

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

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

Plaintiffs,

v.

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

Defendants.

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

**PLAINTIFFS' RESPONSE TO DEFENDANTS' STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Pursuant to Federal Rule of Civil Procedure 56 and LR 56.1(B)(2)(a), NDGa, Plaintiffs ANNIE LOIS GRANT, QUENTIN T. HOWELL, ELROY TOLBERT, TRIANA ARNOLD JAMES, EUNICE SYKES, ELBERT SOLOMON, DEXTER WIMBISH, GARRETT REYNOLDS, JACQUELINE FAYE ARBUTHNOT, JACQUELYN BUSH, and MARY NELL CONNER respond to Defendants' statement of undisputed facts.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

12. The resulting Senate map reduced the number of split counties from the prior plan, did not pair any incumbents of either party who were running for re-election, and maintained the same number of majority-Black districts as prior plans. Report of Blakeman Esselstyn, attached as Ex. A (“Esselstyn Report”), ¶ 40 n.10; Kennedy Dep. 106:4-11.

Plaintiffs’ Response: Disputed. Neither the cited footnote from Mr. Esselstyn’s report nor the excerpt from the deposition transcript of Senator Kennedy supports the assertion that the enacted State Senate map maintained the same number of majority-Black districts as prior plans.

Plaintiffs do not dispute that the enacted State Senate map split fewer counties than the previous State Senate map or that it did not pair any incumbents running for reelection.

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

Plaintiffs’ Response: Disputed. The cited paragraphs from Mr. Esselstyn’s report do not compare the enacted House plan with any prior House plans, nor does Mr. Esselstyn’s report otherwise include this information.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. The cited excerpt from Mr. Esselstyn’s deposition transcript explains that his goal was to “ascertain whether additional majority Black districts could be drawn while also . . . complying with [] traditional redistricting guidelines.”

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

Plaintiffs’ Response: Undisputed.

59. When Mr. Esselstyn was creating his illustrative maps, he turned on features in the software to indicate where Black individuals were located, including using it to inform decisions about which populations were included and excluded from districts. Esselstyn Dep. 76:21-77:12, 77:20-77:25.

Plaintiffs’ Response: Disputed. The cited excerpts from Mr. Esselstyn’s deposition transcripts demonstrate only that he at some point displayed racial information and that this information “inform[ed] the decisions [he] made about

which *parts of districts*”—not “which populations”—“went in and out of [] particular districts.” Ex. 7 (“Esselstyn Dep.”) at 76:21–77:12, 77:20–77:25.* Later in the deposition, Mr. Esselstyn clarified that the software’s racial information did not predominate in any given line-drawing decision. *See id.* at 220:2–221:7.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. The cited paragraphs from Mr. Morgan’s report provide only descriptive information about Mr. Esselstyn’s illustrative plans, not any probative analysis relating to the reasons why Mr. Esselstyn made any given

* Plaintiffs’ exhibits are attached to the Declaration of Jonathan P. Hawley, filed concurrently with Plaintiffs’ response in opposition to Defendants’ motion for summary judgment.

line-drawing decision. Moreover, Mr. Esselstyn testified that he considered county splits in conjunction with other traditional redistricting principles in drafting his districts and disputed Mr. Morgan's characterizations of county splits being racial in nature. *See* Esselstyn Dep. 121:14–122:16, 123:7–124:10, 140:14–143:11.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs’ Response: Disputed. The cited excerpts from Mr. Esselstyn’s deposition transcript provide only descriptive information about illustrative Senate District 23, and Mr. Esselstyn did not otherwise testify that he split counties based on race to create Senate District 23. Moreover, Mr. Esselstyn testified that he considered county splits in conjunction with other traditional redistricting principles in drafting his districts and disputed Mr. Morgan’s characterizations of county splits being racial in nature. *See* Esselstyn Dep. 121:14–122:16, 123:7–124:10, 140:14–143:11.

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

Plaintiffs’ Response: Disputed. The cited excerpt from Mr. Esselstyn’s deposition transcript demonstrates only that he could not recall “specific reasons

other than the kind of trial and error” for connecting Clayton and Henry counties in a single district.

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

Plaintiffs’ Response: Disputed. The cited paragraphs from Mr. Morgan’s report provide only descriptive information about enacted Senate District 10 and illustrative Senate District 10, not any probative analysis relating to Mr. Esselstyn’s map-drawing process. Moreover, the cited paragraphs do not support the assertion that Senate District 10 was “significantly altered,” as Mr. Morgan reported that the enacted and illustrative districts have similar Reock (0.28 versus 0.25) and Polsby-Popper (0.23 versus 0.19) compactness scores.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. The cited excerpt from Mr. Esselstyn's deposition transcript demonstrates only Mr. Esselstyn's agreement that Clayton County is "fairly urban" and his testimony that Coweta County is more rural than Clayton, north Fayette, and south Fulton counties.

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

Plaintiffs' Response: Disputed. The cited excerpt from Mr. Esselstyn's deposition transcript demonstrates only that he was "not trying to make sure that every piece of a district has some unifying factor" and instead sought to ensure that he did not divide communities of interest.

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

Plaintiffs' Response: Disputed. The cited excerpt from Mr. Esselstyn's deposition transcript makes no mention of rural areas and instead demonstrates that illustrative Senate District 35 made Douglas County whole and connected portions

of Fulton and south Paulding counties, the latter of which is included in definitions of the Atlanta metropolitan area.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Disputed. Mr. Esselstyn's report included the Reock, Schwartzberg, Polsby-Popper, and Area/Convex Hull compactness scores for all districts in the enacted and illustrative State Senate plans and all districts in the enacted and illustrative House plans. *See* Esselstyn Dep. 196:19–197:4; Ex. 1 (“Esselstyn Report”) attachs. H & L.

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

Plaintiffs' Response: Disputed. The cited excerpt from Mr. Esselstyn's deposition transcript demonstrates only that he did not include certain altered illustrative districts in figure 8 of his report. Mr. Esselstyn's report otherwise included the Reock, Schwartzberg, Polsby-Popper, and Area/Convex Hull

compactness scores for all districts in the enacted and illustrative State Senate plans and all districts in the enacted and illustrative House plans. *See* Esselstyn Dep. 196:19–197:4; Esselstyn Report attachs. H & L.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. The cited paragraph and table from Mr. Esselstyn’s report demonstrate that illustrative House Districts 64, 117, 145, and 149 have Black voting-age populations above 50%. The report does not suggest that any

districts are “barely above 50%” or otherwise qualify the demographic statistics in this manner.

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

Plaintiffs’ Response: Disputed. The cited excerpt from Mr. Esselstyn’s deposition transcript demonstrates that he would characterize illustrative House Districts 77 and 86 as “accidentally configured so as to have high concentrations of the Black voting age population” in the sense that the districts were not intentionally “packed” or otherwise configured in a manner that ignored other considerations.

Plaintiffs do not dispute that illustrative House Districts 77 and 86 have Black voting-age populations above 75%.

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

Plaintiffs’ Response: Disputed. The cited excerpt from Mr. Esselstyn’s deposition transcript demonstrates that he considers Paulding and Fulton counties to both be within the Atlanta metropolitan area.

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

Plaintiffs' Response: Disputed. The cited excerpt from Mr. Esselstyn's deposition transcript does not support the assertions in this paragraph, while the cited paragraphs from Mr. Morgan's report provide only descriptive information about Mr. Esselstyn's illustrative plans, not any probative analysis relating to the reasons why Mr. Esselstyn made any given line-drawing decision.

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

Plaintiffs' Response: Disputed. The cited excerpt from Mr. Esselstyn's deposition transcript demonstrates that illustrative House District 117 is contained entirely within Henry County.

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

Plaintiffs' Response: Disputed. The cited excerpt from Mr. Esselstyn's deposition transcript does not support the assertions in this paragraph, while the cited paragraphs from Mr. Morgan's report provide only descriptive information about Mr. Esselstyn's illustrative plans, not any probative analysis relating to the reasons why Mr. Esselstyn made any given line-drawing decision.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Disputed. Mr. Esselstyn's report included the Reock, Schwartzberg, Polsby-Popper, and Area/Convex Hull compactness scores for all districts in the enacted and illustrative State Senate plans and all districts in the enacted and illustrative House plans. *See* Esselstyn Dep. 196:19–197:4; Esselstyn Report attachs. H & L.

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

Plaintiffs' Response: Disputed. The cited excerpt from Mr. Esselstyn's deposition transcript demonstrates only that he did not include certain altered illustrative districts in figure 17 of his report. Mr. Esselstyn's report otherwise included the Reock, Schwartzberg, Polsby-Popper, and Area/Convex Hull compactness scores for all districts in the enacted and illustrative State Senate plans and all districts in the enacted and illustrative House plans. *See* Esselstyn Dep. 196:19–197:4; Esselstyn Report attachs. H & L.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

93. Unlike Mr. Esselstyn, Mr. Cooper only drew one additional majority-Black state House district in Macon (instead of two) and did not draw an additional majority-Black district in western metro Atlanta. Report of William Cooper in *Alpha Phi Alpha*, attached as Ex. D (“Cooper Report”), ¶ 153.

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. In none of the cited excerpts from Mr. Esselstyn's deposition transcript did he identify race as a common interest shared by the communities in his illustrative legislative districts, nor does that expansive inference follow from the limited information contained in those excerpts. Mr. Esselstyn explained that "[o]ne of the guiding principles in the creation of both the State Senate and House illustrative plans was to minimize changes to the enacted plan while adhering to other neutral criteria," Esselstyn Report ¶ 26, and that, when drawing his districts, he considered communities of interest, population equality,

preservation of political subdivisions, and other traditional redistricting principles, *see, e.g., id.* ¶¶ 33–42, 54–61.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. The cited excerpt from Dr. Alford’s deposition transcript addresses only the observed voting patterns of Black voters, not the reasons why Black voters preferred certain candidates. Moreover, Dr. Palmer and Dr. Alford both testified that it is not possible to determine causation—which is to say, the reasons voters cast ballots for particular candidates—using the data and methodology employed by Dr. Palmer. *See* Ex. 8 at 88:11–17; Ex. 10 at 82:17–84:14, 90:4–91:9. Finally, Dr. Palmer’s data do not demonstrate “*only*” the “two material facts” that Defendants reference; his report further demonstrated that Black voters in the area of Georgia he examined are extremely cohesive, *see* Ex. 2 ¶¶ 18–19; that white voters consistently and cohesively vote in opposition to Black-

preferred candidates, *see id.*; that Black-preferred candidates are largely unable to win elections in this area, *see id.* ¶¶ 20–21; and that Black-preferred candidates would be able to win elections in Mr. Esselstyn’s illustrative legislative districts, *see id.* ¶¶ 22–25.

Dated: April 19, 2023

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Plaintiffs' Response to Defendants' Statement of Undisputed Material Facts has been prepared in accordance with the font type and margin requirements of LR 5.1, NDGa, using font type of Times New Roman and a point size of 14.

Dated: April 19, 2023

/s/ Adam M. Sparks
Counsel for Plaintiffs

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

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

Plaintiffs,

v.

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

Defendants.

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

PLAINTIFFS' STATEMENT OF ADDITIONAL MATERIAL FACTS

Pursuant to Federal Rule of Civil Procedure 56 and LR 56.1(B)(2)(b), NDGa, Plaintiffs ANNIE LOIS GRANT, QUENTIN T. HOWELL, ELROY TOLBERT, TRIANA ARNOLD JAMES, EUNICE SYKES, ELBERT SOLOMON, DEXTER WIMBISH, GARRETT REYNOLDS, JACQUELINE FAYE ARBUTHNOT, JACQUELYN BUSH, and MARY NELL CONNER file this statement of additional material facts in opposition to Defendants’ motion for summary judgment.¹

1. When asked in his deposition whether, “at any point,” he “display[ed] racial information of the underlying geography on [his] screen” while he “dr[ew] the illustrative plans in this case,” Plaintiffs’ mapping expert, Blakeman B. Esselstyn, responded, “Yes,” explaining, “For the underlying geography, I would—it would be the black percentage of the population meaning the—any part black voting age percent.” Ex. 7 (“Esselstyn Dep.”) at 76:21–77:6.²

¹ LR 56.1(B)(2)(b), NDGa, requires Plaintiffs to submit “[a] statement of additional facts which [they] contend[] are material and present a genuine issue for trial.” For the reasons discussed in their motion for partial summary judgment and associated filings, *see* ECF No. 189, Plaintiffs maintain that there are few genuine issues to be tried and that summary judgment in their favor as to most issues is warranted.

² All exhibits are attached to the Declaration of Jonathan P. Hawley, filed concurrently with Plaintiffs’ response in opposition to Defendants’ motion for summary judgment.

2. When asked if he used the software's shading function when drawing his illustrative State Senate and House plans, Mr. Esselstyn responded that he was "not totally sure." Esselstyn Dep. 77:7–19.

3. When asked about his use of the software's shading function later in the deposition, Mr. Esselstyn responded as follows:

Q Do you recall that Mr. Tyson asked you about the Maptitude software's ability to shade racial demographic information while you're undertaking map drawing?

A I do.

Q And you mentioned that you have used that shading, including in the development of your illustrative plans, correct?

A Correct.

Q My question is: Do you always have that shading function on when you're map drawing?

A No.

Q Did you always have that shading function toggled on when you were drawing your illustrative Senate and House maps in this case?

A No. . . .

Q When you . . . had that shading function toggled and you could see it, . . . did that information predominate in any given line drawing decision you made when you were preparing your illustrative maps?

A No, it did not.

Esselstyn Dep. 220:2–221:7.

4. When asked if he was “instructed to maximize the number of majority black districts in either the State Senate or House map,” Mr. Esselstyn responded, “I was not.” Esselstyn Dep. 229:2–5.

5. Mr. Esselstyn was “asked [] to determine whether there are areas in the State of Georgia where the Black population is ‘sufficiently large and geographically compact’ to enable the creation of additional majority-Black legislative districts relative to the number of such districts provided in the enacted State Senate and State House of Representatives redistricting plans from 2021.” Ex. 1 (“Esselstyn Report”) ¶ 9 (footnote omitted).

6. Mr. Esselstyn concluded that “[i]t is possible to create three additional majority-Black districts in the State Senate plan and five additional majority-Black districts in the State House plan in accordance with traditional redistricting principles.” Esselstyn Report ¶ 13.

7. Mr. Esselstyn reported that, “[d]uring both the earlier process of creating the PI illustrative plans and the process of revising those plans to create the plans described in this report, [he] was constantly balancing a number of

considerations, and there was no one dominant factor or metric.” Esselstyn Report ¶ 25.

8. When asked if he “utilize[d] any of the racial information that you displayed on the screen while you were drawing the illustrative plans to inform the decisions you made about which parts of districts went in and out of [] particular districts,” Mr. Esselstyn responded, “Yes.” Esselstyn Dep. 77:20–25.

9. 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.

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

11. 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.

12. 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.

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

14. 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.

15. 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.

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

17. 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; Ex. 9 (“Morgan Dep.”) at 90:6–17 (agreeing that Mr. Esselstyn’s illustrative plan has similar mean compactness to enacted plan using Reock and Polsby-Popper measures).

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

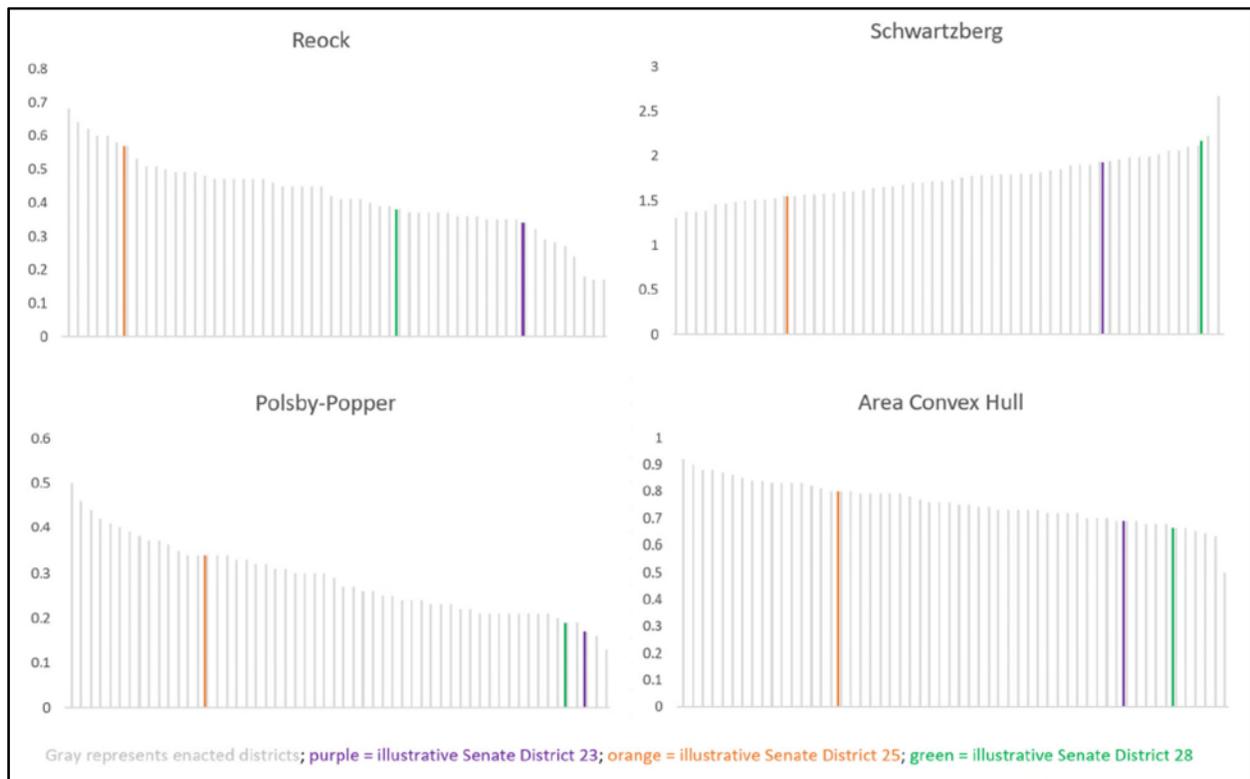
	Reock (average)	Schwartzberg (average)	Polsby- Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.39	1.80	0.28	0.72	22,020
Illustrative	0.39	1.81	0.28	0.72	22,359

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

19. 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.

20. 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.

21. The following table reports the associated compactness scores:

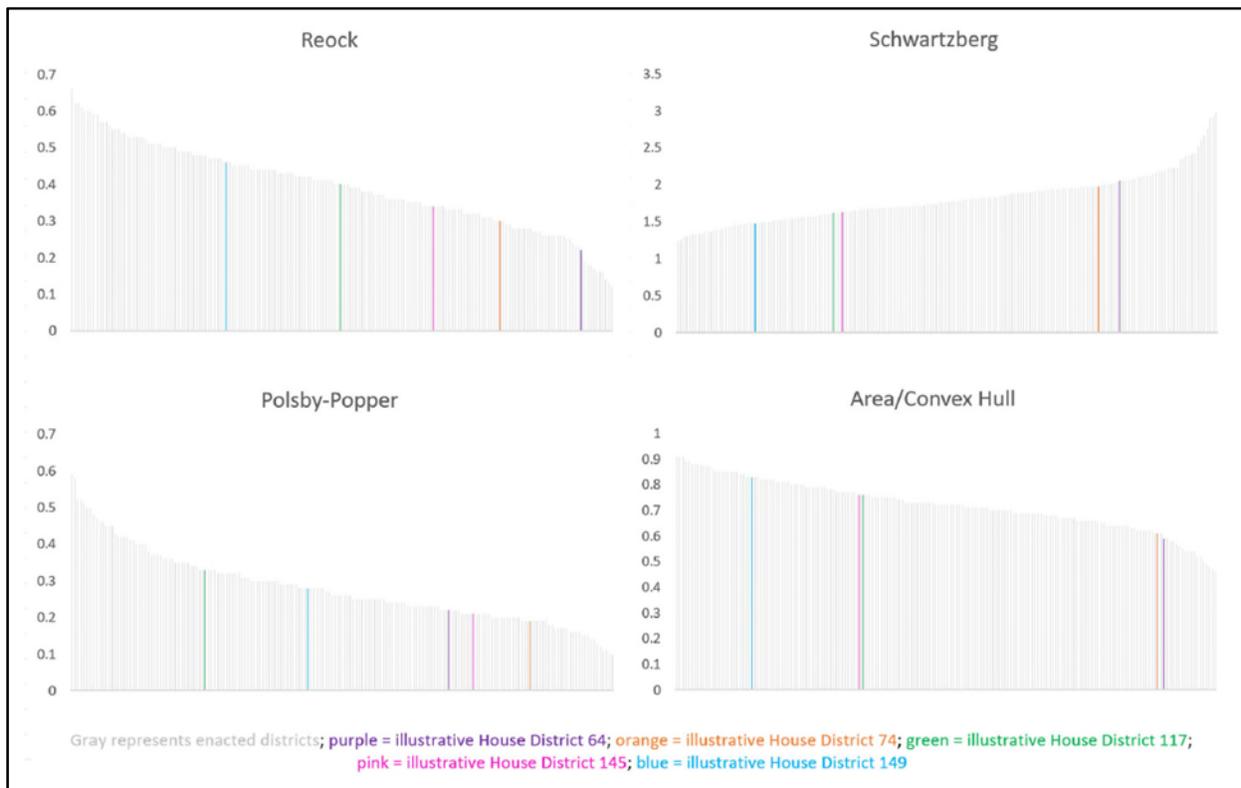
	Measures of Compactness			
	Reock	Schwartzberg	Polsby-Popper	Area/Convex Hull
Enacted plan least compact score	0.17	2.67	0.13	0.50
Enacted plan median score	0.415	1.725	0.28	0.755
Illustrative District 23 score	0.34	1.93	0.17	0.69
Illustrative District 25 score	0.57	1.55	0.34	0.80
Illustrative District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

Esselstyn Report ¶ 37, tbl.3.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

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

28. 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.

29. 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.

30. 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.

31. 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.

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

33. 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.

34. 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.

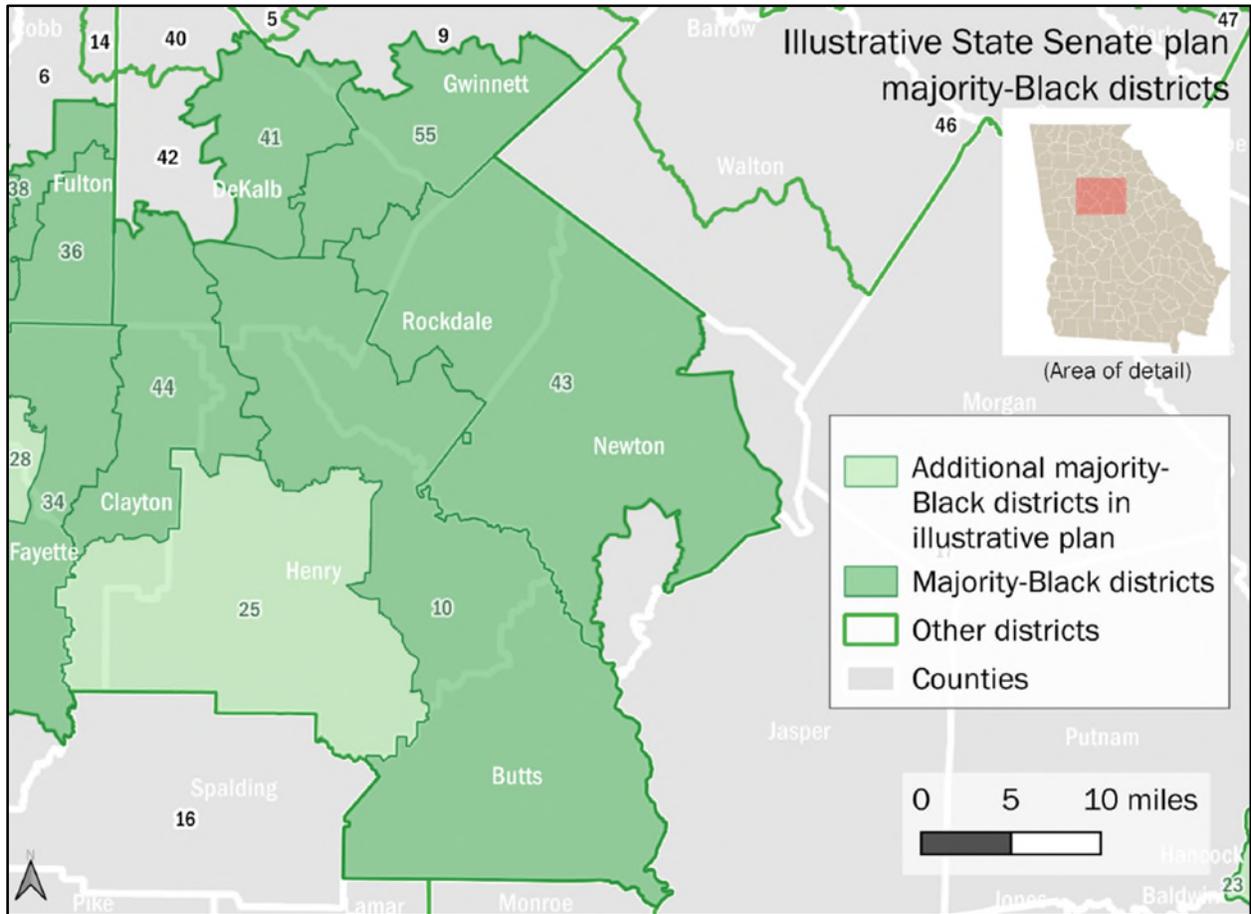
35. Twiggs and Wilkinson counties—described by Gina Wright, the Executive Director of the General Assembly’s Legislative and Congressional Reapportionment Office, as “constitut[ing] a single community of interest”—are included in their entirety in Mr. Esselstyn’s illustrative House District 149. Esselstyn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

36. 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.

37. 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.

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

39. 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.

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

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

42. 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. Ex. 2 (“Palmer Report”) ¶¶ 7, 18–19; Ex. 3 (“Suppl. Palmer Report”) ¶ 4; Ex. 6 (“Alford Report”) at 3 (“As evident in Dr. Palmer’s [reports], the pattern of polarization is quite striking.”); Ex. 10 (“Alford Dep.”) at 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.”).

43. 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).

44. 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.

45. 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.

46. 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.

47. 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).

48. 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.

49. 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.

50. Defendants’ quantitative expert, Dr. John Alford, explained that the data “doesn’t demonstrate that” partisan behavior is not “actually being driven by racial considerations.” Alford Dep. 109:15–111:1.

51. Dr. Alford acknowledged that the race of candidates is not the only role race might play in a voter’s decision and that race likely plays a role in shaping voters’ party preferences. Alford Dep. 99:14–100:7, 134:19–135:18 (“[T]here’s certainly room for race to be involved in decision-making in a wide variety of ways.”).

52. Dr. Alford did not explore the role of race in shaping political behavior, either generally or in this case. Alford Dep. 12:15–18, 115:12–116:10, 132:8–133:15.

53. Dr. Alford acknowledged that he could not draw conclusions about the causes of voting behavior based only on the results of Dr. Palmer’s ecological inference analysis. Alford Dep. 82:17–84:14, 90:4–91:9 (“EI is never going to answer a causation question. . . . Establishing causation is a very difficult scientific issue[.]”).

54. Plaintiffs’ Senate Factors expert, Dr. Orville Vernon Burton, explored the relationship between race and partisanship in Georgia politics. Ex. 4 (“Burton Report”) at 57–62.

55. Dr. Alford did not review Dr. Burton’s analysis. Alford Dep. 16:3–14.

56. 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.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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.

62. 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.

63. 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.

64. 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)).

65. 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.

66. 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.

67. 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 believed that racism is a serious problem in policing, 65% voted for Biden and 33% voted for Trump. Burton Report 76.

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

69. 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)).

70. 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.

Dated: April 19, 2023

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Counsel for Plaintiffs

*Admitted *pro hac vice*

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Plaintiffs' Statement of Additional Material Facts has been prepared in accordance with the font type and margin requirements of LR 5.1, NDGa, using font type of Times New Roman and a point size of 14.

Dated: April 19, 2023

/s/ Adam M. Sparks
Counsel for Plaintiffs