1 IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
2 ATLANTA GEORGIA
3
GEORGIA STATE CONFERENCE)
4 OF THE NAACP, et al.,)
Plaintiffs,)
5)Case No:
vs.)
6)1:21-CV-5338-ELB-SCJ-SDG
)
7 STATE OF GEORGIA, et al.,)
Defendants.)
8 _____
9 COMMON CAUSE, et al.,)
Plaintiffs,)
10)Case No:
vs.)
11)1:22-CV-00090-ELB-SCJ-SDG
BRAD RAFFENSPERGER)
12 Defendant.)
_____
13
14 DEPOSITION OF
JOSEPH BAGLEY, PH.D.
15
16 February 28, 2023
17 10:04 a.m.
18
19 Taylor English Duma, LLP
20 1600 Parkwood Circle, SE
21 Suite 200
22 Atlanta, Georgia
23
24
25 Reported by: Marsi Koehl, CCR-B-2424

C O N T E N T S

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(Original exhibits attached to original transcript.)

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(Pursuant to OGCA 15-14-37 (a) and (b) a written disclosure statement was submitted by the court reporter and is attached hereto.)

P R O C E E D I N G S

(Defendant's Exhibit 1 was marked for identification.)

THE VIDEOGRAPHER: Good morning. We are on the video record at 10:04 a.m. on Tuesday, February 28, 2023.

Please mute your phones at this time. Audio and video recording will continue to take place unless all parties agree to go off the record.

This is Media Unit 1 of the video recorded deposition of Dr. Joseph Bagley taken by counsel for defendants in the matter of Georgia State Conference of the NAACP versus State of Georgia and Common Cause, et al, versus Brad Raffensperger, filed in the U.S. District Court for the Northern District of Georgia, Atlanta Division.

The location of this deposition is Taylor English Duma in Atlanta, Georgia. My name is Leo Mileman representing Veritext and I'm the videographer. The court reporter is Marsi Koehl -- Koehl from the firm Veritext.

Counsel present, please introduce yourselves after which the court reporter will swear in the witness.

MR. TYSON: Well, good morning. I'm Bryan Tyson representing the defendants in these cases.

MR. DAVIS: I'm Alex Davis, Lawyers' Committee for Civil Rights, representing the Georgia NAACP plaintiff group.

JOSEPH BAGLEY, PH.D.,

having been first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. TYSON:

Q. Good morning, Dr. Bagley.

A. Good morning.

Q. My name is Bryan Tyson. We met a minute ago. I represent the defendants in the cases of state governor, secretary of state.

And we're here to take your deposition and talk about your expert report in these redistricting cases. My purpose today, just to kind of dig into your conclusions, the work you've done in the case. My goal is not to confuse you, ask you a bunch of trick questions.

Alex has been in plenty of depositions with me. He knows that there are times I ask a question and I get to the question mark and nobody in the room has any idea what I'm actually asking. If that happens, just let me know and I'll rephrase the question. If you do answer a question, though, I'm assuming you understand what I'm asking.

Does that make sense?

A. Sure.

Q. And your counsel will probably object at some point during the deposition today. Unless he instructs you not to answer, you need to go ahead and answer the question to the best of your ability if you can.

We are in the room, which is helpful, but just since we have folks listening online and for our court reporter -- in conversation we tend to talk over each other sometimes. You anticipate where I'm going with a question and that's just how conversation flows.

Here we want to make sure I'm finishing my question, then you're starting your answer to make for a cleaner transcript and also so we don't talk over each other as much as possible.

A. Of course.

Q. And then last thing, if you need a break at any point, just let me know. I'm happy to work through that. My only request is that there not be a question pending when we take a break. You can answer the question and then move to a break after that.

A. Sure.

Q. So my plan today, just for what we're going to look at doing, I'm going to start with your background and CV. We'll move into your report and just try and walk through the pieces of your report kind of sequentially the best I can through that and go from there.

A. Okay.

Q. Let's begin with background.

If you can give me your full name for the record, please.

A. Joseph Mark Bagley.

Q. And, Dr. Bagley, can you tell me what city and county you reside in?

A. I live in -- technically in Tucker, Georgia, DeKalb County.

Q. Okay. And that's the relatively new city of --

A. Indeed. Yes, sir.

Q. All right. I have to ask this question of everybody, so don't get offended.

Are you on any medication or have any medical condition that would keep you from fully and truthfully participating today?

A. No.

Q. All right. Let's talk about getting ready for your deposition today.

What did you do to get ready for your deposition?

A. Mostly just read the report. Although, I did have a prep session with counsel yesterday and another very brief one last week.

Q. And I'm definitely not asking for what you discussed with counsel. But do you approximately -- recall approximately how long those depositions sessions -- preparation sessions were?

A. Sure. Yesterday maybe five hours at most with a lunch break. Last week was probably more on the order of a half hour.

Q. And beyond your report that you referenced, did you look at any other documents that were refreshing your recollection about anything we're going to discuss today from your report?

A. No, just limited to the report.

Q. So I put in front of you Exhibit No. 1, which is the CV that was provided to us.
A. Mm-hmm.
Q. Is this --
A. Yes.
Q. Is this your current CV?
A. Yes, sir.
Q. So what I want to do is just kind of walk through some of the pieces here. Obviously, you have a bachelor's and a masters both from Auburn University?
A. Yes, sir.
Q. And you got your Ph.D. from Georgia State in 2013; right?
A. That's correct.
Q. And your dissertation topic involves school degradation in Alabama; correct?
A. Yes, sir.
Q. I see you've written a book called, The Politics of White Rights.
I'm assuming that's somewhat related to your dissertation?
A. It is.
Q. And what would -- if you were just briefly describing what the politics of white rights

1 involved, what would you explain to somebody?
2 A. So this book is an analysis of school
3 desegregation litigation in Alabama, a fairly
4 well-exhaustive analysis of that litigation. It also
5 examines the politics and changes in the Alabama
6 politics that occur as lawmakers learn how to combat
7 school desegregation litigation.
8 Q. And so before we get to expert witness
9 piece, I wanted to ask about your teaching
10 experience, which is on the next page over. Page 2
11 at the top, you have teaching with administrative
12 experience listed.
13 Have you had any employment since you got
14 your Ph.D. that's not listed in this teaching and
15 administrative experience section?
16 A. No, sir.
17 Q. And at any point after high school, did you
18 work on any politic campaigns for any candidate?
19 A. No, sir.
20 Q. And so, currently, I see that you are
21 assistant professor, Perimeter College/Georgia State
22 University; is that correct?
23 A. It is.
24 Q. And you have two roles there honors program
25 coordinator and assistant professor?

A. Correct.
Q. Is your assistant professor role a tenure tract job?
A. It is.
Q. And do you currently have tenure?
A. No. I'm up for tenure at the moment.
Q. Well, best of luck with that.
A. Thank you.
Q. In looking at the different courses that you've taught here, I didn't see any that were specifically about Georgia history.
Were there any that address Georgia history directly that you're teaching on this list?
A. Nothing that is exclusive to Georgia. Although, we do have a mandate from the state in our U.S. history survey class to address and talk about Georgia history. So that's something that we always do. And what you see listed is History 2110.
Q. Do you have any or have you ever taught any courses on legislative politics?
A. Nothing specific to that, no.
Q. And what is your experience with the Georgia General Assembly? Have you been to the capital during a session to observe the process?
A. Not during a full session, no.

Q. And have you ever done a study of the process for the legislature in Georgia of how a bill moves from idea to law in Georgia?

A. No. That's something I'm familiar with in terms of state legislatures in general, but I've never undertaken anything, you know, systematic or specific to the Georgia General Assembly. No.

Q. Going down to your invited talks section, the second item there is the Georgia State University Constitution Day event called, To Abridge and Deny: Vote Dilution, Section 5 Preclearance and Undermining the Fifteenth Amendment.

Do you see that?

A. Yes, sir.

Q. Do you personally believe that Georgia should still be under a preclearance approval process under the Voting Rights Act?

A. You know, I'm not going to say that I disagree with the decision of the Supreme Court, which, obviously, in Shelby County decision said that Section 5 preclearance should no longer be valid.

I would say that as a historian I'm familiar with the decades-long process of Georgia being -- the General Assembly being is subjected to those objections. So that's obviously something I talk

about in that talk at some length.

Q. And my question a was a little different.

Do you have a personal belief about whether Georgia should currently be under preclearance?

A. I would say that were the state still under preclearance, there probably would continue to be some objections.

Q. So is that a yes then?

A. I don't know that I have a personal belief as to that. I would say as a scholar, again, I would think that the State would continue to be subjected to these kinds of objections were Section 5 preclearance still be in place.

Q. In looking at your notable citation section, you indicate you've been cited by Nikole Hannah-Jones in a New York Times magazine piece; is that right?

A. Yes, sir.

Q. And Professor Hannah-Jones is the leader of the 1619 Project; isn't she?

A. She is.

Q. Would it be fair to say that you focused primarily on Alabama in your scholarly work?

A. Up to the book, yes. Of course, since that time when I started working on studying voting rights litigation, I've broadened out from there.

Q. Have you taught any courses specifically about the voting rights act or redistricting?

A. No. I don't actually -- I don't know that we would have courses that were, sort of, that granular in their scope.

Q. So let's go back to the first page and talk about some of your prior testimony.

So, first of all, I wanted to ask what being recognized as a university expert means at Georgia State University?

A. The University marketing department has a website that lists various experts in all manner of different fields. And I was the lone representative from Perimeter College to be included on there as someone who does, obviously, expert witness work regarding voting rights cases and speaks to other matters related to school desegregation litigation and so on.

Q. So it's just a recognition from the university, This is a professor who serves as an expert in cases, essentially?

A. Yeah. Essentially, yes.

Q. And are the four cases that you've listed here, all of the cases where you've served as a testifying expert witness?

A. Yes, sir.
Q. And I'm not asking for the cases where you served as a consulting expert witness. But have you served as a consulting witness without testifying in voting rights cases?
A. Yeah. There's one case in the very first case that I worked that was settled, and my report was not entered into the record and so I never testified.
Q. So let's talk through these different pieces.
So the two South Carolina cases that are listed here, the first one was a challenge to the congressional plan.
It was only a constitutional challenge, not a Voting Rights Act challenge; is that right?
A. That's correct.
Q. And in that, you submitted an expert report, testified in a deposition and during the trial and the plaintiffs prevailed in that case. Right?
A. Yes.
Q. And I think we were discussing before the deposition started, we're waiting to hear from the United States Supreme Court on the next steps?
A. Indeed so.

Q. And the second case you have listed there, the South Carolina versus McMaster, that was a challenge to the legislative plans under both the Voting Rights Act and the constitution; is that right?

A. Yes, sir.

Q. And, I'm sorry, I should say for the House of Representatives plan, not --

A. Specifically, yes. The Senate is not redistricting.

(Reporter asks participants to speak one at a time.)

BY MR. TYSON:

Q. I'm sorry. That was in reference to -- the McMaster case was only about the House of Representative plan not the State Senate plan; right?

A. That is correct.

Q. And in that case you submitted a report and testified in a deposition, but there was no trial because the case settled; correct?

A. Yes, sir.

Q. And another case we were discussing before the deposition began, the Milligan case.

And did you serve as an expert in both the single judge case and the three-judge panel case or

was Milligan only the three-judge panel version?
A. It was three-judge panel. Judge Manasco, I think, technically had the single-judge case, but everything was handled in one hearing before all three judges.
Q. And you testified both in a deposition and at the preliminary injunction hearing; right?
A. That is correct.
Q. And you say that your findings was adopted by the Court in granting the preliminary injunction.
What are you referring to there?
A. In the order granting the preliminary injunction, Judge Marcus refers to my testimony and says, Dr. Bagley testified credibly and testified at a high level and we -- and he cites to certain of my findings.
Q. And in the People First of Alabama versus Merrill case, this was a case in 2020 related to voting and Covid; right?
A. Yes.
Q. And you submitted an expert report, did testify in a deposition and at trial and then you indicated your findings were adopted by the Court; right?
A. Mm-hmm. Yes, sir.

Q. And then you have a citation there to the opinion. And is that the opinion where you say your findings were adopted by the Court?

A. It should be. And if I remember correctly, Judge Colon doesn't refer to me by name but refers to my testimony and/or my report with the exhibit number.

Q. Got it. And that's actually what I was going to ask. I didn't see your name in opinion. So that makes sense, that the judge would refer to it that way, which that's a judge's prerogative to do, so...

A. We would -- we would always prefer they use our name, but you can't win them all in that way.

Q. That's right.

Going back to the South Carolina versus Alexander case, that first one there, your citation in that opinion was to the legal struggles of South Carolina with preclearance from the '70s through 2000; is that right?

A. I don't remember exactly how I was cited in there, but if you represent, I would say that's probably correct.

Q. Okay. Do you recall if there was any other reference to your opinions or testimony in the

Alexander opinion?
A. I do not.
Q. Have you testified at trial or in a deposition in any other cases beyond the four that are listed here in your CV?
A. No, sir.
Q. And in the Milligan case, you were asked to opine about a variety of the Senate factors for purpose of Section 2; is that right?
A. That's correct.
Q. And so in each of these four cases where you served as an expert, you always served as an expert for the plaintiffs against a jurisdiction; is that right?
A. Yes.
Q. And so this may seem self-evident, but you never testified for a jurisdiction that was defending a redistricting map; right?
A. Not yet. No, sir.
Q. We can set that to the side. Let's move to this case.
A. Yes.
Q. So how did you first hear about the case that you're here giving a deposition about today?
A. I -- through following the news and being a

1 resident of Atlanta. You know, at some point, I know
2 there were, what, I think three different cases
3 essentially litigating the same thing. So I'm sure I
4 was aware of it at some point last year.
5 Q. Do you recall who first contacted you to be
6 involved in this case?
7 A. Lawyers' Committee -- or, actually, it could
8 have been Crowell & Moring.
9 Q. And do you recall approximately when someone
10 reached out about you being involved in the case?
11 A. Yes. That would have been early to
12 mid-December of last year.
13 Q. That would have been early to mid-December
14 of 2022?
15 A. Yes.
16 Q. I always get thrown off at the beginning of
17 the year --
18 A. Fair enough.
19 Q. So I'm not asking you specifically what you
20 were told. I'm only asking you a yes-or-no question.
21 Were you told that the plaintiffs wanted to
22 prove or what their position on the issues in this
23 case were?
24 MR. DAVIS: Objection --
25 A. Could you ask again?

MR. DAVIS: -- you may answer.
THE WITNESS: Say again.
BY MR. TYSON:
Q. I'm just asking a yes-or-no question not what you were told if you were told anything.
But were you told what the plaintiffs wanted to prove or their positions on the issue in the case?
A. I was asked to opine on the legislature's intent.
Q. Now, you've obviously served as an expert in several different cases. I'm not asking for the legal definition of the role of an expert, but in your own words, what do you see as the role of an expert in a federal case like this one?
A. To assist the Court in coming to a determination on the issues.
Q. And in that role, do you think the expert should be objective in presenting that assistance to the Court?
A. Of course.
Q. And the expert should always provide accurate information to the Court; right?
A. Yes, sir.
Q. And your hourly rate for this case is $150 an hour; is that right?

A. It is.
Q. And is that the same rate for both testifying and non-testifying work?
A. Yes.
Q. And have -- is $150 an hour your normal rate for expert work in cases like this one?
A. It was in the previous case. Yes.
Q. Have you -- are you offering the plaintiffs a discount off your normal rate in this case?
A. No.
Q. Do you recall approximately how much you've billed so far for your work in this case?
A. I want to say the invoice I entered -- the last invoice I entered was about 130 hours.
Q. And to what entity do you send the bills when you send the invoice?
A. To Crowell.
Q. So in -- before you were contacted about this case, had you attended any meetings about Georgia redistricting in 2021 or 2022?
A. No.
Q. Have you attended any meetings about this case since you were retained aside from the sessions we discussed with counsel?
A. Personally attended, no.

Q. And what other kind of attendance would there be?

A. Could you ask the question again?

Q. Sure. Have you attended any meetings about this case that did not involve counsel --

A. Oh.

Q. -- for the plaintiffs?

A. No.

Q. Have you ever spoken to any of the plaintiffs in this -- the actual individuals and organizations involved in this case?

A. No.

Q. And in terms of preparing your report -- we'll get to that in a minute.

Did the plaintiffs' counsel provide you with any facts or data that is not listed in your report that you considered in forming the opinions in this case?

A. No, sir.

Q. And did the plaintiffs' counsel tell you to assume anything that you relied on when you were forming your opinions in this case?

A. No.

MR. TYSON: Let me go ahead and mark your report.

(Defendant's Exhibit 2 was marked for identification.)

BY MR. TYSON:

Q. I'm handing you what we'll mark as Exhibit No. 2. I ask if this is the expert report that you submitted in this case?

A. It is.

Q. And when you were preparing this report, did you maintain drafts along the way?

A. Yes.

Q. Do you recall approximately when you started drafting this report?

A. Not long after I was contacted. So probably third -- second, third week of December of 2022.

Q. And I believe you just said -- you referenced 130 hours. Is that approximately how long it took you to prepare this report?

A. Yes.

Q. Can you just describe for me -- and we'll get into some of the specifics but the general process you go about in drafting a report like this one. Where do you begin? How do you put the pieces together?

A. So I, of course, consider what I've been asked to do, which is to opine on the intent of the

legislature in the passage of these -- the bills that are at issue in this report. And for me, that kind of inquiry is set forth in the Arlington Heights case that I talk about in the report.

And so what I do is marshal all the evidence that I can and then I prepare the report using that as a framework.

Q. So you basically begin with the items listed in Arlington Heights about possible evidence of intent and look for evidence supporting those particular provisions of Arlington Heights?

A. I look at the evidence and allow it to tell me whether or not I think there's enough there for a Court to find that there was discriminatory intent.

Q. And in terms of your report in this case, you're not offering any opinions about racially polarized voting in Georgia; right?

A. No. I'm not a political scientist and so I understand plaintiffs and defendants presumably have their own experts that run those kinds of tests.

Q. And you're not offering any opinions about the design of the maps in terms of the district boundaries and the make-up of the districts; right?

A. No. Correct.

Q. So Exhibit 2, your report, a complete

statement of the expert opinions you're offering in this case?

A. It is.

Q. And are you offering the opinion that Georgia's 2021 redistricting plans for Congress, State Senate and State House were adopted with discriminatory intent?

MR. DAVIS: Objection to the extent it calls for a legal conclusion, but you may answer.

THE WITNESS: So the way I see my role is not to make the final conclusion but to say that in my opinion as a historian, there is enough evidence there for the Court to make that finding.

BY MR. TYSON:

Q. So you're not saying that discriminatory intent was the driving factor of the legislature. You're saying that there's evidence that would support that finding?

A. Correct.

Q. And in terms of other pieces -- turn to page 6 of your report: The purpose, methodology and summary findings.

You're opining about on the top of page 7

the second, third, fourth and fifth Arlington Heights factors; right?

A. Yes.

Q. And you're also opining about Senate Factor 6; correct?

A. Yes.

Q. And you're not offering opinions on any other Arlington Heights factors except for the second, third, fourth and fifth ones; right?

A. That's correct. Insofar as to me the way that I read Arlington Heights, the first factor asks whether it is just plainly obvious that there is discriminatory intent. And if that is not the case, the Court sort of directs you to the remaining factors. And so for me, you don't see in modern times an inquiry on Factor 1.

Q. And so did you conduct an analysis of Factor 1 before moving to the other Arlington Heights factors you analyzed?

A. I would say to me looking at the evidence, it required an inquiry into the other factors.

Q. So in your view, the first Arlington Heights factor of obvious discriminatory intent wasn't present and that's what led you to look at the other factors?

A. In plain obvious terms, that is correct.
Q. And so aside, I guess, from that limitation on the first factor, the only factors from Arlington Heights you're offering any opinions about in this report are the second, third, fourth and fifth factors; right?
A. Correct.
Q. And you're not offering an opinion on any other Senate factor other than Senate Factor 6; correct?
A. Yes, sir.
Q. So let's look at the top of page 6 of what the plaintiff asked you to do here. And you were asked to examine the drafting, passage and enactment of the Georgia General Assembly's new congressional State House and State Senate redistricting plans.
That was kind of piece number one; right?
A. Yes.
Q. And that analysis and evaluation didn't look at boundaries, political impact or racial make-up after those plans; right?
A. Not in the way that a political scientist would.
Q. Was there any way that you looked at boundaries, political impact, racial make-up of the

1 districts themselves as part of your analysis?
2 A. Not in terms of a numbers-crunching
3 analysis, if that's what you mean.
4 Q. And you primarily reviewed the process by
5 which those maps became law. Is that fair to say?
6 A. Yes, sir.
7 Q. So I'm looking at paragraph four in this
8 section. You say: Insofar, as the Supreme Court
9 directed trial courts to use this framework --
10 referring to Arlington Heights framework -- in making
11 determinations on discriminatory intent, experts in
12 my understanding should also follow this guidance in
13 assisting courts to do the same.
14 Where did you gain the understanding that
15 you're referencing in that paragraph?
16 A. From Arlington Heights itself and from -- in
17 previous work on Arlington Heights framework reports.
18 Q. In your previous work on Arlington Heights
19 framework reports, have you reached a conclusion
20 about the intent of the legislature you were
21 analyzing or did you reach an opinion similar to that
22 here that just evidence would support an intent
23 finding?
24 A. Similar to this here.
25 Q. In the next paragraph, you talk about you're

1 guided by the common standards of historiography.
2 Did I get that right?
3 A. You did.
4 Q. Okay. So are the sources that you listed in
5 this paragraph, the sources you relied on in
6 preparing your report?
7 A. They are.
8 Q. Did you review any historical sources about
9 past redistricting cycles in Georgia like the 2001 or
10 2011 cycles?
11 A. In terms of case law and secondary
12 historical sources, yes.
13 Q. Did you review all of the videos and public
14 comments that were available on the General
15 Assembly's website regarding redistricting?
16 A. There were some of the town halls that I did
17 not fully review. I tried to focus on where
18 plaintiffs were challenging districts.
19 Q. Did you review all the video of all the
20 committee meetings that were held in the House and
21 Senate for the maps?
22 A. Yes.
23 Q. And you reviewed all the floor debate for
24 all three maps --
25 A. Yes.

Q. -- right?

So you reference the term a couple of paragraphs down called "color masking," what others have sometimes called "color blindness."

Can you just kind of walk us through what color masking is?

A. Sure. This is something that I discuss in my book, which involves lawmakers learning how to make laws that have a racial impact without using words like "white," "black" or "race." So it's a way of using a, what you might say, a code in rhetoric style.

Q. And I know this is part of the discussion, it looks like, racial appeals in campaigns.

Is that the relationship of color masking to your opinions in this case in the racial appeals section?

A. In this paragraph, yes, sir.

Q. In moving to the last paragraph in this section on page 8, you reviewed -- I see one of the evidentiary pieces you reference is procedural and substantive irregularities in the drafting and passing of the bills --

A. Yes.

Q. -- is that right?

A. Mm-hmm. Yes, sir.
Q. And you covered all the procedural and substantive irregularities in drafting and passing as part of your report; is that right?
A. Yes.
Q. So let's move next to our historical background section. And if you could just look for me and see pages 8 through 13 all cover a period of Georgia history that predates 1962; is that right?
A. Yes.
Q. And then on page 14 at the bottom of that page you reference the creation of an election law study committee. Do you see that?
A. I do.
Q. And you mention that the study committee submitted its recommendations at the same time southern senators were filibustering what will become the Civil Rights Act.
Are you saying those events were connected or just that they happened at the same time?
A. The latter.
Q. And you discuss the congressional redistricting plan in Wesberry versus Sanders being struck down on page 15; right?
A. Yes.

1 Q. And that was a plan that was drawn by the
2 democratically controlled legislature in Georgia;
3 right?
4 A. It was.
5 Q. So let's move to the next section on --
6 after the Voting Rights Act.
7 So Section B, you talk about objections that
8 were interposed in the 1970s. And you'd agree that
9 the 73 objections you reference at the bottom of
10 page 17 between 1968 and 1979 covered local election
11 law changes that had passed the General Assembly but
12 were involving local governments; right?
13 A. That's right.
14 Q. And so are you referencing them here because
15 since they passed the General Assembly, you view them
16 as actions of the State?
17 A. I think it's relevant to this kind of
18 inquiry that they pass through the General Assembly
19 understanding that there is this sort of delegative
20 deference, sort of, form of lawmaking in a state like
21 Georgia. But also we're talking about the actions of
22 the legislators themselves as a collective. And so
23 for me they're relevant.
24 Q. And then moving to the 1970 redistricting
25 cycle, you'd agree that this 1970 redistricting

1 cycle, democrats were in charge of that process;
2 right?
3 A. Correct.
4 Q. And the use of multimember districts was a
5 major reason for objections from DOJ to at least the
6 House plan; correct?
7 A. Yes, sir.
8 Q. In the next section, Section D, you talk
9 about Section 2 and Fourteenth and Fifteenth
10 Amendment legis- -- litigation, I'm sorry, in the
11 1970s.
12 And so you'd agree there was a lot of
13 successful litigation to require single member
14 districts instead of at large election systems in
15 this time period; right?
16 A. There was.
17 Q. In turning to page 22, you reference
18 Thornburg versus Gingles, the Senate factors there at
19 the top of page 22.
20 And I'm assuming you've read the Gingles
21 decision; right?
22 A. Yes, sir.
23 Q. And are you aware which portions of that
24 decision garnered the majority of votes in the
25 Supreme Court and which ones did not?

A. Could you ask it again?
Q. Sure. Are you aware which portions of the Gingles' opinion garnered a majority support of the Supreme Court and which ones did not?
A. I don't recall.
Q. Do you know if the Senate factors were part of the majority decision or part of a plurality opinion?
A. I don't recall off the top of my head. I know that those were derived from a judiciary committee meeting hearing from factors that were utilized in cases prior to that time by attorneys like Jim Blackshear that are ultimately adopted through Gingles in one way or another.
Q. So let's move to the 1980 redistricting cycle, Section E of this part of your report.
You'd agree that the 1980 redistricting process in Georgia was controlled by democrats, as well; right?
A. Yes. It was.
Q. And Georgia, again, had objections from the Department of Justice to its redistricting plans?
A. They did.
Q. You mentioned Senate District 22 in Richmond County.

1 Do you know if Senate District 22 has
2 historically been wholly contained in Richmond
3 County?
4 A. If you represent that, I would not disagree.
5 Q. And you reference Representative Joe Mack
6 Wilson, as we move to the discussion here.
7 And Representative Wilson was a democratic
8 member of the legislature; right?
9 A. That's correct.
10 Q. And I have always found it an extraordinary
11 and succinct determination that -- a court finding he
12 was a racist. I've always been intrigued by that.
13 A. That's very rare.
14 Q. Yeah.
15 A. You've really got to go over the top to get
16 that determination thrown at you.
17 Q. You say after that, that the Court further
18 noted Wilson had been appointed his committee
19 chairmanship by Speaker of the House Thomas Murphy,
20 who himself served as a floor leader for
21 segregationist Governor Lester Maddox.
22 In your view, was Speaker Murphy also racist
23 based on his service as Governor Maddox's floor
24 leader?
25 A. I wouldn't say that he was a racist, no, but

he served for Governor Maddox who was indeed a segregationist.

Q. So you're not connecting Representative Wilson's views to Speaker Murphy's views. You're just pointing out the connection between Speaker Murphy and Governor Maddox?

A. I'd say that's fair.

Q. So moving to Section F, you're referencing objections to local redistricting plans.

Did the objections you're discussing for local plans for the cities pass through the General Assembly, as well, or did they go through a different process?

A. I believe some of them did. Perhaps, not all of them. But, again, they are part of my inquiry because we're talking about lawmakers in the state of Georgia.

So even though the inquiry here is the General Assembly, in terms of the history, I consider what's going on at the local level, as well, to be relevant.

Q. So on page 27, if the city of McDonough and the City of College Park drew their own districts that didn't pass through the General Assembly, you would still find that relevant to your inquiry in

1 this case?
2 A. If we're looking at the history, yes, I
3 would.
4 Q. And based on your training and experience,
5 how would the actions of city officials relate to a
6 review of actions by the General Assembly in the
7 1980s?
8 A. We're talking about lawmakers and public
9 officials in the state of Georgia. And whether it's
10 city officials or county officials, these people are
11 part of a continuum of enacting these kinds of
12 schemes that run afoul of either the Constitution or
13 the Voting Rights Act.
14 So I don't limit my inquiry specifically to
15 things that were passed through the Generally
16 Assembly. If I were to do that, you could even take
17 that farther and say, Can't you only consider the
18 actions of this particular General Assembly, which
19 wouldn't be useful for me as a historian either.
20 Q. You referenced a continuum. Can you let me
21 flow what you mean by the word "continuum" in that
22 context?
23 A. Sure. What we -- one of the things that we
24 try to look at as historian is how the past informs
25 the more near past and then the still more near past.

And so if you continue to see decade after decade these evolving efforts to prevent voters of color from equitably accessing the franchise, then that to us represents a continuum.

Q. And so in that context, you would view the actions of legislatures in 2021 as part of a continuum that includes discriminatory at large election systems from the 1980s?

A. "Yes" is the short answer. And it's not about drawing a direct line from, for example, the actions of the city officials in McDonough in 1980 to the current General Assembly. But it's also not about saying, Well, that was relatively longer ago, so we can just disregard that. So for me it's part of -- a relatively small part of but still a part of an inquiry into the history of discrimination in this state.

Q. So let's move to the 1990s cycle of redistricting, which was quite an eventful one for Georgia.

In the 1990 cycle, those maps were also drawn by democratic members of the General Assembly; right?

A. Indeed.

Q. And you say at the end of this section that

at the end of all of this litigation back and forth in the '90s -- on page 31 you say: By the end of the decade, the membership in the Black Caucus stood at 44, ten higher than it had been entering the decade.

Was that a good thing that the membership of the Black Caucus had increased during the course of the 1990s?

A. Yes. I think so. And I think when you see this as a historian, to contextualize that means to appreciate these are not organic developments. These gains are achieved by an ongoing struggle on the part of black voters and their allies to get closer and closer to, you know, the equitable access to the franchise and the ability to elect those candidates of choice.

Q. What would you consider to be equitable access to the franchise in Georgia for black voters?

A. To be able to say that their votes are not being diluted in any way, to be able to have -- to be able to elect candidates of choice at the same level as other voters.

Q. Would proportionality be equitable for black voters in Georgia?

A. That would be a consideration.

Q. Not the sole consideration, though?

A. I wouldn't think so. No.
Q. Beyond proportionality, what other factors would you consider to be necessary for equitable representation?
A. The absence of any kind of, you know, packing and cracking in the process of redistricting. The absence of campaigns' racial appeals, to have a more genuinely colorblind electoral process as opposed to the -- in the sense we talk about color blindness and color masking and so on.
Q. So you reference color blindness in the electoral process. And I think we said earlier "color blindness" was a term misunderstood by many.
A. Right.
Q. You're not referring to color masking when you say color blind electoral process --
A. Right.
Q. -- right?
What are you referring to?
A. So I mean to have a genuinely -- to have a genuinely color blind electoral process in which there are no devices, schemes, no efforts made to limit in any way the of voters of colors to elect those people who they want to see elected.
Q. And you use some terms that we hear a lot in

1 redistricting: Packing and cracking.
2 What would be your definition of "packing"
3 in the context of redistricting in Georgia?
4 A. You hear this a lot in the public testimony
5 in this process that we're -- I'm examining here and
6 that's being litigated here. And so the people of
7 Georgia understand that to be unnecessarily loading,
8 if you will, voters of color into one districting
9 would be packing that district.
10 And if you are taking voters of color in a
11 given area and deliberately removing some of them
12 from one direct into another in order to limit their
13 influence, that would be "cracking."
14 Q. And it sounds like there's almost an intent
15 element to each of those. Would that be fair to say?
16 It intends to concentrate voters?
17 A. Yes.
18 Q. And so there could be such a thing as
19 unintentional packing?
20 A. I suppose.
21 Q. So let's move to the 2000 cycle. This,
22 obviously, was a new state of play in the
23 redistricting process.
24 The redistricting process in Georgia in the
25 2000 cycle was still controlled by democrats; right?

A. Yes. That was the last one.
Q. And the democrats in the House in 2001 drew multimember districts as part of the redistricting plan for the State House; right?
A. They did.
Q. And you quote Congressman Gingrich -- or, I guess, then Congressman Gingrich -- as using color mask rhetoric. You reference that.
A. Yes.
Q. And you say that -- on the first full paragraph of page 32: Gingrich's color-masked rhetoric was a thinly veiled way of arguing that black people who were mired in poverty and living in crime-ridden neighborhoods with failing schools were there because they as a race lacked the values that worthy white people have.
Did I quote that right?
A. You did.
Q. Are you saying as part of this discussion that Congressman Gingrich is a racist or just that he used racist rhetoric?
A. The latter. And it's not just me. If you look at who I've noted there, it looks like Princeton historian Kevin Kruse and the political scientists Merle and Earl Black and others have analyzed these

and others of Gingrich's quotations and rhetoric and analyzed them in the same way and come to the same conclusion.

Q. And how do Congressman Gingrich's quotes and rhetoric here apply to the 2000 redistricting cycle in Georgia?

A. Because that was a moment at which these -- what I think I described in the report as tectonic shifting politically were coming to the surface and there was a political realignment going on at that time.

And Congressman Gingrich -- Congressman Gingrich's rhetoric was a lot of the kind of rhetoric that you saw in encouraging that political shift to continue apace.

Q. So is it your belief that the political shift that happened in Georgia in the early 2000s was driven by racism in root?

A. In part. There was a time when that was the argument of historians, the most prominent, that investigate this kind of thing.

In the last 20 years, Professor Kruse and others have broadened that argument out to say, Let us appreciate that there are numerous other elements to this political shift. There's anti-labor

1 unionism. There's appeals to evangelical Christians.
2 There's a revolt against property taxes, for example.
3 But at the end of the day, all of these
4 scholars say that race still played a part in this.
5 It's just that the discussion now no longer -- no
6 longer would the main historians in this argument
7 say, Well, this was completely about race and racism.
8 The discussion has a lot more nuance now.
9 Q. So the shifts in Georgia in the early 2000s,
10 racism played a part in it, but you can't say for
11 sure how much of a part it played. Is that fair to
12 say?
13 A. I couldn't quantify it, but I would say it
14 played a substantial part.
15 Q. The next paragraph there on page 32, you
16 say: At that moment, the GOP was in the process of
17 resting control of politics in Georgia from the
18 democratic party.
19 But you'd agree, in 2001 democrats still
20 controlled governor and both houses of the
21 legislature; right?
22 A. Yes, sir.
23 Q. And full GOP control of Georgia didn't take
24 place until the 2004 statewide elections; is that
25 right?

A. Correct.
Q. So going to the top of page 33, you reference the two special sessions that occurred in 2001. And you say: The democratic leadership sought to retain majorities in part by taking black populations from districts in which black candidates would probably be re-elected anyway and redistributing it to districts wherein white democrats might benefit from the population in defeating Republican candidates.
Did I read that right?
A. You did.
Q. And members of the Black Caucus supported those plans that reduced the black percentages in those districts; right?
A. At that time, there was a collaboration of that nature. Yes.
Q. And those plans that reduced the black population to benefit white Democrats for the House were precleared by the Department of Justice; right?
A. Yes.
Q. And so are you taking a position on whether the reduction of majority black districts in the House plan was a good thing or a bad thing?
A. I think the takeaway -- or one of the key

takeaways from this in this cycle is that at times, members of the Black Caucus have seen it to their benefit to work with one party or another. But if we look back at the full picture, one of the constants is the manipulation of black voters and the manipulation of black voter population. So to me, that is one of the key takeaways from this discussion here.

Q. So is it your view that the Black Caucus has allied -- I guess, switched allegiances as needed for political benefits over different redistricting cycles?

A. I would say that's fair.

Q. So in the 2001 cycle, the Black Caucus decided that the best political benefit was to elect more Democrats as opposed to having more majority black districts. Is that fair?

MR. DAVIS: Objection. You may answer.

THE WITNESS: I think they would have liked to have seen primarily the election of -- or primarily more black districts. But, of course, at that time, given where they thought their lot was best cast, that involved some kind of deal-making with white Democrats at that moment.

BY MR. TYSON:

Q. And you'd agree that the House map at least accomplished its goal because in the 2002 elections, Democrats maintained control of the Georgia House of Representatives; right?

A. Yes.

Q. At the bottom of 33, you reference in the second sentence: At the same time, a group of Republicans challenged all three plans in the District Court for the Northern District of Georgia bringing a myriad of claims.

Do you see that?

A. I do.

Q. Do you understand that's -- that's the Larios litigation; is that right?

A. Yes.

Q. And do you understand all the plaintiffs in that case to have been Republicans?

A. I don't recall.

Q. Moving to page 34, second full paragraph, you reference: In the Republican challenge, the Court dismissed most of the claims, and discuss what happened there.

That's referring also to the Larios case; correct?

A. Yes.
Q. And following that litigation, the federal court drew the maps that were ultimately used in the 2004 election; correct?
A. Yes.
Q. And those maps gave Republicans control of the General Assembly; correct?
A. That's correct.
Q. You then reference on the next page the Republican leaders were able to control congressional redistricting.
This was redraw of the plan -- the congressional plan in 2005; is that right?
A. Yes.
Q. And you say the congressional map drew then Congressman Barrow out of his district, but members of Congress don't have to live in their districts in Georgia; right?
A. That's right. Although, it would seemingly make it more difficult to get elected if you were not living in that district.
Q. We have quite a history of people not living in their districts getting elected, so...
A. Indeed. Mr. Ossoff.
Q. He is one. I don't think Congressman

Chambliss ever lived in his district for a while. I know Congressman Scott hasn't lived in his district for a while.

I'm sorry. Getting off on a tangent there.

You'd agree that Congressman Barrow continued winning that seat after the redraw in 2005; right?

A. At least once, yes.

Q. And the 2005 congressional map as drawn by the Republicans eliminated what was referred to as the "dead cat," District 13; is that right?

A. It did.

Q. Are you saying that Georgia's congressional redistricting effort 2005 was racially motivated?

A. I consider it part of this mosaic in that regard.

Q. So there was at least some racial element involved, but it's part of a larger story you're telling; is that --

A. I think that's fair.

Q. So in terms of your report, do you feel you need to see the entire report in context to look at this mosaic you're discussing? You can't single out particular issues like, for example, the 2005 congressional redistricting?

A. Yeah. I think that -- not that any portion of the report doesn't stand on its own and in terms of veracity. But, I mean, of course, this inquiry is structured in the way that it is to allow us to provide the broadest picture possible.

Q. Do you know if there were ever any legal challenges to the 2005 congressional redistricting in Georgia?

A. I don't believe so.

Q. So then we move to the next section on Section 5 objections and pieces of litigation from the 2000s.

And you discuss the city of Albany plan there on page 35; is that right?

A. Where is that? Oh, I'm sorry. At the very beginning of the section?

Q. Yes.

A. Yes.

Q. And do you know if that plan for the city of Albany was drawn by the City or by the General Assembly?

A. I would say it was drawn by the officials of the city.

Q. And that was the plan drawn by the officials of the city that the Department of Justice objected

to; right?
A. Correct.
Q. Moving to the next page, you discuss what's called the Schwier litigation, S-C-H-W-I-E-R; is that right?
A. Yes.
Q. And did the Schwier litigation involve any racial components?
A. This is at the bottom of 36?
Q. Yes.
A. And this involves HAVA, H-A-V-A, and the Social Security Number requirement?
Q. (Counsel nods head affirmatively.)
A. So that's not directly a racial issue, per se, in terms of the actual findings, I suppose. But any time we see any kind of requirements that make it more difficult for people to vote, typically, that's going to fall disproportionally on voters of color.
Q. Is that why you've included the Schwier litigation in this section?
A. That would be one reason. Yes.
Q. What are the other reasons?
A. Well, it looks like, refreshing my memory, these are among the things that were submitted to the Justice Department for Section 5 preclearance and

so -- or, rather, they were not. And so this is something that arguably should have been submitted for preclearance.

Q. Are you aware that Georgia to this day checks citizenship records against Department of -- I'm sorry -- checks voter registration applicants against Department of Driver Services records when a voter registers to vote by mail?

A. Yes.

MR. TYSON: We've been going about an hour, Dr. Bagley. Do you want to take a break at this point or keep going?

THE WITNESS: We can keep going for a little bit longer, I think.

MR. TYSON: That's fine.

BY MR. TYSON:

Q. So in subsection J, you talk about the 2010 redistricting cycle; is that right?

A. Yes.

Q. And one of the comments you make in 2010: At this point Republicans are in firm control of the General Assembly and the governor's office; right?

A. Yes, sir.

Q. And you say there were no black elected officials in the Republican party either statewide or

in the General Assembly.

Is that referring to the year 2010 and 2011 redistricting?

A. During that general period that was my understanding.

Q. Okay. Are you familiar with former State Representative Willie Talton?

A. Yes.

Q. Do you know if Representative Talton was in office during this time period?

A. I forget exactly his term in office but, yes, around that time. So that would be one...

(Defendant's Exhibit 3 was marked for identification.)

BY MR. TYSON:

Q. So I'm going to hand you what I've marked as Exhibit 3.

Are you familiar with Ballotpedia as a resource online?

A. No, I am.

Q. And this represents that Representative Talton was a former republican member of the Georgia House from 2005 to 2015; correct?

A. Indeed.

Q. And Representative Talton is a black

Republican; right?
A. He is.
Q. So when your report says there were no black Republicans in the General Assembly, that's not correct; is it?
A. I forgot about Mr. Talton. Yes. That would be one black Republican, yes.
Q. You next note that the congressional map increased the number of majority black districts in the four districts of black incumbents above 50 percent for the first time in that second paragraph; right?
A. Yes.
Q. And I know in the '90 cycle, we had districts going up in percentage. In the 2000 cycle we had districts going down in the black percentage.
Are you taking a position on whether raising the number of registered black voters in the four districts of black incumbents above 50 percent was a good thing or a bad thing?
MR. DAVIS: Objection. You may answer.
THE WITNESS: It's something to consider.
BY MR. TYSON:
Q. And what do you mean "it's something to

consider"?

A. I mean that this is among the things that people at the time would have raised a red flag about, that it is potentially packing those districts.

Q. And so it's your belief that raising districts above 50 percent, black voter registration, is packing or can be?

A. It depends --

MR. DAVIS: Objection to the extent that calls for a legal conclusion, but you may answer.

THE WITNESS: It depends. I don't myself perform racially polarized voting analyses. But if one were to do that, you would then determine what would be a viable number for minority candidates to elect a candidate of their choice.

BY MR. TYSON:

Q. Now, you'd agree that in the 2011 cycle, the House, Senate and congressional plans were precleared by the Department of Justice on the first attempt; right?

A. They were.

Q. And that was the first time since the Voting

Rights Act was passed in 1965 that all three of Georgia's redistricting plans were approved on the first attempt; right?

A. Yes.

Q. And 2011 was also the first time Republicans drew the House, Senate and congressional plans for Georgia; right?

A. Indeed.

Q. Moving over to page 39, you say: In 2015, after Shelby County versus Holder ended the preclearance requirement and the General Assembly passed a redistricting plan -- and this was a mid-decade redistricting involving the change in a few districts; correct?

A. Correct.

Q. And you're not saying Shelby County was decided in 2015. You're saying the lawsuit was filed in 2015?

A. That's correct.

Q. And you'd agree that the 2015 litigation you reference here never resulted in a court order finding that those changes in the 2015 map to be illegal; right?

A. Right. I believe that was voluntarily dismissed.

Q. And it was voluntarily dismissed after Democrats won both of the challenged seats?
A. Correct.
Q. And are you aware that -- or are you aware if there was ever any court order finding any of the plans drawn by Republicans statewide in the 2011 cycle to be unlawful or unconstitutional?
A. No.
Q. So you're not aware or were there no such orders?
A. There were no such orders that I'm aware of.
Q. Down on the bottom of page 40 you reference a program for then Secretary of State Brian Kemp removing voters from the voter registration rolls; right?
A. Yes.
Q. And you're aware that that system was upheld in the Fair Fight Action litigation against both constitutional and other legal challenges; right?
A. Yes.
Q. You also reference Senate Bill 202.
Are you saying that Senate Bill 202 is intentionally racially discriminatory?
MR. DAVIS: Objection to the extent it calls for a legal conclusion, but you may

answer.

THE WITNESS: I understand that those lawsuits are ongoing, so we shall see.

BY MR. TYSON:

Q. Do you have a personal view on whether SB 202 was racially --

A. I haven't performed an analysis on that, so I could not give a full professional opinion at this time.

Q. Do you consider personally the 2022 elections in Georgia to have been run successfully?

A. I would ask --

MR. DAVIS: Objection. You may answer.

THE WITNESS: How do you mean "successfully"?

BY MR. TYSON:

Q. Were there -- were voters prevented from voting -- or do you know if voters were prevented from voting by the provisions of Senate Bill 202 in the 2022 elections?

A. I could not give you a professional opinion on that at this time.

Q. Do you have any reason to doubt the trustworthiness of the 2022 election results in Georgia?

A. The trustworthiness, no.
Q. Moving to your conclusion section, it's correct that in your view, it doesn't matter which party is in power in Georgia because black citizens have been used by both parties as part of the political process. Is that fair to say?
MR. DAVIS: Objection to form. You may answer.
THE WITNESS: I believe that there -- that black citizens have had to struggle for -- that I believe that regardless of the party in power, black citizens have had to struggle for their full participation in the process.
BY MR. TYSON:
Q. And so in your analysis, it doesn't matter whether district maps were drawn by Democrats in 1990 or Republicans in 2021 because in both cases black citizens were being adversely affected in that process?
A. I think that's what you hear resoundingly from the people who have come forward during this cycle at the town halls and the hearings, including the very brief period of time after the maps were published is that they still feel that they are being

1 unduly manipulated in the process.
2 Q. And my question is: Is that also your
3 opinion? I understand that you saw that expressed in
4 the public meetings.
5 Is that the opinion you're offering in this
6 case?
7 A. Yes.
8 Q. You say in this conclusion section: There
9 are almost no black Republicans in Georgia; right?
10 A. In terms of elected officials, yes.
11 Q. And you're aware that Georgia has a
12 statewide elected Latino Republican?
13 A. Yes.
14 Q. And you're aware that Fitz Johnson is a
15 black Republican who serves in the statewide Office
16 of Public Service Commission; right?
17 A. Yes.
18 Q. And you're aware that Herschel Walker was a
19 black Republican who won the statewide primary and
20 was the nominee against Senator Warnock in 2022;
21 right?
22 A. Yes. Although he would not be, as with the
23 case of, perhaps, the others -- I don't know -- but
24 not the candidate of choice of black voters.
25 Q. And you conducted no analysis of candidates

of choice of black voters in Georgia; right?
A. Not systemically, no.
Q. Is it your belief that Democrats are usually or always the candidate of choice of black voters in Georgia?
MR. DAVIS: Objection to form. You may answer.
THE WITNESS: Not necessarily.
BY MR. TYSON:
Q. Do you have examples of Republicans who are candidates of choice of black voters in Georgia?
A. Not off the top of my head.
Q. And so in your statement that there's no republican black elected officials in the General Assembly or statewide, that's only because Herschel Walker lost his race to Senator Warnock; right?
A. That would be one reason.
Q. And an injunction prevented Commissioner Johnson from running statewide in 2022 --
A. Right.
Q. You also reference that the Republican party in terms of elected officials in the state is not only almost exclusively white but also largely male.
Are you aware of Republican women in leadership positions in the General Assembly?

A. Yes, including Chairwoman Rich.
(Reporter asks for clarification.)
BY MR. TYSON:
Q. And you're aware the speaker pro tem of the Georgia House is a Republican woman?
A. Yes. Jones.
Q. And you're aware that the chair of the Public Service Commission is a statewide elected Republican woman?
A. Right.
Q. You then reference Republicans in the General Assembly routinely invoked the Democrats' abuse of power in the 2001 redistricting cycle as an excuse for their own potential abuse of power in the current cycle.
Are you opining that the 2021 maps were an abuse of power?
A. What I mean there is that when they are confronted by members of the public at the town halls at the public hearings, these people are expressing their opinion that these same sort of things are occurring. And the response from leadership very often to those comments was, well, the Democrats did it in 2001.
Q. And so is it your opinion that the 2021

1 redistricting maps in Georgia were an abuse of power
2 by Republican legislatures?
3 A. I couldn't say that outright. No.
4 Q. And you'd agree that in Georgia, race and
5 politics tends to be coextensive; right?
6 MR. DAVIS: Objection. You may answer.
7 THE WITNESS: I'm not sure I would say
8 "coextensive." Obviously, as a historian, I
9 appreciate that they are deeply intertwined
10 historically. So, yeah, I...
11 BY MR. TYSON:
12 Q. Do you believe it's possible to separate
13 racial goals from political goals by elected
14 officials in Georgia?
15 A. Could you restate?
16 Q. Yeah. Do you believe that it's possible to
17 determine if a legislator is motivated by
18 partisanship or by racial goals?
19 A. It's difficult to get into the heart or the
20 mind of anyone, particularly a specific legislator.
21 And, again, as a historian, you appreciate that,
22 historically speaking, race and politics in a state
23 like Georgia have a very long history.
24 In an inquiry like this, however, you
25 consider political motivations. You consider

1 potential racial motivations. And I think it is
2 possible at the end of the day to separate those out.
3 Q. And do you have a particular method by which
4 you're separating out political motivations and
5 racial motivations in this report?
6 A. Sure. And I think it goes back to the
7 Arlington Heights framework. And we look at what the
8 Court is asking us to examine under that framework.
9 And for me, of course, it begins with the
10 history. And so if you are considering a potential
11 strictly political motivation, you ask yourself: Is
12 there a history in Georgia of, say, political
13 gerrymandering completely irrespective of race? And
14 the answer is, of course, no.
15 At the same time: Is there this very robust
16 history of manipulation of the electoral process to
17 the detriment of black voters? And that involves
18 both political parties in the state, historically
19 speaking.
20 And so the weight of history from the
21 beginning is largely on this -- and that's only one
22 component of it. Right?
23 So then we look at the process and do we see
24 people of color and their allies routinely throughout
25 the process saying, We believe there are racial

1 motivations here that are acting to our detriment.
2 Does that continue after the maps have been
3 published? Yes.
4 And then finally, if lawmakers, in this
5 case, and the leadership were motivated strictly by
6 politics, then the process afforded them the ability
7 to say that. In my review of the process, I don't
8 recall a lot of times anyone saying, Well, you know,
9 this is -- this is a political gerrymander, which
10 would be perfectly acceptable as many of the people
11 involved in the process, including members of the
12 public, understand is -- under the current juris
13 prudence is -- would pass muster.
14 So those are among the things that I
15 consider if I'm trying to weigh if this is just
16 straight politics or not, if that answers your
17 question.
18 Q. That helps. So you mention one of the
19 factors being people of color and allies saying that
20 these particular actions are to the detriment of
21 their political views.
22 In a state where people of color are largely
23 of one political party that is not Republican, how do
24 you then determine that a statement of detriment to a
25 particular racial group is not motivated by detriment

to the political interest of most of the members of that racial group?

A. Sure. Well, first, they're not necessarily just saying this is detrimental to, you know, my politics and, you know, what I consider good lawmaking or legislation. I think what you hear is, We believe that you are manipulating black, brown and Asian American voters in the process.

So in their mind, it's not, sort of, what you would call a lack of responsiveness on the part of lawmakers. It's the process itself that they're targeting as well.

Q. So in the process itself there, it refers, I'm assuming, to the maps themselves?

A. Right.

Q. So is it fair to say that your opinion in this section is in that last -- almost last part of the conclusion: Black voters have been the pawns manipulated since the enactment of the VRA gave them the true right to vote. The party in power and the degree of racial polarization are the only things that have changed.

Is it fair to say that's, kind of, your opinion in Section 4 of your report?

A. Yes.

Q. And when you say the degree of racial polarization has changed, you'd agree that racial polarization has increased since the '90s in Georgia; right?

A. That's probably fair to say.

Q. You'd agree that partisan polarization has also increased in Georgia since the 1990s?

A. Right.

Q. So let's move next to the sequence of events for the 2021 redistricting cycle.

And in the first bullet there, you say that: The public was critical -- widely critical, I'm sorry, of holding the meetings before the release of the census data and the publication of the maps.

Do you know if any town hall meetings in Georgia were held in the 2001 or 2011 redistricting cycles after maps were published?

A. I don't believe so.

Q. And so it wasn't unusual for Georgia to hold town hall meetings prior to the publication of maps based on prior redistricting cycles; right?

A. Based on prior redistricting cycles, yeah, that's the way it was done before.

Q. And you reference calls for a more transparent process.

What do you take a more transparent process to mean from those public comments?

A. That was the number one concern. That was voiced by people over and over at the town halls and at the, you know, publicly opened committee hearings.

And from what I understand people's concerns to be was that not only is the process of actual map drawing occurring behind the scenes, as it were, but that in their view, rushing through the process once the actual maps in terms of the versions that were actually enacted were put forward was a deliberate attempt to truncate feedback on those.

And so those were among the things that they would be concerned about when they are saying that we want a more transparent process.

Q. And the word "truncate" would, to me, necessarily imply a shorter timeline?

A. Right.

Q. You next -- the next bullet at the top of 42, you reference that the Republican members of the committee wanted more of a dialogue than a one-way street of taking community comments at hearings; right?

A. Yes.

Q. Do you know if the hearings that were held

in 2001 and 2011 were also a one-way street of taking community comment without dialogue?

A. They were.

Q. So the 2021 cycle utilized the same process for the town halls themselves, in terms of taking testimony, as was used in 2001 and 2011; right?

A. Right. And so people continued to express their frustration with that as before, yeah.

Q. The next bullet references that the members of the public asking for hearings to be held in the most populous areas of the state where they should have been. Do you see that?

A. I do.

Q. And why should they have been held in the most populous areas of the state?

A. According to people who raised those concerns, if you were really committed to, as I believe the committee set forth in their press releases and guidelines, hearing from as many people as possible, then it would stand to reason that you would want to hold those hearings where they were the most accessible to the most amount of people.

Q. Did you review where prior redistricting cycle public hearings were held across the state?

A. Yes. Although, I couldn't recount to you

right now each and every location of the past two cycles.

Q. Were the locations of the hearings in 2021 similar to the locations where hearings were held in 2001 and 2011?

A. Again, I'm having a hard time recalling exactly where all they were held in the last cycle, but it's possible that it's roughly analogous.

I think among the concerns that people of this particular cycle would be -- for example, obviously Metropolitan Atlanta is where the vast majority of population is in the state of Georgia. Yes, the committee held -- excuse me -- two hearings at the capital in downtown. And I believe the only other one in Metro was in Forsyth.

And so I think people expressed their frustration. I don't have to tell you how hard it is to get down the connector and get downtown from far flung parts of the Metro, conversely, to get up 400 to Forsyth.

So I think they would have liked to have seen hearings in Cobb, here where we are in DeKalb and Gwinnett, possibly even in Rockdale, Douglas, Henry and so on.

And then others were concerned, for example,

you have a large city like Savannah, Chatham, where there was no hearings held. So these were among the concerns that people had in that regard.

Q. Do you believe the committee should have held fewer hearings in rural Georgia and more hearings in Metropolitan Atlanta?

A. That was a concern expressed by people. Although, I don't know that they necessarily were critical of the hearings that were held in more rural areas just that they would have liked to have seen additional hearings within the Metro...

Q. And --

A. I'm sorry. For example, there's a guy who comes to mind that drove down to -- I don't know if it was the hearing held in the Macon area or another one that was in south Georgia somewhere and said, I just heard about this. I didn't hear about the two hearings at the capital. And he had come down from Stone Mountain, for example.

So, you know, for a guy like that, a hearing in DeKalb or even in southeast Gwinnett would have been preferable.

Q. And you referenced in response to my question what people were asking for.

In this section of your report, is it fair

to say you're reporting what people asked for instead of offering your own opinions about the process?

A. I am reporting what people have said in large part in this portion. Although, it's part of performing my own opinion in the broader report.

And so when I see a chorus of views or a view to me that continues throughout this process even after maps are published and that dovetails with the other pieces of the report, then that rises to me to a level of significance.

Q. So would it be fair to say that Section 5 of your report, you're not offering opinions, but you're explaining the parts of the process that helped form your opinions in the case?

A. That's fair.

Q. Next paragraph on 42, you reference the public's concerns regarding the nature of the town hall hearings. And then as a hyphen, they're being held before data and maps were published and the input only format constitute procedural departures from, if not past practice, then certainly from the mass of the public -- what the mass of the public viewed as best practices and good governance; right?

A. Yes.

Q. And we discussed, since the town hall format

1 was identical to the 2001 and 2011 hearings and the
2 timing before maps were introduced was the same as
3 the 2001 and 2011 hearings, you'd agree that the 2021
4 hearings were consistent with past practice in
5 Georgia; right?
6 A. Yes. And that wasn't necessarily the public
7 coming forth and saying, Why are you doing it
8 differently? It's saying, We still don't understand
9 why it's being done this way.
10 Q. You also say that the committee ignored the
11 vast majority of the input at that end of that
12 section; is that right?
13 A. Yes.
14 Q. And so what methodology did you use to
15 determine that the committee ignored the vast
16 majority of the input from the public?
17 A. None of that in terms of what we see moving
18 forward in this process -- well, it does not appear
19 that their commentary was taken to heart in terms of
20 any actual changes to the process.
21 For example, multiple people said, This
22 turnaround after the maps have been published is far,
23 far too short. Give us two weeks. Give us a week.
24 Give us whatever amount of time to analyze these
25 plans, to offer feedback on the plans themselves, on

1 the actual maps as opposed to just giving you input
2 on communities of interest, for example. And that
3 kind of feedback was not acted upon.
4 Q. So when you referring to ignoring a vast
5 majority of the input here on page 42, that's the
6 input about how the process should be conducted, not
7 input about the maps; right?
8 A. Well, there actually was very little input
9 in terms of -- well, I won't say "very little."
10 There was comparatively little input in terms of line
11 drawing. Although, there was that as well. And I
12 think some of that was ignored, too, in terms of
13 specific communities saying, Don't put us here, put
14 us there, so...
15 Q. So that goes back to my question. In term
16 of -- what methodology did you use to determine that
17 input about specific line drawings is not reflected
18 on the enacted plans?
19 A. Well, again, I would say that most of the
20 feedback here is not about specific line drawing.
21 Most of it is about the process.
22 And so even though these hearings are, you
23 know, purportedly held to glean this mass of
24 information about communities of interest and where
25 lines ought to be drawn, that's -- there's not a lot

of that feedback given.

Q. So, again -- so when you're saying that there is ignored the vast majority of the input that was the committee's action, you're saying that's primarily input about the process and some input about the lines themselves but that there was very little input on the lines themselves?

A. Right.

Q. And what methodology did you use to determine that the little input on the lines themselves were ignored in the enacted plans?

A. I didn't analyze systemically the maps themselves as a political scientist would. I performed more of a -- a delicate analysis in that regard. What I can tell you is that people continued to come forward with the exact same concerns once the maps were published.

MR. TYSON: We're at the hour and-a-half mark. This might be a good time to -- let's take a break --

THE WITNESS: Okay. Sure.

THE VIDEOGRAPHER: Off the video record at 11:32 a.m.

(Recess from 11:32 a.m. to 11:44 a.m.)

THE VIDEOGRAPHER: Back on the video

record at 11:44 a.m.

BY MR. TYSON:

Q. Dr. Bagley, we're going to keep working through your report here. Page 42 talks about the committees and who all was involved in the 2021 redistricting process.

And you'd agree that both the House and Senate committees included Democrats and individuals of color; right?

A. Yes.

Q. You're aware that the census data in 2021 for redistricting was delayed from its normal release from other decennial censuses; right?

A. It was.

Q. And you say in the middle of page 43: Leadership insisted that the delay in obtaining census data was going to truncate the process.

Do you see that?

A. I do.

Q. And so you'd agree that the legislative leadership was clear about the fact that the census timeline was going to affect the redistricting process in 2021; right?

A. Yes. I think everyone understood that was going to be the case to a degree.

Q. When you reviewed the public input that was provided in the various town hall meetings, did you observe how much of the public input was provided by groups that are now suing the state over its redistricting maps?

A. There were some individuals representing those groups. Yes.

Q. Have you viewed the video that was created by the legislative and congressional Reapportionment Office that was shown at the vid- -- beginning of each town hall meeting?

A. I have.

Q. And did you find that video to be accurate?

A. I don't recall everything that was in there, but I don't -- I don't think there was anything in there I would characterize as inaccurate. No.

Q. So let's work our way through the various discussions of the different meetings.

So for the Atlanta meeting on June the 15th, that was the first town hall meeting; right?

A. Yes.

Q. And the first individual we talk about on page 44 is Mr. Lawler from the Fair Districts Project?

A. Right.

Q. And you say that he shared his view -- at the end of that paragraph -- that the assembly had backed off of this effort in 2017 because of a federal lawsuit.

That's not correct; is it?

A. That was the suite that we discussed earlier that was dismissed.

Q. And so Mr. Lawler's view that the General Assembly changed its effort in 2017 because of that lawsuit aren't accurate; right?

A. Not exactly.

Q. Okay. How are they accurate?

A. In that he's pointing out that there was a challenge made to the districting in Henry in 2015.

Q. Is that the only accurate piece about his view of the motivation of the General Assembly?

A. That's the penultimate sentence. Yes.

Q. Now you, obviously, through here have selected several different speakers that spoke at this hearing.

You didn't summarize every single individual who testified at the hearing; right?

A. Not every single one. Although, I think I came relatively close.

Q. Did you use a particular methodology to

1 determine whose comments you'd report and whose
2 comments you wouldn't?
3 A. I tried to focus on those individuals whose
4 commentary was reflective of the massive commentary.
5 Although, I certainly didn't leave out individuals
6 with different views and tried to be as exhaustive as
7 possible.
8 Q. Do you include comments from individuals who
9 supported the redistricting process?
10 A. There really weren't hardly any of those
11 individuals, but I did not exclude anyone on that
12 basis.
13 Q. And in this section about the Atlanta
14 hearing, you're not offering any opinions. You're
15 just summarizing what happened at the hearing.
16 Is that fair?
17 A. This would come back to what we talked about
18 earlier in that I'm summarizing this information, but
19 it, as a whole, informs my opinion.
20 Q. So that would be true of all the summaries
21 of the public hearings up through the end of this
22 section of your report on page 56 --
23 A. Yes.
24 Q. -- correct?
25 You're aware that Chairman Rich urged all

1 members to meet with her before the special session
2 about their redistricting maps; right?
3 A. She did say that. Yes.
4 Q. Do you know if any democratic members of the
5 General Assembly met with her?
6 A. I believe she referenced at one point that
7 some had. Yes.
8 Q. Turning to Section E on page 51, you
9 reference comments from Ms. Fountain with the ACLU
10 and Ms. Franklin with Common Cause Georgia; right?
11 A. Yes.
12 Q. And you're aware that Common Cause is suing
13 the State?
14 A. I am.
15 Q. And you're aware that the ACLU is
16 representing groups that are suing the State over the
17 redistricting plans?
18 A. Yes.
19 Q. Did you conduct any analysis of whether
20 those groups provided comments in order to set up
21 these lawsuits?
22 A. All I was able to review -- and given what I
23 was asked to do -- are these -- is this testimony, so
24 I didn't, for example, go interview Ms. Fountain or
25 Ms. Franklin.

1 And I would add that these are not the only
2 individuals. Yes, there are individuals from groups
3 who are engaged in litigation currently, but there
4 are plenty of other people who spoke up with the same
5 concerns.
6 Q. Turning over to page 54, you reference
7 comments from -- at the end of -- right before the
8 Augusta section, at the end of the Macon section:
9 Cathy Cox, the dean of Mercer Law School.
10 A. Yes.
11 Q. You'd agree. Ms. Cox wasn't a plaintiff in
12 the Larios case; she was the defendant in that
13 case --
14 A. Ah, yes. That's an error.
15 Q. And she was the one defending the 2001 plans
16 in that litigation?
17 A. Correct.
18 Q. Going down to the Augusta hearing, you
19 discuss at the bottom of page 54 but at the top of 55
20 an individual named Carlton Howard.
21 And Mr. Howard urged the committee not to
22 include black people in Augusta with surrounding
23 rural white counties; right?
24 A. Let me skim that paragraph.
25 MR. TYSON: Sure.

(Witness reviews document.)
THE WITNESS: Okay.
BY MR. TYSON:
Q. So do you agree Mr. Howard was urging the committee not to include the voices of black people in Augusta with surrounding rural white counties in drawing districts?
A. Yes.
Q. And do you know if the legislature followed that guidance in the drawing of the redistricting plans?
A. In terms of congressional House and Senate, I can't recall specifically as to all three in that -- that -- in the drawing of those districts. It is possible that some of those are self-contained. Yes.
Q. And Ms. Brown with the League of Women Voters is the next individual you reference?
A. Yes.
Q. And the League of Women Voters is also a plaintiff in the lawsuit against the State about redistricting?
A. Yes.
Q. And skip over a paragraph to Mr. Lofton with Alpha Phi Alpha Fraternity, Incorporated. And Alpha

1 Phi Alpha Fraternity is also a plaintiff in the
2 redistricting lawsuits against the State; right?
3 A. Correct.
4 Q. So let's move to Section No. 6: Sequence of
5 events, the legislative history.
6 And you indicate that you have reviewed the
7 public legislative history. Can you tell me what you
8 looked at to review the public legislative history?
9 A. The General Assembly has videoed these
10 committee hearings published online.
11 Q. And did you review the timeline of
12 introduction of bills to the conclusion of the bills?
13 A. The timeline? Could you be more specific?
14 Q. So did you review publicly available
15 information about when bills were introduced, when
16 votes were taken and when they were sent to the
17 governor?
18 A. I believe so.
19 Q. And so in this section you say you were able
20 to review pleas and concerns that reflect what the
21 public and certain members of the Assembly had
22 already expressed in the committee meetings and town
23 halls.
24 In this section of your report, are you also
25 reporting your review of what happened or are you

1 offering opinions about the process?
2 A. Similarly to before, this is a review of the
3 process that itself informs my broader opinion.
4 Q. In this section, specifically, you're just
5 reporting your view of the process, not offering any
6 opinions; right?
7 A. Again, it informs my opinion, but yes.
8 Q. Moving to the paragraph after the bulleted
9 list on page 57, you say: Ignoring the calls for
10 transparency and time constitutes a substantive
11 departure insofar as the committee claims to be
12 deeply concerned with obtaining public input. And
13 these are the top -- top two concerns and they
14 favored a different decision than the one ultimately
15 made to ignore that input.
16 Do you see that?
17 A. I do.
18 Q. And when you're saying that the committee
19 ignored the calls and that was a substantive
20 departure, you're not saying it was a departure from
21 the process used in prior redistricting in Georgia;
22 right?
23 A. No. I'm saying that the committee in its
24 own guidelines insist that it's deeply concerned with
25 obtaining public input and then turns around and, in

my review of the process, seems to not act upon the major issues that were conveyed by way of that input.

Q. The next sentence says using the 2001 process as an excuse for elements of the current process is both a procedural and substantive departure.

Did I read that right?

A. Yes.

Q. So what do you mean by using the 2001 process as an excuse?

A. There were times where -- well, there were many, many times people repeatedly saying, Why can't with we have more time, particularly post-publication of maps to analyze these plans, review these plans, provide feedback on these plans.

And Chairman Kennedy, in particular, but others would say, Well, this is analogous to the way the Democrats did it in 2001, or at one point says, Well, I look back and wouldn't you know it, there was a vote held within three days, or whatever it may have been.

And yet it -- there seems to be nothing that would commit the committee to, you know, fashion its process in that way based upon that.

Q. And so when you say in this sentence that

1 using the 2001 process is both a procedural and
2 substantive departure, what do you mean by a
3 procedural and substantive departure?
4 A. So, substantively, there's, again, nothing
5 in the guidelines that would con- -- again, constrain
6 the committee or the assembly to strictly fashion its
7 behavior based upon previous cycles, which is a
8 procedural issue, as well, of course.
9 Q. But you'd agree that the 2001, 2011 and 2021
10 processes were all procedurally similar; right?
11 A. In major elements of the process, yes.
12 Q. And were they substantively similar across
13 those three cycles, as well?
14 A. Yes. So when I say substantively and
15 procedurally, it's not necessarily in comparison to
16 previous cycles.
17 Q. So a departure isn't a departure from
18 previous cycles; right?
19 A. Not necessarily, right.
20 Q. What is it a departure from?
21 A. It's a departure from what the committee
22 itself purports to be holding itself to, which is to
23 receive and act upon public input and not necessarily
24 to be bound by the strictures of previous cycles.
25 Q. So let's work through process here.

So you reference the call of the special session on September 23rd, 2021. Do you know if the governor's call in 2021 was substantively or procedurally different from the call for the 2011 redistricting session?

A. I don't believe so.

Q. Did you review the 2011 or 2021 calls?

A. I'm not sure if I read that particular -- or either of those particular calls. Possibly at some point.

MR. TYSON: I'll show you what I'll mark as Exhibit 4.

(Defendant's Exhibit 4 was marked for identification.)

BY MR. TYSON:

Q. I represent that this is a call for the special session in 2021.

Did you review this document at any point in the preparation of your report?

A. Not this document specifically, no. I'm aware of the governor's call and press coverage, thereof, but not specifically the proclamation itself.

MR. TYSON: Let me hand you what I'll mark as Exhibit 5.

(Defendant's Exhibit 5 was marked for identification.)

BY MR. TYSON:

Q. This is the call for the 2011 special session.

Did you review the call for the 2011 special session in analyzing or preparing your report at all?

A. Not this specific proclamation, no.

Q. You're aware that the committees both held committee education days on August the 30th prior to the special session; right?

A. Yes.

Q. And have you watched that video?

A. Yes. I did.

Q. And you're aware that a variety of different groups spoke to the committee and presented their view of redistricting?

A. That's right.

Q. Are you aware that the House committee adopted its redistricting guidelines following that August 30th meeting?

A. I believe that's correct. It would be in the report somewhere.

Q. And the Senate committee had a meeting on August 30th about the guidelines, but are you aware

they were unable to adopt the guidelines because they were out of session and, thus, prohibited from doing so by Senate rules?

A. Yes. I believe Senator Kennedy at one point refers to they're being unofficially adopted at one time and then subsequently officially adopted.

Q. And so the committee guidelines were adopted well before there was any release of any maps and in close proximity to the census data release; right?

A. Right.

Q. Are you aware that the Georgia Legislative Black Caucus held its on public hearings before the special session?

A. I am.

Q. And are you aware that the Georgia Legislative Black Caucus refused to share what it learned with the House and Senate reapportionment committees?

A. I remember this coming up during the various meetings and hearings, that they had decided to keep that internal with their -- their -- with experts of their own that they had retained.

Q. Have you been able to review any of the Georgia Legislative Black Caucus' public hearings?

A. I have not been able to see that. No.

Q. So in Section C you, cover the November 4th, 2021 hearing. And like the other sections we've talked about, you're not offering opinions in this report -- this section. You're summarizing the meeting, but it hasn't had some bearing on your ultimate opinion; right?

A. That's correct.

Q. And you'd agree that the Senate committee took public comment at this meeting on November 4th; right?

A. They did.

Q. And that was after districts were released; right?

A. Let me see.

Yeah. This is immediately thereafter.

Q. And at the end of this meeting, page 62, Democratic Leader Butler asked the chairman to postpone a meeting for tomorrow before the presentation of her map; right?

A. Yes.

Q. And the chair advised her that the map was going to -- the meeting was going to go forward tomorrow and she could present her map at that point; right?

A. Right.

Q. So leading into Section D, November 5th meeting. This is the meeting where Democratic Leader Butler was able to present the democratic Senate plan; correct?

A. That's correct.

Q. And just ask kind of a -- so I don't have to ask this after each section.

For the entirety of this section through page No. 84 where you're providing the narrative around the different meetings, this is like the prior sections where you're recounting what happened, not offering any opinions in those sections, but the facts of what happened influenced your opinions; is that right?

A. This is the sort of meat, if you will, that is part of the basis of my overall opinions.

Q. So in this section, are you offering -- from pages 63 to 84, any opinions or is this just the meat of what makes up your opinions?

A. It would be the basis for my opinions.

Q. So not offering opinions, but it is the basis for -- part of the basis for your opinions?

A. Right.

MR. DAVIS: Objection. Asked and answered, but you may answer.

BY MR. TYSON:

Q. So in this November 5th Senate committee meeting, Leader Butler answered questions about her proposal like Senator Kennedy had the opportunity to answer questions about his proposal for district maps; right?

A. Yes.

Q. And you'd agree that the committee, again, took public comments at this meeting; right?

A. They did.

Q. And at the end, there was no motion about the democratic Senate map; correct?

A. That is correct. At that time, yes.

Q. And then Senator Kennedy's bill was passed out of committee by a nine-four vote?

A. Right.

Q. And when you say, All black members voted against the bill, that's the same as saying all Democrats in the committee voted against it; right?

A. Yes. In this particular committee, yes.

Q. So in Section E, you then have a November 5th meeting of the House committee where Chairman Rich presented the majority State House plan and Democratic Leader Beverly presented the democratic caucus' plan; right?

A. Right.
Q. And so you'd agree the democratic leader was able to present its plan and answer questions about it from the committee; right?
A. Yes. He at that time, yes.
Q. And moving to Section F, November 8 meeting, that was three days later; right?
A. Yes.
Q. And at this meeting, a Republican representative opposed the Republican plan but didn't have his request for changes agreed to by the committee; right?
A. Representative Singleton is to whom you refer?
Q. Yes.
A. Yes.
Q. And so the committee declined to accept Representative Singleton's proposed changes to the map?
A. Correct.
Q. And then public comments was taken at this committee meeting as well; right?
A. There was some. Yes.
Q. And no vote was taken at the conclusion of this meeting?

A. I believe that's correct. Yes.
Q. And you reference the removal of a Ms. Jones from the meeting.
What relevance is that to the redistricting plans and the process that happened here?
A. This woman was extremely upset and had to be removed from the meeting. It just shows you, I guess, the fervor that some people have in their disagreement with the process.
Q. You're not saying Ms. Jones' removal was motivated by racist actions by Chairman Rich --
A. No.
Q. -- are you?
Moving to Section G, this is another meeting of the House committee on November 9th; right?
A. Yes.
Q. And more public commentary was allowed at this meeting as well?
A. Yes.
Q. And -- so you'd agree that in both the House and the Senate committees there were opportunities for public input after draft plans were released; right?
A. Yes. But I think if you listen to what people are saying that a lot of times during this

1 process -- well, not just a lot of times, every time
2 that a map is published, the turnaround is very, very
3 short. So it's not to say that there was zero
4 ability to comment on the maps once they were out.
5 It's that the timeline was far too rushed according
6 to a great number of people.
7 Q. Do you know the cost to the state of Georgia
8 for the General Assembly to be session each day of a
9 special session?
10 A. No.
11 Q. So at the end of this section on page 69,
12 you reference that the majority of the plan was voted
13 out favorably with all black members of the committee
14 voting no; is that right?
15 A. Yes.
16 Q. And that's the same as saying all the
17 Democrats in the House committee voted no; right?
18 A. In this case, yes.
19 Q. When you were summarizing these various
20 committee meetings, did you include every committee
21 meeting that was held by the House and Senate
22 committees during this special session at this -- up
23 to this point?
24 A. I don't believe every single one. There may
25 have been some shorter minor committee meetings that

I didn't review.

Q. Are you familiar with the Georgia General Assembly's website? Have you read it before, I guess I should say?

A. Yes.

(Defendant's Exhibit 6 was marked for identification.)

BY MR. TYSON:

Q. I hand you what's been marked as Exhibit 6. Have you seen this page from the General Assembly's website before?

A. I have.

Q. And is this, to your understanding, a list of all the committee meetings that were held by the House reapportionment committee, in I guess, 2022 back through 2011?

A. That's my understanding.

Q. And the General Assembly was in special session in August of 2011 to draw redistricting maps; is that right?

A. I believe that's correct.

Q. And looking back on the second page, the only committee meetings listed in August were August 16, 2011; August 20 -- 22, 2011; and August 24th and 30th 2011; right?

A. Yes.
Q. Did you as part of your review determine if more or fewer committee meetings were held in the 2021 session than were held in prior redistricting sessions in Georgia?
A. No. And I think what most people are saying is not necessarily based upon the previous cycle.
So it's -- you know, for a lot of people who are upset about the process, it's not necessarily that it deviates or correlates with the previous cycle or not.
Q. As a historian analyzing Arlington Heights factors, do you find how Georgia has previously handled redistricting cycles to be relevant to your consideration?
A. Certainly, it's relevant. Yes.
Q. But you didn't review number and scope of committee meetings from prior committee redistricting special sessions in preparing your report?
A. I would have liked to have gone through all of that, but, you know, even with significantly more time, I don't know that that would have been possible to understand take in a systematic manner.
Q. Just to complete this piece, are you familiar that House and Senate -- or Senate

1 committees maintain minutes of their meetings when
2 they meet?
3 A. Yes.
4 (Defendant's Exhibit 7 was marked for
5 identification.)
6 BY MR. TYSON:
7 Q. I hand you what I've marked as Exhibit 7.
8 I'll represent to you this is a collection of minutes
9 downloaded from the reapportionment -- I mean, the
10 Senate reapportionment or redistricting committee's
11 website covering various meetings held during the
12 2021 special session.
13 And then -- and so similar to the House
14 committee, you didn't cover every meeting of the
15 Senate committee in your summaries in your report; is
16 that right?
17 A. I tried to cover most of them, as many as I
18 could.
19 Q. So when the Senate committee met, for
20 example, on November the 11th, 2021, to consider the
21 House plan, that wasn't a meeting that I saw included
22 in your report except for just one sentence on
23 page 69; is that right?
24 A. On which page?
25 Q. Page 69. There's one reference to the

November 11th Senate committee meeting.

A. Okay.

Q. And you didn't cover that meeting in any more detail than that sentence; right?

A. That certainly would have been something that I reviewed. But, yes, I don't see a specific section on that.

Q. And are you aware that the Senate committee allowed public comment on the House plan before voting on the map on November 11th in that meeting?

A. Yes.

Q. You can set those to the side and move to floor debate.

Section I of your report begins with debate on the floor of the State Senate; right?

A. Yes.

Q. And in terms of the presentation, you didn't summarize Senator Kennedy's presentation of the bill. You only summarized the interactions he had with other senators asking questions. Is that fair to say?

A. That's fair to say. Of course, I remember his going through the plan as with Chairman Rich on the House side. They established, you know, how many county splits are there, increasing the splits and

say this plan complies with the Voting Rights Act and sort of check off all those boxes.

Q. Did Senator Kennedy include discussions of various communities of interest as part of his presentation?

A. I believe so. There are a few.

Q. Are you opining that a floor vote on a Senate plan on November 9th, 2021, was a rushed or truncated process compared to prior redistricting special sessions?

A. Not necessarily compared to prior sessions or cycles.

Q. So what I wanted to do is just walk through some of those prior sessions.

So you're aware that when the General Assembly -- when you pull a bill on the General Assembly's website, it includes a list of events that happened around the passage of that bill; right?

A. Sure.

(Defendant's Exhibit 8 was marked for identification.)

BY MR. TYSON:

Q. I'm going to hand you what I've marked as Defendant's Exhibit 8. And I'll represent to you this is a collection of the bills for the final maps

adopted in the 2001 special sessions for Congress, House and Senate. And they run in reverse order here.

So for the first page on the congressional plan, it was first, when you look at the bottom there, read and referred on the 22nd of August 2001? Do you see that on the second page since this is running in reverse order?

A. I see it.

Q. And that was reported out of committee by substitute on August 28th, 2021; right?

A. Correct.

Q. And then, ultimately, Senate passed -- adopted by substitute was on September the 7th, 2001; correct?

A. I see that.

Q. Going to the next set of documents, it's SB1EX1 2001. And that shows an introduction date of August 1st, 2001, read and referred and reported out of committee on August 6th; right?

A. I see that. Yes.

Q. And for the House, introduction of the bill on August 27th, 2001, and reported out of committee on August 28th, 2001; right?

A. Yes.

Q. And for vote on August 29th, 2001; is that right?

A. Yes.

MR. TYSON: I'm going to mark as Exhibit 9 similar reports from the General Assembly's website for the 2011 redistricting cycle.

(Defendant's Exhibit 9 was marked for identification.)

BY MR. TYSON:

Q. And these similarly report where the House first read on August 22nd for the congressional plan in 2011. Reported out of committee on August 24th, 2011, and passed on the House floor on August 25th, 2011; right?

A. Yes.

Q. And for the Senate plan, introduced on August 15th -- or read and referred August 15th, reported out of committee August 17th and passed on the floor of the Senate August 18th, 2011; right?

A. Correct.

Q. And for the House plan, first read on August 15th, reported out of committee August 16th, and passed on the House floor on August 18th, 2011; correct?

A. Correct.

MR. TYSON: And last round here, I'll mark as Exhibit 10.

(Defendant's Exhibit 10 was marked for identification.)

BY MR. TYSON:

Q. Same documents from the 2021 special session.

And for the 2021 special session, we have for congressional introduction on August -- I'm sorry, I mean November the 3rd, reported out of committee November 18th and passed on the Senate floor on November 19th; right?

A. Right.

Q. And for SB1EX, the Senate plan introduction, read and referred on August 3rd, 2021, reported out of committee August 8th, 2021, and passed on the Senate floor on -- I'm sorry -- November 3rd, November 8th and November 9th for passage in 2021; right?

A. Right.

Q. And for the House plan in 2021, we have first read on November 3rd, reported out of committee November 9th and passed on the House floor November 10th, 2021?

A. Right.

Q. So did you review any of that information about the timeline of past redistricting special sessions when you were preparing your report?

A. I'm generally aware of it and it's something I considered. What I will tell you is that I don't, again, think that when people are voicing a lot of these concerns, it's necessarily that they're saying it's a deviation from past practice. I think they would also disagree with that past practice as well.

Q. But you're not opining that the redistricting session in 2021 -- or the process was rushed compared to the prior two redistricting cycles in Georgia; right?

A. Not compared to those two.

Q. At the end of Section -- this is section on page 71, you say: The bill passed 34/21 with no black members voting in favor.

And that was because it was a party line vote; right?

A. There are no current -- well, there were no black members at the time in the other party. Correct.

Q. So all the Republicans voted yes and all the Democrats voted no on the Senate plan?

A. Yes.
Q. Going to subsection J and the floor debate for the House plan, similarly to the Senate plan, you didn't present Representative Rich's presentation of the plan; correct?
A. Right. It's the same sort of rundown as with Senator Kennedy.
Q. At the end after Leader Beverly's speech on page 73, you report that Chairman Rich said that some democratic members had met with her but, apparently, others had been advised not to do so.
Do you know if Democrats were advised not to meet with Senator Rich?
A. I believe some were advised in that way. Yes.
Q. Is that relevant to your assessment of the process if Democratic members refuse to meet with the chair of the committee?
A. It's relevant. Yes.
Q. And does it change any of your conclusions about the process if democratic members refuse to participate in the process?
A. No. In fact, given the sort of totality of these circumstances here, it would indicate to me that, perhaps, they saw it as futile; perhaps, they

didn't feel like it necessarily would be in their interest at that time for whatever reason.

Q. Do you know if either the House or Senate plan included changes requested by democratic members in the final map after the draft was release?

A. In terms of drawing lines, I know there were at least some.

Q. So when democratic members made suggestions, at least in some cases, the Republican majority took those suggestions; right?

A. In some cases, yes.

Q. And there were times when the Republican majority refused Republican requests for changes like Representative Singleton; right?

A. In that one instance. Although, I think in his case, he had run afoul of the late speaker.

Q. Then you say the plan voted on the House floor by a vote of 99 to 79 with no black members voting yes.

You'd agree that no Democrats voted in favor of the plan; right?

A. Yes, sir.

Q. And most of the Republicans voted for the plan; right?

A. Correct.

Q. Then we move to our section on congress. And in the congressional plan, there was a draft plan released in late September shortly after the governor called the special session; is that right?

A. Yes.

Q. And in the meeting you report in Section H: Public comment was, again, allowed on the congressional map; correct?

A. At that -- is this -- let me just skim this very briefly.

MR. TYSON: Certainly. Take your time.

(Witness reviews document.)

THE WITNESS: Yes. So this is -- a new map was published. And then I believe this is only hours before that meeting and then, yes, they took commentary on that new one.

BY MR. TYSON:

Q. And that was a revised draft that bore some similarities of the original draft released in September; right?

A. It was a revised draft. Yes.

Q. Have you reviewed how similar or different the draft was to the plan that was released and discussed in the November 17th meeting?

A. I did. I could not, as I sit here right

now, tell you exactly what was different. But I can tell you that people who spoke at the meeting were under the impression significant differences.

Q. And in Section I, you discuss the House committee meeting to consider the Congressional plan; right?

A. Yes.

Q. And in both this discussion of the November 17th Senate meeting and November 17th House meeting, again, you're recounting what happened there, which informed your opinions but are not offering any opinions; right?

A. This is the basis. This is part of the basis for my overall opinions. Yes.

Q. And in this House meeting on November 17th, the democratic caucus was able to present a congressional redistricting plan through Democratic Leader Beverly; right?

A. Which meeting? I'm sorry, which subsection?

Q. I'm on page 75, subsection I, November 17th House --

A. Oh, yes.

Q. And so Leader Beverly was able to present the democratic proposed congressional plan at that meeting?

A. Right.

Q. And you reference Chairman Rich replying: There's not a magic formula or standard or equation where we find that there are areas where we can draw the voting rights districts and we do that.

Did I quote that correctly?

A. You did.

Q. And you mentioned, I think, earlier in your report comments made about the Voting Rights Act. Is.

This a comment about the Voting Rights Act that is part of your analysis of the redistricting process in Georgia?

MR. DAVIS: Objection to form. You may answer.

THE WITNESS: This comment is significant to me insofar as it -- if racially polarized analysis is done, then there actually is a formula or a standard that would be followed and -- but Representative Rich and Senator Kennedy said repeatedly had conducted such an analysis, but I don't think ever shared the specific results of that and certainly not in the case of individual districts.

BY MR. TYSON:
Q. And so your view of Representative Rich's comment here is that it was not accurate?
MR. DAVIS: Objection to the extent it calls for a legal conclusion, but you may answer.
THE WITNESS: No. I just think in terms of this whole mosaic, I think it's indicative of the kinds of comments you would get from leadership about the Voting Rights Act that are sort of vague and potentially misleading.
BY MR. TYSON:
Q. You're not saying --
A. I'm not saying that Representative Rich doesn't understand the Voting Rights Act.
Q. You're not saying her comment was inaccurate -- let me put it this way -- let me ask this: Why specifically did you include this comment on page 75 of your report?
A. It's just part of the back and forth that, again, I think is indicative of the kinds of exchanges that you see between leadership and others.
Q. Going over to Section J, November 18th, 2021 House committee.

A. Yes.
Q. Again, this was a meeting that allowed public comment on the map; right?
A. Yes. And I can't remember -- this is within a day or two of a plan being published, but yes.
Q. In a second paragraph, you reference a residence of the area of Cobb County named Leroy Hutchins. Do you see that?
A. I do.
Q. Are you aware that Mr. Hutchins is an elected Democrat in Cobb County, Georgia?
A. I was not aware of that, but I would say that's not uncommon for those people to come forward in these meetings.
Q. And there was no vote held on the November 18th House committee meeting; correct?
A. That's correct.
Q. Subsection K, we move to another Senate committee meeting. And you'd agree at this meeting Senator Butler was allowed to present the democratic proposed congressional plan; right?
A. He did.
Q. And I think we've already discussed this. But this is the point where Senator Butler refused to share information from the Legislative Black Caucus'

tour of the state about redistricting; right?
A. I believe it came up. And I don't know that at that time he refused. I think it was noted that that information had not been shared up to that point.
Q. And do you agree the committee took public comment again on the map?
A. Yes. This is the same day as the previous -- or, yes, the same day as the House committee meeting we were just talking about.
Q. And the first individual you reference in the middle of page 77 for public comment is a man named David Garcia?
A. Yes. I see it.
Q. And are you aware that Mr. Garcia works for one of the organizations that's suing the State about its redistricting maps?
A. I am.
Q. And there was ultimately a vote on Leader Butler's plan in the committee meeting; right?
A. That's correct.
Q. And you say the vote was along racial lines, but that's the same thing as saying in this committee, it was along party lines; right?
A. In this -- yes. In this committee, that's

correct.

Q. And then the map Senator Kennedy proposed also passed along party lines; right?

A. Correct.

Q. Subsection K, we move to the floor debate on the congressional plan in the Senate. And, similarly, here you don't present Senator Kennedy's presentation of the plan. You begin with Senator Parent's criticisms of the plan; right?

A. Right. This -- those presentations are kind of pro forma, checking off certain boxes. So it was easier just to summarize that and move forward.

Q. And in looking through this section, the only comment I saw in favor of the plan was the next to the last paragraph where Senator Kennedy responded about the issue.

Did you quote anybody else who spoke in support of the plan?

A. I can tell you I didn't deliberately leave out anyone who spoke in favor of the plan. I can tell you on balance at these floor debates committee meetings and hearings, the vast majority of comments were in opposition.

Q. And then the vote took place. And you'd agree even though it says, No black members voting

aye, that this was a party line vote in favor of the plan; right?

A. It was.

Q. And next we move to a November 20th committee meeting that was held via Zoom; right?

A. Right.

Q. And this was both held on a Saturday and allowed public comment; is that right?

A. Yes. Although, I think a lot of these -- the people that spoke would have characterized it as sort of an 11th-hour meeting, but yes.

Q. And at the end of this meeting when the bill passed through the committee with a favorable vote and no black member voted aye, that's the same as saying it passed on a party line vote for this committee; right?

A. That's correct.

Q. Then Section M, we have the floor debate on the congressional plan.

Do you know if the reapportionment office was close to Leader Beverly in terms of redrawing redistricting maps?

A. I believe they actually went with their map to Ms. Wright in terms of some technical adjustments and that sort of thing at some point.

Q. So the reapportionment office was able to work with Leader Beverly to facility the introduction of his plans?

A. That's a fair characterization in terms of some technical stuff after their plan was created that just sort of brought that in line and helped him in that regard technically.

Q. Do you know if Ms. Wright had worked with Leader Beverly or his staff at all on any other plans apart from the technical review?

A. I'm not sure of the exact details of that interaction.

Q. Going to the middle of page 83, you move to Chairman Rich closing the debate beginning with her concerns about CD6, saying that although it only needed to add 657 people -- and I'm going to summarize, the other districts around it --

A. Yes.

Q. -- needed to be changed; right?

A. Yes.

Q. And have you reviewed the democratic congressional plan?

A. In general, yes.

Q. Are you aware that it significantly redrew District 6, as well?

A. Yes.
Q. And then, ultimately, the vote on page 84 was a party line vote as well; right?
A. That's right.
Q. So it looks to me this is the end of the section on the Arlington Heights analysis because we're moving into Senate Factor 6 on the next page; is that right?
A. Correct.
Q. So what opinions are you offering about Arlington Heights in light of what we've discussed in these prior pages in Sections, I guess, 3 through 6?
A. So that constitutes a review of the process under Arlington Heights. And as I point out in the beginning of that section, it shows to me significant departures in terms of having this flurry of input before and after the maps are published that does not seem to have that addressed.
And so if the committee says they are very concerned with taking in public input -- which they did take in public input at numerous times -- then you would tend to see then, them acting upon that. And to me, you really don't see that with the process.
Q. So are you opining that the specific

sequence of events leading up to the passage of the plans was a departure from the normal procedural sequence used for redistricting in Georgia?

A. I'm not undertaking a systematic comparison of it compared to 2001 or 2010. To me a departure from what you would -- what would be considered substantively, procedurally normal would be taking in public comment. A mass of it weighs one way. And if you were generally concerned with acting upon that, then you would. So in this case, I don't see that that is -- that is what we have.

Q. So the departures in -- that you're referencing in your opinions in this report, reference departures from what the public commentary requested; is that right?

A. That is a large portion of it. Yes.

Q. What is the other portion that's not part of that?

A. Again, if you go back to the beginning of that section, we're talking about this being -- these are not concerns that have come out of nowhere; right? And so these concerns are relevant to me to the history that proceeded this section; right?

And so it's not in and of it departures from what the public would like to see. It's departures

from what the public would like to see in the context of the public having these same concerns in previous decades and not just the last two and specifically members of the public who are people of color.

Q. Is there a connection between the historical account that you gave in Section 3 and Section 4 of your report with the conclusions you're drawing about the redistricting process in 2021?

A. That's kind of what it was just speaking to. Again, these are not concerns that people are bringing up out of the blue that have never been concerns before that have no historical precedence. I think they are speaking to concerns with deep historical roots that you can see in the first section of the report.

Q. You're aware that Georgia in recent history is regularly sued about various voting practices it undertakes; right?

A. Of course.

Q. And you're aware that when this special session occurred in 2021, that there were already multiple lawsuits pending against the State related to Senate Bill 202; right?

A. Yes.

Q. And there was an upcoming trial in the Fair

Fight Action case in the summer of 2022?

A. Right. This is -- that's actually part of the mosaic, that we continue to see voters of color feeling incumbent or necessary to use the court system to achieve what they see as a measure of equity.

Q. So how as a historian do you separate public comments that could be used to set up future litigation from genuine public comments about the process and the maps themselves?

MR. DAVIS: Objection to form. You may answer.

THE WITNESS: So -- so, for example, if I reviewed this process and the only people who were expressing a certain amount of concern or a certain kind of concern were people who were connected to organizations that were engaged in this litigation, that is obviously a red flag.

But, whereas, they are present as you pointed in a number of these hearings, they were not the only ones expressing those concerns.

And so looking at it as a whole, I don't -- I wouldn't come to the same

conclusion where it's only those individuals who are expressing these concerns, if that makes sense.

BY MR. TYSON:

Q. Would it be relevant whether the individuals expressing concerns were engaged in other litigation against the State but not the redistricting litigation?

A. I suppose, although I would imagine it would be litigation like that against SB 202.

Q. Are you opining that any of the contemporary statements made by legislatures evidenced racial intent during the 2021 process?

MR. DAVIS: Objection to the extent it calls for any kind of legal conclusion, but you may answer.

THE WITNESS: I believe the only thing I discuss in here that -- in that regard -- and let me actually back up and say we're long since passed the day and age in which anyone would plainly say with any sort of racial intent.

But there are occasionally items that are perhaps telling, again, within the context of this entire report. And so when

you have a leader of a committee suggest that, perhaps, the application of the Voting Rights Act is unfair, that to me raises a flag.

BY MR. TYSON:

Q. So is that the only comment that you identify that raises a flag of contemporary statements made by legislatures?

A. That's the one that I found most significant.

Q. And that's the comment on page 75 by Chairman Rich?

A. Correct.

Q. Are you offering the opinion that this specific sequence of events leading up to the adoption of the 2021 redistricting plans was racially discriminatory?

MR. DAVIS: Objection to the extent it calls for a legal conclusion, but you may answer.

THE WITNESS: It's my opinion that the sequence of events along with the history of discrimination that I discuss in the report and as part of this report as a whole would tend to lend credence to a finding of

1 discriminatory intent in the process.
2 BY MR. TYSON:
3 Q. So it's your opinion that someone could find
4 that there was discriminatory intent in the process,
5 but you're not saying there was discriminatory intent
6 in the process; right?
7 A. I'm not drawing the legal conclusion which
8 is left for the Court to do.
9 Q. So just so we're completely clear on this,
10 you are not offering the opinion that there was
11 discriminatory intent in the process. You're
12 offering the opinion that evidence would support a
13 finding of discriminatory intent?
14 A. Correct.
15 Q. So aside from the conclusion of your report
16 at the very end, have we -- is it correct that the
17 pages from page 8 where you begin historical
18 background section through page 84 is the entirety of
19 your opinions about the Arlington Heights factors in
20 your report?
21 A. Yes.
22 Q. And barring new facts -- I want to set aside
23 additional facts. But if there are no other new
24 facts that arise, you are not planning to offer any
25 further expert opinions about the Arlington Heights

factors that are not included in this report; right?
A. That is correct.
MR. TYSON: So if we can go off the record for just a minute.
THE VIDEOGRAPHER: Off the video record at 12:46 p.m.
(Recess from 12:46 p.m. to 1:14 p.m.)
THE VIDEOGRAPHER: Back on the video record at 1:14 p.m.
BY MR. TYSON:
Q. Dr. Bagley, we're going to be moving to page 84 of your report next. The factor on -- your analysis of Senate Factor 6 on racial appeals.
So are you offering the opinion that campaigns in Georgia are characterized by subtle and over racial appeals.
A. Subtle and over racial appeals are present.
Q. And are you offering the opinions that they're present or that campaigns are characterized by those appeals?
A. I would say that their being present would be a characterization of appeals in the state.
Q. So your methodology in determining racial appeals when they characterized campaigns was to determine if those racial appeals are present in

1 Georgia campaigns?
2 A. More or less, yes. I don't take that to
3 mean -- that Senate factor to mean that all campaigns
4 are characterized by racial appeals but more or less.
5 Are there -- you know, not just one, but are there
6 campaigns in which there are racial appeals.
7 Q. And I didn't see any racial appeals from
8 congressional racists that were in your report.
9 Did you identify any racial appeals from
10 Georgia congressional races?
11 A. I don't believe so in this report. No.
12 Q. Did you identify any racial appeals in state
13 legislative races in this report?
14 A. Let me just skim back through here and
15 remind myself.
16 (Witness reviews document.)
17 THE WITNESS: These don't seem to
18 include state legislative elections.
19 BY MR. TYSON:
20 Q. And in terms of what you relied on for this
21 section of your report, are the footnote -- the news
22 stories in footnotes 124 through 131 the sources of
23 the racial appeals that you're identifying in
24 these -- I'm sorry. Let me ask that -- the news
25 stories aren't the sources of the appeals.

A. I see what you mean. These --
Q. If you -- let me ask my question again just to set it up.
In terms of sources you relied on for this section of your report on racial appeals, are the news stories in footnotes 124 through 131 the sources you relied upon?
A. Yes.
Q. Are there any other sources you relied on for purposes of the racial appeals portion of your report that are not included in those footnotes?
A. No.
Q. So let's talk through the different advertisements that you identify. First, you talk about appeals targeting AAPI voters.
And I know we know that refers to, but that refers to Asian American and Pacific islander voters; right?
A. Yes.
Q. And do you know what entity ran the advertisement that you've referencing on page 84?
A. I believe it was an organization associated with Stephen Miller, if I'm not mistaken.
Q. Was it called Citizens for Sanity?
A. That sounds correct.

Q. Do you know if anybody affiliated with Citizens for Sanity is based in Georgia?

A. I don't know that. No.

Q. Do you know where the ads that were run -- well, do you know who the recipients of the mailers accusing the Biden administration that you reference in page 84 were?

A. The specific recipients? No, I don't have a list of exactly who all those individuals were.

Q. Do you know approximately how many of those mailers were sent to voters in Georgia?

A. I don't off the top of my head. No.

Q. And you reference television ads that ran at the same time.

Do you know the number of points that were purchased for those particular television ads?

A. No. I don't.

Q. Do you know where those television ads were run geographically?

A. Other than in the state of Georgia, I'm not sure specifically where.

Q. And those ads tried to get Asian voters to vote for Republicans or at the very least vote against Democrats. Is that fair to say?

A. That seems to be the angle. Yes.

Q. And I didn't see any others in the report, but are you aware of any other examples from other elections regarding appeals that targeted AAPI voters?

A. Those are the only ones that I've included here.

Q. Are you aware of any other examples from any other election regarding appeals targeting AAPI voters in Georgia?

A. Not at this time.

Q. Next, it looks like you moved to a discussion of ads targeting Latin X people in Georgia; is that right?

A. It is.

Q. And you reference Mr. Williams' deportation bus; correct?

A. I do.

Q. And are you aware that Mr. Williams finished in last place in the 2018 Republican primary for governor?

A. I did know that. Yes.

Q. And you say in the same primary, candidate David Perdue accused Democratic candidate Stacey Abrams of demeaning her own race and suggested that she go back where she came from.

But that wasn't the same primary; was it?
A. No. I guess not.
Q. That was the '22 primary --
A. Correct. Yes.
Q. And you'd agree that Mr. Perdue lost by -- I guess, by 50 points to Governor Kemp in that primary; right?
A. He did lose. Yes.
Q. And you reference Governor Kemps' ads involving his pickup truck.
How is that popular ad a racial appeal in your estimation?
A. In the quotation there, that he's going to round up criminal illegals and take them home. Encourages vigilante action against immigrants and suggests that all immigrants -- and by proxy brown people, if you will -- are illegal.
Q. Do you have a definition that you're using for a racial appeal in this part of your report?
A. Sure. To me racial appeal is an appeal that would motivate people by race to vote as a block.
Q. And so is an appeal that resonates with voters where the voters are inspired by racial feelings?
A. It's an appeal that's designed to resonate

with people because of their race.

Q. You next reference Governor Kemp running ads in the 2022 election darkening the skin tone of Stacey Abrams, his opponent.

What ads were those? Did you review them?

A. Yes. They would be footnoted there in 129. That's a story from 11Alive.

Q. So you relied on the story from 11Alive for locating the anti-Abrams ads referenced here?

A. That's the source cited. Yes.

Q. And you don't know how many times those ads ran; right?

A. No.

Q. And what geographically the audience was?

A. I don't have that information. No.

Q. Is it your belief that voters in Georgia were not aware that Ms. Abrams is a black woman?

A. That is not my opinion. No. But this process of making someone darker is not -- it's been identified elsewhere as something to appeal to white voters to see someone that is darker skinned and to have a negative feeling associated with that.

Q. And you reference next Senator Loeffler and her campaign for Senate.

She also lost her election to Senator

Warnock; didn't she?
A. She did.
Q. And are you saying that labeling a candidate as a radical socialist is racial appeal?
A. It could be construed that way. And if you notice, the next thing in that sentence is this would echo accusations that were labeled at -- not just Dr. King but others in the movement at that time who were civil rights activists, to label them socialist in the context of Cold War would be a way of saying, We don't like these Civil Rights activists without saying it in so many term.
Q. In your mind, is labeling someone a socialist the same as labeling them a communist?
A. That's an interesting distinction. I feel like many people who use both of those words don't know what either one of them means. I think it could be used in that way, but I think in our modern lexicon, it's been used as a sort of more broad-based accusation than specifically, capital C, Communist.
Q. And I apologize. I asked you earlier about congressional races and I had left this one off my list. You referenced Congresswoman Green.
Is the statement that Congresswoman Green made here, was it made in the context of a campaign?

A. That -- that could have been after -- yeah, she was already a Congresswoman at that time, so -- but, I mean, in my opinion politicians are always on the campaign trail. So if you're at a rally, for example, making a speech, to me that's part of ongoing campaign, if you will.

Q. So for an incumbent member, at least, any comment made anywhere could be a racial appeal in a campaign. It's not limited to a specific campaign activity?

A. I wouldn't say any comment anywhere, but I would consider -- I believe the one in question was at a rally, so for me I would include that.

Q. Are there any other racial appeals that you're relying on for your opinion about racial appeals in Georgia in this report that we have not discussed on pages 84 and 85?

A. No, sir.

Q. And you'd agree that Senator Warnock has won, I guess, four different elections at this point to hold his seat in the U.S. Senate?

A. He has won elections and run-offs. Yes.

Q. So let's move to your conclusions statement on page 86. And you start by saying: The Court will determine whether or not the General Assembly was

1 motivated by discriminatory intent when it passed the
2 bills in question.
3 So you don't view that as your job to offer
4 an opinion on the General Assembly's motivation;
5 right?
6 A. It's not my job to reach the final legal
7 conclusion, I don't think.
8 Q. And your determination is that there's
9 enough evidence for the Court to determine the lines
10 were drawn to deny voters their equitable right to
11 participate in the political process. But you are
12 not saying the lines were drawn to deny voters of
13 color their equitable right to participate in the
14 political process; right?
15 A. I would say that I am -- it is my opinion
16 that the evidence is there for the Court to find
17 that -- to make that final determination.
18 Q. But to be clear, you are not making that
19 final determination?
20 A. Correct.
21 Q. You also reference the nature of the report
22 is to present a mosaic of a continuum. I know we
23 talked a little bit about mosaic and continuums
24 earlier, but can you walk me through what you mean by
25 that phrase in the conclusion?

A. Sure. So for me that kind of cuts to what the Arlington Heights framework is asking us to do. And as a historian, that's to build a foundation, the historical background, in this case discrimination, and to walk that on up to the present day sequence of events and to identify if there are elements of the current process that could be seen as part of that broader mosaic or continuum that would tend to connect it to that past discrimination.

Q. And the methodology you're using to make that connection in the mosaic of a continuum is your historical research and work and explaining what those processes are?

A. I would say that's part of it. It would also include examining this sequence as we would examine something in the more distant past. Right?

And so it is intended to be, you know, an organic inquiry, an organic piece that makes those connections.

Q. When you say "organic inquiry," is there a particular methodology that you use in the historical field to reach those conclusions?

A. It's to look at diverse sources and to weigh those against one another and to, obviously, in this case, weigh the sequence against the history and, of

1 course, use what multiple sources that we can and to
2 see what is substantiated and what is not.
3 Q. Do you use specialized knowledge to weigh
4 out those various stories and narratives?
5 A. Of course.
6 Q. And what is that specialized knowledge?
7 A. In this case, it's the knowledge of the
8 history of the state of Georgia, the history of
9 discrimination, the history of the civil rights
10 movement, the history of the struggle for voting
11 rights in the United States and so on.
12 Q. Did you require a specialized knowledge to
13 report on the committee meetings and the floor debate
14 that you did in your report or was that more just a
15 narrative?
16 A. I don't think it's a narrative that any
17 individual off the streets could come in and present
18 in the way that I did. I think I come at it as
19 someone armed with the knowledge of history who is
20 able to identify significant elements of that and to
21 determine what is useful to the Court in making its
22 determination.
23 Q. So your methodology is you're armed with
24 history. You can review what happened in a committee
25 meeting and know what's relevant to that history

1 based on your training?
2 A. I would hope so.
3 Q. Further down in that paragraph you say, It
4 is telling that Republican legislators have so often
5 evoked 2001 when white men largely in the democratic
6 party attempted to manipulate the size of districts
7 to hold on to power.
8 Then you go on to say: With the demographic
9 changes in Georgia that citizen after citizen and
10 lawmaker after lawmaker evoked during this process,
11 one cannot help but think the motivation on the other
12 side is much the same as the electorate has grown
13 more diverse.
14 Are you saying that the motivation of the
15 Republicans in 2021 was the same as the motivation of
16 Democrats in 2001?
17 A. I'm saying that there could be significant
18 similarities in that consider the Democrats hold on
19 power in the 2000 cycle was obviously very tenuous by
20 that time. Going back to the enactment of the VRA
21 and the Civil Rights Act in '64 with myriad
22 defections to the Republican party. And you can see
23 that in Georgia's congressional delegation with
24 Republicans getting elected steadily more and more
25 and with the make-up of the General Assembly changing

on up to that point.

And so there was a measure of desperation. For me, that's significant in comparing it to now in that the -- perhaps, the Republicans hold on power in the General Assembly or this congressional delegation is getting more tenuous as voters of color are exercising their right to vote more and more and more.

And so my point is that there could be a similar sort of desperate clinging to power if we're making that connection. And it is the connection I would, again, point out the Republican lawmakers themselves are making sort of a justification for elements of their own process.

Q. So, again, you're not saying that definitely -- you're not saying for sure the motivation was the same in 2021 and 2001, but it could be the same?

A. I would say that, yes, it could be the same.

Q. Then looking at the next paragraph, you reference procedural and substantive departures in the legislative process, and then you have a list of items after that dash.

Is that list what you're opining is the procedural and substantive departures from the

1 legislative process?
2 A. Yes. Failing to account for public comment
3 after the maps are published, refusal to allow access
4 to the map drawing process and rushing the process in
5 general and so on.
6 Q. So when you say failing to make time for
7 public comments after maps were published at the last
8 minute, you'd agree there was -- there were multiple
9 committee meetings that allowed comments after the
10 maps were published; right?
11 A. There were, but I would say those were in a
12 very, very tight window of time where in some cases
13 maps are published the day of and commentary is taken
14 the day of, possibly the day after. So what people
15 were asking for is a much larger window of time to be
16 able to really systematically analyze those maps and
17 provide substantive feedback.
18 Q. And you reference rushing the process. But
19 you'd agree that the process was not rushed when
20 compared to the 2001 and 2011 redistricting cycles;
21 right?
22 A. Yes. But that would indicate to me it was
23 also rushed in those cycles, as well, insofar voters
24 want more time with the publication of maps.
25 Q. You say failing to account for minority

population growth. Are you aware that the maps added majority black and minority opportunity districts?

A. I'm aware that that number went up.

Q. So --

A. I think a lot of people wanted to see that accounted for, you know, in certain areas in terms of creation of still more of those kinds of districts or of majority minority districts.

Q. And you say the maps, packing and cracking black and other minority voters in order to protect Republican incumbents.

What districts did that packing and cracking to protect Republican incumbents occur in?

A. So this is -- I'm presenting to the Court the sum total of the significant public outcry, I didn't go do a systematic analysis like a political scientist would on the maps after they were passed.

THE VIDEOGRAPHER: Sorry, you were covering your mic.

THE REPORTER: If you don't mind repeating your answer in this direction, too.

THE WITNESS: So I didn't undertake a systematic analysis as a political scientist would of the maps after they were published.

BY MR. TYSON:
Q. And so you call these items in this list departures in the legislative process. But the departure was only from what you read in the public comment the public was asking for; is that right?
A. And then in terms of what the committee itself purported to value.
Q. When you say what the committee itself purported to value, are you relying on the guidelines that were adopted by House and Senate committees?
A. And comments made by leadership throughout the process, yes.
Q. But you'd agree that there were not procedural and substantive departures in the legislative process when the comparison point is the 2001 and 2011 redistricting cycles?
A. They are generally analogous in that regard.
MR. TYSON: Those are all the questions I have for you.
THE WITNESS: All right.
MR. TYSON: Alex may have some more, but I'm finished for today. Thank you.
THE WITNESS: Thanks, Mr. Tyson.
MR. DAVIS: I have a few questions.
(Discussion ensued off the record.)

EXAMINATION

BY MR. DAVIS:

Q. Dr. Bagley, sorry. Just a few more questions.

If we could turn to page 38 of your report.

A. Okay.

Q. Do you recall in your deposition you were asked about the statement in the third line going into the fourth of the first full paragraph that states: This meant also that no black candidate held statewide office either?

A. Yes.

Q. And do you recall looking at Exhibit 3, which shows that Willie -- which is a Ballotpedia description of Willie Talton?

A. I do.

Q. Does the fact that one -- there was one black candidate who held statewide office during the period you described change your opinions in this case in any way?

MR. DAVIS: Object to the form.

THE WITNESS: It does not.

BY MR. DAVIS:

Q. If we could turn to page 54, please, of your report.

A. Okay.
Q. Oops, I think that's the wrong page.
Let me do it this way: Do you recall in the report you were asked about whether Cathy Cox was a plaintiff or a defendant in a lawsuit, I think --
A. Larios.
Q. Yeah. And does the fact that Cathy Cox was a defendant change your opinions in any way as opposed to a plaintiff in this case?
A. No.
MR. DAVIS: I have no further questions.
THE WITNESS: Oh, okay.
MR. TYSON: I don't have any either.
(Discussion ensued off the record.)
THE VIDEOGRAPHER: This is the end of the deposition. Off the video record at 1:38 p.m.
(Discussion ensued off the record.)
THE REPORTER: I also want to make sure we're going with the same transcript orders on both sides?
MR. TYSON: Yes --
MR. DAVIS: Yes.
MR. TYSON: -- ma'am. Same for us.
(Deposition concluded at 1:38 p.m.)

(Signature reserved.)

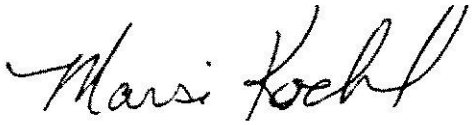
CERTIFICATE

STATE OF GEORGIA:
COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the colloquies, questions, and answers were reduced to typewriting under my direction; that the transcript is a true and correct record of the evidence given upon said proceeding.

I further certify that I am not a relative or employee or attorney of any party, nor am I financially interested in the outcome of this action.

This the 20th day of March, 2023.



_____

Marsi Koehl, CCR-B-2424

DISCLOSURE

STATE OF GEORGIA:
COUNTY OF DEKALB:

Deposition of JOSEPH BAGLEY, PH.D.

Pursuant to Article 8.B. of the Rules and Regulations of the Board of Court Reporting of the Judicial Counsel of Georgia, I make the following disclosure:

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Marsi Koehl

Marsi Koehl, CCR-B-2424 Date: 3/20/23

1 Joseph Bagley, Ph.D.
2 jbaglev3@gsu.edu
3 March 21, 2023
4 RE: Georgia State Conference Of The NAACP, Et Al. v. State Of Georgia, Et Al.
5 2/28/2023, Joseph Bagley , Ph.D. (#5780035)
6 The above-referenced transcript is available for
7 review.
8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.
12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
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17 Return completed errata within 30 days from
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24 Joseph Bagley , Ph.D. Date
25

Georgia State Conference Of The NAACP, Et Al. v. State Of Georgia, Et Al.

Joseph Bagley , Ph.D. (#5780035)

ACKNOWLEDGEMENT OF DEPONENT

I, Joseph Bagley , Ph.D., do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

_____ _____

Joseph Bagley , Ph.D. Date

*If notary is required

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Georgia Code

Title 9, Chapter 11

Article 5, Section 9-11-30

(e) Review by witness; changes; signing.

If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by paragraph (1) of subsection (f) of this Code section whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed. If the deposition is not reviewed and signed by the witness within 30 days of its submission to him or her, the officer shall sign it and state on the record that the deposition was not reviewed and signed by the deponent within 30 days. The deposition may then be used as fully as though signed unless, on a motion to suppress under paragraph (4) of subsection (d) of Code

Section 9-11-32, the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

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DEFENDANT'S EXHIBIT 1

Joseph Bagley, PhD
Curriculum Vitae

Assistant Professor of History
Honors Program Coordinator
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Education

PhD, History, 2013, Georgia State University
"School Desegregation, Law and Order, and Litigating Social Justice in Alabama, 1954-1974"
- Winner of the John M. Matthews Distinguished Dissertation Award, 2013

MA, History, 2007, Auburn University
BA, History, 2004, Auburn University

Major Publications and Grants

The Politics of White Rights: Race, Justice, and Integrating Alabama's Schools (University of Georgia Press, 2018)

Select Reviews:
- *History of Education Quarterly* 59, No. 4 (November 2019): 528 – 530, https://doi.org/10.1017/heq.2019.32
- *Alabama Review* 75, No. 3 (Fall, 2022): 267-270, https://doi.org/10.1353/ala.2022.0027

Held in nearly 1,000 libraries worldwide: WorldCat

Georgia Humanities Grant: "Terminus 1973? Atlanta Fifty Years Later" (2022)
Awarded $2500 to host Emory University Professor Carol Anderson for a lecture hosted at Ebenezer Baptist Church, spring 2023, discussing the pivotal year 1973 and its implication for our own times in terms of voting rights, equal educational opportunity, and more.

Expert Witness in Voting Rights Litigation

Recognized as a 'University Expert' by Georgia State University. Retained by plaintiffs' counsel in the following:

South Carolina State Conference of Branches of the NAACP v. Alexander (D.S.C., 2022): challenge to South Carolina General Assembly's congressional redistricting plan as a racial gerrymander and as intentionally discriminatory. Submitted an expert report and rebuttal report; certified as an expert; testified in deposition and at trial; (Ruling pending in trial court).

South Carolina State Conference of Branches of the NAACP v. McMaster (D.S.C., 2022): challenge to South Carolina General Assembly's redistricting plan for state House of Representatives. Submitted an expert report and rebuttal report; certified as an expert; testified in deposition; (Case settled).

Milligan v. Merrill (N.D., Ala. 2021): challenge to Alabama legislature's congressional redistricting plan as a violation of Section 2 of the Voting Rights Act. Submitted an expert report and rebuttal report; certified as an expert; testified in deposition and at hearing for preliminary injunction; findings adopted by the court in ruling granting preliminary injunction; (U.S. Supreme Court ruling on injunction and trial on the merits pending).

People First of Alabama v. Merrill (N.D., Ala. 2020): challenge to Covid-related restrictions. Submitted an expert report; certified as expert; testified in deposition/at trial; findings adopted by Court (479 F.Supp. 3d 1200).

Joseph Bagley, PhD
Curriculum Vitae

Teaching and Administrative Experience

Honors Program Coordinator, Perimeter College, Georgia State University, 2019 – Present

Assistant Professor, Perimeter College, Georgia State University, 2017 – Present (5/4/2 Load)
AAS 1142, African American History since 1865; AAS 2010, Introduction to Africana Studies ; HIST 1111, Survey of World History to 1500; HIST 1112, Survey of World History since 1500; HIST 2110, Survey of United States History

Lecturer, Georgia Perimeter College, 2015 – 2017 (6/6/2 Load)
HIST 1112, Survey of World History since 1500; HIST 2111, Survey of U.S. History to 1865; HIST 2112, Survey of U.S. History since 1865; HIST 2110, Survey of U.S. History

Visiting Lecturer, Georgia State University, 2013 – 2015 (4/4/2 Load)
HIST 2110, Survey of United States History

Graduate Instructor of Record, Georgia State University, 2009 – 2013 (1/1/1 Load)
HIST 1112, Survey of World History since 1500; HIST 2110, Survey of United States History

Graduate Teaching Assistant,
Georgia State University, 2008-2009, 2013
HIST 1112, Survey of World History since 1500; HIST 2110, Survey of United States History
HIST 3000, Introduction to Historical Studies; HIST 4990, Historical Research (co-taught)
Auburn University, 2004-2008
HIST 1010, Survey of World History to 1789; HIST 1020, Survey of World History since 1789

Invited Talks

Symposium on the Struggle for Black Freedom, Georgia State University, Perimeter College, Keynote Address, February 11, 2020, "The Struggle for Black Voting Rights: from Reconstruction to *Right Now*."

Georgia State University Constitution Day Event, September 18, 2019, "'To Abridge and Deny': Vote Dilution, Section 5 Preclearance, and Undermining the 15th Amendment."

Auburn University Critical Studies Working Group, College of Education, April 12, 2019, "*Teach Us All*, The Little Rock Nine, and Contemporary School Segregation."

League of Women Voters of Greater Jefferson County, February 21, 2019, "School Desegregation in Alabama."

Auburn University Caroline Marshall Draughon Center for the Arts and Humanities, January 29, 2019, Book Talk.

Alabama Department of Archives and History, *Alabama in the Age of Aquarius* Symposium, August 19, 2016, "Desegregating Alabama's Schools: the Montgomery Experience."

Alabama Department of Archives and History, Monthly Lecture Series, May 15, 2014, "Now a Single Shot Can Do It': *Lee v. Macon County Board of Education* and School Desegregation in Alabama."

Joseph Bagley, PhD
Curriculum Vitae

Notable Citations

Nikole Hannah-Jones, "The Resegregation of Jefferson County," *The New York Times Magazine*, Sept. 6, 2017.

Wendy Parker, "Why Alabama School Desegregation Succeeded (And Failed)," 67 *Case Western Law Review*, 1091 (2017).

Rebecca Retzlaff, "Desegregation of City Parks and the Civil Rights Movement: The Case of Oak Park in Montgomery, Alabama," *Journal of Urban History* 47.4, 715 (2019).

Erika Frankenberg, "The Impact and Limits of Implementing *Brown*: Reflections from Sixty-Five Years of School Segregation and Desegregation in Alabama's Largest School District," 11 *Alabama Civil Rights and Civil Liberties Law Review*, 33 (2019).

Bryan Mann, "Segregation Now, Segregation Tomorrow, Segregation Forever? Racial and Economic Isolation and Dissimilarity in Rural Black Belt Schools in Alabama," *Rural Sociology* 86.3, 523 (2021).

Service

Newton Campus Honors Program Coordinator, 2019-present
Newton Campus Mario Bennekin Symposium Committee, 2019-present
Advisor, Phi Theta Kappa, 2022-present
Advisor, Newton Honors Society Club, 2022-present
Newton Academic Community Engagement (ACE) Committee, 2019-present
Chair, Search Committee, Lecturer in History, Fall 2019
Search Committee, Adjunct Faculty in African American Studies, Summer 2019
Search Committee, Faculty Associates to Center for Excellence in Teaching and Learning, Summer 2018
Search Committee, Lecturers in History, Spring 2018
Panthers Vote Presidential Election Panel, Fall 2016
History 2110 Assessment Committee for the Georgia State-Georgia Perimeter Consolidation, 2016 - 2017
Consultant, Shiloh Community Restoration Foundation, Notasulga, Alabama, 2014 - 2015
Coordinating Committee, First Annual Atlanta Graduate Student Conference in History, Emory University, 2012

Conference Presentations

"'We Have Had a Dream, Too': School Desegregation Litigation, Racial Innocence, and Politics in Alabama," Organization of American Historians Annual Conference, St. Louis, Missouri, April 16, 2015.

"'Life, Liberty, and the Pursuit of Alabama's Happiness': School Desegregation, the 'Law and Order' Narrative, and Litigating Social Change in Alabama, 1954-75," Midwest Political Science Association Annual Conference, Chicago, Illinois, April 12, 2013.

"Black Alabamians' Efforts to Desegregate Schools, 1954-1963: Civil Rights, Litigation, and the Road to *Lee. v. Macon*," presented at the University of Alabama History Department's Graduate Conference on Power and Struggle, March 3, 2012.

Joseph Bagley, PhD
Curriculum Vitae

Solicited Manuscript and Book Reviews

Outside Reader for Book Manuscript, Brian K. Landsberg, *Revolution by Law: The Federal Government and the Desegregation of Alabama Schools*, University of Kansas Press (Spring 2021). Blurb on jacket.

Camille Walsh, *Racial Taxation: Schools, Segregation, and Taxpayer Citizenship, 1869-1973* (UNC Press, 2018), *The Alabama Review* (Pending, Spring 2021)

Outside Reader for Essay Manuscript for *Urban History* (Fall, 2019), Anonymous

Stephanie R. Rolph, *Resisting Equality: The Citizens' Council, 1954-1989* (LSU Press, 2018), in *The Journal of Mississippi History* (Fall, 2019)

Wayne A. Weigand and Shirley A. Weigand, *The Desegregation of Public Libraries in Jim Crow South: Civil Rights and Local Activism* (LSU Press, 2018), in *Georgia Historical Quarterly* (Summer, 2019)

Leeann G. Reynolds, *Maintaining Segregation: Children and Racial Instruction in the South, 1920-1955* (LSU Press, 2018), in *The Alabama Review* (Summer, 2019)

Outside Reader for Essay Manuscript for *History of Education Quarterly* (Fall, 2018), Anonymous

James Turner, *Selma and the Liuzzo Murders: The First Modern Civil Rights Convictions* (University of Michigan Press, 2018), in *Law and History Review*, *The Docket*, Vol. 1, Issue 2 (August, 2018)

Tracy E. K'Meyer, *From* Brown *to* Meredith*: The Long Struggle for School Desegregation in Louisville, Kentucky, 1955—2007* (University of North Carolina Press, 2013), in *The Journal of Southern History* 80, No. 4 (Nov, 2014): pp. 1019-20

Frank Sikora, *The Judge: The Life and Opinions of Alabama's Frank M. Johnson, Jr.* (New South Books, 2007), in *The Alabama Review* 61, No. 2 (April, 2008): 153-4

Examination Fields

- 19th-20th Century United States History
- United States Legal/Constitutional Hist.
- History of South Africa

Professional Organizations

- Organization of American Historians
- American Historical Association
- American Society for Legal History
- Southern Historical Association
- Alabama Historical Association

Languages

- Spanish: Reading, Good
- French: Reading, Good

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

GEORGIA STATE CONFERENCE OF THE NAACP; GEORGIA COALITION FOR THE PEOPLE'S AGENDA, INC.; GALEO LATINO COMMUNITY DEVELOPMENT FUND, INC., Plaintiffs, v. STATE OF GEORGIA; BRIAN KEMP, in his official capacity as Governor of the State of Georgia; BRAD RAFFENSPERGER, in his official capacity as Secretary of State of Georgia, Defendants.	**Case No. 23-civ-5338-ELB-SCJ-SDG**

Expert Report of Joseph Bagley, Ph.D.

Served on Behalf of the Georgia State Conf. of the NAACP, et al. Plaintiffs

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I. CREDENTIALS

I am an Assistant Professor of History at Georgia State University, Perimeter College. My specific areas of study are United States constitutional and legal history, politics, and race relations, with a focus on the Deep South. I earned a Ph.D. in 2013

from Georgia State and an M.A. (2007) and B.A. (2004) from Auburn University. My first book, *The Politics of White Rights: Race, Justice, and Integrating Alabama's Schools*, is an analysis of federal school desegregation litigation and political change. It was published in November 2018 by the University of Georgia Press in the *Politics and Culture of the Twentieth Century South* series. My current projects include a book manuscript examining the struggle for voting rights in the South, focusing on Alabama, Georgia, and South Carolina, and a public humanities lecture and town hall series, funded in part by a Georgia Humanities grant, and in conjunction with Ebenezer Baptist Church, on civil and voting rights in Atlanta since the pivotal year 1973.

My academic work has been cited in the *Case Western Law Review*, the *Journal of Urban History*, *Rural Sociology*, the *Alabama Civil Rights and Civil Liberties Law Review*, and in the *New York Times Magazine* (*NYTM*).[1] I have written book and manuscript reviews for, among others, the University Press of Kansas, *Law and History Review*, the *Journal of Southern History*, the *Alabama Review*, *Mississippi Historical Quarterly*, *Georgia Historical Quarterly*, *Urban History*, and *History of Education Quarterly*.

I have been certified as an expert in all previous voting rights litigation in federal courts wherein I have been presented as a testifying expert. I most recently testified at trial in *South Carolina State Conference of Branches of the NAACP v. Alexander* (D.S.C., 2022); the court therein tendered me as an expert in "American political history, southern legal history, political analysis, historical methods, the history of race discrimination and voting with a particular focus on South Carolina and southern race relations and southern politics and law." I submitted an expert report and a rebuttal report in that case, in which plaintiffs alleged racial gerrymandering and intentional discrimination in the drawing of the state's Congressional districts following the 2020 Census. The Court recently ruled that the South Carolina General Assembly had engaged in racial gerrymandering in its

[1] Wendy Parker, "Why Alabama School Desegregation Succeeded (And Failed)," 67 *Case Western Law Review*, 1091 (2017); Rebecca Retzlaff, "Desegregation of City Parks and the Civil Rights Movement: The Case of Oak Park in Montgomery, Alabama," *Journal of Urban History* 47.4, 715 (2019); Erika Frankenberg, "The Impact and Limits of Implementing Brown: Reflections from Sixty-Five Years of School Segregation and Desegregation in Alabama's Largest School District," 11 *Alabama Civil Rights and Civil Liberties Law Review*, 33 (2019); Bryan Mann, "Segregation Now, Segregation Tomorrow, Segregation Forever? Racial and Economic Isolation and Dissimilarity in Rural Black Belt Schools in Alabama," *Rural Sociology* 86.3, 523 (2021). Nikole Hannah-Jones, "The Resegregation of Jefferson County," *The New York Times Magazine*, Sept. 6, 2017.

drawing of the First Congressional District, ordered the legislature to redraw the lines, and cited to my report in its Findings of Fact and Conclusions of Law.[2] I also submitted a report and rebuttal report in the state House phase of that litigation, *South Carolina NAACP v. McMaster*.[3]

Prior to the South Carolina litigation, I submitted two reports and testified at a preliminary injunction hearing in *Milligan v. Merrill* (N.D. Ala.), an ongoing redistricting case in which plaintiffs alleged that Alabama violated §2 of the Voting Rights Act in the drawing of its Congressional districts following the 2020 Census. In a memorandum order and opinion granting a preliminary injunction, the trial court in *Milligan* found that I was a "credible expert witness" who "prepared [a] lengthy, detailed report that set forth substantial evidentiary bases for [my] opinion[s] in a manner that [was] consistent with [my] expertise and applicable professional methods and standards." The Court cited my report and testimony 32 times and observed that "At the preliminary injunction hearing, Dr. Bagley explained at a high level the bases for the detailed opinions on these issues that appear in his report." (*Milligan*, Jan. 24, 2022, pp. 80, 185).

I also submitted a report, testified in a deposition and at trial, and was cited favorably in the Court's opinion in *People First of Alabama v. Merrill*, 491 F. Supp. 3d 1076 (N.D. Ala. 2020), a case in which plaintiffs challenged certain voting restrictions imposed by the state in the context of the Covid-19 pandemic. The Court in *People First* cited to my report 26 times and quoted directly from my testimony at trial (at 1106).[4]

I am compensated at the rate of $150 per hour for my work in preparing this report. This compensation is not dependent upon my findings, and my opinions stated in this report do not necessarily represent the sum total of my opinions in this matter, which are subject to change upon further research or findings. I append to this report a C.V., which lists in full my educational background, publications, and prior testimony.

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[2] *South Carolina State Conf. of the NAACP v. Alexander et al.*, C/A No.: 3:21-cv-03302-MGL-TJH-RMG, Findings of Fact and Conclusions of Law, Jan. 6, 2023, p.8 (D.S.C.).

[3] Consent Decree entered (D.S.C., 2022).

[4] 467 F.Supp.3d 1179 (N.D. Ala. 2020).

II. PURPOSE, METHODOLOGY, SUMMARY FINDINGS

Plaintiffs in this case have asked me to examine the drafting, passage, and enactment of the Georgia General Assembly's new Congressional, state House, and state Senate redistricting plans (SB 2EX/AP, SB 1EX/AP, and HB 1EX LC 47 1163S/AP, respectively) and to offer my opinion as to whether those processes, within their appropriate historical and contemporaneous contexts, are evidence of intentional discrimination against Voters of Color. In my opinion, as reflected in this report, the record reveals enough to support this Court reaching a finding of discriminatory intent as to all three.

Experts in cases assessing the constitutionality of state action relative to discriminatory intent have followed guidelines set forth by the U.S. Supreme Court in *Village of Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252 (1977). Direct, "smoking gun" evidence of intentional discrimination was difficult to find in 1977 and is even harder to find now. As I explain in my own work, White lawmakers have learned how to "colormask" their intentions and defend their prerogatives in courts of law without using the usual plain language that would open them up to legal failures. Cognizant of this even then, the Court in *Arlington Heights* called for lower courts to undertake a "sensitive inquiry into such circumstantial and direct evidence of intent as may be available" by considering certain enumerated factors (*Id.* at 266).

Among those factors are (1) "The impact of the official action – whether it bears more heavily on one race than another." The Court acknowledged that rare were the times when, as in the historical cases of *Yick Wo v. Hopkins* or *Gomillion v. Lightfoot*, this initial inquiry alone might make it plainly obvious that there was discriminatory intent. Absent such circumstances, it directed inquiry towards (2) "The historical background of the decision . . . particularly if it reveals a series of official actions taken for invidious purposes"; (3) "The specific sequence of events leading up to the challenged decision . . . "; (4) "Departures from the normal procedural sequence . . . " and "Substantive departures . . . particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached"; (5) and "The legislative or administrative history . . . especially where there are contemporary statements by members of the decision-making body, minutes of its meetings, or reports." *Id.* at 265-266.

Insofar as the Supreme Court directed trial courts to use this framework in making determinations on discriminatory intent, experts, in my understanding,

should also follow this guidance in assisting courts to do the same. As such, and as a historian, I analyze here the second, third, fourth, and fifth *Arlington Heights* factors. The historical background relevant to invidious discrimination in voting, the legislative sequence of events and the legislature's procedures, and the statements made in the legislative history examined herein are, in my opinion, relevant to the Court's assessment of whether the General Assembly's actions in enacting SB 2EX/AP, SB 1EX/AP, and HB 1EX LC 47 1163S/AP are part of a continuum of the State of Georgia's longstanding acts of discrimination in voting and redistricting, particularly against Voters of Color.

In approaching this, I am guided by the common standards of historiography. This report thus draws upon existing, relevant, and well-regarded historiographical works, that is to say, valuable secondary sources. It relies as well upon primary sources in the form of historical and contemporaneous press coverage; U.S. Justice Department documents; relevant caselaw; and information made available to the public via the General Assembly's Legislative and Congressional Reapportionment Office online and the General Assembly's House Legislative & Congressional Reapportionment Committee and Senate Reapportionment & Redistricting Committee online, including video of proceedings, agendas, minutes, submissions from the public, and approved guidelines. These represent common sources for scholars in the humanities and the social sciences to reference, and I weigh all of these against one another, as is common in the field.

Plaintiffs have also asked me to opine on one of the so-called Senate Factors. These factors are derived from a Senate Judiciary Committee Report published during the reauthorization of the Voting Rights Act in 1982 and were adopted by the Supreme Court in the landmark *Gingles* decision that followed shortly thereafter. They typically inform expert inquiries in Section 2 litigation. Plaintiffs have only asked me to evaluate Senate Factor 6, which asks whether political campaigns in the area or political subdivision in question – here, of course, the State of Georgia – are "characterized by subtle or overt racial appeals."

In my book, I discuss what I call colormasking, or what others have sometimes called colorblindness, a term I find is misleading to many people. I explain how lawmakers in the latter half of the 20th Century learned how to talk about and make laws designed to protect white rights without using overtly racial language. They were able to use coded language and thinly veiled racial appeals. Prominent examples include Ronald Regan's ads talking about the "Welfare Queen" and

George H.W. Bush's "Willie Horton Ad" accusing Michael Dukakis of being "soft on crime." These types of ads are currently being run in Georgia even as, in the last decade, are ads and campaign statements featuring blatant racial appeals. These ads and statements have targeted Black, Latinx, and AAPI citizens. I discuss a few of these below.[5]

Based upon my review of the evidence – the historical background of invidious voter discrimination in Georgia, particularly in redistricting; the legislative history of the bills in question; procedural and substantive irregularities in the drafting and passing of those bills; the statements made by legislators during this process; and the information made available to the public – it is my opinion that the Court has strong support for reaching a finding of discriminatory intent. Below, I flesh out those factors. I begin with the history of minority voter discrimination in Georgia, though I try not to waste the Court's time rehashing too much of the obvious.

III. THE HISTORICAL BACKGROUND – BEFORE THE VOTING RIGHTS ACT

a. The Relevant and 'Distant' Past, Briefly

The legal sins of the distant past do not alone condemn a state to atone forever, legally or constitutionally, for discrimination.[6] But, for a state founded as a colony within a slave society that operated on the principles of chattel and race-based slavery, that past is never irrelevant. This court recently, in assessing the expert report and testimony of Professor Orville Vernon Burton in the ongoing and consolidated *Alpha Phi Alpha Fraternity*, *Pendergrass*, and *Grant* litigation, held that "Defendants seemingly attempted to cast aside this history as long past and therefore less relevant. . . . Of course," the court continued, "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 [Senate Factor 1, a history of discrimination, especially for "invidious purposes"], which specifically

[5] Bagley, *The Politics of White Rights: Race Justice and Integrating Alabama's Schools* (Athens: University of Georgia Press 2018), pp.7-11. See also Wayne Flynt, *Alabama in the Twentieth Century*, pp. 104-5; *Dan Carter, From George Wallace to Newt Gingrich: Race in the Conservative Counterrevolution, 1963-1994* (Baton Rouge: Louisiana State University Press, 1999), and Joseph Crespino, *In Search of Another Country: Mississippi and the Conservative Counterrevolution* (Princeton University Press, 2009), passim.

[6] Shelby County v. Holder, 570 U.S. 529, at 532.

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."[7]

Therefore, when assessing the State of Georgia's adherence to federal statutory and constitutional law relevant to voters of color, its entire past must at least be acknowledged, even if only briefly. An inquiry into the background of a redistricting plan passed by the Georgia General Assembly, in other words, must consider that Black people in the state were once held in bondage, never had the benefit of a land redistribution program, and were subjected to more than a century of relentless efforts, by both parties under White control, to prevent, obstruct, dilute, or manipulate their vote.

Georgia was among the first British North American colonies to import enslaved Black people by the hundreds of thousands from the Caribbean and West Africa for the exclusive purpose of growing cash crops – initially rice and indigo in the Low Country and, later, cotton in the east-central and southwestern Black Belt. Rice was America's most valuable exports until it was surpassed by cotton following Indian Removal and westward expansion in the 1830s. Georgia was within the breadbasket in both cases, meaning that white landowners amassed incredible wealth using the labor of the Black enslaved, who themselves were the most valuable commodities in the nation, per the legal terms of a chattel system.[8]

When Abraham Lincoln was elected President in 1860, as part of a new coalition opposing the expansion of slavery into America's western territories, Georgia was among the first states to declare its purported secession from the American Union. Following the Confederacy's defeat in the Civil War, Georgia was also among the first states to enact "Black Codes" limiting the rights of formerly

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[7] Alpha Phi Alpha v. Raffensperger, Pendergrass v. Raffensperger, and Grant v. Raffensperger, C.A.s No. 1:21-CV-5337-SCJ, No. 1:21-CV-5339-SCJ, and No. 1:22-CV-5339-SCJ, "Order Following Coordinated Hearing on Motions for Preliminary Injunction," Feb. 22, 2022 (N.D. Ga.); the court cited to "Marengo Cnty. Comm'n, 731 F.2d at 1567; Wright, 301 F. Supp. at 1319 (quoting Marengo Cnty. Comm'n)."

[8] James C. Cobb and John Inscoe, Georgia History, *New Georgia Encyclopedia* (University of Georgia Press, 2022), https://www.georgiaencyclopedia.org/articles/history-archaeology/georgia-history-overview/.

enslaved Black people, including the right to vote or to hold office, in the face of the forced ratification of the 13th Amendment.[9]

b. Reconstruction and Redemption

During Congressional Reconstruction, Georgia declined to ratify the 14th Amendment, which ultimately invalidated the post-war Black Codes. In elections in 1868, the Republican Party won a majority of seats in the state legislature, and 25 Black citizens were elected to the state House and 3 to the state Senate, despite the organization of the Ku Klux Klan in the state and an upsurge in violence aimed at keeping Black people from the polls. Democrats in the newly elected legislature secured enough support from sympathetic white Republicans, however, to pass a resolution refusing to seat the Black members, prompting Congress to restore military rule in the state and to force it to ratify the 15th Amendment.[10]

Apathy on the part of the federal military governor during the 1870 elections allowed violence, intimidation, and fraud to increase such that Democrats took back control of the state legislature. When the Republican governor was forced to resign or face impeachment, and a Democrat was elected to take his place, the way was opened, even before the removal of federal troops, for the total disenfranchisement of Black citizens to begin. According to the legal scholar Laughlin McDonald, during the so-called "Redemption" that ensued, "No state was more systematic and thorough in its efforts to deny or limit voting and officeholding by African-Americans" than Georgia.[11]

Likewise, the historian Morgan Kousser has observed, "The most comprehensive effort to undo Reconstruction . . . occurred in Georgia, whose legislature fell into Democratic hands in 1870," the Republican Party having been in power only five years.[12] The Democrat "Redeemers" set about using, in Kousser's words "widespread terrorism and fraud" in order to thwart Black voting. A small number of Black members were elected to the state House in 1870 (four) and 1872 (three), but they faced being jailed on spurious charges or being beaten and intimidated into not taking their seats. "Sabre clubs" patrolled near polling places

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[9] Eric Foner, *Reconstruction: America's Unfinished Revolution* (New York: 1999, 2002), pp. 423-44.

[10] Foner, *Reconstruction*, pp. 590-99; Orville Vernon Burton, *The Age of Lincoln* (New York: Hill and Wang, 2007), pp. 274-76.

[11] Foner, *Reconstruction*, 595-99; Burton, *The Age of Lincoln*, pp. 304-5.

[12] Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia* (Cambridge: Cambridge University Press, 2003, 2009), 29-37.

and used such tactics to keep Black voters from the polls, and local registrars selectively enforced an annual poll tax requirement. Democratic leaders eventually replaced the state's Reconstruction constitution, in 1877, with one that established a cumulative, or compounding, poll tax. The latter ensured that the Georgia GOP was effectively finished, as it then depended on Black voter participation.[13]

c. Populism, the White Primary, and Lynching

In response to the rising Populist movement, which threatened to put the Black vote back into play in the 1890s, Georgia Democrats introduced the white primary system, giving party officials total power over primary elections, and a literacy test that could easily be administered in a discriminatory fashion, in order to bar Black citizens from voting in the only election that mattered once the Populist threat was overcome. As McDonald explains, "Populism was defeated in Georgia because whites become convinced that white supremacy was the paramount goal, and that the achievement of that goal depended on the unity of white sin the Democratic party. The glimmer of racial accommodation in the Populists' plea for economic fairness and their repudiation of lynch law was snuffed out by the demagogic and destructive use of the race issue by state and local politicians."[14]

With the passage of the Hardwick Disenfranchising Act in 1908, which the Supreme Court would later acknowledge was "specifically designed to prevent Negroes from voting," William H. Rogers, the last remaining Black member of the Georgia General Assembly, resigned. Five years later, the state implemented a new registration protocol whereby voters had to submit to an examination by a board of registrars, members of which would of course be all White. Black voter registration fell from 28.3 percent in 1904 to 4.3 percent by 1910. Since 1868 a total of 58 Black men had served in the General Assembly, all as Republicans. No other Black person would serve in that body for another half century.[15]

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[13] Morgan Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven: Yale University Press, 1974), 209-216.

[14] Kousser, *The Shaping of Southern Politics*, pp. 41-42, 72, 78, 214-21.

[15] Laughlin McDonald, Michael B. Binford, and Ken Johnson, "Georgia," in Chandler Davidson and Bernard Grofman, Eds, *Quiet Revolution in the South: the Impact of the Voting Rights Act, 1965-1990* (Princeton: Princeton university Press, 1994), pp. 67-102, p. 67; Robert A. Holmes, "The Georgia Legislative Black Caucus: An Analysis of a Racial Legislative Subgroup," *Journal of Black Studies* Vol. 30, No. 6, Special Issue: African American State

Violence and intimidation meted out against Black Georgians remained commonplace during this time, including in the form of the Atlanta Race Riot of 1906, when a white mob rampaged through Black sections of the city and killed anywhere from 25 to 40 Black people.[16] According to the Equal Justice Initiative, between 1877 and 1950, there were 595 reported cases of lynching in Georgia.[17] Some 450 of these occurred between 1889 and 1930.[18] Jim Crow segregation was also enshrined in Georgia in the first half of the 20th century. Indeed, maintaining segregation depended upon upholding the barriers to Black political participation that white Democrats had erected during the Redemption. Preventing access to the franchise was the most elemental component of white supremacy. This remained the order of the day in Georgia until after World War II. Even then, Georgia was at the forefront of fighting staunchly against any and all efforts to break down that system.

d. Post-World War II

The U.S. Supreme Court invalidated the white primary in *Smith v. Allwright* in 1944. Georgia repealed the poll tax the following year. As Black voter registration began to climb, veteran attorney A.T. Walden and the "mayor" of the Auburn Avenue Black community, John Wesley Dobbs cofounded the Atlanta Negro Voters League (ANVL) in 1946, in order to keep that momentum going and to push for further gains. Walden also helped form the All-Citizens Registration Committee of Atlanta the following year. By 1949, Black voters accounted for 27 percent of the city's electorate and were instrumental in securing reelection for Mayor William Hartsfield, who in turn agreed to hire Black police and firefighters and to build more parks and playgrounds in Black communities. The state, however, remained committed to barring Black citizens from the electoral process. The General Assembly in 1949 passed a registration and purge law. It purged without notice any voter who had not voted in the preceding two years and subjected prospective voters to a voter qualification questionnaire that was designed to be used only for Black would-be registrants and which was also designed to have questions for which the

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Legislative Politics (July 2000), pp. 768-790, pp. 768-69; Kousser, *Shaping of Southern Politics*, pp. 217-19; McDonald, *A Voting Rights Odyssey*, pp. 37-41.

[16] Kliff Kuhn and Gregory Mixon, "The Atlanta Race Riot of 1906," *The New Georgia Encyclopedia*, 2005, 2020, University of Georgia Press.

[17] Equal Justice Initiative, "Lynching in America," https://eji.org/reports/lynching-in-america/.

[18] Numan Bartley, *The Creation of Modern Georgia*, 2d (Athens: University of Georgia Press, 1983, 1990), pp. 139-40.

answer would change so that anyone trying to coach applicants would have a harder time doing so.[19]

When the Supreme Court decided *Brown v. Board of Education* in 1954, the State of Georgia became one of the earliest and most strident practitioners of Massive Resistance to school desegregation, pursuing at one point a policy of eliminating public education in favor of tuition waivers to private schools. Three years later, the state registered its staunch opposition to the Civil Rights Act of 1957, which demonstrated only a very modest commitment from the federal government to the issue of Black citizenship rights in the South. The Georgia General Assembly created an Election Laws Study Commission, which recommended rewriting the state's election code, making the voter registration questionnaire more difficult and raising the score needed to pass. It also called for disenfranchising citizens convicted of a list of crimes for which Black people were more frequently convicted. Members openly explained that these changes were designed to prevent the "bloc vote" from growing, by which they meant the Black vote, and to prevent organizations, most especially the NAACP, from registering and organizing Black voters. But the legislators had learned that the laws themselves had to be "colorblind" in order to pass legal muster.[20]

e. <u>One Person, One Vote</u>

In *Baker v. Carr* in 1962, the U.S. Supreme Court held that redistricting was a justiciable issue, opening the way for the invalidation of malapportioned state legislative schemes like Georgia's. In deeming the state's county unit system unconstitutional, the Court in *Gray v. Sanders* articulated for the first time the idea of "one person, one vote," which it would enshrine nationwide two years later in *Reynolds v. Sims*.[21] The county unit system in Georgia had been adopted in 1917 primarily to ensure that the White voters in the rural Black Belt, the old plantation belt, could dominate statewide elections even as urban areas grew and far outpaced the rural areas of the state in population. The system afforded counties twice as many

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[19] Tomiko Brown Nagin, *Courage to Dissent: Atlanta and the Long Civil Rights Movement* (New York: Oxford University Press, 2011), pp. 55-56; McDonald, *A Voting Rights Odyssey*, pp. 55-6; McDonald et al, "Georgia," in *Quiet Revolution in the South*, p. 70.

[20] Jeff Roche, *Restructured Resistance: the Sibley Commission and the Politics of Desegregation in Georgia* (Athens: University of Georgia Press, 1998, 2010), pp. 23-31; McDonald, *A Voting Rights Odyssey*, pp. 72-4.

[21] Sanders v. Gray, 203 F.Supp. 158 (N.D. Ga. 1963), vacated, Gray v. Sanders, 372 U.S. 368 (1963), 381; Reynolds v. Sims, 377 U.S. 533 (1964).

unit votes in the primary election (in effect, the general election) as they had representatives in an already malapportioned map. The candidate who won a majority of a county's popular vote was entitled to all of its unit votes. The court in *Sanders* acknowledged that the result was a severe degradation of the power of votes in urban counties. Lawmakers understood that the county unit system had become a bulwark against the "bloc vote" as well, since Black voter organizations like the NAACP had been most successful in organizing in places like metropolitan Atlanta.[22]

Later that year, a U.S. district court in *Toombs v. Fortson* invalidated Georgia's state legislative scheme on one-person, one-vote grounds and ordered the General Assembly to reapportion at least one of its houses on the basis of equal population among districts. Lawmakers decided to reapportion the Senate but were faced with the very real prospect of a Black candidate winning an election in a single-member district, especially in Atlanta/Fulton County. Governor Carl Sanders thus put forth the idea of multimember districts, countywide elections, and a majority vote requirement in urban areas. It was widely reported that the expressed purpose of such a scheme was to avoid having a Black member elected. The General Assembly adopted the plan, but implementing it required amending the state's constitution to allow at-large countywide voting, which could not happen without a referendum. Atlanta attorney Leroy Johnson, an A.T. Walden protégé, was elected to Senate District 38 in the fall of 1962 and became the first Black member of the General Assembly since Reconstruction. Johnson had to lobby Governor Sanders to take down the Whites only and Colored signs in the state capitol. By that time, the Black voter population share in the city of Atlanta had risen to 34 percent.[23]

The following year, the General Assembly created a new Election Law Study Committee (ELSC) and tasked it with rewriting the state's election laws in the wake of the county unit system's demise. The committee submitted its recommendations the following spring, at the same time southern Senators were filibustering what would become the Civil Rights Act, which the Georgia General Assembly

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[22] Brown Nagin, *Courage to Dissent*, 196-97; McDonald, *A Voting Rights Odyssey*, pp. 83-84

[23] Toombs v. Fortson, 379 U.S. 621 (1965); Brown Nagin, *Courage to Dissent*, 254-55; Holmes, "The Georgia Legislative Black Caucus," pp. 769-770; Charles Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, Vol. 52, No. 4, pp. 1057-1104, pp. 1062-63.

condemned in a resolution and the owners of the Heart of Atlanta Motel challenged in an unsuccessful lawsuit.[24]

The Supreme Court at that time also handed down *Reynolds v. Sims*, which the Georgia state House also condemned, calling the day of its rendering "the saddest day in American history."[25] The Court in *Reynolds* held that all state legislatures had to reapportion both chambers in their respective bodies in order to account for one-person, one-vote. The ELSC's proposal included a literacy test and voter understanding test, a prohibition on assistance to voters, a numbered-post requirement for multimember districts, and a comprehensive majority vote requirement. Though some proponents of these changes put forth 'good-governance' arguments, it was widely understood that the most influential supporters were looking to blunt the impact of the "bloc vote," meaning the Black vote.[26]

That same year, the Court struck down Georgia's congressional redistricting in *Wesberry v. Sanders*. As under the county unit system and the then-invalidated legislative apportionment, Georgia's congressional apportionment deeply undervalued the votes of citizens in urban areas, particularly in metro Atlanta's Fifth Congressional District. At the same time, the Supreme Court upheld the use of multimember districts in state legislatures in *Fortson v. Dorsey* in 1965, though it did signal a willingness to scrutinize such schemes more closely when it held that redistricting plans might be invalidated if they "operate[d] to minimize or cancel out the voting strength of racial or political elements of the voting population" (379 U.S. 433, 438, quoting from *Reynolds v. Sims*). Leroy Johnson was joined in the Senate by attorney Hank Ford as only second Black member of the General Assembly since Reconstruction.[27]

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[24] McDonald, *A Voting Rights Odyssey*, pp. 91-100; Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964)

[25] McDonald, *A Voting Rights Odyssey*, p. 101.

[26] J. Morgan Kousser, *Colorblind Injustice: Minority Voting Rights and the Undoing of the Second Reconstruction* (Chapel Hill: University of North Carolina Press, 1999), pp. 198-202; McDonald, *A Voting Rights Odyssey*, pp. 91-102.

[27] Wesberry v. Sanders, 376 U.S. 1 (1964); Kousser, *Colorblind Injustice*, p. 333; Holmes, "The Georgia Legislative Black Caucus," p. 770; Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1063-64.

IV. THE HISTORICAL BACKGROUND – AFTER THE VOTING RIGHTS ACT

a. The Voting Rights Act

The passage of the Voting Rights Act in 1965 led to the invalidation of portions of the State of Georgia's collective barrier to Black political participation, most immediately in the form of its literacy test being struck and in the appointment of federal registrars. Georgia was also subject to the coverage provisions of Sections 4 and 5 of the VRA. This meant that the state was to submit any changes to election to the Justice Department's Civil Rights Division for preclearance, a charge that the state largely ignored for several years, as local governing bodies like county commissions, city councils, and school boards switched from single-member districts to at-large schemes with numbered posts and majority vote requirements.[28]

In single-member district elections, with an increase in Black voter registration then likely, Black voters in majority Black areas had an opportunity to elect candidates of their choice beyond just Leroy Johnson. As had been the case in Fulton County in the previously adopted state Senate plan, White lawmakers switched to at-large elections with majority vote requirements to avoid that possibility. Numbered posts enhanced the dilutive and discriminatory nature of such schemes. In a pure at-large system, all candidates would compete with one another for the seats up in a given election, and all voters could cast as many votes as there were seats at issue. They were not required to cast all of their available votes. If five seats were open, for example, the five candidates with the most votes won. This allowed a group of voters to engage in "single-shot" voting, or casting one vote for the same candidate and not casting any of their remaining votes for candidates competing with that preferred candidate. Numbered posts precluded single-shot voting, since each contest was head-to-head. Numerous counties across the state were able to pass such plans through the General Assembly and implement them either shortly before or after the VRA's passage, when the Johnson administration was focused on voter registration.[29]

Meanwhile, the *Toombs v. Fortson* litigation led to the Georgia General Assembly implementing a plan for the state House that met the one-person, one vote

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[28] McDonald et al., "Georgia," in *Quiet Revolution in the South*, pp. 75-79.

[29] McDonald, *A Voting Rights Odyssey*, pp. 131-32; McDonald et al., "Georgia," in *Quiet Revolution in the South*, pp. 81-82.

requirement but included both single and multimember districts. The plan allowed for the election that fall, 1965, of the first Black members to the House since Reconstruction, including a young Julian Bond. Six Black members were elected from Atlanta, one from Augusta, and one from Columbus. Bond was denied the oath of office, however, ostensibly on account of his opposition to the war in Vietnam, though realistically because he was not only Black but young and brash and a natural target for White legislators who bristled at the presence of Black members in the body. Bond was denied his seat following two subsequent elections and only took it when a federal court ruled that his First Amendment rights had been violated.[30]

b. Section 5 Objections – the 1970s

The number of Black members of the General Assembly very slowly increased in 1968 and 1970, and the Justice Department began to interpose Section 5 objections to changes in Georgia election law. The first objection came in 1968 in response to the state's attempt to limit the number of illiterate voters that a single individual could assist, a restriction that was not in the state's election code prior to the adoption of the VRA and the invalidation of the state's literacy test. The second objection involved a second submission by the state attempting to establish the same restriction relative to municipal elections as well as a requirement that poll officials be "judicious, intelligent, and upright electors," qualifications that the CRD found to be "vague and subjective" and subject to "discriminatory application." The third CRD objection came in response to a handbook sent by Secretary of State Ben Fortson to Georgia election officials advising them of limitation on assistance to illiterate voters that did not purport necessary changes indicated in the previous two objections.[31]

Subsequent to these initial objections aimed at the state, between 1968 and 1979, the Attorney General registered objections to changes in local election law, at the county and municipal level, 73 times.[32] While local in nature, these changes were made by way of delegations passing legislation through the General Assembly.

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[30] Bond v. Floyd, 385 U.S. 116 (1966); Holmes, "The Georgia Legislative Black Caucus," p. 771-72.

[31] Assistant Attorney General for Civil Rights Stephan Pollack to Georgia Attorney General Arthur K. Bolton, June 19 and July 28, 1968; Pollack to GA Secretary of State Fortson, Aug. 30, 1968; Justice Department Civil Rights Division Section 5 Objection Letters by State, State of Georgia, https://www.justice.gov/crt/voting-determination-letters-georgia.

[32] Justice Department Section 5 Objection Letters. Ten of those 73 were withdrawn.

Many of them concerned counties of municipalities in the Congressional, Senate, and state House districts challenged by Plaintiffs in this case.

A few examples from the year 1971 are illustrative. Clarke County attempted to reduce the number of districts for its county commission, and in the process of redistricting drastically underpopulated the most heavily Black district. The CRD could not conclude that the plan would not have a racially discriminatory effect. Bibb County tried to switch from an appointed board of education (which at the time had 2 Black members) to one that would be elected at-large, countywide. The county's population was roughly 34 percent Black. The CRD concluded that Black representation on the board could be eliminated as a result of the change. The CRD similarly found that the City of Newnan's attempt to implement a numbered post scheme could have a discriminatory effect and purpose and registered objection. Later that year, the City of Conyers moved to implement a numbered post scheme and majority vote requirement for elections for mayor and alderman, and the AG objected since he could not conclude that these changes would "not have the effect of abridging voting rights on account of race or color."[33]

c. Redistricting – 1970s Cycle

When the General Assembly passed redistricting plans for the state House, state Senate, and for Congress, after the 1970 Census, the Attorney General objected to all three. The state House plan included the usual characteristics of a racially dilutive plan – multimember districts, numbered posts, and a majority vote requirement, along with suspicious adjustments to potentially majority-Black single-member districts. The AG objected to the Senate plan based on the boundaries for District 36, Fulton County/Atlanta, and District 22, Richmond County/Augusta. He could not determine that the proposed boundary lines would not have a "discriminatory racial effect" by "minimizing or unnecessarily diluting black voting strength in those areas."[34]

The CRD objected to the state House plan because 49 out of the 105 districts were multimember districts with numbered posts and were subject to the state's

[33] David L. Norman Assistant Attorney General, Civil Rights Division, to C.R. Vaughn, Jr. Esq., Dec. 2, 1971; see also David L. Norman: Acting Assistant Attorney General, Civil Rights Division, to Upshaw C. Bentley, Aug. 6, 1971; AAG Norman to E.S. Sell Jr., Aug. 24, 1971; and AAG Norman to Charles L. Godwin, Oct. 13, 1971; Justice Department Section 5 Objection Letters.

[34] David L. Norman, Assistant Attorney General for Civil Rights, to Arthur K. Bolton, March 3, 1972, CRD Section 5 Objection Letters by State.

majority vote requirement. Assistant Attorney General for Civil Rights David Norman also noted that 52 of the 105 districts were made up of portions of counties, "suggest[ing] that the state's traditional policy of maintaining county lines in designing legislative districts has been significantly modified." Norman concluded, citing recent federal caselaw, that this combination of factors "would occasion a serious potential abridgment of minority voting rights." Finally, he noted that in the eastern Black Belt there was a large and sufficiently contiguous Black population that could support "at least three" new majority Black single member house districts and that it appeared that the Black population had instead been cracked and stacked with parts of neighboring counties that were majority White.[35]

The Attorney General's office also refused to preclear the General Assembly's 1971 congressional plan. White lawmakers had been candid in their desire to ensure that a "white, moderate, Democratic Congressman" would get elected to the Fifth Congressional District. Some singled-out Julian Bond in fearmongering, insisting that the "worst thing" that could come of redistricting would be Bond's election to Congress. Other rumored candidates for a Fifth District with a significant Black population were Andrew Young and Maynard Jackson. In the plan passed by the General Assembly, neither Young's nor Jackson's residence was in the Fifth, and the Black population of metropolitan Atlanta was cracked between districts 4, 5, and 6. The AG objected to the plan specifically on the basis of the boundary between CDs 5 and 6, unable to conclude that the makeup of these districts would not "have a discriminatory racial effect by minimizing or diluting black voting strength in the Atlanta area." Young was elected to represent CD 5 in 1972, the second Black citizen to represent Georgia in Congress, joining Jefferson Franklin Long, who served less than three months in 1871.[36]

The General Assembly passed new plans for the Senate and House that year, 1972, and the Senate plan passed muster under Section 5. It included all single-member districts, with 2 being majority Black. The House plan again met with objection, however, because while it represented a reduction in the number of multimember districts, it still included 32 such districts with numbered posts and still the majority vote requirement. The General Assembly did not pass through another plan, and state officials began arguing that Section 5 review of

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[35] Norman to Bolton, March 3, 1972.

[36] David L. Normal, Assistant Attorney General for Civil Rights, to Arthur K. Bolton, February 11, 1972; Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1065-66.

reapportionment was unconstitutional. This prompted the Attorney General to file suit. The Supreme Court in *Georgia v. United States* insisted that Section 5 did indeed cover reapportionment, and the state was forced to adopt a third plan for the House in 1974. That plan, which included 24 majority-Black districts, was finally precleared. In elections that fall, 19 Black candidates were elected to the House and 2 to the Senate. The Georgia Legislative Black Caucus was formally organized the following year.[37]

d. Section 2 and 14th/15th Amendment Litigation in the 1970s

Numerous counties and municipalities by the mid-1970s were either operating under at-large election schemes that had been adopted prior to the passage of the VRA or had enacted such plans after passage and had simply not complied with Section 5. According to the historian Stephen Tuck, the prevalence of these schemes "brought into sharp relief the failure of biracial politics after the Voting Rights Act." According to Tuck, the reemergence of the Republican Party in the 1960s, "the removal of the county-unit system, and the emergence of genuine two-party elections, voting coalitions in Georgia underwent a radical shift to the detriment of black influence." But Section 2 and constitutional challenges to dilutive schemes did afford Black voters an opportunity, particularly in some rural areas and cities outside of the capitol, for success.[38]

After the Supreme Court invalidated a dilutive at-large scheme in 1973 Texas, in *White v. Register*, citing the Equal Protection Clause of the 14th Amendment, a flurry of suits were filed against counties and municipalities in Georgia citing the 14th Amendment and/or Section 2 of the VRA. Dozens of government entities were compelled to adopt single-member district plans for county commissions, city councils, and boards of education as a result of that litigation.[39]

Twenty-five counties were sued for using dilutive at-large schemes for election of their county commissions. That figure included several counties among the challenged districts in this case – Fulton (1974), Walton (1975), Morgan (1976),

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[37] Georgia v. United States, 411 U.S. 526 (1973); Holmes, "The Georgia Legislative Black Caucus," 771-3; McDonald, *Voting Rights Odyssey* pp. 148-49; Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1066-67.

[38] Stephen G. Tuck, *Beyond Atlanta: The Struggle for Racial Equality in Georgia, 1940-1980* (Athens: University of Georgia Press, 2001), pp. 218-221; Numan Bartley, *The New South: 1945-1980* (Baton Rouge: Louisiana State University Press, 1996), pp. 388-93.

[39] White v. Regester, 412 U.S. 755 (1973); Kousser, *Colorblind Injustice*, pp. 335-36; McDonald, *Voting Rights Odyssey*, pp. 157-59.

Richmond (1978), and Henry (1979). Each of those counties agreed to adopt single-member district plans as a result. Newton agreed to submit a Section 5 plea under threat of litigation and failed to obtain preclearance, prompting the county to switch to single-member districts. County boards of education were also targeted with VRA suits, including Morgan (1975) and Henry (1979). Newton agreed to adopt its county commission districts for its school board. Numerous cities were also faced with lawsuits under Section 2. Here as well, municipalities in areas where plaintiffs in this case are challenging the current plans were among those challenged in the 1970s, including Albany and Macon (1974), Madison (1976), and Covington (1977). Fourteen cities ended up switching to single-member district elections as a result of the litigation.[40]

More often than not, these governmental entities opted to settle, though some went to trial, allowing the courts to document the stifling history of discrimination in Georgia and its ongoing effect at that time. The Fulton County case is illustrative. The federal trial court in *Pitt v. Busbee* conducted an inquiry consistent with *White v. Regester* and the en banc decision of the Fifth Circuit Court of Appeals in *Zimmer v. McKeithen*, concluded, "Although the present climate in Fulton County presents only minimal political barriers to black registration, the Fulton County government has never become equally open to participation by black and white members of the community" (135 F. Supp. 35, 40, N.D. Ga., 1975).[41]

Likewise, the court in *Pitt v. Busbee* found that, although there was no direct evidence of discriminatory intent in the General Assembly's enactment of the relevant statute, "the effect of the voting procedures embodied in that Act has been to grossly minimize the possibility of blacks fully participating in their county government and particularly in the election of county commissioners of their choice" (at 40-41). It also found that, not only had "no member of the minority group ever been elected to the county commission under the 1952 Act," but the White members of the commission had "in general unresponsive in a number of ways to the needs of the black community, most notably by their continuing effort to contain low-income housing within the predominantly black neighborhoods of the City of Atlanta" (41). The county's at-large scheme furthermore included numbered posts and the majority vote requirement. The court deemed the Act that produced the at-large system unconstitutional.

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[40] McDonald, *Voting Rights Odyssey*, pp. 158-61.

[41] Zimmer v. McKeithen, 485 F.2d 1297 (5th CCA, 1973).

The U.S. Supreme Court announced a much more stringent standard in such cases when it decided *City of Mobile v. Bolden* in 1980, holding that plaintiffs must prove discriminatory intent, rather than relying on evidence of a likely discriminatory effect (446 U.S. 55). When it extended the VRA in 1982, however, Congress amended the legislation to include the discriminatory effect standard. During the hearings surrounded the extension and amendment, the Senate judiciary Committee published a report in which it used pre-*Mobile* jurisprudence, namely *White* and *Zimmer*, to enumerate certain factors that courts might consider in investigating Section 2 violation claims. These "Senate Factors" were in turn adopted by the Supreme Court in *Thornburg v. Gingles* (478 U.S. 30, 1986).[42]

e. Redistricting in the 1980s – *Busbee v. Smith*

When the Georgia General Assembly submitted Acts 3, 4, and 5 to the Justice Department for preclearance, the latter initially requested more information, upon receipt of which it concluded that, for the most part, the state House and Senate plans were acceptable. This was a disappointment for the Legislative Black Caucus and Republicans who had worked together on mutually beneficial plans for the legislative districts and had asked the CRD to reject the plan ultimately passed by White Democrats. The CRD did express at least lingering "concerns" regarding the approved legislative plans. In the Senate plan, those concerns involved districts 42 and 43 in DeKalb County and 22 in Richmond County. The proposed plan reduced the Black population in District 43 from 69 percent to 45 percent, and it created an adjacent District 42 which was to be 65 percent Black population but only 45 percent Black registered voters. The upshot for the CRD was that this would make it "more difficult for the minority community of DeKalb County to elect a candidate of its choice to the Senate."[43]

Regarding District 22 in Richmond County, the CRD noted that not only did the proposed plan reduce the Black population of 22 from 50 percent Black to 48 percent Black, but lawmakers chose to reject the plan put forth by the Chairman of the Senate Reapportionment Committee, which would have established a District 22

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[42] Report of the Committee on the Judiciary on S. 1992 (Voting Rights Act Extension), United States Senate, 97th Congress, 2nd Session, Report No. 97-417; Peyton McCrary, "History in the Courts: The Significance of City of Mobile v. Bolden," in Chandler Davidson (Ed.), *Minority Vote Dilution* (Washington, D.C.: Howard University Press, 1984), pp. 47-65.

[43] Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, to Hon. Michael Bowers, Feb. 11, 1982, p.2, Civil Rights Division Section 5 Objection Letters; Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1069-70.

with 55 percent Black population. The state insisted that its motivation in drawing 22 in the manner that it had was keeping whole the City of Augusta (which at 53 percent Black had just elected a Black mayor for the first time). The objection letter noted that the city was kept whole in the Chairman's 55 percent plan for District 22. The conclusion was that the proposed plan might "have a detrimental effect on black voting strength."[44]

The CRD's concerns regarding the state House plan involved Dougherty County, which had seen a significant increase in Black population in the preceding decade. In the existing plan, Districts 131, 132, 133, and 134 had Black populations, respectively, of 13.5, 80.4, 50.8, and 25 percent Black. In the proposed plan, the corresponding districts would be 73.5, 10.5, 39.1, and 45.9 percent Black. The division concluded that this was "impermissible retrogression" in Black voting opportunity, particularly insofar as the state had provided "no justification" for the fragmentation. The Black Caucus and Republicans saw some gains under the plans that were ultimately passed and approved.[45]

Act 5 passed by the General Assembly in 1981 provided for the state's Congressional redistricting plan. The AG objected to this plan on the basis of the splitting of what it deemed to be a cohesive Black community in Fulton and DeKalb Counties between CDs 4 and 5. On one hand, the new plan would increase the Black population of CD 5 by 7 percentage points, to 57.3, though by the state's own admission CD 5 contained 54 percent White registered voters because the Black community therein was "'less politically active'" than elsewhere. On the other hand, the General Assembly had failed to pass the Senate's congressional plan (which had been proffered by then Senator Julian Bond), which included the entire Black community in Fulton and DeKalb in one CD 5, which had a Black population of 69 percent.

Andrew Young had won election three times in a CD 5 with a slight White majority, but Wyche Fowler had defeated John Lewis in the special election held when Young became the U.S. Ambassador to the United Nations, and he had won reelection twice. Bond had made a tacit agreement with Republican Paul Coverdell whereby the General Assembly would increase the Black population in CD to a majority by taking Black population from CD 4, giving a Republican a better chance

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[44] Reynolds to Bowers, Feb. 11, 1982, pp. 2-3.

[45] Reynolds to Bowers, Feb. 11, 1982, pp. 3; Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, p. 1070.

to win back that seat, then held by Democrat Elliot Levitas but held, before Levitas, by Republican Benjamin Butler. Bond had also agreed with the Majority Leader Tom Allgood to lower the Black population in Allgood Senate district if he would support Bond's plan to draw a 69 percent Black CD 5. The Legislative Black Caucus had put forth plans that had CD 5 even higher in Black population. Ultimately, the plan that came out of conference committee, to bond's displeasure, had CD 5 at 57.3 percent Black.[46]

The rationale provided by the state to the CRD was that the Fulton and DeKalb Black communities were not cohesive socioeconomically and that there was a desire to maintain separate CDs for the two counties. Realistically, Democrats understood that the Republican Coverdell wanted to shed Black population in CD 4. The response from the division, in any case, was that there was significant socioeconomic variation in the Black areas within CD itself and that the proposed plan would split Fulton County by reassigning a large portion of North Fulton from CD 5 to CD 4. It also pointed out that county lines were crossed elsewhere in the Atlanta metropolitan area in the proposed plan. According, the AG determined that the state had not met its burden of proof under Section 5.[47]

The state subsequently filed a declaratory judgment action in the D.C. District Court, arguing that its plan passed the non-retrogression status put forth in *Beer v. United States*.[48] Attorneys for the CRD and for an intervening group of Black citizens argued that, even if that were the case, the plan approved by the G.A. was the product of intentional discrimination. During discovery and over the course of a 3 day trial that summer, 1982, it was revealed that the most influential member of the General Assembly when it came to redistricting, Representative and chair of the House reapportionment committee Joe Mack Wilson of Marietta, had repeatedly referred to Black people as "niggers," including saying to a Republican reapportionment committee member, "There are some things worse than niggers and that's Republicans" and by referring to bills designed to help Black people as "nigger legislation." The court in *Busbee v. Smith* made the extraordinary, and decidedly succinct, determination, "Representative Joe Mack Wilson is a racist."[49] The court further noted that Wilson had been appointed to his committee chairmanship by

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[46] Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1067-69.

[47] Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, to Hon. Michael Bowers, Feb. 11, 1982 (separate letter from previous citations), pp. 2-4.

[48] Beer v. United States, 425 U.S. 130 (1976).

[49] Busbee v. Smith, 549 F.Supp. 494, 500 (D.D.C, 1982), aff'd 549 U.S. 1166.

Speaker of the House Thomas Murphy, who had himself served as floor leader for segregationist governor Lester Maddox, who had, in turn, flouted the Civil Rights Act of 1964 by chasing Black customers away from his restaurant with a pickaxe handle and later by closing the restaurant rather than serving Black customers.[50]

Among the other findings of the *Busbee* court were that one of the two Black members of the House reapportionment committee was consider an "Aunt Jane" by Black lawmakers; that Black citizens did not have adequate representation on the House committee; that discriminatory tactics had been "commonly" used in the state and relevant counties in the past; that not only did the House committee ignore the advice of CRD attorneys at a meeting regarding their Section 5 submission, but Rep. Wilson had responded by saying to colleagues, "The Justice Department is trying to make us draw nigger districts and I don't want to draw nigger districts"; that during public hearings on redistricting no one stated their desire for CD 5 to remain unchanged and that, to the contrary, people testified to their desire that Black communities outside of the existing CD boundaries should be included therein; and that certain leaders, especially Lt. Governor Zell Miller, had prized keeping together one supposedly cohesive group, the so-called mountain counties, an almost exclusive White community of interest, while at the same time decrying the lumping together of demonstrably cohesive Black voters in CD5.[51]

The court also found that "Most of the factors which the legislative leadership identified as important" during the process "were disregarded in the final apportionment plan." For example, Gwinnett County, including the cities of Snellville and Loganville, was split between the 9th and 10th CDs. The 10th was dramatically redrawn, including the loss of constituents for the sitting Rep., despite its not deviating hardly at all from the one-person, one-vote standard. And yet, when it came to inviolability of standards, this was rigorously held to as to the "historical" nature of the split between Fulton and DeKalb, despite public pleas to consider the Black community COI.[52]

Finally, the *Busbee* court observed, "The discrimination in this case is explicit and implicit." It held, "The contradictions, illogical justifications and feigned ignorance reflected in testimony at trial indicate an attempt to cover-up the true

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[50] Id.

[51] Busbee v. Smith, 548 F.Supp., at 501-2; McDonald et. Al., "Georgia," in *Quiet Revolution in the South*, pp. 88-89.

[52] Busbee v. Smith at 502-5.

motive of the Georgia General Assembly." The "purported goals" of maintaining "historical borders," avoiding county and city splits, and avoiding a Republican 4th CD were "pretexts for discrimination." Those goals had been ignored, the court found, in the drawing of CD 1, 3, 6, 7, 8, 9, and 10. The ultimate conclusion was that "The Fifth District was drawn to suppress black voting strength in Georgia."[53]

A special session of the General Assembly, acting on advice from the CRD, ultimately drew a CD 5 with upwards of 65 percent Black population. Wyche Fowler won reelection anyway, though when he joined the Senate in 1986, John Lewis took his place. By that time, republican Pat Swindall had swung CD 4 back to the Republicans.[54]

f. Section 5 Objections and Section 2 Cases in the 1980s

Before, during, and after *Busbee*, counties and cities throughout the state of Georgia submitted electoral changes to the CRD that met with Section 5 objections. This included DeKalb County, which twice tried to block or limit voter registration drives. The CRD noted in its first rejection to DeKalb, in 1980, that only 24 percent of the Black voting age population in the county was registered, compared to 81 percent of the white population. It also concluded that the county board of registrars' stated concern that registration drives might be illegal was "without foundation."[55] Two years later, when the percentage of Black voting age residents of the county had increased by 12.8 percent (since 1980), and the county attempted to limit voter registration drives to even-numbered years, the CRD concluded that disallowing the drives in odd-numbered years would "substantially reduce the opportunities for Black potential voters to register." The CRD also found "no justifiable reason" and "no useful purpose" for the county's insistence that civic groups obtain Section 5 preclearance prior to initiating a voter registration drive.[56]

The CRD objected the same year to the redistricting plan submitted by Dougherty County for its county commission. The AAG concluded that, despite significant Black population growth in the county relative to the White population, the proposed plan decreased the proportion of Black residents in all but one of six

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[53] Id. 514-15.

[54] Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1069-70.

[55] Drew S. Days, Assistant Attorney General, Civil Rights Division, to Harry E. Schmid, Sept. 11, 1980, Civil Rights Division Section 5 Objection Letters.

[56] Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, to Norma S. Lyons, March 5, 1982, Civil Rights Division Section 5 Objection Letters.

districts and "seem[ed] unnecessarily to concentrate black citizens in the two districts that are majority black."[57] Bibb County's proposed redistricting plan for its board of education met a similar fate. Despite Black population growth in the county, the plan retrogressed Black voting strength by providing for Black majorities in only two districts. Alternate plans were submitted that would have maintained Black majorities in three districts, but these were rejected, according to the CRD, "apparently for no compelling reason."[58]

When the City of McDonough submitted a similar plan for its city council in 1982, the CRD noted that while Black residents comprised 37.7 percent of the population, they were concentrated in the southern portion of the city where, when combined with the white population therein, accounted for half of the city's population. But the city proposed a plan that packed the Black population into one precinct and cracked among two others "with the apparently intended result that black voters . . . will have a meaningful influence on the election of council members in only one of the four single-member precincts, and likely can elect a candidate of their choice to only one of six council seats."[59] The City of College Park in the southern Atlanta suburbs submitted a plan that, "in spite of an enormous increase in minority population," according to the CRD, "appear[ed]" to represent "a conscious effort to maintain effective minority voting strength at the level established in 1976." The plan did this, according to the division, by packing Black people into one, 90 percent Black district, and cracking them among four other districts. There also did not "appear to be any legitimate reason for the strangely irregular lines that meander[ed] through . . . a highly concentrated black community."[60]

Similar objections were entered vis-à-vis plans submitted by, among others, the cities of Newnan (packing and cracking city council districts), Griffin (packing and cracking board of commissioners districts), Forsyth (twice: majority vote requirement with numbered posts, and racially selective annexations to maintain white majority), and Macon (racially selective deannexations). The City of August was sued by the Justice Department under Section 2 and forced to adopt a single-

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[57] Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, to C. Nathan Davis, July 12, 1982, Civil Rights Division Section 5 Objection Letters.

[58] Wm Bradford Reynolds, Assistant Attorney General, Civil Rights Division, to Hon. Arthur Griffin Jr., Nov. 26, 1982, Assistant Attorney General, Civil Rights Division.

[59] Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, to S.T. Ellis, Nov. 22, 1982, Assistant Attorney General, Civil Rights Division.

[60] Wm. Bradford Reynolds, Assistant Attorney General, Civil Rights Division, to George E. Glaze, Dec. 12, 1983, Assistant Attorney General, Civil Rights Division.

member district plan for its city council that afforded Black voters a chance to elect candidates of choice to 6 of 13 seats. The city subsequently attempted to consolidate with Richmond County and adopt a consolidated plan that would have retrogressed Black voters' relative strength. The CRD in rejecting the change noted that the court in the Section 2 case had found racial discrimination in the electoral process in both the city and the county and that the AG had registered several Section 5 objections to proposed changes therein, including the initial date set for the referendum on the consolidation.[61]

In the 1980s, the Justice department entered a total of 47 Section 5 objections to changes submitted by either the state of Georgia or its counties or municipalities. Seven of these were partially or wholly withdrawn. In addition, between the amendment of the VRA in 1982 and the end of the decade, private plaintiffs and the United States sued 26 counties and 26 cities under Section 2 for their continued use of at-large election schemes for city and county councils or commissions. An additional 13 counties were sued over their use of at-large elections for their boards of education. In virtually every one of these cases, district systems were adopted either by court order or by settlement.[62]

g. Redistricting in the 1990s – *Shaw* and *Miller*

Following the 1990 Census, Georgia gained a seat in the U.S. House. In previous redistricting cycles, one could have safely assumed that this would mean the creation of a new majority White congressional district. But the state had seen the CRD object to each one of its submitted plans under Section 2 during those previous redistricting cycles. The General Assembly had also been embarrassed by the findings of the court in the *Busbee* litigation a decade prior. It had, for the first time, adopted guidelines that directed the GA to avoid minority vote dilution and to comply with the VRA. And finally, the Black Caucus had come to include 34 members, which, while falling well short of proportionality, certainly afforded Black legislators some kind of voice in the process. Some sough to continue working with Republicans, who offered support for increasing the number of majority Back districts, such that, on their end, adjacent districts could be "bleacher," or made more White and thus more accessible to Republican victories. The plan passed out of a

[61] Civil Rights Division Section 5 Objection Letters, esp. James P. Turner, Assistant Attorney General, Civil Rights Division, to Linda W. Beazley, May 30, 1989; United States v. City of Augusta, Civ. Act. No. 187-004 (S.D. Ga, 1987).

[62] Civil Rights Division Section 5 Objection Letters; McDonald, *Voting Rights Odyssey*, pp. 182-84.

summer, 1991 special session would have created two majority Black CDs – 5 and 11 (the Black Caucus had called for three). The GA also passed new plans for the state House and the Senate, using all single member districts for the first time.[63]

All three plans were submitted to the CRD, and the AG registered objection to all of them. Regarding the Congressional plan, the CRD argued that lawmakers were "predisposed" to limit the number of majority Black districts to two and that they did not "make a good faith attempt to recognize the concentrations of black voters in the southwest" corner of the state, nor to include the Black population of Baldwin County in the new CD 11. It noted that a plan had been submitted to the GA, by the ACLU, that provided for three majority Black districts, and argued that the state had not met its burden of explaining why it rejected said plan. In objecting to the state House plan, the CRD observed that, "Alternatives which avoided unnecessary retrogression, and which recognized minority voting potential by drawing additional viable black majority districts," had been rejected "in what appears to be an effort to accommodate incumbent legislators at the expense of black voters." Concerning the Senate plan, the CRD found that it "likewise include[ed] instances in which the concerns of the incumbents were placed ahead of black voting potential."[64]

Following the objections, the state Senate passed a plan that included three majority Black districts – CDs 5, 11, and 2. The House rejected this plan, and the GA eventually came together on a second adopted plan that included two majority Black districts with a slight increase in Black voters in CDs 11 and 2 from the first plan passed through the GA. The CRD rejected this plan as well, citing again "predisposition" to limit the number of majority Black CDs and citing, this time, the Senate's passage of an alternative with three majority Black CDs. Similarly, the CRD objected to the GA's second attempts to enact state House and Senate plans, citing again the "fragmentation" of Black communities and apparent deliberate maintenance of majority white districts. Regarding the Senate plan, the CRD cited the state's "failing to combine the black growth communities in Clayton County with the residents of the black neighborhoods in DeKalb" as a factor in 'minimizing'

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[63] Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1070-72; McDonald, *A Voting Rights Odyssey*, pp. 211-213.

[64] John R. Dunne, Assistant Attorney General, Civil Rights Division, to Mark H. Cohen, Jan. 21, 1992, Civil Rights Division Section 5 Objection Letters.

Black voting strength in DeKalb, where more "logical" boundaries had been avoided.[65]

The GA came back and passed a third set of plans in the spring of 1992. All three plans were precleared. The Congressional plan was similar to the one previously passed by the Senate but rejected by the House and contained three majority Black CDs. The new state legislative plans produced 13 majority Black Senate districts and 41 majority Black House districts, increases of 5 and 11, respectively from the existing plans.[66]

Despite preclearance, all three plans were subject to legal challenges arising from the Supreme Court's decision in *Shaw v. Reno* in 1993. In *Shaw*, White plaintiffs put forth a gerrymandering theory in which they asserted that race had unconstitutionally predominated in the development of a newly-drawn majority Black congressional district (in North Carolina) that was irregular in shape. The Court ruled in plaintiffs' favor, holding that the Justice Department's demands, as put forth in Section 5 objections, were beyond the scope of the VRA and were the result, instead, of a "Max Black" policy pursued by organizations like the ACLU, who had exercised undue influence on DOJ.[67]

The result in Georgia was the filing of *Johnson v. Miller*. Plaintiffs initially challenged the 11th Congressional District, arguing that it was "segregated" and set up a "predetermined outcome" of the subsequent election because it had deliberately been drawn as majority Black. The trial court found in plaintiffs' favor, holding that the boundaries of CD 11 were "dramatically irregular" and blatantly manipulated along racial lines to satisfy the "Max Black" pursuits of the ACLU and the CRD.[68]

The Supreme Court upheld the decision in a 5-4 ruling, finding that the GA had subordinated traditional redistricting principles to race absent a compelling state interest, which the DOJ's policy, according to the Court, was not. The case was remanded to allow the GA to attempt to pass through another plan, at which point the plaintiffs enlarged their claim to include CD 2, which the court ruled had also been unconstitutionally drawn. By this time, it was the summer of 1995, and the GA

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[65] Dunne to Cohen, March 20, 1992, Civil Rights Division Section 5 Objection Letters.

[66] Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1070-77.

[67] Id. pp. 1075-77; McDonald, *Voting Rights Odyssey*, pp. 212-13.

[68] Johnson v. Miller, 864 F.Supp. 1354 (S.D. Ga. 1994); Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1070-77. Republicans and some rogue LBC members used their own computers and software to run maps that might be mutually beneficial, and a floppy disk was circulated at one point with the file name MAXBLACK.

proved unable to pass a plan to meet the courts' mandates. The trial court thus drew its own plan containing but one majority Black CD 5 and representing a significant rearrangement of the state's districts in general.[69]

Black plaintiffs challenged the court-drawn plan, but the Supreme Court held that the "pressure" from DOJ under the specter of "Max Black" tainted the GA's passage of its previously adopted plans. The Court also noted that Black incumbent Representatives Cynthia McKinney and Sanford Bishop had been reelected under the court-drawn plan.[70]

The *Johnson* plaintiffs, meanwhile, also challenged the state legislative plans adopted by the GA. The Assembly had replaced its third state legislative plan with a fourth, enacted after the 1995 special session that followed the *Miller v. Johnson* decision, and it had already reduced the number of majority Black districts in the House and Senate, by 11 and 2, respectively. Plaintiffs in *Johnson* nonetheless filed a *Shaw* challenge to both. Mediation resulted in a settlement whereby a further 3 majority-Black House districts and 1 majority-Black Senate district were reduced to majority-White. By the end of the decade, the membership in the Black Caucus stood at 44, ten higher than it had been entering the decade.[71]

h. Redistricting in the 2000s – a New State of Play, *Georgia v. Ashcroft*

Tectonic political shifting came to the surface in redistricting in Georgia in the 2000s. White flight from the Democratic to the Republican Party had been occurring since the New Deal and had accelerated after World War II with the Dixiecrat movement, in the 1960s following passage of the Civil and Voting Rights Acts, in the 1970s amid compulsory assignment school desegregation, and in the 1980s and 90s with enforcement of the Voting Rights Act. By the mid-1990s a White, Sunbelt-oriented conservatism had taken hold in Georgia, especially in the northern Atlanta suburbs. The face of that movement at that moment, in Georgia and nationally, was Congressman Newt Gingrich.[72]

Gingrich routinely touted the values of his home Cobb County, an affluent white flight destination, as hard-working and entrepreneurial, while at the same time

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[69] Miller v. Johnson, 515 U.S. 900 (1995).

[70] Abrams v. Johnson, 521 U.S. 74 (1997).

[71] Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1077-79; McDonald, Voting Rights Odyssey, pp. 224-26.

[72] Kevin Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton: Princeton University Press, 2005), pp. 260-63.

deriding the "welfare state" values of then majority-Black Atlanta. Cobb was a place where "upper-middle class" people moved to avoid crime and "keep their lawn cut." The threat was the "bus line" [referring to a potential expansion of Atlanta's MARTA rapid transit service], which would "gradually destroy one apartment complex after another, bringing people out of public housing who have no middle class values and whose kids as they become teenagers often are centers of robbery and where" he continued, "the schools collapse because the parents who live in the apartment complex don't care that the kids don't do well in school and the whole school collapses."[73]

Gingrich's colormasked rhetoric was a thinly veiled way of arguing that Black people who were mired in poverty and living in crime-ridden neighborhoods with "failing" schools were there because they, as a race, lacked the values that worthy White people had. It also represented an argument that White people who fled to places like Cobb did so in order to exercise their "freedom of association," that is, their constitutional right to live with, and go to school with, and pay taxes to support, and to elect, people of their own choosing, even if the nature of the choosing turned on race.[74]

At that moment, the GOP was in the process of wresting control of politics in Georgia from the Democratic Party. The Republicans had captured the majority in the state's congressional delegation in 1995. They came close to taking control of the state Senate in elections in 2000. Places like Cobb, where Republicans performed well, were rapidly growing. Areas where White Democrats did well were not. Members of the Legislative Black Caucus declined to repeat their previous strategy of working with Republicans on redistricting for mutual benefit, having realized that the GOP might well build on its gains to take control of the state chambers, leaving Black members in a more tenuous position. Paul Coverdell had already achieved breakthrough for the GOP Congress, winning the Senate seat held by Wyche Fowler in 1992. Following that victory, Republicans took every U.S. House seat not held by a Black member.[75] This was the milieu when Census figures were published for the 2000 Census and the redistricting process began.[76]

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[73] Kruse, *White Flight*, pp. 261-62; Merle and Earle Black, *The Rise of Southern Republicans* (New York: Belknap, Harvard, 2002), pp. 5-7.

[74] Kruse, *White Flight*, pp. 9, 247, 259.

[75] Nathan Deal switched parties.

[76] Black and Black, *Rise of Southern Republicans*, pp. 297-302; Larios v. Cox, 300 F. Supp. 2d 1320, 1323 (N.D. Ga. 2004).

During two special sessions in August and September of 2001, the Democratic leadership sought to retain majorities, in part, by taking Black population from districts in which Black candidates would probably be reelected anyway and redistributing it to districts wherein White Democrats might benefit from that population in defeating Republican candidates. The use of new software, Maptitude, allowed lawmakers and staff to analyze draft plans in real time for political performance and population deviation. In the Senate plan approved by the GA, four districts were taken below the threshold of Black majority. Several others saw the number of Black voters significantly reduced. The number of majority Black districts in the approved House plan went from 42 to 31. Both maps split numerous counties, even smaller ones that had been kept whole in previous plans, and they paired incumbent Republican members together. The GA used multimember districts in state legislative districts for the first time in 20 years. In the congressional plan, the 13th CD (Georgia had gained 2 more seats in the U.S. House) was so irregularly shaped that it resembled, according to some, a "dead cat" laying in the road.[77]

Democratic lawmakers were able to hold onto the House and Senate, despite losing the statewide popular vote in both cases, though they lost the Senate when four Senators defected to the Republicans. The latter won the governor's mansion, as Sonny Perdue defeated incumbent Roy Barnes to become the first Republican to hold the office since Reconstruction. Democrats picked up two congressional seats, with one of those being David Scott, a Black candidate, in the newly drawn 13th.[78]

The state submitted its plans to the District Court for the District of Columbia for a declaratory judgment under Section 5 rather than to the CRD, though the latter was able to weigh-in at the hearing. At the same time, a group of Republicans challenged all three plans in the District Court for the Northern District of Georgia, bringing myriad claims. In the D.C. trial court proceedings, the CRD counseled approval of the Congressional and state House plans but expressed concerns about three Senate districts (3, 12, and 26) that had been majority Black but were reduced to under 50 percent Black under the proposed plan. The trial court took heed and approved the House and congressional plans but not the Senate plan. The state

[77] Larios v. Cox, 300 F. Supp. 2d 1320, 1323-4 (N.D. Ga. 2004); Bulloch, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1086-1088.

[78] Bulloch, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1088-89.

appealed, and four Black appellees intervened, challenging two additional Senate districts (15 and 22).[79]

The Supreme Court reversed the trial court judgment on the Senate plan. In the 5-4 majority opinion, Justice O'Connor argued that the lower court did not consider all of the "relevant factors" and focused too narrowly on the challenged districts. Viewing the plan as a whole, and citing to *Gingles*, the Court determined that states could maximize minority voting strength in more than one way, with one of those ways being the creation of a larger number of "influence districts," wherein a minority candidate of choice would have a very good, if not necessarily great, chance to get elected, than the number of safe, majority Black districts wherein the chances would be somewhat better. The Court also noted that all but two Black legislators voted for the plan. Accordingly, it judged the plan to be nonretrogressive and thus acceptable under Section 5.[80]

In the Republican challenge, the trial court dismissed most of the claims and stayed one of them – racial gerrymandering – pending the outcome of the *Ashcroft* proceedings. The challenges that came to trial in January 2004 were a one-person, one-vote claim under the Equal Protection clause aimed at both state legislative plans, and an Article 1 § 2/'time, place, and manner' claim against the congressional plan that likewise cited population deviation. The three-judge court in *Larios v. Cox* unanimously held that the state legislative plans "plainly violate[d]" the one-person, one-vote principle, as lawmakers had systematically underpopulated Democratic-leaning and incumbent districts in South Georgia and in "inner-city" Atlanta while also overpopulating suburban areas in northern metropolitan Atlanta that were thought to lean Republican (300 F. Supp. 2d 1320, 1322, N.D. Ga. 2004). The total population deviation was found to be 9.98 percent. The Court denied the claim against the congressional map, citing "legitimate state interests," like avoiding split precincts, as justification for the relatively small population deviations in the plan (Id.). The Supreme Court affirmed the decision later that year.[81]

When the General Assembly convened to pass another round of plans, the Senate – controlled by Republicans – was able to do its job, but the Democratic leadership in the House failed to pass the Senate plan or a plan of its own. This prompted the *Larios* court to appoint a Special Master – retired appellate court judge

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[79] Georgia v. Ashcroft, 195 F. Supp. 2d 25 (D.D.C. 2002).
[80] Georgia v. Ashcroft, 539 U.S. 461, 463-64 (2003).
[81] Cox v. Larios, 542 U.S. 947 (2004).

Joseph Hackett, a Black man from south Florida – who himself retained a redistricting expert, a law professor from Pennsylvania. The maps they produced prioritized reducing the population deviation that had doomed the plan in *Larios*. The result was the pairing of a large number of incumbents from both parties, in the same districts. Half of the chamber's Black members found themselves paired (or even with two other incumbents). The court allowed some relief in the form of separating out those incumbents when there was an open seat in an adjacent district. But in the final plan, eight incumbent senators and sixteen incumbent representatives were paired. When elections were held, Republicans took control of the House for the first time since Reconstruction and gained four seats in the Senate. Black Democrats gained one seat in each chamber.[82]

Republican leaders were able to control congressional redistricting with a focus on shoring up the districts they had, trying to unseat White Democrat Jim Marshall, who had taken the Third, and John Barrow, who had taken the Twelfth, by reducing the number of Black voters in their districts (and in Barrow's case, by drawing him out of his district.[83]

i. Section 5 Objections and Section 2 Litigation in the 2000s

State and local officials continued to submit electoral changes to the Justice Department in the 2000s that met with objections under Section 5. The City of Albany, for example, submitted a redistricting plan for its city council in 2001 but failed to receive preclearance because the CRD concluded that the plan appeared to be the product of discriminatory intent. Under an *Arlington Heights* analysis, the CRD found that a reduction of Black population in the city's Ward 4, which was not malapportioned and thus not in need of significant adjustment, was designed to maintain two majority white wards amid steady white flight and Black population growth in the city.[84]

In particular, the CRD concluded, "The historical background of past redistricting indicates an intent to maintain Ward 4 as a district that remains at the level of 70 percent white, thus eliminating any ability of black voters to elect a candidate of choice in this district." The Black population of Ward 4 had steadily increased, and in the previous two decades, the city had moved some of that

[82] Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1093-94.
[83] Id., 1094-95.
[84] J. Michael Wiggins, Acting Assistant Attorney General, to Al Grieshaber Jr., Sept. 23, 2002, Civil Rights Division Section 5 Objection Letters.

population out into other wards in order to maintain a significant White majority. In this cycle, the Black population had grown to 51 percent in Ward 4, and the city sought to move much of that population into another ward that was already 90 percent Black. The CRD noted that the city's redistricting criteria was to "'maintain ethnic ratios (four majority black districts)' . . . . The proposed plan does maintain four black districts, but implicit in that criterion is an intent to limit black political strength in the city to no more than four districts, even though Ward 4 had become majority black and demographic trends indicate that its strength will continue to increase in the future.'" And finally, it concluded that "The reasons offered by the city for the reductions in the black population in Ward 4 do not withstand scrutiny" and thus, the "facts indicate that the city has fallen short of demonstrating that the change in Ward 4 was not motivated by an intent to retrogress."[85]

Eight other counties or municipalities received similar objections to proposed changes in the 2000s. The State of Georgia also received two objections. The first involved the state's voter registration verification system and, though it came in 2008, traced its origins to the very beginning of the decade. In 2000, private plaintiffs in Walton and Gwinnett counties filed a complaint challenging the state's requirement that potential voters supply their full nine-digit Social Security number in order to register after their applications were denied for failure to provide the full SSN. Plaintiffs argued that such request was a violation of the federal Privacy Act of 1974. The District Court initially granted summary judgment to the state but was reversed by the 11th Circuit Court of Appeals. On remand in 2005, the court in *Schwier v. Cox* granted summary judgment for the plaintiffs and ordered the state to expressly inform voters that they were not required to provide the full SSN in order to register to vote.[86]

The *Schwier* court approved a consent decree wherein the state agreed to adopt a system as set forth in the federal Help America Vote Act (HAVA) and to request from voter applicants a drivers' license number or the last four digits of a SSN. HAVA required states to maintain a digital statewide voter registration database, though it did not indicate that full SSNs should be provided, nor was it intended as a voter eligibility verification system. In early 2007, the state began collecting information from the state Department of Driver Services [DDS] and the Social Security Administration, and it began providing to county officials a list of persons, not only new applicants but also existing registered voters, who were flagged as

[85] AAAG Wiggins to Grieshaber, Sept. 23, 2002.

[86] Schwier v. Cox, 412 F.2d 1266 (N.D. Ga. 2005), aff'd, 439 F.3d 1285 (11th CCA 2006)

potentially ineligible based on, inter alia, non-citizenship. Local officials were instructed to notify those individuals, who were given a three-day window of time to provide additional information, at the courthouse during normal business hours, proving their eligibility.

None of those changes were submitted to the Justice Department for Section 5 preclearance. Prior to the 2008 elections, plaintiffs, represented by the Mexican American Legal Defense and Education Fund [MALDEF], the ACLU, and the Lawyers Committee for Civil Rights under Law, filed suit alleging that the matching system was flawed and incorrectly flagged thousands of eligible voters and that it was illegally implemented on account of the Secretary of State's failure to submit the changes for Section 5 preclearance. When the changes were subsequently submitted, a Justice Department inquiry and analysis found that the state's system did "not produce accurate or reliable information" and that use of the system had been "error-laden and possibly improper." The "most telling" findings, according to the CRD, was the grossly disproportionate effect the system had vis-à-vis naturalized citizens and that more than half of the 7,007 individuals flagged as potential non-citizens were indeed citizens. The CRD concluded, "the impact of these errors falls disproportionately on minority voters and that "applicants who are Hispanic, Asian or African American are more likely than white applicants, to statistically significant degrees, to be flagged for additional scrutiny." The court in *Morales v. Handel* entered a preliminary injunction requiring the state to allow flagged individuals to vote in the elections that fall, and the CRD denied preclearance.[87]

While the *Schiel* litigation was pending, and just prior to the state's adoption of the citizenship verification system, the Department of Justice brought a Section 2 complaint against Long County, Georgia, whose Latinx population had increased 460 percent since 1990. County officials in Long County, upon receipt of challenges from local electoral candidates, required 45 "Hispanic or Spanish-surnamed voters" to attend a hearing and prove their citizenship. The CRD contended that the county officials "abridged the rights of Hispanic voters by requiring Hispanic voters who were challenged to prove their citizenship in order to vote, even though [they] were aware that the challenges were not supported by any credible evidence calling into question the citizenship of the challenged voters," and that they "also imposed

[87] Morales v. Handel, Cv. Ac. No. 1:08-CV-3172-JTC (N.D. Ga., Oct.27, 2008); Loretta King, Acting Assistant Attorney General, Civil Rights Division, to Hon. Thurbert E. Baker, May 29, 2009, Civil Rights Division Section 5 Objection Letters; MALDEF Press Release, "Morales v. Georgia Secretary of State Karen Handel," Nov. 4, 2008.

separate and distinct procedures for these Hispanic challenged voters than for non-Hispanic voters challenged on other bases." In February 2006, the court hearing the case approved a consent decree whereby the county agreed to notify the Latinx citizens that there was no evidence submitted to support the claims against them and that they were free to vote; to respond to future complaints in a nondiscriminatory fashion; and to educate election officials and poll workers on federal law.[88]

j. Redistricting in the 2010s and Recent Challenges

By 2010, the Republican Party had 36 of the 56 seats in the Senate, 113 of the 180 seats in the House, and 8 of the 13 seats in the congressional delegation. Within a year's time, no Democrats would hold statewide office; this meant, also, that no Black candidate held statewide office either. The two parties had become polarized by race. There were no Black elected officials in the Republican party, either statewide or in the General Assembly. There were (and are) some White Democrats, though these candidates tend to come from the urban and suburban areas of the state that represent a shift away from the old good-ole-boy Democratic base anchored in the defunct county unit system. The GOP, for its part, has sought to build on its unprecedented success by obtaining super-majorities in the GA, meaning control of 2/3 of the seats in either chamber or, perhaps, both.[89]

The Republican-drawn congressional map in 2012 raised the number of registered Black voters in the four districts with Black incumbents above 50 percent for the first time. The state House map represented an increase in the same in six districts, while the Senate provided for three such increases. While this could be interpreted as a means of avoiding retrogression under Section 5, it also allowed Republicans to again "bleach" adjacent districts, by giving them large White majorities that would guarantee GOP victories in those districts.[90]

This was a strategy pursued by Republicans in other southern states where they had emerged newly ascendant. The lone remaining white Democrat in Georgia,

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[88] United States v. Long County, Case No. CV206-040 (S.D. Ga. 2006), Consent Decree, February 10, 2006; Complaint in United States v. Long County, supra, Feb. 8, 2006; both in Cases Raising Claims Under Section 2 Of The Voting Rights Act, U.S. Department of Justice, Civil Rights Division, online at https://www.justice.gov/crt/cases-raising-claims-under-section-2-voting-rights-act-0 [Hereinafter Civil Rights Division Section Two Claims].

[89] The Supreme Court decision limiting Section 5 preclearance review is *Reno v. Bossier Parish School Bd.*, 528 U.S. 320 (2000), aka *Bossier II*; Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1093-95.

[90] Bullock, "The History of Redistricting in Georgia," *Georgia Law Review*, pp. 1095-96.

John Barrow, saw Black voting population from Savannah replaced in his district with the White suburbs of Augusta, where he moved in order to seek reelection. Then-House Minority Leader Stacy Abrams argued that the new maps destroyed any remaining coalition districts and amounted to "a resegregation of Georgia into a party of white Republicans and black Democrats, leaving Latinos and Asians to fend for themselves." The plans were all three cleared by the Justice Department under Section 5, the standard of which had become one of retrogression only.[91]

In the 2012 elections, Republicans gained two Senate seats, giving them the super-majority, though they would lose this in 2016. They came within one seat of gaining the super-majority in the state House. Black candidates added five seats in the state House and stood pat in the Senate and congressional delegation. By that time, 13 of the 18 Democrats in the Senate and 47 out of 60 members were Black. Barrow was finally defeated, making Georgia's Democratic contingent in Congress all-Black until the election of Carolyn Bordeaux in 2020. [92]

In December of 2012, the Civil Rights Division registered its final objection to a Georgia electoral change. Augusta and Richmond County sought to merge into a single local government, but the CRD concluded, using an *Arlington Heights* framework, "Where the purported nondiscriminatory reasons for the change appear pretextual, and where the effect of the change would be to disproportionately reduce turnout among black voters, we cannot conclude that the legislation's purpose was not to depress black voter participation." It continued, "The historical context in which we review the proposed change is also illustrative. This is not the first instance in which the Department has reviewed the effect of a July election in Augusta-Richmond and concluded that it did not pass scrutiny under Section 5. In 1988, the City of Augusta and Richmond County sought to hold the referendum election on consolidation in July. On July 15, 1988, the Attorney General concluded that an election at that time would have a disparate impact on minority voter participation, resulting in a retrogressive effect on minority voting strength."[93]

In 2015, after *Shelby County v. Holder* ended the preclearance requirement, the General Assembly passed a redistricting plan for its House of Representatives. Plaintiffs sued the state, seeking a preliminary injunction on the basis of racially

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[91] Id., 1096.

[92] Id., 1096-1100.

[93] Assistant Attorney General Thomas Perez to Mr. Dennis R. Dunn, Dec. 21, 2012, Civil Rights Division Section 5 Objection Letters.

gerrymandering HDs 105 (Gwinnett) and 111 (Henry). Though the court declined to enter the preliminary injunction, it noted that staff in the Assembly's Legislative and Congressional Reapportionment Office, including Gina Wright and Dan O'Connor, had "brought to light 'changing demographics'" in the challenged areas during the process.[94]

The court noted that Mr. O'Connor sent emails to Representatives Chuck Efstration and then-Speaker Pro Tem Jan Jones discussing a decrease in white registration versus a spike in Black registration and indicating the Black voter registration had reached a point in HDs 105 and 111 where those districts would become "targets" for Democrats.[95] The court took further note the Republican incumbents in those districts went to Ms. Wright for help and that she had knowledge of racial demographics in subsequently adjusting district lines. The court concluded that, though plaintiffs had not met the high standard for showing they were likely to prevail in their racial gerrymandering claim, the evidence presented to that point was "compelling" in pointing towards a conclusion that race predominated over other factors in redrawing these lines. The Court concluded that, "Ms. Wright and her colleagues openly undertook to help Republican incumbents. In doing so, the 2015 redistricting moved many black voters from districts where their votes would have made an impact into districts where they did not."[96]

Secretary of State Brian Kemp soon thereafter found himself the subject of a lawsuit alleging that his office had unlawfully used a program that discriminated against voters of color in removing, or purging, citizens from the state's voting rolls.[97] Secretary Kemp was elected governor in the election in question. Governor Kemp was also challenged, in eight separate lawsuits, on the passage of S.B. 202, a measure purportedly aimed at voter fraud, which opponents argue is a red herring and chimera of which there is no proof, and implementing stricter regulations for absentee and other non-traditional modes of voting.[98]

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[94] Georgia State Conference of the NAACP v. State of Georgia, 312 F.Supp.3d 1357, 13-59-60.

[95] Id. at 1360.

[96] Id. at 1365, 1369.

[97] https://www.courtlistener.com/docket/8220497/palast-v-kemp/.

[98] Stephen Fowler, "Here Are All The Lawsuits Challenging Georgia's New Voting Law," GPB, March 19, 2021, https://www.gpb.org/news/2021/05/19/here-are-all-the-lawsuits-challenging-georgias-new-voting-law.

k. Conclusion

The State of Georgia was in the vanguard of denying Black people their rights under law. And it continues to be. Redistricting is one glaring example of this. There is a continuum in Georgia history, right on up to the present moment, of Black citizens being used to help further the agenda of the White party in power. It does not matter *which* party has been in power, historically. Black citizens, and eventually other citizens of color, clawed their way into the political process as Democrats. The White Democratic Party tried make its peace with its prior failure to include Black people, and to expunge its violent past, but it failed. And the newly White Republican Party took advantage. And now politics in Georgia are racially polarized in a whole new way. There are almost no Black Republicans in Georgia. There are no Republican Black elected officials in the General Assembly or statewide. Almost all Black people elected in the state are Democrats. And the Republican party, in terms of elected officials in the state, is not only almost exclusively White but also largely male.

There are some White Democrats, but the game has changed. The Republicans in power in the General Assembly routinely invoked the Democrats' abuse of power in the 2001 redistricting cycle as an excuse for their own potential abuse of power in the current cycle. But as one Black lawmaker pointed out, the constant in this narrative has not been party, but race. Black voters have been the "pawns" manipulated since the enactment of the VRA gave them the true right to vote. The party in power and the degree of racial polarization are the only things that have changed.

The question then becomes, how much does the process in the present mimic or proceed from that which we have seen in the past.

V. THE SEQUENCE OF EVENTS – THE "TOWN HALLS"

The formation of the General Assembly's committees on redistricting and the town halls that they held throughout the summer of 2021 revealed the following:

- The public was widely critical of holding these meetings before the release of the Census data and the publication of maps. They called for ample time for analysis and feedback and map-submission after the fact.
- The public was relentless in its call for a more transparent process, in general.

- The public and members of the committee wanted more of a dialogue than a one-way-street of taking community comment at hearings.
- Hearings were not held, according to members of the public and the committees, in the most populous areas of the state where they should have been.
- Maps ought to reflect the growth of Georgia's minority pollution, including Black, Latinx, and AAPI citizens.
- The committees should not engage in packing and cracking said populations for the purpose of vote dilution in violation of Section 2 of the VRA.

The public's concerns regarding the nature of the town hall hearings – their being held before data and maps were published and the 'input-only' format, constitute procedural departures from, if not past practice, then certainly from what the mass of the public viewed as best practices and good governance. The committee's failure to respond to public calls for more transparency, more time, a reflection of the state growing minority population, and to avoid packing and cracking, constitute substantive departures. The committee made abundantly clear that it wanted and deeply valued public input, meaning this was information, quoting *Arlington Heights*, "considered important by the decisionmaker." That input "strongly favor[ed] . . . decision[s] contrary to the one[s] reached by the committee when it ignored the vast majority of the input.

a. <u>The Committees</u>

Each chamber in the Georgia General Assembly has a standing committee that shepherds legislation during the redistricting process, though the actual map drawing is largely handled behind the scenes by staff in the Legislative and Congressional Reapportionment Office (LCRO), especially Gina Wright, by leadership in the majority, and by counsel and technicians hired by the majority. During the 2021 redistricting cycle, the Senate Committee on Reapportionment and Redistricting included Chairman John Kennedy and fellow Republican Senators Bill Cowsert, Dean Burke, Greg Dolezal, Steve Gooch, Butch Miller, Mike Dugan, Jeff Mullins, and Blake Tillery. Democrats on the panel, who were also the only members of color on the panel, were Minority Leader Gloria Butler, and Senators Tonya Anderson, Ed Harbison, Harold Jones, and Doc Rhett. Members of the House Committee on Legislative and Congressional Reapportionment included Chairman Bonnie Rich and fellow Republican Representatives Houston Gaines, Darlene Taylor, Susan

Holmes, Mandi Ballinger, Buddy DeLoach, Chuck Efstration, Barry Fleming, Jan Jones, Randy Nix, Ed Setzler, Lynn Smith, and Richard Smith. Democrats on the panel, who were also the only members of color, were Kimberly Alexander, Carl Gilliard, Mack Jackson, Sandra Scott, and Mickey Stephens, with the latter being replaced by Rep. Brian Prince upon his passing away. The two committees formed a Joint Reapportionment Committee for the purposes of holding "town hall" hearings across the state during the summer of 2021 in order to take public testimony.[99]

Members of the public were roundly and consistently critical of the format of these hearings, during which members would not take questions or provide feedback to the public. The primary themes that emerged from the meetings, particularly those held in areas of the state where Plaintiffs have challenged House, Senate, or Congressional districts, were pleas for transparency in the process and for time to review, provide feedback, and engage in a dialogue after Census data was received and after maps were produced. Leadership insisted that the delay in obtaining Census data was going to truncate the process. Members of the public repeatedly questioned the efficacy or value of the hearings absent any data or maps for their review. And they called into question the use of the term "town hall," since, in their view, such a format would ensure a back and forth between representatives and members of the assembled public, not a one-way record session.

b. Atlanta, June 15, 2021

At the first town hall, on June 15, at the capitol building in Atlanta, leadership announced the schedule of the other hearings to be held in Cumming, Dalton, Athens, Augusta, Brunswick, Albany, Columbus, Macon, and Online via Zoom. They also noted that the committee had opened an online portal for public commentary. Chairman Rich told the public that "outside counsel" had that day informed herself and Chairman Kennedy of the "importance of preserving information." A video prepared by the LCRO and featuring Chairman Rich, Chairman Kennedy, and Ms. Wright was shown explaining the basics of

[99] Georgia Legislative and Congressional Reapportionment Office website, https://www.legis.ga.gov/joint-office/reapportionment; House Committee on Legislative and Congressional Reapportionment website, https://www.legis.ga.gov/committees/house/114; Senate Committee on Reapportionment and Redistricting website, https://www.legis.ga.gov/committees/senate/140.

reapportionment and redistricting. With that the committee opened the floor for comment from the public.[100]

Ken Lawler of Fair Districts Georgia explained his organization's partnership with the Princeton Gerrymandering Project, which he said had developed a system to obtain nonpartisan independent benchmarks for competitive redistricting. Mr. Lawler would appear at several other hearings and advocate for the Princeton system, though many other members of the public also expressed their concern that the result of redistricting would be districts with little to no competition. Christian Dent followed and expressed his fear that the General Assembly would repeat what it had attempted to do in 2015, which was, in his view, to gerrymander Henry County in order to removed Black voters from Republican districts. He shared his view that the Assembly had backed off of this effort in 2017 because of a federal lawsuit.[101]

Bugaj Panday was one of several Asian Americans who told the committee that AAPI citizens had accounted for a substantial portion of the state's growth in recent years. They expressed their dismay at the lack of proportional representation in the Assembly reflecting that growth. Mr. Panday noted in particular that his Senate district (48) and House district (50) were among the highest Asian American populations in the state and yet had only recently, in 2020, been able to elect an Asian American representative. Mr. Panday said, "Our community is predominantly people of color, and immigrants like me who share similar stories. So when Asian American hate crimes skyrocketed by 145% in the past year, it was not only harrowing for those in my community, but also a stark reminder of the lack of representation that we have. This has left our community largely apathetic and disillusion to politics. So much so that less than half of eligible voters in our community cast their ballots in elections before 2020. And this trend is not just limited to my city, my community or my district. It's a trend that has permeated throughout the state. There are a quarter of a million API voters in Georgia, yet they only make up 2% of the representation in the General Assembly."

Karuna Ramachandran with the Georgia Redistricting Alliance, an organization representing "African American, Latino, Asian American, African diaspora and queer and trans communities of Georgia," lamented a "lack of

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[100] Senate Committee on Reapportionment and Redistricting, Meeting Archives, https://vimeo.com/showcase/gasenrandr?page=2; see for all subsequent paragraphs in this section.

[101] See p. 29, supra.

transparency thus far in the process" and said, "These meetings seem to be an effort to check a box rather than creating real pathways for meaningful public involvement." Lolita Tuft of Asian Americans Advancing Justice Atlanta followed and was among a number of people who, through the hearings, noted the growth of immigrant communities in the state and argued that language equity ought to be a concern to the committee. According to Ms. Tuft, the proposed town halls would not be "accessible or inclusive" and LEP residents" would be "deterred from engaging in participating in the redistricting process" if "key information is restricted to English."

Other speakers, like Michelle Zuluaga with the Latino community Fund, wondered why the specific locations of the remaining hearings had not been announced and worried that members of the Latino community would be unable to attend with short notice. Alex Aimes was among several Georgia Tech students who would, thought the hearings and subsequent committee meetings, ask the committee not to split the Tech campus between two House and two Senate districts. Niles Francis noted that Section 5 preclearance had been nullified by the Supreme Court in the *Shelby County* decision, but he insisted, "I say that to say that even though these maps do not have to be pre cleared by the federal government, it is my expectation and my hope that these maps are pre cleared with Georgia voters," meaning he would like to see time for public feedback and dialogue with the committees after maps were published and proposed. Camille Brown echoed those same concerns and asked that Cherokee County be kept whole in any plan.

Michelle Davis with Women Engaged said that she represented BIPOC, or Black, Indigenous, People Of Color communities, across Metro Atlanta and that those people were also concerned that this was the first redistricting cycle without preclearance and that made it "even more important that the process is done publicly and transparently" and "in full view of the public." Andrew Lewis also bemoaned a historical "lack of transparency" on the part of both Republicans and Democrats when in the majority and asked that, at a minimum, the committee live stream all of its public town halls and hearings. Teddy Reece, the final speaker from the public, echoed calls for better advertising for the town halls and meetings.

Black members of the committee asked several questions of leadership at the conclusion of the hearing. Representative Jackson asked if there would be further public hearings after leadership and staff got the Census data. Representative Rich replied, "We don't we don't know yet. Because we haven't gotten the data yet. And

there's not necessarily a firm deadline. Our main, our main goal is to meet the deadline of having this special session so that we can get the maps drawn, and we just don't know what kind of timeframe we're going to be bumping up against."

Senator Butler said that her concerns were "fair maps, number one," but also "a transparent redistricting process that truly values public input and empowers historically disenfranchised communities." She noted the growth of the state's Black, Hispanic, and Asian American populations and said that new maps needed to reflect that growth. She also echoed public calls for the ability to provide substantive feedback on any proposed maps before they adopted, adding, "Democracy cannot happen behind closed doors."

Representative Alexander asked if subsequent hearings would be streamed online and if there would be hearings held after maps were produced or would there be meetings between committee members and leadership to discuss those maps. Chairman Rich indicated her belief, based on the number of people who had signed up but not spoken, that the committee would probably only need one more opportunity for virtual input. Regarding the maps, she said, "I would encourage you to sign up and meet with me now so that we can get that information there. And then once we've met the requirements for the numbers, and then the requirements for the Voting Rights Act, we can start looking at these, these interests with the community and overlay that so and then I will be available. I have made arrangements with my private practice to be available to you all as much as possible. You know, before and after that we are going to be really compressed on time. I do have to continue to, to work in the private sector, too. So I'm trying to schedule it as best I can."

Representative Scott asked, "Can anyone be sponsored by a legislator to work on a redistricting plan with the [LCRO] as long as they are sponsored? And if not, can plans be submitted by anyone directly to the [LCRO] with or without sponsorship?" Chairman Rich deferred to Ms. Wright who said, "In the past, we have not usually had individuals come in and work with us, especially on the statewide maps, or there have been a very rare few times, we've had a legislative sponsorship for someone to work on a local map for their county commission or a County School Board." She said that plans could be submitted to the office but that it would have to be a full map and in the proper format in order to be considered. Chairman Kennedy adjourned the meeting, saying, "I want to thank the staff *that has enabled us to put this together* today and this evening and for this to work, I think, as well as it did."

c. Atlanta, June 28, 2021

The second hearing at the State Capitol, on June 28, 2021, many of the same themes emerged as in the first hearing. Out of fifty people who spoke to the committee, eighteen spoke about the need for additional transparency in the process, particularly the process of actually drawing the maps. Twelve people expressed their concerns about gerrymandering in general and, more specifically, vote dilution by way of gerrymandering. Nine people spoke of their concern for People of Color – Black, Latino, and AAPI – and asked the committee to be mindful that they did not diminish those people's right to participate equitably in the political process. Seven people discussed the importance of language equity and the need for the committee to ensure that people who were not English proficient or hearing had access to information both about hearings and information shared in the hearings. Seven people asked the committee to adopt maps that had more competitive districts, rather than drawing seats that were safe for incumbents. Six people expressed their belief that redistricting would exacerbate the harm cause by what they viewed as efforts by the General Assembly and the governor to suppress minority voting strength. Five people urged the committee to provide ample time after maps were proposed for the public to analyze them and provide feedback or alternatives. Four people called for the creation of a nonpartisan independent redistricting commission, and three specifically warned against packing and cracking minority communities.[102]

Marcy McCarthy was among several individuals who identified themselves as Republican. Ms. McCarthy indicated that she was the chairman of the DeKalb County Republican Party. She described DeKalb as "a blue desert sprinkled with red and pink islands versus a purple pasture," and expressed dissatisfaction with how the county was split among congressional districts, such that "right leaning voters in DeKalb County have no representation in Congress, the Capitol and in City Hall, and have become disenfranchised." This had, in her opinion, "created the rise and terror of Stacey Abrams," referring to the former Democratic candidate for governor.

Several speakers asked the committee to consider Buckhead as an indivisible COI and to pair it with Sandy Springs and Brookhaven or even with North Fulton along a "GA 400 corridor." Some of those spoke of what they felt like was a sharp increase in crime in Buckhead and asked to be untethered from Smyrna so that those

[102] Senate Committee on Reapportionment and Redistricting, Meeting Archives, https://vimeo.com/showcase/gasenrandr?page=2; see for all subsequent paragraphs in this section.

concerns could be addressed along with residents of Brookhaven and Sandy Springs. Some individuals asked directly for answers or commentary from the panel, but that was not forthcoming.

Attorney Harold Franklin at King and Spaulding spoke on behalf of the Lawyers' Committee for Civil Rights Under Law (LCCUL) and told the committee that they must ensure that Black voters had equitable access to electing candidates of their choice. He pointed the committee to an LCCUL report on gerrymandering in Georgia and mentioned, specifically, the litigation that had been brought in 2015 regarding House districts 105 and 111 in 2015 (which was mentioned at the previous hearing) and HDs 40 and 111 in 2017. Mr. Franklin indicated that he had submitted that report to the committee with his own comments.

Lavita Tuft, Policy Director at Asian Americans Advancing Justice, Atlanta, asked the committee to consider a letter that she submitted, signed by 63 organizations from across the state, calling for greater access for people with limited English proficiency (LEP). She said that the letter had been "ignored" up to that point. Maria Palacios gave her initial remarks in Spanish and followed up in English in a call for the same.

Reverend James Woodall, then the chairman of the Georgia NAACP, indicated his disappointment that some of the most populous counties in the state, especially Gwinnett and Chatham, were excluded from the list of public hearing locations. He also noted that roughly half of Georgians lived in the Atlanta area but there comparatively fewer town halls being held there. He was among several people to express disappointment, also in the fact that the state's Open Records Act did not cover communications between committee members or the actual map-drawing process. He called on the committee to release that information anyway and to avoid engaging in "backroom deals without full transparency." Another speaker, Britt Jones, asked "Why are we hiding" the map-drawing process. The Mayor of Avondale Estates, Jonathan Elmore, repeated these concerns, calling for more hearings in Metro Atlanta and asked for an open, not closed process."

Some speakers predicted that the maps would deliberately draw Representatives Lucy McBath and Carolyn Bordeaux into the same congressional district and asked the committee not to allow that. The Speaker Pro-tem of the House, Representative Jan Jones, reminded the committee that Democrats passed maps in the 2000 redistricting cycle that were judged to be unlawful and that the Republican Party had drawn maps in the 2010 cycle that were precleared by the

Obama Justice Department. This would become a theme during legislative deliberations that fall. Chairman Rich adjourned the meeting with no commentary from any member of the committee.

d. Cumming, June 29, 2021

At the public hearing held in Cumming, in north Metro Atlanta, a lack of transparency was again the primary concern among citizens who came forth to speak, with ten individuals speaking to that concern. They insisted that the committee "show its work" and that "Transparency means that legislators have public hearings not just months before the Census Bureau releases its data, but also after the data is released, which is when maps are actually being drafted, that committee members should "go to each Judicial District in Georgia to show their proposed maps to the public, explain how they got those maps, and meaningfully consider feedback," and that "all meetings considering redistricting [be] done openly before the public with plenty of notice and access provided for Georgians." Three others spoke of the need for time and feedback between when Census data came out and when maps were proposes, and between when maps were proposed and when they were up for a vote.[103]

Seven speakers shared their concerns about the growing number of People of Color in the area, particularly Asian Americans, and they asked that maps reflect that growing population and not crack those communities in order to dilute their voting strength. To of those people also discussed access and accommodation for LEP citizens. Five individuals came forward to ask that Forsyth be kept whole in the new maps. Three people told the committee that county boards of education and/or commissions needed more seats. Two people expressed their dissatisfaction with Representative Bordeaux, though two others came forward in support of the congresswoman. Two people called for keeping Cherokee County whole.

Karuna Ramachandran with Asian Americans Advancing Justice, Atlanta, shared that her organization had been advocating for Asian Americans, Native Hawaiians and Pacific Islanders in Georgia, in particular in Forsyth County. She indicated that the "primary concern" for the organization was "language access." She said that this was "particularly important in Forsyth County," which by her measure was 15% Asian American, 10% Hispanic or Latino, 4% Black, and 17%

[103] Senate Committee on Reapportionment and Redistricting, Meeting Archives, https://vimeo.com/showcase/gasenrandr?page=2; see for all subsequent paragraphs in this section.

foreign born. Many of those people, she said, spoke a language other than English in home. She noted that there was no notice of the hearing in any language other than English and indicated that, in her estimation, "Forsyth deserves better."

Hubba Rivzi made a similar appeal, though in regard to Gwinnett County and, in particular, Duluth. He noted the significant population growth there, especially in the form of Asian Americans. "Our communities have flourished," Mr. Rizvi said, they had "established roots and grown our families, started businesses, rebuilt neighborhoods and communities." He urged the committee to "ensure that Asian American communities are kept together through lines that our communities can thrive and elect people that will represent our voices and our values" and to "ensure that district lines in places like Gwinnett County and my hometown of Duluth are drawn fairly [with] communities of interest [kept] together. We ask that neighborhoods, schools and shopping centers that our families frequent are kept together," he concluded, "and we ask that our voices and political power not be diminished by packing and cracking of these districts."

Jennifer Ambler of Suwanee acknowledged an incentive to protect incumbents but cautioned against look[ing] at a close district that just barely flipped and tr[ying] to make it more hostile to the woman who flipped it in a seeming reference to either CD 6 or CD 7. Katie Gates expressed her belief that North Forsyth and South Forsyth were very different, and that South Forsyth had much more in common with North Gwinnett. "North Forsyth," she said, "remains less diverse and more rural than South Forsyth. And due to these demographic differences, it makes sense that the two areas have different representation in their federal government in order to ensure that these needs are being met." Conversely, she added, South Forsyth and North Gwinnett had both "grown rapidly over the past few decades" and "both areas have large commuter workforces and large, diverse populations of immigrants, largely Asian Americans." She concluded, referencing CD 7 and Rep. Bordeaux, "Both areas are politically diverse Democrat and Republican neighbors living side by side. These facts are reflected in our recent election, where district seven very narrowly elected a moderate Democrat."

A retired Army Ranger named Jeremy told the committee, "I do not believe that any given input given in these town halls will have an impact on decisions made." The hearing was adjourned with no comment from the members.

e. Albany, July 27, 2021

At the hearing in Albany on July 27, 2021, the public commentary was mostly consistent with the previous hearings, though individuals did express some local concerns. Five people asked the committee, in the words of one person, for a "more transparent, thorough, accessible and equitable process." Five people also spoke to the growth of the areas Black, Latino, and AAPI population and asked the committee to consider that when approving maps. Four people insisted that the process of taking public testimony would be more valuable after Census data was published and, more so, after maps were proposed. Two individuals asked for assistance for people who with LEP and two talked about voter suppression combining with gerrymandering to drown out minority voices.[104]

Kimberly Fountain with the ACLU of Georgia expressed her opinion that greater Albany had grown "exponentially" in terms of minority communities. In her estimation, "The black voting age population has grown about 4% The Asian voting age population has grown about 40% and the Hispanic voting age population has grown nearly 30%, [while] the white voting age population has decreased by around 9%. Overall," she said, "the people of color voting age population in the greater Albany area has grown by 5%." In her view, the new maps needed to reflect that growth, in order to "ensure that voters of color have the same opportunity to elect candidates of their choice as white voters." In her opinion that also meant "providing more opportunities for public hearings across the state after the full census data has been released in the fall and having a robust mechanism for citizens to provide feedback on proposed maps."

Sierra Franklin with Common Cause Georgia, Albany, told the committee, "First, transparency and inclusivity is key. For too long redistricting has been done behind closed doors, placing the needs of partisan politicians over the needs of communities," especially "Black, Latinx, AAPI, Indigenous, and other communities of colors that have traditionally been marginalized or excluded from the conversation and the process." Ms. Franklin said that, "During the previous redistricting cycles, "decisions were made in secret and with sparse public input nor knowledge of the proceedings." She advocated for live language translation services, "refraining from the use of alternative data sets to generate maps," and "providing

[104] Senate Committee on Reapportionment and Redistricting, Meeting Archives, https://vimeo.com/showcase/gasenrandr?page=2; see for all subsequent paragraphs in this section.

public access to the data used to draft maps, as well as the public comment period on drafts or final maps before passage." She also suggested "using official procurement procedures to obtain mapping experts, redistricting legal experts, or any of the other contractors who may be used in the redistricting process."

Amina Farooqi of Nine to Five Georgia, Albany, told committee members that people did not have "safe water to drink" nor "access to affordable housing . . . precisely because they have not been fairly represented in the maps that have been drawn" in the past. She asked "that this process be transparent, [and] also that these maps be drawn to protect the black communities in Albany and southwest Georgia." And she noted that, while the population of the southern half of the state had been decreasing, that in her estimation, the population of "young people of color" was growing, relatively.

Dougherty County Republican Chairman Tracy Taylor, the first Black person in that capacity, bemoaned that the representative from CD 2 had been a Democrat, not only for the last few decades, but going back to Reconstruction.

f. Macon, July 29, 2021

At the penultimate town hall in Macon, public commentary remained largely similar to previous hearings. Eight people indicated their opposition to gerrymandering of any kind. Six spoke about the perceived lack of transparency, including Danny Glover, who said, what was needed was "more openness and transparency in this entire process. Now I get that things are rushed," he said, "But as the leaders of this state, we can't afford to rush this process. Because what happens when we rush, we leave so many people behind you consolidate that district, you disenfranchise thousands of people in my community, people who already have some of the poorest home of some of the poorest census tracts in the entire state." Five people spoke about the needs of Black, Latinx, and AAPI citizens. Four people asked for hearings to be held after the publication of Census data and after the publication of maps. And three people spoke of the need for accommodations for people with LEP. Commissioner Ginger Morris of Toombs County was one of three individuals to ask the committee to keep Toombs together with Montgomery County in HD 156 and SD 19.[105]

[105] Senate Committee on Reapportionment and Redistricting, Meeting Archives, https://vimeo.com/showcase/gasenrandr?page=; see for all subsequent paragraphs in this section.

Carolyn Hargrove of the League of Women Voters of Macon noted that Macon-Bibb was split into 5 HDs, which, she said, "divides our community and diminishes our strength. We are also drawn into far flung parts of other counties. Three districts would be an improvement." Mr. Glover asked that the committee acknowledge "the years of disenfranchisement, years of voter suppression tactics that my community has experienced. So I feel implore to come to you today to ask you to keep [Macon minority] communities whole. He noted that, according to the American Community Survey, the white voting age population in greater Macon had decreased by 5% while the Black voting age population had increased by 7%, Asian American VAP had increased by 27%, and Hispanic VAP had increased by 13%. He said, "The legislature cannot ignore the context that race plays in the state of Georgia and drawing these lines."

Rua Roman with Georgia Muslim Voting Project, urged the committee, "Keep our communities together keep this process transparent, improve language access and increase options for public input during the redistricting process," taking note especially of the "thriving Muslim community here in Macon."

Mark Hall asked that Tift County be restored to a single HD. Mr. Hall lamented the use of "grotesque" gerrymandered shapes, citing in particular the 8th CD. Similarly, Nola Scott McFadden lamented the use of what she viewed as gerrymandered lines in local school districts. Ed Shenkovitch asked that the committee "ungerrymander" a slice of Houston County out of HD 144 for the benefit of those associated with Robbins Air Force Base.

Irving Fordham bemoaned having to drive "70 miles to get to this meeting. I heard about this from local NBC affiliate." He said, "I reside in Allgood Elementary School precinct and Stone Mountain House District 86. And I've been registered in DeKalb County since August 1980." He observed that "majority of African Americans [in the state] reside in Fulton DeKalb County, Gwinnett and Chatham counties. And we got to go all over to get to these meetings. And whoever scheduled these meetings, you knew exactly what you were doing. This wasn't no accident. We didn't find out about the earlier meetings until after the fact and thus had to drive 70 miles."

Germanish Dantanna asked the committee to avoid "prison gerrymandering," which she defined as "the practice of counting incarcerated people in the place they're incarcerated instead of the place they're from during the decennial census and redistricting." The result, she said, was that "resources and representation [were]

disproportionately allocated to the area surrounding the incarceration facility. In Georgia, these incarceration facilities are often placed in majority white rural areas. And as we all know," she added, "the US disproportionately incarcerates black and brown people." She also warned that, in her understanding, the 2020 census, in the context of COVID, had significantly undercounted minority population.

Several speakers stated their belief that real decisions were being made "behind closed doors." A few called for the committee to sue the Princeton Gerrymandering Project's benchmarks for competition and fairness. Others called for the creation of an independent, nonpartisan or bipartisan commission for redistricting. Hannah Gebrselassie of Protect the Vote asked, "How do you plan to implement elements of our feedback into your planning, and building new maps to ensure that these hearings weren't just for show? What can you tell us? Otherwise, we will be doing a disservice to the communities that y'all have visited versus a service." Cathy Cox, the Dean of Mercer law school and named plaintiff in the *Larios* case, as then Secretary of State, spoke to the committee about knowing their history and avoiding the mistakes of the past.

g. Augusta, August 11, 2021, Rescheduled from July 29, 2021

The Augusta town hall was postponed due to weather and was later held on August 11. Public concerns expressed there were consistent with those shared elsewhere, though there was a particular focus on the potential dilution of Black voting strength. As usual, a lack of transparency was the top concern among those who chose to speak. Twelve people voiced those concerns, saying, for example, "I stand before you today to say I want you to consider a fair, transparent and public process be followed, that my district is not split or changed unfairly, for partisan reasons, that my vote is not diluted, or diminished. And my community is paired with like, or similar communities, and my rights as a citizen are not violated in the process."[106]

Eight others expressed concerns about vote dilution. For example, Anthony Booker told the committee that putting Richmond County into a 55 percent white CD "disenfranchises the second largest city in Georgia, Augusta, which is 57 percent Black itself," which amounted to, in his view "21st Century 'taxation without congressional representation.'" Carlton Howard elaborated on those concerns,

[106] Senate Committee on Reapportionment and Redistricting, Meeting Archives, https://vimeo.com/showcase/gasenrandr?page=; see for all subsequent paragraphs in this section.

saying, "Voices of Black people in Augusta are being silenced by including us with surrounding rural, White counties. It's things like housing, things like hunger, or homelessness, two of those items, and we cannot be compared to Appling County."

Marian Brown with the local League of Women Voters indicated that she had "had the opportunity to listen to the concerns of other residents across the state of Georgia. And here's what I've learned.," she said, "Georgians want fair districts, they want transparency. They want communities of interests to not be divided. And they want an end to partisan gerrymandering, [and] fair and competitive districts."

Kayla Casey lamented that the committee had not headed her request to hold the hearing in Richmond County where, she said, people could ride the bus. The hearing was arranged by Rep. Fleming and held in Columbia County. She asked the committee to "commit to fair, transparent and open process of drawing lines that prioritize communities that traditionally have been marginalized" and to thus avoid "diluting minority voting power." She also asked the committee to "commit to holding additional hearings for the public to view, understand and comment on the proposed maps also provide the public with sufficient notice and capability to review the maps before those hearings," and for "legislators to draw the maps to explain why they chose to draw the maps the way they did, and not to hide any communications they have."

Sherman Lofton Jr. with Alpha Phi Alpha Fraternity Incorporated acknowledged the state history, observing, "Unfortunately, Georgia has a history of undermining the influence of voters of color through the redistricting process. It is of the utmost importance that this body worked diligently, fairly and transparently to ensure that people of color have a voice in this process, because our democracy depends on it."

Two individuals representing the Georgia Muslim Voter Project noted the state's increase in minority and immigrant population and echoed previous calls for transparency, accommodations for individuals with LEP, and addition time for feedback and discussion after the publication of Census data and of draft maps. Alex Ohanian said, "Georgians have yet to receive any information regarding the dates for the upcoming special aid obsession. Georgians have pushed for additional public town halls following the special legislative session. Additionally, our calls for increased language accessibility have not been met. I have yet to see any sign language interpreters present at any of the public hearings."

Dani McCord, Chairman of the Columbia County Republican Party asked the committee to consider Columbia County COIs, including agribusiness, Fort Gordon, Plant Vogel, the Savannah River Site (in South Carolina though employing many residents of Columbia), the technology and medical sectors, and its suburban nature.

Marika Keelstra with Fair Count told the committee, "I worry that these hearings will mean nothing if there's not a clear and public commitment from the committee to transparency and fairness in this redistricting process. This would mean telling us the criteria used in redistricting, making draft maps publicly available holding further public hearings available in multiple languages." Another representative from Fair Count called it "telling" that the rescheduled meeting was held "the day before the redistricting data will be released." Several other speakers expressed this same skepticism, indicating that they felt this was done deliberately to avoid a town hall hearing post-publication. The representative expressed their belief that "The hearing schedules, locations and tactics shut out the voices of more than 5 million people of color, keeping us from giving meaningful input on draft maps."

As with the other hearings, this one was adjourned without substantive comment from committee members or leadership.

VI. THE SEQUENCE OF EVENTS – THE LEGISLATIVE HISTORY

I have reviewed the legislative history as available publicly. I understand that the parties to this suit are in a dispute regarding the availability of certain other highly relevant documents relating to this process. If those are made available, I will supplement my report to reflect whatever those documents may reveal. The legislative history that I was able to review reveals pleas and concerns that reflect what the public and certain members of the Assembly had already expressed in the town halls and the committee meetings, to wit:

- The public made consistent demands for more transparency, but the process was still carried out behind closed doors with staff and counsel.
- The fact that this had been done by the Democrats 20 years ago was used an excuse to do it again.
- Voters of color were being manipulated again for partisan advantage in places like Henry, Cobb, and Gwinnett counties.

- Congressional districts were stretching far up into North Georgia in order to avoid minority population growth in the northern Metro Atlanta suburbs.
- Women of color, specifically this time congresswoman Lucy McBath, were being targeted by line drawing.
- Staff in the LCRO and leadership on the respective committees were not as responsive to legislators of color as they were to the majority, which was all-white save for a handful of Latino and East Asian members, and none were Black.
- Committee leadership suggested that the Voting Rights Act was "unfair" in its application.

Ignoring the calls for transparency and time constitutes a substantive departure, insofar as the committee's claimed to be deeply concerned with obtaining public input, and these were the top two concerns and they 'favored a different decision' than the one ultimately made to ignore that input. Using the 2001 process as an excuse for elements of the current process is both a procedural and substantive departure – substantively, there is nothing in the committee guidelines that instructs committees or the General Assembly as a whole to fashion its behavior and actions, procedurally, based on previous cycles. Concerns expressed regarding packing and cracking in certain areas and drawing the northern suburbs into the mountains point toward another substantive departure insofar as these decisions trumped guidelines like maintaining COIs. The concerns raised about staff point toward another procedural departure. And Chairman Rich's comment regarding the VRA seems to be a highly relevant "contemporary [statement made by a member] of the decision-making body."

a. Special Session Called, Maps Published

On September 23, 2021, Governor Brian Kemp ordered a special session of the General Assembly to commence on November 3, 2021. Five days later the LCRO posted online a proposed congressional redistricting bill and map sponsored by Senator Kennedy. On October 21, the LCRO published the congressional redistricting plan put forth by the House and Senate Democratic Caucuses. One week later, the LCRO published the Democratic Caucus's state House and Senate plans.

And on November 2, it published the proposed House and Senate plans put forth by Representative Rich and Senator Kennedy, respectively.[107]

b. November 3, 2021, Senate Reapportionment and Redistricting Committee

When the Senate Reapportionment and Redistricting Committee met on November 3, 2021, it unanimously adopted guidelines that Chairman Kennedy described as substantially the same as those used ten years prior and the same as those adopted by the House redistricting committee. Sen. Kennedy expressed his desire to meet the following day in order to obtain public input and then be ready to take a vote and pass out a Senate redistricting bill by Friday, November 5, the following day.[108]

Leader Butler indicated that, "As we move forward with this process, that we will really listen to the people that we listened to over the summer. And that we will take in consideration all of the things that they said they asked for fair maps and transparency. And I hope that we are really listening and acting according to those requests." Senator Harbison asked Sen. Kennedy if he had received comments from the State Conference of the NAACP, to which Sen. Kennedy said he would have to check on that and that he did not think his office had heard from them before the public submission portal closed.

c. November 4, 2021, Senate Reapportionment and Redistricting Committee

At the November 4 meeting of the Senate Reapportionment and Redistricting Committee, Chairman Kennedy indicated that he would present his plan for the Senate and that Leader Butler would present hers. Leader Butler reacted with surprise, saying, "I can't believe that you asked me to present a bill and didn't let me know that the bill being committed today. Did I get a notice that the bill was going to be in committee today?" Senator Kennedy replied, "It's announced on the floor. The hearing is today."[109]

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[107] https://www.legis.ga.gov/joint-office/reapportionment.

[108] Senate Committee on Reapportionment and Redistricting, Meeting Archives, https://vimeo.com/showcase/gasenrandr?page=; see for all subsequent paragraphs in this section.

[109] Senate Committee on Reapportionment and Redistricting, Meeting Archives, https://vimeo.com/showcase/gasenrandr?page=; see for all subsequent paragraphs in this section.

Chairman Kennedy said that his legal counsel had assured him that the plan complied with the Voting Rights Act. He said that there would examples that I can give that probably will be alluded to during the course of this process of specific things that we learned that we tried to incorporate into the map drawing process" from the public town hall hearings. And he made note of over 700 comments that had been posted in the online portal, along with "emails, various forms of communication, that we're all logged and catalogued, and in fact, have been logged, if you will and available to all of our committee members."

Sen. Kennedy reminded the committee that they had held an "Education Day" in August, whereat they heard from several groups, including the state NAACP. On that day, he explained, the guidelines that the committee officially adopted the day before had been "unofficially adopted." These included, "constitutional requirements of equal protection, compliance with the Voting Rights Act, including a recognition of racially polarized voting, and then the importance of jurisdictional boundaries, prioritizing communities of interest, compactness, and continuity." Kennedy said that all of this along with input on the proposed Democratic plan, was conveyed to staff in the LCRO, and that a plan was published two days prior "to allow time for some comment."

The Chairman touted certain features of the plan, including the number of majority-Black and majority-nonwhite districts and opportunity districts. Vice Chairman Cowsert added that, during the summer the committee had heard from the public that they should not split counties, pair incumbents, split COIs, and draw noncompact districts and says that they did less of that than before. Chairman Kennedy specifically mentioned the fact that Democrats in leadership went out of their way to pair incumbents in 2001. He then explained certain granular features of the plan.

Leader Butler asked the Chair how he defined COIs, which he said was an "overly vague" proposition. She asked which specific elements of the plan had come from public feedback during the summer. Sen. Kennedy indicated that the plan reduced the number of splits in Pickens County, the "Onion Belt," from three to two. Leader Butler asked why the concerns of the citizens in that county rose to a level of action whereas people from Bibb and Clarke did not get the same consideration. Chairman Kennedy said that one cannot look at any one county "in a vacuum" because any decision or movement has a ripple effect on the whole map.

Leader Butler also questioned why SD 48's BVAP was reduced from 60 percent to 47 and its Latino population reduced by 50,000 when it only needed to shed 6,000 people. Sen. Kennedy repeated his belief that you cannot analyze districts "in a vacuum" and that SD 48 was not a Voting Rights Act protected district. Sen. Jones asked what metric was used to determine which SDs were VRA protected. Sen. Kennedy stated that he felt the VRA was too complicated to distill into a few sentences and says that he listened to legal counsel on that issue. Leader Butler indicated her impression that Chatham, Douglas, and Henry counties were all cracked to dilute minority population. The chairman asserted that the Democratic plan split more counties than his plan and that those areas were heavily populated.

With that the committee took public input on the proposed plan. The feedback from the public generally was almost entirely negative and generally mirrored what was said at the summer town halls. Individuals indicated that they felt the process lacked transparency, noting in particular the release of the map two days before the this meeting; they felt that the plan denied minority voters an equitable right to participate in the political process and elect candidates of their choice, both in terms of packing/cracking and vote dilution and in failure to act upon the many requestions for accommodations for people who were LEP or deaf; and that there was a general failure to recognize the tremendous growth of the state's Black, Asian American, and Latinx populations. Senator Cowsert occasional asked questions or pushed back on some of these criticisms. Black members of the committee echoed constituent concerns. Otherwise, members of the committee stayed essentially silent.

Janet Grant of Fair Districts explained Senator Kennedy's plan received a grade of F from the Princeton Gerrymandering Project, while the Democratic Caucus plan received an A. She broke down where the GOP map fell short in terms of minority representation and competitiveness. Alex Ani of the Georgia Muslim Voter Project argued that "the newly drawn district maps should reflect Georgia's increased diversity, but to our dismay, they do not. And these maps unfortunately, do not follow the guidelines your committees have put forth following the public's input." Stephanie Ali of the New Georgia Project echoed those concerns and added that the GOP was released on election night as returns were coming in and the present meeting was being held during the Braves baseball team's World Series Victory parade as evidence that the majority was willing to let participation be stifled, in her opinion. She echoed the Minority Leader's concern that city and county splits were designed to crack minority population in certain places. She argued that the GOP would virtually eliminate competition and put to the committee, "I'm publicly calling

on this committee to instead of providing two days for review and input to provide two weeks of time for the community members to be able to review to measure and to comment on maps before any action is taken."

Cindy Battles of the Georgia Coalition for the People's Agenda insisted, "What we're seeing though, is with this 19-to-20 majority-minority districts that you guys have created, you're packing that anywhere from 65 to 90%. So you're overpacking a majority minority district to dilute the opportunity districts around it." John Moye of the Urban League of Greater Atlanta stated, "The map which was presented by the committee, was made publicly available for the first time this past Tuesday, and I was with you at that committee hearing. The day before the special legislative session began, does little if anything, in our opinion, to correct to correct this significant cracking and packing of Georgia Senate districts and in many cases, Mr. Chairman, make the cracking and packing worse in violation of the guidelines to make the districts compliant with the Voting Rights Act of 1965 and the United States Constitution." Mr. Moyer instead touted the "Unity Maps" that his organization had submitted.

Anna Dennis expressed to the committee her belief that "redistricting in Georgia has historically been conducted in secretive process, where interest of partisan operatives and party leaders were prioritized over interest every of the everyday Georgians." This was done, she said, through "intentionally diluting African American voting strength. Also, what we have seen is that we've seen cracking and packing across the state. We are deeply concerned that the patterns of the past are repeating themselves in 2021. This is particularly concerning given the fact that preclearance is no longer in effect, which means that there is no mechanism to check the general the Georgia General Assembly maps prior to the enactment. Now that the redistricting process is not fair and transparent." She mentioned, in particular, splits in the cities of Lawrenceville, Stonecrest, Newnan, and Fayetteville.

David Garcia, an advocate for "the Latino community throughout the state of Georgia," insisted that his organization was "unable to provide a full analysis to the community to the committee because of the lack of opportunities to do so because of the intentionally compressed process whereby the committee plans to move forward on a vote on the plan after a single half day of public comment." He cited particular SDs in Cobb and Gwinnett counties that, in his view, deliberately reached north into whiter counties in order to dilute the voting strength of Asian America, Latinx, and Black voters.

Kareem al Husseini with the Georgia chapter of the Council on American Islamic Relations told the committee, "The process hasn't been transparent. Despite demands by the public throughout the summer, and the fall for the maps to be made public. They were only released 48 hours ago. Less than that, leaving no meaningful opportunity to be to review and have input." He reiterated others' concerns about minority representation and north Metro Atlanta SDs reaching north into whiter areas. He asked the committee, "How did you determine how many majority minority districts were required to be drawn to ensure compliance with section two of the VRA?" No answer was forthcoming.

A senior policy director with the ACLU of Georgia questioned the committee's application of the Voting Rights Act. They indicated that simply acknowledging the racially polarized voting exists in the state was not sufficient under the law. "It has to be a localized analysis for every region of Georgia," they said, "And the reason I bring that up is because it's not about an overall majority minority count. It's about where are those districts are. And as others have mentioned, it's not about packing more minorities into those districts that already exist, or even preserving its majority minority status. You have to actually determine whether maintaining that status is necessary for communities of color there to elect candidates of choice." They added that the room was "packed" with advocates, many of whom were "running on fumes" because of the recent elections.

Vivian Moore of the Georgia NAACP noted that her organization had submitted testimony questioning the splits in Cobb, Clayton, Forsyth, Gwinnett, and Henry counties. Several residents of Henry County also questioned the splits there with one adding, "And the issue is that many minority voices will be overshadowed in the solidifying of this tri split, not only my county, but of other counties in the state of Georgia. Do not rush this vote." Burdale Jackson questioned the split in North Fulton that saw his area of Alpharetta and Johns Creek paired with "far flung" Waleska and Ball Ground in northwestern Cherokee County.

Leader Butler asked the Chairman to postpone the scheduled meeting for tomorrow so that people would have time to digest what they had heard and to draft and submit maps. Chairman Kennedy replaced that people had had access to the census data for months did not need more time.

d. November 5, 2021, Senate Committee on Reapportionment and Redistricting

At the November 5 meeting of the Senate Committee on Reapportionment and Redistricting, Minority Leader Butler presented the Democratic Caucus plan for the Senate. She began by criticizing the majority's process and echoing some of the public's criticism of the same. "Unfortunately," she said "the proposal offered by the majority, and the process by which the majority appears intent on approving it today falls short of a fair map or fair and transparent process. The majority seems intent on allowing just less than 72 hours to review and provide feedback on a map that will affect their lives for the next decade. The majority's proposal was publicly released Tuesday night, as polls were closing, and election results were coming in." There was no reason in her estimation not to slow the process down.[110]

Senator Butler then explained the Democratic Caucus plan in detail and took questions from the committee. Sen. Cowsert asked why the Leader began each explanation of the map features by talking about race and asked if all of the majority-minority districts in her plan were required by the VRA. She indicated her belief that they were and deferred to Senator Elena Parent, who explained that the caucus had retained an expert, Chris Outland, to conduct an RPV analysis and to draw the map. Sen. Dolezal asked why the plan split Forsyth four ways when it was currently only split two ways and when members of the public at the hearing in Cumming expressed their desire for Forsyth to be kept whole. Sen. Parent replied by using Sen. Kennedy's earlier rationale that one cannot examine any given county "in a vacuum." Sen. Dolezal asked if Mr. Outland used political data, which Sen. Parent affirmed. Sen. Jones insisted that this was a clear illustration that the committee should have worked together in hiring experts and having these discussions.

The committee then allowed for public comment, though again with little to no feedback from or interaction with the members of the committee. The commentary again focused on the lack of time for the public to digest and analyze and comment on the specifics of the map. Amy Swygert told the committee, "This is the most important part of the process. This is the part of the process where we as voters, get to tell you all whether you heard us right. When we spoke to you over the summer, we can now tell you, did you hear us? And how did our feedback, make it into your proposed plans? And unfortunately, that is the part that is being rushed?"

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[110] Senate Committee on Reapportionment and Redistricting, Meeting Archives, https://vimeo.com/showcase/gasenrandr?page=; see for all subsequent paragraphs in this section.

She acknowledged Chairman Kennedy's statement that the committee owed the governor an efficient special session and said, "I feel the need to remind you all that you do not work for the governor. And I do not work for the governor. You work for the people in this room." Sen. Mullins noted that Ms. Swygert worked for Sen. Harold's staff.

Keyanna Jones told Sen. Mullins that she videotaped him sleeping in the previous meeting, drawing admonishment from the Chair. Ms. Jones said, "You have questioned and beat with a stick the idea of communities of interest? Well, let me tell you what my community is interested in. My community is interested in truth, justice and the idea of the American way; my community is interested in being able to make informed decisions regarding things that affect them; my community is interested in adequate notice of a public meeting such as this; my community is interested in being able to access the same data that you have that caused you to draw your maps, or the maps more specifically, with more than 48 hours' notice of the initial meeting; my community is interested in being heard and being represented by people not only they don't have to look like me, but they got to share my ideals. They got to be ethical; they got to be transparent."

Phyllis Richardson with Common Cause asked the members what decisions had been made regarding the GOP map in order to comply with the VRA. The Chair told her that the public could comment but that "We do not respond to public questions. Only members can ask questions."

No action was taken on the Democratic Caucus bill. Senator Kennedy's bill, SB 1 EX, passed with a favorable recommendation by a vote of 9-4. All Black members of the committee voted against it.

e. <u>November 5, 2021, House Legislative and Congressional Reapportionment Committee</u>

At the November 5 meeting of the House Legislative and Congressional Reapportionment Committee, Chairman Rich presented the majority's state House plan, and Minority Leader James Beverly presented the Democratic Caucus's plan. Leader spoke first and walked through the particulars of the plan, closing with, "No member of my leadership team met behind closed doors because we wanted to

maintain transparency. You spoke; we listened." He then took questions from committee members.[111]

Rep. Efstration asked why the minority's plan split so many counties. Leader Beverly deferred this question to the caucus's map-drawer, Mr. Brian Sells. Mr. Sells indicated that the county split criterion was balanced against other concerns, namely VRA compliance. Rep. Efstration asked if public input had been considered, and Leader Beverly indicated that, in addition to the town halls, the Legislative Black Caucus has conducted its own set of hearing across the sate from which it had gathered input. Rep. Efstration asked, did the minority map not fail to adhere to the guideline of avoiding incumbent pairings, to which Leader Beverly replied that the majority's map paired more incumbents, including more Republicans, than the minority map.

Rep. Lynn Smith asked how did you take account of the VRA. Leader Beverly indicated that the caucus had "made sure not to dismantle any opportunity districts, and we actually created three more. It complies with Section 2 by any measure." Leader Beverly indicated that the caucus had submitted the plan to the LCRO to ensure technical compliance and for feedback from Gina Wright. Rep. Taylor expressed skepticism as to whether the caucus took into account the thought of any Republican members of the assembly. Rep. Prince asked Leader Beverly to define a COI, which Mr. Sells says is really "in the eye of the beholder" but involves cultural, religious, racial, ethnic, and rural/urban considerations.

White and Black members of the committee asked about the RPV analysis that the caucus conducted. Mr. Sells indicated that the expert who ran the analysis was Stephen Popick. Rep. Fleming asked Leader Beverly is 80 percent BVAP districts were packed. My. Sells replied with the "in a vacuum" defense and insisted that packing was only a concern where it was not necessary.

With that, Chairman Rich presented the majority House plan. She indicated that Gina Wright would assist her in doing so, because "we rely on her so much," and that Mali Aziz was the map-drawer. The chairman recounted the town halls and said that the information gathered there was useful. She noted that staff had printed off the comments from the public online portal for members. And she reminded the committee of the Education Day that was held at the capitol in August. She noted

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[111] House Committee on Legislative and Congressional Reapportionment, Meeting Archives, https://www.house.ga.gov/Committees/en-US/CommitteeArchives114.aspx, see for all subsequent paragraphs in this section.

input from the Democrats, the state NAACP, and mentioned consulting the so-called "Red Book" published by the National Council of State Legislatures. She then gave a rundown of some of the particulars of the plan.

Rep. Scott noted that the schedule for this meeting had previously listed "TBB" and that this bill/map had only been made public and available to committee members, at the same time, a couple of days prior. She said that the public was demanding more time to analyze the map. Chairman Rich replied that the public had had the "opportunity to comment since June." Rep. Gilliard added, "We have just had this map put into existence into the last few days. I have to tell my people, 'Just deal with it.' We need to let the constituents have a say. I don't know what to say to my people." Chairman Rich said that it was "physically impossible" to do what Rep. Gilliard was asking and that two more meetings would be ample.

f. November 8, 2021, House Legislative and Congressional Reapportionment Committee

The House Legislative and Congressional Reapportionment Committee met next on November 8, 2021 to discuss a revised majority House map published that day by the LCRO. The first person to speak was Rep. Philip Singleton of HD 71 in Coweta County. Rep. Singleton asked that certain precincts that he represents be moved back into Coweta in the majority's plan, as they had been moved in with neighboring precincts in south Fulton County to the north. Subsequent commentary from white members of the community from Coweta revealed their fervent desire not to be moved into south Fulton, a majority area, lest they "become like Cobb [County], very likely meaning more diverse. A group of 8 white citizens from Rep. Singleton's district came to the meeting with signs reading "Don't California my Coweta." Mr. Singleton held a town hall of his won in which he told his constituents that they were being "drawn into voting rights districts" and that he had to be careful not to say much more than that. When they came to the meeting, the constituents stated their belief that Mr. Singleton was being drawn out of the county (his home was in the affected area) in retribution for joining a lawsuit over Dominion Voting machines against the then Speaker of the House, David Ralston.[112]

Chairman Rich told the constituents, which included some in an adjacent district to Mr. Singleton's who were also moved into south Fulton, "I am

[112] House Committee on Legislative and Congressional Reapportionment, Meeting Archives, https://www.house.ga.gov/Committees/en-US/CommitteeArchives114.aspx, see for all subsequent paragraphs in this section.

sympathetic to your plight" and "I do have sympathy for your position." But she indicated that population change was driving those decisions and "No matter how much anybody here on this committee or in this room thinks that the application is unfair here, this is just not the body that has any authority to change the Federal Voting Rights Act." She encouraged them to reach out to Senators Ossoff and Warnock, which drew audible groans and protestations. One woman from Coweta stated her belief that the Democrats map was better than the majority's.

The remainder of public commentary largely hued to what had been said in previous meetings. Stephanie Lee of the New Georgia Project said, "I am "still appalled at the speed at which these maps are being put through." She likened the argument that the public had enjoyed plenty of time for input over the summer to "saying that you talked to an architect about building your house and then just never checked back in with them until you moved in. And then you find your house doesn't have bathrooms or like a level floor or a stairwell that goes anywhere." She added, "I just also want to question whether the party has in power has any written publishable guidelines that have been used to draw these maps which affects all of the Georgians that are living under them. You yourself on Friday and earlier today spoke about protecting some of the current incumbents and avoiding paring incumbents. Whereas Senator Kennedy in the Senate mentioned that that was even worse when the Democrats talked about doing it for their bill. It seems like there's no consistent guidelines being used for the drawing of the maps and Georgians deserve to know what specifically was used in drawing them."

Cindy Battles, GA Coalition for the People's Agenda, accused the majority of packing majority minority districts to prevent opportunity districts and making sure you only create so many majority minority districts to barely comply with the law while making sure you keep the majority in the state house." Though she added, "But I have not had a chance to run the new map. So if some of this is wrong, I apologize." She stated her analysis that in the GOP plan, "Clayton County and other south metro Atlanta suburbs remain constrained rather than drawing them outside to prevent packing. Districts on the edges of all suburban counties reach outwards into their white neighbors to dilute the increasing diversity of suburban counties." Vasu Abirahman, of the ACLU of Georgia likened it to "telling an editor to send suggested edits for a piece of writing without having seen the writing that they're trying to edit."

Similarly, Aisha Yaqoob, with the Asian American Advocacy Fund said, "We really wanted to make sure we had ample time to be able to review the maps. And although we had a week with the last version of the maps, I think we just saw these maps less than an hour ago. So some of my comments may not be valid, so I will skip through them." She stated her opinion that the Asian American population in north Atlanta Metro had been packed.

Karen McCowan with Fair Districts Georgia explained that the Princeton Gerrymandering Project gave both plans a grade of B. Representative Setzler noted that if this group had time to analyze the plan, then others should have as well, and he lauded the majority's plan garnering a B grade.

Hannah Gebrselassie with Protect the Vote argued, "We've seen how this process has been rushed, rushed in a way where the people of Georgia aren't able to really express their concerns around this new map around the new maps that have been drawn. We saw what happened in the Senate on day three. On day three, they passed this version of a map that we didn't even get to fully understand because it was a substitute version. That doesn't reflect transparency." Julie Bowen of the League of Women Voters noted that this issue "was brought up in nearly every hearing you had over this summer" and yet still was the primary concern of citizens. Kevin Burgees, a resident of Coweta, added, "To this day, I do not understand why this committee's process to vote on these maps has to be rushed." Elaine Kilgore of Fayette County said, likewise, "I think this is a bipartisan agreement that we need some time." Allison Calhoun said, "We were told on Friday that our county has had since June, to bring our concerns and express our concerns. We did not have since June. We found out about this Wednesday night at around 759. On a social media post."

Subsequent speakers repeated these same concerns along with those of language access, minority vote dilution, and overall transparency. One woman, Keyanna Jones, engaged in a heated back and forth with Rep. Setzler and was ordered by Chairman Rich to be removed from the room by a white capitol police officer.

g. <u>November 9, 2021, House Legislative and Congressional Reapportionment Committee</u>

The meeting of the House Legislative and Congressional Reapportionment Committee opened the following day with public commentary, through this was roundly consistent with what had been said the previous day. Some speakers who

had had more time to analyze the plan noted specific features. Representative Alexander noted, "We received these maps on Friday; we received a revised copy at 12:55 yesterday." She added, "One of the biggest questions from the town halls that all of us heard was, once the maps are released, will there be public input." The public had demanded transparency, she said. And yet she said, I'm still trying to digest it; as a matter of fact, it is 261 pages." Chairman Rich said that revisions made to the map were made primarily at the request of members and had been discussed the previous day at the meeting.[113]

Representative Scott noted that the substitute map was still not available to the public online and that, in her understanding, since a vote was about to be taken, that "the comments that are made this morning would not be considered. And to the maps. If we are getting ready to have a vote on the mats, then the people just came down to talk, because their comments are not going to be considered in the maps." Chairman Rich replied that the map had been discussed "exhaustively" the previous day, despite the fact that very little actual discussion took place. Rep. Setzler added the "original" map had been published the previous Tuesday.

The majority plan was voted out favorably with all Black members of the committee voting No. The following day the House committee passed the Senate's bill through by the same vote. The day after that, Nov. 11, the Senate committee passed the House's plan through in a similar fashion. Public commentary and questions and comments from Black committee members at these relatively brief meetings mirrored those in the meetings held theretofore. At no point did any Black member vote for a plan that passed through.

i. Nov. 9, 2021, Senate Floor – Passage of Senate Plan

When the Senate plan came before the full Senate on November 9, Democratic Senators, most of them Black, expressed many of the same concerns that the public had relentlessly come forth with during the committee meetings and going back to the summer town halls: they argued that this seemed to have been handled in a deliberately and unnecessarily rushed fashion, including a refusal to allow adequate time for the proposed plan, belatedly put forth as it was, to be adequately considered and analyzed; the lack on time for input specifically once the map were posted; the many of the county and city splits seemed deliberately designed to crack minority

[113] House Committee on Legislative and Congressional Reapportionment, Meeting Archives, https://www.house.ga.gov/Committees/en-US/CommitteeArchives114.aspx, see for all subsequent paragraphs in this section.

populations; and a lack of access to the map-drawing process and individuals associated with it.[114]

Senator Kennedy presented the bill and took questions. Senator Emmanuel Jones, a Black member, asked why the plan split Henry County three ways. Senator Kennedy replied with the "vacuum rationale" saying, "That it is a part that is necessarily connected to the other 55 districts. And the only way I know that is having gone through the exercise in the map drawing and room of knowing how a small change is something that perhaps one corner of the state can ultimately impact the rest." He added that he and staff had to comply with the VRA and keep SDs 10 and 43 majority-minority. Jones followed up by asking why the Black population in SD 17, stretching through Henry, Newton, Morgan and Walton, was reduced by nearly 25,000 when the district only needed to lose around 12,000 people. Kennedy said, "It's not like the black residents you're alluding to somehow disappeared or moved out from Georgia." They were "represented in the other districts around 17." Others countered that it was "actually quite possible" to maintain the existing majority minority SDs while keeping 17 more compact and within Henry.

Sen. Jones questioned whether or not the complied with Section 2, saying, "We've received no name of counsel nor were given any opportunity to speak to that counsel. In fact, I sent several emails, after it was stated in committee that this counsel and experts were available to the whole Senate. I sent several emails trying to actually speak to these alleged, you know, experts who have been guiding the majority in the process and did not receive any response."

Senator Parent argued that the plan had been "released without fanfare the night before the session began. . . . While no one was looking." She wondered why no committee hearings had been held in Cobb, Gwinnett, or DeKalb. She said this made it difficult for a large portion of the state's population to make their voices heard but said, summarizing the roundly negative feedback the public did give, "We heard a common refrain. Hundreds of Georgians told us that they wanted an open and transparent process and fair maps that respected communities of interest, partisan preferences, and the diversity and population shifts of Georgia." Yet, she said, this process ignored their pleas."

Senator Derek Mallow, a Black member, echoed Sen. Emmanuel Jones, wondering why "only one hearing was held in the city of Atlanta, where 70% of the

[114] https://vimeo.com/georgiastatesenate.

population resides" and none were held in Savannah-Chatham. He expressed incredulity at the timeline of events as well, saying that in the town halls and subsequent hearings, "What did we hear again, and again, over and over, from the citizens across this great state? There was one thing that rose above all others. And that was the request for transparency. Georgians asked for maps will be released with ample time for public consideration and input before making them final. Yet here we are," he said, "with maps that flew through the reapportionment committee in a couple of days, maps that were released on *Twitter* change without notice the night before the hearing and pass along party lines less than 72 hours after they were made available." Senator Cowsert insisted that all members of the Senate had been invited to speak with Chairman Kennedy at the onset of the process in order to express concerns.

Several other Democratic Senators spoke in opposition to the map, noting SDs that appeared to be packed or cracked and criticizing the map in general for failing to account for minority population growth. Towards the close of debate, Senator Harold Jones sought to contextualize the VRA, saying that it was enacted because of the history of discrimination in voting rights and reminding the chamber that the entire Georgia congressional delegation voted against the measure. Sen. Albers, a Republican member, rhetorically asked what party those members of Congress belonged to, which was the Democratic Party. Sen. Jones replied, "The consistent factor in all of this is not about the parties. That consistent factor has been that black bodies and African Americans have been used as pawns, as far as political power is concerned in this country."

Senator Kennedy closed debate by comparing the process he oversaw to how the Democrats handled it in 2001. Would you believe," he said, "that in 2001. That bill was first introduced on session day, one Wednesday, August one. And guess when it was favorably reported by committee, out of that committee, session day three." He mocked the Princeton project, insisting that "my friends from New Jersey came down and want to impose some good old New Jersey values here in Georgia." And he insisted, "Republicans are not going to be lectured by Democrats who ran the system 20 years ago the way they did, and come into this chamber and talk about how horribly unfair it is, and what a challenge it is to democracy. No, no."

The bill passed 34-21 with no Black members voting in favor.

j. November 10, 2021, the House Floor – the House Plan

When the Georgia House of Representatives convened the following day, it took up the majority's House plan. Members of color expressed frustration mirroring that shared on the Senate floor the previous day: House districts, they felt, had been deliberately packed and cracked in order to dilute minority voting strength; time for analysis and debate of the plan after the map was released was far too short; the process of actual map-making was done behind closed doors, while public input from the summer was largely ignored; and leadership and staff did not ensure that a proper RPV analysis was conducted.[115]

Representative Carolyn Hughley observed, "Republicans have boasted about hosting joint redistricting hearings around the state, as if hearings prior to the census data release provided sufficient information or education for our constituents to gain an understanding of the redistricting process and share their concerns based on a real proposal." The majority, she said, had "decided not to yield to the pleas of constituents for transparency. Instead, this map has been rushed through the legislative process." Representative Sandra Scott agreed, noting that "COVID and the Census delays created problems," but she argued, "They "did not force us to ignore the public in a rushed process that will undoubtedly change Georgia permanently." Rep. Gilliard felt that the committee "put the cart before the horse" and "put the symbolism of public in engagement ahead of what the public really needed."

Representative Singleton drilled down on this point, saying, "It's important to note that with 88 hours of meetings 30 plus hours of public hearings, 900 plus comments, not one single amendment was submitted to the committee to adjust these maps. All of this, everything on these maps was done behind closed doors with a select few." It was, in his view, "political theater."

Representative Sam Park insisted that in order to "ensure the map drawn and passed protects the rights of voters of color to elect their candidates of choice, a racial bloc voting analysis is a must. Unfortunately," he said, "we do not know if a complete racial bloc voting analysis was conducted. For the Republican map on the floor today. There has not been full disclosure to the public, or even committee members. On this point, the name of the expert statistician retained to conduct such analysis on the Republican map is still unknown. What we do know is the

[115] https://vimeo.com/georgiahouse/albums/page:1/sort:date.

Republican map fails to reflect the growing diversity of Georgia and draws one less opportunity district than the proposed Georgia House Democratic Caucus map. The Republican map also dilutes existing opportunity districts. This Republican map threatens the ability of voters of color to elect candidates of choice."

Representative Efstration pushed back on this, insisting that "careful consideration" had been given to Section 2 and that the majority map had minimal population deviation, a relative lack of county and municipal splits, and increased the number of opportunity districts. Representative James Burchett, a Republican, noted that the plan paired himself with another incumbent but said he still supported it. The Speaker Pro Tem, Jan Jones, referred again back to the Democratic redistricting in 2001 and touted the 2011 plan's preclearance.

Leader Beverly gave the final word for the opposition, observing that "Public comment on this map, including from Republicans was overwhelmingly negative and that "it was promptly ignored." Chairman Rich responded by asserting that the majority's first draft map reflected "all of the public comment that we had received through our public hearings across the state and through our written portal." She said that some Democratic members had met with her but that "apparently" others had been advised not to do so. She expressed frustration at the Black Caucus not sharing the results of their town hall hearings and insisted that leadership and staff had conducted an RPV analysis, the result of which were "that there was a finding of racially polarized voting" in the state.

The House voted the plan out 99-79, with no Black members voting aye.

h. <u>November 17, 2021, Senate Committee on Reapportionment and Redistricting</u>

When the Senate Committee on Reapportionment and Redistricting reconvened on November 17, Chairman Kennedy noted that the Senate had posted a "draft" congressional plan on September 27 and that the public had been able to comment on that in the portal. As subsequent commentary from the public and Black members of the committee would make clear, however, the map being considered that day for a vote had only been posted hours before the meeting. Chairman Kennedy gave a run down of the map, explaining that the VRA districts were CDs 2, 4, 5, and 13 and that CD 7 was an opportunity district. He mentioned the

previously adopted guidelines and added preserving the "cores of existing districts."[116]

Public comment followed. Maggie Goldman of Johns Creek told the committee, "This new map, from which I can tell, only released a few hours ago, pretty much cuts Johns Creek out" of CD 6 and "out of the North Fulton community of interest. The residents of North Fulton and specifically Johns Creek have not had an opportunity to weigh in on these maps. We need more time." She asked, "How does Dawson or even Forsyth have anything in common with Sandy Springs? Absolutely nothing except for creating a mostly white majority district. us six will flip from a competitive district to a plus Trump 15. The intent here is blatantly obvious." Finally, she noted that "A large Asian community in Johns Creek is being added to us seven, which will dilute their representation."

Cindy Battles appeared again and indicated that it was her understanding that the expert who drew the map was on Thomas Brunel, a political scientist whose publications include *Redistricting and Representation: Why Competitive Races are Bad for Elections* (2008) and whose expert resume included working on maps in North Carolina that were deemed to be racially gerrymandered. Ms. Battles was among a number of speakers who expressed their belief that "CD 7 was saved while CD 6 is obviously meant to make sure Lucy McBath is not reelected." She concluded, "You waited until the last minute to introduce a map, which cracks impacts people of color, to dilute their voting rights and voting strength, the racial concerns predominated the decision making over traditional districting principles and demonstrates that Georgia's long and documented history of racial discrimination continues to be present in these maps for the next decade."

Ken Lawler of Fair Districts Georgia also appeared again. He began by saying that releasing the draft map in late September had been a "step in the right direction," but he added that "today's release of the real map just hours before the hearing really is a giant step backwards. This does not give the public almost no time for meaningful public analysis and input." He noted the Princeton Project gave the map a C grade.

Mary Lou McCluskey indicated her belief that CD 4 was packed while CD 6 was cracked. She argued that it was unnecessary to redraw the sixth and seventh districts the way you have done neither in order to take into account census changes

[116] https://vimeo.com/showcase/gasenrandr?page=1.

in Georgia or to assure minority opportunity for representation." Stephanie Lee appeared again and stated that, regarding CDs 6 and 7, "I think a lot of us in Georgia were pretty sure one was going to be changing dramatically, while the other was pretty secure. And it is not lost that the that the black woman versus women is the one who's facing the most change versus the white woman" referring to Reps McBath and Bordeaux.

i. November 17, 2021, House Legislative and Congressional Reapportionment Committee

The House Legislative and Congressional Reapportionment Committee also met on November 17 to consider competing plans for congressional redistricting. Leader Beverly presented the Democratic Caucus plan, while Chairman Rich presented the joint Senate and House majority plan. Rep. Scott asked the Chair if the majority performed an RPV analysis. Rep. Rich said that they did but she cannot recall the name of the expert who did so. Rep. Scott followed up by asking how did they know how many majority-minority districts would be necessary to comply with the VRA. Chairman Rich replied, "There's not a magic formula or standard or equation, but where we find that there are areas where we can draw the Voting Rights districts, then then we do that."[117]

Rep. Scott noted that CD 6 was "represented by an African American woman, is diverse, and the most competitive district in the existing map" and asked, "Why did you choose to make the district whiter and less competitive?" Chairman rich answered, "So we did not make any decisions based upon the individual who holds any seat, I want to make that clear. We drew our maps based upon the population shifts, we had incredible population growth in Cherokee County and in Gwinnett County." Maggie Goldman subsequently noted that CD 6, where she is a resident of Johns Creek, only needed to shed 650 voters, whereas thousands were moved out and in. She added that this would indicate that "preserving the cores of districts" and accounting for population growth were not the motivating factors in the changes to the district.

Representative Alexander raised similar concerns regarding splits in Cobb and Henry counties in the GOP plan. Chairman Rich again deferred to population growth. Mary Keelstra from Fair Count testified, echoing the testimony of many others who spoke, "This process has been rushed. The maps released at 10am this

[117] https://www.house.ga.gov/Committees/en-US/CommitteeArchives114.aspx.

morning will affect the resources and representation our communities receive for the next 10 years, the Senate and House committees have stated there will be a public period, a period for public input on these maps. But how can the public have input on something that was released just a few hours ago?"

j. November 18, 2021, House Legislative and Congressional Reapportionment Committee

The committee met again the following day and allowed for further public commentary without member response. By this time, residents of southwestern Cobb County had realized that their precincts had been moved into CD 14. Erica Thomas, the House representative from Austell, Powder Springs, and Mableton, condemned the dilution, in her estimation, of Black citizens of West Cobb and putting them in a CD in which "they so clearly do not belong."[118]

Rep. Setzler defended Congresswoman Taylor Greene's ability to represent voters of color. Leroy Hutchins, a resident of the area in question, demurred. He argued that West Cobb was part of Metro Atlanta and a hub of tourism with significant transportation concerns. This had nothing in common with the bulk of CD 14. Furthermore, he argued, "Congresswoman Marjorie Taylor Greene does not represent [our] values. What we saw in January [referring to the violence at the U.S. Capitol] was despicable, is not American, and her opinions of that day do not represent that of the area, and our communities." Several other speakers relayed these same concerns, while others reiterated the long-running concerns about transparency.

k. November 18, 2021, Senate Committee on Reapportionment and Redistricting

At this meeting, Minority Leader Butler presented the Democratic Caucus's plan for congressional redistricting. She took questions from Sen. Dolezal, who wondered why Forsyth was cut off from North Fulton and why South Gwinnett was paired with Newton County. Sen. Anderson replied that the latter was no change from the current map. Sen. Rhett lamented the inclusion of West Cobb in CD 14 in the GOP proposal and noted that CD 13 was far less packed in the Democratic proposal. Chairman Kennedy asked why there were so many county splits in the

[118] https://www.house.ga.gov/Committees/en-US/CommitteeArchives114.aspx.

Democratic plan. Leader Butler said that that criterion was subordinated to compliance with the VRA.[119]

Sen. Cowsert asserted that the Democrats' map packed "Caucasians" into CDs 3, 9, 11, and 14 and cracked them in CD 10 and that, insofar as Sen. Butler was "arguing" that "Caucasians" were in the minority in Georgia, then this ought to run afoul of the VRA. Sen. Jones replied that this was not his understanding of the meaning or purpose of the VRA. Chairman Kennedy expressed his frustration at Leader Butler for not sharing with him the information gleaned from the Black Caucus's tour of the state. Sens Harbison and Anderson argued that the information was largely redundant to information the committee received otherwise and that, insofar as it was not, the committee and chair were getting that feedback now by way of the Democrats' proposed map.

With that the committee took public commentary for the final time. Feedback was again overwhelmingly negative and focused on the same issues of transparency, time, and minority vote dilution. For example, David Garcia of the Vallejo Impact Fund said that the majority's map, in his view, "cracks populations of people of color dilutes minority voting strength and racially gerrymandered districts to make it more difficult if not impossible, for voters of color to elect candidates of choice." Among the "most egregious" examples of this were increasing the White population in CD 6 by reaching out into Cherokee, Forsyth, and Dawson, the packing of CD 13, and the cracking of Cobb between CDs 6, 11, 13, 14.

Julie Bolen expressed the frustration of many when she said, "Since you started having hearings over the summer, we and our fellow Georgians have asked repeatedly for fairness, more opportunities for public input and transparency. . . . You allowed us to provide comments without seeing maps that you never let the public ask you questions and get answers about your processes and your reasoning and drawing the district lines. Katherine Maddux addressed the chairman and suggested that perhaps he could have approached the Black Caucus for information and not the other way around, saying you don't need a person of color to bring to you a group of colors information." She added that his other White members, namely Senator Cowsert's, upbraiding of other minority members of the committee was "really uncomfortable" to witness.

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[119] https://vimeo.com/showcase/gasenrandr?page=1.

Finally, Vasu Abdirahman cautioned that the majority ought to be wary of attempts to mechanically increase or artificially maintain the same percentage of black voters in districts already electing candidates preferred by black voters," under what he characterized as "the guise of VRA compliance." Senator Tillery's subsequent questioning of Mr. Abdirahman revealed what appeared to be a misunderstanding of the language "candidate of choice," which Sen. Tillery seemed to think this meant a candidate of the voter's race. Sen. Tillery's and the other White committee members, save for Sen. Cowsert, were largely silent for the entire process.

The committee next voted down Leader Butler's plan 5-9, along racial lines, and voted favorably on Chairman Kennedy's plan along the same lines.

k. November 19, 2021, the Senate Floor – the Congressional Plan

Unsurprisingly, when the majority's congressional plan came before the full assembly, the Senate floor debate hinged on the same issues as all previous debate and public commentary: Black members argued that the plan packed and cracked Black voters, lacked adequate time for consideration give its eleventh-hour publication and the fact that the vast majority of public input came prior to said publication, and was the result of a closed-door process that flew in the face of relentless public pleas for transparency.[120]

Senator Parent noted the state's minority population growth, as many legislators and members of the public had before and lamented that the majority's plan did not reflect that. She recalled that "citizens that spoke up at town halls all summer long, and many of whom came to speak before the redistricting committees, pleaded over and over for a transparent process, and fair maps that would reflect Georgia's population and political preference." But, she said, "When the committee hearings commenced, there were members of the committee that spent a great deal of time, challenging members of the public, and even fellow senators on whether feedback was provided or received by the majority party instead of on the substance of the feedback being put forth."

Senator Parent also criticized the public portal. It was, she said, difficult to find on the legislative website and, as members of the public had pointed out, did not allow for attachments and thus map submissions. Members also wondered, she said, if any of the comments were being considered, as there was no feedback nor

[120] https://vimeo.com/georgiastatesenate.

any guidance given as to how public input would be reviewed, processed, considered, or implemented. In Parent's view, the public feedback process represented "a fake pretense" designed to "mollify us into thinking our concerns are being heard and acted upon."

Senator Harold Jones called the constant comparisons to 2001 and 2011 "foolish" and "not good government." Senator Nikki Merritt noted, "When these maps were dropped Wednesday afternoon, we were not even given them, and now here we are today and the map's not up here. I thought it was gonna be up here." She also reiterated what others had said regarding the identity of the GOP's RPV expert: "We were not given the name or contact information of the individual and the majority party, that the majority party claims was specific that was specially hired by legislative counsel, and was available to both parties, Despite repeated requests." She also questioned the public hearing process, saying, "The majority of members of this committee did not answer questions from the public, who came to speak on behalf of themselves and the community. The only explanation we've been given is that you can't look at any district in a vacuum, that every change affects all the other districts. But what they're saying is that there is a driving force behind all of their changes. But we know that force is preserving a Republican majority. That's the elephant in the room."

Senator Michelle Au and a few others focused on the changes to CD 6. Sen. Au said, "The map for the Georgia six should have been the easiest part of your job." It was "the closest already to ideal population size." However, she said, "the Republican congressional map shifts nearly 50% of the metro Atlanta population out of the sixth district, and brings in a fresh batch of more than 350,000 voters from Republican strongholds as far flung as Cherokee, Forsyth and Dawson counties."

Senators Gail Davenport and Donzella James expressed concern that the General Assembly seemed to specifically be "target[ing] and discriminat[ing] against women of color." Sen. Davenport mentioned the arrests of then Senator Nikema Williams during a protest at the capitol in 2018 and of Rep. Park Cannon in 2020. Sen. James explained that, in her view, "The majority party is targeting a black woman [McBath], one of only two in our delegation, in order to redraw her district to make it safely Republican. That's unacceptable. In the previously passed legislative maps," she added, "Republicans targeted a female senator who happens to also be the only female Asian American senator in Georgia [Michelle Au], and it

can be argued that the voices of thousands of Asian American voters in [Au's] senate district 48 are being silenced."

Other Black Senators asked why northern Metro Atlanta communities were connected to places like Dawson County and, like others, lamented that this had not been, in their view, a transparent process. Leader Butler argued that the plan "cracks and packs, voters of color, and likely only contains five districts in which voters of color can elect the candidates of their choice. Think about that. In a state that is likely majority minority, only five or 14 districts will likely provide voters of color and opportunity to elect the candidate of their choice." Like Sens Davenport and James, she said that the map "also targets women and women of color." In her estimation, "It clearly targets the black female incumbent [McBath] and further, seemed to be drawn in order to "exclude the home of the district's current female incumbent" [Bordeaux].

Senator Butler told the Senate that "not a single member of the public spoke in favor of any map the Senate has passed, or the one before us today, during forty-nine minutes yesterday during Senate committee hearings." She also noted that the plan was passed out of committee "with the support of nine white men," and that "not a single member of color, nor any woman voted for this proposal in committee. Indeed, the five votes against this proposal were cast by two black women and three black men." She asked, "And what will the vote in support of this proposal in this chamber look like today?" And noted that "on the other side of the [political] aisle" were 34 Republican Senators, 32 of whom were men, and 31 of whom were non-Hispanic White men. "These are the individuals today," she concluded, "who will dictate the political future of a majority minority state."

Senator Kennedy questioned the good faith in Democrats waiting until, in his view, the last minute to make certain complaints as well as in not offering to make available the information gleaned from the Black Caucus public hearings. Kennedy also responded to the complaints about transparency by indicating that 50 of the 1000 comments in the online portal were added after the original September congressional map was published by Republicans.

The chamber voted 32-21 in favor of the bill, with no Black members voting aye.

1. November 20, 2021, House Legislative and Congressional Reapportionment Committee

The House committee met again on November 20 and took public commentary via Zoom. Members of the public continued the outpouring of concern over moving West Cobb into CD 14. Ashley Whaley said that while Congressman Loudermilk "may not be my choice to fill the seat of the 11th district, he's still someone who I communicate with and can trust to be levelheaded and reasonable." She argued that being put into Congresswoman Taylor Greene's district was more akin to "an abusive relative" and she decried what Ms. Taylor Greene stood for "ideologically and morally." Deborah Johnson added her belief that the Congresswoman had "no empathy for humanity and no sympathy for the dead or the living."[121]

Others spoke about the "reprehensible" changes to CDs 6 and 7. Hasan Arwen of South Forsyth argued, "By extending District Six in the Dawson Cherokee northern Forsyth, you've now taken two completely different areas in demographics, views and issues and placed them into one district and attempt to dilute the voices of one of the fastest growing areas in America in terms of population and diversity, and we do not support it whatsoever." Julian Fortuna added, "This is a clear gerrymandering attempt intended to disadvantage our incumbent and distance our relationship with someone who represents us very well. The current District Six is a community of interest of suburban voters in the North Atlanta suburbs." Anna Hall made note of Forsyth's history of violence and disenfranchisement directed at Black citizens and said that she was unaware of this history until recently. She indicated that North Forsyth continued to bear that legacy while the southern portion of the county had grown more inclusive and progressive.

Marin Iman, a self-described "young Asian American female," indicated that she was "appalled" at the dilution of minority votes in CD 6 to push out Rep. McBath. Harold Kurtz of the Jewish Community Relations Council concluded public comment by saying, "Although I'm reluctant to use the word racist, the obvious step of the proposed map of congressional districts is to eliminate representative Lucy McBath from the congressional delegation. Placing Dawson and Forsyth counties and Representative [McBath's] district and taking out her DeKalb portion of the district runs counter to the principle of placing communities of interest together. As a small minority, the Jewish community will also see its interests hurt

[121] https://www.house.ga.gov/Committees/en-US/CommitteeArchives114.aspx.

by the changes to District Six, while only 2% or less of the total population of Georgia is Jewish. The Jewish community is a substantial portion of District Six, the changes will dilute already small ability to impact the composition of the congressional delegation. It will hurt our own chances of having representation that reflects our overall needs and desires."

The bill passed through the committee favorable with a vote. No Black members voted Aye.

m. November 22, 2021, the House Floor – Congressional Plan

When the majority's congressional plan came before the full House of Representatives on November 22, Black members denounced it in the same terms as those in the Senate had done: in their view it deliberately targeted McBath as a woman of color; it was the culmination of a closed-door process from which they had been shut out, especially by the LCRO and the committee chair; that the map failed to account for the state growing communities of color; that the town hall lineup avoided highly populated counties because of their proportion of communities of color; and the town hall process, in any case, was superficial since no maps were available at that time for the public to review. Minority Leader Beverly said that, despite the continuous pleas dating back to the summer for transparency, "We are fully aware that the process was rushed and secretive with the congressional map released just three hours before public comment was scheduled to begin last week." He also explained that he and other Democratic Caucus members, when maps were "finally released," "attempted to meet with the reapportionment office to look more closely at the Republican map. But we were met with a closed door, a locked gate with a detour sign that said, 'Go see the chair first.' Why does a member of this body need permission from another party to meet with a nonpartisan office in the General Assembly?"[122]

Representative Miriam Paris argued that, "At a time when women are already underrepresented, particularly women of color, we should not be drawing maps that target women incumbents to make it harder for them to run and win in new districts. But the map before us today does just exactly that." Representative Will Boddie spoke to the concerns regarding proportionality and minority population growth and suggested that the map violated the VRA. Rep. Matthew Wilson accused the majority of "intentionally target[ing] incumbent women and voters of color to dilute

[122] https://vimeo.com/georgiahouse/albums/page:1/sort:date.

their power and silence their voices," and characterized "the sound and fury around making this a fair and transparent process" as "tantamount to lipstick on a pig."

Senator David Wilkerson spoke out against the cracking of Black voters in Cobb and putting them into CD 14. He reminded the body that Powder Springs had just elected its first Black mayor in 2015, the first Black mayor in Cobb County's history. He added that he had intervened in a one-person, one-vote lawsuit in 2002 after the General Assembly failed to pass a redistricting plan for the Cobb County Commission and that he and other intervenors had been able to sway the court to draft and enact a plan more favorable to Black voters in the county. He also noted that Austell had elected the county's second Black mayor in 2019.[123] And he noted that citizens of those areas had come before the redistricting committee to speak out against their being moved into overwhelmingly White CD 14 and against their inclusion, as a Metro Atlanta area, in a 'mountain' district as well.

Chairman Rich closed debate and addressed the concerns about CD 6, saying that, although CD 6 only needed to add 657 people, "the districts touching it, and those not touching it required movements that the sixth and all other 13 congressional districts could not escape." She argued that the VRA "doesn't work like that" in terms of protecting McBath. She explained, "The law requires that we draw maps that equally apportion the population among the districts, and that we give minority communities an opportunity to elect a candidate of their choice. It does not mean," she said, "that a majority white district like the Sixth, that elects a minority candidate, all of a sudden gets a lifelong protection under the Voting Rights Act for that incumbent. It doesn't work like that. We don't draw maps to protect incumbents, an individual who happens to be sitting in the seat."

She next addressed, in her words, "the reference to my canceling meetings" and that she was not able to actually work on drawing the maps when, when I ideally would have." She noted that she had experienced "a personal tragedy" that limited her availability. She explained that she opened up another day of meetings since, at the time, "the majority of the Democrats had not met with me. But she said that she was told that there was not time then. So I apologized," particularly to "anyone who had waited until the very last minute." She argued that "this redistricting process has had more transparency than I believe any redistricting probably has in history." She told the chamber that most of the people who came to speak to the committee had

[123] Smith v. Cobb County Board of Elections and Registration, 314 F.Supp.2d 1274, 1283-84 (N.D. Ga., 2002).

been "paid lobbyists for nonpartisan public interest groups" who "said the same thing at every meeting day after day." She acknowledged that the state had a history of gerrymandering to suppress the black vote but noted that "for the 100-plus years that the Democrats controlled the process, yes, yes, that was true. But for the two cycles, that the Republicans have controlled the process," added, "that is not true. And guess what? The courts have said, just as much. There is a reason that we don't have a preclearance requirement. Now. This congressional map is fair."

The House subsequently voted 96-68 in favor of the plan, which was sent to Governor Kemp for his signature.

VII. SENATE FACTOR SIX – RACIAL APPEALS

Senate Factor Six asks whether campaigns have been "characterized by subtle or overt racial appeals." Campaigns in Georgia in the last several years, including last year, have been characterized by both subtle and overt racial appeals. These appeals have targeted Black, Latinx, and AAPI citizens. In the lead-up to last years elections, 2022, AAPI voters were targeted with mailers accusing the Biden administration of "decid[ing] who gets hired, and who gets fired, according to their skin color." The ad listed "job requirements" including, "College Degree, 3-5 years experience" [sic] and "Must be Black or Latinx," and it concluded "Whites and Asians need not apply."[124] Television ads that ran at the same time in Georgia, featuring the rhetorical title "Why Don't Asian Lives Matter to Joe Biden and His Left-Wing Allies?" sought to characterize the Biden administration as "soft on crime" (much as the Bush campaign did vis-à-vis Dukakis in the "Willie Horton" ad) and to blame it for a surge in violent anti-Asian hate crimes, including those committed in Atlanta. The narrator in the ad says, "Joe Biden and his liberal allies have allowed deranged criminals to roam free, putting Asians in grave danger."[125]

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[124] Amy Qin, "Ads from Conservative Groups Target Asian Americans, *New York Times*, Nov. 7, 2022, https://www.nytimes.com/live/2022/11/07/us/election-midterm-news; Chany Chea, "Asian American Voters Targeted by Racist Mailers sent by Conservative Right Wing Organization," Nov. 4, 2022, Asian American Advocacy Fund, https://asianamericanadvocacyfund.org/press-releases-i/asian-american-voters-targeted-by-racist-mailers-sent-by-conservative-right-wing-organization.

[125] Qin, "Ads from Conservative Groups Target Asian Americans, *New York Times*, Nov. 7, 2022; Robert Mackey, "Bizarre Republican Ad Blames Biden for Anti-Asian Violence Incited by Trump," *The Intercept*, Oct. 24, 2022, https://theintercept.com/2022/10/24/anti-asian-ad-trump-citizens-for-sanity/.

Campaign ads with racial appeals have also targeted Latinx people in Georgia. In a 2018 run for Governor, state Senator Michael Williams ran ads featuring a "Deportation Bus," which his campaign actually drove around the state, purporting to be chasing down "illegals." Ads showed the candidate at the back of the bus where, on the windows, it read, "Danger! Murderers, Rapists, Child Molesters, and Other Criminals on Board. Follow Me to Mexico."[126] In the same primary, candidate David Perdue accused Democratic candidate Stacy Abrams of "demeaning her own race" and suggested that she "go back where she came from."[127] The eventual winner of that campaign, Governor Brian Kemp, ran an ad that featured the candidate standing beside his own pickup truck, which he offered to use to "round up some criminal illegals and take them home myself."[128] In the 2022 general election, Governor Kemp ran ads that appeared to deliberately darken the skin tone of his opponent, Abrams, making her appear darker, a common tactic in modern racial appeals in campaigns featuring Black candidates.[129]

Kelly Loeffler, campaigning for the U.S. Senate in 2020, ran ads associating now-Senator Raphael Warnock with Reverend Jeremiah Wright and a speech that he gave over a decade prior which had, itself, been used against President Obama. Loeffler also repeatedly labeled Warnock as a "radical socialist," harkening back to similar accusations laid on the former pastor of Warnock's church, Martin Luther King, Jr.[130] Finally, current congresswoman Marjorie Taylor Greene, who last fall

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[126] Greg Bluestein, "Williams' 'deportation bus' tour hits a few bumps in the road," *Atlanta Journal Constitution*, May 17, 2018, https://www.ajc.com/blog/politics/williams-deportation-bus-tour-hits-few-bumps-the-road/JFt6g2o0w0Cdp826cZ6uYM/.

[127] Warren Rojas and Taiyler Simone Mitchell, "David Perdue caps his campaign for Georgia governor with a racist remark against Stacey Abrams and a Trump tele-rally," *Insider*, May 23, 2022, https://www.businessinsider.com/trump-rallies-for-david-perdue-georgia-primary-brian-kemp-2022-5.

[128] Ben Nadler, "Georgia candidate ad says he'll round up 'criminal illegals,'" AP News, May 10, 2018, https://apnews.com/article/a86fb74820d5435392ac49830155ccc7.

[129] Doug Richards, "Darkened skin in anti-Abrams ad racially charged, 'pernicious,' political analyst says," 11alive.com, Sept. 20, 2022, https://www.11alive.com/article/news/politics/darkened-skin-in-georgia-political-ads-2022/85-3ff31b49-c451-4af8-8033-fd732fe787ae.

[130] Michael Arceneaux, "Every Republican should be ashamed of Kelly Loeffler's failed racist campaign against Raphael Warnock," *The Independent*, January 6, 2021, https://www.independent.co.uk/voices/kelly-loeffler-racist-georgia-senate-raphael-warnock-b1783315.html.

retained her seat, told White voters that millions of illegal immigrants will "replace you," in reference to a racist conspiracy theory.[131]

VIII. CONCLUSION

The court will determine whether or not the General Assembly was motivated by discriminatory intent when it passed the bills in question. As an expert witness and a historian, I can only offer my opinion as to what the public record reveals. In my opinion, it reveals enough for the court to determine that these lines were drawn, in accordance with a very long and robust and relentless history and tradition in the state of Georgia, to deny voters of color their equitable right to participate in the political process. The nature of this report, given my findings, is to present a mosaic of a continuum. What we have seen in the last year or two is an outgrowth of what we have seen for decades, in my opinion. Black citizens, along now with Latinx and AAPI citizens, are being denied an equal seat at the political table as White men, by and large, attempt to hold on to political power. It is telling that Republican legislators have so often evoked 2001, when White men, largely, in the Democratic party attempted to manipulate the size of districts to hold onto power. With the demographic changes in Georgia that citizen after citizen and lawmaker after lawmaker evoked during this process, one cannot help but think the motivation on the other side is much the same, as the electorate has grown more diverse.

Scrutinizing the passage of the laws, in any case, reveals unquestionable historical discrimination, procedural and substantive departures in the legislative process – failing to make time for public comment after maps were published at the last minute, refusal to allow access to the map-drawing process, rushing the process in general despite massive public outcry to the contrary, failing to account for minority population growth, potentially targeting not only minority voters but potential Black female incumbents in drawing lines, packing and cracking Black and other minority voters in order to protect Republican incumbents. Accordingly, I submit this report in support of the court should it find in favor of the Plaintiffs on the claim of discriminatory intent.

I reserve the right to supplement this report if additional facts, testimony, and/or materials that may come to light.

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[131] Liz Goodwin, "Racist GOP appeals heat up in final weeks before midterms," *Washington Post*, Oct. 15, 2022, https://www.washingtonpost.com/politics/2022/10/15/racist-appeals-heat-up-final-weeks-before-midterms/.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 13th day of January 2023 at

Joseph Bagley

Digitally signed by Joseph Bagley
Date: 2023.01.13 23:42:01 -05'00'

SUBSCRIBE DONATE

BP

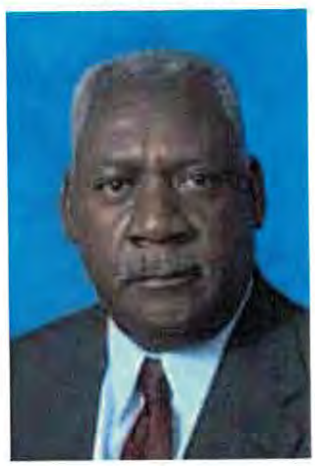
DEFENDANT'S EXHIBIT 3

Interns wanted: Get paid to help ensure that every voter has unbiased election information. 100% remote. Apply today!

Willie Talton

Willie Talton is a former Republican member of the Georgia House of Representatives, representing District 147 from 2005 to 2015.

Willie Talton



Republican Party

Prior offices

Georgia House of Representatives District 147

Education

Associate	Middle Georgia College, 1974
Bachelor's	Fort Valley State University

Biography

Talton's professional experience includes working as the Interim Chief of Police of the Centerville Police Department and Chief Deputy Sheriff in Warner Robbins.

Committee assignments

2013-2014

At the beginning of the 2013 legislative session, Talton served on the following committees:

Georgia committee assignments, 2013 [hide]

- Special Rules, Chair
- Banks and Banking
- Education
- Juvenile Justice
- Legislative and Congressional Reapportionment
- Public Safety and Homeland Security
- Ways and Means

Personal

Profession	Interim Chief of Police, Centerville Police Department

2011-2012

In the 2011-2012 legislative session, Talton served on the following committees:

Georgia committee assignments, 2011 [show]

2009-2010

In the 2009-2010 legislative session, Talton served on the following committees:

Georgia committee assignments, 2009 [show]

Elections

2014

See also: Georgia House of Representatives elections, 2014

Elections for the Georgia House of Representatives took place in 2014. A primary election took place on May 20, 2014, with runoff elections taking place where necessary on July 22, 2014. The general election was held on November 4, 2014. The signature filing deadline for candidates wishing to run in this election was March 7, 2014. Heath N. Clark defeated incumbent Willie Lee Talton in the Republican primary and was unchallenged in the general election.[1][2][3]

Georgia House of Representatives, District 147 Republican Primary, 2014

[Collapse]

CANDIDATE	VOTE %	VOTES
✔**Heath N. Clark**	53.6%	1,545

Willie Talton ***Incumbent***	46.4%	1,339
Total Votes		**2,884**

2012

See also: Georgia House of Representatives elections, 2012

Talton ran in the 2012 election for Georgia House of Representatives District 147. Talton ran unopposed in the Republican primary on July 31, 2012. He was unopposed in the general election, which took place on November 6, 2012.[4][5]

Georgia House of Representatives, District 147, General Election, 2012 **[Collapse]**

PARTY	CANDIDATE	VOTE %	VOTES
Republican	✔**Willie Talton** ***Incumbent***	100%	15,355
Total Votes			**15,355**

2010

See also: Georgia House of Representatives elections, 2010

Talton ran for re-election to the 145th District seat in 2010. He did not have any opposition in the July 20 primary. Talton defeated Fenika Miller (D) in the general election on November 2, 2010.[6]

Georgia House of Representatives, District 145 (2010)		
Candidates	**Votes**	**Percent**
✔ **Willie Talton** (R)	**5,560**	**57.5%**
Fenika Miller (D)	4,105	42.5%

2008

In 2008 Talton was re-elected to the Georgia House of Representatives District 145. Talton (R) ran unopposed and finished with 11,379 votes.[7] Talton raised $13,921 for his campaign fund.[8]

Georgia House of Representatives District 145	
Candidates	**Votes**
✔ **Willie Talton (R)**	**11,739**

Campaign donors

BP *The finance data shown here comes from the disclosures required of candidates and parties. Depending on the election or state, this may not represent all the funds spent on their behalf. Satellite spending groups may or may not have expended funds related to the candidate or politician on whose page you are reading this disclaimer, and campaign finance data from elections may be incomplete. For elections to federal offices, complete data can be found at the FEC website. Click here for more on federal campaign finance law and here for more on state campaign finance law.*

Willie Talton campaign contribution history [hide]			
Year	**Office**	**Result**	**Contributions**
2012	Georgia State House, District 147	✔	$37,135
2010	Georgia State House, District 145	✔	$39,400
2008	Georgia State House, District 145	✔	$13,921
2006	Georgia State House, District 145	✔	$58,199
2004	Georgia State House, District 145	✔	$9,330
Grand total raised			**$157,985**
Source: [[9] Follow the Money]			

2012

Talton won re-election to the Georgia House of Representatives in 2012. During that election cycle, Talton raised a total of **$37,135**.

Georgia House of Representatives 2012 election - campaign contributions [show]

2010

In 2010, Talton collected $39,400 in campaign contributions.[10] The largest contributors to the campaign were as follows:

Georgia House of Representatives 2010 election - Campaign Contributions [show]

2008

In 2008, Talton collected $13,921 in campaign contributions.[11] The six largest contributors to his campaign were as follows:

Donor	Amount
Georgia Association of Realtors	$2,000
UPS	$1,500
Home Builders Association of Georgia	$1,000
Mo Thrash - Govt. Affairs	$1,000
Boeing Company	$1,000
Georgia Medical Association	$1,000

Personal

Note: Please contact us if the personal information below requires an update.

Talton is a member of the Board of Private Detectives, CB and T Bank, Flint Electric Corporation Board of Directors, Robin's Museum of Aviation Board, Rotary Club, Security Guards for the State of Georgia, and the Young Men's Christian Association Board.[12]

Scorecards

See also: State legislative scorecards and State legislative scorecards in Georgia

A scorecard evaluates a legislator's voting record. Its purpose is to inform voters about the legislator's political positions. Because scorecards have varying purposes and methodologies, each report should be considered on its own merits. For example, an advocacy group's scorecard may assess a legislator's voting record on one issue while a state newspaper's scorecard may evaluate the voting record in its entirety.

Ballotpedia is in the process of developing an encyclopedic list of published scorecards. Some states have a limited number of available scorecards or scorecards produced only by select groups. It is Ballotpedia's goal to incorporate all available scorecards regardless of ideology or number.

Click here for an overview of legislative scorecards in all 50 states. To contribute to the list of Georgia scorecards, email suggestions to *editor@ballotpedia.org*.

2014

In 2014, the Georgia State Legislature was in session from January 13 through March 21.

- Georgia Chamber of Commerce

Legislators are scored on their votes on bills related to business issues.

- Georgia National Federation of Independent Business

Legislators are scored on their votes on bills related to business issues.

- The American Conservative Union

Legislators are scored on their votes on conservative issues.

2013

To view all the scorecards we found for this legislator in 2013, click [show]. [show]

2012

To view all the scorecards we found for this legislator in 2012, click [show]. [show]

Recent news

The link below is to the most recent stories in a Google news search for **Willie + Talton + Georgia + Legislature**

Willie Talton News Feed

External links

- Profile from Open States
- Legislative Profile from Project Vote Smart
- Biography from Project Vote Smart
- Campaign Contributions: 2012, 2010, 2008, 2006, 2004
- Willie Talton on Facebook

BP Suggest a link

Footnotes

1. *Georgia Secretary of State*, "Official candidate list," accessed March 10, 2014
2. *Georgia Secretary of State*, "Official primary election results," accessed May 28, 2014
3. *Georgia Secretary of State*, "Official general election results," accessed November 13, 2014
4. *Georgia Secretary of State Elections Division*, "Candidate List," accessed May 29, 2012
5. *Georgia Elections Division*, "2012 Election Results," accessed November 16, 2012

Only the first few references on this page are shown above. Click to show more.

Political offices		
Preceded by **Buddy Harden (R)**	**Georgia House of Representatives District 147** 2013–2015	Succeeded by **Heath N. Clark (R)**
Preceded by -	**Georgia House of Representatives District 145** 2005–2013	Succeeded by **E. Culver Kidd (I)**

Current members of the Georgia House of Representatives	[show]

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BY THE GOVERNOR OF THE STATE OF GEORGIA

A PROCLAMATION
CONVENING THE GENERAL ASSEMBLY OF GEORGIA IN SPECIAL SESSION

WHEREAS: GA. CONST. art. V, § II, para. VII grants the Governor the power to convene a special session of the General Assembly, stating and thereby limiting its purposes; and

WHEREAS: The regular session of the 2021 General Assembly adjourned *sine die* on the morning of April 1, 2021; and

WHEREAS: The Governor has determined that certain purposes warrant the convocation of a special session; and

THEREFORE: By virtue of the power and authority conferred upon me by the Constitution of Georgia, I, Brian P. Kemp, Governor of the State of Georgia, do hereby convene the General Assembly of this State in Special Session on Wednesday, November 3, 2021, for the purposes and only those purposes specified as follows:

1. For enacting, revising, repealing, or amending general law for:
   (a) The division of the State into appropriate districts from which members of the Georgia State Senate shall be elected;
   (b) The division of the State into appropriate districts from which members of the Georgia State House of Representatives shall be elected; and
   (c) The division of the State into appropriate districts from which members of the House of Representatives to the United States Congress shall be elected.

2. To consider amending Code Section 48-1-2 for taxable years beginning on or after January 1, 2021, based on amendments to the United States Internal Revenue Code of 1986, as amended, that passed on or after January 1, 2021, and on or before March 11, 2021.

3. For enacting, revising, repealing, or amending local laws which the General Assembly deems necessary to avoid unreasonable hardship or to avoid undue impairment of public functions if consideration and enactment thereof are postponed.

4. To ratify the provisions of the Executive Orders dated May 10, 2021, May 14, 2021, May 21, 2021, and May 28, 2021, and numbered 05.10.21.02, 05.14.21.01, 05.21.21.01, and 05.28.21.03, respectively, in the official records of the Office of the Governor, suspending the collection of motor fuel and diesel fuel taxes pursuant to Code Section 45-12-22 for the purpose of ensuring the supply of petroleum products to the State of Georgia during the State of Emergency for Petroleum Shortage declared by Executive Order 05.10.21.02.

5. For the Senate to consider and confirm various appointments made by the Governor since the adjournment of the regular session of the General Assembly on April 1, 2021.

Given under my hand and the Great Seal of the State of Georgia, at the City of Atlanta, on this 23rd day of September 2021.

GOVERNOR

ATTEST

CHIEF OF STAFF

DEFENDANT'S EXHIBIT 4

BY THE GOVERNOR OF THE STATE OF GEORGIA

A PROCLAMATION

CONVENING THE GENERAL ASSEMBLY OF GEORGIA IN SPECIAL SESSION

WHEREAS: Article V, Section II, Paragraph VII of the Constitution of the State of Georgia grants to the Governor the power to convene a special session of the General Assembly, stating and thereby limiting its purposes; and

WHEREAS: The Regular Session of the 2011 General Assembly adjourned sine die on April 14, 2011; and

WHEREAS: The Governor has determined that certain purposes warrant the convocation of a special session; and

THEREFORE: By virtue of the power and authority conferred upon me by the Constitution of Georgia, I, Nathan Deal, Governor of the State of Georgia, do hereby convene the General Assembly of this State in Special Session at ten o'clock (10:00) a.m. on Monday, August 15, 2011, for the purposes and only those purposes specified as follows:

1. For enacting, revising, repealing or amending general law for :
   (a) The division of the State into appropriate districts from which members of the Georgia State Senate shall be elected,
   (b) The division of the State into appropriate districts from which members of the Georgia State House of Representatives shall be elected,
   (c) The division of the State into appropriate districts from which members of the House of Representatives to the United States Congress shall be elected; and

2. To ratify the Executive Order dated June 23, 2011, and numbered 06.23.11.03 in the official records of the Office of the Governor until the General Assembly acts upon this Order; and

3. For amending the Official Code of Georgia Annotated Section 48-8-244(a), relating to the special district transportation sales and use tax; and

4. For enacting, revising, repealing or amending local laws which the General Assembly deems necessary to avoid unreasonable hardship or to avoid undue impairment of public functions if consideration and enactment thereof are postponed.

Given under my hand and the Great Seal of the State of Georgia, at the City of Atlanta, on this 10TH day of August 2011.

Nathan Deal
GOVERNOR

ATTEST

CHIEF OF STAFF

DEFENDANT'S EXHIBIT 5

Georgia House of Representatives

REAPPORTIONMENT - ARCHIVES

*Click on the date to view the archived meeting video

2022

March

Wednesday, March 2

2021

June

Joint House and Senate Redistricting Informational Video
Tuesday, June 15

Monday, June 28

Tuesday, June 29 - Cumming, GA

Wednesday, June 30 - Dalton, GA

July

Tuesday, July 6 - Athens, GA

Monday, July 26 - Brunswick, GA

Tuesday, July 27 - Albany, GA

Wednesday, July 28 - Columbus, GA

Thursday, July 29 - Macon, GA

Friday, July 30

August

Wednesday, August 11 - Augusta, GA

Monday, August 30 (Joint)
- AAAJ - Atlanta - Presentation
- ACLU Presentation
- Common Cause Presentation
- Fair Districts GA Presentation
- DPG Presentation
- NCSL Presentation

Monday, August 30

Committee Guidelines

November

Friday, Nov. 5

Monday, Nov. 8

Tuesday, Nov. 9 (Computer that was used to livestream meeting crashed at 28:50. Meeting was suspended until livestream was restored)

Wednesday, Nov. 10

Wednesday, Nov. 17

Thursday, Nov. 18

Saturday, Nov. 20

2018

February

Tuesday, February 6

March

DEFENDANT'S EXHIBIT 6

2017

February
Thursday, Feb. 23

March
Wednesday, March 1

2011

February
Tuesday, Feb. 01
Wednesday, Feb. 16

March
Tuesday, March 01
Wednesday, March 09

May
Monday, May 16
Tuesday, May 17
Wednesday, May 18
Monday, May 23
Tuesday, May 24

June
Monday, June 06
Tuesday, June 07
Monday, June 13
Tuesday, June 14
Monday, June 20
Tuesday, June 21
Thursday, June 30

July
Wednesday, July 20
Wednesday, July 20 (Senate)

August
Tuesday, Aug. 16
Tuesday, Aug. 16 (Senate)
Monday, Aug. 22
Monday, Aug. 22 (Senate)
Wednesday, Aug. 24
Tuesday, Aug. 30 (Senate)

* To view committee meetings for previous legislative sessions, please click here. For additional help, contact the House Media Services Office at (404) 656-0309, or email justin.speck@house.ga.gov.

THE SENATE COMMITTEE ON REAPPORTIONMENT AND REDISTRICTING
2021- 2022 ROSTER

Sen. John Kennedy, Chairman
District 18
231 Riverside Drive
Macon, GA 31202

Sen. Tonya Anderson
District 43
P.O. Box 1026
Lithonia, GA 30058

Sen. Gloria Butler
District 55
6241 Southland Trace
Stone Mountain, GA 30087

Sen. Mike Dugan
District 30
P.O. Box 1260
Carrollton, GA 30112

Sen. Marty Harbin
District 16
215 Greencastle Road
Tyrone, GA 30290

Sen. Harold Jones II
District 22
437 Walker Street
Augusta, GA 30901

Sen. Jeff Mullis, Ex-Officio
District 53
10052 North Highway 27
Rock Spring, GA 30739

Sen. Blake Tillery
District 19
404 Durden Street
Vidalia, GA 30474

Sen. Bill Cowsert, Vice-Chairman
District 46
P.O. Box 512
Athens, GA 30603

Sen. Dean Burke
District 11
1608 Pineland Drive
Bainbridge, GA 39819

Sen. Greg Dolezal
District 27
6505 Shiloh Road, Suite 200
Alpharetta, GA 30005

Sen. Steve Gooch
District 51
P.O. Box 600
Dahlonega, GA 30533

Sen. Ed Harbison
District 15
P.O. Box 1292
Columbus, GA 31902

Sen. Butch Miller
District 49
2420 Browns Bridge Road
Gainesville, GA 30504

Sen. Michael 'Doc' Rhett
District 33
P.O. Box 777
Marietta, GA 30061

DEFENDANT'S EXHIBIT
7

2021- 2022 Rules for the Senate Committee on Reapportionment and Redistricting

1. The quorum for the Committee shall be eight (8) members.

2. The Committee shall convene, recess, and adjourn upon the order of the Chairperson.

3. The Chairperson shall determine measures to be considered and the order in which such measures are considered.

4. The Rules of the Senate shall prevail in all matters not covered by these Committee Rules.

5. All amendments to legislation in the committee shall be delivered to the Chairperson no later than 24 hours prior to any called meeting of the Committee, unless the meeting is called on 24 hour notice, in which event amendments must be delivered to the Chairperson no later than 12 hours prior to the meeting.

6. These Committee Rules may be amended upon motion duly made and seconded and subsequently approved by two-thirds (2/3) of the members of the Committee provided that written notice has been given to the Chairperson (24) hours prior to the Committee Meeting.

Minutes of the Senate Committee on Reapportionment and Redistricting
Wednesday, November 3, 2021

The Senate Committee on Reapportionment and Redistricting met on Wednesday, November 3, 2021 at 1:00 p.m. in Room 450 of the State Capitol. The following Committee Members were in attendance:

Sen. John F. Kennedy (18th), Chairman
Sen. Bill Cowsert (46th), Vice-Chairman
Sen. Tonya Anderson (43rd)
Sen. Dean Burke (11th)
Sen. Gloria Butler (55th)
Sen. Mike Dugan (30th)
Sen. Steve Gooch (51st)
Sen. Marty Harbin (16th)
Sen. Ed Harbison (15th)
Sen. Harold Jones II (22nd)
Sen. Butch Miller (49th)
Sen. Jeff Mullis (53rd), Ex-Officio
Sen. Michael 'Doc' Rhett (33rd) (*Arrived Late)*
Sen. Blake Tillery (19th)

NOTE: Sen. Greg Dolezal (27th) was absent.

Chairman Kennedy (18th) called the meeting to order at 1:05 p.m.

2021- 2022 Senate Committee on Reapportionment and Redistricting Rules

The Chair presented the 2021-2022 Senate Committee on Reapportionment and Redistricting Rules.

The Chair recognized Sen. Burke (11th) who made a motion to adopt the 2021-2022 Rules. Sen. Mullis (53rd) seconded the motion. The motion passed unanimously, by a vote of 12-0. A copy of the adopted rules are attached.

NOTE: Sen. Michael 'Doc' Rhett (33rd) arrived at 1:08 p.m.

2021 Reapportionment and Redistricting Guidelines

The Chair presented the proposed 2021 Reapportionment and Redistricting Guidelines.

The Chair recognized Sen. Cowsert (46th) who made a motion to adopt the 2021-2022 Rules. Sen. Gooch (51st) seconded the motion. The motion passed unanimously, by a vote of 13-0.

The Chair opened the floor for comments from the Committee.

Chairman Kennedy (18th) adjourned the meeting 1:16 p.m.

Respectfully submitted,

/s/ Sen. John F. Kennedy (18th), Chairman

/s/ Ali Farmer, Recording Secretary

Minutes of the Senate Committee on Reapportionment and Redistricting
Thursday, November 4, 2021

The Senate Committee on Reapportionment and Redistricting met on Thursday, November 4, 2021 at 1:00 p.m. in Room 450 of the State Capitol. The following Committee Members were in attendance:

Sen. John F. Kennedy (18th), Chairman
Sen. Bill Cowsert (46th), Vice-Chairman
Sen. Tonya Anderson (43rd)
Sen. Dean Burke (11th)
Sen. Gloria Butler (55th)
Sen. Greg Dolezal (27th)
Sen. Mike Dugan (30th)
Sen. Steve Gooch (51st)
Sen. Marty Harbin (16th)
Sen. Ed Harbison (15th)
Sen. Harold Jones II (22nd)
Sen. Butch Miller (49th)
Sen. Jeff Mullis (53rd), Ex-Officio
Sen. Michael 'Doc' Rhett (33rd)
Sen. Blake Tillery (19th)

Chairman Kennedy (18th) called the meeting to order at 1:10 p.m.

The Chair called upon Vice-Chairman Cowsert (46th) to address the committee.

SB 1 EX (Sen. Kennedy, 18th, LC 47 1159) "Georgia Senate Redistricting Act of 2021"; enact

The Chair indicated that SB 1 EX would receive a hearing only. The Chair then presented the bill to the Committee.

The Chair presented and detailed each Senate district from the Proposed Senate District map relating to a proposed substitute to **SB 1 EX (LC 47 1165S).**

The Chair opened the committee for comments and questions.

The Chair called upon Sen. Anderson (43rd) for a question.

The Chair called upon Sen. Butler (55th) for a question.

The Chair called upon Sen. Harbison (15th) for a question.

The Chair called upon Sen. Jones (22nd) for a question.

The Chair opened the floor for discussion from the public. He recognized the following:
Janet Grant, Fair Districts GA
Salik Sohani, Georgia Muslim Voter Project
Stephanie Ali, The New Georgia Project
Cindy Battles, GA Coalition for the People's Agenda
John Moye, Urban League of Greater Atlanta
Cookie Barney, Augusta University
Jewel Howard
Aunna Denis, Common Cause Georgia
David Garcia, GALEO
Kareem El-Hosseiny, CAIR Georgia
Vasu Abiramen, ACLU of Georgia
Vivianne Moore, DeKalb NAACP
Karen Davenport
Markese Bryant, Georgia Alliance for Social Justice
David Horton
Durp Haynes
Joshua Anthony, Young Democrats of Atlanta
Keyanna Jones
Hannah Joy Gebresilassie, Protect the Vote
Katherine Maddox
Marijke Kylstra, Fair Count
Priscilla Smith
Sen. David Lucas
Shelia Stoval
Biroel Jackson

Committee Recommendation: SB 1 EX (LC 47 1159) No Action Taken

The Chair announced that there would be a hearing on **SB 4 EX** at the next meeting.

Chairman Kennedy (18th) adjourned the meeting 4:16 p.m.

Respectfully submitted,

/s/ Sen. John F. Kennedy (18th), Chairman

/s/ Ali Farmer, Recording Secretary

Minutes of the Senate Committee on Reapportionment and Redistricting
Friday, November 5, 2021

The Senate Committee on Reapportionment and Redistricting met on Friday, November 5, 2021 at 11:00 a.m. in Room 450 of the State Capitol. The following Committee Members were in attendance:

Sen. John F. Kennedy (18th), Chairman
Sen. Bill Cowsert (46th), Vice-Chairman
Sen. Dean Burke (11th)
Sen. Gloria Butler (55th)
Sen. Greg Dolezal (27th)
Sen. Mike Dugan (30th)
Sen. Steve Gooch (51st)
Sen. Marty Harbin (16th)
Sen. Ed Harbison (15th)
Sen. Harold Jones II (22nd)
Sen. Butch Miller (49th)
Sen. Jeff Mullis (53rd), Ex-Officio
Sen. Michael 'Doc' Rhett (33rd)
Sen. Blake Tillery (19th)

NOTE: Sen. Tonya Anderson (43rd) was absent.

Chairman Kennedy (18th) called the meeting to order at 11:17 a.m.

SB 4 EX (Sen. Butler, 55th, LC 47 1154) "Georgia Senate Redistricting Act of 2021"; enact

The Chair recognized Sen. Butler (55th) for the purpose of presenting the bill. Sen. Butler (55th) presented the bill to the Committee.

Sen. Butler (55th) presented and detailed each Senate district from the Proposed Senate District map relating to **SB 4 EX (LC 47 1154).**

The Chair opened the floor for questions and discussion from the Committee.

The Chair called upon Sen. Rhett (33rd) for a comment.

The Chair called upon Sen. Cowsert (46th) for a question.

Sen. Butler (55th) requested Sen. Parent (42nd) join the committee to answer committee member questions. The Chair asked Sen. Parent (42nd) to join the committee from the podium.

The Chair called upon Sen. Mullis (53rd) for a question.

The Chair called upon Sen. Miller (49th) for questions. Sen. Parent (42nd) spoke to the questions from the podium.

The Chair called upon Sen. Jones (22nd) for a question.

The Chair called upon Sen. Harbison (15th) for a question.

The Chair called upon Sen. Dolezal (27th) for a question. Sen. Parent (42nd) spoke to the question from the podium.

The Chair called upon Sen. Dugan (30th) for a question.

The Chair opened the floor for comments from the public. He recognized the following:
Amy Swygert
Ken Lawler, Fair Districts GA
Cindy Battles, GA Coalition for the People's Agenda
Keyanna Jones
Phyllis Richardson, Common Cause
Glory Kilanko, Women Watch Africa

The Chair announced that the Committee would stand in recess for a short break.

The committee recessed at 1:28 p.m.

The committee returned to order at 2:01 p.m.

Committee Recommendation: SB 4 EX (LC 47 1154) No Action Taken

SB 1 EX (Sen. Kennedy, 18th, LC 47 1159) "Georgia Senate Redistricting Act of 2021"; enact

The Chair opened the floor for a motion from the Committee.

Sen. Butler (55th) made a **motion to table SB 1 EX**. Sen. Harbison (15th) seconded the motion. The motion failed by a vote of 4-9.

Sen. Butler (55th), Sen. Harbison (15th), Sen. Jones (22nd), and Sen. Rhett (33rd) voted in favor of the motion.

Sen. Cowsert (46th), Sen. Burke (11th), Sen. Dolezal (27th), Sen. Dugan (30th), Sen. Gooch (51st), Sen. Harbin (16th), Sen. Miller (49th), Sen. Mullis (53rd), and Sen. Tillery (19th) voted in opposition to the motion.

The Chair recognized Sen. Cowsert (46th) who made a motion that **SB 1 EX Do Pass by Substitute (LC 47 1165S)**. Sen. Miller (49th) seconded the motion. The motion passed by a vote of 9-4.

Sen. Cowsert (46th), Sen. Burke (11th), Sen. Dolezal (27th), Sen. Dugan (30th), Sen. Gooch (51st), Sen. Harbin (16th), Sen. Miller (49th), Sen. Mullis (53rd), and Sen. Tillery (19th) voted in favor of the motion.

Sen. Butler (55th), Sen. Harbison (15th), and Sen. Jones (22nd), and Sen. Rhett (33rd) voted in opposition to the motion.

Committee Recommendation: SB 1 EX DO PASS BY SUBSTITUTE (LC 47 1165S)

Chairman Kennedy (18th) adjourned the meeting at 2:14 p.m.

Respectfully submitted,

/s/ Sen. John F. Kennedy (18th), Chairman

/s/ Ali Farmer, Recording Secretary

Minutes of the Senate Committee on Reapportionment and Redistricting
Thursday, November 11, 2021

The Senate Committee on Reapportionment and Redistricting met on Thursday, November 11, 2021 at 2:30 p.m. in Room 450 of the State Capitol. The following Committee Members were in attendance:

Sen. John F. Kennedy (18th), Chairman
Sen. Bill Cowsert (46th), Vice-Chairman
Sen. Tonya Anderson (43rd)
Sen. Dean Burke (11th)
Sen. Gloria Butler (55th)
Sen. Greg Dolezal (27th)
Sen. Mike Dugan (30th)
Sen. Steve Gooch (51st)
Sen. Harold Jones II (22nd)
Sen. Butch Miller (49th)
Sen. Jeff Mullis (53rd), Ex-Officio
Sen. Michael 'Doc' Rhett (33rd)
Sen. Blake Tillery (19th)

NOTE: Sen. Marty Harbin (16th) and Sen. Ed Harbison (15th) were absent.

Chairman Kennedy (18th) called the meeting to order at 2:40 p.m.

HB 1 EX (Rep. Rich, 97th, LC 47 1163S) "Georgia House of Representatives Redistricting Act of 2021"; enact

The Chair recognized Rep. Bonnie Rich (97th) for the purpose of presenting the bill. Rep. Rich (97th) presented the bill to the committee.

The Chair opened the floor for questions from the Committee.

The Chair recognized Sen. Jones (22nd) for a question.

The Chair recognized Sen. Butler (55th) for a question.

The Chair recognized Sen. Anderson (43rd) for a question.

The Chair opened the floor for comments from the public. He recognized the following:
Patti Garrett and Sen. Elena Parent (42nd)
Karen McCown, Fair Districts GA
Cindy Battles, GA Coalition for the People's Agenda
Vasu Abhiraman,

The Chair opened the floor for debate and a motion from the Committee.

The Chair recognized Sen. Dugan (30th) who made a motion that **HB 1 EX Do Pass (LC 47 1163S)**. Sen. Gooch (51st) seconded the motion. The motion passed by a vote of 8-4.

Sen. Cowsert (51th), Sen. Burke (11th), Sen. Dolezal (27th), Sen. Dugan (30th), Sen. Gooch (51st), Sen. Miller (49th), Sen. Mullis (53rd), and Sen. Tillery (19th) voted in favor of the motion.

Sen. Anderson (43rd), Sen. Butler (55th), and Sen. Jones (22nd), Sen. Rhett (33rd) voted in opposition to the motion.

Committee Recommendation: HB 1 EX DO PASS (LC 47 1163S)

Sen. Kennedy (18th) will be the Senate Sponsor for **HB 1EX**.

Chairman Kennedy (18th) adjourned the meeting at 3:18 p.m.

Respectfully submitted,

/s/ Sen. John F. Kennedy (18th), Chairman

/s/ Ali Farmer, Recording Secretary

Minutes of the Senate Committee on Reapportionment and Redistricting
Wednesday, November 17, 2021

The Senate Committee on Reapportionment and Redistricting met on Wednesday, November 17, 2021 at 1:30 p.m. in Room 450 of the State Capitol. The following Committee Members were in attendance:

Sen. John F. Kennedy (18th), Chairman
Sen. Bill Cowsert (46th), Vice-Chairman
Sen. Tonya Anderson (43rd)
Sen. Dean Burke (11th)
Sen. Gloria Butler (55th)
Sen. Greg Dolezal (27th)
Sen. Mike Dugan (30th)
Sen. Steve Gooch (51st)
Sen. Marty Harbin (16th)
Sen. Ed Harbison (15th)
Sen. Harold Jones II (22nd)
Sen. Butch Miller (49th) (*Arrived Late)*
Sen. Michael 'Doc' Rhett (33rd)
Sen. Blake Tillery (19th) (*Arrived Late)*

NOTE: Sen. Jeff Mullis (53rd), Ex-Officio was absent.

Chairman Kennedy (18th) called the meeting to order at 1:39 p.m.

NOTE: Sen. Butch Miller (49th) arrived at 1:41 p.m.

NOTE: Sen. Blake Tillery (19th) arrived at 1:43 p.m.

SB 2 EX (Sen. Kennedy, 18th, LC 47 1158) "Georgia Congressional Redistricting Act"; enact

The Chair indicated that SB 2 EX would receive a hearing only. The Chair then presented the bill to the Committee.

The Chair presented and detailed each Congressional district from the Proposed Congressional District map relating to a proposed substitute to **SB 2 EX (LC 47 1166S).**

The Chair opened the floor for questions and discussion from the Committee.

The Chair opened the floor for comments from the public. He recognized the following:
Maggie Goldman, Resident of Johns Creek
Cindy Battles, People's Agenda
Ken Lawler, Fair Districts GA

Mary Lou McClousky, Fair Districts GA
Stephanie Ali, New Georgia Project Action Fund
Marijke Kylstra, Fair Count
Kat Maddox, Protect the Vote
Vasu Abhiraman, ACLU of GA

The Chair opened the floor for final comments from the Committee.

The Chair recognized Sen. Gloria Butler (55th) for a comment.

The Chair announced that the committee will not be taking action on **SB 2 EX** at this time.

Committee Recommendation: SB 2 EX (LC 47 1158) No Action Taken

Chairman Kennedy (18th) adjourned the meeting at 2:48 p.m.

Respectfully submitted,

/s/ Sen. John F. Kennedy (18th), Chairman

/s/ Ali Farmer, Recording Secretary

Minutes of the Senate Committee on Reapportionment and Redistricting
Thursday, November 18, 2021

The Senate Committee on Reapportionment and Redistricting met on Thursday, November 18, 2021 at 9:30 a.m. in Room 450 of the State Capitol. The following Committee Members were in attendance:

Members Present:
Sen. John F. Kennedy (18th), Chairman
Sen. Bill Cowsert (46th), Vice-Chairman
Sen. Tonya Anderson (43rd) (*Arrived Late)*
Sen. Dean Burke (11th)
Sen. Gloria Butler (55th)
Sen. Greg Dolezal (27th)
Sen. Mike Dugan (30th)
Sen. Steve Gooch (51st)
Sen. Marty Harbin (16th)
Sen. Ed Harbison (15th)
Sen. Harold Jones II (22nd)
Sen. Butch Miller (49th)
Sen. Jeff Mullis (53rd), Ex-Officio
Sen. Michael 'Doc' Rhett (33rd)
Sen. Blake Tillery (19th)

Chairman Kennedy (18th) called the meeting to order at 9:43 a.m.

SB 3 EX (Sen. Butler, 55th, LC 47 1160) "Georgia Congressional Redistricting Act of 2021"; enact

The Chair recognized Sen. Butler (55th) for the purpose of presenting the bill. Sen. Butler (55th) presented the bill to the Committee.

Sen. Butler (55th) presented and detailed each Congressional district from the Proposed Congressional District map relating to **SB 3 EX (LC 47 1160).**

NOTE: Sen. Anderson (43rd) arrived at 9:56 a.m.

The Chair opened the floor for questions and discussion from the Committee.

The Chair recognized Sen. Dolezal (27th) for a question.

The Chair recognized Sen. Jones (22nd) for a question.

The Chair recognized Sen. Anderson (43rd) for a question.

The Chair recognized Sen. Rhett (33rd) for a comment.

The Chair recognized Sen. Harbison (15th) for a question.

The Chair recognized Sen. Cowsert (46th) for a question. Sen. Butler (55th) asked Sen. Jones (22nd) to speak to the question.

Chairman Kennedy (18th) asked a question. Sen. Anderson (43rd), Sen. Jones (22nd), Sen. Harbison (15th) spoke to the question.

The Chair opened the floor for comments from the public. He recognized the following:
David Garcia, GALEO Impact Fund
Geovani Serrano, GLAHR Action Network
Julie Bolen, League of Women Voters of Georgia
Ken Lawler, Fair Districts GA
Julia Leon, Fair Districts GA
John Moye, Urban League
Katherine Maddox, Protect the Vote
Vasu Abhiraman, ACLU of GA

The Chair opened the floor for a motion from the committee.

Sen. Butler (55th) made a motion that **SB 3 EX Do Pass (LC 47 1160)**. Sen. Anderson (43rd) seconded the motion. The motion failed by a vote of 5-9.

Sen. Anderson (43rd), Sen. Butler (55th), Sen. Harbison (15th), Sen. Jones (22nd), and Sen. Rhett (33rd) voted in favor of the motion.

Sen. Cowsert (46th), Sen. Burke (11th), Sen. Dolezal (27th), Sen. Dugan (30th), Sen. Gooch (51st), Sen. Harbin (16th), Sen. Miller (49th), Sen. Mullis (53rd), and Sen. Tillery (19th) voted in opposition of the motion.

Committee Recommendation: SB 3 EX (LC 47 1160) No Further Action Taken

SB 2 EX (Sen. Kennedy, 18th, LC 47 1158) "Georgia Congressional Redistricting Act"; enact

The Chair opened the floor for a motion from the committee.

The Chair recognized Sen. Cowsert (46th) who made a motion that **SB 2 EX Do Pass by Substitute (LC 47 1166S)**. Sen. Mullis (53rd) seconded the motion. The motion passed by a vote of 9-5.

Sen. Cowsert (46th), Sen. Burke (11th), Sen. Dolezal (27th), Sen. Dugan (30th), Sen. Gooch (51st), Sen. Harbin (16th), Sen. Miller (49th), Sen. Mullis (53rd), and Sen. Tillery (19th) voted in favor of the motion.

Sen. Anderson (43rd), Sen. Butler (55th), Sen. Harbison (15th), and Sen. Jones (22nd), and Sen. Rhett (33rd) voted in opposition of the motion.

Committee Recommendation: SB 2 EX DO PASS BY SUBSTITUTE (LC 47 1166S)

The Chair opened the floor for comments from the Committee.

The Chair recognized Sen. Anderson (43rd) for a comment.

Chairman Kennedy (18th) adjourned the meeting at 11:24 a.m.

Respectfully submitted,

/s/ Sen. John F. Kennedy (18th), Chairman

/s/ Ali Farmer, Recording Secretary

Session: 2001 2nd Special Session

You are viewing a page from the 2001 2nd Special Session. ***This is not the current session.***

SB 1EX2

Congressional Election Districts; reapportion; campaign posters on public roads, change a cross-reference

Current Version | Past Versions

Sponsors

No.	Name	District
1.	Golden, Tim	8th

Committees

House Committee:
Legislative & Congressional Reapportionment
Senate Committee:
Reapportionment

First Reader Summary

A BILL to be entitled an Act to amend Title 21 of the Official Code of Georgia Annotated, relating to elections, so as to define certain terms; to provide for the composition of the congressional districts of Georgia; to provide for the election of members of Congress; to provide when the members of Congress shall take office; to provide for the continuation of present congressional districts until a certain time; to redesignate certain provisions designating congressional districts; to amend Code Section 32-6-51 of the Official Code of Georgia Annotated, relating to certain unlawful or unauthorized structures, so as to change a cross-reference; to provide for other matters relative to the foregoing; to provide an effective date; to repeal conflicting laws; and for other purposes.

Status History

Date	Status
10/01/2001	Effective Date
10/01/2001	Act 2EX11
10/01/2001	Senate Date Signed by Governor
10/01/2001	Senate Sent to Governor
09/28/2001	Senate Conference Committee Report Adopted
09/28/2001	House Conference Committee Report Adopted
09/11/2001	House Conference Committee Appointed 169th, 159th, 136th
09/11/2001	Senate Conference Committee Appointed 8th, 10th, 26th
09/11/2001	House Insisted
09/11/2001	Senate Disagreed House Amend or Sub
09/11/2001	House Immediately Transmitted to Senate
09/11/2001	House Passed/Adopted By Substitute
09/11/2001	House Third Readers
09/10/2001	House Committee Favorably Reported By Substitute
09/10/2001	House Second Readers

DEFENDANT'S EXHIBIT 8

Date	Status
09/07/2001	House First Readers
09/07/2001	Senate Passed/Adopted By Substitute
09/07/2001	Senate Third Read
09/06/2001	Senate Committee Favorably Reported By Substitute
08/30/2001	Senate Recommitted
08/30/2001	Senate Third Read
08/29/2001	Senate Read Second Time
08/28/2001	Senate Committee Favorably Reported By Substitute
08/22/2001	Senate Read and Referred
08/22/2001	Senate Hopper

Footnotes

8/20/01 Senator of 22nd replaced by Senator of 10th on SB 1EX2 Conference Committee; 8/28/01 Favorably reported by substitute; 9/21/01 Motion to dissolve Conference Committee lost.

Votes

Date	Vote No.	Yea	Nay	NV	Exc
		No Votes available.			

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Legislative Resources

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HB 14EX2

House districts; reapportion

Current Version | Past Versions

Sponsors

No.	Name	District
1.	Smith, Tommy	169th
2.	Connell, Jack	115th
3.	Walker, Larry	141st
4.	Skipper, Jimmy	137th
5.	Smyre, Calvin	136th
6.	Murphy, Thomas	18th

Committees

House Committee:
Legislative & Congressional Reapportionment
Senate Committee:
Reapportionment

First Reader Summary

A BILL to amend Chapter 2 of Title 28 of the Official Code of Georgia Annotated, relating to apportionment of the House of Representatives and Senate and qualifications of members, so as to provide for the composition and number of state representative districts; and for other purposes.

Status History

Date	Status
10/01/2001	Effective Date
10/01/2001	Act 2EX23
10/01/2001	House Date Signed by Governor
09/26/2001	House Sent to Governor
09/06/2001	Senate Notice to Reconsider
09/06/2001	Senate Passed/Adopted
09/06/2001	Senate Third Read
09/05/2001	Senate Read Second Time
09/04/2001	Senate Committee Favorably Reported
08/29/2001	Senate Read and Referred
08/29/2001	House Passed/Adopted
08/29/2001	House Third Readers
08/28/2001	House Committee Favorably Reported

Date	Status
08/28/2001	House 2nd Read Engrossed Failed
08/28/2001	House Second Readers
08/27/2001	House Notice of Motion to Engross
08/27/2001	House First Readers
08/26/2001	House Hopper

Footnotes

9/7/01 Motion to reconsider lost in Senate.

Votes

Date	Vote No.	Yea	Nay	NV	Exc

No Votes available.

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SB 1EX1

Senatorial Districts; reapportion election districts; change composition to take office in 2003

Current Version | Past Versions

Sponsors

No.	Name	District
1.	Golden, Tim	8th
2.	Starr, Terrell	44th
3.	Walker, Charles	22nd

Committees

House Committee:
Legislative & Congressional Reapportionment
Senate Committee:
Reapportionment

First Reader Summary

A BILL to be entitled an Act to amend Chapter 2 of Title 28 of the Official Code of Georgia Annotated, relating to apportionment of the House of Representatives and Senate and qualifications of members, so as to provide for the composition and number of state senatorial districts; to provide for the number of Senators; to provide for certain qualifications; to provide for the election of Senators; to provide when the Senators elected shall take office; to provide for the continuation of present senatorial districts until a certain time; to provide for other matters relative to the foregoing; to provide an effective date; to repeal conflicting laws; and for other purposes.

Status History

Date	Status
08/24/2001	Effective Date
08/24/2001	Act 1EX6
08/24/2001	Senate Date Signed by Governor
08/17/2001	Senate Sent to Governor
08/17/2001	House Passed/Adopted
08/17/2001	House Third Readers
08/16/2001	House Committee Favorably Reported
08/14/2001	House Second Readers
08/13/2001	House First Readers
08/10/2001	Senate Passed/Adopted By Substitute
08/10/2001	Senate Third Read
08/09/2001	Senate Committee Favorably Reported By Substitute
08/08/2001	Senate Recommitted

Date	Status
08/08/2001	Senate Third Read
08/07/2001	Senate Read Second Time
08/06/2001	Senate Committee Favorably Reported By Substitute
08/01/2001	Senate Read and Referred
08/01/2001	Senate Hopper

Footnotes

8/6/01 Favorably reported by substitute

Votes

Date	Vote No.	Yea	Nay	NV	Exc

No Votes available.

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Session: 2011 Special Session

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HB 20EX

Georgia Congressional Reapportionment Act of 2011; enact

Current Version | Past Versions

Sponsors

No.	Name	District
1.	Lane, Roger	167th

Sponsored In Senate By:
Seabaugh, Mitch

Committees

House Committee:
Legislative & Congressional Reapportionment
Senate Committee:
Reapportionment and Redistricting

First Reader Summary

A BILL to be entitled an Act to provide for the composition and number of congressional districts; to provide for a short title; to amend Title 21 of the Official Code of Georgia Annotated, relating to elections, so as to provide for election of members of Congress; to provide when such members shall take office; to provide for definitions and inclusions; to provide for continuation of present congressional districts until a certain time; to correct a certain reference; to provide for other matters relative to the foregoing; to provide an effective date; to repeal conflicting laws; and for other purposes.

Status History

Date	Status
09/06/2011	Effective Date
09/06/2011	Act 3EX
09/06/2011	House Date Signed by Governor
09/01/2011	House Sent to Governor
08/31/2011	Senate Passed/Adopted
08/31/2011	Senate Third Read
08/30/2011	Senate Read Second Time
08/30/2011	Senate Committee Favorably Reported
08/25/2011	Senate Read and Referred
08/25/2011	House Immediately Transmitted to Senate
08/25/2011	House Passed/Adopted By Substitute
08/25/2011	House Third Readers
08/24/2011	House Committee Favorably Reported By Substitute
08/23/2011	House Second Readers
08/22/2011	House First Readers

DEFENDANT'S EXHIBIT 9

Date	Status
08/19/2011	House Hopper

Footnotes

8/25/2011 Structured Rule; 8/25/2011 Immediately transmitted to Senate

Votes

Date	Vote No.	Yea	Nay	NV	Exc
08/25/2011	House Vote #409	110	60	4	6
08/31/2011	Senate Vote #22	34	21	0	1

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Session: 2011 Special Session

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SB 1EX

Georgia Senate Reapportionment Act of 2011; provide for composition and number of State Senatorial districts

Current Version | Past Versions

Sponsors

No.	Name	District
1.	Seabaugh, Mitch	28th
2.	Cowsert, Bill	46th
3.	Bethel, Charlie	54th
4.	Williams, Tommie	19th
5.	Rogers, Chip	21st

Sponsored In House By:
Lane, Roger

Committees

House Committee:
Legislative & Congressional Reapportionment
Senate Committee:
Reapportionment and Redistricting

First Reader Summary

A BILL to be entitled an Act to provide for the composition and number of state senatorial districts; to provide for a short title; to amend Chapter 2 of Title 28 of the Official Code of Georgia Annotated, relating to apportionment of the House of Representatives and Senate and qualifications of members, so as to provide for the number and election of Senators; to provide for qualifications; to provide when the Senators elected shall take office; to provide for the continuation of present senatorial districts until a certain time; to provide that the provisions of this Act shall supersede and replace an interim apportionment plan; to provide for other matters relative to the foregoing; to provide an effective date; to repeal conflicting laws; and for other purposes.

Status History

Date	Status
08/24/2011	Effective Date
08/24/2011	Act 2EX
08/24/2011	Senate Date Signed by Governor
08/23/2011	Senate Sent to Governor
08/23/2011	House Immediately Transmitted to Senate
08/23/2011	House Passed/Adopted
08/23/2011	House Third Readers
08/22/2011	House Committee Favorably Reported
08/22/2011	House Second Readers

Date	Status
08/18/2011	House First Readers
08/18/2011	Senate Transmitted House
08/18/2011	Senate Passed/Adopted By Substitute
08/18/2011	Senate Third Read
08/17/2011	Senate Read Second Time
08/17/2011	Senate Committee Favorably Reported By Substitute
08/15/2011	Senate Read and Referred
08/09/2011	Senate Hopper

Footnotes

8/23/2011 Structured Rule; 8/23/2011 Immediately transmitted to Senate and Governor

Votes

Date	Vote No.	Yea	Nay	NV	Exc
08/18/2011	Senate Vote #4	35	18	1	2
08/23/2011	House Vote #403	104	56	6	14

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Session: 2011 Special Session

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HB 1EX

Georgia House of Representatives Reapportionment Act of 2011; enact

Current Version | Past Versions

Sponsors

No.	Name	District
1.	Lane, Roger	167th

Sponsored In Senate By:
Seabaugh, Mitch

Committees

House Committee:
Legislative & Congressional Reapportionment
Senate Committee:
Reapportionment and Redistricting

First Reader Summary

A BILL to be entitled an Act to provide for the composition and number of state house districts; to provide for a short title; to amend Chapter 2 of Title 28 of the Official Code of Georgia Annotated, relating to apportionment of the House of Representatives and Senate and qualifications of members, so as to provide for the number and election of Representatives; to provide for certain qualifications; to provide when the Representatives elected shall take office; to provide for the continuation of the present representative districts until a certain time; to provide that the provisions of this Act shall supersede and replace an interim apportionment plan and certain changes thereto; to provide for other matters relative to the foregoing; to provide an effective date; to repeal conflicting laws; and for other purposes.

Status History

Date	Status
08/24/2011	Effective Date
08/24/2011	Act 1EX
08/24/2011	House Date Signed by Governor
08/23/2011	House Sent to Governor
08/23/2011	Senate Transmitted House
08/23/2011	Senate Passed/Adopted
08/23/2011	Senate Third Read
08/22/2011	Senate Read Second Time
08/22/2011	Senate Committee Favorably Reported
08/18/2011	Senate Read and Referred
08/18/2011	House Immediately Transmitted to Senate
08/18/2011	House Passed/Adopted By Substitute
08/18/2011	House Third Readers

Date	Status
08/16/2011	House Committee Favorably Reported By Substitute
08/16/2011	House Second Readers
08/15/2011	House First Readers
08/15/2011	House Hopper

Footnotes

8/18/2011 Passed House by Rules Committee Substitute; 8/18/2011 Structured Rule; 8/18/2011 Immediately transmitted to Senate; 8/23/2011 Immediately transmitted to House and Governor

Votes

Date	Vote No.	Yea	Nay	NV	Exc
08/18/2011	House Vote #399	108	64	4	4
08/23/2011	Senate Vote #7	36	16	0	4

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Session: 2021 Special Session

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SB 2EX

"Georgia Congressional Redistricting Act"; enact

Current Version | Past Versions

Sponsors

No.	Name	District
1.	Kennedy, John	18th
2.	Cowsert, Bill	46th
3.	Dugan, Mike	30th
4.	Gooch, Steve	51st
5.	Burke, Dean	11th
6.	Walker, III, Larry	20th
7.	Miller, Butch	49th

Committees

House Committee:
Legislative & Congressional Reapportionment
Senate Committee:
Reapportionment and Redistricting

First Reader Summary

A BILL to be entitled an Act to provide for the composition and number of congressional districts; to provide for a short title; to provide when such representatives shall take office; to provide for continuation of present congressional districts until a certain time; to provide for related matters; to provide an effective date; to repeal a specific Act; to repeal conflicting laws; and for other purposes.

Status History

Date	Status
12/30/2021	Effective Date
12/30/2021	Act 8EX
12/30/2021	Senate Date Signed by Governor
11/30/2021	Senate Sent to Governor
11/22/2021	House Passed/Adopted
11/22/2021	House Third Readers
11/20/2021	House Committee Favorably Reported
11/20/2021	House Second Readers
11/19/2021	House First Readers
11/19/2021	Senate Passed/Adopted By Substitute
11/19/2021	Senate Third Read

DEFENDANT'S EXHIBIT 10

Date	Status
11/18/2021	Senate Read Second Time
11/18/2021	Senate Committee Favorably Reported By Substitute
11/03/2021	Senate Read and Referred
11/02/2021	Senate Hopper

Footnotes

11/18/2021 Notice of intent to file Minority Report; 11/19/2021 Minority Report Filed; 11/22/2021 Structured Rule

Votes

Date	Vote No.	Yea	Nay	NV	Exc
11/19/2021	Senate Vote #23	32	21	0	3
11/22/2021	House Vote #22	96	68	4	12

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Session: 2021 Special Session

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SB 1EX

"Georgia Senate Redistricting Act of 2021"; enact

Current Version | Past Versions

Sponsors

No.	Name	District
1.	Kennedy, John	18th
2.	Cowsert, Bill	46th
3.	Dugan, Mike	30th
4.	Gooch, Steve	51st
5.	Burke, Dean	11th
6.	Walker, III, Larry	20th
7.	Miller, Butch	49th

Committees

House Committee:
Legislative & Congressional Reapportionment
Senate Committee:
Reapportionment and Redistricting

First Reader Summary

A BILL to be entitled an Act to provide for the composition and number of state senatorial districts; to provide for a short title; to provide when members of the Senate elected shall take office; to provide for the continuation of present senatorial districts until a certain time; to provide that the provisions of this Act shall supersede and replace a districting plan and certain changes thereto; to provide for related matters; to provide an effective date; to repeal specific Acts; to repeal conflicting laws; and for other purposes.

Status History

Date	Status
12/30/2021	Effective Date
12/30/2021	Act 7EX
12/30/2021	Senate Date Signed by Governor
11/30/2021	Senate Sent to Governor
11/15/2021	House Passed/Adopted
11/15/2021	House Third Readers
11/12/2021	House Committee Favorably Reported
11/12/2021	House Second Readers
11/10/2021	House First Readers
11/09/2021	Senate Passed/Adopted By Substitute

Date	Status
11/09/2021	Senate Third Read
11/08/2021	Senate Read Second Time
11/08/2021	Senate Committee Favorably Reported By Substitute
11/03/2021	Senate Read and Referred
11/02/2021	Senate Hopper

Footnotes

11/08/21 Notice of Intent to file Minority Report; 11/09/2021 Minority Report Filed; 11/15/2021 Structured Rule

Votes

Date	Vote No.	Yea	Nay	NV	Exc
11/09/2021	Senate Vote #6	21	33	1	1
11/09/2021	Senate Vote #7	34	21	0	1
11/15/2021	House Vote #12	96	70	1	13

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Session: 2021 Special Session

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HB 1EX

Georgia House of Representatives Redistricting Act of 2021; enact

Current Version | Past Versions

Sponsors

No.	Name	District
1.	Rich, Bonnie	97th

Sponsored In Senate By:
Kennedy, John

Committees

House Committee:
Legislative & Congressional Reapportionment
Senate Committee:
Reapportionment and Redistricting

First Reader Summary

A BILL to be entitled an Act to provide for the composition and number of state house districts; to provide for a short title; to provide when members of the House of Representatives elected shall take office; to provide for the continuation of the present representative districts until a certain time; to provide that the provisions of this Act shall supersede and replace a districting plan and certain changes thereto; to provide for related matters; to provide an effective date; to repeal specific Acts; to repeal conflicting laws; and for other purposes.

Status History

Date	Status
12/30/2021	Effective Date
12/30/2021	Act 6EX
12/30/2021	House Date Signed by Governor
11/29/2021	House Sent to Governor
11/12/2021	Senate Passed/Adopted
11/12/2021	Senate Third Read
11/11/2021	Senate Read Second Time
11/11/2021	Senate Committee Favorably Reported
11/10/2021	Senate Read and Referred
11/10/2021	House Immediately Transmitted to Senate
11/10/2021	House Passed/Adopted By Substitute
11/10/2021	House Third Readers
11/09/2021	House Committee Favorably Reported By Substitute
11/04/2021	House Second Readers
11/03/2021	House First Readers

Date	Status
11/03/2021	House Hopper

Footnotes

11/10/2021 Structured Rule; 11/10/2021 Immediately transmitted to Senate

Votes

Date	Vote No.	Yea	Nay	NV	Exc
11/10/2021	House Vote #8	99	79	1	1
11/12/2021	Senate Vote #13	32	21	0	3

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