

**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 ADDITIONAL MATERIAL FACTS  
WHICH PRESENT A GENUINE ISSUE FOR TRIAL**

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 Local Civil Rule 56.1(B)(2)(b), provide their Statement of Additional Material Facts Which Present a Genuine Issue for Trial, showing the Court the following:

1. When Mr. Esselstyn was creating his illustrative maps, he turned on features in the software to indicate where Black individuals were located. Deposition of Blakeman Esselstyn [Doc. 179] ("Esselstyn Dep.") 76:21-77:12, 77:20-77:25.

2. Mr. Esselstyn used racial data to inform decisions about which populations were included and excluded from districts. Esselstyn Dep. 76:21-77:12, 77:20-77:25.

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

4. Mr. Esselstyn's county splits were often racial in nature. Report of John Morgan [Doc. 192-3] ("Morgan Report"), ¶¶ 33, 54.

5. In his process of creating Senate District 25, Mr. Esselstyn could not recall why he decided to connect Clayton and Henry Counties in a single district or what united them. Esselstyn Dep. 149:24-150:14.

6. 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.

7. In the illustrative Senate plan, the only county in Senate District 10 with a majority-Black voting age population is DeKalb County. Esselstyn Dep. 152:25-153:4.

8. 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.

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

10. Creating Senate District 28 also required changes to Senate District 35 that connected more-rural areas of Paulding County to Fulton County. Esselstyn Dep. 155:12-156:13.

11. Mr. Esselstyn could not identify communities of interest connecting some counties in Senate District 23. Esselstyn Dep. 137:13-139:1.

12. In each split county in Senate District 23, Mr. Esselstyn included the higher concentration of Black voters in the portion of the county in Senate District 23. Esselstyn Dep. 140:19-142:3.

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

14. Mr. Esselstyn's illustrative Senate plan also splits more counties and precincts than the enacted plan. Esselstyn Dep. 160:24-161:5.

15. 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.

16. Mr. Esselstyn did not include all districts he altered on Figure 8 of his report on compactness scores, but only included the new majority-Black districts. Esselstyn Dep. 160:15-23.

17. Of the new districts created, illustrative House Districts 64, 117, 145, and 149 are all less than 52% Black voting age population, with several barely above 50%. Report of Blakeman Esselstyn [Doc. 192-1] (“Esselstyn Report”), ¶ 48, Table 5.

18. 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.

19. 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. Esselstyn Dep. 180:24-181:13; Morgan Report, ¶ 54.

20. To create illustrative House District 74, Mr. Esselstyn lowered lowering the compactness of the surrounding districts. Esselstyn Dep. 180:24-181:13; Morgan Report, ¶ 54.

21. Mr. Esselstyn could not identify communities that are kept whole in House District 74. Esselstyn Dep. 181:14-182:11.

22. To create illustrative House District 117, Mr. Esselstyn connected parts of districts from Clayton County to rural areas. Esselstyn Dep. 182:12-184:11, 185:5-8.

23. Mr. Esselstyn was unable to identify any community that was being kept whole in District 117. Esselstyn Dep. 182:12-184:11, 185:5-8.

24. 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.

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

26. While relying on Ms. Wright's statement for House District 149, Mr. Esselstyn agreed he did not follow what Ms. Wright said about Senate District 26 when he drew the Senate districts including those same counties on his illustrative plan. Esselstyn Dep. 185:18-186:21.

27. Mr. Esselstyn's illustrative House plan has higher total population deviations than the enacted plan. Esselstyn Dep. 195:7-24.

28. Mr. Esselstyn's illustrative House plan also splits one more county and one more precinct than the enacted plan. Esselstyn Dep. 198:18-21.

29. While Mr. Esselstyn made Douglas County whole on the illustrative Senate plan, he introduced a new split of Douglas County on the illustrative House plan. Esselstyn Dep. 179:23-180:15.

30. 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.

31. Mr. Esselstyn did not include all districts he altered on Figure 17 of his report on compactness scores, but only included the new majority-Black districts. Esselstyn Dep. 197:11-198:7.

32. Mr. Esselstyn did not review any public comment or review any documentation related to the Fall Line until after drafting his preliminary injunction plans. Esselstyn Dep. 148:23-149:6, 194:5-195:1.

33. Mr. Esselstyn did not know about various communities that he kept whole in his proposed districts. Esselstyn Dep. 149:19-150:14 (Senate

District 25), 154:2-155:9 (Senate District 28), 180:16-23 (House District 64), 181:14-23 (House District 74), 184:5-11 (House District 117).

34. Plaintiffs' sole statistical expert, Dr. Palmer, declined to examine primary contests in his report. Deposition of Maxwell Palmer [Doc. 183] ("Palmer Dep.") 59:23-60:1.

35. Without those primary contests which would remove partisanship from the calculation, Dr. Palmer found highly polarized general-election contests. Palmer Dep. 59:23-60:1.

36. Dr. Palmer only examined general election contests in the focus areas within the timeframes considered by his report. Palmer Dep. 59:23-60:1.

37. As a result, Dr. Alford opined that "one of the ways that you can recognize the limited nature of the general election fact pattern from what we care about in this case is to look at some elections where that party signal is not going to be such a strong driver..." Deposition of John Alford [Doc. 178] ("Alford Dep.") 156:1-5.

38. In Dr. Alford's view, the way to do that is by "looking at primaries." Alford Dep. 156:6.

39. The lack of data related to primary elections (which take party out of the equation) leaves no way to determine the meaning of that polarization. Alford Dep. 29:12-14.

40. Dr. Alford conducted an analysis of the statewide primary election for United States Senate, in which Herschel Walker prevailed. Alford Dep. 157:5-7.

41. Dr. Alford noted that “the evidence here suggests that white voters in the Republican primary did support Black candidates.” Alford Dep. 157:5-7.

42. Georgia’s 2011 legislative plans were precleared by the U.S. Department of Justice under Section 5 of the VRA on the first attempt. Deposition of Orville Burton [Doc. 201] (“Burton Dep.”) 63:18-25.

43. The challenge to House Districts 105 and 111 in 2015 was dismissed after Democrats won those seats. Burton Dep. 73:19-24.

44. The 2015 Georgia House redistricting plan was never found to be illegal by any court. Burton Dep. 73:25-74:2.

45. Dr. Loren Collingwood was not asked by Plaintiffs to look at the role of partisanship in the voting patterns of Black and White voters in Georgia. Deposition of Loren Collingwood [Doc. 202] (“Collingwood Dep.”) 32:15-18.



46. Socioeconomic disparities affect political participation, regardless of the race of the voters involved. Collingwood Dep. 58:24-59:7.

47. Voter motivation can affect voter turnout for different groups of voters. Collingwood Dep. 64:1-14.

48. Dr. Collingwood admitted that the narrowest gap in voter turnout between Black and White Georgia voters from 2010-22 was in 2012, the year that President Obama ran for re-election, and that it was a “pretty plausible hypothesis” that Black Georgia voters were turning out in greater numbers in 2012 than in 2010 to vote for Mr. Obama. Collingwood Dep. 64:1-25.

49. Dr. Collingwood also testified that motivation may have increased Black voter turnout in 2018, when Stacy Abrams, who is African-American, ran as the Democratic nominee for Governor, and the gap in voter turnout between Black and White Georgia voters narrowed from 11.6% in 2016 to 8.3% in 2018. Collingwood Dep. 71:16-72:17; Report of Loren Collingwood [Doc. 191-5] (“Collingwood Report”) at 8, 12.

50. Dr. Collingwood opined that for Black voters, voter turnout goes down as the percentage of Black voters without a high-school education goes up, but he does not know whether the same is true for White voters with and without a high-school education. Collingwood Dep. 84:3-8.

51. Dr. Collingwood did not and would not offer an opinion that racism, rather than other factors, has caused lower turnout for Black voters compared to White voters in Georgia. Collingwood Dep. 86:22-87:13.

52. Dr. Collingwood did not have an opinion on whether the 2021 Georgia redistricting (or prior redistricting since 2010) may have caused the lower levels of Black voting participation compared to White voting participation that he found in Georgia. Collingwood Dep. 87:21-88:1.

53. Dr. Collingwood testified that the data taken from the 2020 Cooperative Election Study (“CES”) in Table 10 of his Report, “Did a candidate or political campaign organization contact you during the 2020 election?”, are “statistically indistinguishable” for Black voters and White voters. Collingwood Dep. 92:1-4; Collingwood Report at 37.

54. Dr. Collingwood testified that the data taken from the 2020 CES in Table 11 of his Report, “Have you ever run for elective office at any level of government (local, state or federal)?”, are “statistically indistinguishable” for Black voters and White voters. Collingwood Dep. 92:5-6; Collingwood Report at 38.

55. Dr. Burton did not identify any racial appeals in state legislative elections. Burton Dep. 126:6-127:1.

56. Congressman Jody Hice lost the 2022 primary election. Burton Dep. 127:14-18.

57. Senator Butch Miller lost the 2022 primary election. Burton Dep. 127:19-23.

Respectfully submitted this 19th day of April, 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

Bryan P. Tyson