No. 24-10241

In the United States Court of Appeals for the Eleventh Circuit

ANNIE LOIS GRANT, et al.,
Plaintiffs-Appellants,

v.

SECRETARY OF STATE OF GEORGIA,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Georgia
No. 1:21-cv-00122—Steve C. Jones, Judge

APPELLANTS' APPENDIX VOLUME I OF VIII

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Index of Appendix

Docket/Tab #

Volume VII

Volume VIII

A

U.S. District Court
Northern District of Georgia (Atlanta)
CIVIL DOCKET FOR CASE #: 1:22-cv-00122-SCJ

Grant et al v. Raffensperger et al FILING RESTRICTION PER [122] AND [125] ORDERS
Assigned to: Judge Steve C. Jones
Case in other court: USCA - 11th Circuit, 23-13921-AA
USCA- 11th Circuit, 24-10241-AA
Cause: 52:10301 Denial or abridgement of right to vote on account of race or color

Date Filed: 01/11/2022
Date Terminated: 10/26/2023
Jury Demand: None
Nature of Suit: 441 Civil Rights: Voting
Jurisdiction: Federal Question

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Date Filed	#	Docket Text
01/11/2022	1	COMPLAINT filed by Elbert Solomon, Quentin T. Howell, Dexter Wimbish, Elroy Tolbert, Annie Lois Grant, Eunice Sykes, Theron Brown and Triana Arnold James. (Filing fee $402.00, receipt number AGANDC-11510043) (Attachments: # 1 Civil Cover Sheet)(eop) Please visit our website at http://www.gand.uscourts.gov/commonly-used-forms to obtain Pretrial Instructions and Pretrial Associated Forms which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 01/11/2022)
01/11/2022	2	Electronic Summons Issued as to Brad Raffensperger. (eop) (Entered: 01/11/2022)
01/11/2022	3	Electronic Summons Issued as to Sara Tindall Ghazal. (eop) (Entered: 01/11/2022)
01/11/2022	4	Electronic Summons Issued as to Anh Le. (eop) (Entered: 01/11/2022)
01/11/2022	5	Electronic Summons Issued as to Edward Lindsey. (eop) (Entered: 01/11/2022)
01/11/2022	6	Electronic Summons Issued as to Matthew Mashburn. (eop) (Entered: 01/11/2022)
01/11/2022	7	Certificate of Interested Persons by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert and Dexter Wimbish. (eop) (Entered: 01/11/2022)
01/11/2022	8	MOTION for Leave to File Excess Pages with Memorandum of Law In Support by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert and Dexter Wimbish. (Attachments: # 1 Text of Proposed Order)(eop) (Entered: 01/11/2022)
01/11/2022	9	APPLICATION for Admission of Kevin J. Hamilton Pro Hac Vice (Application fee $ 150, receipt number AGANDC-11511098).by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 01/11/2022)
01/11/2022	10	APPLICATION for Admission of Christina A. Ford Pro Hac Vice (Application fee $ 150, receipt number AGANDC-11511099).by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 01/11/2022)
01/11/2022	11	APPLICATION for Admission of Jonathan P. Hawley Pro Hac Vice (Application fee $ 150, receipt number AGANDC-11511100).by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 01/11/2022)
01/12/2022		Submission of 8 MOTION for Leave to File Excess Pages, to District Judge Steve C. Jones. (eop) (Entered: 01/12/2022)
01/12/2022	12	ORDER granting 8 Plaintiffs' Motion for Leave to File Excess Pages. Plaintiffs may file an additional ten pages, for a total of 35 pages, to the memorandum in support of their forthcoming motion for preliminary injunction. Signed by Judge Steve C. Jones on 1/12/2022. (ddm) (Entered: 01/12/2022)
01/12/2022		NOTICE OF VIDEO PROCEEDING: RULE 16 CONFERENCE set for 1/12/2022 at 01:30 PM via Zoom via Zoom before Judge Steve C. Jones, Judge Elizabeth Branch, and Judge Steven Grimberg. Topic: Rule 16 Conference. 1:21-cv-05337-SCJ, 1:21-cv-05338-SCJ-SDG-ELB, 1:21-cv-05339-SCJ, 1:22-0090-ELB-SCJ-SDG, 1:22-CV-0122-SCJ. Connection Instructions. Please click the link below to join the webinar: https://ganduscourts.zoomgov.com/j/1605120572 Passcode: 851671 Or One tap mobile : US: +16692545252,,1605120572#,,,,*851671# or +16468287666,,1605120572#,,,,*851671# Or Telephone: Dial(for higher quality, dial a number based on your current location): US: +1 669 254 5252 or +1 646 828 7666 or +1 551 285 1373 or +1 669 216 1590 Webinar ID: 160 512 0572 Passcode: 851671 International numbers available: https://ganduscourts.zoomgov.com/u/adGvu42dG Or an H.323/SIP room system: H.323: 161.199.138.10 (US West) or 161.199.136.10 (US East) Meeting ID: 160 512 0572 Passcode: 851671 SIP: 1605120572@sip.zoomgov.com Passcode: 851671 You must follow the instructions of the Court for remote proceedings available here. The procedure for filing documentary exhibits admitted during the proceeding is available here. *Photographing, recording, or broadcasting of any judicial proceedings, including proceedings held by video teleconferencing or telephone conferencing, is strictly and absolutely prohibited.* (pdw) (Entered: 01/12/2022)
01/12/2022	13	ORDER granting 8 Plaintiffs' Motion for Leave to File Excess Pages. Plaintiffs may file an additional ten pages, for a total of 35 pages, to the memorandum in support of their forthcoming motion for preliminary injunction. Signed by Judge Steve C. Jones on 1/12/2022. (ddm) (Entered: 01/12/2022)
01/12/2022	14	ORDER setting motion(s) and briefing schedule: Defendants shall file their motion to dismiss, if any, by no later than 5:00 PM EST on January 14,2022.Plaintiffs shall file their response, if any, by no later than 5:00 PM onJanuary 18, 2022. Defendants shall file their reply/ if any, by no later than 5:00 PM on January 20, 2022. Signed by Judge Steve C. Jones on 1/12/2022. (pdw) (Entered: 01/12/2022)
01/12/2022	15	ORDER setting motion(s) and briefing schedule: Plaintiffs shall file their amended motion for a preliminary injunction, if any, by no later than 2:00 PM EST on January 13,2022. Defendant shall file their response, if any, by no later than 5:00 PM EST on January 18, 2022. Plaintiffs shall file their reply, if any, by no later than 5:00 PM EST on January 20, 2022. Signed Judge Steve C. Jones on 1/12/2022. (pdw) (Entered: 01/12/2022)
01/12/2022	57	Minute Entry for proceedings held before Judge Steve C. Jones, Judge Elizabeth Branch, and Judge Steven Grimberg: Rule 16 conference held via Zoom in Alpha Phi Alpha v. Raffensperger, 1:21-cv-5337-SCJ; Georgia State Conference of the NAACP et al v. State of Georgia, 1:21-cv-05338-SCJ-SDG-ELB; Pendergrass v. Raffensperger, 1:21-CV-5339-SCJ; Common Cause et al v. Raffensperger, 1:22-cv-00090-SCJ-SDG-ELB; Grant v. Raffensperger, 1:22-CV-0122-SCJ (Court Reporter Viola Zbrowski)(pdw) (Entered: 02/07/2022)
01/13/2022		APPROVAL by Clerks Office re: 10 APPLICATION for Admission of Christina A. Ford Pro Hac Vice (Application fee $ 150, receipt number AGANDC-11511099). Attorney Christina Ashley Ford added appearing on behalf of Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish (cdg) (Entered: 01/13/2022)
01/13/2022		APPROVAL by Clerks Office re: 9 APPLICATION for Admission of Kevin J. Hamilton Pro Hac Vice (Application fee $ 150, receipt number AGANDC-11511098). Attorney Kevin J. Hamilton added appearing on behalf of Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish (cdg) (Entered: 01/13/2022)
01/13/2022		APPROVAL by Clerks Office re: 11 APPLICATION for Admission of Jonathan P. Hawley Pro Hac Vice (Application fee $ 150, receipt number AGANDC-11511100). Attorney Jonathan Patrick Hawley added appearing on behalf of Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish (cdg) (Entered: 01/13/2022)
01/13/2022	16	APPLICATION for Admission of Abha Khanna Pro Hac Vice (Application fee $ 150, receipt number AGANDC-11515172).by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 01/13/2022)
01/13/2022	17	APPLICATION for Admission of Daniel C. Osher Pro Hac Vice (Application fee $ 150, receipt number AGANDC-11515237).by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 01/13/2022)
01/13/2022	18	APPLICATION for Admission of Graham W. White Pro Hac Vice (Application fee $ 150, receipt number AGANDC-11515268).by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 01/13/2022)
01/13/2022	19	MOTION for Preliminary Injunction with Brief In Support by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Brief in Support of Plaintiffs' Motion for Preliminary Injunction, # 2 Text of Proposed Order Granting Plaintiffs' Motion for Preliminary Injunction)(Sparks, Adam) (Entered: 01/13/2022)
01/13/2022	20	*Declaration of Jonathan P. Hawley* in Support of 19 MOTION for Preliminary Injunction by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit 1A - Expert Report of Blakeman B. Esselstyn, # 2 Exhibit 2 - Expert Report of Dr. Maxwell Palmer, # 3 Exhibit 3 - Expert Report of Dr. Orville Vernon Burton, # 4 Exhibit 4 - Expert Report of Dr. Loren Collingwood, # 5 Exhibit 5 - Declaration of Annie Lois Grant, # 6 Exhibit 6 - Declaration of Quentin T. Howell, # 7 Exhibit 7 - Declaration of Elroy Tolbert, # 8 Exhibit 8 - Declaration of Theron Brown, # 9 Exhibit 9 - Declaration of Triana Arnold James, # 10 Exhibit 10 - Declaration of Eunice Sykes, # 11 Exhibit 11 - Declaration of Elbert Solomon, # 12 Exhibit 12 - Declaration of Dexter Wimbish, # 13 Exhibit 13 - GPB Article (11/09/21), # 14 Exhibit 14 - Athens Banner-Herald Article (11/15/21), # 15 Exhibit 15 - GPB Article (11/10/21), # 16 Exhibit 16 - GPB Article (11/12/21), # 17 Exhibit 17 - Albany Herald Article (11/09/21), # 18 Exhibit 18 - U.S. News & World Report (11/09/21), # 19 Exhibit 19 - Albany Herald Article (11/11/21), # 20 Exhibit 20 - AJC Article (12/30/21), # 21 Exhibit 21 - 2021 Committee Guidelines, # 22 Exhibit 22 - 2021-2022 Guidelines House LCRC, # 23 Exhibit 23 - Dunne Letter (03/20/92), # 24 Exhibit 24 - Reynolds Letter (02/11/82), # 25 Exhibit 25 - AJC Article (09/30/16), # 26 Exhibit 26 - CNN Article (05/02/17), # 27 Exhibit 27 - Appen Media Group Article (03/15/17), # 28 Exhibit 28 - AJC Article (04/15/17), # 29 Exhibit 29 - AJC Article (01/16/17), # 30 Exhibit 30 - Washington Post Article (11/05/18), # 31 Exhibit 31 - Slate Article (11/06/2018), # 32 Exhibit 32 - USA Today Article (05/10/2018), # 33 Exhibit 33 - Salon Article (01/04/21), # 34 Exhibit 34 - ABC News Article (07/28/20), # 35 Exhibit 35 - CNN Article (10/17/20), # 36 Exhibit 36 - AJC Article (10/26/21), # 37 Exhibit 37 - 2021-2022 GLBC Members Webpage, # 38 Exhibit 38 - Governing Article (01/13/21), # 39 Exhibit 39 - NCSL Article (12/01/20), # 40 Exhibit 40 - NGA - Former GA Governors, # 41 Exhibit 41 - AJC Article (12/01/21), # 42 Exhibit 42 - U.S. Senate Webpage - Georgia Senators, # 43 Exhibit 43 - WUGA Article (11/19/2021), # 44 Exhibit 44 - House Study Committee on Maternal Mortality Final Report, # 45 Exhibit 45 - AJC Article (12/01/21), # 46 Exhibit 46 - 2022 State Elections & Voter Registration Calendar, # 47 Exhibit 1B - Attachments to Expert Report of Blakeman B. Esselstyn)(Sparks, Adam) Modified on 1/13/2022 to edit docket text (ddm). (Entered: 01/13/2022)
01/13/2022	21	NOTICE of Appearance by Bryan P. Tyson on behalf of Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger (Tyson, Bryan) (Entered: 01/13/2022)
01/13/2022	22	NOTICE of Appearance by Charlene S McGowan on behalf of Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger (McGowan, Charlene) (Entered: 01/13/2022)
01/14/2022	23	MOTION to Dismiss *Plaintiffs' Complaint* with Brief In Support by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Brief in Support of Defendants' Motion to Dismiss)(Tyson, Bryan) (Entered: 01/14/2022)
01/18/2022	24	RESPONSE in Opposition re 23 MOTION to Dismiss *Plaintiffs' Complaint* filed by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) (Entered: 01/18/2022)
01/18/2022	25	RESPONSE in Opposition re 19 MOTION for Preliminary Injunction filed by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Exhibit A - Dec. of John Morgan, # 2 Exhibit B - Dec. of Michael Barnes)(Tyson, Bryan) (Entered: 01/18/2022)
01/18/2022	26	ORDER granting 9 Application for Admission Pro Hac Vice of Kevin J. Hamilton. Signed by Judge Steve C. Jones on 1/18/2022. If the applicant does not have CM/ECF access in the Northern District of

		Georgia already, they must request access at http://pacer.gov. If they have electronically filed in this district in a previous case, please omit this step.(pdw) (Entered: 01/18/2022)
01/18/2022	27	ORDER granting 10 Application for Admission Pro Hac Vice of Christina A. Ford. Signed by Judge Steve C. Jones on 1/18/2022. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at http://pacer.gov. If they have electronically filed in this district in a previous case, please omit this step.(pdw) (Entered: 01/18/2022)
01/18/2022	28	ORDER granting 11 Application for Admission Pro Hac Vice of Jonathan P. Hawley. Signed by Judge Steve C. Jones on 1/18/2022. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at http://pacer.gov. If they have electronically filed in this district in a previous case, please omit this step.(pdw) (Entered: 01/18/2022)
01/18/2022	29	ORDER granting 16 Application for Admission Pro Hac Vice of Abha Khanna. Signed by Judge Steve C. Jones on 1/18/2022. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at http://pacer.gov. If they have electronically filed in this district in a previous case, please omit this step.(pdw) (Entered: 01/18/2022)
01/19/2022	30	COORDINATED ORDER advising that for any and every case in which the Court does not grant the motion to dismiss and does not thereafter grant a request for interlocutory appeal or a request to stay, the Court will hold a coordinated, in-person preliminary injunction hearing regarding the pending motions for preliminary injunction in those cases. If any preliminary injunction hearing occurs, the parties collectively will have up to six (6) days to present evidence and arguments. The presenting parties may choose not to use all six days. If any preliminary injunction hearing occurs, it will take place in the Richard B. Russell Federal Building and United States Courthouse (courtroom to be determined) and begin at 9:00 A.M. (EST) on MONDAY, FEBRUARY 7, 2022. If the parties opt to use all six days, the hearing will take place each following business day from 9:00 A.M. to 5:00 P.M. until the overall conclusion of the hearing at 5:00 P.M. on MONDAY, FEBRUARY 14, 2022. The parties shall file with the Court a consolidated presentation schedule by no later than 5:00 P.M. (EST) on WEDNESDAY, JANUARY 26, 2022. If any preliminary injunction hearing occurs, the parties in cases with still-pending motions for preliminary injunction shall file proposed findings of fact and conclusions of law by no later than 5:00 P.M. (EST) on MONDAY, FEBRUARY 21, 2022. The proposed findings of fact and conclusions of law shall be specific to each case and motion. Signed by Judge Steve C. Jones on 1/19/2022. (ddm) (Entered: 01/19/2022)
01/19/2022	31	Unopposed MOTION for Leave to File Excess Pages by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order)(Sparks, Adam) (Entered: 01/19/2022)
01/19/2022	32	ORDER granting 31 Motion for Leave to File Excess Pages. Plaintiffs may file an additional five pages, for a total of 20 pages, in their forthcoming reply in support of their motion for preliminary injunction. Signed by Judge Steve C. Jones on 01/19/2022. (rsg) (Entered: 01/19/2022)
01/20/2022		APPROVAL by Clerks Office re: 17 APPLICATION for Admission of Daniel C. Osher Pro Hac Vice (Application fee $ 150, receipt number AGANDC-11515237).. Attorney Daniel C Osher added appearing on behalf of Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish (nmb) (Entered: 01/20/2022)
01/20/2022		APPROVAL by Clerks Office re: 18 APPLICATION for Admission of Graham W. White Pro Hac Vice (Application fee $ 150, receipt number AGANDC-11515268).. Attorney Graham W. White added appearing on behalf of Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish (nmb) (Entered: 01/20/2022)
01/20/2022	33	NOTICE of Appearance by Bryan Francis Jacoutot on behalf of Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger (Jacoutot, Bryan) (Entered: 01/20/2022)
01/20/2022	34	NOTICE of Appearance by Loree Anne Paradise on behalf of Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger (Paradise, Loree Anne) (Entered: 01/20/2022)
01/20/2022	35	REPLY to Response to Motion re 19 MOTION for Preliminary Injunction filed by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) (Entered: 01/20/2022)
01/20/2022	36	*Second Declaration of Jonathan P. Hawley* in Support of 19 Plaintiffs' Motion for Preliminary Injunction filed by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit 1 - Suppl. Expert Report of Blakeman B. Esselstyn, # 2 Exhibit 2 - Suppl. Expert Report of Dr. Orville Vernon Burton) (Sparks, Adam) Modified on 1/21/2022 to edit docket entry (ddm). (Entered: 01/20/2022)
01/20/2022	37	REPLY to Response to Motion re 23 MOTION to Dismiss *Plaintiffs' Complaint* filed by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Tyson, Bryan) (Entered: 01/20/2022)
01/21/2022	38	NOTICE of Appearance by Frank B. Strickland on behalf of Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger (Strickland, Frank) (Entered: 01/21/2022)
01/25/2022	39	NOTICE Of Filing of Supplemental Authority by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish re 19 MOTION for Preliminary Injunction , 24 Response in Opposition to Motion, (Attachments: # 1 Exhibit 1 - Caster v. Merrill Order (01/24/22))(Sparks, Adam) (Entered: 01/25/2022)
01/26/2022	40	NOTICE Of Filing PARTIES CONSOLIDATED PRESENTATION SCHEDULE by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish re 30 Order,,,,,,, Set Deadlines/Hearings,,,,,,, Set Submission Deadline.,,,,, (Lewis, Joyce) (Entered: 01/26/2022)
01/27/2022	41	ORDER granting 17 Application for Admission Pro Hac Vice of Daniel C. Osher. Signed by Judge Steve C. Jones on 1/27/ 2022. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at http://pacer.gov. If they have electronically filed in this district in a previous case, please omit this step.(pdw) (Entered: 01/27/2022)
01/27/2022	42	ORDER granting 18 Application for Admission Pro Hac Vice of Graham W. White. Signed by Judge Steve C. Jones on 1/27/1022. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at http://pacer.gov. If they have electronically filed in this district in a previous case, please omit this step.(pdw) (Entered: 01/27/2022)
01/28/2022	43	ORDER denying 23 Defendants' Motion to Dismiss Plaintiffs' Complaint. Defendants' request for certification of this ruling for immediate appeal under 28 U.S.C. § 1292(b) is denied. Signed by Judge Steve C. Jones on 1/27/2022. (ddm) (Entered: 01/28/2022)
01/28/2022	44	COORDINATED ORDER issued for purposes of perfecting the record as to the February 7-14, 2022 coordinated in-person hearing on the Motion for Preliminary Injunction. See Order for specifics on pre-hearing deadlines, stipulations, hearing schedule and covid-19 mitigation protocols. Signed by Judge Steve C. Jones on 1/27/2022. (ddm) (Entered: 01/28/2022)
01/31/2022	45	Witness List by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Lewis, Joyce) (Entered: 01/31/2022)
01/31/2022	46	NOTICE Of Filing Defendants' Lists of Witnesses and Exhibits by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger re 44 Order, (Attachments: # 1 Exhibit 7, # 2 Exhibit 9, # 3 Exhibit 10, # 4 Exhibit 11, # 5 Exhibit 12, # 6 Exhibit 13, # 7 Exhibit 14 Part 1, # 8 Exhibit 14 Part 2, # 9 Exhibit 15, # 10 Exhibit 16, # 11 Exhibit 17, # 12 Exhibit 18, # 13 Exhibit 19, # 14 Exhibit 20, # 15 Exhibit 21, # 16 Exhibit 22, # 17 Exhibit 23, # 18 Exhibit 24, # 19 Exhibit 25, # 20 Exhibit 26, # 21 Exhibit 27, # 22 Exhibit 28, # 23 Exhibit 29, # 24 Exhibit 30, # 25 Exhibit 31, # 26 Exhibit 32, # 27 Exhibit 33, # 28 Exhibit 34, # 29 Exhibit 35, # 30 Exhibit 36, # 31 Exhibit 37)(Tyson, Bryan) (Entered: 01/31/2022)
02/01/2022	47	RESPONSE to 39 *Plaintiffs' Notice of Supplemental Authority* filed by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Exhibit A - Amicus Brief Joined by Georgia in Merrill v. Milligan)(Tyson, Bryan) Modified on 2/1/2022 to edit docket text (ddm). (Entered: 02/01/2022)
02/02/2022	48	NOTICE Of Filing Defendants' Objections to Plaintiffs' Witnesses and Exhibits by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger re 44 Order, (Tyson, Bryan) (Entered: 02/02/2022)
02/02/2022	49	NOTICE Of Filing *Plaintiffs' Objections to Defendants' Lists of Witnesses and Exhibits* by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Lewis, Joyce) Modified on 2/3/2022 to edit docket text (ddm). (Entered: 02/02/2022)
02/03/2022	50	ORDER ALLOWING AUDIO/VISUAL EQUIPMENT IN THE COURTROOM on 2/04/2022 - 2/14/2022 at 9:00 AM: Graham W. White, Michael B. Jones, Kevin J. Hamilton, Abha Khanna Adam M. Sparks, Joyce Gist Lewis, and Jonathan. P. Hawley, and their accompanying staff, Patricia Marino, Benjamin Winstead and Patina Clarke. Signed by Judge Steve C. Jones on 2/3/2022. Signed by Judge Steve C. Jones on 2/3/2022. (pdw) (Entered: 02/03/2022)
02/03/2022		Submission of 19 MOTION for Preliminary Injunction , to District Judge Steve C. Jones. (pdw) (Entered: 02/03/2022)
02/03/2022		DOCKET ORDER AMENDMENT to 50 Order Allowing Audio/Visual Equipment in the Courtroom: the parties will NOT be permitted to bring additional tables into the Courtroom. Entered by Judge Steve C. Jones on 2/3/2022. (pdw)(pdw) (Entered: 02/03/2022)
02/03/2022	51	ORDER directing Defendants to file on the docket expert reports by Lynn Bailey, Gina Wright, and Dr. John Alford by no later than 12:00 p.m. (EST) on Friday, February 4,2022. Signed by Judge Steve C. Jones on 02/03/2022. (ddm) (Entered: 02/03/2022)
02/03/2022	52	COORDINATED ORDER regarding Defendants' Objections to Plaintiffs' witnesses and exhibits 48 . The Court declines to rule on these objections prior to the preliminary injunction hearing. The Court instructs Defendants to raise their objections to a specific exhibit when Plaintiffs move to introduce the exhibit into evidence. At that time, the Court will rule on the Defendants' objection to that particular exhibit. Signed by Judge Steve C. Jones on 02/03/2022. (ddm) (Entered: 02/03/2022)
02/04/2022	53	Expert Report of John R. Alford, Ph.D. by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 02/04/2022)
02/04/2022	54	Expert Report of Lynn Bailey by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 02/04/2022)
02/04/2022	55	Expert Report of Gina Wright by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 02/04/2022)
02/04/2022		COURT'S NOTICE REGARDING THE PRELIMINARY INJUNCTION HEARING SCHEDULED TO COMMENCE ON FEBRUARY 7, 2022 AT 9:00 AM IN COURTROOM 1907: As part of the Court's COVID-19 safety protocols, a maximum of 24 non-party observers will be permitted to attend. A maximum of 7 members of press will be permitted to sit in the jury box; however, entrance to and egress from the jury box will be limited to prior to start of court and during breaks only. COURTROOM 2105 WILL BE USED FOR OVERFLOW SEATING, WITH A LIVE AUDIO STREAM PROVIDED.(pdw) (Entered: 02/04/2022)
02/04/2022	56	STIPULATION re 44 Order, *Joint Stipulated Facts for Preliminary Injunction Proceedings* by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) (Entered: 02/04/2022)
02/07/2022	58	COURT'S NOTICE Of Filing INSTRUCTIONS FOR CASES ASSIGNED TO THE HONORABLE STEVE C. JONES. (pdw) (Entered: 02/07/2022)
02/07/2022	59	ORDER - In light of the Supreme Court's decision this Court hereby ORDERS the parties to arrive to court tomorrow morning prepared to discuss whether this Court should continue to hold the current hearing regarding Plaintiffs' motions for preliminary injunctions. Signed by Judge Steve C. Jones on 2/7/2022. (pdw) (Entered: 02/07/2022)
02/07/2022	84	Minute Entry for proceedings held before Judge Steve C. Jones: Motion Hearing held on 2/7/2022 re 19 MOTION for Preliminary Injunction. Preliminary Injunction hearing began. Opening statements heard. Pendergrass/Grant plaintiffs' exhibits 1-26, 38-40,53, 55-58, 60, 62, 66 admitted. Alpha plaintiffs' exhibits A1-A18, A22, A37, A46-A49 admitted. Pendergrass/Grant witness Dr. William Cooper sworn and testified. Dr. William Cooper recalled by Alpha plaintiffs. Alpha plaintiffs' exhibit 47 admitted. (Court Reporter V. Zbrowski & M. Brock)(pdw) (Entered: 02/28/2022)
02/08/2022	85	Minute Entry for proceedings held before Judge Steve C. Jones: Motion Hearing continued 2/8/2022 re 19 MOTION for Preliminary Injunction. The Court heard argument regarding SCOTUS ruling issued 2/7/2022 in Alabama cases. Court adjourned for three hours to allow counsel time to prepare for presentation of evidence. Defendants witness Mark Barnes sworn and testified. Pendergrass/Grant

		Witness Blakeman Esselstyn 2nd Supplemental Report) (Court Reporter V. Zbrowski & M. Brock)(pdw) (Entered: 02/28/2022)
02/09/2022	60	RESPONSE re 59 Order, filed by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) (Entered: 02/09/2022)
02/09/2022	61	*Declaration of Jonathan P. Hawley* in Support of 60 Response filed by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit 1 - B. Esselstyn 2nd Supplemental Expert Report)(Sparks, Adam) Modified on 2/9/2022 to edit docket text (ddm). (Entered: 02/09/2022)
02/09/2022	86	Minute Entry for proceedings held before Judge Steve C. Jones: Motion Hearing continued on 2/9/2022 re 19 MOTION for Preliminary Injunction. Defendants' witness Lynn Bailey sworn and testified. Defendants' exhibits 38 and 7 admitted. Pendergrass/Grant witnesses Richard Barron and Nancy Boren sworn and testified. Pendergrass/Grant exhibit 68 admitted. Alpha Plaintiffs' witness Bishop Jackson sworn and testified. Blakeman Esselstyn recalled by Pendergrass/Grant Plaintiffs. (Court Reporter V. Zbrowski & M. Brock)(pdw) (Entered: 02/28/2022)
02/10/2022	62	Unopposed MOTION for Judicial Notice by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit 1 - 2012 Districting Maps and Data, # 2 Exhibit 2 - 2014 Districting Maps and Data, # 3 Exhibit 3 - 2015 Districting Maps and Data)(Sparks, Adam) (Entered: 02/10/2022)
02/10/2022	63	Consent MOTION for Extension of Time to File Answer re 1 Complaint, by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Text of Proposed Order)(Tyson, Bryan) (Entered: 02/10/2022)
02/10/2022	87	Minute Entry for proceedings held before Judge Steve C. Jones: Motion Hearing continued on 2/10/2022 re 19 MOTION for Preliminary Injunction. Pendergrass/Grant witness sworn and testified via Zoom. Pendergrass/Grant witness Dr. Maxwell Palmer sworn and testified. Alpha witness Lisa Handley sworn and testified.Alpha exhibit A52 admitted. Pendergrass/Grant witness Jason Carter sworn and testified. Alpha witness Adrienne Jones sworn and testified. Alpha exhibit A5 admitted. (Court Reporter V. Zbrowski & M. Brock)(pdw) (Entered: 02/28/2022)
02/11/2022	64	DOCKET ORDER granting 62 Unopposed Motion for Judicial Notice. Entered by Judge Steve C. Jones on 2/11/2022. (pdw) (Entered: 02/11/2022)
02/11/2022	65	ORDER granting the 63 Defendants' Motion to Extend the Time to Answer Plaintiffs' Complaint. Defendants' answers to Plaintiffs' Complaint is due on or before February 25, 2022. Signed by Judge Steve C. Jones on 02/11/2022. (ddm) (Entered: 02/11/2022)
02/11/2022	88	Minute Entry for proceedings held before Judge Steve C. Jones: Motion Hearing continued on 2/11/2022 re 19 MOTION for Preliminary Injunction. Defendants' witness Gina Wright sworn and testified. Defendants' exhibits 1-37, 38, 41 admitted.Pendergrass/Grant exhibits 69 and 70 admitted. Defendants exhibit 41 admitted. Defendants witness John Morgan sworn and testified. Defendants' witness JohnAlford sworn and testified via Zoom. Defendants' exhibit 42 admitted Alpha exhibit 207.6 admitted. (Court Reporter V. Zbrowski & M. Brock)(pdw) (Entered: 02/28/2022)
02/14/2022	66	COORDINATED ORDER directing the parties to file proposed findings of fact and conclusions of law no later than 5:00 P.M. (EST) on FRIDAY, FEBRUARY 18, 2022. Parties are further ORDERED to file their proposed findings of fact and conclusions of law to CM/ECF and e-mail a word copy the Court's Courtroom Deputy (see order for contact information). Signed by Judge Steve C. Jones on 02/14/2022. (ddm) (Entered: 02/15/2022)
02/14/2022	89	Minute Entry for proceedings held before Judge Steve C. Jones: Motion Hearing concluded on 2/14/2022 re 19 MOTION for Preliminary Injunction. Alpha exhibit A53 admitted. John Morgan recalled,testified via Zoom. Defendants exhibits 43-47 admitted. Pendergrass/Grant exhibits 27-37, 41-54, 59, 61, 63-67 admitted. Alpha exhibits 50 and 51 admitted. Closing arguments heard. The matter was taken under advisement by the Court with ruling to follow. (Court Reporter V. Zbrowski & M. Brock)(pdw) (Entered: 02/28/2022)
02/15/2022	67	Notice for Leave of Absence for the following date(s): March 24-25, 2022, April 4-8, 2022, May 23-27, 2022, and July 5-8, 2022, by Joyce Gist Lewis. (Lewis, Joyce) (Entered: 02/15/2022)
02/16/2022	68	TRANSCRIPT of Proceedings held on February 7, 2022, before Judge Steve C Jones. Court Reporter/Transcriber Melissa Brock. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 1. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/9/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/17/2022. (Attachments: # 1 Appendix Notice of filing of transcript) Modified on 2/17/2022 to remove QC date (ddm). (Entered: 02/16/2022)
02/16/2022	69	TRANSCRIPT of Proceedings held on February 8, 2022, before Judge Steve C Jones. Court Reporter/Transcriber Melissa Brock. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 2. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/9/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/17/2022. Modified on 2/17/2022 to remove QC date (ddm). (Entered: 02/16/2022)
02/16/2022	70	TRANSCRIPT of Proceedings held on February 11, 2022, before Judge Steve C Jones. Court Reporter/Transcriber Melissa Brock. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 4. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/9/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/17/2022. (Attachments: # 1 Appendix Notice of Filing) Modified on 2/17/2022 to remove QC date (ddm). (Entered: 02/16/2022)
02/16/2022	71	TRANSCRIPT of Proceedings held on February 9, 2022, before Judge Steve C Jones. Court Reporter/Transcriber Melissa Brock. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 3. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/9/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/17/2022. (Attachments: # 1 Appendix Notice of filing of transcript) Modified on 2/17/2022 to remove QC date (ddm). (Entered: 02/16/2022)
02/16/2022	72	TRANSCRIPT of Proceedings held on February 10. 2020, before Judge Steve C Jones. Court Reporter/Transcriber Melissa Brock. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 4. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/9/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/17/2022. (Attachments: # 1 Appendix Notice of filing of transcript) Modified on 2/17/2022 to remove QC date (ddm). (Entered: 02/16/2022)
02/16/2022	73	TRANSCRIPT of Proceedings held on February 14, 2022, before Judge Steve C Jones. Court Reporter/Transcriber Melissa Brock. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 6. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/9/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/17/2022. (Attachments: # 1 Appendix Notice of filing of transcript) Modified on 2/17/2022 to remove QC date (ddm). (Entered: 02/16/2022)
02/17/2022	74	TRANSCRIPT of Preliminary Injunction Proceedings held on 2/7/2022 - A.M. Session, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 1. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/10/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/18/2022. (Attachments: # 1 Appendix Notice of Filing of Transcript) Modified on 2/17/2022 to remove QC date (ddm). (Entered: 02/17/2022)
02/17/2022	75	TRANSCRIPT of Preliminary Injunction Proceedings held on 2/8/2022 - A.M. Session, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 2. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/10/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/18/2022. (Attachments: # 1 Appendix Notice of Filing of Transcript) Modified on 2/17/2022 to remove QC date (ddm). (Entered: 02/17/2022)
02/17/2022	76	TRANSCRIPT of Preliminary Injunction Proceedings held on 2/9/2022 - A.M. Session, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 3. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/10/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/18/2022. (Attachments: # 1 Appendix Notice of Filing of Transcript) Modified on 2/17/2022 to remove QC date (ddm). (Entered: 02/17/2022)
02/17/2022	77	TRANSCRIPT of Preliminary Injunction Proceedings held on 2/10/2022, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 4. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/10/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/18/2022. (Attachments: # 1 Appendix Notice of Filing of Transcript) (Entered: 02/17/2022)
02/17/2022	78	TRANSCRIPT of Preliminary Injunction Proceedings held on 2/11/2022 - A.M. Session, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 5. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/10/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/18/2022. (Attachments: # 1 Appendix Notice of Filing of Transcript) (Entered: 02/17/2022)
02/17/2022	79	TRANSCRIPT of Proceedings Injunction Proceedings held on 2/14/2022 - P.M. Session, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 6. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 3/10/2022. Redacted Transcript Deadline set for 3/21/2022. Release of Transcript Restriction set for 5/18/2022. (Attachments: # 1 Appendix Notice of Filing of Transcript) (Entered: 02/17/2022)
02/18/2022	80	NOTICE by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger *of Supplemental Authority* (Attachments: # 1 Exhibit A - Order in Arkansas State Conf. of the NAACP v. Arkansas Board of Apportionment)(Tyson, Bryan) (Entered: 02/18/2022)
02/18/2022	81	Proposed Findings of Fact by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Tyson, Bryan) (Entered: 02/18/2022)
02/18/2022	82	Proposed Findings of Fact by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) (Entered: 02/18/2022)
02/25/2022	83	ANSWER to 1 COMPLAINT by Sara Tindall Ghazal, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. Discovery ends on 7/25/2022.(Tyson, Bryan) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 02/25/2022)
02/28/2022	90	SCHEDULING ORDER. See Order for all specific deadlines. The parties are encouraged to abide by their previously expressed commitments to coordinate with the parties in all of the redistricting cases (currently pending in the Northern District of Georgia) in terms of discovery, so as to limit redundancies and diminish discovery burdens. Except as modified herein, the Federal Rules of Civil Procedure and the Local Rules of this Court, shall govern any remaining deadlines. Signed by Judge Steve C. Jones on 02/28/2022. (ddm) (Entered: 03/01/2022)
02/28/2022	91	ORDER denying the 19 Motion for Preliminary Injunction. Having determined that a preliminary injunction should not issue, the Court cautions that this is an interim, non-final ruling that should not be viewed as an indication of how the Court will ultimately rule on the merits at trial. Under the specific circumstances of this case, the Court finds that proceeding with the Enacted Maps for the 2022 election cycle is the right decision. But it is a difficult decision. And it is a decision the Court did not make lightly. Signed by Judge Steve C. Jones on 02/28/2022. (ddm) (Entered: 03/01/2022)

03/28/2022	92	JOINT PRELIMINARY REPORT AND DISCOVERY PLAN filed by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) (Entered: 03/28/2022)
03/28/2022	93	CERTIFICATE OF SERVICE *of Plaintiffs' Initial Disclosures* by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.(Sparks, Adam) (Entered: 03/28/2022)
03/29/2022	94	MOTION for Leave to File Amended Complaint with Brief In Support by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit Exhibit - 1 Proposed Amended Complaint, # 2 Exhibit Exhibit - 2 Proposed Order)(Sparks, Adam) (Entered: 03/29/2022)
03/29/2022	95	ORDER granting 94 Plaintiff's Consent Motion for Leave to Amend Complaint. Defendants shall have 14 days from the entry of this order to respond to the amended complaint. Signed by Judge Steve C. Jones on 03/29/2022. (ddm) (Entered: 03/29/2022)
03/29/2022	96	AMENDED COMPLAINT against All Defendants filed by Mary Nell Conner, Quentin T. Howell, Dexter Wimbish, Jacqueline Faye Arbuthnot, Annie Lois Grant, Theron Brown, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Jacquelyn Bush, Elroy Tolbert, Eunice Sykes.(ddm) Please visit our website at http://www.gand.uscourts.gov/commonly-used-forms to obtain Pretrial Instructions and Pretrial Associated Forms which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 03/29/2022)
03/31/2022	97	CERTIFICATE OF SERVICE *for Defendants' Initial Disclosures* by Sara Tindall Ghazal, Janice Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/31/2022)
04/13/2022	98	*Defendants'* ANSWER to 96 Amended Complaint by Sara Tindall Ghazal, Janice Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 04/13/2022)
05/12/2022	99	Notice for Leave of Absence for the following date(s): May 23-27, 2022, July 5-8, 2022, September 2-6, 2022, September 16-19, 2022, September 30, 2022, by Joyce Gist Lewis. (Lewis, Joyce) (Entered: 05/12/2022)
05/16/2022	100	ORDER advising the parties that the Court declines the parties' request for another scheduling conference. The Court also DENIES Plaintiffs' requests to alter the previously issued scheduling orders. Said scheduling orders remain the Order of the Court. Signed by Judge Steve C. Jones on 05/16/2022. (ddm) (Entered: 05/16/2022)
05/23/2022	101	Request for Leave of Absence for the following date(s): 6/13/22 - 6/24/22; 6/27/22 - 7/1/22; 7/5/22 - 7/15/22, by Bryan P. Tyson. (Tyson, Bryan) (Entered: 05/23/2022)
07/27/2022		ORDER (by docket entry only): The parties are hereby ORDERED to file a joint status report no later than 12:00 PM on August 2, 2022 setting forth the following information: 1.) the current posture of the litigation; and 2.) if the parties will be prepared to proceed to trial either in late April or the month of May, 2023. Entered by Judge Steve C. Jones on 7/27/2022. (pdw) (Entered: 07/27/2022)
08/02/2022	102	STATUS REPORT *Joint Status Report* by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) (Entered: 08/02/2022)
08/04/2022	103	ORDER advising the parties that, after having read and considered the parties' Joint Status Report in response to the Court's order of July 27, 2022, the Court exercises its discretion to leave the scheduling order (dated February 28, 2022) in place. No changes will be made at this time. Signed by Judge Steve C. Jones on 08/04/2022. (ddm) (Entered: 08/04/2022)
08/04/2022	104	CERTIFICATE OF SERVICE *of Discovery* by Theron Brown, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.(Lewis, Joyce) (Entered: 08/04/2022)
08/05/2022	105	CERTIFICATE OF SERVICE *for Defendants' First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission* by Sara Tindall Ghazal, Janice Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 08/05/2022)
08/24/2022	106	Joint MOTION for Protective Order by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order [Proposed] Stipulated Protective Order)(Lewis, Joyce) (Entered: 08/24/2022)
08/25/2022	107	STIPULATED PROTECTIVE ORDER. Signed by Judge Steve C. Jones on 08/25/2022. (ddm) (Entered: 08/25/2022)
09/02/2022	108	STIPULATION AND ORDER REGARDING DISCOVERY. Signed by Judge Steve C. Jones on 09/02/2022. (ddm) (Entered: 09/02/2022)
09/13/2022	109	MOTION to Withdraw Loree Anne Paradise as Attorneyby Sara Tindall Ghazal, Janice Johnston, Anh Le, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Text of Proposed Order)(Paradise, Loree Anne) (Entered: 09/13/2022)
09/14/2022	110	APPLICATION for Admission of Makeba Rutahindurwa Pro Hac Vice (Application fee $ 150, receipt number AGANDC-12068072).by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) Documents for this entry are not available for viewing outside the courthouse. (Entered: 09/14/2022)
09/15/2022	111	ORDER granting 109 Motion to Withdraw as Attorney filed by Loree Anne Paradise. Signed by Judge Steve C. Jones on 09/15/2022. (ddm) (Entered: 09/15/2022)
09/19/2022		APPROVAL by Clerks Office re: 110 APPLICATION for Admission of Makeba Rutahindurwa Pro Hac Vice (Application fee $ 150, receipt number AGANDC-12068072). Attorney Makeba Rutahindurwa added appearing on behalf of Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish (pdt) (Entered: 09/19/2022)
09/19/2022	112	ORDER granting 110 Application for Admission Pro Hac Vice filed by Makeba Rutahindurwa. Signed by Judge Steve C. Jones on 09/19/2022. If the applicant does not have CM/ECF access in the Northern District of Georgia already, they must request access at http://pacer.gov. If they have electronically filed in this district in a previous case, please omit this step.(ddm) (Entered: 09/19/2022)
10/07/2022	113	STIPULATION AND ORDER REGARDING DISCOVERY. (See Order for specific deadlines.) Signed by Judge Steve C. Jones on 10/07/2022. (ddm) (Entered: 10/07/2022)
10/17/2022	114	Consent MOTION to Add Party *Judge William S. Duffey, Jr. as a Defendant in His Official Capacity* by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order [Proposed] Order)(Sparks, Adam) (Entered: 10/17/2022)
10/17/2022	115	ORDER granting 114 Plaintiffs' Consent Motion to add Judge William S. Duffey, Jr. as a Defendant. Plaintiffs are ORDERED to file their amended complaint within ten days of the entry of this Order. Signed by Judge Steve C. Jones on 10/17/2022. (ddm) (Entered: 10/18/2022)
10/18/2022	116	CERTIFICATE OF SERVICE by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.(Sparks, Adam) (Entered: 10/18/2022)
10/25/2022	117	CERTIFICATE OF SERVICE by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.(Sparks, Adam) (Entered: 10/25/2022)
10/28/2022	118	Second AMENDED COMPLAINT against All Defendants filed by Mary Nell Conner, Quentin T. Howell, Jacqueline Faye Arbuthnot, Annie Lois Grant, Theron Brown, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Jacquelyn Bush, Elroy Tolbert, Eunice Sykes.(Sparks, Adam) Please visit our website at http://www.gand.uscourts.gov/commonly-used-forms to obtain Pretrial Instructions and Pretrial Associated Forms which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 10/28/2022)
10/31/2022	119	MOTION to Intervene as Plaintiff filed by Marvis McDaniel Ivey. (ddm) (Entered: 11/01/2022)
10/31/2022	120	MOTION for Temporary Restraining Order by Marvis McDaniel Ivey. (ddm) (Entered: 11/01/2022)
11/01/2022	121	ORDER denying 119 Marvis McDaniel Ivey's Motion to Intervene and denying as moot 120 Marvis McDaniel Ivey's Motion for TRO. Signed by Judge Steve C. Jones on 11/01/2022. (ddm) (Entered: 11/01/2022)
11/01/2022		Clerk's Certificate of Mailing as to Marvis McDaniel Ivey re 121 Order. (ddm) (Entered: 11/01/2022)
11/02/2022	122	ORDER directing the Clerk to not docket any future filings by Ms. Ivey in the case sub judice. The Clerk shall instead hold said matters in abatement in a miscellaneous case file and submit said filings to the undersigned for review. The Court will thereafter determine the proper disposition of the filing. Ms. Ivey is hereby warned that any future filings in cases in which she is not a named party that are deemed frivolous by the presiding judge may (after notice and reasonable opportunity to respond) lead to sanctions. Signed by Judge Steve C. Jones on 11/02/2022. (ddm) Modified on 11/2/2022 to edit docket text (ddm). (Entered: 11/02/2022)
11/02/2022		Clerk's Certificate of Mailing as to Marvis McDaniel Ivey re 122 Order. (ddm) (Entered: 11/02/2022)
11/08/2022	123	WAIVER OF SERVICE Returned Executed by Mary Nell Conner, Quentin T. Howell, Dexter Wimbish, Jacqueline Faye Arbuthnot, Annie Lois Grant, Theron Brown, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Jacquelyn Bush, Elroy Tolbert, Eunice Sykes. William S. Duffey, Jr waiver mailed on 11/3/2022, answer due 1/3/2023. (Sparks, Adam) (Entered: 11/08/2022)
11/14/2022	124	ANSWER to 118 Amended Complaint by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 11/14/2022)
11/18/2022	125	Copy of Order from 122mi68 - Pursuant to the Court's inherent authority to control its docket and in the interest of avoiding confusion, Ms. Ivey is ORDERED to style/label each future-filed motion with one case name/caption and one case number and to not file omnibus motions that contains multiple case listings in the header. The Clerk shall file Ms. Ivey's corrected document(s)/motion(s) in the designated case numbers, with the exception of any filings for 1:22-ev-0122. The Court hereby provides CLARIFICATION to the Clerk that its November 2, 2022 order only concerned Case No. 1:22-CV-122, Grant v. Raffensperger and no other case. All other future motions filed by Marvis McDaniel Ivey (not concerning Civil Action No. 1:22-CV-122) shall be docketed in their respective cases absent further order of the Court. This Order should also not be construed as restricting Ms. Ivey's ability to file a new civil action concerning the issues that she is attempting to raise. If Ms. Ivey wishes to file a new civil action, she must comply with Judge Thrash's 2015 Order and the applicable rules and procedures for initiating a new case. Signed by Judge Steve C. Jones on 11/18/2022. (rsg) (Entered: 11/18/2022)
11/23/2022	126	CERTIFICATE OF SERVICE *for Defendants' First Set of Requests for Admission* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn.(Tyson, Bryan) (Entered: 11/23/2022)
11/29/2022	127	Notice for Leave of Absence for the following date(s): December 30, 2022 - January 5, 2023, February 15-20, 2023, March 22-24, 2023, by Joyce Gist Lewis. (Lewis, Joyce) (Entered: 11/29/2022)
12/06/2022	128	CERTIFICATE OF SERVICE by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.(Sparks, Adam) (Entered: 12/06/2022)

12/06/2022	129	CERTIFICATE OF SERVICE *for State Defendants' Responses to Plaintiffs' Second Set of Discovery Requests* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 12/06/2022)
12/06/2022	130	CERTIFICATE OF SERVICE *for Defendants' Notices of Deposition of Dexter Wimbish, Eunice Sykes and Triana Arnold James* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 12/06/2022)
12/06/2022	131	CERTIFICATE OF SERVICE *for the Expert Report of John B. Morgan* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Tyson, Bryan) (Entered: 12/06/2022)
12/09/2022	132	CERTIFICATE OF SERVICE *for Defendants' Notices to take the Depositions of Annie Lois Grant, Quentin T. Howell, Jacqueline Faye Arbuthnot, Garrett Reynolds and Elbert Solomon* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 12/09/2022)
12/13/2022	133	CERTIFICATE OF SERVICE by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.(Sparks, Adam) (Entered: 12/13/2022)
12/15/2022	134	Joint MOTION to Amend 113 Order with Brief In Support by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit 1 - Amended Proposed Stipulation and Order)(Sparks, Adam) (Entered: 12/15/2022)
12/22/2022	135	STIPULATION AND ORDER REGARDING DISCOVERY. Signed by Judge Steve C. Jones on 12/22/2022. (ddm) (Entered: 12/22/2022)
01/03/2023	136	CERTIFICATE OF SERVICE *for Notice to take the Deposition of Eunice Sykes* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 01/03/2023)
01/06/2023	137	MOTION for Leave to Withdraw as Counsel - Graham W. White by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order [Proposed] Order)(Sparks, Adam) (Entered: 01/06/2023)
01/09/2023	138	Notice for Leave of Absence for the following date(s): 4/3/23 - 4/7/23, 5/22/23 - 5/26/23, 10/5/23 - 10/19/23 and 11/9/23 - 11/10/23, by Bryan P. Tyson. (Tyson, Bryan) (Entered: 01/09/2023)
01/19/2023	139	NOTICE of Appearance by Donald P. Boyle, Jr on behalf of William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger (Boyle, Donald) (Entered: 01/19/2023)
01/20/2023	140	CERTIFICATE OF SERVICE *for Defendants' Notice of Deposition of Jacquelyn Bush and Amended Notices of Deposition of Jacqueline Faye Arbuthnot and Garrett Reynolds* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 01/20/2023)
01/24/2023	141	CERTIFICATE OF SERVICE by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.(Sparks, Adam) (Entered: 01/24/2023)
01/25/2023	142	MOTION to Withdraw Kevin J. Hamilton as Attorneyby Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order)(Hamilton, Kevin) (Entered: 01/25/2023)
01/26/2023	143	NOTICE of Appearance by Diane Festin LaRoss on behalf of William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger (LaRoss, Diane) (Entered: 01/26/2023)
01/30/2023		Submission of 137 MOTION for Leave to Withdraw as Counsel - Graham W. White , to District Judge Steve C. Jones. (pdw) (Entered: 01/30/2023)
01/30/2023	144	ORDER granting 137 Motion to Withdraw as Counsel filed by Graham W. White. Signed by Judge Steve C. Jones on 01/30/2023. (ddm) (Entered: 01/30/2023)
01/30/2023		Clerk's Certificate of Mailing to Graham W. White re 144 Order. (ddm) (Entered: 01/30/2023)
01/31/2023	145	CERTIFICATE OF SERVICE *for Defendants' expert disclosure of John Morgan's Report* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 01/31/2023)
01/31/2023	146	CERTIFICATE OF SERVICE *for Defendant Secretary of State Brad Raffensperger's Supplemental Objections and Responses to Plaintiffs' First Set of Interrogatories* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 01/31/2023)
02/01/2023	147	CERTIFICATE OF SERVICE *for Defendants' Notice to take the Expert Deposition of Blakeman Esselstyn* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 02/01/2023)
02/02/2023	148	CERTIFICATE OF SERVICE *for Defendants' notices to take the Depositions of Elroy Tolbert, Mary Nell Conner and Theron Brown* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 02/02/2023)
02/06/2023	149	CERTIFICATE OF SERVICE by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.(Sparks, Adam) (Entered: 02/06/2023)
02/06/2023	150	CERTIFICATE OF SERVICE *for the Expert Report of John R. Alford, Ph.D.* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Tyson, Bryan) (Entered: 02/06/2023)
02/13/2023	151	ORDER granting the 142 Motion to Withdraw as Attorney filed by Kevin J. Hamilton. Signed by Judge Steve C. Jones on 02/13/2023. (ddm) (Entered: 02/13/2023)
02/15/2023	152	Certification of Consent to Substitution of Counsel. Elizabeth Marie Wilson Vaughan replacing attorney Charlene S McGowan. (Vaughan, Elizabeth) (Entered: 02/15/2023)
02/17/2023	153	Joint MOTION for Extension of Time to Complete Discovery *for Limited Purpose of Taking Depositions* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Text of Proposed Order)(Tyson, Bryan) (Entered: 02/17/2023)
02/17/2023	154	CERTIFICATE OF SERVICE *for Defendants' Notices of Depositions of Drs. Orville Vernan Burton, Maxwell Palmer and Loren Collingwood, Fenika Miller and Representatives Derrick Jackson and Erick Allen* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 02/17/2023)
02/17/2023	155	ORDER granting the parties' 153 Joint Motion to Extend Discovery Deadline for Limited Purpose of Taking Depositions. The discovery deadline is extended through and including March 9, 2023 for the limited purpose of conducting depositions. Signed by Judge Steve C. Jones on 02/17/2023. (ddm) (Entered: 02/17/2023)
02/17/2023	156	CERTIFICATE OF SERVICE *of Joint Notices of Deposition* by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.(Sparks, Adam) (Entered: 02/17/2023)
02/28/2023	157	CERTIFICATE OF SERVICE *for Defendants' Amended Notice to take the Expert Deposition of Loren Collingwood, Ph.D. and Defendants' Notices to take the Depositions of Marion Warren and Diane Evans, Ph.D.* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 02/28/2023)
03/06/2023	158	NOTICE by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish *Plaintiffs' and Defendants' Notice Regarding Alternative Dispute Resolution* (Lewis, Joyce) (Entered: 03/06/2023)
03/10/2023	160	STIPULATION *and Consent Motion for Voluntary Dismissal of Plaintiff Theron Brown* by Jacqueline Faye Arbuthnot, Theron Brown, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order [Proposed] Order)(Sparks, Adam) Modified on 3/10/2023 to edit docket entry (ddm). (Entered: 03/10/2023)
03/10/2023	161	MOTION to Strike 159 Certificate of Service, by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Tyson, Bryan) (Entered: 03/10/2023)
03/10/2023	162	ORDER granting the parties' 160 Stipulation and Consent Motion for Voluntary Dismissal of Plaintiff Theron Brown. Plaintiff Theron Brown only shall be dismissed, with the parties to bear their own respective attorneys' fees, expenses, and costs. This Order does not apply to the claims of the remaining Plaintiffs or Defendants' defenses to those claims. Signed by Judge Steve C. Jones on 03/10/2023. (ddm) (Entered: 03/10/2023)
03/13/2023	163	Consent MOTION for Leave to File Excess Pages by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order Granting Plaintiffs' Consent Motion for Leave to File Excess Pages)(Sparks, Adam) (Entered: 03/13/2023)
03/15/2023	164	Consent MOTION for Leave to File Excess Pages *for Summary Judgment Briefing* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Text of Proposed Order)(Tyson, Bryan) (Entered: 03/15/2023)
03/15/2023	165	ORDER granting the 164 Consent Motion for Additional Pages for Summary Judgment Briefing. Signed by Judge Steve C. Jones on 03/15/2023. (ddm) (Entered: 03/16/2023)
03/17/2023	166	DEPOSITION of Jacqueline Arbuthnot taken on 1/24/23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/17/2023)
03/17/2023	167	DEPOSITION of Jacquelyn Bush taken on 1.24.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/17/2023)
03/17/2023	168	DEPOSITION of Mary Nell Conner taken on 2.09.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/17/2023)
03/17/2023	169	DEPOSITION of Annie Lois Grant taken on 12.14.22 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/17/2023)
03/17/2023	170	DEPOSITION of Quentin T. Howell taken on 12.14.22 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/17/2023)

03/17/2023		DEPOSITION of Daniel Amold James taken on 12.07.22 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/17/2023)
03/17/2023	172	DEPOSITION of Garrett Reynolds taken on 1.25.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/17/2023)
03/17/2023	173	DEPOSITION of Elbert Solomon taken on 12.09.22 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/17/2023)
03/17/2023	174	DEPOSITION of Eunice Sykes taken on 12.14.22 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/17/2023)
03/17/2023	175	DEPOSITION of Elroy Tolbert taken on 2.09.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/17/2023)
03/17/2023	176	DEPOSITION of Dexter Wimbish taken on 12.06.22 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/17/2023)
03/17/2023	177	DEPOSITION of John B. Morgan taken on 2/13/2023 by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.(Sparks, Adam) (Entered: 03/17/2023)
03/17/2023	178	(FILED UNDER SEAL) DEPOSITION of Dr. John Alford taken on 2/23/2023 by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.(Sparks, Adam) Modified on 3/17/2023 (ddm). (Entered: 03/17/2023)
03/17/2023	179	DEPOSITION of Blakeman Esselstyn taken on 2.16.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Supplement Part 2 of Blakeman Esselstyn Deposition, # 2 Supplement Part 3 of Blakeman Esselstyn Deposition, # 3 Supplement Part 4 of Blakeman Esselstyn Deposition)(Tyson, Bryan) (Entered: 03/17/2023)
03/17/2023	180	ORDER granting the 163 Consent Motion for Leave to File Excess Pages. Signed by Judge Steve C. Jones on 03/17/2023. (ddm) (Entered: 03/17/2023)
03/17/2023	181	MOTION for Leave to File Matters Under Seal re: 178 Deposition, *of Dr. John Alford* by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit Exhibit - Deposition of Dr. John Alford, # 2 Text of Proposed Order [Proposed] Order)(Sparks, Adam) (Entered: 03/17/2023)
03/17/2023	182	ORDER granting 181 Plaintiffs' Motion for Leave to File Matters Under Seal. Signed by Judge Steve C. Jones on 03/17/2023. (ddm) (Entered: 03/20/2023)
03/20/2023	183	DEPOSITION of Maxwell Palmer taken on 2.22.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/20/2023)
03/20/2023	184	DEPOSITION of Gina Wright taken on 1.26.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/20/2023)
03/20/2023	185	COORDINATED ORDER in anticipation of the Parties' filing their motions for summary judgment. The Court will hold a hearing on the Parties' motions for summary judgment on May 18, 2023 at 10:00 AM. The Court will hold a pretrial conference on August 15, 2023 at 10:00 AM. The Court specially sets the above-listed Actions for a coordinated trial to begin on September 5, 2023. All proceedings will be in person and held in Courtroom No. 1907, in the Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, Georgia 30303. Unless otherwise notified, all proceedings will begin at 9:00 AM. The Court will not permit counsel to argue or witnesses to offer live testimony via Zoom. The Court will permit a witness to testify via video deposition, per a prior agreement between the Parties. Signed by Judge Steve C. Jones on 03/20/2023. (ddm) (Entered: 03/20/2023)
03/20/2023	186	DEPOSITION of John F. Kennedy taken on 1.20.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 03/20/2023)
03/20/2023	187	DEPOSITION of Bonnie Rich taken on 1.18.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Supplement Part 2 of Bonnie Rich Deposition)(Tyson, Bryan) (Entered: 03/20/2023)
03/20/2023	188	DEPOSITION of Derrick Jackson taken on 2.20.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Supplement Part 2 of Derrick Jackson Deposition, # 2 Supplement Part 3 of Derrick Jackson Deposition, # 3 Supplement Part 4 of Derrick Jackson Deposition, # 4 Supplement Part 5 of Derrick Jackson Deposition)(Tyson, Bryan) (Entered: 03/20/2023)
03/20/2023	189	MOTION for Partial Summary Judgment with Brief In Support by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Brief Brief in Support of Plaintiffs' Motion for Partial Summary Judgment, # 2 Statement of Material Facts Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Partial Summary Judgment, # 3 Text of Proposed Order)(Sparks, Adam) --Please refer to http://www.gand.uscourts.gov to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.-- (Entered: 03/20/2023)
03/20/2023	190	MOTION for Summary Judgment with Brief In Support by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Brief in Support of Defendants' Motion for Summary Judgment)(Tyson, Bryan) --Please refer to http://www.gand.uscourts.gov to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.-- (Entered: 03/20/2023)
03/20/2023	191	*Declaration of Jonathan P. Hawley* in Support of 189 MOTION for Partial Summary Judgment filed by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit 1 - Expert Report of Blakeman B. Esselstyn, # 2 Exhibit 2 - Expert Report of Dr. Maxwell Palmer, # 3 Exhibit 3 - Supplemental Expert Report of Dr. Maxwell Palmer, # 4 Exhibit 4 - Expert Report of Dr. Orville Vernon Burton, # 5 Exhibit 5 - Expert Report of Dr. Loren Collingwood, # 6 Exhibit 6A - Expert Report of John B. Morgan Pt. 1, # 7 Exhibit 6B - Expert Report of John B. Morgan Pt. 2, # 8 Exhibit 6C - Expert Report of John B. Morgan Pt. 3, # 9 Exhibit 6D - Expert Report of John B. Morgan Pt. 4, # 10 Exhibit 7 - Expert Report of Dr. John R. Alford, # 11 Exhibit 8 - Excerpts from John B. Morgan Deposition, # 12 Exhibit 9 - Excerpts from Dr. John R. Alford Deposition, # 13 Exhibit 10 - 1982.02.11 Letter from Assistant AG W. Reynolds, # 14 Exhibit 11 - 1992.03.20 Letter from Assistant AG J. Dunne, # 15 Exhibit 12 - 2016.09.30 AJC Article, # 16 Exhibit 13 - 2017.05.02 CNN Article, # 17 Exhibit 14 - 2017.03.15 Appen Media Group Article, # 18 Exhibit 15 - 2017.04.15 AJC Article, # 19 Exhibit 16 - 2017.01.16 AJC Article, # 20 Exhibit 17 - 2018.11.05 Washington Post Article, # 21 Exhibit 18 - 2018.11.06 Slate Article, # 22 Exhibit 19 - 2018.05.10 USA Today Article, # 23 Exhibit 20 - Exhibit Ex. 22 - 2021.01.04 Salon Article, # 24 Exhibit 21 - 2020.07.28 ABC Article, # 25 Exhibit 22 - 2020.10.17 CNN Article, # 26 Exhibit 23 - 2021.10.26 AJC Article)(Sparks, Adam) Modified on 3/21/2023 to edit docket text (ddm). (Entered: 03/20/2023)
03/20/2023	192	Statement of Material Facts re 190 MOTION for Summary Judgment filed by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Exhibit A - Expert Report of Blakeman Esselstyn, # 2 Exhibit B - SEB Responses to Interrogatories, # 3 Exhibit C - Expert Report of John Morgan (Part 1), # 4 Exhibit C - Expert Report of John Morgan (Part 2), # 5 Exhibit C - Expert Report of John Morgan (Part 3), # 6 Exhibit D - Expert Report of Cooper in Alpha Phi Alpha, # 7 Exhibit E - Esselstyn Deposition Excerpts, # 8 Exhibit F - Wright Deposition Excerpts, # 9 Exhibit G - Kennedy Deposition Excerpts, # 10 Exhibit H - Rich Deposition Excerpts, # 11 Exhibit I - Jackson Deposition Excerpts, # 12 Exhibit J - Grant Deposition Excerpts, # 13 Exhibit K - Howell Deposition Excerpts, # 14 Exhibit L - Tolbert Deposition Excerpts, # 15 Exhibit M - James Deposition Excerpts, # 16 Exhibit N - Sykes Deposition Excerpts, # 17 Exhibit O - Solomon Deposition Excerpts, # 18 Exhibit P - Wimbish Deposition Excerpts, # 19 Exhibit Q - Reynolds Deposition Excerpts, # 20 Exhibit R - Arbuthnot Deposition Excerpts, # 21 Exhibit S - Bush Deposition Excerpts, # 22 Exhibit T - Conner Deposition Excerpts, # 23 Exhibit U - Palmer Deposition Excerpts, # 24 Exhibit V - Alford Deposition Excerpts)(Tyson, Bryan) (Entered: 03/20/2023)
03/30/2023		Submission of 161 MOTION to Strike 159 Certificate of Service, , to District Judge Steve C. Jones. (pdw) (Entered: 03/30/2023)
04/03/2023	193	NOTICE by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish re 177 Deposition, *Signed Errata Sheet to Deposition Transcript of John B. Morgan* (Sparks, Adam) (Entered: 04/03/2023)
04/12/2023	194	Consent MOTION for Leave to File Excess Pages by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order)(Sparks, Adam) (Entered: 04/12/2023)
04/12/2023	195	ORDER granting 194 Plaintiffs' Consent Motion for Leave to File Excess Pages. Signed by Judge Steve C. Jones on 04/12/2023. (ddm) (Entered: 04/12/2023)
04/17/2023	196	NOTICE by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish re 178 Deposition, *Signed Errata Sheet to Deposition Transcript of Dr. John Alford* (Sparks, Adam) (Entered: 04/17/2023)
04/17/2023	197	Consent MOTION for Leave to File Excess Pages by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Text of Proposed Order)(Tyson, Bryan) (Entered: 04/17/2023)
04/17/2023	198	ORDER granting the 197 Consent Motion for Additional Pages for Summary Judgment Briefing. Signed by Judge Steve C. Jones on 04/17/2023. (ddm) (Entered: 04/17/2023)
04/18/2023	199	Notice for Leave of Absence for the following date(s): June 12-15, 2023, by Bryan P. Tyson. (Tyson, Bryan) (Entered: 04/18/2023)
04/19/2023	200	MOTION for Leave to Withdraw Appearance Pro Hac Vice of Daniel C. Osher by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order [Proposed] Order)(Sparks, Adam) (Entered: 04/19/2023)
04/19/2023	201	DEPOSITION of Orville Burton, Ph.D. taken on 2.17.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 04/19/2023)
04/19/2023	202	DEPOSITION of Loren Collingwood, Ph.D. taken on 2.28.23 by William S. Duffey, Jr, Sara Tindall Ghazal, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.(Tyson, Bryan) (Entered: 04/19/2023)
04/19/2023	203	RESPONSE in Opposition re 189 MOTION for Partial Summary Judgment filed by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Statement of Material Facts Defendants' Statement of Additional Material Facts, # 2 Exhibit A - Expert Report of John Morgan, # 3 Exhibit B - Expert Report of Blakeman Esselstyn, # 4 Exhibit C - Expert Report of Loren Collingwood, # 5 Exhibit D - Esselstyn Deposition Excerpts, # 6 Exhibit E - Palmer Deposition Excerpts, # 7 Exhibit F - Alford Deposition Excerpts, # 8 Exhibit G - Burton Deposition Excerpts, # 9 Exhibit H - Collingwood Deposition Excerpts)(Tyson, Bryan) Modified on 4/19/2023 to edit docket text (ddm). (Entered: 04/19/2023)
04/19/2023	204	Response to Statement of Material Facts re 189 MOTION for Partial Summary Judgment *Defendants' Response to Plaintiffs' Statement of Undisputed Material Facts* filed by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Exhibit A - Esselstyn Deposition Excerpts, # 2 Exhibit B - Burton Deposition Excerpts) (Tyson, Bryan) (Entered: 04/19/2023)

04/19/2023		RESPONSE in Opposition re 190 MOTION for Summary Judgment filed by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Statement of Material Facts Plaintiffs' Response to Defendants' Statement of Undisputed Material Facts, # 2 Statement of Material Facts Plaintiffs' Statement of Additional Material Facts)(Sparks, Adam) (Entered: 04/19/2023)
04/19/2023	206	DECLARATION of Jonathan P. Hawley in Opposition of 190 MOTION for Summary Judgment filed by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit Ex. 1 Expert Report of Blakeman B. Esselstyn, # 2 Exhibit Ex. 2 Expert Report of Dr. Maxwell Palmer, # 3 Exhibit Ex. 3 Supplemental Expert Report of Dr. Maxwell Palmer, # 4 Exhibit Ex. 4 Expert Report of Dr. Orville Vernon Burton, # 5 Exhibit Ex. 5 Rebuttal Expert Report of John B. Morgan, # 6 Exhibit Ex. 6 Expert Report of Dr. John R. Alford, # 7 Exhibit Ex. 7 Deposition Excerpts of Blakeman B. Esselstyn, # 8 Exhibit Ex. 8 Deposition Excerpts of Dr. Maxwell Palmer, # 9 Exhibit Ex. 9 Deposition Excerpts of John B. Morgan, # 10 Exhibit Ex. 10 Deposition Excerpts of Dr. John R. Alford)(Sparks, Adam) Modified on 4/20/2023 to edit docket entry (ddm). (Entered: 04/19/2023)
04/20/2023	207	ORDER advising the parties that the Court requests two courtesy copies of the documents filed relating to the parties' summary judgment motions. Counsel shall have said courtesy copies delivered to the Court's Atlanta Chambers, 1967 United States Courthouse, 75 Ted Turner Drive, S.W. by 10 A.M., THURSDAY, MAY 4, 2023. Signed by Judge Steve C. Jones on 04/20/2023. (ddm) (Entered: 04/21/2023)
04/28/2023	208	Consent MOTION for Leave to File Excess Pages by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order [Proposed] Order)(Sparks, Adam) (Entered: 04/28/2023)
04/28/2023	209	ORDER outlining the schedule for the May 18. 2023 hearing on the Parties' Motions for Summary Judgment. The Court notes that it reserves the right to amend the schedule of the argument. (Please read Order for specific timing of these hearings.) Signed by Judge Steve C. Jones on 04/28/2023. (ddm) (Entered: 05/01/2023)
05/01/2023	210	ORDER granting 208 Plaintiffs' Motion for Leave to File Excess Pages. Signed by Judge Steve C. Jones on 05/01/2023. (ddm) (Entered: 05/01/2023)
05/01/2023	211	Consent MOTION for Leave to File Excess Pages by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Text of Proposed Order)(Tyson, Bryan) (Entered: 05/01/2023)
05/01/2023	212	ORDER granting 211 Defendants' Motion for Leave to File Excess Pages. Signed by Judge Steve C. Jones on 05/01/2023. (ddm) (Entered: 05/02/2023)
05/02/2023	213	ORDER DENYING Defendants' Motion to Strike (Doc. No. 161). However, the Court, in an effort to perfect the Docket, DIRECTS the Clerk that access to (Doc. No. 159) shall be restricted to Court users. The Clerk shall also modify the CM/ECF docket text to show the document as RESTRICTED. Signed by Judge Steve C. Jones on 05/02/2023. (ddm) (Entered: 05/02/2023)
05/02/2023	214	CLARIFICATION ORDER specifying the preferred format for the courtesy copies to be provided to the Court. Signed by Judge Steve C. Jones on 05/02/2023. (ddm) (Entered: 05/02/2023)
05/03/2023	215	*Defendants' Reply in Support of* 190 MOTION for Summary Judgment filed by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Tyson, Bryan) Modified on 5/3/2023 to edit docket text (ddm). (Entered: 05/03/2023)
05/03/2023	216	*Defendants' Responses and Objections to Plaintiffs' Statement of Additional Material Facts* re 190 MOTION for Summary Judgment filed by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Exhibit A - Esselstyn Deposition Excerpts, # 2 Exhibit B - Alford Deposition Excerpts)(Tyson, Bryan) Modified on 5/3/2023 to edit docket text (ddm). (Entered: 05/03/2023)
05/03/2023	217	*Reply in Support of* 189 MOTION for Partial Summary Judgment filed by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Plaintiffs' Response to Defendants' Statement of Additional Material Facts)(Sparks, Adam) Modified on 5/4/2023 to edit docket entry (ddm). (Entered: 05/03/2023)
05/03/2023	218	*Second Declaration of Jonathan P. Hawley in Support* 189 MOTION for Partial Summary Judgment filed by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit 24 - Declaration of Annie Lois Grant, # 2 Exhibit 25 - Declaration of Quentin T. Howell, # 3 Exhibit 26 - Declaration of Elroy Tolbert, # 4 Exhibit 27 - Declaration of Triana Arnold James, # 5 Exhibit 28 - Declaration of Eunice Sykes, # 6 Exhibit 29 - Declaration of Elbert Solomon, # 7 Exhibit 30 - Declaration of Dexter Wimbish, # 8 Exhibit 31 - Declaration of Garrett Reynolds, # 9 Exhibit 32 - Declaration of Jacqueline Faye Arbuthnot, # 10 Exhibit 33 - Declaration of Jacquelyn Bush, # 11 Exhibit 34 - Deposition Transcript Excerpts of Annie Lois Grant, # 12 Exhibit 35 - Deposition Transcript Excerpts of Quentin T. Howell, # 13 Exhibit 36 - Deposition Transcript Excerpts of Elroy Tolbert, # 14 Exhibit 37 - Deposition Transcript Excerpts of Triana Arnold James, # 15 Exhibit 38 - Deposition Transcript Excerpts of Eunice Sykes, # 16 Exhibit 39 - Deposition Transcript Excerpts of Elbert Solomon, # 17 Exhibit 40 - Deposition Transcript Excerpts of Dexter Wimbish, # 18 Exhibit 41 - Deposition Transcript Excerpts of Garrett Reynolds, # 19 Exhibit 42 - Deposition Transcript Excerpts of Jacqueline Faye Arbuthnot, # 20 Exhibit 43 - Deposition Transcript Excerpts of Jacquelyn Bush, # 21 Exhibit 44 - Deposition Transcript Excerpts of Mary Nell Conner, # 22 Exhibit 45 - Deposition Transcript Excerpts of Blakeman B. Esselstyn, # 23 Exhibit 46 - Deposition Transcript Excerpts of Dr. John R. Alford, # 24 Exhibit 47 - Deposition Transcript Excerpts of Dr. Maxwell Palmer)(Sparks, Adam) Modified on 5/4/2023 to edit docket entry (ddm). (Entered: 05/03/2023)
05/08/2023	219	ORDER granting 200 Plaintiffs' Motion for Leave to Withdraw the Appearance Pro Hac Vice of Daniel C. Osher as counsel of record. Signed by Judge Steve C. Jones on 05/08/2023. (ddm) (Entered: 05/08/2023)
05/15/2023	220	Motion to Bring Audio/Visual/Electronic Equipment in the Courtroom by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order Exhibit A - Proposed Order)(Sparks, Adam) (Entered: 05/15/2023)
05/15/2023	221	ORDER allowing counsel Abha Khanna, Jonathan P. Hawley, Adam M. Sparks, and Joyce Gist Lewis and accompanying staff to bring electronic equipment into the courthouse in conjunction with a hearing scheduled to begin at 10:00 a.m. on Thursday, May 18, 2023, in Courtroom 1907. Counsel and accompanying staff named herein may also bring this equipment on Wednesday, May 17, 2023, to test prior to the hearing as scheduled with Judge Jones's chambers. Signed by Judge Steve C. Jones on 05/15/2023. (ddm) (Entered: 05/15/2023)
05/16/2023		Submission of 189 MOTION for Partial Summary Judgment , 190 MOTION for Summary Judgment , to District Judge Steve C. Jones. (pdw) (Entered: 05/16/2023)
05/18/2023	222	Minute Entry for proceedings held before Judge Steve C. Jones: Hearing held on the parties' Motions for Summary Judgment 189 190 , together with argument in civil actions 1:21-cv-5339-SCJ and 1:21-cv-5337-SCJ. The Court heard oral argument and took the matter under advisement. (Court Reporter Viola Zborowski)(ddm) (Entered: 05/19/2023)
05/19/2023	223	(ORDER VACATED PER 225) AMENDED SCHEDULING ORDER. (See Order for deadlines.) Signed by Judge Steve C. Jones on 05/19/2023. (ddm) Modified on 6/8/2023 (ddm). (Entered: 05/19/2023)
06/01/2023	224	TRANSCRIPT of Proceedings held on 5/18/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 1. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 6/22/2023. Redacted Transcript Deadline set for 7/3/2023. Release of Transcript Restriction set for 8/30/2023. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 06/01/2023)
06/08/2023	225	SECOND AMENDED SCHEDULING ORDER. (See Order for deadlines.) Signed by Judge Steve C. Jones on 06/08/2023. (ddm) (Entered: 06/08/2023)
06/20/2023	226	Notice for Leave of Absence for the following date(s): July 3-7, 2023, August 31-September 2, 2023, September 29, 2023, November 22-27, 2023, by Joyce Gist Lewis. (Lewis, Joyce) (Entered: 06/20/2023)
06/22/2023	227	*Supplemental Brief in Support of Plaintiffs' Motion for Partial Summary Judgment* 189 filed by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit 1 - 2023.05.18 Transcript of Summary Judgment Proceedings)(Sparks, Adam) Modified on 6/23/2023 to edit docket text (ddm). (Entered: 06/22/2023)
06/22/2023	228	*Supplemental Brief Regarding Summary Judgment Briefing Based on Allen v. Milligan* 190 filed by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Tyson, Bryan) Modified on 6/23/2023 to edit docket text (ddm). (Entered: 06/22/2023)
07/17/2023	229	ORDER denying 189 Motion for Partial Summary Judgment; denying 190 Motion for Summary Judgment. As the Court noted consistently throughout this Order, there are material disputes of fact and credibility determinations that foreclose the award of summary judgment to either Party. Additionally, given the gravity and importance of the right to an equal vote for all American citizens, the Court will engage in a thorough and sifting review of the evidence that the Parties will present in this case at a trial. Accordingly, the case will proceed to a coordinated trial with Alpha Phi Alpha Fraternity Inc., et al. v. Brad Raffensperger, (1:21-cv-5337) and Coakley Pendergrass et al. v. Brad Raffensperger et al., (1:21-cv-5339). The Second Amended Scheduling Order (Doc. No. 225) shall govern the forthcoming proceedings. Signed by Judge Steve C. Jones on 7/17/23. (rsg) (Entered: 07/17/2023)
07/21/2023	230	ORDER: Having read and considered Plaintiffs' proposal regarding amending the existing pretrial deadlines and learned of Defendants' agreement thereto, it is hereby ORDERED that exhibit lists and deposition designations shall be exchanged by all Parties and filed with the Court no later than JULY 31, 2023 and objections to the same shall be exchanged by all Parties and filed with the Court no later than AUGUST 4, 2023.1 Except as amended herein, the remainder of the Court's Second Amended Scheduling Order remains in effect, this includes the July 25, 2023 and August 1, 2023 deadlines for filing and responding to motions in limine and Daubert motions. Signed by Judge Steve C. Jones on 07/21/2023. (rsg) (Entered: 07/21/2023)
07/25/2023	231	*Joint Pretrial Order* by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) Modified on 7/26/2023 to edit docket text (ddm). (Entered: 07/25/2023)
07/31/2023	232	NOTICE Of Filing Defendants' Trial Exhibit List and Defendants' Deposition Designations by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger (Attachments: # 1 Exhibit A - Defendants' Trial Exhibit List, # 2 Exhibit B - Defendants' Deposition Designations)(Tyson, Bryan) (Entered: 07/31/2023)
07/31/2023	233	*Plaintiffs' Trial Exhibit List* by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.. (Sparks, Adam) Modified on 8/1/2023 to edit docket text (ddm). (Entered: 07/31/2023)
07/31/2023	234	Joint Exhibit List by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish.. (Sparks, Adam) (Entered: 07/31/2023)
07/31/2023	235	NOTICE Of Filing Plaintiffs' Deposition Designations by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish (Sparks, Adam) (Entered: 07/31/2023)
08/04/2023	236	NOTICE Of Filing Plaintiffs' Deposition Designations with Responses by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish re 235 Notice of Filing, (Sparks, Adam) (Entered: 08/04/2023)
08/04/2023	237	NOTICE Of Filing Objections to Exhibits and Deposition Designations by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger re 230 Scheduling Order,, (Attachments: # 1 Exhibit A - APA Plaintiffs' Exhibit List with Defendant's Objections, # 2 Exhibit B - Grant Plaintiffs' Exhibit List with Defendants' Objections, # 3 Exhibit C -

		Pendergrass Plaintiffs' Exhibit List, (3) Defendants' Objections, # 4 Exhibit D - Defendant's Deposition Designations and Objections to APA Plaintiffs, # 5 Exhibit E - Defendants' Deposition Designations and Objections to Pendergrass and Grant Plaintiffs)(Tyson, Bryan) (Entered: 08/04/2023)
08/04/2023	238	MOTION for Order *Taking Judicial Notice* by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Attachments: # 1 Exhibit A - Census Table 4b CPS 2018, # 2 Exhibit B - Census Table 4b CPS 2020, # 3 Exhibit C - Census Table 4b CPS 2022, # 4 Exhibit D - Members of the Georgia State Senate, # 5 Exhibit E - Members of the Georgia House of Representatives, # 6 Exhibit F - 2022 US Senate Primary Election Results by County, # 7 Exhibit G - 2022 PSC Primary Election Results, # 8 Exhibit H - 2018 District 6 Election Results, # 9 Exhibit I - Biography of Commissioner John King, # 10 Exhibit J - 2022 Commissioner of Insurance Election Results, # 11 Exhibit K - Justice Carla McMillian Biography)(Tyson, Bryan) (Entered: 08/04/2023)
08/04/2023	239	NOTICE Of Filing Plaintiffs' Objections to Defendants' Trial Exhibits by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish (Attachments: # 1 Exhibit A - Plaintiffs' Objections to Defendants' Trial Exhibits)(Sparks, Adam) (Entered: 08/04/2023)
08/11/2023	240	RESPONSE re 238 MOTION for Order *Taking Judicial Notice Plaintiffs' Partial Opposition to Defendants' Motion for Judicial Notice* filed by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) (Entered: 08/11/2023)
08/14/2023	241	NOTICE by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish *Regarding Pretrial Conference Attendance and Unopposed Request for Remote Participation* (Sparks, Adam) (Entered: 08/14/2023)
08/14/2023	242	ORDER DENYING Plaintiffs' Notice regarding tomorrow's pretrial conference and request for remote participation 241 . Signed by Judge Steve C. Jones on 08/14/2023. (ddm) (Entered: 08/14/2023)
08/15/2023	243	PRETRIAL ORDER. Signed by Judge Steve C. Jones on 08/15/2023. (ddm) (Entered: 08/15/2023)
08/15/2023	258	Minute Entry for proceedings held before Judge Steve C. Jones: Pretrial Conference held on 8/15/2023. Bench trial to proceed on September 5, 2023. (Court Reporter Viola Zborowski)(pdw) (Entered: 09/01/2023)
08/18/2023	244	LOGISTICS ORDER entered in preparation for the trial. The Court ORDERS the Parties to provide the Court with courtesy copies of the deposition transcripts that they intend to introduce into evidence at the Trial. The Court ORDERS these courtesy copies be delivered to the Court no later than THURSDAY, AUGUST 24, 2023. The Court will discuss trial presentation of evidence with the Parties at a conference call to be held on Tuesday, August 22, 2023 at 2:00 P.M. Signed by Judge Steve C. Jones on 08/18/2023. (ddm) (Entered: 08/18/2023)
08/18/2023	245	REPLY BRIEF re 238 MOTION for Order *Taking Judicial Notice* filed by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Tyson, Bryan) (Entered: 08/18/2023)
08/22/2023	259	Minute Entry for proceedings held before Judge Steve C. Jones: Telephone Conference held on 8/22/2023 regarding presentation of witness testimony during bench trial beginning 9/05/2023. (Court Reporter Viola Zborowski)(pdw) (Entered: 09/01/2023)
08/23/2023	246	ORDER DENYING Defendants' 238 Motion to Take Judicial Notice with regard to the data contained in Census Bureau Table 4b for the 2018, 2020 and 2022 elections. The Court GRANTS the remainder of the Motion. Signed by Judge Steve C. Jones on 08/23/2023. (ddm) (Entered: 08/23/2023)
08/24/2023	247	TRANSCRIPT of Pretrial Proceedings held on 8/15/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 1. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/14/2023. Redacted Transcript Deadline set for 9/25/2023. Release of Transcript Restriction set for 11/22/2023. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 08/24/2023)
08/24/2023	248	ORDER perfecting the Record on trial logistics and advising the parties how the presentation of evidence will proceed. The Court notes that at the telephone conference, the Plaintiffs indicated that they would like to come to an agreement on the order in which the Plaintiffs will present their cases-in-chief, i.e., Alpha Phi Alpha first, Pendergrass second, and Grant third, or some other order. For purposes of judicial efficiency and to ensure that all Parties are adequately prepared, the Court requires Plaintiffs to submit a notice of the order in which they will present their cases-in-chief on or before 5:00 PM on SEPTEMBER 1, 2023. The Parties are ordered to comply with this Order when presenting the evidence in the coordinated cases at trial. The Court reserves the right to amend or alter this Order in the future. Signed by Judge Steve C. Jones on 08/24/2023. (ddm) (Entered: 08/24/2023)
08/25/2023	249	ORDER directing Defendants to respond to the Alpha Phi Alpha Plaintiffs' Motion to Take Judicial Notice, Alpha Phi Alpha Doc. No. 283 by 5:00 PM on August 28, 2023. If the Pendergrass or Grant Plaintiffs wish to respond they are also ORDERED to do so by 5:00PM on August 28, 2023. Signed by Judge Steve C. Jones on 08/25/2023. (ddm) (Entered: 08/25/2023)
08/28/2023	250	*Defendants' Response in Opposition to APA Plaintiffs' Motion for Judicial Notice* filed 249 Order by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Tyson, Bryan) Modified on 8/29/2023 to edit docket text (ddm). (Entered: 08/28/2023)
08/29/2023	251	Motion to Bring Audio/Visual/Electronic Equipment in the Courtroom by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order)(Sparks, Adam) (Entered: 08/29/2023)
08/30/2023	252	ORDER granting Plaintiffs' Use of Electronic Equipment during trial. It is ordered that attending counsel Abha Khanna, Michael B. Jones, Makeba Rutahindurwa, Joyce Gist Lewis, and Adam M. Sparks, and their accompanying staff, Aidan Denver-Moore, Benjamin Winstead, and Patina Clarke may each bring and use electronic equipment in conjunction with a bench trial before Judge Steve C. Jones, scheduled for Tuesday, September 5, 2023 through Monday, September 18, 2023. The above listed counsel and staff may also bring and use this equipment on Friday, September 1, 2023 for the purpose of arranging, installing, and testing said equipment and trial exhibits as scheduled with Judge Jones's chambers. Signed by Judge Steve C. Jones on 08/30/2023. (ddm) (Entered: 08/30/2023)
08/30/2023	253	ORDER DENYING Alpha Phi Alpha Plaintiffs' Motion to Take Judicial Notice (Alpha Phi Alpha, Doc. No. 283). Signed by Judge Steve C. Jones on 08/30/2023. (ddm) (Entered: 08/30/2023)
08/30/2023	254	ORDER resolving the Parties' outstanding objections to the depositions that they wish to introduce into evidence at trial. Signed by Judge Steve C. Jones on 08/30/2023. (ddm) (Entered: 08/31/2023)
08/31/2023	255	TRANSCRIPT of Conference Call held on 8/22/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 1. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 9/21/2023. Redacted Transcript Deadline set for 10/2/2023. Release of Transcript Restriction set for 11/29/2023. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 08/31/2023)
08/31/2023	256	MOTION for Clarification re: 248 Order,,,, Set Submission Deadline,,, by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Exhibit Exhibit A - B. Tyson Email, # 2 Text of Proposed Order [Proposed] Order)(Sparks, Adam) (Entered: 08/31/2023)
08/31/2023	257	ORDER issued to Clarify its August 24, 2023 Order (Alpha Phi Alpha Doc. No. 286 ; Pendergrass Doc. No. 236 ; Grant Doc. No. 248). The August 24, 2023 Orders are amended in so far as to comply with this Order. Signed by Judge Steve C. Jones on 08/31/2023. (ddm) (Entered: 09/01/2023)
09/05/2023	260	Minute Entry for proceedings held before Judge Steve C. Jones: Bench trial began. Opening statements heard. Plaintiffs' case began. Alpha Plaintiffs' (1:21-cv-5337-SCJ) witness William Cooper sworn and testified as expert. Alpha exhibits 1, 327, 53, 54, 325 admitted. Joint Exhibits 1 and 2 admitted. Trial not concluded. Court adjourned and will reconvene at 9:30 AM on 9/06/2023. (Court Reporter Viola Zborowski & Penny Coudriet)(ddm) (Entered: 09/06/2023)
09/06/2023	261	Minute Entry for proceedings held before Judge Steve C. Jones: Bench Trial continued on 9/6/2023. Testimony of expert witness William Cooper concluded. Alpha Plaintiffs' exhibits 328-339 admitted. Alpha Phi Alpha witness Bishop Reginald Jackson sworn and testified. Pendergrass and Grant Plaintiffs' expert witness Dr. Maxwell Palmer sworn and testified. Grant exhibits 2 and 3, and Pendergrass exhibits 2 and 3 admitted. Grant expert witness Blakeman Esselstyn sworn and testified. Grant exhibits 1 and 6 admitted. Defendants' exhibits 89 and 92 admitted. Trial not concluded. Court adjourned and will reconvene at 9:00 AM on 9/07/2023. (Court Reporter V. Zborowski & P. Coudriet)(ddm) (Entered: 09/07/2023)
09/07/2023	262	Minute Entry for proceedings held before Judge Steve C. Jones: Bench Trial continued on 9/7/2023. Grant witness Dr. Diane Evans sworn and testified. Grant witness Fenika Miller sworn and testified. Grant and Pendergrass expert witness Dr. Loren Collingwood sworn and testified. Grant exhibit 5 and Pendergrass exhibit 5 admitted. William Cooper recalled by Pendergrass plaintiffs as expert witness. Pendergrass exhibit 1 admitted. Defendants' exhibits 21 and 154 admitted. Alpha Phi Alpha ("APA") expert witness Dr. Lisa Handley sworn and testified. APA exhibits 5 and 10 admitted. Trial not concluded. Court adjourned and will reconvene at 9:00 AM on 9/08/2023. (Court Reporter Viola Zborowski)(ddm) (Entered: 09/08/2023)
09/08/2023	263	Minute Entry for proceedings held before Judge Steve C. Jones: Bench Trial continued on 9/8/2023. Testimony of Alpha Phi Alpha expert witness Dr. Lisa Handley concluded. Grant and Pendergrass witness Jason Carter sworn and testified. Grant and Pendergrass witness Erik Allen sworn and testified. APA witness Dr. Traci Burch sworn and testified as expert. APA exhibit 6 admitted. APA witness Dr. Adrienne Jones sworn and testified as expert. APA exhibits 2, 3, 340, 31, 266 admitted. Trial not concluded. Court adjourned and will reconvene at 9:00 AM on 9/11/2023. (Court Reporter V. Zborowski & P. Coudriet)(ddm) (Entered: 09/11/2023)
09/11/2023	264	Minute Entry for proceedings held before Judge Steve C. Jones: Bench Trial continued on 9/11/2023. APA exhibits 31 and 266, and direct and cross testimony of Dr. Adrienne Jones admitted into the Grant and Pendergrass records. Testimony of APA expert witness Dr. Adrienne Jones concluded. Defendants' exhibit 59 admitted. APA witness Sherman Lofton sworn and testified. APA witness Dr. Jason Ward sworn and testified as expert. APA exhibit 4 admitted. Grant and Pendergrass expert witness Dr. Orville Burton sworn and testified. Pendergrass exhibit 4 and Grant exhibit 4 admitted. Pendergrass exhibit 14 and Grant exhibit 15 admitted over objection (these exhibits, as well as testimony of Dr. Burton also admitted as part of the APA record.) Defendants' exhibit 107 admitted. All Plaintiffs rested. Oral motion by Defendants for Judgment on Partial Findings pursuant to Fed.R.Civ.P. 52(c). Oral argument heard. Matter taken under advisement. Trial not concluded. Court adjourned and will reconvene at 9:30 AM on 9/12/2023. (Court Reporter V. Zborowski & P. Coudriet)(ddm) (Entered: 09/12/2023)
09/11/2023		ORAL MOTION by Defendants for Judgment on Partial Findings pursuant to Fed.R.Civ.P. 52(c). (ddm) (Entered: 09/13/2023)
09/12/2023	265	Notice for Leave of Absence for the following date(s): September 29, 2023, October 12-13. 2023, November 22-27, 2023, December 14-21, 2023, by Joyce Gist Lewis. (Lewis, Joyce) (Entered: 09/12/2023)
09/12/2023	266	Minute Entry for proceedings held before Judge Steve C. Jones: Bench Trial continued on 9/12/2023. The Court issued a verbal order denying Defendants' oral motion for Judgment on Partial Findings Pursuant to Fed.R.Civ.P. 52(c) as made on 9/11/2023. Defendants' case began. Witness Gina Wright sworn and testified. Defendants' exhibits 186, 187, 185 admitted. John Morgan sworn and testified as expert witness. Defendants' exhibits 1, 2, 5 admitted in re: APA plaintiffs; exhibits 1, 3, 6 admitted in re: Grant plaintiffs; and exhibits 4 and 7 admitted in re: Pendergrass plaintiffs. Trial not concluded. Court adjourned and will reconvene at 9:00 AM on 9/13/2023. (Court Reporter V. Zborowski & P. Coudriet)(ddm) (Entered: 09/13/2023)
09/13/2023	267	Minute Entry for proceedings held before Judge Steve C. Jones: Bench Trial continued on 9/13/2023. Testimony of John Morgan continued and concluded. Dr. John Alford sworn and testified as expert witness for Defendants. Defendants' exhibit 8 (exclusive of pages 2-9) and exhibit 97 admitted. Trial not concluded. Court adjourned and will reconvene at 9:00 AM on 9/14/2023. (Court Reporter V. Zborowski & P. Coudriet)(ddm) (Entered: 09/14/2023)
09/14/2023		Renewed ORAL MOTION by Defendants for Judgment on Partial Findings pursuant to Fed.R.Civ.P. 52(c). (ddm) (Entered: 09/15/2023)

09/14/2023	268	Minute Entry for proceedings held before Judge Steve C. Jones: Bench Trial conducted on 9/14/2023. Testimony of Dr. John Alford, Dr. Jonathan Mummolo, and Dr. Maxwell Palmer sworn and testified. APA cross examination of witness German incorporated into Pendergrass and Grant records. Defendants rested. Renewed oral motion by Defendants for Judgment on Partial Findings pursuant to Fed.R.Civ.P. 52(c). The Court issued a verbal order denying Defendants' motion. Closing arguments heard. This matter was taken under advisement by the Court, with ruling by written order to follow in due course. (Court Reporter V. Zborowski & P. Coudriet)(ddm) (Entered: 09/15/2023)
09/15/2023	269	Witness List filed by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (ddm) (Entered: 09/15/2023)
09/15/2023	270	Witness List filed by William S. Duffey, Jr., Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (ddm) (Entered: 09/15/2023)
09/15/2023	271	The Parties' Joint Exhibit List. (ddm) (Entered: 09/15/2023)
09/15/2023	272	Trial Exhibit List filed by William S. Duffey, Jr., Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger.. (ddm) (Entered: 09/15/2023)
09/15/2023	273	Grant Plaintiffs' Exhibit List. (ddm) (Entered: 09/15/2023)
09/15/2023	274	Pendergrass Plaintiffs' Exhibit List. (ddm) (Entered: 09/15/2023)
09/15/2023	275	Alpha Phi Alpha Plaintiffs' Exhibit List. (ddm) (Entered: 09/15/2023)
09/18/2023	276	*Plaintiffs' Notice of Submitting Proposed Corrections to Trial Transcript* filed by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) Modified on 9/19/2023 to edit docket text (ddm). (Entered: 09/18/2023)
09/25/2023	277	Proposed Findings of Fact by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Tyson, Bryan) (Entered: 09/25/2023)
09/25/2023	278	Proposed Findings of Fact by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Khanna, Abha) (Entered: 09/25/2023)
09/27/2023	279	NOTICE by William S. Duffey, Jr. Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger *Notice of Resignation of William S. Duffey, Jr.* (Tyson, Bryan) (Entered: 09/27/2023)
10/04/2023	280	ORDER certifying to the United States Attorney General that the constitutionality of Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301(b) has been called into question as affirmative defenses in the Pretrial Order. The Attorney General is requested to submit his position as to intervention in reference to this issue no later than 60 DAYS of the date of this Certification Order. Signed by Judge Steve C. Jones on 10/04/2023. (ddm) (Entered: 10/04/2023)
10/04/2023	281	ORDER directing Defendants to promptly comply with the requirements of compliance with Rule 5.1 (on CM/ECF) on or before Tuesday, October 10, 2023. Signed by Judge Steve C. Jones on 10/04/2023. (ddm) (Entered: 10/04/2023)
10/04/2023		Clerk's Certificate of Mailing to Honorable Merrick Garland re 280 Order. (ddm) (Entered: 10/04/2023)
10/06/2023	282	MOTION to Withdraw Elizabeth Marie Wilson Vaughan as Attorneyby William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger. (Vaughan, Elizabeth) (Entered: 10/06/2023)
10/10/2023	283	NOTICE by William S. Duffey, Jr, Sara Tindall Ghazal, Janice W. Johnston, Edward Lindsey, Matthew Mashburn, Brad Raffensperger re 281 Order, Set Submission Deadline *of Constitutional Question* (Tyson, Bryan) (Entered: 10/10/2023)
10/17/2023	284	ORDER advising that if the Parties have any additional concerns/questions as to the corrected transcripts, they shall notify the court reporters by 5:00 P.M., THURSDAY, OCTOBER 19, 2023. After said deadline, the Court will request that the court reporters finalize the transcripts. Signed by Judge Steve C. Jones on 10/17/2023. (ddm) (Entered: 10/17/2023)
10/18/2023	285	Notice for Leave of Absence for the following date(s): January 9, 2024 - January 19, 2024, by Bryan P. Tyson. (Tyson, Bryan) (Entered: 10/18/2023)
10/25/2023		DOCKET ORDER granting 282 Motion to Withdraw as Attorney. Attorney Elizabeth Marie Wilson Vaughan terminated as counsel for Defendants. Entered by Judge Steve C. Jones on 10/25/2023. (pdw) (Entered: 10/25/2023)
10/25/2023	286	TRANSCRIPT of Bench Trial Proceedings held on 9/5/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 1 A.M. SESSION. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/15/2023. Redacted Transcript Deadline set for 11/27/2023. Release of Transcript Restriction set for 1/23/2024. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 10/25/2023)
10/25/2023	287	TRANSCRIPT of Bench Trial Proceedings held on 9/6/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 2 A.M. SESSION. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/15/2023. Redacted Transcript Deadline set for 11/27/2023. Release of Transcript Restriction set for 1/23/2024. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 10/25/2023)
10/25/2023	288	TRANSCRIPT of Bench Trial Proceedings held on 9/7/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 3 A.M. SESSION. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/15/2023. Redacted Transcript Deadline set for 11/27/2023. Release of Transcript Restriction set for 1/23/2024. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 10/25/2023)
10/25/2023	289	TRANSCRIPT of Bench Trial Proceedings held on 9/8/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 4 P.M. SESSION. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/15/2023. Redacted Transcript Deadline set for 11/27/2023. Release of Transcript Restriction set for 1/23/2024. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 10/25/2023)
10/25/2023	290	TRANSCRIPT of Bench Trial Proceedings held on 9/11/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 5 A.M. SESSION. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/15/2023. Redacted Transcript Deadline set for 11/27/2023. Release of Transcript Restriction set for 1/23/2024. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 10/25/2023)
10/25/2023	291	TRANSCRIPT of Bench Trial Proceedings held on 9/12/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 6 A.M. SESSION. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/15/2023. Redacted Transcript Deadline set for 11/27/2023. Release of Transcript Restriction set for 1/23/2024. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 10/25/2023)
10/25/2023	292	TRANSCRIPT of Bench Trial Proceedings held on 9/13/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 7 A.M. SESSION. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/15/2023. Redacted Transcript Deadline set for 11/27/2023. Release of Transcript Restriction set for 1/23/2024. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 10/25/2023)
10/25/2023	293	TRANSCRIPT of Bench Trial Proceedings held on 9/14/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Viola S. Zborowski. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 8 A.M. SESSION. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 11/15/2023. Redacted Transcript Deadline set for 11/27/2023. Release of Transcript Restriction set for 1/23/2024. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 10/25/2023)
10/26/2023	294	OPINION AND MEMORANDUM OF DECISION advising of the Court's findings and conclusions following a non-jury trial and consideration of the evidence. It is ordered that the Pendergrass and Grant Plaintiffs lack standing to bring suit against the members of the State Election Board, thus, Sarah Tindall Ghazal, Janice W. Johnston, Edward Lindsey, and Matthew Mashburn are DISMISSED from this case. Alpha Phi Alpha Plaintiffs have carried their burden of demonstrating a lack of equal openness in Georgia's election system as a result of the challenged redistricting plans, SB 1EX and HB 1EX, SB 1EX and HB 1EX, as to the following enacted districts/areas: Enacted Senate Districts 10, 16, 17, 34, 43, 44, and Enacted House Districts 74 and 78.138 Alpha Phi Alpha Plaintiffs have not met their burden as to the remaining challenged districts. Pendergrass Plaintiffs have carried their burden of demonstrating a lack of equal openness in Georgia's election system as a result of the challenged redistricting plan, SB 2EX, as to the following enacted district/ areas: Enacted Congressional Districts 3, 6, 11, 13, and 14. Grant Plaintiffs have carried their burden of demonstrating a lack of equal openness in Georgia's election system as a result of the challenged redistricting plans, SB 1EX and HB 1EX, SB 1EX and HB 1EX, as to the following enacted districts/areas: Enacted Senate Districts 10, 16, 17, 25, 28, 30, 34, 35, 44, and Enacted House Districts 61, 64, 78, 117, 133, 142, 143, 145, 147, and 149.139 Grant Plaintiffs have not met their burden as to the remaining challenged districts. This Court further concludes that declaratory and permanent injunctive relief are appropriate. The Court, therefore, DECLARES the rights of the parties as follows. SB 2EX violates Section 2 of the Voting Rights Act as to the following districts/areas: Enacted Congressional Districts 3, 6, 11, 13, and 14. SB 1EX violates Section 2 of the Voting Rights Act as to the following areas/districts: Enacted Senate Districts 10, 16, 17, 25, 28, 30, 34, 35, 43, and 44. HB 1EX violates Section 2 of the Voting Rights Act as to the following areas/districts: Enacted House Districts 61, 64, 74, 78, 117, 133, 142, 143, 145, 147, and 149. The Court PERMANENTLY ENJOINS Defendant Raffensperger, as well as his agents and successors in office, from using SB 2EX, SB 1EX, and HB 1EX in any future election. The Court's injunction affords the State a limited opportunity to enact new plans that comply with the Voting Rights Act by DECEMBER 8, 2023. This timeline balances the relevant equities and serves the public interest by providing the General Assembly with its rightful opportunity to craft a remedy in the first instance, while also ensuring that, if an acceptable remedy is not produced, there will be time for the Court to fashion oneas the Court will not allow another election cycle on redistricting plans that the Court has determined on a full trial record to be unlawful. The Court is confident that the General Assembly can accomplish its task by DECEMBER 8, 2023: the General Assembly enacted the Plans quickly in 2021; the Legislature has been on notice since at least the time that this litigation was commenced nearly 22 months ago that new maps might be necessary; the General Assembly already has access to an experienced cartographer; and the General Assembly has an illustrative remedial plan to consult. The Clerk is DIRECTED to enter judgment in favor of the Alpha Phi Alpha Plaintiffs (in Civil Action No. 1:21-cv-05337), Pendergrass Plaintiffs (in Civil Action No. 1:21-cv-05339), and Grant Plaintiffs (in Civil Action No. 1:22-cv-00122) and against Brad Raffensperger. Attorneys' fees and costs are also awarded to each set of Plaintiffs pursuant to 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988. After entry of judgment, the Clerk is DIRECTED to close these three cases. The Court will retain jurisdiction over these matters for oversight and further remedial proceedings, if necessary. The Court reiterates that Georgia has made great strides since 1965 towards equality in voting. However, the evidence before this Court shows that Georgia has not reached the point where the political process has equal openness and equal opportunity for everyone. Accordingly, the Court issues this Order to ensure that Georgia continues to move toward equal openness and equal opportunity for everyone to participate in the electoral system. Signed by Judge Steve C. Jones on 10/26/2023. (ddm) (Entered: 10/26/2023)

10/26/2023	295	JUDGMENT is entered in favor of PLAINTIFFS and against Defendants in accordance with this Court's Order of October 26, 2023. Attorney fees and costs to be awarded to each set of Plaintiffs pursuant to 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988. (ddm)--Please refer to http://www.ca11.uscourts.gov to obtain an appeals jurisdiction checklist-- (Entered: 10/26/2023)
10/26/2023		Civil Case Terminated. (ddm) (Entered: 10/26/2023)
11/03/2023	296	NOTICE by United States of America *Notice of Intervention Pursuant to 28 U.S.C. § 2403(a)* (Attachments: # 1 Brief)(Freeman, Daniel) (Entered: 11/03/2023)
11/03/2023	297	NOTICE of Appearance by Daniel J. Freeman on behalf of United States of America (Freeman, Daniel) (Entered: 11/03/2023)
11/03/2023	298	NOTICE of Appearance by Michael Elliot Stewart on behalf of United States of America (Stewart, Michael) (Entered: 11/03/2023)
11/08/2023	299	Unopposed MOTION for Extension of Time to File Bill of Costs and Motion for Attorneys' Fees with Brief In Support by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order)(Sparks, Adam) (Entered: 11/08/2023)
11/09/2023	300	ORDER GRANTING 299 Plaintiffs' Unopposed Motion for Extension of Time to File Bill of Costs and Motion for Attorneys' Fees. Plaintiffs shall have until 30 days after the Court receives the Eleventh Circuit's mandate in Defendant's appeal to file a motion for attorneys' fees and expenses and a bill of costs. If Defendant does not appeal, Plaintiffs shall have until 30 days following the expiration of Defendant's time to appeal to file a motion for attorneys' fees and expenses. Signed by Judge Steve C. Jones on 11/09/2023. (ddm) (Entered: 11/09/2023)
11/17/2023	301	*Response to United States on Constitutionality of Section 2 of the Voting Rights Act* 296 filed by Brad Raffensperger. (Tyson, Bryan) Modified on 11/20/2023 to edit docket text (ddm). (Entered: 11/17/2023)
11/22/2023	302	NOTICE OF APPEAL as to 43 Order on Motion to Dismiss, 295 Clerk's Judgment, 229 Order on Motion for Partial Summary Judgment,,,, Order on Motion for Summary Judgment,,, 294 Order,,,,,,,,,,,,,,,,, by Brad Raffensperger. Filing fee $ 505, receipt number AGANDC-13050600. Transcript Order Form due on 12/6/2023 (Tyson, Bryan) (Entered: 11/22/2023)
11/28/2023	303	ORDER perfecting the trial record in this case and providing the parties with the case name and docket location of the depositions used at trial. Signed by Judge Steve C. Jones on 11/28/2023. (ddm) (Entered: 11/28/2023)
11/28/2023	304	USCA Appeal Transmission Letter to USCA- 11th Circuit re: 302 Notice of Appeal, filed by Brad Raffensperger. (pjm) (Entered: 11/28/2023)
11/28/2023	305	Transmission of Certified Copy of Notice of Appeal, USCA Appeal Fees, Judgment, Orders and Docket Sheet to US Court of Appeals re: 302 Notice of Appeal. (pjm) (Entered: 11/28/2023)
11/30/2023	310	EXHIBITS (Parties Joint Exhibits 1 and 2) admitted and retained at the 264 Bench Trial - Continued, 261 Bench Trial - Continued, 260 Bench Trial - Begun, 268 Order on Motion for Judgment on Partial Findings, Bench Trial - Concluded, 266 Order on Motion for Judgment on the Pleadings, Bench Trial - Continued, 262 Bench Trial - Continued, 263 Bench Trial - Continued, 267 Bench Trial - Continued, have been received from Courtroom Deputy and placed in the custody of the Records Clerks. (Attachments: # 1 Joint Ex. 1, # 2 Joint Ex. 2)(sct) (Entered: 12/07/2023)
11/30/2023	313	EXHIBITS (Grant Plaintiff's Exhibits: 1,2,3,4,5,6,15) admitted and retained at the 264 Bench Trial - Continued, 261 Bench Trial - Continued, 260 Bench Trial - Begun, 268 Order on Motion for Judgment on Partial Findings, Bench Trial - Concluded, 266 Order on Motion for Judgment on the Pleadings, Bench Trial - Continued, 262 Bench Trial - Continued, 263 Bench Trial - Continued, 267 Bench Trial - Continued, have been received from Courtroom Deputy and placed in the custody of the Records Clerks. (Attachments: # 1 Pltf Ex. 1, # 2 Pltf Ex. 2, # 3 Pltf Ex. 3, # 4 Pltf Ex. 4, # 5 Pltf Ex. 5, # 6 Pltf Ex. 6, # 7 Pltf Ex. 15)(sct) (Entered: 12/11/2023)
11/30/2023	318	EXHIBITS (Defendant's Exhibits: 1-8,21,59,89,92,97,107,154,185-187) admitted and retained at the 264 Bench Trial - Continued, 261 Bench Trial - Continued, 260 Bench Trial - Begun, 268 Order on Motion for Judgment on Partial Findings, Bench Trial - Concluded, 266 Order on Motion for Judgment on the Pleadings, Bench Trial - Continued, 263 Bench Trial - Continued, 267 Bench Trial - Continued, 262 Bench Trial - Continued, have been received from Courtroom Deputy and placed in the custody of the Records Clerks. (Attachments: # 1 Deft Ex. 1, # 2 Deft Ex. 2 (pages 1-181), # 3 Deft Ex. 2 (pages 181-220), # 4 Deft Ex. 2 (pages 221-362), # 5 Deft Ex. 3, # 6 Deft Ex. 4, # 7 Deft. Ex 5, # 8 Deft Ex. 6, # 9 Deft Ex. 7, # 10 Deft. Ex 8, # 11 Deft Ex. 21, # 12 Deft Ex. 59, # 13 Deft Ex. 89, # 14 Deft Ex. 92, # 15 Deft Ex. 97, # 16 Deft Ex. 107, # 17 Deft Ex. 154, # 18 Deft Ex. 185, # 19 Deft Ex. 186, # 20 Deft Ex. 187)(sct) (Additional attachment(s) added on 12/28/2023: # 21 Deft Ex. 3 part 2, # 22 Deft Ex. 3 part 3) (kdw). (Entered: 12/13/2023)
12/04/2023	306	MOTION for Entry of Remedial Scheduling Order 294 Order,,,,,,,,,,,,,,,,, with Brief In Support by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order)(Sparks, Adam) (Entered: 12/04/2023)
12/05/2023		DOCKET ORDER re 306 MOTION for Entry of Remedial Scheduling Order filed by Plaintiffs. Defendants are ORDERED to file an expedited response no later than 9:00 AM on 12/06/2023, to include Defendants' proposed schedule. Entered by Judge Steve C. Jones on 12/05/2023. (pdw) (Entered: 12/05/2023)
12/05/2023	307	USCA Acknowledgment of 302 Notice of Appeal, filed by Brad Raffensperger. Case Appealed to USCA- 11th Circuit. Case Number 23-13921-B. (pjm) (Entered: 12/05/2023)
12/06/2023	308	RESPONSE re 306 MOTION for Entry of Remedial Scheduling Order 294 Order,,,,,,,,,,,,,,,,, filed by Brad Raffensperger. (Tyson, Bryan) (Entered: 12/06/2023)
12/06/2023	309	ORDER granting 306 Plaintiffs' Joint Motion for Entry of Remedial Scheduling Order. However, because time is of the essence in this matter, the Court finds it necessary to enter a more compressed schedule than that proposed by either Party. See order for new deadlines. A hearing, set for December 20, 2023, at 9:00 a.m., will be held at the Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, S.W., Atlanta, Georgia, in Courtroom 1907. Each set of Plaintiffs will have one hour to present evidence and argument and may proceed in any order they prefer. Defendant will have one hour to present evidence and argument directly following each set of Plaintiffs. To be clear, the presentations will be ordered as follows: One set of Plaintiffs will begin and will have up to one hour to present; Defendant will respond to that presentation and will have up to one hour to do so. The next set of Plaintiffs will make their presentation (up to one hour) and Defendant will then have up to one hour to respond. Finally, the final set of Plaintiffs will present (up to one hour), and Defendant will have up to one hour to respond. Signed by Judge Steve C. Jones on 12/06/2023. (ddm) (Entered: 12/06/2023)
12/07/2023	311	NOTICE TO COUNSEL OF RECORD regarding RECLAMATION AND DISPOSITION OF UNCLAIMED Documentary EXHIBITS from the bench trial held September 5th, 2023 through September 14th, 2023 pursuant to Local Rule 79.1D. Re: 310 Exhibits, (sct) (Entered: 12/07/2023)
12/08/2023	312	NOTICE by Brad Raffensperger *of Adoption of Remedial Plans* (Tyson, Bryan) (Entered: 12/08/2023)
12/11/2023	314	NOTICE TO PLAINTIFF'S COUNSEL OF RECORD regarding RECLAMATION AND DISPOSITION OF UNCLAIMED Documentary EXHIBITS from the bench trial held on September 5, 2023 through September 14, 2023 pursuant to Local Rule 79.1D. Re: 313 Exhibits, (sct) (Entered: 12/11/2023)
12/11/2023	315	ADMINISTRATIVE ORDER NO. 23-08: IN RE USE OF CELLULAR TELEPHONES AND ELECTRONIC EQUIPMENT ON THE 19TH FLOOR OF THE RICHARD B. RUSSELL BUILDING ON DECEMBER 20, 2023. Signed by Judge Timothy C. Batten, Sr. on 12/11/2023.(pdw) (Entered: 12/11/2023)
12/12/2023	316	Appellant's BRIEF by Georgia State Conference of the NAACP, et al.. (Attachments: # 1 Exhibit A Amici Curiae Brief, # 2 Exhibit B Declaration of Dr. Moon Duchin)(Kastorf, Kurt) (Entered: 12/12/2023)
12/12/2023	317	NOTICE Of Filing Plaintiffs Objections To The Georgia General Assemblys Remedial State Legislative Plans by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish re 294 Order,,,,,,,,,,,,,,,,, 309 Order on Motion for Miscellaneous Relief,,,, (Attachments: # 1 Exhibit 1 - Remedial Expert Report of Blakeman Esselstyn, # 2 Exhibit 2 - Remedial Expert Report of Dr. Maxwell Palmer, # 3 Exhibit 3 - Appendix to Ex. 2, # 4 Exhibit 4 - C.V. for Dr. Palmer)(Sparks, Adam) (Entered: 12/12/2023)
12/13/2023	319	NOTICE TO DEFENDANT'S COUNSEL OF RECORD regarding RECLAMATION AND DISPOSITION OF UNCLAIMED Documentary EXHIBITS from the bench trial held on September 5, 2023 through September 14, 2023 pursuant to Local Rule 79.1D. Re: 318 Exhibits. (sct) (Entered: 12/13/2023)
12/14/2023	320	ORDER GRANTING the Motion for Leave to File Brief as Amici Curiae in Opposition to Defendant's Proposed Remedial Maps. Alpha Doc. No. 353 , Grant Doc. No. 316 , Pendergrass Doc. No. 316 . The Clerk is DIRECTED to refile Alpha Doc. Nos. [353-1], Grant Doc. No. [316-1], and Pendergrass Doc. No. [316-1] as a new docket entry in each case on CM/ECF. Signed by Judge Steve C. Jones on 12/14/2023. (ddm) (Entered: 12/14/2023)
12/14/2023	321	AMICUS CURIAE BRIEF in opposition to Defendants' Proposed Remedial Maps filed by Georgia State Conference of the NAACP, et al. (Attachments: # 1 Declaration of Dr. Moon Duchin)(ddm) (Entered: 12/14/2023)
12/15/2023	322	Motion to Bring Audio/Visual/Electronic Equipment in the Courtroom by Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Attachments: # 1 Text of Proposed Order)(Sparks, Adam) (Entered: 12/15/2023)
12/15/2023	323	Motion to Bring Audio/Visual/Electronic Equipment in the Courtroom *During Remedial Hearing* by Brad Raffensperger. (Attachments: # 1 Text of Proposed Order)(Tyson, Bryan) (Entered: 12/15/2023)
12/18/2023	324	ORDER allowing counsel for the Plaintiffs and accompanying staff to bring electronic equipment into the Courthouse on Wednesday, December 20, 2023 for a hearing scheduled to begin at 9:00 a.m. before the undersigned in Courtroom 1907. The Court notes that the prohibition pursuant to Administrative Order No. 23-08 on cellular phones and other electronic devices with camera or other recording technology remains in full force and effect for all persons, including counsel and parties. Signed by Judge Steve C. Jones on 12/18/2023. (ddm) (Entered: 12/18/2023)
12/18/2023	325	ORDER allowing counsel for the Defendant to bring electronic equipment into the Courthouse on Wednesday, December 20, 2023 for a hearing scheduled to begin at 9:00 a.m. before the undersigned in Courtroom 1907. The Court notes that the prohibition pursuant to Administrative Order No. 23-08 on cellular phones and other electronic devices with camera or other recording technology remains in full force and effect for all persons, including counsel and parties. Signed by Judge Steve C. Jones on 12/18/2023. (ddm) (Entered: 12/18/2023)
12/18/2023	326	*Consolidated Response to Plaintiffs' Objections Regarding Remedial Plans* 317 filed by Brad Raffensperger. (Attachments: # 1 Exhibit A - Dec. of Gina Wright, # 2 Exhibit B - Report of Dr. Michael Barber, # 3 Exhibit C - Senate Committee Hearing (11/29/2023), # 4 Exhibit D - House Committee Hearing (11/29/2023), # 5 Exhibit E - House Committee Hearing (11/30/2023), # 6 Exhibit F - Senate Committee Hearing (12/4/2023), # 7 Exhibit G - Senate Floor Debate (12/1/2023), # 8 Exhibit H - House Floor Debate (12/1/2023), # 9 Exhibit I - House Floor Debate (12/7/2023), # 10 Exhibit J - 2024 State Election Calendar)(Tyson, Bryan) Modified on 12/19/2023 to edit docket text (ddm). (Entered: 12/18/2023)
12/19/2023	327	Plaintiffs' Reply in Support of Objections to Remedial Plans 317 by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. (Sparks, Adam) Modified on 12/20/2023 to edit docket text (ddm). (Entered: 12/19/2023)
12/20/2023	328	Minute Entry for proceedings held before Judge Steve C. Jones: Evidentiary Hearing held on 12/20/2023 pursuant to the Court's Order of 12/06/2023 regarding the remedial phase of these proceedings following the anticipated enactment of remedial state legislative and congressional plans by the Georgia General Assembly. The Court heard oral argument from counsel. Gina Wright called by Defendants, sworn and testified. These matters were taken under advisement by the Court, with ruling by written order to follow in due course. (Court Reporter V. Zborowski & P. Coudriet)(ddm) (Entered: 12/20/2023)

12/21/2023	329	TRANSCRIPT of Preliminary Hearing Proceedings held on 12/20/2023, before Judge Steve C. Jones. Court Reporter/Transcriber Penny Coudriet. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Tape Number: 1 - A.M. SESSION. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/11/2024. Redacted Transcript Deadline set for 1/22/2024. Release of Transcript Restriction set for 3/20/2024. (Attachments: # 1 Appendix Notice of Filing Transcript) (Entered: 12/21/2023)
12/27/2023	330	TRANSCRIPT of Proceedings held on 12/20/2023, before Judge Steven Jones. Court Reporter/Transcriber PENNY COUDRIET. A full directory of court reporters and their contact information can be found at www.gand.uscourts.gov/directory-court-reporters. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 1/17/2024. Redacted Transcript Deadline set for 1/29/2024. Release of Transcript Restriction set for 3/26/2024. (Attachments: # 1 Notice of Filing) (ppc) (Entered: 12/27/2023)
12/27/2023	331	Notice for Leave of Absence for the following date(s): 1/9/24 - 1/31/24; 4/1/24 - 4/5/24; 5/20/24 - 5/24/24; 6/3/24 - 6/14/24; 11/14/24 - 11/16/24, by Bryan P. Tyson. (Tyson, Bryan) (Entered: 12/27/2023)
12/28/2023	332	NOTICE TO COURT regarding RECLAMATION AND DISPOSITION OF UNCLAIMED EXHIBITS pursuant to Local Rule 79.1D(2) filed by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. Exhibits to be Retrieved.. (Sparks, Adam) (Entered: 12/28/2023)
12/28/2023	333	ORDER finding that the General Assembly fully complied with this Court's order requiring the creation of Black-majority districts in the regions of the State where vote dilution was found. The Court further finds that the elimination of crossover districts did not violate the October 26, 2023 Order. Hence, the Court OVERRULES Plaintiffs' objections (Doc. No. 317) and HEREBY APPROVES SB 1EX and HB 1EX. Signed by Judge Steve C. Jones on 12/28/2023. (ddm) (Entered: 12/28/2023)
01/16/2024	334	Appeal Remark: Pursuant to FRAP 3(b)(2) and 11th Cir. R. 12-2, and absent any party filing written objections within 14 days, this case will be consolidated with: 23-13914 and 23-13916 re 302 Notice of Appeal.Case Appealed to USCA - 11th Circuit. Case Number 23-13921-AA. (rlh) (Entered: 01/16/2024)
01/22/2024	335	NOTICE OF APPEAL as to 333 Order, by Jacqueline Faye Arbuthnot, Jacquelyn Bush, Mary Nell Conner, Annie Lois Grant, Quentin T. Howell, Triana Arnold James, Garrett Reynolds, Elbert Solomon, Eunice Sykes, Elroy Tolbert, Dexter Wimbish. Case Appealed to USCA - 11th Circuit. Filing fee $ 605, receipt number AGANDC-13172595. Transcript Order Form due on 2/5/2024 (Lewis, Joyce) (Entered: 01/22/2024)
01/23/2024	336	USCA Appeal Transmission Letter to USCA- 11th Circuit re: 335 Notice of Appeal, filed by Jacquelyn Bush, Dexter Wimbish, Jacqueline Faye Arbuthnot, Garrett Reynolds, Eunice Sykes, Annie Lois Grant, Triana Arnold James, Elroy Tolbert, Mary Nell Conner, Quentin T. Howell, and Elbert Solomon. (pjm) (Entered: 01/23/2024)
01/23/2024	337	Transmission of Certified Copy of Notice of Appeal, USCA Appeal Fees, Order and Docket Sheet to USCA - 11th Circuit re: 335 Notice of Appeal. (pjm) (Entered: 01/23/2024)
01/26/2024	338	USCA Acknowledgment of 335 Notice of Appeal, filed by Jacquelyn Bush, Dexter Wimbish, Jacqueline Faye Arbuthnot, Garrett Reynolds, Eunice Sykes, Annie Lois Grant, Triana Arnold James, Elroy Tolbert, Mary Nell Conner, Quentin T. Howell, Elbert Solomon. Case Appealed to USCA- 11th Circuit. Case Number 24-10241-A. (pjm) (Entered: 01/26/2024)
02/05/2024	339	TRANSCRIPT ORDER FORM for proceedings held on 12/20/2023 (Evidentiary Hrg) before Judge Steve C. Jones, re: 335 Notice of Appeal. Court Reporter: Viola Zborowski & Penny Coudriet. (Khanna, Abha) Modified on 2/6/2024 to update text (pjm). (Entered: 02/05/2024)
02/06/2024		Set Deadline re: 335 Notice of Appeal: Financial Arrangements due on 2/20/2024. (pjm) (Entered: 02/06/2024)
02/27/2024	340	Notification of Transcript Filed in District Court re 339 Transcript Order Form filed by Jacquelyn Bush, Dexter Wimbish, Jacqueline Faye Arbuthnot, Garrett Reynolds, Eunice Sykes, Annie Lois Grant, Triana Arnold James, Elroy Tolbert, Mary Nell Conner, Quentin T. Howell, Elbert Solomon. All transcripts for this request are now on file. (Entered: 02/27/2024)
03/11/2024	341	MOTION to Withdraw Michael Elliot Stewart as Attorneyby United States of America. (Attachments: # 1 Text of Proposed Order)(Stewart, Michael) (Entered: 03/11/2024)
03/18/2024	342	Notice for Leave of Absence for the following date(s): April 26-30, 2024, May 9-10, 2024, June 6-7, 2024, July 8-12, 2024, August 29 - September 3, 2024, September 27, 2024, by Joyce Gist Lewis. (Lewis, Joyce) (Entered: 03/18/2024)
03/27/2024	343	USCA Order: The motion to withdraw as legal counsel filed by Jonathan Patrick Hawley for Plaintiffs-Appellants is GRANTED re: 335 Notice of Appeal, filed by Jacquelyn Bush, Dexter Wimbish, Jacqueline Faye Arbuthnot, Garrett Reynolds, Eunice Sykes, Annie Lois Grant, Triana Arnold James, Elroy Tolbert, Mary Nell Conner, Quentin T. Howell and Elbert Solomon. Case Appealed to USCA- 11th Circuit. Case Number 24-10241-A. (pjm) (Entered: 03/27/2024)
03/27/2024		Pursuant to F.R.A.P.11(c), the Clerk certifies that the record is complete for purposes of this appeal, 335 Notice of Appeal. Case Appealed to USCA- 11th Circuit. Case Number 24-10241-AA. The entire record on appeal is available electronically. (pjm) (Entered: 03/27/2024)
04/05/2024		DOCKET ORDER granting 341 Motion to Withdraw as Attorney. Attorney Michael Elliot Stewart terminated as counsel for United States. Entered by Judge Steve C. Jones on 4/05/2024. (pdw) (Entered: 04/05/2024)
04/22/2024	344	USCA Order GRANTING Withdrawal of Counsel filed by Edward Williams for Plaintiffs-Appellees re: 335 Notice of Appeal, filed by Jacquelyn Bush, Dexter Wimbish, Jacqueline Faye Arbuthnot, Garrett Reynolds, Eunice Sykes, Annie Lois Grant, Triana Arnold James, Elroy Tolbert, Mary Nell Conner, Quentin T. Howell, Elbert Solomon. Case Appealed to USCA- 11th Circuit. Case Number 23-13921-B. (pjm) (Entered: 04/22/2024)
05/02/2024	345	USCA Order: The motion to withdraw as counsel filed by Michael B. Jones for Plaintiffs-Appellants is GRANTED re: 335 Notice of Appeal, filed by Jacquelyn Bush, Dexter Wimbish, Jacqueline Faye Arbuthnot, Garrett Reynolds, Eunice Sykes, Annie Lois Grant, Triana Arnold James, Elroy Tolbert, Mary Nell Conner, Quentin T. Howell, Elbert Solomon. Case Appealed to USCA- 11th Circuit. Case Number 24-10241-AA. (pjm) (Entered: 05/02/2024)

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

ANNIE LOIS GRANT; QUENTIN T. HOWELL; ELROY TOLBERT; THERON BROWN; TRIANA ARNOLD JAMES; EUNICE SYKES; ELBERT SOLOMON; and DEXTER WIMBISH; Plaintiffs, v. BRAD RAFFENSPERGER, in his official capacity as the Georgia Secretary of State; SARA TINDALL GHAZAL, in her official capacity as a member of the State Election Board; ANH LE, 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 MATTHEW MASHBURN, in his official capacity as a member of the State Election Board, Defendants.	CIVIL ACTION FILE NO. _____

COMPLAINT

1. Plaintiffs bring this action to challenge the Georgia Senate Redistricting Act of 2021 ("SB 1EX") and the Georgia House of Representatives Redistricting Act of 2021 ("HB 1EX") on the ground that they violate Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301.

2. In undertaking the latest round of redistricting following the 2020 decennial census, the Georgia General Assembly diluted the growing electoral strength of the state's Black voters and other communities of color. Faced with Georgia's changing demographics, the General Assembly has ensured that the growth of the state's Black population will not translate to increased political influence in the Georgia State Senate and Georgia House of Representatives.

3. The 2020 census data make clear that minority voters in Georgia are sufficiently numerous and geographically compact to form a majority of eligible voters—which is to say, a majority of the voting age population[1]—in multiple legislative districts throughout the state, including two additional majority-Black State Senate districts in the southern Atlanta metropolitan area, one additional majority-Black State Senate district in the central Georgia Black Belt region, two

[1] The phrases "majority of eligible voters" and "majority of the voting age population" have been used by courts interchangeably when discussing the threshold requirements of a vote-dilution claim under Section 2 of the Voting Rights Act. *Compare, e.g.*, *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1019 (8th Cir. 2006) ("[T]he first *Gingles* precondition . . . 'requires only a simple *majority of eligible voters* in a single-member district.'" (emphasis added) (quoting *Dickinson v. Ind. State Election Bd.*, 933 F.2d 497, 503 (7th Cir. 1991))), *with Bartlett v. Strickland*, 556 U.S. 1, 18 (2009) (plurality op.) ("[T]he majority-minority rule relies on an objective, numerical test: Do minorities make up *more than 50 percent of the voting-age population* in the relevant geographic area?" (emphasis added)). The phrase "majority of eligible voters" when used in this Complaint shall also refer to the "majority of the voting age population."

additional majority-Black House districts in the southern Atlanta metropolitan area, one additional majority-Black House district in the western Atlanta metropolitan area, and two additional majority-Black House districts anchored in Bibb County. These additional majority-Black legislative districts can be drawn without reducing the total number of districts in the region and statewide in which Black and other minority voters are able to elect their candidates of choice.

4. Rather than draw these State Senate and House districts as those in which Georgians of color would have the opportunity to elect their preferred candidates, the General Assembly instead chose to "pack" some Black voters into limited districts in these areas and "crack" other Black voters among rural-reaching, predominantly white districts.

5. Section 2 of the Voting Rights Act prohibits this result and requires the General Assembly to draw additional legislative districts in which Black voters have opportunities to elect their candidates of choice.

6. By failing to create such districts, the General Assembly's response to Georgia's changing demographics has had the effect of diluting minority voting strength throughout the state.

7. Accordingly, Plaintiffs seek an order (i) declaring that SB 1EX and HB 1EX violate Section 2 of the Voting Rights Act; (ii) enjoining Defendants from

conducting future elections under SB 1EX and HB 1EX; (iii) requiring adoption of valid plans for new State Senate and House districts in Georgia that comport with Section 2 of the Voting Rights Act; and (iv) providing any and such additional relief as is appropriate.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 1357.

9. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper under 28 U.S.C. § 1391(b) because "a substantial part of the events or omissions giving rise to the claim occurred" in this district.

PARTIES

11. Plaintiff Annie Lois Grant is a Black citizen of the United States and the State of Georgia. Ms. Grant is a registered voter and intends to vote in future legislative elections. She is a resident of Greene County and located in Senate District 24 and House District 124 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia State Senate despite strong electoral support for those candidates from other Black voters in her community. Ms. Grant resides in a region where the Black community is sufficiently large and

geographically compact to constitute a majority of eligible voters in a newly drawn State Senate district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Ms. Grant and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

12. Plaintiff Quentin T. Howell is a Black citizen of the United States and the State of Georgia. Mr. Howell is a registered voter and intends to vote in future legislative elections. He is a resident of Baldwin County and located in Senate District 25 and House District 133 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Howell resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in newly drawn State Senate and House districts in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Howell and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

13. Plaintiff Elroy Tolbert is a Black citizen of the United States and the State of Georgia. Mr. Tolbert is a registered voter and intends to vote in future legislative elections. He is a resident of Bibb County and located in Senate District 18 and House District 144 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Tolbert resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn House district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Tolbert and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

14. Plaintiff Theron Brown is a Black citizen of the United States and the State of Georgia. Ms. Brown is a registered voter and intends to vote in future legislative elections. She is a resident of Houston County and located in Senate District 26 and House District 145 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. Brown resides in a region where the Black community is sufficiently large and

geographically compact to constitute a majority of eligible voters in a newly drawn House district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Ms. Brown and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

15. Plaintiff Triana Arnold James is a Black citizen of the United States and the State of Georgia. Ms. James is a registered voter and intends to vote in future legislative elections. She is a resident of Douglas County and located in Senate District 30 and House District 64 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. James resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn House district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Ms. James and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

16. Plaintiff Eunice Sykes is a Black citizen of the United States and the State of Georgia. Ms. Sykes is a registered voter and intends to vote in future

legislative elections. She is a resident of Henry County and located in Senate District 25 and House District 117 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. Sykes resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in newly drawn State Senate and House districts in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Ms. Sykes and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

17. Plaintiff Elbert Solomon is a Black citizen of the United States and the State of Georgia. Mr. Solomon is a registered voter and intends to vote in future legislative elections. He is a resident of Spalding County and located in Senate District 16 and House District 117 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Solomon resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority

of eligible voters in newly drawn State Senate and House districts in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Solomon and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

18. Plaintiff Dexter Wimbish is a Black citizen of the United States and the State of Georgia. Mr. Wimbish is a registered voter and intends to vote in future legislative elections. He is a resident of Spalding County and located in Senate District 16 and House District 74 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Wimbish resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in newly drawn State Senate and House districts in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Wimbish and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

19. Defendant Brad Raffensperger is the Georgia Secretary of State and is named in his official capacity. Secretary Raffensperger is Georgia's chief election official and is responsible for administering the state's elections and implementing election laws and regulations, including Georgia's legislative redistricting plans. *See* O.C.G.A. § 21-2-50; Ga. Comp. R. & Regs. 590-1-1-.01–.02 (specifying, among other things, that Secretary of State's office must provide "maps of Congressional, State Senatorial and House Districts" when requested). Secretary Raffensperger is also an ex officio nonvoting member of the State Election Board, which is responsible for "formulat[ing], adopt[ing], and promulgat[ing] such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." O.C.G.A. §§ 21-2-30(d), -31(2).

20. Defendant Sara Tindall Ghazal is a member of the State Election Board and is named in her official capacity. In this role, she must "formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(2).

21. Defendant Anh Le is a member of the State Election Board and is named in her official capacity. In this role, she must "formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(2).

22. Defendant Edward Lindsey is a member of the State Election Board and is named in his official capacity. In this role, he must "formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(2).

23. Defendant Matthew Mashburn is a member of the State Election Board and is named in his official capacity. In this role, he must "formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(2).

LEGAL BACKGROUND

24. Section 2 of the Voting Rights Act prohibits any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). Thus, in addition to prohibiting practices that deny the exercise of the right to vote, Section 2 prohibits vote dilution.

25. A violation of Section 2 is established if "it is shown that the political processes leading to nomination or election" in the jurisdiction "are not equally open to participation by members of a [minority group] in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301(b).

26. Such a violation might be achieved by "cracking" or "packing" minority voters. To illustrate, the dilution of Black voting strength "may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters"—cracking—"or from the concentration of blacks into districts where they constitute an excessive majority"—packing. *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

27. In *Thornburg v. Gingles*, the U.S. Supreme Court identified three necessary preconditions for a claim of vote dilution under Section 2: (i) the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district"; (ii) the minority group must be "politically cohesive"; and (iii) the majority must vote "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.* at 50–51.

28. Once all three preconditions are established, Section 2 directs courts to consider whether, "based on the totality of circumstances," members of a racial minority "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b).

29. The Senate Report on the 1982 amendments to the Voting Rights Act identified several non-exclusive factors that courts should consider when

determining if, under the totality of circumstances in a jurisdiction, the operation of the challenged electoral device results in a violation of Section 2. *See Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1288–89 (11th Cir. 2020). These "Senate Factors" include:

a. the history of official voting-related discrimination in the state or political subdivision;

b. the extent to which voting in the elections of the state or political subdivision is racially polarized;

c. the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, or prohibitions against bullet-voting;

d. the exclusion of members of the minority group from candidate-slating processes;

e. the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;

f. the use of overt or subtle racial appeals in political campaigns; and

g. the extent to which members of the minority group have been elected to public office in the jurisdiction.

30. The Senate Report itself and the cases interpreting it have made clear that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1566 n.33 (11th Cir. 1984) (quoting S. Rep. No. 97-417, at 29 (1982)); *see also id.* at 1566 ("The statute explicitly calls for a 'totality-of-the circumstances' approach and the Senate Report indicates that no particular factor is an indispensable element of a dilution claim.").

FACTUAL BACKGROUND

The 2020 Census

31. Between 2010 and 2020, Georgia's population increased by more than 1 million people.

32. The population growth during this period is entirely attributable to the increase in Georgia's minority population. The 2020 census results indicate that Georgia's Black population grew by over 15 percent and now comprises 33 percent of Georgia's total population. Meanwhile, Georgia's white population *decreased* by 4 percent over the past decade. In total, Georgia's minority population now comprises just under 50 percent of the state's total population.

The 2021 Legislative Redistricting Plan

33. In enacting Georgia's new State Senate and House maps, the Republican-controlled General Assembly diluted the political power of the state's minority voters.

34. On November 9, 2021, the Georgia State Senate passed SB 1EX, which revised that chamber's district boundaries. The House passed SB 1EX on November 15.

35. On November 10, 2021, the Georgia House of Representatives passed HB 1EX, which revised that chamber's district boundaries; the State Senate passed HB 1EX on November 12.

36. On December 30, 2021, Governor Kemp signed SB 1EX and HB 1EX into law.

37. Democratic and minority legislators were largely excluded from the redistricting process and repeatedly decried the lack of transparency. Moreover, lawmakers and activists from across the political spectrum questioned the speed with which the General Assembly undertook its redistricting efforts, observing that the haste resulted in unnecessary divisions of communities and municipalities.

38. The Republican majority's refusal to draw districts that reflected the past decade's growth in the state's minority communities was noted by lawmakers.

Commenting on the new State Senate map, Senator Michelle Au observed, "It's our responsibility to ensure the people in this room are a good reflection of the people in this state. This map before us does not represent the Georgia of today. It does not see Georgia for who we have become." Senator Elena Parent remarked, "This map is designed to shore up the shrinking political power of the majority. As proposed, it fails to fairly reflect Georgians[']diversity."

39. Minority lawmakers in the House also objected to their chamber's new map, noting that it packed minority voters and diluted their voting strength.

40. Rather than create additional State Senate and House districts in which Georgia's growing minority populations would have the opportunity to elect candidates of their choice, the General Assembly did just the opposite: it packed and cracked Georgia's minority voters to dilute their influence.

41. SB 1EX packs some Black voters into the southern Atlanta metropolitan area and cracks others into rural-reaching, predominantly white State Senate districts. Specifically, Black voters in the southwestern Atlanta metropolitan area are packed into Senate Districts 34 and 35 and cracked into Senate Districts 16, 28, and 30. In the southeastern Atlanta metropolitan area, Black voters are packed into Senate Districts 10 and 44 and cracked into Senate Districts 17 and 25. Two additional majority-Black State Senate districts could be drawn in the southern

Atlanta metropolitan area without reducing the total number of minority-opportunity districts in the enacted map.

42. SB 1EX also cracks Black voters in the Black Belt among Senate Districts 23, 24, and 25. An additional majority-Black State Senate district could be drawn in this area without reducing the total number of minority-opportunity districts in the enacted map.

43. HB 1EX packs some Black voters into the southern and western Atlanta metropolitan area and cracks others into rural-reaching, predominantly white districts. Specifically, Black voters in the western Atlanta metropolitan area are packed into House District 61 and cracked into House District 64. In the southern Atlanta metropolitan area, Black voters are packed into House Districts 69, 75, and 78 and cracked into House Districts 74 and 117. Two additional majority-Black House districts could be drawn in the southern Atlanta metropolitan area, and one additional majority-Black House district in the western Atlanta metropolitan area, without reducing the total number of minority-opportunity districts in the enacted map.

44. HB 1EX further packs Black voters into two House districts anchored in Bibb County—House Districts 142 and 143—even though two additional majority-Black House districts could be drawn in this area by uncracking House

Districts 133, 144, 145, 147, and 149, without reducing the total number of minority-opportunity districts in the enacted map.

45. This combination of cracking and packing dilutes the political power of Black voters in the Atlanta metropolitan area and central Georgia. The General Assembly could have instead created additional, compact State Senate and House districts in which Black voters, including Plaintiffs, comprise a majority of eligible voters and have the opportunity to elect their preferred candidates, as required by Section 2 of the Voting Rights Act. Significantly, this could have been done without reducing the number of other districts in which Black voters have the opportunity to elect candidates of their choice.

46. Unless enjoined, SB 1EX and HB 1EX will deny Black voters throughout the state the opportunity to elect candidates of their choice.

47. The relevant factors and considerations readily require the creation of majority-Black districts under Section 2.

Racial Polarization

48. This Court has recognized that "voting in Georgia is highly racially polarized." *Ga. State Conf. of NAACP v. Georgia*, 312 F. Supp. 3d 1357, 1360 (N.D. Ga. 2018) (three-judge panel).

49. "Districts with large black populations are likely to vote Democratic." *Id.* Indeed, during competitive statewide elections over the past decade—from the 2012 presidential election through the 2021 U.S. Senate runoff elections—an average of 97 percent of Black Georgians supported the Democratic candidate.

50. White voters, by striking contrast, overwhelmingly vote Republican. An average of only 13 percent of white Georgians supported the Democratic candidate in competitive statewide elections over the past decade.

51. Georgia's white majority usually votes as a bloc to defeat minority voters' candidates of choice, including in the areas where Plaintiffs live and the Black population could be united to create a new majority-Black district.

History of Discrimination

52. Georgia's past discrimination against its Black citizens, including its numerous attempts to deny Black voters an equal opportunity to participate in the political process, is extensive and well documented. This prejudice is not confined to history books; the legacy of discrimination manifests itself today in state and local elections marked by racial appeals and undertones. And the consequences of the state's historic discrimination persist to this day, as Black Georgians continue to experience socioeconomic hardship and marginalization.

53. This history dates back to the post-Civil War era, when Black Georgians first gained the right to vote and voted in their first election in April 1868. Soon after this historic election, a *quarter* of the state's Black legislators were either jailed, threatened, beaten, or killed. In 1871, the General Assembly passed a resolution that expelled 25 Black representatives and three senators but permitted the four mixed-race members who did not "look" Black to keep their seats. The General Assembly's resolution was based on the theory that Black Georgians' right of suffrage did not give them the right to hold office, and that they were thus "ineligible" to serve under Georgia's post-Civil War state constitution.

54. After being denied the right to hold office, Black Georgians who attempted to vote also encountered intense and frequently violent opposition. The Ku Klux Klan and other white mobs engaged in a campaign of political terrorism aimed at deterring Black political participation. Their reigns of terror in Georgia included, for instance, attacking a Black political rally in Mitchell County in 1868, killing and wounding many of the participants; warning the Black residents of Wrightsville that "blood would flow" if they exercised their right to vote in an upcoming election; and attacking and beating a Black man in his own home to prevent him from voting in an upcoming congressional election.

55. In the General Assembly, fierce resistance to Black voting rights led to more discriminatory legislation. In 1871, Georgia became the first state to enact a poll tax. At the state's 1877 constitutional convention, the General Assembly made the poll tax permanent and cumulative, requiring citizens to pay all back taxes before being permitted to vote. The poll tax reduced turnout among Black voters in Georgia by half and has been described as the single most effective disenfranchisement law ever enacted. The poll tax was not abolished until 1945—after it had been in effect for almost 75 years.

56. After the repeal of the poll tax in 1945, voter registration among Black Georgians significantly increased. However, as a result of the state's purposeful voter suppression tactics, not a *single* Black lawmaker served in the General Assembly between 1908 and 1962.

57. Georgia's history of voter discrimination is far from ancient history. As recently as 1962, 17 municipalities and 48 counties in Georgia required segregated polling places. When the U.S. Department of Justice filed suit to end this practice, a local Macon leader declared that the federal government was ruining "every vestige of the local government."

58. Other means of disenfranchising Georgia's Black citizens followed. The state adopted virtually every one of the "traditional" methods to obstruct the

exercise of the franchise by Black voters, including literacy and understanding tests, strict residency requirements, onerous registration procedures, voter challenges and purges, the deliberate slowing down of voting by election officials so that Black voters would be left waiting in line when the polls closed, and the adoption of "white primaries."

59. Attempts to minimize Black political influence in Georgia have also tainted redistricting efforts. During the 1981 congressional redistricting process, in opposing a bill that would maintain a majority-Black district, Joe Mack Wilson—a Democratic state representative and chair of the House Reapportionment Committee—openly used racial epithets to describe the district; following a meeting with officials of the U.S. Department of Justice, he complained that "the Justice Department is trying to make us draw [n*****] districts and I don't want to draw [n*****] districts." Speaker of the House Tom Murphy objected to creating a district where a Black representative would certainly be elected and refused to appoint any Black lawmakers to the conference committee, fearing that they would support a plan to allow Black voters to elect a candidate of their choice. Several senators also expressed concern about being perceived as supporting a majority-Black congressional district.

60. Indeed, federal courts have invalidated Georgia's redistricting plans for voting rights violations numerous times. In *Georgia v. United States*, the U.S. Supreme Court affirmed a three-judge panel's decision that Georgia's 1972 reapportionment plan violated Section 5 of the Voting Rights Act, at least in part because it diluted the Black vote in an Atlanta-based congressional district in order to ensure the election of a white candidate. *See* 411 U.S. 526, 541 (1973); *see also Busbee v. Smith*, 549 F. Supp. 494, 517 (D.D.C. 1982) (three-judge panel) (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); *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) (per curiam) (three-judge panel) (invalidating legislative plans that reduced number of majority-minority districts).

61. Due to its lengthy history of discrimination against racial minorities, Georgia became a "covered jurisdiction" under Section 5 of the Voting Rights Act upon its enactment in 1965, prohibiting any changes to Georgia's election practices or procedures (including the enactment of new redistricting plans) until either the U.S. Department of Justice or a federal court determined that the change did not result in backsliding, or "retrogression," of minority voting rights.

62. Accordingly, between 1965 and 2013—at which time the U.S. Supreme Court effectively barred enforcement of the Section 5 preclearance requirement in *Shelby County v. Holder*, 570 U.S. 529 (2013)—Georgia received more than 170 preclearance objection letters from the U.S. Department of Justice.

63. Georgia's history of racial discrimination in voting, here only briefly recounted, has been thoroughly documented by historians and scholars. Indeed, "[t]he history of the state['s] segregation practice and laws at all levels has been rehashed so many times that the Court can all but take judicial notice thereof." *Brooks v. State Bd. of Elections*, 848 F. Supp. 1548, 1560 (S.D. Ga. 1994); *see also, e.g., Fair Fight Action, Inc. v. Raffensperger*, No. 1:18-CV-5391-SCJ, slip op. at 41 (N.D. Ga. Nov. 15, 2021), ECF No. 636 (taking judicial notice of fact that "prior to the 1990s, Georgia had a long sad history of racist policies in a number of areas including voting").

64. Ultimately, as this Court has noted, "Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather than the exception." *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*,

950 F. Supp. 2d 1294, 1314 (N.D. Ga. 2013) (quoting *Brooks*, 848 F. Supp. at 1560), *aff'd in part, rev'd in part on other grounds*, 775 F.3d 1336 (11th Cir. 2015).

Use of Racial Appeals in Political Campaigns

65. In addition to Georgia's history of discrimination against minorities in voting, political campaigns in the state have often relied on both overt and subtle racial appeals—both historically *and* during recent elections.

66. In 2016, Tom Worthan, former Republican Chair of the Douglas County Board of Commissioners, was caught on video making racist comments aimed at discrediting his Black opponent, Romona Jackson-Jones, and a Black candidate for sheriff, Tim Pounds. During the recorded conversation with a Douglas County voter, Worthan asked, "Do you know of another government that's more black that's successful? They bankrupt you." Worthan also stated, in reference to Pounds, "I'd be afraid he'd put his black brothers in positions that maybe they're not qualified to be in."

67. In the 2017 special election for Georgia's Sixth Congressional District—a majority-white district that had over the previous three decades been represented by white Republicans Newt Gingrich, Johnny Isakson, and Tom Price—the husband of the eventual Republican victor, Karen Handel, shared an image over social media that urged voters to "[f]ree the black slaves from the Democratic

plantation." The image also stated, "Criticizing black kids for obeying the law, studying in school, and being ambitious as 'acting white' is a trick the Democrats play on Black people to keep them poor, ignorant and dependent." The image was then shared widely by local and national media outlets.

68. During that same election, Jere Wood—the Republican Mayor of Roswell, Georgia's eighth-largest city—insinuated that voters in the Sixth Congressional District would not vote for Democratic candidate Jon Ossoff because he has an "ethnic-sounding" name. When describing voters in that district, Wood said, "If you just say 'Ossoff,' some folks are gonna think, 'Is he Muslim? Is he Lebanese? Is he Indian?' It's an ethnic-sounding name, even though he may be a white guy, from Scotland or wherever."[2]

69. On a separate occasion, State Senator Fran Millar alluded to the fact that the Sixth Congressional District was gerrymandered in such a way that it would not support candidate Ossoff—specifically, because he was formerly an aide to a Black member of Congress. State Senator Millar said, "I'll be very blunt. These lines

[2] In actuality, now-U.S. Senator Ossoff's paternal forebears were Ashkenazi Jewish immigrants who fled pogroms during the early 20th century. *See* Etan Nechin, *Jon Ossoff Tells Haaretz How His Jewish Upbringing Taught Him to Fight for Justice*, Haaretz (Dec. 20, 2020), https://www.haaretz.com/us-news/.premium-jon-ossoff-tells-haaretz-how-his-jewish-upbringing-taught-him-to-fight-for-justice-1.9386302.

were not drawn to get Hank Johnson's protégé to be my representative. And you didn't hear that. They were not drawn for that purpose, OK? They were not drawn for that purpose."

70. Earlier in 2017, Tommy Hunter, a member of the board of commissioners in Gwinnett County—the second-most populous county in the state—called the late Black Congressman John Lewis a "racist pig" and suggested that his reelection to the U.S. House of Representatives was "illegitimate" because he represented a majority-minority district.

71. Racist robocalls targeted the Democratic candidate for governor in 2018, referring to Stacey Abrams as "Negress Stacey Abrams" and "a poor man's Aunt Jemima." The Republican candidate, now-Governor Kemp, posted a statement on Twitter on the eve of the election alleging that the Black Panther Party supported Ms. Abrams's candidacy.

72. Governor Kemp also ran a controversial television advertisement during the primary campaign asserting that he owned "a big truck, just in case [he] need[s] to round up criminal illegals and take 'em home [him]self."

73. The 2020 campaigns for Georgia's two U.S. Senate seats were also rife with racial appeals. In one race, Republican incumbent Kelly Loeffler ran a paid advertisement on Facebook that artificially darkened the skin of her Democratic

opponent, now-Senator Raphael Warnock. In the other race, Republican incumbent David Perdue ran an advertisement against Democratic nominee Ossoff that employed a classic anti-Semitic trope by artificially enlarging now-Senator Ossoff's nose.

74. Senator Perdue later mispronounced and mocked the pronunciation of then-Senator Kamala Harris's first name during a campaign rally, even though the two had been colleagues in the Senate since 2017.

75. Racial appeals were apparent during local elections in Fulton County even within the last few months. City council candidates in Johns Creek and Sandy Springs pointed to Atlanta crime and protests that turned violent to try to sway voters, publicly urging residents to vote for them or risk seeing their cities become home to chaos and lawlessness. *The Atlanta Journal-Constitution* quoted Emory University political scientist Dr. Andra Gillespie, who explained that although the term "law and order" is racially neutral, the issue becomes infused with present-day cultural meaning and thoughts about crime and violence and thus carries racial undertones.

76. These are just a few—and, indeed, only among the more recent—examples of the types of racially charged political campaigns that have tainted elections in Georgia throughout the state's history.

Ongoing Effects of Georgia's History of Discrimination

77. State-sponsored segregation under Georgia's Jim Crow laws permeated all aspects of daily life and relegated Black citizens to second-class status. State lawmakers segregated everything from public schools to hospitals and graveyards. Black Georgians were also precluded from sitting on juries, which effectively denied Black litigants equal justice under the law. Moreover, Black Georgians were excluded from the most desirable manufacturing jobs, which limited their employment opportunities to primarily unskilled, low-paying labor. And in times of economic hardship, Black employees were the first to lose their jobs.

78. Decades of Jim Crow and other forms of state-sponsored discrimination—followed by continued segregation of public facilities well into the latter half of the 20th century, in defiance of federal law—resulted in persistent socioeconomic disparities between Black and white Georgians. These disparities hinder the ability of voters in each of these groups to participate effectively in the political process.

79. Black Georgians, for instance, have higher poverty rates than white Georgians. According to the U.S. Census Bureau's 2019 American Community Survey ("ACS") 1-Year Estimate, 18.8 percent of Black Georgians have lived below the poverty line in the past 12 months, compared to 9 percent of white Georgians.

80. Relatedly, Black Georgians have lower per capita incomes than white Georgians. The 2019 ACS 1-Year Estimate shows that white Georgians had an average per capita income of $40,348 over the past 12 months, compared to $23,748 for Black Georgians.

81. Black Georgians also have lower homeownership rates than white Georgians. The 2019 ACS 1-Year Estimate shows that 52.6 percent of Black Georgians live in renter-occupied housing, compared to 24.9 percent of white Georgians. And Black Georgians also spend a higher percentage of their income on rent than white Georgians. The 2019 ACS 1-Year Estimate shows that in Georgia, the percent of income spent on rent is a staggering 54.9 percent for Black Georgians, compared to 40.6 percent for white Georgians.

82. Black Georgians also have lower levels of educational attainment than their white counterparts and are less likely to earn degrees. According to the 2019 ACS 1-Year Estimate, only 25 percent of Black Georgians have obtained a bachelor's degree or higher, compared to 37 percent of white Georgians.

83. These disparities impose hurdles to voter participation, including working multiple jobs, working during polling place hours, lack of access to childcare, lack of access to transportation, and higher rates of illness and disability.

All of these hurdles make it more difficult for poor and low-income voters to participate effectively in the political process.

CAUSES OF ACTION

COUNT I:
SB 1EX Violates Section 2 of the Voting Rights Act

84. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

85. Section 2 of the Voting Rights Act prohibits the enforcement of any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or" membership in a language minority group. 52 U.S.C. § 10301(a).

86. The Georgia State Senate district boundaries, as currently drawn, crack and pack minority populations with the effect of diluting their voting strength, in violation of Section 2 of the Voting Rights Act.

87. Black Georgians in the southern Atlanta metropolitan area and the central Georgia Black Belt region are sufficiently numerous and geographically compact to constitute a majority of eligible voters in three additional State Senate districts, without reducing the number of minority-opportunity districts already included in the enacted map.

88. Under Section 2 of the Voting Rights Act, the General Assembly was required to create three additional State Senate districts in which Black voters in these areas would have the opportunity to elect their candidates of choice.

89. Black voters in Georgia, particularly in and around these areas, are politically cohesive. Elections in these areas reveal a clear pattern of racially polarized voting that allows blocs of white voters usually to defeat Black voters' preferred candidates.

90. The totality of the circumstances establishes that the current State Senate map has the effect of denying Black voters an equal opportunity to participate in the political process and elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.

91. By engaging in the acts and omissions alleged herein, Defendants have acted and continue to act to deny Plaintiffs' rights guaranteed by Section 2 of the Voting Rights Act. Defendants will continue to violate those rights absent relief granted by this Court.

COUNT II:
HB 1EX Violates Section 2 of the Voting Rights Act

92. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

93. The Georgia House of Representative district boundaries, as currently drawn, crack and pack minority populations with the effect of diluting their voting strength, in violation of Section 2 of the Voting Rights Act.

94. Black Georgians in the southern and western Atlanta metropolitan area and central Georgia are sufficiently numerous and geographically compact to constitute a majority of eligible voters in five additional House districts, without reducing the number of minority-opportunity districts already included in the enacted map.

95. Under Section 2 of the Voting Rights Act, the General Assembly was required to create five additional House districts in which Black voters in these areas would have the opportunity to elect their candidates of choice.

96. Black voters in Georgia, particularly in and around these areas, are politically cohesive. Elections in these areas reveal a clear pattern of racially polarized voting that allows blocs of white voters usually to defeat Black voters' preferred candidates.

97. The totality of the circumstances establishes that the current House map has the effect of denying Black voters an equal opportunity to participate in the political process and elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.

98. By engaging in the acts and omissions alleged herein, Defendants have acted and continue to act to deny Plaintiffs' rights guaranteed by Section 2 of the Voting Rights Act. Defendants will continue to violate those rights absent relief granted by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

A. Declare that SB 1EX and HB 1EX violate Section 2 of the Voting Rights Act;

B. Enjoin Defendants, as well as their agents and successors in office, from enforcing or giving any effect to the boundaries of the Georgia State Senate districts as drawn in SB 1EX and the boundaries of the Georgia House of Representatives districts as drawn in HB 1EX, including an injunction barring Defendants from conducting any further legislative elections under the current maps;

C. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to order the adoption of a valid legislative redistricting plan that includes three additional Georgia State Senate districts and five additional Georgia House of Representatives districts in which Black voters would have opportunities to elect their preferred candidates, as required by

Section 2 of the Voting Rights Act, without reducing the number of minority-opportunity districts currently in SB 1EX and HB 1EX;

D. Grant such other or further relief the Court deems appropriate, including but not limited to an award of Plaintiffs' attorneys' fees and reasonable costs.

Dated: January 11, 2022

Respectfully submitted,

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**Pro hac vice* application forthcoming

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

DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT

Defendants Brad Raffensperger, in his official capacity as Secretary of the State of Georgia; and Sara Tindall Ghazal, Janice Johnston, Edward Lindsey, and Matthew Mashburn, in their official capacities as members of the State Election Board (collectively, the "Defendants"), answer Plaintiffs' Complaint [Doc. 1] (the "Complaint") as follows:

FIRST AFFIRMATIVE DEFENSE

The allegations in Plaintiffs' Complaint fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred for failure to name necessary and indispensable parties.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs lack constitutional standing to bring this action.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs lack statutory standing to bring this action.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' federal claims against Defendants are barred by the Eleventh Amendment to the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by sovereign immunity.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because Section 2 of the Voting Rights Act provides no provide right of action.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because they should be heard by a three-judge panel.

NINTH AFFIRMATIVE EFENSE

Defendants deny that Plaintiffs have been subjected to the deprivation of any right, privilege, or immunity under the Constitution or laws of the United States.

TENTH AFFIRMATIVE DEFENSE

Defendants reserve the right to amend their defenses and to add additional ones, including lack of subject matter jurisdiction based on the mootness or ripeness doctrines, as further information becomes available in discovery.

Defendants answer the specific numbered paragraphs of Plaintiffs' Complaint as follows:

1. Paragraph 1 of the Complaint sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

2. Defendants deny the allegations set forth in Paragraph 2 of the Complaint.

3. Defendants deny the allegations set forth in Paragraph 3 of the Complaint.

4. Defendants deny the allegations set forth in Paragraph 4 of the Complaint.

5. Paragraph 5 of the Complaint sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

6. Defendants deny the allegations set forth in Paragraph 6 of the Complaint.

7. Paragraph 7 of the Complaint sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied and Defendants further deny that Plaintiffs are entitled to any relief.

8. Defendants admit that this Court has federal-question jurisdiction for claims arising under the Voting Rights Act. Defendants deny the remaining allegations set forth in Paragraph 8 of the Complaint.

9. Defendants deny the allegations set forth in Paragraph 9 of the Complaint.

10. Defendants admit the allegations set forth in Paragraph 10 of the Complaint.

11. The allegations in Paragraph 11 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

12. The allegations in Paragraph 12 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

13. The allegations in Paragraph 13 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

14. The allegations in Paragraph 14 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

15. The allegations in Paragraph 15 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

16. The allegations in Paragraph 16 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

17. The allegations in Paragraph 17 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

18. The allegations in Paragraph 18 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

19. Defendants admit that Secretary Raffensperger is the Secretary of State of Georgia and that the Secretary of State is designated by statute as the chief election official. Defendants further admit that the Secretary has responsibilities under law related to elections. Defendants deny the remaining allegations contained in Paragraph 19 of the Complaint.

20. Defendants admit that Sara Tindall Ghazal is a member of the State Election Board and is named in her official capacity. Defendants further admit that the duties of members of the State Election Board are set forth in statute and refer the Court to the cited authority for a full and accurate statement of its contents and deny any allegations inconsistent

therewith. Defendants deny the remaining allegations contained in Paragraph 20 of the Complaint.

21. Defendants deny that Anh Le is a member of the State Election Board, but further state that Janice Johnston replaced her. Defendants further admit that the duties of members of the State Election Board are set forth in statute and refer the Court to the cited authority for a full and accurate statement of its contents and deny any allegations inconsistent therewith. Defendants deny the remaining allegations contained in Paragraph 21 of the Complaint.

22. Defendants admit that Edward Lindsey is a member of the State Election Board and is named in his official capacity. Defendants further admit that the duties of members of the State Election Board are set forth in statute and refer the Court to the cited authority for a full and accurate statement of its contents and deny any allegations inconsistent therewith. Defendants deny the remaining allegations contained in Paragraph 22 of the Complaint.

23. Defendants admit that Matthew Mashburn is a member of the State Election Board and is named in his official capacity. Defendants further admit that the duties of members of the State Election Board are set forth in statute and refer the Court to the cited authority for a full and accurate

statement of its contents and deny any allegations inconsistent therewith. Defendants deny the remaining allegations contained in Paragraph 23 of the Complaint.

24. Paragraph 24 of the Complaint sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

25. Paragraph 25 of the Complaint sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

26. Paragraph 26 of the Complaint sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

27. Paragraph 27 of the Complaint sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

28. Paragraph 28 of the Complaint sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

29. Paragraph 29 of the Complaint and its subparagraphs set forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

30. Paragraph 30 of the Complaint sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

31. Defendants admit the allegations set forth in Paragraph 31 of the Complaint.

32. Defendants admit that, as a percentage of the electorate, the white percentage has decreased and the percentage of voters of color has increased over the last ten years. The remaining allegations in Paragraph 32 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

33. Defendants deny the allegations set forth in Paragraph 33 of the Complaint.

34. Defendants admit the allegations set forth in Paragraph 34 of the Complaint.

35. Defendants admit the allegations set forth in Paragraph 35 of the Complaint.

36. Defendants admit the allegations set forth in Paragraph 36 of the Complaint.

37. Defendants deny the allegations set forth in Paragraph 37 of the Complaint.

38. Defendants admit that Democratic members of the General Assembly opposed the as-passed redistricting plans and made public comments indicating that opposition. Defendants deny the remaining allegations set forth in Paragraph 38 of the Complaint.

39. Defendants admit that Democratic members of the General Assembly opposed the as-passed redistricting plans and made public comments indicating that opposition. Defendants deny the remaining allegations set forth in Paragraph 39 of the Complaint.

40. Defendants deny the allegations set forth in Paragraph 40 of the Complaint.

41. Defendants deny the allegations set forth in Paragraph 41 of the Complaint.

42. Defendants deny the allegations set forth in Paragraph 42 of the Complaint.

43. Defendants deny the allegations set forth in Paragraph 43 of the Complaint.

44. Defendants deny the allegations set forth in Paragraph 44 of the Complaint.

45. Defendants deny the allegations set forth in Paragraph 45 of the Complaint.

46. Defendants deny the allegations set forth in Paragraph 46 of the Complaint.

47. Defendants deny the allegations set forth in Paragraph 47 of the Complaint.

48. Paragraph 48 of the Complaint sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. Defendants admit that Black and white voters in Georgia vote in blocs and prefer different candidates. The remaining allegations in this Paragraph are denied.

49. Defendants admit that Black and white voters in Georgia vote in blocs and prefer different candidates. Defendants deny the remaining allegations set forth in Paragraph 49 of the Complaint.

50. Defendants admit that Black and white voters in Georgia vote in blocs and prefer different candidates. Defendants deny the remaining allegations set forth in Paragraph 50 of the Complaint.

51. Defendants admit that Black and white voters in Georgia vote in blocs and prefer different candidates. Defendants deny the remaining allegations set forth in Paragraph 51 of the Complaint.

52. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. Defendants deny the remaining allegations set forth in Paragraph 52 of the Complaint.

53. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 53 of the Complaint set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

54. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 54 of the Complaint set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

55. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 55 of the Complaint set forth legal conclusions to which no

response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

56. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 56 of the Complaint set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

57. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 57 of the Complaint set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

58. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 58 of the Complaint set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

59. Defendants admit that Democratic representatives in the 1981 redistricting process sought to minimize Black political influence in Georgia The remaining allegations of Paragraph 59 of the Complaint set forth legal

conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

60. Defendants admit that plans drawn when Democrats controlled Georgia government were objected to in 1971, 1981, 1991, and 2001 and that redistricting plans drawn when Democrats controlled Georgia government were rejected as unconstitutional in 2004. The remaining allegations of Paragraph 60 of the Complaint set forth legal conclusions to which no response is required and, therefore, Defendants deny the same.

61. Defendants admit that, prior to 2013, Georgia was a covered jurisdiction under Section 4 of the Voting Rights Act and was required to seek preclearance of election laws prior to enforcement. The remaining allegations in Paragraph 61 set forth legal conclusions to which no response is required and, therefore, Defendants deny the same.

62. Defendants admit that, prior to 2013, Georgia was a covered jurisdiction under Section 4 of the Voting Rights Act and was required to seek preclearance of election laws prior to enforcement. The remaining allegations in Paragraph 62 set forth legal conclusions to which no response is required and, therefore, Defendants deny the same.

63. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of

Paragraph 63 of the Complaint set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

64. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 64 of the Complaint set forth legal conclusions to which no response is required and, therefore, Defendants deny the same.

65. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 65 of the Complaint set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

66. The allegations in Paragraph 66 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

67. The allegations in Paragraph 67 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

68. The allegations in Paragraph 68 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

69. The allegations in Paragraph 69 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

70. The allegations in Paragraph 70 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

71. The allegations in Paragraph 71 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

72. The allegations in Paragraph 72 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

73. The allegations in Paragraph 73 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

74. The allegations in Paragraph 74 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

75. The allegations in Paragraph 75 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

76. The allegations in Paragraph 76 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

77. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 77 of the Complaint set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

78. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 78 of the Complaint set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

79. The allegations in Paragraph 79 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

80. The allegations in Paragraph 80 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

81. The allegations in Paragraph 81 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

82. The allegations in Paragraph 82 of the Complaint are outside Defendants' knowledge and are therefore denied on that basis.

83. Defendants deny the allegations set forth in Paragraph 83 of the Complaint.

84. Defendants incorporate their responses to Paragraphs 1 through 83 as if fully set forth herein.

85. Paragraph 85 of the Complaint sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same.

86. Defendants deny the allegations set forth in Paragraph 86 of the Complaint.

87. Defendants deny the allegations set forth in Paragraph 86 of the Complaint.

88. Defendants deny the allegations set forth in Paragraph 88 of the Complaint.

89. Defendants deny the allegations set forth in Paragraph 89 of the Complaint.

90. Defendants deny the allegations set forth in Paragraph 90 of the Complaint.

91. Defendants deny the allegations set forth in Paragraph 91 of the Complaint.

92. Defendants incorporate their responses to Paragraphs 1 through 91 as if fully set forth herein.

93. Defendants deny the allegations set forth in Paragraph 93 of the Complaint.

94. Defendants deny the allegations set forth in Paragraph 94 of the Complaint.

95. Defendants deny the allegations set forth in Paragraph 95 of the Complaint.

96. Defendants deny the allegations set forth in Paragraph 96 of the Complaint.

97. Defendants deny the allegations set forth in Paragraph 97 of the Complaint.

98. Defendants deny the allegations set forth in Paragraph 98 of the Complaint.

Prayer for Relief

Defendants deny that Plaintiffs are entitled to any relief they seek. Defendants further deny every allegation not specifically admitted in this Answer.

Respectfully submitted this 25th day of February, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing DEFENDANTS' ANSWER TO PLAINTIFFS' COMPLAINT 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

No. 24-10241

In the United States Court of Appeals for the Eleventh Circuit

ANNIE LOIS GRANT, et al.,
Plaintiffs-Appellants,

v.

SECRETARY OF STATE OF GEORGIA,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Georgia
No. 1:21-cv-00122—Steve C. Jones, Judge

APPELLANTS' APPENDIX VOLUME II OF VIII

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Docket/Tab #

Volume VII

Volume VIII

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

ALPHA PHI ALPHA FRATERNITY INC., et al.,
Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia,
Defendant.

CIVIL ACTION FILE

No. 1:21-CV-5337-SCJ

COAKLEY PENDERGRASS, et al.,
Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,
Defendants.

CIVIL ACTION FILE

No. 1:21-CV-5339-SCJ

ANNIE LOIS GRANT, et al.,
Plaintiffs,

v.

BRAD RAFFENSPERGER, et al.,
Defendants.

CIVIL ACTION FILE

No. 1:22-CV-122-SCJ

ORDER FOLLOWING COORDINATED HEARING ON MOTIONS FOR PRELIMINARY INJUNCTION

TABLE OF CONTENTS

ORDER[1]

This matter appears before the Court on the pending Motions for Preliminary Injunction filed in the above-stated cases concerning the legality of the State of Georgia's newly adopted redistricting plans. APA Doc. No. [39],

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[1] In the interest of judicial economy, the Court issues a single order that will be filed by the Clerk in each of the above-stated cases. The Court's issuance of this single order does not imply or reflect any intention of the court to consolidate these cases under Federal Rule of Civil Procedure 42 or otherwise.

For reference, the following citations are used for support for each of the findings below:

Citation	Document Type
APA Doc. No. [ ]	Docket entry from Alpha Phi Alpha
Grant Doc. No. [ ]	Docket entry from Grant
Pendergrass Doc. [ ]	Docket entry from Pendergrass
Tr.	Transcript of the preliminary injunction hearing held February 7–14, 2022 in all three cases and filed at APA Doc. Nos. [106–117]; Grant Doc. Nos. [68–79]; Pendergrass Doc. Nos. [73–75, 77–85].
DX	Defendants' Exhibits
APAX	Alpha Phi Alpha Plaintiffs' Exhibits
GPX	Grant/Pendergrass Plaintiffs' Exhibits
APA Stip.	Alpha Phi Alpha joint stipulated facts filed at APA Doc. No. [94]
Grant Stip.	Grant joint stipulated facts filed at Grant Doc. No. [56]
Pendergrass Stip.	Pendergrass joint stipulated facts filed at Pendergrass Doc. No. [63]

Grant Doc. No. [19], Pendergrass Doc. No. [32]. In considering this important matter, the Court has had the benefit of thousands of pages of briefing and evidence, as well as the testimony of numerous fact and expert witnesses the Court observed over a six-day hearing on this matter. After careful review and consideration, the Court finds that while the plaintiffs have shown that they are likely to ultimately prove that certain aspects of the State's redistricting plans are unlawful, preliminary injunctive relief is not in the public's interest because changes to the redistricting maps at this point in the 2022 election schedule are likely to substantially disrupt the election process. As a result, the Court will not grant the requests for preliminary injunctive relief.

The Court's analysis proceeds as follows. First, the Court discusses redistricting, voting rights law, and the factual and procedural backgrounds of the above-stated actions. Second, the Court provides the relevant legal standard and discusses the voting rights legislation and case law that guides this Court's analysis. Finally, the Court provides its findings of fact and conclusions of law, which includes the Court's credibility determinations of expert witnesses as well as the Court's analysis under the pertinent law.

I. BACKGROUND

Long ago, the United States Supreme Court in Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886). described the "political franchise of voting" as "a fundamental political right, [] preservative of all rights." Our sister court in the Northern District of Alabama therefore aptly expanded: "Voting is an inviolable right, occupying a sacred place in the lives of those who fought to secure the right and in our democracy, because it is 'preservative of all rights.'" People First of Ala. v. Merrill, 491 F. Supp. 3d 1076, 1091 (N.D. Ala. 2020) (quoting Yick Wo, 118 U.S. at 370), appeal dismissed sub nom. People First of Ala. v. Sec'y of State for Ala., No. 20-13695-GG, 2020 WL 7038817 (11th Cir. Nov. 13, 2020), and appeal dismissed, No. 20-13695-GG, 2020 WL 7028611 (11th Cir. Nov. 16, 2020).

In the three cases before the Court, each set of Plaintiffs argues that their voting rights have been violated by the redistricting plans recently adopted by the State of Georgia in the wake of the 2020 Census. The Court thus approaches this case "with caution, bearing in mind that these circumstances involve 'one of the most fundamental rights of . . . citizens: the right to vote.'" Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs, 775 F.3d 1336, 1345 (11th Cir. 2015) (citations omitted).

A. What Is Redistricting and Why Is It Necessary?

The country's system of elections is based on the principle of "one person, one vote" espoused by the Supreme Court in Baker v. Carr, 369 U.S. 186 (1962). As a result, and because our federal system of government is representative when people are drawn into electoral districts, those districts must have equal populations. Karcher v. Daggett, 462 U.S. 725, 730 (1983) ("Article I, § 2 establishes a 'high standard of justice and common sense' for the apportionment of congressional districts: 'equal representation for equal numbers of people.'" (quoting Wesberry v. Sanders, 376 U.S. 1, 18 (1964))). Otherwise, the voting strength of people who live in districts with large populations will be diluted compared to those who live in districts with smaller populations. The Supreme Court has therefore held that in elections for members of the United States House of Representatives, "the command of Art. I, § 2 [of the Constitution], that Representatives be chosen 'by the People of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." Wesberry, 376 U.S. at 7–8 (footnotes omitted) (citations omitted). This principle has also been extended to state legislative bodies: "[A]s a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral

state legislature must be apportioned on a population basis." Reynolds v. Sims, 377 U.S. 533, 568 (1964).

The number of people who must be in a particular electoral district depends on which legislative office the district is designed to cover. For instance, the U.S. Constitution prescribes that for the House of Representatives, "[t]he Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative." U.S. Const. art. I, § 2, cl. 3. When district populations are not equal, the districts are malapportioned. Because populations naturally shift and change over time, district boundaries must be adjusted periodically to correct any malapportionment. This "[r]ealignment of a legislative district's boundaries to reflect changes in population and ensure proportionate representation by elected officials" is known as reapportionment or redistricting. Reapportionment, Black's Law Dictionary (11th ed. 2019) (citing U.S. Const. art. I, § 2, cl. 3); redistricting, Black's Law Dictionary (11th ed. 2019). The U.S. Constitution requires that reapportionment for members of the U.S. House of Representatives occur every ten years, based on the Decennial Census. U.S. Const. art. I, § 2, cl. 3; id., amend XIV, § 2. Likewise, the Georgia Constitution

requires that the Senate and House districts of the General Assembly be reapportioned after each Decennial Census. Ga. Const. art. III, § 2, ¶ II.

B. Factual History

All of this explains why it was necessary, after the results of the 2020 Census became available, for the Georgia General Assembly to pass laws reapportioning districts for the U.S. House of Representatives (SB 2EX), the Georgia Senate (SB 1EX), and the Georgia House (HB 1EX). Each of these provisions was signed into law by Governor Brian Kemp on December 30, 2021. Plaintiffs' claims all stem from that redistricting process, but they do not claim that the districts are malapportioned. Rather, their claims are based on the alleged improper dilution of their votes tied to race.

Within hours of Governor Kemp signing SB 2EX, SB 1EX, and HB 1EX into law, Plaintiffs in Alpha Phi Alpha v. Raffensperger, No. 1:21-cv-05337-SCJ (Alpha Phi Alpha) and Pendergrass v. Raffensperger, No. 1:21-cv-05339-SCJ (Pendergrass), filed suit. Ultimately, between December 30, 2021, and January 11, 2022, the three cases at issue here were filed against State of Georgia officials, alleging these redistricting plans (collectively, the "Enacted Plans") violated Section 2 of the Voting Rights Act of 1965.

The Alpha Phi Alpha Plaintiffs challenge certain State Senate and State House districts in the Enacted Plans. Specifically, they challenge Senate Districts 16, 17, and 23 in the Enacted State Senate Plan (SB 1EX), and House Districts 74, 114, 117, 118, 124, 133, 137, 140, 141, 149, 150, 153, 154, and 155, in the Enacted State House Plan (HB 1EX). APA Doc. No. [1], ¶¶ 64–66, 70–74. The Alpha Phi Alpha Plaintiffs contend that the Enacted State Senate and House Plans fail to include additional majority-minority districts (i.e., districts in which the majority of the voting-age population is Black) that would give Black voters the opportunity to elect their preferred candidates. Instead, they assert Black voters have been heavily "packed" into certain districts and split up into predominantly white districts (i.e., "cracked") in other areas. See generally APA Doc. No. [1].

The Grant v. Raffensperger, No. 1:22-cv-00122-SCJ (Grant) Plaintiffs, likewise challenge the Enacted State Senate and House Plans. Specifically, the Grant Plaintiffs challenge Senate Districts 10, 16, 17, 23, 24, 25, 28, 30, 34, 35 in the Enacted State Senate Plan, and House Districts 61, 64, 69, 74, 75, 78, 117, 133, 142, 143, 144, 145, 147, and 149 in the Enacted State House Plan. Grant Doc. No. [1], ¶¶ 41–44. They argue the General Assembly should have drawn three

additional majority-minority State Senate districts and five State House districts. See generally Grant Doc. No. [1].

Finally, the Pendergrass Plaintiffs, challenges certain congressional districts in the Congressional Enacted Plan. Specifically, the Pendergrass Plaintiffs challenge congressional Districts 3, 6, 11, 13, and 14. Pendergrass Doc. No. [1], ¶ 35. The Pendergrass Plaintiffs allege that SB 2EX should have included an additional majority-minority district in the western Atlanta metropolitan area.

Each set of Plaintiffs contends these failures to draw additional majority-minority districts violates Section 2 of the Voting Rights Act of 1965.

C. The Purpose of the Voting Rights Act and the Conduct It Prohibits

"The Fifteenth Amendment was ratified in 1870, in the wake of the Civil War. It provides that '[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude,' and it gives Congress the 'power to enforce this article by appropriate legislation.'" Shelby Cnty., Ala. v. Holder, 570 U.S. 529, 536 (2013). Even after the adoption of this amendment, however, many discriminatory systems—including violence—were used to deprive Blacks (among others) of their right to vote.

One particularly extreme use of such violence took place on Sunday, March 7, 1965 ("Bloody Sunday"). On that day, civil rights proponents began marching from Selma, Alabama to Montgomery, Alabama for, among other things, the right to vote. After crossing the Edmund Pettus Bridge, the marchers were attacked by state troopers and civilians, an event that was televised across America. The Bloody Sunday attack caused public outrage. See James D. Wascher, Recognizing the 50th Anniversary of the Voting Rights Act, Fed. Law., May 2015, at 41 (hereinafter, "Wascher") (citing Richard H. Pildes, *Introduction*, in The Future of the Voting Rights Act xi, (David L. Epstein, et al., eds., 2006)). Shortly thereafter, Congress passed the Voting Rights Act of 1965 ("VRA"). It was signed into law on August 6 of that year. Pub. L. No. 89-110, 79 Stat. 437 (1965) (codified as amended at 52 U.S.C. §§ 10301–10702). The VRA was adopted specifically "[t]o enforce the fifteenth amendment to the Constitution of the United States." Id. Many commentators have "rightly called [it] the most effective civil rights legislation ever adopted." Wascher at 38; see also Terrye Conroy, The Voting Rights Act of 1965: A Selected Annotated Bibliography, 98 Law Libr. J. 663, 663 (2006) (stating that the VRA "is widely considered one of the most important and successful civil rights laws ever enacted").

While the VRA has been amended several times, as originally adopted, Section 2 prohibited practices that denied or abridged the right to vote "on account of" race or color. Section 4 contained an automatic trigger for the review of new voting laws or practices adopted in certain locations that had a history of using discriminatory voting tests or devices (such as poll taxes or literacy requirements) (the "coverage formula"). The entire State of Georgia was among these "covered jurisdictions." Under Section 5, covered jurisdictions were required to submit new voting procedures or practices for prior approval ("preclearance") by the Department of Justice or a district court panel of three judges. See Wascher at 41. The VRA thus "employed extraordinary measures to address an extraordinary problem." Shelby Cnty., 570 U.S. at 534.

In 2013, the Supreme Court held that the coverage formula was no longer constitutional because it had not been reformulated since 1975. Shelby Cnty., 570 U.S. at 538, 556–57. As a result, the State of Georgia is no longer a covered jurisdiction. The current round of redistricting is the first to be done as a result of a Decennial Census after the Shelby County ruling. Thus, this is the first time in over fifty years in which Georgia has redistricted following the Decennial Census without having to seek preclearance. But Shelby County "in no way

affect[ed] the permanent, nationwide ban on racial discrimination in voting found in § 2." Shelby Cnty., 570 U.S. at 557. And it is Section 2 on which the Plaintiffs in these three cases predicate their claims.

D. Timeline

Due to the serious time exigencies surrounding the fair and timely resolution of these cases, including the provisions of Georgia's election law that set various deadlines applicable to the upcoming 2022 elections, the Court moved expeditiously to hold a Rule 16 Status Conference on January 12, 2022. APA Doc. No. [8]; Pendergrass Doc. No. [15].

Following the Status Conference, the Court set the following schedule for briefing on motions to dismiss in all three matters: Motions to Dismiss were due by 5:00 PM EST on January 14, 2022; Responses were due by 5:00 PM on January 18; Replies were due by 5:00 PM on January 20. APA Doc. No. [37]; Grant Doc. No. [14]; Pendergrass Doc. No. [33].

The Court also set an expedited schedule for briefing on any motions for preliminary injunction in all three matters: Motions for preliminary injunction were due by 5:00 PM EST on January 13, 2022; Responses were due by 5:00 PM EST on January 18; Replies were due by 5:00 PM EST on January 20. APA Doc. No. [36]; Grant Doc. No. [15]; Pendergrass Doc. No. [35].

The Court then scheduled a six-day preliminary injunction hearing with deadlines for exchange of witnesses and exhibits, objections to witnesses and exhibits, and stipulated facts to streamline the hearing process. APA Doc. No. [55]; Grant Doc. No. [44]; Pendergrass Doc. No. [41]. The Court thereafter entered expedited rulings, denying Defendants' Motions to Dismiss on January 28, 2022. APA Doc. No. [65]; Grant Doc. No. [44]; Pendergrass Doc. No. [43].

The coordinated hearing on the preliminary injunctions in all three cases was held from February 7 through February 14, 2022. APA Doc. Nos. [106]–[117]; Grant Doc. Nos. [68]–[79]; Pendergrass Doc. Nos. [73]–[75], [77]–[85].[2]

Related to the coordinated hearing and in accordance with the Court's orders setting deadlines, the parties filed stipulations, requests for judicial notice, supplemental authority (and responses), and proposed findings and conclusions of law,[3] which the Court has reviewed in conjunction with the issuance of this Order.[4] APA Doc. Nos. [61], [73], [94], [95], [98], [101], [119],

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[2] On February 8, 2022, the Court verbally granted the Motion for Leave to File Brief as Amici Curiae in Support of Plaintiffs filed by Fair Districts Ga and the Election Law Clinic at Harvard. APA Doc. No. [90]. The Amici Curiae brief has been fully considered by the Court in rendering its decision.

[3] In the interest of judicial economy, portions of the proposed findings of fact/conclusions of law have been adopted and incorporated into this Order.

[4] In addition, non-party, Fair Districts Ga and the Election Law Clinic at Harvard filed a Motion for Leave to File Brief as Amici Curiae in Support of Plaintiffs. APA Doc.

[120], [121], [123], [124]; Grant Doc. Nos. [39], [47], [56], [60], [61], [80], [81], [82]; Pendergrass Doc. Nos. [47], 54], [63], [66], [67], [69], [86], [87], [88].

The Court has also reviewed the entire record of each of the three cases at issue, inclusive of the exhibits and evidence admitted during the coordinated hearing. The pending preliminary injunction motions are now ripe for review.

II. LEGAL STANDARD

A. Preliminary Injunction

1. Eleventh Circuit

To obtain injunctive relief, Plaintiffs must demonstrate:

> (1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest.

Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A., 320 F.3d 1205, 1210 (11th Cir. 2003); see also Parker v. State Bd. of Pardons and Paroles, 275 F.3d 1032, 1034–35 (11th Cir. 2001). Injunctive relief is an extraordinary and drastic remedy and should not be granted unless the movant clearly establishes the

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No. [90]. On February 8, 2022, the Court verbally granted the Motion. The Amici Curiae brief has been fully considered by the Court in rendering its decision.

burden of persuasion as to each of these four factors. Siegel v. LePore, 234 F. 3d 1163, 1176 (11th Cir. 2000); McDonald's Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998). Moreover, when a party seeks to affirmatively enjoin a state governmental agency, requiring it to perform a certain action, the "case must contend with the well-established rule that the Government has traditionally been granted the widest latitude in the dispatch of its own affairs." Martin v. Metro. Atlanta Rapid Transit Auth., 225 F. Supp. 2d 1362, 1372 (N.D. Ga. 2002) (citing Rizzo v. Goode, 423 U.S. 362, 378–79 (1976)). This rule "bars federal courts from interfering with non-federal government operations in the absence of facts showing an immediate threat of substantial injury." Id. (quoting Midgett v. Tri–Cnty. Metro. Dist. of Or., 74 F. Supp. 2d 1008, 1012 (D. Or. 1999); citing Brown v. Bd. of Trs. of LaGrange Ind. Sch. Dist., 187 F.2d 20 (5th Cir. 1951)).[5] The decision to grant preliminary injunctive relief is within the broad discretion of the district court. Majd–Pour v. Georgiana Cmty. Hosp., Inc., 724 F.2d 901, 902 (11th Cir. 1984).

[5] All decisions of the former Fifth Circuit entered prior to October 1, 1981, are binding precedent in the Eleventh Circuit. Bonner v. City of Prichard, Ala., 661 F.2d 1206, 1209–10 (11th Cir. 1981).

2. *Recent Supreme Court Authority*

Added to this mix is the recent Supreme Court order in Merrill v. Milligan, 595 U.S. ---, 142 S. Ct. 879 (Feb. 7, 2022). Milligan involves challenges under the United States Constitution and the VRA to Alabama's recently redrawn congressional electoral maps. See generally Milligan v. Merrill, Case No. 2:21-cv-1530-AMM (N.D. Ala.) (three-judge court), consolidated with Singleton v. Merrill, Case No. 2:21-cv-1291-AMM (N.D. Ala.) (three-judge court). After an extensive evidentiary hearing, the three-judge court entered preliminary injunctions enjoining the Alabama Secretary of State from conducting congressional elections using those maps. Id. Doc. No. [107]. The Alabama defendants applied to the United States Supreme Court for a stay of the injunctive relief from those orders. Milligan, 142 S. Ct. at 879.[6] The Supreme Court granted the request and stayed, without opinion, the injunctions that were issued by the three-judge court. See id. Chief Justice Roberts, as well as Justices Kagan, Breyer, and Sotomayor, dissented. Id. at 882–89.

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[6] Because the orders were issued by a three-judge court, all appellate review is by the United States Supreme Court. 52 U.S.C. § 10306(c) ("The district courts of the United States shall have jurisdiction of such actions which shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.").

Justice Kavanaugh, joined by Justice Alito, wrote separately to concur with the stay of the injunctions. See id. at 879–82. Justice Kavanaugh's concurrence first emphasized that the stay was not a ruling on the merits but followed precedent—the Purcell principle[7]—which dictates that federal courts generally "should not enjoin state election laws in the period close to an election." Id. at 879. This is important because

> [l]ate judicial tinkering with election laws can lead to disruption and to unanticipated and unfair consequences for candidates, political parties, and voters, among others. It is one thing for a State on its own to toy with its election laws close to a State's elections. But it is quite another thing for a federal court to swoop in and re-do a State's election laws in the period close to an election.

Id. at 881 (footnote omitted). Because "practical considerations sometimes require courts to allow elections to proceed despite pending legal challenges,"

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[7] The Purcell principle derives from Purcell v. Gonzales, 549 U.S. 1 (2006) (per curiam). There, the Supreme Court noted that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." Id. at 4–5. Accordingly, the Court vacated an appellate court order that enjoined enforcement of a voter-identification law about a month before an election. Id. at 3. Based on Purcell, both the Supreme Court and lower federal courts have applied the principle that "lower federal courts should ordinarily not alter the election rules on the eve of an election." Republican Nat'l Comm. v. Democratic Nat'l Comm., 140 S. Ct. 1205, 1207 (2020) (citations omitted).

id. at 882 (quoting Riley v. Kennedy, 553 U.S. 406, 426 (2008)), Justice Kavanaugh concluded that the Purcell principle should be applied to modify the traditional preliminary injunction standard when elections are close at hand:

> I would think that the Purcell principle thus might be overcome even with respect to an injunction issued close to an election if a plaintiff establishes at least the following: (i) the underlying merits are entirely clearcut in favor of the plaintiff; (ii) the plaintiff would suffer irreparable harm absent the injunction; (iii) the plaintiff has not unduly delayed bringing the complaint to court; and (iv) the changes in question are at least feasible before the election without significant cost, confusion, or hardship.

Id. at 881 (citations omitted).

Although Justice Kavanaugh's concurrence is not controlling, this Court would be remiss if it ignored its conclusions. First, even dicta from the Supreme Court carries strong persuasive value. The Eleventh Circuit has made this clear. In rejecting another appellate court's dismissal of Supreme Court dicta, the Eleventh Circuit emphasized the following:

> We disagree with the [] opinion's dismissal of the Supreme Court's specific pronouncements []. A lot. We will start with the most fundamental reason. We have always believed that when the Founders penned Article III's reference to the judicial power being vested "in one supreme Court and in such inferior

> Courts" as Congress may establish, they used "supreme" and "inferior" as contrasting adjectives, with us being on the short end of the contrast. See U.S. Const. Art. III § 1. . . .
>
> It is true that the Supreme Court's analysis . . . and its conclusion that the issue remains an open question in Supreme Court jurisprudence, is dicta. However, there is dicta and then there is dicta, and then there is Supreme Court dicta. . . .
>
> We have previously recognized that "dicta from the Supreme Court is not something to be lightly cast aside."

Schwab v. Crosby, 451 F.3d 1308, 1325 (11th Cir. 2006) (quoting Peterson v. BMI Refractories, 124 F.3d 1386, 1392 n.4 (11th Cir. 1997)).

Second, although the Supreme Court did not issue an opinion in Milligan explaining its reasoning for staying the three-judge court's injunction orders, five justices agreed that the stay should issue. That is, a majority of the Supreme Court necessarily concluded that there was a "fair prospect" it would reverse the injunction on the merits, the Alabama defendants would suffer irreparable injury if the injunction were not lifted, the equities weighed in the defendants' favor, and the injunction was not in the public interest. 142 S. Ct. at 880 (Kavanaugh, J., concurring). Taken in this light, Justice Kavanaugh's opinion carries even more weight than typical Supreme Court dicta.

Accordingly, although this Court applies the traditional test employed by the Eleventh Circuit for determining whether a preliminary injunction should issue, it is cognizant of the proposed standard set forth by Justice Kavanaugh and that the State of Georgia has already begun the process of preparing for elections to take place under the Enacted Plans.

B. The Voting Rights Act

Subsection (a) of Section 2 of the VRA prohibits standards, practices, and procedures that deny or abridge the right to vote of any United States citizen based on race or color. 52 U.S.C. § 10301(a). Such a violation is established

> if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

Id. at § 10301(b). The Eleventh Circuit has emphasized that Section 2 is "a constitutional exercise of congressional enforcement power under the Fourteenth and Fifteenth Amendments." United States v. Marengo Cnty. Comm'n, 731 F.2d 1546, 1550 (11th Cir. 1984).

1. *The Gingles Preconditions*

In Thornburg v. Gingles, 478 U.S. 30 (1986), the Supreme Court first interpreted Section 2 after Congress amended it in 1982. The statute, as amended, focuses on the results of the challenged standards, practices, and procedures; it is not concerned with whether those processes were adopted because of discriminatory intent. Id. at 35–36. "Under the results test, the inquiry is more direct: past discrimination can severely impair the present-day ability of minorities to participate on an equal footing in the political process. Past discrimination may cause [B]lacks to register or vote in lower numbers than whites. Past discrimination may also lead to present socioeconomic disadvantages, which in turn can reduce participation and influence in political affairs." Marengo Cnty. Comm'n, 731 F.2d at 1567 (footnote omitted) (citation omitted).

Under Gingles, plaintiffs must show that they have satisfied three prerequisites to make out a Section 2 vote dilution claim:

> First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district. If it is not, as would be the case in a substantially integrated district, the *multi-member form* of the district cannot be responsible for minority voters' inability to elect its candidates. Second, the

> minority group must be able to show that it is politically cohesive. If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests. Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate.

478 U.S. at 50–51 (footnotes omitted) (citations omitted). Despite Gingles's focus on multi-member districts, in Voinovich v. Quilter, 507 U.S. 146, 153 (1993), the Supreme Court made clear that single-member districts can also dilute minority voting strength and thereby violate Section 2. The Gingles requirements "present mixed questions of law and fact." Solomon v. Liberty Cnty., Fla., 899 F.2d 1012, 1017 n.6 (11th Cir. 1990) (Kravitch, J., specially concurring).

2. *The Senate Factors*

In addition to applying the Gingles factors, courts must also consider several factors that may be relevant to Section 2 claims, which were identified in the Senate Report accompanying the 1982 VRA amendment. Gingles, 478 U.S. at 44–45. The Court notes, "it will be only the very unusual case in which the plaintiffs can establish the . . . Gingles [threshold] factors but still have failed to establish a violation of § 2 under the totality of the circumstances."

Nipper v. Smith, 39 F.3d 1494, 1514 (11th Cir. 1994) (citing Jenkins v. Red Clay Consol. Sch. Bd. of Educ., 4 F.3d 1103, 1116 (3d Cir. 1993)); see also Clark v. Calhoun Cnty., 88 F.3d 1393, 1402 (5th Cir. 1996) (same). However, Gingles instructs Courts to evaluate the Senate Factors to determine, under the totality of the circumstances, if there was a Section 2 violation. See Gingles, 478 U.S. at 48, n.15. As later explained by the Eleventh Circuit, the Senate Report factors (the "Senate Factors") that will "typically establish" a violation of Section 2 are:

> 1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote or otherwise to participate in the democratic process;
>
> 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions,[8] or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;

[8] Single-shot or bullet voting "enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates." Gingles, 478 U.S. at 38 n.5 (internal quotation marks omitted) (citations omitted).

> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> 5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment[,] and health, which hinder their ability to participate effectively in the political process;
>
> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
>
> 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

Solomon, 899 F.2d at 1015–16. Two additional circumstances may also be probative of a Section 2 violation:

> 8. whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group;
>
> 9. whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is tenuous.

Id. at 1016.

In Gingles, the Supreme Court concluded that the Senate Factors "will often be pertinent to certain types of § 2 violations, particularly to vote dilution claims." 478 U.S. at 45 (footnote omitted). In conjunction, the Gingles

preconditions and Senate Factors require the consideration of race to some extent when evaluating electoral districts so that the voting rights of minorities are not denied or abridged. 52 U.S.C. § 10301(a); see also, e.g., Gingles, 478 U.S. 30; Voinovich, 507 U.S. 146; Solomon, 899 F.2d 1012; Marengo Cnty. Comm'n, 731 F.2d at 1561 ("Section 2 is not meant to create race-conscious voting but to attack the discriminatory results of such voting where it is present."). Satisfying the Gingles preconditions and the Senate Factors proves the injury of vote dilution. Such harms must, however, be evaluated on a district-by-district basis. Gill v. Whitford, 138 S. Ct. 1916, 1930 (2018).

Chief Justice Roberts recently noted that "it is fair to say that Gingles and its progeny have engendered considerable disagreement and uncertainty regarding the nature and contours of a vote dilution claim." Milligan, 142 S. Ct. at 882–83 (Roberts, C.J., dissenting) (citations omitted). Despite the disagreement and apparent uncertainty, this Court applies the relevant Supreme Court and Eleventh Circuit precedent as they currently exist.

C. Evidentiary Considerations

At the preliminary injunction stage, "a district court may rely on affidavits and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is 'appropriate given the character and

objectives of the injunctive proceeding.'" Levi Strauss & Co. v. Sunrise Int'l Trading Inc., 51 F.3d 982, 985 (11th Cir. 1995). A substantial amount of evidence was presented by the parties during the hearing, and much of it has been considered by the Court for purposes of this Order, even if such evidence may not ultimately be admissible at trial. When discussing the evidence, this Order addresses to the extent necessary any objections raised by the parties.[9]

D. Motions to Dismiss

The Court has already ruled on the motions to dismiss filed by Defendants in each of these three cases and denied their requests to certify the Court's rulings for interlocutory appeal. APA Doc. No. [65]; Pendergrass Doc. No. [50]; Grant Doc. No. [43]. No party has sought reconsideration of those Orders. See generally APA Docket; Pendergrass Docket; Grant Docket. Accordingly, the Court does not further address Defendants' argument that there is no private right of action under Section 2.[10]

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[9] The Court entered a separate order addressing evidentiary rulings.

[10] The Court is aware of the recent decision in Arkansas State Conference NAACP v. Arkansas Board of Apportionment, Case No. 4:21-cv-01239-LPR, 2022 WL 496908, at *1 (E.D. Ark. Feb. 17, 2022) (APA Doc. No. [119]), in which the district court concluded there is no implied private right of action under Section 2. Given the extent and weight of the authority holding otherwise (see APA Doc. No. [65], 32–33), including from the Supreme Court, this Court finds no basis to alter the analysis in its Order denying Defendants' motions to dismiss.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the parties' briefs, evidence, and other filings, and having listened to and considered the testimony and arguments presented during the preliminary injunction hearing, the Court now provides the following findings of fact and conclusions of law. The Court first discusses Plaintiffs' likelihood of success on the merits, analyzing the Section 2 claims under the framework established by Gingles and its progeny. The Court then discusses whether Plaintiffs have shown that they will suffer irreparable injury absent the requested injunctions, whether Plaintiffs' threatened injury outweighs whatever the damage the proposed injunction may cause Defendants and if issued, whether the injunction is adverse to the public interest.

A. Likelihood of Success on the Merits

The Court's analysis begins with the first Gingles precondition and a credibility review of the expert witnesses who testified in relation to this prong.

1. *The First Gingles Precondition: Numerosity and Compactness*

a) Credibility Determinations

(1) Mr. Cooper

The Alpha Phi Alpha and Pendergrass Plaintiffs qualified Mr. William S. Cooper as an expert in redistricting and with reference to census data. Feb. 7, 2022, Morning Tr. 38:16–18; Feb. 7; 2022, Afternoon Tr. 112:16–19. Mr. Cooper earned a bachelor's degree in economics from Davidson College and has earned his living for the last thirty years by drawing maps, both for electoral purposes and for demographic analysis. APAX 1, ¶¶ 1–2. He has extensive experience testifying in federal courts about redistricting issues and has been qualified in forty-five voting rights cases in nineteen states. Id. ¶ 2.

Over twenty-five of these cases led to changes in local election district plans. Id. And five of the cases resulted in changes to statewide legislative boundaries: Rural West Tennessee African-American Affairs Council, Inc. v. McWherter, 877 F. Supp. 1096 (W.D. Tenn. 1995); Old Person v. Brown, 182 F. Supp. 2d 1002 (D. Mont. 2002); Bone Shirt v. Hazeltine, 336 F. Supp. 2d 976 (D.S.D. 2004); Alabama Legislative Black Caucus v. Alabama, 231 F. Supp. 3d 1026 (M.D. Ala. 2017); and Thomas v. Reeves, 2:18-CV-441-CWR-FKB, 2021 WL 517038 (S.D. Miss. Feb. 11, 2021).

Mr. Cooper has served as an expert in two post-2010 local level Section 2 cases in Georgia (Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm'rs, 118 F. Supp. 3d 1338 (N.D. Ga. 2015) and Ga. State Conf. of the NAACP v. Emanuel Cnty., 6:16-CV-00021, (S.D. Ga. 2016)) both of which resulted in settlements and implementation of the maps that Mr. Cooper created. Mr. Cooper has worked on behalf of both plaintiffs and defendants in redistricting cases. Caster v. Merrill, No. 2:21-cv-1536-AMM, 2022 WL 264819, at *35 (N.D. Ala. Jan. 24, 2022); APAX 1, 67–72.

The Court finds Mr. Cooper's testimony highly credible. Mr. Cooper has spent the majority of his career drawing maps for redistricting and demographic purposes, and he has accumulated extensive expertise (more so than any other expert in the first Gingles precondition in the case) in redistricting litigation, particularly in Georgia. Indeed, his command of districting issues in Georgia is sufficiently strong that he was able to draw a draft remedial plan for Pendergrass's counsel "in a couple of hours in late November." Feb. 7, 2022, Morning Tr. 69:6–9.

Throughout Mr. Cooper's reports and his live testimony, his opinions were clear and consistent, and he had no difficulty articulating his bases for them. See APAX 1, Feb. 7, 2022, Morning Tr. 39–104; Feb. 7, 2022, Afternoon Tr.

113–241. But he was not dogmatic: he took Mr. Tyson's and the Court's criticism of the compactness of his Illustrative State Senate District 18 seriously and stated, "I think the Plaintiffs – the Defendant are going to complain about [Senate District 18]. I think they sort of have a valid argument that you don't need to have a district that long, so . . . if I had that opportunity, will fix that problem." Feb. 7, 2022, Afternoon Tr. 149:14–23.

The Court particularly credits Mr. Cooper's testimony that he "tried to balance" all traditional redistricting principles. Feb. 7, 2022, Morning Tr. 50:24. Mr. Cooper also testified that he "was aware of [all the traditional redistricting principles] and [he] tried to achieve plans that were fair and balanced." Feb. 7, 2022, Afternoon Tr. 140:6–7. He was candid that he prioritized race only to the extent necessary to answer the essential question asked of him as an expert on the first Gingles precondition ("Is it possible to draw an additional, reasonably compact majority-Black district?"), and clearly explained that he did not prioritize it to any greater extent. See Feb. 7, 2022, Morning Tr. 51:4–5 ("I was aware of the racial demographics for most parts of the state, but certainly [race] did not predominate"); Feb. 7, 2022, Afternoon Tr. 135:17–19 ("I was aware of race as traditional redistrict principles suggest one should be. I mean, it's Voting Rights Act[]. It's Federal Law."). Mr. Cooper acknowledged that [the]

tradeoffs between traditional districting criteria are necessary, and he did not ignore any criteria. See Feb. 7, 2022, Afternoon Tr. 230:22–25 ("I have attempted to balance [traditional redistricting principles] together and I think overall, the Plan does comply with traditional redistricting principles, but I'm certainly willing to accept criticism and would make adjustments upon receiving that criticism.").

During Mr. Cooper's live testimony, the Court carefully observed his demeanor, particularly as he was cross-examined for the first time about his work on this case. He consistently defended his work with careful and deliberate explanations of the cases for his opinions. The Court observed no internal inconsistencies in his testimony, no appropriate question that he could not or would not answer, and no reason to question the veracity of his testimony. The Court finds that his methods and conclusions are highly reliable, and ultimately that his work as an expert on the first Gingles precondition is helpful to the Court.

(2) Mr. Esselstyn

The Grant Plaintiffs qualified Mr. Blakeman B. Esselstyn as an expert in redistricting and census data. Feb. 8, 2022, Afternoon Tr. 111:18–112:1. Mr. Esselstyn earned his bachelor's in Geology & Geophysics and International

Studies from Yale University and a Master's in Computer and Information Technology from the University of Pennsylvania, School of Engineering. GPX 3, 26. Mr. Esselstyn testified that he has "more than 20 years in experience in looking at maps and demographics and recognizing patterns and things like that." Feb. 9, 2022, Afternoon Tr. 168:10–12. Since 2017, Mr. Esselstyn has taught two one-semester-graduate-level courses in Geographic Information Systems. GPX 3, at 27. Mr. Esselstyn has designed redistricting plans that were accepted by various local governments in North Carolina. Id. at 27–28. Mr. Esselstyn was a testifying expert witness in Jensen v. City of Asheville, Buncombe County, North Carolina, Superior Court (2009); Hall v. City of Asheville, Buncombe County, North Carolina, Superior Court (2009); and Arnold v. City of Ashville, Buncombe County, North Carolina, Superior Court (2005). On *voir dire*, Mr. Esselstyn acknowledged that he has never drawn a statewide map that was used in an election and that he has never drawn a map for any jurisdiction in Georgia. Feb. 8, 2022, Afternoon Tr. 112:13–18. The Court finds Mr. Esselstyn's testimony highly credible. Mr. Esselstyn has spent the majority of his professional life drawing maps for redistricting and demographic purposes.

Throughout Mr. Esselstyn's reports and his live testimony, his opinions were clear and consistent, and he had no difficulty articulating his bases for them. See GPX 3; Feb. 8, 2022, Afternoon Tr. 107–128; Feb. 9, 2022, Afternoon Tr. 148–276. Mr. Esselstyn acknowledged that his Illustrative State and House Plans had higher population deviations, more precinct splits, and more county splits than the Enacted State House and Senate Plans. Feb. 9, 2022, Afternoon Tr. 203:18–21, 205:8–14, 23–25. Mr. Esselstyn also stated that if he was asked to try to reduce these changes, he "could probably accommodate." Id. at 204:23–25.

The Court particularly credits Mr. Esselstyn's testimony that he tried "to sort of find the best balance that [he] can" for all the traditional redistricting principles. Feb. 9, 2022, Afternoon Tr. 157:14–25. Mr. Cooper also testified the traditional redistricting principles are "sort of the multi-layered puzzle" and it's a balancing act" because "there are often criteria that will be [in tension] with each other." Id. at 157:24–25. He was candid that he prioritized race only to the extent necessary to answer the essential question asked of him as an expert on the first Gingles precondition ("Is it possible to draw an additional, reasonably compact majority-Black district?"), and clearly explained that he did not prioritize it to any greater extent. See id. at 155:20–156:2 ("[M]y

understanding of Section 2 in the Gingles criteria is that the key metric is whether a district has a majority of Any Part Black population. . . . And that means . . . [y]ou have to look at the numbers that measure the percentage of the population is Black."). Mr. Esselstyn acknowledged that tradeoffs between traditional districting criteria are necessary, and he did not ignore any criteria. See id. at 157:14–21

> [O]ften the criteria will be [in tension] with each other. It may be that you are trying to just follow precinct lines and not split . . . precincts, but the precincts have funny shapes. So that means you either are going to end up with a less compact shape that doesn't split precincts or you could split a precinct and end up with a more compact shape.

During Mr. Esselstyn's live testimony, the Court carefully observed his demeanor, particularly as he was cross-examined for the first time about his work on this case. He consistently defended his work with careful and deliberate explanations of the cases for his opinions. The Court observed no internal inconsistencies in his testimony, no appropriate question that he could not or would not answer, and no reason to question the veracity of his testimony. The Court finds that his methods and conclusions are highly reliable, and ultimately that his work as an expert on the first Gingles precondition is helpful to the Court.

(3) Mr. Morgan

The Defendants qualified Mr. John B. Morgan as an expert in redistricting and the analysis of demographic data. Feb. 11, 2022, Morning Tr. 121:8–10. Mr. Morgan has a bachelor's in History from the University of Chicago and has earned his living for the last thirty years by drawing maps, both for electoral purposes and for demographic analysis. DX 2, ¶ 2; Feb. 11, 2022, Morning Tr. 119:13–18. Prior to this case, Mr. Morgan has served as a testifying expert in five cases. Feb. 11, 2022, Afternoon Tr. 244:12–15. He has performed redistricting work for 20 states and performed demographics and election analysis in 40 states for both statewide and legislative candidates. DX 2, at 17–18.

Despite Mr. Morgan's extensive experience, the Court assigns very little weight to Mr. Morgan's testimony. Mr. Morgan's previous redistricting work includes drawing maps that were ultimately struck down as unconstitutional racial gerrymanders (Feb. 11, 2022, Afternoon Tr. 183:9–17, 183:24–184:6), as well as serving as an expert for the defense in a case in Georgia where the map was ultimately found to have violated the Voting Rights Act (Feb. 14, 2022, Morning Tr. 9:21–10:6).

In Georgia State Conference of NAACP v. Fayette County Board of Commissioners, Mr. Morgan testified as an expert for the defense opposite Mr. Cooper, who testified as an expert for the plaintiffs. 950 F. Supp. 2d 1294, 1310–11 (N.D. Ga. 2013). In granting the motion for summary judgment, that court found that the plaintiffs successfully asserted a vote dilution claim. Id. at 1326. At the preliminary injunction hearing for the cases sub judice, Mr. Morgan admitted that he worked on the 2011–2012 North Carolina State Senate Maps. Feb. 11, 2022, Afternoon Tr.182:22–183:13. Ultimately, twenty-eight districts in North Carolina's 2011 state House and Senate redistricting plans were struck down as racial gerrymanders. Id. at 183:14–19; see also Covington v. North Carolina, 316 F.R.D. 117 (M.D.N.C. 2016), aff'd North Carolina v. Covington, 137 S. Ct. 2211 (2017).

Additionally, two federal courts have determined that Mr. Morgan's testimony was not credible. Feb. 11, 2022, Afternoon Tr. 245:19–246:15, 246:17–19, 247:25–248:21. The Court gives great weight to the credibility determinations of its sister courts.

At the hearing for this matter, Mr. Morgan testified that he had helped draw the 2011 Virginia House of Delegates Maps. Feb. 11, 2022, Afternoon Tr. 183:20–25. In that case, "Mr. Morgan testified . . . that he played a substantial

role in constructing the 2011 plan, which role included his use of the Maptitude software to draw district lines." Bethune-Hill v. Virginia State Bd. of Elections, 326 F. Supp. 3d 128, 151 (E.D. Va. 2018). Ultimately, a three-judge court found that 11 of the House of Delegates districts were racial gerrymanders. Feb. 11, 2022, Afternoon Tr. 184:1–6; see also Bethune-Hill, 326 F. Supp. 3d at 181.

Mr. Morgan served as both a fact and expert witness in Bethune-Hill. That court ultimately found that Mr. Morgan's testimony was not credible. That court found that "Morgan's testimony was wholly lacking in credibility. Th[is] adverse credibility finding[] [is] not limited to particular assertions of [this] witness[], but instead wholly undermine[s] the content of . . . Morgan's testimony." Bethune-Hill, 326 F. Supp. 3d at 174; Feb. 11, 2022, Afternoon Tr. 246:17–19, 247:25–248:4. Specifically, "Morgan testified in considerable detail about his reasons for drawing dozens of lines covering all 11 challenged districts, including purportedly race-neutral explanations for several boundaries that appeared facially suspicious." Bethune-Hill, 326 F. Supp.3d at 151. "In our view, Morgan's contention, that the precision with which these splits divided white and black areas was mere happenstance, simply is not credible." Id. "[W]e conclude that Morgan did not present credible testimony, and we decline to consider it in our predominance analysis." Id. at 152.

Mr. Morgan also served as a testifying expert in Page v. Virginia State Bd. of Elections, No. 3:13cv678, 2015 WL 3604029 (E.D. Va. June 5, 2015). Feb. 11, 2022, Afternoon Tr. 245:2–5. When counsel for the Pendergrass and Grant Plaintiffs asked Mr. Morgan if he recalled that court's opinions about his testimony, he stated: "not specifically." Id. at 245:9–11. That court found "Mr. Morgan, contends that the majority-white populations excluded . . . were predominately Republican. . . . The evidence at trial, however, revealed that Mr. Morgan's analysis was based upon several pieces of mistaken data, a critical error. . . . Mr. Morgan's coding mistakes were significant to the outcome of his analysis." Page, 2015 WL 3604029, at *15 n.25; Feb. 11, 2022, Afternoon T. 245:19–3. Mr. Morgan explained that his error was caused because the attorneys asked him to produce an additional exhibit on the day of trial. Feb. 11, 2022, Afternoon Tr. 246:8–14.

During Mr. Morgan's live testimony, the Court carefully observed his demeanor, particularly as he was cross-examined for the first time about his work on this case. The Court found that Mr. Morgan declined to answer counsel's and the Court's questions about the definition for "packing." Feb. 11, 2022, Afternoon Tr. 192:24–196:25. The Court specifically asked Mr. Morgan for his definition of packing (Id. at 194:4), to which Mr. Morgan responded,

"Honestly, I have seen so many different places —" Id. at 194:4–6. The Court then stated, "I understand that. You said you have been doing this for four decades. You have more experience than just about everybody. What is your definition of it?" Id. at 194:7–9. Despite the Court and counsel's questioning, Mr. Morgan never gave a clear definition for the term "packing." Id. at 194:7–196:25. The Court also observed that Mr. Morgan consistently could not recall that his credibility was undermined in previous redistricting cases. As such, the Court finds that Mr. Morgan's testimony lacks credibility, and the Court assigns little weight to his testimony.

(4) Ms. Wright

Over objection from the Grant and Pendergrass Plaintiffs, Defendants offered Ms. Regina Harbin Wright as an expert on redistricting in Georgia and the analysis of demographic data in Georgia.[11] Ms. Wright is an experienced map drawer and a busy public servant. Ms. Wright serves as the Executive Director of the Legislative and Congressional Reapportionment Officer (LCRO), a joint office of the Georgia General Assembly. DX 41, ¶ 2. Ms. Wright

[11] In 2012, Ms. Wright served as a technical advisor and consultant to this Court in the redrawing the Cobb County, Georgia electoral commission districts. See Crumly v. Cobb Cnty. Bd. of Elections & Voter Registration, 892 F. Supp. 2d 1333 (N.D. Ga. 2012); Feb. 11, 2022, Morning Tr. 9:2–4.

has worked for LRCO for just over twenty-one years and has been the director for almost ten years. Feb. 11, 2022, Morning Tr. 6:20–24. LRCO assists the General Assembly in drawing the Georgia State House and Senate Districts, the Public Service Commission, as well as the fourteen (14) United States Congressional Districts. Id. LRCO provides an array of maps and data reports to both legislators and the public at large. Id.

Ms. Wright has served as an expert or technical advisor for redistricting by federal courts in eight federal cases since the 2010 redistricting cycle. See DX 41, ¶ 6 (Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm'rs, 996 F. Supp. 2d 1353, 1359 (N.D. Ga. 2014) (appointed as the court's "independent technical advisor"); Fayette Cnty. Bd. of Comm'rs, 118 F. Supp. 3d at 1340 (appointed to be the court's "expert or technical advisor"); Crumly v. Cobb Cnty. Bd. of Elections & Voter Registration, 892 F. Supp. 2d 1333, 1344 (N.D. Ga 2012) (appointed as the court's "technical advisor and consultant") Martin v. Augusta-Richmond Cnty., No. CV 112-058, 2012 WL 2339499, at *1 (S.D. Ga. June 19, 2012) (appointed by the court as "advisor and consultant"); Walker v. Cunningham, No. CV 112-058, 2012 WL 2339499, at *5 (S.D. Ga. June 19, 2012) (three-judge court) (appointed by the court "as its independent technical advisor"); Bird v. Sumter Cnty. Bd. of Educ., CA No. 1:12cv76-WLS (M.D. Ga.

2013) Doc. No. [70], 5 (appointed as the court's "independent technical advisor"); Adamson v. Clayton Cnty. Elections & Reg. Bd., CA No. 1:12cv1665-CAP (N.D. Ga. 2012), Doc. No. [23], 2 (appointed as the court's "independent technical advisor."); Ga. State Conf. of NAACP v. Kemp, 312 F. Supp. 3d 1357, 1360–62 (N.D. Ga. 2018) (three-judge court) (testified at preliminary judgment hearing by deposition)).

Counsel for Defendants offered Ms. Wright as an expert on redistricting in Georgia and the analysis of demographic data in Georgia. Feb. 11, 2022, Morning Tr. 10:1–3. Counsel for the Grant and Pendergrass Plaintiffs objected to Ms. Wright's certification as an expert because

> Her credibility has been specifically questioned by the Court in connection with the 2015 redistricting where she moved many [B]lack voters from districts where their votes would have made an impact to districts where they would not. And [her] report[, in this case,] is little more than a running commentary untethered to data, much less any sort of scientific or technical analysis that would lend to credibility before this Court .... [A]lthough [Ms. Wright] has practical experience relating generally to redistricting, she doesn't apply that technical or specialized knowledge here in any way which might be helpful to this Court .... her testimony is not based on sufficient facts or data which are notably absent from the report .... [Ms. Wright] has not and cannot show that her analysis or conclusions to the product are reliable

> principles or methods at 702(C), and it too, is wholly absent from her report.

Feb. 11, 2022, Morning Tr. 20:10–17, 21:8–11, 18–20. The Court overruled counsel's objection and admitted Ms. Wright as an expert on redistricting in Georgia and the analysis of demographic data in Georgia. Id. at 24:1–5.

Although the Court finds that Ms. Wright is a credible expert witness with over twenty-one years of experience in redistricting and demographics in Georgia, the Court assigns little weight to her testimony regarding compactness and demographics; however, the Court assigns a greater amount of weight to Ms. Wright's testimony about communities of interest and political subdivisions in Georgia.

The Court finds that Ms. Wright did not provide any statistical metric by which to measure the compactness of any of the illustrative maps. Ms. Wright's report does not explain how she determined whether a particular district was more or less compact and thus was not permitted to explain her methodology at the hearing. DX 41; Feb. 11, 2022, Morning Tr. 47:18–48:6. Thus, the Court assigns very little weight to Ms. Wright's testimony regarding a district's compactness. The Court does recognize that Ms. Wright was given one day to

prepare and submit her expert report to the Court. See APA Doc. No. [85]; Pendergrass Doc. No. [58]; Grant Doc. No. [51].

Ms. Wright also testified about the demographics of the enacted Congressional, State House, and State Senate districts in comparison to the Illustrative Congressional, State House, and State Senate districts. Ms. Wright testified that the Secretary of State's Office used the Non-Hispanic Black metric as opposed to the Any Part Black metric that was used by Mr. Cooper and Mr. Esselstyn. Id. at 79:4–80:1. In particular, Ms. Wright testified when evaluating the percentage of Black registered voters, Ms. Wright's analysis is based on non-Hispanic Black metric and not Any Part Black metric. Id. at 79:18–21. Because the Court uses the Any Part Black metric to determine if the Black population is sufficiently numerous to create an additional majority-minority district—"it is proper to look at *all* individuals who identify themselves as [B]lack" in their census responses, even if they "self-identify as both [B]lack and a member of another minority group," because the case involved "an examination of only one minority group's effective exercise of the electoral franchise." Georgia v. Ashcroft, 539 U.S. 461, 473 n.1 (2003)—the Court assigns little weight to Ms. Wright's demographic analysis.

The Court assigns greater weight to Ms. Wright's testimony about communities of interest and political subdivisions in Georgia. Ms. Wright has twenty-one years of experience in drawing statewide Congressional, State House, and State Senate districts. DX 41, ¶ 2. Ms. Wright also assists in drawing maps for local County Commissions, Boards of Education, and City Councils throughout the state of Georgia. Id. Ms. Wright oversees a staff that draws maps in Georgia for statewide legislative districts, local redistricting plans, city creation boundaries, annexations and de-annexations, and precinct boundary changes. Id. ¶ 3. Finally, Ms. Wright has been appointed as an expert and technical advisor to the Court in seven federal redistricting cases between 2012 and 2015. Id. at 6. Accordingly, the Court finds that Ms. Wright has extensive knowledge about communities of interest and political subdivisions in Georgia. Thus, Ms. Wright's testimony regarding communities of interest and political subdivisions in Georgia is highly credible.

Having discussed the expert witnesses relevant to the analysis of the first Gingles precondition in these cases.

b) First *Gingles* Precondition Legal Standard

To satisfy the first Gingles precondition, the plaintiffs must establish that Black voters as a group are "sufficiently large and geographically compact to

constitute a majority in some reasonably configured legislative district." Cooper, 137 S. Ct. at 1470 (internal quotation marks omitted). "When applied to a claim that single-member districts dilute minority votes, the first Gingles [pre]condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." Johnson v. De Grandy, 512 U.S. 997, 1008 (1994). Although "[p]laintiffs typically attempt to satisfy [the first Gingles precondition] by drawing hypothetical majority-minority districts," Clark, 88 F.3d at 1406, such illustrative plans are "not cast in stone" and are offered only "to demonstrate that a majority-[B]lack district is feasible," Clark v. Calhoun Cnty., 21 F.3d 92, 95 (5th Cir. 1994); see also Bone Shirt v. Hazeltine, 461 F.3d 1011, 1019 (8th Cir. 2006) (same); Solomon, 899 F.2d at 1018 n.7 (Kravitch, J., specially concurring) ("So long as the potential exists that a minority group could elect its own representative in spite of racially polarized voting, that group has standing to raise a vote dilution challenge under the Voting Rights Act." (citing Gingles, 478 U.S. at 50 n.17)).

(1) Numerosity

The plaintiffs must show that the Black population is sufficiently numerous to create an additional majority-minority district. "In majority-

minority districts, a minority group composes a numerical, working majority of the voting-age population. Under present doctrine, [Section] 2 can require the creation of these districts." Bartlett v. Strickland, 556 U.S. 1, 13 (2009) (plurality op.). "[A] party asserting [Section] 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." Id. at 19–20. When a voting rights "case involves an examination of only one minority group's effective exercise of the electoral franchise[,] . . . it is proper to look at *all* individuals who identify themselves as black" when determining a district's Black Voting Age Population ("BVAP"). Ashcroft, 539 U.S. at 474 n.1 (2003); see also Fayette Cnty., 118 F. Supp. 3d at 1343 n.8 ("[T]he Court is not willing to exclude Black voters who also identify with another race when there is no evidence that these voters do not form part of the politically cohesive group of Black voters in Fayette County.").

In determining whether a district is sufficiently numerous, Courts use the Any Part Black Voting Age Population ("AP BVAP") demographics, not single-race black demographics. The Supreme Court concluded that "it is proper to look at *all* individuals" even if they "self-identify as both [B]lack and a member of another minority group," because the case involved "an

examination of only one minority group's effective exercise of the electoral franchise." Ashcroft, 539 U.S. at 473 n.1 (2003). Because this Court must decide a case that involves claims about Georgia's Black population's effective exercise of the electoral franchise, this Court relies on the AP BVAP metric.

(2) Compactness

The plaintiffs must show that Georgia's Black population can form additional reasonably compact Congressional, State Senate, and State House districts. Under the compactness requirement of the first Gingles precondition, Plaintiffs must show that it is "possible to design an electoral district[] consistent with traditional redistricting principles." Davis v. Chiles, 139 F.3d 1414, 1425 (11th Cir. 1998). Compliance with this criterion does not require that the illustrative plans be equally or more compact than the enacted plans; instead, this criterion requires only that the illustrative plans contain reasonably compact districts. An illustrative plan can be "far from perfect" in terms of compactness yet satisfy the first Gingles precondition. Wright v. Sumter Cnty. Bd. of Elections & Registration, 301 F. Supp. 3d 1297, 1326 (M.D. Ga. 2018), aff'd, 979 F.3d 1282 (11th Cir. 2020). "While no precise rule has emerged governing § 2 compactness," League of United Latin American Citizens (LULAC) v. Perry, 548 U.S. 399, 433 (2006), plaintiffs satisfy the first

Gingles precondition when their proposed majority-minority district is "consistent with traditional districting principles," Davis, 139 F.3d at 1425.

These traditional districting principles include "maintaining communities of interest and traditional boundaries," "geographical compactness, contiguity, and protection of incumbents. Thus, while Plaintiffs' evidence regarding the geographical compactness of their proposed district does not alone establish compactness under § 2, that evidence, combined with their evidence that the district complies with other traditional redistricting principles, is directly relevant to determining whether the district is compact under § 2." Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs, 950 F. Supp. 2d 1294, 1307 (N.D. Ga. 2013) (citations omitted), aff'd in part, rev'd in part on other grounds, 775 F.3d 1336 (11th Cir. 2015).

Plaintiffs' Illustrative Plans must comply with the one person one vote requirement under the Equal Protection Clause. Fayette Cnty., 996 F. Supp. 2d at 1368.

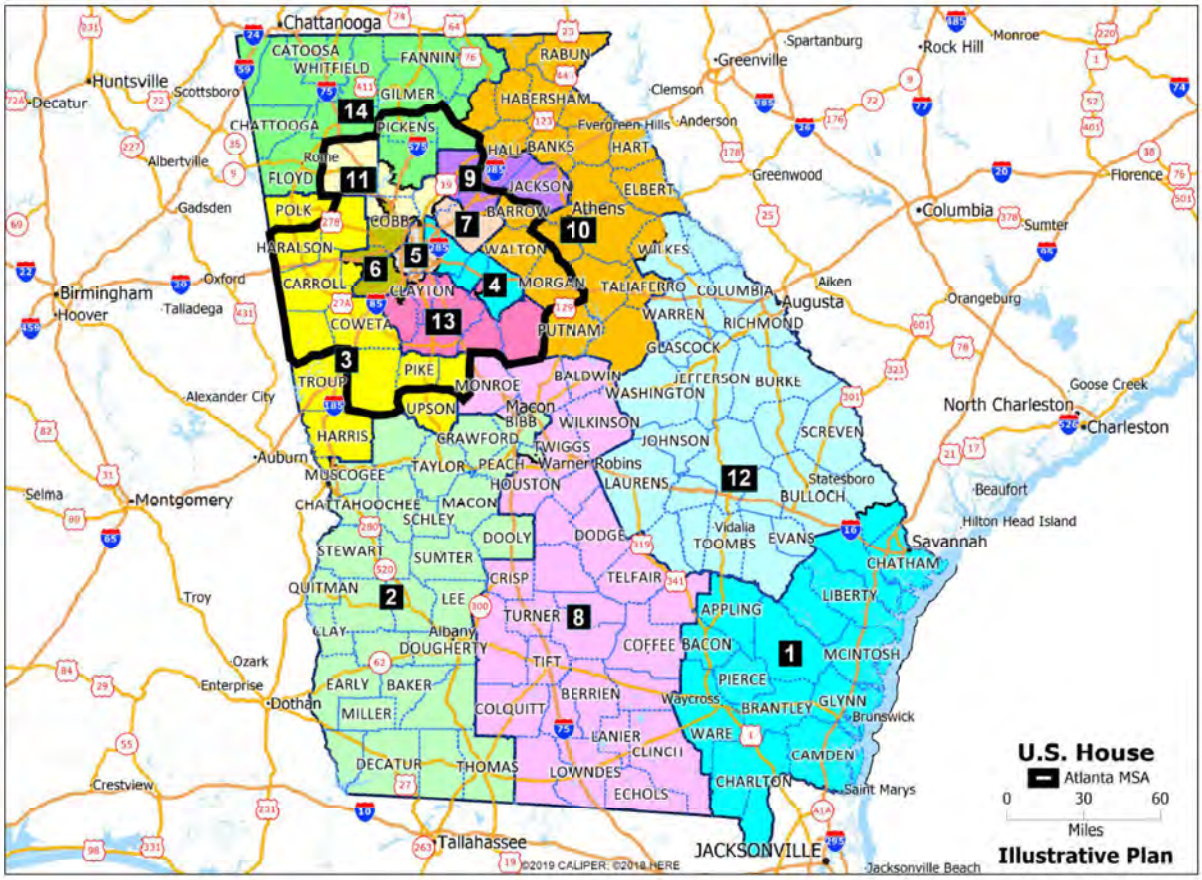
c) Pendergrass

The Court finds that the Pendergrass Plaintiffs have established that they are substantially likely to succeed on the merits of showing that it is possible to create an additional majority-minority congressional district in the western

Atlanta metropolitan area that complies with the relevant considerations under Gingles.

The Pendergrass Plaintiffs move for an order preliminarily enjoining Defendants from enforcing the boundaries of the congressional districts as drawn in the Georgia Congressional Redistricting Act of 2021, which they claim violates Section 2 by failing to include an additional congressional district in the western Atlanta metropolitan area in which Black voters would have the opportunity to elect their preferred candidates. Pendergrass Doc. No. [32], 2. In particular, the Pendergrass Plaintiffs contend that the new congressional map packs Black voters into the Thirteenth Congressional District—which has a BVAP over 66% and includes south Fulton, north Fayette, Douglas, and Cobb Counties—and cracks other Black voters among the more rural and predominately white Third, Eleventh, and Fourteenth Congressional Districts. Pendergrass Doc. No. [32-1], 4, 6–7. The Pendergrass Plaintiffs argue that increases in Georgia's Black population over the last decade, along with concurrent decreases in the state's white population, create an opportunity for an additional majority-minority congressional district that the State did not draw. See id. at 5, 9–10. Specifically, Plaintiffs contend that they can satisfy the first Gingles precondition by showing that an additional, compact majority-

minority district can be drawn in the western Atlanta metropolitan area. Id. at 9–10. Plaintiffs rely on the following illustrative plan by expert demographer William S. Cooper to demonstrate how such a district could be drawn.



GPX 1, at 65–66. With Mr. Cooper's illustrative congressional plan, the Pendergrass Plaintiffs contend that they have drawn an illustrative Congressional District 6—which includes parts of Cobb, Douglas, Fulton, and Fayette Counties—that is majority AP Black and thus would allow Black voters to elect their preferred candidates. Pendergrass Doc. No. [32-1], 10; GPX 1,

¶¶ 47–48 & fig.8. Moreover, Plaintiffs argue that Mr. Cooper's illustrative congressional district is sufficiently compact and complies with other traditional redistricting principles such as population equality, contiguity, maintaining political boundaries and communities of interest, and avoiding pairing of incumbents. Pendergrass Doc. No. [32-1], 10.

Because the first Gingles precondition requires showings that the relevant minority population is "sufficiently large and geographically compact to constitute a majority in a single-member district," LULAC, 548 U.S. at 425 (quoting De Grandy, 512 U.S. at 1006–07), the Court now turns to discussion of whether the Pendergrass Plaintiffs have made those showings with their proposed congressional plan.

(1) Numerosity

The first Gingles precondition requires a "numerosity" showing that "minorities make up more than 50 percent of the voting-age population in the relevant geographic area." Bartlett v, 556 U.S. at 18. The Court finds that the Pendergrass Plaintiffs have established that the AP BVAP in the western Atlanta metropolitan area is sufficiently numerous to constitute a majority of the voting-age population in a new congressional district in the western Atlanta metropolitan area. Below, the Court will discuss relevant demographic

developments in Georgia and then turn to how those developments inform review of the enacted and illustrative congressional maps.

(a) Demographic developments in Georgia

The U.S. Census Bureau releases population and demographic data to the states after each census for use in redistricting. Pendergrass Stip. ¶ 24. The Census Bureau provided initial redistricting data to Georgia on August 12, 2021. Id. ¶ 25. This data shows that from 2010 to 2020, Georgia's population grew by over 1 million people to 10.71 million, up 10.6% from 2010. Id. ¶ 26; GPX 1, ¶ 13. Based upon Georgia's population, it maintained its fourteen seats in the U.S. House of Representatives. Pendergrass Stip. ¶ 27.

Georgia's population growth since 2010 can be attributed to increases in the state's overall minority population. GPX 1, ¶ 14 & fig.1. For example, from 2010 to 2020, Georgia's Black population increased by almost half a million people, up nearly 16% in that time. Pendergrass Stip. ¶ 28; GPX 1, ¶ 15. During that decade, 47.26% of the state's population gain was attributable to Black population growth. Pendergrass Stip. ¶ 29; GPX 1, ¶ 14 & fig.1. Indeed, Georgia's Black population, as a share of the overall statewide population, increased from 31.53% in 2010 to 33.03% in 2020. GPX 1, ¶ 16 & fig.1. And as a

matter of total population, AP Black Georgians comprise the largest minority population in the state (at 33.03%). Pendergrass Stip. ¶ 32.

Georgia's white population, however, decreased by 51,764 persons, or approximately 1%, from 2010 to 2020. Pendergrass Stip. ¶ 30; GPX 1, ¶ 15 & fig.1. As a result, while non-Hispanic white Georgians remain a majority of the state's population, it is by a slim margin—50.06%. GPX 1, ¶ 17.

Georgia's Black population has increased in absolute and percentage terms since 1990, from about 27% in 1990 to 33% in 2020. Pendergrass Stip. ¶ 31. In that time, the Black population has more than doubled: from 1.75 million to 3.54 million, an increase that is the equivalent of the populations of more than two congressional districts. GPX 1, ¶ 22 & fig.3. Over the same period, the non-Hispanic white population also increased, but at a slower rate: from 4.54 million to 5.36 million, amounting to an increase of about 18% over the three-decade period. GPX 1, ¶ 22 & fig.3. And the percentage of Georgia's population identifying as non-Hispanic white has dropped from about 70% to just over 50%. See Pendergrass Stip. ¶ 31; GPX 1, ¶ 21 & fig.3.

As of the 2020 census, Georgia has a total voting-age population of 8,220,274, of whom 2,607,986 (31.73%) are AP Black. Pendergrass Stip. ¶ 33;

GPX 1, ¶ 18 & fig.2. The total estimated citizen voting-age population in Georgia in 2019 was 33.8% AP Black. Pendergrass Stip. ¶ 34; GPX 1, ¶ 20.

The Atlanta Metropolitan Statistical Area (the "Atlanta MSA") consists of the following twenty-nine counties: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton. Pendergrass Stip. ¶ 35; GPX 1, ¶ 12 n.3. The Atlanta MSA has driven Georgia's population growth in recent decades, due in part to a large increase in the region's Black population. See GPX 1, ¶ 24 & fig.4. Between 2010 and 2020, the overall population in the Atlanta MSA grew by 803,087 persons—greater than the population of a Georgia congressional district. See GPX 1, ¶ 29 & fig.5.[12] About half of that increase was attributable to the Atlanta MSA's Black population growing by 409,927 persons (or 23.07%). GPX 1, ¶ 29 & fig.5.[13] And looking at the period from 2000 to 2020, the Black population in the Atlanta

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[12] According to the 2020 Census, the Atlanta MSA now has a total voting-age population of 4,654,322 persons. GPX 1, ¶ 30 & fig.6.

[13] According to the 2020 Census, the Atlanta MSA's voting-age population now includes 1,622,469 (34.86%) AP Black persons and 4,342,333 (52.1%) non-Hispanic white persons. GPX 1, ¶ 30 & fig.6.

MSA grew from 1,248,809 to 2,186,815 in 2020—or 938,006 persons. Pendergrass Stip. ¶ 36.[14]

This increase in the Atlanta MSA's Black population contrasts with the comparative decrease in the non-Hispanic white population in the same area. Under the 2000 Census, the population in the Atlanta MSA was 60.42% non-Hispanic white. GPX 1, ¶ 24 & fig.4. That share decreased to 50.78% in 2010 and then further to 43.71% in 2020. Id. In fact, between 2010 and 2020, the non-Hispanic white population in the Atlanta MSA decreased by 22,736 persons. Pendergrass Stip. ¶ 37; GPX 1, ¶ 24 & fig.4.

Demographic trends in another sub-group of counties provide further insight. The eleven core counties of the Atlanta Regional Commission ("ARC") service area are Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, and Rockdale. Feb. 7, 2022, Morning Tr. 96:3–10. According to the 2020 Census, these ARC counties account for more than half (54.7%) of Georgia's Black population. GPX 1, ¶ 27. When considering the

[14] Charting the percentage share growth over the last two decades also illustrates the increases in the AP Black population in the Atlanta MSA: The AP Black population in the Atlanta MSA was 29.29% in 2000, which increased to 33.61% in 2010 and then further to 35.91% in 2020. Pendergrass Stip. ¶ 36.

entire Atlanta MSA (including the ARC counties), the Atlanta metropolitan area encompasses 61.81% of Georgia's Black population. Id.

And focusing more particularly on the area in which the illustrative District 6 is located, the 2020 Census shows that the combined Black population in Cobb, Fulton, Douglas, and Fayette Counties is 807,076 persons, which is more than necessary to constitute either an entire congressional district or a majority in two congressional districts. GPX 1, ¶ 40 & fig.7. More than half (53.27%) of the total population increase in these four counties since 2010 can be attributed to the increase in the counties' Black population. Id. ¶ 41.

(b) Georgia's 2021 congressional plan

Georgia's Enacted 2021 Congressional Plan contains two majority-minority districts using the AP BVAP metric—Districts 4 and 13. See Pendergrass Stip. ¶ 48. The Enacted Congressional Plan places Districts 3, 6, 11, 13, and 14 in the northwestern part of the state, including areas in the western portions of the Atlanta MSA.


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GPX 1, at 55–56. The Enacted Congressional Plan reduces Congressional District 6's[15] AP BVAP from 14.6% under the prior congressional plan to 9.9%. Pendergrass Stip. ¶ 49; GPX 1, ¶ 38. Under the 2021 plan, Congressional District 13 has an AP BVAP of over 66%. Pendergrass Stip. ¶ 50. Under the Enacted Congressional Plan, Congressional Districts 3, 11, and 14 border Congressional District 13. Id. ¶ 51.

Mr. Cooper observed that "District 13 is packed with African-American voters. Under the 2021 plan it's almost 65 percent, a little bit over 65 percent black voting age." Feb. 7, 2022, Morning Tr. 45:4–6. Mr. Cooper concluded that "it would be very easy to unpack that population so that there are fewer African Americans living in the district but still a clear majority black voting age population district. And in so doing create an additional majority black district in western metro Atlanta that would include a little part of Fayette County and south Fulton County, . . . eastern Douglas County and central Southern Cobb County." Id. at 45:7–14. Mr. Cooper further observed that "the fragmentation of the black population . . . is most evident in Cobb County. Cobb County has

[15] The Court takes judicial notice that Congresswoman Lucy McBath, a Black woman, was elected to represent Congressional District 6 in 2018 and won reelection in 2020, even though the AP BVAP for the district was 14.6%.

been split four ways under the enacted plan . . . . As it now stands, the enacted plan takes population that is just a few minutes away from downtown Atlanta in western Cobb County and puts it in District 14, which goes all the way to the suburbs of Chattanooga." Id. at 46:19–47:4.

(c) The Pendergrass Plaintiffs' illustrative congressional plan

Analyzing the demographic trends discussed above, as well as the enacted congressional map, Mr. Cooper concludes that "[t]he Black population in metropolitan Atlanta is sufficiently numerous and geographically compact to allow for the creation of an additional compact majority-Black congressional district anchored in Cobb and Fulton Counties (District 6 in the Illustrative Plan)." GPX 1, ¶¶ 10, 42, 59. Mr. Cooper opines that this "additional congressional district can be merged into the enacted 2021 Plan without making changes to six of the 14 districts: CD 1, CD 2, CD 5, CD 7, CD 8, and CD 12 are unaffected." Id. ¶ 11; see also id. ¶ 46 ("The result leaves intact six congressional districts in the enacted plan, modifying eight districts in the 2021 Plan to create an additional majority-Black district in and around Cobb and Fulton Counties."); Feb. 7, 2022, Morning Tr. 51:6–20 (Mr. Cooper's testimony about the unchanged districts).

Mr. Cooper drew an illustrative congressional plan that includes an additional majority-minority congressional district—illustrative Congressional District 6—in the western Atlanta metropolitan area. Pendergrass Stip. ¶ 52; GPX 1, ¶¶ 47–48 & fig.8. Mr. Cooper's Illustrative Congressional District 6 has an AP BVAP of 50.23% and a non-Hispanic Black citizen voting-age population ("BCVAP") of 50.69%. Pendergrass Stip. ¶ 53; GPX 1, ¶ 47.[16] Mr. Cooper's Illustrative Congressional Plan includes three total majority-minority districts using the any part BVAP metric and five total majority-minority districts using the non-Hispanic BCVAP metric. Pendergrass Stip. ¶ 55.[17]

Neither Mr. Morgan nor Ms. Wright disputes that Mr. Cooper's Illustrative Congressional District 6 is a majority-minority district under both the AP BVAP and non-Hispanic BCVAP metrics. See DX 3, ¶ 9 (Mr. Morgan's expert report noting that Mr. Cooper's Illustrative Congressional District 6 has a "50.2% any-part Black voting age population"); DX 41, ¶ 29 (Ms. Wright's expert report acknowledging that Mr. Cooper's Illustrative Congressional

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[16] District 6 is below 50% on other racial metrics, including single-race BVAP and the percentage of registered voters who are Black. See DX 43. As stated above, however, this Court is relying on the AP Black metric.

[17] As a result of the adjustments in the illustrative map, District 13 went from having a 66.75% BVAP to having a 51.40% BVAP, and District 4 went from having a 54.42% BVAP to a 52.40% BVAP. See GPX 2, ¶ 5 & fig.1.

District 6 is "over the 50% threshold on any part Black").[18] Both Mr. Morgan and Ms. Wright admitted during the hearing that Mr. Cooper's illustrative Congressional District 6 has an AP BVAP of 50.23%. See Feb. 11, 2022, Morning Tr. 82:21–83:7 (Ms. Wright); Feb. 11, 2022, Afternoon Tr. 233:19–234:1 (Mr. Morgan). Although Ms. Wright claimed that Mr. Cooper's illustrative Congressional District 6 "is below 50% Black on voter registration" (DX 41, ¶ 29), she admitted during the hearing that more than 8% of registered voters are of unknown race and that this qualifying information was not included in her expert report.[19] See Feb. 11, 2022, Morning Tr. 71:10–78:12.

Notably, Mr. Cooper's illustrative plan does not reduce the number of preexisting majority-minority districts in the enacted congressional plan. See GPX 1, ¶ 51; GPX 2, ¶ 5 & fig.1. Mr. Cooper testified that creating an additional majority-minority congressional district in the western Atlanta metropolitan

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[18] While Mr. Morgan notes that District 6 is "a *barely* majority Black district at 50.2%" AP BVAP (DX 3, ¶ 9 (emphasis added)), the question is whether the illustrative district is majority Black. Bartlett, 556 U.S. at 18. Because 50.2% is a majority, the Court finds that the numerosity requirement is met.

[19] Ms. Wright's report and testimony at trial referenced demographic statistics used by the Secretary of State's Office. See DX 41, ¶¶ 10–12, 21, 27–29; Feb. 11, 2022, Morning Tr. 71:10–78:12. Because this information was not attached to Ms. Wright's expert report, or submitted as an exhibit at trial, the Court requested that counsel for Defendants provide said statistics to the Court for review. Feb. 11, 2022, Morning Tr. 80:15–18. The Court reviewed the demographic statistics when preparing this Order.

area with the Black communities in Cobb, Douglas, Fulton, and Fayette Counties "was extremely easy to do" and "not a complicated plan drawing project." Feb. 7, 2022, Morning Tr. 53:6–8. Mr. Cooper emphasized this point throughout the hearing. E.g., id. at 69:6–9 (stating that "it was extraordinarily easy to draw this additional majority black district in the western part of metro Atlanta" and that "[i]t basically just draws it[self]"); id. at 75:11–12 (Mr. Cooper's testimony: "There are no complexities here like there might be in other states. This is just drop-dead obvious.").

Based on the expert reports and testimony provided in this case, the Court concludes that Mr. Cooper's illustrative congressional plan contains an additional majority-minority congressional district.

Based on the expert reports and testimony provided in this case, the Court concludes that Mr. Cooper's Illustrative Congressional Plan contains an additional majority-Black congressional district. Thus, the Court finds that the Pendergrass Plaintiffs have satisfied the numerosity component of the first Gingles precondition.

(2) Geographic Compactness

To satisfy the first Gingles precondition, the Pendergrass Plaintiffs must also show that their proposed majority-Black congressional district is

sufficiently compact. This compactness requirement under Gingles requires a showing that it is "possible to design an electoral district[] consistent with traditional redistricting principles." Davis, 139 F.3d at 1425.

The redistricting guidelines adopted by the Georgia General Assembly provide that those drawing new districts should account for or consider population equality, compactness, contiguity, respect for political subdivision boundaries and communities of interest, and compliance with Section 2 of the Voting Rights Act. See GPX 40. Mr. Cooper testified that his Illustrative Map adheres to these and other neutral districting criteria. See Feb. 7, 2022, Morning Tr. 48:16–50:21 (Mr. Cooper's testimony describing traditional districting principles employed during his map-drawing process). Mr. Cooper explained that none of the traditional districting principles predominated when he drew his Illustrative Congressional Plan; instead, he "tried to balance them all" and "did not prioritize anything other than specifically meeting the one-person, one-vote zero population ideal district size." Id. 50:22–51:2.

For the reasons discussed below, the Court finds that the Pendergrass Plaintiffs' Illustrative Plan comports with traditional redistricting principles—including those enumerated in the General Assembly's redistricting guidelines.

Thus, the Court finds that the Pendergrass Plaintiffs satisfy the remainder of the first Gingles precondition analysis.

(a) Population equality

First, an illustrative plan must comply with the one-person, one-vote principle. See Wright, 301 F. Supp. 3d at 1325–26; see also Reynolds, 377 U.S. at 577 ("[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable.").

Mr. Cooper's expert report demonstrates that his Illustrative Plan contains minimal population deviation. See GPX 1 at 67–68; Feb. 7, 2022, Morning Tr. 55:12–18 (Mr. Cooper's testifying that population equality is "reflected with perfection [in his illustrative map] because the districts are plus or minus one person"). Accordingly, the Court finds that Mr. Cooper's Illustrative Congressional Map complies with the one-person, one-vote principle.

(b) Compactness

Second, as discussed in greater detail above, an illustrative plan must contain "reasonably compact" districts. See Bush v. Vera, 517 U.S. 952, 979 (1996). Mr. Cooper testified that "there is no bright line rule" for compactness,

"nor should there be" given that "so many factors [] enter into the equation" – including, in Georgia, the fact that "municipal boundaries in many [c]ounties [] are not exactly compact." Feb. 7, 2022, Morning Tr. 60:14–24.

The parties' experts evaluated the Enacted Congressional Plan and Mr. Cooper's Illustrative Plan using the Reock and Polsby-Popper analyses, two commonly used measures of a district's compactness. See GPX 1, ¶ 54 & nn.11–12 & fig.10; DX 1, ¶ 17 & chart 2; see also Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections, 835 F. Supp. 2d 563, 570 (N.D. Ill. 2011) (referring to "the Polsby–Popper measure and the Reock indicator" as "two widely acceptable tests to determine compactness scores"). The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. GPX 1, ¶ 54 & n.11. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. Id. The measure is always between 0 and 1, with 1 being the most compact. Id.; see also Feb. 7, 2022, Morning Tr. 59:21–60:4 (Mr. Cooper describing the Reock score as "just creating a number between zero and one to compare the area of a district with a circle drawn around the district, and so the higher you are towards one, the more compact the district would be under that measure"). The Polsby-Popper test,

on the other hand, computes the ratio of the district area to the area of a circle with the same perimeter. GPX 1, ¶ 54 n.12. The measure is always between 0 and 1, with 1 being the most compact. Id.; see also Feb. 7, 2022, Morning Tr. 60:5–13 (Mr. Cooper's testimony describing the Polsby-Popper measure). In discussing these methods of measuring compactness scores, Defendants' mapping expert Mr. Morgan stated that while he would not assert that a certain score would be a universally applicable threshold for compactness, the compactness scores generally "are usually useful in comparing one plan to another" and that "when you do a lot of comparisons, you can see some cases where things are considerably less compact than others." Feb. 11, 2022, Afternoon Tr. 226:2–11.

Mr. Cooper reported that the mean Reock score for his Illustrative Plan is 0.40, compared to a mean score of 0.43 for the Enacted Plan, and that the mean Polsby-Popper score for this Illustrative Plan is 0.23, compared to 0.25 for the Enacted Plan. GPX 1, ¶ 54 & fig.10; see also id. at 78–83. Mr. Morgan confirmed these figures in his report. See DX 3, ¶ 17; see also Feb. 11, 2022, Afternoon Tr. 243:3–9. The following table included in Mr. Morgan's report compares, on a district-by-district level for the eight congressional districts

changed in Mr. Cooper's Illustrative Plan, the compactness measures of Mr. Cooper's illustrative districts to those of the districts in the Enacted Map:

Proposed Remedial Districts /Adopted Districts	Adopted Plan Reock	Cooper Remedial Plan Reock	Adopted Plan Polsby-Popper	Cooper Remedial Polsby-Popper
Congress 003	**0.46**	0.40	**0.28**	0.25
Congress 004	**0.31**	0.29	**0.25**	0.21
Congress 006	**0.42**	0.38	**0.20**	0.16
Congress 009	0.38	**0.40**	0.25	**0.32**
Congress 010	**0.56**	0.40	**0.28**	0.18
Congress 011	**0.48**	0.40	**0.21**	0.16
Congress 013	0.38	**0.42**	0.16	**0.25**
Congress 014	0.43	**0.48**	**0.37**	0.34

DX 1, ¶ 17 & chart 2. Mr. Cooper testified that, "practically speaking, there is no difference" between compactness measures for the Illustrative and Enacted Congressional Plans. Feb. 7, 2022, Morning Tr. 61:4–15. Mr. Cooper also testified that the compactness measures for his Illustrative Congressional Plan are "[i]n the usual range. There is no problem with the compactness per se in either" the Enacted or Illustrative Congressional Plans. Id. at 61:16–20. Further, while Mr. Morgan stated that Mr. Cooper's Illustrative Congressional Plan is "less compact overall" than the Enacted Plan (DX 3, ¶ 17), he did not opine that Mr. Cooper's Illustrative Plan is not reasonably compact. Feb. 11, 2022,

Afternoon Tr. 243:19–244:1; see also id. at 228:3–16 (Mr. Morgan conceding that there is no minimum compactness threshold for districts under Georgia law).

Given the evidence discussed above, the Court finds that Mr. Cooper's Illustrative Congressional Map has comparable compactness scores to Georgia's enacted 2021 congressional plan. More specifically, after reviewing the compactness measures supplied by the expert reports in this case and listening to the expert testimony at the preliminary injunction hearing, the Court concludes that the districts in Mr. Cooper's Illustrative Plan are reasonably compact for purposes of the first Gingles precondition analysis. And beyond recognizing that the numerical compactness measures indicate that the affected districts in the Illustrative Plan are sufficiently compact, the Court finds that the districts in the Illustrative Plan pass the "eyeball test" in that they appear from a visual review to be compact. See Ala. State Conf. of NAACP v. Alabama, No. 2:16-CV-731-WKW, 2020 WL 583803, at *20 (M.D. Ala. Feb. 5, 2020) ("District 1 is contiguous and also passes the eyeball test for geographical compactness."); Comm. for a Fair & Balanced Map, 835 F. Supp. 2d at 571 (noting a district's Polsby-Popper and Reock scores but also stating that the district "passe[d] muster under the 'eyeball' test for compactness"). Accordingly, the Court finds that Mr. Cooper's Illustrative

Congressional Plan is consistent with the traditional districting principle of compactness.

(c) Contiguity

Third, an illustrative plan's district must be contiguous. See Davis, 139 F.3d at 1425. The parties do not dispute that Mr. Cooper's Illustrative Congressional Map contains contiguous districts. See Feb. 7, 2022, Morning Tr. 62:4–14 (Mr. Cooper's testimony confirming that his illustrative districts are contiguous).

(d) Preservation of political subdivisions

Fourth, an illustrative plan should consider the "preservation of significant political and geographic subdivisions." See Adamson, 876 F. Supp. 2d at 1353.

Mr. Cooper testified that he "attempted to avoid splitting counties where unnecessary and avoid splitting towns and municipalities." Feb. 7, 2022, Morning Tr. 55:19–56:22. However, he also noted that "to meet one-person, one-vote in the congressional plan, it is absolutely necessary to split some counties." Id. at 56:3–5. In those cases, Mr. Cooper "would try to split the county by precinct," though splitting precincts was also sometimes necessary to achieve population equality. Id. at 56:6–10. If splitting a precinct was

necessary, Mr. Cooper "would follow, if possible, a municipal boundary or an observable boundary like a road or waterway. And in some cases, [Mr. Cooper] generally follow[ed] observable boundaries, but also rel[ied] on a census bureau boundary that is established, known as a block group." Id. at 56:11–19.

As Mr. Morgan notes, Mr. Cooper's plan splits more political subdivisions than the Enacted Plan does. DX 3, ¶ 15. Overall, however, the Court finds that county, voting district ("VTD"),[20] and municipal splits are comparable between the Enacted Congressional Plan and Mr. Cooper's Illustrative Plan. Although thirteen counties are split in Mr. Cooper's Illustrative Plan (compared to twelve in the Enacted Plan), Mr. Cooper's Illustrative Plan includes fewer unique county-district combinations than the Enacted Plan—fourteen compared to nineteen—indicating fewer splits overall. See GPX 1, ¶ 55 & fig.11; id. at 84–91; Feb. 7, 2022, Morning Tr. 56:20–57:21 (Mr. Cooper's testimony distinguishing between number of counties that are split as opposed to number of splits total). Further, Mr. Cooper's Illustrative

[20] The term "voting district" is "a generic term adopted by the Bureau of the Census to include the wide variety of small polling areas, such as election districts, precincts, or wards, that State and local governments create for the purpose of administering elections." U.S. Census Bureau, https://www2.census.gov/geo/pdfs/reference/GARM/Ch14GARM.pdf (last visited February 27, 2022).

Congressional Plan splits fewer municipalities than the Enacted Plan: seventy-nine compared to ninety. See GPX 1, ¶ 55 & fig.11; id. at 92–97; Feb. 7, 2022, Morning Tr. 57:22–58:4 (Mr. Cooper's testimony describing municipality splits). Mr. Cooper's Illustrative Congressional Plan splits only five more VTDs than the Enacted Plan. See GPX 1, at 84–91; Feb. 7, 2022, Morning Tr. 58:5–59:3 (Mr. Cooper's testimony describing VTD splits). And as compared to the Enacted Congressional Plan, in which Cobb County is divided among four congressional districts, Mr. Cooper's Illustrative Plan divides Cobb County between only two congressional districts. Feb. 7, 2022, Morning Tr. 46:23–47:1, 53:9–22.

Based on the record, the Court finds that Mr. Cooper's Illustrative Congressional Plan sufficiently respects political subdivision boundaries for purposes of the first Gingles precondition. While Mr. Cooper's plan splits more political subdivisions than the Enacted Plan splits, the difference is small and not material. Further, the Court finds that Mr. Cooper provided convincing and permissible reasons for why he opted to split many of the political subdivisions he did split. E.g., Feb. 7, 2022, Morning Tr. 55:21–59:3, 83:2–20 (explaining that he had to split certain counties in order to comply with the one-person, one-

vote requirement). On balance, the Court finds that the Illustrative Plan adequately respects political subdivision boundaries.

(e) Preservation of communities of interest

Fifth, an illustrative map should seek to keep communities of interest together in the same districts. See LULAC, 548 U.S. at 432–33. The Supreme Court has indicated that communities of interest may form by commonalities in "socio-economic status, education, employment, health, and other characteristics." See id. at 432 (citation omitted); see also Perez v. Abbott, No. SA-11-CV-360, 2017 WL 1406379, at *60 (W.D. Tex. Apr. 20, 2017) (recognizing communities of interest that shared "socioeconomic issues, poverty, lack of good jobs, and lack of access to health services and public hospitals"). "The recognition of nonracial communities of interest reflects the principle that a State may not assume from a group of voters' race that they think alike, share the same political interests, and will prefer the same candidates at the polls." LULAC, 548 U.S. at 432–33 (cleaned up). But the Supreme Court has also noted "evidence that in many cases, race correlates strongly with manifestations of community of interest (for example, shared broadcast and print media, public

transport infrastructure, and institutions such as schools and churches)." Bush, 517 U.S. at 964.[21]

With these principles in mind, the Court now turns to discuss whether the Pendergrass Plaintiffs' Illustrative Map respects communities of interest. Because the relevant portions of the Enacted Map and the Pendergrass Plaintiffs' Illustrative Map are in the western portion of the state, the Court focuses its discussion on those districts.

Referring to the Enacted Congressional District 14, Mr. Cooper testified, "I think you would be hard-pressed to find anything with relation to south Cobb County that would connect that part of District 14 to the remainder, particularly since District 14 extends way to the north. So it's really — it's really getting into an Appalachian Regional commission territory. It's just not the same." Feb. 7, 2022, Morning Tr. 47:5–15. When asked by the Court how he would describe southwest Cobb County, Mr. Cooper responded, "Suburban." Id. at 47:16–18.

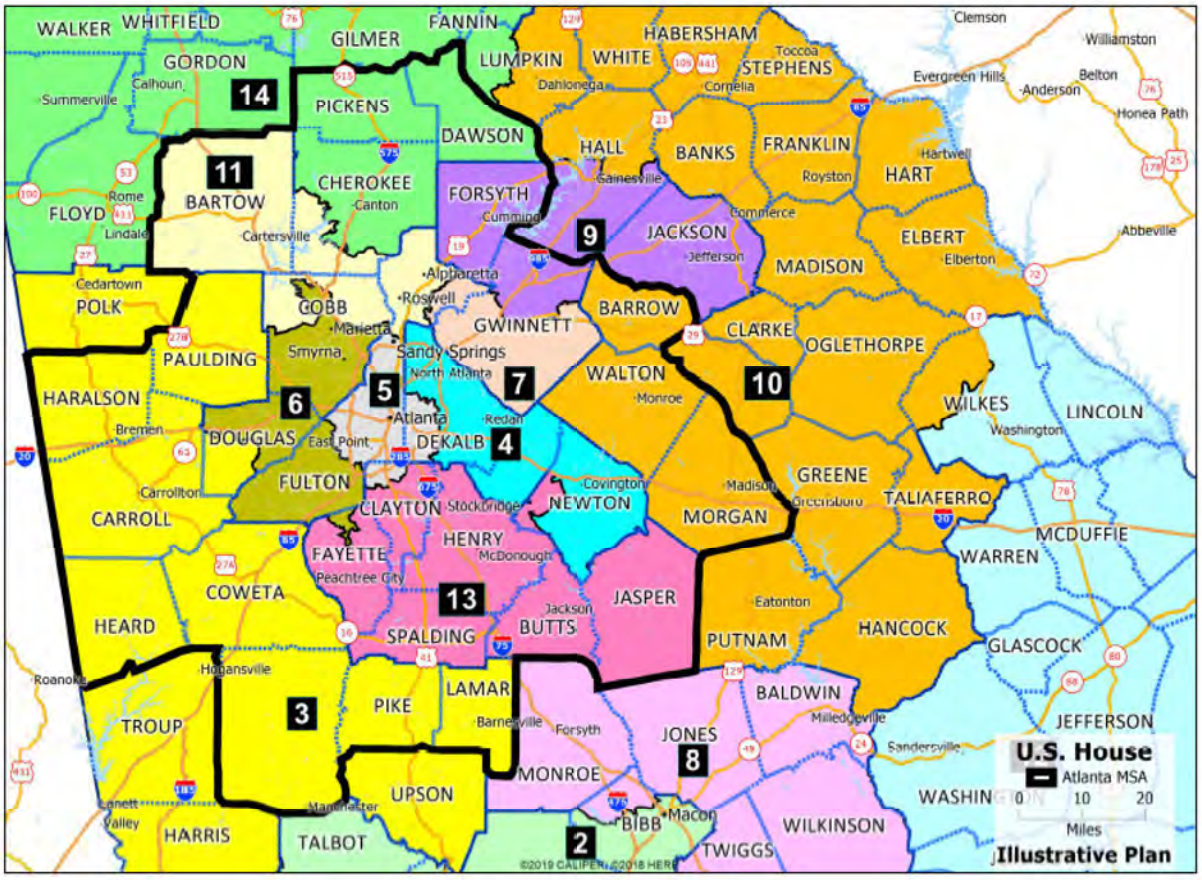
[21] While Georgia's redistricting guidelines provide that communities of interest should be considered when districts are being drawn, the guidelines do not define what constitutes a community of interest. See GPX 40, at 2.

Jason Carter, a former member of the State Senate and candidate for Governor of Georgia during the 2014 election, agreed that the treatment of Cobb County in the enacted congressional map does not serve a clear community of interest, noting that it "looks like . . . you are taking bits and pieces of Cobb County and you are sticking them in these districts that are very, very different from Cobb County." Feb. 10, 2022, Afternoon Tr. 127:8–20. Mr. Carter explained that this "part of Cobb [County] is essentially Metro Atlanta. It's a suburban part . . . . And if you look at [Chattooga] County or some of these others, we are talking about rural, mountain counties in essence that are not part of the Metro Atlanta area at all and [confront] very different sets of issue[s], it would seem to me." Id. at 127:21–128:8. He further explained the difficulties that Cobb County residents would have in securing representation due to being included in more rural-reaching congressional districts: "[I]f you are in a part of that district that is, again, buried as an appendage, in a district that has a significant number of other interests, then you are not going to have the amount of responsiveness that you would otherwise have." Id. at 132:1–15.

Ms. Wright described southwest Cobb County as "municipalized" and "developed." Feb. 11, 2022, Morning Tr. 33:19–34:3. She also confirmed that this

area is "part of metro Atlanta." Id. at 34:4–5. By contrast, she described Polk and Bartow Counties in northwest Georgia—which are connected with southwest Cobb County in the Enacted Congressional Plan—as "more rural counties." Id. at 34:6–11.

Mr. Cooper explained that he looked at maps of Georgia's regional commissions and metropolitan statistical areas to guide his preservation of communities of interest. Feb. 7, 2022, Morning Tr. 62:15–63:17; see also Feb. 11, 2022, Morning Tr. 90:3–91:12 (Ms. Wright's testimony agreeing that a "community of interest is anything that unites people in an area and brings them together" and broadly defining communities of interest to include regions with shared commercial and economic interests). Mr. Cooper testified that he used these sources to derive communities with shared economic and transportation interests. Feb. 7, 2022, Morning Tr. 62:23–63:4. As depicted in his expert report, Mr. Cooper's illustrative Congressional District 6 is comprised of pieces of four counties—Cobb, Douglas, Fulton, and Fayette—that are among the 11 core ARC counties:



GPX 1, ¶ 47 & fig.8. As Mr. Cooper testified, "these [c]ounties are all part of core Atlanta," and the distances between them "are fairly small." Feb. 7, 2022, Morning Tr. 92:23–25; see also id. at 96:22–25 (Mr. Cooper's testimony characterizing 11 ARC counties as core Atlanta area). Mr. Cooper also testified that he was aware of the creation of at least four majority-Black Georgia State Senate districts in the western Atlanta metropolitan area under the newly enacted legislative maps. See GPX 2, ¶ 3; Feb. 7, 2022, Morning Tr. 103:4–14. He explained that "four Senate districts is one congressional, 14 times four is 56.

So that's why I was so confident at the outset that it was going to be likely that I could draw the additional majority black district in that part of the state." Feb. 7, 2022, Morning Tr. 103:15–22.

Commenting on Mr. Cooper's illustrative Congressional District 6, Mr. Carter testified, that it was "clearly" a "suburban district" in a "fast-growing" area of suburban Atlanta. Feb. 10, 2022, Afternoon Tr. 133:8–14. Mr. Carter noted that illustrative Congressional District 6 is an area within forty-five minutes of downtown Atlanta that confronts similar issues. See id. at 133:8–18. Mr. Carter described the interests that residents of the western Atlanta metropolitan area share, such as similar suburban school districts, transportation concerns ("the Atlanta traffic reports affect everybody's life in that part of West Cobb and it affects basically nobody's life in Gordon County"), and healthcare concerns. Id. at 128:9–129:11. Applying these shared concerns to Mr. Cooper's illustrative Congressional District 6, Mr. Carter testified that residents of these areas would have similar transportation, housing, and healthcare issues. Id. at 133:19–23. He further testified that Fulton, Cobb, and Douglas Counties are growing quickly "from a school district standpoint" and will "be in the kind of environments that are going to look familiar to each other." Id. at 133:23–134:2. Asked about shared infrastructure

concerns, Mr. Carter responded, "I think from an infrastructure standpoint, there is no doubt that the infrastructure needs here are really cohesive because you've got the traffic issues that are there . . . . And that also includes [] land use management . . . . [T]he Chattahoochee River runs through here and you are talking about drainage and land use and as these things are growing fast, the connectedness of this area is really real. So that infrastructure piece is another thing that links it together." Id. at 134:3–18.

Based on the record, the Court finds that Mr. Cooper's Illustrative Congressional Plan sufficiently respects communities of interest in the western Atlanta metropolitan area for purposes of the first Gingles precondition. Several witnesses testified that the areas constituting illustrative Congressional District 6 are developed and suburban in nature and generally face the same infrastructure, medical care, educational, and other critical needs. The Court finds that these needs, along with the relative geographic proximity given the compactness of the proposed district, combine to create a community of interest for Gingles purposes.

(f) Core Retention

Next, the Court discusses the preservation of existing district cores, which is not an enumerated districting principle adopted by the Georgia

General Assembly. See GPX 40. Mr. Morgan opined that while the 2021 Enacted Congressional Plan "largely maintains existing district cores" from the prior congressional plan, Mr. Cooper's Illustrative Plan "makes drastic changes" to many of the districts from the prior plan. DX 3, ¶ 12 & chart 1. Mr. Cooper responds, however, that he could not avoid drawing illustrative districts with lower core retention scores than the districts in the Enacted Congressional Plan in light of his objective of satisfying the first Gingles precondition. See GPX 2, ¶ 4. As he explained in his expert report, "[c]ore retention is largely irrelevant when an election plan is challenged on the grounds that it violates Section 2[] of the VRA. The very nature of the challenge means that districts adjacent to the demonstrative majority-minority district must change, while adhering to traditional redistricting principles." Id.

During his testimony at the hearing, Mr. Morgan conceded that illustrative plans are necessarily different from enacted plans. Feb. 11, 2022, Afternoon Tr. 214:1–3. The Court also notes that Mr. Cooper's Illustrative Plan does not alter six of Georgia's fourteen congressional districts. See GPX 1, ¶¶ 11, 46; Feb. 7, 2022, Morning Tr. 51:6–20 (Mr. Cooper's testimony describing unchanged districts). As such, the Court finds that not only does Mr. Cooper's Illustrative Congressional Plan comply with the traditional districting

principles and the General Assembly's guidelines, his plan also does not alter existing district cores in a manner that counsels against finding that it satisfies the first Gingles precondition.

(g) Racial considerations

Finally, the Court addresses whether Mr. Cooper subordinated traditional districting principles in favor of race-conscious considerations. A state cannot use race as the predominant factor motivating the decision to place a significant number of voters within or without a particular district, and the state is not allowed to subordinate other factors, such as compactness or respect for political subdivisions, to racial considerations. Wright, 301 F. Supp. 3d at 1325 (citations omitted). Thus, an illustrative plan should not subordinate traditional redistricting principles to racial considerations substantially more than is reasonably necessary to avoid liability under Section 2. See Davis, 139 F.3d at 1424.

Mr. Cooper was asked "to determine whether the African American population in Georgia is 'sufficiently large and geographically compact' to allow for the creation of an additional majority-Black congressional district in the Atlanta metropolitan area." GPX 1, ¶ 8 (footnotes omitted); see also Feb. 7, 2022, Morning Tr. 98:8–16. He testified that he was not asked to either "draw

as many majority black districts as possible" or "draw every conceivable way of drawing an additional majority black district." Id. at 98:17–24. And Mr. Cooper testified that if he had found that a majority-Black district could not have been drawn, he would have reported that to counsel, as he has "done [] in other cases." Id. at 98:25–99:24. Mr. Cooper testified that race "is something that one does consider as part of traditional redistricting principles" because "you have to be cognizant of race in order to develop a plan that respects communities of interest, as well as complying with the Voting Rights Act[,] because one of the key tenets of traditional redistricting principles is the importance of not diluting the minority vote." Id. at 48:4–15. Mr. Cooper emphasized that he accounted for other considerations when he drew his illustrative map, including the traditional districting principles described above. See id. at 48:16–51:5. Although he "was aware of the racial demographics for most parts of the state," race "certainly did not predominate." Id. at 51:3–5; see also id. at 50:22–51:2 (testifying that no factor was a predominant factor in drawing the Illustrative Plan); 99:25–100:9 (Mr. Cooper's testimony: "I looked at all of the factors that are part of the traditional redistricting principles and tried to balance them. So I tried to draw a compact district, a district that didn't split very many political subdivisions,

and we [have] already seen that the plan that I've drawn splits fewer municipalities than the adopted [] plan. And I looked at other factors, . . . the various traditional redistricting factors. The idea was to balance those factors and show that a district could be created if it could be created."); id. at 101:25–102:13 (similar).

Although Ms. Wright opined that she "cannot explain the decision to take District 6 into Fayette County" in Mr. Cooper's illustrative map (DX 41, ¶ 29), Mr. Cooper explained that "[t]o meet one-person one-vote requirements, one has to split Fayette County between District 13 and District 6 because if you put all of Fayette County in District 13, it would be overpopulated by . . . several thousand people." Feb. 7, 2022, Morning Tr. 64:22–65:8. Mr. Cooper noted that "the northern part of Fayette County" is "a racially diverse area. That is not overwhelmingly black. It's balanced to some part[s] of Cobb County where there is no racial majority." Id. at 82:6–18.

Similarly, Ms. Wright suggested that "District 13 reaches into Newton County in an unusual way that cannot be explained by normal redistricting principles" (DX 41, ¶ 29), but Mr. Cooper again explained that this was done "to balance populations out" because including all of Newton County in Congressional District 4 would have made that district overpopulated. Feb. 7,

2022, Morning Tr. 66:11–67:1. Ms. Wright also stated that "District 6 specifically grabs Black voters near Acworth and Kennesaw State University to connect them with other Black voters in South Cobb, Douglas, and Fulton Counties" (DX 41, ¶ 29), but Mr. Cooper explained that this decision was also made "to ensure that District 6 met population equality." Feb. 7, 2022, Morning Tr. 65:14–21. Mr. Cooper noted that the northern arm of his illustrative Congressional District 6 is not in "an area that is predominately black. It is a racially diverse area[.]" Id. at 65:21–66:2; see also id. at 84:4–7 (Mr. Cooper's testimony: "I was not trying to maximize the black voting age population of District 6 by going into . . . Kennesaw and Acworth."); id. at 85:18–86:4 (Mr. Cooper's testimony: "I had to go in some direction and pick up fairly heavily populated areas, and I knew Kennesaw and Acworth were racially diverse so from a community of interest standpoint it made sense to include that with central Cobb County, which is also racially diverse, and southern Cobb County, which is more predominantly black."); id. at 97:5–10 (Mr. Cooper's testimony: "That was an area with relative racial diversity. I thought it would fit into a majority black district. But I was not trying to identify majority black blocks to put into District 6 from that area.").

Indeed, when asked if "there [were] densely populated black areas in those [c]ounties that you didn't include in your illustrative map," Mr. Cooper confirmed that "there would be ways to enhance the black voting age population, not just in District 6 but elsewhere, by changing lines and perhaps splitting some additional [c]ounties." Feb. 7, 2022, Morning Tr. 66:3–10; see also id. at 97:11–19 (Mr. Cooper's testimony agreeing that he could have "done further changes to the plan that was adopted, perhaps, splitting an additional [c]ounty or something to find other areas to draw a majority black district"). In response to Ms. Wright's suggestion that "[t]he divisions of Cobb, Fayette, and Newton Counties do not make sense as part of normal redistricting principles" and were made "in service of some kind of specific goal" (DX 41, ¶ 29), Mr. Cooper confirmed that he did not have a single specific goal in mind when drawing his Illustrative Congressional Map, explaining that he was asked "to determine whether or not an additional majority black district could be created, but that was not the goal per se. I had to also follow traditional redistricting principles and then make an assessment as to whether that one additional black district could be determined. I determined that it could be, but that was not my goal per se." Feb. 7, 2022, Morning Tr. 68:5–20.

Given the record and the evidence discussed above, the Court finds that race did not predominate in the drawing of Mr. Cooper's Illustrative Congressional Plan. Specifically, the Court finds that Ms. Wright's criticisms of the Illustrative Plan are conclusory and lack analysis. For every unsupported conclusion she made that certain illustrative districts did not comply with traditional redistricting principles, Mr. Cooper offered detailed and readily understandable explanations for why he drew districts in the way he did and how his plan complies with traditional redistricting principles. Moreover, the Court finds that while Mr. Cooper was conscious of race when drawing the congressional districts, other redistricting principles were not subordinated.

(3) Conclusions of Law

Thus, based on the evidence presented, the Court finds that the Pendergrass Plaintiffs' Illustrative Plan demonstrates that the Black population in the western Atlanta metropolitan area is sufficiently geographically compact to constitute a voting-age majority in an additional congressional district. Moreover, the Court finds that the Illustrative Plan is consistent with traditional redistricting principles. Accordingly, the Court finds that the Pendergrass Plaintiffs have shown a substantial likelihood to succeed on the merits of the first Gingles precondition.

d) Grant and Alpha Phi Alpha

The Court finds that the Grant and Alpha Phi Alpha Plaintiffs have sufficiently established that they are substantially likely to succeed on the merits in showing that it is possible to create two additional State Senate Districts and two State House Districts in the Atlanta Metropolitan area and one additional State House District in southwestern Georgia under relevant Gingles considerations.

In addition, as indicated above, Plaintiffs in both the Grant and Alpha Phi Alpha cases allege that the State maps passed in SB 2EX and HB 1EX violate Section 2 of the Voting Rights Act. Both the Grant and Alpha Phi Alpha Plaintiffs allege that the Georgia legislature should have drawn two additional Senate Districts in the southern metropolitan Atlanta area and one additional Senate District in the Eastern Black belt area. Grant Doc. No. [1], ¶¶ 41–42; APA Doc. No. [1], ¶¶ 64–66. While the Illustrative Maps (drawn by redistricting experts, Mr. Esselstyn and Mr. Cooper) presented by the Grant and Alpha Phi Alpha Plaintiffs are not exact replicas, they largely overlap.[22] Compare GPX 3,

[22] The Court recognizes that "there is more than one way to draw a district so that it can reasonably be described as meaningfully adhering to traditional principles, even if not to the same extent or degree as some other hypothetical district." Chen v. City of Houston, 206 F.3d 502, 519 (5th Cir. 2000). And the remedial plan that the Court eventually implements if it finds Section 2 liability need not be one of the maps

¶ 26 & fig.6, with APAX 1, ¶ 79 & fig.17; compare GPX 3, ¶ 27 & fig.7, with APAX 1, ¶ 76 & fig.15; compare GPX 3, ¶ 41 & fig.12 with APAX 1, ¶ 112 & fig.28. The Court finds that both plans concern areas of Henry, Clayton, and Fayette Counties. Accordingly, because the Court found that Mr. Esselstyn's Illustrative Senate District 25 and 28 have a substantial likelihood of success on the merits as to the first Gingles precondition, the Court does not rule on the substantial likelihood of success of Mr. Cooper's Illustrative Senate Districts 17 and 28.

Compare GPX 3, ¶ 24 & fig.4

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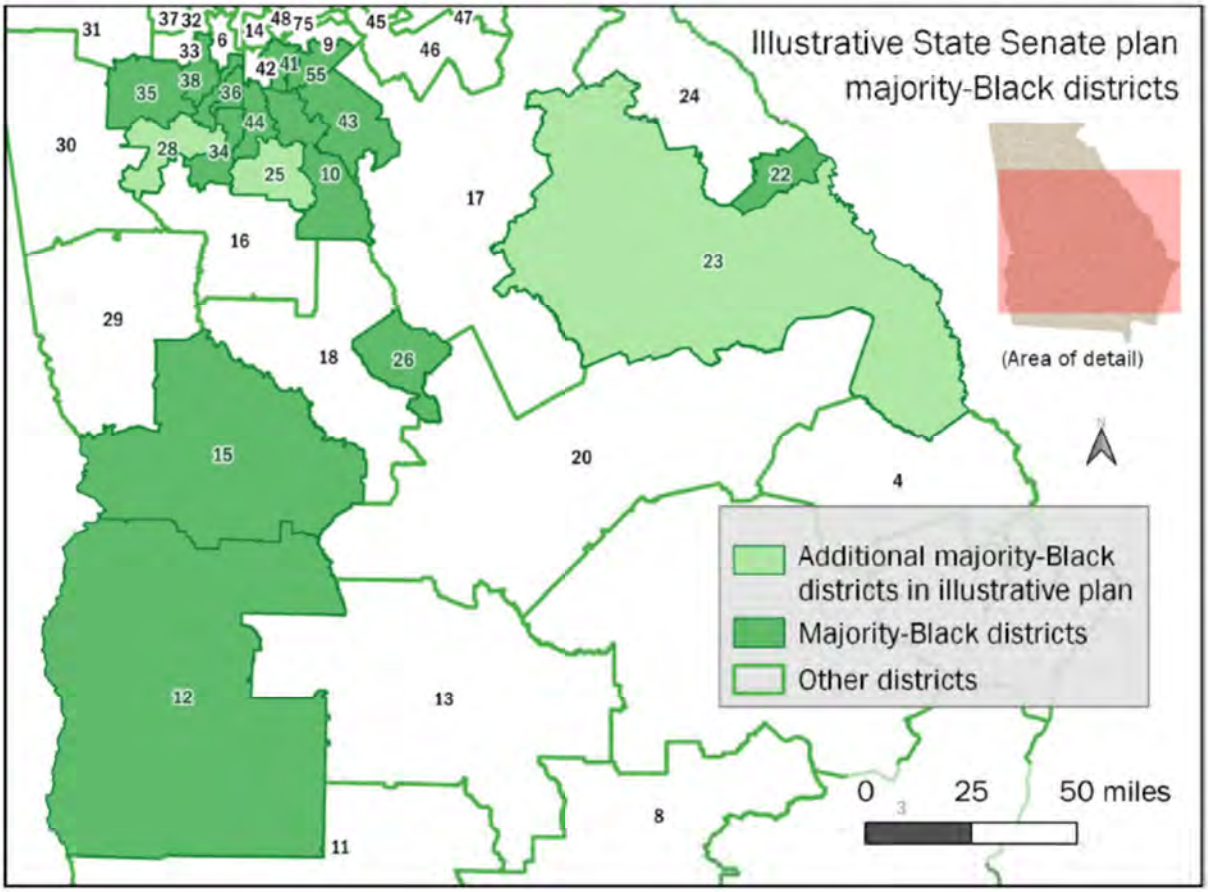
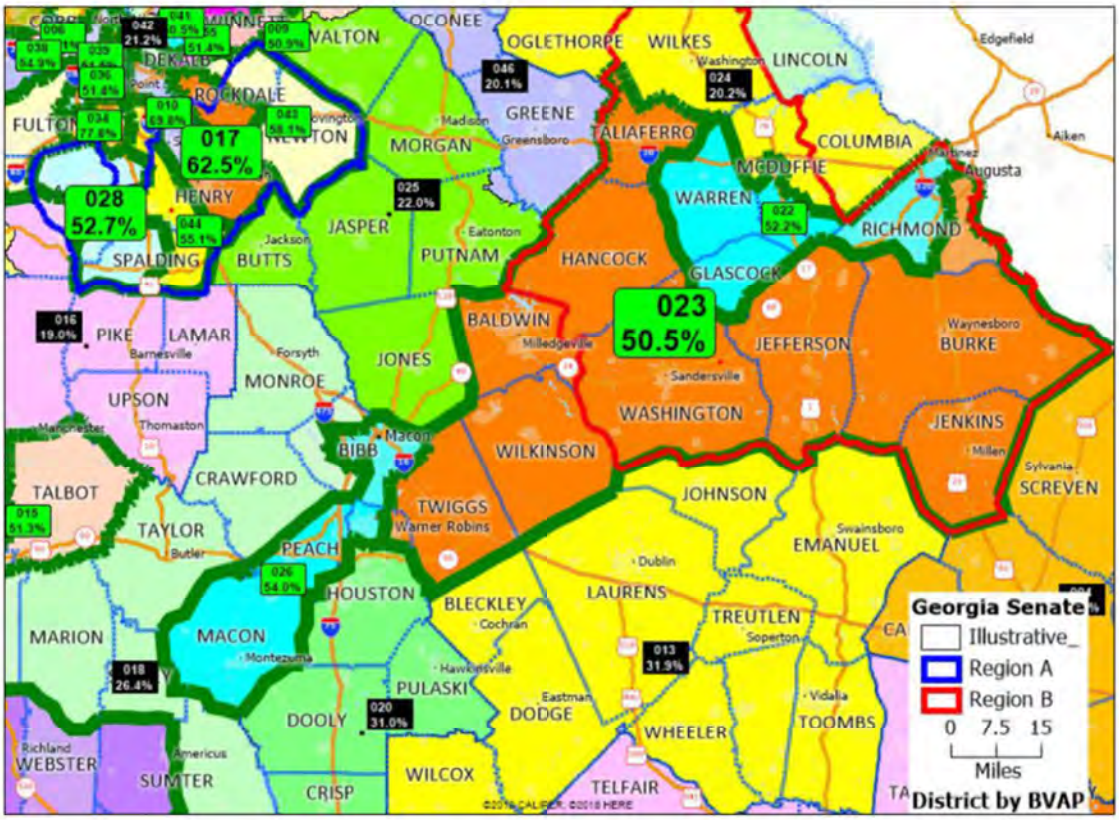
proposed by Plaintiffs. See Clark, 21 F.3d at 95–96 & n.2 ("[P]laintiffs' proposed district is not cast in stone. It was simply presented to demonstrate that a majority-black district is feasible in [the jurisdiction] . . . . [T]he district court, of course, retains supervision over the final configuration of the districting plan.").

Figure 4: Map of majority-Black districts in the illustrative State Senate plan.



with, APAX 1, ¶ 71 & fig.14.

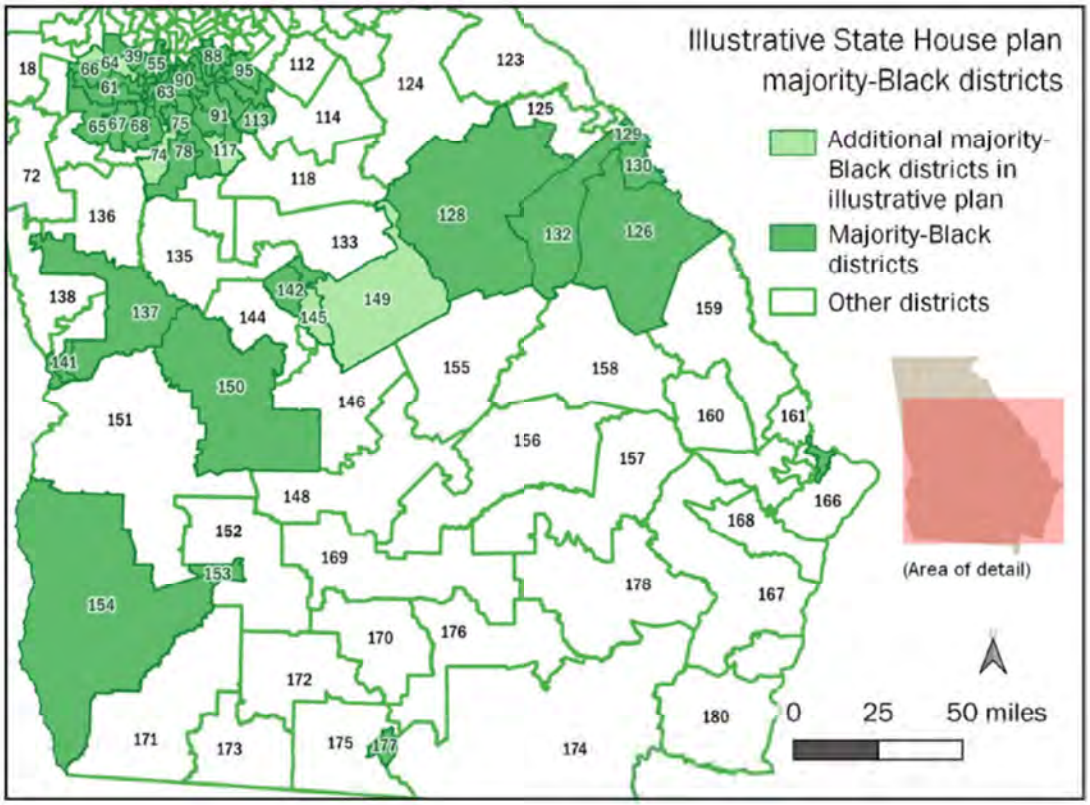
Figure 14



Additionally, both the Grant and Alpha Phi Alpha Plaintiffs allege that the Georgia legislature should have drawn five additional House Districts. The Grant Plaintiffs allege that two additional House Districts could be drawn in the southern Atlanta metropolitan area (Grant Doc. No. [1], ¶ 43), and the Alpha Phi Alpha Plaintiffs allege that three additional House Districts could be drawn in the southern Atlanta metropolitan area (APA Doc. No. [1], ¶¶ 70–72.). Mr. Cooper's Illustrative House Districts 74, 110, and 111 concern areas of

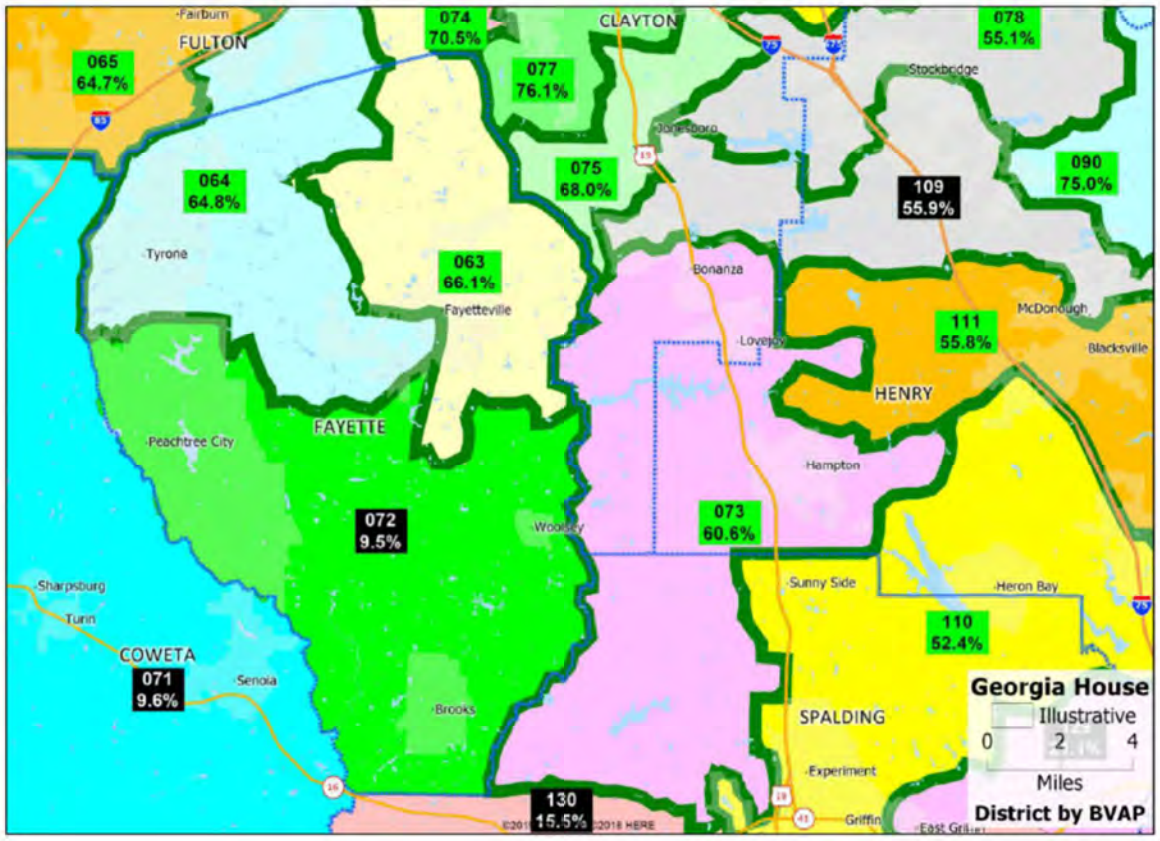
Henry, Fayette, and Clayton Counties. Mr. Esselstyn's Illustrative House Districts 74 and 117 also concern Henry, Fayette, Clayton, and Cowetta Counties. Accordingly, because the Court found that Mr. Esselstyn's Illustrative House District 74 and 117 have a substantial likelihood of success on the first Gingles precondition, the Court does not rule on the substantial likelihood of success of Mr. Cooper's Illustrative House Districts 73, 110, and 111.

Figure 10: Map of majority-Black districts in the illustrative House plan.



GPX 3, ¶ 39 & fig.10.

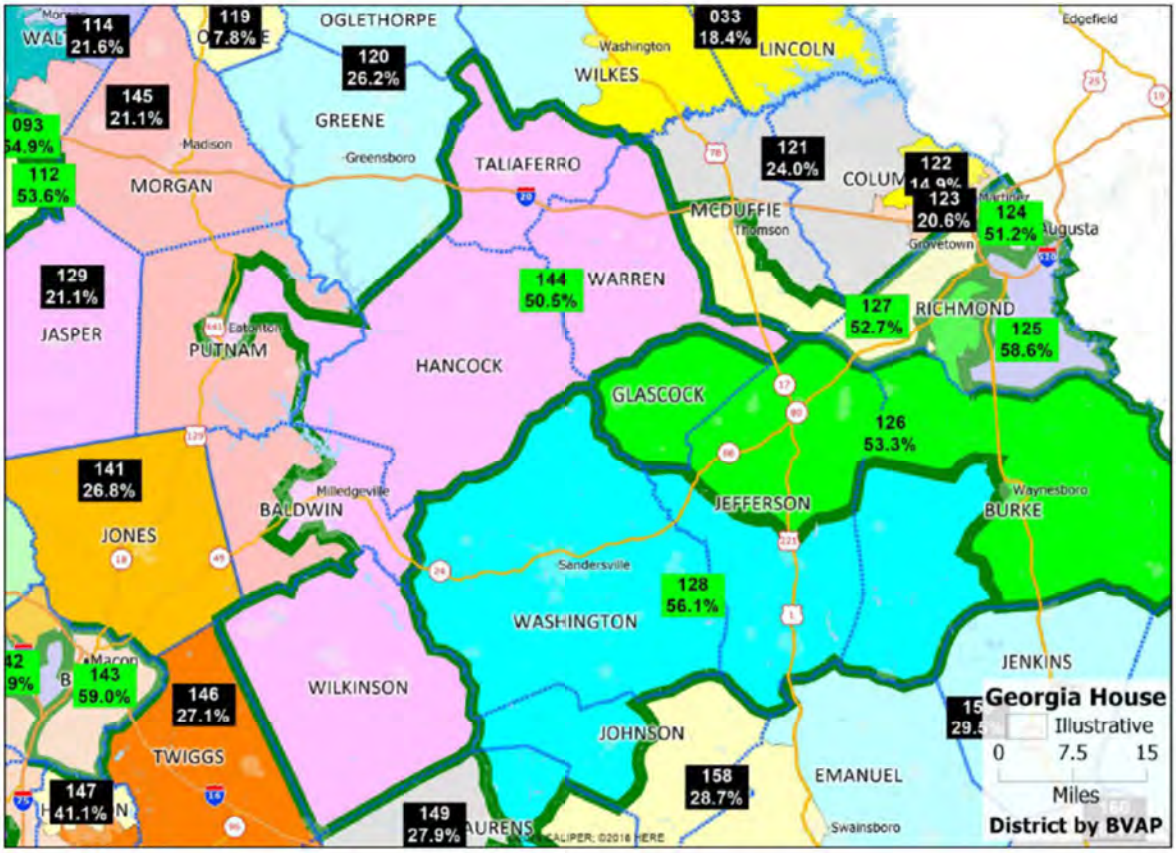
Figure 28: *Illustrative Plan District 73 and Vicinity*



APAX 1, ¶ 111 & fig.28.

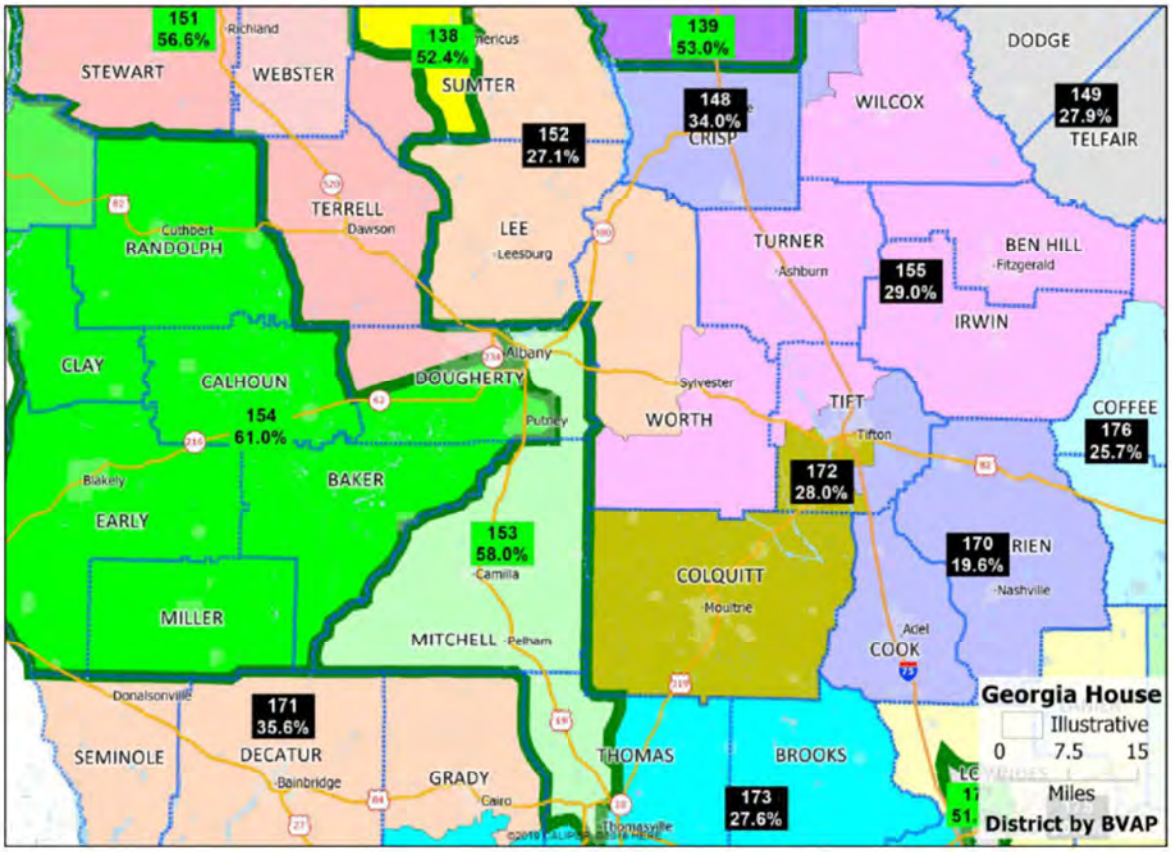
The Grant Plaintiffs' redistricting expert drew one additional House District in the western metropolitan Atlanta area and two additional House Districts in central Georgia, that are anchored in Bibb County. See GPX 3, ¶ 39 & fig.10. The Alpha Phi Alpha Plaintiffs' redistricting expert drew one additional House District in the Eastern Black Belt and one additional House District in Southwestern Georgia.

Figure 32: *Illustrative Plan: District 144 and Vicinity*



Id. ¶ 116 & fig.32.

Figure 34: *Illustrative Plan: District 153 and vicinity*



Id. ¶ 118 & fig.34.

To recap the prior ruling, at this stage, the Court finds that the Grant and Alpha Phi Alpha Plaintiffs have established a substantial likelihood of succeeding on the merits of their claim that SB 2EX and HB 1EX violate Section 2 of the Voting Rights Act because the Black population is sufficiently large and compact to create two additional Black-majority Senate Districts in the southern Atlanta metropolitan area, two additional House Districts in the

southern Atlanta metropolitan area, one additional House District in southwestern Georgia.[23]

(1) The Grant Plaintiffs are substantially likely to establish a Section 2 violation

This Court finds that the Grant Plaintiffs have shown that they have a substantial likelihood of satisfying the first Gingles precondition with respect to two additional State Senate Districts and two additional State House Districts in the Atlanta metropolitan area.

(a) Senate Districts

i) Numerosity

As indicated above, on December 30, 2021, Governor Kemp signed into law State Senate Maps. The Georgia State Senate map consists of 56 districts. GPX 3, ¶ 20; Feb. 9, 2022, Afternoon Tr. 169:13–14. The 2014 Georgia State Senate plan contained 13 majority-Black districts using the AP BVAP metric

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[23] At this stage and without further discovery, the Court does not find that the Grant and Alpha Phi Alpha Plaintiffs have established that they have a substantial likelihood of succeeding on the merits of their claims that a third State Senate District should have been drawn in the Eastern Black Belt or that additional House Districts should have been drawn in the western Atlanta metropolitan area, central Georgia, or in the Eastern Black Belt. Because the burden of proving substantial likelihood of success for a preliminary injunction is a "high threshold," this in no way predetermines whether Plaintiffs can prove that Section 2 requires the creation of an additional Senate District in the Eastern Black Belt, or additional House Districts in central Georgia and in the Eastern Black Belt. See Louisiana v. Envir. Soc., Inc. v. Coleman, 524 F.2d 930, 931 (5th Cir. 1975).

when the 2020 Census data was applied. Grant Stip. ¶ 30. The Enacted State Senate Map contains 14 majority-Black districts using the AP BVAP metric. Grant Stip. ¶ 56; GPX 3, ¶ 21; Feb. 9, 2022, Afternoon Tr. 169:8–12. Ten of those districts are in the Atlanta metropolitan area and four are in the Black Belt. GPX 3, ¶ 21 & fig.3.

Redistricting expert, Mr. Esselstyn, drew two illustrative Senate Districts in the Atlanta metropolitan area, which are labeled Esselstyn Illustrative State Senate District 25 and Illustrative State Senate District 28. Just about half of Georgia's Black population lives in six counties in the Atlanta MSA. GPX 3, ¶ 17. Those six counties, listed in order of Black population, are Fulton, DeKalb, Gwinnett, Cobb, Clayton, and Henry. Id. Under the 2000 Census, the population in the 29-county Atlanta MSA was 29.29% AP Black, increasing to 33.61% in 2010, and increasing further to 35.91% in 2020. Since 2000, the Black population in the Atlanta MSA has grown from 1,248,809 to 2,186,815 in 2020. Grant Stip. ¶ 44.

Mr. Esselstyn's Illustrative State Senate District 25 is an additional majority-Black State Senate district in the southeastern Atlanta metropolitan area and is composed of portions of Clayton and Henry Counties. Grant Stip. ¶ 64; GPX 3, ¶ 26 & fig.6; Feb. 9, 2022, Afternoon Tr. 171:17–23, 228:10–13.

Mr. Esselstyn's Illustrative State Senate District 25 has an AP BVAP over 50%. Grant Stip. ¶ 65; GPX 3, ¶ 24 & tbl.1; Feb. 9, 2022, Afternoon Tr. 171:24–172:8.

Mr. Esselstyn's Illustrative State Senate District 28 is an additional majority-Black State Senate district in the southwestern Atlanta metropolitan area and is composed of portions of Clayton, Coweta, Fayette, and Fulton Counties. Grant Stip. ¶ 66; GPX 3, ¶ 27 & fig.7; Feb. 9, 2022, Afternoon Tr. 172:11–17. Mr. Esselstyn's Illustrative State Senate District 28 has an AP BVAP over 50%. Grant Stip. ¶ 67; GPX 3, ¶ 24 & tbl.1; Feb. 9, 2022, Afternoon Tr. 172:18–20.

Table 1: Illustrative Senate plan majority-Black districts with BVAP percentages

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	60.19%	43	58.52%
22	50.84%	35	54.05%	44	71.52%
23	50.43%	36	51.34%	55	65.97%
25	58.93%	38	66.36%		

Grant Stip. ¶ 60; GPX 3, ¶ 24 & tbl.1; Feb. 9, 2022, Afternoon Tr. 169:20–22.

Mr. Morgan and Ms. Wright do not dispute that Mr. Esselstyn's Illustrative State Senate District 25 and Mr. Esselstyn's Illustrative State Senate District 28 both have AP BVAPs over 50%. See DX 2, ¶ 11 (Mr. Morgan's expert report confirming that Mr. Esselstyn's illustrative State Senate plan contains 17 majority-Black districts); Feb. 11, 2022, Afternoon Tr. 191:21–25 (Mr. Morgan's testimony agreeing that Mr. Esselstyn's illustrative State Senate plan includes three additional majority-Black districts); DX 41, ¶ 20 (Ms. Wright's expert report noting that "[t]he Esselstyn Senate plan also adds majority-Black districts above the adopted Senate plan when using the any-part Black voting age population Census metric"); Feb. 11, 2022, Morning Tr. 78:13–22, 80:23–81:24 (Ms. Wright's testimony acknowledging that AP BVAPs of Mr. Esselstyn's additional majority-Black State Senate districts exceed 50%).

Mr. Morgan's expert report included a chart demonstrating that Mr. Esselstyn's illustrative State Senate plan contains three fewer districts with AP BVAPs above 65% compared to the Enacted Plan.

Chart 1. Number of Majority-Black Senate Districts.

Majority-Black Senate Districts			
% AP Black VAP	2021 Adopted Plan	Proposed Democratic Plan	Esselstyn Remedial Plan
Over 75%	0	1	0
70% to 75%	3	2	1
65% to 70%	3	3	2
60% to 65%	3	1	4
55% to 60%	3	3	4
52% to 55%	1	3	3
50% to 52%	1	2	3
Total # Districts	14	15	17

DX 2, ¶ 10 & chart 1.

As Mr. Esselstyn explained in his supplemental expert report, "[o]ne reason that the Enacted Plans have fewer majority-Black districts than the Illustrative Plans is that more Black voters were unnecessarily concentrated into certain Metro Atlanta districts in the Enacted Plans. By unpacking these districts, the Illustrative Plans contain fewer packed districts—and, consequently, additional majority-Black districts." GPX 4, ¶ 4.

Defendants argue that Senate District 25 is not sufficiently numerous to form an additional majority-Black district. Defendants point out that in

Mr. Esselstyn's Illustrative State Senate District 25, the district is 56.51% single-race Black voting age population and only 52.71% Black voter registration. DX 46. However, this argument fails. First, courts use the AP Black demographics, not single-race black demographics to determine whether the Black community is sufficiently numerous. Because this Court must decide a case that involves claims about Georgia's Black population's effective exercise of the electoral franchise, this Court relies on the AP Black metric.

Second, the Supreme Court held that "a party asserting [Section] 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." Bartlett, 556 U.S. at 19–20. As stated above, the single-race Black population exceeds 50% of the voting age population of Mr. Esselstyn's Illustrative State Senate District 25. Additionally, the percentage of Black registered voters exceeds 50%. Accordingly, the Mr. Esselstyn's Illustrative State Senate District 25 is sufficiently numerous for an additional majority-minority district.

Based on the expert reports and testimony provided in this case, the Court concludes that Mr. Esselstyn's Illustrative State Senate plan contains two additional majority-Black districts in the metropolitan Atlanta area.

ii) Geographic compactness

Mr. Esselstyn states that his Illustrative State Senate Plan "was drawn to comply with and balance" the principles enumerated in the 2021-2022 Senate Reapportionment Committee Guidelines. GPX 3, ¶ 29. The guidelines are as follows:

> 1. Each legislative district of the General Assembly should be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.
> 2. All plans adopted by the committee will comply with Section 2 of the Voting Rights Act of 1965, as amended.
> 3. All plans adopted by the Committee will comply with the United States and Georgia Constitutions.
> 4. Districts shall be composed of contiguous geography. Districts that connect on a single point are not contiguous
> 5. No multi-member districts shall be drawn on any legislative redistricting plan.
> 6. The Committee should consider:
>   a. The boundaries of counties and precincts;
>   b. Compactness; and
>   c. Communities of interest.
> 7. Efforts should be made to avoid unnecessary pairing of incumbents.

> 8. The identifying of these criteria is not intended to limit the consideration of other principles or factors that the Committee deems appropriate.

GPX 39, at 3.

Mr. Esselstyn explained in his supplemental expert report and during his testimony at the hearing, applying these traditional districting principles often required balancing. See GPX 4, ¶ 14. As he described the process,

> It's a balancing act. So . . . often the criteria will be [in tension] with each other. It may be that you are trying to just follow precinct lines and not split . . . precincts, but the precincts have funny shapes. So that means you either are going to end up with a less compact shape that doesn't split precincts or you could split a precinct and end up with a more compact shape. And some of the county shapes are highly irregular as well. So sometime[s] you can have a decision about splitting counties as well. So that's the example of where there's no one clear right answer and I'm trying to sort of find the best balance that I can.

Feb. 9, 2022, Afternoon Tr. 157:14–25.

(a) Population equality

Mr. Esselstyn's Illustrative State Senate Maps are not malapportioned and comply with the one-person, one-vote principle. See Wright, 301 F. Supp. 3d at 1325–26; see also Reynolds, 377 U.S. at 577 ("[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct

districts, in both houses of its legislature, as nearly of equal population as practicable.").

Mr. Esselstyn's expert report demonstrates that his Illustrative State Senate Plan contains minimal population deviation. In both the Enacted and Illustrative State Senate Plans, most district populations are within ±1% of the ideal, and a small minority are between ±1 and 2%. None has a deviation of more than 2%. For the Enacted Plan, the relative average deviation is 0.53%, and for the Illustrative Plan, the relative average deviation is 0.68%. GPX 3, ¶ 30; see also id. at 49–52, 54–55 (Mr. Esselstyn's expert report listing population statistics for enacted and illustrative State Senate maps); id. at 66 (similar); Feb. 9, 2022, Afternoon Tr. 158:4–22, 176:20–177:5, 188:4–12 (Mr. Esselstyn's testimony describing compliance with population equality). Mr. Esselstyn conceded that his illustrative Senate Plan had higher population deviations than the Enacted State Senate Map. Feb. 9, 2022, Afternoon Tr. 205:8-14. Mr. Esselstyn's population deviations are within the limits allowed by the Equal Protection Clause.

> [M]inor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case . . . under the Fourteenth Amendments. . . . Our decisions have established, as a general matter, that an apportionment plan with a

> maximum population deviation under 10% falls within this category of minor deviations.

Brown v. Thomson, 462 U.S. 825, 842 (1983) (quoting Reynolds, 377 U.S. at 745) (quotation marks omitted). Thus, the Court finds that Mr. Esselstyn's Illustrative Senate Plan complies with population equality.

(b) Compactness

Mr. Esselstyn's Illustrative State Senate Plan has comparable compactness scores to the Enacted State Senate Map. Mr. Esselstyn reported the average compactness scores for both the Enacted Plans and his illustrative legislative plans using five measures—Reock,[24] Schwartzberg,[25] Polsby-

[24] The Court discussed Reock and Polsby-Popper in the Pendergrass section of this Order; however, considering the Order's length, the Court deems it proper to readdress these measures for the reader. The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact. GPX 3, at 63.

[25] The Schwartzberg test is a perimeter-based measure that compares a simplified version of each district to a circle, which is considered to be the most compact shape possible. For each district, the Schwartzberg test computes the ratio of the perimeter of the simplified version of the district to the perimeter of a circle with the same area as the original district. This measure is usually greater than or equal to 1, with 1 being the most compact. GPX 3, at 63.

Popper,[26] Area/Convex Hull,[27] and Number of Cut Edges.[28] GPX 3, ¶¶ 31, 46 & tbls. 2, 5; see also Feb. 9, 2022, Afternoon Tr. 158:23–160:1 (Mr. Esselstyn's testimony describing common measures of compactness).

Mr. Esselstyn concluded that the average compactness measures for the Enacted State Senate Map and his Illustrative Plan "are almost identical, if not identical." GPX 3, ¶ 31 & tbl.2; see also id. at 66–79 (Mr. Esselstyn's expert report providing detailed compactness measures for enacted and illustrative State Senate maps); Feb. 9, 2022, Afternoon Tr. 160:2–10, 177:6–19, 188:13–17 (Mr. Esselstyn's testimony describing compliance with compactness principle); Feb. 11, 2022, Afternoon Tr. 223:23–224:3 (Mr. Morgan's testimony confirming

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[26] The Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter: $4\pi\text{Area}/(\text{Perimeter}^2)$. The measure is always between 0 and 1, with 1 being the most compact. GPX 3, at 63.

[27] The Area/Convex Hull test computes the ratio the district area to the area of the convex hull of the district (minimum convex polygon which completely contains the district). The measure is always between 0 and 1, with 1 being the most compact. GPX 3, at 63.

[28] The Cut Edges test counts the number of edges removed ("cut") from the adjacency (dual) graph of the base layer to define the districting plan. The adjacency graph is defined by creating a node for each base layer area. An edge is added between two nodes if the two corresponding base layer areas are adjacent—which is to say, they share a common linear boundary. If such a boundary forms part of the district boundary, then its corresponding edge is cut by the plan. The measure is a single number for the plan. A smaller number implies a more compact plan. GPX 3, at 63–64; see also Feb. 9, 2022, Afternoon Tr. 236:2–16 (Mr. Esselstyn's testimony describing Cut Edges measurement).

that overall compactness scores of Mr. Esselstyn's illustrative State Senate map and enacted map are similar).

Mr. Esselstyn reported those measures as follows:

Table 2: Compactness measures for enacted and illustrative State Senate plans.

	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	0.29	0.75	10,998

GPX 3, ¶ 31 & tbl.2.

In his expert report, Mr. Morgan, confirmed the accuracy of Mr. Esselstyn's compactness statistics without suggesting that Mr. Esselstyn's Illustrative Maps fail to comply with this districting principle. See DX 2, ¶¶ 23–24 & chart 5. Moreover, his report demonstrated that most of the additional majority-Black districts in Mr. Esselstyn's Illustrative Plans outperform their precursors in the Enacted Plans according to the Polsby-Popper compactness measure, with Senate District 25 performing better according to that measure and the Reock measure:

Chart 5. Compactness score summary

New Black-Majority District	Adopted Plan Reock	Esselstyn Remedial Plan Reock	Adopted Plan Polsby-Popper	Esselstyn Remedial Plan Polsby-Popper
Senate 23	**0.37**	0.34	0.16	**0.17**
Senate 25	0.39	**0.57**	0.24	**0.34**
Senate 28	**0.45**	0.38	**0.25**	0.19
House 64	**0.37**	0.22	**0.36**	0.22
House 74	**0.50**	0.30	**0.25**	0.19
House 117	**0.41**	0.40	0.28	**0.33**
House 145	**0.38**	0.34	0.19	**0.21**
House 149	0.32	**0.42**	0.22	**0.23**

Id.

Defendants maintained a line of questioning at the preliminary injunction hearing in an effort to show that the Reock and Schwartzberg scores of the 2021 adopted state Senate plan are more compact on average than Mr. Esselstyn's illustrative state Senate plan. Feb. 9, 2022, Afternoon Tr. 235:10–25. The evidence showed that several districts on the Esselstyn remedial Senate plan are far less compact than the 2021 adopted state Senate plan. DX 2, ¶ 24. However, the Enacted State Senate Map and Mr. Esselstyn's Illustrative Senate Map have identical Polsby-Popper scores (0.29) and Mr. Esselstyn's Illustrative Senate Map has seven fewer cut edges than the Enacted State Senate Map. Second, under the Reock, Schwartzberg and Area/Convex Hull tests the Illustrative Plan is one-one-hundredth of a point

less compact than the enacted State Plan. Accordingly, the Court does not find that Mr. Esselstyn's illustrative legislative maps are not sufficiently compact.

Looking at the challenged districts specifically, the Court finds Mr. Esselstyn's Illustrative State Senate District 25 is more compact than the Enacted State Plan. Mr. Esselstyn's Illustrative State Senate District 25 has a Reock score of 0.57 and Polsby-Popper score of 0.34 and the Enacted State Senate District 25 has a Reock score of 0.39 and a Polsby-Popper score of 0.24. See DX 2, ¶¶ 23–24 & chart 5. The Enacted State Senate District 28 is slightly more compact than Mr. Esselstyn's Illustrative State Senate District 28. Mr. Esselstyn's Illustrative State Senate District 28 has a Reock score of 0.38 and a Polsby-Popper score of 0.19 and the Enacted State Senate District 28 has a Reock score of 0.45 and a Polsby-Popper score of 0.19. Id. The Court finds that Mr. Esselstyn's Illustrative State Senate District 25 is sufficiently compact and more compact than Enacted State Senate District 25.

The Court also finds that Mr. Esselstyn's Illustrative State Senate District 28 is sufficiently compact. The Court does not find that the difference of six-hundredths of a point in the Polsby-Popper score and seven-hundredths of a point difference in the Reock scores makes Mr. Esselstyn's Illustrative State Senate District 28 not compact. Thus, the Court finds that Mr. Esselstyn's

Illustrative State Senate District 25 and Mr. Esselstyn's Illustrative State Senate District 28 are sufficiently compact and satisfy the first Gingles precondition.

(c) Contiguity

Mr. Esselstyn's Illustrative Senate Districts are contiguous. There is no factual dispute on this issue. See Feb. 9, 2022, Afternoon Tr. 160:11–13 (Mr. Esselstyn's testimony confirming that his illustrative districts are contiguous).

(d) Preservation of political subdivisions

Mr. Esselstyn's Illustrative Senate Plan preserves political subdivisions. Mr. Esselstyn testified that it was "not always possible" to preserve political subdivisions because, for example, "a typical precinct size is in the neighborhood typically around a few thousand people," and "[s]o often to get the best shape . . . , it's often practical to divide precincts." Feb. 9, 2022, Afternoon Tr. 160:20–161:1–8. Mr. Esselstyn concluded that "[w]hile the creation of three additional majority-Black State Senate districts involved the division of additional counties and VTDs, the differences are marginal." GPX 3, ¶¶ 32–33 & tbl.3; see also id. at 80–91 (Mr. Esselstyn's expert report providing political subdivision splits for enacted and illustrative State Senate maps); Feb. 9, 2022, Afternoon Tr. 161:9–11 (Mr. Esselstyn's testimony stating that "the

numbers of divided counties and precincts in the Illustrative Plans are similar, slightly higher than those for the Enacted Plans"); id. at 177:20–25, 188:18–24 (Mr. Esselstyn's testimony describing preservation of political subdivisions). He reported the splits in the enacted and illustrative State Senate maps as follows:

Table 3: Political subdivision splits for enacted and illustrative State Senate Plans

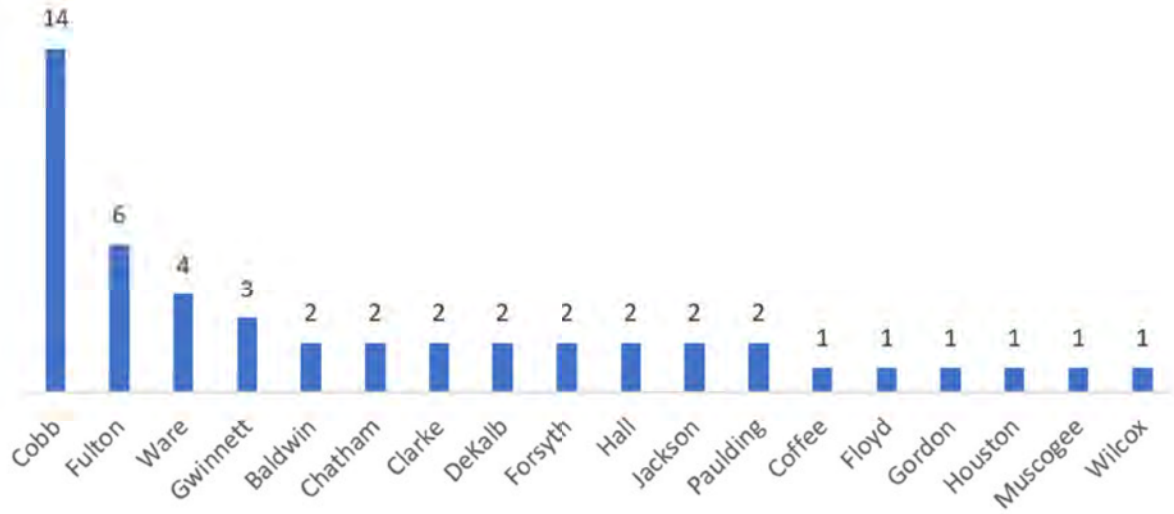
	Intact Counties	Split Counties	Split VTDs
Enacted	130	29	47
Illustrative	125	34	49

GPX 3, ¶¶ 32–33 & tbl.3.

Out of 2,698 VTDs statewide, only 49 are split in Mr. Esselstyn's illustrative State Senate plan, and in only 18 of Georgia's 159 counties. Grant Doc. No. [61-1], ¶ 3 & fig.1; Feb. 9, 2022, Afternoon Tr. 163:17–20, 166:5–9. The 2021 Enacted State Senate Map divides fewer precincts than Mr. Esselstyn's Illustrative State Senate Maps. Feb. 9, 2022, Afternoon Tr. 205:23–25, 236:25–237:1. However, some of the VTD splits in Mr. Esselstyn's Illustrative State Senate Maps are inherited from the Enacted State Senate map because Mr. Esselstyn's illustrative map leaves a majority of districts untouched. Id. at 164:23–165:4. Mr. Esselstyn's second supplemental report included a

histogram depicting the VTD splits in his illustrative State Senate plan by county.

Figure 1: VTD splits in illustrative State Senate plan by County



Grant Doc. No. [61-1], ¶ 3 & fig.1. Thus, the Court finds that Mr. Esselstyn's Illustrative State Senate Map complies with the traditional redistricting principle of keeping political subdivisions together; even though, Mr. Esselstyn's Illustrative State Senate Maps has two more split VTDs than the Enacted State Senate Map.

Mr. Esselstyn's illustrative Senate plan splits thirty-four counties, which is five more than the 2021 adopted state Senate plan. Grant Stip. ¶¶ 58, 75; Feb. 9, 2022, Afternoon Tr. 203:18–21; DX 2, ¶ 21. However, the number of county splits in Mr. Esselstyn's Illustrative State Senate Map is lower than the

number of such splits in the legislative plans used in the most recent elections (which is to say, Georgia's 2014 State Senate plans).

Table 1: Number of split counties in various plans. [1]

	Illustrative	Adopted 2014/2015
State Senate	34	38
House	70	73

GPX 4, ¶ 11 & tbl.1; Feb. 9, 2022, Afternoon Tr. 178:1–5, 188:25–189:4. Defendants' expert Mr. Morgan's report confirmed Mr. Esselstyn's statistics for political subdivision splits without opining that Mr. Esselstyn's illustrative maps fail to comply with this districting principle. See DX 2, ¶¶ 20–22; see also Feb. 11, 2022, Afternoon Tr. 220:15–221:20 (Mr. Morgan's testimony confirming Mr. Esselstyn's reported figures and conceding that his expert report offers no opinion on issue of split geographies). Thus, the Court finds that Mr. Esselstyn's Illustrative State Senate Maps comply with the traditional redistricting principle of maintaining existing political subdivisions.

(e) Preservation of communities of interest

The Court finds that Mr. Esselstyn's Illustrative State Senate Maps preserve communities of interest. Mr. Esselstyn testified regarding his definition of a community of interest:

> [C]ommunity of interest could be something as large as the Black Belt. As large as Metro Atlanta. Can span multiple counties. And . . . it could also be as small as a neighborhood. So it can be an area that is large or larger geographically but the basic idea is you are looking at areas that have a shared characteristics or where the people have a shared interest.

Feb. 9, 2022, Afternoon Tr. 167:1–11. Although sometimes such communities "can be delineated on [a] map"—such as municipalities, college campuses, or military bases—at other times "they don't have clearly defined boundaries." Id. at 167:18–168:9; see also Feb. 11, 2022, Morning Tr. 90:5–91:12 (Ms. Wright's testimony broadly defining communities of interest). Mr. Esselstyn testified that in drawing his illustrative maps, he sought to preserve communities of interest where possible. Feb. 9, 2022, Afternoon Tr. 168:13–16. This does not necessarily mean that each illustrative district is homogenous; as Mr. Esselstyn explained, "I don't believe that the communities of interest principle[] requires every two communities in a given district to have commonalities. I don't think that's what the principle stands for. . . . [M]y focus on communities of interest is trying to keep them intact, when possible." Feb. 9, 2022, Afternoon Tr. 221:1–222:11. Accordingly, the absence of "some shared characteristic" does not necessarily indicate "a failure to meet the communities of interest criteria or any other [] traditional redistricting principle." Id. at 222:12–17.

With respect to Mr. Esselstyn's Illustrative State Senate District 25, Defendants' expert Ms. Wright conceded that "District 25 is at least more compact," but concluded that Mr. Esselstyn's Illustrative State Senate District 25 has the effect of dividing communities of interest in Mr. Esselstyn's Senate District 10. DX 41, ¶ 23; Feb. 11, 2022, Morning Tr. 48:20–49:4. Mr. Esselstyn's Illustrative Senate District 10 stretches from Stonecrest in DeKalb County to Butts County. Id. The Court finds that even if Mr. Esselstyn's Illustrative Senate District 10 divides communities of interest, that does not necessarily mean that Mr. Esselstyn's Illustrative State Senate District 25 does not respect traditional redistricting principles. See Wright, 301 F. Supp. 3d at 1326 (finding that plaintiffs successfully proved violation of Section 2 of the VRA, even though the "illustrative plan [was] [] far from perfect"). Given that Mr. Esselstyn's Illustrative Senate District 10 does not represent a challenged district, and Ms. Wright testified that Mr. Esselstyn's Senate District 25 is "at least more compact," (Feb. 11, 2022, Morning Tr. 48:20–49:4), the Court finds that Mr. Esselstyn's Senate District 25 respects communities of interest.

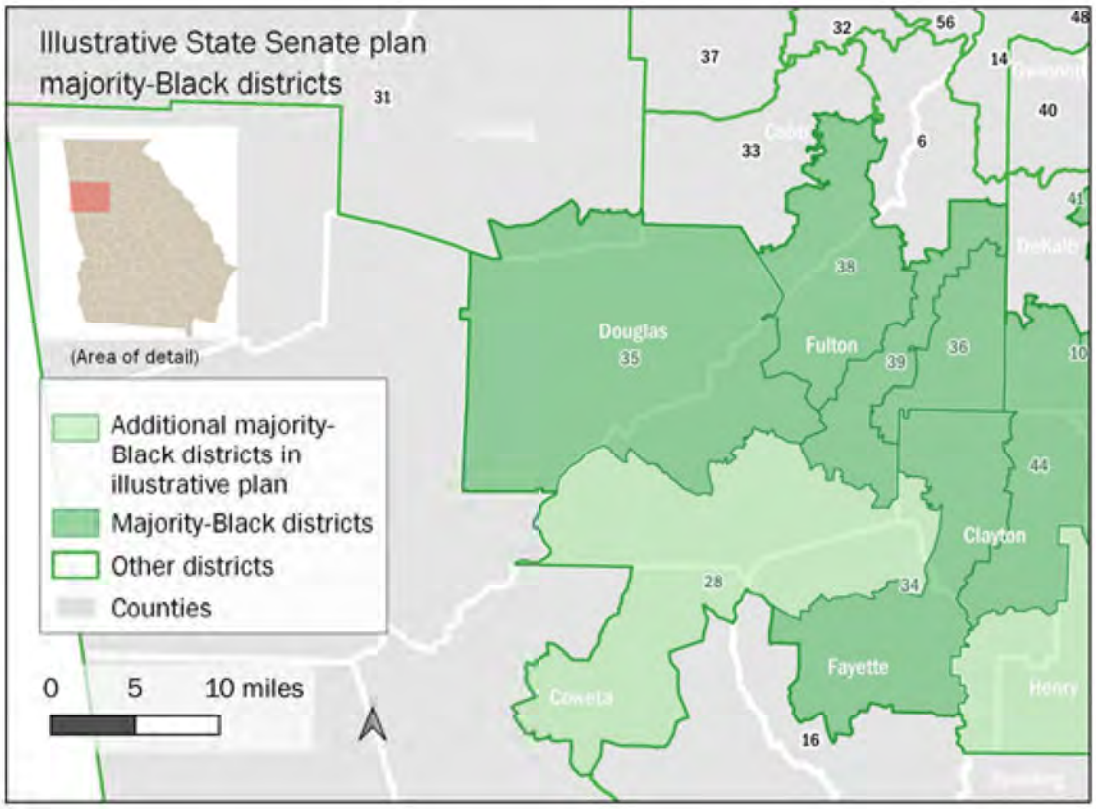
Jason Carter, a former member of the State Senate and candidate for Governor of Georgia during the 2014 election, testified that Mr. Esselstyn's Illustrative State Senate District 25

> includes virtually all of Henry County in a single district . . . [which] helps in some context for sure . . . . [I]f there were really differing aspects in Henry County that needed to be divided, up that would be one thing but . . . Henry County is a fast-growing, multi-racial community that . . . would seem like [] the kind of place that can be kept together . . . if you can make it coherent, it would seem that that would be great.

Feb. 10, 2022, Afternoon Tr. 138:9–139:6. Thus, the Court finds that Mr. Esselstyn's Illustrative State Senate District 25 respects communities of interest.

With respect to Mr. Esselstyn's Illustrative Senate District 28, Defendants argued it connects pieces of the following counties to create a district that is majority-Black: Clayton, Coweta, Fayette, and Fulton. See Feb. 9, 2022, Afternoon Tr. 229:4–7. To create this district, Mr. Esselstyn has to double the traditional number of Senate districts in Clayton County from two to four and cut into Coweta County to reach a sizeable Black population in Newnan. DX 41, ¶ 22; Feb. 9, 2022, Afternoon Tr. 229:23–230:16. Unlike the Democratic Senate plan and 2021 adopted state Senate plan that kept Coweta County whole, Mr. Esselstyn's Senate District 28 splits Coweta County three ways. DX 13; DX 10; Feb. 9, 2022, Afternoon Tr. 231:8–17. Mr. Esselstyn's Illustrative Senate District 28 from his report is reproduced below.

Figure 7: Map of western Metro Atlanta area of illustrative plan with majority-Black State Senate districts indicated.



GPX 3, ¶ 27 & fig.7.

Mr. Carter described the communities of interest contained in Mr. Esselstyn's Illustrative Senate District 28 as follows: "[T]hat is . . . to me, a cohesive community and . . . Newnan certainly has more in common with that part of South Fulton than it does with . . . Franklin, Georgia, because of the issues that it confronts from an infrastructure standpoint and [] other issues[.]" Feb. 10, 2022, Afternoon Tr. 139:18–140:19. Despite the additional county splits, Mr. Esselstyn's Illustrative Senate District 28 "goes right around the Airport,

285. 85 corridors that are . . . those suburban south side areas." Id. at 140:10–12. Thus, Mr. Esselstyn's Illustrative Senate District 28 respects communities of interest.

(f) Incumbent protection

Defendants point out that Mr. Esselstyn's Illustrative State Senate Map pairs incumbents Marty Harbin (R) and Valencia Seay (D) into one district; while, the Enacted State Senate Map pairs no incumbents who are running for reelection. DX 1, ¶ 15. During the hearing, Mr. Esselstyn testified that "I was not able to find a publicly-available authoritative source . . . for incumbent address data . . . [s]o, as a result I did not have that data and so I did not take it into account." Feb. 9, 2022, Afternoon Tr. 223:16–18. Despite not having this information, Mr. Esselstyn's Illustrative State Senate Maps only create one incumbent pairing. The Court finds that Mr. Esselstyn's Illustrative State Senate Map complies with the traditional redistricting principle of protecting incumbents.

(g) Core retention

The Court finds that Mr. Esselstyn's Illustrative State Senate Map retains the core of the Enacted State Senate Map. As an initial note, preservation of existing district cores was not an enumerated districting principle adopted by

the General Assembly. See GPX 39; 40. However, in terms of implementing a remedial map, the Court takes core retention into consideration.

Mr. Esselstyn's Illustrative State Senate Plan changes 22 of the 56 2021 Enacted State Senate districts in the process of creating three additional majority-Black districts. DX 2, ¶ 19. Mr. Esselstyn explained in his supplemental expert report, "One of the guiding principles in the creation of my Illustrative Plans was to keep changes to a minimum while adhering to other neutral criteria . . . . [W]hile the illustrative plans are—intentionally—a departure from the enacted plans, most of the plans' districts remain intact." GPX 4, ¶ 9; see Feb. 9, 2022, Afternoon Tr. 267:20–268:4 (Mr. Esselstyn's testimony: "One of the other considerations for me was not trying to make more changes that I have to.").

The Court finds that Mr. Esselstyn's Illustrative State Senate Maps do not change over 60% of the Enacted State Senate Map. The Court notes that "[m]odifying 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 inescapably results in cascading changes to other surrounding districts."

GPX 4, ¶ 9. Accordingly, the Court finds that Mr. Esselstyn's Illustrative State Senate Map respects the principle of core retention.

(h) Racial considerations

Defendants argued that Mr. Esselstyn's Illustrative Senate Maps must fail because they were predominately drawn for racial considerations. The Court is not persuaded by this argument. Both the Supreme Court's and Eleventh Circuit's "precedents require [Section 2] plaintiffs to show that it would be possible to design an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a minority candidate." Davis, 139 F.3d at 1425. "[I]ntentional creation of a majority-minority district necessarily requires consideration of race." Fayette Cnty., 118 F. Supp. 3d at 1345. Therefore, "[t]o penalize [plaintiffs] . . . for attempting to make the very showing that Gingles [and its progeny] demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section [2] action." Davis, 139 F.3d at 1425. Consideration of race accordingly does not mean that an illustrative plan must be subjected to strict scrutiny or any other heightened bar beyond the question of whether traditional districting principles were employed. Consistent with this understanding, the Eleventh Circuit, and every other circuit to address this

issue, has rejected attempts to graft the constitutional standard that applies to racial gerrymandering by the State onto the first Gingles precondition vote dilution analysis. See Davis, 139 F.3d at 1417–18; see also, e.g., Bone Shirt, 461 F.3d at 1019; Clark, 88 F.3d at 1406–07; Sanchez v. Colorado, 97 F.3d 1303, 1327 (10th Cir. 1996); Cane v. Worcester Cnty., 35 F.3d 921, 926 n.6 (4th Cir. 1994); Bridgeport Coal. for Fair Representation v. City of Bridgeport, 26 F.3d 271, 278 (2d Cir. 1995), vacated on other grounds sub nom. City of Bridgeport v. Bridgeport Coal. for Fair Representation, 512 U.S. 1283 (1994).

Mr. Esselstyn explained that he 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." GPX 3, ¶ 8 (footnote omitted); see also Feb. 9, 2022, Afternoon Tr. 150:11–19, 202:15–29 (Mr. Esselstyn's testimony confirming what he was asked to do in this case). Mr. Esselstyn testified that he was not asked to maximize the number of majority-Black districts in the State Senate or House map. Feb. 9, 2022, Afternoon Tr. 150:23–25. Mr. Esselstyn also testified that it

was necessary for him to consider race as part of his analysis because, under Section 2,

> the key metric is whether a district has a majority of the Any Part Black population. So that means it has to be over 50 percent. And that means looking at a column of numbers in order to determine, to assess whether a district has that characteristic. You have to look at the numbers that measure the percentage of the population is Black.

Id. at 155:15–156:2. When asked by the Court whether race was the controlling issue when drawing his illustrative House District 149, Mr. Esselstyn responded, "There's not one predominant consideration . . . . I'm trying to see if something can be satisfied while considering all the other traditional principles and the principles adopted by the General Assembly." Feb. 9, 2022, Afternoon Tr. 254:1–255:18. Mr. Esselstyn emphasized that he took other considerations into account as well when drawing his Illustrative Plans, including population equality, compliance with the federal and state constitutions, contiguity, and other traditional districting principles. Id. at 156:10–157:9; see also id. at 275:2–11 (Mr. Esselstyn's testimony explaining that, when drawing illustrative districts, "I'm not looking at any one race of voters . . . . I'm always looking [at] a multitude of considerations").

Defendants' expert, Ms. Wright, opined that Mr. Esselstyn's Illustrative Senate District 25 and 28 were drawn predominately with racial considerations, "District 25 . . . strategically connects pieces of south Clayton with Henry apparently in service of a racial goal" (DX 41, ¶ 23) and "District 28 . . . splits Clayton County into four districts in a manner that make [sic] no geographical sense apart from a racial goal." Id. ¶ 22. Without more, the Court is unable to uphold Ms. Wright's assessment. Mr. Esselstyn testified that he used various metrics including but not limited to population size, communities of interest, and political subdivisions, in addition to race when he drew his Illustrative State Senate Maps. Accordingly, the Court does not find that race predominated the drawing of Mr. Esselstyn's Illustrative State Senate Districts 25 and 28.

The Court finds that Mr. Esselstyn's Illustrative State Senate Districts 25 and 28 contain Black population that are sufficiently numerous and compact, as to create two additional districts that comply with traditional redistricting principles. Accordingly, the Court finds that the Grant Plaintiffs have a substantial likelihood of success in proving that Mr. Esselstyn's Illustrative State Senate Districts 25 and 28 satisfy the first Gingles precondition.

(b) Esselstyn House Districts

i) Numerosity

As stated above, on December 30, 2021, Governor Kemp signed the Enacted State House Map into law. The Georgia House of Representatives map consists of 180 districts. GPX 3, ¶ 35; Feb. 9, 2022, Afternoon Tr. 178:10–12. The 2015 Georgia House of Representatives plan contained 47 majority-Black districts using the AP BVAP metric when the 2020 Census data was applied. Grant Stip. ¶ 31. The enacted House plan contains 49 majority-Black districts using the AP BVAP metric. Grant Stip. ¶ 57; GPX 3, ¶ 36; Feb. 9, 2022, Afternoon Tr. 178:17–19. Thirty-four of those districts are in the Atlanta metropolitan area, 13 are in the Black Belt, and two small districts are within Chatham County (anchored in Savannah) and Lowndes County (anchored in Valdosta) in the southeastern part of the state. GPX 3, ¶ 36 & fig.9.

Mr. Esselstyn also drew two additional majority-Black House Districts in the metropolitan Atlanta area: Illustrative State House District 74 and Illustrative State House District 117. As stated above, the AP Black population in the Atlanta MSA increased from 29.29% in 2000 to 33.61% in 2010 and to 35.91% in 2020. Grant Stip. ¶ 44. And half of Georgia's Black population live in Fulton, DeKalb, Gwinnett, Cobb, Clayton, and Henry counties. GPX 3, ¶ 17.

Mr. Esselstyn drew two additional majority-Black House districts in the southern Atlanta metropolitan area (Mr. Esselstyn's Illustrative State House District 74 and Mr. Esselstyn's Illustrative State House District 117) are composed of portions of Clayton, Fayette, and Henry Counties. Grant Stip. ¶ 70; GPX 3, ¶ 41 & fig.12; Feb. 9, 2022, Afternoon Tr. 185:12–18. Mr. Esselstyn's illustrative House Districts 74 and 117 have AP BVAPs over 50%. Grant Stip. ¶ 71; GPX 3, ¶ 39 & tbl.4; Feb. 9, 2022, Afternoon Tr. 185:23–186:5.

Table 4: Illustrative House plan majority-Black districts with BVAP percentages

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	64.87%	79	71.59%	115	53.77%	149	50.02%
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	55.32%	87	73.08%	128	50.40%	165	50.33%
66	50.64%	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%		

Grant Stip. ¶ 61; GPX 3, ¶ 39 & tbl.4.

Mr. Morgan and Ms. Wright do not dispute that Mr. Esselstyn's Illustrative State House District 74 and Mr. Esselstyn's Illustrative State House

District 117 have AP BVAPs over 50%. See DX 2, ¶ 13 (confirming that Mr. Esselstyn's illustrative House plain contains 54 majority-Black districts); DX 41, ¶ 24 (Ms. Wright's expert report noting that "[t]he Esselstyn House plan adds majority-Black districts above the adopted House plan when using the any-part Black voting age population Census metric"); Feb. 11, 2022, Morning Tr. 81:25–82:16 (Ms. Wright's testimony acknowledging that AP BVAPs of Mr. Esselstyn's additional majority-Black House districts exceed 50%).

Mr. Morgan's expert report includes a chart demonstrating that Mr. Esselstyn's illustrative House plan contains three fewer districts with AP BVAPs above 65% compared to the Enacted Plan.

Chart 2. Number of Majority-Black House Districts

Majority-Black House Districts			
% AP Black VAP	2021 Adopted Plan	Proposed Democratic Plan	Esselstyn Remedial Plan
Over 75%	2	6	2
70% to 75%	9	7	5
65% to 70%	7	7	8
60% to 65%	8	3	8
55% to 60%	11	9	10
52% to 55%	10	10	10
50% to 52%	2	3	11
Total # Districts	49	45	54

DX 2, ¶ 12 & chart 2. As Mr. Esselstyn explained in his supplemental expert report, "[o]ne reason that the enacted plans have fewer majority-Black districts than the illustrative plans is that more Black voters were unnecessarily concentrated into certain Metro Atlanta districts in the enacted plans. By unpacking these districts, the illustrative plans contain fewer packed districts—and, consequently, additional majority-Black districts." GPX 4, ¶ 4.

Although Ms. Wright asserts that Mr. Esselstyn's illustrative House Districts 64, 74, and 117 are "below 50% Black on voter registration" (DX 41, ¶¶ 27–28), she admitted during the hearing that more than 8% of registered

voters are of unknown race and that this qualifying information was not included in her expert report. Feb. 11, 2022, Morning Tr. 71:10–78:12.[29]

Based on the expert reports and testimony provided in this case, the Court concludes that Mr. Esselstyn's illustrative House plan contains two additional majority-Black districts.

ii) Geographic Compactness

Mr. Esselstyn states that his illustrative State House Map "was drawn to comply with and balance" the principles enumerated in the 2021-2022 House Reapportionment Committee Guidelines, discussed supra. GPX 3, ¶ 44; 40, 3.

As stated above, Mr. Esselstyn explained in his supplemental expert report and during his testimony at the hearing, applying these traditional districting principles often required balancing. See GPX 4, ¶ 14. As he described the process,

> It's a balancing act. So . . . often the criteria will be [in tension] with each other. It may be that you are trying to just follow precinct lines and not split . . . precincts, but the precincts have funny shapes. So that means you either are going to end up with a less compact shape that doesn't split precincts or you could split a precinct and end up with a more compact shape. And some of the county shapes are highly irregular as well. So sometime[s] you can have a decision about

[29] See supra n.19.

> splitting counties as well. So that's the example of where there's no one clear right answer and I'm trying to sort of find the best balance that I can.

Feb. 9, 2022, Afternoon Tr. 157:14–25.

Mr. Esselstyn's Illustrative House Districts 74 and 117 are consistent with traditional redistricting principles of compactness.

(a) Population equality

Mr. Esselstyn's Illustrative State House Map is not malapportioned and complies with the one-person, one-vote principle. See Wright, 301 F. Supp. 3d at 1325–26; see also Reynolds, 377 U.S. at 577 ("[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable."). Mr. Esselstyn's expert report demonstrates that his Illustrative State House Map contains minimal population deviation.

In both the Enacted and Illustrative House plans, most district populations are within ±1% of the ideal, and a small minority are between ±1 and 2%. None has a deviation of more than 2%. For the Enacted Plan, the relative average deviation is 0.61%, and for the Illustrative Plan, the relative average deviation is 0.64%. GPX 3, ¶ 45; see also id. at 97–106, 108–13 (Mr. Esselstyn's expert report listing population statistics for enacted and

illustrative House maps); id. at 121 (similar); Feb. 9, 2022, Afternoon Tr. 158:4–22, 176:20–177:5, 188:4–12 (Mr. Esselstyn's testimony describing compliance with population equality).

Mr. Esselstyn conceded that his illustrative House plan has higher deviations than the 2021 adopted House plan. Feb. 9, 2022, Afternoon Tr. 205:8-14. Mr. Esselstyn's population deviations are within the limits allowed by the Equal Protection Clause. See Brown, 462 U.S. at 842 (quoting Reynolds, 377 U.S. at 745). Thus, the Court finds that Mr. Esselstyn's Illustrative Senate Plan complies with population equality.

(b) Compactness

Mr. Esselstyn's Illustrative State House Plan has comparable compactness scores to HB 1EX. Using the same compactness measures as for the Illustrative Senate plans, Mr. Esselstyn concluded that the average compactness measures for the enacted House plan and his illustrative plan "are almost identical, if not identical." GPX 3, ¶ 46 & tbl.5; see also id. at 121–52 (Mr. Esselstyn's expert report providing detailed compactness measures for enacted and illustrative House maps); Feb. 9, 2022, Afternoon Tr. 160:2–10 (Mr. Esselstyn's testimony describing compliance with compactness principle); Feb. 11, 2022, Afternoon Tr. 224:4–7 (Mr. Morgan's testimony confirming that

overall compactness scores of Mr. Esselstyn's illustrative House map and enacted map are similar). Mr. Esselstyn reported those measures as follows:

Table 5: Compactness measures for enacted and illustrative House plans.

	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	1.82	0.28	0.72	22,475

GPX 3, ¶ 46 & tbl.5.

Looking at average compactness scores, Mr. Esselstyn's Illustrative House plan has identical Reock, Polsby-Popper and Area/Convex Hull scores as the State's enacted plan, and it is two-hundredths of a point less compact under the Schwartzberg method. GPX 3, ¶ 46 & tbl.5. In his expert report, Mr. Morgan confirmed the accuracy of Mr. Esselstyn's compactness statistics without suggesting that Mr. Esselstyn's illustrative maps are not sufficiently compact. See DX 2, ¶¶ 23–24 & chart 5.

Chart 5. Compactness score summary

New Black-Majority District	Adopted Plan Reock	Esselstyn Remedial Plan Reock	Adopted Plan Polsby-Popper	Esselstyn Remedial Plan Polsby-Popper
Senate 23	**0.37**	0.34	0.16	**0.17**
Senate 25	0.39	**0.57**	0.24	**0.34**
Senate 28	**0.45**	0.38	**0.25**	0.19
House 64	**0.37**	0.22	**0.36**	0.22
House 74	**0.50**	0.30	**0.25**	0.19
House 117	**0.41**	0.40	0.28	**0.33**
House 145	**0.38**	0.34	0.19	**0.21**
House 149	0.32	**0.42**	0.22	**0.23**

Looking at the Schwartzberg and Cut Edges scores, the 2021 adopted state House plan is more compact on average than Mr. Esselstyn's illustrative state House plan. See Feb. 9, 2022, Afternoon Tr. 264:24–265:7. Of the twenty-six districts changed on Mr. Esselstyn's illustrative state House plan, sixteen are less compact on the Reock measurement and fifteen are less compact on the Polsby-Popper measurement. DX 2, ¶ 24. This evidence, however, does not persuade the Court that Mr. Esselstyn's Illustrative House Map is not sufficiently compact. First, the Enacted State House Map and Mr. Esselstyn's Illustrative House Map have identical compactness scores in three out of the five compactness measures. See GPX 3, ¶ 46 & tbl.5. Second, the Enacted State House Map is only two-hundredths of a point more compact than Mr. Esselstyn's Illustrative Map and has only 455 fewer cut edges. Id. The Court

does not find that these minor deviations render Mr. Esselstyn's Illustrative House Map non-compact. Accordingly, the Court does not find that Mr. Esselstyn's Illustrative House Map is not sufficiently compact.

Looking at the challenged districts specifically, the Court finds Mr. Esselstyn's Illustrative State House District 74 is less compact than the Enacted State House District 74. Whereas Mr. Esselstyn's Illustrative State House District 74 has a Reock score of 0.30 and Polsby-Popper score of 0.19, the Enacted State House District 74 has a Reock score of 0.50 and a Polsby-Popper score of 0.25. See DX 2, chart 5. Also, although Enacted State House District 117 is slightly more compact than Mr. Esselstyn's Illustrative State House District 117 under the Reock measure, it is less compact under the Polsby-Popper measure. Id. Specifically, Mr. Esselstyn's Illustrative State House District 117 has a Reock score of 0.40 and a Polsby-Popper score of 0.33 and the Enacted State Senate District 28 has a Reock score of 0.41 and a Polsby-Popper score of 0.28. Id.

After reviewing the data above, the Court finds that Mr. Esselstyn's Illustrative State House Districts 74 and 117 are sufficiently compact. The Court does not find that the difference of one-hundredths of a point in the Reock score makes Mr. Esselstyn's Illustrative State House District 117 not compact,

especially given that the Mr. Esselstyn's Illustrative State House District 117 Polsby-Popper score is five-hundredths of a point higher than the Enacted State House District 117. The Court also finds that Mr. Esselstyn's Illustrative State House District 74 is sufficiently compact. Although Mr. Esselstyn's Illustrative State House District 74 has a Reock score that is a twentieth of a point less compact than the Enacted State House District 74 and six-hundredths of a point less compact under Polsby-Popper, Mr. Morgan acknowledged that there is no minimum compactness threshold for districts under Georgia law. See Feb. 11, 2022, Afternoon Tr. 228:3–16. Thus, the Court finds that Mr. Esselstyn's Illustrative State House Districts 74 and 117 are sufficiently compact and satisfy the first Gingles precondition.

(c) Contiguity

Mr. Esselstyn's Illustrative House Districts 74 and 117 are contiguous. There is no factual dispute on this issue. See Feb. 9, 2022, Afternoon Tr. 160:11–13 (Mr. Esselstyn's testimony confirming that his illustrative districts are contiguous).

(d) Preservation of political subdivisions

Mr. Esselstyn's Illustrative House Plan preserves political subdivisions. Mr. Esselstyn testified that it was "not always possible" to preserve political

subdivisions because, for example, "the ideal population for a House district is around 60,000 people, and there are going to be counties that have way more than 60,000 people. So you are going to have to divide that county up into multiple districts." Feb. 9, 2022, Afternoon Tr. 160:14–25. Similarly, "a typical precinct size is in the neighborhood typically around a few thousand people," and "[s]o often to get the best shape . . . it's often practical to divide precincts." Id. at 161:1–8. Mr. Esselstyn concluded that "[w]hile the creation of five additional majority-Black House districts involved the division of one additional county and a handful of VTDs, the differences are marginal." GPX 3, ¶¶ 47–48 & tbl.6; see also id. at 153–85 (Mr. Esselstyn's expert report providing political subdivision splits for enacted and illustrative House maps); Feb. 9, 2022, Afternoon Tr. 161:9–11 (Mr. Esselstyn's testimony stating that "the numbers of divided counties and precincts in the illustrative plans are similar, slightly higher than those for the enacted plans"). He reported the splits in the enacted and illustrative House maps as follows:

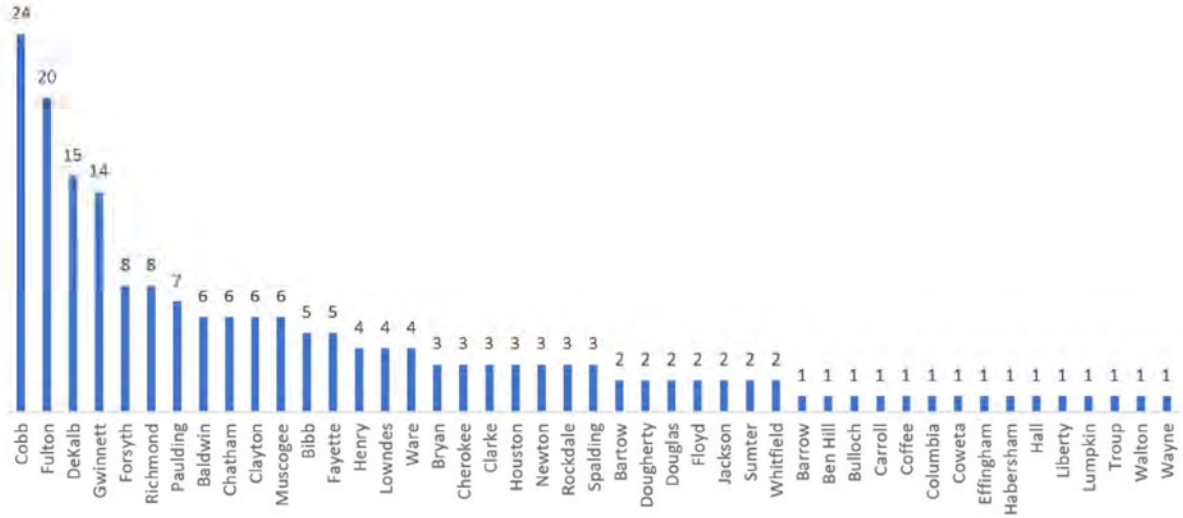
Table 6: Political subdivision splits for enacted and illustrative House plans.

	Intact Counties	Split Counties	Split VTDs
Enacted	90	69	185
Illustrative	89	70	192

GPX 3, ¶¶ 47–48 & tbl.6.

Out of 2,698 VTDs statewide, only 192 are split in Mr. Esselstyn's illustrative House plan, and in only 45 of Georgia's 159 counties. Grant Doc. No. [61-1], ¶ 4 & fig.2; Feb. 9, 2022, Afternoon Tr. 164:13–17, 166:4–11. Some of these VTD splits are inherited from the enacted House map because Mr. Esselstyn's illustrative map leaves a vast majority of districts untouched. Feb. 9, 2022, Afternoon Tr. 164:22–165:6. Mr. Esselstyn's second supplemental report included a histogram depicting the VTD splits in his illustrative House plan by county:

Figure 2: VTD splits in illustrative State House plan by County



Grant Doc. No. [61-1], ¶ 4 & fig.2.

After reviewing this data, the Court finds that although Mr. Esselstyn's Illustrative State House Maps has seven more split VTDs than the Enacted State

Senate Map, it still complies with the traditional redistricting principle of keeping political subdivisions together. Thus, the Court finds fact that Mr. Esselstyn's Illustrative State House Maps satisfy this factor.

Mr. Esselstyn's illustrative House plan splits 70 counties, which is one more than the 2021 enacted state House plan. Grant Stip. ¶¶ 59, 76; Feb. 9, 2022, Afternoon Tr. 267:4–7; DX 2, ¶ 22. However, the number of county splits in Mr. Esselstyn's illustrative State Senate and House plans are lower than the number of such splits in the legislative plans used in the most recent elections (namely, Georgia's 2014 State Senate and 2015 House plans). GPX 4, ¶ 11 & tbl.1; Feb. 9, 2022, Afternoon Tr. 178:1–5, 188:25–189:4.

Mr. Morgan confirmed Mr. Esselstyn's statistics for political subdivision splits without opining that Mr. Esselstyn's illustrative maps fail to comply with this districting principle. See DX 2, ¶¶ 20–22; see also Feb. 11, 2022, Afternoon Tr. 220:15–221:20 (Mr. Morgan's testimony confirming Mr. Esselstyn's reported figures and conceding that his expert report offers no opinion on issue of split geographies). After reviewing the data above, the Court finds that Mr. Esselstyn's Illustrative State House Maps comply with the traditional redistricting principle of maintaining existing political subdivisions.

(e) Preservation of communities of interest

The Court finds that Mr. Esselstyn's Illustrative State House Maps preserve communities of interest. Mr. Esselstyn testified regarding his definition of a community of interest: "[C]ommunity of interest could be something as large as the Black Belt. As large as Metro Atlanta. Can span multiple counties. And . . . it could also be as small as a neighborhood. So it can be an area that is large or larger geographically but the basic idea is you are looking at areas that have a shared characteristic[] or where the people have a shared interest." Feb. 9, 2022, Afternoon Tr. 167:1–11. Although sometimes such communities "can be delineated on a map"—such as municipalities, college campuses, or military bases—at other times "they don't have clearly defined boundaries." Id. at 167:18–168:9; see also Feb. 11, 2022, Morning Tr. 90:3–91:12 (Ms. Wright's testimony broadly defining communities of interest). Mr. Esselstyn testified that in drawing his illustrative maps, he sought to preserve communities of interest where possible. Feb. 9, 2022, Afternoon Tr. 168:13–16. This does not necessarily mean that each illustrative district is homogenous; as Mr. Esselstyn explained, "I don't believe that the communities of interest principle[] requires every two communities in a given district to have commonalities. I don't think that's what the principle stands for. . . . [M]y focus

on communities of interest is trying to keep them intact, when possible." Id. at 221:1–222:11. Accordingly, the absence of "some shared characteristic" does not necessarily indicate "a failure to meet the communities of interest criteria or any other [] traditional redistricting principle." Id. at 222:12–17.

Defendants' expert Ms. Wright did not testify or provide any expert opinion about whether Mr. Esselstyn's Illustrative House Districts 74 and 117 respected communities of interest.[30] When asked by Defendants' counsel whether the composition of his illustrative House District 74 was "to achieve the goal of majority status in [that] district," Mr. Esselstyn responded, "No. . . . [T]here are always multiple goals," such as preserving the community of Irondale, ensuring that Fayetteville was kept intact in the illustrative map, and being "relatively consistent with what it is in the enacted plan" in terms of preexisting district boundaries. Feb. 9, 2022, Afternoon Tr. 246:16–247:5. Ms. Wright, in rebuttal testified that Irondale was not an incorporated city in

[30] Ms. Wright's expert report states that "Districts 74 and 117 suffer from the same problems I outlined above regarding Cooper House District 73 and 110" (DX 41, ¶ 27); however, the Court is unable to determine exactly what problems Mr. Esselstyn's House Districts 74 and 117 suffer from. While Mr. Esselstyn's Illustrative House Districts 74 and 117 overlaps with Mr. Cooper's Illustrative House Districts 73 and 110, the districts are not identical and have boundaries that affect different communities. Thus, the Court will not apply Ms. Wright's opinions about Mr. Cooper's Illustrative House District 73 and 110 to Mr. Esselstyn's Illustrative House Districts 74 and 117.

Georgia. Feb. 11, 2022, Morning Tr. 51:18–52:2. Even though Irondale is not an incorporated municipality, it does not mean that it is not a community of interest. Accordingly, the Court finds that Mr. Esselstyn's Illustrative House Districts 74 and 117 adhere to the traditional redistricting principle of maintaining communities of interest.

(f) Incumbent protection

Mr. Morgan states in his report that Mr. Esselstyn's illustrative state House plan pairs eight sets of incumbents (16 total) who are running for reelection, whereas the Enacted State House map pairs only four sets of incumbents (eight total) who are running for reelection. DX 2, ¶¶ 17–18 & chart 4.

Chart 4. House incumbent pairings

Incumbent Pairings	Adopted House Plan	Esselstyn House Plan
Pairing #1	Rebecca Mitchell -D Shelly Hutchison -D	Mike Glanton -D Demetrius Douglas -D
Pairing #2	Gerald Green -R Winifred Dukes -D	Rebecca Mitchell -D Shelly Hutchison -D
Pairing #3	James Burchett -R Dominic LaRiccia -R	El-Mahdi Holly -D Regina Lewis-Ward -D
Pairing #4	Danny Mathis – R Robert Pruitt - R	Miriam Paris -D Dale Washburn -R
Pairing #5		Robert Dickey -R Shaw Blackmon -R
Pairing #6		Noel Williams – R Robert Pruitt - R
Pairing #7		Gerald Green -R Winifred Dukes -D
Pairing #8		James Burchett -R Dominic LaRiccia -R
Total incumbents Paired	**8**	**16**

DX 2, ¶ 18 & chart 4.

During the hearing, Mr. Esselstyn testified that "I was not able to find a publicly-available authoritative source . . . for incumbent address data . . . [s]o, as a result, I did not have that data and so I did not take it into account." Feb. 9, 2022, Afternoon Tr. 223:16–22. Indeed, the Court finds it notable that Mr. Esselstyn's Illustrative State House Map creates only eight incumbent pairings even though Mr. Esselstyn had no address information regarding

incumbents. Further, three of the incumbent pairings are unchanged from the Enacted State House Map (Rebecca Mitchell and Shelly Hutchinson; Gerald Green and Winifred Dukes; James Burchett and Dominic LaRiccia). DX 2, ¶ 18 & chart 4. Additionally, while Robert Pruitt is paired against Danny Mathis in the enacted plan, Robert Pruitt is paired against Noel Williams in Mr. Esselstyn's Illustrative House Maps—in both pairings, both incumbents are Republicans. Id.

With respect to Mr. Esselstyn's Illustrative House Districts 74 and 117, six-incumbents are paired against one another, two more than the Enacted House Plan. Two of the incumbent pairings (Miriam Paris and Dale Washburn; and Shaw Blackmon and Robert Dickey) are not impacted by Mr. Esselstyn's Illustrative House Districts 74 and 117. Rep. Paris currently represents House District 142 in Bibb County and Rep. Washburn represents House District 141 in Bibb and Monroe Counties. Rep. Blackmon represents House District 146 in Houston County and Rep. Dickey represents House District 140 in Houston, Bibb, Monroe and Peach Counties. Georgia General Assembly House of Representatives, https://www.legis.ga.gov/members/ house (last visited Feb.

28, 2022).[31] Thus, Mr. Esselstyn's Illustrative House Districts 74 and 117 creates six incumbent pairings, two more than the Enacted State House Map. The Court finds that Mr. Esselstyn's Illustrative State House Map complies with the traditional redistricting principle of protecting incumbents.

(g) Core retention

The Court finds that Mr. Esselstyn's Illustrative State House Map retains the core of the Enacted State House Map. As an initial note, preservation of existing district cores was not an enumerated districting principle adopted by the General Assembly. See GPX 40. However, if the Court were to implement a remedial map, the Court would consider core retention. Thus, the Court has considered this issue and finds as follows:

Mr. Esselstyn's illustrative state House plan changes 26 of the 180 2021 adopted House districts in the process of creating five additional majority-minority districts. DX 2, ¶ 19. Mr. Esselstyn explained in his supplemental expert report that "[o]ne of the guiding principles in the creation of my illustrative plans was to keep changes to a minimum while adhering to other neutral criteria . . . . While the illustrative plans are—intentionally—a

[31] The Court takes judicial notice of the names of the members of the House of Representative for the Georgia General Assembly and the districts that those members serve. Fed. R. Evid. 201(b).

departure from the enacted plans, most of the plans' districts remain intact." GPX 4, ¶ 9; see also Feb. 9, 2022, Afternoon Tr. 267:20–268:4 (Mr. Esselstyn's testimony: "One of the other considerations for me was not trying to make more changes [than] I have to.").

The Court finds that in Mr. Esselstyn's Illustrative House Map, "86% of the districts are unchanged from the enacted House plan." GPX 4, ¶ 9. The Court notes that "[m]odifying 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 inescapably results in cascading changes to other surrounding districts." Id. Accordingly, the Court finds that Mr. Esselstyn's Illustrative State House Map respects the principle of core retention.

(h) Racial considerations

Defendants argue that Mr. Esselstyn's Illustrative House Maps still must fail because they were drawn predominately for racial considerations. The Court is not persuaded by this argument. Both the U.S. Supreme Court's and Eleventh Circuit's "precedents require [Section 2] plaintiffs to show that it would be possible to design an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a

minority candidate." Davis, 139 F.3d at 1425. "[I]ntentional creation of a majority-minority district necessarily requires consideration of race." Fayette Cnty., 118 F. Supp. 3d at 1345. Therefore, "[t]o penalize [plaintiffs] . . . for attempting to make the very showing that Gingles, Nipper, 39 F.3d 1494, and [Southern Christian Leadership Conference v. Sessions, 56 F.3d 1281 (11th Cir. 1995),] demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section Two action." Davis, 139 F.3d at 1425.

Mr. Esselstyn explained that he 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." GPX 3, ¶ 8 (footnote omitted); see also Feb. 9, 2022, Afternoon Tr. 150:11–19 (Mr. Esselstyn's testimony confirming what he was asked to do in this case). Mr. Esselstyn testified that he was not asked to maximize the number of majority-Black districts in the State Senate or House map. Feb. 9, 2022, Afternoon Tr. 150:23–25. Mr. Esselstyn also testified that it was necessary for him to consider race as part of his analysis because, under Section 2, "the key metric is whether a district has a majority of the Any Part Black population. So

that means it has to be over 50 percent. And that means looking at a column of numbers in order to determine, to assess whether a district has that characteristic. You have to look at the numbers that measure the percentage of the population is Black." Id. at 155:15–156:2.

When asked by the Court whether race was the "controlling question" when drawing his illustrative House District 149, Mr. Esselstyn responded that he did not have "one predominant consideration. . . . [he was] trying to see if something can be satisfied while considering all the other traditional principles and the principles adopted by the General Assembly." Feb. 9, 2022, Afternoon Tr. 254:1–255:18. Mr. Esselstyn emphasized that he took other considerations into account as well when drawing his illustrative plans, including population equality, compliance with the federal and state constitutions, contiguity, and other traditional districting principles. Id. at 156:10–157:9; see also id. at 275:2–11 (Mr. Esselstyn's testimony explaining that, when drawing illustrative districts, "I'm not looking at any one race of voters. . . . I'm always looking [at] a multitude of considerations").

Defendants' expert Ms. Wright opined that Mr. Esselstyn's Illustrative House District 117 was drawn predominately with racial considerations: "It is also unusual that District 116 follows the interstate except to take a single

precinct across the interstate that likely has racial implications for District 117." DX 41, ¶ 27. The Court does not agree with Ms. Wright's assessment. As stated above, Mr. Esselstyn testified that he used various metrics including but not limited to population size, communities of interest, and political subdivisions, in addition to race, when he drew his Illustrative State House Maps. Accordingly, the Court does not find that race predominated the drawing of Mr. Esselstyn's Illustrative State House Districts 74 and 117.

The Court finds that Mr. Esselstyn's Illustrative State House Districts 74 and 117 contain Black populations that are sufficiently numerous and compact to create two districts that comply with traditional redistricting principles. Accordingly, the Court finds that the Grant Plaintiffs have a substantial likelihood of success in proving that Mr. Esselstyn's Illustrative State House Districts 74 and 117 satisfy the first Gingles precondition.

(2) *The Alpha Phi Alpha Plaintiffs are substantially likely to establish a Section 2 violation.*[32]

(a) Cooper's Illustrative House District 153

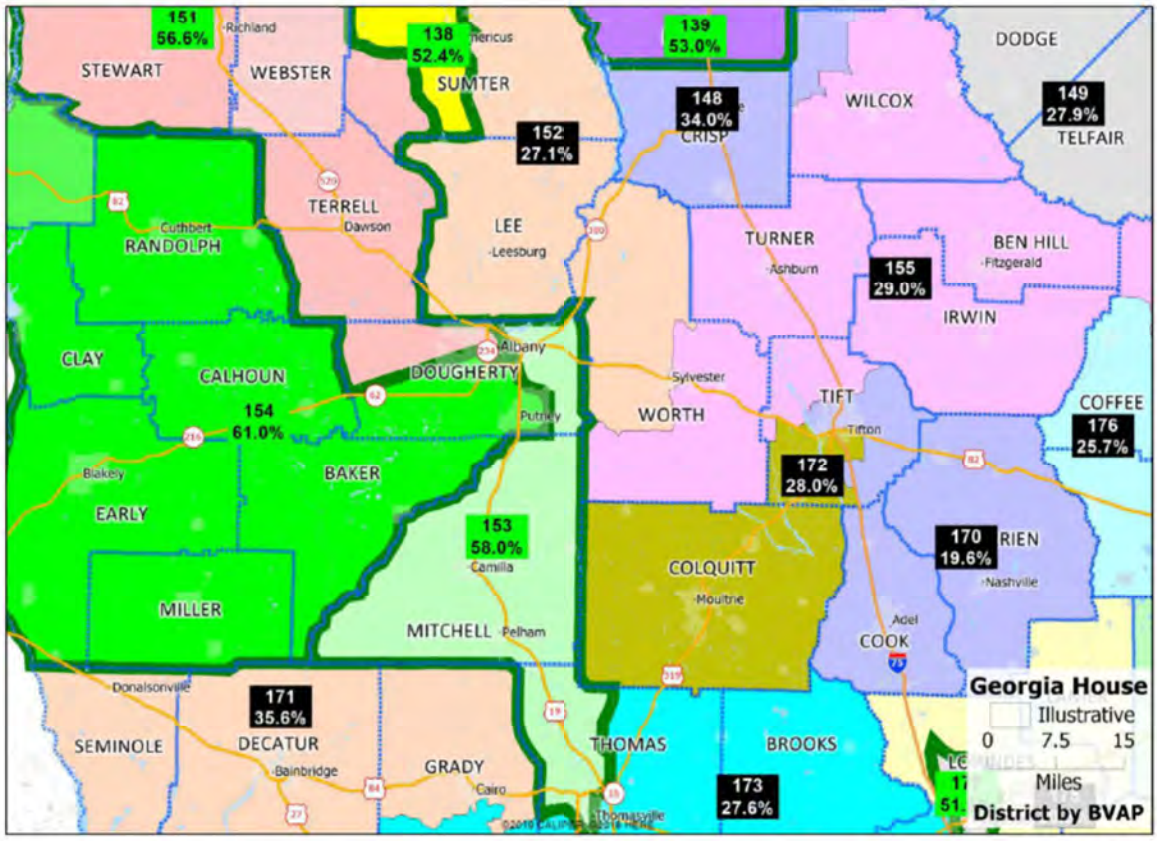
This Court finds that the Alpha Phi Alpha Plaintiffs have shown that they have a substantial likelihood of satisfying the first Gingles precondition with respect to an additional majority-minority district in southwest Georgia.

i) Numerosity

Mr. Cooper drew one illustrative House District in southeastern Georgia. Mr. Cooper's Illustrative House District 153 is in the area South of Albany, including Dougherty, Mitchell, and Thomas Counties. APAX 1, ¶ 118 & fig.34. Mr. Cooper's Illustrative State House District 153 includes all of Mitchell County, and parts of Dougherty and Thomas Counties. Id.

[32] In closing arguments, the court asked counsel for Alpha Phi Alpha whether the Alpha Phi Alpha Plaintiffs would be "upset if [the Court] just totally disregarded Mr. Cooper['s] maps on the Senate?" Feb. 14, 2022, Morning Tr. 81:25–82:1. In response, counsel stated "[n]ot at all, your Honor. They draw districts in exactly—pretty much the same areas of the State and at the end of the day, remedy the same violation based on the exact same population growth, based on the exact same concentration of Black voting strengths in different parts of the Black Belt." Id. 82:2–7. Accordingly, the Court formally incorporates its findings for the Grant Plaintiffs into its findings for the Alpha Phi Alpha Plaintiffs.

Figure 34: *Illustrative Plan: District 153 and vicinity*



APAX 1, ¶ 117 & fig.34.

In 1990, Non-Hispanic whites constituted about half of the overall population in the Senate District 12 region. See APAX 1, ¶ 55 & fig.9. By 2020, Non-Hispanic whites comprised only about one-third of the population. See id. Over the same period, the Black population grew in absolute terms from 102,728 to 115,621, representing just under half the population in 1990, but 60.6% of the population by 2020. See id. From 2000 to 2020, the proportion of

the AP Black population in the southwest Georgia counties comprising Senate District 12 grew, representing just over half the population in 2000 at 55.33%, but 60.6% of the population by 2020. APA Stip. ¶ 109. In the area where Enacted Senate District 12 was drawn with a majority-Black population, only two of the three House districts in the Enacted House Plan are majority Black. See id. ¶ 110. This fact, combined with the increase in the proportion of the Black population in that area over the last decade, indicates that an additional Black-majority House district can very likely be drawn in the area of Southwest Georgia covered by Enacted Senate District 12. Feb. 7, 2022, Afternoon Tr. 123:6–19, 124:8–16; see also APAX 1, ¶ 117 & fig.34; id. ¶ 118 & fig.35. Mr. Cooper's Illustrative House District 153 has an AP BVAP of 57.96%. APAX 1, at 293. Neither of Defendants' experts disputes that Mr. Cooper's Illustrative House District 153 has an AP BVAP greater than 50%. Accordingly, the Court finds that the Black population in Mr. Cooper's Illustrative State House District 153 is sufficiently numerous to constitute an additional Black-majority house district.

ii) Geographic compactness

Mr. Cooper reported that his plans "comply with traditional redistricting principles, including population equality, compactness, contiguity, respect for

communities of interest, and the non-dilution of minority voting strength." APAX 1, ¶ 8. Mr. Cooper testified that he attempted to balance all these principles and that no one principle predominated over the others. See Feb. 7, 2022, Afternoon Tr. 140:2–7 ("I tried to balance [all the traditional redistricting principles]. I was aware of them all and I tried to achieve plans that were fair and balanced.").

(a) Population equality

Mr. Cooper's Illustrative House District 153 is not malapportioned, and it complies with the one-person, one-vote principle. "[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable." Reynolds, 377 U.S. at 577. Mr. Cooper's report states that the population deviation for his Illustrative House District 153 is 1.35% (APAX 1, at 293) and the enacted House District 153 has a population deviation of 0.36% (id. at 282). Mr. Cooper also testified that his Illustrative House Map overall had a deviation of ± 1.5%. Feb. 7, 2022, Afternoon Tr. 169:1–2. Mr. Cooper's population deviations are within the limits allowed by the Equal Protection Clause.

> [M]inor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case . . . under the Fourteenth Amendment . . . . Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations.

Brown v. Thomson, 462 U.S. 835, 842 (1983) (quotations and citations omitted). Thus, the Court finds that Mr. Cooper's Illustrative House District 153 complies with population equality.

(b) Compactness

Mr. Cooper's Illustrative House District 153 has a comparable compactness score to the Enacted State House Map. Mr. Cooper reported that his Illustrative House Map has an average Reock score of 0.39 and an average Polsby-Popper score of 0.27. APAX 1, ¶¶ 122–123 & fig.36. In comparison, the Enacted State House Map has an average Reock score of 0.39 and an average Polsby-Popper score of 0.28. Id. In other words, Mr. Cooper's Illustrative House Map has an identical Reock score as the enacted House Map and is one one-hundredth of a point less compact under Polsby-Popper. Id.

Figure 36

Compactness Scores – Illustrative House Plan vs 2014 Benchmark and 2021 House Plans

	Reock			Polsby-Popper	
	Mean	Low		Mean	Low
Illustrative House Plan	.39	.16		.27	.11
2014 Benchmark House Plan	.39	.13		.27	.09
2021 House Plan	.39	.12		.28	.10

Id.

Defendants' expert Mr. Morgan reports that Mr. Cooper's Illustrative House District 153 has a Reock score of 0.28 and a Polsby-Popper score of 0.19. DX 1, ¶ 24 & chart 5. In comparison, the Enacted State House District 153 has a Reock score of 0.30 and a Polsby-Popper score of 0.30. Id.

Chart 5. Compactness score summary

New Majority-Black District	Adopted Plan Reock	Cooper Plan Reock	Adopted Plan Polsby-Popper	Cooper Plan Polsby-Popper
Senate 6	0.41	**0.43**	**0.24**	0.23
Senate 9	0.24	**0.33**	0.21	0.21
Senate 17	0.35	**0.37**	0.17	**0.18**
Senate 23	**0.37**	0.35	0.16	0.16
Senate 28	0.45	**0.49**	**0.25**	0.22
House 73	0.28	**0.44**	0.20	0.20
House 110	0.36	**0.44**	**0.33**	0.24
House 111	**0.33**	0.30	**0.29**	0.23
House 144	**0.51**	0.31	**0.32**	0.16
House 153	**0.30**	0.28	**0.30**	0.19

Id.

The Court finds that Mr. Cooper's Illustrative House District 153 is sufficiently compact. Mr. Cooper's Illustrative House District 153 has a Reock score only two-hundredths of a point less compact than the Enacted State House District 153. Additionally, the Court does not find that the difference in nine-hundredths of a point difference in the Polsby-Popper scores makes Mr. Cooper's Illustrative House District 153 not compact. Thus, the Court finds that Mr. Cooper's Illustrative House District 153 is sufficiently compact to satisfy the first Gingles precondition.

(c) Contiguity

Mr. Cooper's Illustrative House District 153 is contiguous. There is no factual dispute on this issue. See Feb. 7, 2022, Afternoon Tr. 133:8–13 (Mr. Cooper testimony confirming that he used Maptitude when drawing to alert him to whether his districts were contiguous).

(d) Preservation of political subdivisions

Mr. Cooper's Illustrative State House District 153 preserves political subdivisions. Mr. Cooper reported that "[t]he illustrative plans are drawn to follow, to the extent possible, county and VTD boundaries. Where counties are split to comply with one-person one-vote requirements or to avoid pairing

incumbents, [he] ha[s] generally used whole 2020 Census VTDs as sub-county components." APAX 1, ¶ 9 (footnote omitted). Mr. Cooper also stated that "[w]here VTDs are split, [he] ha[s] followed census block boundaries that are aligned with roads, natural features, census block groups, or municipal boundaries." Id.

Mr. Cooper's Illustrative House Plan as a whole, splits four more counties than the Enacted State House Map and splits 83 more VTDs than the Enacted House Plan. APAX 1, ¶ 124 & fig.37. The Court notes that Mr. Cooper based his Illustrative House Plan on the 2015 Benchmark House Plan, not the Enacted State House Map, because Mr. Cooper began drawing his maps before the Georgia Assembly passed the Enacted State House Map. See Feb. 7, 2022, Afternoon Tr. 239:25–240:5.

Figure 37

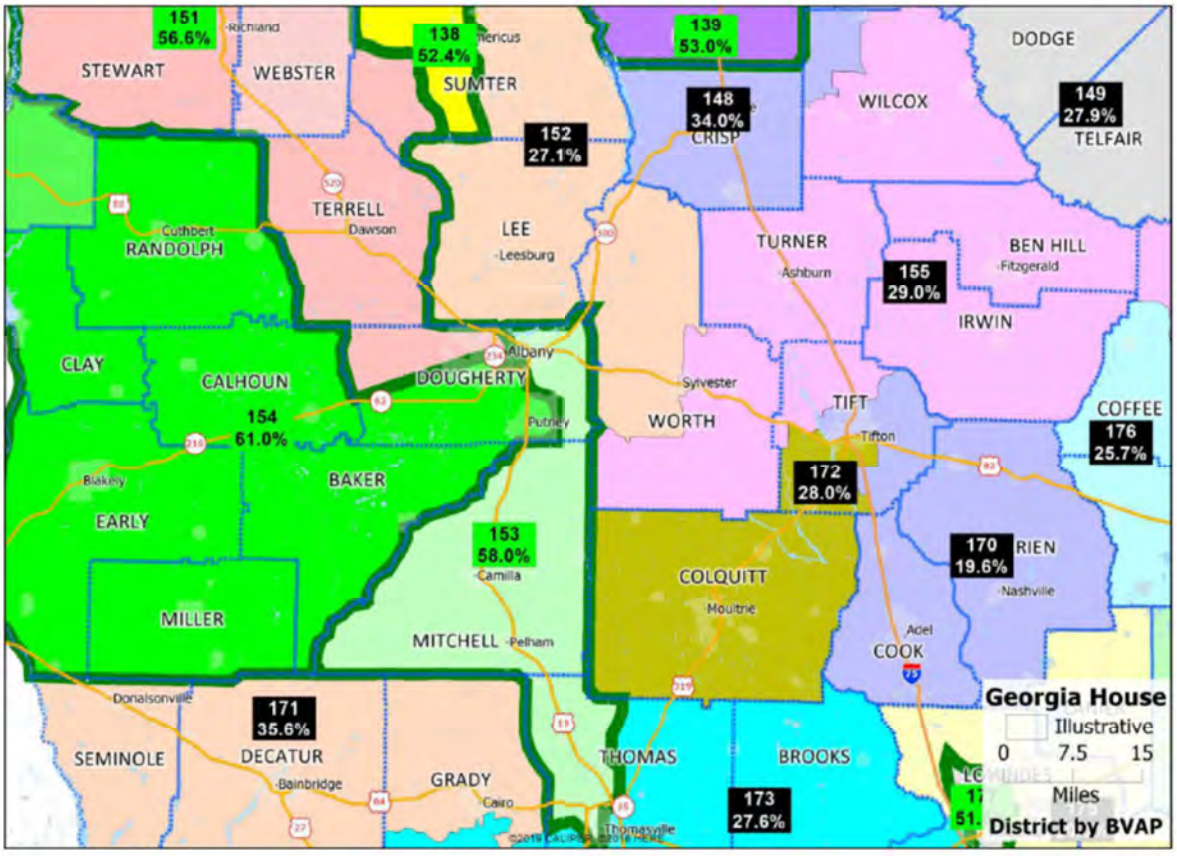
County and VTD Splits – Illustrative Plan vs 2006 and 2015 Plans

	County Splits (Populated)	Unique County-District Combinations	2020 VTD Splits (Populated)
Illustrative House Plan	74	206	262
2015 Benchmark House Plan	73	215	232
2021 House Plan	70	211	179

APAX 1, ¶ 124 & fig.37.

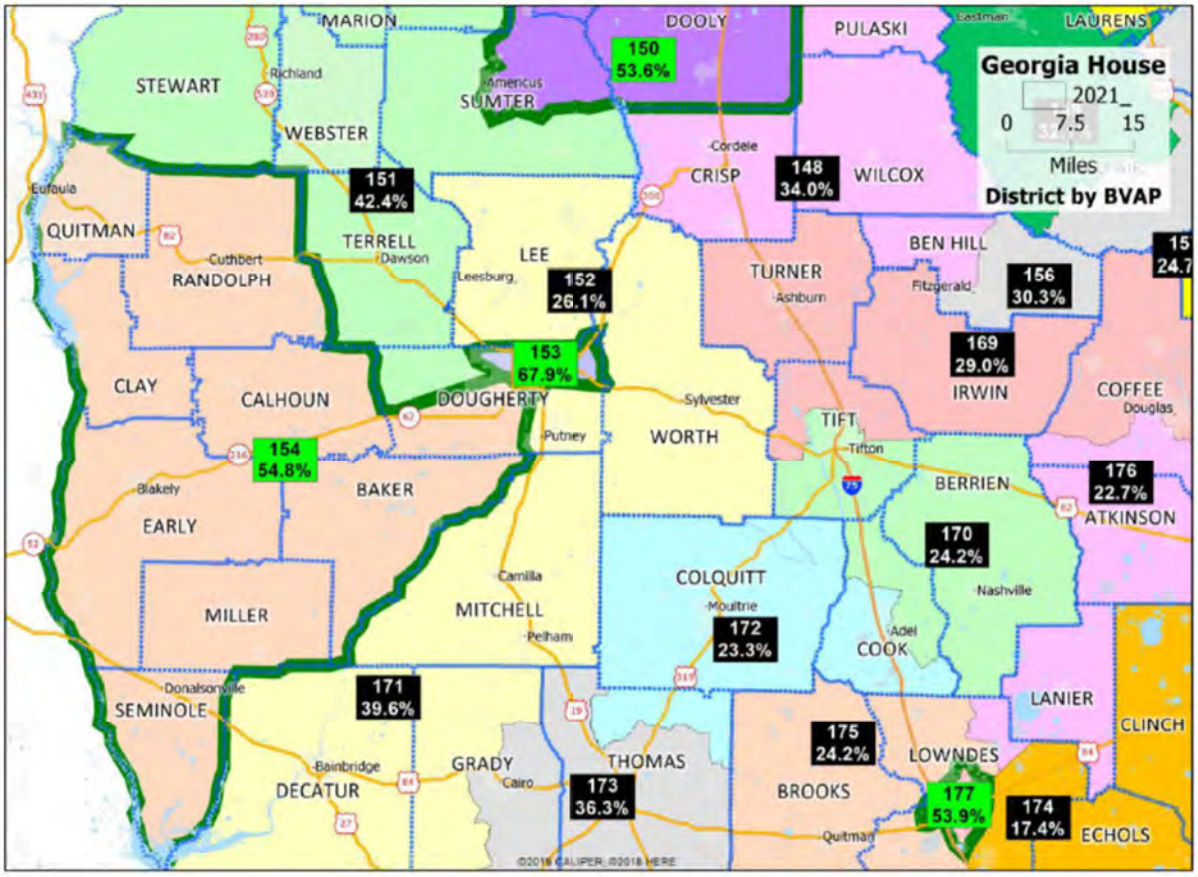
With respect to Mr. Cooper's Illustrative House District 153, Mr. Cooper testifies that his Illustrative House District 153 includes "part of Dougherty County, Albany, [] all of Mitchell and part of Thomas into Thomasville, following the main route there from Albany to Thomasville." Feb. 7, 2022, Afternoon Tr. 159:10–14. Defendants noted that Mr. Cooper's Illustrative State House District 153 has the effect that no district is wholly within Dougherty County on the illustrative plan. See id. at 217:2–10. Upon review, however, the Court notes that Dougherty County is split four ways in the Enacted State Plan and only three ways Mr. Cooper's Illustrative State House Plan. Compare APAX 1, at ¶ 117 & fig.34,

Figure 34: *Illustrative Plan: District 153 and vicinity*



with id. at ¶ 118 & fig.35.

Figure 35: *2021 Plan: District 151, 153, 171 and Vicinity*



In Mr. Cooper's Illustrative State House Plan, Dougherty County is split among Illustrative Districts 151, 153, and 154. Id. at 60 fig.34. In the Enacted State House Map, on the other hand, Dougherty County is split between Districts 153, 154, 155 and 171. Id. at 61 fig.35. Although District 153 is wholly within Dougherty County in the Enacted State House Map, Mr. Cooper's Illustrative State House Map splits Dougherty County three not four times. Accordingly, the Court does not find that Mr. Cooper's Illustrative House

District 153 does not respect political boundaries simply because there is not one district that is wholly within Dougherty County. The Court finds that Mr. Cooper adhered to respecting political subdivisions when he drew his Illustrative House District 153.

(e) Preservation of communities of interest

The Court finds that Mr. Cooper's Illustrative House District 153 preserves communities of interest. Mr. Cooper testified that "there is a clear transportation route along the Highway 19." Feb. 7, 2022, Afternoon Tr. 160:19–23. Additionally, Mr. Cooper stated that "the Southwest Georgia Regional Commission includes Thomas, and extends all the way out to the Albany area. So it's in the same Regional Commission and it's connected by a major highway that's featured in the Georgia tourist volume I think that you can get at rest stops." Id. at 161:3–8. Thus, Mr. Cooper opined, "[t]here are clear connections between Albany and Thomasville." Id. at 161:8–9. Defendants' expert Ms. Wright, however, testified that Albany and Thomasville are "communities that would not typically be combined together . . . . Albany is very – is a very unique, defined identity in that region, as is Thomasville further south, but they don't share a common interest." Feb. 11, 2022, Morning Tr. 44:22–45:2. The Court is not convinced by this assessment. After all, Ms. Wright also testified

that a community of interest is "kind of in the eye of the beholder." Id. at 91:11–12. The Court finds that there is a major roadway that connects the two towns, and the regional commission lists Albany and Thomasville as part of the same region. Feb. 7, 2022, Afternoon Tr. 160:19–23; 161:3–8. Accordingly, the Court finds that Mr. Cooper's Illustrative State House District 153 contains communities of common interest.

(f) Incumbent protection

Mr. Cooper's Illustrative State House District 153 does not pair any incumbents. Mr. Morgan criticized Mr. Cooper's Illustrative State House Plan because it paired 26 total incumbents as opposed to the Enacted State House Map, which paired eight incumbents. DX 1, ¶ 18. Mr. Cooper responded explaining that he used a publicly available database when he drew his Illustrative State House Plan, which had different information than the "incumbent databases used by the Georgia General Assembly during the redistricting process" that Mr. Morgan used. APAX 2, ¶¶ 3–4. Mr. Cooper testified that after he received the information that Mr. Morgan had access to, he was able to sharply reduce the number of incumbent pairings in three or four hours. Feb. 7, 2022, Afternoon Tr. 138:14–140:1. Mr. Cooper was ultimately

able to reduce the number of incumbent pairings significantly. See APAX 2, ¶¶ 3–14.

Of the incumbent pairings that Mr. Morgan identified, only incumbents Winifred Dukes and Gerald Greene currently represent a district that is impacted by Mr. Cooper's Illustrative House District 153.

Chart 4. House incumbent pairings

Incumbent Pairings	Adopted House Plan	Cooper House Plan
Pairing #1	Rebecca Mitchell -D Shelly Hutchison -D	Matthew Gambill -R Mitchell Scoggins -R
Pairing #2	Gerald Green -R Winifred Dukes -D	Trey Kelley -R Tyler Smith -R
Pairing #3	James Burchett -R Dominic LaRiccia -R	Matt Dubnik -R Emory Dunahoo -R
Pairing #4	Danny Mathis – R Robert Pruitt - R	Angelika Kausche -D Sam Park -D
Pairing #5		Regina Lewis-Ward -D Angela Moore -D
Pairing #6		Billy Mitchell -D Doreen Carter -D
Pairing #7		Mike Cheokas -R Debbie Butler -D
Pairing #8		Rick Williams -R Dave Belton -R
Pairing #9		Noel Williams -R Shaw Blackmon -R
Pairing #10		Robert Pruitt -R Matt Hatchett -R
Pairing #11		Gerald Greene -R Winifred Dukes -D
Pairing #12		Ron Stephens -R Carl Guillard -D
Pairing #13		Darlene Taylor -R John LaHood -R
Total incumbents Paired	8	26

DX 1, ¶ 17 & chart 4.; See Georgia General Assembly House of Representatives, https://www.legis.ga.gov/members/ house (last visited Feb. 28, 2022). Rep. Dukes represents House District 154, which includes part of Albany. Id. This

pairing, however, exists in both the Enacted State House Plan and Mr. Cooper's Illustrative State House Plan. DX 1, ¶ 17 & chart 4. The Court thus finds that Mr. Cooper's Illustrative State House District 153 protects incumbents because no incumbents are paired in this district.

(g) Core retention

Defendants argue that Mr. Cooper's Illustrative House Plan does not retain the core of the Enacted State House Map. As an initial note, preservation of existing district cores was not an enumerated districting principle adopted by the General Assembly. See GPX 40. However, if the Court were to implement a remedial map, the Court would consider core retention. Thus, the Court has considered this issue and finds as follows:

The Court finds that Mr. Cooper's Illustrative State House Maps and the enacted House Maps overlap by 61.4%. Although, Mr. Morgan found that only enacted House District 003 was unchanged in Mr. Cooper's Illustrative House Plan (DX 1, ¶ 19), Mr. Cooper found that there is a total 61.4% overlap between Mr. Cooper's Illustrative State House Plan and the Enacted State House Map (APAX 2, ¶ 16). Mr. Morgan testified that he only opined on whether the districts between Mr. Cooper's Illustrative State House Plan and the Enacted State House Map were exactly the same. Feb. 14, 2022, Morning Tr. 13:23–14:1.

However, Mr. Morgan did not contest that Mr. Cooper's Illustrative State House Plan and the Enacted State House Map overlapped by 61.4%. Id. at 14:13–20. Accordingly, the Court finds that Mr. Cooper's Illustrative House Plan maintains more than half of the Enacted State House Map.

(h) Racial considerations

Defendants also argue that Mr. Cooper's Illustrative State House Maps still must fail because they were drawn predominately for racial considerations. The Court is not persuaded by this argument. Both the U.S. Supreme Court's and Eleventh Circuit's "precedents require [Section 2] plaintiffs to show that it would be possible to design an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a minority candidate." Davis, 139 F.3d at 1425. "[I]ntentional creation of a majority-minority district necessarily requires consideration of race." Fayette Cnty., 118 F. Supp. 3d at 1345. Therefore, "[t]o penalize [plaintiffs] . . . for attempting to make the very showing that Gingles [and its progeny] demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section Two action." Davis, 139 F.3d at 1425.

Mr. Cooper explained that he was "aware of race as traditional redistricting principles suggest one should be." Feb. 7, 2022, Afternoon Tr.

135:17–18. Mr. Cooper explained that considering race was required to comply with the Voting Rights Act, which is federal law. Id. at 135:17–21. Mr. Cooper testified that he did not aim to draw any minimum number of Black-majority districts in his analysis. Id. at 135:22–136:3. When asked by the State whether his goal "really was to create an additional majority Black district in the creation of [his] House and Senate Plans," he answered that his goal "was to determine whether or not additional majority Black districts could be created. So there was no goal per se." Id. at 164:16–21. Mr. Cooper repeatedly testified that he balanced all redistricting principles and stated that no one principle predominated. E.g., id. at 140:3–7, 230:17–25.

Ms. Wright testified that Mr. Cooper's Illustrative House District 153 contained "communities that would not typically be combined together. So [she is] not sure what the reason would be unless there was another particular goal in mind to draw that." Feb. 11, 2022, Morning Tr. 44:22–25. The Court does not agree with Ms. Wright's assessment. Mr. Cooper testified that his Illustrative House District 153 is connected by "a clear transportation route along Highway 19" (Feb. 7, 2022, Afternoon Tr. 160:22–23) and is in within the same regional commission (id. at 161:3–8). Mr. Cooper also testified that he took into account a district's population size, political subdivisions and

incumbent pairings, in addition to race. Accordingly, the Court does not find that race predominated the drawing of Mr. Cooper's Illustrative State House District 153.

The Court finds that Mr. Cooper's Illustrative House District 153 contains Black population that is sufficiently numerous and compact, as to create an additional district that complies with traditional redistricting principles. Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have a substantial likelihood of success in proving that Mr. Cooper's Illustrative House District 153 satisfies the first Gingles precondition.

(3) Conclusions of Law

Thus, based upon the evidence presented, the Court finds that the Grant and Alpha Phi Alpha Plaintiffs have sufficiently established that they are substantially likely to succeed on the merits of satisfying the first Gingles precondition because it is possible to create two additional State Senate Districts (Mr. Esselstyn's Illustrative Senate Districts 25 and 28) and two State House Districts in the Atlanta Metropolitan area (Mr. Esselstyn's Illustrative House Districts 74 and 117) and one additional State House District in southwestern Georgia (Mr. Cooper's Illustrative House District 153).

2. *The Second Gingles Precondition: Political Cohesion*

The second Gingles element is that "the minority group . . . show that it is politically cohesive." 478 U.S. at 50. This involves an assessment of the extent to which elections in the jurisdiction are affected by racial polarization:

> [T]he question whether a given district experiences legally significant racially polarized voting requires discrete inquiries into minority and white voting practices. A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and, consequently, establishes minority bloc voting within the context of § 2.

Id. at 56 (citations omitted).

All the parties agree that there is an extremely large degree of racial polarization in Georgia elections. However, they starkly disagree about the causes of that polarization and whether those causes are relevant to the second Gingles precondition.

a) The parties' arguments

(1) Defendants

Defendants contend, in short, that the polarization is caused by partisan factors rather than "the race of the candidate" Black voters vote for. APA Doc. No. [120], ¶ 285. Because white voters cohesively support Republican

candidates and Black voters cohesively support Democratic candidates without regard to whether the candidate is Black or white, Defendants attribute the polarization to partisanship. Id. ¶¶ 286–287. In doing so, Defendants assert that the extreme level of polarization is really partisan rather than racial. Id. Because the vote dilution must be "on account of race or color" to violate Section 2, Defendants argue that the Court must determine whether some other factor is the cause. See id. ¶ 430. As a result, Defendants argue that Plaintiffs cannot show that "electoral losses are 'on account of race or color' and not partisan voting patterns." Id. 430 (citing 52 U.S.C. § 10301(a); Solomon, 221 F. 3d at 1225 (en banc); LULAC, 999 F. 2d at 854 (en banc)).

(2) Plaintiffs

In contrast, all three sets of Plaintiffs contend that the reasons *why* Black Georgia voters and white Georgia voters overwhelmingly support opposing candidates is irrelevant to Section 2's effects-based inquiry. The evidence compellingly demonstrates acute polarization by race and, Plaintiffs assert, what causes Georgia voters to vote that way is not relevant to the second Gingles Precondition or the second Senate Factor. They argue they are not required "to prove [that] racism determines the voting choices of the white electorate in order to succeed in a voting rights case." Pendergrass Doc. No.

[87], ¶ 351 (citing Askew v. City of Rome, 127 F.3d 1355, 1382 (11th Cir. 1997); Fayette Cnty., 950 F. Supp. 2d at 1321 n.29); see also APA Doc. No. 121, ¶ 665 (similar); Grant Doc. No. [82], ¶ 381 (same).

(3) Conclusions of law

The Court concludes as a matter of law that, to satisfy the second Gingles precondition, Plaintiffs need not prove the causes of racial polarization, just its existence. The plurality opinion in Gingles concluded that, "[f]or purposes of § 2, the legal concept of racially polarized voting incorporates neither causation nor intent. *It means simply that the race of voters correlates with the selection of a certain candidate or candidates*; that is, it refers to the situation where different races (or minority language groups) vote in blocs for different candidates." Gingles, 478 U.S. at 62 (emphasis added). Thus, four Supreme Court justices concluded that the existence of political polarization does not negate Plaintiffs' ability to establish the second Gingles precondition by showing the extent of racial-bloc voting. Id.; see also Chisom v. Roemer, 501 U.S. 380, 404 (1991) (emphasizing that "Congress made clear that a violation of § 2 could be established by proof of discriminatory results alone").

The weight that should be placed on the extent of such polarization—and any link to partisanship—must necessarily be part of the totality-of-the-

circumstances analysis under the second Senate Factor. Gingles, 478 U.S. at 37 (identifying extent of racial polarization in elections under second Senate Factor); Solomon, 899 F.2d at 1015 (Kravitch, J., specially concurring) (same). However, such evidence must again be considered in light of the admonition in Gingles's plurality opinion that

> [i]t is the *difference* between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives. Consequently, we conclude that under the "results test" of § 2, only the correlation between race of voter and selection of certain candidates, not the causes of the correlation, matters.
>
> . . . .
>
> [W]e would hold that the legal concept of racially polarized voting, as it relates to claims of vote dilution, refers only to the existence of a correlation between the race of voters and the selection of certain candidates. Plaintiffs need not prove causation or intent in order to prove a prima facie case of racial bloc voting and defendants may not rebut that case with evidence of causation or intent.

478 U.S. at 63, 74 (emphasis in original).

As discussed above, applying the standard advocated by Defendants would undermine the congressional intent behind the 1982 amendments to the VRA—namely, to focus on the *results* of the challenged practices. Id. at 35–36;

see also Marengo Cnty. Comm'n, 731 F.2d at 1567. Congress wanted to avoid "unnecessarily divisive [litigation] involv[ing] charges of racism on the part of individual officials or entire communities." S. Rep. No. 97-417, pt. 1, at 36 (1982); see also Solomon, 899 F.2d at 1016 n.3 (Kravitch, J., specially concurring) (explaining that this theory "would involve litigating the issue of whether or not the community as a whole was motivated by racism, a divisive inquiry that Congress sought to avoid by instituting the results test"). As the Eleventh Circuit long ago made clear, "[t]he surest indication of race-conscious politics is a pattern of racially polarized voting." Marengo Cnty. Comm'n, 731 F.2d at 1567.

Here, each set of Plaintiffs has more than satisfied its burden to show political cohesion among Black voters in the relevant regions and districts.

b) The existence of political cohesion

(1) Pendergrass

(a) Plaintiffs' Expert: Dr. Maxwell Palmer[33]

The Pendergrass Plaintiffs proffered Dr. Maxwell Palmer as their racially polarized voting expert. Feb. 10, 2022, Morning Tr. 44:17–20, 47:8–19.

[33] To the extent Dr. Palmer provided evidence related to other issues or Plaintiffs, the following discussion is necessarily applicable to those matters as well.

i) Qualification

Dr. Palmer received his undergraduate degree in mathematics, and government and legal study from Bowdoin College in Maine; he holds a Ph.D. in political science from Harvard University. Feb. 10, 2022, Morning Tr. 45:14–18. He is currently a tenured associate professor of political science at Boston University. Id. at 45:21–25. He teaches classes on American politics and political methodology, including data science and formal theory. Id. at 46:1–5. Among his principle areas of research are voting rights. Id. at 46:6–8.

Dr. Palmer has previously served as an expert witness in numerous redistricting cases, conducting racially polarization analyses in each; he has never been rejected as such an expert. Feb. 10, 2022, Morning Tr. 46:9–24; GPX 5, ¶ 3 & 22–31. He has also served as an expert for the Virginia Independent Redistricting Commission. Feb. 10, 2022, Morning Tr. 47:3–7; GPX 5, at 29.

Defendants did not object to Dr. Palmer being qualified as an expert in redistricting and data analysis, and the Court so qualified him. Feb. 10, 2022, Morning Tr. 47:15–19. The Court found Dr. Palmer's testimony to be credible and his analyses to be methodologically sound. The Court notes that Dr. Palmer's findings are consistent with the Alpha Phi Alpha Plaintiffs' expert

Dr. Handley. See infra (III.A.2.(b)(3)(a)(ii)). It credits that testimony and the reliability of Dr. Palmer's conclusions.

During Dr. Palmer's live testimony, the Court carefully observed his demeanor, particularly as he was cross-examined for the first time about his work on this case. He consistently defended his work with careful and deliberate explanations of the cases for his opinions. When Defense counsel questioned his methodology, and particularly the reason behind not using primary data, Dr. Palmer provided measured and thoughtful responses. The Court observed no internal inconsistencies in his testimony, no appropriate question that he could not or would not answer, and no reason to question the veracity of his testimony. The Court finds that his methods and conclusions are highly reliable, and ultimately that his work as an expert on the second and third Gingles preconditions is helpful to the Court.

ii) Analysis

Dr. Palmer was tasked with offering an expert opinion on the extent to which voting is racially polarized in each of the Congressional Districts 3, 11, 13, and 14 of the Enacted Maps, as well as the region covered by those districts. Pendergrass Stip. ¶ 56; GPX 5, ¶ 9; Feb. 10, 2022, Morning Tr. 52:5–16. Dr. Palmer found strong evidence of such voting in every area he examined.

Feb. 10, 2022, Morning Tr. 48:3–6. In other words, Dr. Palmer found that Black and white voters consistently support different candidates. GPX 5, ¶ 6.

To assess polarization, Dr. Palmer employed a statistical method called Ecological Inference ("EI") to derive estimates of the percentages of Black and white voters in elections conducted in the relevant Congressional Districts in 31 statewide elections held between 2012 and 2021. GPX 5, ¶¶ 10, 12; Feb. 10, 2022, Morning Tr. 49:19–50:1, 51:16–19. He described EI as a "statistical procedure . . . that estimates group-level preferences based on aggregate data." GPX 5, ¶ 12. His EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. GPX 5, ¶ 10; Feb. 10, 2022, Morning Tr. 51:20–52:3.

First, Dr. Palmer 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. GPX 5, ¶ 13. If a significant majority of the group supported a single candidate, he then identified that candidate as the group's candidate of choice. Id. Dr. Palmer next compared the preferences of white voters to the preferences of Black voters. Id. In every election he examined, across the relevant region and in each Congressional District from the Enacted Maps, Dr. Palmer found that Black voters had clearly identifiable

candidates of choice. GPX 5, ¶¶ 15, 17–18, & figs. 2–4, 6; Feb. 10, 2022, Morning Tr. 52:17–54:19. For elections from 2012 through 2021, Black voters on average supported their preferred candidates with an estimated vote share of 98.5%. GPX 5, ¶¶ 6, 14–15 & figs. 2–3, tbl.1.

(b) Defendants' Expert: Dr. John Alford[34]

Defendants proffered Dr. John Alford as their expert on the issue of racial polarization. Feb. 11, 2022, Afternoon Tr. 140:17–22. Plaintiffs did not object to Dr. Alford being so qualified, and the Court so qualified him. Id. at 140:23–141:4.

i) Qualification

Dr. Alford is a tenured professor of Political Science at Rice University. DX 42, Ex. 1, at 1; Feb. 11, 2022, Afternoon Tr. 140:1–4. He holds a Master's in Public Administration from the University of Houston and a Ph.D. in Political Science from the University of Iowa. DX 42, Ex. 1, at 1; Feb. 11, 2022, Afternoon Tr. 139:18–25. He has taught graduate and undergraduate level courses on various subjects, including redistricting, elections, and political representation. DX 42, 2. Dr. Alford has authored numerous scholarly articles and presented

[34] Since Dr. Alford was Defendants' expert in each of the three cases on multiple issues, the following discussion applies to those matters as well.

papers at various conferences and consortia. DX 42, Ex. 1, at 1–8. He has previously been qualified as an expert witness on racial polarization in cases involving Section 2 claims. Id. at 140:13–18. However, Dr. Alford has never published a paper on racially polarized voting or any peer-reviewed articles using EI; and, he has never written about Section 2 of the Voting Rights Act in an academic publication. See Feb. 11, 2022, Afternoon Tr. 160:8–16.

While the Court found Dr. Alford to be credible, his conclusions were not reached through methodologically sound means and were therefore speculative and unreliable. Other courts have come to similar conclusions. See Lopez v. Abbott, 339 F. Supp. 3d 589, 610 (S.D. Tex. 2018) (crediting Dr. Handley's testimony over Dr. Alford's because "Dr. Alford's testimony . . . focused on issues other than the ethnicity of the voters and their preferred candidates—which are the issues relevant to bloc voting"); Texas v. U.S., 887 F. Supp. 2d 133, 146–47 (D.D.C. 2012) (critiquing Dr. Alford's approach because he used an analysis that "lies outside accepted academic norms among redistricting experts," and instead relying heavily on Dr. Handley's testimony), vacated on other grounds, 570 U.S. 928 (2013).

ii) Analysis

Dr. Alford was tasked with responding to Dr. Palmer's expert report and providing expert opinions about the nature of the polarized voting in Georgia. DX 42; Feb. 11, 2022, Afternoon Tr. 140:5–12. Dr. Alford assumed that Dr. Palmer's EI analysis of existence of racially polarized voting was sound because he knows from his own past work that Dr. Palmer is competent at performing such analyses. Feb. 11, 2022, Afternoon Tr. 143:14–21. However, he raised concerns that Dr. Palmer's results were more attributable to partisanship than race. See DX 42, at 6.

The Court cannot credit this testimony. Dr. Alford admitted on cross-examination that he did not identify any errors that would affect Dr. Palmer's analysis or conclusions. Feb. 11, 2022, Afternoon Tr. 153:3–7. The basis for his testimony was only Dr. Alford's conclusion that Black voters overwhelmingly prefer Democratic candidates and white voters overwhelmingly support Republican candidates. Feb. 11, 2022, Afternoon Tr. 171:8–16; DX 42, at 5. But Dr. Alford did not perform his own analyses of voter behavior, and he testified that it is not possible to separate partisan polarization from racial polarization based on Dr. Palmer's analysis. DX 42; Feb. 11, 2022, Afternoon Tr. 143:4–10. In fact, there is no evidentiary support in the record for Dr. Alford's treatment of

race and partisanship as separate and distinct factors affecting voter behavior. Nor is there any evidence—aside from Dr. Alford's speculation—that partisanship is the cause of the racial polarization identified by Dr. Palmer. DX 42, at 3–4. Dr. Alford himself acknowledged that polarization can reflect both race *and* partisanship, and that "it's possible for political affiliation to be motivated by race." Feb. 11, 2022, Afternoon Tr. 171:8–16. All this undermines Dr. Alford's insistence that partisanship rather than race is the cause of the polarization. In any event, and as discussed above, the cause of the polarization is not relevant to the second Gingles precondition.

Other courts have discounted Dr. Alford's testimony for similar reasons. See, e.g., NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist., 462 F. Supp. 3d 368, 381 (S.D.N.Y. 2020) ("[Dr. Alford's] testimony, while sincere, did not reflect current established scholarship and methods of analysis of racially polarized voting and voting estimates."), aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist., 984 F.3d 213 (2d Cir. 2021); Flores v. Town of Islip, 382 F. Supp. 3d 197, 233 (E.D.N.Y. 2019) ("Dr. Alford maintains that at least 80% of the white majority in Islip must vote against the Hispanic-preferred candidate for the white bloc vote to be sufficient. . . . This theory has no foundation in the applicable caselaw."); Lopez v. Abbott, 339 F. Supp. 3d 589, 610 (S.D. Tex. 2018)

("At this juncture, the Court is only concerned with whether there is a pattern of white bloc voting that consistently defeats minority-preferred candidates. That analysis requires a determination that the different groups prefer different candidates, as they do. It does not require a determination of why particular candidates are preferred by the two groups."); Patino v. City of Pasadena, 230 F. Supp. 3d 667, 709–13 (S.D. Tex. 2017) (finding in favor of the plaintiffs as to Gingles' second and third prongs, contrary to Dr. Alford's testimony on behalf of the defendant jurisdiction), stay denied pending appeal, 667 F. App'x 950 (5th Cir. 2017) (per curiam); Montes v. City of Yakima, 40 F. Supp. 3d 1377, 1401–07 (E.D. Wash. 2014) (finding the same and stating that Dr. Alford's testimony did "not defeat a finding of Latino voter cohesion"); Benavidez v. Irving Indep. Sch. Dist., No. 3:13–CV–0087–D, 2014 WL 4055366, at *11–13 (N.D. Tex. Aug. 15, 2014) (same); Fabela v. City of Farmers Branch, No. 3:10–CV–1425–D, 2012 WL 3135545, at *8–13 (N.D. Tex. Aug. 2, 2012) (same); Texas v. United States, 887 F. Supp. 2d 133, 181 (D.D.C. 2012) ("[T]he fact that a number of Anglo voters share the same political party as minority voters does not remove those minority voters from the protections of the VRA. The statute makes clear that this Court must focus on whether minorities are able to elect the candidate of their choice, no matter the political party that may benefit."),

vacated on other grounds, 570 U.S. 928 (2013); Benavidez v. City of Irving, 638 F. Supp. 2d 709, 722–25, 731–32 (N.D. Tex. 2009) (finding in favor of the plaintiffs as to Gingles' second and third prongs, contrary to Dr. Alford's testimony on behalf of the defendant jurisdiction); see also Feb. 11, 2022, Afternoon Tr. 172:17–20 (agreeing that other courts have rejected his testimony before "[i]n the sense of deciding to go in a different direction than what I thought the facts of the case suggested").

(c) Conclusions of Law

The Court concludes that the Pendergrass Plaintiffs have satisfied their burden to establish that Black voters in Georgia (at least for those regions examined) are politically cohesive. Gingles, 478 U.S. at 49. "Bloc voting by blacks tends to prove that the black community is politically cohesive, that is, it shows that blacks prefer certain candidates whom they could elect in a single-member, black majority district." Id. at 68. Dr. Palmer's analysis clearly demonstrate high levels of such cohesiveness, both across the congressional focus area and in the individual districts that comprise it. Neither Dr. Alford's testimony nor his expert report undermines this conclusion.

This finding is also consistent with previous findings of political cohesion among Black Georgians. See, e.g., Wright, 301 F. Supp. 3d at 1313

(noting that, in ten elections for Sumter County Board of Education with Black candidates, "the overwhelming majority of African Americans voted for the same candidate"); Wright, 979 F.3d at 1306 (noting "the high levels of racially polarized voting" in Sumter County).

(2) Grant

The Grant Plaintiffs also proffered Dr. Palmer as their racially polarized voting expert. Feb. 10, 2022, Morning Tr. 44:17–20, 47:8–11. Defendants again proffered Dr. Alford. Except with regard to the specific areas and districts analyzed by Dr. Palmer for the Grant case, (which are discussed further below), the discussion concerning the existence of political cohesion in Pendergrass applies equally here. The Court likewise finds that the Grant Plaintiffs have met their burden to establish the second Gingles precondition.

(a) Dr. Palmer's analysis

In Grant, Dr. Palmer was tasked with offering an expert opinion on the extent to which voting is racially polarized in five different "focus areas" based on the Georgia General Assembly House and Senate Enacted Maps. Grant Stip. ¶ 77; Feb. 10, 2022, Morning Tr. 60:1–13; GPX 6, ¶ 9. The focus areas cover those regions where Plaintiffs' illustrative majority-minority districts are located. GPX 6, ¶ 9. For the Georgia House, Dr. Palmer examined regions he described

as the Black Belt (covering Enacted Map House Districts 133, 142, 143, 145, 147, and 149), Southern Atlanta (Enacted Map House Districts 69, 74, 75, 78, 115, and 117), and Western Atlanta (Enacted Map House Districts 61 and 64). GPX 6, ¶ 10. For the Georgia Senate, Dr. Palmer looked at the Black Belt (Enacted Map Senate Districts 22, 23, 24, 25, and 26) and Southern Atlanta (Enacted Map Senate Districts 10, 16, 17, 25, 28, 34, 35, 39, and 44). GPX 6, ¶ 11.

The analysis Dr. Palmer performed was the same type of EI as that in Pendergrass (GPX 6, ¶¶ 14–16; Feb. 10, 2022, Morning Tr. 59:12–25, 60:18–21), and the results were similar: Black voters in the relevant regions supported their preferred candidate with at least 95.2% of the vote. GPX 6, ¶ 17 & fig.2, tbl.1. Each of the House districts Dr. Palmer examined also exhibited a high degree of polarization. Id. ¶ 18 & fig.3. For the Senate districts, 12 of the 14 showed racial polarization. Id.[35]

(3) Alpha Phi Alpha

The Alpha Plaintiffs proffered Dr. Lisa Handley as an expert in racial polarization analysis and the analysis of minority vote dilution and

[35] For the two districts where Dr. Palmer concluded there was not consistent evidence of racially polarized voting, he noted the following: "Voting is generally not polarized in Senate District 39. In Senate District 44, White voters do not have a clear candidate of choice in 18 of the 31 elections, and majorities of White voters opposed the Black-preferred candidate in 13 elections." GPX 6, ¶ 18 & fig.3.

redistricting. Feb. 10, 2022, Morning Tr. 76:13, 81:8–10. Defendants proffered Dr. Alford. Accordingly, except with regard to the specific areas and districts analyzed by Dr. Handley for the Alpha Phi Alpha case, the discussion concerning the existence of political cohesion in Pendergrass applies here, too.

(a) Plaintiffs' Expert: Dr. Lisa Handley

i) Qualification

Dr. Handley holds a Ph.D. in Political Science from The George Washington University. Feb. 10, 2022, Morning Tr. 78:22–79:4; APAX 3, at 47. She has over thirty years of experience in the areas of redistricting and voting rights, and has provided election assistance to numerous countries including to various post-conflict countries through the United Nations. Feb. 10, 2022, Morning Tr. 79:5–18; APAX 3, at 47. She has taught political science courses at both the graduate and undergraduate level at several universities. APAX 3, at 47. She has authored numerous scholarly works concerning redistricting and minority vote dilution, including her dissertation. Feb. 10, 2022, Morning Tr. 79:22–80:4; APAX 3, at 50–52.

Dr. Handley has served as an expert in "scores" of redistricting and voting rights cases, including on behalf of jurisdictions defending against Section 2 cases. Feb. 10, 2022, Morning Tr. 80:5–12, 102:23–103:6; APAX 3, at 46.

In those cases, she generally analyzes voting patterns by race and ethnicity. Feb. 10, 2022, Morning Tr. 80:13–19. As an expert, she has also numerous times performed analyses of racial-bloc voting and evaluations of whether proposed districts provide minorities with the opportunity to elect candidates of their choice. Feb. 10, 2022, Morning Tr. 80:20–81:7. She has routinely been qualified as an expert in cases where she used the same methodology she employed here. Feb. 10, 2022, Morning Tr. 84:25–85:4; APA Doc. No. [118-2], ¶ 4.

Defendants did not object to Dr. Handley being qualified as an expert in the analysis of racial polarization and minority vote dilution and redistricting, and the Court so qualified her. Feb. 10, 2022, Morning Tr. 81:14–17. The Court found Dr. Handley's testimony to be credible and her analyses to be sound. At the live hearing, the Court carefully observed Dr. Handley's demeanor, particularly as she was cross-examined for the first time about his work on this case. She consistently defended his work with careful and deliberate explanations of the cases for his opinions. When Defense counsel questioned her about her methodology particularly the reason behind not using confidence intervals, Dr. Palmer provided measured and thoughtful responses. The Court observed no internal inconsistencies in her testimony, no appropriate question that he could not or would not answer, and no reason to question the veracity

of her testimony. Thus, the Court credits that testimony and the reliability of Dr. Handley's conclusions.

ii) Analysis

Dr. Handley was tasked with conducting an analysis of voting patterns by race in several regions of Georgia to determine whether there is racially polarized voting there. APAX 3, at 2. She concluded that an election was racially polarized where, according to her EI analysis, "the outcome would be different if the election were held only among black voters compared to only among white voters." Feb. 10, 2022, Morning Tr. 83:13–14. In all six regions that Dr. Handley examined, Black voters were cohesive in supporting their preferred candidates. APAX 3, at 23.

Dr. Handley analyzed voting patterns by race in the six regions that are the focus of the Alpha Phi Alpha case, specifically: the Eastern Atlanta Metro Region, the Southern Atlanta Metro Region, East Central Georgia with Augusta, the Southeastern Atlanta Metro Region, Central Georgia, and Southwest Georgia. APAX 3, at 2; Feb. 10, 2022, Morning Tr. 83:7–8. Dr. Handley's analysis employed three commonly used statistical methods that have been widely accepted by courts in voting rights cases: homogeneous precinct analysis, ecological regression, and "King's EI." Feb. 10, 2022, Morning

Tr. 83:21–23, 84:3–24, 85:12–25; APAX 3, at 3–5; APA Doc. No. [118-2], ¶ 4. Dr. Handley has employed King's EI in numerous cases, and courts have routinely accepted her use of that methodology to assess racially polarized voting. APA Doc. No. [118-2], ¶ 4; Feb. 10, 2022, Morning Tr. 84:20–85:4. She uses homogeneous precinct analysis and ecological regression to check the estimates produced by EI. Feb. 10, 2022, Morning Tr. 84:2–19. She has used all three techniques in previous cases. Id. at 83:19–85:4.

Although Dr. Alford claimed that Dr. Handley should have used a version of EI called "RxC," Dr. Handley credibly explained why her use of King's EI here was appropriate. Dr. Handley testified that she uses EI RxC analysis in only two situations: (1) when "estimating the voting patterns of more than two racial/ethnic groups"; or (2) when she lacks data showing "turnout by race," and she "instead must rely on voting age population by race to estimate voting patterns." APA Doc. No. [118-2], ¶¶ 1–2. Because neither was present here, she concluded that King's EI was an appropriate methodology. Id.

(a) Statewide general elections

Dr. Handley estimated of the percentage of Black and white voters in the six regions in statewide general elections for U.S. Senate, Governor,

Commissioner of Insurance, and School Superintendent. Feb. 10, 2022, Morning Tr. 86:1–7; APAX 3, at 5–6; APA Doc. No. [118-1]. All but two of those elections involved Black and white candidates—i.e., they were biracial elections. APAX 3, at 6, 8–11; Feb. 10, 2022, Morning Tr. 91:8–17. According to Dr. Handley, biracial elections are the most probative for measuring racial polarization. Feb. 10, 2022, Morning Tr. 86:16–20. Courts generally have agreed. See Feb. 11, 2022, Afternoon Tr. 170:25–171:7. Dr. Handley also analyzed the 2020 U.S. Senate general election and 2021 U.S. Senate runoff election with Jon Ossoff, in part because Black candidates ran in the primary. Feb. 10, 2022, Morning Tr. 86:23–87:3.

The racial polarization was stark in every statewide general election that Dr. Handley analyzed, with the vast majority of Black voters supporting one candidate and the vast majority of white voters supporting the other candidate. Feb. 10, 2022, Morning Tr. 90:18–20, 91:6–25, 101:20–23; APA Doc. No. [118-1]. The Black-voter preferred candidates in these races typically received more than 98% of Black voters' support. APA Doc. No. [118-1].

(b) State legislative elections

Dr. Handley also looked at 26 State legislative elections in the relevant regions. Feb. 10, 2022, Morning Tr. 86:1–7, 91:12–17; APAX 4, at 5, 7–10. She

found starkly racially polarized voting here, too. Feb. 10, 2022, Morning Tr. 91:8–25; APAX 4, at 5, 7–10. She analyzed recent biracial elections in General Assembly districts wholly contained within or overlapping with the additional majority-Black districts drawn by Plaintiffs' expert demographer. Feb. 10, 2022, Morning Tr. 91:8–17; APAX 3, at 8–11. There were eight such State senate contests, and 18 such State house contests. APAX 3, at 8–11. All these elections were racially polarized, with Black candidates receiving a minuscule share of the white vote and the overwhelming support of Black voters. Feb. 10, 2022, Morning Tr. 91:8–25; APAX 4, at 5, 7–10. Indeed, in all but one of the 26 contests, over 95% of Black voters supported the same candidate. APAX 4, at 5, 7–10.

(c) Primaries

In addition to analyzing statewide elections, Dr. Handley applied her EI analysis to statewide Democratic primaries for Governor, Lieutenant Governor, Commissioner of Insurance, School Superintendent, and Commissioner of Labor. APAX 3, at 5–6; APA Doc. No. [118-1]; Feb. 10, 2022, Morning Tr. 86:3–4. Although Dr. Handley acknowledged that polarized voting is "somewhat less stark in the primaries" and in a few instances the support of Black and white voters for the same candidate is close (Feb. 10, 2022, Morning Tr. 101:3–23), the majority of primaries she analyzed across all six

regions still demonstrated evidence of racially polarized voting (Feb. 10, 2022, Morning Tr. 100:13–16; APAX 4, at 2–3). The only regular exceptions were the two recent Democratic primaries in which Black voters supported white candidates (Jon Ossoff in the 2020 primary for U.S. Senate and Jim Barksdale in his bid for the Democratic nomination for U.S. Senate in 2016). APAX 3, at 8, 23.

Specifically, Dr. Handley found that in all six regions, at least 62.5% of the eight primaries she analyzed showed evidence of racial polarization. APAX 4, at 2–3. For example, in the 2018 Democratic primary for Lieutenant Governor, the white candidate received an average of more than 83% of the white vote in these areas, and the Black candidate received an average of nearly 60% of the Black vote. See APA Doc. No. [118-1], 3–13. Similarly, in the 2018 Democratic primary for the Commissioner of Insurance, the white candidate received on average more than 60% of the white vote, and the Black candidate received on average more than 78% of the Black vote. See APA Doc. No. [118-1], 3–13.

This evidence of racial polarization in primary elections is particularly compelling here because it undermines Defendants' contention that the polarization is the result of partisan factors. By definition, partisan affiliation

cannot explain polarized election outcomes in primary contests, where Democrats are necessarily running against other Democrats.

(b) Defendants' Expert: Dr. Alford

As an expert witness, Dr. Alford has used all three statistical methods employed by Dr. Handley here. Feb. 11, 2022, Afternoon Tr. 168:21–24. He agrees that King's EI is "the gold standard for experts in this field doing a racially-polarized voting analysis." Id. at 163:20–23. Dr. Alford did, however, voice some concern that the type of ecological inference analysis Dr. Handley employed was not really "King's EI" but instead an "iterative version of it" that lacks "an appropriate test of statistical significance." Id. at 165:13–15. Dr. Handley later clarified that she did use King's EI to produce her results, and she ran the analysis more than once (i.e., "iteratively"). APA Doc. No. [118-2], ¶ 1. Dr. Handley has used, and courts have accepted and relied on, this exact method of EI in numerous prior minority vote dilution cases. Feb. 10, 2022, Morning Tr. 84:25–85:4; APA Doc. No. [118-2], ¶ 4.

Dr. Alford did agree with Dr. Handley's assessment that statewide general elections involving Black and white candidates are the most probative for measuring racial polarization. Feb. 11, 2022, Afternoon Tr. 170:25–171:7. And he did not dispute Dr. Handley's conclusions there is a high degree of

racial polarization in the election contests she analyzed, testifying that in general elections in Georgia, Black voters are "very cohesive." Id. at 154:15–17; DX 42, at 6. He concluded the same of white voters. Feb. 11, 2022, Afternoon Tr. 154:18–19; DX 42, at 6. Dr. Alford also found Dr. Handley's conclusions and those of Dr. Palmer were "entirely compatible with each other," and that both showed polarized voting. Feb. 11, 2022, Afternoon Tr. 142:9–13, 145:21. Dr. Alford said that "[i]t would be hard to get a difference more stark" than the voting patterns of Black and white voters reflected in the analyses of Drs. Handley and Palmer. Id. at 154:20–22.

Moreover, Dr. Alford did not testify to anything contradicting Dr. Handley's assessment that there was evidence of racially polarized voting in Democratic primaries in the six regions she evaluated. In fact, in a previous case in which he was an expert witness, "Dr. Alford testified that an analysis of primary elections is preferable to general elections because primary elections are nonpartisan and cannot be influenced by the partisanship factor." Perez v. Pasadena Indep. Sch. Dist., 958 F. Supp. 1196, 1225 (S.D. Tex. 1997), aff'd, 165 F.3d 368 (5th Cir. 1999); accord Feb. 11, 2022, Afternoon Tr. 171:17–172:16 (Dr. Alford testifying that partisanship cannot explain racial polarization in

nonpartisan elections such as primaries). This undermines Dr. Alford's speculation that partisanship explains the polarization better than race.

(c) Conclusions of Law

As with Dr. Alford's critiques of Dr. Palmer's analyses, the Court finds the criticisms of Dr. Handley's work unpersuasive. For the same reasons as stated with regard to the Pendergrass Plaintiffs, the Alpha Phi Alpha Plaintiffs have satisfied their burden to establish that, for the regions and elections Dr. Handley examined, Black voters in Georgia are politically cohesive. Gingles, 478 U.S. at 49.

3. The Third Gingles Precondition: Bloc Voting

The third Gingles precondition requires that the minority group be able to demonstrate that "the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate." Gingles, 478 U.S. at 51 (citations omitted). In Gingles, the Supreme Court treated the terms "racial bloc" and "racial polarization" as interchangeable. Id. at 53 n.21. Thus, the third precondition involves the same evaluation as to the voting preferences of the majority group as that the second precondition does for the minority group: "[I]n general, a white bloc vote that normally will defeat

the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." Id. at 56 (citations omitted).

a) Pendergrass

In addition to his work concerning political cohesion, Dr. Palmer also testified about racial-bloc voting. He employed the same methods described above, and the Court incorporates that discussion here by reference.[36] Dr. Palmer's analysis shows that white voters in the regions he examined vote sufficiently as a bloc to defeat Black voters' candidates of choice except in majority-Black districts. Feb. 10, 2022, Morning Tr. 48:9–13; GPX 5, ¶ 7.

Overall, Dr. Palmer found "strong evidence of racially polarized voting" as a whole and in each individual congressional district he examined. Feb. 10, 2022, Morning Tr. 48:3–8; GPX 5, ¶¶ 6, 18. White voters had clearly identifiable candidates of choice in each election. GPX 5, ¶¶ 16–17 & figs. 2–4. From 2012 to 2021, white voters were highly cohesive in opposing the Black candidate of choice in every election. On average, Dr. Palmer found that white voters supported Black-preferred candidates with an average of just 11.5% of the vote.

[36] See supra Sections III(A)(2)(b)(1)(a), (2)(a).

See id. ¶ 16. White voters, however, on average supported their preferred candidates with an estimated vote-share of 88.5%. See id.

As a result of this racially polarized voting in the regions Dr. Palmer examined, candidates preferred by Black voters have generally been unable to win elections outside of majority-Black districts. Feb. 10, 2022, Morning Tr. 48:9–13. Excluding the existing majority-Black Congressional District 13, Black-preferred candidates were defeated by white-bloc voting in all 31 elections Dr. Palmer examined. GPX 5, ¶ 21. Dr. Alford did not dispute Dr. Palmer's conclusions about racial-bloc voting. Feb. 11, 2022, Afternoon Tr. 159:7–11.

Dr. Palmer also assessed the anticipated performance of Plaintiffs' Illustrative Congressional District 6. Feb. 10, 2022, Morning Tr. 47:21–48:2. Dr. Palmer concluded that this proposed district would permit the Black voters there to elect candidates of their choice with an average of 66.7% of the vote. Id. at 48:5–8, 58:13–59:1; GPX 5, ¶¶ 8, 22–23. Dr. Alford did not contest this conclusion. Dr. Palmer's analysis of the illustrative district also weighs in favor of the feasibility of the Pendergrass Plaintiffs' proposed remedy.

For these reasons and those explained above,[37] the Court credits Dr. Palmer's analysis and testimony, and concludes that the Pendergrass Plaintiffs have satisfied their burden under the third Gingles precondition.

b) Grant

Dr. Palmer testified similarly concerning the regions he examined in Grant. In the areas as a whole and in each legislative district, Dr. Palmer concluded that white voters had clearly identifiable candidates of choice for every election he analyzed. Feb. 10, 2022, Morning Tr. 60:22–25; GPX 6, ¶ 17 & figs. 2–3, tbl.1. In elections from 2012 to 2021, white voters were highly cohesive in voting in opposition to the Black voters' candidate of choice. On average, Dr. Palmer found that white voters supported Black-preferred candidates with a maximum of just 17.7% of the vote. GPX 6, ¶ 17. That is, white voters on average supported their preferred candidates with an estimated vote share of 82.3%. Id.

Dr. Palmer also concluded that, as a result of this racially polarized voting, candidates preferred by Black voters in the regions he examined have generally been unable to win elections outside of majority-Black districts. GPX

[37] See supra Sections III(A)(2)(b)(1)(a), (2)(a).

6, ¶ 20. He testified that "Black-preferred candidates win almost every election in the Black-majority districts, but lose almost every election in the non Black-majority districts." Id.

Using returns from 31 statewide elections, Dr. Palmer analyzed the illustrative State House and Senate districts drawn by Esselstyn. GPX 6, ¶ 22 & fig.5, tbl.10. He found that in "Senate Districts 23, 25, and 28, the Black-preferred candidate won a larger share of the vote in all 31 statewide elections. In House District 117, the Black-preferred candidate won all 19 elections since 2018." Id. ¶ 22. He also confirmed that that changes Esselstyn made to the majority-Black districts in the Enacted Maps would not change the ability of candidates preferred by Black voters to win there. Feb. 10, 2022, Morning Tr. 65:1–4.

For these reasons and those explained above,[38] the Court credits Dr. Palmer's analysis and testimony, and concludes that the Grant Plaintiffs have satisfied their burden under the third Gingles precondition.

[38] See supra Sections III(A)(2)(b)(1)(a), (2)(a).

c) Alpha Phi Alpha

The Alpha Phi Alpha Plaintiffs' expert, Dr. Handley, also provided evidence about racial-bloc voting. She performed the same type of analysis for racial-bloc voting as she did for political cohesion, looking at voting patterns by race in the six identified regions. APAX 3, at 2. For every general election she analyzed, Dr. Handley found that white voters voted as a bloc against the preferred candidates of Black voters. Id. at 8; APAX 4, at 5, 7–10; APA Doc. No. [118-1]; Feb. 10, 2022, Morning Tr. 90:18–20, 91:22–25, 101:20–23. She concluded that, as a result of the stark racial polarization, candidates preferred by Black voters were consistently unable to win elections and will likely continue to be unable to win elections outside of majority-Black districts. Feb. 10, 2022, Morning Tr. 95:24–96:3; APAX 3, at 8–9.

Specifically, Dr. Handley found that the candidate of choice for Black voters on average secured the support of less than 5% of white voters in State Senate races and less than 9.5% of white voters in State House races. APAX 3, at 8; APAX 4, at 5, 7–10. As a result, blocs of white voters in the regions Dr. Handley examined were able to consistently defeat the candidates preferred by Black voters in state legislative general elections, except where the districts were majority Black. Feb. 10, 2022, Morning Tr. 95:21–96:3; APA Doc.

No. [118-1]. Based on this "starkly" racially polarized voting, Dr. Handley concluded that the ability of Black voters to elect candidates of their choice to the Georgia General Assembly is substantially impeded unless majority-minority districts are drawn to provide Black voters with such opportunities. Feb. 10, 2022, Morning Tr. 82:16–83:4, 95:9–96:3, 99:12–18; APAX 3, at 12.

Dr. Handley also evaluated whether Black voters had the opportunity to elect candidates of their choice under the illustrative districts drawn by Cooper compared with the Enacted Maps. Feb. 10, 2022, Morning Tr. 81:21–25; APAX 3, at 7–8. She used recompiled election results with official data from 2016, 2018, and 2020 statewide election contests and 2020 Census data, to determine whether Black voters have an opportunity to elect their candidates of choice. Feb. 10, 2022, Morning Tr. 92:18–93:3, 93:7–9; APAX 3, at 2–4. Recompiled elections analysis has been accepted by courts and used by special masters specifically for the purpose of evaluating whether a proposed majority-minority district will provide Black voters with the opportunity to elect their candidates of choice. Feb. 10, 2022, Morning Tr. 92:1–93:17.

To do so, Dr. Handley calculated a "General Election" effectiveness score ("GE Score"), which averaged the vote-share of candidates of choice for Black voters in five prior statewide elections in each of the districts in the illustrative

maps and the Enacted Maps for the regions of focus. Feb. 10, 2022, Morning Tr. 92:18–93:3, 93:7–9; APAX 3, at 12. The GE Scores show that, on average, the candidates preferred by Black voters receive less than 50% of the vote outside of districts that are majority-Black and were thus likely to be defeated. Feb. 10, 2022, Morning Tr. 97:4–99:11; APAX 3, at 12–23. Based on her analysis, Dr. Handley concluded that the illustrative maps provide "at least one additional black opportunity district compared to the enacted plan" in the regions she analyzed. Feb. 10, 2022, Morning Tr. 83:2–4; APAX 3, at 12–20. This means that, for each of the proposed majority-Black districts, candidates of choice for Black voters would have received more than 50% of the total vote, providing Black voters with an opportunity they would not otherwise have had to elect those candidates. APAX 3, at 22–23.

For example, in and around Illustrative House District 153, white voters consistently joined together to defeat Black voters' candidates of choice. Feb. 10, 2022, Morning Tr. 95:21–96:3; APA Doc. No. [118-1]. As House District 173 was constituted before the Enacted Maps were adopted, its area overlapped with illustrative House District 153. In elections in District 173 in 2016 and 2020, candidates preferred by Black voters garnered more than 96% of Black votes but were defeated because of white racial-bloc voting, with white voters'

candidates of choice securing more than 90% of the white vote. APAX 4, at 8, 10.

Accordingly, and for the reasons explained above,[39] the Court credits Dr. Handley's analysis and testimony and concludes that the Alpha Phi Alpha Plaintiffs have satisfied their burden under the third Gingles precondition.

4. *The Senate Factors*

As indicated above, to determine whether vote dilution is occurring, "a court must assess the impact of the contested structure or practice on minority electoral opportunities on the basis of objective factors. The Senate Report [from the 1982 Amendments to the VRA] specifies factors which typically may be relevant to a § 2 claim[.]" Gingles, 478 U.S. at 44. The Court now reviews the relevant Senate factors.

a) **Senate Factor One: Georgia has a history of official, voting-related discrimination.**

It cannot be disputed that Black Georgians have experienced franchise-related discrimination. "African-Americans have in the past been subject to legal and cultural segregation in Georgia[.]" Cofield v. City of LaGrange, 969 F. Supp. 749, 767 (N.D. Ga. 1997). "Black residents did not enjoy the right to

[39] See supra Section III(A)(2)(b)(3)(a).

vote until Reconstruction." Id. "Moreover, early in this century, Georgia passed a constitutional amendment establishing a literacy test, poll tax, property ownership requirement, and a good-character test for voting." Id. "This act was accurately called the 'Disfranchisement Act.' Such devices that limited black participation in elections continued into the 1950s." Id.

This Court recently took judicial notice of the fact that "prior to the 1990s, Georgia had a long sad history of racist policies in a number of areas including voting." Fair Fight Action, Inc. v. Raffensperger, No. 1:18-CV-5391-SCJ, slip op. at 41 (N.D. Ga. Nov. 15, 2021) (hereinafter, "Fair Fight") (order denying defendants' motion for summary judgment). As this Court has described, "Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather than the exception." Fayette Cnty., 950 F. Supp. 2d at 1314; see also Wright, 301 F. Supp. 3d at 1310 ("Georgia's history of discrimination has been rehashed so many times that the Court can all but take judicial notice thereof." (citation and internal quotation marks omitted)).

The Pendergrass and Grant Plaintiffs detailed this sad history through the report and testimony of their expert witness, Dr. Orville Vernon Burton. See GPX 7; Feb. 10, 2022, Morning Tr. 4:11–43:22. Dr. Burton is a professor of history at Clemson University who earned his undergraduate degree from Furman University and Ph.D. in American History from Princeton University. GPX 7, at 4. He was retained "to analyze the history of voting-related discrimination in Georgia and to contextualize and put in historical perspective such discrimination." Id. at 2. His report describes the many decades of efforts to minimize the influence of minority—and specifically Black—voters. See id. at 2–3; 7–54. This historical review spans from the Reconstruction era to the present day. Id. at 9–54. Most of his analysis relates to discrimination that occurred prior to the 1980s. See id. at 9–38. Dr. Burton expounded on his report when he testified remotely by videoconference at the hearing, where he was qualified as an expert on the history of race discrimination and voting. Feb. 10, 2022, Morning Tr. 7:6–11. The Court has reviewed Dr. Burton's report and closely observed his testimony. The Court finds Dr. Burton to be highly credible. His historical analysis was thorough and methodologically sound. Further, the Court finds Dr. Burton's conclusions to be reliable.

Dr. Burton opined on the extensive history of discrimination against Black voters in Georgia and concluded that throughout the State's history, "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." GPX 7, at 8. This discrimination included years of physical violence and intimidation (id. at 12–15, 22), as well as official barriers such as poll taxes and legislation that had the effect of disenfranchising most Black voters (e.g., id. at 15–20). The Court need not belabor this issue—as stated above, this history is well-documented in the relevant caselaw. The Court finds that Plaintiffs have shown that Black Georgians have historically experienced franchise-related discrimination.

During the hearing, Defendants seemingly attempted to cast aside this history as long past and therefore less relevant. See, e.g., Feb. 10, 2022, Morning Tr. 25:16–26:13 (emphasizing how much of Dr. Burton's report concerns pre-1980 matters). Of course, whether some of the history Dr. Burton discussed is decades or centuries old does not diminish the importance of those events and trends under this Senate Factor, which specifically requires the Court to consider the *history* of official discrimination in Georgia. And it is not a novel concept that a history of discrimination can have present-day ramifications. See

Marengo Cnty. Comm'n, 731 F.2d at 1567; Wright, 301 F. Supp. at 1319 (quoting Marengo Cnty. Comm'n).

Accordingly, the Court finds that Plaintiffs have demonstrated the history of voting-related discrimination in Georgia. The first Senate Factor thus weighs decisively in Plaintiffs' favor.

b) Senate Factor Two: Georgia voters are racially polarized.

"The second Senate Factor focuses on 'the extent to which voting in the elections of the State or political subdivision is racially polarized.'" Wright, 979 F.3d at 1305 (quoting LULAC, 548 U.S. at 426). "This 'factor will ordinarily be the keystone of a dilution case.'" Id. (quoting Marengo Cnty. Comm'n, 731 F.2d at 1566).

Plaintiffs' experts, Dr. Palmer and Dr. Handley, provided clear evidence through their reports and hearing testimony that Black and white Georgians consistently support different candidates. Defendants' expert, Dr. Alford, did not contest this point—in fact, he agreed with it. See Feb. 11, 2022, Afternoon Tr. 153:15–154:22. Moreover, Dr. Alford's observations about the relationship between race and partisanship—namely, that Black voters overwhelmingly support Democratic candidates and that white voters overwhelmingly support Republican candidates (see Feb. 11, 2022, Afternoon Tr. 171:8–16)—are

irrelevant because the fact remains that voters are racially polarized, as Plaintiffs have shown. In short, the Court's analysis on the second and third Gingles preconditions controls here.[40] The second Senate Factor thus weighs in Plaintiffs' favor.

c) Senate Factor Three: Georgia's voting practices enhance the opportunity for discrimination.

Senate Factor Three "considers 'the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting.'" Wright, 979 F.3d at 1295 (quoting Gingles, 478 U.S. at 44–45).

For this Senate Factor, the Court returns to Dr. Burton's expert report and testimony. Dr. Burton opined that throughout much of the twentieth century, Georgia deliberately malapportioned its legislative and congressional districts to dilute the votes of Black Georgians, citing as examples past congressional districts in and near Atlanta that were severely malapportioned. See GPX 7, at 29–30; Feb. 10, 2022, Morning Tr. 12:7–18. Dr. Burton also opined that Georgia's history is marked by electoral schemes that have enhanced the opportunity for

[40] See supra Sections III.A.2. and III.A.3.

discrimination against Black voters, such as shifts from voting by district to at-large voting and staggered voting. See GPX 7, at 34–36. Dr. Burton also opined that similar efforts have persisted to today. See id. at 44–53. Because Plaintiffs have shown there has been a history of voting practices or procedures in Georgia that have enhanced the opportunity for discrimination against Black voters, the Court finds that this factor weighs in Plaintiffs' favor.

d) Senate Factor Four: Georgia has no history of candidate slating for legislative elections.

It is undisputed that Georgia uses no slating process for its legislative or congressional elections. As a result, this factor is irrelevant to these cases.

e) Senate Factor Five: Georgia's discrimination has produced significant socioeconomic disparities that impair Black Georgians' participation in the political process.

The Eleventh Circuit has "recognized in binding precedent that 'disproportionate educational, employment, income level, and living conditions arising from past discrimination tend to depress minority political participation.'" Wright, 979 F.3d at 1294 (quoting Marengo Cnty. Comm'n, 731 F.2d at 1568). "Where these conditions are shown, and where the level of black participation is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of

political participation." Id. (quoting Marengo Cnty., 731 F.2d at 1568–69); United States v. Dallas Cnty. Comm'n, 739 F.2d 1529, 1537 (11th Cir. 1984) ("Once lower socio-economic status of [B]lacks has been shown, there is no need to show the causal link of this lower status on political participation.")).

Here, Plaintiffs have offered unrebutted evidence that Black Georgians suffer socioeconomic hardships stemming from centuries-long racial discrimination, and that those hardships impede their ability to fully participate in the political process. To that end, the Court accepts the analysis and conclusions of Plaintiffs' expert, Dr. Loren Collingwood. Dr. Collingwood, a professor of political science at the University of New Mexico, has published extensively on matters of election administration and racially polarized voting. See GPX 11, at 2. Dr. Collingwood analyzed data from the American Community Survey ("ACS"), as well as voter-turnout data from the Georgia Secretary of State's office. Id. at 3. From this data, he concluded that Black Georgians are disadvantaged socioeconomically relative to non-Hispanic white Georgians by several measures. Id. at 3–6.

For example, the unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%). Id. at 4; Pendergrass Stip. ¶ 58. White households in Georgia are twice as likely as Black households to

(1) report an annual income above $100,000 and (2) not to live below the poverty line. GPX 11, at 4; Pendergrass Stip. ¶¶ 59–60. Black Georgians are less likely than white Georgians to have received a high school diploma or a bachelor's degree or higher. GPX 11, at 4; Pendergrass Stip. ¶¶ 62–63. And statistics indicate that Black Georgians also experience disparities in medical care. See, e.g., GPX 11, at 4 (stating that Black Georgians are more likely than white Georgians to lack health insurance).[41]

These disparities have extended to the political arena. Historically and today, the number of Black legislators serving in the Georgia General Assembly has trailed the number of white legislators, and Georgia has never had a Black governor. See Pendergrass Stip. ¶¶ 64–65. Generally, Black Georgians have voted at significantly lower rates than white Georgians, and there is evidence that Black Georgians have been less engaged in political activities such as attending political meetings and donating to political campaigns. See GPX 11, at 6–23.

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[41] This Court recently credited similar evidence that "twice as many Black Georgians as white Georgians live below the poverty line; the unemployment rate for Black Georgians is double that of white Georgians; Black Georgians are less likely to attain a high school or college degree; and Black Georgians die of cancer, heart disease and diabetes at a higher rate than white Georgians." Fair Fight, slip op. at 44 (citations omitted).

After careful review of Dr. Collingwood's report, the Court accepts Dr. Collingwood as qualified to opine as an expert on demographics and political science. The Court finds Dr. Collingwood to be credible, his analysis methodologically sound, and his conclusions reliable. The Court credits Dr. Collingwood's opinions and conclusions, which support a finding that Black Georgians bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process. Specifically, the Court is persuaded by Dr. Collingwood's opinion that many of the socioeconomic disparities discussed above have been a cause of lower political participation among Black Georgians. See id. at 6.

To be sure, Senator Raphael Warnock was recently elected as the first Black Georgian to serve Georgia in the U.S. Senate. Pendergrass Stip. ¶ 66. And while Defendants have highlighted the record-breaking turnout of Black voters in the 2020 election as an indication that Blacks are no longer hindered from participating in the political process (see Feb. 10, 2022, Afternoon Tr. 198:18–24), the Court finds that it is still important to consider the pre-2020 level of Black political participation for purposes of this Senate Factor. Put another way, the Court finds that one recent example of increased Black voter turnout does

not erase the evidence that Black individuals have for years participated less in the political process in Georgia.

Accordingly, the Court finds that Plaintiffs' evidence on this factor weighs in favor of a finding of vote dilution.

f) Senate Factor Six: Both overt and subtle racial appeals are prevalent in Georgia's political campaigns.

This factor "asks whether political campaigns in the area are characterized by subtle or overt racial appeals." Wright, 979 F.3d at 1296 (quoting Gingles, 478 U.S. at 45).

This Court recently credited evidence of racial appeals in recent Georgia elections. Fair Fight, slip op. at 44–46. In addition, Plaintiffs have submitted substantial evidence that overt and subtle racial appeals remain common in Georgia politics. To start, Dr. Burton's report provides a historical backdrop for this issue, discussing early, post-Civil War racial appeals in Georgia politics. GPX 7, at 9–20. And at the hearing, Dr. Burton related this history to the modern era, testifying that contemporary racial appeals in Georgia stem from the political realignment that followed Democrats' support for civil rights legislation in the 1960s and that saw white Georgians overwhelmingly switch to the Republican Party. Feb. 10, 2022, Morning Tr. 20:13–22:8. Dr. Burton

explained that during this transition, Republican politicians courted conservative constituents with race-based appeals, including what Dr. Burton deemed to be implicitly racist language and terms such as the "Welfare queen" and "strapping young buck." Id.; GPX 8, at 3–6. Dr. Burton further opined that such coded racial appeals have continued to this day, with conservative political discourse constantly focused on matters such as poverty, "criminal corruption," and immigration. Feb. 10, 2022, Morning Tr. 21:25–22:8, 30:20–32:13.

For this Senate Factor, Plaintiffs also relied on the report and testimony of Dr. Adrienne Jones, a political science professor at Morehouse College in Atlanta, who has expertise in the history of racial discrimination in voting. See APAX 5, at 3. The Court has reviewed Dr. Jones's report and listened to her testify during the hearing. The Court finds her to be credible, and the Court accepts her as qualified to opine as an expert on political science. Feb. 10, 2022, Afternoon Tr. 172:3–10. In her report and in her testimony, Dr. Jones opined that explicit and subtle racial appeals have been used in political campaign strategies in Georgia. E.g., APAX 5, at 25–29; see also Feb. 10, 2022, Afternoon Tr. 176:2–183:4 (discussing what Dr. Jones determines to be racial appeals in recent campaigns, which has included the darkening of Black candidates' skin

color in advertisements to create what Dr. Jones opines to be a "dark menacing" image). Dr. Jones concludes that these and similar instances of race-based messaging in recent Georgia campaigns and election cycles show that racial appeals continue to play an important role in Georgia political campaigns. APAX 5, at 25–29.

After careful review and consideration, the Court finds that Plaintiffs have presented sufficient evidence for this factor to weigh in their favor. The Court is unable to uphold Defendants' suggestion that appeals to racism by "unsuccessful candidates" do not weigh toward this Senate Factor or the totality of the circumstances. As this Court has previously explained, "this factor does not require that racially polarized statements be made by successful candidates. The factor simply asks whether campaigns include racial appeals." Fair Fight, slip op. at 45–46 (citing Gingles, 478 U.S. at 37).

g) Senate Factor Seven: Black candidates in Georgia are underrepresented in office and rarely succeed outside of majority-minority districts.

This factor "focuses on 'the extent to which members of the minority group have been elected to public office in the jurisdiction.'" Wright, 979 F.3d at 1295 (quoting LULAC, 548 U.S. at 426). "If members of the minority group have not been elected to public office, it is of course evidence of vote dilution."

Marengo Cnty. Comm'n, 731 F.2d at 1571. As discussed above under Senate Factor Five, Plaintiffs' evidence demonstrates that Black Georgians have been and continue to be underrepresented in statewide elected offices and rarely succeed in local elections outside of majority-minority districts. Further, the Court notes that Dr. Burton discussed how Black Georgians historically have been underrepresented politically—comparatively few Black individuals have held statewide positions, and Black candidates tend to have struggled even at the county level unless they were in majority-minority districts. See GPX 7, at 32–38, 53–54. Based on the evidence presented, the Court finds that this factor thus weighs in Plaintiffs' favor.

h) Senate Factor Eight: Georgia is not responsive to its Black residents.

"The authors of the Senate Report apparently contemplated that unresponsiveness would be relevant only if the plaintiff chose to make it so, and that although a showing of unresponsiveness might have some probative value a showing of responsiveness would have very little." Marengo Cnty. Comm'n, 731 F.2d at 1572 (footnote omitted). As discussed above, Dr. Collingwood's expert report shows significant socioeconomic disparities between Black and white Georgians, which Dr. Collingwood opines contribute to the lower rates at which Black Georgians engage in the political process and

elect their preferred candidates. See GPX 11, at 16–19. Moreover, political science professor Dr. Traci Burch was offered as an expert in political behavior, barriers to voting, and political participation. See APAX 6, at 3. She explained that disparities, such as the ones Dr. Collingwood identified, are often caused by public policies and demonstrate a lack of responsiveness by public officials to the needs of Black Georgians, which in turn leaves those Black Georgians dissatisfied with their elected representatives and the quality of the local services they receive. See id. at 28. While the Court does not find that this evidence causes this factor to weigh heavily in Plaintiffs' favor, it still weighs in their favor.

i) Senate Factor Nine: The justifications for the enacted redistricting maps are tenuous.

Defendants have offered no justification for the General Assembly's failure to draw additional majority-Black legislative districts in the areas at issue in the pending cases. And Mr. Esselstyn's and Mr. Cooper's illustrative maps demonstrate that it is possible to create such maps while respecting traditional redistricting principles—just as the Voting Rights Act requires.

This factor thus weighs in Plaintiffs' favor.

5. Conclusions of Law

As is clear from this discussion, the Court finds that Plaintiffs have satisfied each of the Gingles preconditions for at least some of the Illustrative Districts at issue. Further, all the applicable Senate Factors weigh in Plaintiffs' favor. The Court therefore concludes that the Pendergrass Plaintiffs have satisfied their burden to show a substantial likelihood of success as to Illustrative Congressional District 6. The Grant Plaintiffs have shown a substantial likelihood of success as to Illustrative State Senate Districts 25 and 28, and Illustrative State House Districts 74 and 177. The Alpha Phi Alpha Plaintiffs have shown a likelihood of success as to Illustrative State House District 153. This does not mean that the other proposed districts cannot ultimately succeed, only that Plaintiffs have not met their burden as to those districts at this preliminary injunction stage.

B. Irreparable Injury

The Eleventh Circuit has explained that an injury is irreparable "if it cannot be undone through monetary remedies." Cunningham v. Adams, 808 F.2d 815, 821 (11th Cir. 1987) (citation omitted). It has also been held that "[a]bridgement or dilution of a right so fundamental as the right to vote constitutes irreparable injury." Cardona v. Oakland Unified Sch. Dist., 785

F. Supp. 837, 840 (N.D. Cal. 1992); see also League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 247 (4th Cir. 2014) ("Courts routinely deem restrictions on fundamental voting rights irreparable injury.") (citations omitted).

In view of this Court's finding, supra, that there is a substantial likelihood the Enacted Plans violate Section 2 of the Voting Rights Act,[42] this Court further finds that Plaintiffs have met their burden of persuasion of establishing that the resulting threatened injury of having to vote under those plans cannot be undone through any form of monetary or post-election relief as to the 2022 election cycle only. See League of Women Voters, 769 F.3d at 247 ("[O]nce the election occurs, there can be no do-over and no redress.").

C. Balancing of the Equities and Public Interest

"The last two requirements for a preliminary injunction involve a balancing of the equities between the parties and the public." Florida v. Dep't of Health & Hum. Servs., 19 F.4th 1271, 1293 (11th Cir. 2021). "Where the government is the party opposing the preliminary injunction, its interest and harm—the third and fourth elements—merge with the public interest." Id.

[42] See generally supra Section III.A.

(citation omitted). All Defendants in each of the cases at issue were named in their official capacities as governmental actors and oppose the preliminary injunction. Therefore, the Court will address the third and fourth preliminary injunction factors together in a merged format in accordance with applicable authority. See Swain v. Junior, 961 F.3d 1276, 1293 (11th Cir. 2020) (indicating that the balance of the equities and public interest factors "'merge' when, as here, 'the Government is the opposing party'") (quoting Nken v. Holder, 556 U.S. 418, 435 (2009)).

Thus, the Court proceeds with its findings of fact and conclusions of law as to the issue of whether the threatened injuries to Plaintiffs outweigh the harm that the preliminary injunction would cause Defendants and the public.

1. Findings of Fact

At the preliminary injunction hearing, this Court heard extensive evidence about Georgia's election timelines and machinery, as well as evidence on the potential effects of issuing a preliminary injunction related to the upcoming 2022 election cycle. The Court heard from multiple witnesses in this regard. The Court found the expert witness testimony of Lynn Bailey, the former director of the Richmond County Board of Elections, who has decades of experience as a county election official, particularly credible.

More specifically, the evidence at the hearing showed that the election timeline is tight in a normal year, but it is even more challenging this year because of the delayed release of the 2020 Census data and an earlier-than-usual general primary, currently scheduled for May 24, 2022. DX 38, ¶ 8; Feb. 9, 2022, Morning Tr. 8:21–9:2. The General Election is scheduled to be held on November 8, 2022. DX 4, Ex. 1, at 1.

In addition, the election calendar generally works backwards from the date for an election. DX 38, ¶ 12. The earliest day a candidate could circulate a nominating petition for the 2022 General Election was January 13, 2022. See O.C.G.A. § 21-2-170(e). The deadline for calling special elections to be held in conjunction with the May 2022 primary and the deadline for setting polling places outside the boundaries of a precinct was February 23, 2022. DX 38, ¶¶ 13–14; Feb. 9, 2022, Morning Tr. 118:6–12. Qualifying for the May 2022 primary is set to begin on March 7, 2022. DX 4, ¶ 6; see also O.C.G.A. § 21-2-153(c)(1)(A). County registrars can begin mailing absentee ballots on April 5, 2022. DX 4, ¶14. Absentee ballots for overseas voters must be mailed by April 9, 2022. Feb. 8, 2022, Afternoon Tr. 88:4–8; see also O.C.G.A. § 21-2-384(a)(2). The early voting period for the May 2022 primary election begins on May 2, 2022. DX 4, Ex. 1, at 2. The primary election is scheduled to be held on May 24,

2022. Id. at 1.[43] The primary election runoff is scheduled for June 21, 2022. Id. The General Election is scheduled to be held on November 8, 2022. Id.

Before the Georgia Secretary of State's office can create ballots for use in the primary election, county elections officials must allocate voters to their correct districts by updating street segments in Georgia's voter registration database—the 2022 process has already begun as of the date of this Order. DX 4, ¶¶ 6–7; Feb. 9, 2022, Morning Tr. 41:24–42:10. More specifically, county election officials have to update each individual street segment manually to update district numbers for voters on that street segment. Feb. 9, 2022, Morning Tr. 17:5–18:9, 32:1–25. During this process, county election officials engage in a manual review of maps to identify where each street segment is located on the new district plans. Id. at 20:14–21:9, 81:7–20; DX 38, ¶ 9. Once a county has entered the data-entry/redistricting module, the county registrar is prevented from engaging in normal activity in the voter registration system, such as adding new voters. Feb. 9, 2022, Morning Tr. 20:4–11; DX 7, at 31.

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[43] A number of Georgia election officials requested a change in the primary election schedule in the summer of 2021; however, the General Assembly did not make that change during the special session, as had been requested. Feb. 9, 2022, Morning Tr. 54:1–23. Without the schedule change, election officials proceeded to plan for the election by contacting polling places and taking other steps based on the established election calendar. Id. at 57:6–25.

Defendants' representative witness from the Secretary of State's office, Michael Barnes, stated in his declaration that "[c]ounty registrars generally need several weeks to complete the reallocation process for voters in their particular counties." DX 4, ¶ 16.[44] There was also evidence that it took Fulton County four weeks to update its street segments. Feb. 9, 2022, Morning Tr. 83:12–19.[45]

After counties complete updating their street segments, the next step is to request precinct cards from the voter-registration system to notify voters about their new districts. DX 7, at 49. Also, after county registrars complete the process of updating all the street segments in a county with new district numbers, the Center for Election Systems of the Office of the Secretary of State begins the manual process of creating ballot combinations for use in the

[44] The Secretary of State set a February 18, 2022, non-statutory deadline for all county registrars to complete their updates to the voter-registration database with new district information. DX 4, ¶ 15; DX 38, ¶ 12; Feb. 8, 2022, Afternoon Tr. 73:20–74:1.

[45] Plaintiffs' demographer/map expert, Mr. Esselstyn also provided testimony about the feasibility of implementing his maps/plans. However, that testimony was based on his belief that Georgia's voter-registration system allowed the mass assignment of all voters in a single precinct to a particular district. Feb. 8, 2022, Afternoon Tr. 123:15–124:16. Mr. Esselstyn was mistaken on that point, as several county election officials attested, and thus his testimony on the feasibility of relief does not assist the Court.

election. DX 4, ¶¶ 8–9, 11; DX 38, ¶ 12; Feb. 8, 2022, Afternoon Tr. 68:3–23.[46] Ballot combinations account for every possible combination of political districts in the State and include all races from United States Congress down to county commission and school board. Feb. 8, 2022, Afternoon Tr. 67:11–68:2; Feb. 9, 2022, Morning Tr. 105:4–24. There is at least one ballot combination per precinct, so the total is more than 2,000 ballot combinations or styles in the state of Georgia. Feb. 8, 2022, Afternoon Tr. 67:24–68:2; DX 4, ¶ 9. According to Elections Director Michael Barnes, the Center for Election Systems has already started building election projects for use in the 2022 primary election for counties that already know their districts. Feb. 8, 2022, Afternoon Tr. 70:4–7.

Once qualifying occurs, the Center for Election Systems adds candidate names to the relevant contests and begins preparing proofing packages to send to counties. DX 4, ¶ 12; Feb. 8, 2022, Afternoon Tr. 70:8–71:2. County election officials then proof those drafts, identify errors, and return the drafts to the Center for Election Systems to make corrections to the databases. Feb. 8, 2022, Afternoon Tr. 71:3–6; DX 38, ¶¶ 15, 16. The Center for Election Systems then

[46] State officials cannot build ballot combinations until after county registrars have entered all updated information into the voter-registration database. Feb. 9, 2022, Morning Tr. 92:16–19.

makes those corrections, generates a revised proofing package, and creates print files for absentee ballots and final project files for programming the voting machines. Feb. 8, 2022, Afternoon Tr. 71:7–23. This entire process occurs for all 159 counties between the close of qualifying on March 11 and the deadline for sending ballots for overseas voters on April 9. Id. at 71:24–72:4, 86:23–88:8.

The upcoming primary is the first time the State of Georgia has built ballot combinations for the Dominion ballot-marking voting system after redistricting. Id. at 72:8–20. In addition, extra election projects have to be built this year because of the addition of ranked-choice voting for overseas and military voters. Id. If all the ballot combinations are not ready by qualifying, then no ballot proofing can occur because the Center for Elections Systems cannot generate a proofing package without both the ballot combinations and candidate information. Id. at 72:21–73:19.

There was also evidence presented at the hearing about various remedial/injunctive relief options, such as changing the qualifying date without changing the election date, and changing both the qualifying and election dates. The evidence revealed that if the qualifying dates for the primary elections are moved without moving the May 24, 2022, election date, the work of the Center for Election Systems and counties becomes incredibly

compressed, risking the accuracy of the election. Id. 74:13–75:16. In essence, delaying qualifying without delaying the primary would limit the time election officials have to engage in the quality-assurance checks necessary to ensure the election is accurate. Feb. 9, 2022, Morning Tr. 8:13–9:15. In addition, without candidate names after qualifying, no ballot proofs can be completed, meaning that the Center for Election Systems cannot send proofing packages and counties cannot begin proofing ballots. Feb. 8, 2022, Afternoon Tr. 75:17–76:7. There was also testimony that reduced time for proofing ballots can lead to errors in information that could result in less voter confidence in the election system. Id. at 102:8–103:15.

The evidence also showed that delaying qualifying without delaying the primary while also imposing new district lines would require election officials to simultaneously input new district information while conducting other tasks related to elections, reducing the opportunity to check for errors. DX 38, ¶ 21.

The evidence from Ms. Bailey concerning changing the election date was clear: there could be "massive upheaval." DX 38, ¶ 19. She testified that there could be problems with the polling places as some counties have already secured their polling locations for the May 2022 primary. Feb. 9, 2022, Morning Tr. 94:15–19, 111:20–25, 119:3–5. In addition, election officials have already

scheduled poll workers and poll-worker training around the existing election calendar for the May primary. Id. at 121:7–10. And voters are already being notified of their districts and polling locations for the May primary election. Id. at 10:13–11:11.

The testimony also showed that facilities used as polling locations have other events on their calendars this year. Id. at 9:16–24, 27:15–23; DX 38, ¶¶ 19–20. For example, churches have often scheduled Vacation Bible School around the planned election dates and may not be available as polling locations if the date of the election were to change. Feb. 9, 2022, Morning Tr. 68:5–19, 119:3–18. In addition, finding new polling facilities is challenging not only because of scheduling but also because of the electrical power needs of Georgia's voting machines. Id. at 73:17–74:5, 75:15–20.[47]

Furthermore, when the 2020 primary elections were delayed during the pandemic, county officials in Fulton County lost access to polling locations. Id. at 95:10–24. The resulting loss of access meant voters were combined in voting

[47] The Court recognizes that Plaintiffs' witness, Bishop Reginald Johnson, offered 520 African Methodist Episcopal churches as polling places. Feb. 9, 2022, Afternoon Tr. 131:24–132:21. However, it was not clearly established that all 520 of these churches would meet the power requirements for the Dominion voting machines and other polling location requirements.

locations. Id. at 95:1–96:17. Voters in Fulton County (a number of whom were of color) waited in line for hours during the June 9, 2020, primary at locations where polling places had to be combined. Id. at 96:18–97:22. There was also testimony that voter confidence can be adversely affected by long lines and that moving polling locations causes confusion for voters. Id. at 98:9–23; Feb. 9, 2022, Afternoon Tr. 144:21–23.[48]

Additionally, there was testimony of the "whiplash" effect that could occur if the primary election date were changed by this Court and then that order were stayed by an appellate court. On this, the testimony from Ms. Bailey was clear that there would be chaos and confusion for local election officials and voters. Feb. 9, 2022, Morning Tr. 12:22–13:3; DX 38, ¶ 19.

2. *Conclusions of Law*

This Court must weigh the threatened injury to Plaintiffs (discussed above) and the public interests of the State of Georgia.

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[48] Another potential concern with awarding remedial relief in these cases is the fact that the recent change in Georgia law from nine-week runoffs to four-week runoffs is currently being challenged in three of the consolidated cases challenging provisions of SB 202, which regulates various election processes and activities. New Georgia Project v. Raffensperger, Sixth District AME v. Raffensperger, and Concerned Black Clergy v. Raffensperger, Consolidated Case No. 1:21-mi-55555-JPB (N.D. Ga.).

The State of Georgia has significant interests "in conducting an efficient election [and] maintaining order," because "'[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.'" New Ga. Project v. Raffensperger, 976 F.3d 1278, 1284 (11th Cir. 2020) (quoting Purcell, 549 U.S. at 4).

The Court finds that the public interest of the State of Georgia would be significantly undermined by altering the election calendar and unwinding the electoral process at this point.

More specifically, the evidence at the preliminary injunction hearing showed that elections are complex and election calendars are finely calibrated processes, and significant upheaval and voter confusion can result if changes are made late in the process. With candidate qualifying for the State of Georgia set to begin in six days, any change now would be considered late in the process. Applying the Purcell principle, the United States Supreme Court "has also repeatedly emphasized that lower federal courts should ordinarily not alter the election rules on the eve of an election." Republican Nat'l Comm. v. Democratic Nat'l Comm., 140 S. Ct. 1205, 1207 (2020) (citing, inter alia, Purcell, 549 U.S. at 1).

And while "it would be the unusual case in which a court would be justified in not taking appropriate action to [e]nsure that no further elections are conducted under the invalid plan," the United States Supreme Court has recognized that "under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing apportionment scheme was found invalid." Reynolds, 377 U.S. at 585. Here, in considering the "proximity of a forthcoming election and the mechanics and complexities of state election laws, and . . . general equitable principles," the Court is of the opinion that it would not be proper to enjoin the 2022 election cycle for which the election machinery is already in progress. Id.

More specifically, the evidence at the preliminary injunction hearing showed that moving the date for qualifying without moving the date of the primary election risks the accuracy of the primary because of the required timelines for building ballot combinations, proofing draft ballots, and preparing ballots for printing by the deadline for overseas and military voters. Likewise, moving the primary election date would upend months of planning by local election officials. Multiple county election officials testified that they

already selected polling places for all election dates in 2022 and changing those dates could entail having to locate new polling places on short notice. Fulton County's experience in June 2020 showed that consolidating polling places at the last minute can lead to long lines for voters (including voters of color). And several witnesses testified to the voter confusion that would occur if last-minute changes were required. There is also the potential for "whiplash" if orders of this Court and subsequent rulings of appellate courts resulted in different conclusions. Such events could create even more voter confusion and loss of confidence in the election system. See Purcell, 549 U.S. at 4–5 ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls."). In essence, the sum of the testimony of the election officials presented at the preliminary injunction hearing was that changes in the 2022 election calendar at this point would result in significant cost, confusion, and hardship.

Further, under applicable law, this Court would be required to first give the Georgia General Assembly the opportunity to draw new district plans based on this Court's findings. Cf. Wise v. Lipscomb, 437 U.S. 535, 540 (1978) ("When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a

reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan.").[49] Even if this election process were to continue through a court-drawn redistricting plan, at least one former special master recommends "[a]llowing one month for the drawing of a plan and an additional month for hearings and potential modifications to it [in order to] build in enough of a cushion so that all concerned can proceed in a nonfrenzied fashion." Nathaniel Persily, When Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans, 73 Geo. Wash. L. Rev. 1131, 1148 (2005). This is because "[a] quick plan . . . is not necessarily a good plan." Id. at 1147.[50]

Ultimately, voters are not well served "by a chaotic, last-minute reordering of [] districts. It is best for candidates and voters to know significantly in advance of the [qualifying] period who may run where." Favors

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[49] While constitutionality of the apportionment scheme is not at issue in these three cases, the Supreme Court's ruling in Wise is still analogous.

[50] The Court notes that the evidence at the preliminary injunction hearing showed that the General Assembly's process of drawing redistricting maps for 2021 took "a couple of months" even though the legislation for the maps was introduced, considered, and passed in a matter of days. Feb. 11, 2022, Morning Tr. 59:3–17; 114:9–15.

v. Cuomo, 881 F. Supp. 2d 356, 371 (E.D.N.Y. 2012) (three-judge court) (citing Diaz v. Silver, 932 F. Supp. 462, 466–68 (E.D.N.Y. 1996) (three-judge court)).

While not precedential, as indicated above, the Court is also aware of the Supreme Court's ruling on Alabama's motion to stay the three-judge court's injunction in Merrill v. Milligan. APA Doc. No. [97]; Grant Doc. No. [59]; Pendergrass Doc. No. [65].[51] Given the similarity of the claims in these three cases on the one hand and the Alabama cases on the other hand (i.e., they are Section 2 cases seeking at least one additional majority-minority district), and the timeline (i.e., both sets of cases involve a May 24 primary election), it would be unwise, irresponsible, and against common sense for this Court not to take note of Milligan, which essentially allowed Alabama's May 24, 2022, primary election to go forward despite a three-judge court's preliminary injunction ruling that the plaintiffs had a likelihood of success on the merits of their Section 2 claims. See Upham v. Seamon, 456 U.S. 37, 44 (1982) (noting that the Supreme Court has "authorized District Courts to order or to permit elections

[51] The Court also recognizes that the stay issued by the Supreme Court did not change the law in this Circuit. Cf. Schwab v. Sec'y, Dep't of Corr., 507 F.3d 1297, 1298 (11th Cir. 2007) ("The district court's action in granting the stay is contrary to the unequivocal law of this circuit that . . . grants of certiorari do not themselves change the law . . . .").

to be held pursuant to apportionment plans that do not in all respects measure up to the legal requirements, even constitutional requirements").

Numerous other lower courts have also permitted elections to proceed when the state's election machinery was already in progress, even after a finding that the districts were unlawful. See Wright v. Sumter Cnty. Bd. of Elections & Registration, No. 1:14-CV-42 (WLS), 2018 WL 7365178, at *3 (Mar. 30, 2018), objections overruled, 2018 WL 7365179 (Apr. 11, 2018), and modified, 2018 WL 7366461 (M.D. Ga. June 21, 2018); see also Covington, 316 F.R.D. 117.

While this Court proceeded with these three important cases as quickly as practicable in light of the complicated issues involved, the "greatest public interest must attach to adjudicating these claims fairly—and correctly." Favors, 881 F. Supp. 2d at 371. Given the massively complex factual issues combined with the timeline of candidate qualifying set to begin in days, it would not serve the public interest or the candidates, poll workers, and voters to enjoin use of the Enacted Plans and begin the process of putting new plans in their place for the 2022 election cycle.

After review of the evidence and briefing submitted by the parties, this Court concludes that due to the mechanics of State election requirements, there is insufficient time to effectuate remedial relief for purposes of the 2022 election

cycle. The Court is unable to disregard the Purcell principle given the progress of Georgia's election machinery toward the 2022 election. The merged balancing of the harms and public interest factors weigh against injunctive relief at this time.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** the pending Motions for Preliminary Injunctions in each of the above-stated cases. Doc. Nos. [26], [39], 1:21-cv-5337; Doc. No. [32], 1:21-cv-5339; Doc. No. [19], 1:22-cv-122.[52] Having determined that a preliminary injunction should not issue, the Court cautions that this is an interim, non-final ruling that should not be viewed as an indication of how the Court will ultimately rule on the merits at trial.

Under the specific circumstances of this case, the Court finds that proceeding with the Enacted Maps for the 2022 election cycle is the right decision. But it is a difficult decision. And it is a decision the Court did not make lightly.

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[52] While the option of halting all proceedings to await a future ruling by the United States Supreme Court was briefly mentioned at the preliminary injunction hearing, in the absence of a formal motion and full briefing, the Court declines to halt these proceedings. To this regard, each of the above-stated cases shall proceed on the same discovery tracks previously set for the three-judge court redistricting cases pending in the Northern District of Georgia. The Court will issue formal scheduling orders at a later date.

IT IS SO ORDERED this 28th day of February, 2022.

Steve C Jones

HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE

No. 24-10241

In the United States Court of Appeals for the Eleventh Circuit

ANNIE LOIS GRANT, et al.,
Plaintiffs-Appellants,

v.

SECRETARY OF STATE OF GEORGIA,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Georgia
No. 1:21-cv-00122—Steve C. Jones, Judge

APPELLANTS' APPENDIX VOLUME III OF VIII

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

ANNIE LOIS GRANT; QUENTIN T. HOWELL; ELROY TOLBERT; THERON BROWN; 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

SECOND AMENDED COMPLAINT

1. Plaintiffs bring this action to challenge the Georgia Senate Redistricting Act of 2021 ("SB 1EX") and the Georgia House of Representatives Redistricting Act of 2021 ("HB 1EX") on the ground that they violate Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301.

2. In undertaking the latest round of redistricting following the 2020 decennial census, the Georgia General Assembly diluted the growing electoral strength of the state's Black voters and other communities of color. Faced with Georgia's changing demographics, the General Assembly has ensured that the growth of the state's Black population will not translate to increased political influence in the Georgia State Senate and Georgia House of Representatives.

3. The 2020 census data make clear that minority voters in Georgia are sufficiently numerous and geographically compact to form a majority of eligible voters—which is to say, a majority of the voting age population[1]—in multiple

[1] The phrases "majority of eligible voters" and "majority of the voting age population" have been used by courts interchangeably when discussing the threshold requirements of a vote-dilution claim under Section 2 of the Voting Rights Act. *Compare, e.g.*, *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1019 (8th Cir. 2006) ("[T]he first *Gingles* precondition . . . 'requires only a simple *majority of eligible voters* in a single-member district.'" (emphasis added) (quoting *Dickinson v. Ind. State Election Bd.*, 933 F.2d 497, 503 (7th Cir. 1991))), *with Bartlett v. Strickland*, 556 U.S. 1, 18 (2009) (plurality op.) ("[T]he majority-minority rule relies on an objective, numerical test: Do minorities make up *more than 50 percent of the voting-age population* in the relevant geographic area?" (emphasis added)). The phrase

legislative districts throughout the state, including two additional majority-Black State Senate districts in the southern Atlanta metropolitan area, one additional majority-Black State Senate district in the central Georgia Black Belt region, two additional majority-Black House districts in the southern Atlanta metropolitan area, one additional majority-Black House district in the western Atlanta metropolitan area, and two additional majority-Black House districts anchored in Bibb County. These additional majority-Black legislative districts can be drawn without reducing the total number of districts in the region and statewide in which Black and other minority voters are able to elect their candidates of choice.

4. Rather than draw these State Senate and House districts as those in which Georgians of color would have the opportunity to elect their preferred candidates, the General Assembly instead chose to "pack" some Black voters into limited districts in these areas and "crack" other Black voters among rural-reaching, predominantly white districts.

5. Section 2 of the Voting Rights Act prohibits this result and requires the General Assembly to draw additional legislative districts in which Black voters have opportunities to elect their candidates of choice.

"majority of eligible voters" when used in this Complaint shall also refer to the "majority of the voting age population."

6. By failing to create such districts, the General Assembly's response to Georgia's changing demographics has had the effect of diluting minority voting strength throughout the state.

7. Accordingly, Plaintiffs seek an order (i) declaring that SB 1EX and HB 1EX violate Section 2 of the Voting Rights Act; (ii) enjoining Defendants from conducting future elections under SB 1EX and HB 1EX; (iii) requiring adoption of valid plans for new State Senate and House districts in Georgia that comport with Section 2 of the Voting Rights Act; and (iv) providing any and such additional relief as is appropriate.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. §§ 1331, 1343(a)(3) and (4), and 1357.

9. This Court has jurisdiction to grant declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

10. Venue is proper under 28 U.S.C. § 1391(b) because "a substantial part of the events or omissions giving rise to the claim occurred" in this district.

PARTIES

11. Plaintiff Annie Lois Grant is a Black citizen of the United States and the State of Georgia. Ms. Grant is a registered voter and intends to vote in future

legislative elections. She is a resident of Greene County and located in Senate District 24 and House District 124 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia State Senate despite strong electoral support for those candidates from other Black voters in her community. Ms. Grant resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn State Senate district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Ms. Grant and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

12. Plaintiff Quentin T. Howell is a Black citizen of the United States and the State of Georgia. Mr. Howell is a registered voter and intends to vote in future legislative elections. He is a resident of Baldwin County and located in Senate District 25 and House District 133 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Howell resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in newly drawn State Senate and House districts in which Black

voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Howell and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

13. Plaintiff Elroy Tolbert is a Black citizen of the United States and the State of Georgia. Mr. Tolbert is a registered voter and intends to vote in future legislative elections. He is a resident of Bibb County and located in Senate District 18 and House District 144 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Tolbert resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn House district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Tolbert and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

14. Plaintiff Theron Brown is a Black citizen of the United States and the State of Georgia. Ms. Brown is a registered voter and intends to vote in future legislative elections. She is a resident of Houston County and located in Senate

District 26 and House District 145 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. Brown resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn House district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Ms. Brown and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

15. Plaintiff Triana Arnold James is a Black citizen of the United States and the State of Georgia. Ms. James is a registered voter and intends to vote in future legislative elections. She is a resident of Douglas County and located in Senate District 30 and House District 64 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. James resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn House district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of

Black voters like Ms. James and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

16. Plaintiff Eunice Sykes is a Black citizen of the United States and the State of Georgia. Ms. Sykes is a registered voter and intends to vote in future legislative elections. She is a resident of Henry County and located in Senate District 25 and House District 117 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. Sykes resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in newly drawn State Senate and House districts in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Ms. Sykes and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

17. Plaintiff Elbert Solomon is a Black citizen of the United States and the State of Georgia. Mr. Solomon is a registered voter and intends to vote in future legislative elections. He is a resident of Spalding County and located in Senate District 16 and House District 117 under the enacted plans, where he is unable to

elect candidates of his choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Solomon resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in newly drawn State Senate and House districts in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Solomon and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

18. Plaintiff Dexter Wimbish is a Black citizen of the United States and the State of Georgia. Mr. Wimbish is a registered voter and intends to vote in future legislative elections. He is a resident of Spalding County and located in Senate District 16 and House District 74 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Wimbish resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in newly drawn State Senate and House districts in which Black voters would have the opportunity to elect their preferred candidates. The enacted

redistricting plan dilutes the voting power of Black voters like Mr. Wimbish and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

19. Plaintiff Garrett Reynolds is a Black citizen of the United States and the State of Georgia. Mr. Reynolds is a registered voter and intends to vote in future legislative elections. He is a resident of Fayette County and located in Senate District 16 and House District 68 under the enacted plans, where he is unable to elect candidates of his choice to the Georgia State Senate despite strong electoral support for those candidates from other Black voters in his community. Mr. Reynolds resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn State Senate district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Reynolds and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

20. Plaintiff Jacqueline Faye Arbuthnot is a Black citizen of the United States and the State of Georgia. Ms. Arbuthnot is a registered voter and intends to vote in future legislative elections. She is a resident of Paulding County and located in Senate District 31 and House District 64 under the enacted plans, where she is

unable to elect candidates of her choice to the Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. Arbuthnot resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn House district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Ms. Arbuthnot and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

21. Plaintiff Jacquelyn Bush is a Black citizen of the United States and the State of Georgia. Ms. Bush is a registered voter and intends to vote in future legislative elections. She is a resident of Fayette County and located in Senate District 16 and House District 74 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. Bush resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn House district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of

Black voters like Ms. Bush and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

22. Plaintiff Mary Nell Conner is a Black citizen of the United States and the State of Georgia. Ms. Conner is a registered voter and intends to vote in future legislative elections. She is a resident of Henry County and located in Senate District 25 and House District 117 under the enacted plans, where she is unable to elect candidates of her choice to the Georgia State Senate and Georgia House of Representatives despite strong electoral support for those candidates from other Black voters in her community. Ms. Conner resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in newly drawn State Senate and House districts in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Ms. Conner and denies them an equal opportunity to elect candidates of their choice to the Georgia General Assembly.

23. Defendant Brad Raffensperger is the Georgia Secretary of State and is named in his official capacity. Secretary Raffensperger is Georgia's chief election official and is responsible for administering the state's elections and implementing election laws and regulations, including Georgia's legislative redistricting plans. *See*

O.C.G.A. § 21-2-50; Ga. Comp. R. & Regs. 590-1-1-.01–.02 (specifying, among other things, that Secretary of State's office must provide "maps of Congressional, State Senatorial and House Districts" when requested). Secretary Raffensperger is also an ex officio nonvoting member of the State Election Board, which is responsible for "formulat[ing], adopt[ing], and promulgat[ing] such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." O.C.G.A. §§ 21-2-30(d), -31(2).

24. Defendant Judge William S. Duffey, Jr. is the Chair of the State Election Board and is named in his official capacity. In this role, he must "formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(2).

25. Defendant Sara Tindall Ghazal is a member of the State Election Board and is named in her official capacity. In this role, she must "formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(2).

26. Defendant Janice Johnston is a member of the State Election Board and is named in her official capacity. In this role, she must "formulate, adopt, and

promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(2).

27. Defendant Edward Lindsey is a member of the State Election Board and is named in his official capacity. In this role, he must "formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(2).

28. Defendant Matthew Mashburn is a member of the State Election Board and is named in his official capacity. In this role, he must "formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." *Id.* § 21-2-31(2).

LEGAL BACKGROUND

29. Section 2 of the Voting Rights Act prohibits any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). Thus, in addition to prohibiting practices that deny the exercise of the right to vote, Section 2 prohibits vote dilution.

30. A violation of Section 2 is established if "it is shown that the political processes leading to nomination or election" in the jurisdiction "are not equally open to participation by members of a [minority group] in that its members have less

opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." *Id.* § 10301(b).

31. Such a violation might be achieved by "cracking" or "packing" minority voters. To illustrate, the dilution of Black voting strength "may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters"—cracking—"or from the concentration of blacks into districts where they constitute an excessive majority"—packing. *Thornburg v. Gingles*, 478 U.S. 30, 46 n.11 (1986).

32. In *Thornburg v. Gingles*, the U.S. Supreme Court identified three necessary preconditions for a claim of vote dilution under Section 2: (i) the minority group must be "sufficiently large and geographically compact to constitute a majority in a single-member district"; (ii) the minority group must be "politically cohesive"; and (iii) the majority must vote "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Id.* at 50–51.

33. Once all three preconditions are established, Section 2 directs courts to consider whether, "based on the totality of circumstances," members of a racial minority "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b).

34. The Senate Report on the 1982 amendments to the Voting Rights Act identified several non-exclusive factors that courts should consider when determining if, under the totality of circumstances in a jurisdiction, the operation of the challenged electoral device results in a violation of Section 2. *See Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1288–89 (11th Cir. 2020). These "Senate Factors" include:

a. the history of official voting-related discrimination in the state or political subdivision;

b. the extent to which voting in the elections of the state or political subdivision is racially polarized;

c. the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority-vote requirements, or prohibitions against bullet-voting;

d. the exclusion of members of the minority group from candidate-slating processes;

e. the extent to which minority group members bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process;

f. the use of overt or subtle racial appeals in political campaigns; and

g. the extent to which members of the minority group have been elected to public office in the jurisdiction.

35. The Senate Report itself and the cases interpreting it have made clear that "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1566 n.33 (11th Cir. 1984) (quoting S. Rep. No. 97-417, at 29 (1982)); *see also id.* at 1566 ("The statute explicitly calls for a 'totality-of-the circumstances' approach and the Senate Report indicates that no particular factor is an indispensable element of a dilution claim.").

FACTUAL BACKGROUND

The 2020 Census

36. Between 2010 and 2020, Georgia's population increased by more than 1 million people.

37. The population growth during this period is entirely attributable to the increase in Georgia's minority population. The 2020 census results indicate that Georgia's Black population grew by over 15 percent and now comprises 33 percent of Georgia's total population. Meanwhile, Georgia's white population *decreased* by

4 percent over the past decade. In total, Georgia's minority population now comprises just under 50 percent of the state's total population.

The 2021 Legislative Redistricting Plan

38. In enacting Georgia's new State Senate and House maps, the Republican-controlled General Assembly diluted the political power of the state's minority voters.

39. On November 9, 2021, the Georgia State Senate passed SB 1EX, which revised that chamber's district boundaries. The House passed SB 1EX on November 15.

40. On November 10, 2021, the Georgia House of Representatives passed HB 1EX, which revised that chamber's district boundaries; the State Senate passed HB 1EX on November 12.

41. On December 30, 2021, Governor Kemp signed SB 1EX and HB 1EX into law.

42. Democratic and minority legislators were largely excluded from the redistricting process and repeatedly decried the lack of transparency. Moreover, lawmakers and activists from across the political spectrum questioned the speed with which the General Assembly undertook its redistricting efforts, observing that the haste resulted in unnecessary divisions of communities and municipalities.

43. The Republican majority's refusal to draw districts that reflected the past decade's growth in the state's minority communities was noted by lawmakers. Commenting on the new State Senate map, Senator Michelle Au observed, "It's our responsibility to ensure the people in this room are a good reflection of the people in this state. This map before us does not represent the Georgia of today. It does not see Georgia for who we have become." Senator Elena Parent remarked, "This map is designed to shore up the shrinking political power of the majority. As proposed, it fails to fairly reflect Georgians['] diversity."

44. Minority lawmakers in the House also objected to their chamber's new map, noting that it packed minority voters and diluted their voting strength.

45. Rather than create additional State Senate and House districts in which Georgia's growing minority populations would have the opportunity to elect candidates of their choice, the General Assembly did just the opposite: it packed and cracked Georgia's minority voters to dilute their influence.

46. SB 1EX packs some Black voters into the southern Atlanta metropolitan area and cracks others into rural-reaching, predominantly white State Senate districts. Specifically, Black voters in the southwestern Atlanta metropolitan area are packed into Senate Districts 34 and 35 and cracked into Senate Districts 16, 28, and 30. In the southeastern Atlanta metropolitan area, Black voters are packed

into Senate Districts 10 and 44 and cracked into Senate Districts 17 and 25. Two additional majority-Black State Senate districts could be drawn in the southern Atlanta metropolitan area without reducing the total number of minority-opportunity districts in the enacted map.

47. SB 1EX also cracks Black voters in the Black Belt among Senate Districts 23, 24, and 25. An additional majority-Black State Senate district could be drawn in this area without reducing the total number of minority-opportunity districts in the enacted map.

48. HB 1EX packs some Black voters into the southern and western Atlanta metropolitan area and cracks others into rural-reaching, predominantly white districts. Specifically, Black voters in the western Atlanta metropolitan area are packed into House District 61 and cracked into House District 64. In the southern Atlanta metropolitan area, Black voters are packed into House Districts 69, 75, and 78 and cracked into House Districts 74 and 117. Two additional majority-Black House districts could be drawn in the southern Atlanta metropolitan area, and one additional majority-Black House district in the western Atlanta metropolitan area, without reducing the total number of minority-opportunity districts in the enacted map.

49. HB 1EX further packs Black voters into two House districts anchored in Bibb County—House Districts 142 and 143—even though two additional majority-Black House districts could be drawn in this area by uncracking House Districts 133, 144, 145, 147, and 149, without reducing the total number of minority-opportunity districts in the enacted map.

50. This combination of cracking and packing dilutes the political power of Black voters in the Atlanta metropolitan area and central Georgia. The General Assembly could have instead created additional, compact State Senate and House districts in which Black voters, including Plaintiffs, comprise a majority of eligible voters and have the opportunity to elect their preferred candidates, as required by Section 2 of the Voting Rights Act. Significantly, this could have been done without reducing the number of other districts in which Black voters have the opportunity to elect candidates of their choice.

51. Unless enjoined, SB 1EX and HB 1EX will deny Black voters throughout the state the opportunity to elect candidates of their choice.

52. The relevant factors and considerations readily require the creation of majority-Black districts under Section 2.

Racial Polarization

53. This Court has recognized that "voting in Georgia is highly racially polarized." *Ga. State Conf. of NAACP v. Georgia*, 312 F. Supp. 3d 1357, 1360 (N.D. Ga. 2018) (three-judge panel).

54. "Districts with large black populations are likely to vote Democratic." *Id.* Indeed, during competitive statewide elections over the past decade—from the 2012 presidential election through the 2021 U.S. Senate runoff elections—an average of 97 percent of Black Georgians supported the Democratic candidate.

55. White voters, by striking contrast, overwhelmingly vote Republican. An average of only 13 percent of white Georgians supported the Democratic candidate in competitive statewide elections over the past decade.

56. Georgia's white majority usually votes as a bloc to defeat minority voters' candidates of choice, including in the areas where Plaintiffs live and the Black population could be united to create a new majority-Black district.

History of Discrimination

57. Georgia's past discrimination against its Black citizens, including its numerous attempts to deny Black voters an equal opportunity to participate in the political process, is extensive and well documented. This prejudice is not confined to history books; the legacy of discrimination manifests itself today in state and local

elections marked by racial appeals and undertones. And the consequences of the state's historic discrimination persist to this day, as Black Georgians continue to experience socioeconomic hardship and marginalization.

58. This history dates back to the post-Civil War era, when Black Georgians first gained the right to vote and voted in their first election in April 1868. Soon after this historic election, a *quarter* of the state's Black legislators were either jailed, threatened, beaten, or killed. In 1871, the General Assembly passed a resolution that expelled 25 Black representatives and three senators but permitted the four mixed-race members who did not "look" Black to keep their seats. The General Assembly's resolution was based on the theory that Black Georgians' right of suffrage did not give them the right to hold office, and that they were thus "ineligible" to serve under Georgia's post-Civil War state constitution.

59. After being denied the right to hold office, Black Georgians who attempted to vote also encountered intense and frequently violent opposition. The Ku Klux Klan and other white mobs engaged in a campaign of political terrorism aimed at deterring Black political participation. Their reigns of terror in Georgia included, for instance, attacking a Black political rally in Mitchell County in 1868, killing and wounding many of the participants; warning the Black residents of Wrightsville that "blood would flow" if they exercised their right to vote in an

upcoming election; and attacking and beating a Black man in his own home to prevent him from voting in an upcoming congressional election.

60. In the General Assembly, fierce resistance to Black voting rights led to more discriminatory legislation. In 1871, Georgia became the first state to enact a poll tax. At the state's 1877 constitutional convention, the General Assembly made the poll tax permanent and cumulative, requiring citizens to pay all back taxes before being permitted to vote. The poll tax reduced turnout among Black voters in Georgia by half and has been described as the single most effective disenfranchisement law ever enacted. The poll tax was not abolished until 1945—after it had been in effect for almost 75 years.

61. After the repeal of the poll tax in 1945, voter registration among Black Georgians significantly increased. However, as a result of the state's purposeful voter suppression tactics, not a *single* Black lawmaker served in the General Assembly between 1908 and 1962.

62. Georgia's history of voter discrimination is far from ancient history. As recently as 1962, 17 municipalities and 48 counties in Georgia required segregated polling places. When the U.S. Department of Justice filed suit to end this practice, a local Macon leader declared that the federal government was ruining "every vestige of the local government."

63. Other means of disenfranchising Georgia's Black citizens followed. The state adopted virtually every one of the "traditional" methods to obstruct the exercise of the franchise by Black voters, including literacy and understanding tests, strict residency requirements, onerous registration procedures, voter challenges and purges, the deliberate slowing down of voting by election officials so that Black voters would be left waiting in line when the polls closed, and the adoption of "white primaries."

64. Attempts to minimize Black political influence in Georgia have also tainted redistricting efforts. During the 1981 congressional redistricting process, in opposing a bill that would maintain a majority-Black district, Joe Mack Wilson—a Democratic state representative and chair of the House Reapportionment Committee—openly used racial epithets to describe the district; following a meeting with officials of the U.S. Department of Justice, he complained that "the Justice Department is trying to make us draw [n*****] districts and I don't want to draw [n*****] districts." Speaker of the House Tom Murphy objected to creating a district where a Black representative would certainly be elected and refused to appoint any Black lawmakers to the conference committee, fearing that they would support a plan to allow Black voters to elect a candidate of their choice. Several senators also

expressed concern about being perceived as supporting a majority-Black congressional district.

65. Indeed, federal courts have invalidated Georgia's redistricting plans for voting rights violations numerous times. In *Georgia v. United States*, the U.S. Supreme Court affirmed a three-judge panel's decision that Georgia's 1972 reapportionment plan violated Section 5 of the Voting Rights Act, at least in part because it diluted the Black vote in an Atlanta-based congressional district in order to ensure the election of a white candidate. *See* 411 U.S. 526, 541 (1973); *see also Busbee v. Smith*, 549 F. Supp. 494, 517 (D.D.C. 1982) (three-judge panel) (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); *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) (per curiam) (three-judge panel) (invalidating legislative plans that reduced number of majority-minority districts).

66. Due to its lengthy history of discrimination against racial minorities, Georgia became a "covered jurisdiction" under Section 5 of the Voting Rights Act upon its enactment in 1965, prohibiting any changes to Georgia's election practices or procedures (including the enactment of new redistricting plans) until either the

U.S. Department of Justice or a federal court determined that the change did not result in backsliding, or "retrogression," of minority voting rights.

67. Accordingly, between 1965 and 2013—at which time the U.S. Supreme Court effectively barred enforcement of the Section 5 preclearance requirement in *Shelby County v. Holder*, 570 U.S. 529 (2013)—Georgia received more than 170 preclearance objection letters from the U.S. Department of Justice.

68. Georgia's history of racial discrimination in voting, here only briefly recounted, has been thoroughly documented by historians and scholars. Indeed, "[t]he history of the state['s] segregation practice and laws at all levels has been rehashed so many times that the Court can all but take judicial notice thereof." *Brooks v. State Bd. of Elections*, 848 F. Supp. 1548, 1560 (S.D. Ga. 1994); *see also, e.g.*, *Fair Fight Action, Inc. v. Raffensperger*, No. 1:18-CV-5391-SCJ, slip op. at 41 (N.D. Ga. Nov. 15, 2021), ECF No. 636 (taking judicial notice of fact that "prior to the 1990s, Georgia had a long sad history of racist policies in a number of areas including voting").

69. Ultimately, as this Court has noted, "Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather

than the exception." *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 950 F. Supp. 2d 1294, 1314 (N.D. Ga. 2013) (quoting *Brooks*, 848 F. Supp. at 1560), *aff'd in part, rev'd in part on other grounds*, 775 F.3d 1336 (11th Cir. 2015).

Use of Racial Appeals in Political Campaigns

70. In addition to Georgia's history of discrimination against minorities in voting, political campaigns in the state have often relied on both overt and subtle racial appeals—both historically *and* during recent elections.

71. In 2016, Tom Worthan, former Republican Chair of the Douglas County Board of Commissioners, was caught on video making racist comments aimed at discrediting his Black opponent, Romona Jackson-Jones, and a Black candidate for sheriff, Tim Pounds. During the recorded conversation with a Douglas County voter, Worthan asked, "Do you know of another government that's more black that's successful? They bankrupt you." Worthan also stated, in reference to Pounds, "I'd be afraid he'd put his black brothers in positions that maybe they're not qualified to be in."

72. In the 2017 special election for Georgia's Sixth Congressional District—a majority-white district that had over the previous three decades been represented by white Republicans Newt Gingrich, Johnny Isakson, and Tom Price—the husband of the eventual Republican victor, Karen Handel, shared an image over

social media that urged voters to "[f]ree the black slaves from the Democratic plantation." The image also stated, "Criticizing black kids for obeying the law, studying in school, and being ambitious as 'acting white' is a trick the Democrats play on Black people to keep them poor, ignorant and dependent." The image was then shared widely by local and national media outlets.

73. During that same election, Jere Wood—the Republican Mayor of Roswell, Georgia's eighth-largest city—insinuated that voters in the Sixth Congressional District would not vote for Democratic candidate Jon Ossoff because he has an "ethnic-sounding" name. When describing voters in that district, Wood said, "If you just say 'Ossoff,' some folks are gonna think, 'Is he Muslim? Is he Lebanese? Is he Indian?' It's an ethnic-sounding name, even though he may be a white guy, from Scotland or wherever."[2]

74. On a separate occasion, State Senator Fran Millar alluded to the fact that the Sixth Congressional District was gerrymandered in such a way that it would not support candidate Ossoff—specifically, because he was formerly an aide to a

[2] In actuality, now-U.S. Senator Ossoff's paternal forebears were Ashkenazi Jewish immigrants who fled pogroms during the early 20th century. *See* Etan Nechin, *Jon Ossoff Tells Haaretz How His Jewish Upbringing Taught Him to Fight for Justice*, Haaretz (Dec. 20, 2020), https://www.haaretz.com/us-news/.premium-jon-ossoff-tells-haaretz-how-his-jewish-upbringing-taught-him-to-fight-for-justice-1.9386302.

Black member of Congress. State Senator Millar said, "I'll be very blunt. These lines were not drawn to get Hank Johnson's protégé to be my representative. And you didn't hear that. They were not drawn for that purpose, OK? They were not drawn for that purpose."

75. Earlier in 2017, Tommy Hunter, a member of the board of commissioners in Gwinnett County—the second-most populous county in the state—called the late Black Congressman John Lewis a "racist pig" and suggested that his reelection to the U.S. House of Representatives was "illegitimate" because he represented a majority-minority district.

76. Racist robocalls targeted the Democratic candidate for governor in 2018, referring to Stacey Abrams as "Negress Stacey Abrams" and "a poor man's Aunt Jemima." The Republican candidate, now-Governor Kemp, posted a statement on Twitter on the eve of the election alleging that the Black Panther Party supported Ms. Abrams's candidacy.

77. Governor Kemp also ran a controversial television advertisement during the primary campaign asserting that he owned "a big truck, just in case [he] need[s] to round up criminal illegals and take 'em home [him]self."

78. The 2020 campaigns for Georgia's two U.S. Senate seats were also rife with racial appeals. In one race, Republican incumbent Kelly Loeffler ran a paid

advertisement on Facebook that artificially darkened the skin of her Democratic opponent, now-Senator Raphael Warnock. In the other race, Republican incumbent David Perdue ran an advertisement against Democratic nominee Ossoff that employed a classic anti-Semitic trope by artificially enlarging now-Senator Ossoff's nose.

79. Senator Perdue later mispronounced and mocked the pronunciation of then-Senator Kamala Harris's first name during a campaign rally, even though the two had been colleagues in the Senate since 2017.

80. Racial appeals were apparent during local elections in Fulton County even within the last few months. City council candidates in Johns Creek and Sandy Springs pointed to Atlanta crime and protests that turned violent to try to sway voters, publicly urging residents to vote for them or risk seeing their cities become home to chaos and lawlessness. *The Atlanta Journal-Constitution* quoted Emory University political scientist Dr. Andra Gillespie, who explained that although the term "law and order" is racially neutral, the issue becomes infused with present-day cultural meaning and thoughts about crime and violence and thus carries racial undertones.

81. These are just a few—and, indeed, only among the more recent—examples of the types of racially charged political campaigns that have tainted elections in Georgia throughout the state's history.

Ongoing Effects of Georgia's History of Discrimination

82. State-sponsored segregation under Georgia's Jim Crow laws permeated all aspects of daily life and relegated Black citizens to second-class status. State lawmakers segregated everything from public schools to hospitals and graveyards. Black Georgians were also precluded from sitting on juries, which effectively denied Black litigants equal justice under the law. Moreover, Black Georgians were excluded from the most desirable manufacturing jobs, which limited their employment opportunities to primarily unskilled, low-paying labor. And in times of economic hardship, Black employees were the first to lose their jobs.

83. Decades of Jim Crow and other forms of state-sponsored discrimination—followed by continued segregation of public facilities well into the latter half of the 20th century, in defiance of federal law—resulted in persistent socioeconomic disparities between Black and white Georgians. These disparities hinder the ability of voters in each of these groups to participate effectively in the political process.

84. Black Georgians, for instance, have higher poverty rates than white Georgians. According to the U.S. Census Bureau's 2019 American Community Survey ("ACS") 1-Year Estimate, 18.8 percent of Black Georgians have lived below the poverty line in the past 12 months, compared to 9 percent of white Georgians.

85. Relatedly, Black Georgians have lower per capita incomes than white Georgians. The 2019 ACS 1-Year Estimate shows that white Georgians had an average per capita income of $40,348 over the past 12 months, compared to $23,748 for Black Georgians.

86. Black Georgians also have lower homeownership rates than white Georgians. The 2019 ACS 1-Year Estimate shows that 52.6 percent of Black Georgians live in renter-occupied housing, compared to 24.9 percent of white Georgians. And Black Georgians also spend a higher percentage of their income on rent than white Georgians. The 2019 ACS 1-Year Estimate shows that in Georgia, the percent of income spent on rent is a staggering 54.9 percent for Black Georgians, compared to 40.6 percent for white Georgians.

87. Black Georgians also have lower levels of educational attainment than their white counterparts and are less likely to earn degrees. According to the 2019 ACS 1-Year Estimate, only 25 percent of Black Georgians have obtained a bachelor's degree or higher, compared to 37 percent of white Georgians.

88. These disparities impose hurdles to voter participation, including working multiple jobs, working during polling place hours, lack of access to childcare, lack of access to transportation, and higher rates of illness and disability. All of these hurdles make it more difficult for poor and low-income voters to participate effectively in the political process.

CAUSES OF ACTION

COUNT I:
SB 1EX Violates Section 2 of the Voting Rights Act

89. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

90. Section 2 of the Voting Rights Act prohibits the enforcement of any "standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or" membership in a language minority group. 52 U.S.C. § 10301(a).

91. The Georgia State Senate district boundaries, as currently drawn, crack and pack minority populations with the effect of diluting their voting strength, in violation of Section 2 of the Voting Rights Act.

92. Black Georgians in the southern Atlanta metropolitan area and the central Georgia Black Belt region are sufficiently numerous and geographically compact to constitute a majority of eligible voters in three additional State Senate

districts, without reducing the number of minority-opportunity districts already included in the enacted map.

93. Under Section 2 of the Voting Rights Act, the General Assembly was required to create three additional State Senate districts in which Black voters in these areas would have the opportunity to elect their candidates of choice.

94. Black voters in Georgia, particularly in and around these areas, are politically cohesive. Elections in these areas reveal a clear pattern of racially polarized voting that allows blocs of white voters usually to defeat Black voters' preferred candidates.

95. The totality of the circumstances establishes that the current State Senate map has the effect of denying Black voters an equal opportunity to participate in the political process and elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.

96. By engaging in the acts and omissions alleged herein, Defendants have acted and continue to act to deny Plaintiffs' rights guaranteed by Section 2 of the Voting Rights Act. Defendants will continue to violate those rights absent relief granted by this Court.

COUNT II:
HB 1EX Violates Section 2 of the Voting Rights Act

97. Plaintiffs reallege and incorporate by reference all prior paragraphs of this Complaint as though fully set forth herein.

98. The Georgia House of Representative district boundaries, as currently drawn, crack and pack minority populations with the effect of diluting their voting strength, in violation of Section 2 of the Voting Rights Act.

99. Black Georgians in the southern and western Atlanta metropolitan area and central Georgia are sufficiently numerous and geographically compact to constitute a majority of eligible voters in five additional House districts, without reducing the number of minority-opportunity districts already included in the enacted map.

100. Under Section 2 of the Voting Rights Act, the General Assembly was required to create five additional House districts in which Black voters in these areas would have the opportunity to elect their candidates of choice.

101. Black voters in Georgia, particularly in and around these areas, are politically cohesive. Elections in these areas reveal a clear pattern of racially polarized voting that allows blocs of white voters usually to defeat Black voters' preferred candidates.

102. The totality of the circumstances establishes that the current House map has the effect of denying Black voters an equal opportunity to participate in the political process and elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.

103. By engaging in the acts and omissions alleged herein, Defendants have acted and continue to act to deny Plaintiffs' rights guaranteed by Section 2 of the Voting Rights Act. Defendants will continue to violate those rights absent relief granted by this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

A. Declare that SB 1EX and HB 1EX violate Section 2 of the Voting Rights Act;

B. Enjoin Defendants, as well as their agents and successors in office, from enforcing or giving any effect to the boundaries of the Georgia State Senate districts as drawn in SB 1EX and the boundaries of the Georgia House of Representatives districts as drawn in HB 1EX, including an injunction barring Defendants from conducting any further legislative elections under the current maps;

C. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to order the adoption of a valid legislative redistricting plan that includes three additional Georgia State Senate districts and five additional Georgia House of Representatives districts in which Black voters would have opportunities to elect their preferred candidates, as required by Section 2 of the Voting Rights Act, without reducing the number of minority-opportunity districts currently in SB 1EX and HB 1EX;

D. Grant such other or further relief the Court deems appropriate, including but not limited to an award of Plaintiffs' attorneys' fees and reasonable costs.

Dated: October 28, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **SECOND AMENDED COMPLAINT** 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: October 28, 2022

Adam M. Sparks

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing **SECOND AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to counsel of record.

Dated: October 28, 2022

Adam M. Sparks

Counsel for Plaintiffs

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

DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendants Brad Raffensperger, in his official capacity as Secretary of the State of Georgia; William S. Duffey, Jr., in his official capacity as chair of the State Election Board; and Sara Tindall Ghazal, Janice Johnston, Edward Lindsey, and Matthew Mashburn, in their official capacities as members of the State Election Board (collectively, the "Defendants"), answer Plaintiffs' Second Amended Complaint [Doc. 118] (the "SAC") as follows:

FIRST AFFIRMATIVE DEFENSE

The allegations in Plaintiffs' SAC fail to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred for failure to name necessary and indispensable parties.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs lack constitutional standing to bring this action.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs lack statutory standing to bring this action.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' federal claims against Defendants are barred by the Eleventh Amendment to the United States Constitution.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by sovereign immunity.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because Section 2 of the Voting Rights Act provides no provide right of action.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred because they should be heard by a three-judge panel.

NINTH AFFIRMATIVE EFENSE

Defendants deny that Plaintiffs have been subjected to the deprivation of any right, privilege, or immunity under the Constitution or laws of the United States.

TENTH AFFIRMATIVE DEFENSE

Defendants reserve the right to amend their defenses and to add additional ones, including lack of subject matter jurisdiction based on the mootness or ripeness doctrines, as further information becomes available in discovery.

Defendants answer the specific numbered paragraphs of Plaintiffs' SAC as follows:

1. Paragraph 1 of the SAC sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

2. Defendants deny the allegations set forth in Paragraph 2 of the SAC.

3. Defendants deny the allegations set forth in Paragraph 3 of the SAC.

4. Defendants deny the allegations set forth in Paragraph 4 of the SAC.

5. Paragraph 5 of the SAC sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

6. Defendants deny the allegations set forth in Paragraph 6 of the SAC.

7. Paragraph 7 of the SAC sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied and Defendants further deny that Plaintiffs are entitled to any relief.

8. Defendants admit that this Court has federal-question jurisdiction for claims arising under the Voting Rights Act. Defendants deny the remaining allegations set forth in Paragraph 8 of the SAC.

9. Defendants deny the allegations set forth in Paragraph 9 of the SAC.

10. Defendants admit the allegations set forth in Paragraph 10 of the SAC.

11. The allegations in Paragraph 11 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

12. The allegations in Paragraph 12 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

13. The allegations in Paragraph 13 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

14. The allegations in Paragraph 14 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

15. The allegations in Paragraph 15 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

16. The allegations in Paragraph 16 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

17. The allegations in Paragraph 17 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

18. The allegations in Paragraph 18 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

19. The allegations in Paragraph 19 of the SAC are outside the Defendants' knowledge and are therefore denied on that basis.

20. The allegations in Paragraph 20 of the SAC are outside the Defendants' knowledge and are therefore denied on that basis.

21. The allegations in Paragraph 21 of the SAC are outside the Defendants' knowledge and are therefore denied on that basis.

22. The allegations in Paragraph 22 of the SAC are outside the Defendants' knowledge and are therefore denied on that basis.

23. Defendants admit that Secretary Raffensperger is the Secretary of State of Georgia and that the Secretary of State is designated by statute as the chief election official. Defendants further admit that the Secretary has responsibilities under law related to elections. Defendants deny the remaining allegations contained in Paragraph 23 of the SAC.

24. Defendants admit that Judge William S. Duffey, Jr. is the Chair of the State Election Board and is named in his official capacity. Defendants further admit that the duties of members of the State Election Board are set forth in statute and refer the Court to the cited authority for a full and accurate statement of its contents and deny any allegations inconsistent therewith. Defendants deny the remaining allegations contained in Paragraph 24 of the SAC.

25. Defendants admit that Sara Tindall Ghazal is a member of the State Election Board and is named in her official capacity. Defendants further admit that the duties of members of the State Election Board are set forth in statute and refer the Court to the cited authority for a full and accurate statement of its contents and deny any allegations inconsistent

therewith. Defendants deny the remaining allegations contained in Paragraph 25 of the SAC.

26. Defendants admit that Janice Johnston is a member of the State Election Board and is named in her official capacity. Defendants further admit that the duties of members of the State Election Board are set forth in statute and refer the Court to the cited authority for a full and accurate statement of its contents and deny any allegations inconsistent therewith. Defendants deny the remaining allegations contained in Paragraph 26 of the SAC.

27. Defendants admit that Edward Lindsey is a member of the State Election Board and is named in his official capacity. Defendants further admit that the duties of members of the State Election Board are set forth in statute and refer the Court to the cited authority for a full and accurate statement of its contents and deny any allegations inconsistent therewith. Defendants deny the remaining allegations contained in Paragraph 27 of the SAC.

28. Defendants admit that Matthew Mashburn is a member of the State Election Board and is named in his official capacity. Defendants further admit that the duties of members of the State Election Board are set forth in statute and refer the Court to the cited authority for a full and accurate

statement of its contents and deny any allegations inconsistent therewith. Defendants deny the remaining allegations contained in Paragraph 28 of the SAC.

29. Paragraph 29 of the SAC sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

30. Paragraph 30 of the SAC sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

31. Paragraph 31 of the SAC sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

32. Paragraph 32 of the SAC sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

33. Paragraph 33 of the SAC sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

34. Paragraph 34 of the SAC and its subparagraphs set forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

35. Paragraph 35 of the SAC sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. The remaining allegations in this Paragraph are denied.

36. Defendants admit the allegations set forth in Paragraph 36 of the SAC.

37. Defendants admit that, as a percentage of the electorate, the white percentage has decreased and the percentage of voters of color has increased over the last ten years. The remaining allegations in Paragraph 37 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

38. Defendants deny the allegations set forth in Paragraph 38 of the SAC.

39. Defendants admit the allegations set forth in Paragraph 39 of the SAC.

40. Defendants admit the allegations set forth in Paragraph 40 of the SAC.

41. Defendants admit the allegations set forth in Paragraph 41 of the SAC.

42. Defendants deny the allegations set forth in Paragraph 42 of the SAC.

43. Defendants admit that Democratic members of the General Assembly opposed the as-passed redistricting plans and made public comments indicating that opposition. Defendants deny the remaining allegations set forth in Paragraph 43 of the SAC.

44. Defendants admit that Democratic members of the General Assembly opposed the as-passed redistricting plans and made public comments indicating that opposition. Defendants deny the remaining allegations set forth in Paragraph 44 of the SAC.

45. Defendants deny the allegations set forth in Paragraph 45 of the SAC.

46. Defendants deny the allegations set forth in Paragraph 46 of the SAC.

47. Defendants deny the allegations set forth in Paragraph 47 of the SAC.

48. Defendants deny the allegations set forth in Paragraph 48 of the SAC.

49. Defendants deny the allegations set forth in Paragraph 49 of the SAC.

50. Defendants deny the allegations set forth in Paragraph 50 of the SAC.

51. Defendants deny the allegations set forth in Paragraph 51 of the SAC.

52. Defendants deny the allegations set forth in Paragraph 52 of the SAC.

53. Paragraph 53 of the SAC sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same. Defendants admit that Black and white voters in Georgia vote in blocs and prefer different candidates. The remaining allegations in this Paragraph are denied.

54. Defendants admit that Black and white voters in Georgia vote in blocs and prefer different candidates. Defendants deny the remaining allegations set forth in Paragraph 54 of the SAC.

55. Defendants admit that Black and white voters in Georgia vote in blocs and prefer different candidates. Defendants deny the remaining allegations set forth in Paragraph 55 of the SAC.

56. Defendants admit that Black and white voters in Georgia vote in blocs and prefer different candidates. Defendants deny the remaining allegations set forth in Paragraph 56 of the SAC.

57. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. Defendants deny the remaining allegations set forth in Paragraph 57 of the SAC.

58. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 58 of the SAC set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

59. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 59 of the SAC set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

60. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 60 of the SAC set forth legal conclusions to which no response is

required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

61. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 61 of the SAC set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

62. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 62 of the SAC set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

63. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 63 of the SAC set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

64. Defendants admit that Democratic representatives in the 1981 redistricting process sought to minimize Black political influence in Georgia The remaining allegations of Paragraph 64 of the SAC set forth legal

conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

65. Defendants admit that plans drawn when Democrats controlled Georgia government were objected to in 1971, 1981, 1991, and 2001 and that redistricting plans drawn when Democrats controlled Georgia government were rejected as unconstitutional in 2004. The remaining allegations of Paragraph 65 of the SAC set forth legal conclusions to which no response is required and, therefore, Defendants deny the same.

66. Defendants admit that, prior to 2013, Georgia was a covered jurisdiction under Section 4 of the Voting Rights Act and was required to seek preclearance of election laws prior to enforcement. The remaining allegations in Paragraph 66 set forth legal conclusions to which no response is required and, therefore, Defendants deny the same.

67. Defendants admit that, prior to 2013, Georgia was a covered jurisdiction under Section 4 of the Voting Rights Act and was required to seek preclearance of election laws prior to enforcement. The remaining allegations in Paragraph 67 set forth legal conclusions to which no response is required and, therefore, Defendants deny the same.

68. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of

Paragraph 68 of the SAC set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

69. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 69 of the SAC set forth legal conclusions to which no response is required and, therefore, Defendants deny the same.

70. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 70 of the SAC set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

71. The allegations in Paragraph 71 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

72. The allegations in Paragraph 72 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

73. The allegations in Paragraph 73 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

74. The allegations in Paragraph 74 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

75. The allegations in Paragraph 75 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

76. The allegations in Paragraph 76 of the SAC are outside Defendants' knowledge an are therefore denied on that basis.

77. The allegations in Paragraph 77 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

78. The allegations in Paragraph 78 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

79. The allegations in Paragraph 79 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

80. The allegations in Paragraph 80 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

81. The allegations in Paragraph 81 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

82. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 82 of the SAC set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

83. Defendants admit that Georgia has a past history of state-sanctioned discrimination against Black voters. The remaining allegations of Paragraph 83 of the SAC set forth legal conclusions to which no response is required or are beyond the scope of Defendants' knowledge and, therefore, Defendants deny the same.

84. The allegations in Paragraph 84 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

85. The allegations in Paragraph 85 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

86. The allegations in Paragraph 86 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

87. The allegations in Paragraph 87 of the SAC are outside Defendants' knowledge and are therefore denied on that basis.

88. Defendants deny the allegations set forth in Paragraph 88 of the SAC.

89. Defendants incorporate their responses to Paragraphs 1 through 89 as if fully set forth herein.

90. Paragraph 90 of the SAC sets forth legal conclusions to which no response is required and, therefore, Defendants deny the same.

91. Defendants deny the allegations set forth in Paragraph 91 of the SAC.

92. Defendants deny the allegations set forth in Paragraph 92 of the SAC.

93. Defendants deny the allegations set forth in Paragraph 93 of the SAC.

94. Defendants deny the allegations set forth in Paragraph 94 of the SAC.

95. Defendants deny the allegations set forth in Paragraph 95 of the SAC.

96. Defendants deny the allegations set forth in Paragraph 96 of the SAC.

97. Defendants incorporate their responses to Paragraphs 1 through 96 as if fully set forth herein.

98. Defendants deny the allegations set forth in Paragraph 99 of the SAC.

99. Defendants deny the allegations set forth in Paragraph 99 of the SAC.

100. Defendants deny the allegations set forth in Paragraph 100 of the SAC.

101. Defendants deny the allegations set forth in Paragraph 101 of the SAC.

102. Defendants deny the allegations set forth in Paragraph 102 of the SAC.

103. Defendants deny the allegations set forth in Paragraph 103 of the SAC.

Prayer for Relief

Defendants deny that Plaintiffs are entitled to any relief they seek. Defendants further deny every allegation in the SAC not specifically admitted in this Answer.

Respectfully submitted this 14th day of November, 2022.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT 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

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(Pages 1–120)

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

ALPHA PHI ALPHA FRATERNITY INC., et al.,
Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia,
Defendant.

CIVIL ACTION FILE

No. 1:21-CV-05337-SCJ

COAKLEY PENDERGRASS et al.,
Plaintiffs,

v.

BRAD RAFFENSPERGER et al.,
Defendants.

CIVIL ACTION FILE

No. 1:21-CV-05339-SCJ

ANNIE LOIS GRANT et al.,
Plaintiffs,

v.

BRAD RAFFENSPERGER et al.,
Defendants.

CIVIL ACTION FILE

No. 1:22-CV-00122-SCJ

OPINION AND MEMORANDUM OF DECISION

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OPINION AND MEMORANDUM OF DECISION

The right to vote "is regarded as a fundamental political right, because [it is] preservative of all rights." Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886).

> The voting rights act has proven the most successful civil rights statute in the history of the nation because it has reflected the overwhelming consensus in this nation that the most fundamental civil right of all citizens-- the right to vote-- must be preserved at whatever cost and through whatever commitment required of the federal government.

S. REP. 97-417, 111, 1982 U.S.C.C.A.N. 177, 282. This past summer, Chief Justice Roberts confirmed that "the essence of a § 2 claim . . . [is] where an electoral structure operates to minimize or cancel out minority voters' ability to elect their preferred candidates. Such a risk is greatest where minority and majority voters consistently prefer different candidates and where minority voters are submerged in a majority voting population that regularly defeat[s] their choices." Allen v. Milligan, 599 U.S. 1, 17–18 (2023) (citing Thornburg v. Gingles, 478 U.S. at 30, 47–49 (1986)) (cleaned up).

In the three cases before the Court, [1] each set of Plaintiffs argues that their voting rights have been violated by the redistricting plans recently adopted by the State of Georgia in the wake of the 2020 Census. The Court thus approaches these cases "with caution, bearing in mind that these circumstances involve 'one of the most fundamental rights of . . . citizens: the right to vote.'" Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs, 775 F.3d 1336, 1345 (11th Cir. 2015) (citations omitted).

After conducting a thorough and sifting review of the evidence in this case, the Court finds that the State of Georgia violated the Voting Rights Act when it enacted its congressional and legislative maps. The Court commends Georgia for the great strides that it has made to increase the political opportunities of Black voters in the 58 years since the passage of the Voting Rights Act of 1965. Despite these great gains, the Court determines that in certain areas of the State, the political process is not equally open to Black voters. For example, in the past

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[1] In the interest of judicial economy, and to avoid confusion, the Court issues a single order that will be filed by the Clerk in each of the above-stated cases. Although the Court issues a single order, the Court has evaluated the merits of each case independently and reached its conclusions as follows.

decade, all of Georgia's population growth was attributable to the minority population, however, the number of majority-Black congressional and legislative districts remained the same.[2] In light of this fact and in conjunction with all of the evidence and testimony in this case, the Court determines that Georgia's congressional and legislative maps violate Section 2 of the Voting Rights Act and enjoins their use in any future elections.

I. FINDINGS OF FACT

Having considered the evidence at trial, the Parties' presentations (pursuant to Federal Rule of Civil Procedure 52(c)), and closing arguments, this Court makes the following findings of fact. [3]

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[2] This finding in no way requires that the number of majority-Black congressional or legislative district be proportionate to the Black population.

[3] The Court has used the term "findings of fact" for simplicity's sake, but the Court notes that some of the foregoing findings are also conclusions of law. Similarly, the "conclusions of law" section contains some findings of fact.

The Court divides it discussion of the factual findings into four parts. First, the Court explains the procedural history of the three cases and describes the named Parties. Second, the Court considers the history of race and voting in Georgia and its changing demographics. Third, the Court explains its findings of fact about the creation of the 2021 congressional, Senate, and House districting plans based on the testimony and evidence introduced at a coordinated trial of these actions. Fourth, the Court sets forth its findings regarding the Illustrative Plans.

For reference, the following citations are used for support for each of the findings below:

Citation[4]	Document Type
APA Doc. No. [ ]	Docket entry from Alpha Phi Alpha
Grant Doc. No. [ ]	Docket entry from Grant
Pendergrass Doc. No. [ ]	Docket entry from Pendergrass

[4] All citations are to the electronic docket unless otherwise noted, and all page numbers are those imprinted by the Court's docketing software.

Tr.	Transcript of the trial hearing held September 5–14, 2023 in all three cases.[5]
PI Tr.	APA Doc. Nos. [106]–[117]; Pendergrass Doc. Nos. [73]–[85]; Grant Doc. Nos. [68]–[79]
DX	Defendants' Exhibits
APAX	Alpha Phi Alpha Plaintiffs' Exhibits
GX	Grant Plaintiffs' Exhibits
PX	Pendergrass Plaintiffs' Exhibits
JX	Joint Exhibits
Stip.	Stipulations filed at APA Doc. No. [280], Attach. E.; Grant Doc. No. [243], Attach. E.; Pendergrass Doc. No. [231], Attach. E.
Jud. Not.	Court's Order taking judicial notice at APA Doc. No. [284], Grant Doc. No. [246], Pendergrass Doc. No. [234]

[5] The Court cites to the Official Certified Hearing Transcript for the Trial provided by the court reporter. This transcript has not yet been filed on the docket.

A. Procedural History

1. Initial Filings

On December 30, 2021, Plaintiffs in the Alpha Phi Alpha case filed their Complaint against Brad Raffensperger, in his official capacity as Secretary of State of Georgia. APA Doc. No. [1]. On that same date, Plaintiffs in the Pendergrass case filed their Complaint against Raffensperger and the members of the State Election Board (the "SEB"). Pendergrass Doc. No. [1]. On January 11, 2022, Plaintiffs in the Grant case filed their Complaint against Raffensperger and the SEB. Grant Doc. No. [1]. All three Complaints alleged violations of Section 2 of the Voting Rights Act, as amended 52 U.S.C. § 10301.

On January 7, 2022, Plaintiffs in Alpha Phi Alpha Plaintiffs filed their Motion for a Preliminary Injunction. APA Doc. Nos. [26], [39]. [6] Pendergrass Plaintiffs filed their Motion for a Preliminary Injunction on January 12, 2022 (Pendergrass Doc. No. [32]) and the following day, the Grant Plaintiffs filed their Motion for Preliminary Injunction (Grant Doc. No. [19]).

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[6] Alpha Phi Alpha Plaintiffs filed a *renewed* Motion for Preliminary Injunction on January 13, 2023. Doc. No. [39].

On January 14, 2022, Defendant Raffensperger filed his Motion to Dismiss the Alpha Phi Alpha Complaint (APA Doc. No. [43]) and Defendants Raffensperger and the State Election Board members filed their Motions to Dismiss the Pendergrass and Grant Complaints (Pendergrass Doc. No. [38], Grant Doc. No. [23]). Defendants' motions primarily advanced two arguments: (1) Section 2 did not create a private right of action, therefore, Plaintiffs could not bring their claims and (2) 28 U.S.C. § 2284(a) required the Alpha Phi Alpha and Grant Plaintiffs' claims be heard by a three-judge court. Id. The Parties then briefed the Motions to Dismiss and for Preliminary Injunction on an expedited basis (APA Doc. Nos. [45]–[47], [58], [59], Pendergrass Doc. Nos. [39], [40], [44], [45], Grant Doc. Nos. [24]–[25], [35], [37]).

The Court denied Defendants' Motions to Dismiss. APA Doc. No. [65], Pendergrass Doc. No. [50], Grant Doc. No. [43]. The Court concluded that the text of Section 2284 does not require a plaintiff to request a three-judge court for purely statutory challenges to the apportionment of congressional districts and statewide legislative bodies. Id. The Court further concluded that Plaintiffs could assert their claims because, for the past forty-five years, the Supreme Court and

lower courts have allowed private individuals to assert challenges under Section 2 of the Voting Rights Act. Id.

2. Preliminary Injunction

After denying the motions to dismiss, in February 2022, the Court convened a coordinated hearing on the motions for preliminary injunction. APA Doc. No. [127], Pendergrass Doc. No. [90], Grant Doc. No. [84].

On the first day of the preliminary injunction hearing, the United States Supreme Court granted the State of Alabama's motion to stay a three-judge district court's order granting a preliminary injunction in favor of a challenge to Alabama's congressional map under Section 2. Merrill v. Milligan, 142 S. Ct. 879 (2022). The Supreme Court then accepted certiorari and placed the case on its October 2022 term calendar. Id. Justice Kavanaugh, joined by Justice Alito, wrote separately to concur in the stay. See generally id. at 879–82. In his concurrence, Justice Kavanaugh first emphasized that the stay was not a ruling on the merits, but followed Supreme Court election-law precedent that established that federal courts generally "should not enjoin state election laws in the period close to an election." Id. at 879 (citing Purcell v. Gonzalez, 549 U.S. 1 (2006)) (per curiam)).

The Court allowed the Parties in the cases *sub judice* to submit briefing and oral argument on the effect of the Milligan stay order. APA Doc. Nos. [97], [127]–[131], Pendergrass Doc. Nos. [65], [91]–[95], Grant Doc. Nos. [59], [85]–[89]. The Court thereafter decided to proceed with the preliminary injunction hearing. Over the course of the six-day preliminary injunction hearing—February 7 through February 14, 2022—the Court admitted various pieces of evidence and heard testimony from a variety of expert and fact witnesses. Id.

On February 28, 2022, the Court issued its Preliminary Injunction Order. The Court found a substantial likelihood of success on the merits in that additional majority-Black districts should have been drawn. The General Assembly should have drawn an additional majority-Black congressional district in the west-metro Atlanta (Pendergrass Plaintiffs); two additional majority-Black State Senate districts in south-metro Atlanta (Grant); two additional majority-Black State House districts in the south-metro Atlanta (Grant), and one additional majority-Black State House district in southwestern Georgia (Alpha Phi Alpha). Alpha Phi Alpha Fraternity, Inc. v. Raffensperger, 587 F. Supp. 3d 1222, 1243–320

(N.D. Ga. 2022).[7] In light of the Supreme Court's decision to stay the Milligan case, the Court ultimately denied the preliminary injunction finding that the balance of harms and public interest weighed against granting the injunction. Id. at 1321–27. Specifically, the Court found based upon the evidence presented that "the public interest of the State of Georgia would be significantly undermined by altering the election calendar and unwinding the electoral process" as of the date of its ruling. Id. at 1324.

Pursuant to Federal Rule of Civil Procedure 65(a)(2), certain evidence that was received on the preliminary injunction motions (in a format admissible at trial) has become a part of the trial record.

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[7] The Court did not find it necessary to rule on the substantial likelihood of success as to the Alpha Phi Alpha Plaintiffs' Illustrative Senate Districts 17 and 28 and Illustrative House Districts 73, 110, and 111. Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1267–68. The Court also did "not find that the Grant and Alpha Phi Alpha Plaintiffs ha[d] established that they have a substantial likelihood of succeeding on the merits of their claims that a third State Senate District should have been drawn in the Eastern Black Belt or that additional House Districts should have been drawn in the western Atlanta metropolitan area, central Georgia, or in the Eastern Black Belt." Id. at 1271 n.23.

3. Discovery and Summary Judgment

Following the preliminary injunction hearing, all Plaintiffs amended their complaints and engaged in a nine-month discovery period. APA Doc. Nos. [133], [141], Pendergrass Doc. Nos. [96], [120], Grant Doc. No. [90], [96]. Following discovery, Defendants filed Motions for Summary Judgment in all three cases. APA Doc. No. [230], Pendergrass Doc. No. [175], Grant Doc. No. [190]. The Pendergrass and Grant Plaintiffs also filed Motions for Summary Judgment. Pendergrass Doc. No. [173], Grant Doc. No. [189]. On May 18, 2023, the Court heard argument on the pending motions. APA Doc. No. [260], Pendergrass Doc. No. [209], Grant Doc. No. [224]. At the conclusion of the hearing, the Court informed the Parties that it would not rule on the motions for summary judgment until after the Supreme Court issued its opinion for the Allen case.

On June 8, 2023, the Supreme Court issued a 5-4 decision in Allen, 599 U.S. 1, affirming the three-judge court's Grant of the preliminary injunction.[8] Chief

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[8] The procedural history for the Allen case shows that the case name changed from Merrill v. Milligan to Allen v. Milligan based upon the expiration of the term of Alabama's Secretary of State and the swearing in of the successor.

Justice Roberts, writing for the majority, upheld the existing three-part framework developed in Gingles, 478 U.S. at 30 and found under a clear error review that the three-judge district court did not err in finding a substantial likelihood of success on a Section 2 violation. Id.[9]

Following the Supreme Court's Allen decision, the Parties provided supplemental briefing. APA Doc. Nos. [263], [264], Pendergrass Doc. Nos. [212], [214], Grant Doc. Nos. [227], [228]. The Court then denied all pending motions for summary judgment. APA Doc. No. [268], Pendergrass Doc. No. [215], Grant Doc. No. [229]. In all three cases, the Court found that issues of fact and credibility remained on all three Gingles preconditions as well as the totality of the circumstances. Id.

4. Trial

The Parties then proceeded to trial on the merits of Plaintiffs' claims and Defendants' affirmative defenses. Although the Court did not consolidate the three cases, at the trial, the Court heard all three cases at once (utilizing

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[9] For a thorough discussion of the Supreme Court's Allen decision, see APA Doc. No. [268].

coordinated hearing procedures). For the sake of clarity, the Court required the Parties to clearly state on the Record which testimony and which pieces of evidence were attributed to which case. APA Doc. No. [286], Pendergrass Doc. No. [236], Grant Doc. No. [248]. Over the course of the eight-day trial—spanning from September 5, 2023 through September 14, 2023—the Court heard from 20 live witnesses and accepted testimony from 22 witnesses via deposition (APA Doc. No. [292], Pendergrass Doc. No. [243], Grant Doc. No. [254]).

At the conclusion of all three Plaintiffs' presentations of evidence, Defendants moved for Judgment on Partial Findings of Fact pursuant to Federal Rule of Civil Procedure 52(c). APA Doc. No. [305], Pendergrass Doc. No. [255], Grant Doc. No. [264]. The Court verbally denied the motion. APA Doc. No. [306], Pendergrass Doc. No. [257], Grant Doc. No. [266]. Defendants then proceeded to present their case-in-chief. The Court heard closing arguments and took the matter under advisement. APA Doc. No. [308], Pendergrass Doc. No. [259], Grant Doc. No. [268].

5. Post-Trial Proceedings

Following the trial, all Parties submitted proposed findings of fact and conclusions of law for the Court's consideration. APA Doc. Nos. [317], [318], Pendergrass Doc. Nos. [268], [269], Grant Doc. Nos. [277], [278].[10] The Court has adopted and rejected portions of the Parties' submissions.

B. The Named Parties

1. Alpha Phi Alpha Plaintiffs

a) Alpha Phi Alpha Fraternity, Inc.

Alpha Phi Alpha Fraternity, Inc. is the first intercollegiate Greek-letter fraternity established for Black men. Stip. ¶ 51. Alpha Phi Alpha has programs to raise political awareness, register voters, and empower Black communities. Stip. ¶ 53. Alpha Phi Alpha has thousands of members throughout Georgia. Stip. ¶ 52.

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[10] Under the Local Rules, counsel are "directed to submit a statement of proposed Findings of Fact and Conclusions of Law in nonjury cases." LR 16.4(B)(25), NDGa. The Court does not view these proposals as evidence or post-trial briefs. To the extent that any Party raised an argument in their Proposed Findings of Fact and Conclusions of Law that was not raised in the Pretrial Order or at trial, that argument will be disregarded.

Under the Enacted Legislative Plans, Alpha Phi Alpha has members who live in State Senate Districts 16, 17, and 23 and State House Districts 74, 114, 117, 128, 133, 134, 145, 171, and 173. Id. Harry Mays is a member of Alpha Phi Alpha Fraternity, Inc. Doc. No. [94], at 2 ¶ 4; Stip. ¶ 54. Mr. Mays resides in House District 117 under the State's 2021 House Plan, and under Plaintiffs' illustrative maps would reside in a new majority-Black House District. Id. ¶¶ 55–56.

b) Sixth District African Methodist Episcopal Church

The Sixth District of the African Methodist Episcopal Church ("Sixth District AME") is a nonprofit religious organization. Stip. ¶ 57. The Sixth District AME is one of twenty districts of the AME Church and covers all of Georgia. Stip. ¶ 58. One of its core tenets is encouraging and supporting civic participation among its members through voter registration, transporting churchgoers to the polls, hosting "Get Out the Vote" efforts, and providing food, water and encouragement to people waiting in lines at the polls. Stip. ¶ 62.

Under the Enacted Legislative Plans, member-churches of the Sixth District AME are located in State Senate Districts 16, 17, and 23 and State House Districts 74, 114, 117, 128, 133, 134, 145, 171, and 173. Stip. ¶ 61. Plaintiff Phil S. Brown is a

member of the Lofton Circuit AME Church in Wrens, Georgia, and Plaintiff Janice Stewart is a member of the Saint Peter AME Church in Camilla, Georgia. Stip. ¶¶ 63–64.

c) Individually-named Plaintiffs in the APA case

Eric T. Woods is a Black resident of Tyrone, Georgia. Stip. ¶¶ 65, 66. Under the Enacted Legislative Plans, Mr. Woods is a registered voter in State Senate District 16. Stip. ¶¶ 67, 68. Katie Bailey Glenn is a Black resident of McDonough, Georgia. Stip. ¶¶ 70, 71. Under the Enacted Legislative Plans, Ms. Bailey is a registered voter in State Senate District 17. Stip. ¶¶ 72, 73. Phil S. Brown is a Black resident of Wrens, Georgia. Stip. ¶¶ 75, 76. Under the Enacted Legislative Plans, Mr. Brown is a registered voter in State Senate District 23. Stip. ¶¶ 77, 78. Janice Stewart is a Black resident of Thomasville, Georgia. Stip. ¶¶ 80, 81. Under the Enacted Legislative Plans, Ms. Stewart is a registered voter in State House District 173. Stip. ¶¶ 82, 83.

2. *Pendergrass Plaintiffs*

Coakley Pendergrass is a Black resident of Cobb County, Georgia. Stip. ¶¶ 1, 2. Under the Enacted Congressional Plan, Mr. Coakley is a registered voter in Congressional District 11. Stip. ¶ 3. Triana Arnold is a Black resident of

Douglas County, Georgia. Stip. ¶¶ 4, 5. Under the Enacted Congressional Plan, Ms. Arnold is a registered voter in Congressional District 3. Stip. ¶ 6. Elliott Hennington is a Black resident of Cobb County, Georgia. Stip. ¶¶ 7, 8. Under the Enacted Congressional Plan, Mr. Hennington is a registered voter in Congressional District 14. Stip. ¶ 9. Robert Richards is a Black resident of Cobb County, Georgia. Stip. ¶¶ 10, 11. Under the Enacted Congressional Plan, he is a registered voter in Congressional District 14. Stip. ¶ 12. Jens Rueckert is a Black resident of Cobb County, Georgia. Stip. ¶¶ 13, 14. Under the Enacted Congressional Plan, Mr. Rueckert is a registered voter in Congressional District 14. Stip. ¶ 15. Ojuan Glaze is a Black resident of Douglas County, Georgia. Stip. ¶¶ 16, 17. Under the Enacted Congressional Plan, Mr. Glaze is a registered voter in Congressional District 13. Stip. ¶ 18.

3. *Grant Plaintiffs*

Annie Lois Grant is a Black resident of Union Point, Georgia. Stip. ¶¶ 19, 20. Under the Enacted Legislative Plans, Ms. Grant is a registered voter in State Senate District 24 and State House District 124. Stip. ¶ 20. Quentin T. Howell is a Black resident of Milledgeville, Georgia. Stip. ¶¶ 21, 22. Under the Enacted

Legislative Plans, Mr. Howell is a registered voter in State Senate District 25 and State House District 133. Stip. ¶ 23. Elroy Tolbert is a Black resident of Macon, Georgia. Stip. ¶¶ 24, 25. Under the Enacted Legislative Plans, Mr. Tolbert is a registered voter in State Senate District 18 and State House District 144. Stip. ¶ 26. Triana Arnold James is a Black resident of Villa Rica, Georgia. Stip. ¶¶ 27, 28. Under the Enacted Legislative Plans, Ms. James is a registered voter in State Senate District 30 and State House District 64. Stip. ¶ 29. Eunice Sykes is a Black resident of Locust Grove, Georgia. Stip. ¶¶ 30, 31. Under the Enacted Legislative Plans, Ms. Sykes is a registered voter in State Senate District 25 and State House District 117. Stip. ¶ 33. Elbert Solomon is a Black resident of Griffin, Georgia. Stip. ¶¶ 33, 34. Under the Enacted Legislative Plans, Mr. Solomon is a registered voter in State Senate District 16 and State House District 117. Stip. ¶ 35.

Dexter Wimbish is a Black resident of Griffin, Georgia. Stip. ¶¶ 36, 37. Under the Enacted Legislative Plans, Mr. Wimbish is a registered voter in State Senate District 16 and State House District 74. Stip. ¶ 38. Garrett Reynolds is a Black resident of Tyrone, Georgia. Stip. ¶¶ 39, 40. Under the Enacted Legislative Plans, Mr. Reynolds is a registered voter in State Senate District 16 and State

House District 68. Stip. ¶ 41. Jacqueline Faye Arbuthnot is a Black resident of Powder Springs, Georgia. Stip. ¶¶ 42, 43. Under the Enacted Legislative Plans, Ms. Arbuthnot is a registered voter in State Senate District 31 and State House District 64. Stip. ¶ 44. Jacquelyn Bush is a Black resident of Fayetteville, Georgia. Stip. ¶¶ 45, 46. Under the Enacted Legislative Plans, Ms. Bush is a registered voter in State Senate District 16 and State House District 74. Stip. ¶ 47. Mary Nell Conner is a Black resident of Henry County, Georgia. Stip. ¶¶ 48, 49. Under the Enacted Legislative Plans, Ms. Conner is a registered voter in State Senate District 25 and State House District 117. Stip. ¶ 50.

4. Defendants

a) Brad Raffensperger

Brad Raffensperger is the Georgia Secretary of State. Stip. ¶ 85. The Secretary of State is a constitutional officer elected by Georgia voters every four years. Ga. Const. Art. 5, § 3, par. 1. Under Georgia law, the Secretary of State is required:

> (1) [t]o determine the forms of nomination petitions, ballots, and other forms;
> . . . .

> (6) [t]o receive from the superintendent the returns of primaries and elections and to canvass and compute the votes cast for candidates and upon questions;
> . . . .
> (13) [t]o prepare and furnish information for citizens on voter registration and voting; and
> . . . .
> (15) [t]o develop, program, building, and review ballots for use by counties and municipalities on voting systems in use in the state.

O.C.G.A. § 21-2-50(a).

b) The State Election Board[11]

The State Election Board ("SEB") was created by legislation codified in the Georgia's Election Code, O.C.G.A. § 21-2-30(a). It consists of five members, including a representative of each of the two major political parties. Id. § 21-2-

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[11] The Court notes for the record that Defendant Raffensperger is sued in his official capacity in all three lawsuits, the members of the SEB are sued in their official capacities in Pendergrass and Grant. As will be discussed below, the Court finds that the Pendergrass and Grant Plaintiffs did not introduce any evidence about the SEB's ability to redress their injuries or that the injury is traceable to it. Thus, the Court ultimately finds that the Pendergrass and Grant Plaintiffs lack standing to sue the SEB. See Section II(A)(1)(b) *infra*. However, throughout this Opinion and Memorandum, the Court will collectively refer to all Defendants, even though the SEB is ultimately dismissed and was not sued by the Alpha Phi Alpha Plaintiffs. However, any relief will be directed to Secretary of State Raffensperger.

30(c). Sarah Tindall Ghazal, Janice Johnston, Edward Lindsey, and Matthew Mashburn serve as members of the SEB. Stip. ¶¶ 86–89. [12]

Under Georgia law, moreover, the SEB has a statutory duty to "formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections." O.C.G.A. § 21-2-31(2). Georgia law also tasks the SEB with "investigat[ing] or authoriz[ing] the Secretary of State to investigate, when necessary or advisable[,] the administration of primary and election laws and frauds and irregularities in primaries and elections and to report violations of the primary and election laws either to the Attorney General or the appropriate district attorney . . . ." Id. § 21-2-31(5). Furthermore, the SEB is "vested with the power to issue orders, after the completion of appropriate proceedings, directing compliance with [the Election

[12] Defendants have filed a notice indicating that on September 1, 2023, the Honorable William S. Duffey, Jr., stepped down as a chair of the State Election Board. Pendergrass Doc. No. [270], Grant Doc. No. [279]. Because Duffey was sued in his official capacity, this resignation does not abate the action, but does lead to Duffey being terminated as a named-party under the applicable rules of civil procedure. See Fed. R. Civ. P. 21; 25(d).

Code] or prohibiting the actual or threatened commission of any conduct constituting a violation . . . . " Id. § 21-2-33.1(a).

Additionally, Georgia law tasks the SEB with oversight authority over the counties. See O.C.G.A. § 21-2-31(1) ("It shall be the duty of the [SEB] . . . [t]o promulgate rules and regulations so as to obtain uniformity in the practices and proceedings of superintendents, registrars, deputy registrars, poll officers, and other officials, as well as the legality and purity in all primaries and elections[.]"); id. at § 21-2-31(2) ("[t]o formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections"); id. at § 21-2-31(5) ("[t]o investigate, or authorize the Secretary of State to investigate, when necessary or advisable the administration of primary and election laws and frauds and irregularities in primaries and elections and to report violations of the primary and election laws either to the Attorney General or the appropriate district attorney who shall be responsible for further investigation and prosecution.").

C. History of Race and Voting in Georgia

In 1965, Congress passed the Voting Rights Act ("VRA"). While the VRA has been amended several times, as originally adopted, Section 2 prohibited practices that denied or abridged the right to vote "on account of" race or color. See Allen, 599 U.S. at 11 n.1 (citing 42 U.S.C. § 1973 (1970 ed.)).

The Act was amended in 1982. Id. at 11. Section 4 of the VRA (the "coverage formula") determined which jurisdictions were "covered" and were required to submit new voting procedures or practices for prior approval ("preclearance") by the Department of Justice or a district court panel of three judges, pursuant to Section 5. See James D. Wascher, Recognizing the 50th Anniversary of the Voting Rights Act, Fed. Law., May 2015, at 41 (hereinafter, "Wascher"). The VRA thus "employed extraordinary measures to address an extraordinary problem." Shelby Cnty. v. Holder, 570 U.S. 529, 534 (2013). Georgia was a covered jurisdiction because in the 1960s and early 1970s, the whole state had low voter registration or turnout and maintained tests or devices as prerequisites to voting (i.e., poll taxes, literacy tests, and grandfathering rules). Id. at 536–37 (28 C.F.R. pt. 51, App. (2012)).

During Georgia's last redistricting cycle in 2011, which was subject to preclearance under Section 5 of the Voting Rights Act, the Department of Justice ("DOJ") precleared Georgia's proposed State Senate, State House, and Congressional Plans. See Jud. Not.[13]

Following those determinations, in 2013, the Supreme Court held that the coverage formula was no longer constitutional because it had not been reformulated since 1975. Shelby Cnty., 570 U.S. at 538, 556–57. As a result, the State of Georgia is no longer a covered jurisdiction and is no longer required to send district plans or any proposed voting practices or procedural changes to the DOJ for preclearance. The 2020 redistricting cycle is the first in which Georgia was not required to seek preclearance before adopting its new congressional and legislative plans.

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[13] The precleared plans were utilized in the 2012 election and will hereinafter be referred to as the "2012 Plans."

D. Georgia's Changing Demographics

1. Georgia's Total Population

Between 2000 and 2010, Georgia's population increased by a little over 1.5 million people (from 8,186,453 to 9,687,653), which marked a population growth rate of 18.34%. PX 1, fig.3. The growth of the minority population accounted for approximately 14.85% of this growth rate, the Any-Part Black ("AP Black") [14] population alone accounted for 8.07%, and the white population accounted for approximately 3.48% of Georgia's growth rate. Id. During this time, the minority population increased by 1,215,941 people and had a growth rate of 34.66%. PX 1, fig.3. The AP Black population increased by 660,673 people and had a growth rate of 27.60%. Id. Meanwhile, Georgia's white population grew by 285,259 people and had a growth rate of 5.56%. Id. Following the 2010 Census, as a result of population growth, Georgia was apportioned a 14th Congressional

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[14] "AP Black" is defined as the combined total of all persons who are single-race Black and persons who are two or more races and one of them is Black. Stip. ¶ 95. "[I]t is proper to look at *all* individuals who identify themselves as [B]lack" in their census responses, even if they "self-identify as both [B]lack and a member of another minority group," because the inquiry involved is "an examination of only one minority group's effective exercise of the electoral franchise." Georgia v. Ashcroft, 539 U.S. 461, 473 n.1 (2003).

District. Stip. ¶ 94. During this time, the growth of the minority population outpaced the white population by approximately 6 times and the Black population outpaced the white population by approximately 5 times.

In 2020, the United States Census Bureau conducted the 2020 Census. The Census results were provided to Georgia on August 21, 2021. Stip. ¶ 92. Between 2010 and 2020 Georgia's total population increased by over a million people to 10,711,908, which marked a population growth rate of 10.57%. Id. ¶ 93; PX 1, fig.3; Tr. 718:4–6. The growth of the minority population accounted for approximately 11.11% of this growth rate, the AP Black population alone accounted for 5.00%, and the white population accounted for approximately -0.53% of Georgia's growth rate. Id. Meaning, all of Georgia's population growth during the past decade is attributable to the growth of the minority population. PX 1 ¶ 14, fig.1, Tr. 718:7–15. During this time, the minority population increased by 1,076,019 people and had a growth rate of 25.18%. PX 1, fig.3. The AP Black population increased by 484,048 people and had a growth rate of 15.85%. Id. Meanwhile, Georgia's white population decreased by 51,764 people and had a negative growth rate of –0.9%. Id. Over the past two decades, Georgia's Black and

minority populations continued to have a double-digit rate of growth; whereas, in the last decade, the white population has begun to decline in Georgia.

In total numbers, Georgia's AP Black population increased by 484,048 people since 2010. Stip. ¶ 95; PX 1 ¶ 14, fig.3. Between 2010 and 2020 the AP Black population accounted for 47.26% of Georgia's total population growth. Stip. ¶¶ 96, 102; PX 1 ¶ 14 & fig.1. And the proportion of the AP Black population overall increased from 31.53% to 33.03% over the same period. Stip. ¶ 102; PX 1 ¶ 16. Meanwhile, Georgia's single-race white population decreased by 51,764 people and makes up 50.06% of Georgia's population, which is a razor thin majority of Georgia's population. Stip. ¶¶ 99, 102. Georgia's minority population now totals 49.94%. PX 1 ¶ 14 & fig.1.

2. *Metro Atlanta*

The Atlanta Metropolitan Statistical Area ("Atlanta MSA") [15] had a population growth of 803,087 persons between 2010 and 2020, which accounts

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[15] The Atlanta MSA consists of the following 29 counties: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton,

for approximately 78.41% of Georgia's total population growth. Stip. ¶ 107; PX . 1 ¶ 14 & fig.1; id. ¶ 30 & fig.5. The AP Black population accounted for 409,927 of those persons, which amounts to 51.04% of the population growth in Atlanta and 40.02% of Georgia's population growth. Id. The AP Black population is 35.91% of the Atlanta MSA, which was an increase from 33.61% in 2010. Stip. ¶ 108. The AP Black population accounts for 34.86% of the Atlanta MSA's total voting age population. Stip. ¶ 110.

According to the 2020 Census, the Atlanta MSA has a total voting-age population of 4,654,322 persons, of whom 1,622,469 (34.86%) are AP Black. Stip. ¶ 110. The non-Hispanic white voting-age population is 4,342,333 (52.1%). PX 1 ¶ 31 & fig.6. And, the 11 ARC counties account for more than half (54.7%) of the statewide Black population. PX 1 ¶ 28.

Based on the 2020 Census, the combined Black population in Cobb, Fulton, Douglas, and Fayette Counties is 807,076 persons, more than necessary to

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Paulding, Pickens, Pike, Rockdale, Spalding, and Walton. Stip. ¶ 106. The Atlanta Regional Commission ("ARC") is comprised of 11 core counties within the Atlanta MSA: Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, and Rockdale. Stip. ¶ 111.

constitute an entirely AP Black congressional district[16]—or a majority in two congressional districts. PX 1 ¶ 42 & fig.8. The population is 100,000 people more than needed to constitute an entirely AP Black Senate district[17] in this area, and nearly 5 entirely AP Black House Districts.[18] More than half (53.27%) of the total population increase in these four counties since 2010 can be attributed to the increase in the Black population. PX 1 ¶ 43.

The southeastern metro-Atlanta area has experienced similar growth patterns. In 2000, 18.51% of the population in the five-county Fayette-Spalding-Henry-Rockdale-Newton area was Black. Stip. ¶ 114; APAX 1, 25 & fig.7. By 2010, the Black population in that area more than doubled to reach 36.70% of the overall population, then grew to 46.57% in 2020. Id. Between 2000 and 2020, the Black population in this five-county South Metro Atlanta area quadrupled, from 74,249 to 294,914. Stip. ¶ 115. This area is now plurality Black. APAX 1, 25 & fig.7. Fayette and Spalding Counties have seen Black population increases of 54.5%

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[16] The ideal population size of a congressional district is 765,136 people. Stip. ¶ 197.

[17] The ideal population size for a Senate district is 191,284 people. Stip. ¶ 277

[18] The ideal population size for a House district is 59,511 people. Stip. ¶ 278.

and 18.7%, respectively, since 2010. APAX 1, at 40 ¶ 97. Henry County's Black population has increased by 39.3% in the last decade, and Henry County is now plurality Black. Id. ¶ 102. As Mr. Cooper explained, in the 1990s, Henry County was not even "10 percent Black" but the county has "change[d] over time." Tr. 116:17–18.

Meanwhile, under the 2000 Census, the population in the 29-county Atlanta MSA was 60.42% non-Hispanic white, decreased to 50.78% in 2010, and decreased further to 43.71% in 2020. PX 1 ¶ 25 & fig.4. Between 2010 and 2020, the non-Hispanic white population in the Atlanta MSA decreased by 22,736 persons. Stip. ¶ 112; PX 1 ¶ 25 & fig.4; Tr. 721:19–23.

3. *The Black Belt*

The Black Belt refers to an area that runs across the southeastern United States. Stip. ¶ 118. The Black Belt, is in part, characterized by significant Black populations and a shared history of antebellum slavery and plantation agriculture. Id. Georgia's portion of the Black Belt runs across the middle of the State between Augusta and Southwest Georgia. Stip. ¶ 119. Unlike, the Atlanta MSA, it is not comprised of a specific set of whole counties.

a) Eastern Black Belt Region

The Georgia Department of Community Affairs ("GDCA") has prepared regional commission maps, including of the Central Savannah River Area region. APAX 1, 13 ¶ 26; id. at 118-119, Ex. F. The Central Savannah River Area Counties include: Jenkins, Burke, Richmond, Jefferson, McDuffie, Wilkes, Taliaferro, Glascock, Warren, Washington, and Hancock. Ten of these 11 contiguous counties—excluding Glascock—are identified as part of Georgia's Black Belt by the Georgia Budget and Policy Institute. APAX 1, 13–14 ¶ 27; DX 22, at 20–25; Stip. ¶¶ 120–123. Mr. Cooper defined this set of 11 counties as part of the "Eastern Black Belt." APAX 1 ¶ 24. These same counties are consistent with Mr. Esselstyn's understanding of the eastern portion of the Black Belt. GX 1 ¶ 19 & fig.1.

According to Mr. Cooper's analysis, between 2000 and 2020, the total population in the Eastern Black Belt has remained relatively constant. APAX 1 ¶ 58 & fig.8. And, at least 40% of these eleven counties are AP Black and over the past two decades, their share of the population increased from 50.66% to 54.62%. Stip. ¶¶ 120, 122. Meanwhile, the white population decreased from 45.61% to

38.17% of the population over the same period. Stip. ¶ 123. In other words, the Black population in this area has become more concentrated over time, and now comprises a majority.

b) Metro-Macon Region

Metropolitan Macon is a seven-county region in Middle Georgia defined by the combined Metropolitan Statistical Areas ("MSAs") of Macon-Bibb and Warner Robins. Stip. ¶ 124; APAX 1, at 15–16 ¶ 33. The Macon-Bibb MSA includes the counties of Twiggs, Macon-Bibb, Jones, Monroe, and Crawford. Stip. ¶ 124; APAX 1, at 16 n.14. The adjacent Warner Robins MSA encompasses Houston and Peach Counties. Stip. ¶ 124; APAX 1, 16 n.14. Three of the Macon-area counties are "identified as part of Georgia's Black Belt"—Macon, Bibb, Peach, and Twiggs, encompassing about 59% of the Black population (177,269) in the seven-county region. APAX 1, 29; GX 1 ¶ 19 & fig.1. Between 2000 and 2020, the AP Black population increased from 36.89% to 41.67% of the Macon MSA. Stip. ¶ 126. Meanwhile, the white population decreased from 59.40% to 49.10% of the Macon MSA. Stip. ¶ 127.

c) Southwestern Georgia Region

The relevant counties in southwest Georgia include: Sumpter, Webster, Stewart, Quitman, Clay, Randolph, Terrell, Calhoun, Dougherty, Early, Baker, and Mitchell. Stip. ¶¶ 128–132. Twelve of the thirteen counties in Senate District 12—all but Miller County—are identified by the Georgia Budget and Policy Institute as Black Belt counties. APAX 1, 15 ¶ 32; DX 22, at 20–25. At least 40% of this region is AP Black, and all but Miller County is at least 40% AP Black. Stip. ¶ 128. Between 2000 and 2020, the population decreased in this area from 214,686 to 190,819 (11.12%). Stip. ¶ 130. While the AP Black and white populations have decreased over the past two decades, the share of the AP Black population increased from 55.33% to 60.6%, and the white population decreased from 42.36% to 33.83%. Stip. ¶¶ 131, 132.

E. Georgia 2021 Enacted Plans

1. The 2021 Redistricting Process

a) Legislative activities

In the wake of the COVID-19 pandemic, the Georgia General Assembly underwent the constitutionally required process of redistricting. Article One, Section 2, Clause 3 of the United States Constitution provides:

"Representatives . . . shall be apportioned among the several States which may be included within the Union, according to their respective Numbers . . . . The actual Enumeration shall be made . . . every [ ] Term of ten Years, in such Manner as they shall by Law direct." U.S. Const. art. I, §2, cl. 3.

In 2021 and prior to the public release of the redistricting plans, the House Legislative and Congressional Reapportionment and Senate Reapportionment and Redistricting Committees adopted guidelines. Stip. ¶¶ 134, 135. The general principles for drafting plans for the House Legislative and Congressional Reapportionment Committee are as follows:

III. REDISTRICTING PLANS

A. GENERAL PRINCIPLES FOR DRAFTING PLANS

1. Each congressional district should be drawn with a total population of plus or minus one person from the ideal district size.

2. Each legislative district of the General Assembly should be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.

3. All plans adopted by the Committee will comply with Section 2 of the Voting Rights Act of 1965, as amended.

4. All plans adopted by the Committee will comply with the United States and Georgia Constitutions.

5. Districts shall be composed of contiguous geography. Districts that connect on a single point are not contiguous.

6. No multi-member districts shall be drawn on any legislative redistricting plan.

7. The Committee should consider:

   a. The boundaries of counties and precincts;

   b. Compactness; and

   c. Communities of interest.

8. Efforts should be made to avoid the unnecessary pairing of incumbents.

9. The identifying of these criteria is not intended to limit the consideration of any other principles or factors that the Committee deems appropriate.

Stip. ¶ 134; JX 2, 3. The general principles for drafting plans for the Senate Reapportionment and Redistricting Committee are as follows:

III. REDISTRICTING PLANS

A. GENERAL PRINCIPLES FOR DRAFTING PLANS

1. Each congressional district should be drawn with a total population of plus or minus one person from the ideal district size.

2. Each legislative district of the General Assembly should be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.

3. All plans adopted by the Committee will comply with Section 2 of the Voting Rights Act of 1965, as amended.

4. All plans adopted by the Committee will comply with the United States and Georgia Constitutions.

5. Districts shall be composed of contiguous geography. Districts that connect on a single point are not contiguous.

6. No multi-member districts shall be drawn on any legislative redistricting plan.

7. The Committee should consider:

   a. The boundaries of counties and precincts;

   b. Compactness; and

   c. Communities of interest.

8. Efforts should be made to avoid the unnecessary pairing of incumbents.

9. The identifying of these criteria is not intended to limit the consideration of any other principles or factors that the Committee deems appropriate.

Stip. ¶ 135; JX 1, 3.

The redistricting process consisted of the following actions. Beginning on June 15, 2021 and between June and July of 2021, the Georgia General Assembly held nine in-person and two virtual joint public hearing committees on redistricting. Stip. ¶ 136. The joint redistricting committee released educational videos about the redistricting process. Stip. ¶ 137. The Georgia General Assembly created an online portal and received 1,000 comments from voters in 86 counties. Stip. ¶ 138.

On August 21, 2021, the Census Bureau released its detailed population data gathered from its 2020 canvassing efforts. Stip. ¶ 140. On August 30, 2021, the General Assembly's joint redistricting committees held a meeting with interest groups. Stip. ¶ 141. The National Conference of State Legislatures, American Civil Liberties Union of Georgia, Common Cause, Fair Districts GA, the Democratic Party of Georgia, and Asian-Americans Advancing Justice–Atlanta presented at the August 30, 2021 joint meeting. Stip. ¶ 142.

b) Map drawing process

Gina Wright, the Executive Director of the Georgia General Assembly's Office of Legislative and Congressional Reapportionment, testified at trial that

she drew Georgia's redistricting plans for Congress, State Senate, and State House in 2021. Tr. 1605:14–16. As a fact witness, the Court found Ms. Wright to be highly credible in her knowledge about Georgia's map drawing process. The Court also found Ms. Wright's testimony about various areas of the state to be credible and reliable.

Ms. Wright testified that generally she began drafting the new legislative plans by using blank maps, rather than starting from the existing plans. Tr. 1622:11–17; 1642:7–14. She then put the ideal population size, using the Census population, into the blank map. Tr. 1622:11–13. At times, she layered the new maps with the former map to see if she retained core districts. Tr. 1607:8–1621:18–22. Ms. Wright used the eyeball test and did not look at compactness scores when she drew the congressional and legislative districts. Tr. 1610:3–1611:12.

Once she drew the blind map, she gave the map to the chairmen of the House Legislative and Congressional Reapportionment and Senate Reapportionment and Redistricting Committees. Tr. 1623:4–6. Ms. Wright then made adjustments as requested by Senator Kennedy, chairman of the Senate

Reapportionment and Redistricting Committee, Representative Bonnie Rich, a former member of the House Reapportionment and Redistricting Committee, and other members, if requested. Tr. 1626:10–1627:1; 1641: 24–1642:1. Ms. Wright also incorporated the information she received from the public hearings when drawing the plans. Tr. 1627:2–13.

The Congressional map was drawn in a slightly different manner. Instead of starting with a blank map, Ms. Wright testified that the chairman asked her to draw a benchmark map that had a more specific framework than the State legislative plans. Tr. 1666:5–11. There was no testimony or further explanation about the specific framework that was requested to go into the benchmark map.

The Proposed 2021 Senate and House Plans were first released on November 2, 2021. Stip. ¶ 143. Following their release, the joint redistricting committees received public comment on the proposed maps. Stip. ¶ 146. On November 3, 2021, the General Assembly convened a special session, in part, to consider the proposed Senate and House Plans. Stip. ¶ 144. The House and Senate redistricting committees held multiple meetings during the special session. Stip. ¶ 145. During this time, the House and Senate redistricting committees

received public comment on the draft plans during their committee meetings. Stip. ¶ 146.

On November 12, 2021, the General Assembly passed the 2021 Senate and House Plans (SB 1EX and HB 1EX, respectively) (collectively, the "Enacted Legislative Plans," individually, the "Enacted Senate Plan" and "Enacted House Plan"). Stip. ¶ 147. On November 22, 2021, the General Assembly passed the 2021 Congressional Redistricting Plan (the "Enacted Congressional Plan"). Stip. ¶ 148. No Democratic members of the General Assembly or Black representatives voted in favor of the 2021 Enacted Congressional, Enacted Senate, or Enacted House Plans (collectively "the Enacted Plans"). Stip. ¶¶ 150, 151. On December 30, 2021, Governor Kemp signed the Enacted Plans into law. Stip. ¶ 149. The Enacted Plans were used in the 2022 Elections. Stip. ¶ 152.

2. *Enacted Plan Statistics*

a) Congressional Plan

(1) 2012 Congressional plan

The 2012 Congressional Plan was precleared under Section 5 of the VRA by the DOJ. See Jud. Not.; see also Attorney General Press Release, https://law.georgia.gov/press-releases/2011-12-23/justice-approves-georgias-

redistricting-plans; Charles Bullock, The History of Redistricting in Georgia, 52 Ga. L. Rev. 1057, 1097–98 (Summer 2018).

Pursuant to the population increase shown in the 2010 Census results, for the first time, Georgia was apportioned an additional seat in the U.S. House of Representatives, making Georgia's U.S. House of Representative delegation a total of 14 members. See United States Census Bureau, Historical Apportionment Data (1910-2020), https://www.census.gov/data/tables/time-series/dec/apportionment-data-text.html (last visited Sept. 15, 2023).[19]

The 2012 Congressional Plan contained four districts where the AP Black Voting Age Population ("AP BVAP") was in the majority. Stip. ¶ 160. Three of those districts were located within the Atlanta MSA. Stip. ¶ 162. The 2012 Congressional Plan split 16 counties. Stip. ¶ 165. The average Reock Score[20] for

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[19] The Court takes judicial notice of the Decennial Census data. See United States v. Phillips, 287 F.3d 1053, 1055 n.1 (11th Cir. 2002) (citing Hollis v. Davis, 941 F.2d 1471, 1474 (11th Cir. 1991) and Moore v. Comfed Savings Bank, 908 F.2d 834, 841 n.4 (11th Cir. 1990)) (taking judicial notice of the United States Census Bureau's 1990 census figures); Grant Doc. No. [229], at 9 n.10 (taking judicial notice of 2020 U.S. Census figures).

[20] "The Reock test is an area-based measure that compares each district to a circle, which

the 2012 Congressional Plan is 0.45 and the average Polsby-Popper Score[21] is 0.26. Stip. ¶ 168; PX 1, Ex. L-2.

District[22]	2012 Congressional Plan Reock Score	2012 Congressional Plan Polsby-Popper Score
1	0.40	0.23
*2	0.44	0.31
3	0.55	0.28
*4	0.54	0.27
*5	0.52	0.37
6	0.49	0.27
7	0.45	0.26
8	0.33	0.16
9	0.36	0.30
10	0.52	0.27
11	0.50	0.28
12	0.41	0.19
*13	0.38	0.16
14	0.45	0.31
Mean	**0.45**	**0.26**
Max:	**0.55**	**0.37**
Min:	**0.33**	**0.16**

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is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact." Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1275 n.24 (citation omitted).

[21] "The Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter: $4\pi Area/(Perimeter^2)$. The measure is always between 0 and 1, with 1 being the most compact." Id. at 1275 n.26.

[22] The asterisk (*) denotes a majority AP Black district. Stip. ¶¶ 166, 167; Pendergrass Doc. Nos. [174-1], 61; [174-2], 25, 69.

(2) Enacted Congressional Plan

Pursuant to the 2020 Census, Georgia was apportioned 14 seats in the U.S. House of Representatives. Stip. ¶ 94. A colorized version of the Enacted Congressional Plan was introduced into evidence at trial and is below.

PX 1, Ex. G.

The Enacted Congressional Plan contains four districts where the non-Hispanic Department of Justice Black citizen voting age population ("NH DOJ BCVAP")[23] is in the majority—CD-2 (50.001%), CD-4 (58.46%), CD-5 (52.35%), and CD-13 (67.05%). Stip. ¶ 161; PX 1 ¶ 53 & fig.11. The AP BVAP, however, only exceeds 50% in 2 districts CD-4 (54.54%) and CD-13 (66.75%). The AP BVAP of CD-2 is 49.29% and CD-5 is 49.60%. PX 1, Ex. K-1. All but one of those districts is contained in the Atlanta MSA. Stip. ¶ 166; PX 1, Ex. J-2. The Enacted Congressional Plan splits 15 counties. Stip. ¶ 164. It also split 46 VTDs.[24] PX 1 ¶ 81. The average Reock Score for the 2021 Congressional Plan is 0.44 and the average Polsby-Popper Score is 0.27. Stip. ¶ 168; PX 1, Ex. L-3.

A table that shows the Reock and Polsby score comparisons is as follows:

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[23] The "NH DOJ Black CVAP" category includes voting age citizens who are either NH single-race Black or NH Black and White. An "Any Part Black CVAP" category that would include Black Hispanics cannot be calculated from the 5-Year ACS Census Bureau Special Tabulation." PX 1 ¶ 57 n.10.

[24] "'VTD' is a Census Bureau term meaning 'voting tabulation district.' VTDs generally correspond to precincts." PX 1 ¶ 11 n.4.

District[25]	2021 Congressional Plan Reock Score	2021 Congressional Plan Polsby-Popper Score
1	0.46	0.29
*2	0.46	0.27
3	0.46	0.28
*4	0.31	0.25
*5	0.51	0.32
6	0.42	0.20
7	0.50	0.39
8	0.34	0.21
9	0.38	0.25
10	0.56	0.28
11	0.48	0.21
12	0.50	0.28
*13	0.38	0.16
14	0.43	0.37
Mean	**0.44**	**0.27**
Max:	**0.56**	**0.39**
Min:	**0.31**	**0.16**

PX 1, Ex. L-3.

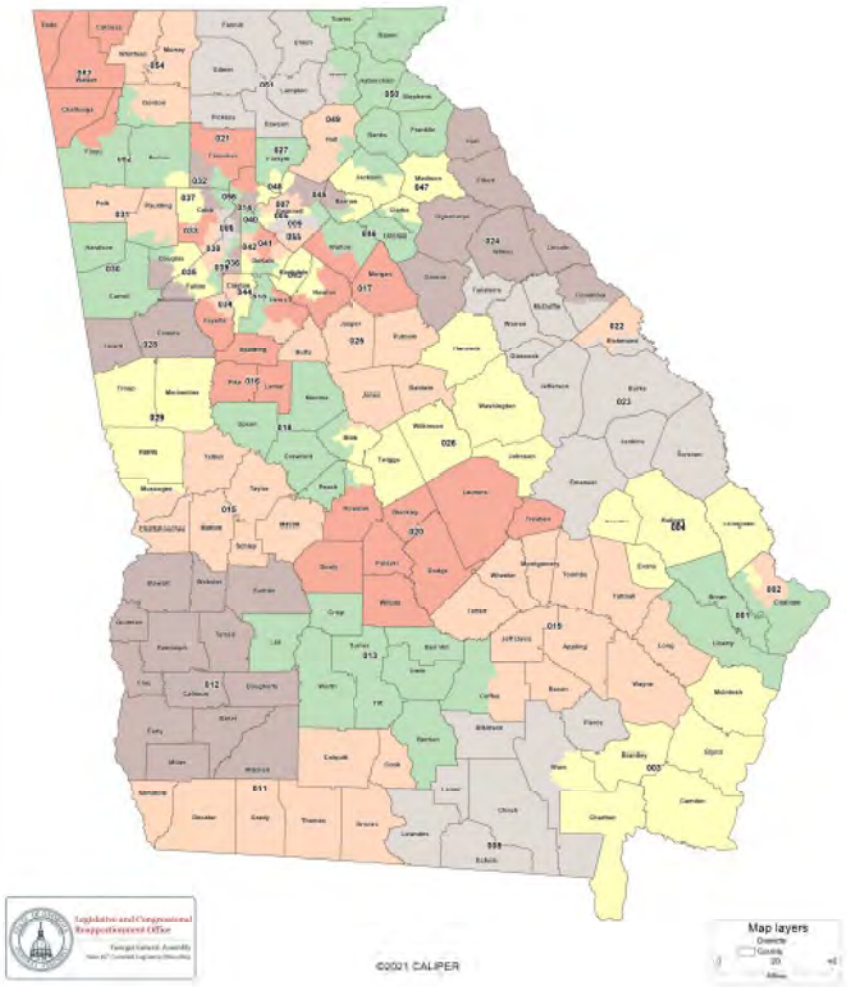
b) State Senate Plan

Under Georgia law, "[t]here shall be 56 members of the Senate. The General Assembly shall by general law divide the state into 56 Senate districts

[25] The asterisk (*) denotes a majority AP Black district.

which shall be composed of a portion of a county or counties or a combination thereof and shall be represented by one Senator elected only by the electors of such district." O.C.G.A. § 28-2-2; see also Ga. Const. art. III, § 2, ¶ I. The ideal population for a Senate district in 191,284 people. Stip. ¶ 277.

Below is the Enacted Senate Plan:



APAX 1, Ex. L.

Under the Enacted Senate Plan, the greatest population deviation is ±1.03%. Id. The average population deviation is 0.53%. Id. The Enacted Senate Plan split 29 counties. APAX 1 ¶ 116; fig.21. It also split 40 VTDs. Id. The Enacted Senate Plan did not pair any incumbents who were running for reelection. Stip. ¶ 175.

The Enacted Senate Plan contains 14 Senate districts where the ABVAP is the majority of the population, ten of the districts are fully within the Atlanta MSA. Stip. ¶¶ 176, 186; APAX 1, Ex. M-1. This is a reduction of one majority-Black district in the Senate Plan as a whole. Stip. ¶¶ 173, 177 (indicating that the 2014 Senate Plan contained 15 majority-Black Senate Districts with 10 wholly within the Atlanta MSA). The following is a Table depicting the majority AP Black districts and the percentage of the districts that is AP BVAP.

District	% AP BVAP
10	71.46
12	57.97
15	54.00
22	56.50
26	56.99
34	69.54
35	71.90
36	51.34
38	65.30
39	60.70
41	62.61
43	64.33
44	71.34
55	65.97

APAX 1, M-1.

The Enacted Senate Plan has an average Reock score of 0.43 and Polsby-Popper Score of 0.27. Stip. 189; APAX 1, Ex. S-2. The maximum and minimum Reock scores are 0.68 and 0.14. Id. The maximum and minimum Polsby-Popper scores are 0.62 and 0.11. Id. The compactness scores for the majority-Black districts are as follows:

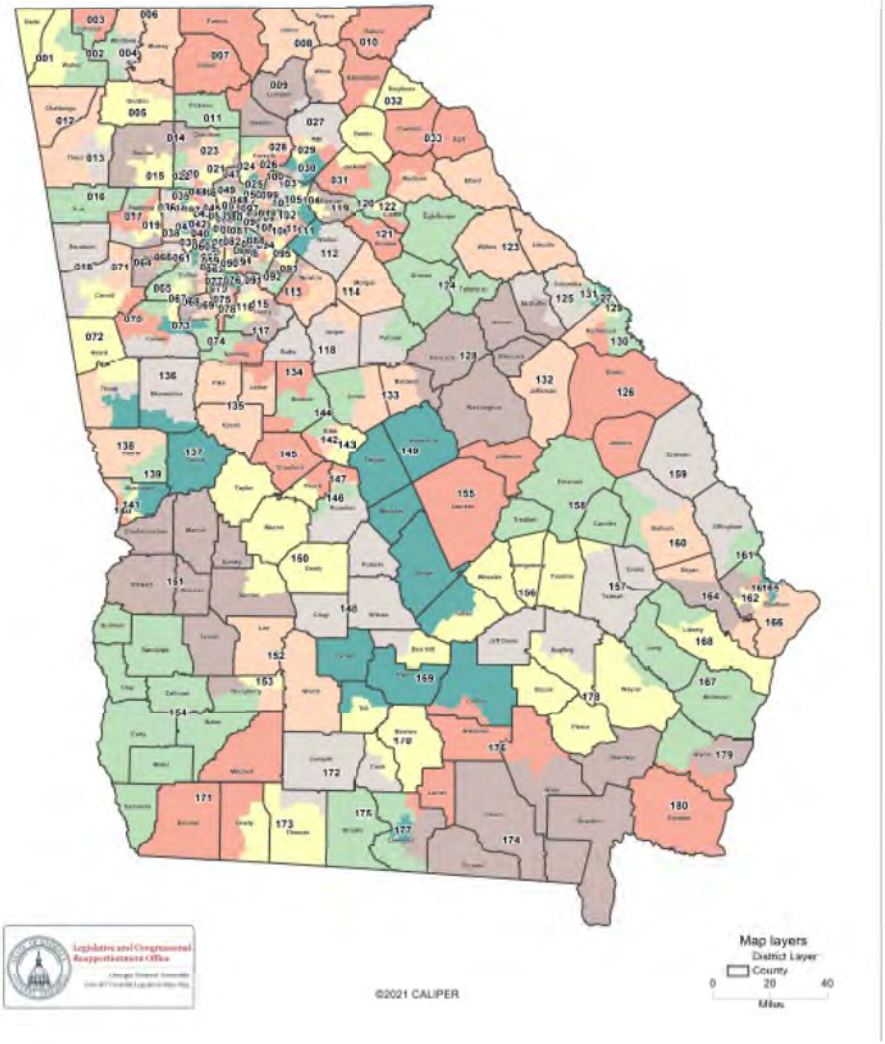
Districts	Reock Score	Polsby-Popper Score
10	0.37	0.27
12	0.53	0.28
15	0.56	0.33
22	0.39	0.34
26	0.47	0.21
34	0.40	0.32
35	0.42	0.18
36	0.25	0.28
38	0.47	0.21
39	0.14	0.11
41	0.31	0.21
43	0.56	0.27
44	0.19	0.18
55	0.25	0.23

APAX 1, S-2.

c) State House Plan

Under Georgia law, "[t]here shall be 180 members of the House of Representatives." O.C.G.A. § 28-2-1(a)(1); see also Ga. Const. art. III, § 2, ¶ I. The Georgia Code further provides that: "[t]he General Assembly by general law shall divide the state into 180 representative districts which shall consist of either a portion of a county or a county or counties or any combination thereof and shall be represented by one Representative elected only by the electors of such district." O.C.G.A. § 28-2-1 (a)(1)–(2); Stip. ¶ 179. The ideal population for a House district in 59,511. Stip. ¶ 278.

Below is the Enacted House Plan:



APAX 1, Ex. Y.

Under the Enacted Plan, the greatest population deviation of any district is ±1.40%. Stip. ¶ 186; APAX 1, 116. The Enacted House Plan contains 49 House districts where the ABVAP is the majority of the population. Stip. ¶ 186; APAX

1, Ex. Z-1. Thirty-three of these districts are fully within the Atlanta MSA. Stip. ¶ 186; APAX 1, Exs. C,Y. This results in an addition of two majority-Black House districts overall and two in the Atlanta MSA. Stip. ¶¶ 180, 183. The Enacted House Plan split 69 Counties. APAX 1 ¶ 189; fig.37. It also split 179 VTDs. Id. The Enacted House Plan paired four sets of incumbents who ran for reelection in 2022. Stip. ¶ 182.

The following is a Table depicting the majority AP Black districts and the percentage of the districts that is AP BVAP.

District	%AP Black	District	%AP Black
38	54.23	90	58.49
39	55.29	91	70.04
55	55.38	92	68.79
58	63.04	93	65.36
59	70.09	94	69.04
60	63.88	95	67.15
61	74.29	113	59.53
62	72.26	115	52.13
63	69.33	116	58.12
65	61.98	126	54.47
66	53.41	128	50.41
67	58.92	129	54.87
68	55.75	130	59.91
69	63.56	132	52.34
75	74.40	137	52.13
76	67.23	140	57.63
77	76.13	141	57.46
78	71.58	142	59.52
79	71.59	143	60.79
84	73.66	150	53.56
85	62.71	153	67.95
86	75.05	154	54.82
87	73.08	165	50.33
88	63.35	177	53.88
89	62.54		

APAX 1, Z-1.

The Enacted House Plan has an average Reock score of 0.39 and Polsby-Popper Score of 0.28. Stip. ¶ 189; APAX 1, AG-2. The maximum and minimum

Reock scores are 0.66 and 0.12. Id. The maximum and minimum Polsby-Popper scores are 0.59 and 0.10. Id. The compactness scores for the majority-Black districts are as follows:

District	Reock Score	Polsby-Popper Score	District	Reock Score	Polsby-Popper Score
38	0.59	0.58	90	0.36	0.29
39	0.59	0.40	91	0.45	0.20
55	0.18	0.16	92	0.36	0.20
58	0.13	0.13	93	0.26	0.11
59	0.12	0.11	94	0.31	0.15
60	0.19	0.15	95	0.44	0.25
61	0.25	0.20	113	0.50	0.32
62	0.16	0.10	115	0.44	0.23
63	0.16	0.14	116	0.41	0.28
65	0.46	0.17	126	0.52	0.41
66	0.36	0.25	128	0.60	0.32
67	0.36	0.12	129	0.48	0.25
68	0.32	0.17	130	0.51	0.25
69	0.40	0.25	132	0.27	0.30
75	0.42	0.28	137	0.33	0.16
76	0.53	0.51	140	0.29	0.19
77	0.40	0.21	141	0.26	0.20
78	0.21	0.19	142	0.35	0.23
79	050	0.21	143	0.50	0.30
84	0.25	0.20	150	0.44	0.28
85	0.36	0.32	153	0.30	0.30
86	0.17	0.17	154	0.41	0.33
87	0.26	0.24	165	0.23	0.16
88	0.26	0.20	177	0.43	0.34
89	0.14	0.10			

Stip. ¶¶ 186, 189; APAX 1, Ex. S-3.

F. Illustrative Plans

1. Credibility Determinations

The Court makes the following credibility determinations as it relates to the Gingles preconditions experts.

a) Mr. William S. Cooper

Both the Alpha Phi Alpha and the Pendergrass Plaintiffs engaged Mr. Cooper as an expert. APAX 1, PX 1. The Court qualified Mr. Cooper as an expert in redistricting demographics and use of Census data. Tr. 65:21–24, 67:10–11; 715:8–10, 717:3–4. Mr. Cooper earned his Bachelor of Arts in economics from Davidson College. APAX 1, Ex. A. Since the late 1980s, Mr. Cooper has testified as an expert trial witness on redistricting and demographics in federal courts in about 55 voting rights cases. Tr. 62:11–14; see also APAX 1, Ex. A. Over 25 of the cases led to changes in local election district plans and five resulted in changes to statewide legislative boundaries. APAX 1, Ex. A; see Rural West Tennessee African-American Affairs Council, Inc. v. McWherter, 877 F. Supp. 1096 (W.D. Tenn. 1995); Old Person v. Brown, 182 F. Supp. 2d 1002 (D. Mont. 2002); Bone Shirt v. Hazeltine, 336 F. Supp. 2d 976 (D.S.D. 2004); Alabama

Legislative Black Caucus v. Alabama, 231 F. Supp. 3d 1026 (M.D. Ala. 2017); and Thomas v. Reeves, 3:18-CV-441-CWR-FKB, 2021 WL 517038 (S.D. Miss. Feb. 11, 2021).

In Georgia alone, Mr. Cooper has testified as an expert on redistricting and demographics in four other federal cases: Cofield v. City of LaGrange, 969 F. Supp. 749 (N.D. Ga. 1997); Love v. Cox, No. CV 679-037, 1992 WL 96307 (S.D. Ga. Apr. 23, 1992); Askew v. City of Rome, 127 F.3d 1355 (11th Cir. 1997); Woodard v. Mayor and City Council of Lumber City, 676 F. Supp. 255 (S.D. Ga. 1987). Mr. Cooper also filed expert declarations or depositions in the following Georgia federal cases: Dwight v. Kemp, No. 1:18-cv-2869 (N.D. Ga. 2018); Georgia State Conference of the NAACP v. Gwinnett County, No. 1:16-cv-02852-AT (N.D. Ga. 2016); Georgia State Conference of the NAACP v. Fayette County, 950 F. Supp. 2d 1294 (N.D. Ga. 2013); Knighton v. Dougherty County, No. 1:02-CV-130-2(WLS) (M.D. Ga. 2002); Johnson v. Miller, 864 F. Supp. 1354 (S.D. Ga. 1994); Jones v. Cook County, 7:94cv73 (M.D Ga. 1994). APAX 1, Ex. A.

Following the 2020 Decennial Census, three local governments adopted commission level plans that Mr. Cooper drafted. Id. And Jefferson County,

Alabama, adopted his proposed school board plans. Id. Mr. Cooper testified in seven redistricting trials or preliminary injunction hearings in 2022, including in these Actions. Id. In one of those cases, the Supreme Court affirmed the district court's finding that his congressional maps were sufficient to show a substantial likelihood of success on the first Gingles precondition. Allen, 599 U.S. at 12–24.

Finally, Mr. Cooper was qualified as a redistricting and demographics expert at the preliminary injunction hearing. Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1244. This Court found that "Mr. Cooper's testimony [was] highly credible . . . [and] that his methods and conclusions [we]re highly reliable, and ultimately that his work as an expert on the first Gingles precondition [wa]s helpful to the Court." Id. at 1244–45.

Mr. Cooper spent around six hours on the stand testifying as to his Illustrative Plans, including over three hours of cross-examination. On voir dire, Defense counsel questioned Mr. Cooper about his involvement in a 2012 Alabama redistricting case in which the three-judge court there stated in a 2017 memorandum of opinion and order that "plaintiffs' mapmakers came dangerously close to admitting that race predominated in at least some of the

districts in their plans." Ala. Legis. Black Caucus, 231 F. Supp. 3d 1026 at 1046. Nevertheless, the three-judge court also "credit[ed] much of [Mr.] Cooper's testimony" in an earlier 2013 opinion. Ala. Legis. Black Caucus v. Alabama, 989 F. Supp. 2d 1227, 1271–72 (M.D. Ala. 2013), rev'd on other grounds, Ala. Legis. Black Caucus v. Alabama, 575 U.S. 254 (2015).

During Mr. Cooper's time on the stand, the Court was able to question and observe Mr. Cooper closely. Throughout his reports and hours of live testimony, his opinions were clear, consistent, and forthright, and he had no difficulty articulating the bases for his districting decisions. He was also forthright with the Court when discussing the characteristics of his illustrative plans and admitted that while the illustrative plans were acceptable for the first Gingles precondition, there would be other ways to draw maps at the remedial stage. E.g., Tr. 235:24–25.

Having reviewed Mr. Cooper's expert report and evaluating his trial testimony, the Court again finds that Mr. Cooper is highly credible. Mr. Cooper has spent the majority of his career drawing maps for redistricting and demographic purposes, and he has accumulated extensive expertise (more so

than any other expert qualified in redistricting demographics in this case) in redistricting litigation, particularly in Georgia.

b) Mr. Blakeman B. Esselstyn

The Grant Plaintiffs proffered and the Court qualified Mr. Esselstyn as an expert in redistricting, demography, and geographic information systems. Tr. 464:2–5, 466:19–20. Mr. Esselstyn earned his Bachelor's degree in geology & geophysics and international studies from Yale University and a master's degree in computer and information technology from University of Pennsylvania. GX 1 ¶ 5. Mr. Esselstyn is the founder and principal of a consultancy called Mapfigure Consulting, which provides expert services in the areas of redistricting, demographics, and geographic information systems (GIS). Id. ¶ 1. He has served as a consulting expert in four redistricting cases. Id. ¶ 3. Mr. Esselstyn has developed 16 redistricting plans that have been enacted for use in elections by jurisdictions at various levels of government. Id. ¶ 4.

Mr. Esselstyn was a testifying expert witness in the following cases: Jensen v. City of Asheville, (N.C. Super. 2009); Hall v. City of Asheville, (No. 05CV53804, 2007 WL 9210091 (N.C. Super. June 17, 2007); and Arnold v. City of Asheville,

Buncombe Cnty., No. 02CV53945 (N.C. Super. Nov. 20, 2003). GX 1, Attach. A. On *voir dire*, Mr. Esselstyn acknowledged that he has never drawn a statewide map that was used in an election and that he has never drawn a map for any jurisdiction in Georgia. Tr. 465:20–25.

Following the 2020 Decennial Census, Mr. Esselstyn has been consulted as an expert for the plaintiffs in League of United Latin American Citizens v. Abbott, 3:21-CV-00259-DCG-JES-JVB (W.D. Tex. Oct. 18, 2021) and Rivera v. Schwab, 315 Kan. 877, 512 P.3d 168 (2022). GX 1, Attach. A.

Mr. Esselstyn was qualified as a redistricting and demographics expert at the preliminary injunction hearing. Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1245-46. This Court found that "Mr. Esselstyn's testimony [was] highly credible . . . [and] that his methods and conclusions [we]re highly reliable, and ultimately that his work as an expert on the first Gingles precondition [wa]s helpful to the Court." Id. at 1246.

Having reviewed Mr. Esselstyn's expert report and evaluating his trial testimony, the Court again finds that Mr. Esselstyn is highly credible. The Court does note that Mr. Esselstyn was less forthcoming on cross-examination in the

trial than he was during the preliminary injunction hearing. However, the Court finds that Mr. Esselstyn's explanations were internally consistent and did not falter. Accordingly, the Court will give great weight to Mr. Esselstyn's testimony.

c) Mr. John B. Morgan

Defendant proffered and the Court qualified Mr. Morgan as its expert in redistricting and the analysis of demographic data in all three cases. Tr. 1748:8–11, 15–16. Mr. Morgan earned his Bachelor of Arts in history from the University of Chicago. DX 1 ¶ 2. Mr. Morgan worked on redistricting plans in the redistricting efforts and testified about demographics and redistricting following the 1990, 2000, 2010, and 2020 Censuses. Id. Over the course of his career, Mr. Morgan worked on statewide congressional and legislative redistrict plans in the following states: Connecticut, Florida, Georgia, Indiana, Iowa, Kansas, Michigan, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Virginia, and Wisconsin. DX 1. His plans have been adopted in whole or in part by various jurisdictions. Id.

Before this case, Mr. Morgan has provided expert reports and/or testified in seven cases. Id. (citing Egolf v. Duran, D-101-CV-2011-02, 2011 WL 12523985

(N.M. Dist. Dec. 28, 2011); Georgia State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs, 952 F. Supp. 2d 1360 (N.D. Ga. 2013); Page v. Va. Bd. of Elections, 3:13CV678, 2015 WL 3604029 (E.D. Va. June 5, 2015); Bethune-Hill v. Va. Bd. of Elections, 114 F. Supp. 3d 323 (E.D. Va. 2015); Vesilind v. Va. Bd. of Elecions, 813 S.E.2d 739 (2018); and Georgia State Conf. of the NAACP v. Gwinnet Cnty. Bd. of Elec.).[26]

Although Mr. Morgan has an extensive background in redistricting, the Court finds that other courts, including this one, have called Mr. Morgan's credibility into doubt. Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1247–48. Although, this Court's ultimate determination as to Mr. Morgan's credibility is not dependent on the determinations made by its sister courts, or by its determinations in the preliminary injunction hearing, the Court gives great weight to the determinations made in those cases.

In 2011, Mr. Morgan assisted Virginia with drawing its House of Delegates maps; and in that case, "[Mr.] Morgan testified . . . that he played a substantial

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[26] Mr. Morgan's report does not provide a full citation for the NAACP case.

role in constructing the 2011 plan, which role included his use of the Maptitude software to draw district lines." Bethune-Hill v. Virginia State Bd. of Elections, 326 F. Supp. 3d 128, 151 (E.D. Va. 2018). Ultimately, a three-judge court found that 11 of the House of Delegates districts were racial gerrymanders. Feb. 11, 2022, Afternoon PI Tr. 184:1–6; see also Bethune-Hill, 326 F. Supp. 3d at 137, 181.

Mr. Morgan served as both a fact and expert witness in Bethune-Hill. That court ultimately found that Mr. Morgan's testimony was not credible. That court found that "Morgan's testimony was wholly lacking in credibility. Th[is] adverse credibility finding [ ] [is] not limited to particular assertions of [this] witness [ ], but instead wholly undermine[s] the content of . . . Morgan's testimony." Bethune-Hill, 326 F. Supp. 3d at 174; Tr. 2101:7–2102:10; 2109:17–2110:7. Specifically, "Morgan testified in considerable detail about his reasons for drawing dozens of lines covering all 11 challenged districts, including purportedly race-neutral explanations for several boundaries that appeared facially suspicious." Bethune-Hill, 326 F. Supp.3d at 151. That court found: "Morgan's contention, that the precision with which these splits divided white and black areas was mere happenstance, simply is not credible." Id. "[W]e

conclude that Morgan did not present credible testimony, and we decline to consider it in our predominance analysis." Id. at 152.

Mr. Morgan also served as a testifying expert in Page v. Virginia State Bd. of Elections, No. 3:13CV678, 2015 WL 3604029 (E.D. Va. June 5, 2015). Tr. 2108:24–2109:11. That court found "Mr. Morgan, contends that the majority-white populations excluded . . . were predominately Republican . . . . The evidence at trial, however, revealed that Mr. Morgan's analysis was based upon several pieces of mistaken data, a critical error . . . Mr. Morgan's coding mistakes were significant to the outcome of his analysis[.]" Page, 2015 WL 3604029, at *15 n.25; Tr. 2108:24–2109:11. Mr. Morgan explained that his error was caused because the attorneys asked him to produce an additional exhibit on the day of trial. Tr. 2109:12–16.

Additionally, in Georgia State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs, Mr. Morgan testified as an expert for the defense opposite Mr. Cooper, who testified as an expert for the plaintiffs. 950 F. Supp. 2d 1294, 1310–11 (N.D. Ga. 2013). In granting the motion for summary judgment, that court found that the plaintiffs successfully asserted a vote dilution claim. Id. at 1326.

Finally, Mr. Morgan admitted that he drew some plans for the 2011 North Carolina State Senate Maps. Tr. 2097:3–7. Ultimately, 28 districts in North Carolina's 2011 State House and Senate redistricting plans were struck down as racial gerrymanders. Feb. 11, 2022, Afternoon PI Tr. 183:14–19; see also Covington v. North Carolina, 316 F.R.D. 117 (M.D.N.C. 2016), aff'd North Carolina v. Covington, 581 U.S.1015, (2017).

At the preliminary injunction hearing in the cases *sub judice*, the Court found that "Mr. Morgan's testimony lack[ed] credibility, and the Court assign[ed] little weight to his testimony." Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1247–48. During the course of his testimony, Mr. Morgan was impeached about reading Mr. Cooper's reports before preparing his expert report and he offered contradictory testimony when he testified that he watched Mr. Cooper testify and then later testified that he was viewing exhibits for the first time, even though they were in Mr. Cooper's report and they were displayed during Mr. Cooper's testimony. Tr. 1959:5–1961:8; 2037:2–7.

Having observed Mr. Morgan's testimony and demeanor during the course of the trial, the Court again assigns less weight to his testimony.

d) Dr. Maxwell Palmer

The Grant and Pendergrass Plaintiffs proffered and the Court qualified Dr. Palmer as an expert in redistricting and data analysis. Tr. 396:11–14, 397:8–9. Dr. Palmer earned his Bachelor of Arts in mathematics and government and legal studies from Bowdoin College. PX 2, 20. Dr. Palmer also earned his master's and doctorate in political science from Harvard University. Id. Dr. Palmer currently serves as an associate professor at Boston University in the political science department, where he has been teaching since 2014. Id. Dr. Palmer has extensively published academic articles and books on a variety of topics, including gerrymandering and redistricting. Id. at 20–22.

Outside of this case, Dr. Palmer has offered consulting or expert testimony in the following cases: Bethune-Hill v. Virginia, 3:14-cv-00852-REP-AWA-BMK (E.D. Va. 2017); Thomas v. Bryant, 3:18-CV-411-CWR-FKB (S.D. Miss. 2018); Chestnut v. Merrill, 2:18-cv-00907-KOB (N.D. Ala. 2019); Dwight v. Raffensperger, 1:18-cv-2869-RWS (N.D. Ga. 2018); Bruni v. Hughs, 5:20-cv-35 (S.D. Tex. 2020); Caster v. Merrill, 2:21-cv-1536-AMM (N.D. Ala. 2021); Galmon v. Ardoin, 3:22-cv-214-SDD-SDJ (M.D. La. 2022). Id. at 27–28.

In the preliminary injunction hearing, in the cases *sub judice*, Dr. Palmer testified as an expert witness for the Grant and Pendergrass Plaintiffs. The Court "f[ound] that his methods and conclusions [we]re highly reliable, and ultimately that his work as an expert on the second and third Gingles preconditions [wa]s helpful to the Court." Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1304.

Having reviewed Dr. Palmer's demeanor and his testimony, Dr. Palmer's testimony was internally consistent, and he maintained a calm demeanor throughout. The Court deems Dr. Palmer to be highly credible and his testimony is extremely helpful to the Court. Thus, the Court assigns great weight to his testimony.

e) Dr. Lisa Handley

The Alpha Phi Alpha Plaintiffs proffered and the Court qualified Dr. Handley as an expert in racial polarization analysis, minority vote dilution, and redistricting. Tr. 856:16–19, 861:11–12. Dr. Handley earned her doctorate in political science from George Washington University. APAX 5, 47. Dr. Handley serves as the president and co-founder of Frontier International Electoral

Consulting LLC. Id. Dr. Handley has extensively published academic articles and books on a variety of topics, including gerrymandering and redistricting. Id.

Since 2000, Dr. Handley has served as a consultant and expert witness for the following jurisdictions: Alaska, Arizona, Colorado, Connecticut, Florida, Kansas, Louisiana, Massachusetts, Maryland, Michigan, New Mexico, New York, and Rhode Island. Id. She has also served as a redistricting consultant for the ACLU and provided expert testimony in an Ohio partisan gerrymander challenge, Lawyers Committee for Civil Rights under Law in challenges to judicial elections in Texas and Alabama, the Department of Justice in Section 2 and Section 5 cases. Id.

Other than this case, Dr. Handley has been a testifying expert in the following cases: In re: 2011 Redistricting Cases, No.4FA-11-2209CI (Alaska Super. 2013); Texas v. U.S., 11-1303 (TBG-RMC-BAH) (D.D.C. 2011); Jeffers v. Beebe, 2:12CV00016 JLH (E.D. Ark. 2012); Perry v. Perez, SA-11-CV0360 (W.D. Tex. 2011); Lopez v. Abbott, 2:16-CV-303 (S.D. Tex. 2016); Alabama State Conf. of the NAACP v. Alabama, 2:16-CV-731-WKW (M.D. Ala. 2020); U.S. v. Eastpointe, 4:17-cv-10079 (E.D. Mich. 2017); New York v. U.S. Dep't of Commerce, 18-CV-

2921 (JMF), 18-CV-5025 (JMF) (S.D.N.Y. 2018); Ohio Phillip Randolph Inst. v. Householder, 1:18-cv-357 (S.D. Ohio 2018); League of Women Voters of Ohio, 2021-1449 (Ohio 2021); League of Women Voters of Ohio v. Ohio Redistricting Comm'n, 2021-1193 (Ohio 2021); Ark. State Conf. of the NAACP v. Ark. Bd. of Apportionment, 4:21-cv-1239-LPR (E.D. Ark. 2021). Id.

In the preliminary injunction hearing, in the cases *sub judice*, Dr. Handley testified as an expert witness for the Grant and Pendergrass Plaintiffs. The Court found that Dr. Handley's testimony was truthful and reliable. Alpha Phi Alpha, 597 F. Supp. 3d at 1309.

At the trial, Dr. Handley's methodology and conclusions about the existence of polarization were relatively unchallenged by Defendant. [27] Accordingly, the Court will rely on the findings in her report.

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[27] In Alabama State Conference of the NAACP, the court stated that "the parameters for the elections [Dr. Handley] chose — only statewide elections with a black candidate running against a white candidate — exclude other relevant elections, thereby diminishing the credibility of her conclusions." Ala. State Conf. of Nat'l Ass'n for Advancement of Colored People v. Alabama, 612 F. Supp. 3d 1232, 1274 (M.D. Ala. 2020); Tr. 857:4–859:16. The Court agrees that Dr. Handley's dataset may limit the applicability and breadth of her conclusions, as Dr. Alford himself indicated. Tr. 2199.

f) Dr. John Alford

Defendants proffered and the Court qualified Dr. Alford as an expert on the second and third Gingles preconditions and Senate Factor Two. Tr. 2132:19–21, 2133:1. Dr. Alford earned his Bachelor of Science and Master of Public Administration from the University of Houston. DX 8, App. 1. He also achieved his masters and doctorate in political science from the University of Iowa. Id. Dr. Alford is a professor at Rice University of and has been teaching there since 1985. Id. Dr. Alford was an assistant professor at the University of Georgia between 1981 and 1985. Id. Dr. Alford has published academic articles and books on a variety of topics including voting. Id.

Dr. Alford has worked with local governments on districting plans and on VRA cases. Id. He has provided expert reports and testified as an expert witness in a variety of court cases. Id. Sister courts have found that Dr. Alford's methodology was unreliable. See Lopez v. Abbott, 339 F. Supp. 3d 589, 610 (S.D.

The scope of Dr. Handley's conclusions, however, is a question for the Court's analysis on the Gingles 2 and 3 preconditions and not a question of Dr. Handley's credibility as an expert witness. Accordingly, the Court relies on the findings in her report as they have been largely unchallenged by Defendants.

Tex. 2018) (crediting Dr. Handley's testimony over Dr. Alford's because "Dr. Alford's testimony . . . focused on issues other than the ethnicity of the voters and their preferred candidates—which are the issues relevant to bloc voting"); Texas v. U.S., 887 F. Supp. 2d 133, 146–47 (D.D.C. 2012), vacated on other grounds, 570 U.S. 928 (2013) (critiquing Dr. Alford's approach because he used an analysis that "lies outside accepted academic norms among redistricting experts[,]" and the Court, instead, relied heavily on Dr. Handley's testimony), vacated on other grounds, 570 U.S. 928 (2013).

In the preliminary injunction hearing, in the cases *sub judice*, the Court found that Dr. Alford was credible, however "his conclusions were not reached through methodologically sound means and were therefore speculative and unreliable." Alpha Phi Alpha Fraternity, Inc, 587 F. Supp. 3 at 1305–06.

The Court again finds that Dr. Alford was highly credible. However, Dr. Alford's testimony primarily relates to partisan polarization and not racial polarization. Accordingly, the Court will give little weight to Dr. Alford's testimony with respect to the Gingles preconditions because it does not effectively address that inquiry. The Court will give greater weight to

Dr. Alford's testimony with respect to Senate Factor Two, because there it is appropriate to inquire about the non-racial reasons explaining racially polarized voting.

2. *Illustrative Congressional Plan*

a) First *Gingles* Precondition

Based on Georgia's demographics, Mr. Cooper concluded that "[t]he Black population in metro Atlanta is sufficiently numerous and geographically compact to allow for the creation of an additional majority-Black congressional district anchored in Cobb, Douglas, and Fulton Counties (CD-6 in the illustrative plan) consistent with traditional redistricting principles." PX 1 ¶ 10; see also id. ¶¶ 42, 86. Defendants' mapping expert Mr. Morgan agreed that his report "offers no opinion to dispute" this conclusion. Tr. 1954:1–12. Mr. Cooper drew an illustrative congressional plan (the "Illustrative Congressional Plan") that includes an additional majority-Black congressional district ("Illustrative CD-6") anchored in west-metro Atlanta. Stip. ¶ 190; PX 1 ¶ 55 & fig.12; Tr. 717:14–23.

(1) Mr. Cooper's process in drawing the maps

At the preliminary injunction hearing, he testified that he was not asked to either "draw as many majority black districts as possible" or "draw every

conceivable way of drawing an additional majority black district." Feb. 7, 2022, Morning PI Tr. 98:17–24. And if in his expert opinion an additional majority-Black district could not have been drawn, Mr. Cooper testified that he would have reported that to counsel, as he has "done [] in other cases." Id. 98:25–99:24.

Mr. Cooper, in his report, declared that he analyzed population and geographic data from the Decennial Census and the American Community Survey ("ACS"). PX 1, Ex. B. He also used the geographic information system software package called Maptitude for Redistricting ("Maptitude") and the geographic boundary files in Maptitude (created by the U.S. Census). Id. He evaluated incumbent addresses, Georgia's current and historical legislative plans, Georgia's 2000 House, Senate, and Congressional Plans. Id. The Court notes that Mr. Cooper was able to review the Enacted Congressional Plan's compactness scores when he was drawing his Illustrative Congressional Plans. Id.

When he began drawing the Illustrative Congressional Plan, for trial, he testified that he started by using the plan he drew from the preliminary injunction. Tr. 727: 20–23. He then stated that some of the map stayed very similar, but when drawing his proposed Illustrative CD-6 he made specific changes

because "some concerns were raised about going further north into Acworth. And so for that reason, I'm taking local knowledge into account, I changed the district a bit to push the district in Cobb County further south." Tr. 729: 4–7. He clarified that the local knowledge that he took into account was that of Ms. Wright. Id. at 13–16.

Mr. Cooper also testified that he considers race when creating an illustrative plan that would satisfy the first Gingles precondition because "[t]hat's part of the inquiry." Tr. 725:16–25. Specifically, when drawing the Illustrative Congressional Plan, Mr. Cooper displayed dots showing him where precincts with more than 30% Black population were located. Tr. 789:25–790:10, 823:25–824:7. Mr. Cooper explained that he "need[s] to show that the district would be over 50 percent Black voting age population, while adhering to traditional redistricting principles." Id.; see also Feb. 7, 2022, Morning PI Tr. 48:4–15 (Mr. Cooper testifying at the preliminary injunction hearing that race "is something that one does consider as part of traditional redistricting principles" because "you have to be cognizant of race in order to develop a plan that respects communities of interest, as well as complying with the Voting Rights Act[,]

because one of the key tenets of traditional redistricting principles is the importance of not diluting the minority vote").

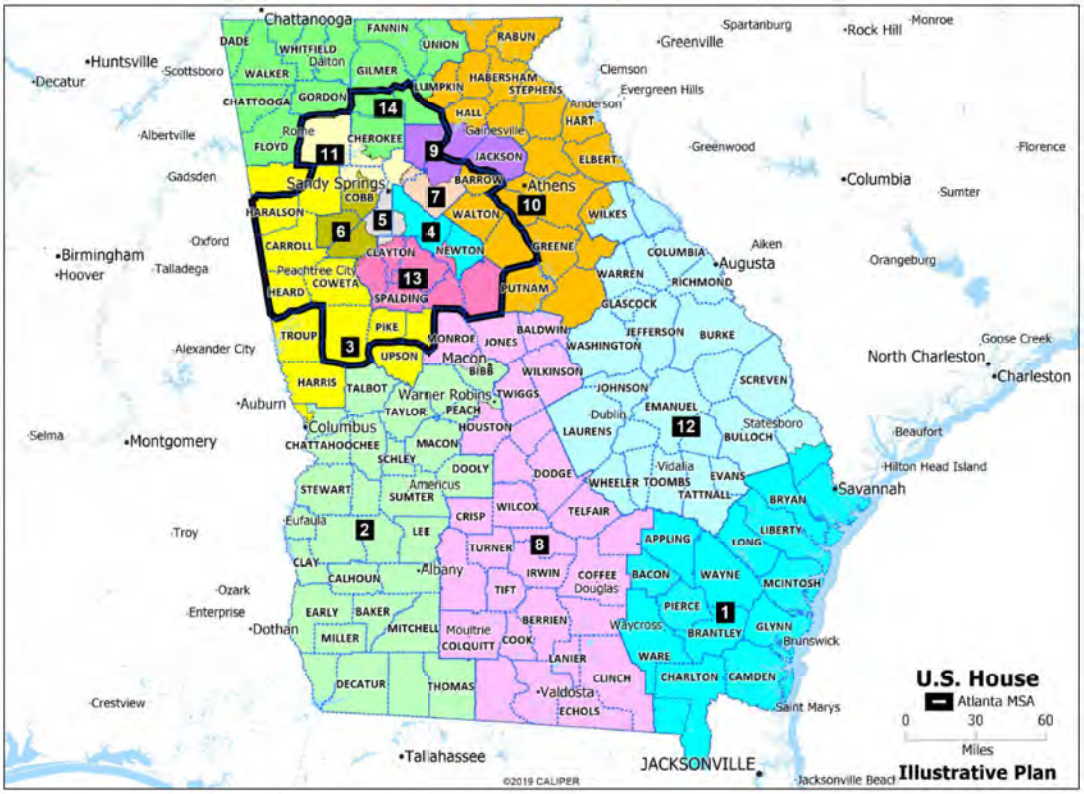
Mr. Cooper testified that race did not predominate in his drawing of the Illustrative Congressional Plan because he merely considered it along with the traditional redistricting principles that he was "constantly balancing." Tr. 726:11–727:16. Indeed, Mr. Cooper explained that "in drafting this plan, [he] . . . attempted to balance all of the traditional redistricting principles so that no one principle predominates." Tr. 822:19–24.

Mr. Cooper testified that he did not have election return data available to him when drawing the Illustrative Congressional Plan and that he did not review any public testimony from Georgia voters as part of the process for preparing the Illustrative Congressional Plan. Tr. 524:24–25, 819:13–15.

(2) Illustrative Congressional Plan

(a) Empirical Measures

The Illustrative Congressional Plan contains an additional majority-Black congressional district in west-metro Atlanta.


Chattanooga
Huntsville
Decatur
Albertville
Gadsden
Sandy Springs
Athens
Birmingham
Hoover
Talladega
Oxford
Peachtree City
Alexander City
Auburn
Selma
Montgomery
Columbus
Macon
Warner Robins
Albany
Troy
Eufaula
Ozark
Enterprise
Dothan
Crestview
Tallahassee
Valdosta
JACKSONVILLE
Jacksonville Beach
Savannah
Statesboro
Augusta
Columbia
Greenville
Spartanburg
Rock Hill
Monroe
Clemson
Evergreen Hills
Greenwood
Florence
Sumter
Aiken
Orangeburg
North Charleston
Charleston
Goose Creek
Beaufort
Hilton Head Island
Waycross
Douglas
Moultrie
Americus
Dublin
Vidalia
Brunswick
Saint Marys
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Atlanta MSA
0 30 60
Miles
Illustrative Plan

PX 1, 82.

i) numerosity

Illustrative CD-6 is 50.23% AP BVAP. PX 1 ¶ 73 & fig.14. Under all metrics, the Black voting age population of Illustrative CD-6 exceeded 50%. Id.

Figure 14
BVAP and BCVAP Comparison: Illustrative Plan and 2021 Plan

	Illustrative Plan				2021 Plan		
District*	% BVAP	% NH BCVAP	% NH DOJ BCVAP		% BVAP	% NH BCVAP	% NH DOJ BCVAP
1	28.17%	29.16%	29.67%		28.17%	29.16%	29.67%
2	49.29%	49.55%	50.001%		49.29%	49.55%	50.001%
3	**20.47%**	**19.64%**	**20.02%**		**23.32%**	**22.53%**	**22.86%**
4	**52.77%**	**55.62%**	**56.37%**		**54.52%**	**57.71%**	**58.46%**
5	49.60%	51.64%	52.35%		49.60%	51.64%	52.35%
6	**50.23%**	**50.18%**	**50.98%**		**9.91%**	**9.72%**	**10.26%**
7	29.82%	31.88%	32.44%		29.82%	31.88%	32.44%
8	30.04%	30.46%	30.76%		30.04%	30.46%	30.76%
9	**11.66%**	**11.29%**	**11.74%**		**10.42%**	**10.03%**	**10.34%**
10	**14.31%**	**15.09%**	**15.39%**		**22.60%**	**22.11%**	**22.56%**
11	**13.67%**	**12.91%**	**13.48%**		**17.95%**	**17.57%**	**18.30%**
12	36.72%	36.60%	37.19%		36.72%	36.60%	37.19%
13	**51.13%**	**49.64%**	**50.34%**		**66.75%**	**66.36%**	**67.05%**
14	**5.17%**	**4.80%**	**5.19%**		**14.28%**	**13.19%**	**13.71%**

*Bold font identifies districts that are changed from the 2021 Plan configuration.

PX 1 ¶ 73 & fig.14.

ii) population equality and contiguity

It is undisputed that the population in all districts in the Illustrative Congressional Plan is plus-or-minus one person from the ideal district

population of 765,136. Stip. ¶ 197. It is also undisputed that all districts in the Illustrative Congressional Plan are contiguous. Stip. ¶ 198.

iii) Compactness scores

The Illustrative Congressional Plan has comparable, or slightly better, compactness scores as compared to the Enacted Congressional Plan. The mean Reock score for the Illustrative Congressional Plan is 0.43 and is 0.44 on the Enacted Plan. PX 1 ¶ 79 & fig.13. The mean Polsby-Popper scores are identical at 0.27. Id. Mr. Morgan does not dispute that the enacted and the illustrative plans have similar mean Reock scores and identical mean Polsby-Popper scores. Tr. 1948:22–1949:5. Accordingly, the Court finds that the Illustrative Congressional Plan is comparably as compact as the Enacted Congressional Plan.

With respect to the majority-Black districts, the Court finds that the Illustrative Congressional Plan scores generally fared better or were equal to the Enacted Congressional Plan.

PX		Illustrative Plan		Enacted Plan		1,
	Districts	Reock	Polsby-Popper	Reock	Polsby-Popper	
Exs.	001	0.46	0.29	0.46	0.29	L-1,
L-3.	002*	0.46	0.27	0.46	0.27	
	003	0.39	0.24	0.46	0.28	
	004*	0.28	0.22	0.31	0.25	
	005*	0.51	0.32	0.51	0.32	
	006[28]	**0.45**	**0.27**	**0.42**	**0.20**	
	007	0.50	0.39	0.50	0.39	
	008	0.34	0.21	0.34	0.21	
	009	0.40	0.32	0.38	0.25	
	010	0.40	0.18	0.56	0.28	
	011	0.40	0.19	0.48	0.21	
	012	0.50	0.28	0.50	0.28	
	013*	0.44	0.29	0.38	0.16	
	014	0.48	0.34	0.43	0.37	
	Mean:	**0.43**	**0.27**	**0.44**	**0.27**	
	Max:	**0.51**	**0.39**	**0.51**	**0.39**	
	Min:	**0.28**	**0.18**	**0.31**	**0.16**	

Mr. Morgan's report's compactness measures are identical to Mr. Cooper's. DX 4 ¶ 22, chart 2. The districts that immediately surround Illustrative CD-6 are,

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[28] The bolded data is for the proposed additional majority-Black district that is not a majority-Black district in the Enacted Congressional Plan. And any district that has an asterisk (*) is a majority-Black district.

Illustrative CD-3, 5, 11, and 13. PX 1, Ex. H-2. Of the surrounding districts Illustrative and Enacted CD-5 have identical compactness scores, Illustrative CD-3 and 11 fare worse on both compactness measures than Enacted CD-3 and 11, and Illustrative CD-13 fares better on both compactness measures than Enacted CD-13. The Court notes that CD-5 and 13 are majority-Black districts on both the Enacted and Illustrative Congressional Plans, whereas CD-3 and CD-11 are majority-white districts. PX 1, Ex. H-2. Thus, the Court finds that Mr. Cooper lowered the compactness scores in neighboring majority-white districts when he drew the Illustrative Congressional Plan.

The Court concludes that the Illustrative Congressional Plan is comparably as compact as the Enacted Congressional Plan. The Illustrative Congressional Plan fares worse on the Reock measure by 0.01 points and had an identical Polsby-Popper score. PX 1, Exs. L-1, L-3. The Court finds that overall, the Plans are equivalently compact. With respect to the majority-Black districts, the Court finds that two of the districts (CD-2, and 5) have identical compactness scores, Illustrative CD-4 fares worse on both compactness scores by 0.03 points, Illustrative CD-13 fares better on the Reock score by 0.06 points and Polsby-

Popper by 0.13 points. Id. Finally, Illustrative CD-6 fares better on Reock by 0.03 points and 0.07 on Polsby-Popper. Id. The Court finds that that, generally, the majority-Black districts are equivalently, if not slightly more compact than the Enacted Congressional majority-Black districts.

iv) political subdivision splits

The Illustrative Congressional Plan splits the same number of counties as the Enacted Plan, but has fewer unique county splits, VTD splits, city and town splits, and unique cities and town splits. PX 1 ¶ 81 & fig.14.

Figure 14
County, VTD, and Municipal Splits: Illustrative Plan, 2012 Benchmark, and 2021 Plan (All Districts)

	Split Counties*	County Splits*	2020 VTD Splits*	Split Cities/ Towns#	City/ Town Splits*
Illustrative Plan	15	18	43	37	78
2012 Benchmark Plan	16	22	43	40	85
2021 Plan	15	21	46	43	91

*Excludes unpopulated areas
#Out of 531 municipalities (calculated by subtracting the number of whole cities in the Maptitude report from 531)

PX 1 ¶ 81 & fig.14.

Neither Defendants nor their experts have meaningfully suggested that the Illustrative Congressional Plan fails to respect city, town, and county lines. The

Court notes that, as with compactness, Mr. Cooper was able to evaluate the Enacted Congressional Plans political subdivision splits when he drew his Illustrative Congressional Plan. PX 1, Ex. B. Accordingly, the Court finds that the Illustrative Congressional Plan respected more political subdivisions than the Enacted Congressional Plan.

v) findings of fact

In sum, the Court finds that the Illustrative Congressional Plan meets or exceeds the Enacted Congressional Plan on compactness scores and political subdivision splits. The Illustrative Congressional Plan and the Enacted Congressional Plan have identical Polsby-Popper scores and the Illustrative Congressional Plan is 0.01 less compact on Reock than the Enacted Plan. PX 1 ¶ 79 & fig.13.

(b) Core retention

The Court also finds that the Illustrative Congressional Plan retained many of the cores of the districts in the Enacted Congressional Plan. The General Assembly did not enumerate core retention as a redistricting principle. JX 2. And Ms. Wright testified that when she draws the new Plans, she starts with a blank map and not from the existing Congressional Plan.

> Generally, I like to create the new ideal size with the new census population that we have in the state. I plug that into a blank map. And then I just work with the data to create new districts. I don't usually start from the old and try to change it, I start blank, because that way I feel like it's easier for me to build a map rather than try to just move pieces that are already there.
>
> I do use the existing district layer if I need to as a reference, to see if I'm retaining core districts and things like that. But I build that map out just as a balanced map population-wise first as a draft and a blind map to start with.

Tr. 1622:11–22.

Although not a requirement, the Court finds that the Illustrative Congressional Plan does retain the majority of the core districts of the Enacted Congressional Plan. DX 4, Ex. 7. Pursuant to the data provided by Mr. Morgan, the Court finds that approximately 74.6% of individual's district are unchanged from the Enacted Congressional Plan and the Illustrative Congressional Plan. Id.; Tr. 1944:22–1945:13; PX 1 ¶ 13. In other words, only 25.4% of Georgians would be affected if the General Assembly were to enact the Illustrative Congressional Plan. The following is a table derived from the data in Mr. Morgan's report and that exemplifies the number of individuals who remain in the same district under the

Illustrative Congressional Plan. As an initial note, the population size of each congressional district is either 765,137 or 765,136 persons. Stip. ¶ 197.

District	# of individuals whose district is unchanged
001	765,137
002	765,137
003	528,200
004	736,485
005	765,137
006	19,006
007	765,137
008	765,136
009	403,191
010	488,385
011	372,724
012	765,136
013	374,470
014	475,707

DX 4, Ex. 7.

As the chart shows, in six of the district, no voter is impacted by the Illustrative Congressional Plan's changes (Illustrative CD-1, CD-2, CD-5, CD-7, CD-8, CD-12). And of the remaining eight changed districts, in only three of those districts (Illustrative CD-6, CD-11, and CD-13) does more than half of the population have a changed district. Illustrative CD-6 is the new majority-minority district and CD-11 and CD-13 are two districts that immediately

surround Illustrative CD-6. Accordingly, the Court finds that Illustrative Congressional Plan, does respect district cores from the Enacted Congressional Plan.

(c) Racial predominance

The Court further concludes that Mr. Cooper did not subordinate traditional districting principles in favor of racial considerations. Mr. Cooper was asked "to determine whether the African American population in Georgia is 'sufficiently large and geographically compact' to allow for the creation of an additional majority-Black congressional district in the Atlanta metropolitan area." PX 1 ¶ 8 (footnotes omitted); Tr. 717:14–17. At the preliminary injunction hearing, he testified that he was not asked to either "draw as many majority black districts as possible" or "draw every conceivable way of drawing an additional majority black district." Feb. 7, 2022, Morning PI Tr. 98:17–24. And if in his expert opinion an additional majority-Black district could not have been drawn, Mr. Cooper testified that he would have reported that to counsel, as he has "done [] in other cases." Id. 98:25–99:24.

Mr. Cooper testified that he considers race when creating an illustrative plan that would satisfy the first Gingles precondition because "[t]hat's part of the inquiry." Tr. 725:16–25. Mr. Cooper explained that he "need[s] to show that the district would be over 50 percent Black voting age population, while adhering to traditional redistricting principles." Id.; see also Feb. 7, 2022, Morning PI Tr. 48:4–15 (Mr. Cooper testifying at the preliminary injunction hearing that race "is something that one does consider as part of traditional redistricting principles" because "you have to be cognizant of race in order to develop a plan that respects communities of interest, as well as complying with the Voting Rights Act[,] because one of the key tenets of traditional redistricting principles is the importance of not diluting the minority vote").

Mr. Cooper testified that race did not predominate in his drawing of the Illustrative Congressional Plan because he merely considered it along with the traditional redistricting principles that he was "constantly balancing." Tr. 726:11–727:16. Indeed, Mr. Cooper explained that "in drafting this plan, [he] . . . attempted to balance all of the traditional redistricting principles so that no one principle predominates." Tr. 822:19–24. Defendants' expert does not even

contend that race predominated in the Illustrative Congressional Plan. Tr. 1952:23–1953:17; see generally DX 4.

The Court finds that race did not predominate in the drawing of the Illustrative Congressional Plan.

b) Second and Third *Gingles* Preconditions

The Court finds that that the minority group within Illustrative CD-6 is politically cohesive. Both Pendergrass Plaintiffs' expert, Dr. Palmer, and Defendants' expert, Dr. Alford, testified that ecological inference ("EI") is a reliable method for conducting the second and third Gingles preconditions analyses. "Q. Dr. Alford, you agree that . . . the method of ecological inference Dr. Palmer applied is the best available method for estimating voting behavior by race; correct? A. Correct." Tr. 2250:12–16; "Q. Do scholars and experts regularly use EI to examine racially polarized voting? A. Yes?" Tr. 401: 7–9. EI "estimates group-level preferences based on aggregate data." PX 2 ¶ 13. The data analyzed under EI also includes confidence intervals, which measure the uncertainty of results. Id. at n. 12. "Larger confidence intervals reflect a higher

degree of uncertainty in the estimates, while smaller confidence intervals reflect less uncertainty." Id.

Dr. Palmer conducted a racially-polarized voting analysis of Enacted CD-3, 6, 11, 13, and 14, both as a region (the "congressional focus area") and individually. Stip. ¶ 214; PX 2 ¶ 7; Tr. 413:18–414:5.

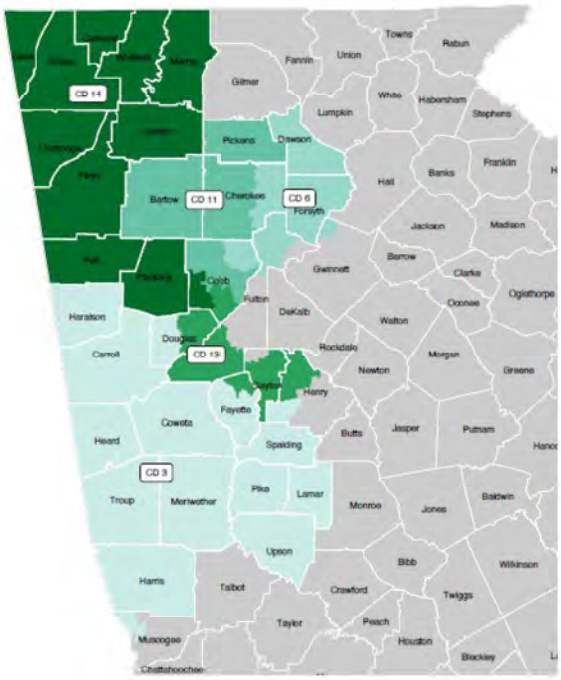


Figure 1: Map of the Focus Area

PX 2 ¶ 11 & fig.1.

Dr. Palmer evaluated Black and white voters' choices in the congressional focus area for each candidate in 40 statewide elections between 2012 and 2022.

Stip. ¶ 217; PX 2 ¶¶ 13, 15. Dr. Palmer's EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. PX 2 ¶ 11; Tr. 403:2–13.

Dr. Palmer first 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. PX 2 ¶ 14. If a significant majority of the group supported a single candidate, he then identified that candidate as the group's candidate of choice. Id. Dr. Palmer next compared the preferences of white voters to the preferences of Black voters. Id. He concludes that racially polarized voting existed when he found that Black voters and white voters support different candidates. Id.

3. *Cooper Legislative Plans*

a) Mr. Cooper's process in drawing the maps

Mr. Cooper submitted an illustrative State Senate plan (the "Cooper Senate Plan") and an illustrative State House plan (the "Cooper House Plan") (collectively, the "Cooper Legislative Plans") as a part of his expert report. APAX 1 ¶ 85 & fig.5; ¶ 151 & fig.27. When Mr. Cooper was retained as an expert, he was asked "to determine whether the African-American population in Georgia is

'sufficiently large and geographically compact' to allow for the creation, consistent with traditional redistricting principles, of additional majority-Black Senate and House districts[.]" APAX 1 ¶ 7; Tr. 67:23-68:1. At the preliminary injunction hearing, he testified that he was not asked to either "draw as many majority black districts as possible" or "draw every conceivable way of drawing an additional majority black district." Feb. 7, 2022, Morning PI Tr. 98:17–24. And if in his expert opinion an additional majority-Black district could not have been drawn, Mr. Cooper testified that he would have reported that to counsel, as he has "done [] in other cases." Id. 98:25–99:24.

Mr. Cooper, in his report, declared that he analyzed population and geographic data from the Decennial Census and the ACS. APAX 1, Ex. B. He also used Maptitude and its geographic boundary files (created by the U.S. Census). Id. He evaluated incumbent addresses, Georgia's current and historical legislative plans, Georgia's 2000s House, Senate, and Congressional Plans. Id. The Court notes that Mr. Cooper was able to review the Enacted Legislative Plan's compactness scores when he was drawing the Cooper Legislative Plans. APAX 1, Ex. B ¶ 7.

Mr. Cooper specifically testified in detail about how he followed the criteria in Georgia's districting guidelines when drawing the Cooper Legislative Plans. See, e.g., Tr. 89:15-91:9. Mr. Cooper testified that, with respect to Cooper Legislative Plans, he balanced all of the traditional redistricting principles, and that they "all went into the mix as I was drawing the [I]llustrative [P]lan." Tr. 90:16-19. He confirmed that he "balanced the traditional districting principles in drawing [the] illustrative districts," (Id. at 168:19-22), and he testified that none of the factors predominated over any others. Id. at 90:16-19; see also Id. at 107:18-20 ("Q. Mr. Cooper, did any factors get more weight than others when you were drawing your [I]llustrative [P]lans? A. I don't believe so."); Tr. 367:5-7 ("you really do have to balance, balance, balance. That's the name of the game.").

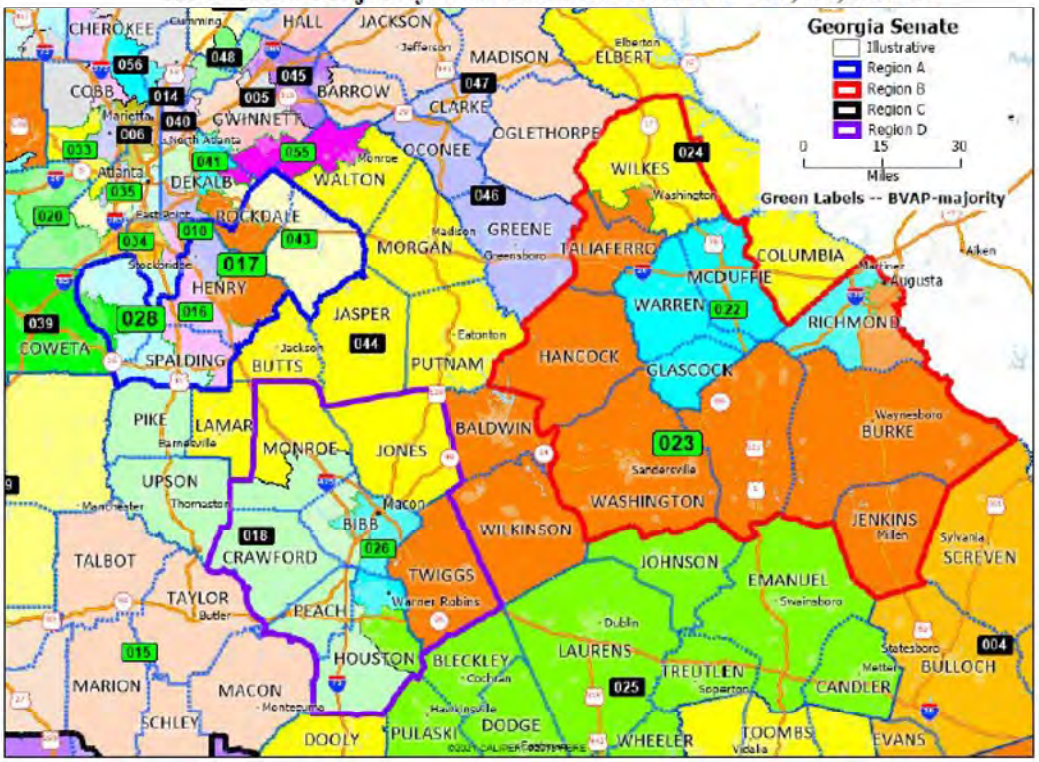
Traditional redistricting principles, that he considered, include population equality, compactness, contiguity, respect for political subdivision lines like counties and voting tabulation districts ("VTDs," otherwise known as precincts), respect for communities of interest, and non-dilution of minority voting strength. See, e.g., Tr. 90:2-91:9. Mr. Cooper also testified that avoiding pairing incumbents

is a consideration that he takes into account, consistent with Georgia's adopted districting guidelines. See, e.g., Id. 128:5-7, 166:25:167:8, 225:15-24.

b) Cooper Senate Plan

The Cooper Senate Plan contains three additional majority-Black Senate Districts, two in south-metro Atlanta and one in the Eastern Black Belt, anchored in and around Augusta.

Additional Majority-Black Senate Districts – 17, 23, and 28



APAX 1 ¶ 85 & fig.15.

(1) Empirical measures

(a) numerosity

The AP BVAP population for the additional districts are as follows: Cooper SD-17 is 62.55%, SD-23 is 50.21%, SD-28 is 51.32%. APAX 1, Ex. O-1. All of Cooper's proposed illustrative Senate districts exceed 50% as do the districts that are majority-Black under the Enacted Senate Plan.

District	AP BVAP	District	AP BVAP
010	69.76%	028*	51.32%
012	57.97%	033	52.60%
015	54.00%	034	77.84%
016	56.52%	035	60.80%
017*	62.55%	036	51.34%
020	60.44%	038	54.25%
022	50.36%	041	64.57%
023*	50.21%	043	57.97%
026	52.81%	055	51.22%

(*) denotes a new majority-Black district

APAX 1, Ex. O-1.

(b) population equality and contiguity

It is undisputed that the population deviation for the Cooper Senate Plan is ±1.00% from the ideal district population size of 191,284 people. Stip. ¶¶ 277, 301. This is lower than the Enacted Senate Plan, which has a deviation range of -1.03% to +0.98%. Stip. ¶ 301. It is also undisputed that all districts in the Cooper Senate Plan are contiguous. Stip. ¶ 300.

(c) compactness

The Court finds that the Cooper Senate Plan and the Enacted Senate Plan, on the whole, are comparable. Mr. Cooper explained, the Cooper Legislative Plans "matched or beat the State's plans on … compactness measures[.]" Tr. 109:2-4. Mr. Cooper concluded that "[o]n balance, the Illustrative Senate Plan and 2021 Senate Plan score about the same on the widely referenced Reock and Polsby-Popper measures. If anything, the Illustrative Plan scores better inasmuch as its least compact district by Reock scores [0].22, compared to [0].17 for the 2021 Senate Plan." APAX 1 ¶ 114.

Mr. Cooper's expert report provided detailed compactness measures for the Enacted Senate Plan as follows:

Compactness Scores
Illustrative Senate Plan and 2014 Benchmark and 2021 Senate Plans

	Reock			Polsby-Popper	
	Mean	Low		Mean	Low
Illustrative Senate Plan	.43	.22		.28	.14
2014 Benchmark Senate Plan	.43	.14		.27	.11
2021 Senate Plan	.42	.17		.29	.13

APAX 1 ¶ 114 & fig.20.

Dr. Morgan, Defendant's mapping expert, concluded that the Cooper Senate Plan "still has mean compactness scores close to the enacted plan, with the mean compactness score on the Reock test higher and the mean compactness score on the Polsby-Popper test lower." DX 2 ¶ 18.

The Court concludes that the Cooper Senate Plan is more compact than the Enacted Senate Plan on Reock by 0.01 points and less compact by 0.01 on Polsby-Popper. Id. Consistent with both Defendants' and the Alpha Phi Alpha Plaintiffs' experts, the Court finds that the compactness scores of the two plans are "similar." Accordingly, the Court finds that the Cooper and Enacted Senate Plans are comparably compact with respect to the average and minimum scores.

With respect to the majority-Black districts, the Court finds that the additional majority-Black districts are all more compact than the least compact

district in the Enacted Senate Plan. The following table is derived from the data contained in Exhibits S-1 and S-3:

	Enacted Districts			Illustrative Districts	
Districts	**Reock**	**Polsby-Popper**	**Districts**	**Reock**	**Polsby-Popper**
017	0.35	0.17	017	0.37	0.17
023	0.37	0.16	023	0.37	0.16
016[29]	0.37	0.31	028	0.37	0.18

APAX 1, Exs. S-1, S-3.

The Court finds that generally, the majority-Black Senate districts performed identically to their corollary Enacted Senate Plan district, with the exception of Cooper SD-28, which has a lower Polsby-Popper score by 0.13 points. However, none of the compactness measures are below the least compact district's measures on the Enacted Senate Plan, in part because Cooper's Enacted Senate Plan's has a higher minimum compactness score than the Enacted Senate Plan. APAX 1 ¶ 114.

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[29] Mr. Cooper testified that Cooper SD-28 correlates with Enacted SD-16. APAX 1 ¶ 99.

In sum, the Court finds that on the empirical compactness measures, the majority-Black districts in the Cooper Senate Plan are nearly identical to the compactness scores on the Enacted Senate Plan.

(d) political subdivision splits

The Cooper Senate Plan splits fewer political subdivisions than the Enacted Senate Plan and performs better across all metrics. APAX 1 ¶ 116 & fig.21.

County and VTD Splits/Whole Municipalities –
Illustrative Plan versus 2014 Benchmark and 2021 Senate Plans

	Split Counties	Total County Splits*	2020 VTD Splits*	Single-County Whole City/Towns (478)#	Single and Multi County Whole City/ Towns (531#)	Total City/ Town Splits*
Illustrative Senate	28	57	38	437	464	166
2014 Benchmark	38	65	86	422	448	198
2021 Senate	29	60	40	434	463	169

*Populated splits only
Higher is better

Id.

Neither Defendants nor their experts have meaningfully suggested that the Cooper Senate Plan fails to respect city, town, and county lines. Accordingly, the

Court finds that the Cooper Senate Plan respected more political subdivisions than the Enacted Senate Plan.

(e) findings of fact on empirical measures

In sum, the Court finds that the Cooper Senate Plan meets or exceeds the Enacted Senate Plan on population equality, compactness scores, and political subdivision splits. The Cooper Senate Plan's Reock score beats the Enacted Senate Plan's Reock score by 0.01 and the Enacted Senate Plan's Polsby-Popper score beats the Cooper Senate Plan's Polsby-Popper score by the same amount. APAX 1 ¶ 114 & fig.20. The Court thus finds that the compactness scores between the two plans are virtually identical.

(2) Core retention

The Court also finds that the Cooper Senate Plan retained many of the cores of the districts in the Enacted Senate Plan. Georgia's Reapportionment Guidelines do not identify preservation of existing district cores as a "General Principles for Drafting Plans." See JX 1, JX2. The Cooper Senate Plan kept 21 Senate districts the same as the Enacted Senate Plan. DX 2 ¶ 17. And, if the General Assembly were to enact the Cooper Senate Plan, 82% of the Georgia

population would remain in the same district in the Enacted Senate Plan. Tr. 88:13-18.

(3) Incumbent pairing

Georgia's redistricting guidelines provide that "efforts should be made to avoid unnecessary incumbent pairings." JX 1, 3; JX 2, 2. He testified that also sought to avoid incumbent pairings. Tr. 236:1-2. He used official incumbent address information that defense counsel provided in January 2022 and another potential database of incumbent address information that followed the November 2022 General Election. APAX 1 ¶ 12. Mr. Cooper testified, as he was drawing the Cooper Legislative Plans, "always in the back of my mind [I] was trying to avoid pairing incumbents." Tr. 236:1-2. The Cooper Senate Plan pairs six incumbents. The Enacted Senate Plan pairs four incumbents. DX 2 ¶ 16 & chart 2. The Court finds that two additional pairs of incumbents are paired under the Cooper Senate Plan than in the Enacted Senate Plan.

(4) Racial considerations

Georgia's redistricting guidelines provide all plans must "comply with Section 2 of the Voting Rights Act[,] as amended." JX 1, at 3; JX 2, at 3. Mr. Cooper testified that non-dilution of minority voting strength means that "as you're

drawing a plan, you should make a point of not excluding the Black population in some areas where you might be able to draw a minority Black district or split one somehow or another into districts that don't necessarily have sufficient minority population to elect a candidate of choice or to overconcentrate Black voters in a single district when they could have been placed in two districts and perhaps have an opportunity in two districts instead of just one." Tr. 92:14-23.

Mr. Cooper testified that for purposes of non-dilution, "you have to at least be aware of where the minority population lives." Tr. 92:14-15. However, Mr. Cooper testified that while race is "out there and [he's] aware of it, . . . it didn't control how [the Illustrative Plans] were drawn." Tr. 108:7-11. He stated that he did not aim to draw any maximum or minimum number of Black-majority districts. Tr. 112:11-14; see also Tr. 197:23-24 ("My goal was not to draw the maximum number of majority Black districts"). When asked whether he was "trying to maximize the number of Black majority districts when [he] drew the [I]llustrative [P]lans?" Mr. Cooper responded, "Not at all." Tr. 358:9-12.

Mr. Cooper testified that when he draws maps, he sometimes uses "a little dot for precincts that are 30 percent or greater Black." Tr. 200:11-15. He testified

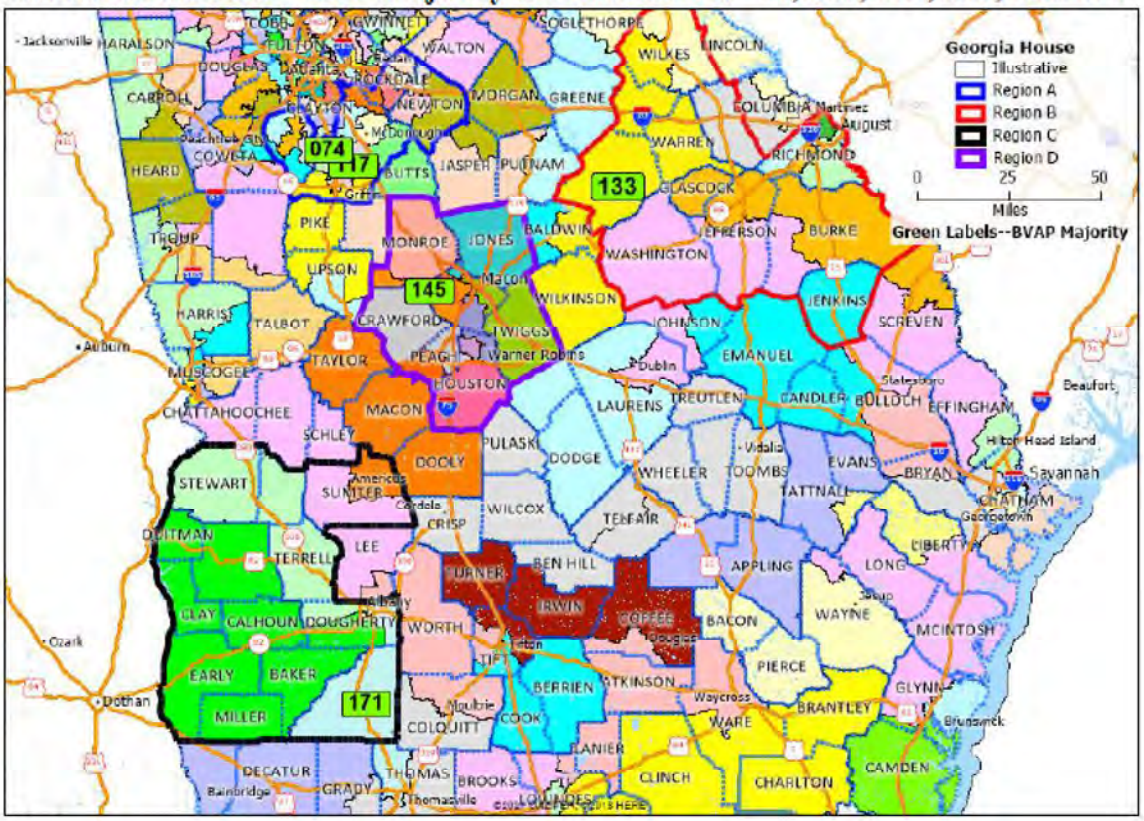
that he did not always use that feature. Tr. 93:23-94:2. Mr. Cooper repeatedly testified that "race did not predominate" in his drawing of the Illustrative Plans. Tr. 93:1, 108:4-11, 108:23-109:5, 168:15-18. When asked by the Court if race predominated, Mr. Cooper responded, "No. Because I also had to take into account these other factors, population equality, avoiding county splits, avoiding splitting municipalities. So it's out there and I'm aware of it, but it didn't control how these districts were drawn. Id. at 108:4-11.

Particularly in light of Mr. Cooper's extensive experience and his testimony regarding the process he used in this case and his balancing of the various considerations, the Court finds that race did not predominate over the other traditional redistricting principles when he drew the Cooper Legislative Plans.

c) Cooper House Plan

The Cooper House Plan contains five additional majority-Black House Districts, two in south-metro Atlanta, one in the Eastern Black Belt, anchored in and around Augusta, one in and around Macon-Bibb, and one in southwest Georgia.

Illustrative House – New Majority-Black Districts –74, 117, 133, 145, and 171



APAX 1 ¶ 151 & fig.27.

(1) Empirical measures

(a) numerosity

The AP BVAP population for the additional districts are as follows: Cooper HD-74 is 61.49%, HD-117 is 54.64%, HD-133 is 51.97%, HD-145 is 50.20%, and HD-171 is 58.06%. APAX 1, Ex. AA-1. All of the districts in the Cooper House

Plan exceed 50% as do the districts that are majority-Black under the Enacted House Plan. Id.

(b) population equality and contiguity

It is undisputed that the population deviations in all districts in the Cooper House Plan are within ±1.49% of the ideal district population size of 59,511 people. Stip. ¶¶ 278, 302. This is higher than the Enacted House Plan, which has a deviation range of -1.40% to +1.34%. Stip. ¶ 302. It is also undisputed that all districts in the Cooper House Plan are contiguous. Stip. ¶ 300.

(c) compactness

The Court finds that the Cooper House Plan and the Enacted House Plan, on the whole, are comparable. Mr. Cooper explained, the Cooper Legislative Plans "matched or beat the State's plans on … compactness measures[.]" Tr. 109:2-4. Mr. Cooper concluded that "[o]n balance, the Illustrative House Plan and 2021 Senate Plan score about the same on the widely referenced Reock and Polsby-Popper measures. If anything, the Illustrative Plan scores better inasmuch as its least compact district by Reock scores [0].16, compared to [0].12 for the 2021 House Plan." APAX 1 ¶ 187.

Mr. Cooper's expert report provided detailed compactness measures for the Enacted Senate Plan as follows:

Compactness Scores
Illustrative House Plan versus
2015 Benchmark and 2021 House Plans

	Reock			Polsby-Popper	
	Mean	Low		Mean	Low
Illustrative House Plan	.39	.16		.27	.11
2015 Benchmark House Plan	.39	.13		.27	.09
2021 House Plan	.39	.12		.28	.10

APAX 1 ¶ 187 & fig.36.

Dr. Morgan, Defendant's mapping expert, concluded that the average compactness scores in the Cooper House Plan and the Enacted House Plan "are similar." DX 2 ¶ 47.

The Court concludes that the Cooper and Enacted House Plans have identical Reock scores, but the Cooper House Plan is less compact by 0.01 on Polsby-Popper. Id. Consistent with both Defendants' and the Alpha Phi Alpha Plaintiffs' experts, the Court finds that the compactness scores of the two plans are "similar." Accordingly, the Court finds that the Cooper and Enacted House Plans are comparably compact, with respect to the average and minimum scores.

With respect to the additional majority-Black districts, the Court finds that those districts are all more compact than the least compact district in the Enacted House Plan. The following table is derived from the data contained in Exhibits AG-1 and AG-2:

	Enacted Districts		Illustrative Districts	
Districts	**Reock**	**Polsby-Popper**	**Reock**	**Polsby-Popper**
074	0.50	0.25	0.63	0.36
117	0.41	0.28	0.41	0.26
133	0.55	0.42	0.26	0.20
145	0.38	0.19	0.25	0.22
171	0.35	0.37	0.28	0.20

APAX 1, Exs. AG-1, AG-2.

The Court finds that in the south metro-Atlanta districts, the majority-Black districts in the Cooper House Plan are comparable. For example, Cooper HD-74 beats Enacted HD-74 by 0.13 on Reock and 0.11 on Polsby-Popper. The Court finds that for the districts outside of Atlanta, the majority-Black districts in the Cooper House Plan generally fared worse than the Enacted House Plan's

majority-Black districts, with the exception of Cooper HD-145's Polsby-Popper score which is 0.03 more compact than Enacted HD-145. However, none of the compactness scores are below the least compact district's scores on the Enacted House Plan. APAX 1 ¶ 187 & fig.36.

(d) political subdivisions

The Cooper House Plan's political splits are comparable to the Enacted House Plan's. APAX 1 ¶ 189 & fig.37. The Cooper House Plan splits one less county. The plans have the same numbers of unique county and VTD splits. Id. The chart below depicts the total findings on political subdivision splits:

County and VTD splits/Whole Municipalities
Illustrative House Plan versus
2015 Benchmark and 2021 House Plans

	Split Counties	Total County Splits*	2020 VTD Splits*	Single-County Whole City/Towns (478)#	Single and Multi County Whole City/ Towns (538)#	Total City/ Town Splits*
Illustrative House	68	209	179	393	402	361
2015 Benchmark	73	215	268	381	402	378
2021 House	69	209	179	384	412	344

*Populated splits only
Higher is better

Id.

Neither Defendant, nor his experts have meaningfully suggested that the Cooper House Plan fails to respect city, town, and county lines. Accordingly, the Court finds that the Cooper House Plan has comparable political subdivision splits to the Enacted House Plan.

(e) findings of fact on the empirical measures

In sum, the Court finds that the Cooper House Plan is comparable to the Enacted House Plan on population equality, compactness scores, and political subdivision splits.

(2) Core retention

The Court also finds that the Cooper House Plan retained many of the cores of the districts in the Enacted House Plan. Georgia's Reapportionment Guidelines do not identify as a traditional districting principle the goal to preserve existing district cores among "General Principles for Drafting Plans." See JX 1, JX2. The Cooper House Plan kept 87 House districts the same as the Enacted House Plan. DX 2 ¶ 47. If the General Assembly were to enact the Cooper House Plan, 86% of the Georgia population would remain in the same district in the Enacted House Plan. Tr. 88:13-18.

(3) Incumbent pairings

Georgia's redistricting guidelines provide that "efforts should be made to avoid unnecessary incumbent pairings." JX 1, at 3; JX 2, at 3. Mr. Cooper testified that he also sought to avoid incumbent pairings. Tr. 236:1-2. Mr. Cooper used official incumbent address information that defense counsel provided in January 2022 and another potential database of incumbent address information that followed the November 2022 General Election. APAX 1 ¶ 12. Mr. Cooper testified that as he was drawing the Illustrative Plans, "always in the back of my mind [I] was trying to avoid pairing incumbents." Tr. 236:1-2. Cooper House Plans pairs 25 incumbents. The Enacted House Plan pairs 20 incumbents. Id. at 25. Mr. Cooper paired five more incumbents than the Enacted House Plan.

(4) Racial considerations

The evidence regarding Mr. Cooper's racial considerations when drawing the Cooper House Plan is identical to the evidence regarding the drawing of the Cooper Senate Plan. Accordingly, the Court incorporates by reference its analysis of the Mr. Cooper's racial consideration in the Cooper Senate Plan here. See Section I(F)(3)(b)(4) *supra*.

4. *Esselstyn Legislative Plans*

a) Mr. Esselstyn's map drawing process

As a part of his expert report, Mr. Esselstyn submitted an illustrative State Senate Plan ("Esselstyn Senate Plan") and an illustrative State House Plan ("Esselstyn House Plan") (collectively the "Esselstyn Legislative Plans"). Mr. Esselstyn testified that he was asked whether "the Black population in Georgia is sufficiently large and geographically compact to allow for the creation of additional majority Black districts in the legislative maps relative to the enacted maps while adhering to traditional redistricting principles." Tr. 467: 11–15. To accomplish this inquiry, Mr. Esselstyn used data from the Census Bureau's website, the Georgia General Assembly's Legislative Congressional Reapportionment Office's website, and the Georgia General Assembly's Reapportionment Committees Guidelines. Id. ¶¶ 1–2. Mr. Esselstyn also drew upon his knowledge as a geologist for determining where "fall line cities" were located in Georgia. Tr. 529:12–530:1. Mr. Esselstyn did not have any political data or election return information available when drawing the illustrative plans. Tr. 524:19–25. He also did not review any public comments provided by Georgians at public hearings until after he drew his preliminary injunction plans,

and the Esselstyn Legislative Plans are very similar to his preliminary injunction plans. Tr. 530:2–8.

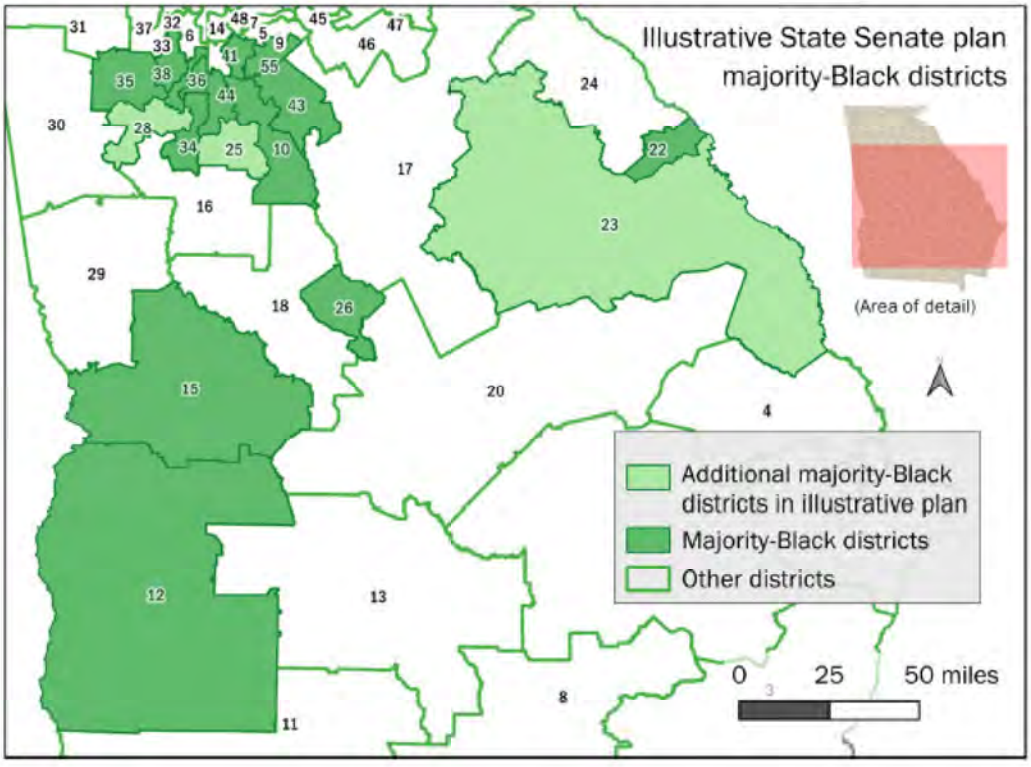
For the physical process of drawing his illustrative plans, Mr. Esselstyn primarily used the mapping software Maptitude, the same software used by the Georgia General Assembly. GX 2, Attach. B ¶ 4. Through Maptitude, he was able to import Census Bureau data files and the Enacted Legislative Plans. Id.

Maptitude shows statistics for the districts, such as compactness and population deviation. Id. Maptitude allows the map drawer to shade the map for racial demographics. Tr. 521:13–19. Mr. Esselstyn testified that "[a]t times" he would use the racial information to "inform decisions that he made about which parts of districts went in and out of a particular district." Tr. 522:19–25. But, he stated that he did not always have it on when drawing the Esselstyn Legislative Plans. Tr. 587:18–24. He testified that the racial information "would have been one factor that [he] was considering in addition to other factors." Tr. 522:24–25. Mr. Esselstyn testified that in determining where particular communities were located, he primarily relied on visible features that were displayed in the Maptitude software. Tr. 528:23–529:2.

b) Esselstyn Senate Plan

Analyzing these demographics and the Enacted Senate Plan, Mr. Esselstyn concluded that "[i]t is possible to create three additional majority-Black districts in the State Senate plan . . . in accordance with traditional redistricting principles." GX 1 ¶ 13; Tr. 468:2–4. Two in south-metro Atlanta and one in the Eastern Black Belt. GX 1 ¶ 13. Meaning, the Esselstyn Senate Plan has 17 majority-Black State Senate districts using the AP BVAP metric. Stip. ¶ 231; GX 1 ¶ 27.

Figure 4: Map of majority-Black districts in the illustrative State Senate plan.



GX 1 ¶ 27 & fig.4.

(1) Empirical measures

(a) numerosity

The Esselstyn Senate Plan contains 17 majority-Black districts. GX 1 ¶ 27 & tbl. 1. The AP BVAP in all 17 districts exceed 50 percent. Id. Of the additional majority-Black districts, the majority-Black population is 51.06%, 58.93%, and 57.28% respectively. Id.

Table 1: Illustrative Senate plan majority-Black districts with BVAP percentages.

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%		

(b) population equality and contiguity

It is undisputed that the districts in the Esselstyn Senate Plan are all contiguous. Stip. ¶ 258.

The overall deviation range on the Enacted Senate Plan is higher than the overall deviation range on the Enacted Senate Plan. Tr. 527:11–15; DX 3, Chart 3. However, the Court finds that the Esselstyn Senate Plan complies with the General Assembly's population equality guidelines. Under the General Assembly's redistricting guidelines "[e]ach legislative district of the General Assembly shall be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below." JX 2, 2.

Under the Esselstyn Senate Plan, all districts have a population deviation between ±1 and 2%, with most within ±1%. GX 1 ¶ 34. The district with the greatest deviation is + 1.90% and the district contains 194,919—3,635 persons more than the ideal population. GX 1, Attach. E. The average population deviation in Esselstyn's Senate Plan is ±0.67%. Id. The Court finds that on average, Mr. Esselstyn's Senate Plan complies with the General Assembly's guideline on population equality.

(c) Compactness scores

The Court finds that the Esselstyn Senate Plan and the Enacted Senate Plan, on the whole, are comparable. Mr. Esselstyn reported the average compactness scores for both the Enacted and Esselstyn Legislative Plans using five measures—Reock, Schwartzberg[30], Polsby-Popper, Area/Convex Hull[31], and Number of Cut Edges[32]. GX 1 ¶¶ 36, 57 & tbls.2, 6; see also Tr. 475:18–476:18 (Mr. Esselstyn's testimony describing common measures of compactness).

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[30] The Schwartzberg test is a perimeter-based measure that compares a simplified version of each district to a circle, which is considered to be the most compact shape possible. For each district, the Schwartzberg test computes the ratio of the perimeter of the simplified version of the district to the perimeter of a circle with the same area as the original district. This measure is usually greater than or equal to 1, with 1 being the most compact. GX 1, Attach. G.

[31] The Area/Convex Hull test computes the ratio of the district area to the area of the convex hull of the district (minimum convex polygon which completely contains the district). The measure is always between 0 and 1, with 1 being the most compact. GX 1, Attach. G.

[32] The Cut Edges test counts the number of edges removed ("cut") from the adjacency (dual) graph of the base layer to define the districting plan. The adjacency graph is defined by creating a node for each base layer area. An edge is added between two nodes if the two corresponding base layer areas are adjacent—which is to say, they share a common linear boundary. If such a boundary forms part of the district boundary, then its corresponding edge is cut by the plan. The measure is a single number for the plan. A smaller number implies a more compact plan. GX 1, Attach. G.

No. 24-10241

In the United States Court of Appeals for the Eleventh Circuit

ANNIE LOIS GRANT, et al.,
Plaintiffs-Appellants,

v.

SECRETARY OF STATE OF GEORGIA,
Defendant-Appellee.

On Appeal from the United States District Court
for the Northern District of Georgia
No. 1:21-cv-00122—Steve C. Jones, Judge

APPELLANTS' APPENDIX VOLUME IV OF VIII

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Mr. Esselstyn concluded that the average compactness measures for the Enacted and Esselstyn Senate Plans "are almost identical." GX 1 ¶ 36 & tbl.2; see also Id. at 79–91 (Mr. Esselstyn's expert report providing detailed compactness measures for Enacted and Esselstyn Senate Plans); Tr. 485:19–21 (Mr. Esselstyn's testimony describing compliance with compactness principle). Mr. Morgan agreed that the mean compactness scores were "very close." Tr. 1843:19–1844:2. Mr. Esselstyn reported those measures as follows:

Table 2: Compactness measures for enacted and illustrative State Senate plans.

	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

GX 1 ¶ 36 & tbl. 2.

The Court concludes that the Esselstyn Senate Plan fares worse than the Enacted Senate Plan by 0.01 points on four of the five measures and has 2 fewer cut edges than the Enacted Senate Plan. Id. Consistent with both Defendants' and the Grant Plaintiffs' experts, the Court finds that the compactness scores of the

two plans are "very close." Accordingly, the Court finds that the Esselstyn and Enacted Senate Plans are comparably compact.

The following chart is derived from the data in attachment H to Mr. Esselstyn's report and depicts the compactness scores for the minority-Black districts in the Enacted and Esselstyn Senate Plans.

	Enacted Senate Plan		**Esselstyn Senate Plan**	
District	**Reock**	**Polsby-Popper**	**Reock**	**Polsby-Popper**
010	0.28	0.23	0.25	0.19
012	0.62	0.39	0.62	0.39
015	0.57	0.32	0.57	0.32
022	0.41	0.29	0.33	0.32
023*	0.37	0.16	0.34	0.17
025*	0.39	0.24	0.57	0.34
026	0.47	0.20	0.44	0.25
028*	0.45	0.25	0.38	0.19
034	0.45	0.34	0.31	0.21
035	0.47	0.26	0.59	0.42
036	0.32	0.30	0.32	0.30
038	0.36	0.21	0.37	0.20
039	0.17	0.13	0.18	0.13
041	0.51	0.30	0.51	0.30
043	0.64	0.35	0.49	0.25
044	0.18	0.19	0.33	0.24
045	0.35	0.30	0.35	0.30
Mean:	**0.41**	**0.26**	**0.41**	**0.27**
Max:	**0.64**	**0.39**	**0.62**	**0.42**
Min:	**0.17**	**0.13**	**0.18**	**0.13**

asterisk (*) denotes a new majority-Black district

With respect to the majority-Black districts, the Court finds that the Esselstyn Senate Plan is equivalent if not better than the Enacted Senate Plan. On average, the two plans have identical Reock scores and the Esselstyn Senate Plan fares 0.01 better on the Polsby-Popper measure. GX 1, Attach. H.

With respect to the maximum and minimum scores, the Enacted Senate Plan has a district that is 0.02 better on Reock than the most compact district in the Esselstyn Senate Plan. Id. Conversely, on the Polsby-Popper measure, the Esselstyn Senate Plan's most compact district is 0.03 points more compact than the most compact district in the Enacted Senate Plan. Id. The least compact districts in both plans have identical Polsby-Popper scores and the Esselstyn Senate Plan's least compact district is more compact by 0.01 points. Id.

Finally, on the Reock measure, five of the majority-Black districts have identical scores, five districts are more compact in the Esselstyn Senate Plan, and seven districts are more compact in the Enacted Senate Plan. Id. On the Polsby-Popper measure, six of the majority-Black districts have identical scores, six

districts are more compact in the Esselstyn Senate Plan, and five are more compact on the Enacted Senate Plan.

In sum, the Court finds that on the empirical compactness measures, the majority-Black districts in the Enacted and Esselstyn Senate Plans are comparably compact.

(d) political subdivisions

The Court finds that on the whole, the Esselstyn Senate Plan's political subdivision splits are comparable to the Enacted Senate Plan's. The Esselstyn Senate Plan splits more counties and VTDs than the Enacted Senate Plan. Tr. 528:1–5; DX 3, Chart 3. Mr. Esselstyn noted that he split fewer counties than in the 2014 Georgia Legislative Plans. Tr. 487:15–21; GX 1 ¶ 40 & tabl.4. He reported the splits in the enacted and illustrative State Senate maps as follows:

Table 4: Political subdivision splits for enacted and illustrative State Senate plans.

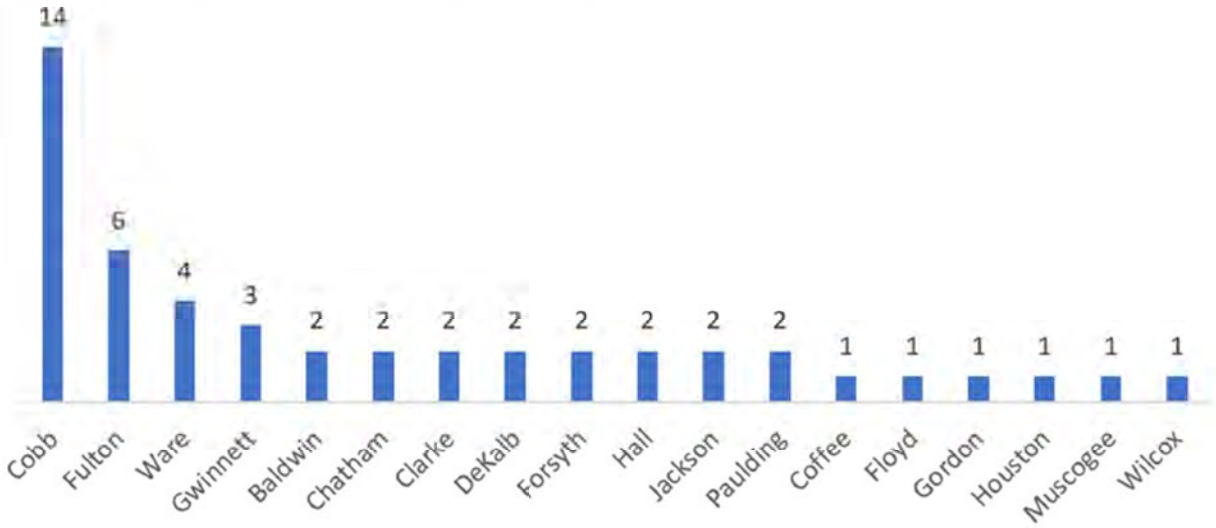
	Intact Counties	Split Counties	Split VTDs
Enacted	130	29	47
Illustrative	125	34	49

GX 1, ¶ 40 & tbl.4.

Mr. Esselstyn concluded that "[w]hile the creation of three additional majority-Black State Senate districts involved the division of additional counties and VTDs, the differences are marginal." GX 1 ¶ 40 & tbl.4; see also Id. at 92–103 (Mr. Esselstyn's expert report providing political subdivision splits for enacted and illustrative State Senate maps); Tr. 487:8–14 (Mr. Esselstyn's testimony that the number of political subdivision splits in the illustrative and enacted Senate plans are "very similar").

Mr. Morgan's report confirms that the Esselstyn Senate Plan split the same counties as the Enacted Senate Plan. See DX 3 ¶ 35. Mr. Morgan also conceded that the ways in which the Esselstyn Senate Plan splits counties, at times, affected fewer people because he split smaller counties and united some of the bigger counties. See Tr. 1887:21–1891:1. Out of 2,698 VTDs statewide, only 49 are split in Esselstyn Senate Plan, and in only 18 of Georgia's 159 counties. Doc. No. GX 1 ¶ 40 & tbl.4; Mr. Esselstyn's report included a histogram depicting the VTD splits in the Esselstyn Senate Plan by county:

Figure 10: VTD splits in illustrative State Senate plan by county.



GX 1 ¶ 40 & fig.10.

(e) findings of fact on the empirical measures

In sum, the Court finds that the Esselstyn Senate Plan has greater population deviations than the Enacted Senate Plan; however, the Esselstyn Senate Plan has comparable compactness scores and political subdivision splits.

(2) Core retention

The General Assembly Guidelines did not include maintaining existing State Senate district cores. JX 1, JX 2. Similarly, Ms. Wright testified that when drafting the Enacted Senate Plan, she starts with a blank map and builds out from

there. Tr. 1622:11–17; 1642:7–14. She does not start by using the most recent State Senate map. Id. Although not an enumerated guideline, the Court finds that the Esselstyn Senate Plan respects the core districts of the Enacted Senate Plan. Mr. Esselstyn used the Enacted Senate Plan as a starting point, and many of the districts are the same. Only 22 districts were modified, leaving the other 34 unchanged. Stip. ¶ 261; GX 1 ¶ 26; Tr. 485:3–5. As Mr. Morgan's report confirms, nearly 90% of Georgia's population would remain in their same numbered State Senate district under the Esselstyn Senate Plan. DX 3, Ex. 7. The Court finds that the Esselstyn Senate Plan retained the majority of the core districts from the Enacted Senate Plan.

(3) Incumbent Pairings

Based on the record, the Court concludes that the Esselstyn Senate Plan complies with the districting criterion of avoiding unnecessary pairings of incumbents. See JX1, JX2. At the preliminary injunction hearing, Mr. Esselstyn submitted an illustrative State Senate plan that he created without knowledge of incumbent addresses. GX 1 ¶ 42; Tr. 479:23–480:21. That plan paired two incumbents in the State Senate.

The Esselstyn Senate Plan, submitted at trial, pairs fewer incumbents than Mr. Esselstyn's initial plans. Currently, no incumbent State Senators are paired. GX 1 ¶ 42; Tr. 480:18–21.

Accordingly, the Court finds that Esselstyn Senate Plan respects the traditional redistricting principle of avoiding pairing incumbents because it paired no incumbents.

(4) Racial Considerations

The Court further concludes that Mr. Esselstyn did not subordinate traditional districting principles in favor of race-conscious considerations. 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." GX 1 ¶ 9 (footnote omitted); see also Tr. 467:8–15 (Mr. Esselstyn's testimony confirming what he was asked to do in this case). Mr. Esselstyn testified that he was not asked to

maximize the number of majority-Black districts in the Enacted Legislative Plans. Feb. 9, 2022, Afternoon PI Tr. 150:23–25.

Mr. Esselstyn testified that it was necessary for him to consider race as part of his analysis because "the Gingles 1 precondition is looking at whether majority Black districts can be created. And in order to understand whether districts are majority Black, one has to be able to look at statistics for those districts." Tr. 471:9–17. See Feb. 9, 2022, Afternoon PI Tr. 155:15–156:2. (Mr. Esselstyn testifying that, under Section 2, "the key metric is whether a district has a majority of the Any Part Black population. So that means it has to be over 50 percent. And that means looking at a column of numbers in order to determine, to assess whether a district has that characteristic. You have to look at the numbers that measure the percentage of the population is Black.").

Mr. Esselstyn emphasized that he took other considerations into account as well when drawing his illustrative plans, including population equality, compliance with the federal and Georgia constitutions, contiguity, and other traditional districting principles. Tr. 471:18–472:14.; Id. at 522:5–14 ("I'm constantly looking at the shape of the district, what it does for population

equality, . . . political subdivisions, communities of interest, incumbents, all that. So while yes, at times [race] would have been used to inform a decision, it was one of a number of factors.").

Mr. Esselstyn confirmed that race did not predominate when he drew the Esselstyn Legislative Plans. Tr. 472:15–20. Although Mr. Morgan concluded that Mr. Esselstyn's changes from the Enacted Senate Plan indicate that he prioritized race, the Court does not credit Mr. Morgan's analysis or conclusions for several reasons.

First, Mr. Morgan conceded that he did not examine the extent to which Mr. Esselstyn's changes were designed to satisfy traditional districting criteria like avoiding the unnecessary pairing of incumbents and preserving communities of interest. Tr. 1897:11–1899:3, 1923:21–1924:16. Mr. Morgan's overarching conclusion about the prioritization of race over other factors is difficult to square with his failure to actually examine all of the relevant factors Mr. Esselstyn stated he considered in drawing his illustrative plans.

Second, Mr. Morgan's analysis is methodologically inconsistent. For instance, the text of his expert report, which purports to compare the district in

the Enacted and Esselstyn Senate Plans, contains compactness scores for the enacted districts but makes no mention of the compactness scores for the corresponding illustrative districts. Tr. 1854:5–12.

Third, Mr. Morgan's analysis of the new majority-Black districts is incomplete. The text of Mr. Morgan's expert report provides no description or analysis whatsoever of Esselstyn SD-25, SD-28, HD-64, HD-117, HD-145 or HD-149. Tr. 1846:10–1847:6; Tr. 1896:21–23, 1922:22–25, 1923:1–15.

Fourth, Mr. Morgan's conclusion regarding the role of race seems to fault the Esselstyn Legislative Plans for taking the same approach as the Enacted Legislative Plans. Specifically, Mr. Morgan criticizes Esselstyn Legislative Plans for "elongating" various districts when creating new majority-Black districts, e.g., Tr. 1811:25–1812:18, but conceded that the Enacted Legislative Plans do the same thing. Tr. 1927:4–1928:25. Ms. Wright also agreed that several districts in the Enacted Legislative Plans, including EnactedSD-10, SD-44, HD-36, and HD-60, are "elongated." Tr. 1702:3–1704:1.

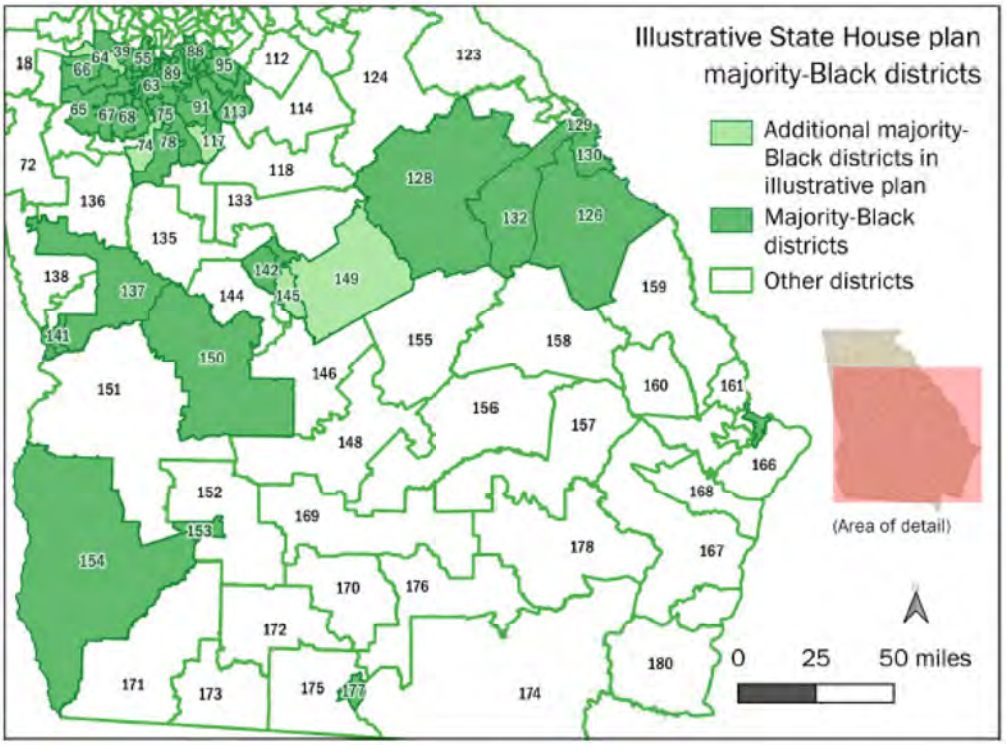
For these reasons, the Court is not persuaded by Mr. Morgan's testimony and conclusions that race predominated when Mr. Esselstyn drew the Esselstyn

Legislative Plans. The Court finds that Mr. Esselstyn consistently testified that race did not predominate when he drew his plans. Rather, he made efforts to balance traditional redistricting principles when he made districting decisions. Thus, the Court finds that race did not predominate in the drawing of the Esselstyn Legislative Plans.

c) Esselstyn House Plan

Mr. Esselstyn concluded that it was possible to drawn five additional majority-Black House districts in accordance with traditional redistricting principles. GX 1 ¶ 13.

Figure 13: Map of majority-Black districts in the illustrative House plan.



GX 1 ¶ 48 & fig.13.

(1) Empirical measures

(a) numerosity

Esselstyn'sThe Esselstyn House Plan contains 54 majority-Black districts. GX 1 ¶ 48 & tbl. 5. The AP BVAP in all of these districts exceed 50 percent. Id. The majority-Black population in the majority-Black districts is 50.24%, 53.94%, 51.56%, 50.38%, and 51.53% respectively. Id.

Table 5: Illustrative House plan majority-Black districts with BVAP percentages.

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%		

GX 1 ¶ 48 & tbl. 5.

(b) <u>population equality and contiguity</u>

It is undisputed that the districts in the Esselstyn House Plan are all contiguous. Stip. ¶ 258.

The Esselstyn House Plan's overall population deviation is higher than the deviation range in the Enacted House Plan's. Tr. 527:11–15; DX 3, Chart 3. However, the Court finds that the Esselstyn House Plan complies with the General Assembly's population equality guidelines. Under the General Assembly's redistricting guidelines state that "[e]ach legislative district of the

General Assembly shall be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below." JX 2, 2.

Under the Esselstyn House Plan, all districts have a population deviation between -1.94% and +1.91%, with a mean deviation of +0.64%. GX 1, Attach. J. The district with the greatest deviation is +1.91% and the district contains 58,358 people—1,153 persons less than the ideal population. GX 1, Attach. J. Comparatively, the Enacted House Plan has a population deviation range of -1.40 to +1.34%. GX 1, Attach. I. The Court finds that the Esselstyn House Plan has a greater deviation range than the Enacted House Plan, and on average, Mr. Esselstyn's House Plan complies with the General Assembly's guideline on population equality.

(c) compactness scores

The Court finds that the Esselstyn House Plan and the Enacted House Plan, on the whole, are comparable. Mr. Esselstyn reported the average compactness scores for both the Enacted and Esselstyn House Plans using five measures—Reock, Schwartzberg, Polsby-Popper, Area/Convex Hull, and Number of Cut

Edges. GX 1 ¶¶ 36, 57 & tbls.2, 6; see also Tr. 475:18–476:18 (Mr. Esselstyn's testimony describing common measures of compactness).

Mr. Esselstyn further concluded that the average compactness measures for the Enacted and Esselstyn House Plans "are almost identical, if not identical." GX 1 ¶ 57 & tbl. 6; see also Id. at 135–65 (Mr. Esselstyn's expert report providing detailed compactness measures for enacted and illustrative House maps); Tr. 492:17–22 (Mr. Esselstyn's testimony describing compliance with compactness principle). Mr. Esselstyn reported those measures as follows:

Table 6: Compactness measures for enacted and illustrative House plans.

	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

GX 1 ¶ 57 & tbl.6.

Mr. Morgan characterized the overall compactness scores of the Enacted and Esselstyn House Plans as "similar." DX 3 ¶ 50. The Court concludes that the Esselstyn House Plan is identical on Reock, Polsby-Popper, and Area/Convex

Hull. Id. On the Schwartzberg measure, the Enacted Plan is 0.01 more compact and the Enacted House Plan cut 339 fewer edges. GX 1 ¶ 57 & tbl.6

Consistent with both Defendants' and the Grant Plaintiffs' experts, the Court finds that the compactness scores of the two plans are "similar." Accordingly, the Court finds that the Esselstyn and Enacted House Plans are comparably compact. With respect to the maximum and minimum scores, the most compact district in the Enacted House Plan has a Reock score of 0.66 and the least compact district has a Reock Score of 0.12. GX 1, Attach. L. And on the Polsby-Popper measures, the most compact district has a score of 0.59 and the least compact district has a score of 0.10.The Esselstyn House Plan has the same metrics. Id.

With respect to the additional majority-Black districts, the Court finds that the additional majority-Black districts compactness scores all exceed 0.12 on Reock and 0.10 on Polsby-Popper, which are the lowest compactness scores in the Enacted House Plan. Id.

However, generally, the Court finds that the majority-Black House districts performed worse than the districts in the Enacted House Plan. However, none of

the compactness measures are below the least compact district's measures on the Enacted House Plan. The following table is derived from the data contained in attachment L to GX 1:

	Enacted House Plan		Illustrative House Plan	
Districts	**Reock**	**Polsby-Popper**	**Reock**	**Polsby-Popper**
064	0.37	0.36	0.22	0.22
074	0.50	0.25	0.30	0.19
117	0.41	0.28	0.40	0.33
145	0.38	0.19	0.34	0.21
149	0.32	0.22	0.46	0.28

In sum, the Court finds that on the empirical compactness measures, the majority-Black districts in the Esselstyn House Plan fall within the compactness score range of the Enacted House Plan.

(d) political subdivisions

The Court finds that on the whole, the Esselstyn House Plan's political subdivision splits are comparable to the Enacted House Plan's. The Enacted House Plan splits more counties and precincts than the Enacted House Plan. Tr. 528:1–5; DX 3, Chart 3.

Mr. Esselstyn concluded that "[w]hile the creation of three additional majority-Black State House districts involved the division of additional counties and VTDs, the differences are marginal." GX 1 ¶ 39 & tbl.4; see also Id. at 92–103 (Mr. Esselstyn's expert report providing political subdivision splits for the Enacted and Esselstyn House Plans); Tr. 487:8–14 (Mr. Esselstyn's testimony that the number of political subdivision splits in the Esselstyn and Enacted House Plans are "very similar"). He reported the splits in the Enacted and Esselstyn House Plans as follows:

Table 8: Political subdivision splits for enacted and illustrative House plans.

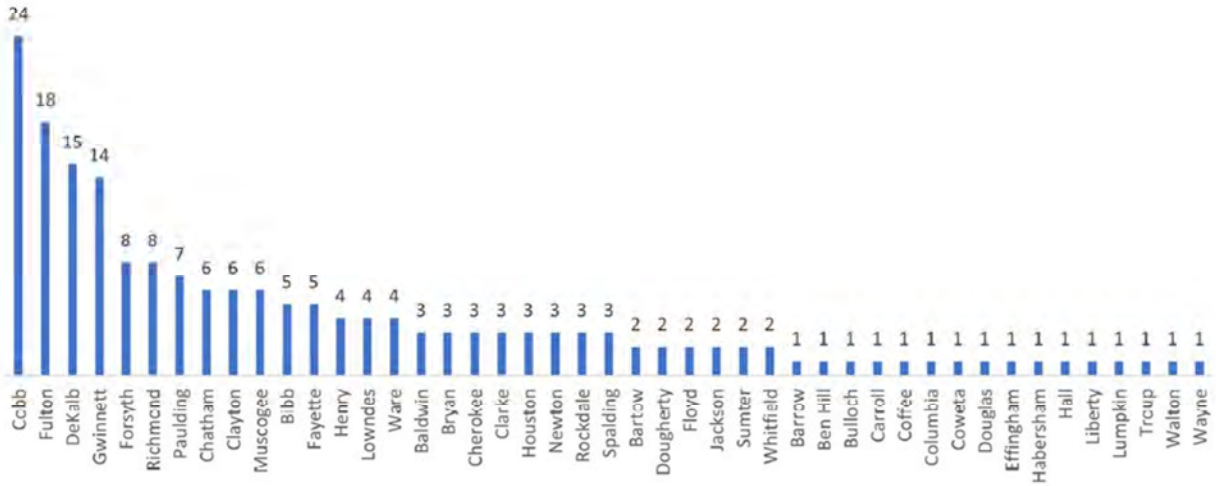
	Intact Counties	Split Counties	Split VTDs
Enacted	90	69	185
Illustrative	89	70	186

GX 1 ¶ 59 & tbl. 8.

The Esselstyn House Plan splits one more county and VTD than the Enacted House Plan. Notably, out of 2,698 VTDs statewide, only 186 are split in Esselstyn House Plan, and in only 45 of Georgia's 159 counties. GX 1 ¶ 59 & tbl.8; Tr. 494:16–495:3. Mr. Morgan also found that the ways in which the Esselstyn House Plan splits counties, at times, fewer people are affected because he split

smaller counties and united some of the bigger counties. See Tr. 1887:21–1891:1. Mr. Esselstyn's report included a histogram depicting the VTD splits in the Esselstyn House Plan by county:

Figure 18: VTD splits in illustrative State House plan by county.



GX 1 ¶ 59 & fig.18.

(e) findings of fact on the empirical measures

In sum, the Court finds that the Esselstyn House Plan has a greater range of population deviations than the Enacted House Plan; however, the Esselstyn House Plan has comparable compactness scores and political subdivision splits.

(2) Core retention

The General Assembly Guidelines did not include maintaining existing State House district cores. JX 1, JX 2. Similarly, Ms. Wright testified that when drafting the Enacted House Plan, she starts with a blank map and builds out from there. 1622:11–17; 1642:7–14. She does not start by using the most recent State House map. Id. Although not an enumerated guideline, the Court finds that the Esselstyn House Plan respects the core districts of the Enacted House Plan. Mr. Esselstyn used the Enacted House Plan as a starting point and many of the districts are the same. Only 25 districts were modified, leaving the other 155 unchanged. Stip. ¶ 261; GX 1 ¶ 47; DX 3, Ex. 14. As Mr. Morgan's report confirms, nearly 94% of Georgia's population would remain in their same numbered State House district under the Esselstyn House Plan. DX 3, Ex. 7. The Court finds that the Esselstyn House Plan retained the majority of the core districts from the Enacted House Plan.

(3) Incumbent Pairings

Based on the record, the Court concludes that the Esselstyn House Plan complies with the districting criterion of avoiding unnecessary pairings of incumbents. See JX1, JX2. Mr. Esselstyn's preliminary injunction State House

plan was created without knowledge of incumbent addresses and paired 16 incumbents in the State House. GX 1 ¶ 61; Tr. 479:23–480:21.

The Esselstyn House Plan, submitted in his December 2022 expert report, pairs fewer incumbents than Mr. Esselstyn's initial plans. The Esselstyn House Plan would pair a total of eight incumbents in the same districts—the same number of incumbents that the Enacted House Plan paired in the same districts. GX 1 ¶ 61; Tr. 480:14–21.

Accordingly, the Court finds that the Esselstyn House Plan pairs the same number of incumbents as the Enacted House Plan; therefore, it complies with the traditional redistricting principle of avoiding pairing incumbents.

(4) Racial Considerations

The evidence regarding the Esselstyn Senate and House Plans was identical. Accordingly, the Court incorporates its racial predominance analysis from the Esselstyn Senate Plan Section. See Section I(H)(4)(b)(4) *supra*.

G. Second and Third *Gingles* Preconditions

1. Pendergrass: Dr. Palmer's methodology

Dr. Palmer who served as Pendergrass and Grant Plaintiffs' experts, evaluated the Black population's cohesion and white voter bloc voting using EI.

PX 2, GX 2. Both Dr. Palmer and Defendants' expert, Dr. Alford, testified that ecological inference ("EI") is a reliable method for conducting the second and third Gingles preconditions analyses. "Q. Dr. Alford, you agree that . . . the method of ecological inference Dr. Palmer applied is the best available method for estimating voting behavior by race; correct? A. Correct." Tr. 2250:12–16; "Q. Do scholars and experts regularly use EI to examine racially polarized voting? A. Yes?" Tr. 401: 7–9. EI "estimates group-level preferences based on aggregate data." PX 2 ¶ 13. The data analyzed under EI also includes confidence intervals, which measure the uncertainty of results. Id. at n. 12.

Dr. Palmer conducted a racially polarized voting analysis of Enacted CD-3, 6, 11, 13, and 14, both as a region (the "congressional focus area") and individually. Stip. ¶ 214; PX 2 ¶ 7; Tr. 413:18–414:5.

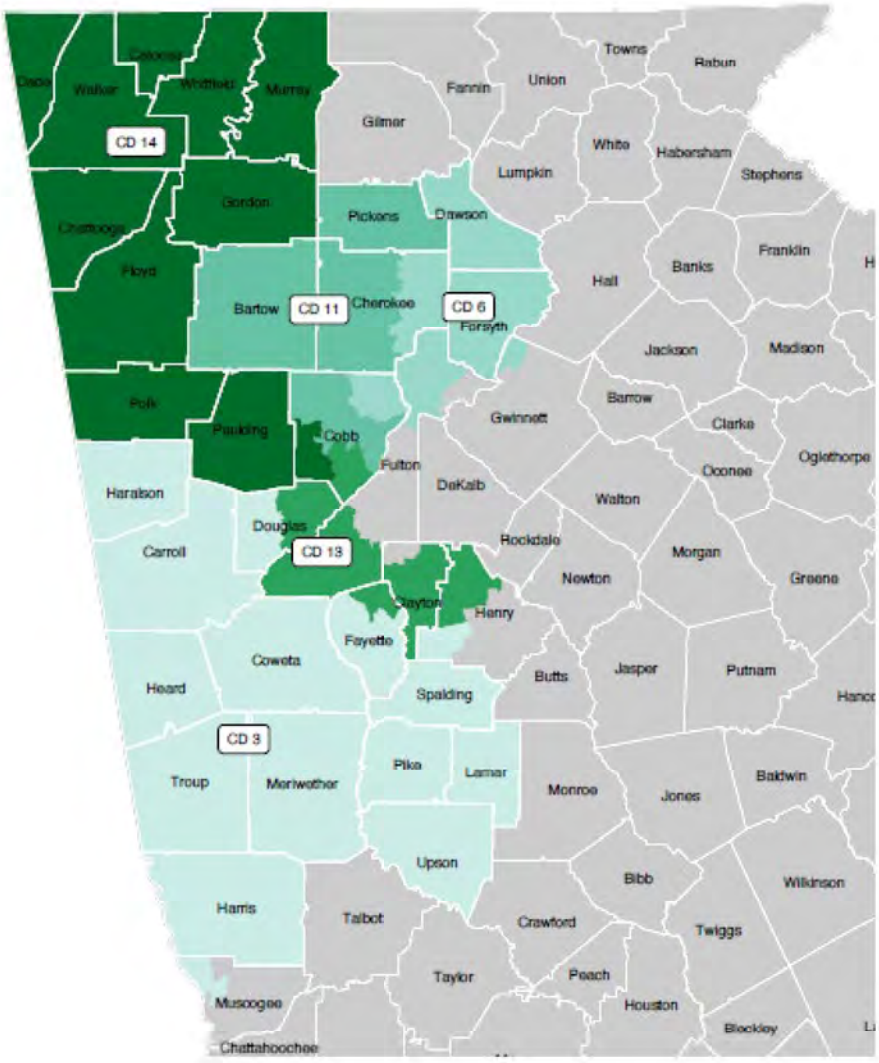


Figure 1: Map of the Focus Area

PX 2 ¶ 11 & fig.1.

Dr. Palmer evaluated Black and white voters' choices in the congressional focus area that voted for each candidate in 40 statewide elections between 2012

and 2022. Stip. ¶ 217; PX 2 ¶¶ 13, 15. Dr. Palmer's EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. PX 2 ¶ 11; Tr. 403:2–13.

Dr. Palmer first 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. PX 2 ¶ 14. If a significant majority of the group supported a single candidate, he then identified that candidate as the group's candidate of choice. Id. Dr. Palmer next compared the preferences of white voters to the preferences of Black voters. Id. He concluded that evidence of racially polarized voting is found when Black voters and white voters support different candidates. Id.

2. *Alpha Phi Alpha: Dr. Handley's methodology*

Dr. Handley, Alpha Phi Alpha's expert, analyzed voting patterns by race in seven areas of Georgia where the Cooper Legislative Plans created additional majority-Black districts. Tr. 861:21-25; APAX 5, 2; Stip. ¶ 307. As part of that analysis, she considered whether Black voters had the opportunity to elect

candidates of their choice in these areas under the Cooper Legislative Plans as compared to the Enacted Legislative Plans. See Tr. 862:22-863:5; APAX 5, 2, 12.

Dr. Handley stated that these seven areas in Georgia are where "districts that offered Black voters opportunities to elect their candidates of choice could have been drawn and were not drawn when you compare the illustrative to the adopted plan." Tr. 861:21-25. Dr. Handley named these seven areas the Eastern Atlanta Metro Region, the Southern Atlanta Metro Region, East Central Georgia with Augusta, the Southeastern Atlanta Metro Region, Central Georgia, Southwest Georgia, and the Macon Region. See APAX 5, 8-9; Tr. 869:13-25.

The first area Dr. Handley analyzed—the Eastern Atlanta Metro Region—encompasses Cooper SD-10, SD-17, SD-43 and Enacted SD-10, SD-17, SD-43 (DeKalb, Henry, Morgan, Newton, Rockdale, and Walton Counties). Stip. ¶ 309; APAX 5, 8, 17-18. The second area—the Southern Atlanta Metro Region—encompasses Cooper SD-16, SD-28, SD-34, and SD-39 and Enacted SD-16, SD-28, SD-34, and SD-44 (Clayton, Coweta, Douglas, Fayette, Heard, Henry, Lamar, Pike, and Spalding Counties). Stip. ¶ 310; APAX 5, 8, 19-20.

The third area—the East Central Georgia Region—encompasses Cooper SD-22, SD-23, SD-26, and SD-44 and Enacted SD-22, SD-23, SD-25, and SD-26 (Baldwin, Bibb, Burke, Butts, Columbia, Emanuel, Glascock, Hancock, Henry, Houston, Jasper, Jefferson, Jenkins, Johnson, Jones, Lamar, McDuffie, Monroe, Morgan, Putnam, Richmond, Screven, Taliaferro, Twiggs, Walton, Warren, Washington, Wilkes, and Wilkinson Counties). Stip. ¶ 311; APAX 5, 9, 21-22. The fourth area—Southeastern Atlanta Metro Region—encompasses Cooper HD-74, HD-75, HD-78, HD-115, HD-116, HD-117, HD-118, HD-134, and HD-135 and Enacted HD-74, HD-75, HD-78, HD-115, HD-116, HD-117, HD-118, HD-134, and HD-135 (Butts, Clayton, Fayette, Henry, Jasper, Lamar, Monroe, Pike, Putnam, Spalding, and Upson Counties). Stip. ¶ 312; APAX 5, 9, 23-24. The fifth area—Central Georgia—encompasses Cooper HD-128, HD-133, HD-144, and HD-155 and Enacted HD-128, HD-133, HD-149, and HD-155 (Baldwin, Bibb, Bleckley, Dodge, Glascock, Hancock, Jefferson, Johnson, Jones, Laurens, McDuffie, Taliaferro, Telfair, Twiggs, Warren, Washington, Wilkes, and Wilkinson Counties). Stip. ¶ 313; APAX 5, 9, 26-27.

The sixth area—Southwest Georgia—encompasses Cooper HD-152, HD-153, HD-171, HD-172, and HD-173 and Enacted HD-152, HD-153, HD-171, HD-172, and HD-173 (Colquitt, Cook, Decatur, Dougherty, Grady, Lee, Mitchell, Seminole, Stewart, Terrell, Thomas, Tift, Webster, and Worth Counties). Stip. ¶ 314; APAX 5, 9, 28-29. The seventh area—the Macon Region—encompasses Cooper HD-142, HD-143, and HD-145 and Enacted HD-142, HD-143, and HD-145 (Bibb, Crawford, Houston, Peach, and Twiggs Counties). Stip. ¶ 315; APAX 5, 9, 30-31.

Dr. Handley employed three commonly used, well-accepted statistical methods to conduct her racially polarized voting analysis: homogeneous precinct

analysis,[33] ecological regression[34], and EI.[35] Tr. 864:17-21, 868:10-12; APAX 5, 3-4; Stip. ¶ 308. With these three statistical methods, she calculated estimates of the percentage of Black and white voters who voted for candidates in recent statewide general elections and State legislative general elections in the seven areas. Tr. 863:21-864:25, 862:22-863:5. Dr. Handley uses homogeneous precinct analysis and ecological regression to check the estimates produced by EI. Tr. 868:7-9. When "they all come up with very similar estimates," Dr. Handley testified that she can be confident in those estimates. Id.

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[33] Homogeneous precinct analysis and ecological regression have been used for approximately 40 years. Tr. 864:17-20. These analytic tools were employed by the plaintiffs' expert in Gingles and were accepted by the Supreme Court. APAX 5, 4; Gingles, 478 U.S. at 52–53, 80.

[34] Ecological regression (ER), uses information from all precincts, not simply the homogeneous ones, to derive estimates of the voting behavior of minorities and whites. If there is a strong linear relationship across precincts between the percentage of minorities and the percentage of votes cast for a given candidate, this relationship can be used to estimate the percentage of minority voters supporting the candidate. APAX 5, 3.

[35] Dr. Handley used two forms of EI called "King's EI" and "EI RxC." Tr. 873:18-21. APAX 5, 4-5. Defendant's expert, Dr. John Alford, agrees that EI RxC is "the best of the statistical methods for estimating voting behaviors." Tr. 2215:23-25.

Dr. Alford has "no concerns with [Dr. Handley's] use of EI RxC in her most recent [December 23, 2022] report." Tr. 2216:1-3. He "[does not] question her ability," and agrees that "her new report, most recent report, relies on methods that . . . are acceptable." Id. at 2220:21, 2216:13-17. Dr. Alford has "no concerns about the data that went into Dr. Handley's statistical analysis in this case[.]" Tr. 2221:5-7.

Dr. Handley evaluated 16 recent (2016-2022) general and runoff statewide elections, including for U.S. Senate, Governor, School Superintendent, Public Service Commission, and Commissioners of Agriculture, Insurance, and Labor. APAX 5, 6; Stip. ¶¶ 316-317. She also looked at 54 recent (2016-2022) State legislative elections in the areas of interest, including 16 State Senate contests and 38 State House contests. Tr. 890:2-12; APAX 5, at 7-8; Stip. ¶ 324. All 2022 State legislative contests in the Enacted Legislative Plans identified as districts of interest were analyzed, even if the contest did not include at least one Black candidate. APAX 5, at 7-8. In addition, because there has only been one set of State legislative elections (2022) under the Enacted Plans, Dr. Handley also analyzed biracial State legislative elections conducted between 2016 and 2020 in

the State legislative districts under the previous State House and State Senate plans that are located within the seven areas of interest. Id.

Dr. Handley also examined 11 statewide Democratic primaries. Tr. 879:25-880:2. She examined those because "we have a two-part election system here and you have to make it through the Democratic primary to make it into the general election" and, in some jurisdictions, primaries are the operative barrier for Black-preferred candidates, so Dr. Handley "would always look at both." Id. at 892:22-893:8. With regard to the areas of interest in this litigation, Dr. Handley concluded that the Democratic primaries were "not a barrier" for Black-preferred candidates to win elections, and Dr. Handley rested her opinions of racially polarized voting in the areas of interest on the general elections. Id. at 894:13-22. Dr. Handley did not evaluate whether Democratic primaries are the barrier to electing Black-preferred candidates outside the areas of interest. Id. at 894:23-895:1.

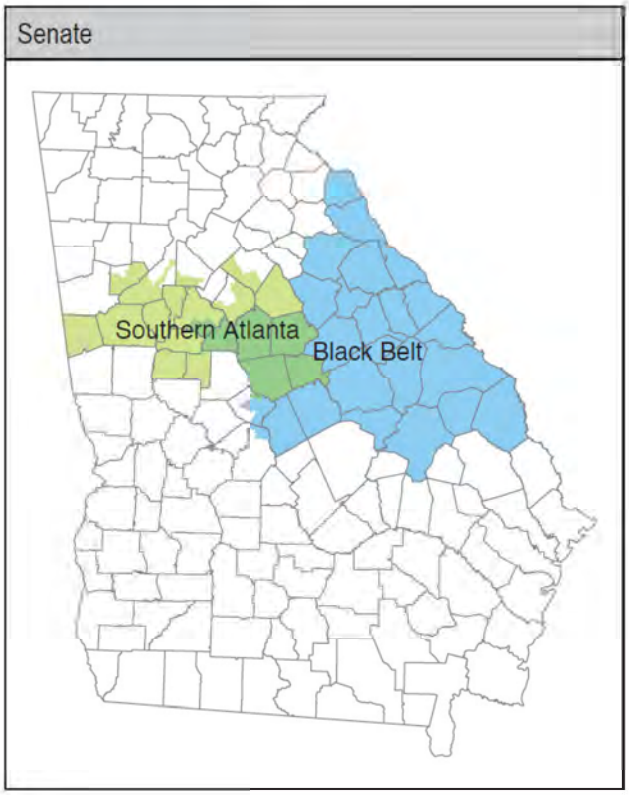
3. *Grant: Dr. Palmer's methodology*

Dr. Palmer, who served as the Pendergrass Plaintiffs' expert on political cohesion and voter polarization also served as the Grant Plaintiffs' expert.

Dr. Palmer used the same EI method as that used in Pendergrass. Tr. 418:21–25. Dr. Palmer conducted a racially polarized voting analysis of five different legislative focus areas. Stip. ¶ 262; GX 2 ¶ 10; Tr. 403:21–404:5. His EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. GX 2 ¶ 13; Tr. 403:2–13. Dr. Palmer analyzed two focus areas for the Enacted Senate Plan.

In the Black Belt, Dr. Palmer evaluated Enacted SD-22, SD-23, SD-24, SD-25, and SD-26 ("Palmer's senate Black Belt focus area"). These districts 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. Tr. 403:21–404:5; GX 2 ¶ 12; Stip. ¶ 265. In south-metro Atlanta Dr. Palmer evaluated Enacted SD-10, SD-16, SD-17, SD-25, SD-28, SD-34, SD-35, SD-39, and SD-44. These districts include Baldwin, Butts, Clayton, Coweta, Fayette, Heard, Jasper, Jones, Lamar, Morgan, Pike, Putnam, and Spalding Counties and parts of

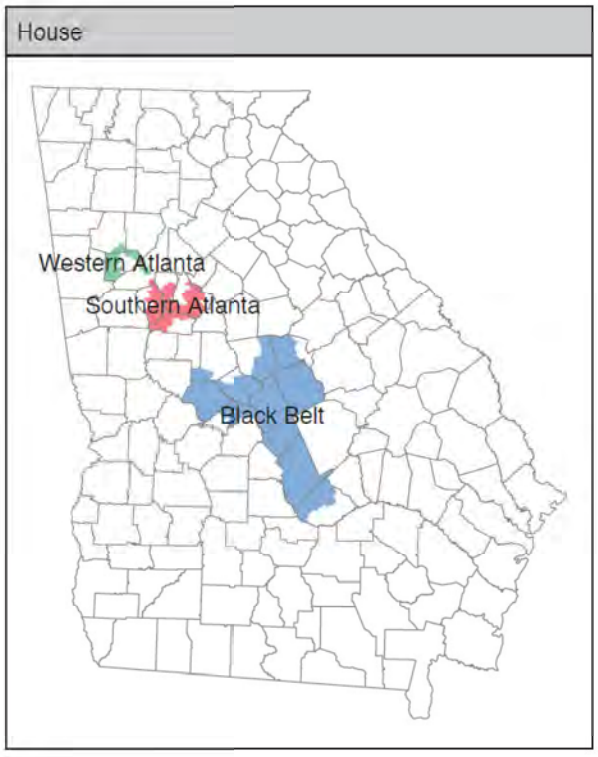
Bibb, DeKalb, Douglas, Fulton, Henry, Newton, and Walton Counties. Tr. 403:21–404:5; GX 2 ¶ 12; Stip. ¶ 265.



GX 2 ¶ 12 & fig.1.

Dr. Palmer analyzed three focus areas for the State House Plan. In the Black Belt, Dr. Palmer evaluated Enacted HD-133, HD-142, HD-143, HD-145, HD-147, and HD-149. These districts include Bleckley, Crawford, Dodge, Twiggs, and Wilkinson Counties and parts of Baldwin, Bibb, Houston, Jones, Monroe, Peach, and Telfair Counties. Tr. 403:21–404:5; GX 2 ¶ 11; Stip. ¶ 264. In south-metro

Atlanta, Dr. Palmer evaluated Enacted HD-69, HD-74, HD-75, HD-78, HD-115, and HD-117. These districts include parts of Clayton, Fayette, Fulton, Henry, and Spalding Counties. Tr. 403:21–404:5; GX 2 ¶ 11; Stip. ¶ 264. Finally, in west-metro Atlanta, Dr. Palmer evaluated Enacted HD-61 and HD-64. These districts include parts of Douglas, Fulton, and Paulding Counties. Tr. 403:21–404:5; GX 2 ¶ 11; Stip. ¶ 264.



GX 2 ¶ 12 & fig.1.

Dr. Palmer first 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. GX 2 ¶ 16. If a significant majority of the group supported a single candidate, he then identified that candidate as the group's candidate of choice. Id. Dr. Palmer next compared the preferences of white voters to the preferences of Black voters. Id. He concluded that there was evidence of racially polarized voting when he found that Black voters and white voters support different candidates. Id. Defendants' expert, Dr. Alford, did not contest Dr. Palmer's methodology. Tr. 2145:23–2146:1, 2215:17–25.

H. Georgia's History of Voting and Recent Electoral Developments

1. Credibility Determinations

The Court makes the following credibility determinations as it relates to the experts on the Senate Factors.

a) Dr. Orville Vernon Burton

The Grant and Pendergrass Plaintiffs[36] proffered and the Court qualified Dr. Burton as an expert on history of race discrimination and voting. Tr. 1419:14–17, 1424:8–9. Dr. Burton earned his undergraduate degree from Furman University in 1969 and his doctorate in American history from Princeton University in 1976. PX 4, 5. Dr. Burton has taught American history at various universities since 1971. Id. Currently, he serves as the Judge Matthew J. Perry Distinguished Professor of History and Professor of Global Black Studies, Sociology and Anthropology, and Computer Science at Clemson University. Id. at 6. Dr. Burton is the author or editor of more than 20 books and 300 articles. Id. Dr. Burton has received numerous awards based on his research. Id.

Dr. Burton also has connections to the state of Georgia. He was born in Madison County, Georgia and is a recognized authority on Morehouse College's

[36] The Parties consented to allow Dr. Burton's trial testimony, the portions of his report that were directly referenced in the trial, and PX 14, GX 15, DX 107 to apply across all three cases. Tr. 1464:10–23, 1505:11–1506:1.

former President Dr. Benjamin E. Mays. He has also written a book about an area in South Carolina that has strong ties to the city of Augusta, Georgia. Id. 6.

Dr. Burton has been retained as an expert witness and consultant in numerous voting rights case over the past forty years. Id. 7. Specifically, he was qualified as an expert on social and economic status, discrimination, historical intent in voting rights cases, and group voting behavior. Id. His testimony has been accepted and relied upon by various federal courts. Id. 7–8.

At the preliminary injunction, the Court found "Dr. Burton to be highly credible. His historical analysis was thorough and methodologically sound" and his "conclusions [were found] to be reliable." Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1315. Having observed Dr. Burton's demeanor and testimony, the Court finds that Dr. Burton's testimony is highly credible. Dr. Burton answered all questions on direct-examination and cross-examination thoroughly. Dr. Burton engaged in an extensive colloquy with the Court on the history of voting and race that expounded upon information that was in his report. Accordingly, the Court finds that his testimony is highly credible and extremely

helpful to the Court. Thus, the Court will assign great weight to Dr. Burton's testimony.

b) Dr. Loren Collingwood

The Grant and Pendergrass Plaintiffs proffered and the Court qualified Dr. Collingwood as an expert in political science, applied statistics, and demography. Tr. 671:18–21, 673:5–7. Dr. Collingwood received his Bachelor of Arts from California State University, Chico in 2002 and his Ph.D. in political science with a concentration in political methodology and applied statistics from the University of Washington in 2012. PX 5, 2. Currently, he serves as an associate professor of political science at the University of New Mexico. Id. Previously, he was an associate professor of political science and co-director of civic engagement at the Center for Social Innovation at the University of California, Riverside. Id. He has published two books, 39 articles, and nearly a dozen book chapters on sanctuary cities, race/ethnic politics, election administration, and racially polarized voting. Id. Dr. Collingwood has served as an expert witness in seven redistricting cases. Id. He has also served as an expert witness in three other voting related cases. Id.

In the preliminary injunction order, the Court found that Dr. Collingwood was "qualified to opine as an expert on demographics and political science. The Court f[ound] Dr. Collingwood to be credible, his analysis methodologically sound, and his conclusions reliable." Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1318.

Having observed Dr. Collingwood's demeanor and testimony, the Court finds that his testimony was internally consistent and he was able to thoroughly answer questions on direct and cross examination. Thus, the Court finds Dr. Collingwood to be highly credible and will assign great weight to his testimony.

c) Dr. Adrienne Jones

The Alpha Phi Alpha Plaintiffs [37] proffered and the Court qualified Dr. Jones as an expert in history of voting rights, voting-related discrimination, race and politics, and Black political development, but not various sections of the

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[37] The Parties consented to allow Dr. Jones's trial testimony, the portions of her report that were directly referenced in the trial, and APAX 31, 266, DX 59 to apply across all three cases. Tr. 1244:10–1245:8, 1504:18–1505:10.

Civil Rights Act. Tr. 1149:8–11, 1158:2–5.Dr. Adrienne Jones received her Bachelor of Arts in Modern Culture and Media (Semiotics) from Brown University, her Juris Doctor from the University of California at Berkley, her Masters and Ph.D. in political science from City University of New York Graduate Center. APAX 2, 4. Currently, Dr. Jones is an assistant professor of political science at Morehouse College in Atlanta, Georgia where she teaches political science and also serves as the Pre-Law Director. Id. at 4. Dr. Jones has written a doctoral dissertation and two peer-reviewed articles on the Voting Rights Act. Id. She is currently writing a book on the VRA. Id.

In addition to this case, Dr. Jones served as an expert witness in Fair Fight Action v. Raffensperger, 634 F. Supp. 3d. 1128 (N.D. Ga. 2022), which was decided by this Court. In Fair Fight, the Court credited Dr. Jones's testimony as it related to the historical backdrop pertinent to Section 2 of the VRA. Id. at 1171. The Court gave less weight to the testimony regarding matters that occurred after 1990 and present voting practices. Id.

Having observed Dr. Jones's demeanor and testimony, the Court finds that her testimony was internally consistent and she was able to thoroughly answer

questions on direct and cross examination that relate to the topics that she was qualified. The Court notes that on *voir dire*, Dr. Jones's testimony regarding various aspects of the Civil Rights Act were inconsistent with current law. Accordingly, the Court assigns little to no weight to testimony about the legal requirements under the Civil Right Act, to which Dr. Jones was not qualified as an expert. As to the portions of Dr. Jones's testimony for which she was qualified to testify, the Court finds it highly credible and will assign great weight to that testimony.

d) Dr. Traci Burch

The Alpha Phi Alpha Plaintiffs proffered and the Court qualified Dr. Burch as an expert on in political science, political participation and barriers to voting. Tr. 1041:25-1042:2, 1046:9-13. Dr. Burch has been an associate professor of political science at Northwestern University and a research professor at the American Bar Foundation since 2007. Tr. 1035:4-9. Dr. Burch received her Ph.D. in government and social policy from Harvard University, and her undergraduate degree in politics from Princeton University. Tr. 1034:19-1035:3.

Dr. Burch has published numerous peer-reviewed publications and a book on political participation, including publications focusing on Georgia, and she teaches several courses related to voting and political participation. Tr. 1036:12-18, 1037:15-1038:2. Dr. Burch has received several prizes and awards, including national prizes, for her book and her dissertation. Tr. 1037:2-14. She has served as a peer reviewer for flagship scholarly journals in her field of political science. Tr. 1036:19-24. Dr. Burch's research and writing involves conducting data analysis on voter registration files and voter turnout data. Tr. 1038:8-1039:1.

Dr. Burch has previously testified as an expert in six other cases, including voting rights cases where she offered expert testimony relating to a Senate Factor or the Arlington Heights framework. Tr. 1039:4-1040:23. Dr. Burch was qualified to serve as an expert in all of the cases in which she has testified. Tr. 1040:24-1041:1.

In preparing her report, Dr. Burch relied on sources and methodologies that are consistent with her work as a political scientist. Tr. 1047:23-1048:9; APAX 6, at 4. The Court finds Dr. Burch credible, her methodology sound, and her

conclusions reliable. Accordingly, the Court credits Dr. Burch's testimony and conclusions.

e) Dr. Jason Morgan Ward

The Alpha Phi Alpha Plaintiffs proffered and the Court qualified Dr. Ward as an expert in the history of Georgia and the history of racial politics in Georgia. Tr. 1333:17-19, 1335: 3-7. Dr. Ward has been a professor of history and at Emory University since 2018. Tr. 1331:1-4. He received his Ph.D., M.Phil, and M.A. in history from Yale University, and his undergraduate degree in history with honors from Duke University. Tr. 1330:17-19. Dr. Ward wrote his dissertation on civil rights and racial politics during the mid-20th century. Tr. 1330:20-24.

Dr. Ward has published numerous peer-reviewed publications and two books about the history of racial politics and violence in the South, including Georgia. Tr. 1332:17-1333:10; APAX 4, at 28-29. Dr. Ward has taught courses on the history of the modern United States, civil rights, race and politics, political violence and extremism, including courses that cover the history of racial politics in Georgia. Tr. 1331:2 –1332:16.

In preparing his report, Dr. Ward relied on sources and methodologies that he would typically employ as a historian undertaking a historical analysis. Tr. 1335:17-1336:3. The Court finds Dr. Ward credible, his methodology for historical analysis sound, and his conclusions reliable. Accordingly, the Court credits Dr. Ward's testimony and conclusions.

2. Analysis

Given the widely overlapping nature of the evidence adduced in the three different cases and to avoid confusion about what evidence applies to which case, the Court will address its factual findings as they relate to the Senate Factors and the totality of the circumstances below in the conclusion of law section.

II. CONCLUSIONS OF LAW

A. Jurisdictional Considerations

In the Pretrial Order, Defendants raised affirmative defenses regarding constitutional and statutory standing. APA Doc. No. [280] at 23; Grant Doc. No. [243], 26; Pendergrass Doc. No. [231], 28. The Court now addresses these affirmative defenses and determines that, with the exception of claims against the SEB, Plaintiffs in all three cases have standing to bring these suits.

1. *Constitutional Standing*

Article III of the United States Constitution limits the courts to hearing actual "Cases" and "Controversies." U.S. Const. art. III, § 2; see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 559–60 (1992). Overall, the standing requirement arising out of Article III seeks to uphold separation-of-powers principles and "to prevent the judicial process from being used to usurp the powers of the political branches." Clapper v. Amnesty Int'l USA, 568 U.S. 398, 408 (2013) (citations omitted).

> To establish standing, a plaintiff must show three things:
>
> First, the plaintiff must have suffered an injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Lujan, 504 U.S. at 560–61 (internal quotations, citations, and alterations omitted). The standing challenges specifically identified by Defendant are as to (1) claims

by Plaintiff Sixth District AME (in Alpha Phi Alpha), and (2) claims against Defendant SEB (in Grant and Pendergrass).

a) Claims by the Sixth District AME

An organization may establish injury by invoking "associational standing," which is established by proof that the organization's members "would otherwise have standing to sue in their own right[.]" Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc., 528 U.S. 167, 181 (2000). The Parties stipulate that the Sixth District AME has more than 500 member-churches in Georgia and that the member-churches of the Sixth District AME have tens of thousands of members across Georgia. Stip. ¶¶ 59–60. Sixth District AME specifically has churches located in Enacted SD- 16, SD-17, and SD-23 as well as in Enacted HD-74, HD-114, HD-117, HD-128, HD-1h33, HD-134, HD-145, HD-171, and HD-173. Stip. ¶¶ 61.

While the Defendant presented no argument on the associational standing issue by motion or at trial, it did propose the following conclusion of law after conclusion of the trial:

> This Court determines that Plaintiff Sixth District of the African Methodist Episcopal Church does not have

> associational standing because it has not established that it has individual members who are voters impacted by the enacted redistricting plans, but rather its membership consists of member churches. Churches do not vote and thus cannot have an injury for the district in which the churches reside.

APA Doc. No. [317] ¶ 147. However, in that same filing, Defendant conceded that Alpha Phi Alpha (as a named Plaintiff) has associational standing and that the individual plaintiffs have standing as to the districts in which they reside. Id. ¶ 145. Therefore, as a jurisdictional matter, it is unnecessary for the court to determine whether Sixth District AME h has standing. See Vill. of Arlington Heights v. Metro. Hous. Dev. Corp., 429 U.S. 252, 264 n.9 (1977) ("Because of the presence of this plaintiff [who has demonstrated standing], we need not consider whether the other individual and corporate plaintiffs have standing to maintain the suit."); Am. Civil Liberties Union of Ga. v. Rabun Cnty. Chamber of Comm., Inc., 698 F.2d 1098, 1108–09 (11th Cir. 1983) ("Because we have determined that at least these two individuals have met the requirements of Article III, it is unnecessary for us to consider the standing of the other plaintiffs in this action."); see also Town of Chester v. Laroe Estates, Inc., 581 U.S. 433, 439 (2017) ("At least

one plaintiff must have standing to seek each form of relief requested in the complaint.").

Here, it is unchallenged that the individual plaintiffs and Alpha Phi Alpha have constitutional standing to challenge the districts at issue in this suit. Alpha Phi Alpha Defendant's single proposed conclusion of law regarding applicability of associational standing to the final plaintiff, Sixth District AME, thereby is insufficient for the Court to further consider Defendant's affirmative defense as to this one plaintiff.

b) Claims against the SEB

In moving for summary judgment, the Grant and Pendergrass Defendants argued that the Grant and Pendergrass Plaintiffs' injuries are not fairly traceable to or redressable by the SEB. Grant Doc. No. [190-1], 17-19; Pendergrass Doc. No. [175-1], 12-14. In denying the Motions for Summary Judgment, the Court acknowledged that Pendergrass and Grants Plaintiffs failed to adduce facts to support a finding of traceability of their injuries to the SEB. Nevertheless, when taking all inferences in the light most favorable to the Pendergrass and Grant Plaintiffs as nonmovants, the Court found that the broad language of the Georgia

statutes delineating the SEB's duties and roles in elections was sufficient to allow them to proceed to trial against the SEB. Grant Doc. No. [229], 28; Pendergrass Doc. No. [215], 26.

At trial, despite bearing the burden of proof and the Court's prompting in the summary judgement orders, Pendergrass and Grant Plaintiffs presented no evidence from which the Court could conclude that their injuries are traceable to the SEB.[38] Therefore, the Court concludes that the Grant and Pendergrass Plaintiffs lack standing to raise their claims against the SEB.[39]

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[38] Unlike reliance on the standing of at least one other plaintiff to find that all named Plaintiffs in Alpha Phi Alpha have standing, there is no authority to support reliance on standing against one named defendant to support standing as to other defendants. Therefore, the Court's reasoning with regarding to claims by Sixth District AME in Alpha Phi Alpha does not apply to claims brought against SEB in Grant and Pendergrass.

[39] Because the Secretary of State is a named defendant in both Grant and Pendergrass, the absence of standing with regard to claims against the SEB does not alter the relief available to Plaintiffs. The Secretary of State is responsible for administering the elections, therefore, the Court can "enjoin the holding of elections pursuant to the [Enacted] plan . . . and subsequently require elections to be conducted pursuant to a [legal] apportionment system . . . ." Larios v. Perdue, 306 F. Supp. 2d 1190, 1199 (N.D. Ga. 2003).

2. *Statutory Standing*

The question of statutory standing turns on whether the "statutory provision on which the claim rests properly can be understood as granting persons in the plaintiff's position a right to judicial relief." Warth v. Seldin, 422 U.S. 490, 500 (1975). The Supreme Court has clarified that the term "statutory standing" is "misleading, since the absence of a valid . . . cause of action does not implicate subject-matter jurisdiction, i.e., the court's statutory or constitutional power to adjudicate the case." Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 128 n.4 (2014) (cleaned up). Under Lexmark, the question is whether the plaintiff "has a cause of action under the statute." Id. at 128. The Court went on to explain that "a statutory cause of action extends only to plaintiffs whose interests fall within the zone of interests protected by the law invoked." Id. at 129 (cleaned up).

In the cases before the Court, Defendants have done nothing more than assert an affirmative defense that Plaintiffs' lack statutory standing. Because the question of statutory standing is not jurisdictional, the Court has no obligation to

delve into the issue without benefit of argument or evidence from Defendants. Moreover, the Court has already determined that a private right of action under Section 2 exists. See APA Doc. No. [65], 31–34; Grant Doc. No. [43], 30–33; Pendergrass Doc. No. [50], 17–20; see also Allen, 599 U.S. Ct. at 41 (affirming a preliminary injunction order, Singleton v. Merrill, 582 F. Supp. 3d 924,1031–32 (N.D. Ala. 2022), which analyzed whether Section 2 provided a private right of action). Therefore, the Court has no difficulty concluding that Defendants have failed to carry their burden of establishing their affirmative defense based on statutory standing and rejects this affirmative defense.

B. Legal Standards

1. First Gingles Precondition

Under the first Gingles precondition, Plaintiffs must prove that the minority group exceeds 50% in the challenged area and that the minority group is sufficiently compact to draw a reasonably configured district. Wisc. Legis. v. Wisc. Elections Comm'n, 595 U.S. 398, 400, (2022). Ct. "A district will be reasonably configured . . . if it comports with traditional districting criteria, such as being contiguous and reasonably compact." Allen, 599 U.S. at 18 (citing Ala. Legis. Black Caucus, 575 U.S. at 272). To determine whether Plaintiffs have met

the numerosity and compactness requirements, the Court must evaluate the specific challenged district and not the state as a whole. Cf. Ala. Legis. Black Caucus, 575 U.S. at 268 ("[T]he District Court's analysis of racial gerrymandering of the State, [under [the Equal Protection Clause], 'as a whole' was legally erroneous.").[40]

2. *Second and Third Gingles Precondition*

The second Gingles precondition requires the Plaintiffs to show that "the minority group . . . is politically cohesive." Gingles, 478 U.S. at 51. The third Gingles precondition requires the Plaintiffs to show that "the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances . . . usually to defeat the minority's preferred candidate." Id.

3. *Totality of the Circumstances: Senate Factors*

In a Section 2 case, after evaluating the Gingles preconditions, the final assessment to determine whether vote dilution has actually occurred requires

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[40] Although Alabama Legislative Black Caucus concerned constitutional redistricting challenges, the Supreme Court applied its analysis to a Section 2 challenge in Allen. Allen, 143 S. Ct. at 1503, 1519.

"assess[ing] the impact of the contested structure or practice on minority electoral opportunities on the basis of objective factors." Gingles, 478 U.S. at 44 (citations omitted). To do so, the Court looks at the VRA's 1982 Amendments' Senate Report, which specifies the factors relevant for a Section 2 analysis. "The totality of circumstances inquiry recognizes that application of the Gingles factors is 'peculiarly dependent upon the facts of each case.'" Allen, 599 U.S. at 19 (quoting Gingles, 478 U.S. at 79). The totality of the circumstances' inquiry is fact intensive and requires weighing and balancing various facts and factors, which is generally inappropriate on summary judgment. See Rose v. Raffensperger, 1:20-cv-2921-SDG, 2022 WL 670080, at *2 (N.D. Ga. Mar. 7, 2022) ("[T]he Court . . . cannot appropriately evaluate the totality of the circumstances before trial.").

C. Congressional District

The Court finds that Pendergrass Plaintiffs successfully carried their burden in establishing that an additional majority-minority congressional district could be drawn in the west-metro Atlanta.

1. First Gingles Precondition

Pendergrass Plaintiffs have proven that they meet the first Gingles precondition. The first Gingles precondition requires plaintiffs to prove that the

"minority group [is] sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district." Wisc. Legis., 595 U.S. at 402 (per curiam) (citing Gingles, 478 U.S. at 50–51). "A district will be reasonably configured . . . if it comports with traditional districting criteria, such as being contiguous and reasonably compact." Allen, 599 U.S. at 18 (citing Ala. Legis. Black Caucus v. Alabama, 575 U.S., 254, 272 (2015). The first Gingles precondition focuses on the "need[] to establish that the minority [group] has the potential to elect a representative of [their] own choice in some single-member district. Growe v. Emison, 507 U.S. 25, 40 (1993).

a) Numerosity

First, Pendergrass Plaintiffs have shown, both at the preliminary injunction and trial that Georgia's Black population is sufficiently large to constitute a majority in an additional congressional district in west-metro Atlanta. "[A] party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." Bartlett v. Strickland, 556 U.S. 1, 20 (2009).

Mr. Cooper drew an illustrative plan that contains an additional majority-Black congressional district in west-metro Atlanta that balanced traditional redistricting criteria. Mr. Cooper submitted a similarly configured district at the preliminary injunction. DX 154. The Court instantly discusses both configurations for the purpose of showing that the population in this area of the State is sufficiently numerous because a majority-Black congressional district can be drawn in more than one way, contrary to Defendants submissions. See Feb. 7, 2022, Morning PI Tr. 21:5:8 ("[W]hile these are illustrative plans, the way they are configured are so tight in terms of population, there's not really a whole lot of different ways to configure[.]"); Tr. 1806:2–19 (Mr. Morgan discussing that various districts in the Illustrative Plans are barely over 50% and took population from existing majority-Black districts to achieve the numerosity requirement). Illustrative CD-6 submitted both at the preliminary injunction hearing and at the trial (which was configured in Mr. Cooper's December 5, 2022 Report) have an AP BVAP of 50.23%. Stip. ¶ 192; DX 20, 51 fig.9; PX 1, 73, fig.14.

Figure 9
BVAP and BCVAP Comparison in the Eight Modified Districts: Illustrative Plan and 2021 Plan

	Illustrative Plan			2021 Plan	
District	% BVAP	% NH BCVAP		% BVAP	% NH BCVAP
03	20.92%	20.40%		23.32%	22.82%
04	**52.40%**	**55.48%**		**54.52%**	**58.04%**
06	**50.23%**	**50.69%**		**9.91%**	**10.00%**
09	11.66%	11.66%		10.42%	10.38%
10	14.31%	15.38%		22.60%	22.56%
11	13.27%	13.30%		17.95%	18.09%
13	**51.40%**	**50.05%**		**66.75%**	**66.88%**
14	5.17%	5.14%		14.28%	13.38%

DX 154 ¶ 51 fig.9 (preliminary injunction).

Figure 14
BVAP and BCVAP Comparison: Illustrative Plan and 2021 Plan

	Illustrative Plan				2021 Plan		
District*	% BVAP	% NH BCVAP	% NH DOJ BCVAP		% BVAP	% NH BCVAP	% NH DOJ BCVAP
1	28.17%	29.16%	29.67%		28.17%	29.16%	29.67%
2	49.29%	49.55%	50.001%		49.29%	49.55%	50.001%
3	**20.47%**	**19.64%**	**20.02%**		**23.32%**	**22.53%**	**22.86%**
4	**52.77%**	**55.62%**	**56.37%**		**54.52%**	**57.71%**	**58.46%**
5	49.60%	51.64%	52.35%		49.60%	51.64%	52.35%
6	**50.23%**	**50.18%**	**50.98%**		**9.91%**	**9.72%**	**10.26%**
7	29.82%	31.88%	32.44%		29.82%	31.88%	32.44%
8	30.04%	30.46%	30.76%		30.04%	30.46%	30.76%
9	**11.66%**	**11.29%**	**11.74%**		**10.42%**	**10.03%**	**10.34%**
10	**14.31%**	**15.09%**	**15.39%**		**22.60%**	**22.11%**	**22.56%**
11	**13.67%**	**12.91%**	**13.48%**		**17.95%**	**17.57%**	**18.30%**
12	36.72%	36.60%	37.19%		36.72%	36.60%	37.19%
13	**51.13%**	**49.64%**	**50.34%**		**66.75%**	**66.36%**	**67.05%**
14	**5.17%**	**4.80%**	**5.19%**		**14.28%**	**13.19%**	**13.71%**

*Bold font identifies districts that are changed from the 2021 Plan configuration.

PX 1 ¶ 73 fig, 14 (trial plan).

The fact that Mr. Cooper has now successfully created two districts in this area exceeding 50% BVAP (one for the preliminary injunction hearing and one for the trial) despite changing the boundaries of the illustrative district,[41] supports that the Black voting age population is sufficiently numerous in this area. Compare DX 20 ¶ 51, fig.9 (BVAP is 50.23%), with PX 1 ¶ 73, fig.14 (BVAP is 50.23%).

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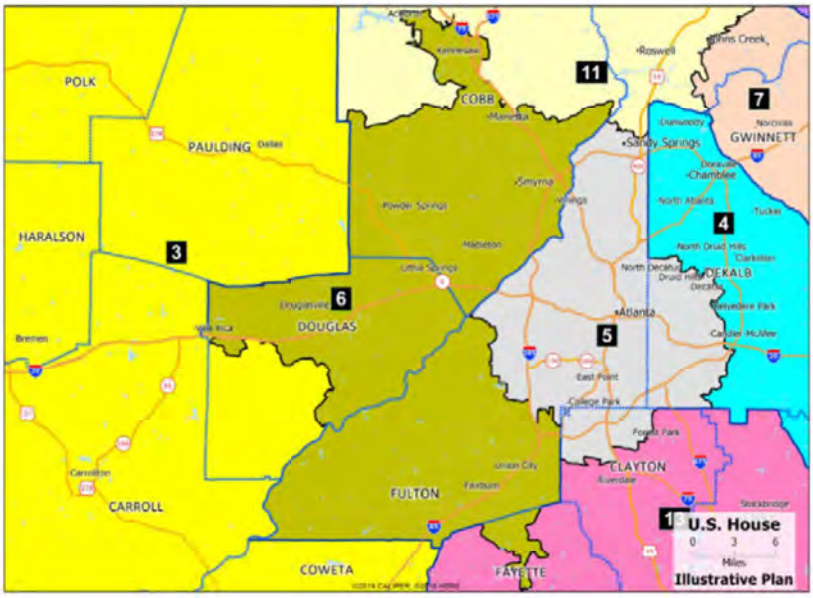
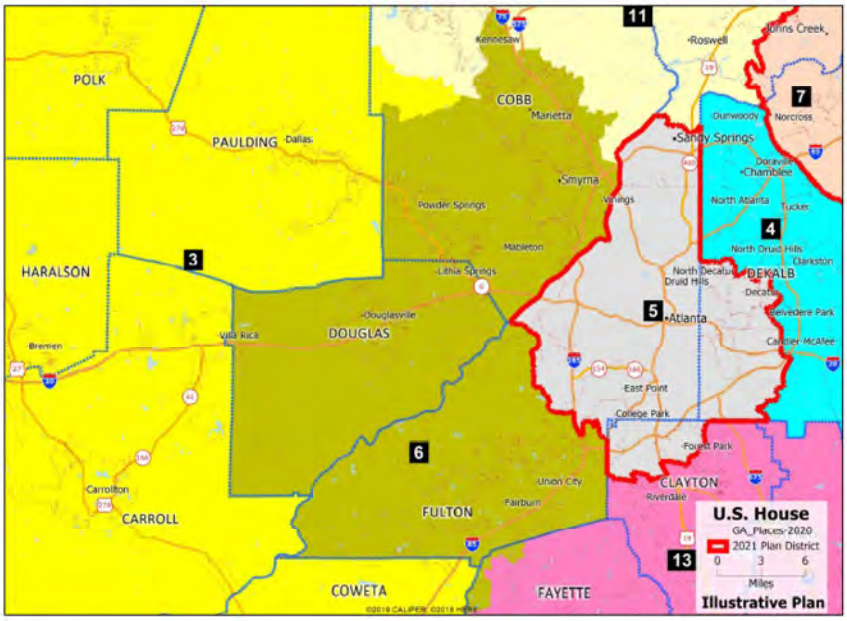
[41] Although both maps are similar, the primary differences between the two configurations of Illustrative CD-6 are that in the preliminary injunction map, (1) Illustrative CD-6 did not keep Douglas County whole and (2) the southeastern part of the district reached into Fayetteville. Compare DX 154, Ex. K, with PX 1, Ex. I-2.



DX 154, Ex. K (preliminary injunction).



PX 1, I-2 (trial).

Accordingly, the Court concludes that Plaintiffs have shown that Georgia's Black population is large enough to constitute a majority in an additional congressional district in west-metro Atlanta.

b) Compactness

The Court further concludes that Pendergrass Plaintiffs have shown that Georgia's Black population in west-metro Atlanta is geographically compact to comprise a majority of the voting age population in an additional congressional district. Under the compactness requirement of the first Gingles precondition, plaintiffs must show that it is "possible to design an electoral district[] consistent with traditional redistricting principles[.]" Davis v. Chiles, 139 F.3d 1414, 1425 (11th Cir. 1998). The compactness inquiry "refers to the compactness of the minority population, not . . . the compactness of the contested district." League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 433 (2006) (hereinafter "LULAC") (citing Bush v. Vera, 517 U.S. 952, 997 (1996)).

"A district that reaches out to grab small and apparently isolated minority communities' is not reasonably compact." Id. (citing Vera, 517 U.S. at 979). The relevant factors for compactness under the first Gingles precondition include:

population equality, contiguity, empirical compactness scores, the eyeball test for irregularities and contiguity, respect for political subdivisions, and uniting communities of interest. See Wesberry v. Sanders, 376 U.S. 1, 18 (1964) (population equality); LULAC, 548 U.S. at 433 (communities of interest); Vera, 517 U.S. at 959-60 (contiguity, eyeball test); Cooper v. Harris, 581 U.S. 285, 291, 312 (2017) (political subdivisions, partisan advantage, empirical compactness measures).

(1) Empirical measures

(a) population equality

Article I § 2 of the Constitution "requires congressional districts to achieve population equality 'as nearly as is practicable.'" Abrams v. Johnson, 521 U.S. 74, 98 (1997) (quoting Wesberry, 376 U.S. at 7–8). This standard requires a mapmaker to "make a good-faith effort to achieve precise mathematical equality." Karcher v. Daggett, 462 U.S. 725, 730 (1983) (internal quotation marks omitted) (quoting Kirkpatrick v. Preisler, 394 U.S. 526, 530-31 (1969)). A congressional plan achieves population equality when its districts are plus or minus one person. See Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1258 (finding that "Mr. Cooper's Illustrative Congressional Map complies with the one-person, one-vote principle"

where he testified that "the districts are plus or minus one person" (internal quotation marks omitted)). It is undisputed that Mr. Cooper's Illustrative Plan meets the population equality requirement and that the population deviations are limited to plus or minus one person from the ideal district population of 765,136. Stip. ¶ 197. Accordingly, the Court concludes that the Illustrative Congressional Plan achieves population equality.

(b) contiguity

Similarly, an illustrative district should not disregard traditional redistricting principles, such as contiguity. Allen, 599 U.S. at 18. A district is contiguous when it consists of "a single connected piece." Lopez, 339 F. Supp. 3d at 607. As it is undisputed (Stip. ¶ 198), the Court concludes that all the districts in the Illustrative Congressional Plan are contiguous.

(c) compactness scores

The Court also finds that the Illustrative CD-6 is sufficiently compact using empirical measures. One way in which courts assess the compactness of the districts in an illustrative plan is by relying on "widely acceptable tests to determine compactness scores," including "the Polsby-Popper measure and the Reock indicator," Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections,

835 F. Supp. 2d 563, 570 (N.D. Ill. 2011). Mr. Cooper's Illustrative Congressional plan compares favorably on the empirical compactness scores to the Enacted Congressional Plan. The mean Reock score for the Illustrative Congressional Plan is 0.43 and is 0.44 on the Enacted Congressional Plan. PX 1, ¶ 79, fig.13. The mean Polsby-Popper score for the Illustrative Congressional Plan is 0.27 and the Enacted Congressional Plan is 0.27. Id. The Illustrative and Enacted Congressional Plans have identical Polsby-Popper scores and the Enacted Congressional Plan is 0.01 more compact using the Reock metric. Defendants' rebuttal mapping expert, Mr. Morgan, does not dispute that the Enacted and the Illustrative Congressional Plans have similar mean Reock scores and identical mean Polsby-Popper scores. Tr. 1948:22–1949:5. Accordingly, the Court finds that the Illustrative Congressional Plan is comparably as compact as the Enacted Congressional Plan.

With respect to the majority-Black districts, the Court finds that the Illustrative Congressional Plan compactness scores generally fared better or were equal to the Enacted Congressional Plan.

	Illustrative Plan		Enacted Plan	
Districts	**Reock**	**Polsby-Popper**	**Reock**	**Polsby-Popper**
004	0.28	0.22	0.31	0.25
005	0.51	0.32	0.51	0.32
006*	**0.45**	**0.27**	**0.42**	**0.20**
013	0.44	0.29	0.38	0.16

The asterisk (*) denotes the additional majority-Black district.

PX 1, Exs. L-1, L-3. Mr. Morgan's report's compactness measures are identical to Mr. Coopers. DX 4 ¶ 22 & chart 2.

The Court finds that Illustrative CD-6, the challenged district, is 0.03 more compact on Reock and 0.07 more compact on Polsby-Popper. The Court finds that Plaintiffs have sufficiently shown that the Illustrative CD-6 is slightly more compact, on empirical measures than the Enacted CD-6.[42]

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[42] Additionally, the Court finds that Illustrative CD-13 is 0.06 more compact on Reock and 0.13 more compact on Polsby-Popper than Enacted CD-13. Illustrative CD-5 and Enacted CD-5 have identical compactness scores and Enacted CD-4 is 0.03 more compact than Illustrative CD-4 on both compactness measures. Thus, the challenged

(d) political subdivisions

The Court also finds that Illustrative CD-6 "respected existing political subdivisions, such as counties, cities, and towns." Allen, 599 U.S. at 20. Illustrative CD-6 splits the same number of counties as the Enacted Plan, but has fewer county, VTD, and city and town split. PX 1 ¶ 81 & fig.14.

Figure 14
County, VTD, and Municipal Splits: Illustrative Plan, 2012 Benchmark, and 2021 Plan (All Districts)

	Split Counties*	County Splits*	2020 VTD Splits*	Split Cities/ Towns#	City/ Town Splits*
Illustrative Plan	15	18	43	37	78
2012 Benchmark Plan	16	22	43	40	85
2021 Plan	15	21	46	43	91

*Excludes unpopulated areas
#Out of 531 municipalities (calculated by subtracting the number of whole cities in the Maptitude report from 531)

PX 1 ¶ 81, fig.14.

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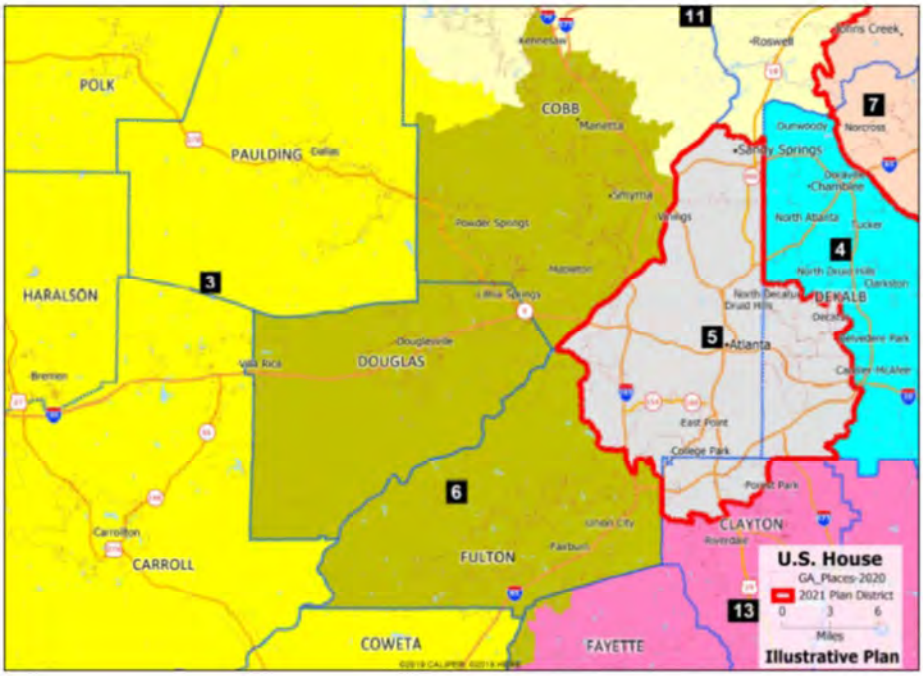
district, and the other majority-Black districts are comparably compact if not more compact than the Enacted majority-Black congressional districts.

Neither Defendants nor their experts have meaningfully suggested that the Illustrative Congressional Plan fails to respect city, town, and county lines. Accordingly, the Court finds that the Illustrative Congressional Plan respected more political subdivisions than the Enacted Congressional Plan.

(2) Eyeball test

The Court finds that Illustrative CD-6 is also visually compact. The eyeball test is commonly utilized to determine if a district is compact or not. See Allen, 599 U.S. at 60 n.10 (quoting Singleton, 582 F. Supp. 3d at 1011) (crediting the district court's findings that the illustrative maps were compact because they did not contain "tentacles, appendages, bizarre shapes or any other obvious irregularities"); Vera, 517 U.S. at 960 (crediting the district court's finding that the challenged district passed the eyeball test and was visually compact); Ala. State Conf. of NAACP v. Alabama, 612 F.Supp.3d at 1265 ("District 1 is contiguous and also passes the eyeball test for geographical compactness."); Comm. for a Fair & Balanced Map, 835 F. Supp. 2d at 571 (three-judge court) (stating that the district "passe[d] muster under the 'eyeball' test for compactness").

The Court finds that Illustrative CD-6 passes the eyeball test.



PX 1, Ex. I-2 (trial).

The district includes all of Douglas County, and portions of southern Fulton and southern Cobb Counties. Defendants' mapping expert, Mr. Morgan, does not dispute the visual compactness of Illustrative CD-6, nor did he testify about the district's visual compactness. DX 4. Unlike at the preliminary injunction, where there was questioning regarding the "fingers" into Fayetteville and Kennesaw to "pick-up" Black population, Illustrative CD-6 no longer reaches into Fayetteville. Doc. No. [73] 82:21–83:1, 86:6–12. At the trial, Defendants

elicited no testimony or questions about "fingers" branching off of Illustrative CD-6.

The Court finds that the district does not have any tentacles or appendages. Illustrative CD-6 is about 40 miles from top to bottom (Tr. 835:19–20), is contained in a relatively small area of the state and is completely within the metro-Atlanta counties. Accordingly, it lacks any similarities to the map in Miller, which spanned from metro Atlanta to Augusta, or LULAC, which stretched 300 miles along the southern border of Texas. Miller v. Johnson, 515 U.S. 900, 909 (1995); LULAC, 548 U.S. at 424. Thus, the Court finds that Illustrative CD-6 is visually compact.

(3) Communities of interest

The Court also concludes Illustrative CD-6 respects communities of interest. A district that "reaches out to grab small and apparently isolated minority communities" is not reasonably compact. Vera, 517 U.S. at 979. Plaintiffs "may not 'assum[e] from a group of voters' race that they think alike, share the same political interests, and will prefer the same candidates at the polls.'" LULAC, 548 U.S. at 433 (quoting Miller, 515 U.S. at 920; Shaw v. Reno, 509 U.S.

630, 647 (1993)). LULAC instructs district courts to account for "the characteristics, needs, and interests" of the minority community in the contested area. Id. at 434.

There is no bright line test for determining whether a district combines communities with common interests or disparate communities. Ms. Wright, the General Assembly's map drawer testified that "[c]ommunities of interest are very hard to measure." Tr. 1617:8. They could include, "a school attendance zone, . . . an incorporated city or town, . . . share[d] resources[,] . . . the same water authority[,] . . . a religious community that attends one facility." Id. at 1617:12–1618:22. LULAC provides some guidance on what courts should consider. "[R]ural and urban communities[ ] could share similar interests and therefore form a compact district if the areas are in reasonably close proximity." 548 U.S. at 435. However, when "the only common index is race" this is not a Section 2 remedy. Id. In LULAC, the Supreme Court held that the challenged district did not contain a community of interest because the district court found an enormous geographical distance separated one portion of the district from the other and the minority communities in the district had disparate needs and interests. Id.

In this case, the Court finds that there is sufficient evidence that Illustrative CD-6 is made up of communities of interest and does not combine disparate minority communities. Mr. Cooper testified that when he draws districts he "ha[s] to look at communities of interest." Tr. 726:19. He stated that he respects communities of interest because he "look[s] at political subdivisions, particularly towns and cities, and tr[ies] to keep those areas all together in one--in one district." Tr. 740:13–15. Specifically for Illustrative CD-6, he looked at the federally described 29-county Atlanta MSA and the Georgia defined 11-county core Atlanta area. Tr. 741:18–742:1. He further concluded that Illustrative CD-6 is a community of interest because it is wholly contained in suburban Atlanta. Tr. 799:2–7.

Pendergrass Plaintiffs also submitted the testimonial evidence of former General Assembly members Mr. Allen and Mr. Carter. The Court credits this testimony with respect to communities of interest. Both witnesses have served as representatives of metro Atlanta communities and Mr. Allen's former district is within Illustrative CD-6.

Mr. Allen, a former member of the Georgia House of Representatives and a Smyrna resident, agreed that his neighbors, the Black residents of Illustrative CD-6, face the same transportation-related challenges, specifically involving "access, congestion, [and] infrastructure." Tr. 1009:9–13. He testified that "[a]s a resident of this area," he knows that these communities rely on the same interstates. Id. at 1009:4–8. Residents of these areas attend some of the same places of worship. Id. at 1009:17–22. Mr. Allen also explained that the residents of Illustrative CD-6 share an interest in receiving services from Grady Hospital, the only Level One Trauma Center in Metro Atlanta. Id. at 1019:24–1020:3.

Former Georgia State Senator and candidate for Governor Jason Carter also testified that Illustrative CD-6 constitutes a community of interest. He stated that all areas of the district can be described as suburbs of Atlanta. Tr. 966:11–19. He testified that all parts of the district are within a 20-to-40-minute drive of downtown Atlanta, without traffic. Tr. 967:22–968:5. It is an area that is growing and increasingly diversifying. Tr. 967:13–17. The individuals in the area use similar roadways and are impacted by Atlanta traffic patterns. Tr. 966:22–967:10.

Finally, he testified that the Chattahoochee river runs through the middle of the district.

Neither Defendants' experts nor Ms. Wright provided testimony disputing that Illustrative CD-6 unites communities of interest. The Court finds that Illustrative CD-6 combines areas of suburban metro Atlanta. The communities are relatively close in proximity. They share traffic concerns and have a common waterway. The Court finds that Illustrative CD-6 does not combine disparate minority communities, like the challenged district in LULAC (which stretched across 300 miles on the Texas border) or in Miller (which spanned from Augusta to Atlanta). Accordingly, the Court finds that Illustrative CD-6 respects the traditional districting principles of maintaining communities of interest.

(4) Core retention

Although not a typical traditional redistricting principle, the Court also finds that the Illustrative Congressional Plan retained many of the cores of the districts in the Enacted Congressional Plan. The Supreme Court recently called into question the importance of core retention for Section 2 Plaintiffs. "[T]his Court has never held that a State's adherence to a previously used districting plan

can defeat a § 2 claim. If that were the rule, a State could immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan." Allen, 599 U.S. at 22. Additionally, Ms. Wright testified that when she draws the new Plans, she starts with a blank map and not from the existing congressional plan, and then "work[s] with the data to create new districts." Tr. 1622:11–17. Ms. Wright admitted to using the existing district "as a reference" for other measures, such as retaining core districts. Tr. 1622:18–20.

To the extent that core retention is relevant as a traditional redistricting principle, the Court finds that the Illustrative Congressional Plan retains a majority of the population's districts. See generally DX 4. Pursuant to the data provided by Mr. Morgan, the Court finds that approximately 74.6% of voters would have the same congressional district as they do under the Enacted Congressional Plan. Id. In other words, only 25.4% of Georgians would be affected if Illustrative CD-6 were enacted into law. The following is a table is derived from the data in Mr. Morgan's Report and that exemplifies the number

of individuals who remain in the same district under the Illustrative Congressional Plan.

District	# of individuals whose district is unchanged
001	765,137*
002	765,137*
003	528,200
004	736,485
005	765,137*
006	19,006
007	765,137*
008	765,136*
009	403,191
010	488,385
011	372,724
012	765,136*
013	374,470
014	475,707

The asterisk (*) denotes a district unchanged on the illustrative map

DX 4, Ex. 7.

The ideal population size of a congressional district is 765,136 (plus or minus one person). As the chart above shows, six of the districts remain unchanged (Illustrative CD-1, CD-2, CD-5, CD-7, CD-8, CD-12). In the eight

changed districts, only three districts (Illustrative CD-6, CD-11, and CD-13) change more than half of the population's congressional district. These changes logically follow from the fact that Illustrative CD-6 is the new majority-minority district and CD-11 and CD-13 are two districts immediately surrounding it. Accordingly, the Court finds that the Illustrative Congressional Plan substantially retains the Enacted Congressional Plan's district cores.

(5) Racial considerations

Finally, the Court concludes that race did not predominate in the drawing of the Illustrative Congressional Plan. Allen recognized that "[t]he question whether additional majority-*minority* districts can be drawn . . . involves a 'quintessentially race-conscious calculus.'" 599 U.S. at 31 (plurality opinion) (quoting Johnson v. De Grandy, 512 U.S. 997, 1020 (1994)). Consequently, "[t]he contention that mapmakers must be entirely 'blind' to race has no footing in our § 2 case law. The line that we have long since drawn is between consciousness and predominance." Id. at 33 (plurality opinion). Race does not predominate when a mapmaker "adhere[s] . . . to traditional redistricting criteria," testifies that "race was not the predominant factor motivating his design process," and

explains that he never sought to "maximize the number of majority-minority" districts. Davis, 139 F.3d at 1426; see also id. at 1425–26 (finding clear error with the district court's finding of racial predominance based on an expert's testimony that he was asked to draw additional majority-minority districts in an area with a high concentration of Black citizens).

During Defendants' cross-examination of Mr. Cooper, questions were asked about whether race predominated when drawing the Illustrative Congressional Districts. Tr. 786:23–787:6. Mr. Cooper testified that he considered race among other traditional redistricting principles, balancing all considerations and did not allow any of them to predominate or subordinate the others. On this point, Mr. Cooper's testimony is well summarized by the following:

> I'm constantly balancing the traditional redistricting principles, which would include population equality, which must be plus or minus one or so in most states. I'm looking at the compactness of the district. The district has to be contiguous, it has to be connected with all parts. I have to look at communities of interest. I have to look at political subdivisions and try to keep those whole. And that's sort of subsumed under communities of interest. And, finally, also I have to be cognizant of avoiding the dilution of the minority voting source.

Tr. 726:14–23.

As the Court noted above, Mr. Cooper's testimony was highly credible. Mr. Cooper expressly disclaimed that race predominated the drawing of any district, let alone Illustrative CD-6. Tr. 1744–2129; PX 1. It does not appear from the face of the Illustrative Congressional Plan that race predominated its creation. Compare PX 1, Ex. I-2 (creating an additional majority-minority district that is wholly contained within four counties), with Miller, 512 U.S. at 108–09 (a district that stretched from Augusta, Georgia to Atlanta, Georgia). The Court finds that the evidence shows that Mr. Cooper was aware of race when he drew the Illustrative Congressional Plan, but that race did not predominate the configuration of its districts. Accordingly, the Court finds that the Pendergrass Plaintiffs have sufficiently proven that race did not predominate over the drawing of the Illustrative Congressional Plan, or Illustrative CD-6.

(6) Possible remedy

In Nipper, the Eleventh Circuit held that "the first threshold factor of Gingles [ ] require[s] that there must be a remedy within the confines of the state's judicial model that does not undermine the administration of justice." Nipper v. Smith, 39 F.3d 1494, 1531 (11th Cir. 1994). The Eleventh Circuit later clarified that

"[t]his requirement simply serves 'to establish that the minority has the potential to elect a representative of its own choice from some single-member district.'" Burton v. City of Belle Glade, 178 F.3d 1175, 1199 (11th Cir. 1999) (quoting Nipper, 39 F.3d at 1530). Additionally, "[i]f a minority cannot establish that an alternate election scheme exists that would provide better access to the political process, then the challenged voting practice is not responsible for the claimed injury." Id.; see also Brooks v. Miller, 158 F.3d 1230, 1239 (11th Cir. 1998) (holding that "[i]f the plaintiffs in a § 2 case cannot show the existence of an adequate alternative electoral system under which the minority group's rights will be protected, then the case ends on the first prerequisite").

Under Nipper, the question of remedy depends on whether the alternate scheme is a "workable remedy within the confines of the state's system of government." Nipper, 39 F.3d at 1533. For example, in Wright v. Sumter Cnty. Bd. of Elections and Registration, 979 F.3d 1282, 1304 (11th Cir. 2020), the Eleventh Circuit found that the first Gingles precondition had been met because the special master's maps showed that at least three majority-Black districts could have been drawn in that area, meaning "that a meaningful remedy was available."

The Court has already determined that there is Record evidence that the minority population in Illustrative CD-6 is sufficiently compact. As is stated above, the Court finds that Mr. Cooper's Illustrative Congressional Plans, both from the preliminary injunction hearing and the trial, prove it is possible to draw an additional majority-Black congressional district in west-metro Atlanta. PX 1, I-2, DX 154, Ex. K. The Illustrative Congressional Plan achieves population equality and each district is plus or minus one person. PX 1 ¶ 48. All of the districts are contiguous. Stip. ¶ 198. The Illustrative Congressional Plan is comparably as compact as the Enacted Plan. PX 1 ¶ 81 & fig.14. Visually speaking, Illustrative CD-6 is compact and does not contain any tentacles or appendages. See Section II(D)(2)(b)(3) *supra*. The Illustrative Congressional Plan unites communities of interest. See Section II(D)(2)(b)(4) *supra*. The Illustrative Congressional Plan leaves approximately 75% of the Enacted Plan intact. DX 4 at 48–50; Tr. 1945:10–13. And there is substantial, unrebutted, evidence and testimony that race did not predominate the creation of the Illustrative Congressional Plan. Tr. 726:14–23.

Furthermore, Mr. Cooper testified that he used the General Assembly's guidelines to inform his decisions when drawing the Illustrative Congressional Plan. Tr. 818:18–20. Thus, the Court finds that the General Assembly could implement the Illustrative Congressional Plan, because Mr. Cooper used the legislative guidelines.

To the extent, that Defendants have argued that the General Assembly would have been barred from implementing this map because it impermissibly took race into consideration, the Supreme Court recently rejected this proposition. Allen, 599 U.S. at 1512 (plurality opinion), 1518. The Eleventh Circuit, moreover, has long held that the first Gingles precondition specifically requires that Plaintiffs' proposed maps consider race.[43] Davis, 139 F.3d at 1425–26.

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[43] Additionally, the Supreme Court has stated that upon showing of racial predominance, the state must "satisfy strict scrutiny" by demonstrating that the race-based plan "is narrowly tailored to achieve a compelling interest"). In this context, narrow tailoring does not "require an exact connection between the means and ends of redistricting," but rather just "'good reasons' to draft a district in which race predominated over traditional districting criteria." Ala. Legis. Black Caucus, 231 F. Supp. 3d at 1064 (quoting Ala. Legis. Black Caucus, 575 U.S. at 278). Miller, 515 U.S. at 920. The U.S. Supreme Court has "assume[d], without deciding, that . . . complying with the Voting Rights Act was compelling." Bethune-Hill v. Va. State Bd. of Elections, 580

Here, the Court found that race did not predominate the drawing of the Illustrative Congressional Plan and therefore, the State could implement it without violating the Constitution. Accordingly, the Court finds that the Illustrative Congressional Plan satisfies Nipper's remedial requirement.

(7) Conclusions of law

In sum, the Court concludes that the Illustrative Congressional Plan meets or exceeds the Enacted Congressional Plan on all empirical measures. Accordingly, the Court finds that on the objective comparable measures, the Illustrative Congressional Plan is as compact as the Enacted Congressional Plan. The Court also finds that the Illustrative Congressional Plan is compact on the eyeball test, respects communities of interest, and retains the majority of the cores from the Enacted Congressional Plan. Finally, the Court finds that the Enacted Congressional Plan could be enacted as a possible remedy because it complies with traditional redistricting principles and race did not predominate in its

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U.S. 178, 193 (2017). Indeed, the redistricting guidelines adopted by the General Assembly confirm that Georgia understands compliance with the Voting Rights Act to be a compelling state interest. See JX1–2.

creation. Accordingly, the Pendergrass Plaintiffs carried their burden in showing that the minority community in west-metro Atlanta is sufficiently large and compact to warrant drawing an additional majority-Black district. Accordingly, the Court finds that Pendergrass Plaintiffs have successfully proven the first Gingles precondition.

2. *Second Gingles Precondition*

The Court turns to the second and third Gingles preconditions. As the Court examined more thoroughly in its Order on the Pendergrass Motions for Summary Judgment (Pendergrass, Doc. No. [215], 48–65), to satisfy the second and third Gingles preconditions, plaintiffs must show (1) the existence of minority voter political cohesion and (2) that the majority votes as a bloc, usually to defeat the minority voter's candidate of choice. As a part of these preconditions, plaintiffs do not have to prove that race is the sole or predominant cause of the voting difference between the minority and majority voting blocs, nor must plaintiffs disprove that other race-neutral reasons, such as partisanship, are causing the racial bloc voting.

The second Gingles precondition requires plaintiffs to show that "the minority group . . . is politically cohesive." Gingles. 478 U.S. at 51. "The second [precondition], concern[s] the political cohesiveness of the minority group [and] shows that a representative of its choice would in fact be elected." Allen, 599 U.S. at 19. Plaintiffs can establish minority cohesiveness by showing that "a significant number of minority group members usually vote for the same candidates." Solomon v. Liberty Cnty., 899 F.2d 1012, 1019 (11th Cir. 1990) (Kravitch, J., specially concurring); see also Gingles, 478 U.S. at 56 ("A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and, consequently, establishes minority bloc voting within the context of § 2." (internal citations omitted)). The Court finds that Pendergrass Plaintiffs have successfully proven that the minority group in the challenged area is politically cohesive.

Courts generally rely on statistical analyses to estimate the proportion of each racial group that voted for each candidate. See, e.g., Gingles, 478 U.S. at 52–54; Nipper, 39 F.3d at 1505 n.20. Courts have recognized ecological inference

("EI") as an appropriate analysis for determining whether a plaintiff has satisfied the second and third Gingles preconditions. See, e.g., Rose v. Raffensperger, 584 F. Supp. 3d 1278, 1294 (N.D. Ga. 2022); Patino v. City of Pasadena, 230 F. Supp. 3d 667, 691 (S.D. Tex. 2017); Benavidez v. City of Irving, 638 F. Supp. 2d 709, 723–24 (N.D. Tex. 2009); Bone Shirt, 336 F. Supp. 2d at 1003, aff'd 461 F.3d 1011 (8th Cir. 2006). Both Drs. Palmer and Alford testified that EI is a reliable method for conducting the second and third Gingles' preconditions analyses. Tr. 2250:12–16; 401: 7–9.

Pendergrass Plaintiffs polarization expert, Dr. Palmer, concluded that in the 40 statewide general elections examined, in both the congressional focus area (i.e., Enacted CD-3, 6, 11, 13, and 14) and each congressional district, Black voters had clearly identifiable candidates of choice. Stip. ¶¶ 218, 220–21; PX 2 ¶ 16, tbl.1 & figs.2–3, 5; Tr. 414:25–416:13, 417:16–418:4. On average, Black voters supported their candidates of choice with 98.4% of the vote. Stip. ¶ 219; PX 2 ¶¶ 7,16. Defendants' rebuttal expert on racially polarized voting, Dr. John Alford, does not dispute Dr. Palmer's conclusions as to the second Gingles precondition. DX 8, 3; Tr. 2250:12–2251:9. Additionally, the Parties stipulated that "Black voters in

Georgia are extremely cohesive, with a clear candidate of choice in all 40 general elections Dr. Palmer examined." Stip. ¶ 218.

The Court finds that the second Gingles precondition is satisfied here because Black voters in Georgia are extremely politically cohesive. See 478 U.S. at 49. "Bloc voting by blacks tends to prove that the [B]lack community is politically cohesive, that is, it shows that [B]lacks prefer certain candidates whom they could elect in a single-member, [B]lack majority district." Id. at 68. Dr. Palmer's analysis clearly demonstrates high levels of cohesiveness among Black Georgians in supporting their preferred candidates, both across the congressional focus area and in the individual districts that comprise it. In Allen, the Supreme Court credited the lower court's finding of "very strong" Black voter cohesion in Alabama, with an average of 92.3%. 599 U.S. at 22. Here in Georgia, Black voter cohesion is even stronger, with an average of 98.4%.[44] Stip. ¶¶ 218–19.

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[44] The record evidence does not dispute, and even reiterates, conclusions made in prior cases about political cohesion among Black Georgians. See, e.g., Wright, 301 F. Supp. 3d at 1313 (noting that, in ten elections for Sumter County Board of Education with Black candidates, "the overwhelming majority of African Americans voted for the same

Accordingly, the Court finds that Pendergrass Plaintiffs have successful carried their burden and proven that Black voters in the challenged area are politically cohesive.

3. *Third Gingles Precondition*

The third Gingles precondition requires plaintiffs demonstrate that "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." Gingles, 478 U.S. at 51. "[A] white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." Id. at 56. This precondition "establishes that the challenged districting thwarts a distinctive minority vote at least plausibly on account of race." Allen, 599 U.S. at 19 (cleaned up) (quoting Growe, 507 U.S. at 40). No specific threshold percentage is required to demonstrate bloc voting. Gingles, 478 U.S. at 56 ("The amount of white bloc voting that can generally 'minimize or cancel' black voters' ability to

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candidate"); Lowery v. Deal, 850 F. Supp. 2d 1326, 1329 (N.D. Ga. 2012) ("Black voters in Fulton and DeKalb counties have demonstrated a cohesive political identity by consistently supporting [B]lack candidates.").

elect representatives of their choice . . . will vary from district to district." (citation omitted)).

Pendergrass Plaintiffs' polarization expert, Dr. Palmer, demonstrated (and the Parties have stipulated) that white voters in the congressional focus area usually vote as a bloc to defeat Black-preferred candidates. Stip. ¶¶ 222–227. In each congressional district examined and in the focus area as a whole, white voters had clearly identifiable candidates of choice for every election examined. Id. ¶ 223; PX 2 ¶ 17 & figs.2–4; Tr. 414:25–416:13, 417:16–418:4. In the 40 statewide general elections examined, white voters were highly cohesive in voting in opposition to the Black candidate of choice. Stip. ¶ 222. On average, Dr. Palmer found that white voters supported Black-preferred candidates with an average of just 12.4% of the vote. Id. ¶ 223. In other words, white voters on average supported their preferred candidates with an estimated vote share of 87.6%.[45]

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[45] The Court notes that the Black preferred candidate in all of the examined races was the Democrat candidate and the white -preferred candidate was a Republican. Stip. ¶¶ 194, 215–16. The Court finds that the inquiry into whether partisanship is the motivating factor behind the polarization is not relevant to the Gingles precondition inquiry, but may be relevant to the overall totality of the circumstances. See Section II(D)(4)(b), *infra*.

Overall, Dr. Palmer found "strong evidence of racially polarized voting across the focus area" as a whole and in each individual congressional district he examined. PX 2 ¶¶ 7, 19; Tr. 398:17–21, 418:5–8. As a result of this racially polarized voting, candidates preferred by Black voters in the focus area have generally been unable to win elections outside of majority-Black districts. Tr. 419:11–420:2. Excluding the majority-Black Congressional District 13, white bloc voting defeated Black-preferred candidates in all 40 elections in the focus area that Dr. Palmer examined. Stip. ¶¶ 225, 227; PX 2 ¶ 22. Defendants have offered no evidence suggesting that this is no longer the case. To the contrary, just as with the second Gingles precondition, the parties have stipulated to satisfaction of the third Gingles precondition. Stip. ¶ 225.

The Court concludes that Dr. Palmer's analysis demonstrates high levels of white bloc voting in the congressional focus area and in the individual districts that comprise it. The Court also finds that candidates preferred by Black voters are almost always defeated by white bloc voting except in those areas where they form a majority. The evidence of polarization is stronger in this case than it was in Allen: in Georgia, only 12.4% of white voters support Black-preferred

candidates, whereas in Alabama 15.4% of white voters supported Black-preferred candidates. Allen, 599 U.S. at 22. There the Supreme Court affirmed that there was "very clear" evidence of racially polarized voting. Id. Thus, this Court likewise finds "very clear" evidence of racially polarized voting in the challenged district. [46] Accordingly, the Court concludes that Pendergrass Plaintiffs' evidence demonstrates that white voters vote in opposition to and typically defeat Black preferred candidates and thus Pendergrass Plaintiffs have carried their burden as to the third Gingles precondition.

* * * *

[46] Again, the evidence in this case does not dispute, and even reiterates, conclusions made in prior cases about racially polarized voting. See, e.g., Fair Fight Action, 634 F. Supp. 3d at 1247 (finding racial polarization in Georgia voting); Whitest v. Crisp Cnty. Bd. of Educ., No. 1:17-CV-109 LAG, 2021 WL 4483802, at *3 (M.D. Ga. Aug. 20, 2021) ("African Americans in Crisp County are politically cohesive in elections for members of the Board of Education, but the white majority votes sufficiently as a bloc to enable it to defeat the candidates preferred by Black voters in elections for members of the Board of Education."); Wright, 301 F. Supp. 3d at 1317 (finding that "[t]he third Gingles factor is satisfied" after concluding that "there can be no doubt black and white voters consistently prefer different candidates" and that "white voters are usually able to the defeat the candidate preferred by African Americans").

The Court concludes that the Pendergrass Plaintiffs have carried their burden in proving the three Gingles preconditions. Accordingly, the Court now turns to the totality of the circumstances inquiry.

4. *Totality of the Circumstances*

The Court must determine whether Georgia's political process is equally open to the affected Black voters. Wright, 979 F.3d at 1288 ("[I]n the words of the Supreme Court, the district court is required to determine, after reviewing the 'totality of the circumstances' and, 'based upon a searching practical evaluation of the past and present reality, whether the political process is equally open to minority voters.'" (quoting Gingles, 478 U.S. at 79)); Solomon v. Liberty Cnty. Com'rs, 166 F.3d 1135, 1148 (11th Cir. 1999), vacated 206 F.3d 1054 (acknowledging that the Third, Fifth, and Tenth Circuits have found it to be "unusual" or "rare" if a plaintiff can establish the Gingles preconditions, but fail to establish a Section 2 violation on the totality of the circumstances (quoting Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ., 4 F.3d 1103, 1135 (3d Cir. 1993); Sanchez v. Colorado, 97 F.3d 1303, 1322 (10th Cir. 1996)) (citing Clark v. Calhoun Cnty., 21 F.3d 92, 97 (5th Cir. 1994)).

a) Totality of circumstances inquiry: purpose and framework

For a Section 2 violation to be found, the Court must conduct "an intensely local appraisal" of the electoral mechanism at issue, as well as a "searching practical evaluation of the 'past and present reality.'" Allen, 599 U.S. at 19 (citing Gingles, 478 U.S. at 79). The purpose of this appraisal is to determine the "essential inquiry" of a Section 2 case, which is "whether the political process is *equally open* to minority voters." Ga. State Conf. of the NAACP, 775 F.3d at 1342 (emphasis added) (quoting Gingles, 478 U.S. at 79). Put differently, the totality of the circumstances inquiry ensures that violations of Section 2 may only be found when "members of the protected class have *less opportunity* to participate in the political process." Chisom v. Roemer, 501 U.S. 380, 397 (1991) (emphasis added).

Over the last fifty years Georgia has become increasingly more politically open to Black voters and in recent elections Black candidates have enjoyed success—five of Georgia's representatives to the United States House of Representatives and one of its Senators are Black. Although the Court commends the progress that Georgia has made since 1965, when weighing the Senate Factors, the Court finds that the Enacted Congressional Plan dilutes Black voting power

in west-metro Atlanta. The Enacted Congressional Plan in west metro-Atlanta has resulted in Black voters having less of an opportunity to participate equally in the political process than white voters. Gingles, 478 U.S. at 79; Chisom, 501 U.S. at 397. The whole of the evidence shows that the political process is not currently *equally* to Black Georgians in west-metro Atlanta—Black voters still suffer from *less* opportunity to partake in the political process in the area than white voters. Thus, given the consideration of the factors named *infra*, the Court determines that the totality of the circumstances inquiry supports finding a Section 2 violation in this case and that an additional majority-minority congressional district must be drawn in the western-metro Atlanta area.

Turning to the legal framework guiding the totality of the circumstances inquiry: the totality inquiry focuses on a number of non-comprehensive and non-exclusive Senate Factors. Ga. State Conf. of the NAACP, 775 F.3d at 1342. The Senate Factors include: (1) "the history of voting-related discrimination in the State or political subdivision"; (2) "the extent to which voting in the elections of the State or political subdivision is racially polarized"; (3) "the extent to which the State or political subdivision has used voting practices or procedures that

tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting"; (4) "the exclusion of members of the minority group from the candidate slating processes"; (5) "the extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process"; (6) "the use of overt or subtle racial appeals in political campaigns"; and (7) "the extent to which members of the minority group have been elected to public office in the jurisdiction." Gingles, 478 U.S. at 44–45. Furthermore, "[t]he [Senate] Report notes also that evidence demonstrating [8] that elected officials are unresponsive to the particularized needs of the members of the minority group and [9] that the policy underlying the State's . . . use of the contested practice or structure is tenuous may have probative value." Gingles, 478 U.S. at 45.

The Court now will consider and weigh each of these factors in addition to the proportionality of Black citizens to majority-Black districts and the State's changing demographics. Again, the Court ultimately concludes that the totality

of the circumstances' inquiry weighs in favor of finding a Section 2 violation in the Pendergrass Plaintiffs' case.[47]

b) Senate Factor One and Three: historical evidence of discrimination and State's use of voting procedures enhancing opportunity to discriminate

The Court first turns to Georgia electoral practices, both past and present, that bear on discrimination against Black voters under Senate Factors One and Three.[48] Senate Factor One focuses on "the extent of any history of official discrimination in the state . . . that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process[.]" Gingles, 478 U.S. at 36-37. Senate Factor Three "considers 'the extent to which the State or political subdivision has used voting practices or procedures

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[47] Although Dr. Jones was solely retained as an expert in the Alpha Phi Alpha case, the Court notes that at the trial, the Parties consented to adopt the testimony of Dr. Jones into the Pendergrass Plaintiffs' case-in-chief. Tr. 1244:10–1245:8, 1589:3–1591:21. Thus, the Court may rely on Dr. Jones's trial testimony any portions of her report that were directly referenced at trial.

[48] The Court considers both Senate Factors One and Three together because there is significant overlap in the trial evidence for the two factors. Cf., e.g., Singleton, 582 F. Supp. 3d at 1020, aff'd sub nom. Allen, 599 U.S. 1 (considering Senate Factors One, Three, and Five together).

that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting.'" Wright, 979 F.3d at 1295 (quoting Gingles, 478 U.S. at 44–45).

The Court finds that Pendergrass Plaintiffs have shown evidence of both past and present history in Georgia that the State's voting practices disproportionately affect Black voters. Per guidance from binding authorities, the Court is careful in this analysis to assess both past *and present* efforts that have caused a disproportionate impact on Black voters. Indeed, "past discrimination cannot, in the manner of original sin, condemn governmental action that is not itself unlawful." Greater Birmingham Ministries v. Sec'y of State for Ala., 992 F.3d 1299, 1325 (11th Cir. 2021) (quoting Mobile v. Bolden, 446 U.S. 55, 74 (1980)); see also Abbott v. Perez, 585 U.S. ----, 138 S. Ct. 2305, 2324 (2018) (explaining that "the presumption of legislative good faith [is] not changed by a finding of past discrimination").

While present evidence of disproportionate impact is necessary, the Court's reading of recent decisions is that past discrimination and

disproportionate effects cannot be overlooked. To be sure, the Supreme Court recently opined that Section 2 looks at both the *past* and present realities of Georgia's electoral mechanism by recounting Alabama's history of past discrimination from the Reconstruction Era. Allen, 599 U.S. at 19; see also id. at 14 ("For the first 115 years following Reconstruction, the State of Alabama elected no [B]lack Representatives to Congress."). In the wake of the Allen decision, Chief Judge Pryor recently clarified that "[p]ast discrimination *is relevant*" even if it is "one evidentiary source" that is "not to be overweighed." League of Women Voters of Fla. Inc. v. Fla. Sec'y of State, 81 F.4th 1328, 1332 (11th Cir. 2023) (Pryor, C.J., concurring in denial of rehearing en banc) (emphasis added) (quoting Abbott, 138 S. Ct. at 2325); see also id. ("Allen cited the 'extensive history of repugnant racial and voting-related discrimination' in Alabama as relevant to whether the political process today is 'equally open' to minority voters." (quoting Allen, 599 U.S. at 22)). Accordingly, the Court takes these cues from both recent Supreme Court and Eleventh Circuit jurisprudence and evaluates Georgia's practices of discrimination *past and present* as relevant evidence in the totality of the circumstances inquiry.

(1) Historical evidence of discrimination broadly

"Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather than the exception." Wright, 301 F. Supp. 3d at 1310 (citation omitted). "African-Americans have in the past been subject to legal and cultural segregation in Georgia[.]" Cofield, 969 F. Supp. at 767. "Black residents did not enjoy the right to vote until Reconstruction. Moreover, early in this century, Georgia passed a constitutional amendment establishing a literacy test, poll tax, property ownership requirement, and a good-character test for voting. This act was accurately called the 'Disfranchisement Act.' Such devices that limited black participation in elections continued into the 1950s." Id.

In this case, one of Pendergrass Plaintiffs' expert witnesses opined that "[t]hroughout 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." PX 4, 10; Tr. 1428:3–24. Another expert witness testified, Georgia has "used basically every expedient . . . associated with Jim Crow to prevent Black voters from voting in the state of Georgia." Tr. 1161:20–1162:11.

During the trial, Defendants stipulated "up until 1990 we had historical discrimination in Georgia." Tr. 1524:14–15. Thus, the unrebutted testimony and the extensive accounts of Georgia's history of discrimination in Pendergrass Plaintiffs' expert reports demonstrate that Georgia's discriminatory history—including in voting procedures— spans from the end of the Civil War onward and have uncontrovertibly burdened Black Georgians. See, e.g. Tr. 1429:11–21.

(2) Georgia practice from the passage of the VRA to 2000

Congress enacted the Voting Rights Act of 1965 to address these discriminatory practices. One of the Voting Rights Act's 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. PX 4, 36; Tr. 1436:11–1437:6.

The Voting Rights Act, however, "did not translate to instant success" for Black political participation. PX 4, 36. 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. Id.; Tr. 1437:10–1438:3. These continued disparities following the VRA were at least caused because "Georgia resisted the Voting Rights Act . . . [and] for a period, it refused to comply[.]" Tr. 1163:9–1164:1. For example, a study found that local jurisdictions in Georgia and Mississippi "went ahead with election changes despite a pending preclearance request." PX 4, 39. Even still, from 1965 to 1981, the Department of Justice objected to more than 200 changes submitted by Georgia, more than any other state in the country. Id.

Georgia's history of discrimination against Black voters did not end in 1981. When the VRA was reauthorized in 1982, the Senate Report specifically cited to Georgia's discriminatory practices that diminished the voting power of Black

voters. S. Rep. 97-417, at 10, 13 (1982). During the 1990 redistricting cycle, twice the DOJ rejected the State's reapportionment plans. PX 4, 42.

During the process of reauthorization of the Voting Rights Act in 2006, Georgia legislators "took a leadership position in challenging the reauthorization of the [A]ct." Tr. 1164:2–17. As Dr. Jones reminds us, "Georgia's resistance to the VRA is consistent with its history of resisting the expansion of voting rights to Black citizens at every turn." APAX 2, 9. Even following the 2000 Census, the district court in the District of Columbia refused to preclear the General Assembly's Senate plan because the court found "the presence of racially polarized voting" and that "the State ha[d] failed to demonstrate by a preponderance of the evidence that the reapportionment plan for the State Senate will not have a retrogressive effect." Georgia v. Ashcroft, 195 F. Supp. 2d 25, 94 (D.D.C. 2002), affirmed by King v. Georgia, 537 U.S. 1100 (2003).

(3) More recent voting practices with a disproportionate impact on Black voters

The Court concludes that Pendergrass Plaintiffs submitted evidence about more recent practices in Georgia which disproportionately impact Black voters and have resulted in a discriminatory effect. These practices include polling place

closures, voter purges, and the Exact Match requirement. Pendergrass Plaintiffs' also continually rely on the Georgia's General Assembly passage of SB 202 following the 2020 presidential election as evidence of recent and present discrimination disproportionally affecting Black voters.[49]

Following Shelby County and the end of pre-clearance, the U.S. Commission on Civil Rights, found that Georgia had adopted five of the most common restrictions that impose roadblocks to the franchise for minority voters: (1) voter ID laws, (2) proof of citizenship requirements, (3) voter purges, (4) cuts in early voting[50], and (5) widespread polling place closures. PX 4, 48–49 (citing

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[49] On the Record, Dr. Burton clearly stated and the Court would like to reiterate, this Order, in no way states or implies that the General Assembly or Georgia Republicans are racist. Tr. 1473:18–1474:9. As articulated by Dr. Burton, "[n]o. I'm not saying that the legislature is [racist]—I am saying that some of the legislation that comes out has a disparity—it affects Black citizens differently than white citizens to the disadvantage of Black citizens, but I am not saying that they are racist. But the effect has a disparate impact among whites and Blacks and other minorities." Tr. 1474:4–9. Section 2 of the VRA does not require the Court to find that the General Assembly passed the challenged maps to discriminate against Black voters, or that the General Assembly is racist in any way. Nothing in this Order should be construed to indicate otherwise.

[50] While it may have been true at the time of this report that Georgia had made cuts to early voting, the Court acknowledges Mr. Germany's trial testimony was that SB 202 increased early voting opportunities by adding two mandatory Saturdays and expressly permitted counties to hold early voting on Sundays, at their discretion. Tr. 2269:9–21.

U.S. Commission on Civil Rights, An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Enforcement Report (Washington, 2018), 369). No other State has engaged in all five practices. PX 4, 49.

The Court ultimately weighs the evidence submitted and determines that the present evidence of Georgia's voting practices show they had a disproportionately negative impact on Black voters. The Court proceeds by assessing Pendergrass Plaintiffs' evidence of (a) Georgia's practice of closing polling places, (b) Georgia's Exact Match requirement and purging of its registration lists, (c) the General Assembly's passage of SB 202, and (d) the State's rebuttal evidence of open and fair election procedures.[51] The Court finally (e) renders its conclusion of law on this Senate Factor.

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[51] The Court may evaluate statewide evidence to determine whether Black voters have an equal opportunity in the election process. LULAC, 548 U.S. at 438 (2006) ("[S]everal of the [ ] factors in the totality of circumstances have been characterized with reference to the State as a whole."); see also Allen, 599 U.S. at 22 (crediting the three-judge court's findings of lack of equal openness with respect to statewide evidence (citing Singleton, 582 F. Supp. 3d at 1018–1024); Gingles, 478 U.S. at 80 (crediting district court's findings of lack of equal opportunity that was supported by statewide evidence (citing Gingles v. Edmisten, 590 F. Supp. 345, 359–75 (E.D.N.C. 1984)).

(a) polling place closures

The Court finds that there is compelling evidence that Georgia's recent closure of numerous polling places disproportionately impacts Black voters. In the wake of the Supreme Court's decision in Shelby County, "'dozens of polling places' were 'closed, consolidated, or moved.'" PX 4, 49 (citing Kristina Torres, "Cost-Cutting Raises Voter Access Fears," Atlanta Journal Constitution, (Oct. 13, 2016); Kristina Torres, "State Monitored For Voting Rights Issues," Atlanta Journal Constitution, (Jun. 20, 2016)).

By 2019, the Leadership Conference Education Fund determined that Georgia had closed over 200 polling locations since June of 2012, despite the significant growth in Georgia's population. PX 4, 50. "A 2020 study found that '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.'" Id. (citing Stephen Fowler, "Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours? Their Numbers Have Soared, and Their Polling Places Have Dwindled," ProPublica, https://www.propublica.org/article/why-do-

nonwhite-georgia-voters-have-to-wait-in-line-for-hours-their-numbers-have-soared-and-their-polling-places-have-dwindled, (Oct. 17, 2020)).

Specifically, in the challenged area (i.e., around Illustrative CD-6), "[i]n 2020, the nine counties in metro Atlanta that had nearly half of the registered voters (and the majority of the Black voters in the state)[, but] had only 38% of the state's polling places." PX 4, 51 (citing Fowler, "Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours?"). In 2020, Union City, which is within Illustrative CD-6 and has a Black voting age population of 88%, had wait times as long as five hours. PX 4, 51 (citing Mark Niesse and Nick Thieme, "Fewer Polls Cut Voter Turnout Across Georgia," Atlanta Journal Constitution (Dec. 15, 2009); Fowler, "Why Do Nonwhite Georgia Voters Have to Wait in Line for Hours?").

At trial, Dr. Burton testified about his findings as to polling place closures and his conclusion that they disproportionately impacted Black voters. Tr. 1432:21–25; 1441:2–21. These conclusions were not raised on cross examination. Tr. 1465:6–1494:14.

The Court concludes that Pendergrass Plaintiffs' evidence of polling place closures—and, notably, in west-metro Atlanta where Pendergrass Plaintiffs

propose Illustrative CD-6 be drawn as an additional majority-minority district—is recent evidence of a voting practice with a disproportionate impact on Black voters.

(b) exact match and registration list purges

Pendergrass Plaintiffs' evidence also shows Georgia's voting practices include roadblocks to the voting efforts of minority voters in the form of the Exact Match system and the State's purging of voter registration lists. PX 4, 49–51 (citing U.S. Commission on Civil Rights, An Assessment of Minority Voting Rights Access in the United States: 2018 Statutory Enforcement Report (Washington, 2018), 369).

These practices, however, have been determined in prior decisions by the Court to *not* be illegal under federal law. The prior decisions upholding the Exact Match requirement and registration list purges certainly impact the weight to afford these voting practices. However, in this case, the evidence shows—without contradicting the prior legal determinations—that these practices have a *disproportionate effect* on Black voters for purposes of the instant totality of the circumstances inquiry. Specifically, when these prior decisions are considered in

the light of the legal frameworks at issue, the Court finds that these practices can be used as evidentiary support of a disproportionate discriminatory impact on Black voters in Georgia without contradicting or minimizing the prior decisions upholding Georgia's laws.

Specifically, Georgia's Exact Match procedure was determined to not violate VRA's Section 2 because when the burden on voters, the disparate impact, and the State's interest in preventing fraud were considered together, the weighing of these considerations counseled against finding a violation. Fair Fight Action, 634 F. Supp. 3d at 1246. The Exact Match decision in Fair Fight relied on the Brnovich decision and emphasized that "the modest burdens allegedly imposed by [the Exact Match law], the small size of the disparate impact [on Georgia voters as a whole], and the State's justifications" did not support a Section 2 violation. Id. at 1245 (citing Brnovich v. Democratic Nat'l Comm., 594 U.S. ----, 141 S. Ct. 2321, 2346 (2021)). Even without a Section 2 violation, however, the Court found that the Exact Match requirement disproportionately impacted Black voters given that: Black voters were a smaller portion of the electorate but as of January 2020, 69.4% of individuals flagged as "missing identification

required" were African American, and 31.6% of the voters flagged for pending citizenship 31.6% were African American, whereas white voters only accounted for 20.9%. Fair Fight Action, 634 F. Supp. 3d at 1160, 1162; Tr. 1283:3–10. The Court's decision in Fair Fight itself acknowledged that the Exact Match practice in Georgia has a *discriminatory impact* on Black voters—the inquiry specifically at issue here. When the Court considers Fair Fight's determination in the light of the Civil Rights' Commission's report that generally Exact Match practices are a roadblock to minority voters, the Court concludes that this modern practice in Georgia supports that Georgia's modern voting practices have a discriminatory effect on Black voters.

The same Fair Fight case also resolved on summary judgment (in favor of the State) claims that purges of voter registration lists violated the Constitution. Fair Fight Action, Inc. v. Raffensperger, No. 18-cv-5391, 2021 WL 9553856 (N.D. Ga. Mar. 31, 2021). The Anderson-Burdick framework governed this summary judgment resolution and notably did not require any showing or determination of racial discrimination. Id. Instead, the Court's task was to balance the voter's burden with the State's interest in complying with federal law (i.e., the National

Voter Registration Act). 2021 WL 9553856, *at 15–18. The Court's weighing of these considerations does not instantly preclude a finding that Georgia's voter purges have a disproportionate impact on Black voters for purposes of the totality of the circumstances inquiry here. This is especially the case in the light of the expert evidence that these voter purses have minimized the "electoral influence of minority voters and particularly of Black Georgians." PX 4, 2. Thus, the Court finds that, while not illegal under Anderson-Burdick, the voter purges provide some evidence of modern practices with disproportionate discriminatory impact on Black voters in Georgia.

Accordingly, while the Court is cognizant of the prior decisions upholding the Exact Match and registration list purges in Georgia, the Court still finds that these voting practices are *some* evidence indicating a disproportionate impact on Black voters.

(c) SB 202's disparate impact

The Pendergrass Plaintiffs also cite to Georgia's passage of SB 202 as evidence of modern discrimination. The General Assembly passed SB 202 following the 2020 Presidential election. PX 4, 53–56; Tr. 1474:10–1481:1. A

challenge to SB 202 is pending in the Northern District of Georgia and has not been resolved at the time the Court enters this Order.[52] In re SB 202, 1:21-mi-55555 (N.D. Ga. Dec. 23, 2021). The Court acknowledges that the evidence presented in that case is not presently before this Court.[53] Given this pending challenge to SB 202, the Court proceeds cautiously in an effort of judicial restraint, which counsels against the Court preemptively making any findings that could lead to inconsistent rulings or implicate the ultimate determination of the legality of SB 202.

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[52] The Court notes that on October 11, 2023, the district court hearing the case ruled on a pending motion for preliminary injunction that involves Section 2 and constitutional challenges to several provisions in SB 202. In re SB 202, 1:21-mi-55555, ECF No. 686 (N.D. Ga. Oct. 11, 2023). The court denied the plaintiffs motions for preliminary injunction and found that there was not a substantial likelihood of success on the merits of any of their claims. Id. at 61. No rulings in that case are binding on this Court. McGinley v. Houston, 361 F.3d 1328, 1331 (11th Cir. 2004) ("[A] a district judge's decision neither binds another district judge nor binds him"). However, the Court is cautious in its discussion of SB 202 to avoid inconsistent rulings and creating confusion.

[53] To be abundantly clear, this Court does not have a challenge to SB 202 before it. Plaintiffs' experts have provided evidence regarding potential motivations behind SB 202 and the impact that its passage had on Black voters. APAX 2; PX 4; GX 4. And Defendants provided counter evidence. See Tr. 2261–2307 (testimony of Ryan Germany). The Court evaluates solely the evidence adduced in this case.

With these qualifications in mind, the Court cannot ignore that evidence on SB 202 has been presented by the Plaintiffs as proof of present discriminatory practices in Georgia's treatment of Black voters. PX 4, 53–55, Tr. 1474:10–1481:1.[54] Defendants likewise provided rebuttal testimony. See generally Tr. 2261–2307. The Court, treading cautiously, tethers its findings regarding SB 202 to the testimony and evidence provided by Pendergrass Plaintiffs' experts *for purposes of the totality of the circumstances inquiry on the Senate Factors*. Namely, the Court considers the passage of SB 202, once again, as some evidence of practices with a disproportionate impact on Black voters. This determination is made with the conclusion of Dr. Burton, Pendergrass Plaintiffs' expert, in mind: "[t]he history of Georgia demonstrates a clear pattern" (PX 4, 4), where "periods of increased nonwhite voter registration and turnout" have been followed by the state

[54] Drs. Burton and Jones concluded that certain portions of SB 202 have an actual or perceived negative impact on Black voters. See Tr. 1185:17–1186:16 (Dr. Jones opining that Black voters increased use of absentee ballots and their use of drop boxes correlated with the passage of SB 202); Tr. 1445: 1–25 (Dr. Burton opining that certain provisions of SB 202 were put in place because of the gains made by Black voters in the electorate).

[passing] legislation" to deter minority voters. PX 4, 10. Dr. Burton specifically cites the passage of SB 202 as evidence of this pattern. PX 4, 10.

Accordingly, the Court considers SB 202 as evidence of a current manifestation of a historical pattern that following an election, the General Assembly responsively passes voting laws that disproportionately impact Black voters in Georgia.

(4) Defendant's rebuttal evidence

The Court now turns to Defendants' rebuttal evidence. To begin, Defendants submit no rebuttal expert or report to Dr. Burton's report and testimony. Tr. 1425:8–16. In fact, Defendants do not affirmatively rebut the aforementioned evidence with their own evidence. Instead, Defendants cross-examined Dr. Jones on the prior legal determinations that the Exact Match and list maintenance procedures utilized by Georgia. Tr. 1251:16–19. As the Court has already determined, it considers these prior judicial decisions as part of its weighing of this evidence. It also has assessed the basis for these prior decisions and has determined that it is not inconsistent with these prior rulings to now find that these voting practices have a discriminatory impact on Black voters for

purposes of the instant totality of the circumstances. See Section II(C)(4)(b)(3)(b) *supra*.

Defendants also, through lay witness testimony, submitted that Georgia has implemented legislation to make it easier for all voters to participate.[55] In favor of Defendants on these factors, the Court considers Mr. Germany's testimony about SB 202 indicates that the motive for passing the law was to alleviate stress on the electoral system and increase voter confidence. Tr. 2265:5–23. Moreover, SB 202, among other things, expanded the number of early voting days in Georgia. Tr. 1476:7–9. There's evidence that Georgia employs no-excuse absentee voting (Tr. 1476:10–13), automatic voter registration through the Department of Driver Services (Tr. 2263:12–20) and voters to register the vote using both paper registration and online voter registration (Tr. 2263:14–23).

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[55] The Court notes that on cross-examination Mr. Germany explained that SB 202 received numerous complaints; however, he is unable to quantify whether those complaints primarily came from Black voters because the Secretary of State's Office does not analyze the impact of the legislation on particular categories of voters—i.e., white voters v. Black voters. In his opinion, that analysis is not helpful to the overall goal to "make it easy for everyone, regardless of race." Tr. 2283:2–2285:5.

Georgia offers free, state-issued, identification cards that voters can use to satisfy Georgia's photo ID laws. Tr. 2264:15–22.

Additionally, the Court has also been presented with additional evidence that immediately prior to Shelby County, the DOJ precleared Georgia's 2011 Congressional Plan. Tr. 1471:14–17. Moreover, following the passage of SB 202, Georgia experienced record voter turnout in the 2022 midterm election cycle. Tr. 1480:3–9.

(5) Conclusion on Senate Factors One and Three

In sum, the majority of the evidence before the Court shows that Georgia has a long history of discrimination against Black voters. This history has persisted in the wake of the VRA and even into the present through various voting practices that disproportionately effect Black voters. Pendergrass Plaintiffs have provided concrete recent examples of the discriminatory impact of recent Georgia practices, some specifically in the challenged area of Illustrative CD-6.

Defendants have submitted some recent evidence of Georgia increasing the access and availability of voting. The evidence even shows that *overall* voter

turnout has increased in the most recent national election.[56] These efforts are commendable, and the Court is encouraged by these developments. In the Court's view, however, it is insufficient rebuttal evidence. Thereby, *in toto*, the Court concludes that Georgia has a history—uncontrovertibly in the past, and extending into the present—of voting practices that disproportionately impact Black voters. Thus, Senate Factors One and Three, on the whole, weigh in favor of finding a Section 2 violation.

c) Senate Factor Two: racial polarization

The second Senate Factor assesses "the extent to which voting in the elections of the State or political subdivision is racially polarized." Wright, 979 F.3d at 1305 (quoting LULAC, 548 U.S. at 426). As indicated in the Pendergrass Summary Judgment Order (Doc. No. [215], 97), polarization is a factor to be considered in the totality of circumstances inquiry, in addition to the second and third Gingles preconditions. Pursuant to persuasive authority, the

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[56] As discussed in greater detail, *infra*, Black voter turnout rate decreased by 15 points from the 2020 election cycle to the 2022 election cycle and recorded the lowest voter turnout rate in a decade. See Section II(D)(4)(e)(1) *infra*.

Court finds that when a Defendant has raised a race-neutral reason for the polarization, the Court must look beyond the straight empirical conclusions of polarization. See Nipper, 39 F.3d at 1524 (plurality opinion) (finding that Defendants may rebut evidence of polarization by showing racial bias is based on nonracial circumstances); Uno v. City of Holyoke, 72 F.3d 973, 983 (1st Cir. 1995) (stating that an inference of racial polarization "will endure *unless* and *until* the defendant adduces credible evidence tending to prove the detected voting patterns can most logically be explained by factors unconnected to the intersection of race with the electoral system.").

Defendants have consistently argued that partisanship is a race-neutral explanation for polarization of voters in Georgia. See, e.g., Tr. 2410:18–2411:14. In an intentional discrimination context, the Eleventh Circuit cautioned courts "against conflating discrimination on the basis of party affiliation on the basis of race . . . . [e]vidence of *race-based* discrimination is necessary to establish a constitutional violation." League of Women Voters of Fla. Inc. v. Fla. Sec'y of State, 66 F.4th 905, 924 (11th Cir. 2023) (emphasis in original) (citing Brnovich, 141 S. Ct. at 2349). However, Chief Justice Roberts recently confirmed that a

Section 2 violation "occurs where an 'electoral structure operates to minimize or cancel out' minority voters' 'ability to elect their preferred candidates.' Such as risk is greatest 'where minority and majority voters consistently prefer different candidates' and where minority voters are submerged in a majority voting population that 'regularly defeat[s]' their choices." Allen, 599 U.S. at 1, 17–18.

The Court acknowledges that whether voter polarization is on account of partisanship and race is a difficult issue to disentangle. During an extended colloquy with the Court, Dr. Alford testified that "voting behavior is complicated" and that in his view democracy is about "voting for a person that follows their philosophy or they think is going to respond to their needs." Tr. 2182:4–5; 2183:4–8. He went on to clarify that party identity and affiliation is exceptionally strong this country and starts at a young age. Tr. 2183:8–2184:6.

Dr. Alford concluded that, from the empirical evidence presented by Pendergrass Plaintiffs, one cannot causally determine whether the data is best explained by party affiliation or racial polarization. He specifically testified that:

> [T]he kind of data that we use here, which is, you know ecological and highly abstract data, cannot demonstrate cohesion in sort of its natural form.

> Much of the work on things like individual-level surveys, exit polls, et cetera, also make it very difficult in a non-experimental setting to demonstrate causation. It really takes an experimental setting. So there is some work done in experimental settings, but this is not an area of inquiry that is—scientific causation in the social sciences is very difficult to establish. This is not an area where there has been any work that's established that.

Tr. 2226:7–18.

The Court is not in a position to resolve the global question of what causes voter behavior. Such question is empirically driven, and one in which the expert political scientists and statisticians did not agree. The Court can, however, assess the *evidence* of polarization presented at trial. In doing so, the Court determines that the Pendergrass Plaintiffs shown sufficient evidence of racial polarization in Georgia voting.

The Pendergrass Plaintiffs present Dr. Palmer's report, indicating strong evidence of racial polarization in voting. PX 2; see also Section II(C)(2)–(3) *supra*. Plaintiffs also offered testimony about the strong connection between race and partisanship as it currently exists in Georgia. Tr. 424:5–8 (affirming that "race and party cannot be separated for the purpose of [Dr. Palmer's] racial polarization analysis"); 1460:11–15 ("[O]ne party is highly supporting . . . issues that are most

important to minorities, particularly African Americans. And another party is not getting a good grade on how they're voting for them."); PX 4, 74 (indicating the "opposing positions that member's of Georgia's Democratic and Republican parties take on issues inexplicably linked to race.").

Defendants also argued that there must be evidence that voter's change their behavior based on the candidate to show that the polarization is race-based. Tr. 2409:25–2410:9. The Court finds that this is not a necessary precondition to determining whether voting is polarized on account of race. Race of a candidate is not dispositive for a polarization inquiry. DeGrandy, 512 U.S. at 1027 ("The assumption that majority-minority districts elect only minority representatives, or that majority-white districts elect only white representatives, is false as an empirical matter. And on a more fundamental level, the assumption reflects the demeaning notion that members of the defined racial groups ascribe to certain minority views that must be different from those of other citizens." (citation omitted)). The Court, however, finds that an assessment of the success of Black candidates in reference to different percentages of white voters, is good evidence that partisanship is not the best logical explanation of racial voting patterns in

Georgia. Cf. Johnson v. Hamrick, 196 F.3d 1216, 1221–22 (11th Cir. 1999) ("We do not mean to imply that district courts *should* give elections involving [B]lack candidates more weight; rather, we merely note that in light of existing case law district courts may do so without committing clear error.").

Assuming *arguendo* that evidence of voter behavior in relation to the race of the candidate were required, Pendergrass Plaintiffs have provided evidence showing racial polarization based on the race of the candidate. Pendergrass Plaintiffs offer the expert opinions and testimony of Dr. Burton, who assessed the success of Black candidates in the light of the percentage of white voters in the district.

The following chart showcases his findings:

Winning Candidates in 2020 in Georgia House of Representatives

Percentage white registered voters in district	White Republicans[197]	Black Democrats	White Democrats
Under 40%	0	48	7
40–46.2%	1	3	2
46.2–54.9	11	1	6
55–62.4%	23	0	5
Over 62.4%	68	0	O

Winning Candidates in 2020 in Georgia State Senate

Percentage white registered voters in district	White Republicans	Black Democrats	White Democrats
Under 47%	0	16	1
47–54.9%	3	0	3
Over 55%	51	0	0

PX 4, 56 (footnote content omitted).

There is a meaningful difference in Black candidate success depending on the percentage of white voters in a district. When the white voter percentage is lowest, Black Democratic candidates have the most success. However, as the percentage of white voters increases, Black elected officials decreased. Id. And, when the white voter percentage reaches 47% (for the State Senate) or 55% (for

the State House) of the electorate no Black candidates are elected, even though white Democrats do achieve some success. PX 4, 56. These findings are consistent with Dr. Palmer's unrebutted findings about the challenged districts: Black voters voted for the same candidate, on average, 98.4% of the time and white voters voted for a different candidate, on average, 87.6% of the time. Stip. ¶ 223.

In contrast to Pendergrass Plaintiffs' evidence, Defendants' expert, Dr. Alford, rendered only descriptive conclusions based on Dr. Palmer's data set and, most importantly, did not offer additional support for a conclusion that voter behavior was caused by partisanship rather than race. DX 8. To be sure, Defendants did not offer any further evidence—quantitative or qualitative—in support of their theory that partisanship, not race, is controlling voting patterns in Georgia.

While the Court acknowledges that the Black preferred candidate was the Democrat in all elections reviewed, the Court also finds that there is not sufficient evidence to show that Black people myopically vote for the Democrat candidate. The Court specifically asked Dr. Alford, "[a]re you saying that whites folks will vote for Republicans just because they're Republicans, and Blacks folks will vote

for Democrats just because they're Democrat?" Tr. 2180:23–25. Dr. Alford responded by answering, "I've spent a lifetime trying to understand voting behavior and, I would never say something as simple as that. It's much more complicated than that." Tr. 2181:1–3. The Court agrees that it is too simple to find that partisanship is the moving force behind a Black voter's choice of candidate. The history provided to the Court shows the complicated history between the current Republican Party and Black citizens. See Tr. 1444:23–1448:21 (explaining the history of politics in Georgia, and nationwide, as it relates to race and partisan affiliation).

Finally, even Defendant's expert agreed that candidate choices and Black political alignment with the Democratic party is not just based on the party label.

> The Court: So could it be said that voters are not necessarily voting for the party; they're voting for a person that follows their philosophy or they think is going to respond to their needs?
>
> [Dr. Alford]: That's -- with my view, that's what democracy is about. That's what's going on. It is the case that in the United States, unlike in most other democracies, party identity is also really important, that we identify with a party.

Tr. 2183:4–12. Given all the evidence before the Court, the Court finds that there is significant evidence that "minority and majority voters consistently prefer different candidates", and because "minority voters are submerged into a majority voting population that 'regularly defeat[s]' their choice," Georgia's "electoral structure operates to minimize or cancel out' [Black] voters' 'ability to elect their preferred candidates.'" Allen, 559 U.S. at 17–18.

In light of the foregoing evidence, the Court finds that Senate Factor Two weighs heavily in favor of finding a Section 2 violation.

d) Senate Factor Five:[57] socioeconomic disparities

Senate Factor Five considers socioeconomic disparities between Black and white voters and these disparities' impact on Black voter participation. The Eleventh Circuit recognized in binding precedent that "disproportionate educational, employment, income level, and living conditions arising from past discrimination tend to depress minority political participation.'" Wright, 979 F.3d

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[57] Senate Factor 4—a history of candidate slating for congressional elections—is not at issue because Georgia's congressional elections do not use a slating process. Doc. No. [173-1], 32; see also Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1317.

at 1294 (quoting United States v. Marengo Cnty. Comm'n, 731 F.2d 1546, 1568 (1984)). "Where these conditions are shown, and where the level of [B]lack participation is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation." Id. (quoting Marengo Cnty., 731 F.2d at 1568-69); United States v. Dallas Cnty. Comm'n, 739 F.2d 1529, 1537 (11th Cir. 1984) ("Once lower socio-economic status of [B]lacks has been shown, there is no need to show the causal link of this lower status on political participation.")).

(1) Black voter participation

The Court finds that, as a quantitative matter, Black voters participate less than white voters in Georgia's elections. Pendergrass Plaintiffs' expert, Dr. Collingwood, in evaluating Black and white voter turnout used the data from the Secretary of State's website, which records the actual number of registrations and votes cast by racial group. Tr. 684:2–10.

Dr. Collingwood's data shows that in the 2022 election cycle Black voters had a 45% turnout rate and white voters had a 58.3% turnout rate—a 13.3% gap. PX 6, 8. The 2020 election recorded similar results, where Black voter turnout was

60% and white voter turnout was 72.6%, a 12.6% difference. Id. By contrast in 2018 Black voter turnout was 53.9% and white voter turnout was 62.2%, which is only a 8.3% difference and 2012, which recorded the smallest gap, Black voters turned out at 72.6% and white voters turned out at 75.7%. Id. Using the precinct specific data, in 2020 white voters had a higher turnout in 79.2% of precincts and in 2022 that increased to 81.0%. PX 6, 14. Based on this data, Dr. Collingwood concluded that overall Black voter turnout has decreased over the last 6–8 years. Id.; Tr. 684:23–25.

Specifically, in the challenged district, Dr. Collingwood found that in the 2020 election, the percentage of Black voter turnout did not exceed the percentage of white voter turnout in any county.[58] In the counties affected most by the Illustrative Congressional Plan (Cobb, Fulton, Douglas, and Fayette), the percentage of white voter turnout exceeded the percentage of Black voter turnout. Id.; PX 6, 16.

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[58] In 2022 the percentage of Black voter turnout slightly exceeded white turnout in Clayton, Henry, and Rockdale counties. PX 6, 16.

In addition to voter turnout rates, Dr. Collingwood provided statistical evidence that white voters had higher participation rates in the political process outside of casting a ballot more than Black voters. White voters had higher participation than Black voters in attending local political meeting (5.92% of white voters, 3.51% Black voters); putting up political signs (17.95% white voters, 6.46% Black voters), working for a candidate's campaign (3.65% white voters, 1.84% Black voters); contacting a public official (21.01% white voters, 8.84% Black voters), and donating money to political campaigns (24.36% white voters, 13.63% Black voters). PX 6, 36–37, tbls. 4–6, 8, 9; Tr. 700:6–701:20, 702:8–24. Some of these metrics present relatively comparable white voter participation and Black voter participation (i.e., attending local political meetings, working for political campaigns). Dr. Collingwood testified that under ordinary methods, these close percentages still are statistically significant.[59] Tr. 700:11–15. The Court credits Dr. Collingwood's conclusions and finds that white voters tend to engage more with the political process than Black voters across various metrics.

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[59] Defendants did not rebut these findings regarding Black voter participation in the political process.

Defendants did not put forth rebuttal evidence contesting that Black voter participation in the political process was lower than white voters. Defendants also did not challenge or rebut the accuracy of Dr. Collingwood's findings on voter turnout, but rather questioned whether they were sufficient to prove lower percentages of Black voter participation. Tr. 695:5–13; 700:6–704:10. Defendants argue that voter turnout depends on voter mobilization, which can be explained largely by the candidates on the ballot. See Tr. at 694:9–696:13. At the trial, Defendants questioned Dr. Collingwood about the significance of particular Black candidates appearing on the ballot—i.e., President Obama in 2012 and Stacy Abrams in 2018. Tr. 695:5–21. Dr. Collingwood agreed that the particular candidate on the ballot could have some effect. Tr. 695:5–21.

The Court understands Defendants argument to be that voter turnout is not suppressed because Black voters are actively *choosing not* to vote, unless an "exciting" candidate is running for office. To prove this point, Defendants cited to discrete elections of Black candidates where voter turnout was high for both

Black and white voters.[60] However, Defendants provide no empirical evidence to support this conclusion; rather, the only evidence on this point is a hypothetical question asked to Pendergrass Plaintiffs' expert. The Court is not persuaded by this argument.

Even assuming that Defendants' theory of voter mobilization could be a valid legal argument rebutting statistical evidence of suppressed Black voter turnout, Defendants submitted little-to-no evidence connecting lower Black voter turnout to a lack of motivation to vote. Some nonempirical testimonial evidence on cross examination that the candidates on a ballot impact voter turnout is insufficient to rebut the expert statistical evidence presented by Pendergrass Plaintiffs that Black voter turnout is, on the whole and across elections,

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[60] To the extent that Defendants rely on the 2012 presidential election and the 2018 gubernatorial election because of the race of the candidate, the Court determines that the whole of the evidence does not support that the race of the candidate explains voter turnout. Specifically, in 2020, where the disparity in voter turnout was 12.6%, Senator Warnock was running for the U.S. Senate and became the first Black Senator in Georgia's history. Jud. Not., 11. Similarly, in 2022, where the disparity in voter turnout was 13.3%, Stacey Abrams ran for Governor and Senator Warnock ran against Herschel Walker for U.S. Senate. Id. In both of the 2020 election contests, Black candidates were at the top of the ballot, like in the 2012 and the 2018 elections, but turnout gap was greater than in the preceding election.

disproportionately lower than white voter turnout, and that Black voters participate less in the political process than white voters. Thus, the Court concludes that Pendergrass Plaintiffs submitted evidence that Black Georgians participate in the political process, both generally and in voter turnout, less than white voters.

(2) Socio-economic disparities

The Court also concludes that there is sufficient evidence in the Record to show disproportionate educational, employment, income level, and living conditions arising from past discrimination. Census estimates provide: the unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%); white households are twice as likely as Black households to report an annual income above $100,000; Black Georgians are more than twice as likely—and Black children, in particular, are more than three times as likely—to live below the poverty line; Black Georgians are nearly three times more likely than white Georgians to receive SNAP benefits; Black adults are more likely than white adults to lack a high school diploma (13.3% as compared to 9.4%); 35% 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. PX 6, 4 & tbl.1; Stip. ¶ 342–347. Additionally, Black Georgians are more likely to report a disability than white Georgians (11.8% compared to 10.9%) and are more likely to lack health insurance (18.9% compared to 14.2%, among 19-to-64-year-olds). PX 6 at 4. Defendant did not meaningfully contest this evidence. Thereby, the Court concludes that this evidence is more than sufficient to show socioeconomic disparities exist between Black and white Georgians.

(3) Conclusion on Senate Factor Five

Under binding precedent, Pendergrass Plaintiffs have proven that rates of Black voter political participation are depressed as compared to white voters participation. The aforementioned evidence also shows that Black Georgians suffer from significant socioeconomic disparities, including educational attainment, unemployment rates, income levels, and healthcare access. When both of these showings have been made, the law does not require a causal link be proven between the socioeconomic status and Black voter participation. Wright,

979 F.3d at 1294 (citing Marengo Cnty. Comm'n, 731 F.2d at 1568).[61] Accordingly, the Court concludes that the socioeconomic evidence and the lower rates of Black voter participation support a finding that Senate Factor Five weighs heavily in favor of a Section 2 violation.

e) Senate Factor Six: racial appeals in Georgia's political campaigns

Senate Factor Six "asks whether political campaigns in the area are characterized by subtle or overt racial appeals." Wright, 979 F.3d at 1296 (quoting Gingles, 478 U.S. at 45). Courts have continually affirmed district courts' findings of "overt and blatant" as well as "subtle and furtive" racial appeals. Gingles, 478 U.S. at 40; see also Allen, 599 U.S. at 22–23. However, in the Alabama district court proceedings, which preceded the Allen appeal, the trial court had assigned less weight to the evidence of racial appeals because the plaintiffs had only shown three examples of racial appeals in recent campaigns, but did not submit

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[61] While not required as a matter of law, as a matter of social science, Dr. Collingwood's report indicates that the academic literature "demonstrates a strong and consistent link between socioeconomic status [ ] and voter turnout." PX 6, 7. He describes this link in terms of resources causally driving behavior. Id. At trial, Dr. Collingwood also testified to the same. Tr. 688:15–689:3.

"any systematic or statistical evaluation of the extent to which political campaigns are *characterized* by racial appeals" and thus the court could not evaluate if these appeals "occur frequently, regularly, occasionally, or rarely." Singleton, 582 F. Supp. 3d at 1024.

Similarly here, the Court finds that there is evidence of isolated racial appeals in recent Georgia statewide campaigns.[62] However, there is no evidence for the Court to determine if these appeals *characterize* political campaigns in Georgia. Thus, while Pendergrass Plaintiffs submitted at least six instances[63] in

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[62] None of the evidence of racial appeals occurred in congressional races.

[63] Pendergrass Plaintiffs have provided evidence of six racial appeals used in recent Georgia elections across the past few election cycles:

In the 2018 gubernatorial election, then-Secretary of State Kemp, (now twice-elected Governor) used a social media campaign to associate Stacey Abrams with the Black Panther Party and ran a commercial advertisement where he discussed rounding up illegal immigrants in his pickup truck. PX 4, 67; Tr. 1364:12–16.

In the 2020 U.S. Senatorial election, then-Senator Kelly Loeffler ran an ad against "a dangerous Raphael Warnock," whose skin had been darkened, and who was also associated with communism, protests, and civil unrest. Tr. 1193:19–1195:5; APAX 31; APAX 2, 39.

In 2022, during the senatorial race between Senator Warnock and Herschel Walker, Mr. Walker ran an advertisement that aimed to distinguish "between the Black candidate and himself" as the Republican candidate, in order to "associate himself with

recent elections where racial appeals were invoked—which is some evidence of political campaigns being characterized by racial appeals—the Court cannot meaningfully evaluate whether these appeals "occur frequently, regularly, occasionally, or rarely" and thereby does not afford great weight to this factor. Singleton, 582 F. Supp. 3d at 1024.

f) Senate Factor Seven: minority candidate success

Senate Factor Seven "focuses on 'the extent to which members of the minority group have been elected to public office in the jurisdiction.'" Wright, 979 F.3d at 1295 (quoting LULAC, 548 U.S. at 426). Unlike the second and third Gingles preconditions, the Court now must specifically look at the success of *Black* candidates, not just the success of Black preferred candidates. Assessing the

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the white voter [and] mak[e] the Black candidate look menacing and problematic . . . ." Tr. 1198:1–1199:10; APAX 2, 43–44.

Also in 2022, in the Republican primary for governor, former Senator David Purdue stated in an interview, that Abrams was "demeaning her own race" and should "go back where she came from." PX 4, 70 (citing 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.). Later, in the general gubernatorial election, Governor Kemp darkened Abrams's face in ads and repeatedly attacked Abrams in the general election as "upset and mad," evoking the trope and dog whistle of the "angry Black Woman." PX 4, 70.

results of Georgia's recent elections, the Court finds that Black candidates have achieved little success, particularly in majority-white districts.

As a population, Black Georgians have historically been and continue to be underrepresented by Black elected officials across Georgia's statewide offices. Georgia has never elected a Black governor (Stip. ¶ 349) and Black candidates have otherwise only had isolated success in statewide partisan elections in the last 30-years. Specifically, in 2000, David Burgess was elected Public Service Commissioner, in 2002 and 2006 Mike Thurmond was elected to Labor Commissioner, and in 1998, 2002, and 2006 Thurbert Baker was elected Georgia Attorney General.[64] Stip. ¶361. Most recently, after 230 years of exclusively white Senators, Senator Raphael Warnock was twice elected to U.S. Senate and in his most recent election he defeated a Black candidate. Jud. Not., 11. Finally, nine

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[64] The Court takes judicial notice of the elections that each candidate successfully won. See Scott v. Garlock, 2:18-cv-981-WKW-WC, 2019 WL 4200400, at *3 n. 4 (M.D. Ala. July 31, 2019) (taking judicial notice of the publicly filed election results).

Black individuals have been elected to statewide nonpartisan office in Georgia.[65] Stip. ¶ 362.

In Georgia's congressional elections, only 12 Black candidates have ever been elected to the Congress. Tr. 1201:1–5. Five Black individuals serve in the United States House of Representatives from Georgia's current congressional districts. Stip. ¶ 359. Four of these Black congresspersons are elected in majority-Black districts. PX 1, K-1. The other Black Representative, Congresswoman Lucy

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[65] The Court takes judicial notice of the following election results. Justice Robert Benham was elected to Georgia Court of Appeals in 1984 and was re-elected to the Georgia Supreme Court Justice five times following his 1989 appointment until his 2020 retirement. Justice Leah Ward-Sears was re-elected to the Georgia Supreme Court after her appointment in 1992 and served until her retirement in 2009. Justice Harold Melton was re-elected to the Georgia Supreme Court following his appointment in 2005 and served until his retirement in 2021. Justice Verda Colvin was appointed to the Georgia Supreme Court in 2021 and was re-elected in 2022. Judge John Ruffin was re-elected to the Georgia Court of Appeals following his appointment in 1994 and served until his retirement in 2008. Judge Clarence Cooper served as a judge on the Georgia Court of Appeals from 1990 until 1994 when he was appointed to the Northern District of Georgia. Judge Herbert Phipps was appointed to the Georgia Court of Appeals in 1999 and was re-elected twice before his retirement in 2016. Judge Yvette Miller was appointed to the Georgia Court of Appeal is 1999, has been re-elected since and continues to serve in this role. Judge Clyde Reese was appointed to the Georgia Court of Appeals in 2016 and was re-elected in 2018, where he served until his death in 2022.

McBath, represents Congressional District 7, which is a majority-minority district where the white voting age population is 32.78%.[66] PX 1, Ex. G.

In State legislative districts, the Georgia Legislative Black Caucus has only 14 members in the Georgia State Senate (25%) and 41 members in the Georgia House of Representatives (less than 23%).[67] Stip. ¶ 348. As shown Section II(C)(4)(f) *supra*, Pendergrass Plaintiffs' expert, Dr. Burton, submits a chart showing that in the 2020 and 2022 legislative elections, Black candidates had little-to-no success when they did not make up the majority of a district.[68] Specifically, Black candidates in the 2020 legislative elections did not have any success when they did not make up at least 45.1% of a House District or 53.8% of a Senate District.

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[66] Congresswoman McBath first defeated white candidate Karen Handel in the 2018 Congressional District 6 election, in a district that had a white voting age population of 58.11%. Jud. Not., pp. 9–11; Stip. ¶ 167; PX 1, 64, Ex. F.

[67] The Enacted Senate Plan contains 14 majority-Black districts. Stip. ¶ 186; APAX 1, M-1. The Enacted House Plan contains 49 majority-Black districts. Stip. ¶¶ 183, 186, APAX 1, Z-1.

[68] The Court notes that Erick Allen was elected to Georgia House District 40 in 2018 and re-elected in 2020. Tr. 1012:2–12. House district 40 was not a majority-Black district in 2018 or 2020. Id.

Winning Candidates in 2020 in Georgia House of Representatives

Percentage white registered voters in district	White Republicans[197]	Black Democrats	White Democrats
Under 40%	0	48	7
40–46.2%	1	3	2
46.2–54.9	11	1	6
55–62.4%	23	0	5
Over 62.4%	68	0	O

Winning Candidates in 2020 in Georgia State Senate

Percentage white registered voters in district	White Republicans	Black Democrats	White Democrats
Under 47%	0	16	1
47–54.9%	3	0	3
Over 55%	51	0	0

PX 4, 56.

Although the Court finds that Black candidates have achieved some success in statewide elections following 2000, the Court nonetheless finds that this factor weighs heavily in favor of Pendergrass Plaintiffs. The Supreme Court in Gingles, when discussing the success of a select few Black candidates, cautioned courts in conflating the success of few as dispositive. Gingles, 478 U.S.

at 76 ("Nothing in the statute or its legislative history prohibited the court from viewing with some caution black candidates' success in the 1982 election, and from deciding on the basis of all the relevant circumstances to accord greater weight to blacks' relative lack of success over the course of several recent elections.").

In short, since Reconstruction, Georgia has only elected *four* Black candidates in statewide partisan elections: Mike Thurmond, Thurbert Baker, David Burgess, and Raphael Warnock. Stip. ¶ 361. For statewide non-partisan elections, Georgia has elected nine successful Black candidates: Robert Benham, Leah Ward-Sears, Harold Melton, Verda Colvin, John Ruffin, Clarence Cooper, Herbert Phipps, Yvette Miller, Clyde Reese. Stip. ¶ 362. Georgia has sent twelve successful Black candidates to the U.S. House of Representatives. Tr. 1201:1–5. Currently, the Georgia Legislative Black Caucus has 55 members in the Georgia General Assembly (of 236 total members). Stip. ¶ 348.

The Court concludes that these isolated successes of Black candidates show that the Black population is underrepresented in Georgia's statewide elected offices. This conclusion is even stronger in majority-white districts.

To be sure, Dr. Burton acknowledged, that some academic scholarship indicates "the future electoral prospects of African American statewide nominees in growth states such as Georgia are indeed promising." Tr. 1470:2–24. The Court is likewise hopeful about the prospects of increased enfranchisement of all voters and for the potential success of minority candidates in Georgia. However, Dr. Burton also emphasized that, specifically in Georgia, dating back to Reconstruction, "when these things happen, then you get more legislation from whichever party is in power that works to sort of disenfranchise or at least dilute or make the vote count less." Tr. 1470:12–24. The optimism about Georgia's future elections does not rebut the contrary evidence of the present lack of success of Black candidates; accordingly, the Court finds that Senate Factor Seven weighs heavily in favor of finding a Section 2 violation.

g) Senate Factor Eight: responsiveness to Black residents

Senate Factor Eight considers whether elected officials are responsive to the particularized needs of Black voters. A lack of responsiveness is "evidence that minorities have insufficient political influence to ensure that their desires are considered by those in power." Marengo Cnty. Comm'n, 731 F.2d at 1572. The

Eleventh Circuit noted that "although a showing of unresponsiveness might have some probative value a showing of responsiveness would have very little." Id. Pendergrass Plaintiffs' expert, Dr. Collingwood, discussed the existence of significant socioeconomic disparities between Black and white Georgians, which he concluded contributed to the lower rates at which Blacks engage their elected representatives. PX 5, 34, 37. He further explained, "such clear disadvantages in healthcare, economics, and education" demonstrates that "the political system is relatively unresponsive to Black Georgians." Id. at 4; see also id. at 7 ("If the [political] system did respond, we would expect to see fewer gaps in both health and economic indicators and a reduction in voter turnout gaps."); Tr. 675:14–24. Dr. Collingwood also testified that lower Black voter turnout "typically means that elected officials as a whole are going to be less responsive to you" and thus perpetuates "these same gaps [i]n [] economic, health, [and] educational outcomes." Tr. 690:2–20.

The Court finds that the arguments regarding socioeconomic disparities are not particularly helpful in determining whether Georgia's elected officials are responsive to Black Georgians. At the trial, a number of Pendergrass Plaintiffs'

lay witnesses testified about socioeconomic issues affecting Black voters, but also admitted that these issues are not exclusive to the Black population. Tr. 657:23–658:4; 1014:16–1015:4, 1016:1–8, 1016:18–24, 1016:25–1017:8; 639:24-640:25.

Ultimately, there is an absence of evidence regarding the level of responsiveness of Georgia's elected representatives to Black voters and white voters. Due to the lack of evidence, the Court finds that Senate Factor Eight does not weigh in favor of finding a Section 2 violation. See Greater Birmingham Ministries, 992 F.3d at 1334 (finding that failure to consider amendments to a particular piece of legislation does not show that legislatures were unresponsive to the needs of minority voters).

h) Senate Factor Nine: justification for the Enacted Congressional Plan

The Court considers Defendants' justification for the Enacted Congressional Plan and finds that this factor weighs in favor of Defendants and thus weights against finding a Section 2 violation. The "final Senate Factor considers whether the policy underlying Georgia's use of the voting standard, practice, or procedure at issue is 'tenuous.'" Rose v. Raffensperger, 619 F. Supp. 3d 1241, 1267 (N.D.2022) (quoting Senate Report at 29, 1982 USCCAN 207).

"Under our cases, the States retain a flexibility that federal courts enforcing § 2 lack . . . deference is due to their reasonable fears of, and to their reasonable efforts to avoid, § 2 liability." Vera, 517 U.S. at 978.

At the trial, Ms. Wright testified that the Enacted Congressional Plan began with the creation of a blank map that largely balanced population that then could be modified based on input from legislators. Tr. 1665:2–1666:14. Ms. Wright also relied on information obtained from the public hearings on redistricting. Tr. 1668:24–1670:5. Political performance was an important consideration in the design of the Enacted Congressional Plan. Tr. 1668:20–23. In Enacted CD-6 specifically, Ms. Wright emphasized and explained that the four-way split of Cobb Count was because Cobb County was better able to handle a split of a congressional district than a smaller nearby county. Tr. 1671:5–1672:4. She further testified that the inclusion of parts of west Cobb County in Enacted CD-14 was because of population and political considerations, namely putting a democratic area into District 14 instead of District 11 (which was more political competitive). Tr. 1673:6–1674:2.

The Court finds that Defendants' evidence that the Enacted Congressional Plan was drawn to further partisan goals is a sufficient, non-tenuous justification for this Senate Factor. The Supreme Court has held that partisan gerrymandering is outside of the reach of the federal courts and "[f]ederal judges have no license to reallocate political power between the two major political parties, with no plausible Grant of authority in the Constitution, and no legal standards to limit and direct their decisions." Rucho v. Common Cause, 588 U.S. ----, 139 S. Ct. 2484, 2507 (2019). Accordingly, the Court finds that Defendants' justification, supported by Ms. Wright's testimony, that the General Assembly drew the congressional plan to capitalize on a partisan advantage is sufficient for Senate Factor Nine to not weigh in favor of a Section 2 violation.[69]

i) Proportionality

Finally, Defendants argued that Georgia's Black congressional delegation is proportional to Georgia's Black voting age population, which shows that

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[69] Consistent with the operative legal standards, this factor must be accorded less weight to Senate Factor Nine in a Section 2 case given that Section 2 is an effects test and that a legislatures' intent in drawing map is irrelevant.

Georgia's political process is equally open to Black voters. Tr. 52:16–17; 2392:12-2393:1. However, De Grandy, the Supreme Court expressly rejected proportionality as a safe harbor for Section 2 violations. De Grandy, 512 U.S. at 1017–18 ("Proportionality . . . would thus be a safe harbor for any districting scheme. The safety would be in derogation of the statutory text and its considered purpose, however, and of the ideal that the Voting Right Act of 1965 attempts to foster."). De Grandy did find, however, that proportionality is helpful in determining the "apparent[]" political effectiveness, based solely on an analysis of district makeups. Id. at 1014.

According to the 2020 Census population statistics,[70] under the Enacted Congressional Plan, four of Georgia's U.S. House Congressional districts are

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[70] The Parties have stipulated to the data for the 2021 Enacted Plan contained in Dr. Cooper's report at Exhibit K-1. See PX 1, Exs. K-1. Exhibit K-1 reflects the 2020 Census population statistics. PX 1 ¶¶ 38, 62. The Court notes that under the various data sets, the number of majority-Black districts fluctuates between 2 and 4 districts. Using the NH DOJ CVAP and total AP Black numbers there are four majority-Black districts. PX 1, Exs. G, K-1. However, using the AP BVAP percentages only two districts are majority-Black CD-4 (54.52%), CD-13 (66.75%). PX 1, Ex. K-1. Enacted CD-2 has an AP BVAP of 49.29% and CD-5 has an AP BVAP of 49.60%. Id.

majority-Black districts, using the total AP Black population. (CD- 2, 4, 5, 13) (or 28.6% of the congressional districts[71]) and one additional majority-minority district (CD-7) (for, a total of 5 majority-minority districts, which is 35.7% of the

District	18+ Pop	18+ SR Black	% 18+ SR Black	18+ AP Black	% 18+ AP Black	18+ Latino	% 18+ Latino	18+ NH White	% 18+ NH White
001	589266	157770	26.77%	166025	28.17%	39938	6.78%	440636	57.59%
002	587555	281564	47.92%	289612	49.29%	30074	5.12%	305611	39.94%
003	586319	130099	22.19%	136708	23.32%	31274	5.33%	492494	64.37%
004	589470	308266	52.30%	321379	54.52%	59670	10.12%	197536	25.82%
005	621515	295885	47.61%	308271	49.60%	41432	6.67%	273819	35.79%
006	574797	50334	8.76%	56969	9.91%	52353	9.11%	487400	63.70%
007	566934	157650	27.81%	169071	29.82%	120604	21.27%	225905	29.52%
008	585857	170421	29.09%	175967	30.04%	35732	6.10%	443123	57.91%
009	592520	56416	9.52%	61747	10.42%	76361	12.89%	495078	64.70%
010	588874	126798	21.53%	133097	22.60%	38336	6.51%	486487	63.58%
011	595201	98212	16.50%	106811	17.95%	66802	11.22%	469264	61.33%
012	588119	207872	35.35%	215958	36.72%	28628	4.87%	398843	52.13%
013	574789	370024	64.38%	383663	66.75%	60467	10.52%	125106	16.35%
014	579058	77108	13.32%	82708	14.28%	61247	10.58%	520854	68.07%
Total	**8220274**	**2488419**	**30.27%**	**2607986**	**31.73%**	**742918**	**9.04%**	**5362156**	**65.23%**

PX 1, Ex. K-1.

The Parties have stipulated that the 2021 Enacted Plan contains 3 majority-Black congressional districts in the Atlanta MSA. Stip. ¶ 162. Enacted CD-2 is not in the MSA, but according to the Census data in the aforementioned exhibits, has an AP Black population that exceeds 50%. See PX 1, Ex. K-1 (showing CD-2 with an AP Black of 51.39%) & Ex. G (showing CD-2 with a non-Hispanic Black population of 49.03%). For purposes of this Order, the Court will use the total AP Black statistics for determining whether a district is majority-Black, because these are the statistics that were seemingly contemplated in the Parties' stipulations.

[71] 4/14 is approximately 28.6%.

congressional districts[72]). See PX 1, Ex. K-1 (reproduced below). Thus, under the Enacted Congressional Plan, 28.57% of Georgia's Congressional Districts are

Georgia U.S. House -- 2020 Census -- Enacted Plan

District	Population	Deviation	% Deviation	AP Black	% AP Black	Latino	% Latino	NH White	% NH White
001	765137	1	0.00%	230783	30.16%	59328	7.75%	440636	57.59%
002	765137	1	0.00%	393195	51.39%	45499	5.95%	305611	39.94%
003	765136	0	0.00%	188947	24.69%	48285	6.31%	492494	64.37%
004	765135	-1	0.00%	423763	55.38%	88947	11.63%	197536	25.82%
005	765137	1	0.00%	392822	51.34%	56496	7.38%	273819	35.79%
006	765136	0	0.00%	78871	10.31%	78299	10.23%	487400	63.70%
007	765137	1	0.00%	239717	31.33%	181851	23.77%	225905	29.52%
008	765136	0	0.00%	241628	31.58%	54850	7.17%	443123	57.91%
009	765137	1	0.00%	87130	11.39%	117758	15.39%	495078	64.70%
010	765135	-1	0.00%	184137	24.07%	58645	7.66%	486487	63.58%
011	765137	1	0.00%	143404	18.74%	99794	13.04%	469264	61.33%
012	765136	0	0.00%	294961	38.55%	43065	5.63%	398843	52.13%
013	765137	1	0.00%	520094	67.97%	93554	12.23%	125106	16.35%
014	765135	-1	0.00%	118694	15.51%	97086	12.69%	520854	68.07%
Total	**10711908**		**0.00%**	**3538146**	**33.03%**	**1123457**	**10.49%**	**5362156**	**50.06%**

majority-Black and 35.71% are majority-minority, and 64.29% are majority-white. Id.

The Black voting age population in Georgia is 31.73%, total minority voting age population is 47.18%, and the white voting age population is 52.82%. PX 1

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[72] 5/14 is approximately 35.7%. Conversely, with the added majority Black district in the Illustrative Congressional Plan, the proportion of majority-white districts drops to approximately 64.3% (i.e., 9 of 14 districts), which is closer to the proportion of the white population in Georgia (55.7%) (see PX 1 ¶ 18 & fig.2).

¶ 18, fig.2. Under the Enacted Congressional Plan, the only group that has representation that is equal to or exceeds their proportion of the State's population is white voters, who receive 64.29% of the districts, but only make up 55.7% of the electorate.

The Illustrative Congressional Plan, however, reaches near proportional representation. The addition of one majority-Black district brings the proportion of Black congressional districts to 35.7% (i.e., 5 of 14 congressional districts), which is close to the 33.3% AP Black voting age population in the State (PX 1 ¶ 18 & fig.2.). The additional Illustrative CD-6, moreover, brings the number of majority-minority congressional districts to 6, which is approximately 42.9% of the 14 congressional districts and close to the 44.3% of the total minority voting age population (PX 1 ¶ 18 & fig.2). And 57.14% of Georgia's congressional districts will be majority-white districts and close to the 52.82% of the total white voting age population. Id.

The Court understands that Defendants are arguing that the recent election of five Black Congresspersons to the U.S. House of Representatives (35.7% of Georgia's congressional delegation) is proportionate to the percentage of

Georgia's Black residents (33.03%); therefore, Georgia's political system is equally open to Black voters. As is clear from the text of Section 2, "nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in their population." 52 U.S.C. § 10301(b). Furthermore, it is abundantly clear that it is reversable error for the District Court to attempt to maximize the number of majority-minority districts. DeGrandy, 512 U.S. at 1000; Miller, 515 U.S. at 926–27. However, the existence of near proportional representation or a remedy that results in proportional representation, in and of itself, is not reversible error because "proportionality is not dispositive." DeGrandy, 512 U.S. at 1000; see also Allen, 599 U.S. at 26–30, 42 (affirming three-judge court's finding of a Section 2 violation, even though the remedy would result in proportional representation). Having considered the evidence provided in support of and to rebut the Senate Factors and after conducting a "careful[] and searching review [of] the totality of the circumstances," the Court finds that Black voters do not have equal access to the political process in the challenged area. DeGrandy, 512 U.S at 1026 (O'Conner, J., concurring).

> The Supreme Court recently confirmed that:
>
> > what must be shown to prove a § 2 violation[,] [ ] requires consideration of the totality of circumstances in each case and demands proof that the political processes leading to nomination or election in the State or political subdivision are not *equally open* to participation by members of a protected class *in that its members have less opportunity* than other members of the electorate to participate in the political process and to elect representatives of their choice.

Brnovich, 141 S. Ct. at 2332 (cleaned up) (emphasis in original). The Court has reviewed all of the evidence before it, and even with Georgia's election of five Black congresspersons, the Black voters in the area of the challenged congressional districts do not have an equal opportunity to participate. As Justice O'Connor opined, "the presence of proportionality [does not] prove the absence of dilution." DeGrandy, 512 U.S. at 1026.

This past summer, the Supreme Court was again confronted with the question of proportionality. Allen, 599 U.S. at 26–30. In Justice Thomas's dissent, he opined that it is error to use proportionality as a benchmark for a Section 2 violation." Allen, 599 U.S. at 71–73 (Thomas, J., dissenting). Justice Kavanaugh specifically addressed this issue and explained that Gingles "does not mandate a

proportional number of majority-minority districts." Allen, 559 U.S. at 43 (Kavanaugh, J., concurring). Rather, a Section 2 violation occurs only when (1) the redistricting maps split the minority community and (2) a reasonably configured district could be drawn in that area. Id. He concluded that "[i]f Gingles required proportional representation, then States would be forced to group together geographically dispersed minority communities in unusually shaped districts. Id. That is not the case here, as is evidenced above, Illustrative CD-6 is more compact on objective measures than Enacted CD-6, and the district is in a relatively small area of the State. See Section II(C)(1)(b)–(c) *supra*.

Consistent with DeGrandy, Brnovich, and Allen, the Court finds that if there is sufficient evidence of minority voter dilution under the totality of the circumstances, taking into consideration the Senate Factors, then proportionality cannot immunize the State from a Section 2 challenge. In other words, proportionality is neither a benchmark for plaintiffs, nor a safe harbor for States.

Accordingly, the Court finds that proportionality neither weighs in favor of Defendants, nor weighs against finding a Section 2 violation.[73]

j) Demographic Changes

Finally, the Court considers Georgia's demographic changes as part of its totality of the circumstances analysis. See Singleton, 582 F. Supp. 3d at 977. The greatest population growth since the last Decennial Census was in metro-Atlanta. PX 1 ¶ 25 & fig.4. More than half (53.27%) of the population increase in the counties included in Illustrative CD-6 results from the increased Black population. Id. ¶ 42 & fig.8. And, in all but Fulton County, the Black population accounts for most of the population changes. Id. The Enacted Congressional Plan does not account for the growth in the Black population in this area.

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[73] Achieving proportional representation is not a factor to weigh against finding a Section 2 violation. De Grandy was evaluating proportionality under the Enacted Congressional Plan, not the remedial plan. Its statement that proportionality cannot prove a Section 2 case does not readily extend to say that achieving proportionality weighs *against* a Section 2 case. Id. at 1000. See Allen, 599 U.S at 26–30; see also id. at 71–73 (Kavanaugh, J., concurring).

Figure 8
Four-County Area: 2010 Census to 2020 Census Population and Black Population Changes

	2020 Population	2020 Black Population	2010–2020 Population Change	2010–2020 Black Population Change	Black Population Change as Percentage of Total Change
Cobb	766,149	223,116	78,071	42,151	53.99%
Douglas	144,237	74,260	11,834	20,007	169.06%
Fayette	119,194	32,076	12,627	9,578	75.85%
Fulton	1,066,710	477,624	146,129	60,732	41.56%
Total	**2,096,290**	**807,076**	**248,661**	**132,468**	**53.27%**

PX 1 ¶ 42 & fig.8; Id. ¶ 43.

In Allen, the three-judge court noted that, over the past decade, the Black population grew by 6.53%, and the white population's share of Alabama's total population decreased by 3.92%. Singleton, 582 F. Supp. 3d at 977. The Black population's growth in Georgia, as a whole, and in metro-Atlanta, specifically, is greater than the demographic changes in Alabama. In fact, during the same period, Georgia's Black population grew by 15.84% and accounted for 5.00% percent of Georgia's population growth, while the white population's share of the State's total population decreased by 5.82%. PX 1 ¶ 14 & fig.1. In metro-Atlanta alone, the Black population is responsible for 51.04% of Atlanta MSA's

population growth, and their population share increased by 2.30%. PX 1 ¶ 30 & fig.5. Conversely, the white population in the Atlanta MSA decreased by 2.83%, their share of the population decreased by 7.08%. Id. Meaning, that the demographic shifts in Georgia—as a whole and in the area where the proposed majority-minority district is located—are greater than those in Alabama, where a Section 2 violation was found and affirmed.

Despite the growth in the Black population in the affected areas and the voter polarization between white and Black Georgians, see Section II(C)(2)(4)(c) *supra*, the Enacted Congressional Plan did not increase the number of majority-Black districts in the Atlanta metro area. By failing to do so, the Enacted Congressional Plan in effect dilutes and diminishes the Black population's voting power in that area of the State. Accordingly, the Court finds that the population changes in metro-Atlanta weigh heavily in favor of finding a Section 2 violation.

5. Conclusions of Law

The Court finds that the Pendergrass Plaintiffs have met their burden in establishing that (1) the Black community in the west-metro Atlanta metro area is sufficiently numerous and compact to constitute an additional majority-Black

district; (2) the Black community is politically cohesive; and (3) that the white majority votes as a bloc to typically defeat the Black-preferred candidate. The Court also finds that in evaluating the totality of the circumstances, Georgia's electoral system is not equally open to Black voters. Specifically, the Court finds that Senate Factors One, Two, Three, Five, and Seven weigh in favor of showing the present realities of lack of opportunity for Black voters. The Court also finds that Senate Factor Six weighs slightly in favor finding a Section 2 violations. Additionally, the growth of Georgia's Black population in metro-Atlanta while the white population decreased weighs in favor of a Section 2 violation.

Only Senate Factors Four, Eight[74] and Nine do not weigh in favor of finding a Section 2 violation. The Court also finds that proportionality does not weigh against finding a Section 2 violation.

In sum, the Court finds that the majority of the totality of the circumstances' evidence weighs in favor of finding a Section 2 violation. Because Pendergrass

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[74] The Eleventh Circuit found that Senate Factor Eight is given little weight. Marengo Cnty. Comm'n, 731 F.2d at 1572. And the Court gives less weight to Senate Factor Nine because this is not an intentional discrimination case.

Plaintiffs have carried their burden of proof on all of the legal requirements, the Court concludes that SB 2EX violates Section 2 of the Voting Rights Act.

D. Legislative Districts

The Court will now discuss the State legislative districts (i.e., State Senate and State House districts). First, the Court will discuss the first Gingles precondition for all illustrative legislative districts. This portion of the Section is divided into different regions of the State (i.e., metro Atlanta, eastern Black Belt, Macon-Bibb, and southwest Georgia). For the regions where both the Alpha Phi Alpha Plaintiffs and the Grant Plaintiffs challenged districts, the Court will first make its findings as to all of the Alpha Phi Alpha illustrative districts and will then make findings as to all of the Grant illustrative districts. For the illustrative districts that survive the first Gingles precondition, the Court will then evaluate them under the second and third Gingles preconditions (Alpha Phi Alpha first and then Grant). For the illustrative districts that survive all three Gingles precondition, the Court will then turn and evaluate whether the political process is equally open to Black voters in those areas (again, Alpha Phi Alpha first and Grant second).

1. *First Gingles Precondition*

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden in proving the first Gingles precondition in three of the proposed district in south-metro Atlanta (i.e., Cooper SD-17, SD-28, and HD-74). The Alpha Phi Alpha Plaintiffs have not met their burden in proving the first Gingles precondition in one of the House district in south-metro Atlanta, the districts in the Eastern Black Belt, in and around Macon-Bibb, or southwest Georgia (Cooper SD-23, HD-133, HD-117, HD-145, HD-171).

The Court finds that the Grant Plaintiffs have met their burden in proving the first Gingles precondition in the south-metro Atlanta Senate districts, two House districts in metro Atlanta, and two House districts in the Macon-Bibb region (i.e., Esselstyn SD-25, SD-28, HD-64, HD-117, HD-145, and HD-149). The Grant Plaintiffs have not met their burden in proving the first Gingles precondition as to the proposed district in the eastern Black Belt, or one proposed district in south-metro Atlanta (Esselstyn SD-23, HD-74).

a) Racial predominance

The Court begins its discussion of the illustrative districts by finding that race did not predominate in the drawing of either the Cooper or Esselstyn

Legislative Plans. In a Section 2 case "the question [of] whether additional majority-minority districts can be drawn . . . involves a 'quintessentially race-conscious calculus." Allen, 599 U.S. at 31 (plurality opinion) (quoting DeGrandy, 512 U.S. at 1020). "The line that [has] long since [been] drawn is between consciousness and predominance." Id. at 33 (plurality opinion). Race does not predominate when a mapmaker "adhere[s] . . . to traditional redistricting criteria," testifies that "race was not the predominate factor motivating his design process," and explains that he never sought to "maximize the number of majority-minority" districts. Davis, 139 F.3d at 1426.

Both Mr. Cooper and Mr. Esselstyn testified at the trial and preliminary injunction that they were aware of race when drawing their illustrative legislative plans, but that race did not outweigh any of the other traditional redistricting principles. See Tr. 108:4–11 (Mr. Cooper testifying that he is "aware of [race], but it didn't control how these districts were drawn); Tr. 522:5–14 ("I'm constantly looking at the shape of the district, what it does for population equality, . . . political subdivisions, communities of interest, incumbents, all that. So while yes, at time [race] would have been used to inform a decision, it was one

of a number of factors."); Alpha Phi Alpha Fraternity, 587 F. Supp. 3d at 1244 (crediting Mr. Cooper's testimony that race did not predominate when he drew his illustrative maps); id. at 1245–46 (crediting Mr. Esselstyn's testimony that race was but one factor he considered when drawing his illustrative maps). The Court again finds that Mr. Cooper and Esselstyn testified credibly that race did not predominate when they drew their illustrative legislative plans. Accordingly, the Court finds that race did not predominate in the creation of the Cooper Legislative Plan or the Esselstyn Legislative Plan.

The Court will now determine whether the Black community is sufficiently numerous and compact in each of the proposed legislative districts.

b) Metro Atlanta region

(1) Alpha Phi Alpha

(a) numerosity

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden in showing that the Black voting age population in metro Atlanta is large enough to create two additional majority-Black Senate districts and two majority-Black House districts in south-metro Atlanta. "[A] party asserting § 2 liability must

show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." Bartlett, 556 U.S. at 20.

It is undisputed that Cooper SD-17 and SD-28 have an AP BVAP of 62.55% and 51.32%, respectively, both of which exceed the 50% threshold required by Gingles. APAX 1, Ex. O-1. It is also undisputed that Cooper HD-74, and HD-117 have an AP BVAP of 61.49% and 54.64%, respectively. APAX 1, Ex. AA-1.

Based on these numbers, the Court finds that the Alpha Phi Alpha Plaintiffs have met their burden with respect to the numerosity prong of the first Gingles precondition in all additional majority-Black districts that Mr. Cooper proposed in metro Atlanta (i.e., SD-17, SD-28, HD-74, and HD-117).

(b) Compactness

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden to show that the minority community is sufficiently compact to warrant the creation of two additional majority-Black State Senate (Cooper SD-17 and SD-28) and one majority-Black House district (Cooper HD-74) in south-metro Atlanta.

The standards governing the compactness inquiry for these additional districts is the same as the compactness inquiry in the Pendergrass case. See

Section II(C)(1)(b) *supra*. The Court must consider if the illustrative proposed districts adhered to traditional redistricting principles, namely: population equality, contiguity, empirical compactness scores, the eyeball test for irregularities and contiguity, respecting political subdivisions, and uniting communities of interest. See id.

i) Cooper SD-17

The Court finds that Cooper SD-17 is reasonably compact. The Court notes that Cooper SD-17 is in the same area as Enacted SD-17. APAX 1 ¶ 104 ("a majority-Black Senate District 17 can be drawn in the vicinity of 2021 Senate District 17").

((a)) empirical measures

((1)) population equality

The Court finds that Cooper SD-17 is not malapportioned. See Reynolds v. Sims, 377 U.S. 533, 577 (1964) (requiring "an honest and good faith effort to construct districts . . . of nearly equal population as practicable."); Brown v. Thomson, 462 U.S. 835, 842 (1983) (finding "minor deviations" do not violate the Fourteenth Amendment). The General Assembly's "General Principles for Drafting Plans" specifies that "[e]ach legislative district . . . should be drawn to

achieve a total population that is substantially equal as practicable." Stip. ¶ 135; JX 2, 2.

The ideal population size of a State Senate district is 191,284. Stip. ¶ 277. The General Assembly did not enumerate a specific deviation range that is acceptable for the State Senate districts. However, relying on the Enacted Senate Plan as a rough guide, an acceptable population deviation range is between -1.03% and +0.98% is acceptable. APAX 1, Ex. M-1. Cooper SD-17 has a population deviation of +0.002%, which is 35 people from perfect correlation. APAX 1, Ex. O-1. Cooper SD-17 achieves better population equality than Enacted SD-17, which has a population deviation of +0.67%. APAX 1, Ex. M-1. Thus, the Court finds that Cooper SD-17 achieves population equality that is consistent with the General Assembly's Redistricting Guidelines and traditional redistricting principles.

((2)) contiguity

The Parties stipulated that Cooper SD-17 is a contiguous district. Stip. ¶ 300. Hence, the Court finds that Cooper SD-17 complies with the traditional redistricting principle of contiguity.

((3)) compactness scores

The Court finds that Cooper SD-17 is more compact than Enacted SD-17. In reaching this conclusion, the Court, as it did in the Pendergrass case, looks to the objective compactness scores of the Polsby-Popper and the Reock indicatosr.

Using the Reock measure, Cooper SD-17 is 0.37 compared with Enacted SD-17, which is 0.35. GX 1, Attach. H. As such, Cooper SD-17 is 0.02 points more compact under the Reock indicator. When using the Polsby-Popper measure, Cooper SD-17 is 0.17 as is the Enacted SD-17, i.e., the two districts have identical Polsby-Popper scores. Id. Hence, the Court finds that on the empirical compactness measures, Cooper SD-17 fares better than or is identical to Enacted SD-17. Accordingly, the Court finds that Cooper SD-17 is slightly more compact when compared to Enacted SD-17.

((4)) political subdivisions

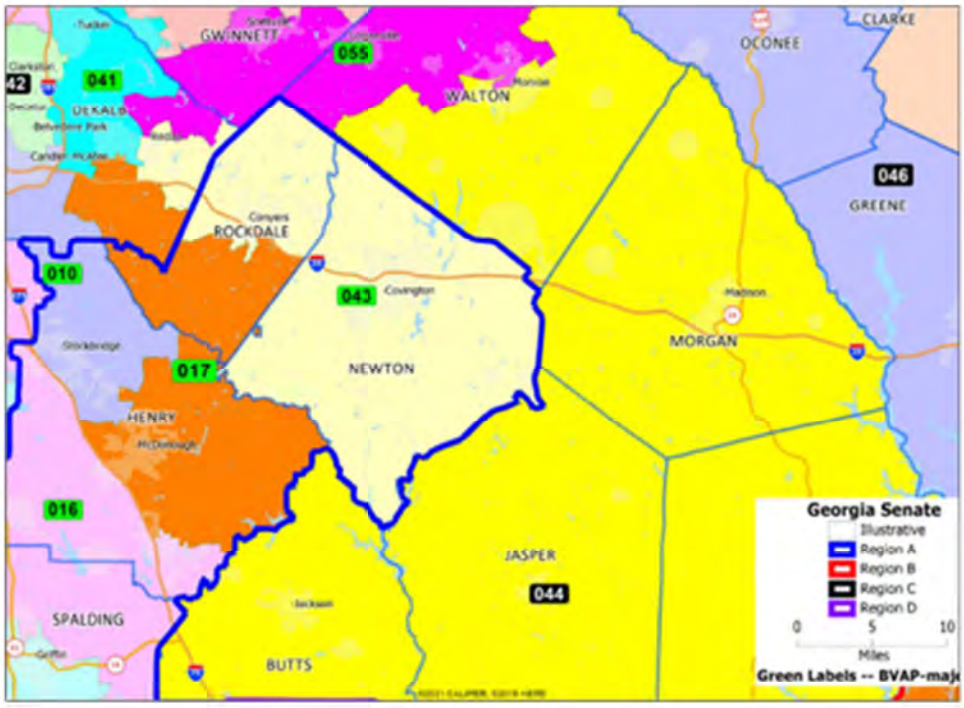
The Court also finds that Cooper SD-17 generally respected political subdivisions. That proposed district consists of portions of DeKalb, Henry, and Rockdale Counties. APAX 1 ¶ 105 & fig.17D. Enacted SD-17 also split three counties—Henry, Newton and Rockdale. APAX 1 ¶ 102 & fig.17C. Thus, the

Court finds that both Cooper SD-17 and Enacted SD-17 split the same number of counties. Although the county splits remain the same, the Court notes that Cooper SD-17 splits more VTDs (4) than Enacted SD-17 (none). APAX 1, Exs. T-1, T-3. There was no testimony that Cooper SD-17 split municipalities, even though there was testimony regarding the municipalities that were included in the district, such as McDonough in Henry County and Stonecrest in DeKalb County. Tr. 117:5–11.

Although Cooper SD-17 splits more VTDs, the Court finds that generally, SD-17 respects political subdivisions because he split the same number of counties and seemingly kept municipalities intact.

((b)) <u>eyeball test</u>

The Court finds that Cooper SD-17 is visually compact under the eyeball test:



APAX 1 ¶ 105 & fig.17D.

Moreover, using the mapping tool provided by Mr. Esselstyn, the Court finds that the district at its most distant points is less than 30 miles in length. Id. Cooper SD-17 has no appendages or tentacles. Id. And there is no contrary evidence or testimony in the Record. In fact, Mr. Morgan testified that Cooper SD-17 is "geographically more compact in the sense that it doesn't go quite the distance as the enacted District 17 . . . [g]eographically, generally, yes, it appears more compact." Tr. 2027:11–24. Accordingly, the Court finds that Cooper SD-17 is visually compact.

((c)) communities of interest

The Court finds that Cooper SD-17 respects communities of interest. Cooper SD-17 includes neighboring parts of south DeKalb, Henry, and Rockdale Counties, connecting the nearby communities of Stonecrest, Conyers, and McDonough. APAX 1, 45-6 ¶¶ 104-5 & fig.17D. Both Cooper SD-17 and Enacted SD-17 overlap in and around McDonough in Henry County. Id. at 44, 46.

Mr. Cooper testified that he is familiar with this area of Georgia because he has drawn districting maps for Henry County before, dating back to 1991 and most recently in the 2018 Dwight v. Kemp case. Tr. 116:12–24. He also testified that the communities in Cooper SD-17 are primarily suburban or exurban. Tr. 116:6–8. And, the distance between the portions of the district in south DeKalb and south Henry Counties are probably a 10-minute drive from one another. Tr. 231:14–20. Furthermore, he testified that in configuring the district in this manner, he was able to keep Newton County, whole (rather than split it, as the Enacted Senate Plan does) and include it in Cooper SD-43, which is compact and majority-Black. APAX 1, 48 & fig.17F.

Moreover, Mr. Cooper examined ACS data showing that the counties included in Cooper SD-17 share certain socioeconomic characteristics, such as similar educational attainment rates among Black residents in Henry, Rockdale, and DeKalb Counties. APAX 1 ¶¶ 127-128 & Ex. CD at 21-22.

The testimony of Mr. Lofton, who lives in McDonough, bolster's Mr. Cooper's testimony. Mr. Lofton testified regarding the interconnectedness of the different counties in south-metro Atlanta, including competing against one another in sports. Tr. 1306:23-25 ("I visited Rockdale even from high school. We used to compete against Rockdale County Heritage High School when I was in high school. We were [in] the same region."). Mr. Lofton testified about the similarities and connections between DeKalb, Stonecrest, Conyers and McDonough. Tr. 1308:16-22 (discussing the "major thoroughfares" connecting DeKalb, Rockdale, and Henry Counties that people drive up and down "all day."); Id. at 1308:23-1309:8 (discussing travelling between McDonough, Stonecrest, Conyers, and Covington for shopping and dining "because they're not terribly far out of the way."). He also testified that Henry, Rockdale, and

DeKalb Counties are getting more diverse and "on par" with one another. Id. at 1298:16-20, 1306:16-1307:8, 1308:4-7.

In sum, the Court finds that Cooper SD-17 is a small district contained wholly within metro Atlanta, unlike the districts in LULAC and Miller. There was extensive testimony from Mr. Cooper and a resident of McDonough about the interrelatedness of the communities in the district. Furthermore, Mr. Cooper's report details the shared socio-economic characteristics of the voters living in the district. In all the Court finds that this testimony shows that the district preserves existing communities of interest.

((d)) conclusions of law

The Court determines that the Alpha Phi Alpha Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Cooper SD-17 to constitute an- additional majority-Black district. The Court finds that Cooper SD-17 complies with the traditional redistricting principles of population equality, contiguity, compactness, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain

any appendages or tentacles. Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have carried their burden in meeting the first Gingles precondition in the area contained in Cooper SD-17.

ii) Cooper SD-28

The Court finds also that the Alpha Phi Alpha Plaintiffs have shown that it is possible to draw an electoral district consistent with traditional redistricting principles in the area encompassed by Cooper SD-28. As an initial note, Mr. Cooper explained that Cooper SD-28 is in the same general area as, and correlates with, Enacted SD-16. APAX 1 ¶ 99 ("a majority-Black District 28 [ ] can be drawn in the vicinity of 2021 Senate District 16").

((a)) empirical measures

((1)) population equality

The Court finds that Cooper SD-28 achieves relative population equality. As stated above, the General Assembly did not enumerate a specific acceptable deviation range for the State Senate Districts. However, relying on the Enacted Plan as a guide, a population deviation range between -1.03% and +0.98% is acceptable. APAX 1, Ex. M-1. In comparison, Cooper SD-28 has a population deviation of -0.73%, which is within range of the population deviations in the

Enacted Senate Plan. APAX 1, Ex. O-1. The Court finds that Cooper SD-28 is consistent with the General Assembly's Redistricting Guidelines, and traditional redistricting principles.

((2)) contiguity

The Parties stipulated that Cooper SD-28 is a contiguous district. Stip. ¶ 300. Hence, the Court finds that Cooper SD-28 complies with the traditional redistricting principle of contiguity.

((3)) compactness scores

The Court finds Cooper SD-28's compactness scores are within the range of compactness scores found in the Enacted Senate Plan. APAX 1, Exs. S-1, S-3. Cooper SD-28 and Enacted SD-16 have identical Reock scores of 0.37. Enacted SD-16 is more compact on the Polsby-Popper measure with a score of 0.31.while Cooper SD-28 has a Polsby-Popper score of 0.18. APAX 1, Exs. S-1, S-3.

Although Enacted SD-16 is more compact on the Polsby-Popper measure, Cooper SD-28 is within the range of compactness scores found in the Enacted Senate Plan. Specifically, the Enacted Senate Plan has a minimum Polsby-Popper score of 0.13. APAX 1, Ex. S-3. Cooper SD-28's Polsby-Popper score (0.18) exceeds the minimum threshold Polsby-Popper score found in the Enacted Senate Plan.

Id. Accordingly, the Court finds that Cooper SD-28 falls within the range of compactness scores found in the Enacted Senate Plan and therefore constitutes a compact district for purposes of the first Gingles precondition.

((4)) political subdivisions

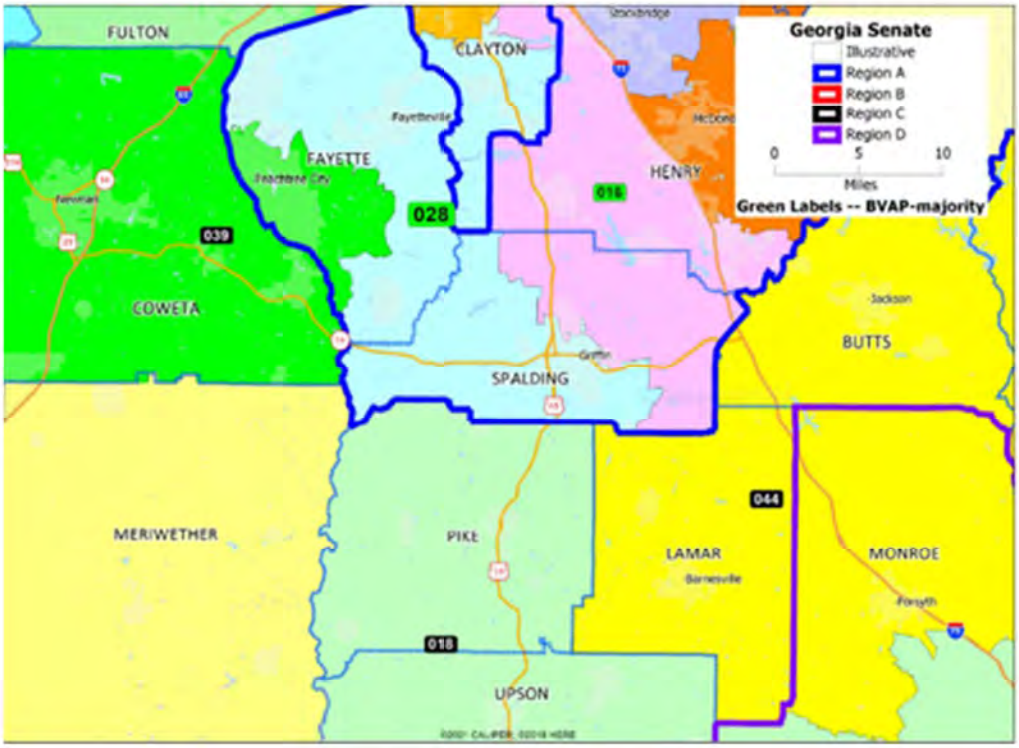
The Court finds that Cooper SD-28 generally respects political subdivisions. The Court notes that Cooper SD-28 does have more political subdivision splits than Enacted SD-16. Cooper SD-28 contains portions of Fayette, Spalding, and Clayton Counties, resulting in three county splits. APAX 1 ¶ 99. Enacted SD-16 splits only Fayette County, and keeps Spalding, Pike, and Lamar Counties whole. Additionally, Cooper SD-28 splits two VTDs, whereas Enacted SD-16 splits none. APAX 1, Exs. T-1, T-3. Mr. Cooper testified, "[y]ou can see that I separated or made the boundary for District 28, which is the new majority Black district, following the municipal lines of Griffin, which can be kind of odd shaped in places." Tr. 114:4-7; APAX 11, at 41 ¶ 99 & fig.17B; see also Id. Ex. T-1 (listing a single split VTD in Fayette County and one in Spalding County).

Although those increased splits do exist, Mr. Cooper testified that he was able to keep municipalities whole. Specifically, when drawing these districts, he

was able to keep the city of Griffin wholly within Cooper SD-28 and Peachtree City was kept wholly within Cooper SD-39. APAX 1 ¶ 99 & fig.17A; Tr. 114:1–7, 238:4–7. Mr. Cooper explained that some of his mapping decisions, were made to comply with population equality. See Tr. 238:23–239:3 ("once you pick up Griffin and some of the area between Spalding and Fayetteville, there's a lot of population as you approach Fayetteville. So, from one person one voter standpoint you could not include Peachtree City in District 28."). The Court credits Mr. Cooper's testimony regarding decisions for drawing boundary lines. Therefore, the Court finds that Cooper SD-28 respects political subdivisions.

((b)) eyeball test

The Court finds that Cooper SD-28 is visually compact under the eyeball test:



APAX 1 ¶ 99 & fig.17A.

Using the mapping tool, the Court finds that at its most distant points, Cooper SD-28 is approximate 30 miles long. Id. Mr. Morgan testified that north to south the district is 24 miles long. Tr. 1982:7–12. Cooper SD-28 does not contain any tentacles or appendages. Mr. Cooper also testified that when looking at the district, one can see that "[t]he towns and cities are—suburbs are all very close together." Tr. 113:18–21. The Court agrees with Mr. Cooper's assessment, the district itself visually encompasses a small geographic area. Defendant submits

no evidence or testimony in the Record suggesting that Cooper SD-28 is not visually compact. See generally DX 1; Tr. 1896:13-23. Accordingly, the Court concludes that Cooper SD-28 is visually compact.

((c)) communities of interest

Mr. Cooper testified that the areas of Fayette and Spalding County that he included in Cooper SD-28 are growing, becoming more diverse and suburban, and thus more similar to Clayton County. Tr. 113:6-114:18; see also Tr. 242:15-24. He noted that these parts of Spalding and Fayette Counties are experiencing population growth and change as well as suburbanization, which warranted grouping them with Clayton County. Tr. 113:6-114:18. Moreover, he explained that the areas he connected are similarly suburban and exurban in nature, in comparison to the more rural and predominantly white Pike and Lamar Counties, which were not included in Cooper SD-28. Tr. 113:24-25 ("Yes. This area is predominantly a suburban/exurban. So the area matches up socioeconomically, I believe.").

Mr. Cooper also explained why it made sense to not include western Fayette County in Illustrative District 28, highlighting the differences between Peachtree City and Griffin. Tr. 114:19-115:5

> THE COURT: What are the commonalities of the people in Griffin and Peachtree City?
> THE WITNESS: Well, the -- Griffin and Peachtree City are quite different, frankly.
> THE COURT: They are.
> THE WITNESS: Peachtree City is predominantly white. Just kind of sprung up there I think in the 1980s. They drive around in golf carts. I mean, that's --.
> THE COURT: Yeah.
> THE WITNESS: Yeah. And so it doesn't really fit with Griffin exactly, which is one of the reasons why I didn't include it in District 28. It is the western part of Fayette County.

Tr. 1311:21-1312:13.

Additionally, Mr. Cooper examined ACS data showing that the counties included in Cooper SD-28—namely, Fayette, Spalding, and Clayton—share socioeconomic commonalities. Specifically, Fayette, Spalding, and Clayton Counties share certain socioeconomic characteristics, as all have a relatively high proportion of Black residents in the labor force. APAX 1, at 56 ¶ 125, Ex. CD, at 53-55.

The testimony of Mr. Lofton, a lifelong metro Atlantan, and a long-time resident of Henry County with connections in Fayette, Clayton, and DeKalb Counties, was consistent with Mr. Cooper's. Mr. Lofton attested to the interconnectedness of the communities included in Cooper SD-28. For example, as Mr. Lofton explained, if you visit shopping centers in Griffin you will see Fayette and Clayton car tags. Tr. 1302:9-11. Mr. Lofton also testified that areas covered by Cooper SD-28 share common places of worship and that Black communities in the area share certain socioeconomic characteristics, like similar educational attainment. Id. at 1309:25-1310:9. Gina Wright, who testified that she was familiar with the area, agreed that the area of South Clayton County that is included in Cooper SD-28 is suburban. Id. at 1685:2-20.

Thus, the Court finds that Cooper SD-28 is a small district contained wholly within metro Atlanta and has no resemblance to the districts in LULAC and Miller. Mr. Cooper testified extensively about the communities that are contained within the district, the shared socio-economic factors, and the characteristics that unite them. Additionally, Mr. Lofton, with his lifelong experience as a resident in the area, explained how the communities interact with

one another. The Court finds that the size of the district coupled with the witness testimony shows Cooper SD-28 preserves communities of interest.

((d)) conclusions of law

The Court finds that the Alpha Phi Alpha Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Cooper SD-28 to constitute an additional majority-Black district. The Court finds that Cooper SD-28 complies with the traditional redistricting principles of population equality, contiguity, compactness, respect for political subdivisions, and preservation communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have carried their burden on the first Gingles precondition in the area encompassed by Cooper SD-28

iii) Cooper HD-74

The Court finds that Cooper HD-74 is reasonably compact. The Court notes that Cooper SD-17 is in the area of Enacted HD-74. APAX 1 ¶ 162.

((a)) empirical measures

((1)) population equality

The Court finds that Cooper HD-74 is not malapportioned. See Reynolds, 377 U.S. at 577 (requiring "an honest and good faith effort to construct districts . . . of nearly equal population as practicable."); Brown, 462 U.S. at 842 (finding "minor deviations" are not violative of the Fourteenth Amendment). The General Assembly's "General Principles for Drafting Plans" specifies that "[e]ach legislative district . . . should be drawn to achieve a total population that is substantially equal as practicable." Stip. ¶ 135; JX 2, 2.

The ideal population size of a State House District is 59,511. Stip. ¶ 278. The General Assembly did not enumerate the deviation range for State House Districts. However, relying on the Enacted House Plan as a rough guide, a population deviation range between -1.40% and +1.34% is acceptable. APAX 1, Z-1. Cooper HD-74 has a population deviation of +0.78%. APAX 1, Ex. AA-1. Cooper HD-74 achieves better population equality than Enacted HD-74, which has a population deviation of -0.93%. APAX 1, Ex. M-1. Thus, the Court finds that Cooper HD-74 achieves population equality that is consistent with the General Assembly's Redistricting Guidelines and traditional redistricting principles.

((2)) contiguity

The Parties stipulated that Cooper HD-74 is a contiguous district. Stip. ¶ 300. Hence, the Court finds that Cooper HD-74 complies with the traditional redistricting principle of contiguity.

((3)) compactness scores

The Court finds that Cooper HD-74 is more compact than Enacted HD-74. In reaching this conclusion, the Court, as it did in the Pendergrass case, looks at the objective compactness scores of the Polsby-Popper and Reock measures.

Using the Reock indicator, Cooper HD-74 measures 0.63 as compared to Enacted HD-74 which measures 0.50. APAX 1, Exs. AG-1, AG-2. This means that on the Reock measure, Cooper HD-74 is 0.13 points more compact than Enacted HD-74. Id. Using the Polsby-Popper measure, Cooper HD-74 has an 0.11 compactness advantage: Cooper HD-74 is 0.36 and Enacted HD-74 is 0.25. Id. Hence, the Court finds that on the empirical compactness scores, Cooper HD-74 fares better than Enacted HD-74.

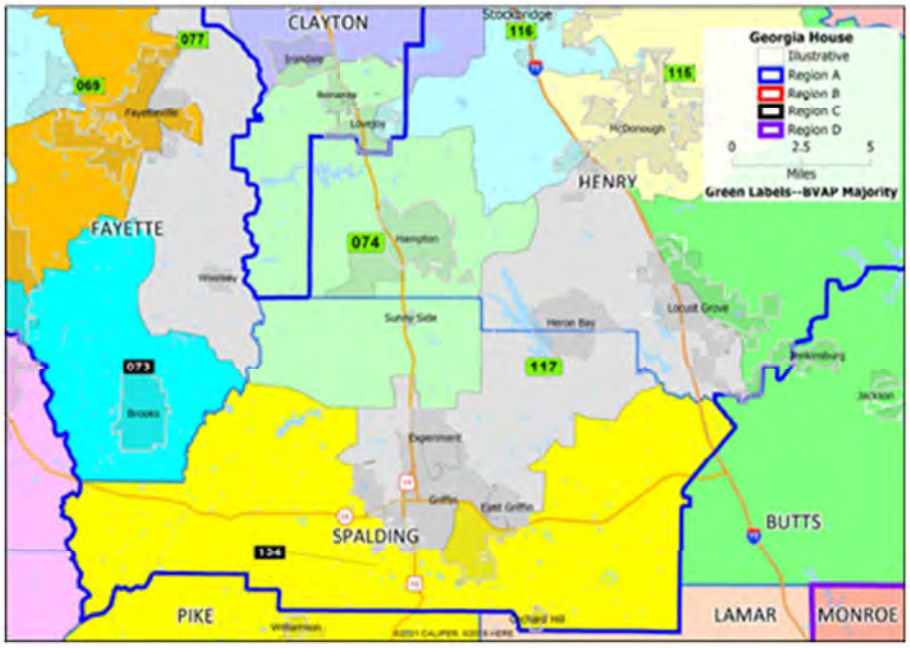
Accordingly, the Court finds that Cooper HD-74 is more compact when compared to Enacted HD-74.

((4)) *political subdivisions*

The Court also finds that Cooper HD-74 exhibits respect for political subdivisions more so than Enacted HD-74. Cooper HD-74 consists of portions of Clayton, Henry and Spalding Counties. APAX 1 ¶ 164 & fig.29. Enacted HD-74 also split three counties—Fayette, Harris, and Spalding. APAX 1 ¶ 162 & fig.28. Yet Cooper HD-74 split fewer VTDs than Enacted HD-74. Enacted HD-74 split five VTDs while Cooper HD-74 split only two. APAX 1, Exs. AH-1, AH-3. There is no testimony or opinion that Cooper HD-74 split municipalities. In fact, Mr. Morgan, Defendant's mapping expert, agreed that it includes the "panhandle of Clayton, which is not included in the enacted District 74." Tr. 2049: 10–12. Thus, the Court finds that Mr. Cooper respected political subdivisions when drawing Cooper HD-74.

((b)) **eyeball test**

The Court finds that Cooper SD-17 is visually compact under the eyeball test:



APAX 1 ¶ 164 & fig.29.

Using the mapping tool provided by Mr. Esselstyn, the Court finds that the district at its most distant points is less than 15 miles in length. Id. Cooper HD-74 has no appendages or tentacles. Id. Mr. Cooper testified that the district "couldn't be more compact." Tr. 122:18. And, Mr. Morgan testified that Cooper HD-74 is "a smaller geographic area and it contains the panhandle of Clayton, which is not included in the enacted District 74." Tr. 2027:11–24. The Court agrees with both mapping experts, Cooper HD-74 is a very compact district, visually. Accordingly, the Court finds that Cooper HD-74 passes the eyeball test.

((c)) communities of interest

The Court finds that Cooper HD-74 respects communities of interest. Cooper HD-74 unites nearby, adjacent communities on either side of the line between south Clayton and Henry Counties. APAX 1 ¶ 198. As Mr. Cooper testified, "the distance[] there to get from one part of the district to the other are . . . maybe a 20-minute drive at most, unless you're going during rush hour traffic or something." Tr. 272:24-273:2.

Mr. Cooper testified that the communities included in the district are "largely suburban" in nature. Tr. 273:17-22. Consistent with that, Mr. Cooper's examination of the ACS data shows that the counties included in Cooper HD-74 share a similar proportion of population in the labor force (71.0%, 58.2%, and 69.5% respectively). APAX 1 ¶ 198. Mr. Lofton's testimony was consistent, testifying that Black communities in south-metro Atlanta are "middle class, upper middle class, professional, college educated. A lot of families, single families." Tr. 1309:25-1310:4.

The Court finds that Cooper HD-74 complies with the traditional redistricting principle of preserving communities of interest. Defendant's expert

admitted that Mr. Cooper's district is geographically compact. This district in no way resembles the districts in Miller and LULAC that stretched across large swaths of their respective States. There is unrebutted testimony that the voters in this area have similar socio-economic characteristics. Accordingly, the Court finds that Cooper HD-74 complies with the traditional redistricting principle of preserving communities of interest.

((d)) conclusions of law

The Court determines that the Alpha Phi Alpha Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Cooper HD-74 to constitute an additional majority-Black district. The Court finds that Cooper HD-74 complies with the traditional redistricting principles of population equality, contiguity, compactness scores, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have carried their burden in meeting the first Gingles precondition as to the area contained in Cooper HD-74.

iv) Cooper HD-117

The Court next finds that the Alpha Phi Alpha Plaintiffs have not shown that it is possible to draw an electoral district consistent with traditional redistricting principles in the area encompassed by Cooper HD-117. As an initial note, Mr. Cooper explained that Cooper HD-117 is in the same general area, and correlates with, Enacted HD-117. APAX 1 ¶ 165 ("another majority-Black House District can be drawn around where District 117 in the 2021 House Plan is drawn").

((a)) empirical measures

((1)) population equality

The Court finds that Cooper HD-117 is not malapportioned. As stated above, the General Assembly did not enumerate the deviation range for the State Senate Districts. However, using the Enacted House Plan as a guide a population deviation range of ±1.40% is acceptable. Stip. ¶ 302. In comparison, Cooper SD-28 has a population deviation of -1.38%, which is within the deviation found in the Enacted House Plan. APAX 1, Ex. AA-1. The Court does note that Enacted HD-117 has a lower population deviation--+1.04%. The population deviation of Cooper HD-117 is higher than its enacted corollary, and it is barely within the

range of population deviations approved by the Georgia General Assembly when it passed the Enacted House Plan. Although the Court finds that Cooper HD-117 is not malapportioned, the Court also finds that it respects the traditional redistricting principle of population equality less than Enacted HD-117.

((2)) contiguity

The Parties stipulated that Cooper HD-117 is a contiguous district. Stip. ¶ 300. Hence, the Court finds that Cooper HD-117 complies with the traditional redistricting principle of contiguity.

((3)) compactness scores

The Court finds Cooper HD-117's compactness scores are either identical or very close to the compactness scores found in the Enacted House Plan. APAX 1, Exs. AG-1, AG-2. Cooper HD-117 and Enacted HD-117 have identical Reock scores of 0.41. Id. Enacted HD-117 is slightly more compact on the Polsby-Popper measure with a score of 0.28 while Cooper HD-117 has a Polsby-Popper score of 0.26. APAX 1, Exs. AG-2, AG-3. In sum, , the districts have identical Reock scores, but Enacted HD-117 is slightly more compact on the Polsby-Popper measure.

Despite a disadvantage of 0.02 points on the Polsby-Popper measure, Cooper HD-117 is well within the range of compactness scores of the Enacted

House Plan. Specifically, the Enacted Senate Plan has a minimum Polsby-Popper score is 0.10. APAX 1, Ex. AG-2. Cooper HD-117's Polsby-Popper score (0.26) far exceeds the lowest threshold Polsby-Popper score found in the Enacted House Plan. Id. Accordingly, the Court finds that Cooper HD-117 has identical or near identical compactness scores as Enacted HD-117, and Cooper HD-117 falls comfortably within the range of compactness scores in the Enacted House Plan. Therefore, Cooper HD-117 constitutes a compact district for purposes of the first Gingles precondition.

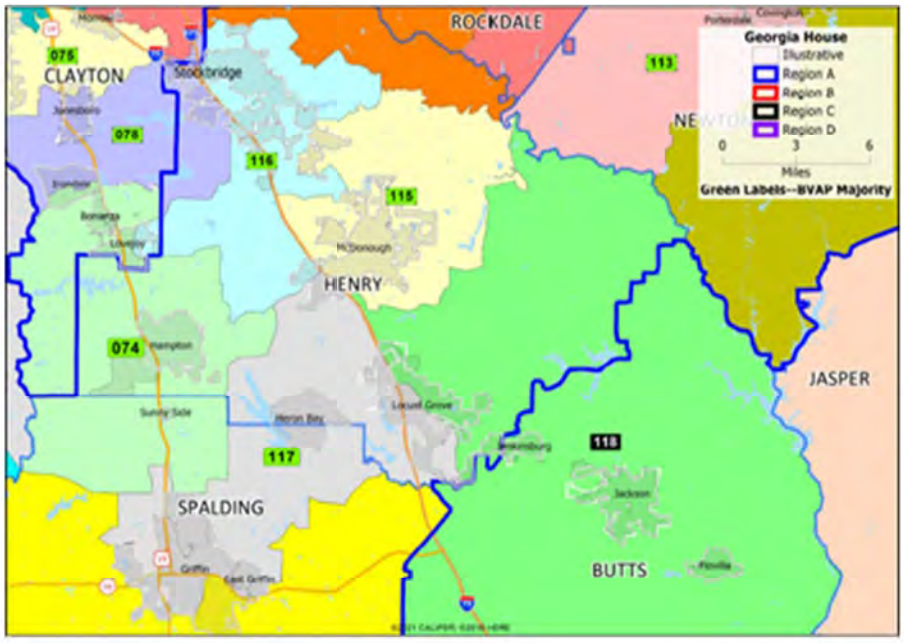
((4)) political subdivisions

In considering respect for the preservation of political subdivisions, Cooper HD-117 fares worse than Enacted HD-117. For example, Cooper HD-117 has more political subdivision splits than Enacted HD-117. Both districts split Henry and Spalding Counties. APAX 1 ¶ 165 & fig.29A; ¶ 167 & fig.29C. But, Cooper HD-117 splits six VTDs, while Enacted HD-117 splits only one. APAX 1, Exs. AH-1, AH-3. Mr. Cooper testified, "[y]ou can see that I separated or made the boundary for District 28, which is the new majority Black district, following the municipal lines of Griffin, which can be kind of odd shaped in places."

Tr. 114:4-7; APAX 11, at 41 ¶ 99 & fig.17B; see also id. at T-1 (listing a single split VTD in Fayette County and one in Spalding County). Mr. Cooper also testified that he did not keep the cities of Griffin or Locust Grove intact. Tr. 276:22–277:1. The Court finds that on balance, Cooper HD-117 reflects less respect for political subdivisions than Enacted HD-117.

((b)) eyeball test

The Court finds that Cooper HD-117 is visually compact under the eyeball test:



APAX 1 ¶ 198, Ex. AC-1.

Using the mapping tool, the Court finds that at its most points, Cooper HD-117 is less than 20 miles long. Id. Cooper HD-117 does not contain any tentacles or appendages. Defendant's own mapping expert agreed that Cooper HD-117 and Enacted HD-117 are both fairly compact. Tr. 2051:20-2052:1. ("Q. And illustrative 117 and enacted 117 are similarly compact? A. On compactness scores or just looking at it? Q. Both. A. I mean, it's hard to say whether it would be that way on compactness scores. But looking at it, they're both fairly compact, yes. They're not a great distance between anything."). Consistent with Defendant's mapping expert, the Court concludes that Cooper HD-117 is visually compact.

((c)) communities of interest

Cooper HD-117 unites communities that are geographically proximate to one another. Cooper HD-117 is in an area that includes adjacent portions of South Henry County around Locust Grove and a portion of Spalding County, including much of Griffin (Spalding County's seat and largest city) which is majority-Black. APAX 1 ¶ 198 & Ex. AC-2.

Mr. Cooper testified that "everyone" in Cooper HD-117 "lives close by." Tr. 123:17. Again, Defendant's mapping expert agreed, testifying that Griffin and Locust Grove are "close." Tr. 1794:23. When specifically asked about the connection between Griffin and Locust Grove, Mr. Cooper testified that "they are in an exurban area of Metro Atlanta." Tr. 277:25. Further Mr. Cooper noted that the area has a "somewhat younger population" (Tr. 123:24) and has a similar Black labor force participation rate. APAX 1 ¶ 198.

Mr. Lofton's testimony was consistent with respect to the proximity and connections between the communities in Cooper HD-117. For example, he testified about the shared commercial centers used by residents of the area, such as Tanger Outlets, and about how Highways 138 and 155 are important transportation corridors that unite the district. Tr. 1308:20-1309:8.

Thus, the Court finds that Cooper HD-117 is a small district contained wholly with metro Atlanta and has no resemblance to the districts in LULAC and Miller. Mr. Cooper testified about the communities that are contained within the district, the shared socio-economic factors, and the characteristics that unite them. Additionally, Mr. Lofton, with his lifelong experience as a resident in the area,

explained how the communities interact with one another. The Court finds that the size of the district coupled with the witness testimony shows Cooper HD-117 preserves communities of interest.

((d)) conclusions of law

The Court finds that the Alpha Phi Alpha Plaintiffs have not carried their burden in establishing that the Black community is sufficiently compact in Cooper HD-117 to constitute an additional majority-Black district. Although Cooper HD-117 complies with the traditional redistricting principles of contiguity, compactness scores, and preservation of communities of interest, the Court finds that it split more political subdivisions than Enacted HD-117. Additionally, the district's population deviation is both higher than Enacted HD-117 and is barely within the range of the Enacted House Plan's population deviations.

Although there is no requirement that an illustrative district match or perform better than the correlating enacted district,[75] the Court finds that the higher deviation coupled with the splitting of an additional four VTDs as well as two municipalities leads to a finding that the district could not be drawn in accordance with traditional redistricting principles.

Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have not carried their burden on the first Gingles precondition in the area encompassed by Cooper HD-117.

(2) Grant

The Court finds that the Grant Plaintiffs have met their burden in proving the three Gingles preconditions in relation to the challenged Senate districts in metro Atlanta and two of the challenged House districts in metro Atlanta.

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[75] See Wright v. Sumter Cnty. Bd. of Elections & Registration, 301 F. Supp. 3d 1297, 1326 (M.D. Ga. 2018), aff'd, 979 F.3d 1282 (11th Cir. 2020) (opining that an illustrative plan can be "far from perfect" in terms of compactness yet satisfy the first Gingles precondition).

(a) numerosity

The Court finds that Grant Plaintiffs have met their burden in showing that the Black voting age population in metro Atlanta is large enough to create two additional majority-Black Senate districts, two majority-Black House districts in south metro Atlanta, and one additional majority-Black House district in western metro Atlanta. "[A] party asserting § 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." Bartlett, 556 U.S. at 20.

It is undisputed that Esselstyn SD-25 and SD-28 have an AP BVAP of 58.93% and 57.28%, respectively, both of which exceed the 50% threshold required by Gingles. GX 1 ¶ 27 & tbl.1; Stip. ¶ 234.

Table 1: Illustrative Senate plan majority-Black districts with BVAP percentages.

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%		

It is also undisputed that Esselstyn HD-64, HD-74, and HD-117 have an AP BVAP of 50.24%, 53.94%, and 51.56%, respectively. Stip. ¶ 239, GX 1 ¶ 48 & tbl.5.

Table 5: Illustrative House plan majority-Black districts with BVAP percentages.

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%		

Based on these numbers, the Court finds that the Grant Plaintiffs have met their burden with respect to the numerosity prong of the first Gingles precondition in all additional majority-Black districts that Mr. Esselstyn proposed in metro Atlanta (i.e., SD-25, SD-28, HD-64, HD-74, and HD-117).

(b) compactness

The Court finds that the Grant Plaintiffs have also met their burden to show that the minority community is sufficiently compact to warrant the creation of two additional majority-Black State Senate districts in south-metro Atlanta. They have also met their burden in showing that one additional compact

majority-Black district can be drawn in south metro Atlanta and one can be drawn in west-metro Atlanta. The Grant Plaintiffs have not met their burden with respect to Esselstyn HD-74, in south-metro Atlanta.

The standards governing the compactness inquiry for these additional proposed State Senate Districts is the same as the compactness inquiry undertaken in the Pendergrass case. See Section II(C)(1)(b) *supra*. The Court must consider if the illustrative proposed districts adhered to traditional redistricting principles, namely: population equality, contiguity, empirical compactness scores, the eyeball test for irregularities and contiguity, respect for political subdivisions, and preserving communities of interest. See Section II(C)(1)(b) *supra*.

i) Esselstyn SD-25[76]

The Court finds that the minority community in Esselstyn SD-25 is sufficiently compact.

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[76] Esselstyn's State Senate districts in metro-Atlanta do not correlate to any of the enacted State Senate districts. Compare GX 1 ¶ 27 & fig. 4, with GX 1, attach D. Accordingly, the Court will compare the Esselstyn State Senate districts t the overall Enacted Senate Plan's statistics.

((a)) empirical measures

((1)) population equality

The Court finds that Esselstyn SD-25 is not malapportioned. See Reynolds, 377 U.S. at 577 (requiring "an honest and good faith effort to construct districts . . . of nearly equal population as practicable."); Brown, 462 U.S. at 842 ("minor deviations" are not violative of the Fourteenth Amendment). The General Assembly's "General Principles for Drafting Plans" specifies that "[e]ach legislative district . . . should be drawn to achieve a total population that is substantially equal as practicable." Stip. ¶ 135; JX 2, 2.

The ideal population size of a State Senate District is 191,284. Stip. ¶ 277. The General Assembly did not enumerate a specific acceptable deviation range for the State Senate Districts. However, using the Enacted Plan as a rough guide, a population deviation range between -1.03% and -0.98% is acceptable. GX 1, Attach. E. Esselstyn SD-25 has a population deviation of +0.74%. GX 1, Attach. F. This deviation falls squarely within the range of deviations in the Enacted Senate Plan. Thus, the Court finds that Esselstyn SD-25 achieves population equality that is consistent with the General Assembly's Redistricting Guidelines and traditional redistricting principles.

((2)) contiguity

The Parties stipulated that Esselstyn SD-25 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn SD-25 complies with the traditional redistricting principle of contiguity.

((3)) compactness scores

The Court finds that Esselstyn SD-25 is more compact than Enacted SD-25. In reaching this conclusion, the Court, as it did in the Pendergrass case, looks at the objective compactness scores of the Polsby-Popper measure and Reock indicator.

Using the Reock indicator, Esselstyn's SD-25 is 0.57 as compared to the Enacted Senate Plan, which has an average Reock score of 0.42. GX 1, Attach. H. Thus, under the Reock measure, Esselstyn SD-25 is 0.15 points more compact than Enacted Senate Plan's average Reock score. Under the Polsby-Popper measure, Esselstyn's SD-25 is 0.34, and the Enacted Senate Plan has an average score of 0.29, a 0.05 point advantage for Esselstyn's SD-25 on this measure. Id. Hence, the Court finds that upon application of the empirical compactness measures, Esselstyn SD-25 fares better than the Enacted Senate Plan's average compactness scores.

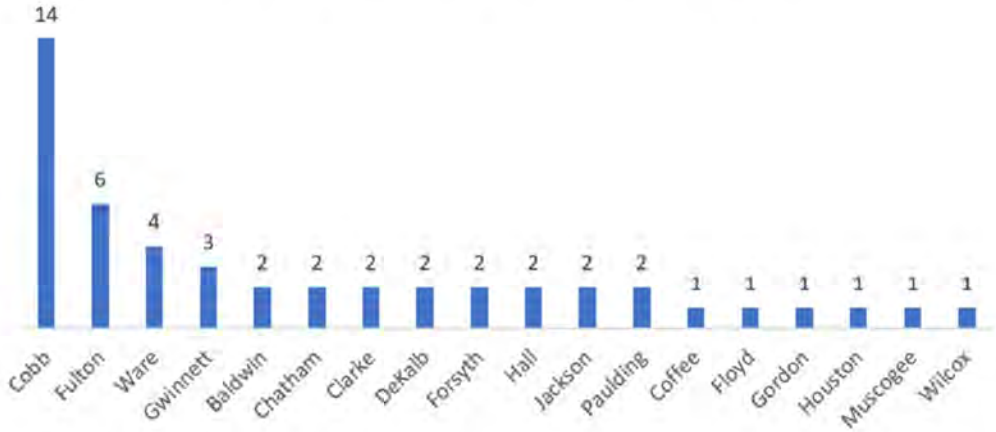
The State's mapping expert, Mr. Morgan, agreed that Esselstyn SD-25 is significantly more compact than Enacted SD-25. Tr. 1850:8–11. Mr. Morgan conceded, furthermore, that Esselstyn SD-25 is more compact on the Reock and Polsby-Popper scale than *all* of the districts implicated by in the Enacted Senate Plan, except for one with an identical Polsby-Popper score. Tr. 1895:17–1896:1.

In sum, the Court finds that Esselstyn SD-25 is sufficiently compact w.

((4)) political subdivisions

The Court also finds that in creating Esselstyn SD-25, Mr. Esselstyn respected political subdivisions. Esselstyn SD-25 consists of portions of Henry and Clayton Counties. GX 1 ¶ 30 & fig.6. Additionally, Esselstyn SD-25 does not split any VTDs. GX 1 ¶ 40 & fig.10. See below for a graphic depiction of the Esselstyn Senate Plan's VTD splits:

Figure 10: VTD splits in illustrative State Senate plan by county.

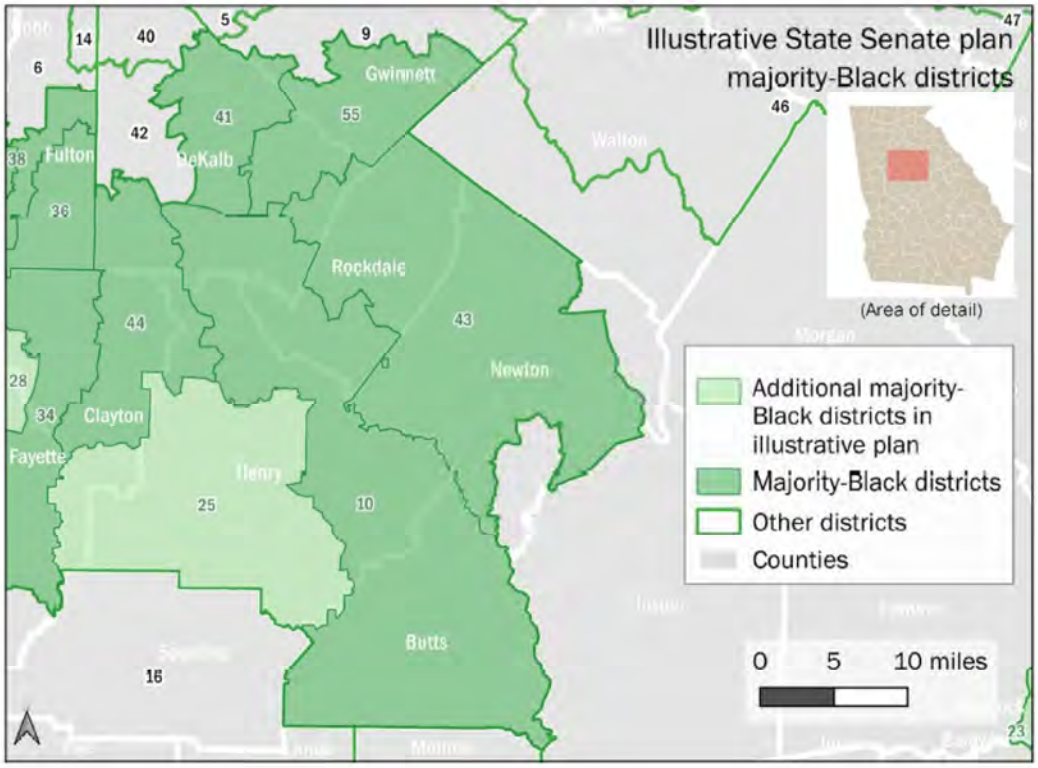


GX 1 ¶ 40 & fig.10.

Mr. Esselstyn also testified that he made an effort to keep municipalities intact. Tr. 544:8–12 (testifying that McDonough is mostly intact, and that Locust Grove, Hampton, Bonanza and Lovejoy are kept intact). Accordingly, the Court finds that Esselstyn SD-25 reflects a respect for political subdivisions.

((b)) <u>eyeball test</u>

The Court finds that Esselstyn SD-25 is visually compact under the eyeball test:



GX 1 ¶ 30 & fig.6.

Using the mapping tool provided by Mr. Esselstyn, the Court finds that the district at its most distant points is approximately 20 miles in length. Id. Esselstyn SD-25 has no appendages or tentacles. Id. There is no contrary evidence or testimony in the Record. In fact, Mr. Morgan's report includes no analysis on the visual compactness of Esselstyn SD-25. Accordingly, the Court finds that Esselstyn SD-25 is visually compact.

((c)) communities of interest

The Court finds that Esselstyn SD-25 demonstrates respect for communities of interest. Mr. Esselstyn testified that the district is in metro Atlanta. Tr. 484:5–9. He also explained that he combined Henry and Clayton Counties because they are adjacent to one another. Tr. 544:1–7.

On cross-examination, Mr. Esselstyn admitted that he was unable to articulate a community of interest that connects south Clayton County with Locust Grove. Tr. 546:16–21. the Grant Plaintiffs, however, supplemented this testimony with testimony from Jason Carter, a former member of the State Senate and 2014 candidate for Governor of Georgia. Mr. Carter noted that Mr. Esselstyn's districts in south metro Atlanta are "suburban and exurban," "clearly [] fast-growing, . . . Atlanta commuter communit[ies] that ha[ve] all of the traffic concerns and the concerns of . . . expanding schools and massive population boom." Id. at 953:20–954:3. See also id. at 958:9–19 (similar); id. at 959:6–19 (similar); id. at 962:1–965:17 (similar). Addressing their shared interests, Mr. Carter explained that residents of these areas need their government officials to be responsive to their "transportation, education, [and] healthcare" needs. Id.

at 955:7–21. In the same vein, Eric Allen, 2020 candidate for Lt. Governor, testified that the residents of Esselstyn SD-25 share similar entertainment districts, hospitals, transit systems, education systems, employment, and all travel on I-75, I-285, I-20, and I-85. Tr. 1000:18–1001:2. In fact, the State's own map drawer, Ms. Wright, testified in connection with Enacted SD-28 and said that it was important to keep the city of Locust Grove wholly within that district (Tr. 1634:3–6), which Mr. Esselstyn accomplished (Tr. 546:16–21).

In sum, the Court finds that Esselstyn SD-25 is a small district contained wholly within metro Atlanta. It is comprised of two adjacent counties. The communities share the same concerns with transportation routes and have both experienced recent major population growth. Additionally, the Court finds that this district is not long and sprawling, like the districts in LULAC and Miller that stretched across large portions of the States and combined disparate minority populations. Rather, as is evidenced by the size of the district and the trial testimony, Esselstyn SD-25 preserves communities of interest.

((d)) conclusions of law

The Court determines that the Grant Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Esselstyn SD-25 to constitute an additional majority-Black district. The Court finds that Esselstyn SD-25 complies with the traditional redistricting principles of population equality, contiguity, compactness, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Grant Plaintiffs have carried their burden in meeting the first Gingles precondition in the area contained in Esselstyn SD-25.

ii) Esselstyn SD-28[77]

The Court finds also that Grant Plaintiffs have shown that it is possible to draw a reasonably compact electoral district consistent with traditional redistricting principles in the area encompassed by Esselstyn SD-28.

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[77] As stated *supra*, the Court compares Esselstyn SD-28 to the Enacted Senate Plan as a whole. See Section II(D)(1)(b)(2)(b)(i) *supra*.

((a)) empirical measures

((1)) population equality

The Court finds that Esselstyn SD-28 achieves relative population equality. As stated above, the General Assembly did not enumerate a specific acceptable deviation range for the Enacted Senate Plan. However, using the Enacted Plan as a guide, a population deviation range between -1.03% and -0.98% is acceptable. GX 1, Attach. D. Accordingly, the Court finds that Esselstyn SD-28 is within the acceptable range of population deviations approved by the Georgia General Assembly when it passed the Enacted Senate Plan. Thus, it achieves population equality that is consistent with the Enacted Senate Plan, the General Assembly's Redistricting Guidelines, and traditional redistricting principles.

((2)) contiguity

The Parties stipulated that Esselstyn SD-28 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn SD-28 complies with the traditional redistricting principle of contiguity.

((3)) compactness scores

The Court finds Esselstyn SD-28's compactness scores, while lower on a side-by-side comparison with the Enacted Senate Plan, are within the acceptable

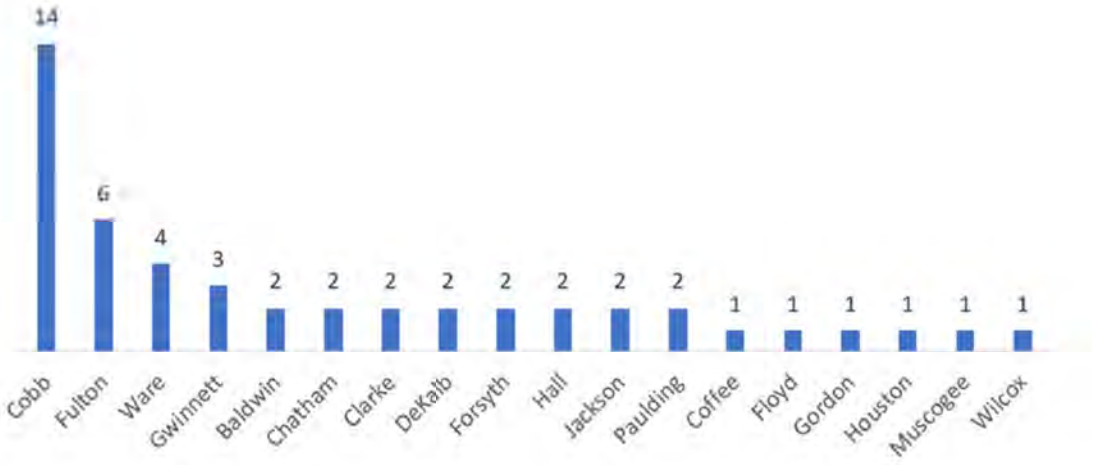
range of compactness scores found in the Enacted Senate Plan. GX 1, Attach. H. Esselstyn SD-28 has a Reock score of 0.38 and a Polsby-Popper score of 0.19. Id. The Enacted Senate Plan has an average Reock score of 042 and Polsby-Poppper score of 0.29. Accordingly, the Enacted Senate Plan's average compactness scores beats Esselstyn SD-28 on all empirical measures—0.05 points on Reock and 0.10 on Polsby-Popper.

Despite a lower compactness score under both empirical measures, Esselstyn SD-28 is within the range of compactness scores found in the Enacted Senate Plan. Specifically, the Enacted Senate Plan has a minimum Reock score of 0.17. GX 1, Attach. H. Esselstyn SD-28's Reock score (0.38) far exceeds that minimum threshold Reock score in the Enacted Senate Plan. Id. Similarly, the Enacted Senate Plan's minimum Polsby-Popper score is 0.13. Id. Esselstyn SD-28's Polsby-Popper score (0.19) exceeds, albeit slightly, the minimum threshold Polsby-Popper score in the Enacted Senate Plan. Id. Accordingly, the Court finds that Esselstyn SD-28 falls within the range of compactness scores in the Enacted Senate Plan and therefore constitutes a compact district for purposes of the first Gingles precondition.

((4)) political subdivisions

The Court finds that Esselstyn SD-28 exhibits respect for political subdivisions. Esselstyn SD-28 contains portions of Clayton, Coweta, Fayette, and Fulton Counties. GX 1 ¶ 31.

Figure 10: VTD splits in illustrative State Senate plan by county.



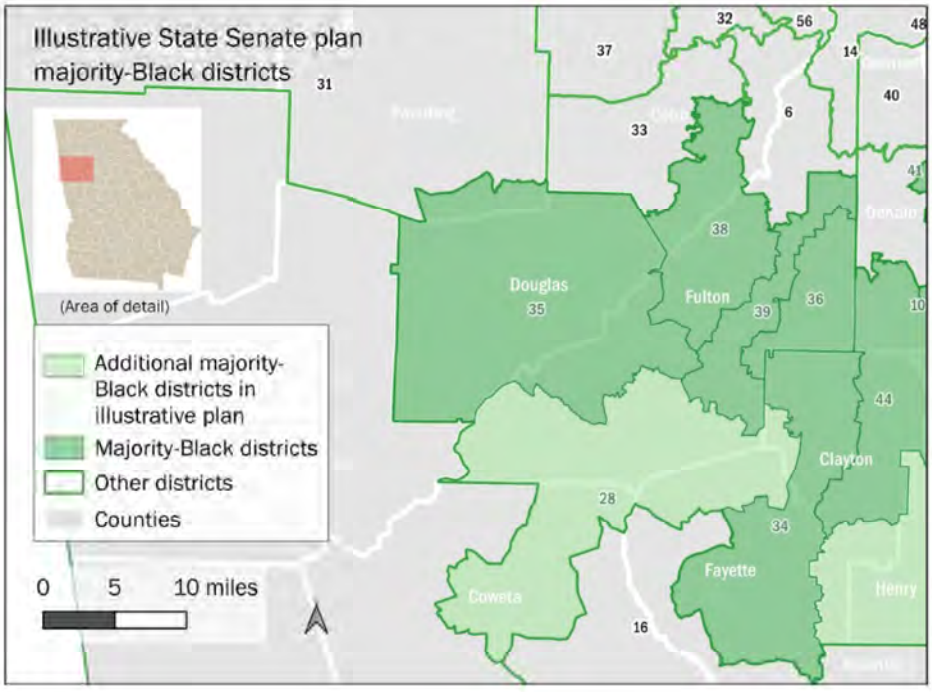
GX 1 ¶ 40 & fig.10. As this chart shows, the only county that is included within Esselstyn SD-28 with VTD splits is Fulton County. Put differently, Esselstyn SD-28 does not split any VTDs in Coweta, Clayton, and Fayette Counties, which make up the majority of the district. Id.; at ¶ 31 & fig.7. Even though Esselstyn SD-28 splits the city of Newnan, 90% of the city is contained within a single

district. Tr. 549:2-5, 550:25-551:9. Esselstyn, moreover, did not split any VTDs in Newnan, which is in Coweta County, itself. GX 1 ¶ 40 & fig.10.

Based on the foregoing, the Court finds that Esselstyn SD-28 exhibits a respect for political subdivisions.

((b)) <u>eyeball test</u>

The Court finds that Esselstyn SD-28 is visually compact under the eyeball test:



GX 1 ¶ 31 & fig.7.

Using the mapping tool, the Court finds that at its most distant points, Esselstyn SD-28 is approximate 25 miles long. Id. Esselstyn SD-28 does not contain any tentacles or appendages. Defendants submit no evidence or testimony in the Record suggesting that Esselstyn SD-28 is not visually compact. See generally DX 3; Tr. 1896:13-23. Accordingly, the Court concludes that Esselstyn SD-28 is visually compact.

((c)) communities of interest

The Court finds that Esselstyn SD-28 respects communities of interest. Because Esselstyn SD-25 and SD-28 are in close proximity to one another, much of the testimony adduced about SD-28 was also discussed in relation to Esselstyn SD-25. See Tr. 484:5–9 (Mr. Esselstyn testimony); see also generally id. 953:20–965:17 (Mr. Carter testimony). The Court thereby incorporates its general analysis on communities of interest in south-metro Atlanta from Esselstyn SD-25 above into this section on Esselstyn SD-28. See Section II(D)(1)(2)(b)(i)(c) *supra*.

Specific to Esselstyn SD-28, Mr. Esselstyn testified that he drew the district to best keep together municipalities in Fulton County, and specifically to keep 90% of Newnan intact. Tr. 548:20–549:24. Similar to Locust Grove, Mr. Esselstyn

admitted that he was unable to articulate a community of interest that connects the city of Newnan with Fulton and Clayton Counties (Tr. 548:20–549:1). Again, however, the Grant Plaintiffs' supplemented this testimony with testimony from Mr. Allen, who testified that all of Esselstyn SD-28 is within metro Atlanta. Tr. 1002:18–20. He also mentioned that the area was serviced by the same healthcare systems (i.e., Emory Hospital and Grady Hospital) and relied on the same interstates for transportation. Id. at 1002:21–1003:5. Additionally, the State's map drawer, Ms. Wright, who is herself a resident of nearby Henry County (Tr. 1653:17–21), testified about the general communities in this area. In reference to the Enacted Senate Plan, Ms. Wright testified that it makes sense to group Coweta and Fayette Counties in a single district because the counties "are commonly sharing resources and things like that." Tr. 1656:18–21.

Thus, the Court finds that Esselstyn SD-28 is a small district contained wholly within metro Atlanta. Its communities share the same concerns with transportation routes and have experienced recent major population growth. Additionally, the Court finds that this district is not long and sprawling, like the districts in LULAC and Miller that stretched across large portions of their

respective States and combined disparate minority populations. Rather, as is evidenced by the size of the district and the trial testimony, Esselstyn SD-28 preserves communities of interest.

((d)) conclusions of law

The Court finds that the Grant Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Esselstyn SD-28 to constitute an additional majority-Black district. The Court finds that Esselstyn SD-28 complies with the traditional redistricting principles of population equality, contiguity, compactness scores, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Grant Plaintiffs have carried their burden on the first Gingles precondition in the area encompassed by Esselstyn SD-28.

iii) Esselstyn HD-64

The Court finds that the Grant Plaintiffs have shown that it is possible to draw a State House district consistent with traditional redistricting principles in the area encompassed by Esselstyn HD-64.

((a)) Empirical measures

((1)) population equality

The Court finds that Esselstyn HD-64 achieves better population equality than Enacted HD-64. Enacted HD-64 has a population deviation of -0.88%, whereas Esselstyn HD-64 has a population deviation of +0.23%. GX 1, attachs. I, J. Accordingly, Esselstyn HD-64 achieves population equality consistent with the General Assembly's Guidelines and traditional redistricting principles.

((2)) contiguity

The Parties stipulated that Esselstyn HD-64 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn HD-64 complies with the traditional redistricting principle of contiguity.

((3)) compactness scores

The Court finds that Esselstyn HD-64's compactness score is within the range of scores achieved by the Enacted House Plan. Esselstyn HD-64 has a compactness measure of 0.22 on both metrics. GX 1, Attach. L. Enacted HD-64 has a Reock score of 0.38 and Polsby-Popper score of 0.36. Id. While Esselstyn HD-64 is less compact than Enacted HD-64 using empirical measures, the proposed district is still within the range of acceptable range of compactness

scores found in the Enacted House Plan (i.e., a minimum Reock score of 0.12 and a minimum Polsby-Popper score of 0.10). Id. Accordingly, the Court finds that Esselstyn HD-64 is reasonably compact in terms of empirical scoring.

((4)) political subdivisions

The Court finds that Esselstyn HD-64 respects political subdivisions. Esselstyn HD-64 consists of portions of Douglas, Fulton, and Paulding Counties. GX 1 ¶ 49. Esselstyn HD-64 splits one more county than Enacted HD-64, which includes only portions of Douglas and Paulding Counties. GX 1, Attach. I. When comparing the VTD splits in Enacted HD-64 and Esselstyn HD-64, they both split only one VTD (in Paulding County). GX 1, Attach. L. [78] Additionally, Mr. Esselstyn testified he was able to keep Lithia Springs intact, which is an incorporated community. Tr. 562:4-13.

Defendants' mapping expert, Mr. Morgan, did not opine about Esselstyn HD-64 in his report. DX 3. However, at the trial, he testified that Esselstyn HD-

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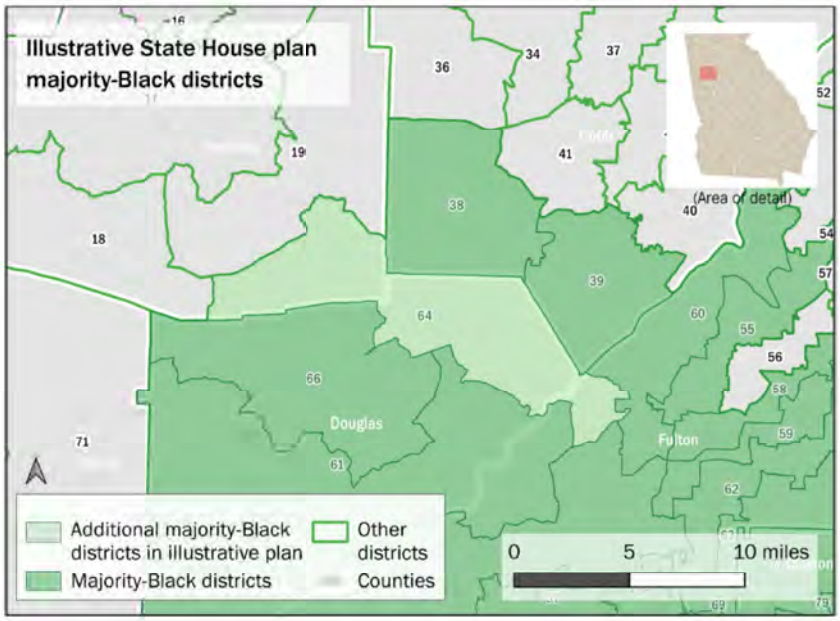
[78] The statistics for the VTD splits can be found on page 14 of subdivision of the Political Subdivisions Chart entitled GA House Enacted and page 14 of Political Subdivisions Chart entitled GA House Illustrative. GX 1, Attach. L.

64 contains the same Fulton and Douglas County precincts as Enacted HD-61. Tr. 1826:17–21. Outside of this testimony, Mr. Morgan offered no opinion about whether Esselstyn HD-64 exhibited respect for existing political subdivisions.

The Court finds that not only are Esselstyn HD-64 subdivision splits consistent with Enacted HD-64, but Esselstyn HD-64 on the whole respects political subdivisions.

((b)) <u>eyeball test</u>

The Court finds that Esselstyn HD-64 is visually compact:



GX 1 ¶ 49 & fig.14.

Mr. Esselstyn testified that he modeled the shape of Esselstyn HD-64 on the shape of Enacted HD-61. Tr. 560:14–24. Visually, the Court finds that Esselstyn HD-64 does not have appendages or tentacles. Esselsyn HD-64 is relatively small in size. In fact, when measured with the mapping tool, it is less than 20 miles at its most distant points. GX 1 ¶ 49 & fig.14.

Because of these considerations and the fact that Defendants do not meaningfully dispute the visual compactness of this district, the Court finds that Esselstyn HD-64 is visually compact.

((c)) communities of interest

The Court finds that Esselstyn HD-64 preserves communities of interest and does not combine disparate communities. As an initial note, the Court finds that Esselstyn HD-64 is in the same relative area as Illustrative CD-6. Both proposed districts combine areas in-and-around Fulton and Douglas Counties.[79] GX 1 ¶ 49. As the Court stated above, it found that Illustrative CD-6 preserved communities of interest. See Section II(C)(1)(b)(3) *supra*.

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[79] Esselstyn HD-64 also contains parts of Pauling County, and Illustrative CD-6 combines areas in Cobb and Fayette Counties.

Specific to Esselstyn HD-64, Mr. Allen explained that the residents of this west-metro Atlanta district have shared interests. Tr. 1004:1–10. They rely on the same roadways and face many of the same transportation-related challenges. Id. at 1004:11–22. They rely on the same healthcare systems and share an interest in preserving access to Grady Hospital, the only Level One Trauma Center in the metro area. Id. at 1005:1–24. Accordingly, the Court finds that Esselstyn HD-64 preserves existing communities of interest.

((d)) conclusions of law

The Court finds that the Grant Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Esselstyn HD-64 to constitute an additional majority-Black district. The Court finds that Esselstyn HD-64 complies with the traditional redistricting principles of population equality, contiguity, compactness, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Grant

Plaintiffs have carried their burden in meeting the first Gingles precondition in the area encompassed by Esselstyn HD-64.

iv) Esselstyn HD-74

The Court finds that Grant Plaintiffs have not shown that it is possible to draw a legislative district consistent with traditional redistricting principles in the area encompassed by Esselstyn HD-74.

((a)) empirical measures

((1)) population equality

The Court finds that Esselstyn HD-74's population deviation of -1.84% is greater than any district in the Enacted House Plan (-1.40% and +1.34%). Esselstyn HD-74 is nearly one point greater than the deviation of Enacted HD-74 (-0.93%). GX 1, attachs. J, I. ; Stip. ¶ 278. Mr. Esselstyn admitted that it was one of the most underpopulated districts on his House Plan. Tr. 567:23–568:6."[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable." Reynolds, 377 U.S. at 577.

> [M]inor deviations from mathematical equality among State legislative districts are insufficient to make out a prima facie case . . . under the Fourteenth

> Amendments . . . . Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations.

Brown, 462 U.S. at 842 (quoting Reynolds, 377 U.S. at 577) (quotation marks omitted). More recently, the Supreme Court held that population deviations that are below 10 percent are not entitled to a safe harbor. Cox v. Larios, 542 U.S. 947, 949 (2004). Specifically, "the equal-population principle remains the only clear limitation on improper districting practices, and we must be careful not to dilute its strength." Id. at 949–50. In 2004, that three-judge court noted that with technology it is possible to have perfect population equality. Larios v. Cox, 300 F. Supp. 2d 1320, 1341 (N.D. Ga. 2004). In 1991, a court in the Northern District of Illinois similarly remarked that "[t]he use of increasingly sophisticated computers in the congressional map drawing process has reduced population deviations to nearly infinitesimal proportions." Harstert v. State Bd. of Elections, 777 F. Supp. 634, 643 (N.D. Ill. 1991).

Although perfect population deviation is not a requirement by the Supreme Court or the Georgia General Assembly, "[e]ach legislative district of the General Assembly shall be drawn to achieve a total population that is

substantially equal as practicable, considering the principles listed below." JX 2, 2. The Court finds that Esselstyn HD-74 achieves population equality less so than Enacted HD-74. Using the Georgia Enacted House Plan as a guide, the accepted population deviation range is ±1.40%. Esselstyn HD-74, at -1.84%, is significantly greater than that range.

((2)) contiguity

The Parties stipulated that Esselstyn HD-74 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn HD-74 complies with the traditional redistricting principle of contiguity.

((3)) compactness scores

The Court finds that the Esselstyn HD-74's compactness scores are within the acceptable range of compactness scores on the overall Enacted House Plan. Esselstyn HD-74 has a Reock score of 0.30 and a Polsby-Popper score of 0.19. GX 1, Attach. L. The Court notes that Enacted HD-74 performs better on the Reock measure (0.50) as well as the Polsby-Popper measure (0.25). Id. The Court notes Esselstyn HD-74's scores do not fall below the minimum compactness scores for the Enacted Plan—0.12(on Reock) and 0.10 (on Polsby-Popper). Id. In sum, the Court finds that Esselstyn HD-74 is less compact than Enacted HD-74.

((4)) political subdivisions

The Court finds that Esselstyn HD-74 generally exhibited respect for communities of interest. The Court notes that Esselstyn HD-74 splits one less county than Enacted HD-74. GX 1 ¶ 50 & fig.15 (Esselstyn HD-74 is contained in Clayton and Fulton Counties); GX 1, Ex. I (Enacted HD-74 is contained in Fayette, Henry, and Spalding Counties).

However, at the trial Mr. Esselstyn testified that he split Peachtree City. Tr. 567:6–13; 1657:22–23. It is worth noting that the Enacted House Plan also split Peachtree City. Id. Esselstyn HD-74 testified that he was able to keep the communities of Irondale, Brooks, and Woolsey "if not entirely intact, almost entirely intact," but conceded that Irondale is not an incorporated municipality. Tr. 566:22–567:5.

Finally, Esselstyn HD-74 split fewer VTDs than Enacted HD-74. Enacted HD-74 split four VTDs, one in Fayette and three in Spalding Counties (GX 1, Ex. L),[80] whereas Esselstyn HD-74 split only one VTD in Clayton County (id.).

Based on the foregoing, the Court finds that Esselstyn HD-74 reflects respect for political subdivisions.

((b)) eyeball test

The Court finds that Esselstyn HD-74 is visually compact:

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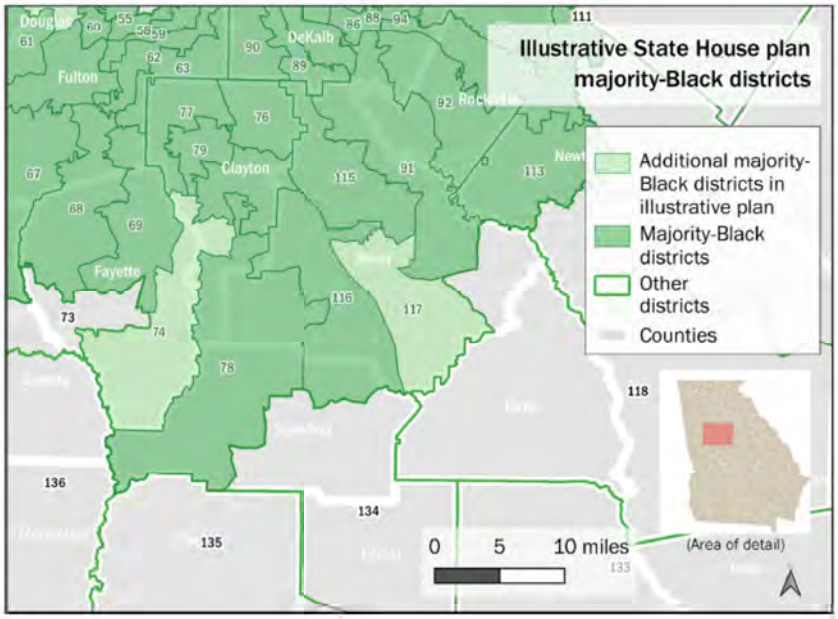
[80] The statistics for the VTD splits can be found on pages 11 and 15 of subdivision of the Political Subdivisions Chart entitled GA House Enacted and page 2 of Political Subdivisions Chart entitled GA House Illustrative. GX 1, Attach. L.

Figure 15: Map of southern Metro Atlanta area of illustrative plan with majority-Black House districts indicated.



GX 1 ¶ 50 & fig.15.

Esselstyn HD-74 does not have appendages or tentacles. Using the mapping tool, Esselstyn HD-74 is approximately 20 miles in length at its most distant points.

Defendants do not meaningfully dispute the visual compactness of this district. Accordingly, the Court finds that Esselstyn HD-74 is visually compact.

((c)) <u>communities of interest</u>

The Court finds that Esselstyn HD-74 combines rural, urban, and suburban populations. In fact, Mr. Esselstyn testified that the proposed district contained

rural, urban, and suburban populations. Tr. 566:22–24. Mr. Carter's testimony about the communities of interest in this district was generally the same as his testimony about the communities of interest in Esselstyn HD-117, SD-25, and SD-28 because they are in the same relative region of the state. However, on cross-examination, Mr. Carter agreed that the parts of south Fayette County included in Esselstyn HD-74 were exurban, if not rural, compared with other parts of the district. Tr. 987:2–16.

The Court finds that the testimony specific to Esselstyn HD-74 shows that it combined widely diverse communities into a district. Accordingly, the Court finds that Esselstyn HD-74 combines disparate communities into one district.

((d)) conclusions of law

The Court has determined that the Grant Plaintiffs have not carried their burden in establishing that the Black community in Esselstyn HD-74 is sufficiently numerous and compact to constitute an additional majority-Black district. Although the Black population in Esselstyn HD-74 exceeds 50%, the Court finds that it does so by having one of the most underpopulated districts in the Esselstyn House Plan. Tr. 567:23–568:6. Additionally, the Court finds that

although the district is visually compact, it is significantly less compact than Enacted HD-74 in other ways. Furthermore, Mr. Esselstyn admitted and Mr. Carter agreed that the district combines urban, suburban, and rural communities. Neither witness was able to explain the commonalities that the voters in Esselstyn HD-74 share, except for the general commonalities that all metro Atlanta voters share. Accordingly, the Court concludes that the Grant Plaintiffs have not carried their burden in meeting the first Gingles precondition in the area drawn by Esselstyn HD-74.

v) Esselstyn HD-117

The Court finds that the Grant Plaintiffs have shown that it is possible to draw a legislative district consistent with traditional redistricting principles in the area encompassed by Esselstyn HD-117.

((a)) Empirical measures

((1)) population equality

The Court finds that Esselstyn and Enacted HD-117 have comparable population deviations. Esselstyn HD-117 has a population deviation of +1.06% whereas Enacted HD-117 has a population deviation of +1.04%. GX 1, Attachs. I, J. The Court finds that the difference in population deviations between the two

districts is not legally significant. Additionally, the Court finds that Esselstyn HD-117's population deviation is within the range of population deviations found in the Enacted House Plan (-1.40% and 1.34%). Id. at Attach. I. Accordingly, the Court finds that Esselstyn HD-117 complies with traditional redistricting principle of population equality.

((2)) contiguity

The Parties stipulated that Esselstyn HD-117 is a contiguous district. Stip. ¶ 258. Hence, the Court finds that Esselstyn HD-117 complies with the traditional redistricting principle of contiguity.

((3)) compactness scores

The Court finds that Esselstyn and Enacted HD-117 are comparably compact. Esselstyn HD-117 has a Reock score of 0.40 and a Polsby-Popper score of 0.33. GX 1, Attach. L. Enacted HD-117 has a Reock score of 0.41 and a Polsby-Pooper score of 0.28. Id. Thus, Enacted HD-117 is more compact on the Reock measure (by 0.01 points), and Esselstyn HD-117 is more compact on the Polsby-Popper score (by 0.05 points). Generally, however, the two districts are roughly equal in terms of objective compactness scores. The Court also finds that Esselstyn HD-117 performs better than the Enacted House Plan's average

compactness scores (0.39 on Reock and 0.28 on Polsby-Popper). Id. Accordingly, the Court finds that Esselstyn HD-117 is compact as compared to Enacted HD-117 and overall qualifies as a compact district.

((4)) political subdivisions

The Court finds that Esselstyn HD-117 demonstrates respect for political subdivisions. Esselstyn HD-117 is wholly within Henry County, meaning it does not split any counties (GX 1 ¶ 50 & fig.15), whereas Enacted HD-117 consists of Henry and Spalding Counties (GX 1, Ex. I). Accordingly, Esselstyn HD-117 splits one less county than Enacted HD-117.

Conversely, however, Mr. Esselstyn split the city of McDonough, even though he kept the core of the city whole. Tr. 571:19–25. Mr. Esselstyn also split the city of Locust Grove, by using I-75 as a boundary.[81] Tr. 571:16–21. Finally,

[81] Mr. Esselstyn, however, crossed over I-75 in another district. Tr. 571:16–21

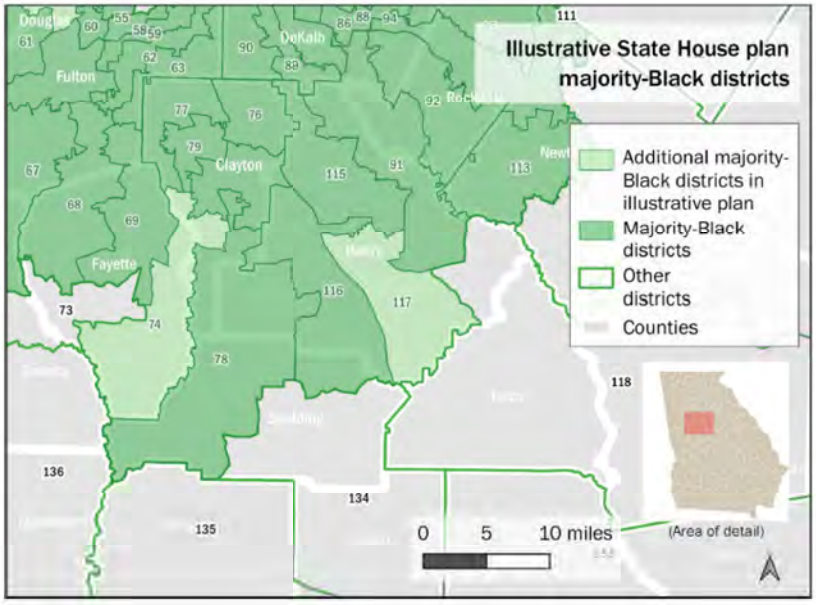
Esselstyn HD-117 splits two VTDs in Henry County, whereas the Enacted HD-117 split only one VTD in Henry County. GX 1, Ex. L.[82]

Given the above evidence, the Court finds that Mr. Esselstyn, generally, respected political subdivisions in creating Esselstyn HD-117.

((b)) Eyeball test

The Court finds that Esselstyn HD-117 is visually compact:

Figure 15: Map of southern Metro Atlanta area of illustrative plan with majority-Black House districts indicated.



[82] The statistics for the VTD splits can be found on page 13 of subdivision of the Political Subdivisions Chart entitled GA House Enacted and page 13 of Political Subdivisions Chart entitled GA House Illustrative. GX 1, Attach. L.

GX 1 ¶ 50 & fig.15.

Esselstyn HD-117 does not have appendages or tentacles. Using the mapping tool, Esselstyn HD-117 is approximately 15 miles at its most distant points. Defendants do not meaningfully dispute the visual compactness of this district. Accordingly, the Court finds that Esselstyn HD-117 is visually compact.

((c)) Communities of interest

The Court finds that Esselstyn HD-117 respects communities of interest. The testimony about HD-117 is virtually identical to the testimony regarding Esselstyn HD-74 because both districts are relatively close in proximity. See Section II(D)(1)(b)(2)(i)(c), id. at (ii)(c), id. at (iii)(c) *supra* (HD-74 and in Senate districts for south metro). There is no evidence or testimony opining or showing that Esselstyn HD-117 includes disparate communities.

The Court does not find Mr. Esselstyn's split of McDonough and Locust Grove to constitute a failure in preserving communities of interest. Mr. Esselstyn testified that when drawing the district, he made his best effort to keep the core of McDonough whole and only the "fringes of McDonough [ ] are outside of District 117." Tr. 570: 22–25. And Locust Grove is divided based on the I-75

boundary. Tr. 571:16–19. The Court credits Mr. Esselstyn's explanations for the reasons why McDonough and Locust Grove were not kept intact and finds that they are sufficient for purposes of showing that Mr. Esselstyn preserved communities of interest.

In sum, the Court finds that Esselstyn HD-117 is a small district contained wholly within metro Atlanta. The communities share the same concerns with transportation routes and have experienced recent major population growth. Additionally, the Court finds that this district is not long and sprawling, like the districts in LULAC and Miller that stretched across large portions of their respective States and combined disparate minority populations. Rather, as is evidenced by the size of the district and the trial testimony, Esselstyn HD-117 preserves communities of interest.

((d)) Conclusions of law

The Court finds that the Grant Plaintiffs have carried their burden in establishing that the Black community is sufficiently numerous and compact in Esselstyn HD-117 to constitute an additional majority-Black district. The Court finds that Esselstyn HD-117 complies with the traditional redistricting principles

of population equality, contiguity, compactness, respect for political subdivisions, and preservation of communities of interest. Additionally, when visually inspecting the district, it is relatively small in size and does not contain any appendages or tentacles. Accordingly, the Court finds that the Grant Plaintiffs have carried their burden in meeting the first Gingles precondition in the area drawn by Esselstyn HD-117.

c) Eastern Black Belt region

(1) Alpha Phi Alpha

The Court finds that the Alpha Phi Alpha Plaintiffs have not met their burden in establishing that the Black community in the eastern Black Belt sufficiently large and geographically compact to constitute an additional majority-Black Senate or House district.

(a) numerosity

The Court finds that the Alpha Phi Alpha Plaintiffs have met their burden in showing that the Black voting age population in the eastern Black Belt is large enough to constitute an additional majority-Black district. Bartlett, 556 U.S. at 20 ("[A] party asserting § 2 liability must show by a preponderance of the evidence

that the minority population in the potential election district is greater than 50 percent.").

Cooper SD-23 has an AP BVAP of 50.21%, which slightly exceeds the 50% threshold required by Gingles. APAX 1, 227 & Ex. O-1. As the Court discusses further below, it is significant that Mr. Cooper removed Black population from SD-22 to create SD-23, which resulted in two underpopulated districts that meet the 50% majority-Black threshold by only slight margins. Tr. 257:1-4.

The Black voting age population in the eastern Black Belt is also large enough to constitute an additional majority-Black House district. Cooper HD-133 has an AP BVAP of 51.97%, which exceeds the 50% threshold required by Gingles APAX 1, Ex. AA-1. Thus, Cooper HD-133 meets the first Gingles precondition's numerosity requirement.

(b) compactness

The Court concludes that neither Cooper SD-23 nor Cooper HD-133 are, on the whole, compact pursuant to the standards for the first Gingles precondition in the Alpha Phi Alpha Plaintiffs' case.

i) Cooper SD-23

((a)) empirical measures

((1)) population equality

The ideal population size of a State Senate District is 191,284 people. Stip. ¶ 277. Cooper SD-23 has a population of 190,081 people, which constitutes a population deviation of -0.63%. APAX 1, Ex. O-1. The neighboring majority-Black district, SD-22, is also underpopulated—its population is 189,518, which constitutes a population deviation of -0.92%. APAX 1, Ex. O-1. Conversely, Enacted SD-23 is slightly underpopulated with a population of 190,344, with a population deviation of only -0.49%. APAX 1, Ex. M-1. For its part, Enacted SD-22 is overpopulated with a population of 193,163 and a population deviation of +0.98%. Id.

The Supreme Court has indicated a strong preference for "population equality with little more than *de minimis* variation." Connor v. Finch, 431 U.S. 407, 414 (1977) (internal quotation mark omitted) (quoting Chapman v. Meier, 420 U.S. 1, 27 (1975)). While the Equal Protection Clause does not require that Legislative Districts meet perfect population deviations, with the advent of technology, it seems that ±10% deviation is no longer a safe harbor for proposed districts. See

Section II(D)(1)(b)(2)(b)(iii)(a)(1) *supra* (Esselstyn HD-74); see also JX 2, 2 (stating a guideline that "[e]ach legislative district of the General Assembly shall be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.").

The Court finds that Cooper SD-23 itself is not malapportioned. To create the district, however, Mr. Cooper reduced the population in SD-22 to nearly the lowest deviation on the Cooper Senate Plan. Tr. 254:14-255:3, 1783:10-14. Therefore, the Court concludes it is significant that Mr. Cooper's creation of SD-23 required creating increasing the population deviation in SD-22, so that it is barely within Mr. Cooper's ±1.00% deviation guidepost. Stop. ¶ 301, APAX 1 ¶ 111. Moreover, even though the General Assembly did not enumerate a specific population deviation range for the Legislative Districts, the Court finds Cooper SD-23 performs worse on the population equality metric than Enacted SD-23. JX 2, 2; APAX 1, Exs. O-1, M-1. Accordingly, the Court finds that the evidence shows that Cooper SD-23 achieves the traditional redistricting principle of population equality less so than Enacted SD-23.

((2)) contiguity

The Parties stipulated that Cooper SD-23 is a contiguous district. Stip. ¶ 300. Therefore, the Court finds that Cooper SD-23 complies with the traditional redistricting principle of contiguity.

((3)) compactness scores

Under the objective Reock and Polsby-Popper measures, Cooper SD-23 and Enacted SD-23 are comparably compact. In fact, they achieve the same scores: Enacted SD-23 has a Reock score of 0.37 and a Polsby-Popper score of 0.16. APAX 1, Ex. S-3. Likewise, Cooper's SD-23 has a Reock score 0.37 and a Polsby-Popper 0.16. Id., Ex. S-1. Thus, the Court considers Cooper's SD-23 to be comparably compact to Enacted SD-23.

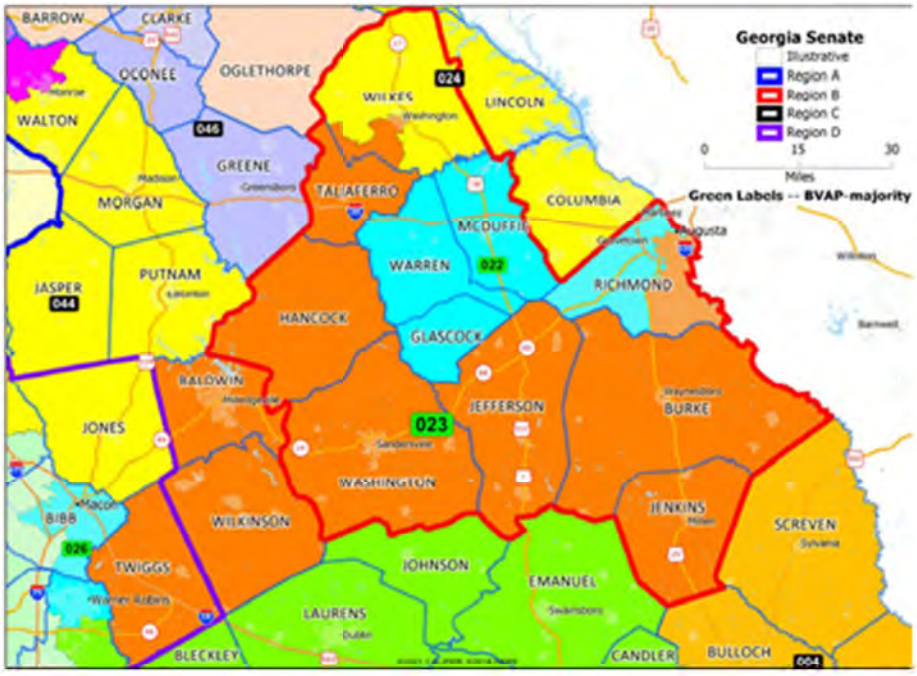
((4)) political subdivisions

Both Enacted SD-23 and Cooper SD-23 split two counties: Enacted SD-23 splits Richmond and Columbia Counties while Cooper SD-23 splits Richmond and Wilkes Counties. Tr. 119: 4-13. However, Cooper SD-23 splits the City of Washington (Tr. 258:24 – 259:2), whereas Enacted SD-23 does not. APAX 1 ¶ 107 & fig.18 (the city of Washington is in Wilkes County and all of Wilkes County is

within Enacted SD-24). Additionally, Cooper SD-23 splits two VTDs in Wilkes County, whereas Enacted SD-23 splits none. APAX 1, Exs. T-1, T-3. Thus, the Court concludes that Cooper SD-23 does not exhibit respect for political subdivisions as well as Enacted SD-23.

((b)) <u>eyeball test</u>

The Court concludes that Cooper SD-23 does not pass the eyeball test for visual compactness:



APAX 1 ¶ 108 & fig.19A.

Cooper SD-23 is an oddly shaped, sprawling district that spans north to south from Wilkes County to Jenkins County and east to west from Twiggs County to Burke County. APAX Ex. 1, fig.19A. Milledgeville in Baldwin County (western part of the district) is more than 100 miles from Augusta in Richmond County (eastern part of the district). DX 2 ¶ 36. Based on the foregoing, Cooper SD-23 is not visually compact.

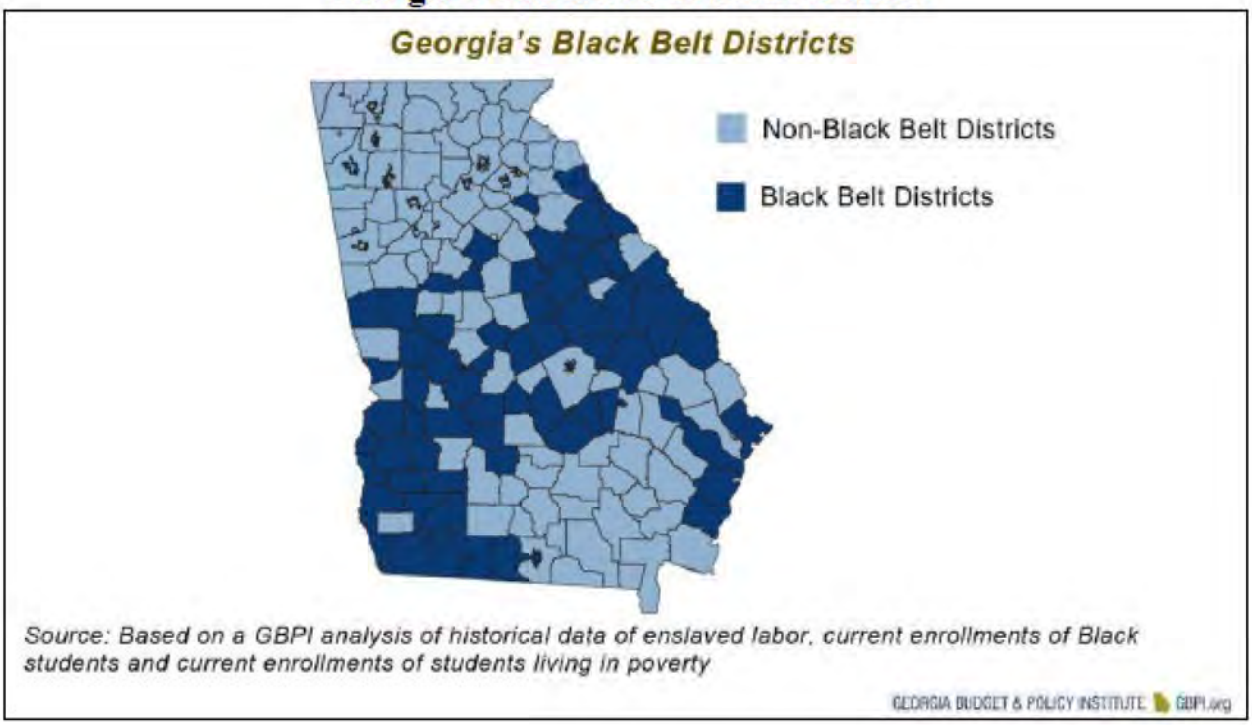
Admittedly, Enacted SD-23 is also large and sprawling, albeit in a different way than Cooper SD-23. However, as a majority-white district, Enacted SD-23 is not subject to Gingles' compactness requirements. LULAC, 548 U.S. at 430–31 ("[T]here is no § 2 right to a district that is not reasonably compact, the creation of a noncompact district does not compensate for the dismantling of a compact opportunity district." (citing Abrams, 521 U.S. at 91–92)). In other words, the large and sprawling nature of Enacted SD-23 does not alleviate the concerns with the shape and size of Cooper SD-23. Moreover, plaintiffs, who have alleged a Section 2 violation, have the burden to show that the minority community is sufficiently compact to create the proposed majority-minority district. Based on

the foregoing, the Court concludes Alpha Phi Alpha Plaintiffs have not met their burden to show visual compactness.

((c)) communities of interest

The Court furthermore finds that the Alpha Phi Alpha Plaintiffs have not carried their burden in showing that Cooper SD-23 unites communities of interest. Mr. Cooper stated that the "Black Belt" formed a community of interest in relation to Cooper SD-23. Tr. 267:12–22. But when asked to define the factors that unite the Black communities in Cooper SD-23, Mr. Cooper only vaguely referenced "cultural and historical factors," a response the Court finds unpersuasive. First, the Black Belt is a wide region that "stretches from one side of the State to another and "that is a pretty significant amount of distance to define as one community." Tr. 1619:6-9.

Georgia's Black Belt School Districts

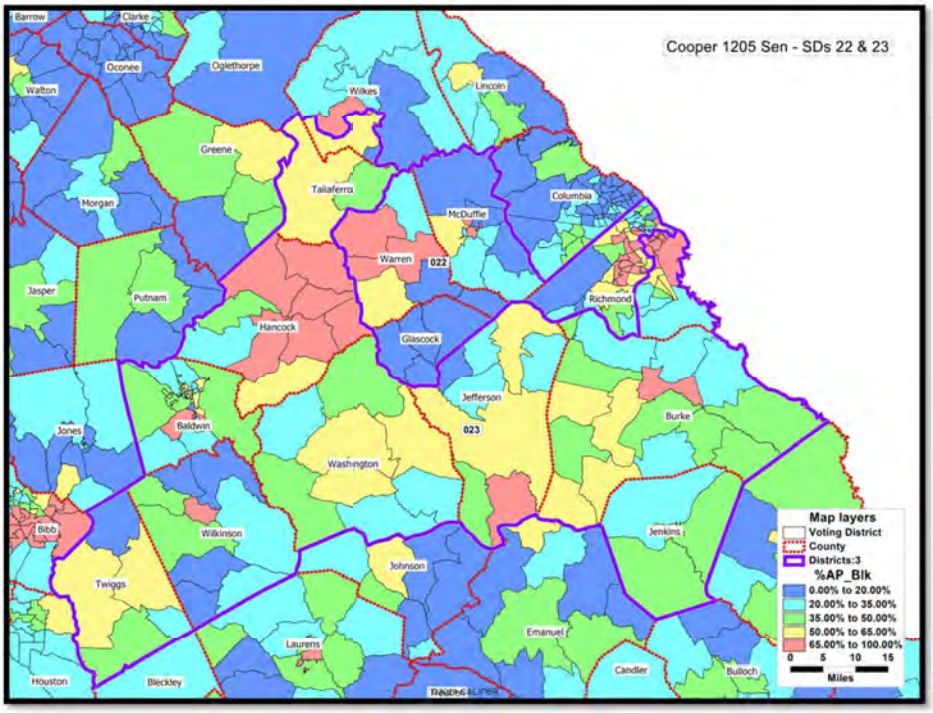


APAX 1 ¶ 18 & fig.1.

Ms. Wright, the State's map drawer, testified that there is a natural barrier in the area of the Ogeechee River that runs through Warren, Glascock, and Jefferson Counties, which runs through the center of Cooper SD-23. Tr. 1639:12-1640:1. She also testified that Augusta is a more urban area, whereas the surrounding counties are rural. Tr. 1639:12-14; 1695:25-1696:8.

With respect to the demographic makeup of the district, Mr. Morgan, Defendant's mapping expert, described Cooper SD-23 as a district that "connects

separate enclaves of Black population." DX 2 ¶ 35. The Court agrees. For example, Cooper SD-23 links Black population from Milledgeville in Baldwin County to the Black population residing more than 100 miles away in Augusta. Id. Furthermore, Mr. Cooper conceded that Cooper SD-23 includes counties from different regions and splits a regional commission. Tr. 260:23–261:13.



DX 2 ¶ 34 & Ex. 23.

The Court finds that, although communities of interest are hard to define, the distance between the Black population in Cooper SD-23 coupled with the

sprawling geographic nature of the district indicates that there is not a unified community of interest in Cooper SD-23. Mr. Cooper's vague reference to shared historical and cultural similarities of the Black Belt is insufficient to establish communities of interest. The Black Belt runs across the southeastern United States, and in Georgia, it spans from Augusta, near the South Carolina border to the southwest corner of the State near Alabama and Florida. Stip. ¶ 118; GX 1 ¶ 19 & fig.1. The Court finds that portions of Cooper SD-23 are both urban and rural and that a river divides the proposed district.

The Court also finds that the lay witness testimony does not sufficiently prove that Cooper SD-23 preserves communities of interest. Dr. Diane Evans,[83] who lives in Jefferson County—at the heart of Cooper SD-23—testified about communities in the proposed district that share numerous interests. She said that Black residents in the eastern section of the Black Belt attend the same houses of worship and share church leadership. Tr. 627:19-628:6. She identified other common interests shared by the Black residents in the area such as sports, and

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[83] The Court granted Plaintiffs' motion to incorporate Dr. Evans's testimony as part of the Alpha Phi Alpha record. Tr. 633:18-634:10.

farming; she said they also have similar policy concerns regarding high school dropout rates and education. Id. at 625:3-8, 629:22-630:13.

While the Court finds Dr. Evans to be highly credible, the Court also finds that the evidence presented at trial is not enough to show that the Black communities in Esselstyn SD-23 are part of a community of interest. Although there is some evidence of shared concerns over high rates of gun violence and low high school graduation rates, it is unclear how these commonalities unite the widely dispersed Black communities in the proposed district. Additionally, given the widely dispersed nature of the pockets of high concentration of Black people, the evidence is insufficient to show that all of the communities in this area share these same concerns.

Although the three-judge court in Singleton found a community of interest in Alabama's Black Belt, the evidence in this case differs. There, the three-judge court found that "Black voters in the Black Belt share common 'political beliefs, cultural values, and economic interests.'" Singleton, 582 F. Supp. 3d at 953. The Court finds that there is not sufficient evidence in the Record for it to conclude that the Black community in this region constitutes a community of interest.

Accordingly, the Court finds that Cooper SD-23 does not preserve communities of interest.

((d)) conclusions of law

The Court concludes that the Black community is not sufficiently compact in Cooper SD-23. This conclusion is based on (a) the underpopulation of Cooper SD-23 (and its ripple effect of reducing the population in Cooper SD-22), (b) Cooper SD-23's treatment of political subdivisions, (c) a lack of visual compactness, and (d) Cooper SD-23's unification of geographically distant disparate black populations without preserving articulable communities of interest.

Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have not carried their burden in meeting the first Gingles precondition as to Cooper SD-23. The three Gingles requirements are necessary preconditions, intended "to help courts determine which claims could meet the totality-of-the-circumstances standard for a § 2 violation." Bartlett, 556 U.S. at 21. Failure to prove any one of the preconditions is fatal to a plaintiff's Section 2 claim. Greater Birmingham Ministries, 992 F.3d at 1332. Because the Alpha Phi Alpha Plaintiffs have not

successfully carried their burden in establishing that the Black community in the eastern Black Belt is sufficiently compact, they have failed to demonstrate that the Enacted Senate Plan violates Section 2 with respect to the area of Cooper SD-23.

ii) Cooper HD-133

As with Cooper SD-23, the Court concludes, based on the following measures of compactness, that Cooper HD-133 does not satisfy the first Gingles' precondition's compactness requirement either.

((a)) empirical measures

((1)) population equality

The ideal population size of a State House District is 59,511 people. Stip. ¶ 278. Cooper HD-133 and Enacted HD-133 have identical population deviations of -1.33%. APAX 1, Exs. Z-1, AA-1. Accordingly, the Court finds that the population of Cooper HD-133 complies with the General Assembly's guidelines and the traditional redistricting principle for population equality.

((2)) contiguity

The Parties stipulated that Cooper HD-133 is a contiguous district. Stip. ¶ 300. Therefore, the Court finds that Cooper HD-133 complies with the traditional redistricting principle of contiguity.

((3)) compactness scores

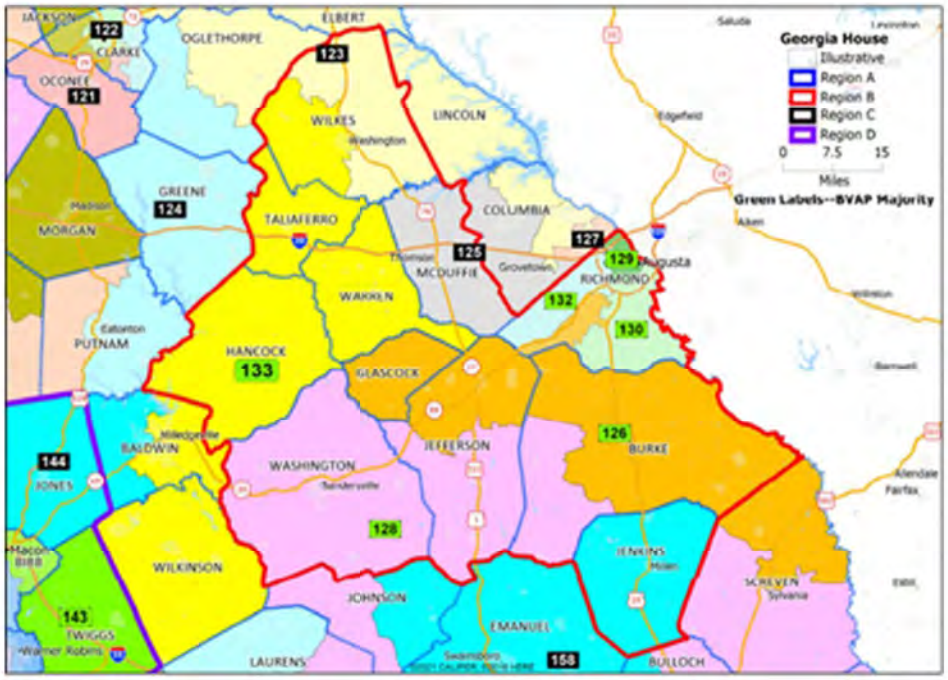
Under the Reock and Polsby-Popper measures, Cooper HD-133 is much less compact than Enacted HD-133: Enacted HD-133 has a Reock score of 0.55 and a Polsby-Popper score of 0.42, whereas Cooper's HD-133 has a Reock score 0.26 and a Polsby-Popper 0.20. DX 2, 25 & Chart 7. Accordingly, the Court concludes that Cooper HD-133 is not comparably compact to Enacted HD-133. The Court does note, however that both of these compactness scores are within the range of compactness scores found in the Enacted House Plan, i.e., minimum Reock score is 0.12 and minimum Polsby-Popper score is 0.10. APAX 1, Ex. AG-2. Although Cooper HD-133 exceeds the minimum threshold, the Court finds that, compared to Enacted HD-133, it performs far worse on compactness measures.

((4)) ***political subdivisions***

Evidence at trial established that Mr. Cooper sacrificed preservation of political subdivisions, including counties and precincts, in creating Cooper HD-133. Mr. Cooper testified that there are more splits in this area of the Cooper House Plan than in other illustrative plans he has drawn. Tr. 282:3-4. Also, Cooper HD-133 split *nine* precincts—again, more than any other district on the Cooper House Plan. DX 2 ¶ 62; APAX 1, T-1, T-3. Furthermore, to create Cooper HD-133, Mr. Cooper made changes to Enacted HD-128—a majority-Black district—that resulted in additional split counties in that area. Tr. 282:13–19. Likewise, the creation of Cooper HD-133 required changes to Enacted HD-126 that resulted in additional county splits in that district. Tr. 283:23–284:11. Thus, the Court determines that Cooper HD-133 does not respect political subdivisions, either itself in the proposed district, or in the districts experiencing the ripple effect of Mr. Cooper's changes to the area.

((b)) <u>eyeball test</u>

The Court concludes that Cooper HD-133 does not pass the eyeball test:



APAX 1 ¶ 169 & fig.31.

Cooper HD-133 is a long district that stretches from Wilkes County in the north, narrows around Milledgeville, and then widens out to Wilkinson County in the south. DX 2, 75 fig.31. According to Mr. Morgan, Defendants' mapping expert, Cooper HD-133 stretches north to south for 90 miles to pick up Black population from Milledgeville. DX 2 ¶ 61. In these ways, Cooper HD-133 stands in stark contrast to Enacted HD-133, which covers a much smaller geographic area. See DX 2, 74 fig.30. Thus, the Court concludes that Cooper HD-133 is not visually compact.

((c)) communities of interest

Finally, the Court finds that the Alpha Phi Alpha Plaintiffs have not carried their burden in showing that Cooper HD-133 unites communities of interest. Mr. Cooper identified the "Black Belt" as a community of interest that joined the various counties within Cooper HD-133. Tr. 280:23 – 25. He further stated that the counties in Cooper HD-133 are rural in nature, and with the exception of Glascock County, are significantly Black. Id. at 281:3-8.

The Court finds that, although communities of interest are hard to define, Alpha Phi Alpha Plaintiffs have not produced sufficient evidence show that this 90-mile district preserves communities of interest as opposed to combining disparate communities. This is true even in light of Dr. Evan's testimony, which is incorporated here (see Section II(D)(1)(c)(1)(b)(i)(c) *supra*). Without more, the Court cannot conclude that Cooper HD-133 preserves communities of interest.

((d)) conclusions of law

The Court concludes that the Black community is not sufficiently compact in Cooper HD-133. This conclusion is based on the following findings of fact: compared to Enacted HD-133 Cooper HD-133 splits more VTDs, and added numerous county splits in the area. Additionally, the creation of Cooper HD-133

led to increased VTD splits in neighboring districts. Cooper HD-133, moreover, is not visually compact and unites Black populations whose only commonalities are being in the Black Belt in mostly rural areas—an insufficient showing of communities of interest.

Accordingly, the Court concludes that the Alpha Phi Alpha Plaintiffs have not carried their burden in meeting the first Gingles precondition as to Cooper HD-133. Like with Cooper SD-23, *supra*, failure to prove any one of the preconditions is fatal to Plaintiffs' Section 2 claim. Greater Birmingham Ministries, 992 F.3d at 1332. Accordingly, Alpha Phi Alpha Plaintiffs have failed to demonstrate that the Enacted House Plan violates Section 2 with respect to that area of the State.

(2) Grant: Esselstyn SD-23

The Court finds that the Grant Plaintiffs failed to prove that the Black community is not sufficiently compact to constitute an additional majority-Black Senate district in the Eastern Black Belt region.

(a) numerosity

The Court finds that the Grant Plaintiffs have met their burden in showing that the Black voting age population in the eastern Black Belt is large enough to

constitute an additional majority-Black district. It is undisputed that Esselstyn SD-23 has an AP BVAP of 51.06%, which exceeds the 50% threshold required by Gingles. GX 1 1 ¶ 27 & tbl.1; Stip. ¶ 234.

(b) compactness

Based on a review of traditional redistricting principles, the Court finds that the minority community is not sufficiently compact to warrant the creation of an additional majority-Black district in the eastern Black Belt as found in Esselstyn SD-23. Additionally, Esselstyn SD-23 fails to respect the other traditional redistricting principles (visual compactness and preservation of communities of interest).

i) empirical measures

((a)) population equality

The Court finds that Esselstyn SD-23 is not malapportioned. Nevertheless, as explained below, the Court finds that Esselstyn SD-23 has the *greatest* population deviation of any district in the Esselstyn and Enacted Senate Plans.

The ideal population size of a State Senate District is 191,284 people. Stip. ¶ 277. Esselstyn SD-23 has a population of 188,095 people, which amounts to a population deviation of -1.67%. GX 1, attach E. Esselstyn SD-23 is the most

underpopulated district in either the Esselstyn or Enacted Senate Plan. Additionally, the Court finds that neighboring majority-Black district, SD-22 is underpopulated under the Esselstyn Senate Plan. Esselstyn SD-22 has a population of 188,930, which is a population deviation of -1.23%. GX 1, attach E. In the Enacted Senate Plan, conversely, Enacted SD-23 is slightly underpopulated with a population of 190,344 (a population deviation of -0.49%), and Enacted SD-22 is overpopulated with a population of 193,163 (a population deviation of +0.98%). GX 1, Attach. D.

Although the General Assembly did not enumerate a specific deviation range for the Legislative Districts, the Court finds that the population of Esselstyn SD-23 does not comply with the guideline that "[e]ach legislative district of the General Assembly shall be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below." JX 2, 2. Additionally, in creating Esselstyn SD-23, Mr. Esselstyn did not keep his deviations within the range of the Enacted Senate Plan, which is ±1.03%. Cf. Stip. ¶ 301 (indicating the 2021 Senate Plan's population deviation range in comparison to Mr. Cooper's population deviation range). Thereby, for all these