend can be seen at the local level as well: During each general election, white voters exceeded the turnout rates of Black voters in all but a handful

of Georgia's 159 counties, and of 1,957 precincts Dr. Collingwood analyzed, white voters had higher rates of turnout in 79.2% of precincts. Collingwood Report 8–15.

185. Voter turnout in the Atlanta metropolitan area and the Black Belt is consistent with the overall statewide trend. Collingwood Report 16–23.

186. Each 10-percentage-point increase in the size of the Black population without a high school degree decreases Black turnout by 3.5 percentage points, and Black turnout rises 2.3 percentage points for each 10-percentage-point increase in the percentage of the Black population with a four-year degree. Collingwood Report 24–26.

187. Black turnout falls 4.9 percentage points for each 10-percentage-point increase in the percentage of the Black population below the poverty line. Collingwood Report 28.

188. White Georgians are more likely than Black Georgians to participate in a range of political activities, including attending local meetings, demonstrating political participation through lawn signs and bumper stickers, working on campaigns, attending protests and demonstrations, contacting public officials, and donating money to campaigns and political causes. Collingwood Report 34–38.

F. Senate Factor Six: Racial Appeals in Georgia Campaigns

189. Although explicit racial appeals are no longer commonplace, implicit racial appeals remain common and contribute to Georgia’s racially polarized voting. Burton Report 62.

190. In the words of Princeton University political scientist Tali Mendelberg, an implicit racial appeal “contains a recognizable—if subtle—racial reference, most easily through visual references.” Burton Report 63–64 (quoting Tali Mendelberg, *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality* 9, 11 (2001)).

191. Ian Haney López, the Chief Justice Earl Warren Professor of Public Law at Berkeley Law, described an implicit racial appeal as a “*coded* racial appeal,” with “one core point of the code being to foster deniability” since the “explicit racial appeal of yesteryear now invites political suicide”; accordingly, one characteristic of implicit racial appeals is that they are usually most successful when their racial subtext goes undetected. Burton Report 63 (quoting Ian Haney López, *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class* 4, 130 (2013)).

192. Implicit racial appeals use coded language to activate racial thinking and prime racial attitudes among voters; such racial cues include phrases like

“welfare queen,” “lazy,” “criminal,” “taking advantage,” “corruption,” “fraud,” “voter fraud,” and “law and order.” Burton Report 63–64.

193. Dr. Burton explained that “[r]acism, whether dog whistled or communicated directly, became a hallmark of” Georgia politics during the second half of the 20th century. Burton Report 66.

194. During his first successful campaign for Congress in 1978, future U.S. Speaker of the House Newt Gingrich ran against Virginia Shephard, a white Democrat; he distributed a flyer showing his opponent in a photo with Black Representative Julian Bond, which read: “If you like welfare cheaters, you’ll love Virginia Shephard. In 1976, Virginia Shephard voted to table a bill to cut down on welfare cheaters. People like Mrs. Shephard, who was a welfare worker for five years, and Julian Bond fought together to kill the bill.” Burton Report 65 (quoting Dana Milbank, *The Destructionists: The Twenty-Five Year Crack-up of the Republican Party* 66 (2022)).

195. One of Gingrich’s campaign aides later said, “[W]e went after every rural southern prejudice we could think of.” Burton Report 65 (quoting Milbank, *supra*, at 66).

196. In the 1990s, Republican Congressman Bob Barr addressed the Council of Conservative Citizens, a descendant of the Jim Crow-era white citizens councils. Burton Report 66.

197. North Georgia Congresswoman Marjorie Taylor Greene has recorded videos stating, among other things, that Black people's progress is hindered by Black gang activity, drugs, lack of education, Planned Parenthood, and abortions. Burton Report 69.

198. Georgia's more recent campaigns were rife with racial appeals; for example, during the 2018 gubernatorial election, now-Governor Brian Kemp circulated a photograph of members of the New Black Panther Party attending a rally for his opponent, Stacey Abrams, with the accompanying message: "The New Black Panther Party is a virulently racist and antisemitic organization whose leaders have encouraged violence against whites, Jews, and police officers. SHARE if you agree that Abrams and the Black Panthers are TOO EXTREME for Georgia!" Burton Report 67.

199. During that same election, a robocall created by a fringe right-wing group circulated in the Atlanta suburbs before the election, with a speaker imitating Oprah Winfrey and stating, "This is the magical Negro, Oprah Winfrey, asking you to make my fellow Negro, Stacey Abrams, governor of Georgia." Burton Report 68.

200. Ultimately, as one commentator noted following the 2018 election, the use of racial appeals in Georgia and elsewhere helped candidates during that election cycle. Burton Report 68 (citing Jarvis DeBerry, *The Dirty South: Racist Appeals Didn't Hurt White Candidates; Did They Help Them Win?*, NOLA.com (Nov. 17, 2018), https://www.nola.com/opinions/article_2affbc92-aaf4-5c6c-88d6-9fe1db466492.html).

201. The 2020 election for the U.S. Senate also saw use of racial appeals, with attacks on now-Senator Raphael Warnock and the Ebenezer Baptist Church, where Senator Warnock preaches. Burton Report 68–69.

202. During that election, Warnock's opponent, former Senator Kelly Loeffler, was photographed with Chester Doles, a former "Grand Klaliff" of the Ku Klux Klan in North Georgia and a member of the neo-Nazi National Alliance, and did an interview on the One America News Channel with Jack Posobiec, "a TV pundit associated with white supremacy and Nazism." Burton Report 69 (quoting Leon Stafford, *Campaign Check: Warnock Tests Loeffler's View That She's Not Racist*, Atlanta J.-Const. (Dec. 22, 2020), <https://www.ajc.com/politics/senate-watch/campaign-check-warnock-tests-loefflers-view-that-shes-not-racist/SOWX3GL3ARDJNBFDWWZYQ75BVM>).

203. During the 2022 gubernatorial election—a rematch between Governor Kemp and Stacey Abrams—Governor Kemp’s campaign deliberately darkened images of Abrams’s face in campaign advertisements “in an effort to create a darker, more menacing image.” Burton Report 70.

204. Governor Kemp repeatedly attacked Abrams in the general election as “upset and mad”—“evoking the trope and dog whistle of the ‘angry Black woman’”—while his Republican primary opponent, former Senator David Perdue, said in a televised interview that Abrams was “demeaning her own race” and should “go back where she came from.” Burton Report 70 (first quoting Abby Vesoulis, *Did Brian Kemp Deploy a Dog Whistle During His Debate Against Stacey Abrams?*, Mother Jones (Oct. 18, 2022), <https://www.motherjones.com/politics/2022/10/Georgia-debate-governor-abrams-kemp>; and then quoting Ewan Palmer, *David Perdue Doubles Down on ‘Racist’ Stacey Abrams Remarks in TV Interview*, Newsweek (May 24, 2022), <https://www.newsweek.com/david-perdue-racist-stacey-abrams-go-back-georgia-1709429>).

205. After Abrams planned a campaign rally in Forsyth County, in suburban Atlanta, the Republican Party of Forsyth County issued a digital flyer that was “a ‘call to action’ encouraging ‘conservatives and patriots’ to ‘save and protect our neighborhoods,’” and accused both Abrams and Senator Warnock of being

“designers of destructive [radicalism]” that would be “crossing over our county border”; the flier carried echoes of the infamous pogrom in Forsyth County in 1912, when most of the Black people in the county were forcibly expelled. Burton Report 70 (quoting Maya King, *In Georgia County With Racist History, Flier Paints Abrams as Invading Enemy*, N.Y. Times (Sept. 16, 2022), <https://www.nytimes.com/2022/09/16/us/politics/stacey-abrams-forsyth-georgia-republicans.html>).

206. Governor Kemp and other Georgia politicians have also spread the unsubstantiated specter of “voter fraud” in the Atlanta metropolitan area and other areas with large Black populations—another coded term that echoes the efforts of conservative white Georgians during and after Reconstruction to restrict and eliminate Black suffrage. Burton Report 70–74.

207. Plurality-Black Fulton County has been at the center of these allegations of voter fraud, with former President Donald Trump promoting baseless conspiracy theories about the county as part of his effort to overturn the 2020 election results in Georgia. Esselstyn Report attach. C; Burton Report 73–74.

208. Two Black poll workers in Fulton County, Ruby Freeman and Shaye Moss, were targeted by former President Trump, his campaign, and Rudy Giuliani with allegations that they had engaged in “surreptitious illegal activity”; the two

women received harassing phone calls and death threats, often laced with racial slurs, with suggestions that they should be “strung up from the nearest lamppost and set on fire”—in Dr. Burton’s words, “horribly echoing the calls for lynchings of Black citizens from earlier years who were attempting to participate in the political process.” Burton Report 73–74 (quoting Jason Szep & Linda So, *Trump Campaign Demonized Two Georgia Election Workers—and Death Threats Followed*, Reuters (Dec. 1, 2021), <https://www.reuters.com/investigates/special-report/usa-election-threats-georgia>).

209. During the 2022 election cycle, other political candidates—including Governor Kemp, Congressman Jody Hice (running for secretary of state), and State Senator Butch Miller (running for lieutenant governor)—continued to sound the drumbeat of voter fraud, with particular focus remaining on Fulton County. Burton Report 74.

210. Since the 2016 election, local, state, and national news outlets have repeatedly reported on instances of racial appeals in Georgia campaigns. Exs. 12–23.

G. Senate Factor Seven: Underrepresentation of Black Georgians in Elected Office

211. At the time of the Voting Rights Act's passage, Black Georgians constituted 34% of the voting-age population, and yet the state had only three elected Black officials. Burton Report 35.

212. By 1980, Black Georgians comprised only 3% of county officials in the state, the vast majority of whom were elected from majority-Black districts or counties. Burton Report 41.

213. While more Black Georgians have been elected in recent years, those officials are almost always from near-majority- or outright-majority-Black districts. Burton Report 55–57.

214. In the 2020 legislative elections, no Black members of the Georgia House of Representatives were elected from districts where white voters exceeded 55% of the voting-age population, and no Black members of the Georgia State Senate were elected from districts where white voters exceeded 47% of the voting-age population. Burton Report 56.

215. After the 2020 elections, the Georgia Legislative Black Caucus had only 16 members in the Georgia State Senate and 52 members in the Georgia House of Representatives—less than 30% of each chamber. Burton Report 56.

216. Senator Raphael Warnock is the first Black Georgian to serve Georgia in the U.S. Senate after more than 230 years of white senators. Burton Report 53, 68.

H. Senate Factor Eight: Official Nonresponsiveness

217. Black Georgians face clear and significant disadvantages across a range of socioeconomic indicators, including education, employment, and health. Collingwood Report 3.

218. As Dr. Collingwood explained, “[i]t follows that the political system is relatively unresponsive to Black Georgians; otherwise, we would not observe such clear disadvantages in healthcare, economics, and education.” Collingwood Report 4.

I. Senate Factor Nine: Absence of Justification for Enacted Legislative Plans

219. Mr. Esselstyn concluded that it is possible to create three additional majority-Black districts in the State Senate plan and five additional majority-Black districts in the House plan in accordance with traditional redistricting principles. Esselstyn Report ¶¶ 13, 63.

J. Proportionality

220. Of the 56 enacted State Senate districts, 14 are majority-Black in terms of the any-part Black voting-age population. Esselstyn Report ¶ 22 & n.6, attach. D.

221. Mr. Esselstyn prepared an illustrative State Senate plan with three additional majority-Black districts, for a total of 17 majority-Black State Senate districts. Esselstyn Report ¶ 27, fig.4, tbl.1.

222. Of the 180 enacted House districts, 49 are majority-Black in terms of the any-part Black voting-age population. Esselstyn Report ¶¶ 22 n.6, 45, attach. I.

223. Mr. Esselstyn prepared an illustrative House plan with five additional majority-Black districts, for a total of 54 majority-Black House districts. Esselstyn Report ¶ 48, fig.13, tbl.5.

Dated: March 20, 2023

By: **Adam M. Sparks**

Joyce Gist Lewis

Georgia Bar No. 296261

Adam M. Sparks

Georgia Bar No. 341578

KREVOLIN & HORST, LLC

One Atlantic Center

1201 West Peachtree Street, NW,
Suite 3250

Atlanta, Georgia 30309

Telephone: (404) 888-9700

Facsimile: (404) 888-9577

Email: JLewis@khlawfirm.com

Email: Sparks@khlawfirm.com

Respectfully submitted,

Abha Khanna*

Jonathan P. Hawley*

Makeba A.K. Rutahindurwa*

ELIAS LAW GROUP LLP

1700 Seventh Avenue,
Suite 2100

Seattle, Washington 98101

Phone: (206) 656-0177

Facsimile: (206) 656-0180

Email: AKhanna@elias.law

Email: JHawley@elias.law

Email: MRutahindurwa@elias.law

Michael B. Jones

Georgia Bar No. 721264

ELIAS LAW GROUP LLP

250 Massachusetts Avenue NW,
Suite 400

Washington, D.C. 20001

Phone: (202) 968-4490

Facsimile: (202) 968-4498

Email: MJones@elias.law

Counsel for Plaintiffs

*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing *Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Partial Summary Judgment* with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to counsel of record.

Dated: March 20, 2023

Adam M. Sparks
Counsel for Plaintiffs