

**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’ RESPONSE TO PLAINTIFFS’ 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 Local Civil Rule 56.1(B)(2)(a), provides their Response to Plaintiffs’ Statement of Undisputed Material Facts [Doc. 189-2], showing the Court the following:

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case because the rate of growth of population is not relevant in a Section 2 case.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case because the rate of growth of population is not relevant in a Section 2 case.

**Plaintiffs' Statement No. 4.**

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

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case because the rate of growth of population is not relevant in a Section 2 case.

**Plaintiffs' Statement No. 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.

**RSEPONSE:** Undisputed.

**Plaintiffs' Statement No. 6.**

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

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case because the rate of growth of population is not relevant in a Section 2 case.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Disputed. Mr. Esselstyn was unable to identify the specific counties in the Black Belt and did not utilize counties being in the Black Belt as part of his drawing process for the illustrative State House or

State Senate plans. Deposition of Blakeman Esselstyn [Doc. 179] (“Esselstyn Dep.”) 108:17-109:12, 110:14-112:5.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Disputed. Mr. Esselstyn was unable to identify the specific counties in the Black Belt and did not utilize counties being in the Black Belt as part of his drawing process for the illustrative State House or State Senate plans. Esselstyn Dep. 108:17-109:12, 110:14-112:5.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Disputed. Mr. Esselstyn was unable to identify the specific counties in the Black Belt and did not utilize counties being in the Black Belt as part of his drawing process for the illustrative State House or State Senate plans. Esselstyn Dep. 108:17-109:12, 110:14-112:5.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Disputed. Mr. Esselstyn was unable to identify the specific counties in the Black Belt and did not utilize counties being in the Black Belt

as part of his drawing process for the illustrative State House or State Senate plans. Esselstyn Dep. 108:17-109:12, 110:14-112:5.

**Plaintiffs’ Statement No. 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).

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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).

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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).

**RESPONSE:** Undisputed if Black voting-age population is defined as AP Black VAP.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact stated because it does not make the comparison stated. Further, Mr. Esselstyn



was unable to identify a particular numerical threshold for when a district was “packed” and associated it with intentional actions. Esselstyn Dep. 41:9-42:20.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it does not cite to evidence. Specifically, the fact fails to identify what maps and districts Mr. Esselstyn’s illustrative Senate Districts are being compared against.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact. At various times in the referenced districts, Dr. Palmer’s data indicates Black-preferred candidates failing to achieve a majority-vote share, suggesting that these districts don’t always “continue to perform” for these candidates. Expert Report of Maxwell Palmer [Doc. 191-2] (“Palmer Report”) ¶ 25.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Disputed. Mr. Esselstyn was unable to identify the specific counties in the Black Belt and did not utilize counties being in the Black Belt as part of his drawing process for the illustrative State House or State Senate plans. Esselstyn Dep. 108:17-109:12, 110:14-112:5

**Plaintiffs’ Statement No. 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).

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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).

**RESPONSE:** Undisputed if Black voting-age population is defined as AP Black VAP.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, Mr. Esselstyn was unable to identify the specific counties in the Black Belt and did not utilize counties being in the Black Belt as part of his drawing process for the illustrative State House or State Senate plans. Esselstyn Dep. 108:17-109:12, 110:14-112:5.

**Plaintiffs' Statement No. 36.**

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

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact. At various times in the referenced districts, Dr. Palmer's data indicates Black-preferred candidates failing to achieve a majority-vote share, suggesting that these districts don't always "continue to perform" for these candidates. Palmer Report ¶ 25.

**Plaintiffs' Statement No. 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).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence cited does not support the fact stated in that Mr. Morgan did not agree with that statement



and Mr. Esselstyn did not offer the opinion as worded. In addition, this fact is refuted by Mr. Esselstyn's testimony, where he indicated that he did not have a consistent approach to deciding which factor would control when drawing a plan. Esselstyn Dep. 113:25-115:3. Further, Mr. Esselstyn testified that racial data informed the decisions he made about which parts of population went into particular districts while drawing. Esselstyn Dep. 77:20-25.

**Plaintiffs' Statement No. 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.

**RESPONSE:** This fact is refuted by Mr. Esselstyn's testimony, where he indicated that he did not have a consistent approach to deciding which factor would control when drawing a plan. Esselstyn Dep. 113:25-115:3. Further, Mr. Esselstyn testified that racial data informed the decisions he made about which parts of population went into particular districts while drawing. Esselstyn Dep. 77:20-25.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Mr. Esselstyn offers this opinion in his report.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** This fact is refuted by Mr. Esselstyn’s testimony, where he indicated that he did not have a consistent approach to deciding which factor would control when drawing a plan. Esselstyn Dep. 113:25-115:3. Further, Mr. Esselstyn testified that racial data informed the decisions he made about which parts of population went into particular districts while drawing. Esselstyn Dep. 77:20-25.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact stated, because the cited paragraph refers only to the illustrative State plan. Further, this fact is refuted by Mr. Esselstyn's testimony, where he indicated that he did not have a consistent approach to deciding which factor would control when drawing a plan. Esselstyn Dep. 113:25-115:3.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 48.**

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

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs’ Statement No. 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).

**RESPONSE:** Undisputed.

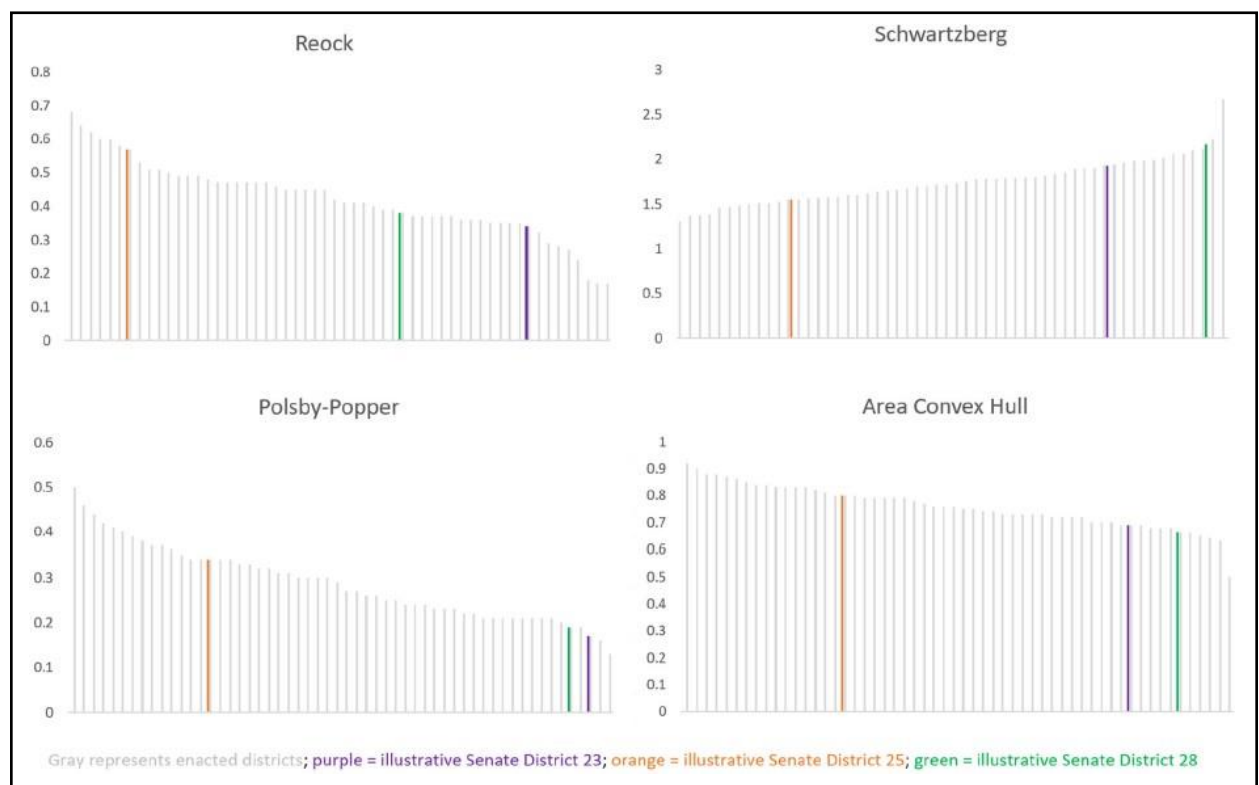
**Plaintiffs’ Statement No. 54.**

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.

**RESPONSE:** This statement is refuted by Mr. Esselstyn’s testimony, where he agreed that he did not know whether the districts change don the illustrative plan from the enacted plan were more or less compact as a whole than the enacted plan. Esselstyn Dep. 158:23-159:20.

### Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** This fact is refuted by Mr. Esselstyn's testimony, where he could not recall any communities of interest besides government entities, Fort Gordon, and two campuses of Georgia college, nor could he recall any personal conversations he relied on when assembling the illustrative plans. Esselstyn Dep. 165:14-167:2.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs' Statement No. 61.**

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

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 62.**

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

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 63.**

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

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 65.**

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

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 68.**

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

	<b>Reock (average)</b>	<b>Schwartzberg (average)</b>	<b>Polsby- Popper (average)</b>	<b>Area/Convex Hull (average)</b>	<b>Number of Cut Edges</b>
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).

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 69.**

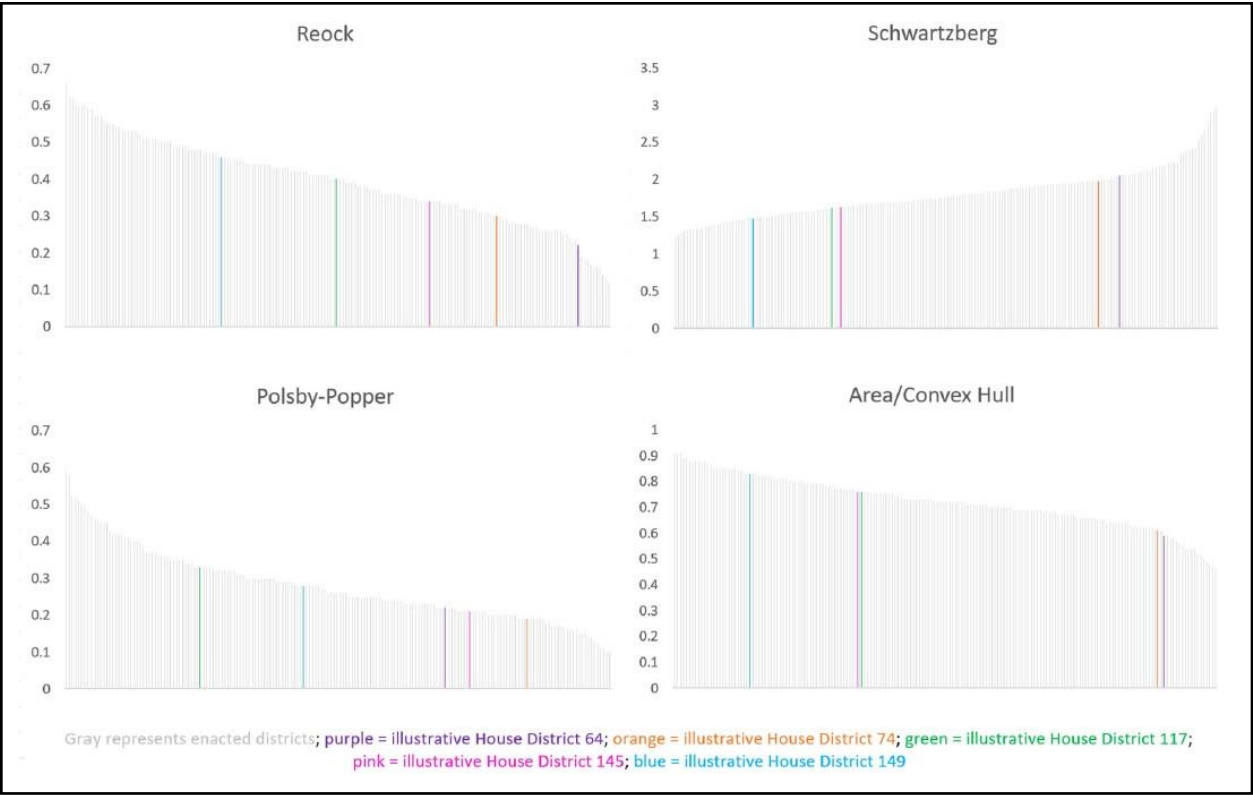
The compactness scores of the five additional majority-Black districts in Mr. Esselstyn's illustrative House plan—House Districts 64, 74, 117, 145, and 149—all fall within the range of compactness scores of the districts in the enacted plan using the Reock, Schwartzberg, Polsby-Popper and Area/Convex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

**RESPONSE:** This statement is refuted by Mr. Esselstyn's testimony, where he agreed that he did not know the compactness scores for the enacted

plan districts corresponding to his new majority-Black districts on the illustrative House plan and only reported the comparison of compactness for the new majority-Black districts and not all the districts he changed. Esselstyn Dep. 196:10-198:1.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs’ Statement No. 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).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs' Statement No. 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.

**RESPONSE:** This fact is refuted by Mr. Esselstyn's testimony, where he testified that the Fall Line runs from Augusta to Columbus and that he did not read specifically about Georgia's Fall Line until after drawing the illustrative plans. Esselstyn Dep. 192:14-195:1.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs’ Statement No. 78.**

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

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 80.**

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

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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).

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact stated. This fact purports to explain how “Dr. Palmer’s EI process proceeded,” but in reality deals with the way Dr. Palmer interprets the results of his EI analysis.

**Plaintiffs’ Statement No. 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).

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 88.**

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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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).

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact. Dr. Palmer characterizes the contests as “racially polarized” but makes no mention of whether he finds the white vote to be cohesive in any election.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact. There are five focus areas Dr. Palmer examined, not three. Further this fact does not comply with LR. 56.1 because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Burton gives this opinion in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Burton made statements concerning the violence of the Ku Klux Klan during the 1800s in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is stated as argument rather than as a statement of fact as to “seizing control” and “barred Black Georgian from voting.”

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is stated as argument rather than as a statement of fact as to “constant” violence and threat of violence.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is stated as argument rather than as a statement of fact as to “mob violence” and “amounted to ‘slavery by another name’.”

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is stated as argument rather than as a statement of fact as to “violence ... surged.”

**Plaintiffs' Statement No. 105.**

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

**RESPONSE:** Undisputed that Dr. Burton gives this opinion in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Burton gives this opinion in his report concerning the lynchings in Georgia from 1875 through 1930.

**Plaintiffs' Statement No. 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)).

**RESPONSE:** Undisputed that Dr. Burton included this quote in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is stated as argument rather than as a statement of fact that “the State responded” with “intent and effect.”

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered, it is duplicative, is stated as argument rather than as a statement of fact and includes facts that are not stated in Dr. Burton’s report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered, is stated as argument rather than as a statement of fact, and is based on hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs' Statement No. 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).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Burton gives this opinion of the 1910 Code in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs’ Statement No. 116.**

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

**RESPONSE:** Undisputed that Dr. Burton gives this opinion pertaining to the time period of 1920 to 1930 in his report.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and it in part states a legal conclusion concerning the enactment of the Voting Rights Act that is not in Dr. Bruton’s report at the cited page.

**Plaintiffs' Statement No. 118.**

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

**RESPONSE:** Undisputed that Dr. Burton gives this opinion in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and the evidence cited does not support the fact stated.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Burton gives this opinion in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is factually incorrect because (1) Georgia adopted photo ID before Shelby County, *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1346 (11th Cir. 2009) (noting 2005 adoption); (2) state officials are not responsible for polling place closures, *Fair Fight Action Fair Fight Action, Inc. v. Raffensperger*, No. 1:18-CV-5391-SCJ, 2021 U.S. Dist. LEXIS 261570, at \*49 (N.D. Ga. Feb. 16, 2021); and (3) Georgia’s list-maintenance procedures are not applied differently to any class of voters, *Fair Fight Action, Inc. v. Raffensperger*, No. 1:18-CV-5391-SCJ, 2021 U.S. Dist. LEXIS 261571, at \*62 (N.D. Ga. Mar. 31, 2021). Further, this statement relies on hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs' Statement No. 124.**

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

**RESPONSE:** Objection. The fact is immaterial to the claims and defenses in this case and is factually incorrect because the state of Georgia is not responsible for closing polling places—county officials are. *Fair Fight Action Fair Fight Action, Inc. v. Raffensperger*, No. 1:18-CV-5391-SCJ, 2021 U.S. Dist. LEXIS 261570, at \*49 (N.D. Ga. Feb. 16, 2021).

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered, is immaterial to the claims and defenses in this case, and is factually incorrect because the state of Georgia is not responsible for closing polling places—county officials are. *Fair Fight Action Fair Fight Action, Inc. v. Raffensperger*, No. 1:18-CV-5391-SCJ, 2021 U.S. Dist. LEXIS 261570, at \*49 (N.D. Ga. Feb. 16, 2021). The statement also relies on hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v.*

*Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

Further, the evidence cited does not support the fact because the citation does not establish any connection between precinct closure in 18 Georgia counties and “longer waiting times at the polls” in two precincts.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and it is based on hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”)

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact is based on hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”)

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and conflicts with the findings of this Court that the list-maintenance process was not applied differently to any class of voters. *Fair Fight Action, Inc. v. Raffensperger*, No. 1:18-CV-5391-SCJ, 2021 U.S. Dist. LEXIS 261571, at \*62 (N.D. Ga. Mar. 31, 2021).

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and it is based on hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) ("Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible."). Defendants further state that the provisions of SB 202 are being challenged in separate litigation.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs’ Statement No. 131.**

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

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is stated as argument rather than as a statement of fact with respect to the use of the term “grievously malapportioned.”

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and it is based on hearsay, which

cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered it is based on hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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).

**RESPONSE:** Undisputed that Dr. Burton gives this opinion in his report.

**Plaintiffs' Statement No. 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”).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs’ Statement No. 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”).

**RESPONSE:** Undisputed that Dr. Burton gives this opinion in his report.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed that Dr. Burton gives this opinion in his report.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The act does not comply with LR 56.1(B)(1) because it is not separately numbered and is immaterial to the claims and defenses in this case because the referenced redistricting was not found to be unlawful.

**Plaintiffs’ Statement No. 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.”).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) to the extent the term “racial polarization” is a legal conclusion as distinct from the mere observation using statistical analysis that two races are voting cohesively for different candidates in a given election.

**Plaintiffs’ Statement No. 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).

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 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).

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact. Dr. Palmer characterizes the contests as “racially polarized” but makes no mention of whether he finds the white vote to be cohesive in any election.

**Plaintiffs' Statement No. 148.**

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

**RESPONSE:** Undisputed that Dr. Burton gives opinions concerning race and partisanship in Georgia in his report opining that race and partisanship are inextricably intertwined and cannot be separated in Georgia.



Report of Orville Burton [Doc. 191-4] (“Burton Report”), p. 4 and Deposition of Orville Burton [Doc. 201] (“Burton Dep.”) 64:10-17.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and because it is stated as argument rather than as a statement of fact.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Burton gives this opinion in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Burton gives this opinion in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and it is based on hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

**Plaintiffs’ Statement No. 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)).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs’ Statement No. 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)).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and Defendants object to whether Dr. Burton is qualified to provide that opinion.

**Plaintiffs’ Statement No. 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)).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Dallas Cty. v. Commercial Union Assur. Co.*,

286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs’ Statement No. 163.**

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

**RESPONSE:** Objection. The fact relied on is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802;



*Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and fails to give a specific page cite for this fact.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is not supported by the evidence cited as to the reference “deliberately” which is not used by Dr. Burton.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is duplicative, is not separately numbered and the evidence cited does not support the fact stated.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is a legal conclusion and stated as an argument and not fact to the extent that intent inferred by the use of the word “ensuring.” By way of further objection, the fact does not comply with LR 56.1(B)(1) because county decisions are immaterial to the claims and defenses in this case.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is legally incorrect because the state of Georgia does not close polling places, which is the responsibility of county officials. *Fair Fight Action, Inc. v. Raffensperger*, No. 1:18-CV-5391-SCJ, 2021 U.S. Dist. LEXIS 261570, at \*49 (N.D. Ga. Feb. 16, 2021).

**Plaintiffs’ Statement No. 171.**

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

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it does not cite to evidence.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report.

**Plaintiffs’ Statement No. 174.**

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

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report, based on data in the 2015-2019 American Community Survey (ACS).

**Plaintiffs’ Statement No. 175.**

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

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report, based on data in the 2015-2019 American Community Survey (ACS).

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact stated. Dr. Collingwood's opinion on page 4 of his Report is in error. The figures included in Table 1 on page 5 of Dr. Collingwood's Report from the 2015-2019 ACS for children below the poverty line are 31.3% for Black children and 11.5% for white children, which is less than a three-fold difference.

**Plaintiffs' Statement No. 177.**

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

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact stated. Dr. Collingwood's Report on page 4 qualifies the referenced opinion by limiting the adults to those over the age of 25.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report.

**Plaintiffs' Statement No. 180.**

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

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report.

**Plaintiffs' Statement No. 181.**

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

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report.

**Plaintiffs’ Statement No. 182.**

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

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact stated. The data cited on page 8 of Dr. Collingwood’s Report show a gap in turnout of 5.5% in 2010, 3.1% in 2012, 6.9% in 2014, 11.6% in 2016, 8.3% in 2018, 12.6% in 2020, and 13.3% in 2022. Thus, there is not a “consistent[]” trend in the data as implied by the allegation of a “peak” in Plaintiff’s SMF



¶ 183. Rather, the gap narrowed from 2010 to 2012, widened from 2012 to 2016, narrowed again from 2016 to 2018, and widened again from 2018 to 2022.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report.

**Plaintiffs' Statement No. 185.**

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

**RESPONSE:** Objection. The evidence cited does not support the fact stated. Defendants admit that Dr. Collingwood's Report analyzes data from the Atlanta-Sandy Springs-Alpharetta Metropolitan Area and so opines on pages 16-19 of his Report. But the report also deny the statement in part, because Dr. Collingwood's Report concedes on page 16 that Black turnout exceeded White turnout in Clayton, Henry, and Rockdale Counties.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The evidence cited does not support the fact stated. Defendants admit Dr. Collingwood states in his Report at page 38 that “White Georgians engage in a wide range of political activity at higher rates than Black Georgians, including activities like donating to campaigns, contacting public officials, and posting political signs.” But Defendants deny the statement because Dr. Collingwood concluded on page 35 of his Report that “there are three [of the eight] questions where significant statistical differences do not emerge,” namely, political protest, being contacted by a political campaign, and running for office.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs’ Statement No. 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)).

**RESPONSE:** Objection. The fact is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs’ Statement No. 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)).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and the fact is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid.

802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is stated as argument rather than as a statement of fact.

**Plaintiffs’ Statement No. 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)).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is stated as argument rather than as a statement of fact.

**Plaintiffs’ Statement No. 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).

**RESPONSE:** Objection. The fact is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Burton cites this incident in his report.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because the evidence relied upon is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) ("Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.")

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and the evidence relied upon is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and evidence cited does not support



the fact. Further, the fact is also objectionable because it is immaterial to the claims and defenses in this case because Dr. Burton did not analyze the impact of the call on any election in Georgia or did not research how widely the call was distributed in Georgia. Burton Dep. 125:7-126:5.

**Plaintiffs' Statement No. 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](https://www.nola.com/opinions/article_2affbc92-aaf4-5c6c-88d6-9fe1db466492.html)).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence does not support the fact because the citation misstates the page of Dr. Burton's report. Further, the evidence on which the statement relies is inadmissible because it is hearsay. *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) ("Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.").

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed that Dr. Burton includes this statement in his report.

**Plaintiffs' Statement No. 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>).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and the evidence on which the statement relies is inadmissible because it is hearsay. *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998); *Dallas Cty. v. Commercial Union Assur. Co.*, 286

F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and the evidence cited does not support the fact stated.

**Plaintiffs’ Statement No. 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>).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and the evidence on which the statement relies is inadmissible because it is hearsay. *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”)

**Plaintiffs’ Statement No. 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>).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and the evidence on which the statement relies is inadmissible because it is hearsay. *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and the evidence on which the statement relies is inadmissible because it is hearsay. *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs’ Statement No. 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>).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and the evidence on which the statement relies is inadmissible because it is hearsay. *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is immaterial to the claims and defenses in this case because Jody Hice and Butch Miller were not successful in being elected to office.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The evidence on which the statement relies is inadmissible because it is hearsay. *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because Dr. Burton’s report does not cite to any evidence supporting this fact.

**Plaintiffs’ Statement No. 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.



**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs’ Statement No. 217.**

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

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Undisputed that Dr. Collingwood gives that opinion in his report.

**Plaintiffs’ Statement No. 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.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence cited does not support the fact stated in that Mr. Morgan did not agree with that statement and Mr. Esselstyn did not offer the opinion as worded. In addition, this fact is refuted by Mr. Esselstyn's testimony, where he indicated that he did not have a consistent approach to deciding which factor would control when drawing a plan. Esselstyn Dep. 113:25-115:3. Further, Mr. Esselstyn testified that racial data informed the decisions he made about which parts of population went into particular districts while drawing. Esselstyn Dep. 77:20-25.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.

**RESPONSE:** Undisputed.

**Plaintiffs' Statement No. 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.ed t

**RESPONSE:** Undisputed.

Respectfully submitted this 19th day of April, 2023.

Christopher M. Carr  
Attorney General  
Georgia Bar No. 112505  
Bryan K. Webb  
Deputy Attorney General  
Georgia Bar No. 743580  
Russell D. Willard  
Senior Assistant Attorney General  
Georgia Bar No. 760280  
Elizabeth Vaughan  
Assistant Attorney General  
Georgia Bar No. 762715  
**State Law Department**  
40 Capitol Square, S.W.

Atlanta, Georgia 30334

/s/ Bryan P. Tyson

Bryan P. Tyson  
Special Assistant Attorney General  
Georgia Bar No. 515411  
btyson@taylorenghish.com

Frank B. Strickland  
Georgia Bar No. 687600  
fstrickland@taylorenghish.com

Bryan F. Jacoutot  
Georgia Bar No. 668272  
bjacoutot@taylorenghish.com

Diane Festin LaRoss  
Georgia Bar No. 430830  
dlaross@taylorenghish.com

Donald P. Boyle, Jr.  
Georgia Bar No. 073519  
dboyle@taylorenghish.com

Daniel H. Weigel  
Georgia Bar No. 956419  
dweigel@taylorenghish.com

**Taylor English Duma LLP**  
1600 Parkwood Circle  
Suite 200  
Atlanta, Georgia 30339  
(678) 336-7249

*Counsel for Defendant*

**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

# EXHIBIT A

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

Page 1

1 UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF GEORGIA  
3 ATLANTA DIVISION

4 ANNIE LOIS-GRANT et al., )  
5 )  
6 Plaintiffs, )  
7 )  
8 vs. ) CIVIL ACTION FILE  
9 ) NO. 1:22-CV-00122-SCJ  
10 BRAD RAFFENSPERGER, in his )  
11 official capacity as the )  
12 Georgia Secretary of State, )  
13 et al., )  
14 )  
15 Defendants. )  
16 \_\_\_\_\_ )

17 Deposition of Blakeman Esselstyn  
18 (Signature is reserved.)  
19 February 16, 2023  
20 9:00 a.m.

21 Remote via Zoom technology  
22  
23  
24  
25

Reported by: Carla J. Hopson, RPR, CCR-1816



1 commonly used terms in discussing the -- kind of the  
2 methods used in gerrymandering or in creating unfair  
3 maps. And --

4 Is that a sufficient explanation or  
5 would you --

6 Q Well, I -- actually, I'd like to dig  
7 into that a little more.

8 A Okay.

9 Q You were defining the term if it's used  
10 frequently "packing." How would you define what  
11 packing is in the redistricting context?

12 A I would say that packing is  
13 concentrating if not as many as possible a  
14 substantial amount of the individuals from a group  
15 that you're trying to disfavor into an artificially  
16 small number of districts or a -- packing many  
17 individuals from the group that the map drawer is  
18 trying to disfavor into a small number of districts.

19 Q Do you believe there is an intent  
20 element to packing? You said they were trying to  
21 disfavor.

22 A An intent. I think there's something  
23 that has been called accidental packing where if  
24 someone were to draw a district in a certain county  
25 that could have a very high concentration of either

1 a racial group or certain voters that tend to vote  
2 with a certain party, and it can be done  
3 accidentally.

4 So I have heard people talk about  
5 accidental packing and mathematicians may, you know,  
6 identify a map as showing signs --

7 I'm trying to remember. Your original  
8 question was out about whether it -- it has an  
9 intent element to. I would say typically but not  
10 always.

11 Q And are there particular thresholds of  
12 the number of percentage of the groups you're trying  
13 to disfavor, as you put it, where you would say that  
14 district is a packed district?

15 A No.

16 Q Okay. So you don't have a percentage  
17 where if something is 80 percent of a single racial  
18 group or something like that, you wouldn't  
19 automatically say that it's a packed district?

20 A Correct.

21 Q Okay. How would you then determine if  
22 the district is packed?

23 A It involves the -- I'm looking at the  
24 exhibit here. And it's -- it involves the  
25 distribution of -- I mean, there are different ways

1 Q And what kind of racial information  
2 would you display while you were drawing the  
3 illustrative plans?

4 A For the underlying geography, I would --  
5 it would be the black percentage of the population  
6 meaning the -- any part black voting age percent.

7 Q And did you use a theme or a shading of  
8 precincts or counties to look at that any part black  
9 population while you were drawing?

10 A I think so. I think that I -- I think  
11 that I may have. I'm not a hundred percent sure,  
12 but I think that I may have, yes.

13 Q And did you utilize that display of  
14 racial information about the underlying geography  
15 while you were drawing the illustrative plans for  
16 House and Senate?

17 A The shading?

18 Q Yes.

19 A I'm not totally sure.

20 Q Did you utilize any of the racial  
21 information that you displayed on the screen while  
22 you were drawing the illustrative plans to inform  
23 the decisions you made about which parts of  
24 districts went in and out of a particular districts?

25 A Yes.

1 demographics.

2 So I was not meaning to indicate that  
3 this was a -- it was a source from which  
4 I determined or confirmed that some -- some sources  
5 or some -- some historic references to the Black  
6 Belt had been based on soil, not just demographics.

7 As far as the other findings of this  
8 report, they were not significant in my analysis.

9 Q Okay. So it's fair to say you didn't  
10 rely on this report for determining what counties  
11 would be in or out of the Black Belt in Georgia?

12 A Correct.

13 Q Okay. I can put that away.

14 Let's turn back to your report, Figure 1  
15 on Page 6. You can let me know when you're there.

16 A I'm there.

17 Q Okay. So in looking at Figure 1 I see  
18 you have a reference to Black Belt running from kind  
19 of southwest Georgia through just to the north of  
20 Augusta. In this map are you able to identify which  
21 counties are part of the Black Belt and which ones  
22 are not?

23 A No.

24 Q How would you go about determining  
25 whether county was part of the Black Belt or not?

1           A       I would -- I don't know how I would. I  
2 would have to think about that. I -- I imagine  
3 that -- well, as we were just looking at, other --  
4 other scholars have looked into that. I guess he  
5 would probably look to other people's work and see  
6 if there was agreement.

7                   And if there was not agreement, if --  
8 again, I feel that I'm sort of speculating here.  
9 I -- I would see whether there was a universally  
10 agreed-upon determination, and if not -- I don't  
11 know that I would try to definitively classify  
12 counties as being in or out.

13           Q       If you can -- not to get too far ahead  
14 of ourselves, but if you could turn to page 12 of  
15 your report, paragraph 29. You reference the  
16 creation of Senate Districts 23 as an additional  
17 majority black State Senate district in the eastern  
18 Black Belt area.

19                   So when you make the statement that this  
20 district is in the eastern Black Belt area, are you  
21 saying all the counties in Senate 23 as you've drawn  
22 it at part of Black Belt?

23           A       That was in the my intent.

24           Q       Okay. Well, what do you mean by the  
25 term eastern Black Belt area if you're not certain

1 which counties are in and out of the Black Belt?

2 A The band that we were looking from -- I  
3 think it was figure 1 -- now I'm questioning that's  
4 the right figure.

5 Yes, figure 1. And the sort of stripe  
6 that is labeled there with the letters I think is a  
7 general -- gives a general idea of that band that,  
8 as you -- you've kind of described, a linear --  
9 linear but with a feature running from kind of the  
10 southwest to a bit north of the Augusta area. And I  
11 think the illustrative Senate District 23 falls  
12 on -- and, you know, intersects with a large part of  
13 it, overlaps with that area.

14 Q But it's correct that you -- I guess  
15 what -- I guess what I hear you saying is that the  
16 Black Belt is kind of a general swath of Georgia but  
17 you can't identify specifically whether particular  
18 counties are in or out of the Black Belt region. Is  
19 that fair to say?

20 A Yes, that's correct.

21 Q Do you know if counties in the Black  
22 Belt share anything in common besides the racial  
23 makeup of their populations?

24 A I think it depends on who you ask. As  
25 we mentioned, some -- it depends on how it's

1 defined. So I -- I don't have an answer -- a  
2 blanket answer to your question.

3 Q Okay. Did you rely on counties being in  
4 the Black Belt as part of the drawing process of the  
5 illustrative State House or State Senate plans in  
6 your report?

7 A I don't think so.

8 Q If it's not an area that you relied on  
9 as part of your drawing process, why did you include  
10 it a description of the Black Belt and a map of it  
11 in your report?

12 A I think, as you mentioned before, there  
13 are essentially two primary areas, I think, was the  
14 term you used of the state where significant  
15 portions of the black population live. One can be  
16 general classified as metro Atlanta and one can be  
17 generally classified a the back bell. And that's  
18 sort of visible in Figure 1.

19 And because my illustrative plans  
20 contained additional districts that were either  
21 generally in the metro Atlanta area or either  
22 generally in the Black Belt region or intersecting  
23 with the Black Belt region, it just -- it seemed  
24 like a convenient way of distinguishing kind of  
25 where in the state they were.

1 Q Okay. So more general background  
2 information, not a reason to configure districts in  
3 a particular way because they're in or out of the  
4 Black Belt, is that correct?

5 A Yes.

6 Q Let's move to the illustrative State  
7 Senate plan. And going to Page 8, Paragraph 22,  
8 you've identified that there are 14 districts that  
9 are majority black out of the 56 in the enacted  
10 Senate plan, right?

11 A Correct.

12 Q And you identify that four of those are  
13 in the Black Belt and I'm assuming that would be  
14 District 22, District 26, District 15 and District  
15 12, is that right?

16 A Yes.

17 Q And when you're saying they're in the  
18 Black Belt you're not saying every county contained  
19 in those districts is in the Black Belt, you're  
20 saying these districts are located generally in the  
21 Black Belt region. Is that fair?

22 A Yeah.

23 Q Okay. It would also be correct just to  
24 say those four districts are in south Georgia,  
25 right?



1           A       22? Arguably central. I think people  
2     have talked about Bibb County as central Georgia.  
3     So again, maybe it would depend on who you ask, and  
4     as far as whether -- as far as whether, you know,  
5     Richmond County is south Georgia.

6           Q       I once heard a definition of south  
7     Georgia as anything south of I-20, so it's the bulk  
8     of the state.

9                   All right. So let's talk a little bit  
10    about your illustrative plan. And first of all, you  
11    do note that this plan is modified from the version  
12    that you provided as part of the PI proceedings,  
13    right?

14          A       Yes.

15          Q       I want to ask. We talked about this a  
16    little bit. But you say in paragraph 25 that during  
17    both the earlier process of creating the PI  
18    illustrative plans and the process of revising those  
19    plans to create the plans described in this report,  
20    I was constantly balancing a number of  
21    considerations and there was no one dominant factor  
22    or metric.

23                   Did I read that right?

24          A       I think so, yes.

25          Q       And so when you balanced an area's

1 considerations, how did you decide in your drawing  
2 which factor would control or which consideration  
3 would control if two were in conflict with each  
4 other?

5 A I guess it comes down to kind of a  
6 question of art. There's not a -- there's not a  
7 science to it. Each situation is different. Maybe  
8 I feel that I -- you know, going one way gives a  
9 little bit more -- you know, let's say it's between  
10 compactness and keeping precincts intact and  
11 choosing between option A and option B. I feel that  
12 Option B kind of achieves a greater net result  
13 just --

14 And some of that's kind of just visual.  
15 Does it -- which one looks better or do I think --  
16 and in this case, you know, it's hard to justify  
17 splitting a precinct in the name of compactness, and  
18 that's just kind of a subjective judgment call.

19 So some of it is -- it's sort of the  
20 just a -- I don't know. It's hard for me to give a  
21 specific, you know, decision tree kind of thing.

22 Q And you've obviously drawn a lot of  
23 different maps over time. Is that what you just  
24 described in terms of the more art than science true  
25 of drawing maps in other jurisdictions as well?

1           A           Generally, yes. And I should clarify.  
2           I mean, when it comes to deciding between multiple  
3           factors that may be in tension with each other, yes.

4           Q           Okay. In Paragraph 26 you talk about  
5           trying to minimize changes to the enacted plan while  
6           adhering to other neutral criteria. Do you see  
7           that?

8           A           Yes.

9           Q           And does this map that's submitted with  
10          your 12/5 report modify the fewest existing plan  
11          districts of any plan that you've submitted in this  
12          case?

13                   MR. HAWLEY: Objection to the extent  
14          that that question touches on protected draft  
15          maps. But Mr. Esselstyn you can proceed if  
16          talking only about submitted maps, not just  
17          protected draft reports or maps.

18          A           Okay. And your -- could you repeat the  
19          question, please, Mr. Tyson.

20          Q           Well -- and maybe I can ask it this way  
21          to make a cleaner break of it. This -- the plan in  
22          your 12/5 report changes fewer existing districts  
23          than the plan in your PI report. Wait a minute.  
24          I'm sorry. This is for the State House.

25                   For State Senate, the plan submitted in

1 Q But you would agree it's 1.56 points  
2 higher on total deviation, right?

3 A Yes.

4 Q And even though it's a higher total  
5 deviation on the illustrative plan versus the  
6 enacted plan, you determined that it still complied  
7 with the traditional principles of population  
8 equality, it being the illustrative plan?

9 A Yes.

10 Q In Paragraph 36, to go back to where  
11 were on Page 15 --

12 A Just for the record, that was Page 77,  
13 if we're going back to look at something like that.

14 Q Okay.

15 A You said now Page 15?

16 Q Right. It's the downside of one of us  
17 using paper and one uses electronic, I suppose.

18 A Okay. I'm on page 15.

19 Q Okay. So this is the discussion of  
20 compactness and the reporting of compactness  
21 metrics, correct?

22 A Yes.

23 Q And you report the average compactness  
24 scores for the enacted and the illustrative plans,  
25 but this includes -- the average score includes all

1 56 districts, not just the ones that were changed,  
2 right?

3 A Right.

4 Q And you didn't run a compactness score  
5 report only for the districts that were changed to  
6 compare those with the enacted plan; correct?

7 A Correct.

8 Q Do you know if the districts that you  
9 changed on the illustrative plan from the enacted  
10 plan are more or less compact as a whole than the  
11 enacted plan?

12 A So compactness depends on which metric  
13 you just. You know, some -- some districts can be  
14 more compact based on one metric and less compact on  
15 another. So, again, repeating the question was  
16 whether I know whether the districts I changed were  
17 on the whole more compact or less compact?

18 Q Yes.

19 A I don't -- I don't know. I can guess,  
20 but I don't think I can say with certainty.

21 Q So let's look at Figure 8. Can you just  
22 explain to me what Figure 8 shows?

23 A Yes. So Figure 8 is a series of sorted  
24 bar charts basically, and for the four measures,  
25 compactness measures, that can be applied to

1 why you're referencing the population?

2 A Yes, and specifically in response to  
3 your question about the county splits, the  
4 additional number which were -- so it's a difference  
5 -- a net difference of five, and four of those were  
6 -- four of the ones that are not split in the  
7 enacted plan are related to that Black Belt area.  
8 And that's where the Bibb County decision sort of  
9 could be considered a balance or an offset and that  
10 Douglas and Coweta are quite close to having the  
11 same population.

12 And so Newton, one is -- one is split in  
13 one and whole in the other, vice versa.

14 Q So moving to Paragraph 41, you talked  
15 about the consideration of communities of interest.  
16 And I know we talked a lot about communities of  
17 interest. But the only I saw referenced here  
18 related to the two campuses of Georgia College.

19 Are there other communities of interest  
20 you can identify that you kept whole on the  
21 illustrative plan that were divided on the enacted  
22 plan?

23 A So we've just recently been talking  
24 about counties and consolidated municipal county  
25 governments. So Macon-Bibb would be an example,

1 Douglas County. Other than that, I -- I think maybe  
2 Fort Gordon. I'm remembering considering closely at  
3 least parts of Fort Gordon that I felt I was making  
4 improvements relative to the enacted plan and  
5 keeping the actual boundaries, the Fort -- I --

6 My memory is a little hazy on that, but  
7 I think that was another one that -- where at least  
8 portions of it one could consider an improvement.

9 Let me just look back at the figures  
10 here. There may have been census studies -- maybe  
11 places in Henry County. I'm -- honestly, I'm I  
12 can't think of any others that I can say  
13 definitively.

14 Q Okay. You reference in Paragraph 41  
15 communities that you've heard described by Georgians  
16 either in personal conversation or in statements  
17 made be public hearings. What personal  
18 conversations did you rely on when you were putting  
19 together the illustrative plan, if any?

20 A So I'm trying to remember -- I don't  
21 recall. There -- I know when I wrote in there were  
22 things I had in mind, and I -- I don't remember.

23 Q And this is your report from December  
24 5th, 2022?

25 A Yes. Yeah, the language is in that

1 report, yes. I don't know if it was in -- if I used  
2 that same language in the previous report.

3 Q Okay. In Paragraph 42 you talk about  
4 the pairing of incumbents and you used residential  
5 addresses of recently elected State Senators as  
6 provided by counsel. I didn't see that you included  
7 an incumbency report anywhere in your -- in your  
8 documents. Is there a reason why you didn't include  
9 that?

10 A There is. Maptitude gives you kind of  
11 two flavors of incumbency reports, and they both are  
12 designed to focus on -- or not focus on, but to have  
13 as part of their significant information included  
14 political affiliation.

15 And I deliberately did not want to be  
16 looking at the political affiliation. So when I got  
17 those spreadsheets or brought them or geocoded the  
18 spreadsheets so that I had latitude and longitude  
19 for all the addresses and brought those into  
20 Maptitude I no longer had party information.

21 So in generating the report you have to  
22 specify some field for the party information. The  
23 short answer is basically the -- the report was  
24 including party related information that was  
25 meaningless because I didn't have it in there. I



1 the -- I think that's District 128 to the northeast  
2 of 149 -- was not changed.

3 So -- well, when I say was not changed,  
4 it was changed from my PI plan to my December 2022  
5 plan in such a way that the district in the December  
6 2022 plan is identical to the way it is in the  
7 enacted plan.

8 I probably could have described that  
9 more succinctly. But -- and that would be very hard  
10 to see in Figure 13 or comparing Figure 13 in the  
11 older document versus the Figure 16.

12 Q And you identify the connection between  
13 Milledgeville and Macon as -- or, actually, I'm  
14 sorry. You identify District 149 as generally  
15 following the orientation of the Georgia fall line  
16 geological feature, is that right? In paragraph 52.

17 A So I'm going back. That sounds right.  
18 I just want to see it before agreeing.

19 Yes.

20 Q You'd agree that Augusta is also part of  
21 the Georgia fall line, right?

22 A Yes.

23 Q And the Columbus is also on the fall  
24 line?

25 A Yes.

1           Q       You reference shared economic  
2 similarities along the fall line. What are the  
3 shared economic histories of Milledgeville and  
4 Macon?

5           A       So my understanding is that the fall  
6 line essentially has an area of steeper terrain  
7 between the Piedmont and the Coastal Plain, and what  
8 that means is that the rivers are steeper and no  
9 longer navigable from the coast.

10                   So from what I remember reading, that  
11 meant that these fall line cities would sort of be  
12 the farthest point that river-based trade could go  
13 inland, and these would be a kind of a trading point  
14 or a transfer point for goods coming up the river  
15 and also goods coming from the Piedmont to then be  
16 shipped downstream and -- to other points.

17                   There's also this kind of being on the  
18 boundary, the scene if you will, between two  
19 different geologic areas that have different soil  
20 types, so different crops that might grow better  
21 in -- on one side than the other. And there's also  
22 the -- that steeper nature of the rivers allows for  
23 hydrologic power of things like mills.

24                   And so they would be places where  
25 historically there might have been locations of the

1 types of industries that would benefit from  
2 hydropower -- old fashioned hydropower to power  
3 those various kinds of -- whether it was  
4 manufacturing or processing, that kind of thing.

5 Q Did you read about the fall line before  
6 or after you drew the connection between Macon and  
7 Milledgeville in your PI plan in 2021?

8 A I think I was familiar with it in a  
9 general sense. I've looked a lot at North Carolina  
10 geography, and that fall line is not unique to  
11 Georgia. In North Carolina -- I think my daughter  
12 learned in kindergarten or something about the major  
13 regions of the state being the mountains and the  
14 Piedmont and the Coastal Plain.

15 So that -- that general kind of  
16 distinction or that characterization of cites that  
17 are along these -- these boundary areas, these edges  
18 is something I was generally familiar with.

19 And also the idea that the Black Belt,  
20 while often talked about that in terms of its  
21 demography as what defines it also has been defined  
22 in terms of its -- essentially it's geology. It's  
23 the soil types that are in that area.

24 So the actual article, I did not read  
25 until later, but I was generally aware of that

1 division, that -- those relationships, if you will.

2 Q Looking at District 145, did you make  
3 any changes aside from the change to -- between 145  
4 and 147 between the PI plan and the December 5th  
5 report?

6 A I did not.

7 Q So let's move to the comparative  
8 characteristics of the House plan. And you'd agree  
9 that the total deviation of the illustrative House  
10 plan is higher than the total deviation on the  
11 enacted House plan, is that right?

12 A So the total deviation I would need to  
13 look at the -- I'm pretty sure it's the case, but I  
14 don't want to reply with certainty.

15 Q Attachment L?

16 A Okay. Thank you.

17 Q I think it's Page 134.

18 A Yes. Okay. Total deviation, yes.

19 Q So you'd agree the illustrative plan  
20 total deviation is higher than the enacted plan?

21 A Yes.

22 Q And it's more than a point higher from  
23 2.74 to 3.85, right?

24 A That's right.

25 Q And you didn't include that total

1 deviation number in your written report, just in the  
2 exhibits, right?

3 A That's right.

4 Q Is the way that you determined that the  
5 illustrative plan complied with the traditional  
6 principle of population equality for the House the  
7 same as the methods you used for making that  
8 determination for the Senate illustrative plan?

9 A I think generally, yes.

10 Q In paragraph 57 you talk about  
11 compactness. And we, again, have the average scores  
12 for four of the five metrics and then a cut edge  
13 score. Would you expect average compaction scores  
14 to be the same if 155 of the 180 districts on a plan  
15 are the same?

16 A No. I mean, it could be. But --

17 Q Okay.

18 A -- that's saying that --

19 Q Okay. So you didn't break out the  
20 compactness scores for the 25 districts that you  
21 changed. You only reported here in Table 6 the  
22 average for all 180 districts for four of those five  
23 measures, and then over on Table 7 the scores for  
24 just the new majority black districts, right?

25 A That's right. In the text of the

1 report. But the -- the attachments include  
2 compactness scores for all the districts in both  
3 enacted and illustrative as well as other summary  
4 and metrics.

5 Q And was your method of determining that  
6 the plan complied with the traditional principle of  
7 compactness generally the same process for the House  
8 illustrative plan as for the Senate Illustrative  
9 plan?

10 A Yes.

11 Q And for Figure 17, like the Senate,  
12 these charts -- the only districts on these four  
13 charts that are from the illustrative plan are the  
14 colored lines. And the gray lines are districts on  
15 the enacted plan, right?

16 A That's right.

17 I'm sorry. If you -- if you wouldn't  
18 mind repeating that question again. I just tuned  
19 out for a moment.

20 Q Sure. In Figure 17, the --

21 A Yes.

22 Q -- in all four charts the only districts  
23 from the illustrative plan on those charts are the  
24 colored lines. The gray lines refer or are  
25 districts on the enacted plan, right?

1 A That's right.

2 Q And in Table 7 when you reported the  
3 various compactness scores for the new majority  
4 black districts, you didn't show the compactness  
5 scores for the enacted plan districts that  
6 correspond to those districts, right?

7 A That's right.

8 Q And in Paragraph 59, Table 8, you'd  
9 agree that the illustrative plan -- I'm sorry.

10 A Just a second. When you say the  
11 districts that correspond, meaning the districts  
12 that have the same number?

13 Q Either the districts that have the same  
14 number or that are in the same general geographic  
15 area. You didn't report either of those compactness  
16 scores, right?

17 A Yes. Right.

18 Q In Paragraph 59, Table 8, you'd agree  
19 that the illustrative plan splits one more county  
20 and one more VTD in the enacted plan, right?

21 A Yes.

22 Q Then in Paragraph 60 we get to  
23 communities of interest, and I see again a reference  
24 to the two campuses of Georgia College and the  
25 central community of Milledgeville. Are there are

# EXHIBIT B



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

Page 1

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

ANNIE LOIS GRANT, et al.,

Plaintiffs,

vs.

CIVIL ACTION FILE

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

NO. 1:22-CV-00122-SCJ

Defendants.

COAKLEY PENDERGRASS, et  
al.,

Plaintiffs,

CIVIL ACTION FILE

vs.

NO. 1:21-CV-05339-SCJ

BRAD RAFFENSPERGER, et  
al.,

Defendants.

REMOTE VIDEO DEPOSITION OF  
ORVILLE VERNON BURTON, PH.D.

February 17, 2023

1:24 p.m.

Suite 200

1600 Parkwood Circle

Atlanta, Georgia

Tracy A. Williams, B-2168, RPR

Jesse Wiggins, Videographer

1 other people, and it might lead me to it.

2 Q. Okay. And then you read everything you  
3 could and that -- and then summarized that  
4 information. Would that be fair to say?

5 A. Yes, and analyzed it and put it together  
6 so that it's not just one source, but all evidence  
7 that sort of points in a direction.

8 Q. Okay. I'm going to refer back to your  
9 report. I may need to just leave it up for a while,  
10 but -- sorry about that.

11 We are going to go to Page 3, and the  
12 second paragraph there on Page 3 of your report  
13 indicating that "For the next 40 years, Georgia  
14 failed to go to a redistricting cycle without  
15 objection from the Department of Justice."

16 Do you see that statement there?

17 A. Yes.

18 Q. Okay. And you would agree that the  
19 redistricting plans drawn in 1971, 1981, '91, and  
20 2001 were drawn by Democratic legislatures, correct?

21 A. Yes.

22 Q. And you would agree that the  
23 Republican-drawn maps in 2011 were precleared by the  
24 Department of Justice on the first attempt, correct?

25 A. Yes.

1 Q. And on Page 4 -- and on Page 4, I'm going  
2 to scroll down to that full paragraph above the  
3 heading "Expert Credentials." And there you conclude  
4 that "Race unquestionably contributes to Georgia's  
5 partisan divides today. And, similarly, those  
6 divides cannot be fully explained without discussing  
7 race."

8 Is that correct?

9 A. Yes.

10 Q. And I believe also in your report, you say  
11 that "Partisanship and race are and have been  
12 inextricably intertwined in Georgia."

13 Does that sound right?

14 A. Yes.

15 Q. So in other words, you conclude that race  
16 and partisanship cannot be separated, correct?

17 A. Correct, today in Georgia.

18 Q. Today in Georgia. And you further state  
19 that -- I believe on Page 4, you indicate that -- so  
20 you're not saying that all voters that identify with  
21 the Republican party in Georgia are racist. Have I  
22 read that correctly?

23 A. You have read what I said there correctly.  
24 I would rephrase it to say that it doesn't matter.  
25 And I'm not saying that anyone is racist. But I am

1           A. I thought that I did. That's what I was  
2 attempting to do in the report.

3           Q. Okay. And how do you measure intent?

4           A. With examples and the context in which  
5 they're used, which I outlined specific examples in  
6 Georgia.

7           Q. And on -- let's look at Page 67. You refer  
8 to an example of a racial appeal. And then if we go  
9 ahead and -- sorry -- look at Page 68 concerning a  
10 robocall imitating Oprah Winfrey during the Stacey  
11 Abrams campaign. Do you see that?

12          A. I do.

13          Q. Okay. Did you research how widely  
14 distributed that call was?

15          A. I don't remember.

16          Q. Do you know how many people received that  
17 robocall?

18          A. Do not.

19          Q. Would it surprise you if it was a total of  
20 583 people in Georgia? And I can refer you to an  
21 exhibit if that would help.

22          A. No. I would hope it would be less than  
23 that. It's so disgusting. But, no, it would not  
24 surprise me.

25          Q. Did you evaluate the impact of that, of the

1 robocall?

2 A. I did not. But as I noted here, someone  
3 said that racist appeals didn't hurt the candidates  
4 making them in Georgia. Throughout the South, it  
5 actually helped them.

6 Q. Are any of the racial appeals that you  
7 discuss in your report, Dr. Burton, in Georgia from a  
8 State House race in recent elections?

9 A. I don't remember without going back, you  
10 know, into the report and see. I think I was just  
11 looking at the level, explaining how these work in  
12 Georgia. I'm not sure I paid attention to whether  
13 they were in the State House or just in the general  
14 elections where we had someone like a black candidate  
15 like Warnock.

16 Q. Okay. Did your research show any racial  
17 appeals in any state legislative races in the state  
18 of Georgia in the last ten years?

19 A. I don't remember if I did or not. I  
20 discussed different candidates or different people  
21 using these appeals, but I don't know if it was in  
22 the legislature or just at the state level.

23 Q. Okay. Do you recall specifically looking  
24 at examples of racial appeals in a State Senate race  
25 here in Georgia?