UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

Georgia State Conference of NAACP, et al.,

Plaintiffs,

vs. C.A. NO:
1:21-cv-5338-ELB-SCJ-SDG

State of Georgia, et al.,

Defendants.

VIDEOTAPED TELECONFERENCE
DEPOSITION OF: John R. Alford, Ph.D.
DATE: March 2, 2023
TIME: 8:41 a.m. CST
LOCATION: Virtual -- Zoom

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Roxanne Easterwood, RPR

VIDEOGRAPHER: Leo Mileman

APPEARANCES OF COUNSEL:

ATTORNEYS FOR PLAINTIFFS:

Crowell & Moring, LLP
By: Crinesha Berry
Astor HL Heaven
Lily Hsu
1001 Pennsylvania Avenue, NW
Washington, DC 20004
cberry@crowell.com
aheaven@crowell.com
lhsu@crowell.com
Crowell & Moring, LLP
By: Raija J. Horstman
515 South Flower Street, 40th Floor
Los Angeles, CA 90071
rhorstman@crowell.com

Lawyers Committee for Civil Rights
Under Law
By: David Rollins-Boyd
Ezra Rosenberg
Julie Houk
Alexander Davis
1500 K Street, NW, Suite 900
Washington, DC 20005
drollins-boyd@lawyerscommittee.org
erosenberg@lawyerscommittee.org
jhouk@lawyerscommittee.org
adavis@lawyescommittee.org
American Civil Liberties Union (ACLU)
By: Ming Cheung
125 Broad Street 18th Floor
New York, NY 10004
mcheung@aclu.org

Dechert, LLP
By: Vince Montoya-Armanios
Cira Centre 2929 Arch Street
Philadelphia, PA 19104
vince.montoya-armanios@dechert.com

Dechert, LLP
By: Cassandra Love
633 West 5th Street, Suite 4900
Los Angeles, CA 90071
cassandra.love@dechert.com

ATTORNEYS FOR DEFENDANTS:

Taylor English Duma, LLP
By: Bryan F. Jacoutot
1600 Parkwood Circle, SE, Suite 200
Atlanta, GA 30339
bjacoutot@taylorenglish.com

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P R O C E E D I N G S

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VIDEOGRAPHER: Good morning. We are on video record at 8:41 a.m. on Thursday, March 2nd, 2023. Please note that this deposition is being conducted virtually. Quality of recording depends on the quality of camera and internet connection of participants. What is seen from the witness and heard on the screen is what will be recorded.

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. John Alford, taken by counsel for plaintiff, in the matter of Georgia State Conference of the NAACP versus State of Georgia, et al., filed in the U.S. District Court for the Northern District of Georgia, Atlanta Division. Case Number 1:21-cv-5338-ELB-SCJ-SDG.

The location of this deposition is being conducted virtually. My name is Leo Mileman, representing Veritext, and I'm the videographer. The court reporter is Roxanne Easterwood, from the firm Veritext. I am not

related to any party in this action, nor am I financially interested in the outcome.

If there are any objections to proceeding, please state them at the time of your appearance.

Counsel and all present, including remotely, will now state your appearances and associations for the record, after which the court reporter will swear in the witness:

MS. BERRY: Crinesha Berry, with Crowell & Moring, on behalf of the Georgia NAACP plaintiffs.

MR. JACOUTOT: Bryan Jacoutot -- oh, I'm sorry. I'll let the plaintiffs and other attorneys go first. I'll finish up. Sorry about that.

MR. ROSENBERG: No problem. It's always difficult on this.

Ezra Rosenberg, from Lawyers Committee for Civil Rights Under Law, for the plaintiffs.

And nice to see you again, Dr. Alford.

MS. HOUK: Julie Houk, Lawyers Committee for Civil Rights Under Law, for the plaintiffs.

MR. DAVIS: Alex Davis -- go ahead,

David.

MR. ROLLINS-BOYD: David Rollins, Lawyers Committee for Civil Rights Under Law, on behalf of Georgia NAACP plaintiffs.

MR. DAVIS: Alex Davis, Lawyers Committee for Civil Rights Under Law, on behalf of the Georgia NAACP plaintiffs.

MS. HORSTMAN: Raija J. Horstman, of Crowell & Moring, on behalf of the Georgia NAACP plaintiffs.

MS. HSU: Lily Hsu, with Crowell & Moring, on behalf of the Georgia State plaintiffs.

MR. HEAVEN: Astor Heaven, from Crowell & Moring, on behalf of the plaintiffs, as well.

MR. MONTOYA-ARMANIOS: Vincent Montoya, Dechert, LLP, observing on behalf of the common cause plaintiffs.

MR. CHEUNG: Ming Cheung, from the ACLU, representing the Alpha Phi Alpha plaintiffs.

MR. JACOUTOT: Bryan F. Jacoutot, from Taylor English, representing state defendants and the deponent.

JOHN R. ALFORD, Ph.D.

being first duly sworn, testified as follows:

EXAMINATION

BY MS. BERRY:

Q. Okay. Now, could you please state and spell your name for the record, please?

A. Yes. John Alford. J-O-H-N, A-L-F-O-R-D.

Q. Okay. And what is your home address?

A. It is 15907 Erin Creek Court -- that's Erin, E-R-I-N -- Houston, Texas.

Q. And where are you currently located today?

A. I am at my home address.

Q. Okay. And are you on any medications that might affect your testimony today?

A. No.

Q. Okay. And are you currently suffering from any impediments that might impair your ability to give truthful and accurate testimony?

A. No.

Q. Okay. Have you ever had your deposition taken before?

A. Yes, I have.

(Exhibit 1, John R. Alford Subpoena to Testify at a Deposition in a Civil Action, marked for identification.)

BY MS. BERRY:

Q. So if you can open up Exhibit Share, could you pull up Exhibit 1, which should be your deposition and subpoena?

A. Yes, I see that.

Q. Okay. And are you familiar with this document?

A. Yes.

Q. Okay. And you understand that this obligates you to sit for your deposition today?

A. Yes, I do.

Q. Okay. And you're prepared to do so?

A. Yes.

MS. BERRY: Okay. And if you give me a moment, I'm going to mark another exhibit.

(Exhibit 2, Alford Rebuttal Expert Report, marked for identification.)

BY MS. BERRY:

Q. Okay. You should be seeing Exhibit 2 in Exhibit Share. Let me know if it -- when it populates.

A. All right.

Q. Are you able to see it, or is it still loading?

A. Yes, it still says: "Generating file." There it is.

Q. Okay. And Exhibit 2 is the report that you served in this case, correct?
A. That is correct.
Q. Okay. And you understand that you're here today to discuss the contents of your report?
A. Yes.
Q. Okay. And you understand that you're under oath?
A. Yes.
Q. Okay. So I'm -- I know you've had your deposition taken before, but I'm just going to go through a few ground rules, so we, hopefully, can make this as efficient and quick as possible. So, as you know --
MR. JACOUTOT: Crinesha?
MS. BERRY: Yes.
MR. JACOUTOT: Sorry to interrupt you. I just didn't know -- I was scrolling down the report. It looks like there's some highlights on there. I'm not sure if you want those in for the -- for purposes of your questioning. But I did that once, and I didn't want to. I just wanted to alert you to it.
MS. BERRY: Oh, no. That's fine. Thank you.

MR. JACOUTOT: Okay. Thanks.
BY MS. BERRY:
Q. Okay. So as you know, the court reporter is taking down everything that we say. So it's really important that we speak slowly and clearly. And so do you understand that -- well, you understand that you -- you are to allow me to ask my question fully before you give an answer?
A. Yes.
Q. Okay. And you understand that if -- if I ask a question that you don't understand, that you can ask me to clarify it, but otherwise I will assume that you understood the question as asked?
A. Yes.
Q. Okay. If you need to take a break, that's fine, but you do understand that the only time you're able to take a break is if there is no question that's pending?
A. Yes.
Q. From time to time you may hear objections from your lawyer. Unless you're instructed not to answer my question, then you understand that after your attorney objects, you are to proceed with responding to the question as

asked?
A. Yes.
Q. Okay. And also, because this deposition is virtual, can you confirm for me that the only applications you have open is the Zoom and Exhibit Share?
A. That's correct.
Q. Okay. And you understand that you're not able to communicate with anyone during your deposition?
A. Correct.
Q. Okay. How many times have you had your deposition taken?
A. A lot. I'd say more than 50 times. I'm not really sure.
Q. Okay. And what were the nature of the cases where you've had your deposition taken?
A. Mostly Voting Rights Act cases, mostly related to Gingles 2 and 3, but also VRA cases more broadly.
Q. I'm sorry, what that was?
A. VRA, or Voting Rights Act cases more broadly, and then I've been -- some other kinds of cases involving statistical analysis of census data. Early on, I think I was involved in a case

1 challenging the jury pool in a federal case. But
2 primarily Voting Rights Act cases.
3 Q. Okay. And just a rough estimate, when
4 would you say was the first time you testified in
5 a voting rights case?
6 A. It would have been in the late 1980s.
7 Q. So it's safe to say that since the
8 1980s you've been testifying as an expert witness
9 in voting rights -- voting rights cases?
10 A. That's correct.
11 Q. Okay. And have you -- how many times
12 have you testified at trial?
13 A. Again, I've --
14 Q. I'm sorry, let me clarify. As an
15 expert witness?
16 A. I would -- I would say, you know,
17 something -- 20 times, something like that. Maybe
18 more.
19 Q. And those 20 times, were they voting
20 rights cases also?
21 A. Yes.
22 Q. How did you prepare for this
23 deposition?
24 A. I looked back over Professor Schneer's
25 report and back over my responsive report.

Q. Did you meet with your attorneys?
A. I did not.
Q. Did you meet with any -- any person?
A. No.
Q. Did you review any other documents other than Dr. Schneer's report and your rebuttal report?
A. No.
Q. Have you discussed his deposition with anyone, other than counsel?
A. Just the schedule of it with my family. Other than that, no.
Q. Okay. And how much time, roughly, did you spend preparing for your deposition today?
A. I don't know. Several hours. My report doesn't take very long to read, but Dr. Schneer's is a much longer report. So I would say several hours.
Q. And you say several, more than five?
A. No, I wouldn't think so.
Q. Okay. Less than five hours?
A. Yes.
Q. Okay. And you understand you're offering expert testimony for a dispute between three organizational plaintiffs and the state of

Georgia today?

A. Yes.

Q. Okay. And what is your understanding of this dispute?

A. My understanding is that this is related to the districts drawn by the state of Georgia, by the legislature following the 2020 census. And the dispute relates broadly to those districts and to whether there are -- I would say, essentially, whether there are -- should be more minority districts drawn than are drawn in the adopted plan.

Q. And to your knowledge, do you have any relationship with any of the parties?

A. Not to my knowledge, no.

Q. Do you have any prior experience with the state of Georgia, including Georgia legislators?

A. Yes.

Q. Okay. And what is that experience?

A. I taught at the University of Georgia. During that time I also was a consultant with the Institute of Government there, which included some work with statistical and records work that the institute was doing for the state.

And I have worked both for the state and for Gwinnett County in previous redistricting matters. I personally know a couple of state legislators. My wife is from Jefferson, Georgia, and through her family, I know some people in that area.

Q. Okay. So I want to break that down a bit. So starting with the state legislators that you personally know, who -- who -- which state legislators do you know personally?

A. I've met Bubba McDonald, who was at that time a state legislator. I'm not sure what -- I think he moved on to some administrative position. I knew him when he was running for Congress, I guess -- I can't remember if he was running for house -- I think he was running for the Senate, or maybe governor.

And I met just at a social -- actually church event, someone else who is a representative and represents that area, Jackson County, but I can't remember his name off the top of my head. That was 20 years ago.

Q. Okay. Do you -- okay. So the representative from Jackson County that you met 20 years ago, so there is no ongoing relationship?

A. No. And other -- again, other than knowing or having talked -- talked with him socially, I have no ongoing relationship with anybody in the legislature or the legislature itself, other than my involvement in these redistricting lawsuits.

Q. Okay. And have you spoken with any Georgia legislators about this lawsuit?

A. No.

Q. And so you mentioned -- I think you said you -- you did some work previously with the state for prior redistricting for Gwinnett County?

A. Yes.

Q. Okay. And when was that?

A. It was towards the end of the last decade. I'm thinking maybe 2017, somewhere in that -- around that area of time.

Q. Okay. And what was the nature of your work?

A. Again, this had to do with redistricting. And I think it was -- there was some issue related to, I believe, the State House Districts, and there was -- with regard to the county, I think there may have been an issue with the county commissioners. I'm not sure, but I

know at the time I was working both for the state and for Gwinnett County.

Q. Okay. And so what were you specifically asked to do in connection with the redistricting at this time on behalf of the state?

A. Oh, to respond to reports that -- filed by the plaintiffs. That was initially the reports of Dr. Palmer and Dr. Handley. And then with the additional report from Dr. Schneer, to respond to that.

Q. Just to make sure I'm clear, I'm referring to when you said you worked on the Gwinnett County -- when you -- in the last decade.

A. Okay. I'm sorry.

Q. No, that's fine. I think I may have confused you.

So I was asking specifically what was the nature of your work as it relates to redistricting when you worked for -- or worked for or either with the state or with Gwinnett County?

A. So I wasn't involved in drawing districts. I was brought in after the districts had been adopted and were the subject of a lawsuit. And I was primarily dealing with, again, with Gingles 2 and 3 issues. Although, I think

there may have been some issues that -- some issues with regard to totality of circumstances, and maybe some portion of that might have involved some Gingles 1 issues about the nature of the districts themselves, but it would primarily have been, as it is in this case, Gingles 2 and 3 and voter polarization.

Q. And do you recall the name of that case?

A. I do not.

Q. Okay. And so -- but you were -- you were -- it sounds like you wrote an expert report?

A. Yes, I believe I did.

Q. Okay. And what was the result? What was your -- what were your opinions?

A. I actually don't recall. As I said, I think I wrote an expert report. I don't recall what my opinions were. I mean, I could -- I'm sure I could refresh my knowledge on that. But as I said, I've been involved in a lot of cases. I've read a lot of reports, a lot since -- since then. So I have no specific recollection of what was in the reports from that earlier era.

Q. Okay. And do you recall if you testified in any hearing or court proceeding in

that case?

A. It wouldn't surprise me if I did, but I don't have a specific recollection of that.

Q. Okay. All right. And so when were you retained in this matter?

A. I've -- so I already was under contract to assist earlier, and as I said, in relation to some issues in Georgia, and I think I have been -- at the beginning or early in this redistricting cycle, the -- I was contacted and agreed to work with the state, assuming that the state would be sued, which it was.

And then more recently, in the fall/maybe late summer, I was contacted with sort of more details about -- again, about the two cases involving Dr. Palmer and Dr. Handley and alerted to the fact that there would be reports filed and that I would be -- no. Wait a minute. I'm thinking of a different case.

So there were reports filed much earlier with regard to the preliminary injunction, I guess. So it would have been fall -- not last fall, but the year before, where I was responding to the early reports, initial reports in that preliminary injunction case of Dr. Palmer and

Dr. Handley; and then, again, being responsive to the supplemental reports and the initial report of Dr. Schneer more recently.

Q. Okay. So just to make sure that I understand, when you said that you were already under contract, this was earlier, you were referring to a different case?

A. I think it was a -- I think it was a contract related to -- I don't know. It may have been simply a continuation of a contract from an earlier case. It may be -- it may have been that -- that I was contracted earlier -- say early on in the -- with the -- around the time of the arrival of the census data in anticipation that the state would be sued.

I don't -- I don't recall. I just know that when this matter came up, I already had a contract with the -- with the law firm or the state.

Q. Who contacted you?

A. I think it was Bryan Tyson at Taylor English.

Q. And so Bryan Tyson is the person that initially contacted you?

A. Yes.

Q. Okay. And so you said you may have had a contract either with the state -- you were -- you may have been under retainer with the state prior to this litigation being filed?

A. I'm just -- I think there may have been a contract that didn't have an expiration date that was updated for -- for this matter. That's my recollection. But I wasn't on a retainer.

Q. Okay. So when was the first time you did work in connection to the redistricting, this redistricting matter? And maybe not necessarily the case, but you said that -- my understanding is you're not clear, but you may have had some type of contract with the state or either Bryan Tyson prior to the litigation being filed. Did I understand that correctly?

MR. JACOUTOT: Object to the form.

THE WITNESS: Yes, I think -- I think that's the case.

BY MS. BERRY:

Q. Okay. And what were you doing for either the state or Bryan Tyson?

A. I -- my recollection is that's just --

MR. JACOUTOT: Dr. Alford, I just want

to interject an objection here to the extent your response requires you to disclose attorney-client privileged information. Other than that, you can answer.

THE WITNESS: I don't recall exactly. I wasn't -- actually, at the beginning of this set of cases when I was contacted about these matters specifically, I didn't even recall that there was a contract. And in the discussion about getting the contract up, I think the lawyers indicated that there was already a contract in place, and that contract was then updated to reflect my involvement in this case.

I don't really know what the -- again, I had worked with the state prior, in prior cases at the end of the last decade. I don't know if it was a contract that survived from that or was relating to something else.

BY MS. BERRY:

Q. Okay. And just so I'm clear, also, you're also not sure if it was Bryan Tyson or the state that contacted you to work on this case?

A. It was Bryan Tyson who contacted me. And I think the contract is with -- is with the law firm. But, you know, sometimes I'm -- my

contract is with the Attorney General in a state. Sometimes it's with the lawyers, outside counsel.

I think in this case the contract is with -- is with Taylor English, but it could be with the Attorney General.

Q. Okay. And what's your understanding of what you were asked to do?

A. I was asked to be prepared to respond to the plaintiffs' expert reports, particularly focussed on Gingles 2 and 3, and the issue of racially polarized voting.

Q. And what is your understanding of racially polarized voting?

A. Racially polarized voting is a term of art related to some parts of Gingles 2 and 3 threshold tests, and in some Part 2, the totality of circumstances requirement, that the -- that racially polarized voting be demonstrated, and it relates to polarization in -- in voting in which a minority group votes in polar opposition or votes cohesively, and non-minorities vote in polar opposition to that minority cohesion.

So it involves assessment of cohesion for both minority voters and non-minority voters, and, at least at a minimum, with regard to

totality of circumstances, involves evidence of polarization on account of race.

Q. Okay. We'll get into all of that in just a second.

Did you agree to serve as an expert prior to reviewing Dr. Schneer's report?

A. Yes.

Q. Okay. And what is the exact nature of your expertise?

A. Well, as I said, I've been involved in Voting Rights Act statistical analysis since the late 1980s, so for multiple decades. I have, in that regard, developed statistical programs that are useful for doing that, and expertise in that area. I have taught classes on redistricting. I've drawn district -- single-member district plans for multiple local community school districts and cities.

I in one case provided a draft starting plan for congressional districts for federal court for the state of Texas. And I've been actively involved as an expert witness, as well as a consulting expert, in redistricting and redistricting lawsuits throughout the decades since the late '80s.

Q. And what is your professional or educational experience with voting behavior?

A. My dissertation is on voting behavior. My -- one of my examination fields for a Ph.D. was in methods. I've worked since the time I started my master's program in public administration for a variety of institutes doing statistical work of various natures. I've run political data labs at the University of Georgia and at Rice University.

I have taught courses on statistical methodology. I have taught courses on redistricting. And would say much of my research is -- within teaching, is related to voting behavior, particularly American voting behavior.

Q. You attach your CV to your expert report?

A. That's correct.

Q. So can we go back to -- I think it's exhibit -- I think your report is Exhibit 2. And your CV is attached as Appendix 1?

A. Yes, I see that.

Q. Okay. And can we go through that -- well, you can go through it. But is your CV accurate and complete?

A. I think -- I believe it is. I have

been retained in an additional case since then, a lawsuit against Galveston County that I'm currently a consulting expert in. There's been no report filed. It's still in the early stage.

Q. And you're consulting for plaintiff or defendant?

A. I'm consulting for defendant, Galveston County.

Q. Okay. And what is the nature of your consulting work?

A. Again, racially polarized voting analysis related to Gingles 2 and 3.

Q. Okay. So are there any -- well, I know you said that there's a case that's not in here that you've been recently retained in. But so are there any errors or misstatements in your CV?

A. Not that I know of.

Q. Okay. And you continue to stand by your publications and presentations?

A. Yes.

MR. JACOUTOT: Crinesha, can I interrupt for just one -- one second?

MS. BERRY: Yes. Sure.

MR. JACOUTOT: I just realized that I

don't think we established at the beginning of the deposition whether objections would be reserved except to form of the question and responsiveness of the answer. I am happy to do it either way. I prefer -- I typically prefer to have that reservation. But, you know, we didn't -- since we didn't do it, I'm happy to make all of the objections as needed, or we can just reserve them. But I just wanted to point that out.

MS. BERRY: Okay. Yes, that's right. I mean, whatever you prefer to do. If you want to reserve them, that's fine, or if you want to object as we go.

MR. JACOUTOT: Okay. I think reserving those is fine for me except for form of the question, responsiveness of the answer, and, obviously, attorney-client privilege.

MS. BERRY: Okay.

MR. JACOUTOT: Thanks. I'm sorry about that.

MS. BERRY: No problem.

BY MS. BERRY:

Q. I want to make sure you answered. You said you do stand behind your publications and present- -- and the presentations that are

listed in your CV?

A. Yes, I do.

Q. Okay. And to your knowledge, have you ever spoken or written publicly on any issues that are relevant to this case?

A. So I've -- as I said, I've taught courses on redistricting. I have given presentations on redistricting in a variety of settings. So, generally, you know, things related to the redistricting process and to the -- sort of the scope and subject matter of redistricting litigation, in those settings.

I wrote a short piece of sort of redistricting advice to school boards, I think. It was sent around to school board lawyers in Texas at some point. That's what I recall.

Q. Okay. And what -- what was the redistricting advice that you wrote to the school boards?

A. It was in anticipation of an upcoming census. I don't remember which census that might have been, maybe 2000, maybe 1990. I think maybe 2000. I had been asked to do this by the person who was the head of the school law section, and it was just kind of heads-up for school districts of

things they might look at to think about whether they might, in fact, be sued.

So I suggested looking at their -- looking at the census demographics and the nature of their current election system, and if they were electing at-large and they had a significant minority population, they should be prepared for the possibility that they would be -- that they would be sued.

Q. But with respect to -- still sticking to talking about your -- your experience with writing or speaking publicly about issues related to this case, what about specifically race- -- the topic racially polarized voting?

A. That certainly would have been something that was covered in -- again, in the -- some of these presentations to the various groups or with regard to sort of general, you know, teaching the course on redistricting. I think that would probably be it.

Q. Okay. And so what is your current form of employment?

A. I'm a full professor at Rice University.

Q. And what do you teach?

A. I currently teach Introduction to American Politics. I teach the Biology of Politics. I teach -- every two years I teach a course specifically directed at the election in that cycle. So in even-numbered years, I teach an election course. I teach Political Behavior. I think that those are -- currently, that's the main location that I teach in.

Q. Okay. So do you teach any courses or do -- so do you teach any courses, or do some of the courses you teach touch on minority politics?

A. Certainly Introduction to American Politics touches on it. Political Behavior touches on it. I don't -- the courses on the -- like, for example, the 2022 election course I taught in the fall would touch on that.

But I'm -- we have several faculty members who teach specifically in the area of minority politics and its relationship to elections and behavior. Those are not courses I teach.

Q. Okay. What about courses specific to racially polarized voting?

A. Again, I taught a course on redistricting, and that would have been --

something would have come up in the context of that course, but I don't teach courses on racially polarized voting.

Q. Okay. And you mentioned earlier, I think a couple times, where -- that you had experience or you often served as a consultant, right?

A. Yes.

Q. Okay. And so what kind of matters do you typically provide support for as a consultant?

A. So with -- earlier on, maybe 20 years ago, I was involved with a group of other faculty members at Rice that pretty regularly conducted jury experiments for local law firms. So that -- sort of that piece of things.

But I would say the majority of my consulting work involves drawing single-member district plans, either for local jurisdictions that already have single-member districts and are redrawing them because of population and quality issues after the census, or drawing single-member district plans for -- occasionally for districts that are at-large and are -- and are voluntarily switching to a single-member district system.

And then in terms of just sort of

consulting expert, I'm often retained as a consulting expert in a case like this where the case has been filed and the lawyers are just interested in, you know, my assessment of the -- how solid the case is or isn't. And so I just, you know, as a consultant take a look at the -- you know, at what I see out there and let them know what I think, and that -- sometimes that turns into my involvement as a testifying expert; sometimes that -- that doesn't.

And I think that's about it.

Q. Okay. And who are your clients, generally? And I'm specifically asking about when you're a consulting expert in cases like this.

A. I would say my clients are sometimes the -- sometimes or most often either government entities or their outside counsel. Sometimes it's individuals who have -- I was recently involved in a case in Pennsylvania, working with one of the plaintiffs or intervenor groups with regard to districts in Pennsylvania. But I would say predominantly, both in lawsuit-related and non-lawsuit-related issues, I predominantly consult for government entities.

Q. Okay. Have you ever consulted or

advised in organizations that made a racial challenge in a Voting Rights Act -- in a voting rights case?

MR. JACOUTOT: Object to the form.

THE WITNESS: I'm really not sure how to characterize my involvement in the Pennsylvania -- consulting in the Pennsylvania case. It was, you know, an alternative plan. So I'm not sure exactly how to characterize that.

But I would say that my initial -- the first case I was involved in was, I was involved in working for the defendant government entity, and since then that's sort of the direction.

I don't -- I've never solicited work in any case of any kind. I have a full-time job. I don't need to do this. So, you know, people come to me, and the people who -- who have come to me have largely been individuals representing defendant government entities.

I have, you know, as I said, in Pennsylvania and some -- some earlier was involved in something working for some plaintiffs' attorneys. But by and large, the people who come to me are government entities who are defendants in these cases.

BY MS. BERRY:

Q. Have you written or published any academic articles on election law?

A. No.

Q. What about majority politics?

A. No.

Q. Racially polarized voting?

A. No.

Q. The relationship between race and politics in the American South?

A. No.

Q. The history of race and politics in the American South?

A. No.

Q. Okay. Statistics as it relates to redistricting?

A. No.

Q. Okay. All right. So we talked about that you have previously served as an expert a number of times. I think you said 30 to 40, I believe; is that accurate? Well, let me just ask you the question again. So, apologies.

How -- how many times have you previously served as an expert witness?

A. So my work as an expert would be much,

much -- right. So there's a big circle, which is my work as an expert, including in lawsuits, and that would be well over 50 cases. My work as a -- as a testifying expert would have been something smaller than that. And then my work in cases in which I actually testified, that is, cases that actually ended up not settling or otherwise dealt with where I was an actual witness in court, would have been something smaller.

So I think some maybe 30 or so times that I've -- 20 to 30 times that I've actually testified in court. It's somewhere in that range. The larger set of cases in which I've been a testifying expert but didn't actually -- case didn't actually go to court, and then, again, a substantially larger number of cases I've been involved in where my involvement was as a consultant and not -- and therefore, didn't come to the level of, for example, writing a report.

Q. Have you ever been qualified as an expert witness?

A. Yes. In all of the cases that I testified in, I was qualified as an expert in the -- most often in issues related to Gingles 2 and 3 and polarized voting, but in other cases

more broadly in those issues, as well as Gingles 1, and more broadly in things like the Senate Factors.

Q. Okay. Still focussing on the cases where you were qualified as an expert in Gingles 2 and 3 in racially polarized voting, that would have been roughly 20 times you've qualified as an expert?

A. I would have to go back and count it up, but I -- yes, I would think at least 20 times.

Q. Okay. And I don't expect you to list out 20 courts. But to the extent you can remember the different districts you've qualified as an expert witness, what were they?

A. So I have been qualified in -- as an expert in cases in -- lots of cases in Texas, obviously. I'm in Texas. In cases in Washington State, cases in Georgia, cases in New York, cases in Arkansas, in Kansas, Louisiana, Alabama, Florida. I'm sure I'm leaving some state out, which I hate to do because I -- Michigan, Wisconsin.

Q. Okay. Are you --

A. I can't remember. There was a case in New Mexico, but I -- I -- I don't think that

actually went to trial, so I'll leave New Mexico aside for now. I think that's roughly -- I think that's roughly correct.

Q. Okay. And how recently were you qualified as an expert witness in Gingles 2 and 3 in polarized voting?

A. So in -- in this round, the -- I would have -- I'm trying to think of where. This round I would have been qualified at least once in Texas, in Arkansas, in Kansas, in Wisconsin, in -- I guess at some point earlier in -- in Georgia, but not necessarily. You know, maybe -- that one may have been four or five years ago, but...

Q. What do you mean when you say in this round?

A. In cases that arise out of the -- that come after the 2020 census.

Q. Okay.

A. So I think of it in sort of decades of work.

Q. Got it.

A. So the cases I mentioned are all cases that occurred or related to or following the 2020 census and the current round of redistricting.

Q. Okay. And so you said in all of the

cases where you've been offered as a witness in Gingles 2 and 3 in racially polarized voting, you've been qualified as an expert. So I would assume you've not been -- you have not failed to qualify as an expert for Gingles 2 -- I'm sorry, go ahead.

A. I was just going to say that's correct, that I -- it indicates that I have been offered as an expert witness and that a judge has qualified me as an expert.

Q. Okay. And has your expert opinion or testimony ever been excluded or limited, and again, focussing on Gingles 2 and 3 in racially polarized voting cases?

A. There's certain- -- certainly cases where the court has chosen to go a different direction than my testimony. So, you know, some courts -- when the court is deciding on behalf of the side that I'm arguing on, they say nice things about me. And when they're deciding on the other side, they usually say that -- in order to reach that decision they, obviously, have to take a different view than the view I take, and so they take a view that the plaintiffs' expert takes.

So, yes, there are cases where judges

have decided on the behalf of the other side, and in those cases have explained, in part, their decision based on their disagreements with me.

Q. Okay. I think we may be saying something a little differently. So I'm asking specifically about whether you've been excluded or limited, and then separately I would ask about criticisms. But have you ever been -- has any -- can you name any courts where your opinion has been excluded?

A. I mean, I guess I -- maybe that's a legal term of art. I don't know.

MR. JACOUTOT: Object to the form. Sorry.

BY MS. BERRY:

Q. So let me -- so let's talk about it this way. You have -- you mentioned that you were familiar with some cases where -- I'll just use the word criticize, or where judges didn't -- I think you may have said agreed with your opinions. Is that an accurate characterization of what you just said?

A. Yes, I think -- I mean, the -- right, judges tend to agree or endorse certain views where there are issues in dispute where my

position is different than the position of a plaintiffs' expert, for example, where we have a disagreement about methodology or something of that sort. The judges sometimes, not always, but sometimes, you know, come down to that level of dispute and endorse one view or the other. So it's not always my view that gets endorsed.

But I don't know -- I mean, I don't know whether that's, you know, that judge is explaining why is it that they're -- that they are more convinced by the other expert than by me, whether that has to do with the weight or has to do with -- I'm not sure what you mean by exclude. I guess that's the question.

Q. No, I moved on from exclude. I was sticking with -- I was focussing on you -- you mentioned that there is some cases where judges didn't agree with you or -- I don't think you used the word criticize, but I edited in where maybe you've been criticized, your opinions in Gingles 2 and 3 on racially polarized voting have been criticized by a court. Has that ever happened?

MR. JACOUTOT: Objection.

THE WITNESS: It has.

BY MS. BERRY:

Q. Okay. And let's talk to those. What are -- do you recall some cases?

A. So I would say sort of most prominently in my mind, the case involving Texas preclearance before the three-judge panel in -- in D.C. The judges were unhappy with Texas, unhappy with me, unhappy with the lawyers for Texas, unhappy with pretty much everything about Texas. And so they, yes, they disagreed with my opinions in that -- in that case, and in the end the case was mooted. So I don't know what that means. But it didn't change the fact that the judges were -- did not -- not enthusiastic about my position in the -- in that Texas preclearance case.

Q. Do you recall the name of the case?

A. There -- I'm not -- I don't have a great citational memory. And, you know, Texas generates, you know, dozens of redistricting Voting Rights Act, otherwise, cases pretty much continuously. So I -- I mean, there was -- there were cases related to the redistricting itself, some of which were consolidated and some of which weren't. There were, you know, I don't know, 40 or 50 lawyers involved total on the plaintiffs' side.

There was a preclearance case in D.C. There was a three-judge panel case that lasted seven years in Texas itself. So the things and all the cases that fed into that set of almost -- almost a decade-long set of cases. I don't recall the -- I don't recall the case name.

Q. Do you recall what year?

A. Well, let's see. So Texas would have -- this would have been maybe the 2000 redistricting. Texas would have failed to redistrict. There -- we had court planned. Texas would come back. Maybe 2003/2004, somewhere in there.

Q. Okay. And what specifically do you recall the court saying about your Gingles 2 and 3 analysis?

A. I mean, I have -- you know, I haven't looked at that case in a long, long time. My recollection of the court's criticism was largely about issues related to -- it was a preclearance case, not a challenge to the -- to the plan under Section 2.

So it was a Section 5 case. And the testimony I recall that -- that the judges weren't happy about related to retrogression, not to -- to

polarized voting. I don't recall -- again, I haven't read the decision in more than a decade. But that -- what I recall was that the -- the criticism revolved around how you measure a retrogression in a Section 5 case.

Q. Okay. So focussing on Section 2 in Gingles 2 and 3 analysis, do you recall what criti- -- which courts do you recall that criticized your analysis?

A. Oh, the case in New York, where the -- involved local nonpartisan elections where there were all kinds of disputes about -- about methodology, about statistical significance, about appropriate defendant variables, a whole host of things where the judge was critical over a variety of things.

I think, frankly, the judge was mostly -- there are some things that are sort of how something fits into a legal argument. That's really not my -- you know, I'm typically pushed to offer some sense of how I think about that, but, ultimately, you know, that's a judge's decision. And I respect judges' interpretation of law. It's their appropriate job. My job is, as I see, the part of it that's more important is to -- to make

sure that there's a valid statistical empirical analysis of the data.

So there were criticism. The criticisms the judge made in that regard I think are clearly incorrect. But, you know, I'm sure the -- the judge also thought what I thought the law might mean was incorrect. And, you know, on that I'll -- that's certainly the judge's prerogative. They're the expert on the law, not me. I'm not a lawyer. But they're also not experts on statistical methodology. And so I would -- I would sort of respectfully disagree with the criticism related to the methodology of the case.

But I don't think -- and in the end the decision turned on -- not on those methodological issues, but, obviously, on legal issues, so...

Q. And do you recall writing a report in Alpha Phi Alpha versus Raffensperger? Those are, I think, sort of the preliminary injunction hearing in Northern District of Georgia.

A. Yes.

Q. Okay. And do you recall -- okay. So you wrote a report in that case, correct?

A. That's correct.
Q. Okay. And what was the subject of your report in that case?
A. My recollection is the subject is racially polarized voting in Georgia, at least in some parts of Georgia, as these cases go.
Q. Okay. And what were your opinions in that case?
A. When I wrote a report, I think I testified. You know, those opinions are the opinions. Broadly, my opinions would be similar to my opinion here, which is plaintiffs are offering evidence that convincingly shows that voting is polarized on the basis of party in Georgia, and they're not offering -- empirically offering much of anything else.
And so that is what it is. And my own view is that that's -- that that's insufficient, but the court's view -- my recollection of the court's view is that -- that, in fact, there -- that was not an issue that the court needed to reach, but the -- the issue of the -- involved in the partisanship in elections is not something the court needed to reach in the Section 2 case.
And so since that's really the only

argument I'm making, that's -- again, that's a legal -- you know, the court may be absolutely right about that. That's a legal argument. I just want -- my view is just that, as it was in that matter, that the court understand what it is that the plaintiffs have actually demonstrated empirically. And then if the court thinks that's all they need to demonstrate -- and my recollection is that's exactly what the judge said in that matter, that all the plaintiffs needed to demonstrate was that the voting was polarized regardless of cause, and then I'm fine with that.

I try to be as straightforward as I can about this. I usually state that right upfront in my report, that the voting is polarized on a partisan basis, so...

Q. Okay. And you do recall that the court had found your -- your reference to their being partisan polarization was speculative and unreliable, right? Well, rather, are you aware that that's what the court said about your opinions for partisan polarization?

A. I when -- I haven't looked at the opinion again since I first saw the opinion, but I'd have to look at that to see what that was

actually directed toward. The analysis that I'm referring to is analysis done by Dr. Handley and Dr. Palmer. So if there is a problem in the analysis, that's a criticism of their work, not mine.

MS. BERRY: Give me a second. I'm going to mark and introduce an exhibit.

(Exhibit 3, Alpha Phi Alpha v. Raffensperger, marked for identification.)

BY MS. BERRY:

Q. So you should see what I've marked as Exhibit 3, which is the court's decision in the Alpha Phi Alpha case that I was just speaking about. It may take a minute to load. So let me know when you get it.

A. All right. I've got the -- I've got the spinning wheel. So I'm headed in the right direction.

Q. And it's 84 pages long. So we're going to have to do some scrolling.

A. I was involved in a -- in a case where the judge felt that there really wasn't a lot to dispute in the case and wrote a -- like, a short, like, a ten-page opinion or something, and the 5th Circuit immediately kicked it back and said, like,

what part of extensive fact-based local. And so the judge turned it back at 100 pages. And I've thought -- I've often thought ever since then you rarely see an opinion that isn't in the kind of 80- to 100-page range. And so there -- you know, the supervisory authority in the upper courts does actually work its way down to the district on at least -- on at least some matters.

I think it kind of makes me think of the page limits on a student assignment. So, apparently, there's -- ten pages is not going to get a passing grade on a Voting Rights Act case, and I think quite appropriately. They are -- they are unusually complicated.

It has appeared.

Q. Okay. So if you want to take a look at the top, the caption, to refamiliarize yourself, that's fine, but I would like to direct your attention to Page 64, which I think -- so it's going to be Page 64 in Exhibit Share, not 64 of the opinion. So if you look at the bottom, it should say Page 64 of 84.

A. I got it.

Q. You said you got it?

A. Oh, sorry. Where it says page

whatever, whatever. But 55, 60. All right. I'm on Page 64 of 84.

Q. Okay. And so you see --

A. Oh, I see something that's been highlighted here.

Q. Yeah. So you see there's Qualification -- I'm not going to focus on that for now. But under Qualification, you see the first sentence says: "Dr. Alford." And so they're talking about, of course, talking about your qualifications?

A. Yes.

Q. And then if you go -- if you go to the second paragraph, it reads: "While the court found Dr. Alford to be credible, his conclusions were not reached through methodologically sound means and were, therefore, speculative and unreliable."

Do you see that?

A. You said -- I don't see -- all I see is one paragraph.

Q. You should see two. So you see the paragraph under Qualification that says: "Dr. Alford is a tenured-professor"? Do you see that? It's on the left side of the page.

A. Yes. Okay. I was looking at -- so I shouldn't be looking at the highlighted part?

Q. No, not -- not right now.

A. Okay.

Q. Yes. And so the very next paragraph says: "While the court." And that's the sentence that I just read to you.

A. Yes.

Q. Okay. And so is that familiar to you, that the court had determined your partisan polarization theory was speculative and unreliable?

MR. JACOUTOT: Object to the form.

BY MS. BERRY:

Q. Dr. Alford, I wasn't -- I'm not sure if you heard the question that I asked or if you're continuing to read the opinion.

A. Yeah, this is sort of -- I was just looking at what we were talking about. So the first part that you mentioned is the judge characterizing a decision from another case, Lopez v. Abbott, and from the Texas VUS, which would have been a preclearance case.

Q. Right. I'm not focussing on that -- that right now. I think I'm focussing on the part

of the opinion when the judge made a finding that your conclusions were not, you know, sound and that it was, therefore, your -- your -- excuse me, your partisan polarization theory was speculative and unreliable, which is the same -- you -- you testified earlier that your opinions in this case were similar -- in that case were similar to the opinions in this case. And I'm asking if you recall the court saying that those opinions were speculative and unreliable?

MR. JACOUTOT: Object to form.

BY MS. BERRY:

Q. Well, let me ask this way: Do you see in the opinion that that is what the court said about your opinions?

A. That's what that sentence says.

Q. Okay. Thank you. And so next you mentioned -- you mentioned the Lopez case. We can take that exhibit down. We don't need that. I can pull that up separately if we want to look at it.

But you mentioned the Lopez case. Were you referring to Lopez v. Abbott?

A. That's what it says here, Lopez v. Abbott, 2018.

Q. Okay. Do you independently recall that case?

A. Again, this is part of that decade-long Texas case.

Q. Okay. I can -- you don't have to rely on that opinion. I can -- I can pull it up for you.

But in -- in that opinion -- in that case, you also had opinions that were -- you spoke about this partisan polarization idea. Do you recall that?

A. Yes.

Q. Okay. And do you recall that court saying that, you know, the race of the candidate was not what mattered when looking at a Gingles 2 and 3 analysis?

A. Yes. I'm not -- again, I'm not sure if that -- if that specifically limited to Gingles 2 and 3 or whether there's -- whether they go on to deal with this under totality of circumstances.

So in -- in several cases I've been involved in, the court has said that this -- the issue of race versus party is not relevant to Gingles 2 and 3 and to bloc voting, but is relevant to totality of circumstances.

So, again, I don't know what Lopez v. Abbott is. If it's the case related to the Texas Supreme Court, the court decided that it was relevant under totality of circumstances and -- and gave way to that under totality.

Q. When you say the court decided, which -- which court are you talking about, the District Court in the Lopez case?

A. Again, I -- Lopez v. Abbott, I recognize that as a Texas case. There's nothing here in the context that tells me whether this is a -- is the case related to the -- to districting or the challenge to the at-large election of the Texas Supreme Court.

So I'm just saying in this case related, whatever it was, in Texas in District Court related to the election of Supreme Court judges at-large, where the -- where it upheld the at-large election against a Section 2 challenge.

The court indicated that they did not believe that this issue applied to -- specifically to Gingles 2 and 3, the threshold, but that it did apply to totality of circumstances. And in that case they thought it was relevant that, in terms of totality of circumstance totality of

circumstances, the plaintiffs hadn't demonstrated racially polarized voting.

(Exhibit 4, Lopez v. Abbott, marked for identification.)

BY MS. BERRY:

Q. Okay. I marked as Exhibit 4 the Lopez v. Abbott case. It should be showing up in Exhibit Share. And let me know when you have it up.

A. All right. It has appeared.

Q. Okay. And so is it -- are you familiar -- looking at that case caption and the description at the top, are you familiar with this case?

A. Yes. So this is a case challenging the at-large election of Supreme Court judges in Texas.

Q. Okay. And my understanding is that you said the court allowed your partisan polarization theory?

A. Yes.

Q. Okay. So I want to -- if you could scroll to Page 21 of the PDF, and let me know when you get there.

A. Page 23?

Q. 21.
A. Oh, sorry.
Q. It's okay. There should be the number 3, Majority Bloc Voting. When you get there, if you look at the bottom of the second full paragraph, the sentence begins with: "Dr. Alford's analysis did not negate the results of Dr. Handley."
Do you see that?
A. Yes.
Q. Okay. And towards the middle, the judge says: "He" -- referring to you -- "instead looked at elections from the point of view of the ethnicity or race of the candidate, suggesting that there was no pol"-- "racial polarization in contests where Hispanic voters voted for the white candidate over Hispanic candidates, and he attributed results strictly to partisan preference, rather than racial bloc voting."
Do you see that?
A. Yes.
Q. Okay. And then the court -- in the next paragraph the court says: "At this juncture, the court is only concerned whether there is a pattern of white bloc voting that consistently

defeats minority-preferred candidates. That analysis requires a determination that the different groups prefer different candidates, as they do. It does not require a determination of why particular candidates are preferred by two groups."

Do you see that?

A. Yes.

Q. And then the court says: "The court finds that plaintiffs have met the third Gingles condition. Plaintiffs have demonstrated that the white majority votes sufficiently as a bloc to enable it to defeat the minority's preferred candidate."

Do you see that also?

A. Yes.

Q. So my reading of that is that the court did not accept your partisan polarization theory. Is that also your understanding?

A. No.

Q. Okay. So how do you read that?

A. Okay. So, again, the beginning of the paragraph you read: "At this juncture, the court is only concerned with whether there is a pattern. White bloc voting consistently beats minority

1 candidates."
2 At this juncture, I think you can see,
3 clearly, as they said later on, the court finds
4 plaintiffs have met the third Gingles
5 precondition. Right. So this is -- again,
6 they're saying at this juncture, meaning at the --
7 at the juncture the Gingles preconditions, the
8 threshold factors. That's -- that's what the --
9 that's what the court is -- is deciding, right.
10 So if you then go on to Page 23,
11 there's a paragraph that says: "While plaintiffs
12 point out that this single example doesn't
13 support" -- et cetera, et cetera -- "this evidence
14 supports a finding that partisanship is a better
15 explanation for the defeats of Hispanic-preferred
16 candidates than racial vote dilution."
17 And so this here they -- this -- they
18 are basically addressing the racial polarization
19 factor and totality of circumstance and, again,
20 revisiting this same -- this same issue.
21 Q. But under Gingles 3, and focussing on
22 the page that I directed your attention to, and
23 we're looking at majority bloc voting, I
24 understand what at this juncture means, but it
25 also means at this point, based on this specific

analysis focussed on Gingles -- Gingles 3 precondition, the court did not accept your partisan polarization theory?

A. Again, that's exactly what I said, that the court made the decision about specifically whether this applies to the Gingles section of the decision or whether it applies to racially polarized voting, which is the totality of circumstances factor.

And in this I'm saying in -- in the subsequent decision, the court revisits this issue, finds that my evidence is correct, and says the state's statistical analysis supporting partisan explanation is compelling. And then they go on to say that: "This factor, therefore, weighs against the plaintiff in this case." And they decided -- ultimately decided against the plaintiffs in this case.

Q. Sir, earlier --

A. I think it's -- I think it's -- to argue that the court is rejecting my evidence when the court uses that evidence in part to reach the decision that the state of Texas is allowed to continue to elect Supreme Court judges at-large is a complete mischaracterization of what the court

is doing.

Q. But if I'm specifically asking you about Gingles 2 with the preconditions, that's a separate question from totality of circumstance. And at least in what you read in that opinion, when the court was specifically looking at the Gingles 3 in majority bloc voting, they did not credit your partisan polarization theory; you agree with that, correct?

A. No, I do not agree with that.

Q. Okay. We can --

A. You're saying they didn't credit my -- my partisan polarization theory, and here is the exact words of the court: "The state's statistical analysis supporting the partisan explanation was compelling."

Okay. So they don't -- they don't accept the argument, which was one of the -- the arguments that the lawyers were making in the case was that this issue demonstrating that the polarization was on account of race needed to be established both with regard to the threshold factors and the totality of circumstance. The court declined to apply totality of circum- -- or to the Gingles factors.

I think that's -- I think that's a very good argument for it. I understand their argument. They're not rejecting my analysis. They are rejecting the application of that analysis as suggested by the lawyers to Gingles 2 and 3. That's a legal issue about where it applies, but it -- they did decide that it was compelling. They decided it was statically accurate, and they decided the case in part on the basis of it.

And to say that because they decided -- they mentioned earlier that they're not going to apply it as a legal matter to Gingles 2 and 3, I think is a stretch to argue that the court is rejecting my testimony. They're basing the decision of the case. The plaintiffs lost this case, which is rare in a state like Texas for the plaintiffs to lose a case where they're trying to overturn an at-large election system.

Q. What percentage of the time do you spend serving as an expert witness?

A. I'm sorry, I don't understand the question.

Q. You said you sometimes serve as an expert witness and you're also a professor,

correct?

A. Correct.

Q. What percentage of your time do you spend serving as an expert witness?

MR. JACOUTOT: Object to the form.

THE WITNESS: I have no idea.

BY MS. BERRY:

Q. In a given year, how often are you serving as an expert witness?

A. It varies heavily by where we are in the redistricting cycle. So there are a lot of cases shortly after the census. And I'm typically involved in multiple cases in that time period. And then those cases get resolved and fade away, and then it's usually fairly low in the remaining seven, eight years of a decade.

MS. BERRY: I think we've been going for about an hour. Do you need a break, Dr. Alford, or does the court reporter need a break?

THE WITNESS: I think this would be a good time for a break.

MS. BERRY: Can we go off the record, please.

VIDEOGRAPHER: Off the video record at

9:57 a.m.

(A recess was taken.)

VIDEOGRAPHER: Back on video record at 11:08 a.m.

BY MS. BERRY:

Q. Dr. Alford, excuse me, have you previously served as an expert --

(Audio interruption.)

MS. BERRY: I'm sorry?

BY MS. BERRY:

Q. Dr. Alford, have you previously served as an expert for the law firm Taylor English?

A. Yes. Well, I was -- as, again, the issues I referred to in the -- toward the end of the last decade with regard to Georgia. I think there were two law firms involved, but -- and, actually, I think -- I'm not sure exactly how that evolved over time. I think they may have been involved -- there may have been two law firms involved, or the lawyers -- there may have been some joining of firms. I don't know.

But my initial work was with Frank Strictland, who I think may have been with another law firm, but -- initially, but I think by the end of that process I was working with Taylor English

as well.

Q. Okay. And how many times have you served as an expert for Taylor English?

A. I guess I don't -- I don't know how many. I think, obviously -- so I guess in some sense maybe I'm serving as an expert for them three times in this matter, because there are three different lawsuits. In my view, I have worked with them twice: once in the matters at the end of the last decade, and once in this issue. I don't think I've worked on -- with them on anything else.

Q. Okay. Any other matters outside of voting rights?

A. Not that I recall, no.

Q. Okay. And just so -- I know that you're involved in a lot of different cases. So just so we're on the same page, so the case that you're testifying -- that you're being deposed on today, as you know, is for the Georgia NAACP plaintiffs. And so I know that, you know, you're involved in the Grant case, Alpha Phi Alpha, and Pendergrass. So if I refer to any of those cases, I'm just going to refer to them collectively as the Pendergrass cases; is that okay?

A. Yes.
Q. Okay. I don't want to create any confusion. All right. So you wrote a rebuttal report in this matter in response to Dr. Schneer's report on racially polarized voting in Georgia, right?
A. Correct.
Q. Okay. And what information were you provided to prepare for your report?
A. I was provided with Dr. Schneer's report and with the materials that he had disclosed either with the report or shortly after.
Q. Were you provided anything else?
A. No.
Q. So just so I'm clear, the only thing you reviewed to prepare your report was Dr. Schneer's report and his materials?
A. That's correct.
Q. Okay. Did you request any additional material to be provided to you?
A. No.
Q. So how much time have you spent on this matter in total?
A. I have no idea. I'm not -- so I'm -- I'm involved in responding, obviously, to the

three experts in three different cases, all related to the same matters. So I -- at this point, I would have a -- I'm not sure I could sort out what relates to this case specifically, as opposed to this set of cases. So how much of it is related specifically to the response to Dr. Schneer's report, I don't know.

Q. Okay. And just to back up, so I can make sure that I'm clear: So the materials you received was Dr. Schneer's report and the materials that he had disclosed. Were there any materials that you did not have access to that you would have -- that you needed?

A. Not that -- not essential materials. I guess I would have preferred that there was an appendix with actual results or that the disclosed data would include the actual results, as opposed to the graphics. But it wasn't necessarily -- I'll say be nice, but not necessary. And given the -- given the time, I didn't think it was worth pressing for.

Q. Okay. And you only submitted one report in this case, right?

A. That's correct.

Q. Okay. And did you draft your own

report?
A. Yes.
Q. Did you maintain drafts of your report?
A. Maintain drafts?
Q. Yes, previous drafts?
A. No. I just work in a single report.
Q. Okay. And did you consult with any other experts when drafting your report?
MR. JACOUTOT: Object to the form.
THE WITNESS: I think I probably would have talked to Professor Stevenson, who I've worked with on a variety of cases for 15 years or so. We worked together in doing the EI analysis.
I don't think that there's anything here that's related directly to anything he would have done with regard to the Schneer report. But, you know, we were discussing issues related to the reports in the -- in the other related cases. So there may have been some mention of the Schneer report, but I don't -- there wasn't any analysis related to the Schneer report.
BY MS. BERRY:
Q. So you said you spoke with Professor Stevenson when you were preparing the report in

this case?

A. I've -- so I have spoken to him throughout this process, including when I was preparing this report, because I was also preparing -- preparing other reports simultaneously. So there may have been some mention of the Schneer report, maybe just in the sense of whether I needed or felt that I was going to be doing any independent analysis. But I don't recall specifically, and -- and I don't think -- but there wasn't any independent analysis for the for this report, so...

Q. You said there was not?

A. No, there is not. It simply relies on the results provided by Dr. Schneer.

Q. Okay. And did Professor Stevenson provide you with any input for this report?

A. No, I don't believe so. No.

Q. And just so that I'm clear, who is Professor Stevenson?

A. He is a professor at Rice, comparative politics methodology specialist. Typically, if there's going to be additional EI analysis beyond what's already been provided by the plaintiffs, I typically work with him on that. So he works

under my direction and does the programming to provide that analysis.

He doesn't work on the report itself. So he had no contribution to the report that I filed here. I'm not even sure if he ever would even have seen the Schneer report. Given that he's not doing analysis for it, I wouldn't think he would have.

Q. Okay. Did you speak to anyone else while you were preparing your report, other than counsel?

A. No.

Q. Okay. Did you speak with Dr. Thomas Brunell?

A. Who?

Q. Thomas Brunell.

A. I don't believe so, no.

Q. Okay. Gina Wright?

A. No.

Q. Okay. Did you speak with anyone from the state of Georgia, including any legislators, when you were preparing this report?

A. No.

Q. And so do you intend to do any additional work or research in this case after

this deposition and prior to trial?
A. If I'm asked to by the attorneys, yes. Otherwise, no.
Q. Okay. And you reviewed your final report, correct?
A. Yes.
Q. Okay. And is there anything in your report that you would like to change or amend?
A. No.
Q. How much are you being paid to serve as an expert in this case?
A. $500 an hour.
Q. How much have you been paid to date?
A. I don't think I've been paid anything.
Q. Okay. And I want to back up just a bit. Do you know Dr. Thomas Brunell?
A. It sounds vaguely familiar. I probably -- you know, political scientist -- I think he's a political scientist. Political science, I may have run into him in the political science context.
I may have been -- he -- I may have been involved in working with him or discussing things with him in some other case at some point, but I have no specific recollection of any

discussion with him, other than that his name is familiar. I don't have a great citational memory.

Q. Okay. We'll get back to that. For now I would like you to pull up your report, which, I think, is Exhibit 2.

A. I am looking at it.

Q. Okay. And so on Page 2 of your report you list some data and sources, which are limited to the election and demographic data that Dr. Schneer provided; is that correct?

A. Yes.

Q. Okay. And so just to confirm, that's the complete list of materials you considered in forming your opinions in this case?

A. I think as I maybe indicated to Bob and certainly discussed further down in the report, I'm -- I'm sort of placing his work in the context of work on the same time period and -- and overlapping sets of elections in the reports of Dr. Palmer and Dr. Handley. But other than the material in those reports, the only thing I've taken into consideration are the Schneer report itself and my review of the data he provided.

Q. Okay. Just -- I just want -- I just want to make sure I'm clear. I know that you do

attach to your report the report that you wrote in the other cases, the Pendergrass cases, right? That's also your understanding? It's attached as appendix -- I believe it's Appendix 2 to this report.

A. I believe that's correct.

Q. Okay. In there you also have data and sources that you relied on?

A. Correct.

Q. Okay. And are those data and sources, are you -- you did not rely on those data and sources for reaching your opinions for Dr. Schneer -- in response to Dr. Schneer?

MR. JACOUTOT: Object to the form.

THE WITNESS: That's correct. And in response to Dr. Schneer, I am -- I am relying on the -- on the results of the analysis by Dr. Palmer and Dr. Handley, as presented in their report, but not on anything beyond the results they discuss in their report.

BY MS. BERRY:

Q. Okay. And so going back, again, focussing in on this case, you formed opinions in this case, correct?

A. Correct.

Q. Okay. And your opinions are limited to Gingles 2 and 3?

A. Correct.

Q. Okay. And what are your opinions in this case?

A. My opinion in this case is that the voting patterns, as in the elections Dr. Schneer has analyzed, clearly show voting that is polarized, and that voting is consistently polarized in the form of minorities voting for Democratic candidates and non-Hispanic white voters voting for Republican candidates, and that there's no indication beyond that partisan pattern that race or ethnicity of candidates is the source of that pattern of polarization.

Q. Okay. And what -- what are the bases of that opinion?

A. So, as I indicate in the report, there are -- about half of the contests he analyzes involve -- are racially contested. The other half are not. So we have a nice comparison set. If race of candidate is important, then the racially-contested elections will look different than the elections that are not racially contested.

So we have a control group, if you want to think of it that way, as an experimental group. And, again, what we see is consistent across all of those elections. We have a partisan cue. So if -- if we want evidence of the partisan cue, it's clear here. It's clear when the elections are racially contested and when they are not. But the other thing we can see is that in the elections where there is no racial cue for candidates, the results are the same as they are, essentially, for when there is a racial cue, suggesting that the partisan cue is -- performs consistently whether the election is racially contested or not.

And as Dr. Schneer indicates in his report, the point of having the racially-contested elections is that they can be helpful to indicate whether, in fact, the race of the candidates is having an effect on the behavior of voters. And here that is clearly the case that that is -- the polarization we're seeing is not related to the race of the candidate.

Q. Okay. You had -- you said quite a few things that I want to break down. So, first, is it your opinion that race has no relationship with

partisanship?

A. No.

Q. Okay. So what is your understanding of that relationship?

A. Race is involved in -- as are a number of other factors, in either descriptively or some other fashion, is related to -- to -- can be related to partisanship.

I guess I'm -- I'm not -- I'm not studying partisanship here. I don't have any data or -- I'm sorry, Dr. Schneer doesn't provide any analysis related to the partisanship of voters. That's not -- that's not the issue I'm dealing with. He provides data on the -- on the ballot partisan label of candidates.

Q. So, but you're -- you said that the voting patterns clearly show that voting is polarized in Georgia, correct?

A. Correct.

Q. Okay. And you said minority voters consistently vote for Democrats, correct?

A. Right.

Q. Okay. You said non-Hispanic white voters consistently vote Republican?

A. Correct.

Q. Correct. And so with that data, you don't find that there is -- voting is racially polarized because black voters are not voting for, consistently, black candidates, regardless of party affiliation?

MR. JACOUTOT: Object to form.

THE WITNESS: So, again, you asked earlier about partisanship, and as -- as indicated, where -- to the extent there's partisanship here, it's the partisanship of the candidates. So the candidates -- and the candidates provide a partisan signal because they're labeled as Democrats or Republicans on the ballot, and the race of the candidates itself provide a signal voters can respond to.

And I'm just -- because it happens, at least in my reading of the -- this discussion, Dr. Schneer agrees with me that -- that one way of looking at the effect of race on the behavior of voters is to look at racially-contested elections and contrast them. In this case he's contrasting them with non-racially-contested elections, and they show what they show.

I -- but I don't know what the source of that is. But I'm just saying it's his argument

that these are -- are helpful in understanding the effect of -- of the race of the candidate on the behavior of the voters, and his analysis doesn't show that effect.

BY MS. BERRY:

Q. But he's not -- Dr. Schneer is not saying that that's the exclusive way; he's just saying, my understanding -- obviously, you can let me know if you disagree, but if you have an election where you have a non-minority candidate running against a minority candidate, and, you know, that is one way where you can see where race might matter, but it doesn't -- he doesn't indicate that that is the only way and that's the exclusive way, right?

MR. JACOUTOT: Object to form.

THE WITNESS: Again, maybe -- maybe I can make my view of that clear. You're correct; he does not say that's the only way to show it, but it is the only analysis he provides. So this is the only analysis he provides to support the notion that voting in Georgia is polarized on account of race. And based on his discussion, as he says -- you're quite correct, he says this is one way we might see it, and then we don't see it.

And that doesn't mean that there isn't other way we might see it.

But my point is simply this is the only evidence he's provided. So you can speculate about what other things that might be involved, but if you're going to set aside what this shows, which does not show that -- as far as I can tell, there's no empirical evidence related to racially polarized voting in this report at all.

BY MS. BERRY:

Q. So what analysis did you undertake -- well, let me -- let's back up. So you received all of Dr. Schneer's sources and materials, right, that he used?

A. I received the input files for election results and for demographics. I don't know if that's all of his -- the materials he used, but that's -- that's what I received, election files that produced his election analysis.

Q. So were you prohibited in any way from doing an in- -- because you indicated earlier you did not do an independent analysis. Were you prohibited in any way from doing an independent analysis in this case?

MR. JACOUTOT: Object to the form.

THE WITNESS: No. I don't think -- I would certainly have done one if I thought one was required, but, again, I don't think one was required, because I believe he did a -- based on the analysis and the fact that this same analysis has been done by multiple other experts and my review of the datasets he used, I think this -- the analysis he did was, you know, and the substantive results of that analysis looked to me to be valid.

Certainly I'm not -- so I'm not -- I -- I believe that if I reproduced his analysis, I would get essentially the same result since that's the result I've gotten in the past in doing this kind of analysis. It's the result the other experts get. When you've got three competent experts looking at the same thing, getting the same result, I think that would be duplicative to do anything with regard to reproducing or replicating his analysis.

And as far as going beyond his analysis, you know, I'm responding to his report, not writing -- I'm not writing my report as a sort of independent treatise on this. I'm just

1 responding to what Dr. Schneer provided.
2 I think the evidentiary basis, the
3 empirical analysis is perfectly adequate. I'm
4 fine with reaching conclusions based on that. So
5 the court doesn't need to decide if they like my
6 technique or Dr. Schneer's technique. I'm
7 accepting his technique, his data, and his
8 analysis.
9 BY MS. BERRY:
10 Q. Well, what exactly is your technique
11 from determining that voting isn't racially
12 polarized in Georgia, other than looking at data
13 saying these people -- this group voted for
14 Democrat; this people -- this group voted for
15 Republican, so it's based on partisanship?
16 A. First of all, I've never said -- you
17 keep bringing that up. I've never said that it's
18 based on partisanship. There's no analysis here
19 on partisanship.
20 And, secondly, I'm not reaching that
21 conclusion. It's not my -- I don't need to reach
22 that conclusion. I don't have the burden of proof
23 here.
24 My point is Dr. Schneer's report
25 clearly establishes that there is partisan

correlation. It also clearly establishes that what he says are critical, which is to look at the independent effect of the race of the candidate, shows that there is no effect there.

So my only point is to say that's the only evidence Dr. Schneer provides. I think it's a correct and appropriate analysis of those elections, and it does not establish that there is racially polarized voting here, except in the sense that the two groups are voting differently with regard to the partisanship of the candidates.

So I am not proving that there is no effect beyond partisanship. I'm just trying to make what I think is -- to -- to any observer would be immediately clear, which is Dr. Schneer provides no evidence that there is anything beyond partisanship, and everything in his analysis is entirely compatible with an argument that the party of the candidates is what matters, and nothing in his analysis suggests empirical demonstration that the race of the candidates matter.

So it's the inadequacy of his demonstration that I'm dealing with. I'm responsive to his report. I am not arguing or

providing evidence that partisanship is the sole explanation or anything about some interaction between party and race. I'm just commenting on what Dr. Schneer has provided, demonstrated, and -- and what that means in terms of the frame he sets up, which is that if we want to understand the effect of race, then having biracial elections will be helpful and will indicate that, and his analysis answers that question. These elections don't know that.

So I'm just simply saying he hasn't demonstrated that there is racially polarized voting. I -- I don't need to do some additional analysis to demonstrate that, because his own analysis demonstrates that very clearly.

Q. What is your understanding of Gingles 2?

A. My understanding of Gingles 2 is that the Gingles threshold test requires that the minority group in the case can -- or the experts can show or analysis can show that the group is politically cohesive, and typically that political cohesion is shown through election analysis, although not exclusively.

So political cohesion on the part of

the group that is shown to be a potential majority under the Gingles 1 threshold.

Q. Okay. And what is your understanding of political cohesion?

A. Political cohesion in election sense can mean voting together at some substantial level. The court has not offered a bright line for that. Sometimes the court says surely it has to be at least 60 percent. Other courts have said 80 percent.

There's no real standard there, but something -- some level of voting together could be an indication of political cohesion. Beyond that, co-endorsing candidates, participation in political events, funding candidates, a variety of other things can be involved in political cohesion.

Q. Okay. And you agree that minority voters in Georgia consistently vote for Democrats?

A. Yes.

Q. Okay. And non-Hispanic vote- -- non-Hispianic white voters vote for Republican?

A. Correct.

Q. Okay. And is that political cohesion?

A. It is. It's political cohesion on

account of party, is what's established here. So, yes, I think it's political cohesion.

Q. Okay. Fair. But when you told -- when you described Gingles 2, you didn't say anything on account of party or account of race. You said it means that they vote together, right?

A. Yes. So certainly that -- you need to see them voting together. And then the question of whether that voting together, does that need to be something beyond just partisanship? I don't know. That's a legal -- this goes back to LULAC v. Clements.

And the court clearly says that, you know, if -- if -- if the defendant says this looks like partisanship, then the plaintiffs will have to show that it's something more than that, that mere partisanship can't be sufficient to meet the -- to meet this, but what -- meet what, right? Meet the Gingles test or meet the totality of circumstances or both or neither? That's a legal -- that's a legal matter.

All I'm commenting on is to the extent that that matters to the court, either if the Gingles phase or if the totality phase, there is no evidence here of anything other than political

cohesion on the basis of the party of the candidates.

Q. Okay. And just -- just so that I'm clear, for Gingles 2 only, it's just required that there to be political cohesion, and Dr. Schneer shows, and you agree, that there is political cohesion for minority and majority voters in Georgia?

MR. JACOUTOT: Object to the form. Calls for legal conclusion. And object to the form. Compound question.

THE WITNESS: Yes, I would say, again, there's -- as you phrased the earlier question, the analysis does show that -- that minority voters are voting for the Democrat. The -- the question then becomes is that sufficient to meet this cohesion, the Gingles 2 cohesion test. And there I think the -- the question is what exactly it's implying.

So, for example, when Dr. Schneer says that, in assessing the Gingles factors, it's particularly useful to use -- or that biracial or racially-contested elections are particularly probative, I would agree with that. The court has said that repeatedly, that those elections also

are particularly probative. So probative of what? Why are they particularly probative? They are, in fact, no more probative of political cohesion than are non-racially-contested elections. They are more probative about whether that cohesion among minority voters reflects, in fact, a cohesive preference for representation with regard to the race of candidate.

So it -- it may be there is no inquiry into whether race is a part of the cohesion in Gingles 2, but if that's the case, then I -- I guess I'm mystified about why the -- the racially contested-elections would be -- I mean, as Dr. Schneer expresses this, the -- the point of them -- what he says, and I think he's right, the reason they're generally regarded as probative or more probative is because they provide an opportunity to see whether minority voters vote cohesively for minority candidates. That suggests a particular source of cohesion. That source of cohesion hasn't been demonstrated here. What's been demonstrated here is that minority voters vote for the Democratic candidate.

So, again, the courts can figure that out, but I don't think it's -- in my own view, I

think it would be useful if the court did make a clear decision there. I think there are arguments for doing that of totality and arguments for doing it at the Gingles level. But the language of the court is used, and the language Dr. Schneer uses here certainly doesn't suggest that -- that sticking right here, it's -- it's clear that Dr. Schneer himself doesn't believe that the race of candidates and the tendency of voters -- minority voters to support minority candidates is irrelevant to the Gingles 2 decision.

And so I will -- I'm comfortable agreeing with Dr. Schneer that this is important in assessing Gingles 2.

BY MS. BERRY:

Q. Okay. And just so I'm clear, you don't -- you're not contesting Dr. Schneer's methodology, are you?

A. No, I'm not.

Q. Okay. You're not contesting the data that he relied on?

A. No, I'm not.

Q. Okay. So you just have -- your -- your issue is his results?

A. I'm not contesting his results.

Q. Okay. What are you contesting?
A. All I'm pointing out is that, based on his own standard, his results, which he produced and which I accept, demonstrate clearly that voters are -- minority voters are cohesive in supporting Democrat candidates, and non-Hispanic white voters are cohesive in supporting Republican candidates, and that the -- we then look at -- specifically at the issue of the additional probative value of the racially-contested elections. They also demonstrate that the race of the -- and ethnicity of the candidates does not produce this, the polarized result we're seeing. So they -- they demonstrate quite clearly that the polarization is partisan. And that's -- that's all I'm saying. That's what he's demonstrated.
So what I disagree with is not his results; it is that -- that he goes on to suggest that those results support something that they, in fact, do not support.
Q. So what would you need to see, in your opinion, for there to be racially polarized voting?
MR. JACOUTOT: Object to form.
THE WITNESS: I would need to see some

evidence that there is an impact of race on the behavior of voters beyond the -- the evidence presented here, which is clearly evidence of the effect of partisanship on the behavior of voters.

And, again, I'm -- all I'm doing is -- is -- is raising that issue because the issue has been raised in the courts, again, going all the way back, you know, decades ago, in the 5th Circuit and in other circuits.

So -- and -- and experts often indicate, at some point in their report or in their conclusion that they have demonstrated that race is the dominant factor in the elections or race is polarizing elections, and I think that's a -- whether it's a legal matter or just simply a matter of -- of the court asserting -- eventually asserting that they have found something to be the case, I think it's important not to have courts erroneously asserting that, for example, Dr. Schneer has demonstrated that voters in Georgia vote diametrically different on the basis of race, when the only evidence he's provided is that they vote diametrically different on the basis of the party of the candidates on the ballot.

Those are two very -- right, one of

those would explain -- well, I'll leave that. I'll leave that aside. But I find the idea that -- that -- I think suggesting that voting is racially polarized, as opposed to polarized on the basis of party, is -- is important. It's a critical foundation of the purpose and the utility and the success of the Voting Rights Act. And asserting that that's true without evidence that it's true, I think is -- is inappropriate, and I think is -- I just find it to be something that ought not to be charged lightly when you're talking about the -- with this case, the voters of an entire state.

BY MS. BERRY:

Q. So you mentioned evidence of the impact of race. What kind of impact would you need to see for there to be racially polarized voting?

MR. JACOUTOT: Objection.

THE WITNESS: If the evidence -- if the evidence you provide shows that the party of the candidate matters independently of the race of the candidate and that the race of the candidate does not matter independent of the party of the candidate, then you've provided no evidence

that -- of a racial effect at all.

So it's not a question of what evidence I wouldn't want to see. It's a -- it's a question of what -- of what evidence the plaintiffs -- if the plaintiffs really believe that voting in Georgia is racially polarized, then I don't think it would be very hard to find evidence of it. So they haven't presented any evidence of it all.

And all I'm saying is this is a serious issue, and on the surface there seems to be a lot of sort of circumstantial evidence that suggests that maybe the race of the candidates and the -- and the -- and the voters' response to that race is really not sort of absolutely critical to driving elections in -- in Georgia.

So if you're going to establish this, you need to establish it. It's not -- it's not my job to establish it, but it is my job to comment on whether you've established it or not. That's -- that's my view of this.

BY MS. BERRY:

Q. Well, do you disagree that minority voters -- well, let me ask this way: Do you disagree that voters identify with particular

parties because of their race?
MR. JACOUTOT: Object to the form.
THE WITNESS: They may. I don't know. This is -- there's no inquiry here into -- by anybody about why people identify with particular parties, and I'm not talking about party identification. So whether there is an impact or not or what that impact might be is an interesting question, but it's not addressed here. It's not been addressed here, and it's not included in any of the arguments that Dr. Schneer is making.
BY MS. BERRY:
Q. So if you don't know, then how -- how do you know there is not a relationship between minority voters consistently voting for Democrats in Georgia?
MR. JACOUTOT: Object to the form.
THE WITNESS: How do I know that that isn't the case?
BY MS. BERRY:
Q. Well, you -- I believe you said you don't know, when I asked the question -- and I don't remember exactly how I asked it. But I asked you if you disagree that voters identify with certain parties because of their -- based on

their race.

For example, do you disagree with the fact that black voters will vote for a Democrat because black voters identify with the Democratic party, that's generally how they tend to vote?

MR. JACOUTOT: Object to form.

THE WITNESS: Again, I -- I suspect that -- that black voters that identify with the Democratic party tend to vote for Democrats. I think white voters who identify with the Democratic party tend to vote for Democrats.

You know, party polarization is a powerful thing, and certainly that includes identifiers. Although, it also includes non-identifiers. That's -- those are just things I think. And in terms of what is possible here, is it possible that that's what's driving this and in what sense that would matter? I don't know. It could be driven by climate or aliens, or I don't know.

It's -- I'm not trying to comprehensively demonstrate all of the things that this isn't. All I'm trying to comment on is Dr. Schneer's report provides no evidence that that's true. What you've just said may be true,

but a lot of things may be true. It may even be likely to be true, but Dr. Schneer's report does not address them, provide any evidence of them, and just hand-waving is -- I don't believe is sufficient for something as important as setting aside the ability of the state of Georgia to -- to create its own election districts.

BY MS. BERRY:

Q. In forming your opinions, have you considered the history of the leaning in Georgia?

MR. JACOUTOT: Object to form. Outside the scope of the report.

THE WITNESS: My opinion relates to the evidence provided by Dr. Schneer. Dr. Schneer, as far as I can tell, is not presenting evidence about the history of voting in Georgia, and I'm not responding to it.

BY MS. BERRY:

Q. Are you familiar with the history of voting in Georgia?

A. I've lived in Georgia. I have some familiarity with Georgia politics. But I am not commenting at all on anything in totality of circumstance beyond voting polarization. And certainly in regard to Dr. Schneer's report,

that's not an issue. So it has no bearing on my report, and it has no bearing on my opinion in regard to the evidence provided by Dr. Schneer.

Q. Did you consider the history of racial discrimination against black and Hispanic citizens in Georgia?

MR. JACOUTOT: Objection. Asked and answered.

THE WITNESS: In evaluating Dr. Schneer's report, which doesn't discuss that issue, I did not --

BY MS. BERRY:

Q. Well, in reaching your -- in reaching your opinions?

A. My opinion is that Dr. Schneer has not provided any evidence of racially polarized voting in Georgia beyond the partisan pattern. I didn't reach that opinion on the basis of my belief about anything about the history of Georgia.

It's -- I'm commenting on Dr. Schneer's opinion. And I don't need to include evidence or my own thinking about the history of racial discrimination in Georgia. I don't see that referenced in Dr. Schneer's opinion, and it has no impact one way or another

on whether his analysis supports the conclusion he reaches.

Q. Well, you seem to be separating partisanship from race and indicating because there is -- because minority voters consistently vote for Democrats, then there is no evidence of racially polarized voting.

A. I don't believe that's correct.

Q. Okay. So what did I state -- state -- say that was incorrect?

A. You're -- you're continually suggesting that I'm asserting that there is no -- that -- that voting is not racially polarized in Georgia. It's not my job to prove that racially -- that voting is not racially polarized in Georgia. That may or may not be something that can be proven. But it is the plaintiffs' job to prove that it is racially polarized. That's that -- that's a requirement for the Voting Rights Act to be applied and for the federal courts to overturn the election system in Georgia.

So that's a -- it's very difficult to prove a negative, and if you can't prove a positive, then you -- you can't sustain this kind of a case. The Voting Rights Act clearly requires

that you provide evidence of racially polarized voting.

Q. So --

A. You're asking for me to provide evidence that it's not racially polarized. The evidence that it's not racially polarized is that Dr. Schneer's analysis clearly shows that there's no effect on the race of the candidate. To the extent we have any evidence, it's from Dr. Schneer, and it contradicts what you just said.

If there's some other way in which that somehow that turns out to be evidence of racially polarized voting, then I suggest Dr. Schneer get to work and produce it.

Q. Okay. So let's put aside who -- who put forth the evidence. I'm trying to understand what your conclusion -- do you -- so do you conclude, or is it your opinion that there is no racially polarized voting in Georgia?

A. I have not been asked to write a report in which I analyze that empirically.

Q. Okay. So no?

A. I have provided the court with empirical analysis, and to the extent that relying

-- as I said, you're relying on Dr. Schneer's report, there is no evidence in Dr. Schneer's report of any kind of polarization in Georgia beyond polarization based on the partisan affiliation of the candidates. That's the only evidence that's been presented here.

To the extent that the absence of evidence is suggestive of something, that's -- whatever the -- whatever this pathway to this effect is, the -- the ultimate result is that when voters go to the polls in Georgia, that many of those voters are facing two pieces, among other pieces of information, but two important pieces of information that are available to voters are the race of the candidates and the party of the candidates. And based on Dr. Schneer's analysis, voters respond to the party of the candidates and -- and do not respond to the race of the candidates. And so that's what's been demonstrated in Dr. Schneer's report.

If there is some other more complicated pathway, it hasn't been laid out. It hasn't been demonstrated empirically. So I'm not offering the court an opinion, a non-expert or any other sort of opinion, about the -- the complexity

of voting decisions in Georgia. I'm just saying that the evidence -- the empirical evidence provided to the court, clearly supports the -- the -- the -- you know, the voting pattern that candidates -- Democratic candidates and Democratic voters are equally situated, similarly situated with regard to their voting power and their ability to win or lose elections in ways independent of the race or ethnicity of the candidates.

Q. So is the answer to my question no?

A. The answer to your question is I'm -- your question has to do with whether I have some -- some theory about something or some --

Q. No, not your -- not your theory. I'm trying to understand is that your opinion that there is no -- or maybe -- no, I asked so you did not conclude that there was no racially polarized voting in Georgia?

A. Again, my conclusion is that Dr. Schneer, Dr. Palmer, and Dr. Handley have provided no evidence of racially polarized voting in Georgia.

Q. And so the answer to my question is no?

A. I would say -- so if I -- to the extent I have a preliminary opinion, based on the evidence I've seen in the state of Georgia, based on that evidence, the evidence suggests that there is not racially polarized voting in Georgia.

Proving it, demonstrating it can be -- is a much larger question. But I have seen extensive evidence now from multiple experts, all of them expert qualified, and all of their evidence suggests that there is not racially polarized voting in Georgia.

Q. And in your view, racially polarized voting only exists when voters base -- vote based on the race of the candidate?

MR. JACOUTOT: Object to the form.

THE WITNESS: That's not my opinion.

BY MS. BERRY:

Q. So if voting cohesively for Democrats or Republicans -- Republicans is not racially polarized voting, I'm not understanding what you're understanding racially polarized voting is.

A. All I'm saying is that -- that there are lots of things that contribute to voting behavior. Courts, again, going back to the LULAC v. Clements, have said that if this is just

partisanship, then -- if it is mere partisanship, then it doesn't rise to the level of satisfying the requirements for the Voting Rights Act, and so that -- and that suggests that -- where in the pattern suggests that it's mere partisanship, that something else needs to be demonstrated to show that it's beyond mere partisanship.

The Voting Rights Act doesn't protect the -- the voting power of Democrats. It protects the voting power of minorities. And so that's -- my point is just what is it that's been demonstrated here, and what's been demonstrated here is -- is -- is so far, at least nothing beyond mere partisanship.

Q. And your basis for that is because minority voters vote cohesively in Georgia for Democrats?

MR. JACOUTOT: Object to form.

THE WITNESS: No, I don't think -- I don't think that's fair. There's, obviously, a great deal that goes into this that I discussed at great length. I don't think that's a fair summary of that.

BY MS. BERRY:

Q. Well, you said that you agreed --

earlier you testified that you agreed with Dr. Schneer that minorities in Georgia vote cohesively for Democrats and non-Hispanic white voters vote cohesively for Republicans.

And you said the only data that -- not data, but you said the results -- results of Dr. Schneer's analysis just shows that people vote, you know, based on partisanship, and so that -- you said that's the only data that he -- he was able to provide you.

So what else are you considering when you -- when you say -- when you discount the fact that minority voters consistently vote for Democrats in the south, that that's not an example of racially polarized voting?

MR. JACOUTOT: Object to form.

THE WITNESS: It's not the only evidence he provides. It's -- it's the only -- it's the only evidence that -- it's the only result that he can -- that is supported by his data, but it's not the only evidence he provides.

Half of the -- he has 21 racially-contested elections and 20 or non-racially-contested elections. He provides very clear evidence that there is not an effect on

the race of the candidate, very clear evidence across all 41 elections, consistent, precise, highly-polarized voting, and no indication of any effect at all when he contrasts racially-contested and non-racially-contested elections. He's examined that issue. He finds no support for the proposition that this voting behavior is in any way a consequence of voting on account of race. And so he has established simply that there is partisan voting.

So if you're asking me if I think just establishing partisan voting is enough, a judge will have to figure that out, right. Brennan thought that was enough, but I don't think that most judges currently think that. I haven't been involved in a case where judges think -- well, I have been involved in a case where judges think that's enough, but I -- I simply disagree. I just don't believe it is enough. But ultimately, the court will have to decide that.

My only issue is if you're asserting that Dr. Schneer has provided evidence for the court that there is voting on account of race, polarization on account of race in Georgia, he's provided evidence, very clear evidence, of exactly

the opposite, okay. He didn't just analyze the racially polarized elections and say, okay, black voters are voting for Democrats; non-Hispanic whites are voting for Republicans, and since the Democratic candidates are all black that shows racially polarized.

He -- he -- he has the elections in which that's not the case and those candidates are white. And in roughly half the cases, black voters are voting for white Democrats. In roughly half the cases, they're voting for black Democrats. And they're equally cohesive. And more important, in my view, the -- the tendency of white voters to vote Republican, white voters vote Republican when the Democratic candidate is white, and they vote Republican when the Democratic candidate is black.

And so again, neither the cohesion of the black voters or the bloc voting by white voters seems to be affected by the race of candidates. And if, in fact, that's -- that's an issue that is pervasive or sufficient to meet the Voting Rights Act, there -- the evidence of it must be somewhere else, because it isn't in the analysis provided by Dr. Schneer.

BY MS. BERRY:

Q. So what I'm trying to understand is that you -- you keep mentioning the race of the candidate. So the race of the candidate is what determines if there's racially polarized voting?

MR. JACOUTOT: Objection.

THE WITNESS: No. Biracially con- -- bi- -- or racially contested or biracial elections are particularly probative for precisely the reason Dr. Schneer states. I'll quote it back to you. Dr. Schneer says: "They're par-" -- "They're particularly probative because they can provide evidence of whether voters are responding to the issue on the basis of race." He's right about that. And they don't know that at all.

That's not -- that's -- that's Dr. Schneer's -- and I'll say this: I think his -- his reasoning there is absolutely correct. Why else would the courts say these elections are particularly probative? Why are they particularly probative if you're correct and it makes absolutely no difference what the race of the candidate is?

They're probative because they can show you whether the race of the candidate makes

absolutely no difference and, therefore, tell you whether the -- the -- the polarization that you think you've demonstrated is, in fact, related to the race of the candidates and, therefore, to some racial dimension.

And -- and what that shows here is that that doesn't appear to be the case. It appears just to be party polarization. And then if you want to make an argument that party polarization, partisan voting in and of itself in Georgia today is fundamentally racist, that's -- that is a serious charge and a tall order, and go to it. But Dr. Schneer provides absolutely no evidence of that. Nor is it suggested he needs to. He just says I'm providing the most probative elections because they will you show the impact of race, and they show no impact of race.

BY MS. BERRY:

Q. Have you ever found racially polarized voting in any state you were hired to be an expert?

A. Yes.

Q. Which states were they?

A. I don't know if it's -- if that would be true of a state -- at the level of state, but

I've found that in working for various -- I've found it before in working for entities.

Q. Working for who, I'm sorry?

A. Working for government entities.

Q. Okay. Which government entities? Like, which -- which government entities? Where were they located?

A. I suspect mostly in Texas, because most of the local analysis I do is for school districts and cities in Texas. So it would have been a school district or a city in Texas.

I would have been -- that would have been -- I would have been a consulting, not a testifying, expert. And I would have been asked to examine an issue, and I would have -- and I reported back to the lawyers that -- that I don't think they'd have a good case based on the -- on the voting patterns and the -- those cases I -- I think in all of those cases, I think they -- those were either settled, or certainly I didn't testify. I think they were all settled.

MS. BERRY: Okay. I think we could break -- I'm sorry, give me one second. I'm sorry. So we can break for lunch. We can go off the record.

VIDEOGRAPHER: Off the video record at 11:03 a.m.

(A lunch recess was taken.)

VIDEOGRAPHER: Back on the record at 11:38 a.m.

BY MS. BERRY:

Q. Hi, Dr. Alford.

A. Hi.

Q. Okay. Just so I'm clear, your opinions in this case are limited to you responding to Dr. Schneer, and you don't draw any conclusions outside of that?

A. My conclusions are -- yes, reflect on the evidence in Dr. Schneer's report and nothing with regard to -- to this specific case beyond that.

Q. Okay. And so, you know, earlier we were talking about whether you -- you had concluded that there was racially polarized voting in Georgia. So setting aside whose burden it is and what Dr. Schneer did, you did not conclude, to a degree of scientific certainty, that racially polarized voting exists in Georgia, correct?

A. Correct.

Q. Okay. And so you agree that racially

polarized voting is when a majority group and a minority -- minority group vote differently?

A. That's not the entire definition, but it's -- that would certainly be a part of the definition.

Q. Okay. And you understand there are methods to determining whether racially polarized voting exists?

A. Yes.

Q. Okay. And one of those would be a scatter -- scatter plot analysis?

A. Could be.

Q. Okay. And you didn't undertake a scatter plot analysis in this case?

A. No.

Q. Okay. And another is an ecological regression analysis?

A. Correct.

Q. Okay. And you did not undertake an ecological regression analysis in this case?

A. I'm certainly relying on an ecological inference analysis of this case, but I'm relying on Dr. Schneer's analysis.

Q. Okay. And another one is a homogenous precinct analysis?

A. I don't think there's any homogenous precinct analysis in Dr. Schneer's report, and I certainly didn't do...

Q. Okay. And you agree that Dr. Schneer did perform an ecological inference analysis in this case?

A. Yes.

Q. Okay. And your position is that Dr. Schneer has shown partisan polarization but not racial polarization?

A. Again, he's -- the polarization that he's provided evidence of is polarization with regard to the party of candidates, not polarization with regard to the race of candidates.

And again, what that means in a legal sense is -- that's up to the courts one way or the other. Some -- as I understand at least, some judges -- our judges all have very different opinions about this going all the way back to the original Gingles decision.

So what the evidence -- what evidence Dr. Schneer has provided and what it establishes I think is clear, and then the legal significance of it I think is unclear.

Q. Okay. Has any court in Georgia ever endorsed your partisan polarization theory?

MR. JACOUTOT: Objection.

THE WITNESS: I have no idea, but I would say it's -- I don't think it's -- when you say it's my partisan polarization theory, I don't think it's my theory. I don't think it's a theory. I'm just -- this is -- this is what I've said is what -- just in simple language, what Dr. Schneer has demonstrated here and what Dr. Palmer and Dr. Handley have demonstrated here.

It's not a theory. It's just, right, what's been demonstrated, and beyond that -- right. So you can't say -- for example, you could not conclude based on any of this analysis that black voters typically vote for black candidates and white voters typically vote for white candidates. That's just not true. So it's not a theory. It's just a statement of what the facts are, and they're -- they're in evidence here.

(Exhibit 5, Pendergrass, et al. v. Raffensperger, et al., marked for identification.)

BY MS. BERRY:

Q. Okay. If you go to Exhibit Share, I have uploaded a new exhibit, which should be an

order from Judge Jones in the preliminary injunction here in the Pendergrass case, where I believe you testified. And let me know when you see it. It may take a minute to load.

A. It's spinning. It stopped spinning. We're there.

Q. Oh, okay.

A. Yeah, that's a good thing. I didn't mean to suggest that it was...

Q. I thought we were in trouble. Okay.

A. No. I'm looking at what looks to be Coakley Pendergrass, et cetera, et cetera, et cetera.

Q. Okay. And you recall testifying as an expert during this preliminary injunction hearing?

A. Yes.

Q. Okay. So I wanted to turn your attention to Page 8 of the PDF. And if you're there, it should say: "Plaintiffs have shown that voting in Georgia is racially polarized."

And let me know when you see it.

A. Yes, Heading B.

Q. Okay. And the court states under B: "Defendants questioned the findings of Dr. Maxwell Palmer, who clearly demonstrated that black

Georgians are politically cohesive, that white Georgians engage in bloc voting to defeat black-preferred candidates, and that voting in Georgia is racially polarized. By suggesting that partisanship explains the polarization better than race."

Do you see that?

A. Yes.

Q. Okay. And move -- going on, it says: Defendants once again tried to move the goalpost. The 11th Circuit has never held that Section 2 requires a determination that voters are motivated by race when evaluating the existence of racially polarized voting."

Do you see that?

A. Yes.

Q. "In fact, it has indicated the opposite, reversing a district court's insistence that a Section 2 plaintiff indicate that race was an overriding or primary consideration in the election of a candidate."

Do you see that?

A. Yes.

Q. Do you disagree with Judge Jones's opinion?

A. Whether it's application of law or the opinion of what's the law in the 11th Circuit, I have no idea whether it's accurate.

Q. Well, in determining what is considered for Section 2 when considering racially polarized voting?

A. She's presenting a typical legal argument, suggesting that in the 11th Circuit, based on the cases she cited, this is not a consideration for polarization.

I don't know if that's -- if she's correct in that argument or incorrect. I don't know anything about what she's citing. But she's -- again, I think that reflects her -- the judge's opinion about what the law is in the 11th Circuit.

I'm not a lawyer. I'm not a federal judge. But I say both because I'm not a federal judge or a lawyer, I can't tell you whether she's right in that opinion, but that's the opinion as expressed in this discussion. It's a discussion about what the -- about what the standard is in the 11th Circuit. And apparently, she -- that's -- this is establishing a position based on a legal argument. If it's correct or not, in --

in the 11th Circuit or beyond, I don't know.

Q. Okay. And the opinions that you drew in this case are similar to the one -- in that case, the Pendergrass case, are similar to the ones that you draw in this case?

A. Yes.

Q. Okay. We can put that away.

So what's your understanding of what Congress intended when Congress included racially polarized voting in Senate Factor 2? What -- what is -- what is your understanding of what it meant?

MR. JACOUTOT: Object to form.

THE WITNESS: I'm not an expert on legislative intent. In fact, I strongly suspect there is not such a thing as an expert on legislative intent. I'm not even sure I agree that legislative intent exists in the sense that it's often used colloquially.

So I don't know what the intent of Congress was. Again, I'm not sure there is such a thing as an intent of Congress. It's a collegial and collective body, maybe not as collegial as collective. And the idea that it has -- it means something when you put together a majority coalition in favor of something, I guess I -- it's

an interesting area -- creative area of inquiry, but it's not one that I deal with either as a scholarly matter or otherwise.

BY MS. BERRY:

Q. Okay. If I'm not mistaken, earlier in your deposition I think you mentioned LULAC versus Clements?

A. Yes.

Q. Is that accurate?

Okay. And is it your understanding that that case controls here?

MR. JACOUTOT: I'm going to object to form. It just basically requires a legal conclusion. And Dr. Alford can certainly testify as to -- in his personal beliefs or knowledge. But, you know, these are legal questions, I think, that are being posed to him.

MS. BERRY: Well, I'll -- I'll try to rephrase.

BY MS. BERRY:

Q. So when you were instructed to draft your opinions in this case, were you instructed that LULAC -- LULAC versus Clements controls in this case?

A. No.

Q. Okay. So what is your understanding of Gingles 3?

A. So I've established Gingles 1, that there is a sufficient compact population to create a natural political community. And then Gingles 2 is that that community votes and acts politically with a level of -- a yet to be determined level of cohesion, probably minimally 60 percent, but maybe something much higher than that.

The other question is whether, with those two factors in place, whether the -- given the structure of elections, the -- the majority can -- can and does effectively block the preference of minority voters through cohesion voting on the part of the majority voters.

Q. Okay. And you said block the preference of a minority voter. So the preferred candidate -- well, the candidate just has to be a preferred candidate; it doesn't have -- the candidate doesn't have to be a black candidate, if we're talking about black voters?

MR. JACOUTOT: Objection.

THE WITNESS: Correct.

BY MS. BERRY:

Q. Great. Okay. And so if you recall in

Dr. Schneer's report, he talks about the 2018 gubernatorial election. Do you recall reading that?

A. I do not specifically recall that.

Q. That's fine. I think we already marked his -- let's see. Maybe we have not. We have not.

MS. BERRY: Okay. Give me a second. I'll mark it, and this should show up in a second.

(Exhibit 6, Benjamin Schneer Expert Report, marked for identification.)

BY MS. BERRY:

Q. I just introduced what's marked as Exhibit 6, which is the expert report for Dr. Benjamin Schneer. It's 92 pages. So it may take a while to load, but let me know when you see it.

A. All right. It has appeared.

Q. I want to draw your attention to Paragraph 26, which is Page 16. And you can take a moment to read it, if you like.

(The witness reviews the document, as requested.)

THE WITNESS: Yes, I read it.

BY MS. BERRY:

Q. Okay. And so you see where he says that 99 percent of black voters supported Stacey Abrams as a minority candidate?

A. Yes.

Q. Okay. And then if we -- if you continue down to -- towards the bottom, and he's referring to the black voter support for minority candidates running against non-minority candidates, and he -- he mentions Barack Obama in 2012, where the minority support was 98 percent. Do you see that?

A. Correct. Yes.

Q. And then Connie Stokes in 2014, minority support was 98 percent?

A. Correct.

Q. And Doreen Carter in 2014, minority support was 98 percent?

A. Correct.

Q. And Otha Thornton in 2018, minority support was 99 percent?

A. Correct.

Q. And Raph Warnock in 2021, minority report -- support was 99 percent?

A. Correct.

MR. JACOUTOT: I'll just object. I

1 don't think that says minority support is 99
2 percent. It says black support is 99 percent.
3 All of the percentages on all of those are
4 reflective of black support, not minority.
5 MS. BERRY: Fair. Sorry. I won't
6 re-read all of that. But yes, black support.
7 BY MS. BERRY:
8 Q. So what percentage these are -- these
9 are -- we see 98 and 99 percent. So what would
10 meet the percentage for there to be racially
11 polarized voting when you see that majority --
12 overwhelming majority of black voters are
13 supporting particular candidates?
14 A. Yes. This is -- this shows clear --
15 clearly cohesive support on the part of black
16 voters. And again, my point is just that you can
17 take out the -- the same minority candidates is --
18 is superfluous here in terms of the point we make.
19 You can replace all of these names with white
20 Democratic candidates and you'll have the same
21 highly cohesive voting.
22 So, yes, voting is -- black voters
23 vote highly cohesive fashion for Democratic
24 candidates, including Democratic candidates that
25 happen to be black.

Q. Okay. So are you familiar with Chairman John Kennedy?

A. No.

Q. Are you aware he testified in his -- well, did -- I think -- so earlier you said you have not received any deposition testimony or anything like that in this case; the only document you received was Dr. Schneer's report?

A. That's correct.

MS. BERRY: Give me one moment. I'm going to add another exhibit.

(Exhibit 7, 1/20/23 John Kennedy Deposition Transcript re: Georgia State Conference of NAACP, et al., v. State of Georgia, et al., marked for identification.)

BY MS. BERRY:

Q. So John Kennedy was the chair of the Reapportionment Committee in the Senate, and he testified in this case. And I just marked a new exhibit, which is Exhibit 7, which is the deposition of John Kennedy.

A. Let me get back to -- all right, I'm waiting for it to load.

Q. Are you aware that he testified that racially polarized voting exists in Georgia?

A. I'm unaware of anything in his testimony.

Q. Would it surprise you to know that he stated that racially polarized voting exists in Georgia?

A. No.

Q. Why?

A. As I've said -- I think, as we have established, there are -- people can mean a lot of different things by that. Again, if it means simply that blacks and whites vote for different parties, then it's -- I don't know if he means it in -- or -- or provides evidence for it in a legal sense, whatever, but if he's just -- if he's just saying racially polarized voting as in blacks and whites vote differently in elections, I think we all agree that that's true. So it's both just a term and a term of art. And -- and what we're talking about is what we have evidence of here in the Schneer report.

And so -- I mean, Schneer says that, and I think I know what he means by that. In fact, I don't think it's a conclusion. I think it's just a -- it's a term that can refer to -- as I think Brennan makes fairly clear, can refer to a

number of different things, so...

I guess I would what to know what Mr. Kenney means by that. I mean, if that's clear from his testimony, then I would be happy to read it.

Q. Sure. Let's -- I'll draw your attention. You can start with the beginning of 199. And it goes: Fifth, we laid out our guidelines on -- on August, the 30th, when most of the members came and met here that would govern the drawing of the maps. Those guidelines focussed on the constitutional requirements of equal protection, compliance with the Voting Rights Act, including a recognition of racially polarized voting, and the importance of jurisdictional boundaries prioritizing communities of interest, compactness, and contiguity."

If you continue to Page 211, he's asked: "Okay. Now, going back to that video that was played, you stated that there is racially -- you recognize racially polarized voting; is that right?"

"I think I was speaking -- not me, but I think I was speaking that the process that we undertook in the work of the committee with my

leadership as chair, again, which necessarily involves significant input from Gina Wright and counsel, did recognize that principle, yes."

"What principle of racially polarized voting was recognized during this process?"

"I think what I said was that there is racially polarized voting in Georgia."

MR. JACOUTOT: Object to the form. We don't have the full context of this exchange, and we have lack of foundation, because I think Dr. Alford has said he doesn't know who the person is.

THE WITNESS: Read what -- I'm just looking at the full -- but he -- again, it says: "I'd like to know how he came to that conclusion." That's exactly the next question asked: "How did you come to that conclusion?"

He says: "Quite frankly, it was on the advise of counsel. Understand, I am not -- I am not an elections expert. I'm not a redistricting expert. I was chairing this process during the time that was made on the front end of the committee process, but it was" -- and that's where it stops. So that's my point exactly.

BY MS. BERRY:

Q. Regardless if it was the advice of counsel, the fact is this is the chairman of the redistricting committee that said that racially polarized voting exists in Georgia?

A. Again, I don't know what he means by that, but based on how he said he came to the conclusion, he seems to suggest he's just mimicking a term he heard from someone else.

He says: "I don't know, quite frankly. I'm not an election expert. I'm not a redistricting expert."

So, again, I suspect he's using that term in some kind of general way, but quite frankly, based on this, I don't think even he knows what he means by that term.

Q. So what -- when you say it's used in a general way, what is your understanding of how racially polarized voting, the term, is used in a general way?

MR. JACOUTOT: Object to the form.

THE WITNESS: It's used in a general way, colloquial way, just to say -- suggest, as, for example, various people suggest that any time one group prefers one candidate, another group prefers another candidate, then that's racially

polarized voting if they are of different racial groups. That's not the court's standard --

BY MS. BERRY:

Q. You said that's -- you said that's a colloquial term?

A. It can be -- that could be colloquially. I've seen it used by experts. It's not the court's determination of what's racially polarized voting, which is, obviously, a more extensive process. But my point is, it's -- it's a term that's thrown around in a variety of contexts.

He seems to have simply adopted it on the basis of what he heard from counsel. I don't know what counsel meant by it, but it's clear that he doesn't mean anything in particular by it. And he backs away very quickly by suggesting that he doesn't know -- I mean, how he could know in a technical sense he's endorsing the court's standard for the evidence of racially polarized voting in Georgia when he says, "I'm not an election expert. I'm not a redistricting expert. I just did this on advice of counsel."

I don't think he's contributing much in the way of factual assessment of racially

polarized voting in Georgia.

Q. Okay. You mentioned earlier that Dr. Thomas Brunell sounded -- I think you said the name was vague -- vaguely familiar or something. Do you recall that?

A. Yes.

Q. Okay. Do you know that Dr. Thomas Brunell is an expert in the field of racially polarized voting?

A. I believe that's correct, but I -- again, I only just recognize his name. I would have to see something else to be certain of that.

Q. Okay. Are you aware that Bryan Tyson secured -- well, Bryan Tyson hired him to provide a report to Chairman Kennedy --

A. I'm not.

Q. -- about racially polarized voting?

A. I am not.

Q. Okay. So I imagine you have not seen the report either?

A. No.

Q. Okay. And so he -- he reached conclusions in this -- that report. And would you be surprised to know that he found racially polarized voting in Georgia?

MR. JACOUTOT: Object to the form.

THE WITNESS: Again, I would want to see the report and see what the basis was for that. But if he's basically concluded, as Dr. Schneer, again, on the basis of his report, and as we have discussed, you could easily conclude if you just view it as two racial groups voting differently, then it wouldn't surprise me at all.

I mean, Dr. Schneer reaches the same conclusion. I reach the same conclusion with regard to if -- if the standard is simply that two racial groups are voting in opposite directions, then it's abundantly clear from everything that's in evidence in this case. So it wouldn't surprise me at all.

Again, I assume Dr. Brunell is not reaching a legal conclusion. I assume he's talking about a factual conclusion. And I would want to see in his report, what his definition -- his empirical definition is of that.

MS. BERRY: Can we take -- can we go off the record, take maybe a five-minute break, please.

VIDEOGRAPHER: Off the record at

12:03 p.m.

(A recess was taken.)

VIDEOGRAPHER: Back on the video record at 12:09.

BY MS. BERRY:

Q. Dr. Alford, earlier when you mentioned LULAC, why did you mention that case?

A. It was the first case that I was familiar with where the court discussed the issue of partisanship versus race -- race or ethnicity in voting patterns.

Q. Okay. And did you apply the reasoning from LULAC in reaching your opinions in this case?

A. No.

Q. Do you apply that standard in any of your other cases that are not in the 5th Circuit?

MR. JACOUTOT: Object to form.

THE WITNESS: I don't apply the reasoning in any cases.

MS. BERRY: I think that's all the questions that I have.

MR. JACOUTOT: I just have a little bit or one, I think, clarifying follow-up here.

EXAMINATION

BY MR. JACOUTOT:

Q. Dr. Alford, I believe counsel for the plaintiffs asked you if the opinions in your report are limited to Gingles 2 and -- Gingles 2, second and third factors, and I believe you answered in the affirmative; is that correct?

A. I believe that's correct, and I guess, so that would mean Gingles 2 and 3, and then more broadly the totality of circumstance that reflects racially polarized voting.

Q. Okay. So your report does go into the racially polarized and that voting analysis that's present in the totality of circumstance factors as well?

A. Yes. What I meant to inartfuly exclude was that I wasn't looking at Gingles 1, and I wasn't looking at other enhancing factors.

MR. JACOUTOT: Okay. I just wanted to make sure that was clear. I think it came out in the record, but I wanted to be sure. So thank you. That's all the questions I have.

VIDEOGRAPHER: Anyone else have questions?

MS. BERRY: We can close it.

VIDEOGRAPHER: Thank you. This is the end of the deposition. Going off the video record

at 12:11 p.m.

MR. JACOUTOT: We'll read and sign, yes.

MS. BERRY: We'll take a rough draft.

(The deposition was concluded at 12:11 CST p.m.)

(The witness, after having been advised of the right to read and sign this transcript, does not waive that right.)

CERTIFICATE OF REPORTER

I, Roxanne M. Easterwood, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 8th day of March 2023 at Charleston, Charleston County, South Carolina.

Roxanne M. Easterwood, RPR
My Commission expires
February 1, 2025

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re: Georgia State Conference of NAACP, et al., v. State of Georgia, et al.

DECLARATION

I hereby declare I am the deponent in the within matter; that I have read the foregoing transcript and know the contents thereof; and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare under the penalties of perjury under the laws of the United States that the foregoing is true and correct.

This declaration is executed this _____ day of _____, 20___, at _____, _____.

_____

John R. Alford, Ph.D.

Bryan F. Jacoutot, Esq.
bjacoutot@taylorenglish.com

March 8, 2023

RE: Georgia State Conference of NAACP vs. State of Georgia
March 2, 2023-John R. Alford, Ph.D.-5786355
The above-referenced transcript has been
completed by Veritext Legal Solutions and
review of the transcript is being handled as follows:

__ Per CA State Code (CCP 2025.520 (a)-(e)) – Contact Veritext to schedule a time to review the original transcript at a Veritext office.

__ Per CA State Code (CCP 2025.520 (a)-(e)) – Locked .PDF Transcript - The witness should review the transcript and make any necessary corrections on the errata pages included below, notating the page and line number of the corrections. The witness should then sign and date the errata and penalty of perjury pages and return the completed pages to all appearing counsel within the period of time determined at the deposition or provided by the Code of Civil Procedure.

__ Waiving the CA Code of Civil Procedure per Stipulation of Counsel - Original transcript to be released for signature as determined at the deposition.

__ Signature Waived – Reading & Signature was waived at the time of the deposition.

_X_ Federal R&S Requested (FRCP 30(e)(1)(B)) – Locked .PDF Transcript - The witness should review the transcript and make any necessary corrections on the errata pages included below, notating the page and line number of the corrections. The witness should then sign and date the errata and penalty of perjury pages and return the completed pages to all appearing counsel within the period of time determined at the deposition or provided by the Federal Rules.

__ Federal R&S Not Requested - Reading & Signature was not requested before the completion of the deposition.

Georgia State Conference of NAACP vs. State of Georgia
John R. Alford, Ph.D.-5786355

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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.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

DECLARATION

I hereby [illegible] as the deponent in the within matter; that I have read the foregoing transcript and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe them to be true.

I declare under the penalties of perjury under the laws of the United States that the foregoing is true and correct.

This declaration is executed this 11 day of April, 2022, at [illegible], Texas.

[illegible], M.D.

[illegible]

[illegible] March 2, 2022

[illegible]

[illegible]

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[illegible]

_X_ Federal R&C Signature (FRCP 30(e)) - Review and Transcript. The witness should review the transcript and make any necessary corrections on the errata pages provided below, noting the page and line number of the correction. The witness should then sign and date each errata and return to the reporter pages and return the completed pages to the reporting counsel within the period of time determined at the deposition or as provided by the Federal Rules.

__ Federal R&C Waiver. Reading & Signature was not requested before the conclusion of this deposition.

Georgia State Conference of NAACP vs. State of Georgia

John S. Affleck, Pro Hac Vice

ERRATA SHEET

PAGE 23 LINE 16 CHANGE 'Part 2' to 'Part to.'

REASON transcription error

PAGE 50 LINE 22 CHANGE 'VVS' to 'V VS'

REASON transcription error

PAGE 60 LINE 6 CHANGE 'statistelle' to 'Statistelle'

REASON transcription error

PAGE 70 LINE 15 CHANGE 'do Rob' to 'today'

REASON transcription error

PAGE 104 LINE 15 CHANGE 'know' to 'show'

REASON transcription error

PAGE 122 LINE 3 CHANGE 'Kenny' to 'Kennedy'

REASON transcription error

Signature

Date

AO 88A (Rev. 12/20) Subpoena to Testify at a Deposition in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of Georgia

Exhibit 0001

GA St Conf of NAACP, et al.	)	
Plaintiff	)	
v.	)	Civil Action No. 1:21-cv-5338-ELB-SCJ-SDG
State of Georgia, et al.	)	
	)	
Defendant	)	

SUBPOENA TO TESTIFY AT A DEPOSITION IN A CIVIL ACTION

To: Dr. John R. Alford

(Name of person to whom this subpoena is directed)

☑ Testimony: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this civil action. If you are an organization, you must promptly confer in good faith with the party serving this subpoena about the following matters, or those set forth in an attachment, and you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about these matters:

Place:	Date and Time:
Via electronic means	3/2/2023 9:30 am

The deposition will be recorded by this method: video and audio and stenographic

☐ *Production:* You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and must permit inspection, copying, testing, or sampling of the material:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 02/24/2023

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk | *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* Plaintiffs GA State Conf of the NAACP, et al., who issues or requests this subpoena, are:

Jacob Canter, Crowell & Moring LLP, 3 Embarcadero Ctr, 26th Fl., San Francisco, CA 94111; jcanter@crowell.com

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 1:21-cv-5338-ELB-SCJ-SDG

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____ .

☐ I served the subpoena by delivering a copy to the named individual as follows: _____

_____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of $ _____ .

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) ***For a Trial, Hearing, or Deposition.*** A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

(A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or

(B) within the state where the person resides, is employed, or regularly transacts business in person, if the person

(i) is a party or a party's officer; or

(ii) is commanded to attend a trial and would not incur substantial expense.

(2) ***For Other Discovery.*** A subpoena may command:

(A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and

(B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) ***Command to Produce Materials or Permit Inspection.***

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) ***Producing Documents or Electronically Stored Information.*** These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) ***Claiming Privilege or Protection.***

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

For access to subpoena materials, see Fed. R. Civ. P. 45(a) Committee Note (2013).

EXPERT REPORT OF JOHN R. ALFORD, Ph.D.

Scope of Inquiry

I have been retained by the Georgia Secretary of State and State Election Board as an expert to provide analysis related to *Grant v. Raffensperger*, *Alpha Phi Alpha v. Raffensperger*, and *Pendergrass v. Raffensperger*. All three cases allege the current U.S. Congressional, state Senate, and state House districts in Georgia violate Section 2 of the Voting Rights Act. In early 2022, I provided a report and testified in the preliminary injunction hearing in those matters. I have provided a report in those cases dated 2/6/2023 that was responsive to the reports and supplemental reports provided by plaintiffs' experts Dr. Maxwell Palmer, and Dr. Lisa Handley. The previous report, including my analysis of primary voting relevant to this case, is attached as Appendix 2. In this report I will supplement that report with additional consideration of the report provided by Dr. Benjamin Schneer dated 1/13/2023 in *Ga. NAACP* and *Common Cause* cases. My rate of compensation in this matter is $500 per hour.

Qualifications

I am a tenured full professor of political science at Rice University. At Rice, I have taught courses on redistricting, elections, political representation, voting behavior and statistical methods at both the undergraduate and graduate level. Over the last thirty years, I have worked with numerous local governments on districting plans and on Voting Rights Act issues. I have previously provided expert reports and/or testified as an expert witness in voting rights and statistical issues in a variety of court cases, including on behalf of the U.S. Attorney in Houston, Texas, the Texas Attorney General, a U.S. Congressman, and various cities and school districts.

In the 2000 round of redistricting, I was retained as an expert to provide advice to the Texas Attorney General in his role as Chair of the Legislative Redistricting Board. I subsequently served as the expert for the State of Texas in the state and federal litigation involving the 2001 redistricting for U.S. Congress, the Texas Senate, the Texas House of Representatives, and the Texas State Board of Education. In the 2010 round of redistricting in Texas, I was again retained as an expert by the State of Texas to assist in defending various state election maps and systems including the district maps for the U.S. Congress, the Texas Senate, the Texas House of Representatives, and the current at large system for electing Justices to the State Supreme Court

Exhibit
0002

and Court of Appeals, as well as the winner-take-all system for allocating Electoral College votes.

I have also worked as an expert on redistricting and voting rights cases at the state and/or local level in Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Michigan, Mississippi, New Mexico, New York, Pennsylvania, Washington, and Wisconsin. The details of my academic background, including all publications in the last ten years, and work as an expert, including all cases in which I have testified by deposition or at trial in the last four years, are covered in the attached CV (Appendix 1).

Data and Sources

In preparing this report, I have reviewed the reports filed by the Dr. Schneer in this case. I have also reviewed various election and demographic data provided by Dr. Schneer in his disclosures related to his report in this case.

Dr. Schneer's Report

In his report dated 2/13/2023, Dr. Schneer provides the results of a set of Ecological Inference ("EI") election analyses that he used to assess Racially Polarized Voting (RPV) in 41 two-party contested general election contests between 2012 and 2022. He notes that 21 of these contests (indicated by an asterisk next to the contest label) include a minority candidate running against a non-minority candidate. He considers these contests to be the most probative. The remaining 20 contests feature candidates that are the same race. He reports results for the estimated voting preferences in all 41 of these contests within a variety of geographic contexts for Black, white, and sometimes Hispanic voters. As his list of the 21 minority candidates on pages 13-14 shows, all 21 are running as Democrats, and in his broader set of 41 election contests, the preferred candidate of Black voters is always the Democrat.

Dr. Schneer acknowledges that the race of the candidates provides important information about racially polarized voting. He notes, "[w]hile I estimate RPV results for all statewide general elections since 2012, I rely on those elections in which a minority candidate was one of the two major party candidates running for office as most probative for making inferences about racially polarized voting" (page 13). In his associated footnote 18 on page 13, he states that an "election between a minority and a non-minority candidate provides variation in the race of the candidate

and therefore offers a test of whether race might matter in vote choice among different voter groups." He goes on to say that he also includes "elections in which no minority candidate ran or two minority candidates ran as major party candidates. These are useful for establishing a general pattern of vote choice for different racial groups, even if elections with a single minority candidate are most probative for determining the extent of RPV" (page 14).

However, despite having recognized the potential value this data identified in his reports and the associated opportunity analyze it, there is no discussion of the impact, if any, that the race of the candidate has on the behavior of Black, white, or Hispanic voters in any of these contests. Consider the patterns evident in Dr. Schneer's Figure 1. In all 41 of the 41 election contests examined, minorities show cohesive voting for the Democratic candidate. In contrast, White voters cohesively favor the Republican candidate. Clearly the partisan label of a candidate matters, as there is only minimal variation in the estimated vote shares across ten years and 41 elections ranging from top-of-the-ballot Presidential contests to down ballot contests like Public Service Commissioner.

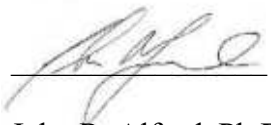
The key question is whether the variation in the race of the Democratic candidate matters to either minority or white voters. As noted above, Dr. Schneer acknowledges that "variation in the race of the candidate … offers a test of whether race might matter in vote choice among different voter groups" (page 13). Here we have that variation across Democratic candidates as roughly half are minorities running against white candidates, and the other half are not. A look at any of the 17 figures relating to the various geographies examined in Dr. Schneer's report makes it clear that the strong support of minority voters for Democratic candidates does not in fact vary to any visible degree[1] on the basis of the race of the candidates. In other words, "variation in the race of the candidate … offers a test of whether race might matter in vote choice among different voter groups," and based on Dr. Schneer's results, there is no indication that race matters in the vote choice among different voter groups. This is exactly the same result illustrated in my discussion of the pattern of general election results presented in the reports of Dr. Handley and Dr. Palmer.

[1] We have to rely on visual comparison here because Dr. Schneer does not provide the numerical point estimates for his EI analysis. However, his analysis is very similar to the analysis of general elections in Dr. Palmer's reports where the numeric estimates are provided, and that numeric comparison is covered in my report in this case dated 2/6/2023.

Dr. Schneer recognizes that the vote patterns don't vary by the race of candidates, and this can be seen throughout his report where he consistently observes the same cohesive voting patterns in elections regardless of whether the election features a minority candidate running against a non-minority candidate, or the election has no minority candidate on the ballot. For example, in reflecting on his Figure 1, Dr. Schneer concludes that: "I estimate that about 96% of Hispanic voters supported Abrams in 2018. Again, the results are generally similar across other elections I examined with minority candidates. When a minority candidate was not one of the two major party candidates, minority voters continued to vote cohesively, supporting particular candidates at overwhelming rates." (Page 15). And again toward the end of his report discussing patterns in his Figure 27, he notes that he observes "evidence of RPV with Black and Hispanic voters supporting minority candidates and White voters opposing them across all past statewide elections with a minority candidate running. When a minority candidate does not run, Black and Hispanic voters support the same minority preferred candidate and white voters oppose this candidate" (page 63).

Summary Conclusions

Dr. Schneer's analysis of voting in general elections is entirely comparable to that of Dr. Palmer and Dr. Handley. All three provide analysis that demonstrates that Black voters provide uniformly high levels of support for Democratic candidates and white voters provide uniformly high levels of support for Republican candidates. Dr. Schneer acknowledges that variation in the race of candidates provides a test of whether race matters to voters, and the large set of elections both he and Dr. Palmer provide, across the ballot and across a decade, nicely happens to divide almost evenly into half that are racially contested and half that are not. The results of this test are clear. The high level of minority voter support for Democratic candidates is not a response to the race of the Democratic or Republican candidates. Similarly, the high level of white voter support for Republican candidates is not a response to the race of the Democratic or Republican candidates.



John R. Alford, Ph.D. February 10, 2023

Appendix 1

CV

John R. Alford

Curriculum Vitae
January 2023

Dept. of Political Science
Rice University - MS-24
P.O. Box 1892
Houston, Texas 77251-1892
713-348-3364
jra@rice.edu

Employment:

Professor, Rice University, 2015 to present.
Associate Professor, Rice University, 1985-2015.
Assistant Professor, University of Georgia, 1981-1985.
Instructor, Oakland University, 1980-1981.
Teaching-Research Fellow, University of Iowa, 1977-1980.
Research Associate, Institute for Urban Studies, Houston, Texas, 1976-1977.

Education:

Ph.D., University of Iowa, Political Science, 1981.
M.A., University of Iowa, Political Science, 1980.
M.P.A., University of Houston, Public Administration, 1977.
B.S., University of Houston, Political Science, 1975.

Books:

Predisposed: Liberals, Conservatives, and the Biology of Political Differences. New York: Routledge, 2013. Co-authors, John R. Hibbing and Kevin B. Smith.

Articles:

"Political Orientations Vary with Detection of Androstenone," with Amanda Friesen, Michael Gruszczynski, and Kevin B. Smith. **Politics and the Life Sciences**. (Spring, 2020).

"Intuitive ethics and political orientations: Testing moral foundations as a theory of political ideology." with Kevin Smith, John Hibbing, Nicholas Martin, and Peter Hatemi. **American Journal of Political Science**. (April, 2017).

"The Genetic and Environmental Foundations of Political, Psychological, Social, and Economic Behaviors: A Panel Study of Twins and Families." with Peter Hatemi, Kevin Smith, and John Hibbing. **Twin Research and Human Genetics**. (May, 2015.)

"Liberals and conservatives: Non-convertible currencies." with John R. Hibbing and Kevin B. Smith. **Behavioral and Brain Sciences** (January, 2015).

"Non-Political Images Evoke Neural Predictors Of Political Ideology." with Woo-Young Ahn, Kenneth T. Kishida, Xiaosi Gu, Terry Lohrenz, Ann Harvey, Kevin Smith, Gideon Yaffe, John Hibbing, Peter Dayan, P. Read Montague. **Current Biology**. (November, 2014).

"Cortisol and Politics: Variance in Voting Behavior is Predicted by Baseline Cortisol Levels." with Jeffrey French, Kevin Smith, Adam Guck, Andrew Birnie, and John Hibbing. **Physiology & Behavior**. (June, 2014).

"Differences in Negativity Bias Underlie Variations in Political Ideology." with Kevin B. Smith and John R. Hibbing. **Behavioral and Brain Sciences**. (June, 2014).

"Negativity bias and political preferences: A response to commentators Response." with Kevin B. Smith and John R. Hibbing. **Behavioral and Brain Sciences**. (June, 2014).

"Genetic and Environmental Transmission of Political Orientations." with Carolyn L. Funk, Matthew Hibbing, Kevin B. Smith, Nicholas R. Eaton, Robert F. Krueger, Lindon J. Eaves, John R. Hibbing. **Political Psychology**, (December, 2013).

"Biology, Ideology, and Epistemology: How Do We Know Political Attitudes Are Inherited and Why Should We Care?" with Kevin Smith, Peter K. Hatemi, Lindon J. Eaves, Carolyn Funk, and John R. Hibbing. **American Journal of Political Science**. (January, 2012)

"Disgust Sensitivity and the Neurophysiology of Left-Right Political Orientations." with Kevin Smith, John Hibbing, Douglas Oxley, and Matthew Hibbing, **PlosONE**, (October, 2011).

"Linking Genetics and Political Attitudes: Re-Conceptualizing Political Ideology." with Kevin Smith, John Hibbing, Douglas Oxley, and Matthew Hibbing, **Political Psychology**, (June, 2011).

"The Politics of Mate Choice." with Peter Hatemi, John R. Hibbing, Nicholas Martin and Lindon Eaves, **Journal of Politics**, (March, 2011).

"Not by Twins Alone: Using the Extended Twin Family Design to Investigate the Genetic Basis of Political Beliefs" with Peter Hatemi, John Hibbing, Sarah Medland, Matthew Keller, Kevin Smith, Nicholas Martin, and Lindon Eaves, **American Journal of Political Science**, (July, 2010).

"The Ultimate Source of Political Opinions: Genes and the Environment" with John R. Hibbing in **Understanding Public Opinion**, 3rd Edition eds. Barbara Norrander and Clyde Wilcox, Washington D.C.: CQ Press, (2010).

"Is There a 'Party' in your Genes" with Peter Hatemi, John R. Hibbing, Nicholas Martin and Lindon Eaves, **Political Research Quarterly**, (September, 2009).

"Twin Studies, Molecular Genetics, Politics, and Tolerance: A Response to Beckwith and Morris" with John R. Hibbing and Cary Funk, **Perspectives on Politics**, (December, 2008). This is a solicited response to a critique of our 2005 APSR article "Are Political Orientations Genetically Transmitted?"

"Political Attitudes Vary with Physiological Traits" with Douglas R. Oxley, Kevin B. Smith, Matthew V. Hibbing, Jennifer L. Miller, Mario Scalora, Peter K. Hatemi, and John R. Hibbing, **Science**, (September 19, 2008).

"The New Empirical Biopolitics" with John R. Hibbing, **Annual Review of Political Science**, (June, 2008).

"Beyond Liberals and Conservatives to Political Genotypes and Phenotypes" with John R. Hibbing and Cary Funk, **Perspectives on Politics**, (June, 2008). This is a solicited response to a critique of our 2005 APSR article "Are Political Orientations Genetically Transmitted?"

"Personal, Interpersonal, and Political Temperaments" with John R. Hibbing, **Annals of the American Academy of Political and Social Science**, (November, 2007).

"Is Politics in our Genes?" with John R. Hibbing, **Tidsskriftet Politik**, (February, 2007).

"Biology and Rational Choice" with John R. Hibbing, **The Political Economist**, (Fall, 2005)

"Are Political Orientations Genetically Transmitted?" with John R. Hibbing and Carolyn Funk, **American Political Science Review**, (May, 2005). (The main findings table from this article has been reprinted in two college level text books - Psychology, 9th ed. and Invitation to Psychology 4th ed. both by Wade and Tavris, Prentice Hall, 2007).

"The Origin of Politics: An Evolutionary Theory of Political Behavior" with John R. Hibbing, **Perspectives on Politics**, (December, 2004).

"Accepting Authoritative Decisions: Humans as Wary Cooperators" with John R. Hibbing, **American Journal of Political Science**, (January, 2004).

"Electoral Convergence of the Two Houses of Congress" with John R. Hibbing, in **The Exceptional Senate**, ed. Bruce Oppenheimer, Columbus: Ohio State University Press, (2002).

"We're All in this Together: The Decline of Trust in Government, 1958-1996." in **What is it About Government that Americans Dislike?**, eds. John Hibbing and Beth Theiss-Morse, Cambridge: Cambridge University Press, (2001).

"The 2000 Census and the New Redistricting," **Texas State Bar Association School Law Section Newsletter**, (July, 2000).

"Overdraft: The Political Cost of Congressional Malfeasance" with Holly Teeters, Dan Ward, and Rick Wilson, **Journal of Politics** (August, 1994).

"Personal and Partisan Advantage in U.S. Congressional Elections, 1846-1990" with David W. Brady, in **Congress Reconsidered** 5th edition, eds. Larry Dodd and Bruce Oppenheimer, CQ Press, (1993).

"The 1990 Congressional Election Results and the Fallacy that They Embodied an Anti-Incumbent Mood" with John R. Hibbing, **PS** 25 (June, 1992).

"Constituency Population and Representation in the United States Senate" with John R. Hibbing. **Legislative Studies Quarterly**, (November, 1990).

"Editors' Introduction: Electing the U.S. Senate" with Bruce I. Oppenheimer. **Legislative Studies Quarterly**, (November, 1990).

"Personal and Partisan Advantage in U.S. Congressional Elections, 1846-1990" with David W. Brady, in **Congress Reconsidered** 4th edition, eds. Larry Dodd and Bruce Oppenheimer, CQ Press, (1988). Reprinted in The Congress of the United States, 1789-1989, ed. Joel Silby, Carlson Publishing Inc., (1991), and in The Quest for Office, eds. Wayne and Wilcox, St. Martins Press, (1991).

"Can Government Regulate Fertility? An Assessment of Pro-natalist Policy in Eastern Europe" with Jerome Legge. **The Western Political Quarterly** (December, 1986).

"Partisanship and Voting" with James Campbell, Mary Munro, and Bruce Campbell, in **Research in Micropolitics. Volume 1 - Voting Behavior**. Samuel Long, ed. JAI Press, (1986).

"Economic Conditions and Individual Vote in the Federal Republic of Germany" with Jerome S. Legge. **Journal of Politics** (November, 1984).

"Television Markets and Congressional Elections" with James Campbell and Keith Henry. **Legislative Studies Quarterly** (November, 1984).

"Economic Conditions and the Forgotten Side of Congress: A Foray into U.S. Senate Elections" with John R. Hibbing, **British Journal of Political Science** (October, 1982).

"Increased Incumbency Advantage in the House" with John R. Hibbing, **Journal of Politics** (November, 1981). Reprinted in The Congress of the United States, 1789-1989, Carlson Publishing Inc., (1991).

"The Electoral Impact of Economic Conditions: Who is Held Responsible?" with John R. Hibbing, **American Journal of Political Science** (August, 1981).

"Comment on Increased Incumbency Advantage" with John R. Hibbing, Refereed communication: **American Political Science Review** (March, 1981).

"Can Government Regulate Safety? The Coal Mine Example" with Michael Lewis-Beck, **American Political Science Review** (September, 1980).

Awards and Honors:

CQ Press Award - 1988, honoring the outstanding paper in legislative politics presented at the 1987 Annual Meeting of the American Political Science Association. Awarded for "The Demise of the Upper House and the Rise of the Senate: Electoral Responsiveness in the United States Senate" with John Hibbing.

Research Grants:

National Science Foundation, 2009-2011, "Identifying the Biological Influences on Political Temperaments", with John Hibbing, Kevin Smith, Kim Espy, Nicolas Martin and Read Montague. This is a collaborative project involving Rice, University of Nebraska, Baylor College of Medicine, and Queensland Institute for Medical Research.

National Science Foundation, 2007-2010, "Genes and Politics: Providing the Necessary Data", with John Hibbing, Kevin Smith, and Lindon Eaves. This is a collaborative project involving Rice, University of Nebraska, Virginia Commonwealth University, and the University of Minnesota.

National Science Foundation, 2007-2010, "Investigating the Genetic Basis of Economic Behavior", with John Hibbing and Kevin Smith. This is a collaborative project involving Rice, University of Nebraska, Virginia Commonwealth University, and the Queensland Institute of Medical Research.

Rice University Faculty Initiatives Fund, 2007-2009, "The Biological Substrates of Political Behavior". This is in assistance of a collaborative project involving Rice, Baylor College of Medicine, Queensland Institute of Medical Research, University of Nebraska, Virginia Commonwealth University, and the University of Minnesota.

National Science Foundation, 2004-2006, "Decision-Making on Behalf of Others", with John Hibbing. This is a collaborative project involving Rice and the University of Nebraska.

National Science Foundation, 2001-2002, dissertation grant for Kevin Arceneaux, "Doctoral Dissertation Research in Political Science: Voting Behavior in the Context of U.S. Federalism."

National Science Foundation, 2000-2001, dissertation grant for Stacy Ulbig, "Doctoral Dissertation Research in Political Science: Sub-national Contextual Influences on Political Trust."

National Science Foundation, 1999-2000, dissertation grant for Richard Engstrom, "Doctoral Dissertation Research in Political Science: Electoral District Structure and Political Behavior."

Rice University Research Grant, 1985, Recent Trends in British Parliamentary Elections.

Faculty Research Grants Program, University of Georgia, Summer, 1982. Impact of Media Structure on Congressional Elections, with James Campbell.

Papers Presented:

"The Physiological Basis of Political Temperaments" 6th European Consortium for Political Research General Conference, Reykjavik, Iceland (2011), with Kevin Smith, and John Hibbing.

"Identifying the Biological Influences on Political Temperaments" National Science Foundation Annual Human Social Dynamics Meeting (2010), with John Hibbing, Kimberly Espy, Nicholas Martin, Read Montague, and Kevin B. Smith.

"Political Orientations May Be Related to Detection of the Odor of Androstenone" Annual meeting of the Midwest Political Science Association, Chicago, IL (2010), with Kevin Smith, Amanda Balzer, Michael Gruszczynski, Carly M. Jacobs, and John Hibbing.

"Toward a Modern View of Political Man: Genetic and Environmental Transmission of Political Orientations from Attitude Intensity to Political Participation" Annual meeting of the American Political Science Association, Washington, DC (2010), with Carolyn Funk, Kevin Smith, and John Hibbing.

"Genetic and Environmental Transmission of Political Involvement from Attitude Intensity to Political Participation" Annual meeting of the International Society for Political Psychology, San Francisco, CA (2010), with Carolyn Funk, Kevin Smith, and John Hibbing.

"Are Violations of the EEA Relevant to Political Attitudes and Behaviors?" Annual meeting of the Midwest Political Science Association, Chicago, IL (2010), with Kevin Smith, and John Hibbing.

"The Neural Basis of Representation" Annual meeting of the American Political Science Association, Toronto, Canada (2009), with John Hibbing.

"Genetic and Environmental Transmission of Value Orientations" Annual meeting of the American Political Science Association, Toronto, Canada (2009), with Carolyn Funk, Kevin Smith, Matthew Hibbing, Pete Hatemi, Robert Krueger, Lindon Eaves, and John Hibbing.

"The Genetic Heritability of Political Orientations: A New Twin Study of Political Attitudes" Annual Meeting of the International Society for Political Psychology, Dublin, Ireland (2009), with John Hibbing, Cary Funk, Kevin Smith, and Peter K Hatemi.

"The Heritability of Value Orientations" Annual meeting of the Behavior Genetics Association, Minneapolis, MN (2009), with Kevin Smith, John Hibbing, Carolyn Funk, Robert Krueger, Peter Hatemi, and Lindon Eaves.

"The Ick Factor: Disgust Sensitivity as a Predictor of Political Attitudes" Annual meeting of the Midwest Political Science Association, Chicago, IL (2009), with Kevin Smith, Douglas Oxley Matthew Hibbing, and John Hibbing.

"The Ideological Animal: The Origins and Implications of Ideology" Annual meeting of the American Political Science Association, Boston, MA (2008), with Kevin Smith, Matthew Hibbing, Douglas Oxley, and John Hibbing.

"The Physiological Differences of Liberals and Conservatives" Annual meeting of the Midwest Political Science Association, Chicago, IL (2008), with Kevin Smith, Douglas Oxley, and John Hibbing.

"Looking for Political Genes: The Influence of Serotonin on Political and Social Values" Annual meeting of the Midwest Political Science Association, Chicago, IL (2008), with Peter Hatemi, Sarah Medland, John Hibbing, and Nicholas Martin.

"Not by Twins Alone: Using the Extended Twin Family Design to Investigate the Genetic Basis of Political Beliefs" Annual meeting of the American Political Science Association, Chicago, IL (2007), with Peter Hatemi, John Hibbing, Matthew Keller, Nicholas Martin, Sarah Medland, and Lindon Eaves.

"Factorial Association: A generalization of the Fulker between-within model to the multivariate case" Annual meeting of the Behavior Genetics Association, Amsterdam, The Netherlands (2007), with Sarah Medland, Peter Hatemi, John Hibbing, William Coventry, Nicholas Martin, and Michael Neale.

"Not by Twins Alone: Using the Extended Twin Family Design to Investigate the Genetic Basis of Political Beliefs" Annual meeting of the Midwest Political Science Association, Chicago, IL (2007), with Peter Hatemi, John Hibbing, Nicholas Martin, and Lindon Eaves.

"Getting from Genes to Politics: The Connecting Role of Emotion-Reading Capability" Annual Meeting of the International Society for Political Psychology, Portland, OR, (2007.), with John Hibbing.

"The Neurological Basis of Representative Democracy." Hendricks Conference on Political Behavior, Lincoln, NE (2006), with John Hibbing.

"The Neural Basis of Representative Democracy" Annual meeting of the American Political Science Association, Philadelphia, PA (2006), with John Hibbing.

"How are Political Orientations Genetically Transmitted? A Research Agenda" Annual meeting of the Midwest Political Science Association, Chicago Illinois (2006), with John Hibbing.

"The Politics of Mate Choice" Annual meeting of the Southern Political Science Association, Atlanta, GA (2006), with John Hibbing.

"The Challenge Evolutionary Biology Poses for Rational Choice" Annual meeting of the American Political Science Association, Washington, DC (2005), with John Hibbing and Kevin Smith.

"Decision Making on Behalf of Others" Annual meeting of the American Political Science Association, Washington, DC (2005), with John Hibbing.

"The Source of Political Attitudes and Behavior: Assessing Genetic and Environmental Contributions" Annual meeting of the Midwest Political Science Association, Chicago Illinois (2005), with John Hibbing and Carolyn Funk.

"The Source of Political Attitudes and Behavior: Assessing Genetic and Environmental Contributions" Annual meeting of the American Political Science Association, Chicago Illinois (2004), with John Hibbing and Carolyn Funk.

"Accepting Authoritative Decisions: Humans as Wary Cooperators" Annual Meeting of the Midwest Political Science Association, Chicago, Illinois (2002), with John Hibbing

"Can We Trust the NES Trust Measure?" Annual Meeting of the Midwest Political Science Association, Chicago, Illinois (2001), with Stacy Ulbig.

"The Impact of Organizational Structure on the Production of Social Capital Among Group Members" Annual Meeting of the Southern Political Science Association, Atlanta, Georgia (2000), with Allison Rinden.

"Isolating the Origins of Incumbency Advantage: An Analysis of House Primaries, 1956-1998" Annual Meeting of the Southern Political Science Association, Atlanta, Georgia (2000), with Kevin Arceneaux.

"The Electorally Indistinct Senate," Norman Thomas Conference on Senate Exceptionalism, Vanderbilt University; Nashville, Tennessee; October (1999), with John R. Hibbing.

"Interest Group Participation and Social Capital" Annual Meeting of the Midwest Political Science Association, Chicago, Illinois (1999), with Allison Rinden.

"We're All in this Together: The Decline of Trust in Government, 1958-1996." The Hendricks Symposium, University of Nebraska, Lincoln. (1998)

"Constituency Population and Representation in the United States Senate," Electing the Senate; Houston, Texas; December (1989), with John R. Hibbing.

"The Disparate Electoral Security of House and Senate Incumbents," American Political Science Association Annual Meetings; Atlanta, Georgia; September (1989), with John R. Hibbing.

"Partisan and Incumbent Advantage in House Elections," Annual Meeting of the Southern Political Science Association (1987), with David W. Brady.

"Personal and Party Advantage in U.S. House Elections, 1846-1986" with David W. Brady, 1987 Social Science History Association Meetings.

"The Demise of the Upper House and the Rise of the Senate: Electoral Responsiveness in the United States Senate" with John Hibbing, 1987 Annual Meeting of the American Political Science Association.

"A Comparative Analysis of Economic Voting" with Jerome Legge, 1985 Annual Meeting of the American Political Science Association.

"An Analysis of Economic Conditions and the Individual Vote in Great Britain, 1964-1979" with Jerome Legge, 1985 Annual Meeting of the Western Political Science Association.

"Can Government Regulate Fertility? An Assessment of Pro-natalist Policy in Eastern Europe" with Jerome Legge, 1985 Annual Meeting of the Southwestern Social Science Association.

"Economic Conditions and the Individual Vote in the Federal Republic of Germany" with Jerome S. Legge, 1984 Annual Meeting of the Southern Political Science Association.

"The Conditions Required for Economic Issue Voting" with John R. Hibbing, 1984 Annual Meeting of the Midwest Political Science Association.

"Incumbency Advantage in Senate Elections," 1983 Annual Meeting of the Midwest Political Science Association.

"Television Markets and Congressional Elections: The Impact of Market/District Congruence" with James Campbell and Keith Henry, 1982 Annual Meeting of the Southern Political Science Association.

"Economic Conditions and Senate Elections" with John R. Hibbing, 1982 Annual Meeting of the Midwest Political Science Association. "Pocketbook Voting: Economic Conditions and Individual Level Voting," 1982 Annual Meeting of the American Political Science Association.

"Increased Incumbency Advantage in the House," with John R. Hibbing, 1981 Annual Meeting of the Midwest Political Science Association.

Other Conference Participation:

Roundtable Participant – Closing Round-table on Biopolitics; 2016 UC Merced Conference on Bio-Politics and Political Psychology, Merced, CA.

Roundtable Participant "Genes, Brains, and Core Political Orientations" 2008 Annual Meeting of the Southwestern Political Science Association, Las Vegas.

Roundtable Participant "Politics in the Laboratory" 2007 Annual Meeting of the Southern Political Science Association, New Orleans.

Short Course Lecturer, "What Neuroscience has to Offer Political Science" 2006 Annual Meeting of the American Political Science Association.

Panel chair and discussant, "Neuro-scientific Advances in the Study of Political Science" 2006 Annual Meeting of the American Political Science Association.

Presentation, "The Twin Study Approach to Assessing Genetic Influences on Political Behavior" Rice Conference on New Methods for Understanding Political Behavior, 2005.

Panel discussant, "The Political Consequences of Redistricting," 2002 Annual Meeting of the American Political Science Association.

Panel discussant, "Race and Redistricting," 1999 Annual Meeting of the Midwest Political Science Association.

Invited participant, "Roundtable on Public Dissatisfaction with American Political Institutions", 1998 Annual Meeting of the Southwestern Social Science Association.

Presentation, "Redistricting in the '90s," Texas Economic and Demographic Association, 1997.

Panel chair, "Congressional Elections," 1992 Annual Meeting of the Southern Political Science Association.

Panel discussant, "Incumbency and Congressional Elections," 1992 Annual Meeting of the American Political Science Association.

Panel chair, "Issues in Legislative Elections," 1991 Annual Meeting of the Midwest Political Science Association.

Panel chair, "Economic Attitudes and Public Policy in Europe," 1990 Annual Meeting of the Southern Political Science Association

Panel discussant, "Retrospective Voting in U.S. Elections," 1990 Annual Meeting of the Midwest Political Science Association.

Co-convener, with Bruce Oppenheimer, of Electing the Senate, a national conference on the NES 1988 Senate Election Study. Funded by the Rice Institute for Policy Analysis, the University of Houston Center for Public Policy, and the National Science Foundation, Houston, Texas, December, 1989.

Invited participant, Understanding Congress: A Bicentennial Research Conference, Washington, D.C., February, 1989.

Invited participant--Hendricks Symposium on the United States Senate, University of Nebraska, Lincoln, Nebraska, October, 1988

Invited participant--Conference on the History of Congress, Stanford University, Stanford, California, June, 1988.

Invited participant, "Roundtable on Partisan Realignment in the 1980's", 1987 Annual Meeting of the Southern Political Science Association.

Professional Activities:

Other Universities:

Invited Speaker, Annual Lecture, Psi Kappa -the Psychology Club at Houston Community College, 2018.

Invited Speaker, Annual Allman Family Lecture, Dedman College Interdisciplinary Institute, Southern Methodist University, 2016.

Invited Speaker, Annual Lecture, Psi Sigma Alpha – Political Science Dept., Oklahoma State University, 2015.

Invited Lecturer, Department of Political Science, Vanderbilt University, 2014.

Invited Speaker, Annual Lecture, Psi Kappa -the Psychology Club at Houston Community College, 2014.

Invited Speaker, Graduate Student Colloquium, Department of Political Science, University of New Mexico, 2013.

Invited Keynote Speaker, Political Science Alumni Evening, University of Houston, 2013.

Invited Lecturer, Biology and Politics Masters Seminar (John Geer and David Bader), Department of Political Science and Biology Department, Vanderbilt University, 2010.

Invited Lecturer, Biology and Politics Senior Seminar (John Geer and David Bader), Department of Political Science and Biology Department, Vanderbilt University, 2008.

Visiting Fellow, the Hoover Institution, Stanford University, 2007.

Invited Speaker, Joint Political Psychology Graduate Seminar, University of Minnesota, 2007.

Invited Speaker, Department of Political Science, Vanderbilt University, 2006.

Member:

Editorial Board, Journal of Politics, 2007-2008.

Planning Committee for the National Election Studies' Senate Election Study, 1990-92.

Nominations Committee, Social Science History Association, 1988

Reviewer for:

American Journal of Political Science
American Political Science Review
American Politics Research
American Politics Quarterly
American Psychologist
American Sociological Review
Canadian Journal of Political Science
Comparative Politics
Electoral Studies
Evolution and Human Behavior
International Studies Quarterly

Journal of Politics
Journal of Urban Affairs
Legislative Studies Quarterly
National Science Foundation
PLoS ONE
Policy Studies Review
Political Behavior
Political Communication
Political Psychology
Political Research Quarterly
Public Opinion Quarterly
Science
Security Studies
Social Forces
Social Science Quarterly
Western Political Quarterly

University Service:

Member, University Senate, 2021-2023.

Member, University Parking Committee, 2016-2022.

Member, University Benefits Committee, 2013-2016.

Internship Director for the Department of Political Science, 2004-2018.

Member, University Council, 2012-2013.

Invited Speaker, Rice Classroom Connect, 2016.

Invited Speaker, Glasscock School, 2016.

Invited Speaker, Rice Alumni Association, Austin, 2016.

Invited Speaker, Rice Alumni Association, New York City, 2016.

Invited Speaker, Rice TEDxRiceU , 2013.

Invited Speaker, Rice Alumni Association, Atlanta, 2011.

Lecturer, Advanced Topics in AP Psychology, Rice University AP Summer Institute, 2009.

Scientia Lecture Series: "Politics in Our Genes: The Biology of Ideology" 2008

Invited Speaker, Rice Alumni Association, Seattle, San Francisco and Los Angeles, 2008.

Invited Speaker, Rice Alumni Association, Austin, Chicago and Washington, DC, 2006.

Invited Speaker, Rice Alumni Association, Dallas and New York, 2005.

Director: Rice University Behavioral Research Lab and Social Science Computing Lab, 2005-2006.

University Official Representative to the Inter-university Consortium for Political and Social Research, 1989-2012.

Director: Rice University Social Science Computing Lab, 1989-2004.

Member, Rice University Information Technology Access and Security Committee, 2001-2002

Rice University Committee on Computers, Member, 1988-1992, 1995-1996; Chair, 1996-1998, Co-chair, 1999.

Acting Chairman, Rice Institute for Policy Analysis, 1991-1992.

Divisional Member of the John W. Gardner Dissertation Award Selection Committee, 1998

Social Science Representative to the Educational Sub-committee of the Computer Planning Committee, 1989-1990.

Director of Graduate Admissions, Department of Political Science, Rice University, 1986-1988.

Co-director, Mellon Workshop: Southern Politics, May, 1988.

Guest Lecturer, Mellon Workshop: The U.S. Congress in Historical Perspective, May, 1987 and 1988.

Faculty Associate, Hanszen College, Rice University, 1987-1990.

Director, Political Data Analysis Center, University of Georgia, 1982-1985.

External Consulting:

Expert Witness, Soto Palmer v. Hobbs, (Washington State), racially polarized voting analysis, 2022.

Expert Witness, Pendergrass v. Raffensperger, (Georgia State House and Senate), racially polarized voting analysis, 2022.

Expert Witness, LULAC, et al. v. Abbott, et al., Voto Latino, et al. v. Scott, et al., Mexican American Legislative Caucus, et al. v. Texas, et al., Texas NAACP v. Abbott, et al., Fair Maps Texas, et al. v. Abbott, et al., US v. Texas, et al. (consolidated cases) challenges to Texas Congressional, State Senate, State House, and State Board of Education districting, 2022.

Expert Witness, Robinson/Galmon v. Ardoin, (Louisiana), racially polarized voting analysis, 2022.

Expert Witness, Christian Ministerial Alliance et al v. Arkansas, racially polarized voting analysis, 2022.

Expert Witness, Johnson v. Wisconsin Elections Commission, 2022.

Expert Witness, Rivera, et al. v. Schwab, Alonzo, et al. v. Schwab, Frick, et al. v. Schwab, (consolidated cases) challenge to Kansas congressional map, 2022.

Expert Witness, Grant v. Raffensperger, challenge to Georgia congressional map, 2022

Expert Witness, Brooks et al. v. Abbot, challenge to State Senate District 10, 2022.

Expert Witness, Elizondo v. Spring Branch ISD, 2022.

Expert Witness, Portugal v. Franklin County, et al., challenge to Franklin County, Washington at large County Commissioner's election system, 2022.

Consulting Expert, Gressman Math/Science Petitioners, Pennsylvania Congressional redistricting, 2022.

Consultant, Houston Community College – evaluation of election impact for redrawing of college board election districts, 2022.

Consultant, Lone Star College – evaluation of election impact for redrawing of college board election districts, 2022.

Consultant, Killeen ISD – evaluation of election impact for redrawing of school board election districts, 2022.

Consultant, Houston ISD – evaluation of election impact for redrawing of school board election districts, 2022.

Consultant, Brazosport ISD – evaluation of election impact for redrawing of school board election districts, 2022.

Consultant, Dallas ISD – evaluation of election impact for redrawing of school board election districts, 2022.

Consultant, Lancaster ISD – redrawing of all school board member election districts including demographic analysis and redrawing of election districts, 2021.

Consultant, City of Baytown – redrawing of all city council member election districts including demographic analysis and redrawing of election districts, 2021.

Consultant, Goose Creek ISD – redrawing of all board member election districts including demographic analysis and redrawing of election districts, 2021.

Expert Witness, Bruni et al. v. State of Texas, straight ticket voting analysis, 2020.

Consulting Expert, Sarasota County, VRA challenge to district map, 2020.

Expert Witness, Kumar v. Frisco ISD, TX, racially polarized voting analysis, 2019.

Expert Witness, Vaughan v. Lewisville ISD, TX, racially polarized voting analysis, 2019.

Expert Witness, Johnson v. Ardoin, (Louisiana), racially polarized voting analysis, 2019.

Expert Witness, Flores et al. v. Town of Islip, NY, racially polarized voting analysis, 2018.

Expert Witness, Tyson v. Richardson ISD, racially polarized voting analysis, 2018.

Expert Witness, Dwight v. State of Georgia, racially polarized voting analysis, 2018.

Expert Witness, NAACP v. East Ramapo Central School District, racially polarized voting analysis, 2018.

Expert Witness, Georgia NAACP v. State of Georgia, racially polarized voting analysis, 2018.

Appendix 2

EXPERT REPORT OF JOHN R. ALFORD, Ph.D.

Scope of Inquiry

I have been retained by the Georgia Secretary of State and State Election Board as an expert to provide analysis related to *Grant v. Raffensperger*, *Alpha Phi Alpha v. Raffensperger*, and *Pendergrass v. Raffensperger*. All three cases allege the current U.S. Congressional, state Senate, and state House districts in Georgia violate Section 2 of the Voting Rights Act. In early 2022, I provided a report and testified in the preliminary injunction hearing in this matter. I have examined the reports and supplemental reports provided by plaintiffs' experts Dr. Maxwell Palmer, and Dr. Lisa Handley in this case. My rate of compensation in this matter is $500 per hour.

Qualifications

I am a tenured full professor of political science at Rice University. At Rice, I have taught courses on redistricting, elections, political representation, voting behavior and statistical methods at both the undergraduate and graduate level. Over the last thirty years, I have worked with numerous local governments on districting plans and on Voting Rights Act issues. I have previously provided expert reports and/or testified as an expert witness in voting rights and statistical issues in a variety of court cases, including on behalf of the U.S. Attorney in Houston, the Texas Attorney General, a U.S. Congressman, and various cities and school districts.

In the 2000 round of redistricting, I was retained as an expert to provide advice to the Texas Attorney General in his role as Chair of the Legislative Redistricting Board. I subsequently served as the expert for the State of Texas in the state and federal litigation involving the 2001 redistricting for U.S. Congress, the Texas Senate, the Texas House of Representatives, and the Texas State Board of Education. In the 2010 round of redistricting in Texas, I was again retained as an expert by the State of Texas to assist in defending various state election maps and systems including the district maps for the U.S. Congress, the Texas Senate, the Texas House of Representatives, and the current at large system for electing Justices to the State Supreme Court

and Court of Appeals, as well as the winner-take-all system for allocating Electoral College votes.

I have also worked as an expert on redistricting and voting rights cases at the state and/or local level in Alabama, Arkansas, Florida, Georgia, Kansas, Louisiana, Michigan, Mississippi, New Mexico, New York, Pennsylvania, Washington, and Wisconsin. The details of my academic background, including all publications in the last ten years, and work as an expert, including all cases in which I have testified by deposition or at trial in the last four years, are covered in the attached CV (Appendix 1).

Data and Sources

In preparing this report, I have reviewed the reports filed by the plaintiffs' experts in this case. I have relied on the analysis provided to date by Dr. Palmer and Dr. Handley in their expert reports in this case. I have also relied on various election and demographic data provided by Dr. Palmer and Dr. Handley in their disclosures related to their reports in this case. In addition, I relied on data on turnout by race for the 2022 Republican Primary election provided to counsel by the Georgia Secretary of State, and 2022 precinct-level election results for that election downloaded from the publicly available website of the Georgia Secretary of State.

Dr. Palmer's Reports

Dr. Palmer, in his report in *Pendergrass v. Raffensperger* dated 12/12/2022, provides the results of an EI election analysis that he used to assess Racially Polarized Voting (RPV) in each of 40 contests between 2012 and 2022, and reports the results in his Tables 1 through 6 for five U.S. Congressional districts and as a combined focus area. Similarly, in his report in *Grant v. Raffensperger* dated 12/12/2022, Dr. Palmer provides the EI results for the same 40 contests between 2012 and 2022 as reported in his Tables 2 through 6, for three Georgia House and two Georgia Senate focus areas. The race of the candidate preferred by Black voters is indicated in Dr. Palmer's tables with an asterisk by the name of each Black candidate, and the absence of an asterisk indicating a non-Black candidate. Across the 40 reported contests 19 of the preferred candidates are Black and 21 are non-Black, providing an ideal, almost equal distribution, for comparing both Black and white voter support for Black-preferred candidates that happen to be Black, with Black voter support for Black-preferred candidates that happen not to be Black.

However, despite having this data identified in his reports and the associated opportunity analyze it, there is no discussion of the impact, if any, that the race of the candidate might have on the behavior of Black or white voters in these contests. Also, Dr. Palmer provides no party labels in these tables, and does not mention the party of candidates in his discussion of the results of his analysis.

As evident in Dr. Palmer's Tables 1-6 in his *Pendergrass* report, and Tables 2-6 in his *Grant* report, the pattern of polarization is quite striking. Black voter support for their preferred candidate is typically in the 90 percent range and scarcely varies at all across the ten years examined from 2012 to 2022. Nor does it vary in any meaningful degree from the top of the ballot elections for U.S. President to down-ballot contests like Public Service Commissioner. While slightly more varied, estimated white voter opposition to the Black-preferred candidate is typically above 80 percent. In the *Pendergrass* Table 1 for the combined focus area, Dr. Palmer reports estimates of Black voter support that only varies between 96 and 99 percent when results are rounded to the nearest percent. White voter opposition to the Black preferred candidate is slightly more varied, but still remarkably stable, ranging in *Pendergrass* Table 1 only from 84.5% to 91.4 percent.

What accounts for this remarkable stability in the divergent preferences of Black and white voters across years and offices? It is clearly not Black voter's preference for Black candidates, or white voter's disinclination to vote for Black candidates. At 98.5 percent, the average Black support for the 19 Black candidates identified as Black in Palmer's *Pendergrass* Table 1 is indeed nearly universal, but so is the average 98.4 percent support for the 21 candidates identified as non-Black in Table 1. Similarly, the average white vote in opposition to the 19 candidates identified as Black in *Pendergrass* Table 1 is a clearly cohesive 88.1 percent, but so is the average 87.1 percent white voter opposition to the 21 candidates identified as non-Black. The same can said for Dr. Palmer's results in his *Grant* report where, for example, the average Black support for the 19 candidates identified as Black in Table 2 is 98.2 percent, and Black voter support for the 21 candidates identified as non-Black is a nearly identical 98.1 percent. Similarly, the average white vote in opposition to the 19 candidates identified as Black in *Grant* Table 2 is a clearly cohesive 90.1 percent, but so is the average 89.1 percent white voter opposition to the 21 candidates identified as non-Black.

If we do consider the party affiliation of the candidates, the pattern over these election contests is stark in both the *Grant* report and the *Pendergrass* report. In all 40 contests the candidate of choice of Black voters is the Democrat and the candidate of choice of white voters is the Republican.

In contrast, the race of the candidates does not appear to be influential. Black voter support for Black Democratic candidates is certainly high, as Dr. Palmer's Tables 2 through 6 in *Grant* and Tables 1 through 5 in *Pendergrass* clearly show, but those same figures also show Black voter support in the same high range for white Democratic candidates as it is for Black Democratic candidates. Similarly, white voter support for Black Democratic candidates is very low, but white voter support for white Democratic candidates is also very low.[1] In other words, there appears to be just one overarching attribute of candidates that uniformly leads to their relative acceptability or unacceptability among white voters and Black voters alike. And it is not the candidate's race. It is their party affiliation.

For example, in the 2022 contest for Governor in Dr. Palmer's *Pendergrass* Table 1 (his combined focus region) Stacey Abrams, the Black Democratic candidate, gets an estimated 98.5% of the Black vote, but in the same election in the adjacent Lt. Governor contest Charlie Bailey, a white Democrat, gets an almost identical estimated 98.4% of the Black vote. Looking at White voters a similar pattern is clear. Abrams gets an estimated 10.3% of the white vote, but in the same election in the adjacent Lt. Governor contest Baily, the white Democrat, received a similar estimated 12.1% of the white vote.

Similarly, in the 2021 U.S. Senate runoffs in Dr. Palmer's *Pendergrass* Table 1 (his combined focus region) Raphael Warnock, the Black Democratic candidate gets an estimated 98.7% of the Black vote, but in the same election in the other Senate contest Jon Ossoff, a white Democrat gets an identical estimated 98.7% of the Black vote. Looking at white voters a similar pattern is clear. Warnock, the Black Democratic candidate, gets an estimated 15.2% of the white vote, but in the same election in the other Senate contest, Ossoff, the White Democrat, gets an almost identical estimated 14.5% of the white vote.

[1] The limited evidence from the 2022 endogenous elections provided in Dr. Palmer's supplemental reports do not contradict this broad pattern.

Moving beyond his EI analysis, Dr. Palmer also provides reconstituted election results to demonstrate the success rate of Black preferred candidates in his focus areas. Given that as mentioned above the Black preferred candidate is always the Democratic candidate and given the dominance of political party in the EI results as discussed above, it is no surprise that these tables show stable performance for Democratic candidates across the 40 contests, regardless of race. For example, in Dr. Palmer's Table 7 in his *Pendergrass* report, the average vote share for the Democratic candidate is 41.7 percent in the 19 contests where the Democratic candidate is Black, and a very similar 42.3 percent in the 21 contests where the Democratic candidate is not Black.

In short, all that Dr. Palmer's analysis demonstrates is that Black voters provide uniformly high levels of support for Democratic candidates and white voters provide uniformly high levels of support for Republican candidates. There is no indication in these EI results that the high levels of Black voter support for Democratic candidates is connected in any meaningful way to the race of the Democratic or Republican candidates. Similarly, there is no indication in these results that the high levels of white voter support for the Republican candidates is connected in any meaningful way to the race of the Democratic or Republican candidates.

Dr. Handley's Report

Dr. Handley's December 12, 2022 report in *Alpha Phi Alpha* focuses first on general elections, and reports results similar to those reported by Dr. Palmer. Black voters support Democratic candidates and white voters support Republican candidates. She indicates that she has chosen to focus on racially contested elections, so this limits the ability to see whether this partisan pattern varies at all with the race of the candidates, but in the two contests without a Black Democrat, the Ossoff 2020 Senate contest and 2021 runoff, the results for both Black and White voters are very similar to the results for the racially contested elections, as was the case in Dr. Palmer's larger set of general elections.

Unlike Dr. Palmer, Dr. Handley also analyzes eleven racially contested statewide Democratic primaries. The results in these primaries are very different from the general election patterns. The general election pattern is a very important contrast to keep in mind when evaluating the results for these eleven primary contests. In the general elections, Black support for the Democratic candidate is very high and very stable in the upper 90% range. Similarly,

White voter opposition to the Democratic candidates is also high and stable in the 80 percent and up range.

While there is not currently a bright-line court standard for determining the level of support needed under *Gingles* prongs 2 and 3 to demonstrate cohesion, multiple plaintiffs' experts have recently discussed a minimum of 60 percent threshold for cohesion in a two-person contest. Simply having a preferred candidate (50 percent plus 1 in a two-candidate contest) is not sufficient. This is, of course, true by definition. If simply having a preferred candidate was sufficient to establish cohesion, then the *Gingles* 2 threshold test would always be met in two candidate contests and thus not actually constitute a test at all. As Dr. Palmer notes on page 4 of his *Pendergrass* report, "[i]f the group's support is roughly evenly divided between the two candidates, then the group does not cohesively support a single candidate". Even if a more stringent 75 percent or 80 percent threshold was the cohesion threshold standard, the results for the general elections provided by both Dr. Palmer and Dr. Handley clearly establish partisan polarization, with Blacks always favoring Democratic candidates at stable levels well above 80 percent, and whites favoring Republican candidates at similarly stable levels, typically above 80 percent.

Applying the 60 percent threshold for cohesion to the 40 general election contests in Dr. Palmer's *Grant* report or the 40 general election contests in Dr. Palmer's *Pendergrass* report, produces the same clear result. In 40 out of 40 contests, Black voters provide cohesive support to the Democratic candidate and white voters provide cohesive support to the opposing Republican candidate. This unequivocal result is what Palmer references as supporting his conclusion of polarized voting. As he states on pages 5-6 of his December 12, 2022 *Grant* report:

> *Black voters are extremely cohesive, with a clear candidate of choice in all 40 elections. In contrast to Black voters, Figure 2 shows that White voters are highly cohesive in voting in opposition to the Black-preferred candidate in every election across the five focus areas. Table 1 lists the average level of support for the Black-preferred candidate for Black and White voters in each focus area. Across all five focus areas, Black voters support their preferred candidate with an average of 98.5% and a minimum of 95.2% of the vote, and White voters support Black-preferred candidates with an average of 8.3% and a maximum of 17.7% of the vote. This is strong evidence of racially polarized voting across all five focus areas.*

The same can be said for the 16 general election contests that Dr. Handley includes for each of her seven focus regions as reported in her Appendix C1-C7. In every one of the 16 contests examined in all seven regions, Black voter support for the Democratic candidate clearly exceeds 60 percent and in all the regular elections (excluding the one 20 candidate special Senate election in 2020) exceeded 90 percent. White voters provided cohesive support to the opposing Republican candidates exceeding 60% in every contest with the sole exception of the 2022 Senate contest in Appendix 1, where the white estimated vote fell just short of 60 percent at 59.3 percent.

As Dr. Handley, herself, states on page 9 of her December 23, 2022 Report:

> *Overall, the average percentage of Black vote for the 16 Black-preferred candidates is 96.1%. The average percentage of White vote for these 16 Black-preferred candidates across the seven areas is 11.2%. (When Ossoff is excluded, and only Black-preferred Black candidates are considered, the average White vote is slightly lower: 11.1 %.) The highest average White vote for any of the 16 candidates is 14.4% for Raphael Warnock in his 2022 general election bid for re-election. While the percentage of White support for candidates preferred by Black voters varies across the areas, in five of the seven areas the average did not even reach 10%. White crossover voting was the highest in the Eastern Atlanta Metro Region (Map 1), but only about one third of White voters typically supported the Black-preferred Black candidates in this area.*

She finds similarly clear evidence of polarization when she considers the analysis of state legislative elections included in her Appendix B1 and B2, stating on page 9 of her December 23, 2022:

> *Nearly every one of the 54 of the state legislative elections analyzed (53 of the 54 contests, or 98.1%) was racially polarized. The estimates of Black and White support for the state legislative candidates in these contests analyzed can be found in Appendices B1 (State Senate) and B2 (State House). Black voters were quite cohesive in supporting Black candidates in these state legislative contests: on average, 97.4% of Black voters supported their preferred Black state senate candidates, and 91.5% supported their preferred Black state house candidate. Very few White voters supported these candidates, however: Black-preferred Black state senate candidates garnered, on average, 10.1% of the White vote; Black-preferred Black state house candidates received, on average, 9.8% of the White vote.*

Based on their summary descriptions of their general election analysis, it is clear that both Dr. Palmer and Dr. Handley know what a convincing pattern of polarization looks like. That clear pattern is not present once candidate party labels are removed from the contest. Dr. Palmer

makes no effort to address this issue of conflating polarization in support for Democratic versus Republican candidates with racial polarization. Dr. Handley attempts to address the issue by providing analysis for eleven Democratic primaries in each of her seven focus regions.

But looking at the Democratic primary contests, as reported in Dr. Handley's Appendix C1-C7, the contrast to the pattern in the partisan general elects is stark. As detailed above, the pattern of Black voter support for Democratic candidates and white voter support for their Republican opponents in general elections is near universal, and both Black and white voters show strong and highly stable levels of cohesion. In contrast the pattern Dr. Handley identifies in the Democratic primaries is far from universal or stable. The support of Black voters for Black candidates varies widely, and seldom reaches above 80 percent. Similarly, white voter support for Democratic candidates is typically below 20% in the general elections, but in the primaries white support for Black candidates varies widely and is often fairly evenly divided. In many of the contests within Dr. Handley's six focus regions, for example, the votes of Blacks, whites, or both are divided too evenly to characterize the voting as cohesive. Even ignoring any concern for establishing minority or majority cohesion and applying a very loose standard of Blacks and whites simply preferring different candidates, Dr. Handley is only able to conclude that "the majority (55.8%) of the contests I analyzed were racially polarized" (page 10), a level not much above chance, and far below the 100 percent or 98.1 percent reported for general elections.

If we consider the *Gingles* 2 and 3 cohesion thresholds, even this slight result disappears. Using even a modest 60% standard for voter cohesion, Black voters vote cohesively for Black candidates in only 35 contests out of 77 (46 percent). If we add the instances where Blacks vote cohesively for white candidate that rises to 49 contests (64 percent of the 77 total). In those 49 contests, white voters cohesively opposed the Black preference in only 10 contests (20 percent of the 49 contests).

Herschel Walker Senate Race

The recent 2022 Republican U.S. Senate primary provides an additional racially contested primary to consider. Among the six candidates, the majority winner was Herschel Walker, one of the three Black candidates. Given that Black voters were less than 12 percent of the voters in in any county in the state in that primary, and that Walker received a majority of the vote in every county in Georgia, it is clear the Walker was the preferred candidate among White voters

in the Republican primary. This can be seen as well in an initial look at EI estimates for the area covered in Dr. Handley's Appendix A1, reproduced below in Table 1 (Eastern Atlanta Metro Region – Map Area 1, Dekalb, Henry, Morgan, Newton, Rockdale, and Walton). With an estimated 62 percent support among Black voters, and 67 percent support among white voters, Walker is the preferred candidate of both Black and white voters in the Republican primary.

Table 1; Ecological Estimates of Voting Patterns by Race in the 2022 Republican U.S. Senate Primary for Dr. Handley's Eastern Atlanta Metro Region

			95% Confidence Interval			95% Confidence Interval			95% Confidence Interval	
Last Name	**Candidate Race**	**Black support**	**Low**	**High**	**White Support**	**Low**	**High**	**Other Support**	**Low**	**High**
Herschel Walker	Black	**62.4%**	57.8%	67.4%	**67.0%**	66.3%	67.6%	5.3%	1.8%	11.7%
Kelvin King	Black	**10.1%**	7.7%	12.8%	**2.5%**	2.0%	3.0%	17.5%	12.5%	22.5%
"Jon" McColumn	Black	**3.0%**	1.7%	4.8%	**0.9%**	0.6%	1.2%	22.4%	18.8%	25.4%
Gary Black	white	**12.8%**	9.6%	16.2%	**15.3%**	14.5%	16.0%	9.3%	3.3%	17.0%
Latham Saddler	white	**7.1%**	4.1%	10.7%	**12.7%**	11.9%	13.5%	15.7%	7.8%	24.0%
Josh Clark	white	**4.5%**	2.7%	6.8%	**1.6%**	1.1%	2.2%	29.8%	23.7%	35.3%

Summary Conclusions

The partisan general election analysis report by Dr. Palmer and Dr. Handley show that Black voters cohesively support Democratic candidates, regardless of whether those candidates are Black or White. Similarly, white voters cohesively vote for Republican candidates, and in opposition to Democratic candidates, regardless of whether those Democratic candidates are Black or white. Thus, it is cohesive Black voter support for *Democratic* candidates, and white voter support for *Republican* candidates that the general election analysis reveals, not cohesive Black voter support for *Black* candidates and white voter support for *white* candidates. Nonetheless, the voting pattern is clearly one of partisan polarized voting, with both highly cohesive Black vote for the Democrat and highly cohesive white vote for the Republican candidate. The more limited analysis of Democratic primaries reported by Dr. Handley shows a very different picture of voting behavior from the general elections. Nothing even approaching the levels of Black and white cohesion seen in the general elections appears anywhere in the

primary contests, and the overall patterns are mixed and variable even within the same set of voters on the same day as we see in the multiple contests in the 2018 Democratic primary. Similarly, the 2022 U.S. Senate Republican primary indicates that white Republican primary voters are willing to support a Black Republican candidate over multiple white opponents.

February 6, 2023

John R. Alford, Ph.D.

KeyCite Yellow Flag - Negative Treatment
Distinguished by Jacksonville Branch of NAACP v. City of Jacksonville, M.D.Fla., October 12, 2022

587 F.Supp.3d 1222
United States District Court,
N.D. Georgia, Atlanta Division.

ALPHA PHI ALPHA FRATERNITY INC., et al., Plaintiffs,
v.
Brad RAFFENSPERGER, in his official capacity as Secretary of State of Georgia, Defendant.
Coakley Pendergrass, et al., Plaintiffs,
v.
Brad Raffensperger, et al., Defendants.
Annie Lois Grant, et al., Plaintiffs,
v.
Brad Raffensperger, et al., Defendants.

CIVIL ACTION FILE No. 1:21-CV-5337-SCJ,
CIVIL ACTION FILE No. 1:21-CV-5339-SCJ,
CIVIL ACTION FILE No. 1:22-CV-122-SCJ
|
Signed 02/28/2022

Synopsis
Background: Plaintiffs brought actions challenging the legality of the State of Georgia's newly adopted redistricting plan under the Voting Rights Act (VRA). Plaintiffs moved for preliminary injunction.

Holdings: The District Court, Steve C. Jones, J., held that:

[1] plaintiffs met *Gingles* preconditions for their claims of vote dilution in congressional and state legislative districts under redistricting plan;

[2] plaintiffs met Senate factors for determining that vote dilution was occurring;

[3] plaintiffs would likely the suffer irreparable harm in the absence of a preliminary injunction; but

[4] balancing of harms and public interest weighed against granting plaintiffs a preliminary injunction.

Motion denied.

Procedural Posture(s): Motion for Preliminary Injunction.

West Headnotes (54)

[1] **Injunction** Grounds in general; multiple factors

To obtain injunctive relief, plaintiffs must demonstrate: (1) substantial likelihood of success on merits; (2) that irreparable injury will be suffered unless injunction issues; (3) threatened injury to movant outweighs whatever damage proposed injunction may cause opposing party; and (4) if issued, injunction would not be adverse to public interest.

[2] **Injunction** Extraordinary or unusual nature of remedy

Injunction Clear showing or proof

Injunctive relief is an extraordinary and drastic remedy and should not be granted unless the movant clearly establishes the burden of persuasion as to each of the four factors.

[3] **Injunction** Injunctions against government entities in general

When a party seeks to affirmatively enjoin a state governmental agency, requiring it to perform a certain action, the case must contend with the well-established rule that the government has traditionally been granted the widest latitude in the dispatch of its own affairs; this rule bars federal courts from interfering with non-federal government operations in the absence of facts showing an immediate threat of substantial injury.

[4] **Injunction** Discretionary Nature of Remedy

Exhibit 0003

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The decision to grant preliminary injunctive relief is within the broad discretion of the district court.

[5] **Courts** Dicta

Even dicta from the Supreme Court carries strong persuasive value.

[6] **Election Law** Compactness and cohesiveness of minority group

Under *Gingles*, a minority group claiming dilution of its vote in violation of the Voting Rights Act (VRA) must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district; if it is not, as would be the case in a substantially integrated district, the multi-member form of the district cannot be responsible for minority voters' inability to elect its candidates. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[7] **Election Law** Compactness and cohesiveness of minority group

Under *Gingles*, a minority group claiming dilution of its vote in violation of the Voting Rights Act (VRA) must be able to show that it is politically cohesive; if it is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[8] **Election Law** Dilution of voting power in general

Under *Gingles*, a minority group claiming dilution of its vote in violation of the Voting Rights Act (VRA) must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it, in the absence of special circumstances, such as the minority candidate running unopposed, usually to defeat the minority's preferred candidate. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[9] **Election Law** Judicial Review or Intervention

The *Gingles* requirements for a vote-dilution claim under the Voting Rights Act (VRA) presents mixed questions of law and fact. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[10] **Election Law** Discriminatory practices proscribed in general

The "Senate factors" that will typically establish a violation of Section 2 of the Voting Rights Act (VRA) are: (1) the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote or otherwise to participate in the democratic process; (2) the extent to which voting in the elections of the state or political subdivision is racially polarized; (3) the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group; (4) if there is a candidate slating process, whether the members of the minority group have been denied access to that process; (5) the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process; (6) whether political campaigns have been characterized by overt or subtle racial appeals; (7) the extent to which members of the minority group have been elected to public office in the jurisdiction; (8) whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group; and (9) whether the policy underlying the state or political subdivision's use of such voting qualification, prerequisite to voting, or standard, practice or procedure is

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tenuous. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[11] **Election Law** Vote Dilution

In the context of a claim of vote dilution in violation of the Voting Rights Act (VRA), "single-shot" or "bullet voting" enables minority group to win some at-large seats if it concentrates its vote behind limited number of candidates and if vote of majority is divided among number of candidates. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[12] **Election Law** Dilution of voting power in general

Satisfying the *Gingles* preconditions and the Senate factors proves the injury of vote dilution under the Voting Rights Act (VRA); such harms must, however, be evaluated on a district-by-district basis. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[13] **Injunction** Pleadings and affidavits as evidence

Injunction Hearsay

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

[14] **Election Law** Compactness and cohesiveness of minority group

To satisfy first *Gingles* precondition for a vote-dilution claim under Voting Rights Act (VRA), plaintiffs must establish that Black voters as group are sufficiently large and geographically compact to constitute majority in some reasonably configured legislative district. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[15] **Election Law** Compactness and cohesiveness of minority group

In order to show minority vote dilution through districting of single-member districts, there must be the possibility of creating more than the existing number of reasonably compact districts with sufficiently large minority population to elect candidates of its choice. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[16] **Election Law** Majority-minority districts

Although plaintiffs typically attempt to satisfy the first *Gingles* precondition of compactness/numerosity for a vote-dilution claim under the Voting Rights Act (VRA) by drawing hypothetical majority-minority districts, such illustrative plans are not cast in stone and are offered only to demonstrate that a majority-Black district is feasible. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[17] **Election Law** Compactness and cohesiveness of minority group

Election Law Weight and sufficiency

A party asserting liability for vote dilution under Article 2 of the Voting Rights Act (VRA) must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[18] **Election Law** Racial and language minorities in general

When a voting rights case involves an examination of only one minority group's effective exercise of the electoral franchise, it is proper to look at all individuals who identify themselves as Black when determining a district's Black Voting Age Population (BVAP). Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

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[19] **Election Law** Compactness and cohesiveness of minority group

Compliance with the first *Gingles* precondition of compactness/numerosity for a vote-dilution claim under the Voting Rights Act (VRA) does not require that the illustrative plans be equally or more compact than the enacted plans, but requires only that the illustrative plans contain reasonably compact districts; an illustrative plan can be far from perfect in terms of compactness yet satisfy the first *Gingles* precondition. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

1 Case that cites this headnote

[20] **Election Law** Majority-minority districts

Plaintiffs satisfy the first *Gingles* precondition of compactness/numerosity for a vote-dilution claim under the Voting Rights Act (VRA) when their proposed majority-minority district is consistent with traditional districting principles. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[21] **Election Law** Vote Dilution

Traditional districting principles for analyzing a Voting Rights Act (VRA) vote-dilution claim include maintaining communities of interest and traditional boundaries, geographical compactness, contiguity, and protection of incumbents. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[22] **Election Law** Compactness and cohesiveness of minority group

To satisfy the first *Gingles* precondition of compactness/numerosity for a vote-dilution claim under the Voting Rights Act (VRA), plaintiffs' illustrative plans must comply with the one person one vote requirement under the Equal Protection Clause. U.S. Const. Amend. 14; Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[23] **Injunction** Redistricting and reapportionment

Plaintiffs asserting a vote-dilution claim under the Voting Rights Act (VRA) were substantially likely to succeed on the merits of their claim that it was possible to create an additional majority-minority congressional district that complied with *Gingles* compactness/numerosity requirement, supporting preliminary injunction enjoining enforcement of boundaries of congressional districts adopted by Georgia legislature; plaintiffs' illustrative plan showed that relevant Black populations was sufficiently large and geographically compact to constitute a majority in a single-member district, and plan did not subordinate traditional redistricting principles in favor of race-conscious considerations. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[24] **Election Law** Majority-minority districts

To satisfy first *Gingles* precondition for vote-dilution claim, plaintiffs must show that their proposed majority-minority congressional district is sufficiently compact; this compactness requirement requires showing that it is possible to design an electoral district consistent with traditional redistricting principles. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[25] **Election Law** Vote Dilution

A state cannot use race as predominant factor motivating the decision to place a significant number of voters within or without a particular district, and the state is not allowed to subordinate other factors, such as compactness or respect for political subdivisions, to racial considerations; thus, an illustrative plan submitted in support of a vote-dilution claim should not subordinate traditional redistricting principles to racial considerations substantially more than is reasonably necessary to avoid liability under Voting Rights Act (VRA). Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

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[26] **Injunction** Redistricting and reapportionment

Plaintiffs asserting a vote-dilution claim under the Voting Rights Act (VRA) established that they were substantially likely to succeed on the merits of their claim that redistricting plan adopted by the Georgia legislature violated the VRA based on the Black population being sufficiently large and compact to create additional Black-majority state senate and house districts, thus complying with *Gingles* compactness/numerosity requirement and supporting their motion for a preliminary injunction enjoining enforcement of boundaries of state legislative districts; plaintiff's illustrative plans showing potential additional districts complied with traditional redistricting principles and did not prioritize race-conscious considerations. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

1 Case that cites this headnote

[27] **Election Law** Vote Dilution

As part of a vote-dilution claim under the Voting Rights Act (VRA), there is more than one way to draw a district so that it can reasonably be described as meaningfully adhering to traditional principles, even if not to the same extent or degree as some other hypothetical district. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[28] **Constitutional Law** Population deviation

The Equal Protection Clause requires that a state make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. U.S. Const. Amend. 14.

[29] **Election Law** Majority-minority districts

Intentional creation of a majority-minority district necessarily requires consideration of race; therefore, to penalize plaintiffs for attempting to make the very showing that *Gingles* and its progeny demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful vote dilution action under Section 2 of the Voting Rights Act (VRA). Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[30] **Election Law** Dilution of voting power in general

The second *Gingles* element required of a plaintiff making a vote-dilution claim under the Voting Rights Act (VRA) is that the minority group show that it is politically cohesive; this involves an assessment of the extent to which elections in the jurisdiction are affected by racial polarization and requires discrete inquiries into minority and white voting practices. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[31] **Election Law** Dilution of voting power in general

Showing that significant number of minority group members usually vote for same candidates is one way of proving political cohesiveness necessary to vote-dilution claim, and, consequently, establishes minority bloc voting within context of Voting Rights Act (VRA). Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[32] **Election Law** Dilution of voting power in general

To satisfy the second *Gingles* precondition for a vote-dilution claim under the Voting Rights Act (VRA), i.e. that the minority group is politically cohesive, plaintiffs need not prove the causes of racial polarization, just its existence. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[33] **Election Law** Dilution of voting power in general

In the context of a vote-dilution claim under the Voting Rights Act (VRA), the surest indication of race-conscious politics is a pattern of racially

polarized voting. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

1 Case that cites this headnote

[34] **Injunction** Redistricting and reapportionment

Plaintiffs challenging the legality of redistricting plan adopted by the Georgia legislature were substantially likely to succeed on the merits of establishing that Black voters in Georgia were politically cohesive as required by second *Gingles* precondition for a vote-dilution claim under the Voting Rights Act (VRA), thus supporting preliminary injunction enjoining enforcement of the redistricting plan; evidence established that the overwhelming majority of Black voters preferred certain candidates in plaintiffs' congressional focus area, the individual districts that comprised it, and in state legislative districts. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[35] **Election Law** Dilution of voting power in general

The third *Gingles* precondition for a vote-dilution claim under the Voting Rights Act (VRA) requires that the minority group be able to demonstrate that the white majority votes sufficiently as a bloc to enable it, in the absence of special circumstances, such as the minority candidate running unopposed, usually to defeat the minority's preferred candidate. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[36] **Election Law** Dilution of voting power in general

The third *Gingles* precondition for a vote-dilution claim under the Voting Rights Act (VRA), i.e. bloc voting, involves the same evaluation as to the voting preferences of the majority group as that the second precondition does for the minority group: in general, a white bloc vote that normally will defeat the combined strength of minority support plus white crossover votes rises to the level of legally significant white bloc voting. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[37] **Injunction** Redistricting and reapportionment

Plaintiffs challenging the legality of redistricting plan adopted by the Georgia legislature were substantially likely to succeed on the merits of establishing that white majority votes sufficiently as a bloc to usually defeat the minority's preferred candidate, as required by third *Gingles* precondition for a vote-dilution claim under the Voting Rights Act (VRA), thus supporting preliminary injunction enjoining enforcement of the redistricting plan; there was strong evidence of racially polarized voting in the contested areas, and Black voters had generally been unable to win elections outside of majority-Black districts. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[38] **Election Law** Weight and sufficiency
Injunction Redistricting and reapportionment

Plaintiffs challenging the legality of redistricting plan adopted by Georgia legislature demonstrated a history of voting-related discrimination in Georgia, as a factor in determining whether vote dilution in violation of the Voting Rights Act (VRA) was occurring, and supporting preliminary injunction enjoining enforcement of redistricting plan; Georgia had a well-documented and extensive history of discrimination against Black voters. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[39] **Election Law** Weight and sufficiency
Injunction Redistricting and reapportionment

Plaintiffs challenging the legality of redistricting plan adopted by Georgia legislature demonstrated that Georgia voters were racially polarized, as a factor in determining whether vote dilution in violation of the Voting Rights Act (VRA) was occurring, and supporting

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preliminary injunction enjoining enforcement of redistricting plan; clear evidence established that Black and white voters consistently supported different candidates. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[40] **Election Law** Dilution of voting power in general

The extent to which voting in elections of the state or political subdivision is racially polarized, as a factor in determining whether vote dilution is occurring, will ordinarily be the keystone of a dilution case under the Voting Rights Act (VRA). Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[41] **Injunction** Redistricting and reapportionment

Plaintiffs challenging the legality of redistricting plan adopted by Georgia legislature were substantially likely to succeed on the merits of demonstrating that voting practices enhanced the opportunity for discrimination, as a factor in determining whether vote dilution in violation of the Voting Rights Act (VRA) was occurring, and supporting preliminary injunction enjoining enforcement of redistricting plan; evidence supporting finding that Georgia deliberately malapportioned its legislative and congressional districts and altered its voting procedures to dilute the votes of Black Georgians. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[42] **Election Law** Dilution of voting power in general

The extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting, is a factor to be considered in determining whether there is vote dilution in violation of the Voting Rights Act (VRA). Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[43] **Election Law** Dilution of voting power in general

Where disproportionate educational, employment, income level, and living conditions arising from past discrimination tend to depress minority political participation, and where level of Black participation is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and depressed level of political participation, as a factor in determining whether vote dilution is occurring in violation of the Voting Rights Act (VRA). Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[44] **Injunction** Redistricting and reapportionment

Plaintiffs challenging the legality of redistricting plan adopted by Georgia legislature were substantially likely to succeed on the merits of demonstrating that discrimination had produced significant socioeconomic disparities that impeded the ability of Black Georgians to fully participate in the political process, as a factor in determining whether vote dilution in violation of the Voting Rights Act (VRA) was occurring, and supporting preliminary injunction enjoining enforcement of redistricting plan; evidence established that Blacks experienced higher unemployment rates, lower annual incomes, and lower educational levels compared to white Georgians, Black voters voted at significantly lower rates than white voters, and disproportionately fewer Blacks had been elected. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[45] **Injunction** Redistricting and reapportionment

Plaintiffs challenging the legality of redistricting plan adopted by Georgia legislature were substantially likely to succeed on the merits of demonstrating that overt and subtle racial appeals were prevalent in Georgia's political

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campaigns, as a factor in determining whether vote dilution in violation of the Voting Rights Act (VRA) was occurring, and supporting preliminary injunction enjoining enforcement of redistricting plan; plaintiffs produced evidence that explicit and subtle racial appeals and race-based messaging have been used in political campaign in Georgia. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[46] **Election Law** Dilution of voting power in general

The factor of whether racial appeals are prevalent in political campaigns, as a consideration in determining whether vote dilution in violation of the Voting Rights Act (VRA) is occurring, does not require that racially polarized statements be made by successful candidates; the factor simply asks whether campaigns include racial appeals. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[47] **Injunction** Redistricting and reapportionment

Plaintiffs challenging the legality of redistricting plan adopted by Georgia legislature were substantially likely to succeed on the merits of demonstrating that Black candidates were underrepresented in office and rarely succeed outside of majority-minority districts, as a factor in determining whether vote dilution in violation of the Voting Rights Act (VRA) was occurring, and supporting preliminary injunction enjoining enforcement of redistricting plan; comparatively few Black individuals had held statewide positions, and Black candidates tended to have struggled even at the county level unless they were in majority-minority districts. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[48] **Election Law** Dilution of voting power in general

If members of the minority group have not been elected to public office, it is of course evidence of vote dilution. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[49] **Injunction** Redistricting and reapportionment

Plaintiffs challenging the legality of redistricting plan adopted by Georgia legislature were likely to succeed on the merits of demonstrating that Georgia was not responsive to the needs of its Black residents, as a factor in determining whether vote dilution in violation of the Voting Rights Act (VRA) was occurring, and supporting preliminary injunction enjoining enforcement of redistricting plan; evidence showed significant socioeconomic disparities between Black and white Georgians, lower Black participation in political process, and fewer Black elected officials. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[50] **Election Law** Majority-minority districts

Injunction Redistricting and reapportionment

The justifications for the redistricting plan adopted by the Georgia legislature were tenuous, as a factor in determining whether vote dilution in violation of the Voting Rights Act (VRA) was occurring, and supporting preliminary injunction enjoining enforcement of redistricting plan in plaintiffs' action alleging violations of the VRA; the state offered no justification for the legislature's failure to draw additional majority-Black legislative districts. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[51] **Injunction** Redistricting and reapportionment

Plaintiffs bringing a Voting Rights Act (VRA) challenge to the legality of redistricting plan adopted by Georgia legislature would likely suffer the irreparable harm of dilution of their right to vote in the absence of a preliminary injunction enjoining enforcement of redistricting plan. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

1 Case that cites this headnote

[52] **Injunction** Injunctions against government entities in general

Where the government is the party opposing a preliminary injunction, its interest and harm merge with the public interest.

[53] **Election Law** Power to Confer and Regulate

Confidence in the integrity of the electoral processes is essential to the functioning of a participatory democracy.

[54] **Injunction** Redistricting and reapportionment

The balancing of harms and public interest weighed against granting plaintiffs a preliminary injunction enjoining enforcement of redistricting plan adopted by Georgia legislature, in action alleging vote dilution in violation of the Voting Rights Act (VRA); there was insufficient time to effectuate remedial relief for the current election cycle given imminent deadlines for candidate qualification and the required time for election procedures, last-minute changes would risk voter confusion, and Georgia legislature should be afforded an opportunity to draw new district plans. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

1 Case that cites this headnote

Attorneys and Law Firms

***1229** Abigail Shaw, Pro Hac Vice, Alex W. Miller, Pro Hac Vice, Cassandra Mitchell, Pro Hac Vice, Debo P. Adegbile, Pro Hac Vice, Eliot Kim, Pro Hac Vice, Maura Douglas, Pro Hac Vice, Robert Boone, Pro Hac Vice, Samuel Weitzman, Pro Hac Vice, Wilmer Cutler Pickering Hale and Dorr LLP, Ari J. Savitzky, Pro Hac Vice, Jennesa Calvo-Friedman, Pro Hac Vice, Sophia Lin Lakin, Pro Hac Vice, American Civil Liberties Union Foundation, New York, NY, Anuradha Sivaram, Pro Hac Vice, Ayana Williams, Pro Hac Vice, De'Ericka Aiken, Pro Hac Vice, Edward Henderson Williams, II, Pro Hac Vice, Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC, Charlotte Geaghan-Breiner, Pro Hac Vice, Wilmer, Cutler, Pickering, Hale, and Dorr, LLP, Palo Alto, CA, Denise Tsai, Pro Hac Vice, George P. Varghese, Pro Hac Vice, Taeyoung Kim, Pro Hac Vice, Wilmer Cutler Pickering Hale and Dorr LLP, Boston, MA, Rahul Garabadu, Sean Young, American Civil Liberties Union Foundation of Georgia, Inc., Atlanta, GA, for Plaintiff Alpha Phi Alpha Fraternity, Inc. in 1:21-CV-5337-SCJ.

Abigail Shaw, Pro Hac Vice, Alex W. Miller, Pro Hac Vice, Debo P. Adegbile, Pro Hac Vice, Eliot Kim, Pro Hac Vice, Maura Douglas, Pro Hac Vice, Robert Boone, Pro Hac Vice, Samuel Weitzman, Pro Hac Vice, Wilmer Cutler Pickering Hale and Dorr LLP, Ari J. Savitzky, Pro Hac Vice, Jennesa Calvo-Friedman, Pro Hac Vice, Sophia Lin Lakin, Pro Hac Vice, American Civil Liberties Union Foundation, New York, NY, Anuradha Sivaram, Pro Hac Vice, Ayana Williams, Pro Hac Vice, De'Ericka Aiken, Pro Hac Vice, Edward Henderson Williams, II, Pro Hac Vice, Wilmer Cutler Pickering Hale and Dorr LLP, Washington, DC, Charlotte Geaghan-Breiner, Pro Hac Vice, Wilmer, Cutler, Pickering, Hale, and Dorr, LLP, Palo Alto, CA, Denise Tsai, Pro Hac Vice, George P. Varghese, Pro Hac Vice, Taeyoung Kim, Pro Hac Vice, Wilmer Cutler Pickering Hale and Dorr LLP, Boston, MA, Rahul Garabadu, Sean Young, American Civil Liberties Union Foundation of Georgia, Inc., Atlanta, GA, for Plaintiffs Sixth District of the African Methodist Episcopal Church in 1:21-CV-5337-SCJ, Eric T. Woods in 1:21-CV-5337-SCJ, Katie Bailey Glenn in 1:21-CV-5337-SCJ, Phil Brown in 1:21-CV-5337-SCJ, Janice Stewart in 1:21-CV-5337-SCJ.

Abha Khanna, Pro Hac Vice, Jonathan Patrick Hawley, Pro Hac Vice, Elias Law Group LLP, Kevin J. Hamilton, Pro Hac Vice, Perkins Coie LLP, Seattle, WA, Adam Martin Sparks, Joyce Gist Lewis, Krevolin & Horst, LLC, Atlanta, GA, Christina Ashley Ford, Pro Hac Vice, Daniel C. Osher, Pro Hac Vice, Graham W. White, Pro Hac Vice, Michael Brandon Jones, Elias Law Group LLP, Washington, DC, for Plaintiffs in 1:21-CV-5339, 1:22-CV-122-SCJ.

Bryan Francis Jacoutot, Bryan P. Tyson, Frank B. Strickland, Loree Anne Paradise, Taylor English Duma LLP, Charlene S. McGowan, Office of the Georgia Attorney General, Atlanta, GA, for Defendants Brad Raffensperger in 1:21-CV-5339-SCJ, 1:21-CV-5337-SCJ, 1:22-CV-122-SCJ, Sara Tindall Ghazal in 1:22-CV-122-SCJ, 1:21-CV-5339-SCJ, Matthew Mashburn in 1:22-CV-122-SCJ, 1:21-CV-5339-SCJ, Anh Le

in 1:21-CV-5339-SCJ, 1:22-CV-122-SCJ, Edward Lindsey in 1:22-CV-122-SCJ.

Bryan P. Tyson, Taylor English Duma LLP, Atlanta, GA, for Defendant Edward Lindsey in 1:21-CV-5339-SCJ.

ORDER FOLLOWING COORDINATED HEARING ON MOTIONS FOR PRELIMINARY INJUNCTION

STEVE C. JONES, UNITED STATES DISTRICT JUDGE

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ORDER [1]

This matter appears before the Court on the pending Motions for Preliminary Injunction filed in the above-stated cases concerning the legality of the State of Georgia's newly adopted redistricting plans. APA Doc. No. [39], Grant Doc. No. [19], Pendergrass Doc. No. [32]. In considering this important matter, the Court has had the benefit of thousands of pages of briefing and evidence, as well as the testimony of numerous fact and expert witnesses the Court observed over a six-day hearing on this matter. After careful review and consideration, the Court finds that while the plaintiffs have shown that they are likely to ultimately prove that certain aspects of the State's redistricting plans are unlawful, preliminary injunctive relief is not in the public's interest because changes to the redistricting maps at this point in the 2022 election schedule are ***1234** likely to substantially disrupt the election process. As a result, the Court will not grant the requests for preliminary injunctive relief.

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

I. BACKGROUND

Long ago, the United States Supreme Court in Yick Wo v. Hopkins, 118 U.S. 356, 370, 6 S.Ct. 1064, 30 L.Ed. 220 (1886). described the "political franchise of voting" as "a fundamental political right, [ ] preservative of all rights." Our sister court in the Northern District of Alabama therefore aptly expanded: "Voting is an inviolable right, occupying a sacred place in the lives of those who fought to secure the right and in our democracy, because it is 'preservative of all rights.' " People First of Ala. v. Merrill, 491 F. Supp. 3d 1076, 1091 (N.D. Ala. 2020) (quoting Yick Wo, 118 U.S. at 370, 6 S.Ct. 1064), appeal dismissed sub nom. People First of Ala. v. Sec'y of State for Ala., No. 20-13695-GG, 2020 WL 7038817 (11th Cir. Nov. 13, 2020), and appeal dismissed, No. 20-13695-GG, 2020 WL 7028611 (11th Cir. Nov. 16, 2020).

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

A. What Is Redistricting and Why Is It Necessary?

The country's system of elections is based on the principle of "one person, one vote" espoused by the Supreme Court in Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). As a result, and because our federal system of government is representative when people are drawn into electoral districts, those districts must have equal populations. Karcher v. Daggett, 462 U.S. 725, 730, 103 S.Ct. 2653, 77 L.Ed.2d 133 (1983) ("Article I, § 2 establishes a 'high standard of justice and common sense' for the apportionment of congressional districts: 'equal representation for equal numbers of people.' " (quoting Wesberry v. Sanders, 376 U.S. 1, 18, 84 S.Ct. 526, 11 L.Ed.2d 481 (1964))). Otherwise, the voting strength of people who live in districts with large populations will be diluted compared to those who live in districts with smaller populations. The Supreme Court has therefore held that in elections for members of the United States House of Representatives, "the command of Art. I, § 2 [of the Constitution], that Representatives be chosen 'by the People of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." Wesberry, 376 U.S. at 7–8, 84 S.Ct. 526 (footnotes omitted) (citations omitted). This principle has also been extended to state legislative bodies: "[A]s a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population ***1235** basis." Reynolds v. Sims, 377 U.S. 533, 568, 84 S.Ct. 1362, 12 L.Ed.2d 506 (1964).

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

B. Factual History

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

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

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

been heavily "packed" into certain districts and split up into predominantly white districts (i.e., "cracked") in other areas. See generally APA Doc. No. [1].

The Grant v. Raffensperger, No. 1:22-cv-00122-SCJ (Grant) Plaintiffs, likewise challenge the Enacted State Senate and House Plans. Specifically, the Grant Plaintiffs challenge Senate Districts 10, 16, 17, 23, ***1236** 24, 25, 28, 30, 34, 35 in the Enacted State Senate Plan, and House Districts 61, 64, 69, 74, 75, 78, 117, 133, 142, 143, 144, 145, 147, and 149 in the Enacted State House Plan. Grant Doc. No. [1], ¶¶ 41–44. They argue the General Assembly should have drawn three additional majority-minority State Senate districts and five State House districts. See generally Grant Doc. No. [1].

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

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

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

"The Fifteenth Amendment was ratified in 1870, in the wake of the Civil War. It provides that '[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude,' and it gives Congress the 'power to enforce this article by appropriate legislation.' " Shelby Cnty., Ala. v. Holder, 570 U.S. 529, 536, 133 S.Ct. 2612, 186 L.Ed.2d 651 (2013). Even after the adoption of this amendment, however, many discriminatory systems—including violence—were used to deprive Blacks (among others) of their right to vote.

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

While the VRA has been amended several times, as originally adopted, Section 2 prohibited practices that denied or abridged the right to vote "on account of" race or color. Section 4 contained an automatic trigger for the review of new voting laws or practices adopted in certain locations that had a history of using discriminatory voting tests or devices (such as poll taxes or literacy requirements) (the "coverage formula"). The entire State of Georgia was among these "covered jurisdictions." Under Section 5, covered jurisdictions were required to submit new voting procedures or practices for prior ***1237** approval ("preclearance") by the Department of Justice or a district court panel of three judges. See Wascher at 41. The VRA thus "employed extraordinary measures to address an extraordinary problem." Shelby Cnty., 570 U.S. at 534, 133 S.Ct. 2612.

In 2013, the Supreme Court held that the coverage formula was no longer constitutional because it had not been reformulated since 1975. Shelby Cnty., 570 U.S. at 538, 556–57, 133 S.Ct. 2612. As a result, the State of Georgia is no longer a covered jurisdiction. The current round of redistricting is the first to be done as a result of a Decennial Census after the Shelby County ruling. Thus, this is the first time in over fifty years in which Georgia has redistricted following the Decennial Census without having to seek preclearance. But Shelby County "in no way affect[ed] the permanent, nationwide ban on racial discrimination in voting found in § 2." Shelby Cnty., 570 U.S. at 557, 133 S.Ct. 2612. And it is Section 2 on which the Plaintiffs in these three cases predicate their claims.

D. Timeline

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

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

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

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

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

Related to the coordinated hearing and in accordance with the Court's orders setting deadlines, the parties filed stipulations, requests for judicial notice, supplemental authority (and responses), and proposed findings and conclusions of law, [3] ***1238** which the Court has reviewed in conjunction with the issuance of this Order. [4] APA Doc. Nos. [61], [73], [94], [95], [98], [101], [119], [120], [121], [123], [124]; Grant Doc. Nos. [39], [47], [56], [60], [61], [80], [81], [82]; Pendergrass Doc. Nos. [47], [54], [63], [66], [67], [69], [86], [87], [88].

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

II. LEGAL STANDARD

A. Preliminary Injunction

1. Eleventh Circuit

[1] [2] [3] [4] To obtain injunctive relief, Plaintiffs must demonstrate:

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

Four Seasons Hotels & Resorts, B.V. v. Consorcio Barr, S.A., 320 F.3d 1205, 1210 (11th Cir. 2003); see also Parker v. State Bd. of Pardons and Paroles, 275 F.3d 1032, 1034–35 (11th Cir. 2001). Injunctive relief is an extraordinary and drastic remedy and should not be granted unless the movant clearly establishes the burden of persuasion as to each of these four factors. Siegel v. LePore, 234 F. 3d 1163, 1176 (11th Cir. 2000); McDonald's Corp. v. Robertson, 147 F.3d 1301, 1306 (11th Cir. 1998). Moreover, when a party seeks to affirmatively enjoin a state governmental agency, requiring it to perform a certain action, the "case must contend with the well-established rule that the Government has traditionally been granted the widest latitude in the dispatch of its own affairs." Martin v. Metro. Atlanta Rapid Transit Auth., 225 F. Supp. 2d 1362, 1372 (N.D. Ga. 2002) (citing Rizzo v. Goode, 423 U.S. 362, 378–79, 96 S.Ct. 598, 46 L.Ed.2d 561 (1976)). This rule "bars federal courts from interfering with non-federal government operations in the absence of facts showing an immediate threat of substantial injury." Id. (quoting Midgett v. Tri–Cnty. Metro. Dist. of Or., 74 F. Supp. 2d 1008, 1012 (D. Or. 1999); citing Brown v. Bd. of Trs. of LaGrange Ind. Sch. Dist., 187 F.2d 20 (5th Cir. 1951)). [5] The decision to grant preliminary injunctive relief is within the

broad discretion of the district court. Majd–Pour v. Georgiana Cmty. Hosp., Inc., 724 F.2d 901, 902 (11th Cir. 1984).

2. Recent Supreme Court Authority

Added to this mix is the recent Supreme Court order in Merrill v. Milligan, 595 U.S. ——, 142 S. Ct. 879, —— L.Ed.2d —— (Feb. 7, 2022). Milligan involves challenges under the United States Constitution and the VRA to Alabama's recently redrawn congressional electoral maps. See generally Milligan v. Merrill, Case No. 2:21-cv-1530-AMM (N.D. Ala.) (three-judge court), ***1239** consolidated with Singleton v. Merrill, Case No. 2:21-cv-1291-AMM (N.D. Ala.) (three-judge court). After an extensive evidentiary hearing, the three-judge court entered preliminary injunctions enjoining the Alabama Secretary of State from conducting congressional elections using those maps. Id. Doc. No. [107]. The Alabama defendants applied to the United States Supreme Court for a stay of the injunctive relief from those orders. Milligan, 142 S. Ct. at 879.[6] The Supreme Court granted the request and stayed, without opinion, the injunctions that were issued by the three-judge court. See id. Chief Justice Roberts, as well as Justices Kagan, Breyer, and Sotomayor, dissented. Id. at 882–89.

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

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

Id. at 881 (footnote omitted). Because "practical considerations sometimes require courts to allow elections to proceed despite pending legal challenges," id. at 882 (quoting Riley v. Kennedy, 553 U.S. 406, 426, 128 S.Ct. 1970, 170 L.Ed.2d 837 (2008)), Justice Kavanaugh concluded that the Purcell principle should be applied to modify the traditional preliminary injunction standard when elections are close at hand:

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

Id. at 881 (citations omitted).

[5] Although Justice Kavanaugh's concurrence is not controlling, this Court ***1240** would be remiss if it ignored its conclusions. First, even dicta from the Supreme Court carries strong persuasive value. The Eleventh Circuit has made this clear. In rejecting another appellate court's dismissal of Supreme Court dicta, the Eleventh Circuit emphasized the following:

> We disagree with the [ ] opinion's dismissal of the Supreme Court's specific pronouncements [ ]. A lot. We will start with the most fundamental reason. We have always believed that when the Founders penned Article III's reference to the judicial power being vested "in one supreme Court and in such inferior Courts" as Congress may establish, they used "supreme" and "inferior" as contrasting adjectives, with us being on the short end of the contrast. See U.S. Const. Art. III § 1....
>
> It is true that the Supreme Court's analysis and its conclusion that the issue remains an open question in Supreme Court jurisprudence, is dicta. However, there is

> dicta and then there is dicta, and then there is Supreme Court dicta....
>
> We have previously recognized that "dicta from the Supreme Court is not something to be lightly cast aside."

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

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

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

B. The Voting Rights Act

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

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

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

1. The Gingles Preconditions

In Thornburg v. Gingles, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986), the Supreme Court first interpreted Section 2 after Congress amended it in 1982. The ***1241** statute, as amended, focuses on the results of the challenged standards, practices, and procedures; it is not concerned with whether those processes were adopted because of discriminatory intent. Id. at 35–36, 106 S.Ct. 2752. "Under the results test, the inquiry is more direct: past discrimination can severely impair the present-day ability of minorities to participate on an equal footing in the political process. Past discrimination may cause [B]lacks to register or vote in lower numbers than whites. Past discrimination may also lead to present socioeconomic disadvantages, which in turn can reduce participation and influence in political affairs." Marengo Cnty. Comm'n, 731 F.2d at 1567 (footnote omitted) (citation omitted).

[6] [7] [8] [9] Under Gingles, plaintiffs must show that they have satisfied three prerequisites to make out a Section 2 vote dilution claim:

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

> of a multimember electoral structure thwarts distinctive minority group interests. Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate.

478 U.S. at 50–51, 106 S.Ct. 2752 (footnotes omitted) (citations omitted). Despite Gingles's focus on multi-member districts, in Voinovich v. Quilter, 507 U.S. 146, 153, 113 S.Ct. 1149, 122 L.Ed.2d 500 (1993), the Supreme Court made clear that single-member districts can also dilute minority voting strength and thereby violate Section 2. The Gingles requirements "present mixed questions of law and fact." Solomon v. Liberty Cnty., Fla., 899 F.2d 1012, 1017 n.6 (11th Cir. 1990) (Kravitch, J., specially concurring).

2. The Senate Factors

[10] **[11]** In addition to applying the Gingles factors, courts must also consider several factors that may be relevant to Section 2 claims, which were identified in the Senate Report accompanying the 1982 VRA amendment. Gingles, 478 U.S. at 44–45, 106 S.Ct. 2752. The Court notes, "it will be only the very unusual case in which the plaintiffs can establish the ... Gingles [threshold] factors but still have failed to establish a violation of § 2 under the totality of the circumstances." Nipper v. Smith, 39 F.3d 1494, 1514 (11th Cir. 1994) (citing Jenkins v. Red Clay Consol. Sch. Bd. of Educ., 4 F.3d 1103, 1116 (3d Cir. 1993)); see also Clark v. Calhoun Cnty., 88 F.3d 1393, 1402 (5th Cir. 1996) (same). However, Gingles instructs Courts to evaluate the Senate Factors to determine, under the totality of the circumstances, if there was a Section 2 violation. See Gingles, 478 U.S. at 48, n.15, 106 S.Ct. 2752. As later explained by the Eleventh Circuit, the Senate Report factors (the "Senate Factors") that will "typically establish" a violation of Section 2 are:

> 1. the extent of any history of official discrimination in the state or political subdivision that touched the right of the members of the minority group to register, to vote or otherwise to participate in the democratic process;
>
> ***1242** 2. the extent to which voting in the elections of the state or political subdivision is racially polarized;
>
> 3. the extent to which the state or political subdivision has used unusually large election districts, majority vote requirements, anti-single shot provisions, [8] or other voting practices or procedures that may enhance the opportunity for discrimination against the minority group;
>
> 4. if there is a candidate slating process, whether the members of the minority group have been denied access to that process;
>
> 5. the extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment[,] and health, which hinder their ability to participate effectively in the political process;
>
> 6. whether political campaigns have been characterized by overt or subtle racial appeals;
>
> 7. the extent to which members of the minority group have been elected to public office in the jurisdiction.

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

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

Id. at 1016.

[12] In Gingles, the Supreme Court concluded that the Senate Factors "will often be pertinent to certain types of § 2 violations, particularly to vote dilution claims." 478 U.S. at 45, 106 S.Ct. 2752 (footnote omitted). In conjunction, the Gingles preconditions and Senate Factors require the consideration of race to some extent when evaluating electoral districts so that the voting rights of minorities are not denied or abridged. 52 U.S.C. § 10301(a); see also, e.g., Gingles, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25; Voinovich, 507 U.S. 146; Solomon, 899 F.2d 1012; Marengo Cnty. Comm'n, 731 F.2d at 1561 ("Section 2 is not meant to create race-conscious voting but to attack the discriminatory results of such voting where it is present."). Satisfying the Gingles preconditions

and the Senate Factors proves the injury of vote dilution. Such harms must, however, be evaluated on a district-by-district basis. Gill v. Whitford, —— U.S. ——, 138 S. Ct. 1916, 1930, 201 L.Ed.2d 313 (2018).

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

C. Evidentiary Considerations

[13] At the preliminary injunction stage, "a district court may rely on affidavits ***1243** and hearsay materials which would not be admissible evidence for a permanent injunction, if the evidence is 'appropriate given the character and objectives of the injunctive proceeding.' " Levi Strauss & Co. v. Sunrise Int'l Trading Inc., 51 F.3d 982, 985 (11th Cir. 1995). A substantial amount of evidence was presented by the parties during the hearing, and much of it has been considered by the Court for purposes of this Order, even if such evidence may not ultimately be admissible at trial. When discussing the evidence, this Order addresses to the extent necessary any objections raised by the parties. [9]

D. Motions to Dismiss

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

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Likelihood of Success on the Merits

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

1. The First Gingles Precondition: Numerosity and Compactness

a) Credibility Determinations

(1) Mr. Cooper

The Alpha Phi Alpha and Pendergrass Plaintiffs qualified Mr. William S. Cooper as an expert in redistricting and with reference to census data. Feb. 7, 2022, Morning Tr. 38:16–18; Feb. 7; 2022, Afternoon Tr. 112:16–19. Mr. Cooper earned a bachelor's degree in economics from Davidson College and has earned his living for the last thirty years by drawing maps, both for electoral purposes and for demographic analysis. APAX 1, ¶¶ 1–2. He has extensive experience testifying in federal courts about redistricting issues and has been ***1244** qualified in forty-five voting rights cases in nineteen states. Id. ¶ 2.

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

Mr. Cooper has served as an expert in two post-2010 local level Section 2 cases in Georgia (Ga. State Conf. of the

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

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

Throughout Mr. Cooper's reports and his live testimony, his opinions were clear and consistent, and he had no difficulty articulating his bases for them. See APAX 1, Feb. 7, 2022, Morning Tr. 39–104; Feb. 7, 2022, Afternoon Tr. 113–241. But he was not dogmatic: he took Mr. Tyson's and the Court's criticism of the compactness of his Illustrative State Senate District 18 seriously and stated, "I think the Plaintiffs – the Defendant are going to complain about [Senate District 18]. I think they sort of have a valid argument that you don't need to have a district that long, so ... if I had that opportunity, will fix that problem." Feb. 7, 2022, Afternoon Tr. 149:14–23.

The Court particularly credits Mr. Cooper's testimony that he "tried to balance" all traditional redistricting principles. Feb. 7, 2022, Morning Tr. 50:24. Mr. Cooper also testified that he "was aware of [all the traditional redistricting principles] and [he] tried to achieve plans that were fair and balanced." Feb. 7, 2022, Afternoon Tr. 140:6–7. He was candid that he prioritized race only to the extent necessary to answer the essential question asked of him as an expert on the first Gingles precondition ("Is it possible to draw an additional, reasonably compact majority-Black district?"), and clearly explained that he did not prioritize it to any greater extent. See Feb. 7, 2022, Morning Tr. 51:4–5 ("I was aware of the racial demographics for most parts of the state, but certainly [race] did not predominate"); Feb. 7, 2022, Afternoon Tr. 135:17–19 ("I was aware of race as traditional redistrict principles suggest one should be. I mean, it's Voting Rights Act[ ]. It's Federal Law."). Mr. Cooper acknowledged that [the] tradeoffs between traditional districting criteria are necessary, and he did not ignore any criteria. See Feb. 7, 2022, Afternoon Tr. 230:22–25 ("I have attempted to balance [traditional redistricting principles] together and I think overall, the Plan does comply with ***1245** traditional redistricting principles, but I'm certainly willing to accept criticism and would make adjustments upon receiving that criticism.").

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

(2) Mr. Esselstyn

The Grant Plaintiffs qualified Mr. Blakeman B. Esselstyn as an expert in redistricting and census data. Feb. 8, 2022, Afternoon Tr. 111:18–112:1. Mr. Esselstyn earned his bachelor's in Geology & Geophysics and International Studies from Yale University and a Master's in Computer and Information Technology from the University of Pennsylvania, School of Engineering. GPX 3, 26. Mr. Esselstyn testified that he has "more than 20 years in experience in looking at maps and demographics and recognizing patterns and things like that." Feb. 9, 2022, Afternoon Tr. 168:10–12. Since 2017, Mr. Esselstyn has taught two one-semester-graduate-level courses in Geographic Information Systems. GPX 3, at 27. Mr. Esselstyn has designed redistricting plans that were accepted by various local governments in North Carolina. Id. at 27–28. Mr. Esselstyn was a testifying expert witness in Jensen v. City of Asheville, Buncombe County, North Carolina, Superior Court (2009); Hall v. City of Asheville, Buncombe County, North Carolina, Superior Court (2009); and Arnold v. City of Ashville, Buncombe County, North Carolina, Superior Court (2005). On *voir dire*, Mr. Esselstyn acknowledged that he has never drawn a statewide map that was used in an election and that he has never drawn a map for any jurisdiction in Georgia. Feb. 8, 2022, Afternoon Tr. 112:13–18. The Court finds Mr. Esselstyn's testimony highly credible. Mr. Esselstyn has spent the majority of his professional life drawing maps for redistricting and demographic purposes.

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

The Court particularly credits Mr. Esselstyn's testimony that he tried "to sort of find the best balance that [he] can" for all the traditional redistricting principles. Feb. 9, 2022, Afternoon Tr. 157:14–25. Mr. Cooper also testified the traditional redistricting principles are "sort of the multi-layered puzzle" and it's a balancing act" because "there are often criteria that will be [in tension] with each other." Id. at 157:24–25. He was candid that he prioritized race only to the extent necessary to answer the essential question asked of him as an expert on the first Gingles precondition ("Is it possible to draw an additional, reasonably compact majority-Black district?"), and clearly explained that he did ***1246** not prioritize it to any greater extent. See id. at 155:20–156:2 ("[M]y understanding of Section 2 in the Gingles criteria is that the key metric is whether a district has a majority of Any Part Black population.... And that means ... [y]ou have to look at the numbers that measure the percentage of the population is Black."). Mr. Esselstyn acknowledged that tradeoffs between traditional districting criteria are necessary, and he did not ignore any criteria. See id. at 157:14–21

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

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

(3) Mr. Morgan

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

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

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

North Carolina v. Covington, —— U.S. ——, 137 S. Ct. 2211, 198 L.Ed.2d 655 (2017).

Additionally, two federal courts have determined that Mr. Morgan's testimony was not credible. Feb. 11, 2022, Afternoon ***1247** Tr. 245:19–246:15, 246:17–19, 247:25–248:21. The Court gives great weight to the credibility determinations of its sister courts.

At the hearing for this matter, Mr. Morgan testified that he had helped draw the 2011 Virginia House of Delegates Maps. Feb. 11, 2022, Afternoon Tr. 183:20–25. In that case, "Mr. Morgan testified ... that he played a substantial role in constructing the 2011 plan, which role included his use of the Maptitude software to draw district lines." Bethune-Hill v. Virginia State Bd. of Elections, 326 F. Supp. 3d 128, 151 (E.D. Va. 2018). Ultimately, a three-judge court found that 11 of the House of Delegates districts were racial gerrymanders. Feb. 11, 2022, Afternoon Tr. 184:1–6; see also Bethune-Hill, 326 F. Supp. 3d at 181.

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

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

During Mr. Morgan's live testimony, the Court carefully observed his demeanor, particularly as he was cross-examined for the first time about his work on this case. The Court found that Mr. Morgan declined to answer counsel's and the Court's questions about the definition for "packing." Feb. 11, 2022, Afternoon Tr. 192:24–196:25. The Court specifically asked Mr. Morgan for his definition of packing (Id. at 194:4), to which Mr. Morgan responded, "Honestly, I have seen so many different places —" Id. at 194:4–6. The Court then stated, "I understand that. You said you have been doing this for four decades. You have more experience than just about everybody. What is your definition of it?" Id. at 194:7–9. Despite the Court and counsel's questioning, Mr. Morgan never gave a clear definition for the term "packing." Id. at 194:7–196:25. The Court also observed that Mr. Morgan consistently could not recall that his credibility was undermined in previous redistricting cases. As such, ***1248** the Court finds that Mr. Morgan's testimony lacks credibility, and the Court assigns little weight to his testimony.

(4) Ms. Wright

Over objection from the Grant and Pendergrass Plaintiffs, Defendants offered Ms. Regina Harbin Wright as an expert on redistricting in Georgia and the analysis of demographic data in Georgia.[11] Ms. Wright is an experienced map drawer and a busy public servant. Ms. Wright serves as the Executive Director of the Legislative and Congressional Reapportionment Officer (LCRO), a joint office of the Georgia General Assembly. DX 41, ¶ 2. Ms. Wright has worked for LRCO for just over twenty-one years and has been the director for almost ten years. Feb. 11, 2022, Morning Tr. 6:20–24. LRCO assists the General Assembly in drawing the Georgia State House and Senate Districts, the Public Service Commission, as well as the fourteen (14) United States Congressional Districts. Id. LRCO provides an array of maps and data reports to both legislators and the public at large. Id.

Ms. Wright has served as an expert or technical advisor for redistricting by federal courts in eight federal cases since the 2010 redistricting cycle. See DX 41, ¶ 6 (Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm'rs, 996 F. Supp. 2d 1353, 1359 (N.D. Ga. 2014) (appointed as the court's "independent technical advisor"); Fayette Cnty. Bd. of Comm'rs, 118 F. Supp. 3d at 1340 (appointed to be the court's "expert or technical advisor"); Crumly v. Cobb Cnty. Bd. of Elections & Voter Registration, 892 F. Supp. 2d 1333, 1344 (N.D. Ga 2012) (appointed as the court's "technical advisor and consultant") Martin v. Augusta-Richmond Cnty., No. CV 112-058, 2012 WL 2339499, at *1 (S.D. Ga. June 19, 2012) (appointed by the court as "advisor and consultant"); Walker v. Cunningham, No. CV 112-058, 2012 WL 2339499, at *5 (S.D. Ga. June 19, 2012) (three-judge court) (appointed by the court "as its independent technical advisor"); Bird v. Sumter Cnty. Bd. of Educ., CA No. 1:12cv76-WLS, 2013 WL 5797653 (M.D. Ga. 2013) Doc. No. [70], 5 (appointed as the court's "independent technical advisor"); Adamson v. Clayton Cnty. Elections & Reg. Bd., 876 F.Supp.2d 1347 (N.D. Ga. 2012), Doc. No. [23], 2 (appointed as the court's "independent technical advisor."); Ga. State Conf. of NAACP v. Kemp, 312 F. Supp. 3d 1357, 1360–62 (N.D. Ga. 2018) (three-judge court) (testified at preliminary judgment hearing by deposition)).

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

> Her credibility has been specifically questioned by the Court in connection with the 2015 redistricting where she moved many [B]lack voters from districts where their votes would have made an impact to districts where they would not. And [her] report[, in this case,] is little more than a running commentary untethered to data, much less any sort of scientific or technical analysis that would lend to credibility before this Court .... [A]lthough [Ms. Wright] has practical experience relating generally to redistricting, she doesn't apply that technical or specialized knowledge here in any way which might be helpful ***1249** to this Court .... her testimony is not based on sufficient facts or data which are notably absent from the report .... [Ms. Wright] has not and cannot show that her analysis or conclusions to the product are reliable principles or methods at 702(C), and it too, is wholly absent from her report.

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

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

The Court finds that Ms. Wright did not provide any statistical metric by which to measure the compactness of any of the illustrative maps. Ms. Wright's report does not explain how she determined whether a particular district was more or less compact and thus was not permitted to explain her methodology at the hearing. DX 41; Feb. 11, 2022, Morning Tr. 47:18–48:6. Thus, the Court assigns very little weight to Ms. Wright's testimony regarding a district's compactness. The Court does recognize that Ms. Wright was given one day to prepare and submit her expert report to the Court. See APA Doc. No. [85]; Pendergrass Doc. No. [58]; Grant Doc. No. [51].

Ms. Wright also testified about the demographics of the enacted Congressional, State House, and State Senate districts in comparison to the Illustrative Congressional, State House, and State Senate districts. Ms. Wright testified that the Secretary of State's Office used the Non-Hispanic Black metric as opposed to the Any Part Black metric that was used by Mr. Cooper and Mr. Esselstyn. Id. at 79:4–80:1. In particular, Ms. Wright testified when evaluating the percentage of Black registered voters, Ms. Wright's analysis is based on non-Hispanic Black metric and not Any Part Black metric. Id. at 79:18–21. Because the Court uses the

Any Part Black metric to determine if the Black population is sufficiently numerous to create an additional majority-minority district—"it is proper to look at *all* individuals who identify themselves as [B]lack" in their census responses, even if they "self-identify as both [B]lack and a member of another minority group," because the case involved "an examination of only one minority group's effective exercise of the electoral franchise." Georgia v. Ashcroft, 539 U.S. 461, 473 n.1, 123 S.Ct. 2498, 156 L.Ed.2d 428 (2003)—the Court assigns little weight to Ms. Wright's demographic analysis.

The Court assigns greater weight to Ms. Wright's testimony about communities of interest and political subdivisions in Georgia. Ms. Wright has twenty-one years of experience in drawing statewide Congressional, State House, and State Senate districts. DX 41, ¶ 2. Ms. Wright also assists in drawing maps for local County Commissions, Boards of Education, and City Councils throughout the state of Georgia. Id. Ms. Wright oversees a staff that draws maps in Georgia for statewide legislative districts, local redistricting plans, city creation boundaries, annexations and de-annexations, and precinct boundary changes. Id. ¶ 3. Finally, Ms. Wright has been appointed as an expert and technical advisor to the Court in seven federal redistricting cases between 2012 and 2015. Id. at 6. Accordingly, the Court finds that Ms. Wright has extensive knowledge about ***1250** communities of interest and political subdivisions in Georgia. Thus, Ms. Wright's testimony regarding communities of interest and political subdivisions in Georgia is highly credible.

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

b) First *Gingles* Precondition Legal Standard

[14] **[15]** **[16]** To satisfy the first Gingles precondition, the plaintiffs must establish that Black voters as a group are "sufficiently large and geographically compact to constitute a majority in some reasonably configured legislative district." Cooper, 137 S. Ct. at 1470 (internal quotation marks omitted). "When applied to a claim that single-member districts dilute minority votes, the first Gingles [pre]condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." Johnson v. De Grandy, 512 U.S. 997, 1008, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994). Although "[p]laintiffs typically attempt to satisfy [the first Gingles precondition] by drawing hypothetical majority-minority districts," Clark, 88 F.3d at 1406, such illustrative plans are "not cast in stone" and are offered only "to demonstrate that a majority-[B]lack district is feasible," Clark v. Calhoun Cnty., 21 F.3d 92, 95 (5th Cir. 1994); see also Bone Shirt v. Hazeltine, 461 F.3d 1011, 1019 (8th Cir. 2006) (same); Solomon, 899 F.2d at 1018 n.7 (Kravitch, J., specially concurring) ("So long as the potential exists that a minority group could elect its own representative in spite of racially polarized voting, that group has standing to raise a vote dilution challenge under the Voting Rights Act." (citing Gingles, 478 U.S. at 50 n.17, 106 S.Ct. 2752)).

(1) Numerosity

[17] **[18]** The plaintiffs must show that the Black population is sufficiently numerous to create an additional majority-minority district. "In majority-minority districts, a minority group composes a numerical, working majority of the voting-age population. Under present doctrine, [Section] 2 can require the creation of these districts." Bartlett v. Strickland, 556 U.S. 1, 13, 129 S.Ct. 1231, 173 L.Ed.2d 173 (2009) (plurality op.). "[A] party asserting [Section] 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." Id. at 19–20, 129 S.Ct. 1231. When a voting rights "case involves an examination of only one minority group's effective exercise of the electoral franchise[,] ... it is proper to look at *all* individuals who identify themselves as black" when determining a district's Black Voting Age Population ("BVAP"). Ashcroft, 539 U.S. at 474 n.1, 123 S.Ct. 2498 (2003); see also Fayette Cnty., 118 F. Supp. 3d at 1343 n.8 ("[T]he Court is not willing to exclude Black voters who also identify with another race when there is no evidence that these voters do not form part of the politically cohesive group of Black voters in Fayette County.").

In determining whether a district is sufficiently numerous, Courts use the Any Part Black Voting Age Population ("AP BVAP") demographics, not single-race black demographics. The Supreme Court concluded that "it is proper to look at *all* individuals" even if they "self-identify as both [B]lack and a member of another minority group," because the case involved "an examination of only one minority group's effective exercise of the electoral franchise." Ashcroft, 539 U.S. at 473 n.1, 123 S.Ct. 2498 (2003). Because this Court must decide a case that involves claims about Georgia's Black population's effective ***1251** exercise of the electoral franchise, this Court relies on the AP BVAP metric.

(2) Compactness

[19] **[20]** The plaintiffs must show that Georgia's Black population can form additional reasonably compact Congressional, State Senate, and State House districts. Under the compactness requirement of the first Gingles precondition, Plaintiffs must show that it is "possible to design an electoral district[ ] consistent with traditional redistricting principles." Davis v. Chiles, 139 F.3d 1414, 1425 (11th Cir. 1998). Compliance with this criterion does not require that the illustrative plans be equally or more compact than the enacted plans; instead, this criterion requires only that the illustrative plans contain reasonably compact districts. An illustrative plan can be "far from perfect" in terms of compactness yet satisfy the first Gingles precondition. Wright v. Sumter Cnty. Bd. of Elections & Registration, 301 F. Supp. 3d 1297, 1326 (M.D. Ga. 2018), aff'd, 979 F.3d 1282 (11th Cir. 2020). "While no precise rule has emerged governing § 2 compactness," League of United Latin American Citizens (LULAC) v. Perry, 548 U.S. 399, 433 (2006), plaintiffs satisfy the first Gingles precondition when their proposed majority-minority district is "consistent with traditional districting principles," Davis, 139 F.3d at 1425.

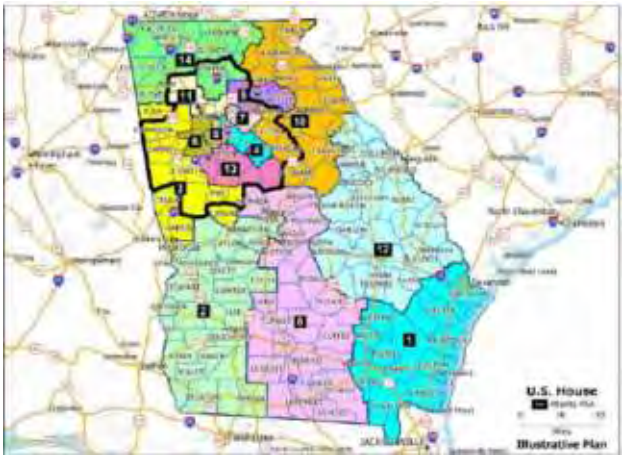
[21] These traditional districting principles include "maintaining communities of interest and traditional boundaries," "geographical compactness, contiguity, and protection of incumbents. Thus, while Plaintiffs' evidence regarding the geographical compactness of their proposed district does not alone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

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

c) Pendergrass

[23] The Court finds that the Pendergrass Plaintiffs have established that they are substantially likely to succeed on the merits of showing that it is possible to create an additional majority-minority congressional district in the western Atlanta metropolitan area that complies with the relevant considerations under Gingles.

The Pendergrass Plaintiffs move for an order preliminarily enjoining Defendants from enforcing the boundaries of the congressional districts as drawn in the Georgia Congressional Redistricting Act of 2021, which they claim violates Section 2 by failing to include an additional congressional district in the western Atlanta metropolitan area in which Black voters would have the opportunity to elect their preferred candidates. Pendergrass Doc. No. [32], 2. In particular, the Pendergrass Plaintiffs contend that the new congressional map packs Black voters into the Thirteenth Congressional District—which has a BVAP over 66% and includes south Fulton, north Fayette, Douglas, and Cobb Counties—and cracks other Black voters among the more rural and predominately white Third, Eleventh, and Fourteenth Congressional Districts. Pendergrass Doc. No. [32-1], 4, 6–7. The Pendergrass Plaintiffs argue that increases in Georgia's Black population over the last decade, along with concurrent decreases in the ***1252** state's white population, create an opportunity for an additional majority-minority congressional district that the State did not draw. See id. at 5, 9–10. Specifically, Plaintiffs contend that they can satisfy the first Gingles precondition by showing that an additional, compact majority-minority district can be drawn in the western Atlanta metropolitan area. Id. at 9–10. Plaintiffs rely on the following illustrative plan by expert demographer William S. Cooper to demonstrate how such a district could be drawn.



GPX 1, at 65–66. With Mr. Cooper's illustrative congressional plan, the Pendergrass Plaintiffs contend that they have drawn an illustrative Congressional District 6—which includes parts of Cobb, Douglas, Fulton, and Fayette Counties—

that is majority AP Black and thus would allow Black voters to elect their preferred candidates. Pendergrass Doc. No. [32-1], 10; GPX 1, ¶¶ 47–48 & fig.8. Moreover, Plaintiffs argue that Mr. Cooper's illustrative congressional district is sufficiently compact and complies with other traditional redistricting principles such as population equality, contiguity, maintaining political boundaries and communities of interest, and avoiding pairing of incumbents. Pendergrass Doc. No. [32-1], 10.

Because the first Gingles precondition requires showings that the relevant minority population is "sufficiently large and geographically compact to constitute a majority in a single-member district," LULAC, 548 U.S. at 425, 126 S.Ct. 2594 (quoting De Grandy, 512 U.S. at 1006–07, 114 S.Ct. 2647), the Court now turns to discussion of whether the Pendergrass Plaintiffs have made those showings with their proposed congressional plan.

(1) Numerosity

The first Gingles precondition requires a "numerosity" showing that "minorities make up more than 50 percent of the voting-age population in the relevant geographic area." Bartlett v. Strickland, 556 U.S. at 18, 129 S.Ct. 1231. The Court finds that the Pendergrass Plaintiffs have established ***1253** that the AP BVAP in the western Atlanta metropolitan area is sufficiently numerous to constitute a majority of the voting-age population in a new congressional district in the western Atlanta metropolitan area. Below, the Court will discuss relevant demographic developments in Georgia and then turn to how those developments inform review of the enacted and illustrative congressional maps.

(a) Demographic developments in Georgia

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

Georgia's population growth since 2010 can be attributed to increases in the state's overall minority population. GPX 1, ¶ 14 & fig.1. For example, from 2010 to 2020, Georgia's Black population increased by almost half a million people, up nearly 16% in that time. Pendergrass Stip. ¶ 28; GPX 1, ¶ 15. During that decade, 47.26% of the state's population gain was attributable to Black population growth. Pendergrass Stip. ¶ 29; GPX 1, ¶ 14 & fig.1. Indeed, Georgia's Black population, as a share of the overall statewide population, increased from 31.53% in 2010 to 33.03% in 2020. GPX 1, ¶ 16 & fig.1. And as a matter of total population, AP Black Georgians comprise the largest minority population in the state (at 33.03%). Pendergrass Stip. ¶ 32.

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

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

As of the 2020 census, Georgia has a total voting-age population of 8,220,274, of whom 2,607,986 (31.73%) are AP Black. Pendergrass Stip. ¶ 33; GPX 1, ¶ 18 & fig.2. The total estimated citizen voting-age population in Georgia in 2019 was 33.8% AP Black. Pendergrass Stip. ¶ 34; GPX 1, ¶ 20.

The Atlanta Metropolitan Statistical Area (the "Atlanta MSA") consists of the following twenty-nine counties: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton. Pendergrass Stip. ¶ 35; GPX 1, ¶ 12 n.3. The Atlanta MSA has driven Georgia's population growth in recent decades, due in part to a large increase in the region's Black population. See GPX 1, ¶ 24 & fig.4. ***1254** Between 2010 and 2020, the overall population in

the Atlanta MSA grew by 803,087 persons—greater than the population of a Georgia congressional district. See GPX 1, ¶ 29 & fig.5. [12] About half of that increase was attributable to the Atlanta MSA's Black population growing by 409,927 persons (or 23.07%). GPX 1, ¶ 29 & fig.5. [13] And looking at the period from 2000 to 2020, the Black population in the Atlanta MSA grew from 1,248,809 to 2,186,815 in 2020—or 938,006 persons. Pendergrass Stip. ¶ 36. [14]

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

Demographic trends in another sub-group of counties provide further insight. The eleven core counties of the Atlanta Regional Commission ("ARC") service area are Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, and Rockdale. Feb. 7, 2022, Morning Tr. 96:3–10. According to the 2020 Census, these ARC counties account for more than half (54.7%) of Georgia's Black population. GPX 1, ¶ 27. When considering the entire Atlanta MSA (including the ARC counties), the Atlanta metropolitan area encompasses 61.81% of Georgia's Black population. Id.

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

(b) Georgia's 2021 congressional plan

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

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GPX 1, at 55–56. The Enacted Congressional Plan reduces Congressional District 6's [15] AP BVAP from 14.6% under the prior congressional plan to 9.9%. Pendergrass Stip. ¶ 49; GPX 1, ¶ 38. Under the 2021 plan, Congressional District 13 has an AP BVAP of over 66%. Pendergrass Stip. ¶ 50. Under the Enacted Congressional Plan, Congressional Districts 3, 11, and 14 border Congressional District 13. Id. ¶ 51.
Mr. Cooper observed that "District 13 is packed with African-American voters. Under the 2021 plan it's almost 65 percent, a little bit over 65 percent black voting age." Feb. 7, 2022, Morning Tr. 45:4–6. Mr. Cooper concluded that "it would be very easy to unpack that population so that there are fewer African Americans living in the district but still a clear majority black voting age population district. And in so doing ***1256** create an additional majority black district in western metro Atlanta that would include a little part of Fayette County and south Fulton County, ... eastern Douglas County and central Southern Cobb County." Id. at 45:7–14. Mr. Cooper further observed that "the fragmentation of the black population ... is most evident in Cobb County. Cobb County has been split four ways under the enacted plan .... As it now stands, the enacted plan takes population that is just a few minutes away from downtown Atlanta in western Cobb

County and puts it in District 14, which goes all the way to the suburbs of Chattanooga." Id. at 46:19–47:4.

(c) The Pendergrass Plaintiffs' illustrative congressional plan

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

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

Neither Mr. Morgan nor Ms. Wright disputes that Mr. Cooper's Illustrative Congressional District 6 is a majority-minority district under both the AP BVAP and non-Hispanic BCVAP metrics. See DX 3, ¶ 9 (Mr. Morgan's expert report noting that Mr. Cooper's Illustrative Congressional District 6 has a "50.2% any-part Black voting age population"); DX 41, ¶ 29 (Ms. Wright's expert report acknowledging that Mr. Cooper's Illustrative Congressional District 6 is "over the 50% threshold on any part Black").[18] Both Mr. Morgan and Ms. Wright admitted during the hearing ***1257** that Mr. Cooper's illustrative Congressional District 6 has an AP BVAP of 50.23%. See Feb. 11, 2022, Morning Tr. 82:21–83:7 (Ms. Wright); Feb. 11, 2022, Afternoon Tr. 233:19–234:1 (Mr. Morgan). Although Ms. Wright claimed that Mr. Cooper's illustrative Congressional District 6 "is below 50% Black on voter registration" (DX 41, ¶ 29), she admitted during the hearing that more than 8% of registered voters are of unknown race and that this qualifying information was not included in her expert report.[19] See Feb. 11, 2022, Morning Tr. 71:10–78:12.

Notably, Mr. Cooper's illustrative plan does not reduce the number of preexisting majority-minority districts in the enacted congressional plan. See GPX 1, ¶ 51; GPX 2, ¶ 5 & fig.1. Mr. Cooper testified that creating an additional majority-minority congressional district in the western Atlanta metropolitan area with the Black communities in Cobb, Douglas, Fulton, and Fayette Counties "was extremely easy to do" and "not a complicated plan drawing project." Feb. 7, 2022, Morning Tr. 53:6–8. Mr. Cooper emphasized this point throughout the hearing. E.g., id. at 69:6–9 (stating that "it was extraordinarily easy to draw this additional majority black district in the western part of metro Atlanta" and that "[i]t basically just draws it[self]"); id. at 75:11–12 (Mr. Cooper's testimony: "There are no complexities here like there might be in other states. This is just drop-dead obvious.").

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

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

(2) Geographic Compactness

[24] To satisfy the first Gingles precondition, the Pendergrass Plaintiffs must also show that their proposed majority-Black congressional district is sufficiently compact. This compactness requirement under Gingles requires a showing that it is "possible to design an electoral district[ ] consistent with traditional redistricting principles." Davis, 139 F.3d at 1425.

The redistricting guidelines adopted by the Georgia General Assembly provide that those drawing new districts should account for or consider population equality, compactness, contiguity, respect for political subdivision boundaries and communities of interest, and compliance with Section 2 of the Voting Rights Act. See GPX 40. Mr. Cooper testified that his Illustrative Map adheres to these and other neutral districting criteria. See Feb. 7, 2022, Morning Tr. 48:16–50:21 (Mr. Cooper's testimony describing traditional districting principles employed during his map-drawing process). Mr. Cooper explained that none of the traditional districting principles predominated when he drew his Illustrative Congressional Plan; instead, he "tried to balance them all" and "did not prioritize anything other than ***1258** specifically meeting the one-person, one-vote zero population ideal district size." Id. 50:22–51:2.

For the reasons discussed below, the Court finds that the Pendergrass Plaintiffs' Illustrative Plan comports with traditional redistricting principles—including those enumerated in the General Assembly's redistricting guidelines. Thus, the Court finds that the Pendergrass Plaintiffs satisfy the remainder of the first Gingles precondition analysis.

(a) Population equality

First, an illustrative plan must comply with the one-person, one-vote principle. See Wright, 301 F. Supp. 3d at 1325–26; see also Reynolds, 377 U.S. at 577, 84 S.Ct. 1362 ("[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable.").

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

(b) Compactness

Second, as discussed in greater detail above, an illustrative plan must contain "reasonably compact" districts. See Bush v. Vera, 517 U.S. 952, 979, 116 S.Ct. 1941, 135 L.Ed.2d 248 (1996). Mr. Cooper testified that "there is no bright line rule" for compactness, "nor should there be" given that "so many factors [ ] enter into the equation"—including, in Georgia, the fact that "municipal boundaries in many [c]ounties [ ] are not exactly compact." Feb. 7, 2022, Morning Tr. 60:14–24.

The parties' experts evaluated the Enacted Congressional Plan and Mr. Cooper's Illustrative Plan using the Reock and Polsby-Popper analyses, two commonly used measures of a district's compactness. See GPX 1, ¶ 54 & nn.11–12 & fig.10; DX 1, ¶ 17 & chart 2; see also Comm. for a Fair & Balanced Map v. Ill. State Bd. of Elections, 835 F. Supp. 2d 563, 570 (N.D. Ill. 2011) (referring to "the Polsby–Popper measure and the Reock indicator" as "two widely acceptable tests to determine compactness scores"). The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. GPX 1, ¶ 54 & n.11. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. Id. The measure is always between 0 and 1, with 1 being the most compact. Id.; see also Feb. 7, 2022, Morning Tr. 59:21–60:4 (Mr. Cooper describing the Reock score as "just creating a number between zero and one to compare the area of a district with a circle drawn around the district, and so the higher you are towards one, the more compact the district would be under that measure"). The Polsby-Popper test, on the other hand, computes the ratio of the district area to the area of a circle with the same perimeter. GPX 1, ¶ 54 n.12. The measure is always between 0 and 1, with 1 being the most compact. Id.; see also Feb. 7, 2022, Morning Tr. 60:5–13 (Mr. Cooper's testimony describing the Polsby-Popper measure). In discussing these methods of measuring compactness scores, Defendants' mapping expert Mr. Morgan stated that while he would not assert that a certain score would be a universally applicable threshold for compactness, the compactness scores generally "are usually useful in comparing one plan to another" and that ***1259** "when you do a lot of comparisons, you can see some cases where things are considerably less compact than others." Feb. 11, 2022, Afternoon Tr. 226:2–11.

Mr. Cooper reported that the mean Reock score for his Illustrative Plan is 0.40, compared to a mean score of 0.43 for the Enacted Plan, and that the mean Polsby-Popper score for this Illustrative Plan is 0.23, compared to 0.25 for the Enacted Plan. GPX 1, ¶ 54 & fig.10; see also id. at 78–83. Mr. Morgan

confirmed these figures in his report. See DX 3, ¶ 17; see also Feb. 11, 2022, Afternoon Tr. 243:3–9. The following table included in Mr. Morgan's report compares, on a district-by-district level for the eight congressional districts changed in Mr. Cooper's Illustrative Plan, the compactness measures of Mr. Cooper's illustrative districts to those of the districts in the Enacted Map:

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

DX 1, ¶ 17 & chart 2. Mr. Cooper testified that, "practically speaking, there is no difference" between compactness measures for the Illustrative and Enacted Congressional Plans. Feb. 7, 2022, Morning Tr. 61:4–15. Mr. Cooper also testified that the compactness measures for his Illustrative Congressional Plan are "[i]n the usual range. There is no problem with the compactness per se in either" the Enacted or Illustrative Congressional Plans. Id. at 61:16–20. Further, while Mr. Morgan stated that Mr. Cooper's Illustrative Congressional Plan is "less compact overall" than the Enacted Plan (DX 3, ¶ 17), he did not opine that Mr. Cooper's Illustrative Plan is not reasonably compact. Feb. 11, 2022, Afternoon Tr. 243:19–244:1; see also id. at 228:3–16 (Mr. Morgan conceding that there is no minimum compactness threshold for districts under Georgia law).

Given the evidence discussed above, the Court finds that Mr. Cooper's Illustrative Congressional Map has comparable compactness scores to Georgia's enacted 2021 congressional plan. More specifically, after reviewing the compactness measures supplied by the expert reports in this case and listening to the expert testimony at the preliminary injunction hearing, the Court concludes that the districts in Mr. Cooper's Illustrative Plan are reasonably compact for purposes of the first Gingles precondition analysis. And beyond recognizing that the numerical compactness measures indicate that the affected districts in the Illustrative Plan are sufficiently compact, the Court finds that the districts in the Illustrative Plan pass the "eyeball test" in that they appear from a visual review to be compact. See Ala. State Conf. of NAACP v. Alabama, No. 2:16-CV-731-WKW, —— F.Supp.3d ——, ——, 2020 WL 583803, at *20 (M.D. Ala. Feb. 5, 2020) ("District 1 is contiguous and also passes the eyeball test ***1260** for geographical compactness."); Comm. for a Fair & Balanced Map, 835 F. Supp. 2d at 571 (noting a district's Polsby-Popper and Reock scores but also stating that the district "passe[d] muster under the 'eyeball' test for compactness"). Accordingly, the Court finds that Mr.

Cooper's Illustrative Congressional Plan is consistent with the traditional districting principle of compactness.

(c) Contiguity

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

(d) Preservation of political subdivisions

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

Mr. Cooper testified that he "attempted to avoid splitting counties where unnecessary and avoid splitting towns and municipalities." Feb. 7, 2022, Morning Tr. 55:19–56:22. However, he also noted that "to meet one-person, one-vote in the congressional plan, it is absolutely necessary to split some counties." Id. at 56:3–5. In those cases, Mr. Cooper "would try to split the county by precinct," though splitting precincts was also sometimes necessary to achieve population equality. Id. at 56:6–10. If splitting a precinct was necessary, Mr. Cooper "would follow, if possible, a municipal boundary or an observable boundary like a road or waterway. And in some cases, [Mr. Cooper] generally follow[ed] observable boundaries, but also rel[ied] on a census bureau boundary that is established, known as a block group." Id. at 56:11–19.

As Mr. Morgan notes, Mr. Cooper's plan splits more political subdivisions than the Enacted Plan does. DX 3, ¶ 15. Overall, however, the Court finds that county, voting district ("VTD"),[20] and municipal splits are comparable between the Enacted Congressional Plan and Mr. Cooper's Illustrative Plan. Although thirteen counties are split in Mr. Cooper's Illustrative Plan (compared to twelve in the Enacted Plan), Mr. Cooper's Illustrative Plan includes fewer unique county-district combinations than the Enacted Plan —fourteen compared to nineteen—indicating fewer splits overall. See GPX 1, ¶ 55 & fig.11; id. at 84–91; Feb. 7, 2022, Morning Tr. 56:20–57:21 (Mr. Cooper's testimony distinguishing between number of counties that are split as opposed to number of splits total). Further, Mr. Cooper's Illustrative Congressional Plan splits fewer municipalities than the Enacted Plan: seventy-nine compared to ninety. See GPX 1, ¶ 55 & fig.11; id. at 92–97; Feb. 7, 2022, Morning Tr. 57:22–58:4 (Mr. Cooper's testimony describing municipality splits). Mr. Cooper's Illustrative Congressional Plan splits only five more VTDs than the Enacted Plan. See GPX 1, at 84–91; Feb. 7, 2022, Morning Tr. 58:5–59:3 (Mr. Cooper's testimony describing VTD splits). And as compared to the Enacted Congressional Plan, in which Cobb County is divided among four congressional districts, Mr. Cooper's Illustrative Plan divides Cobb County between ***1261** only two congressional districts. Feb. 7, 2022, Morning Tr. 46:23–47:1, 53:9–22.

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

(e) Preservation of communities of interest

Fifth, an illustrative map should seek to keep communities of interest together in the same districts. See LULAC, 548 U.S. at 432–33, 126 S.Ct. 2594. The Supreme Court has indicated that communities of interest may form by commonalities in "socio-economic status, education, employment, health, and other characteristics." See id. at 432, 126 S.Ct. 2594 (citation omitted); see also Perez v. Abbott, No. SA-11-CV-360, 2017 WL 1406379, at *60 (W.D. Tex. Apr. 20, 2017) (recognizing communities of interest that shared "socioeconomic issues, poverty, lack of good jobs, and lack of access to health services and public hospitals"). "The recognition of nonracial communities of interest reflects the principle that a State may not assume from a group of voters' race that they think alike, share the same political interests, and will prefer the same candidates at the polls." LULAC, 548 U.S. at 432–33, 126 S.Ct. 2594 (cleaned up). But the Supreme Court has also noted "evidence that in many cases, race correlates strongly with manifestations of community of interest (for example, shared

broadcast and print media, public transport infrastructure, and institutions such as schools and churches)." Bush, 517 U.S. at 964, 116 S.Ct. 1941. [21]

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

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

Jason Carter, a former member of the State Senate and candidate for Governor of Georgia during the 2014 election, agreed that the treatment of Cobb County in the enacted congressional map does not serve a clear community of interest, noting that it "looks like ... you are taking bits and pieces of Cobb County and you are sticking them in these districts that are very, very different from Cobb County." Feb. ***1262** 10, 2022, Afternoon Tr. 127:8–20. Mr. Carter explained that this "part of Cobb [County] is essentially Metro Atlanta. It's a suburban part .... And if you look at [Chattooga] County or some of these others, we are talking about rural, mountain counties in essence that are not part of the Metro Atlanta area at all and [confront] very different sets of issue[s], it would seem to me." Id. at 127:21–128:8. He further explained the difficulties that Cobb County residents would have in securing representation due to being included in more rural-reaching congressional districts: "[I]f you are in a part of that district that is, again, buried as an appendage, in a district that has a significant number of other interests, then you are not going to have the amount of responsiveness that you would otherwise have." Id. at 132:1–15.

Ms. Wright described southwest Cobb County as "municipalized" and "developed." Feb. 11, 2022, Morning Tr. 33:19–34:3. She also confirmed that this area is "part of metro Atlanta." Id. at 34:4–5. By contrast, she described Polk and Bartow Counties in northwest Georgia—which are connected with southwest Cobb County in the Enacted Congressional Plan—as "more rural counties." Id. at 34:6–11.

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

***1263** GPX 1, ¶ 47 & fig.8. As Mr. Cooper testified, "these [c]ounties are all part of core Atlanta," and the distances between them "are fairly small." Feb. 7, 2022, Morning Tr. 92:23–25; see also id. at 96:22–25 (Mr. Cooper's testimony characterizing 11 ARC counties as core Atlanta area). Mr. Cooper also testified that he was aware of the creation of at least four majority-Black Georgia State Senate districts in the western Atlanta metropolitan area under the newly enacted legislative maps. See GPX 2, ¶ 3; Feb. 7, 2022, Morning Tr. 103:4–14. He explained that "four Senate districts is one congressional, 14 times four is 56. So that's why I was so confident at the outset that it was going to be likely that I could draw the additional majority black district in that part of the state." Feb. 7, 2022, Morning Tr. 103:15–22.
Commenting on Mr. Cooper's illustrative Congressional District 6, Mr. Carter testified, that it was "clearly" a "suburban district" in a "fast-growing" area of suburban

Atlanta. Feb. 10, 2022, Afternoon Tr. 133:8–14. Mr. Carter noted that illustrative Congressional District 6 is an area within forty-five minutes of downtown Atlanta that confronts similar issues. See id. at 133:8–18. Mr. Carter described the interests that residents of the western Atlanta metropolitan area share, such as similar suburban school districts, transportation concerns ("the Atlanta traffic reports affect everybody's life in that part of West Cobb and it affects basically nobody's life in Gordon County"), and healthcare concerns. Id. at 128:9–129:11. Applying these shared concerns to Mr. Cooper's illustrative Congressional District 6, Mr. Carter testified that residents of these areas would have similar transportation, housing, and healthcare issues. Id. at 133:19–23. He further testified that Fulton, Cobb, and Douglas Counties are growing quickly "from a school district standpoint" and will "be in the kind of environments that are going to look familiar to each other." Id. at 133:23–134:2. Asked about shared infrastructure concerns, Mr. Carter responded, "I think from an infrastructure standpoint, there is no doubt that the infrastructure needs here are really cohesive because you've got the traffic issues that are there .... And that also includes [ ] land use management .... [T]he Chattahoochee River runs through here and you are talking about drainage and land use and as these things are growing fast, the connectedness of this area is really real. So that infrastructure piece is another thing that links it together." Id. at 134:3–18.

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

(f) Core Retention

Next, the Court discusses the preservation of existing district cores, which is not an enumerated districting principle adopted by the Georgia General Assembly. See GPX 40. Mr. Morgan opined that while the 2021 Enacted Congressional Plan "largely maintains existing district cores" from the prior congressional plan, Mr. Cooper's Illustrative Plan "makes drastic changes" to many of the districts from the prior plan. DX 3, ¶ 12 & chart 1. Mr. Cooper responds, however, that he could not avoid drawing illustrative districts with ***1264** lower core retention scores than the districts in the Enacted Congressional Plan in light of his objective of satisfying the first Gingles precondition. See GPX 2, ¶ 4. As he explained in his expert report, "[c]ore retention is largely irrelevant when an election plan is challenged on the grounds that it violates Section 2[ ] of the VRA. The very nature of the challenge means that districts adjacent to the demonstrative majority-minority district must change, while adhering to traditional redistricting principles." Id.

During his testimony at the hearing, Mr. Morgan conceded that illustrative plans are necessarily different from enacted plans. Feb. 11, 2022, Afternoon Tr. 214:1–3. The Court also notes that Mr. Cooper's Illustrative Plan does not alter six of Georgia's fourteen congressional districts. See GPX 1, ¶¶ 11, 46; Feb. 7, 2022, Morning Tr. 51:6–20 (Mr. Cooper's testimony describing unchanged districts). As such, the Court finds that not only does Mr. Cooper's Illustrative Congressional Plan comply with the traditional districting principles and the General Assembly's guidelines, his plan also does not alter existing district cores in a manner that counsels against finding that it satisfies the first Gingles precondition.

(g) Racial considerations

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

Mr. Cooper was asked "to determine whether the African American population in Georgia is 'sufficiently large and geographically compact' to allow for the creation of an additional majority-Black congressional district in the Atlanta metropolitan area." GPX 1, ¶ 8 (footnotes omitted); see also

Feb. 7, 2022, Morning Tr. 98:8–16. He testified that he was not asked to either "draw as many majority black districts as possible" or "draw every conceivable way of drawing an additional majority black district." Id. at 98:17–24. And Mr. Cooper testified that if he had found that a majority-Black district could not have been drawn, he would have reported that to counsel, as he has "done [ ] in other cases." Id. at 98:25–99:24. Mr. Cooper testified that race "is something that one does consider as part of traditional redistricting principles" because "you have to be cognizant of race in order to develop a plan that respects communities of interest, as well as complying with the Voting Rights Act[,] because one of the key tenets of traditional redistricting principles is the importance of not diluting the minority vote." Id. at 48:4–15. Mr. Cooper emphasized that he accounted for other considerations when he drew his illustrative map, including the traditional districting principles described above. See id. at 48:16–51:5. Although he "was aware of the racial demographics for most parts of the state," race "certainly did not predominate." Id. at 51:3–5; see also id. at 50:22–51:2 (testifying that no factor was a predominant factor in drawing the Illustrative Plan); 99:25–100:9 (Mr. Cooper's testimony: "I looked at all of the factors that are part of the ***1265** traditional redistricting principles and tried to balance them. So I tried to draw a compact district, a district that didn't split very many political subdivisions, and we [have] already seen that the plan that I've drawn splits fewer municipalities than the adopted [ ] plan. And I looked at other factors, ... the various traditional redistricting factors. The idea was to balance those factors and show that a district could be created if it could be created."); id. at 101:25–102:13 (similar).

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

Similarly, Ms. Wright suggested that "District 13 reaches into Newton County in an unusual way that cannot be explained by normal redistricting principles" (DX 41, ¶ 29), but Mr. Cooper again explained that this was done "to balance populations out" because including all of Newton County in Congressional District 4 would have made that district overpopulated. Feb. 7, 2022, Morning Tr. 66:11–67:1. Ms. Wright also stated that "District 6 specifically grabs Black voters near Acworth and Kennesaw State University to connect them with other Black voters in South Cobb, Douglas, and Fulton Counties" (DX 41, ¶ 29), but Mr. Cooper explained that this decision was also made "to ensure that District 6 met population equality." Feb. 7, 2022, Morning Tr. 65:14–21. Mr. Cooper noted that the northern arm of his illustrative Congressional District 6 is not in "an area that is predominately black. It is a racially diverse area[.]" Id. at 65:21–66:2; see also id. at 84:4–7 (Mr. Cooper's testimony: "I was not trying to maximize the black voting age population of District 6 by going into ... Kennesaw and Acworth."); id. at 85:18–86:4 (Mr. Cooper's testimony: "I had to go in some direction and pick up fairly heavily populated areas, and I knew Kennesaw and Acworth were racially diverse so from a community of interest standpoint it made sense to include that with central Cobb County, which is also racially diverse, and southern Cobb County, which is more predominantly black."); id. at 97:5–10 (Mr. Cooper's testimony: "That was an area with relative racial diversity. I thought it would fit into a majority black district. But I was not trying to identify majority black blocks to put into District 6 from that area.").

Indeed, when asked if "there [were] densely populated black areas in those [c]ounties that you didn't include in your illustrative map," Mr. Cooper confirmed that "there would be ways to enhance the black voting age population, not just in District 6 but elsewhere, by changing lines and perhaps splitting some additional [c]ounties." Feb. 7, 2022, Morning Tr. 66:3–10; see also id. at 97:11–19 (Mr. Cooper's testimony agreeing that he could have "done further changes to the plan that was adopted, perhaps, splitting an additional [c]ounty or something to find other areas to draw a majority black district"). In response to Ms. Wright's suggestion that "[t]he divisions of Cobb, Fayette, and Newton Counties do not make sense as part of normal redistricting principles" and were made "in service of some kind of specific goal" (DX 41, ¶ 29), Mr. ***1266** Cooper confirmed that he did not have a single specific goal in mind when drawing his Illustrative Congressional Map, explaining that he was asked "to determine whether or not an additional majority black district could be created, but that was not the goal per se. I had to also follow traditional redistricting principles and then make an assessment as to whether that one additional black district could be determined. I determined that it could be, but

that was not my goal per se." Feb. 7, 2022, Morning Tr. 68:5–20.

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

(3) Conclusions of Law

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

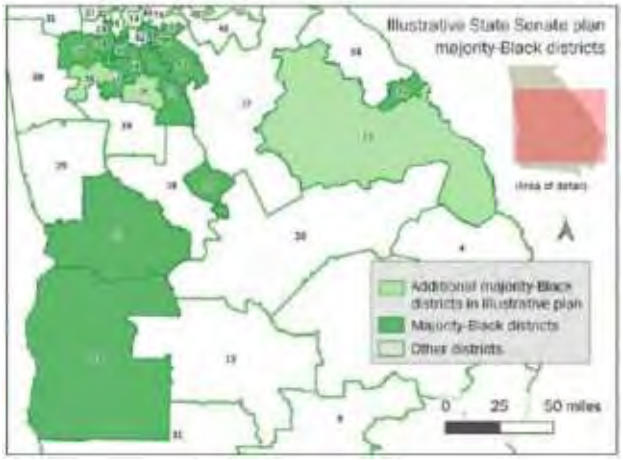
d) Grant and Alpha Phi Alpha

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

[27] In addition, as indicated above, Plaintiffs in both the Grant and Alpha Phi Alpha cases allege that the State maps passed in SB 2EX and HB 1EX violate Section 2 of the Voting Rights Act. Both the Grant and Alpha Phi Alpha Plaintiffs allege that the Georgia legislature should have drawn two additional Senate Districts in the southern metropolitan Atlanta area and one additional Senate District in the Eastern Black belt area. Grant Doc. No. [1], ¶¶ 41–42; APA Doc. No. [1], ¶¶ 64–66. While the Illustrative Maps (drawn by redistricting experts, Mr. Esselstyn and Mr. Cooper) presented by the Grant and Alpha Phi Alpha Plaintiffs are not exact replicas, they largely overlap.[22] Compare GPX 3, ¶ 26 & fig.6, with APAX 1, ¶ 79 & fig.17; ***1267** compare GPX 3, ¶ 27 & fig.7, with APAX 1, ¶ 76 & fig.15; compare GPX 3, ¶ 41 & fig.12 with APAX 1, ¶ 112 & fig.28. The Court finds that both plans concern areas of Henry, Clayton, and Fayette Counties. Accordingly, because the Court found that Mr. Esselstyn's Illustrative Senate District 25 and 28 have a substantial likelihood of success on the merits as to the first Gingles precondition, the Court does not rule on the substantial likelihood of success of Mr. Cooper's Illustrative Senate Districts 17 and 28.

Compare GPX 3, ¶ 24 & fig.4

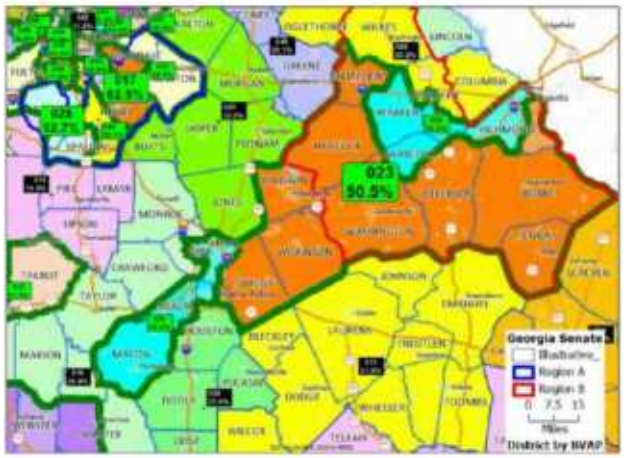
Figure 4: Map of majority-Black districts in the Illustrative State Senate plan.



with, APAX 1, ¶ 71 & fig.14.

***1268**

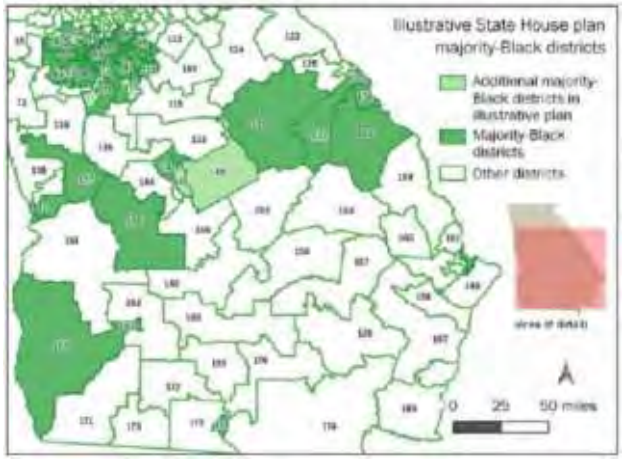
Figure 14



Additionally, both the Grant and Alpha Phi Alpha Plaintiffs allege that the Georgia legislature should have drawn five additional House Districts. The Grant Plaintiffs allege that two additional House Districts could be drawn in the southern Atlanta metropolitan area (Grant Doc. No. [1], ¶ 43), and the Alpha Phi Alpha Plaintiffs allege that three additional House Districts could be drawn in the southern Atlanta metropolitan area (APA Doc. No. [1], ¶¶ 70–72.). Mr. Cooper's Illustrative House Districts 74, 110, and 111 concern areas of Henry, Fayette, and Clayton Counties. Mr. Esselstyn's Illustrative House Districts 74 and 117 also concern Henry, Fayette, Clayton, and Cowetta Counties. Accordingly, because the Court found that Mr. Esselstyn's Illustrative House District 74 and 117 have a substantial likelihood of success on the first Gingles precondition, the Court does not rule on the substantial likelihood of success of Mr. Cooper's Illustrative House Districts 73, 110, and 111.

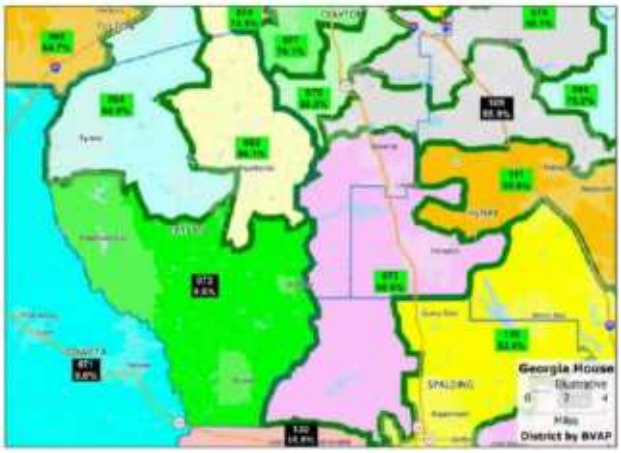
***1269**

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



GPX 3, ¶ 39 & fig.10.

Figure 28: *Illustrative Plan District 73 and Vicinity*



***1270** APAX 1, ¶ 111 & fig.28.

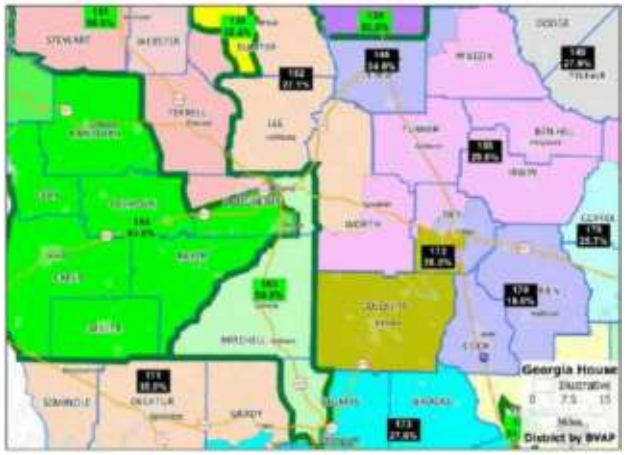
The Grant Plaintiffs' redistricting expert drew one additional House District in the western metropolitan Atlanta area and two additional House Districts in central Georgia, that are anchored in Bibb County. See GPX 3, ¶ 39 & fig.10. The Alpha Phi Alpha Plaintiffs' redistricting expert drew one additional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

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

Id. ¶ 116 & fig.32.

***1271**

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



Id. ¶ 118 & fig.34.

To recap the prior ruling, at this stage, the Court finds that the Grant and Alpha Phi Alpha Plaintiffs have established a substantial likelihood of succeeding on the merits of their claim that SB 2EX and HB 1EX violate Section 2 of the Voting Rights Act because the Black population is sufficiently large and compact to create two additional Black-majority Senate Districts in the southern Atlanta metropolitan area, two additional House Districts in the southern Atlanta metropolitan area, one additional House District in southwestern Georgia. [23]

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

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

(a) Senate Districts

i) Numerosity

As indicated above, on December 30, 2021, Governor Kemp signed into law ***1272** State Senate Maps. The Georgia State Senate map consists of 56 districts. GPX 3, ¶ 20; Feb. 9, 2022, Afternoon Tr. 169:13–14. The 2014 Georgia State Senate plan contained 13 majority-Black districts using the AP BVAP metric when the 2020 Census data was applied. Grant Stip. ¶ 30. The Enacted State Senate Map contains 14 majority-Black districts using the AP BVAP metric. Grant Stip. ¶ 56; GPX 3, ¶ 21; Feb. 9, 2022, Afternoon Tr. 169:8–12. Ten of those districts are in the Atlanta metropolitan area and four are in the Black Belt. GPX 3, ¶ 21 & fig.3.

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

Mr. Esselstyn's Illustrative State Senate District 25 is an additional majority-Black State Senate district in the southeastern Atlanta metropolitan area and is composed of portions of Clayton and Henry Counties. Grant Stip. ¶ 64; GPX 3, ¶ 26 & fig.6; Feb. 9, 2022, Afternoon Tr. 171:17–23, 228:10–13. Mr. Esselstyn's Illustrative State Senate District 25 has an AP BVAP over 50%. Grant Stip. ¶ 65; GPX 3, ¶ 24 & tbl.1; Feb. 9, 2022, Afternoon Tr. 171:24–172:8.

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

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

District	BVAP%	District	BVAP%	District	BVAP%
10	61.10%	26	52.84%	39	60.21%
12	57.97%	28	57.28%	41	62.61%

15	54.00%	34	60.19%	43	58.52%
22	50.84%	35	54.05%	44	71.52%
23	50.43%	36	51.34%	55	65.97%
25	58.93%	38	66.36%		

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

Mr. Morgan and Ms. Wright do not dispute that Mr. Esselstyn's Illustrative State Senate District 25 and Mr. Esselstyn's ***1273** Illustrative State Senate District 28 both have AP BVAPs over 50%. See DX 2, ¶ 11 (Mr. Morgan's expert report confirming that Mr. Esselstyn's illustrative State Senate plan contains 17 majority-Black districts); Feb. 11, 2022, Afternoon Tr. 191:21–25 (Mr. Morgan's testimony agreeing that Mr. Esselstyn's illustrative State Senate plan includes three additional majority-Black districts); DX 41, ¶ 20 (Ms. Wright's expert report noting that "[t]he Esselstyn Senate plan also adds majority-Black districts above the adopted Senate plan when using the any-part Black voting age population Census metric"); Feb. 11, 2022, Morning Tr. 78:13–22, 80:23–81:24 (Ms. Wright's testimony acknowledging that AP BVAPs of Mr. Esselstyn's additional majority-Black State Senate districts exceed 50%).

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

Chart 1. Number of Majority-Black Senate Districts.

Majority-Black Senate Districts

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

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DX 2, ¶ 10 & chart 1.
As Mr. Esselstyn explained in his supplemental expert report, "[o]ne reason that the Enacted Plans have fewer majority-Black districts than the Illustrative Plans is that more Black voters were unnecessarily concentrated into certain Metro Atlanta districts in the Enacted Plans. By unpacking these districts, the Illustrative Plans contain fewer packed districts —and, consequently, additional majority-Black districts." GPX 4, ¶ 4.

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

***1274** Second, the Supreme Court held that "a party asserting [Section] 2 liability must show by a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." Bartlett, 556 U.S. at 19–20, 129 S.Ct. 1231. As stated above, the single-race Black population exceeds 50% of the voting age population of Mr. Esselstyn's Illustrative State Senate District 25. Additionally, the percentage of Black registered voters exceeds 50%. Accordingly, the Mr. Esselstyn's Illustrative State Senate District 25 is sufficiently numerous for an additional majority-minority district.

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

ii) Geographic compactness

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

1. Each legislative district of the General Assembly should be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.

2. All plans adopted by the committee will comply with Section 2 of the Voting Rights Act of 1965, as amended.

3. All plans adopted by the Committee will comply with the United States and Georgia Constitutions.

4. Districts shall be composed of contiguous geography. Districts that connect on a single point are not contiguous

5. No multi-member districts shall be drawn on any legislative redistricting plan.

6. The Committee should consider:

   a. The boundaries of counties and precincts;

   b. Compactness; and

   c. Communities of interest.

7. Efforts should be made to avoid unnecessary pairing of incumbents.

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

GPX 39, at 3.

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

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

> county shapes are highly irregular as well. So sometime[s] you can have a decision about splitting counties as well. So that's the example of where there's no one clear right answer and I'm trying to sort of find the best balance that I can.

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

(a) Population equality

Mr. Esselstyn's Illustrative State Senate Maps are not malapportioned and comply ***1275** with the one-person, one-vote principle. See Wright, 301 F. Supp. 3d at 1325–26; see also Reynolds, 377 U.S. at 577, 84 S.Ct. 1362 ("[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable.").

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

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

Brown v. Thomson, 462 U.S. 835, 842, 103 S.Ct. 2690, 77 L.Ed.2d 214 (1983) (quoting Reynolds, 377 U.S. at 577, 84 S.Ct. 1362) (quotation marks omitted). Thus, the Court finds that Mr. Esselstyn's Illustrative Senate Plan complies with population equality.

(b) Compactness

Mr. Esselstyn's Illustrative State Senate Plan has comparable compactness scores to the Enacted State Senate Map. Mr. Esselstyn reported the average compactness scores for both the Enacted Plans and his illustrative legislative plans using five measures—Reock,[24] Schwartzberg,[25] Polsby-Popper,[26] Area/Convex Hull,[27] and ***1276** Number of Cut Edges.[28] GPX 3, ¶¶ 31, 46 & tbls. 2, 5; see also Feb. 9, 2022, Afternoon Tr. 158:23–160:1 (Mr. Esselstyn's testimony describing common measures of compactness).

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

Mr. Esselstyn reported those measures as follows:

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

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

Enacted	0.42	1.75	0.29	0.76	11,005
Illustrative	0.41	1.76	0.29	0.75	10,998

GPX 3, ¶ 31 & tbl.2.

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

Chart 5. Compactness score summary

***1277**

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

Id.

Defendants maintained a line of questioning at the preliminary injunction hearing in an effort to show that the Reock and Schwartzberg scores of the 2021 adopted state Senate plan are more compact on average than Mr. Esselstyn's illustrative state Senate plan. Feb. 9, 2022, Afternoon Tr. 235:10–25. The evidence showed that several districts on the Esselstyn remedial Senate plan are far less compact than the 2021 adopted state Senate plan. DX 2, ¶ 24. However, the Enacted State Senate Map and Mr. Esselstyn's Illustrative Senate Map have identical Polsby-Popper scores (0.29) and Mr. Esselstyn's Illustrative Senate Map has seven fewer cut edges than the Enacted State Senate Map. Second, under the Reock, Schwartzberg and Area/Convex Hull tests the Illustrative Plan is one-one-hundredth of a point less compact than the enacted State Plan. Accordingly, the Court does not find that Mr. Esselstyn's illustrative legislative maps are not sufficiently compact.

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

compact and more compact than Enacted State Senate District 25.

The Court also finds that Mr. Esselstyn's Illustrative State Senate District 28 is sufficiently compact. The Court does not find that the difference of six-hundredths of a point in the Polsby-Popper score and seven-hundredths of a point difference in the Reock scores makes Mr. Esselstyn's Illustrative State Senate District 28 not compact. Thus, the Court finds that Mr. Esselstyn's Illustrative State Senate District 25 and Mr. Esselstyn's Illustrative State Senate District 28 are sufficiently compact and satisfy the first Gingles precondition.

(c) Contiguity

Mr. Esselstyn's Illustrative Senate Districts are contiguous. There is no factual dispute on this issue. See Feb. 9, 2022, Afternoon Tr. 160:11–13 (Mr. Esselstyn's ***1278** testimony confirming that his illustrative districts are contiguous).

(d) Preservation of political subdivisions

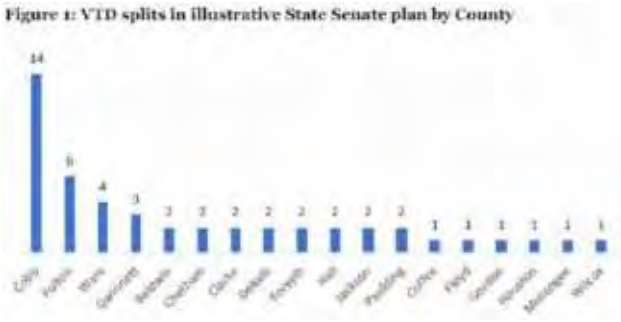
Mr. Esselstyn's Illustrative Senate Plan preserves political subdivisions. Mr. Esselstyn testified that it was "not always possible" to preserve political subdivisions because, for example, "a typical precinct size is in the neighborhood typically around a few thousand people," and "[s]o often to get the best shape ..., it's often practical to divide precincts." Feb. 9, 2022, Afternoon Tr. 160:20–161:1–8. Mr. Esselstyn concluded that "[w]hile the creation of three additional majority-Black State Senate districts involved the division of additional counties and VTDs, the differences are marginal." GPX 3, ¶¶ 32–33 & tbl.3; see also id. at 80–91 (Mr. Esselstyn's expert report providing political subdivision splits for enacted and illustrative State Senate maps); Feb. 9, 2022, Afternoon Tr. 161:9–11 (Mr. Esselstyn's testimony stating that "the numbers of divided counties and precincts in the Illustrative Plans are similar, slightly higher than those for the Enacted Plans"); id. at 177:20–25, 188:18–24 (Mr. Esselstyn's testimony describing preservation of political subdivisions). He reported the splits in the enacted and illustrative State Senate maps as follows:

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

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

GPX 3, ¶¶ 32–33 & tbl.3.

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



***1279** Grant Doc. No. [61-1], ¶ 3 & fig.1. Thus, the Court finds that Mr. Esselstyn's Illustrative State Senate Map complies with the traditional redistricting principle of keeping political subdivisions together; even though, Mr. Esselstyn's Illustrative State Senate Maps has two more split VTDs than the Enacted State Senate Map.

Mr. Esselstyn's illustrative Senate plan splits thirty-four counties, which is five more than the 2021 adopted state Senate plan. Grant Stip. ¶¶ 58, 75; Feb. 9, 2022, Afternoon Tr.

203:18–21; DX 2, ¶ 21. However, the number of county splits in Mr. Esselstyn's Illustrative State Senate Map is lower than the number of such splits in the legislative plans used in the most recent elections (which is to say, Georgia's 2014 State Senate plans).

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

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

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

(e) Preservation of communities of interest

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

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

Feb. 9, 2022, Afternoon Tr. 167:1–11. Although sometimes such communities "can be delineated on [a] map"—such as municipalities, college campuses, or military bases—at other times "they don't have clearly defined boundaries." Id. at 167:18–168:9; see also Feb. 11, 2022, Morning Tr. 90:5–91:12 (Ms. Wright's testimony broadly defining communities of interest). Mr. Esselstyn testified that in drawing his illustrative maps, he sought to preserve communities of interest where possible. Feb. 9, 2022, Afternoon Tr. 168:13–16. This does not necessarily mean that each illustrative district is homogenous; as Mr. Esselstyn explained, "I don't believe that the communities of interest principle[ ] requires every two communities in a given district to have commonalities. I don't think that's what the principle stands for.... [M]y focus on communities of interest is trying to keep them intact, when possible." Feb. 9, 2022, Afternoon Tr. 221:1–222:11. Accordingly, the absence of "some shared characteristic" does not necessarily indicate "a failure to meet the ***1280** communities of interest criteria or any other [ ] traditional redistricting principle." Id. at 222:12–17.

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

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

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

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

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

***1281**

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

GPX 3, ¶ 27 & fig.7.

Mr. Carter described the communities of interest contained in Mr. Esselstyn's Illustrative Senate District 28 as follows: "[T]hat is ... to me, a cohesive community and ... Newnan certainly has more in common with that part of South Fulton than it does with ... Franklin, Georgia, because of the issues that it confronts from an infrastructure standpoint and [ ] other issues[.]" Feb. 10, 2022, Afternoon Tr. 139:18–140:19. Despite the additional county splits, Mr. Esselstyn's Illustrative Senate District 28 "goes right around the Airport, 285. 85 corridors that are ... those suburban south side areas." Id. at 140:10–12. Thus, Mr. Esselstyn's Illustrative Senate District 28 respects communities of interest.

(f) Incumbent protection

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

(g) Core retention

The Court finds that Mr. Esselstyn's Illustrative State Senate Map retains the core of the Enacted State Senate Map. As an initial note, preservation of existing district cores was not an enumerated districting principle adopted by the General Assembly. ***1282** See GPX 39; 40. However, in terms of implementing a remedial map, the Court takes core retention into consideration.

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

The Court finds that Mr. Esselstyn's Illustrative State Senate Maps do not change over 60% of the Enacted State Senate Map. The Court notes that "[m]odifying one district necessarily requires changes to districts adjacent to the original modification, and harmonizing those changes with traditional redistricting criteria (such as population equality and intactness of counties) often inescapably results in cascading changes to other surrounding districts." GPX 4, ¶ 9. Accordingly, the Court finds that Mr. Esselstyn's Illustrative State Senate Map respects the principle of core retention.

(h) Racial considerations

Defendants argued that Mr. Esselstyn's Illustrative Senate Maps must fail because they were predominately drawn for racial considerations. The Court is not persuaded by this argument. Both the Supreme Court's and Eleventh Circuit's "precedents require [Section 2] plaintiffs to show that it would be possible to design an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a minority candidate." Davis, 139 F.3d at 1425. "[I]ntentional creation of a majority-minority district necessarily requires consideration of race." Fayette Cnty., 118 F. Supp. 3d at 1345. Therefore, "[t]o penalize [plaintiffs] ... for attempting to make the very showing that Gingles [and its progeny] demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section [2] action." Davis, 139 F.3d at 1425. Consideration of race accordingly does not mean that an illustrative plan must be subjected to strict scrutiny or any other heightened bar beyond the question of whether traditional districting principles were employed. Consistent with this understanding, the Eleventh Circuit, and every other circuit to address this issue, has rejected attempts to graft the constitutional standard that applies to racial gerrymandering by the State onto the first Gingles precondition vote dilution analysis. See Davis, 139 F.3d at 1417–18; see also, e.g., Bone Shirt, 461 F.3d at 1019; Clark, 88 F.3d at 1406–07; Sanchez v. Colorado, 97 F.3d 1303, 1327 (10th Cir. 1996); Cane v. Worcester Cnty., 35 F.3d 921, 926 n.6 (4th Cir. 1994); Bridgeport Coal. for Fair Representation v. City of Bridgeport, 26 F.3d 271, 278 (2d Cir. 1994), vacated on other grounds sub nom. City of Bridgeport v. Bridgeport Coal. for Fair Representation, 512 U.S. 1283, 115 S.Ct. 35, 129 L.Ed.2d 931 (1994).

Mr. Esselstyn explained that he was asked "to determine whether there are areas in the State of Georgia where the Black population is 'sufficiently large and geographically compact' to enable the creation of additional majority-Black legislative districts relative to the number of such districts provided in the enacted State Senate and State House of Representatives ***1283** redistricting plans from 2021." GPX 3, ¶ 8 (footnote omitted); see also Feb. 9, 2022, Afternoon Tr. 150:11–19, 202:15–29 (Mr. Esselstyn's testimony confirming what he was asked to do in this case). Mr. Esselstyn testified that he was not asked to maximize the number of majority-Black districts in the State Senate or House map. Feb. 9, 2022, Afternoon Tr. 150:23–25. Mr. Esselstyn also testified that it was necessary for him to consider race as part of his analysis because, under Section 2,

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

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

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

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

(b) Esselstyn House Districts

i) Numerosity

As stated above, on December 30, 2021, Governor Kemp signed the Enacted State House Map into law. The Georgia House of Representatives map consists of 180 districts. GPX 3, ¶ 35; Feb. 9, 2022, Afternoon Tr. 178:10–12. The 2015 Georgia House of Representatives plan contained 47 majority-Black districts using the AP BVAP metric when the 2020 Census data was applied. Grant Stip. ¶ 31. The enacted House plan contains 49 majority-Black districts using the AP BVAP metric. Grant Stip. ¶ 57; GPX 3, ¶ 36; Feb. 9, 2022, Afternoon ***1284** Tr. 178:17–19. Thirty-four of those districts are in the Atlanta metropolitan area, 13 are in the Black Belt, and two small districts are within Chatham County (anchored in Savannah) and Lowndes County (anchored in Valdosta) in the southeastern part of the state. GPX 3, ¶ 36 & fig.9.

Mr. Esselstyn also drew two additional majority-Black House Districts in the metropolitan Atlanta area: Illustrative State House District 74 and Illustrative State House District 117. As stated above, the AP Black population in the Atlanta MSA increased from 29.29% in 2000 to 33.61% in 2010 and to 35.91% in 2020. Grant Stip. ¶ 44. And half of Georgia's Black population live in Fulton, DeKalb, Gwinnett, Cobb, Clayton, and Henry counties. GPX 3, ¶ 17. Mr. Esselstyn drew two additional majority-Black House districts in the southern Atlanta metropolitan area (Mr. Esselstyn's Illustrative State House District 74 and Mr. Esselstyn's Illustrative State House District 117) are composed of portions of Clayton, Fayette, and Henry Counties. Grant Stip. ¶ 70; GPX 3, ¶ 41 & fig.12; Feb. 9, 2022, Afternoon Tr. 185:12–18. Mr. Esselstyn's illustrative House Districts 74 and 117 have AP BVAPs over 50%. Grant Stip. ¶ 71; GPX 3, ¶ 39 & tbl.4; Feb. 9, 2022, Afternoon Tr. 185:23–186:5.

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

District	BVAP%	District	BVAP%	District	BVAP%	District	BVAP%
38	54.23%	69	62.73%	91	60.01%	137	52.13%
39	55.29%	74	53.94%	92	68.79%	140	57.63%
55	55.38%	75	66.89%	93	65.36%	141	57.46%

58	63.04%	76	67.23%	94	69.04%	142	50.14%
59	70.09%	77	76.13%	95	67.15%	143	50.64%
60	63.88%	78	51.03%	113	59.53%	145	50.38%
61	64.87%	79	71.59%	115	53.77%	149	50.02%
62	72.26%	84	73.66%	116	51.95%	150	53.56%
63	69.33%	85	62.71%	117	51.56%	153	67.95%
64	50.24%	86	75.05%	126	54.47%	154	54.82%
65	55.32%	87	73.08%	128	50.40%	165	50.33%
66	50.64%	88	63.35%	129	54.87%	177	53.88%
67	58.92%	89	62.54%	130	59.91%		
68	55.75%	90	58.49%	132	52.34%		

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

Mr. Morgan and Ms. Wright do not dispute that Mr. Esselstyn's Illustrative State House District 74 and Mr. Esselstyn's Illustrative State House District 117 have AP BVAPs over 50%. See DX 2, ¶ 13 (confirming that Mr. Esselstyn's illustrative House plain contains 54 majority-Black districts); DX 41, ¶ 24 (Ms. Wright's expert report noting that "[t]he Esselstyn House plan adds majority-Black districts above the adopted House plan when using the any-part Black voting age population Census metric"); Feb. 11, 2022, Morning Tr. 81:25–82:16 (Ms. Wright's testimony acknowledging that AP BVAPs of Mr. Esselstyn's additional majority-Black House districts exceed 50%).

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

Chart 2. Number of Majority-Black House Districts

***1285**

Majority-Black House Districts

% AP Black VAP	2021 Adopted Plan	Proposed Democratic Plan	Esselstyn Remedial Plan
Over 75%	2	6	2
70% to 75%	9	7	5
65% to 70%	7	7	8
60 % to 65%	8	3	8
55% to 60%	11	9	10

52% to 55%	10	10	10
50% to 52%	2	3	11
Total # Districts	49	45	54

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

Although Ms. Wright asserts that Mr. Esselstyn's illustrative House Districts 64, 74, and 117 are "below 50% Black on voter registration" (DX 41, ¶¶ 27–28), she admitted during the hearing that more than 8% of registered voters are of unknown race and that this qualifying information was not included in her expert report. Feb. 11, 2022, Morning Tr. 71:10–78:12. [29]

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

ii) Geographic Compactness

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

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

> It's a balancing act. So ... often the criteria will be [in tension] with each other. It may be that you are trying to just follow precinct lines and not split ... precincts, but the precincts have funny shapes. So that means you either are going to end up with a less compact shape that doesn't split precincts or you could split a precinct and end up with a more compact shape. And some of the county shapes are highly irregular as well. So sometime[s] you can have a decision about splitting counties as well. So that's the example of where there's ***1286** no one clear right answer and I'm trying to sort of find the best balance that I can.

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

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

(a) Population equality

Mr. Esselstyn's Illustrative State House Map is not malapportioned and complies with the one-person, one-vote principle. See Wright, 301 F. Supp. 3d at 1325–26; see also Reynolds, 377 U.S. at 577, 84 S.Ct. 1362 ("[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable."). Mr. Esselstyn's expert report demonstrates that his Illustrative State House Map contains minimal population deviation.

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

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

Mr. Esselstyn conceded that his illustrative House plan has higher deviations than the 2021 adopted House plan. Feb. 9, 2022, Afternoon Tr. 205:8-14. Mr. Esselstyn's population deviations are within the limits allowed by the Equal Protection Clause. See Brown, 462 U.S. at 842, 103 S.Ct. 2690 (quoting Reynolds, 377 U.S. at 577, 84 S.Ct. 1362). Thus, the Court finds that Mr. Esselstyn's Illustrative Senate Plan complies with population equality.

(b) Compactness

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

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

	Reock (average)	Schwartzberg (average)	Polsby-Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.39	1.80	0.28	0.72	22,020
Illustrative	0.39	1.82	0.28	0.72	22,475

***1287** GPX 3, ¶ 46 & tbl.5.

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

Chart 5. Compactness score summary

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

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House 149	0.32	**0.42**	0.22	**0.23**

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

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

After reviewing the data above, the Court finds that Mr. Esselstyn's Illustrative ***1288** State House Districts 74 and 117 are sufficiently compact. The Court does not find that the difference of one-hundredths of a point in the Reock score makes Mr. Esselstyn's Illustrative State House District 117 not compact, especially given that the Mr. Esselstyn's Illustrative State House District 117 Polsby-Popper score is five-hundredths of a point higher than the Enacted State House District 117. The Court also finds that Mr. Esselstyn's Illustrative State House District 74 is sufficiently compact. Although Mr. Esselstyn's Illustrative State House District 74 has a Reock score that is a twentieth of a point less compact than the Enacted State House District 74 and six-hundredths of a point less compact under Polsby-Popper, Mr. Morgan acknowledged that there is no minimum compactness threshold for districts under Georgia law. See Feb. 11, 2022, Afternoon Tr. 228:3–16. Thus, the Court finds that Mr. Esselstyn's Illustrative State House Districts 74 and 117 are sufficiently compact and satisfy the first Gingles precondition.

(c) Contiguity

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

(d) Preservation of political subdivisions

Mr. Esselstyn's Illustrative House Plan preserves political subdivisions. Mr. Esselstyn testified that it was "not always possible" to preserve political subdivisions because, for example, "the ideal population for a House district is around 60,000 people, and there are going to be counties that have way more than 60,000 people. So you are going to have to divide that county up into multiple districts." Feb. 9, 2022, Afternoon Tr. 160:14–25. Similarly, "a typical precinct size is in the neighborhood typically around a few thousand people," and "[s]o often to get the best shape ... it's often practical to divide precincts." Id. at 161:1–8. Mr. Esselstyn concluded that "[w]hile the creation of five additional majority-Black House districts involved the division of one additional county and a handful of VTDs, the differences are marginal." GPX 3, ¶¶ 47–48 & tbl.6; see also id. at 153–85 (Mr. Esselstyn's expert report providing political subdivision splits for enacted and illustrative House maps); Feb. 9, 2022, Afternoon Tr. 161:9–11 (Mr. Esselstyn's testimony stating that "the numbers of divided counties and precincts in the illustrative plans are similar, slightly higher than those for the enacted plans"). He reported the splits in the enacted and illustrative House maps as follows:

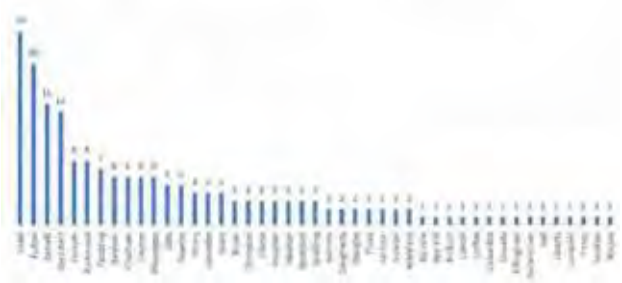
Table 6: Political subdivision splits for enacted and illustrative House plans.

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

GPX 3, ¶¶ 47–48 & tbl.6.

Out of 2,698 VTDs statewide, only 192 are split in Mr. Esselstyn's illustrative House plan, and in only 45 of Georgia's 159 counties. Grant Doc. No. [61-1], ¶ 4 & fig.2; Feb. 9, 2022, Afternoon Tr. 164:13–17, 166:4–11. Some of these VTD splits are inherited from the enacted House map because Mr. Esselstyn's illustrative map leaves a vast majority of districts untouched. Feb. 9, 2022, Afternoon Tr. 164:22–165:6. Mr. Esselstyn's second supplemental report included a histogram depicting ***1289** the VTD splits in his illustrative House plan by county:

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



Grant Doc. No. [61-1], ¶ 4 & fig.2.

After reviewing this data, the Court finds that although Mr. Esselstyn's Illustrative State House Maps has seven more split VTDs than the Enacted State Senate Map, it still complies with the traditional redistricting principle of keeping political subdivisions together. Thus, the Court finds fact that Mr. Esselstyn's Illustrative State House Maps satisfy this factor.

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

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

(e) Preservation of communities of interest

The Court finds that Mr. Esselstyn's Illustrative State House Maps preserve communities of interest. Mr. Esselstyn testified regarding his definition of a community of interest: "[C]ommunity of interest could be something as large as the Black Belt. As large as Metro Atlanta. Can span multiple counties. And ... it could also be as small as a neighborhood. So it can be an area that is large or larger geographically but the basic idea is you are looking at areas that have a shared characteristic[ ] or where the people have a shared interest." Feb. 9, 2022, Afternoon Tr. 167:1–11. ***1290** Although sometimes such communities "can be delineated on a map"—such as municipalities, college campuses, or military bases—at other times "they don't have clearly defined boundaries." Id. at 167:18–168:9; see also Feb. 11, 2022, Morning Tr. 90:3–91:12 (Ms. Wright's testimony broadly defining communities of interest). Mr. Esselstyn testified that in drawing his illustrative maps, he sought to preserve communities of interest where possible. Feb. 9, 2022, Afternoon Tr. 168:13–16. This does not necessarily mean that each illustrative district is homogenous; as Mr. Esselstyn explained, "I don't believe that the communities of interest principle[ ] requires every two communities in a given district to have commonalities. I don't think that's what the principle stands for.... [M]y focus on communities of interest is trying to keep them intact, when possible." Id. at 221:1–222:11. Accordingly, the absence of "some shared characteristic" does not necessarily indicate "a failure to meet

the communities of interest criteria or any other [ ] traditional redistricting principle." Id. at 222:12–17.

Defendants' expert Ms. Wright did not testify or provide any expert opinion about whether Mr. Esselstyn's Illustrative House Districts 74 and 117 respected communities of interest.[30] When asked by Defendants' counsel whether the composition of his illustrative House District 74 was "to achieve the goal of majority status in [that] district," Mr. Esselstyn responded, "No.... [T]here are always multiple goals," such as preserving the community of Irondale, ensuring that Fayetteville was kept intact in the illustrative map, and being "relatively consistent with what it is in the enacted plan" in terms of preexisting district boundaries. Feb. 9, 2022, Afternoon Tr. 246:16–247:5. Ms. Wright, in rebuttal testified that Irondale was not an incorporated city in Georgia. Feb. 11, 2022, Morning Tr. 51:18–52:2. Even though Irondale is not an incorporated municipality, it does not mean that it is not a community of interest. Accordingly, the Court finds that Mr. Esselstyn's Illustrative House Districts 74 and 117 adhere to the traditional redistricting principle of maintaining communities of interest.

(f) Incumbent protection

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

Chart 4. House incumbent pairings

***1291**

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

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Pairing #7		Gerald Green -R Winifred Dukes -D
Pairing #8		James Burchett -R Dominic LaRiccia -R
Total incumbents Paired	**8**	**16**

DX 2, ¶ 18 & chart 4.

During the hearing, Mr. Esselstyn testified that "I was not able to find a publicly-available authoritative source ... for incumbent address data ... [s]o, as a result, I did not have that data and so I did not take it into account." Feb. 9, 2022, Afternoon Tr. 223:16–22. Indeed, the Court finds it notable that Mr. Esselstyn's Illustrative State House Map creates only eight incumbent pairings even though Mr. Esselstyn had no address information regarding incumbents. Further, three of the incumbent pairings are unchanged from the Enacted State House Map (Rebecca Mitchell and Shelly Hutchinson; Gerald Green and Winifred Dukes; James Burchett and Dominic LaRiccia). DX 2, ¶ 18 & chart 4. Additionally, while Robert Pruitt is paired against Danny Mathis in the enacted plan, Robert Pruitt is paired against Noel Williams in Mr. Esselstyn's Illustrative House Maps—in both pairings, both incumbents are Republicans. Id.

With respect to Mr. Esselstyn's Illustrative House Districts 74 and 117, six-incumbents are paired against one another, two more than the Enacted House Plan. Two of the incumbent pairings (Miriam Paris and Dale Washburn; and Shaw Blackmon and Robert Dickey) are not impacted by Mr. Esselstyn's Illustrative House Districts 74 and 117. Rep. Paris currently represents House District 142 in Bibb County and Rep. Washburn represents House District 141 in Bibb and Monroe Counties. Rep. Blackmon represents House District 146 in Houston County and Rep. Dickey represents House District 140 in Houston, Bibb, Monroe and Peach Counties. Georgia General Assembly House of Representatives, https://www.legis.ga.gov/members/house (last visited Feb. 28, 2022).[31] Thus, Mr. Esselstyn's ***1292** Illustrative House Districts 74 and 117 creates six incumbent pairings, two more than the Enacted State House Map. The Court finds that Mr. Esselstyn's Illustrative State House Map complies with the traditional redistricting principle of protecting incumbents.

(g) Core retention

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

Mr. Esselstyn's illustrative state House plan changes 26 of the 180 2021 adopted House districts in the process of creating five additional majority-minority districts. DX 2, ¶ 19. Mr. Esselstyn explained in his supplemental expert report that "[o]ne of the guiding principles in the creation of my illustrative plans was to keep changes to a minimum while adhering to other neutral criteria .... While the illustrative plans are—intentionally—a departure from the enacted plans, most of the plans' districts remain intact." GPX 4, ¶ 9; see also Feb. 9, 2022, Afternoon Tr. 267:20–268:4 (Mr. Esselstyn's testimony: "One of the other considerations for me was not trying to make more changes [than] I have to.").

The Court finds that in Mr. Esselstyn's Illustrative House Map, "86% of the districts are unchanged from the enacted House plan." GPX 4, ¶ 9. The Court notes that "[m]odifying one district necessarily requires changes to districts adjacent to the original modification, and harmonizing those changes with traditional redistricting criteria (such as population equality and intactness of counties) often inescapably results in cascading changes to other surrounding districts." Id.

Accordingly, the Court finds that Mr. Esselstyn's Illustrative State House Map respects the principle of core retention.

(h) Racial considerations

Defendants argue that Mr. Esselstyn's Illustrative House Maps still must fail because they were drawn predominately for racial considerations. The Court is not persuaded by this argument. Both the U.S. Supreme Court's and Eleventh Circuit's "precedents require [Section 2] plaintiffs to show that it would be possible to design an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a minority candidate." Davis, 139 F.3d at 1425. "[I]ntentional creation of a majority-minority district necessarily requires consideration of race." Fayette Cnty., 118 F. Supp. 3d at 1345. Therefore, "[t]o penalize [plaintiffs] ... for attempting to make the very showing that Gingles, Nipper, 39 F.3d 1494, and [Southern Christian Leadership Conference v. Sessions, 56 F.3d 1281 (11th Cir. 1995),] demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section Two action." Davis, 139 F.3d at 1425.

Mr. Esselstyn explained that he was asked "to determine whether there are areas in the State of Georgia where the Black population is 'sufficiently large and geographically compact' to enable the creation of additional majority-Black legislative districts relative to the number of such districts provided in the enacted State Senate and State House of Representatives ***1293** redistricting plans from 2021." GPX 3, ¶ 8 (footnote omitted); see also Feb. 9, 2022, Afternoon Tr. 150:11–19 (Mr. Esselstyn's testimony confirming what he was asked to do in this case). Mr. Esselstyn testified that he was not asked to maximize the number of majority-Black districts in the State Senate or House map. Feb. 9, 2022, Afternoon Tr. 150:23–25. Mr. Esselstyn also testified that it was necessary for him to consider race as part of his analysis because, under Section 2, "the key metric is whether a district has a majority of the Any Part Black population. So that means it has to be over 50 percent. And that means looking at a column of numbers in order to determine, to assess whether a district has that characteristic. You have to look at the numbers that measure the percentage of the population is Black." Id. at 155:15–156:2.

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

Defendants' expert Ms. Wright opined that Mr. Esselstyn's Illustrative House District 117 was drawn predominately with racial considerations: "It is also unusual that District 116 follows the interstate except to take a single precinct across the interstate that likely has racial implications for District 117." DX 41, ¶ 27. The Court does not agree with Ms. Wright's assessment. As stated above, Mr. Esselstyn testified that he used various metrics including but not limited to population size, communities of interest, and political subdivisions, in addition to race, when he drew his Illustrative State House Maps. Accordingly, the Court does not find that race predominated the drawing of Mr. Esselstyn's Illustrative State House Districts 74 and 117.

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

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

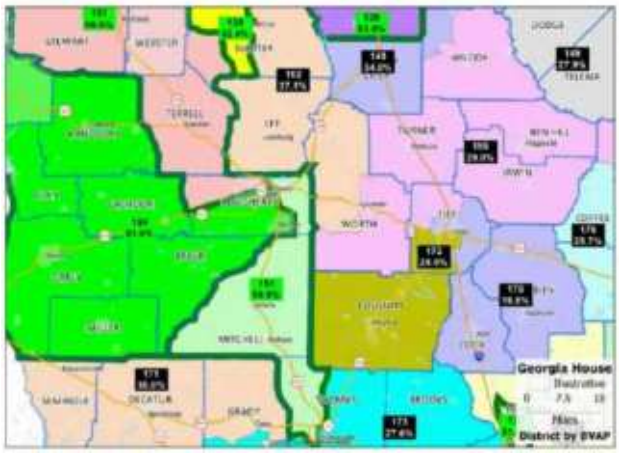
(a) Cooper's Illustrative House District 153

This Court finds that the Alpha Phi Alpha Plaintiffs have shown that they have ***1294** a substantial likelihood of satisfying the first Gingles precondition with respect to an additional majority-minority district in southwest Georgia.

i) Numerosity

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

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



APAX 1, ¶ 117 & fig.34.

In 1990, Non-Hispanic whites constituted about half of the overall population in the Senate District 12 region. See APAX 1, ¶ 55 & fig.9. By 2020, Non-Hispanic whites comprised only about one-third of the population. See id. Over the same period, the Black population grew in absolute terms from 102,728 to 115,621, representing just under half the population in 1990, but 60.6% of the population by 2020. See id. From 2000 to 2020, the proportion of the AP Black population in the southwest Georgia counties comprising Senate District 12 grew, representing just over half the population in 2000 at 55.33%, but 60.6% of the population by 2020. APA Stip. ¶ 109. In the area where Enacted Senate District 12 was drawn with a majority-Black population, only two of the three House districts in the Enacted House Plan are majority Black. See id. ¶ 110. This fact, combined with the increase in the proportion of the Black population in that area over the last decade, indicates that an additional Black-majority House district can very likely be drawn in the area of Southwest Georgia covered by Enacted ***1295** Senate District 12. Feb. 7, 2022, Afternoon Tr. 123:6–19, 124:8–16; see also APAX 1, ¶ 117 & fig.34; id. ¶ 118 & fig.35. Mr. Cooper's Illustrative House District 153 has an AP BVAP of 57.96%. APAX 1, at 293. Neither of Defendants' experts disputes that Mr. Cooper's Illustrative House District 153 has an AP BVAP greater than 50%. Accordingly, the Court finds that the Black population in Mr. Cooper's Illustrative State House District 153 is sufficiently numerous to constitute an additional Black-majority house district.

ii) Geographic compactness

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

(a) Population equality

[28] Mr. Cooper's Illustrative House District 153 is not malapportioned, and it complies with the one-person, one-vote principle. "[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as practicable." Reynolds, 377 U.S. at 577, 84 S.Ct. 1362. Mr. Cooper's report states that the population deviation for his Illustrative House District 153 is 1.35% (APAX 1, at 293) and the enacted House District 153 has a population deviation of 0.36% (id. at 282). Mr. Cooper also testified that his Illustrative House Map overall had a deviation of ± 1.5%. Feb. 7, 2022, Afternoon Tr. 169:1–2. Mr. Cooper's population deviations are within the limits allowed by the Equal Protection Clause.

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

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

Brown v. Thomson, 462 U.S. 835, 842, 103 S.Ct. 2690, 77 L.Ed.2d 214 (1983) (quotations and citations omitted). Thus, the Court finds that Mr. Cooper's Illustrative House District 153 complies with population equality.

(b) Compactness

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

Figure 36

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

***1296**

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

Id.

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

Chart 5. Compactness score summary

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

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House 144	**0.51**	0.31	**0.32**	0.16
House 153	**0.30**	0.28	**0.30**	0.19

Id.

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

(c) Contiguity

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

(d) Preservation of political subdivisions

Mr. Cooper's Illustrative State House District 153 preserves political subdivisions. Mr. Cooper reported that "[t]he illustrative plans are drawn to follow, to the extent possible, county and VTD boundaries. Where counties are split to comply with one-person one-vote requirements or to avoid pairing incumbents, [he] ha[s] generally used whole 2020 Census VTDs as sub-county components." APAX 1, ¶ 9 (footnote omitted). Mr. Cooper also stated that "[w]here VTDs are split, [he] ha[s] followed census block boundaries that are ***1297** aligned with roads, natural features, census block groups, or municipal boundaries." Id.

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

Figure 37

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

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

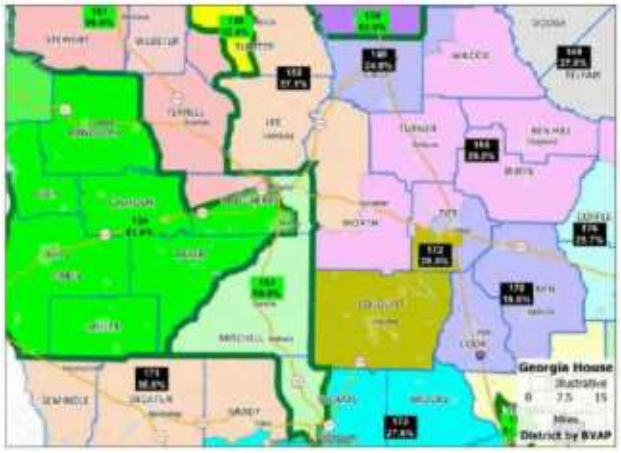
APAX 1, ¶ 124 & fig.37.

With respect to Mr. Cooper's Illustrative House District 153, Mr. Cooper testifies that his Illustrative House District 153

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

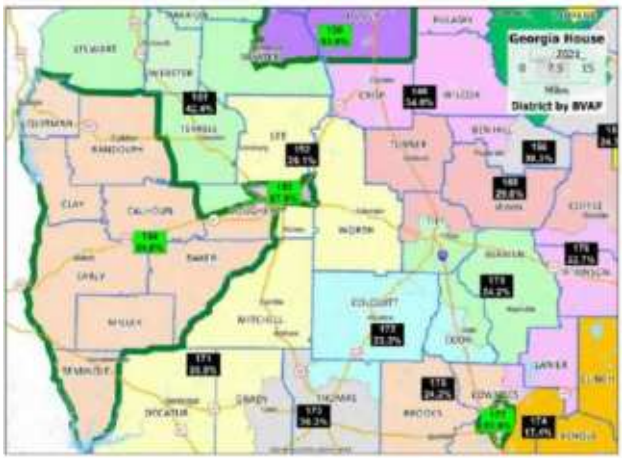
***1298**

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



with id. at ¶ 118 & fig.35.

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



***1299** In Mr. Cooper's Illustrative State House Plan, Dougherty County is split among Illustrative Districts 151, 153, and 154. Id. at 60 fig.34. In the Enacted State House Map, on the other hand, Dougherty County is split between Districts 153, 154, 155 and 171. Id. at 61 fig.35. Although District 153 is wholly within Dougherty County in the Enacted State House Map, Mr. Cooper's Illustrative State House Map splits Dougherty County three not four times. Accordingly, the Court does not find that Mr. Cooper's Illustrative House District 153 does not respect political boundaries simply because there is not one district that is wholly within Dougherty County. The Court finds that Mr. Cooper adhered to respecting political subdivisions when he drew his Illustrative House District 153.

(e) Preservation of communities of interest

The Court finds that Mr. Cooper's Illustrative House District 153 preserves communities of interest. Mr. Cooper testified that "there is a clear transportation route along the Highway 19." Feb. 7, 2022, Afternoon Tr. 160:19–23. Additionally, Mr. Cooper stated that "the Southwest Georgia Regional Commission includes Thomas, and extends all the way out to the Albany area. So it's in the same Regional Commission and it's connected by a major highway that's featured in the Georgia tourist volume I think that you can get at rest stops." Id. at 161:3–8. Thus, Mr. Cooper opined, "[t]here are clear connections between Albany and Thomasville." Id. at 161:8–9. Defendants' expert Ms. Wright, however, testified that Albany and Thomasville are "communities that would not typically be combined together .... Albany is very – is a very unique, defined identity in that region, as is Thomasville further south, but they don't share a common interest." Feb. 11, 2022, Morning Tr. 44:22–45:2. The Court is not convinced by this assessment. After all, Ms. Wright also testified that a community of interest is "kind of in the eye of the beholder." Id. at 91:11–12. The Court finds that there is a major roadway that connects the two towns, and the regional commission lists Albany and Thomasville as part of the same region. Feb. 7, 2022, Afternoon Tr. 160:19–23; 161:3–8. Accordingly, the Court finds that Mr. Cooper's Illustrative State House District 153 contains communities of common interest.

(f) Incumbent protection

Mr. Cooper's Illustrative State House District 153 does not pair any incumbents. Mr. Morgan criticized Mr. Cooper's Illustrative State House Plan because it paired 26 total incumbents as opposed to the Enacted State House Map, which paired eight incumbents. DX 1, ¶ 18. Mr. Cooper responded explaining that he used a publicly available database when he drew his Illustrative State House Plan, which had different information than the "incumbent databases used by the Georgia General Assembly during the

redistricting process" that Mr. Morgan used. APAX 2, ¶¶ 3–4. Mr. Cooper testified that after he received the information that Mr. Morgan had access to, he was able to sharply reduce the number of incumbent pairings in three or four hours. Feb. 7, 2022, Afternoon Tr. 138:14–140:1. Mr. Cooper was ultimately able to reduce the number of incumbent pairings significantly. See APAX 2, ¶¶ 3–14.

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

Chart 4. House incumbent pairings

***1300**

Incumbent Pairings	Adopted House Plan	Cooper House Plan
Pairing #1	Rebecca Mitchell -D Shelly Hutchinson -D	Matthew Gambill -R Mitchell Scoggins -R
Pairing #2	Gerald Green -R Winifred Dukes -D	Trey Kelley -R Tyler Smith -R
Pairing #3	James Burchett -R Dominic LaRiccia -R	Matt Dubnik -R Emory Dunahoo -R
Pairing #4	Danny Mathis – R Robert Pruitt - R	Angelika Kausche -D Sam Park -D
Pairing #5		Regina Lewis-Ward -D Angela Moore -D
Pairing #6		Billy Mitchell -D Doreen Carter -D
Pairing #7		Mike Cheokas -R Debbie Butler -D
Pairing #8		Rick Williams -R Dave Belton -R
Pairing #9		Noel Williams -R Shaw Blackmon -R

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Pairing #10		Robert Pruitt -R Matt Hatchett -R
Pairing #11		Gerald Greene -R Winifred Dukes -D
Pairing #12		Ron Stephens -R Carl Guillard -D
Pairing #13		Darlene Taylor -R John LaHood -R
Total incumbents Paired	**8**	**26**

DX 1, ¶ 17 & chart 4.; See Georgia General Assembly House of Representatives, https://www.legis.ga.gov/members/house (last visited Feb. 28, 2022). Rep. Dukes represents House District 154, which includes part of Albany. Id. This pairing, however, exists in both the Enacted State House Plan and Mr. Cooper's Illustrative State House Plan. DX 1, ¶ 17 & chart 4. The Court thus finds that Mr. Cooper's Illustrative State House District 153 protects incumbents because no incumbents are paired in this district.

(g) Core retention

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

***1301** The Court finds that Mr. Cooper's Illustrative State House Maps and the enacted House Maps overlap by 61.4%. Although, Mr. Morgan found that only enacted House District 003 was unchanged in Mr. Cooper's Illustrative House Plan (DX 1, ¶ 19), Mr. Cooper found that there is a total 61.4% overlap between Mr. Cooper's Illustrative State House Plan and the Enacted State House Map (APAX 2, ¶ 16). Mr. Morgan testified that he only opined on whether the districts between Mr. Cooper's Illustrative State House Plan and the Enacted State House Map were exactly the same. Feb. 14, 2022, Morning Tr. 13:23–14:1. However, Mr. Morgan did not contest that Mr. Cooper's Illustrative State House Plan and the Enacted State House Map overlapped by 61.4%. Id. at 14:13–20. Accordingly, the Court finds that Mr. Cooper's Illustrative House Plan maintains more than half of the Enacted State House Map.

(h) Racial considerations

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

Mr. Cooper explained that he was "aware of race as traditional redistricting principles suggest one should be." Feb. 7, 2022, Afternoon Tr. 135:17–18. Mr. Cooper explained that

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

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

***1302** The Court finds that Mr. Cooper's Illustrative House District 153 contains Black population that is sufficiently numerous and compact, as to create an additional district that complies with traditional redistricting principles. Accordingly, the Court finds that the Alpha Phi Alpha Plaintiffs have a substantial likelihood of success in proving that Mr. Cooper's Illustrative House District 153 satisfies the first Gingles precondition.

(3) Conclusions of Law

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

2. The Second Gingles Precondition: Political Cohesion

[30] **[31]** The second Gingles element is that "the minority group ... show that it is politically cohesive." 478 U.S. at 50, 106 S.Ct. 2752. This involves an assessment of the extent to which elections in the jurisdiction are affected by racial polarization:

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

Id. at 56, 106 S.Ct. 2752 (citations omitted).

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

a) The parties' arguments

(1) Defendants

Defendants contend, in short, that the polarization is caused by partisan factors rather than "the race of the candidate" Black voters vote for. APA Doc. No. [120], ¶ 285. Because white voters cohesively support Republican candidates and Black voters cohesively support Democratic candidates without regard to whether the candidate is Black or white, Defendants attribute the polarization to partisanship. Id. ¶¶ 286–287. In doing so, Defendants assert that the extreme level of polarization is really partisan rather than racial. Id.

Because the vote dilution must be "on account of race or color" to violate Section 2, Defendants argue that the Court must determine whether some other factor is the cause. See id. ¶ 430. As a result, Defendants argue that Plaintiffs cannot show that "electoral losses are 'on account of race or color' and not partisan voting patterns." Id. 430 (citing 52 U.S.C. § 10301(a); Solomon, 221 F. 3d at 1225 (en banc); LULAC, 999 F. 2d at 854 (en banc)).

(2) Plaintiffs

In contrast, all three sets of Plaintiffs contend that the reasons *why* Black Georgia voters and white Georgia voters overwhelmingly support opposing candidates is irrelevant to Section 2's effects-based inquiry. The evidence compellingly demonstrates acute polarization by race and, Plaintiffs assert, what causes Georgia voters ***1303** to vote that way is not relevant to the second Gingles Precondition or the second Senate Factor. They argue they are not required "to prove [that] racism determines the voting choices of the white electorate in order to succeed in a voting rights case." Pendergrass Doc. No. [87], ¶ 351 (citing Askew v. City of Rome, 127 F.3d 1355, 1382 (11th Cir. 1997); Fayette Cnty., 950 F. Supp. 2d at 1321 n.29); see also APA Doc. No. 121, ¶ 665 (similar); Grant Doc. No. [82], ¶ 381 (same).

(3) Conclusions of law

[32] The Court concludes as a matter of law that, to satisfy the second Gingles precondition, Plaintiffs need not prove the causes of racial polarization, just its existence. The plurality opinion in Gingles concluded that, "[f]or purposes of § 2, the legal concept of racially polarized voting incorporates neither causation nor intent. *It means simply that the race of voters correlates with the selection of a certain candidate or candidates*; that is, it refers to the situation where different races (or minority language groups) vote in blocs for different candidates." Gingles, 478 U.S. at 62, 106 S.Ct. 2752 (emphasis added). Thus, four Supreme Court justices concluded that the existence of political polarization does not negate Plaintiffs' ability to establish the second Gingles precondition by showing the extent of racial-bloc voting. Id.; see also Chisom v. Roemer, 501 U.S. 380, 404, 111 S.Ct. 2354, 115 L.Ed.2d 348 (1991) (emphasizing that "Congress made clear that a violation of § 2 could be established by proof of discriminatory results alone").

The weight that should be placed on the extent of such polarization—and any link to partisanship—must necessarily be part of the totality-of-the-circumstances analysis under the second Senate Factor. Gingles, 478 U.S. at 37, 106 S.Ct. 2752 (identifying extent of racial polarization in elections under second Senate Factor); Solomon, 899 F.2d at 1015 (Kravitch, J., specially concurring) (same). However, such evidence must again be considered in light of the admonition in Gingles's plurality opinion that

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

478 U.S. at 63, 74, 106 S.Ct. 2752 (emphasis in original).

[33] As discussed above, applying the standard advocated by Defendants would undermine the congressional intent behind the 1982 amendments to the VRA—namely, to focus on the *results* of the challenged practices. Id. at 35–36, 106 S.Ct. 2752; see also Marengo Cnty. Comm'n, 731 F.2d at 1567. Congress wanted to avoid "unnecessarily divisive [litigation] involv[ing] charges of racism on the part of individual officials or entire communities." S. Rep. No. 97-417, pt. 1, at 36 (1982); see also Solomon, 899 F.2d at 1016 n.3 (Kravitch, J., specially concurring) (explaining that this theory "would involve litigating the issue of whether or not the community as a ***1304** whole was motivated by racism, a divisive inquiry that Congress sought to avoid by instituting the results test"). As the Eleventh Circuit long ago made clear, "[t]he surest indication of race-conscious politics is a pattern of racially polarized voting." Marengo Cnty. Comm'n, 731 F.2d at 1567.

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

b) The existence of political cohesion

(1) Pendergrass

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

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

i) Qualification

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

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

Defendants did not object to Dr. Palmer being qualified as an expert in redistricting and data analysis, and the Court so qualified him. Feb. 10, 2022, Morning Tr. 47:15–19. The Court found Dr. Palmer's testimony to be credible and his analyses to be methodologically sound. The Court notes that Dr. Palmer's findings are consistent with the Alpha Phi Alpha Plaintiffs' expert Dr. Handley. See infra (III.A.2.(b)(3)(a)(ii)). It credits that testimony and the reliability of Dr. Palmer's conclusions.

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

ii) Analysis

Dr. Palmer was tasked with offering an expert opinion on the extent to which voting is racially polarized in each of the Congressional Districts 3, 11, 13, and 14 of the Enacted Maps, as well as the region covered by those districts. Pendergrass Stip. ¶ 56; GPX 5, ¶ 9; Feb. 10, 2022, Morning Tr. 52:5–16. Dr. Palmer found ***1305** strong evidence of such voting in every area he examined. Feb. 10, 2022, Morning Tr. 48:3–6. In other words, Dr. Palmer found that Black and white voters consistently support different candidates. GPX 5, ¶ 6.

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

First, Dr. Palmer examined each racial group's support for each candidate to determine if members of the group voted cohesively in support of a single candidate in each election. GPX 5, ¶ 13. If a significant majority of the group supported a single candidate, he then identified that candidate as the group's candidate of choice. Id. Dr. Palmer next compared the preferences of white voters to the preferences of Black voters. Id. In every election he examined, across the relevant region and in each Congressional District from the Enacted Maps, Dr. Palmer found that Black voters had clearly identifiable candidates of choice. GPX 5, ¶¶ 15, 17–18, & figs. 2–4, 6; Feb. 10, 2022, Morning Tr. 52:17–54:19. For elections from 2012 through 2021, Black voters on average supported their

preferred candidates with an estimated vote share of 98.5%. GPX 5, ¶¶ 6, 14–15 & figs. 2–3, tbl.1.

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

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

i) Qualification

Dr. Alford is a tenured professor of Political Science at Rice University. DX 42, Ex. 1, at 1; Feb. 11, 2022, Afternoon Tr. 140:1–4. He holds a Master's in Public Administration from the University of Houston and a Ph.D. in Political Science from the University of Iowa. DX 42, Ex. 1, at 1; Feb. 11, 2022, Afternoon Tr. 139:18–25. He has taught graduate and undergraduate level courses on various subjects, including redistricting, elections, and political representation. DX 42, 2. Dr. Alford has authored numerous scholarly articles and presented papers at various conferences and consortia. DX 42, Ex. 1, at 1–8. He has previously been qualified as an expert witness on racial polarization in cases involving Section 2 claims. Id. at 140:13–18. However, Dr. Alford has never published a paper on racially polarized voting or any peer-reviewed articles using EI; and, he has never written about Section 2 of the Voting Rights Act in an academic publication. See Feb. 11, 2022, Afternoon Tr. 160:8–16.

While the Court found Dr. Alford to be credible, his conclusions were not reached through methodologically sound means and were therefore speculative and unreliable. Other courts have come to similar conclusions. See Lopez v. Abbott, 339 F. Supp. 3d 589, 610 (S.D. Tex. 2018) (crediting Dr. Handley's testimony over Dr. Alford's ***1306** because "Dr. Alford's testimony ... focused on issues other than the ethnicity of the voters and their preferred candidates—which are the issues relevant to bloc voting"); Texas v. U.S., 887 F. Supp. 2d 133, 146–47 (D.D.C. 2012) (critiquing Dr. Alford's approach because he used an analysis that "lies outside accepted academic norms among redistricting experts," and instead relying heavily on Dr. Handley's testimony), vacated on other grounds, 570 U.S. 928, 133 S.Ct. 2886, 186 L.Ed.2d 930 (2013).

ii) Analysis

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

The Court cannot credit this testimony. Dr. Alford admitted on cross-examination that he did not identify any errors that would affect Dr. Palmer's analysis or conclusions. Feb. 11, 2022, Afternoon Tr. 153:3–7. The basis for his testimony was only Dr. Alford's conclusion that Black voters overwhelmingly prefer Democratic candidates and white voters overwhelmingly support Republican candidates. Feb. 11, 2022, Afternoon Tr. 171:8–16; DX 42, at 5. But Dr. Alford did not perform his own analyses of voter behavior, and he testified that it is not possible to separate partisan polarization from racial polarization based on Dr. Palmer's analysis. DX 42; Feb. 11, 2022, Afternoon Tr. 143:4–10. In fact, there is no evidentiary support in the record for Dr. Alford's treatment of race and partisanship as separate and distinct factors affecting voter behavior. Nor is there any evidence—aside from Dr. Alford's speculation—that partisanship is the cause of the racial polarization identified by Dr. Palmer. DX 42, at 3–4. Dr. Alford himself acknowledged that polarization can reflect both race *and* partisanship, and that "it's possible for political affiliation to be motivated by race." Feb. 11, 2022, Afternoon Tr. 171:8–16. All this undermines Dr. Alford's insistence that partisanship rather than race is the cause of the polarization. In any event, and as discussed above, the cause of the polarization is not relevant to the second Gingles precondition.

Other courts have discounted Dr. Alford's testimony for similar reasons. See, e.g., NAACP, Spring Valley Branch v. E. Ramapo Cent. Sch. Dist., 462 F. Supp. 3d 368, 381 (S.D.N.Y. 2020) ("[Dr. Alford's] testimony, while sincere, did not reflect current established scholarship and methods of analysis of racially polarized voting and voting estimates."), aff'd sub nom. Clerveaux v. E. Ramapo Cent. Sch. Dist., 984 F.3d 213 (2d Cir. 2021); Flores v. Town of Islip, 382 F. Supp. 3d 197, 233 (E.D.N.Y. 2019) ("Dr. Alford maintains

that at least 80% of the white majority in Islip must vote against the Hispanic-preferred candidate for the white bloc vote to be sufficient.... This theory has no foundation in the applicable caselaw."); Lopez v. Abbott, 339 F. Supp. 3d 589, 610 (S.D. Tex. 2018) ("At this juncture, the Court is only concerned with whether there is a pattern of white bloc voting that consistently defeats minority-preferred candidates. That analysis requires a determination that the different groups prefer different candidates, as they do. It does not require a determination of why particular candidates are preferred by the two groups."); ***1307** Patino v. City of Pasadena, 230 F. Supp. 3d 667, 709–13 (S.D. Tex. 2017) (finding in favor of the plaintiffs as to Gingles' second and third prongs, contrary to Dr. Alford's testimony on behalf of the defendant jurisdiction), stay denied pending appeal, 667 F. App'x 950 (5th Cir. 2017) (per curiam); Montes v. City of Yakima, 40 F. Supp. 3d 1377, 1401–07 (E.D. Wash. 2014) (finding the same and stating that Dr. Alford's testimony did "not defeat a finding of Latino voter cohesion"); Benavidez v. Irving Indep. Sch. Dist., No. 3:13-CV-0087-D, 2014 WL 4055366, at *11–13 (N.D. Tex. Aug. 15, 2014) (same); Fabela v. City of Farmers Branch, No. 3:10-CV-1425-D, 2012 WL 3135545, at *8–13 (N.D. Tex. Aug. 2, 2012) (same); Texas v. United States, 887 F. Supp. 2d 133, 181 (D.D.C. 2012) ("[T]he fact that a number of Anglo voters share the same political party as minority voters does not remove those minority voters from the protections of the VRA. The statute makes clear that this Court must focus on whether minorities are able to elect the candidate of their choice, no matter the political party that may benefit."), vacated on other grounds, 570 U.S. 928, 133 S.Ct. 2886, 186 L.Ed.2d 930 (2013); Benavidez v. City of Irving, 638 F. Supp. 2d 709, 722–25, 731–32 (N.D. Tex. 2009) (finding in favor of the plaintiffs as to Gingles' second and third prongs, contrary to Dr. Alford's testimony on behalf of the defendant jurisdiction); see also Feb. 11, 2022, Afternoon Tr. 172:17–20 (agreeing that other courts have rejected his testimony before "[i]n the sense of deciding to go in a different direction than what I thought the facts of the case suggested").

(c) Conclusions of Law

[34] The Court concludes that the Pendergrass Plaintiffs have satisfied their burden to establish that Black voters in Georgia (at least for those regions examined) are politically cohesive. Gingles, 478 U.S. at 49, 106 S.Ct. 2752. "Bloc voting by blacks tends to prove that the black community is politically cohesive, that is, it shows that blacks prefer certain candidates whom they could elect in a single-member, black majority district." Id. at 68, 106 S.Ct. 2752. Dr. Palmer's analysis clearly demonstrate high levels of such cohesiveness, both across the congressional focus area and in the individual districts that comprise it. Neither Dr. Alford's testimony nor his expert report undermines this conclusion.

This finding is also consistent with previous findings of political cohesion among Black Georgians. See, e.g., Wright, 301 F. Supp. 3d at 1313 (noting that, in ten elections for Sumter County Board of Education with Black candidates, "the overwhelming majority of African Americans voted for the same candidate"); Wright, 979 F.3d at 1306 (noting "the high levels of racially polarized voting" in Sumter County).

(2) Grant

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

(a) Dr. Palmer's analysis

In Grant, Dr. Palmer was tasked with offering an expert opinion on the extent to which voting is racially polarized in five different "focus areas" based on the Georgia General Assembly House and Senate Enacted Maps. Grant Stip. ¶ 77; Feb. 10, 2022, Morning Tr. 60:1–13; GPX 6, ¶ 9. The focus areas cover those regions where ***1308** Plaintiffs' illustrative majority-minority districts are located. GPX 6, ¶ 9. For the Georgia House, Dr. Palmer examined regions he described as the Black Belt (covering Enacted Map House Districts 133, 142, 143, 145, 147, and 149), Southern Atlanta (Enacted Map House Districts 69, 74, 75, 78, 115, and 117), and Western Atlanta (Enacted Map House Districts 61 and 64). GPX 6, ¶ 10. For the Georgia Senate, Dr. Palmer looked at the Black Belt (Enacted Map Senate Districts 22, 23, 24, 25, and 26) and Southern Atlanta (Enacted Map Senate Districts 10, 16, 17, 25, 28, 34, 35, 39, and 44). GPX 6, ¶ 11.

The analysis Dr. Palmer performed was the same type of EI as that in Pendergrass (GPX 6, ¶¶ 14–16; Feb. 10,

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

(3) Alpha Phi Alpha

The Alpha Plaintiffs proffered Dr. Lisa Handley as an expert in racial polarization analysis and the analysis of minority vote dilution and redistricting. Feb. 10, 2022, Morning Tr. 76:13, 81:8–10. Defendants proffered Dr. Alford. Accordingly, except with regard to the specific areas and districts analyzed by Dr. Handley for the Alpha Phi Alpha case, the discussion concerning the existence of political cohesion in Pendergrass applies here, too.

(a) Plaintiffs' Expert: Dr. Lisa Handley

i) Qualification

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

Dr. Handley has served as an expert in "scores" of redistricting and voting rights cases, including on behalf of jurisdictions defending against Section 2 cases. Feb. 10, 2022, Morning Tr. 80:5–12, 102:23–103:6; APAX 3, at 46. In those cases, she generally analyzes voting patterns by race and ethnicity. Feb. 10, 2022, Morning Tr. 80:13–19. As an expert, she has also numerous times performed analyses of racial-bloc voting and evaluations of whether proposed districts provide minorities with the opportunity to elect candidates of their choice. Feb. 10, 2022, Morning Tr. 80:20–81:7. She has routinely been qualified as an expert in cases where she used the same methodology she employed here. Feb. 10, 2022, Morning Tr. 84:25–85:4; APA Doc. No. [118-2], ¶ 4.

Defendants did not object to Dr. Handley being qualified as an expert in the ***1309** analysis of racial polarization and minority vote dilution and redistricting, and the Court so qualified her. Feb. 10, 2022, Morning Tr. 81:14–17. The Court found Dr. Handley's testimony to be credible and her analyses to be sound. At the live hearing, the Court carefully observed Dr. Handley's demeanor, particularly as she was cross-examined for the first time about his work on this case. She consistently defended his work with careful and deliberate explanations of the cases for his opinions. When Defense counsel questioned her about her methodology particularly the reason behind not using confidence intervals, Dr. Palmer provided measured and thoughtful responses. The Court observed no internal inconsistencies in her testimony, no appropriate question that he could not or would not answer, and no reason to question the veracity of her testimony. Thus, the Court credits that testimony and the reliability of Dr. Handley's conclusions.

ii) Analysis

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

Dr. Handley analyzed voting patterns by race in the six regions that are the focus of the Alpha Phi Alpha case, specifically: the Eastern Atlanta Metro Region, the Southern Atlanta Metro Region, East Central Georgia with Augusta, the Southeastern Atlanta Metro Region, Central Georgia, and Southwest Georgia. APAX 3, at 2; Feb. 10, 2022, Morning Tr. 83:7–8. Dr. Handley's analysis employed three commonly used statistical methods that have been widely accepted by courts in voting rights cases: homogeneous precinct analysis, ecological regression, and "King's EI." Feb. 10, 2022, Morning Tr. 83:21–23, 84:3–24, 85:12–25;

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

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

(a) Statewide general elections

Dr. Handley estimated of the percentage of Black and white voters in the six regions in statewide general elections for U.S. Senate, Governor, Commissioner of Insurance, and School Superintendent. Feb. 10, 2022, Morning Tr. 86:1–7; APAX 3, at 5–6; APA Doc. No. [118-1]. All but two of those elections involved Black and white candidates—i.e., they were biracial elections. APAX 3, at 6, 8–11; Feb. 10, ***1310** 2022, Morning Tr. 91:8–17. According to Dr. Handley, biracial elections are the most probative for measuring racial polarization. Feb. 10, 2022, Morning Tr. 86:16–20. Courts generally have agreed. See Feb. 11, 2022, Afternoon Tr. 170:25–171:7. Dr. Handley also analyzed the 2020 U.S. Senate general election and 2021 U.S. Senate runoff election with Jon Ossoff, in part because Black candidates ran in the primary. Feb. 10, 2022, Morning Tr. 86:23–87:3.

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

(b) State legislative elections

Dr. Handley also looked at 26 State legislative elections in the relevant regions. Feb. 10, 2022, Morning Tr. 86:1–7, 91:12–17; APAX 4, at 5, 7–10. She found starkly racially polarized voting here, too. Feb. 10, 2022, Morning Tr. 91:8–25; APAX 4, at 5, 7–10. She analyzed recent biracial elections in General Assembly districts wholly contained within or overlapping with the additional majority-Black districts drawn by Plaintiffs' expert demographer. Feb. 10, 2022, Morning Tr. 91:8–17; APAX 3, at 8–11. There were eight such State senate contests, and 18 such State house contests. APAX 3, at 8–11. All these elections were racially polarized, with Black candidates receiving a minuscule share of the white vote and the overwhelming support of Black voters. Feb. 10, 2022, Morning Tr. 91:8–25; APAX 4, at 5, 7–10. Indeed, in all but one of the 26 contests, over 95% of Black voters supported the same candidate. APAX 4, at 5, 7–10.

(c) Primaries

In addition to analyzing statewide elections, Dr. Handley applied her EI analysis to statewide Democratic primaries for Governor, Lieutenant Governor, Commissioner of Insurance, School Superintendent, and Commissioner of Labor. APAX 3, at 5–6; APA Doc. No. [118-1]; Feb. 10, 2022, Morning Tr. 86:3–4. Although Dr. Handley acknowledged that polarized voting is "somewhat less stark in the primaries" and in a few instances the support of Black and white voters for the same candidate is close (Feb. 10, 2022, Morning Tr. 101:3–23), the majority of primaries she analyzed across all six regions still demonstrated evidence of racially polarized voting (Feb. 10, 2022, Morning Tr. 100:13–16; APAX 4, at 2–3). The only regular exceptions were the two recent Democratic primaries in which Black voters supported white candidates (Jon Ossoff in the 2020 primary for U.S. Senate and Jim Barksdale in his bid for the Democratic nomination for U.S. Senate in 2016). APAX 3, at 8, 23.

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

[118-1], 3–13. Similarly, in the 2018 Democratic primary for the Commissioner of Insurance, the white candidate received on average more than 60% of the white vote, and the Black candidate received on average more than 78% of the Black vote. See APA Doc. No. [118-1], 3–13.

***1311** This evidence of racial polarization in primary elections is particularly compelling here because it undermines Defendants' contention that the polarization is the result of partisan factors. By definition, partisan affiliation cannot explain polarized election outcomes in primary contests, where Democrats are necessarily running against other Democrats.

(b) Defendants' Expert: Dr. Alford

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

Dr. Alford did agree with Dr. Handley's assessment that statewide general elections involving Black and white candidates are the most probative for measuring racial polarization. Feb. 11, 2022, Afternoon Tr. 170:25–171:7. And he did not dispute Dr. Handley's conclusions there is a high degree of racial polarization in the election contests she analyzed, testifying that in general elections in Georgia, Black voters are "very cohesive." Id. at 154:15–17; DX 42, at 6. He concluded the same of white voters. Feb. 11, 2022, Afternoon Tr. 154:18–19; DX 42, at 6. Dr. Alford also found Dr. Handley's conclusions and those of Dr. Palmer were "entirely compatible with each other," and that both showed polarized voting. Feb. 11, 2022, Afternoon Tr. 142:9–13, 145:21. Dr. Alford said that "[i]t would be hard to get a difference more stark" than the voting patterns of Black and white voters reflected in the analyses of Drs. Handley and Palmer. Id. at 154:20–22.

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

(c) Conclusions of Law

As with Dr. Alford's critiques of Dr. Palmer's analyses, the Court finds the criticisms of Dr. Handley's work unpersuasive. For the same reasons as stated with regard to the Pendergrass Plaintiffs, the Alpha Phi Alpha Plaintiffs have satisfied their burden to establish that, for the regions and elections Dr. Handley examined, Black voters in Georgia are politically cohesive. Gingles, 478 U.S. at 49, 106 S.Ct. 2752.

3. The Third Gingles Precondition: Bloc Voting

[35] **[36]** The third Gingles precondition requires that the minority group be able to ***1312** demonstrate that "the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate." Gingles, 478 U.S. at 51, 106 S.Ct. 2752 (citations omitted). In Gingles, the Supreme Court treated the terms "racial bloc" and "racial polarization" as interchangeable. Id. at 53 n.21, 106 S.Ct. 2752. Thus, the third precondition involves the same evaluation as to the voting preferences of the majority group as that the second precondition does for the minority group: "[I]n general, a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." Id. at 56, 106 S.Ct. 2752 (citations omitted).

a) Pendergrass

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

Overall, Dr. Palmer found "strong evidence of racially polarized voting" as a whole and in each individual congressional district he examined. Feb. 10, 2022, Morning Tr. 48:3–8; GPX 5, ¶¶ 6, 18. White voters had clearly identifiable candidates of choice in each election. GPX 5, ¶¶ 16–17 & figs. 2–4. From 2012 to 2021, white voters were highly cohesive in opposing the Black candidate of choice in every election. On average, Dr. Palmer found that white voters supported Black-preferred candidates with an average of just 11.5% of the vote. See id. ¶ 16. White voters, however, on average supported their preferred candidates with an estimated vote-share of 88.5%. See id.

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

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

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

b) Grant

Dr. Palmer testified similarly concerning the regions he examined in Grant. In the areas as a whole and in each legislative ***1313** district, Dr. Palmer concluded that white voters had clearly identifiable candidates of choice for every election he analyzed. Feb. 10, 2022, Morning Tr. 60:22–25; GPX 6, ¶ 17 & figs. 2–3, tbl.1. In elections from 2012 to 2021, white voters were highly cohesive in voting in opposition to the Black voters' candidate of choice. On average, Dr. Palmer found that white voters supported Black-preferred candidates with a maximum of just 17.7% of the vote. GPX 6, ¶ 17. That is, white voters on average supported their preferred candidates with an estimated vote share of 82.3%. Id.

Dr. Palmer also concluded that, as a result of this racially polarized voting, candidates preferred by Black voters in the regions he examined have generally been unable to win elections outside of majority-Black districts. GPX 6, ¶ 20. He testified that "Black-preferred candidates win almost every election in the Black-majority districts, but lose almost every election in the non Black-majority districts." Id.

Using returns from 31 statewide elections, Dr. Palmer analyzed the illustrative State House and Senate districts drawn by Esselstyn. GPX 6, ¶ 22 & fig.5, tbl.10. He found that in "Senate Districts 23, 25, and 28, the Black-preferred candidate won a larger share of the vote in all 31 statewide elections. In House District 117, the Black-preferred candidate won all 19 elections since 2018." Id. ¶ 22. He also confirmed that that changes Esselstyn made to the majority-Black districts in the Enacted Maps would not change the ability of candidates preferred by Black voters to win there. Feb. 10, 2022, Morning Tr. 65:1–4.

For these reasons and those explained above,[38] the Court credits Dr. Palmer's analysis and testimony, and concludes that the Grant Plaintiffs have satisfied their burden under the third Gingles precondition.

c) Alpha Phi Alpha

The Alpha Phi Alpha Plaintiffs' expert, Dr. Handley, also provided evidence about racial-bloc voting. She performed the same type of analysis for racial-bloc voting as she did for political cohesion, looking at voting patterns by race in the six

identified regions. APAX 3, at 2. For every general election she analyzed, Dr. Handley found that white voters voted as a bloc against the preferred candidates of Black voters. Id. at 8; APAX 4, at 5, 7–10; APA Doc. No. [118-1]; Feb. 10, 2022, Morning Tr. 90:18–20, 91:22–25, 101:20–23. She concluded that, as a result of the stark racial polarization, candidates preferred by Black voters were consistently unable to win elections and will likely continue to be unable to win elections outside of majority-Black districts. Feb. 10, 2022, Morning Tr. 95:24–96:3; APAX 3, at 8–9.

Specifically, Dr. Handley found that the candidate of choice for Black voters on average secured the support of less than 5% of white voters in State Senate races and less than 9.5% of white voters in State House races. APAX 3, at 8; APAX 4, at 5, 7–10. As a result, blocs of white voters in the regions Dr. Handley examined were able to consistently defeat the candidates preferred by Black voters in state legislative general elections, except where the districts were majority Black. Feb. 10, 2022, Morning Tr. 95:21–96:3; APA Doc. No. [118-1]. Based on this "starkly" racially polarized voting, Dr. Handley concluded that the ability of Black voters to elect candidates of their choice to the Georgia General Assembly is substantially impeded unless majority-minority districts are drawn to provide Black voters with such opportunities. Feb. 10, 2022, Morning ***1314** Tr. 82:16–83:4, 95:9–96:3, 99:12–18; APAX 3, at 12.

Dr. Handley also evaluated whether Black voters had the opportunity to elect candidates of their choice under the illustrative districts drawn by Cooper compared with the Enacted Maps. Feb. 10, 2022, Morning Tr. 81:21–25; APAX 3, at 7–8. She used recompiled election results with official data from 2016, 2018, and 2020 statewide election contests and 2020 Census data, to determine whether Black voters have an opportunity to elect their candidates of choice. Feb. 10, 2022, Morning Tr. 92:18–93:3, 93:7–9; APAX 3, at 2–4. Recompiled elections analysis has been accepted by courts and used by special masters specifically for the purpose of evaluating whether a proposed majority-minority district will provide Black voters with the opportunity to elect their candidates of choice. Feb. 10, 2022, Morning Tr. 92:1–93:17.

To do so, Dr. Handley calculated a "General Election" effectiveness score ("GE Score"), which averaged the vote-share of candidates of choice for Black voters in five prior statewide elections in each of the districts in the illustrative maps and the Enacted Maps for the regions of focus. Feb. 10, 2022, Morning Tr. 92:18–93:3, 93:7–9; APAX 3, at 12. The GE Scores show that, on average, the candidates preferred by Black voters receive less than 50% of the vote outside of districts that are majority-Black and were thus likely to be defeated. Feb. 10, 2022, Morning Tr. 97:4–99:11; APAX 3, at 12–23. Based on her analysis, Dr. Handley concluded that the illustrative maps provide "at least one additional black opportunity district compared to the enacted plan" in the regions she analyzed. Feb. 10, 2022, Morning Tr. 83:2–4; APAX 3, at 12–20. This means that, for each of the proposed majority-Black districts, candidates of choice for Black voters would have received more than 50% of the total vote, providing Black voters with an opportunity they would not otherwise have had to elect those candidates. APAX 3, at 22–23.

For example, in and around Illustrative House District 153, white voters consistently joined together to defeat Black voters' candidates of choice. Feb. 10, 2022, Morning Tr. 95:21–96:3; APA Doc. No. [118-1]. As House District 173 was constituted before the Enacted Maps were adopted, its area overlapped with illustrative House District 153. In elections in District 173 in 2016 and 2020, candidates preferred by Black voters garnered more than 96% of Black votes but were defeated because of white racial-bloc voting, with white voters' candidates of choice securing more than 90% of the white vote. APAX 4, at 8, 10.

Accordingly, and for the reasons explained above,[39] the Court credits Dr. Handley's analysis and testimony and concludes that the Alpha Phi Alpha Plaintiffs have satisfied their burden under the third Gingles precondition.

4. The Senate Factors

As indicated above, to determine whether vote dilution is occurring, "a court must assess the impact of the contested structure or practice on minority electoral opportunities on the basis of objective factors. The Senate Report [from the 1982 Amendments to the VRA] specifies factors which typically may be relevant to a § 2 claim[.]" Gingles, 478 U.S. at 44, 106 S.Ct. 2752. The Court now reviews the relevant Senate factors.

a) Senate Factor One: Georgia has a history of official, voting-related discrimination.

[38] It cannot be disputed that Black Georgians have experienced franchise-related ***1315** discrimination. "African-Americans have in the past been subject to legal and cultural segregation in Georgia[.]" Cofield v. City of LaGrange, 969 F. Supp. 749, 767 (N.D. Ga. 1997). "Black residents did not enjoy the right to vote until Reconstruction." Id. "Moreover, early in this century, Georgia passed a constitutional amendment establishing a literacy test, poll tax, property ownership requirement, and a good-character test for voting." Id. "This act was accurately called the 'Disfranchisement Act.' Such devices that limited black participation in elections continued into the 1950s." Id.

This Court recently took judicial notice of the fact that "prior to the 1990s, Georgia had a long sad history of racist policies in a number of areas including voting." Fair Fight Action, Inc. v. Raffensperger, No. 1:18-CV-5391-SCJ, slip op. at 41 (N.D. Ga. Nov. 15, 2021) (hereinafter, "Fair Fight") (order denying defendants' motion for summary judgment). As this Court has described, "Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather than the exception." Fayette Cnty., 950 F. Supp. 2d at 1314; see also Wright, 301 F. Supp. 3d at 1310 ("Georgia's history of discrimination has been rehashed so many times that the Court can all but take judicial notice thereof." (citation and internal quotation marks omitted)).

The Pendergrass and Grant Plaintiffs detailed this sad history through the report and testimony of their expert witness, Dr. Orville Vernon Burton. See GPX 7; Feb. 10, 2022, Morning Tr. 4:11–43:22. Dr. Burton is a professor of history at Clemson University who earned his undergraduate degree from Furman University and Ph.D. in American History from Princeton University. GPX 7, at 4. He was retained "to analyze the history of voting-related discrimination in Georgia and to contextualize and put in historical perspective such discrimination." Id. at 2. His report describes the many decades of efforts to minimize the influence of minority—and specifically Black—voters. See id. at 2–3; 7–54. This historical review spans from the Reconstruction era to the present day. Id. at 9–54. Most of his analysis relates to discrimination that occurred prior to the 1980s. See id. at 9–38. Dr. Burton expounded on his report when he testified remotely by videoconference at the hearing, where he was qualified as an expert on the history of race discrimination and voting. Feb. 10, 2022, Morning Tr. 7:6–11. The Court has reviewed Dr. Burton's report and closely observed his testimony. The Court finds Dr. Burton to be highly credible. His historical analysis was thorough and methodologically sound. Further, the Court finds Dr. Burton's conclusions to be reliable.

Dr. Burton opined on the extensive history of discrimination against Black voters in Georgia and concluded that throughout the State's history, "voting rights have followed a pattern where after periods of increased nonwhite voter registration and turnout, the state has passed legislation, and often used extralegal means, to disenfranchise minority voters." GPX 7, at 8. This discrimination included years of physical violence and intimidation (id. at 12–15, 22), as well as official barriers such as poll taxes and legislation that had the effect of disenfranchising most Black voters (e.g., id. at 15–20). The Court need not belabor this issue—as stated above, this history is well-documented in the relevant caselaw. The Court finds that Plaintiffs have shown that Black Georgians have historically experienced franchise-related discrimination.

***1316** During the hearing, Defendants seemingly attempted to cast aside this history as long past and therefore less relevant. See, e.g., Feb. 10, 2022, Morning Tr. 25:16–26:13 (emphasizing how much of Dr. Burton's report concerns pre-1980 matters). Of course, whether some of the history Dr. Burton discussed is decades or centuries old does not diminish the importance of those events and trends under this Senate Factor, which specifically requires the Court to consider the *history* of official discrimination in Georgia. And it is not a novel concept that a history of discrimination can have present-day ramifications. See Marengo Cnty. Comm'n, 731 F.2d at 1567; Wright, 301 F. Supp. at 1319 (quoting Marengo Cnty. Comm'n).

Accordingly, the Court finds that Plaintiffs have demonstrated the history of voting-related discrimination in Georgia. The first Senate Factor thus weighs decisively in Plaintiffs' favor.

b) Senate Factor Two: Georgia voters are racially polarized.

[39] **[40]** "The second Senate Factor focuses on 'the extent to which voting in the elections of the State or political subdivision is racially polarized.' " Wright, 979 F.3d at 1305 (quoting LULAC, 548 U.S. at 426, 126 S.Ct. 2594). "This

'factor will ordinarily be the keystone of a dilution case.' " Id. (quoting Marengo Cnty. Comm'n, 731 F.2d at 1566).

Plaintiffs' experts, Dr. Palmer and Dr. Handley, provided clear evidence through their reports and hearing testimony that Black and white Georgians consistently support different candidates. Defendants' expert, Dr. Alford, did not contest this point—in fact, he agreed with it. See Feb. 11, 2022, Afternoon Tr. 153:15–154:22. Moreover, Dr. Alford's observations about the relationship between race and partisanship—namely, that Black voters overwhelmingly support Democratic candidates and that white voters overwhelmingly support Republican candidates (see Feb. 11, 2022, Afternoon Tr. 171:8–16)—are irrelevant because the fact remains that voters are racially polarized, as Plaintiffs have shown. In short, the Court's analysis on the second and third Gingles preconditions controls here. [40] The second Senate Factor thus weighs in Plaintiffs' favor.

c) Senate Factor Three: Georgia's voting practices enhance the opportunity for discrimination.

[41] **[42]** Senate Factor Three "considers 'the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting.' " Wright, 979 F.3d at 1295 (quoting Gingles, 478 U.S. at 44–45, 106 S.Ct. 2752).

For this Senate Factor, the Court returns to Dr. Burton's expert report and testimony. Dr. Burton opined that throughout much of the twentieth century, Georgia deliberately malapportioned its legislative and congressional districts to dilute the votes of Black Georgians, citing as examples past congressional districts in and near Atlanta that were severely malapportioned. See GPX 7, at 29–30; Feb. 10, 2022, Morning Tr. 12:7–18. Dr. Burton also opined that Georgia's history is marked by electoral schemes that have enhanced the opportunity for discrimination against Black voters, such as shifts from voting by district to at-large voting and staggered voting. See GPX 7, at 34–36. Dr. Burton also opined that similar efforts have persisted to today. See id. at 44–53. Because Plaintiffs have shown there has ***1317** been a history of voting practices or procedures in Georgia that have enhanced the opportunity for discrimination against Black voters, the Court finds that this factor weighs in Plaintiffs' favor.

d) Senate Factor Four: Georgia has no history of candidate slating for legislative elections.

It is undisputed that Georgia uses no slating process for its legislative or congressional elections. As a result, this factor is irrelevant to these cases.

e) Senate Factor Five: Georgia's discrimination has produced significant socioeconomic disparities that impair Black Georgians' participation in the political process.

[43] The Eleventh Circuit has "recognized in binding precedent that 'disproportionate educational, employment, income level, and living conditions arising from past discrimination tend to depress minority political participation.' " Wright, 979 F.3d at 1294 (quoting Marengo Cnty. Comm'n, 731 F.2d at 1568). "Where these conditions are shown, and where the level of black participation is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation." Id. (quoting Marengo Cnty., 731 F.2d at 1568–69); United States v. Dallas Cnty. Comm'n, 739 F.2d 1529, 1537 (11th Cir. 1984) ("Once lower socio-economic status of [B]lacks has been shown, there is no need to show the causal link of this lower status on political participation.").

[44] Here, Plaintiffs have offered unrebutted evidence that Black Georgians suffer socioeconomic hardships stemming from centuries-long racial discrimination, and that those hardships impede their ability to fully participate in the political process. To that end, the Court accepts the analysis and conclusions of Plaintiffs' expert, Dr. Loren Collingwood. Dr. Collingwood, a professor of political science at the University of New Mexico, has published extensively on matters of election administration and racially polarized voting. See GPX 11, at 2. Dr. Collingwood analyzed data from the American Community Survey ("ACS"), as well as voter-turnout data from the Georgia Secretary of State's office. Id. at 3. From this data, he concluded that Black Georgians are disadvantaged socioeconomically relative to non-Hispanic white Georgians by several measures. Id. at 3–6.

For example, the unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%). Id.

at 4; Pendergrass Stip. ¶ 58. White households in Georgia are twice as likely as Black households to (1) report an annual income above $100,000 and (2) not to live below the poverty line. GPX 11, at 4; Pendergrass Stip. ¶¶ 59–60. Black Georgians are less likely than white Georgians to have received a high school diploma or a bachelor's degree or higher. GPX 11, at 4; Pendergrass Stip. ¶¶ 62–63. And statistics indicate that Black Georgians also experience disparities in medical care. See, e.g., GPX 11, at 4 (stating that Black Georgians are more likely than white Georgians to lack health insurance). [41]

These disparities have extended to the political arena. Historically and today, the number of Black legislators serving in the ***1318** Georgia General Assembly has trailed the number of white legislators, and Georgia has never had a Black governor. See Pendergrass Stip. ¶¶ 64–65. Generally, Black Georgians have voted at significantly lower rates than white Georgians, and there is evidence that Black Georgians have been less engaged in political activities such as attending political meetings and donating to political campaigns. See GPX 11, at 6–23.

After careful review of Dr. Collingwood's report, the Court accepts Dr. Collingwood as qualified to opine as an expert on demographics and political science. The Court finds Dr. Collingwood to be credible, his analysis methodologically sound, and his conclusions reliable. The Court credits Dr. Collingwood's opinions and conclusions, which support a finding that Black Georgians bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process. Specifically, the Court is persuaded by Dr. Collingwood's opinion that many of the socioeconomic disparities discussed above have been a cause of lower political participation among Black Georgians. See id. at 6.

To be sure, Senator Raphael Warnock was recently elected as the first Black Georgian to serve Georgia in the U.S. Senate. Pendergrass Stip. ¶ 66. And while Defendants have highlighted the record-breaking turnout of Black voters in the 2020 election as an indication that Blacks are no longer hindered from participating in the political process (see Feb. 10, 2022, Afternoon Tr. 198:18–24), the Court finds that it is still important to consider the pre-2020 level of Black political participation for purposes of this Senate Factor. Put another way, the Court finds that one recent example of increased Black voter turnout does not erase the evidence that Black individuals have for years participated less in the political process in Georgia.

Accordingly, the Court finds that Plaintiffs' evidence on this factor weighs in favor of a finding of vote dilution.

f) Senate Factor Six: Both overt and subtle racial appeals are prevalent in Georgia's political campaigns.

[45] This factor "asks whether political campaigns in the area are characterized by subtle or overt racial appeals." Wright, 979 F.3d at 1296 (quoting Gingles, 478 U.S. at 45, 106 S.Ct. 2752).

This Court recently credited evidence of racial appeals in recent Georgia elections. Fair Fight, slip op. at 44–46. In addition, Plaintiffs have submitted substantial evidence that overt and subtle racial appeals remain common in Georgia politics. To start, Dr. Burton's report provides a historical backdrop for this issue, discussing early, post-Civil War racial appeals in Georgia politics. GPX 7, at 9–20. And at the hearing, Dr. Burton related this history to the modern era, testifying that contemporary racial appeals in Georgia stem from the political realignment that followed Democrats' support for civil rights legislation in the 1960s and that saw white Georgians overwhelmingly switch to the Republican Party. Feb. 10, 2022, Morning Tr. 20:13–22:8. Dr. Burton explained that during this transition, Republican politicians courted conservative constituents with race-based appeals, including what Dr. Burton deemed to be implicitly racist language and terms such as the "Welfare queen" and "strapping young buck." Id.; GPX 8, at 3–6. Dr. Burton further opined that such coded racial appeals have continued to this day, with conservative political discourse constantly focused on matters such as poverty, "criminal corruption," and immigration. Feb. 10, 2022, Morning Tr. 21:25–22:8, 30:20–32:13.

***1319** For this Senate Factor, Plaintiffs also relied on the report and testimony of Dr. Adrienne Jones, a political science professor at Morehouse College in Atlanta, who has expertise in the history of racial discrimination in voting. See APAX 5, at 3. The Court has reviewed Dr. Jones's report and listened to her testify during the hearing. The Court finds her to be credible, and the Court accepts her as qualified to opine as an expert on political science. Feb. 10, 2022, Afternoon Tr. 172:3–10. In her report and in her testimony, Dr. Jones opined that explicit and subtle racial appeals have been used

in political campaign strategies in Georgia. E.g., APAX 5, at 25–29; see also Feb. 10, 2022, Afternoon Tr. 176:2–183:4 (discussing what Dr. Jones determines to be racial appeals in recent campaigns, which has included the darkening of Black candidates' skin color in advertisements to create what Dr. Jones opines to be a "dark menacing" image). Dr. Jones concludes that these and similar instances of race-based messaging in recent Georgia campaigns and election cycles show that racial appeals continue to play an important role in Georgia political campaigns. APAX 5, at 25–29.

[46] After careful review and consideration, the Court finds that Plaintiffs have presented sufficient evidence for this factor to weigh in their favor. The Court is unable to uphold Defendants' suggestion that appeals to racism by "unsuccessful candidates" do not weigh toward this Senate Factor or the totality of the circumstances. As this Court has previously explained, "this factor does not require that racially polarized statements be made by successful candidates. The factor simply asks whether campaigns include racial appeals." Fair Fight, slip op. at 45–46 (citing Gingles, 478 U.S. at 37, 106 S.Ct. 2752).

g) Senate Factor Seven: Black candidates in Georgia are underrepresented in office and rarely succeed outside of majority-minority districts.

[47] **[48]** This factor "focuses on 'the extent to which members of the minority group have been elected to public office in the jurisdiction.' " Wright, 979 F.3d at 1295 (quoting LULAC, 548 U.S. at 426, 126 S.Ct. 2594). "If members of the minority group have not been elected to public office, it is of course evidence of vote dilution." Marengo Cnty. Comm'n, 731 F.2d at 1571. As discussed above under Senate Factor Five, Plaintiffs' evidence demonstrates that Black Georgians have been and continue to be underrepresented in statewide elected offices and rarely succeed in local elections outside of majority-minority districts. Further, the Court notes that Dr. Burton discussed how Black Georgians historically have been underrepresented politically—comparatively few Black individuals have held statewide positions, and Black candidates tend to have struggled even at the county level unless they were in majority-minority districts. See GPX 7, at 32–38, 53–54. Based on the evidence presented, the Court finds that this factor thus weighs in Plaintiffs' favor.

h) Senate Factor Eight: Georgia is not responsive to its Black residents.

[49] "The authors of the Senate Report apparently contemplated that unresponsiveness would be relevant only if the plaintiff chose to make it so, and that although a showing of unresponsiveness might have some probative value a showing of responsiveness would have very little." Marengo Cnty. Comm'n, 731 F.2d at 1572 (footnote omitted). As discussed above, Dr. Collingwood's expert report shows significant socioeconomic disparities between Black and white Georgians, which ***1320** Dr. Collingwood opines contribute to the lower rates at which Black Georgians engage in the political process and elect their preferred candidates. See GPX 11, at 16–19. Moreover, political science professor Dr. Traci Burch was offered as an expert in political behavior, barriers to voting, and political participation. See APAX 6, at 3. She explained that disparities, such as the ones Dr. Collingwood identified, are often caused by public policies and demonstrate a lack of responsiveness by public officials to the needs of Black Georgians, which in turn leaves those Black Georgians dissatisfied with their elected representatives and the quality of the local services they receive. See id. at 28. While the Court does not find that this evidence causes this factor to weigh heavily in Plaintiffs' favor, it still weighs in their favor.

i) Senate Factor Nine: The justifications for the enacted redistricting maps are tenuous.

[50] Defendants have offered no justification for the General Assembly's failure to draw additional majority-Black legislative districts in the areas at issue in the pending cases. And Mr. Esselstyn's and Mr. Cooper's illustrative maps demonstrate that it is possible to create such maps while respecting traditional redistricting principles—just as the Voting Rights Act requires.

This factor thus weighs in Plaintiffs' favor.

5. Conclusions of Law

As is clear from this discussion, the Court finds that Plaintiffs have satisfied each of the Gingles preconditions for at least some of the Illustrative Districts at issue. Further, all the applicable Senate Factors weigh in Plaintiffs' favor. The

Court therefore concludes that the Pendergrass Plaintiffs have satisfied their burden to show a substantial likelihood of success as to Illustrative Congressional District 6. The Grant Plaintiffs have shown a substantial likelihood of success as to Illustrative State Senate Districts 25 and 28, and Illustrative State House Districts 74 and 177. The Alpha Phi Alpha Plaintiffs have shown a likelihood of success as to Illustrative State House District 153. This does not mean that the other proposed districts cannot ultimately succeed, only that Plaintiffs have not met their burden as to those districts at this preliminary injunction stage.

B. Irreparable Injury

The Eleventh Circuit has explained that an injury is irreparable "if it cannot be undone through monetary remedies." Cunningham v. Adams, 808 F.2d 815, 821 (11th Cir. 1987) (citation omitted). It has also been held that "[a]bridgement or dilution of a right so fundamental as the right to vote constitutes irreparable injury." Cardona v. Oakland Unified Sch. Dist., 785 F. Supp. 837, 840 (N.D. Cal. 1992); see also League of Women Voters of N.C. v. North Carolina, 769 F.3d 224, 247 (4th Cir. 2014) ("Courts routinely deem restrictions on fundamental voting rights irreparable injury.") (citations omitted).

[51] In view of this Court's finding, supra, that there is a substantial likelihood the Enacted Plans violate Section 2 of the Voting Rights Act,[42] this Court further finds that Plaintiffs have met their burden of persuasion of establishing that the resulting threatened injury of having to vote under those plans cannot be undone through any form of monetary or post-election relief as to the 2022 election cycle only. See ***1321** League of Women Voters, 769 F.3d at 247 ("[O]nce the election occurs, there can be no do-over and no redress.").

C. Balancing of the Equities and Public Interest

[52] "The last two requirements for a preliminary injunction involve a balancing of the equities between the parties and the public." Florida v. Dep't of Health & Hum. Servs., 19 F.4th 1271, 1293 (11th Cir. 2021). "Where the government is the party opposing the preliminary injunction, its interest and harm—the third and fourth elements—merge with the public interest." Id. (citation omitted). All Defendants in each of the cases at issue were named in their official capacities as governmental actors and oppose the preliminary injunction. Therefore, the Court will address the third and fourth preliminary injunction factors together in a merged format in accordance with applicable authority. See Swain v. Junior, 961 F.3d 1276, 1293 (11th Cir. 2020) (indicating that the balance of the equities and public interest factors " 'merge' when, as here, 'the Government is the opposing party' ") (quoting Nken v. Holder, 556 U.S. 418, 435, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009)).

Thus, the Court proceeds with its findings of fact and conclusions of law as to the issue of whether the threatened injuries to Plaintiffs outweigh the harm that the preliminary injunction would cause Defendants and the public.

1. Findings of Fact

At the preliminary injunction hearing, this Court heard extensive evidence about Georgia's election timelines and machinery, as well as evidence on the potential effects of issuing a preliminary injunction related to the upcoming 2022 election cycle. The Court heard from multiple witnesses in this regard. The Court found the expert witness testimony of Lynn Bailey, the former director of the Richmond County Board of Elections, who has decades of experience as a county election official, particularly credible.

More specifically, the evidence at the hearing showed that the election timeline is tight in a normal year, but it is even more challenging this year because of the delayed release of the 2020 Census data and an earlier-than-usual general primary, currently scheduled for May 24, 2022. DX 38, ¶ 8; Feb. 9, 2022, Morning Tr. 8:21–9:2. The General Election is scheduled to be held on November 8, 2022. DX 4, Ex. 1, at 1.

In addition, the election calendar generally works backwards from the date for an election. DX 38, ¶ 12. The earliest day a candidate could circulate a nominating petition for the 2022 General Election was January 13, 2022. See O.C.G.A. § 21-2-170(e). The deadline for calling special elections to be held in conjunction with the May 2022 primary and the deadline for setting polling places outside the boundaries of a precinct was February 23, 2022. DX 38, ¶¶ 13–14; Feb. 9, 2022, Morning Tr. 118:6–12. Qualifying for the May 2022 primary is set to begin on March 7, 2022. DX 4, ¶ 6; see also O.C.G.A. § 21-2-153(c)(1)(A). County registrars can begin mailing absentee ballots on April 5, 2022. DX 4, ¶14. Absentee ballots for overseas voters must be mailed by April 9, 2022. Feb. 8, 2022, Afternoon Tr. 88:4–8; see also O.C.G.A. § 21-2-384(a)(2). The early voting period for the May 2022 primary election begins on May 2, 2022. DX 4, Ex. 1, at 2. The primary election is scheduled to be held on

May 24, 2022. Id. at 1.[43] The ***1322** primary election runoff is scheduled for June 21, 2022. Id. The General Election is scheduled to be held on November 8, 2022. Id.

Before the Georgia Secretary of State's office can create ballots for use in the primary election, county elections officials must allocate voters to their correct districts by updating street segments in Georgia's voter registration database—the 2022 process has already begun as of the date of this Order. DX 4, ¶¶ 6–7; Feb. 9, 2022, Morning Tr. 41:24–42:10. More specifically, county election officials have to update each individual street segment manually to update district numbers for voters on that street segment. Feb. 9, 2022, Morning Tr. 17:5–18:9, 32:1–25. During this process, county election officials engage in a manual review of maps to identify where each street segment is located on the new district plans. Id. at 20:14–21:9, 81:7–20; DX 38, ¶ 9. Once a county has entered the data-entry/redistricting module, the county registrar is prevented from engaging in normal activity in the voter registration system, such as adding new voters. Feb. 9, 2022, Morning Tr. 20:4–11; DX 7, at 31.

Defendants' representative witness from the Secretary of State's office, Michael Barnes, stated in his declaration that "[c]ounty registrars generally need several weeks to complete the reallocation process for voters in their particular counties." DX 4, ¶ 16.[44] There was also evidence that it took Fulton County four weeks to update its street segments. Feb. 9, 2022, Morning Tr. 83:12–19.[45]

After counties complete updating their street segments, the next step is to request precinct cards from the voter-registration system to notify voters about their new districts. DX 7, at 49. Also, after county registrars complete the process of updating all the street segments in a county with new district numbers, the Center for Election Systems of the Office of the Secretary of State begins the manual process of creating ballot combinations for use in the election. DX 4, ¶¶ 8–9, 11; DX 38, ¶ 12; Feb. 8, 2022, Afternoon Tr. 68:3–23.[46] Ballot combinations account for every possible combination of political districts in the State and include all races from United States Congress down to county commission and school board. Feb. 8, 2022, Afternoon Tr. 67:11–68:2; Feb. 9, 2022, Morning Tr. 105:4–24. There is at least one ballot combination per precinct, so the total is more than 2,000 ballot combinations or styles in the state of Georgia. Feb. 8, 2022, Afternoon Tr. 67:24–68:2; DX 4, ¶ 9. According to Elections Director Michael Barnes, the Center for Election Systems ***1323** has already started building election projects for use in the 2022 primary election for counties that already know their districts. Feb. 8, 2022, Afternoon Tr. 70:4–7.

Once qualifying occurs, the Center for Election Systems adds candidate names to the relevant contests and begins preparing proofing packages to send to counties. DX 4, ¶ 12; Feb. 8, 2022, Afternoon Tr. 70:8–71:2. County election officials then proof those drafts, identify errors, and return the drafts to the Center for Election Systems to make corrections to the databases. Feb. 8, 2022, Afternoon Tr. 71:3–6; DX 38, ¶¶ 15, 16. The Center for Election Systems then makes those corrections, generates a revised proofing package, and creates print files for absentee ballots and final project files for programming the voting machines. Feb. 8, 2022, Afternoon Tr. 71:7–23. This entire process occurs for all 159 counties between the close of qualifying on March 11 and the deadline for sending ballots for overseas voters on April 9. Id. at 71:24–72:4, 86:23–88:8.

The upcoming primary is the first time the State of Georgia has built ballot combinations for the Dominion ballot-marking voting system after redistricting. Id. at 72:8–20. In addition, extra election projects have to be built this year because of the addition of ranked-choice voting for overseas and military voters. Id. If all the ballot combinations are not ready by qualifying, then no ballot proofing can occur because the Center for Elections Systems cannot generate a proofing package without both the ballot combinations and candidate information. Id. at 72:21–73:19.

There was also evidence presented at the hearing about various remedial/injunctive relief options, such as changing the qualifying date without changing the election date, and changing both the qualifying and election dates. The evidence revealed that if the qualifying dates for the primary elections are moved without moving the May 24, 2022, election date, the work of the Center for Election Systems and counties becomes incredibly compressed, risking the accuracy of the election. Id. 74:13–75:16. In essence, delaying qualifying without delaying the primary would limit the time election officials have to engage in the quality-assurance checks necessary to ensure the election is accurate. Feb. 9, 2022, Morning Tr. 8:13–9:15. In addition, without candidate names after qualifying, no ballot proofs can be completed, meaning that the Center for Election Systems cannot send proofing packages and counties cannot begin proofing ballots. Feb. 8, 2022, Afternoon Tr. 75:17–76:7. There was also testimony that reduced time for proofing ballots can lead to errors in

information that could result in less voter confidence in the election system. Id. at 102:8–103:15.

The evidence also showed that delaying qualifying without delaying the primary while also imposing new district lines would require election officials to simultaneously input new district information while conducting other tasks related to elections, reducing the opportunity to check for errors. DX 38, ¶ 21.

The evidence from Ms. Bailey concerning changing the election date was clear: there could be "massive upheaval." DX 38, ¶ 19. She testified that there could be problems with the polling places as some counties have already secured their polling locations for the May 2022 primary. Feb. 9, 2022, Morning Tr. 94:15–19, 111:20–25, 119:3–5. In addition, election officials have already scheduled poll workers and poll-worker training around the existing election calendar for the May primary. Id. at 121:7–10. And voters are already being notified of their districts and polling locations for the May primary election. Id. at 10:13–11:11.

***1324** The testimony also showed that facilities used as polling locations have other events on their calendars this year. Id. at 9:16–24, 27:15–23; DX 38, ¶¶ 19–20. For example, churches have often scheduled Vacation Bible School around the planned election dates and may not be available as polling locations if the date of the election were to change. Feb. 9, 2022, Morning Tr. 68:5–19, 119:3–18. In addition, finding new polling facilities is challenging not only because of scheduling but also because of the electrical power needs of Georgia's voting machines. Id. at 73:17–74:5, 75:15–20. [47]

Furthermore, when the 2020 primary elections were delayed during the pandemic, county officials in Fulton County lost access to polling locations. Id. at 95:10–24. The resulting loss of access meant voters were combined in voting locations. Id. at 95:1–96:17. Voters in Fulton County (a number of whom were of color) waited in line for hours during the June 9, 2020, primary at locations where polling places had to be combined. Id. at 96:18–97:22. There was also testimony that voter confidence can be adversely affected by long lines and that moving polling locations causes confusion for voters. Id. at 98:9–23; Feb. 9, 2022, Afternoon Tr. 144:21–23. [48]

Additionally, there was testimony of the "whiplash" effect that could occur if the primary election date were changed by this Court and then that order were stayed by an appellate court. On this, the testimony from Ms. Bailey was clear that there would be chaos and confusion for local election officials and voters. Feb. 9, 2022, Morning Tr. 12:22–13:3; DX 38, ¶ 19.

2. Conclusions of Law

This Court must weigh the threatened injury to Plaintiffs (discussed above) and the public interests of the State of Georgia.

[53] The State of Georgia has significant interests "in conducting an efficient election [and] maintaining order," because " '[c]onfidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy.' " New Ga. Project v. Raffensperger, 976 F.3d 1278, 1284 (11th Cir. 2020) (quoting Purcell, 549 U.S. at 4, 127 S.Ct. 5).

[54] The Court finds that the public interest of the State of Georgia would be significantly undermined by altering the election calendar and unwinding the electoral process at this point.

More specifically, the evidence at the preliminary injunction hearing showed that elections are complex and election calendars are finely calibrated processes, and significant upheaval and voter confusion can result if changes are made late in the process. With candidate qualifying for the State of Georgia set to begin in six days, any change now would be considered late in the process. Applying the Purcell principle, the United States Supreme Court "has also repeatedly emphasized that lower federal courts should ordinarily ***1325** not alter the election rules on the eve of an election." Republican Nat'l Comm. v. Democratic Nat'l Comm., —— U.S. ——, 140 S. Ct. 1205, 1207, 206 L.Ed.2d 452 (2020) (citing, inter alia, Purcell, 549 U.S. at 1, 127 S.Ct. 5).

And while "it would be the unusual case in which a court would be justified in not taking appropriate action to [e]nsure that no further elections are conducted under the invalid plan," the United States Supreme Court has recognized that "under certain circumstances, such as where an impending election is imminent and a State's election machinery is already in progress, equitable considerations might justify a court in withholding the granting of immediately effective relief in a legislative apportionment case, even though the existing

apportionment scheme was found invalid." Reynolds, 377 U.S. at 585, 84 S.Ct. 1362. Here, in considering the "proximity of a forthcoming election and the mechanics and complexities of state election laws, and ... general equitable principles," the Court is of the opinion that it would not be proper to enjoin the 2022 election cycle for which the election machinery is already in progress. Id.

More specifically, the evidence at the preliminary injunction hearing showed that moving the date for qualifying without moving the date of the primary election risks the accuracy of the primary because of the required timelines for building ballot combinations, proofing draft ballots, and preparing ballots for printing by the deadline for overseas and military voters. Likewise, moving the primary election date would upend months of planning by local election officials. Multiple county election officials testified that they already selected polling places for all election dates in 2022 and changing those dates could entail having to locate new polling places on short notice. Fulton County's experience in June 2020 showed that consolidating polling places at the last minute can lead to long lines for voters (including voters of color). And several witnesses testified to the voter confusion that would occur if last-minute changes were required. There is also the potential for "whiplash" if orders of this Court and subsequent rulings of appellate courts resulted in different conclusions. Such events could create even more voter confusion and loss of confidence in the election system. See Purcell, 549 U.S. at 4–5, 127 S.Ct. 5 ("Court orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls."). In essence, the sum of the testimony of the election officials presented at the preliminary injunction hearing was that changes in the 2022 election calendar at this point would result in significant cost, confusion, and hardship.

Further, under applicable law, this Court would be required to first give the Georgia General Assembly the opportunity to draw new district plans based on this Court's findings. Cf. Wise v. Lipscomb, 437 U.S. 535, 540, 98 S.Ct. 2493, 57 L.Ed.2d 411 (1978) ("When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan."). [49] Even if this election process were to continue through a court-drawn redistricting plan, at least one former special master recommends "[a]llowing one month for the drawing of a plan and an additional month for hearings and ***1326** potential modifications to it [in order to] build in enough of a cushion so that all concerned can proceed in a nonfrenzied fashion." Nathaniel Persily, When Judges Carve Democracies: A Primer on Court-Drawn Redistricting Plans, 73 Geo. Wash. L. Rev. 1131, 1148 (2005). This is because "[a] quick plan ... is not necessarily a good plan." Id. at 1147. [50]

Ultimately, voters are not well served "by a chaotic, last–minute reordering of [ ] districts. It is best for candidates and voters to know significantly in advance of the [qualifying] period who may run where." Favors v. Cuomo, 881 F. Supp. 2d 356, 371 (E.D.N.Y. 2012) (three-judge court) (citing Diaz v. Silver, 932 F. Supp. 462, 466–68 (E.D.N.Y. 1996) (three-judge court)).

While not precedential, as indicated above, the Court is also aware of the Supreme Court's ruling on Alabama's motion to stay the three-judge court's injunction in Merrill v. Milligan. APA Doc. No. [97]; Grant Doc. No. [59]; Pendergrass Doc. No. [65]. [51] Given the similarity of the claims in these three cases on the one hand and the Alabama cases on the other hand (i.e., they are Section 2 cases seeking at least one additional majority-minority district), and the timeline (i.e., both sets of cases involve a May 24 primary election), it would be unwise, irresponsible, and against common sense for this Court not to take note of Milligan, which essentially allowed Alabama's May 24, 2022, primary election to go forward despite a three-judge court's preliminary injunction ruling that the plaintiffs had a likelihood of success on the merits of their Section 2 claims. See Upham v. Seamon, 456 U.S. 37, 44, 102 S.Ct. 1518, 71 L.Ed.2d 725 (1982) (noting that the Supreme Court has "authorized District Courts to order or to permit elections to be held pursuant to apportionment plans that do not in all respects measure up to the legal requirements, even constitutional requirements").

Numerous other lower courts have also permitted elections to proceed when the state's election machinery was already in progress, even after a finding that the districts were unlawful. See Wright v. Sumter Cnty. Bd. of Elections & Registration, No. 1:14-CV-42 (WLS), 2018 WL 7365178, at *3 (M.D. Ga. Mar. 30, 2018), objections overruled, 2018 WL 7365179 (M.D. Ga. Apr. 11, 2018), and modified, 2018 WL 7366461 (M.D. Ga. June 21, 2018); see also Covington, 316 F.R.D. 117.

While this Court proceeded with these three important cases as quickly as practicable in light of the complicated

issues involved, the "greatest public interest must attach to adjudicating these claims fairly—and correctly." Favors, 881 F. Supp. 2d at 371. Given the massively complex factual issues combined with the timeline of candidate qualifying set to begin in days, it would not serve the public interest or the candidates, poll workers, and voters to enjoin use of the Enacted Plans and begin the process of putting new plans in their place for the 2022 election cycle.

After review of the evidence and briefing submitted by the parties, this Court concludes that due to the mechanics of State election requirements, there is insufficient ***1327** time to effectuate remedial relief for purposes of the 2022 election cycle. The Court is unable to disregard the Purcell principle given the progress of Georgia's election machinery toward the 2022 election. The merged balancing of the harms and public interest factors weigh against injunctive relief at this time.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** the pending Motions for Preliminary Injunctions in each of the above-stated cases. Doc. Nos. [26], [39], 1:21-cv-5337; Doc. No. [32], 1:21-cv-5339; Doc. No. [19], 1:22-cv-122.[52] Having determined that a preliminary injunction should not issue, the Court cautions that this is an interim, non-final ruling that should not be viewed as an indication of how the Court will ultimately rule on the merits at trial.

Under the specific circumstances of this case, the Court finds that proceeding with the Enacted Maps for the 2022 election cycle is the right decision. But it is a difficult decision. And it is a decision the Court did not make lightly.

IT IS SO ORDERED this 28th day of February, 2022.

All Citations

587 F.Supp.3d 1222

Footnotes

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

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

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

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APA Stip.	Alpha Phi Alpha joint stipulated facts filed at APA Doc. No. [94]
Grant Stip.	Grant joint stipulated facts filed at Grant Doc. No. [56]
Pendergrass Stip.	Pendergrass joint stipulated facts filed at Pendergrass Doc. No. [63]

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

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

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

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

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

7 The Purcell principle derives from Purcell v. Gonzalez, 549 U.S. 1, 127 S.Ct. 5, 166 L.Ed.2d 1 (2006) (per curiam). There, the Supreme Court noted that "[c]ourt orders affecting elections, especially conflicting orders, can themselves result in voter confusion and consequent incentive to remain away from the polls. As an election draws closer, that risk will increase." Id. at 4–5, 127 S.Ct. 5. Accordingly, the Court vacated an appellate court order that enjoined enforcement of a voter-identification law about a month before an election. Id. at 3, 127 S.Ct. 5. Based on Purcell, both the Supreme Court and lower federal courts have applied the principle that "lower federal courts should ordinarily not alter the election rules on the eve of an election." Republican Nat'l Comm. v. Democratic Nat'l Comm., —— U.S. ——, 140 S. Ct. 1205, 1207, 206 L.Ed.2d 452 (2020) (citations omitted).

8 Single-shot or bullet voting "enables a minority group to win some at-large seats if it concentrates its vote behind a limited number of candidates and if the vote of the majority is divided among a number of candidates." Gingles, 478 U.S. at 38 n.5, 106 S.Ct. 2752 (internal quotation marks omitted) (citations omitted).

9 The Court entered a separate order addressing evidentiary rulings.

10 The Court is aware of the recent decision in Arkansas State Conference NAACP v. Arkansas Board of Apportionment, Case No. 4:21-cv-01239-LPR, 586 F.Supp.3d 893,895–96 (E.D. Ark. Feb. 17, 2022) (APA Doc. No. [119]), in which the district court concluded there is no implied private right of action under Section 2. Given the extent and weight of the authority holding otherwise (see APA Doc. No. [65], 32–33), including from the Supreme Court, this Court finds no basis to alter the analysis in its Order denying Defendants' motions to dismiss.

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

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

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

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

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

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

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

18 While Mr. Morgan notes that District 6 is "a *barely* majority Black district at 50.2%" AP BVAP (DX 3, ¶ 9 (emphasis added)), the question is whether the illustrative district is majority Black. Bartlett, 556 U.S. at 18, 129 S.Ct. 1231. Because 50.2% is a majority, the Court finds that the numerosity requirement is met.

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

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

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

22 The Court recognizes that "there is more than one way to draw a district so that it can reasonably be described as meaningfully adhering to traditional principles, even if not to the same extent or degree as some other hypothetical district." Chen v. City of Houston, 206 F.3d 502, 519 (5th Cir. 2000). And the remedial plan that the Court eventually implements if it finds Section 2 liability need not be one of the maps proposed by Plaintiffs. See Clark, 21 F.3d at 95–96 & n.2 ("[P]laintiffs' proposed district is not cast in stone. It was simply presented to demonstrate that a majority-black district is feasible in [the jurisdiction] .... [T]he district court, of course, retains supervision over the final configuration of the districting plan.").

23 At this stage and without further discovery, the Court does not find that the Grant and Alpha Phi Alpha Plaintiffs have established that they have a substantial likelihood of succeeding on the merits of their claims that a third

State Senate District should have been drawn in the Eastern Black Belt or that additional House Districts should have been drawn in the western Atlanta metropolitan area, central Georgia, or in the Eastern Black Belt. Because the burden of proving substantial likelihood of success for a preliminary injunction is a "high threshold," this in no way predetermines whether Plaintiffs can prove that Section 2 requires the creation of an additional Senate District in the Eastern Black Belt, or additional House Districts in central Georgia and in the Eastern Black Belt. See Louisiana v. Envir. Soc., Inc. v. Coleman, 524 F.2d 930, 931 (5th Cir. 1975).

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

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

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

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

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

29 See supra n.19.

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

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

32 In closing arguments, the court asked counsel for Alpha Phi Alpha whether the Alpha Phi Alpha Plaintiffs would be "upset if [the Court] just totally disregarded Mr. Cooper['s] maps on the Senate?" Feb. 14, 2022, Morning Tr. 81:25–82:1. In response, counsel stated "[n]ot at all, your Honor. They draw districts in exactly—

pretty much the same areas of the State and at the end of the day, remedy the same violation based on the exact same population growth, based on the exact same concentration of Black voting strengths in different parts of the Black Belt." Id. 82:2–7. Accordingly, the Court formally incorporates its findings for the Grant Plaintiffs into its findings for the Alpha Phi Alpha Plaintiffs.

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

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

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

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

37 See supra Sections III(A)(2)(b)(1)(a), (2)(a).

38 See supra Sections III(A)(2)(b)(1)(a), (2)(a).

39 See supra Section III(A)(2)(b)(3)(a).

40 See supra Sections III.A.2. and III.A.3.

41 This Court recently credited similar evidence that "twice as many Black Georgians as white Georgians live below the poverty line; the unemployment rate for Black Georgians is double that of white Georgians; Black Georgians are less likely to attain a high school or college degree; and Black Georgians die of cancer, heart disease and diabetes at a higher rate than white Georgians." Fair Fight, slip op. at 44 (citations omitted).

42 See generally supra Section III.A.

43 A number of Georgia election officials requested a change in the primary election schedule in the summer of 2021; however, the General Assembly did not make that change during the special session, as had been requested. Feb. 9, 2022, Morning Tr. 54:1–23. Without the schedule change, election officials proceeded to plan for the election by contacting polling places and taking other steps based on the established election calendar. Id. at 57:6–25.

44 The Secretary of State set a February 18, 2022, non-statutory deadline for all county registrars to complete their updates to the voter-registration database with new district information. DX 4, ¶ 15; DX 38, ¶ 12; Feb. 8, 2022, Afternoon Tr. 73:20–74:1.

45 Plaintiffs' demographer/map expert, Mr. Esselstyn also provided testimony about the feasibility of implementing his maps/plans. However, that testimony was based on his belief that Georgia's voter-registration system allowed the mass assignment of all voters in a single precinct to a particular district. Feb. 8, 2022, Afternoon Tr. 123:15–124:16. Mr. Esselstyn was mistaken on that point, as several county election officials attested, and thus his testimony on the feasibility of relief does not assist the Court.

46 State officials cannot build ballot combinations until after county registrars have entered all updated information into the voter-registration database. Feb. 9, 2022, Morning Tr. 92:16–19.

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47 The Court recognizes that Plaintiffs' witness, Bishop Reginald Johnson, offered 520 African Methodist Episcopal churches as polling places. Feb. 9, 2022, Afternoon Tr. 131:24–132:21. However, it was not clearly established that all 520 of these churches would meet the power requirements for the Dominion voting machines and other polling location requirements.

48 Another potential concern with awarding remedial relief in these cases is the fact that the recent change in Georgia law from nine-week runoffs to four-week runoffs is currently being challenged in three of the consolidated cases challenging provisions of SB 202, which regulates various election processes and activities. New Georgia Project v. Raffensperger, Sixth District AME v. Raffensperger, and Concerned Black Clergy v. Raffensperger, Consolidated Case No. 1:21-mi-55555-JPB (N.D. Ga.).

49 While constitutionality of the apportionment scheme is not at issue in these three cases, the Supreme Court's ruling in Wise is still analogous.

50 The Court notes that the evidence at the preliminary injunction hearing showed that the General Assembly's process of drawing redistricting maps for 2021 took "a couple of months" even though the legislation for the maps was introduced, considered, and passed in a matter of days. Feb. 11, 2022, Morning Tr. 59:3–17; 114:9–15.

51 The Court also recognizes that the stay issued by the Supreme Court did not change the law in this Circuit. Cf. Schwab v. Sec'y, Dep't of Corr., 507 F.3d 1297, 1298 (11th Cir. 2007) ("The district court's action in granting the stay is contrary to the unequivocal law of this circuit that ... grants of certiorari do not themselves change the law ....").

52 While the option of halting all proceedings to await a future ruling by the United States Supreme Court was briefly mentioned at the preliminary injunction hearing, in the absence of a formal motion and full briefing, the Court declines to halt these proceedings. To this regard, each of the above-stated cases shall proceed on the same discovery tracks previously set for the three-judge court redistricting cases pending in the Northern District of Georgia. The Court will issue formal scheduling orders at a later date.

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339 F.Supp.3d 589
United States District Court, S.D. Texas, Corpus Christi Division.

Lionel LOPEZ, et al, Plaintiffs,
v.
Greg ABBOTT, et al, Defendants.

Civil Action No. 2:16-CV-303
|
Signed 09/12/2018

Synopsis

Background: Hispanic voters and non-profit organization, which was comprised of many Hispanic voters in Texas, brought action challenging statewide, at-large elections of all justices to the Supreme Court of Texas and judges to the Texas Court of Criminal Appeals under Section 2 of the Voting Rights Act of 1965, alleging that at-large voting diluted voting strength of registered voters who are Hispanic and seeking imposition of single member districts to be drawn up by Texas legislature.

Holdings: The District Court, Nelva Gonzales Ramos, J., held that:

[1] Hispanic minority group was sufficiently large and geographically compact to constitute a majority in hypothetical single-member districts;

[2] districts did not affirmatively violate redistricting principle;

[3] districts were reasonably compact without application of mathematical metrics;

[4] group constituted politically cohesive unit;

[5] white majority voted sufficiently as bloc to enable it usually to defeat Hispanic minority's preferred candidate; and

[6] at-large system of voting worked to disadvantage of group and it was possible to remedy disadvantage through single-member districts.

Ordered accordingly.

Procedural Posture(s): Other.

West Headnotes (78)

[1] **Election Law** Scope of review
Federal Courts Elections, voting, and political rights

Vote dilution is a question of fact subject to the clearly-erroneous appellate standard of review. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a); Fed. R. Civ. P. 52(a).

[2] **Election Law** Evidence

Evidence relevant to determination regarding to vote dilution must be made over time and over the course of many elections. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[3] **Election Law** Dilution of voting power in general

How many elections must be studied to make determination regarding vote dilution depends on the particular circumstances of the locale. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[4] **Election Law** Vote Dilution

As a precondition for racially-correlated vote dilution based on use of a multimember district, plaintiffs must offer evidence of the circumstances of the local political landscape, that is, evidence demonstrating that its members have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[5] **Election Law** Weight and sufficiency

While preconditions for racially-correlated vote dilution based on use of a multimember district are not applied in isolation, plaintiffs must prove each of them by a preponderance of the evidence. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[6] **Election Law** Vote Dilution

Two of three preconditions for racially-correlated vote dilution based on use of a multimember district look to whether, putting the challenged practice, procedure, or structure to one side, minority voters within a given constituency have the potential to elect representatives of their choice. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[7] **Election Law** Vote Dilution

One of three preconditions for racially-correlated vote dilution based on use of a multimember district addresses whether the challenged practice, procedure, or structure is the cause of the minority group's inability to mobilize its potential voting power and elect its preferred candidates. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[8] **Election Law** Presumptions and burden of proof

Proof of all preconditions for racially-correlated vote dilution based on use of a multimember district creates an inference that members of the minority are in fact harmed by the challenged electoral practice, procedure, or structure. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[9] **Election Law** Presumptions and burden of proof

Inference that members of the minority are in fact harmed by the challenged electoral practice, procedure, or structure is rebuttable. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[10] **Election Law** Presumptions and burden of proof

The totality of circumstances test is the means by which the inference of racially-correlated vote dilution based on use of a multimember district may be rebutted or cemented. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[11] **Election Law** Dilution of voting power in general

The court must balance a number of considerations to determine whether there is unlawful vote dilution under the totality of the circumstances, including: (1) the history of official discrimination in voting, (2) racial polarization of elections, (3) voting practices that enhance the potential for discrimination against minorities, (4) exclusive slating processes, (5) the social, educational, and financial legacy of discrimination that hinders effective minority participation in the political process, (6) racial appeals in elections, (7) the number of minorities elected to public office, (8) elected representatives' lack of responsiveness to the minority's particularized needs, and (9) whether the reasoning for imposing the challenged voting methodology is tenuous. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[12] **Election Law** Judicial Review or Intervention

Issues considered when determining whether there is unlawful vote dilution under the totality of the circumstances present questions of fact for the court. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[13] **Election Law** Vote Dilution

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With respect to the interaction between preconditions and factors relevant to totality of circumstances test when determining whether there is racially-correlated vote dilution based on use of a multimember district, it will be only the very unusual case in which the plaintiffs can establish the existence of preconditions but still have failed to establish a violation under the totality of circumstances. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[14] **Election Law** Judicial Review or Intervention

Where plaintiffs can establish the existence of preconditions but still fail to establish a violation under the totality of circumstances, as related to racially-correlated vote dilution based on use of a multimember district, a district court must explain with particularity why it has concluded, under the particular facts of that case, that an electoral system that routinely results in white voters voting as a bloc to defeat the candidate of choice of a politically cohesive minority group is not violative of the Voting Rights Act. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[15] **Election Law** Vote Dilution

With respect to the interaction between preconditions and factors relevant to totality of circumstances test when determining whether there is racially-correlated vote dilution based on use of a multimember district, an unusual case in which the plaintiffs can establish the existence of preconditions but still have failed to establish a violation under the totality of circumstances is a case where the racial minority is closely aligned with the losing political party and the evidence on the totality of circumstances renders political partisanship the better explanation for the defeat of minority-preferred candidates at the polls. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[16] **Election Law** Dilution of voting power in general

Without diminished minority access, a vote dilution claim is a mere euphemism for political defeat at the polls. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[17] **Election Law** Judicial Review or Intervention

Courts should not summarily dismiss vote dilution claims in cases where racially divergent voting patterns correspond with partisan affiliation as political defeats not cognizable under Section 2 of the Voting Rights Act. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[18] **Election Law** Weight and sufficiency

In the absence of evidence that other issues explain minority electoral defeat, some evidence of racial bias in voting will satisfy plaintiffs' burden to prove racially-correlated vote dilution based on use of a multimember district. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[19] **Election Law** Presumptions and burden of proof

When proving racially-correlated vote dilution based on use of a multimember district, plaintiffs have the duty, in the first instance, to demonstrate some evidence of racial bias through the factors used in preconditions and totality of circumstances test. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[20] **Election Law** Presumptions and burden of proof

When proving racially-correlated vote dilution based on use of a multimember district, if plaintiffs demonstrate some evidence of racial

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bias, the burden shifts to the State to demonstrate some evidence of partisan politics, or some other issue, influencing voting patterns. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[21] **Election Law** Weight and sufficiency

When proving racially-correlated vote dilution based on use of a multimember district, if plaintiffs demonstrate some evidence of racial bias and the State demonstrates some evidence of some issue influencing voting patterns, then the Court must balance the relative strength of the evidence directed to each of the totality of circumstances factors to determine whether racial bias best explains the alleged vote dilution. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[22] **Election Law** Vote Dilution

A voting methodology that correlates the jurisdiction of the elected official with his or her constituency is expressive of the State's linkage interest, as related to racially-correlated vote dilution based on use of a multimember district. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[23] **Election Law** Vote Dilution

As related to racially-correlated vote dilution based on use of a multimember district, the reasoning behind linkage is to promote the State's substantial interest in judicial effectiveness by balancing accountability and independence. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[24] **Election Law** Judicial Review or Intervention

As related to racially-correlated vote dilution based on use of a multimember district, the weight of a substantial state linkage interest is a question of law. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[25] **Election Law** Vote Dilution

In a case alleging racially-correlated vote dilution based on use of a multimember district, the court must balance state linkage interest against localized evidence of racial vote dilution. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[26] **Election Law** Vote Dilution

Linkage does not automatically wield dispositive weight, but is part of the totality of circumstances balancing test, as related to racially-correlated vote dilution based on use of a multimember district. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[27] **Election Law** Presumptions and burden of proof

Plaintiffs alleging racially-correlated vote dilution based on use of a multimember district must produce evidence of racial dilution in voting pursuant to the factors of the totality of circumstances test. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[28] **Election Law** Judicial Review or Intervention

As related to racially-correlated vote dilution based on use of a multimember district, if the state raises the linkage interest, the court determines the weight of that interest as a question of law and then balances that, along with the other factors, to determine if racial dilution, rather than an appropriate state interest in linking an elected official with the office's constituency, explains the vote dilution. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

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[29] **Election Law** Discriminatory practices proscribed in general

Section 2 of the Voting Rights Act does not provide an assurance of success at the polls for minorities. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[30] **Election Law** Discriminatory practices proscribed in general

Section 2 of the Voting Rights Act seeks to provide an assurance of fairness. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[31] **Election Law** Discriminatory practices proscribed in general

When a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by minority and white voters to elect their preferred representatives, a Section 2 of the Voting Rights Act claim lies. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301.

[32] **Election Law** Vote Dilution

Preconditions to establish racially-correlated vote dilution based on use of a multimember district are designed to demonstrate whether the electoral structure is such that minority votes are consistently defeated. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[33] **Election Law** Vote Dilution

The totality of circumstances test to establish racially-correlated vote dilution based on use of a multimember district is designed to show whether an election result is a matter of race-based dilution or some other phenomenon. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[34] **Election Law** Evidence

A precondition to establish racially-correlated vote dilution based on use of a multimember district requires submitting as evidence hypothetical redistricting schemes in the form of illustrative plans. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[35] **Election Law** Relief in General

Evidence of hypothetical redistricting schemes submitted as a precondition to establish racially-correlated vote dilution based on use of a multimember district is not proposed as a final remedy, but as a feasible alternative. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[36] **Election Law** Evidence

Evidence of hypothetical redistricting schemes submitted as a precondition to establish racially-correlated vote dilution based on use of a multimember district must demonstrate that the minority population exceeds fifty percent of Citizen Voting Age Population (CVAP) in an illustrative single-member district. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[37] **Election Law** Compactness and cohesiveness of minority group

Hispanic minority group was sufficiently large and geographically compact to constitute a majority in hypothetical single-member districts, as required for precondition to establish racially-correlated vote dilution based on use of a multimember district as related to system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; Hispanic population exceeded 50% of citizen voting age population (CVAP) in districts,

districts complied with principle of one person one vote, districts were contiguous, and districts followed existing administrative boundaries. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[38] **Election Law** Relief in General

Whether districts in hypothetical redistricting schemes submitted as a precondition to establish racially-correlated vote dilution based on use of a multimember district would actually perform effectively is a question that can be considered at the remedial phase. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[39] **Election Law** Vote Dilution

Whether districts in hypothetical redistricting schemes submitted as a precondition to establish racially-correlated vote dilution based on use of a multimember district would actually perform effectively is not an element of proving liability. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[40] **Election Law** Compactness and cohesiveness of minority group

Hypothetical redistricting schemes submitted as a precondition to establish racially-correlated vote dilution based on use of a multimember district must show that the minority group is geographically compact under traditional redistricting principles. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[41] **Election Law** Vote Dilution

Principles used in overall determination of whether hypothetical redistricting schemes submitted as a precondition to establish racially-correlated vote dilution based on use of a multimember district comport with traditional redistricting principles include, inter alia: compactness, contiguity, and respect for political subdivisions, avoiding contests between incumbent representatives, not disrupting preexisting electoral minority-opportunity districts, and maintaining communities of interest and traditional boundaries. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[42] **Election Law** Vote Dilution

Any variation in districting plans will, by necessity, value some principles over others in determination of whether hypothetical redistricting schemes submitted as a precondition to establish racially-correlated vote dilution based on use of a multimember district comport with traditional redistricting principles. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[43] **Election Law** Vote Dilution

The objective of a challenge to hypothetical redistricting schemes submitted as a precondition to establish racially-correlated vote dilution based on use of a multimember district is to show that legitimate political objectives sought are comparably consistent with traditional redistricting principles. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[44] **Election Law** Compactness and cohesiveness of minority group

Hypothetical single-member districts comprised of Hispanic minority group did not affirmatively violate redistricting principle related to communities of interest, as related to precondition to establish racially-correlated vote dilution based on use of a multimember district and system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; there was no evidence regarding what communities of interest might have existed and whether they were improperly combined or separated, and interests of compactness, contiguity, and respect for political subdivisions were all successfully

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accommodated. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[45] **Election Law** Compactness and cohesiveness of minority group

Hypothetical single-member districts comprised of Hispanic minority group were reasonably compact without application of mathematical metrics, as related to precondition to establish racially-correlated vote dilution based on use of a multimember district and system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; despite existence of mathematical measures, there was still eyeball test by which court may have made visual inspection of district map to determine whether district was compact or unduly contorted, and district map passed test. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[46] **Election Law** Compactness and cohesiveness of minority group

Election Law Racially polarized or bloc voting

The purpose of inquiring into the existence of racially polarized voting as precondition to establish racially-correlated vote dilution based on use of a multimember district is twofold: to ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[47] **Election Law** Dilution of voting power in general

"Racial polarization" exists where there is a consistent relationship between the race of the voter and the way in which the voter votes, or to put it differently, where black voters and white voters vote differently. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[48] **Election Law** Compactness and cohesiveness of minority group

As related to racially-correlated vote dilution based on use of a multimember district, if the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[49] **Election Law** Racially polarized or bloc voting

As related to racially-correlated vote dilution based on use of a multimember district, the legal concept of racially polarized voting incorporates neither causation nor intent. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[50] **Election Law** Racially polarized or bloc voting

As related to racially-correlated vote dilution based on use of a multimember district, the legal concept of racially polarized voting means simply that the race of voters correlates with the selection of a certain candidate or candidates; that is, it refers to the situation where different races, or minority language groups, vote in blocs for different candidates. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[51] **Election Law** Compactness and cohesiveness of minority group

Correlation rather than causation is the test for political cohesion of minority group because the reasons black and white voters vote differently have no relevance to the central inquiry into racially-correlated vote dilution based on use of a

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multimember district. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[52] **Election Law** Vote Dilution

Correlation between race of voter and the selection of certain candidates is crucial to inquiry into racially-correlated vote dilution based on use of a multimember district. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[53] **Election Law** Weight and sufficiency

Precondition requiring political cohesion of minority group, as related to racially-correlated vote dilution based on use of a multimember district, is proven by statistical evidence that a significant number of minority group members usually vote for the same candidates. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[54] **Election Law** Compactness and cohesiveness of minority group

Preferred candidate of number of minority group members need not be a member of minority group to prove political cohesion precondition for racially-correlated vote dilution based on use of a multimember district. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

1 Case that cites this headnote

[55] **Election Law** Racially polarized or bloc voting

Analysis of political cohesion of minority group, as related to racially-correlated vote dilution based on use of a multimember district, preferably covers a sufficient time to display a consistent pattern of racial bloc voting. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[56] **Election Law** Compactness and cohesiveness of minority group

Hispanic minority group constituted politically cohesive unit, as required to prove racially-correlated vote dilution based on use of a multimember district as related to system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; Texas's Spanish surname database was used to analyze Hispanic voting preferences in statewide judicial elections, and in 11 of 13 relevant electoral contests at least 70% of Hispanic voters preferred same candidate. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[57] **Election Law** Weight and sufficiency

Bloc voting precondition to prove racially-correlated vote dilution based on use of a multimember district is demonstrated through statistical evidence that the submergence of the minority group in a white majority multimember district impedes the minority group's ability to elect its chosen representatives. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[58] **Election Law** Weight and sufficiency

While statistical evidence need not show invariable white bloc voting success, white bloc success must be the usual result to satisfy bloc voting precondition to prove racially-correlated vote dilution based on use of a multimember district. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[59] **Election Law** Racially polarized or bloc voting

The amount of white bloc voting that can generally minimize or cancel black voters' ability to elect representatives of their choice, as required to satisfy bloc voting precondition to prove racially-correlated vote dilution based on use of a multimember district, will vary from district to district according to a number of

factors, including the nature of the allegedly dilutive electoral mechanism, the presence or absence of other potentially dilutive electoral devices, such as majority vote requirements, designated posts, and prohibitions against bullet voting, the percentage of registered voters in the district who are members of the minority group, the size of the district, and, in multimember districts, the number of seats open and the number of candidates in the field. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[60] **Election Law** Racially polarized or bloc voting

White majority voted sufficiently as bloc to enable it, in the absence of special circumstances, usually to defeat Hispanic minority's preferred candidate, as required to satisfy bloc voting precondition to prove racially-correlated vote dilution based on use of a multimember district and system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; white bloc voting rate was as high as 84.4% in an election involving candidates from both major parties, and pattern of voting demonstrated that white voters often voted as a bloc for a candidate that the minority group opposed. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

1 Case that cites this headnote

[61] **Election Law** Racially polarized or bloc voting

Analysis of whether there is a pattern of white bloc voting that consistently defeats minority-preferred candidates, as related to bloc voting precondition to prove racially-correlated vote dilution based on use of a multimember district, requires a determination that the different groups prefer different candidates. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

1 Case that cites this headnote

[62] **Election Law** Racially polarized or bloc voting

Analysis of whether there is a pattern of white bloc voting that consistently defeats minority-preferred candidates, as related to bloc voting precondition to prove racially-correlated vote dilution based on use of a multimember district, does not require a determination of why particular candidates are preferred by the two groups. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

1 Case that cites this headnote

[63] **Election Law** At-Large Elections

At-large system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals worked to disadvantage of Hispanic minority and it was possible to remedy disadvantage through single-member districts; there was racial divide among voters, and single-member districts would have provided minority group with fair access in contrast to at-large elections in which white bloc voting consistently defeated preferred candidate. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[64] **Election Law** Vote Dilution

When preconditions to prove racially-correlated vote dilution based on use of a multimember district are met, the court considers whether, on the totality of circumstances, minorities have been denied an equal opportunity to participate in the political process and to elect representatives of their choice. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[65] **Election Law** Vote Dilution

History of official discrimination weighed slightly in favor of Hispanic minority in totality of circumstances analysis required to prove racially-correlated vote dilution based on use of a multimember district related to system of voting for justices of Supreme Court of

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Texas and judges on Texas Court of Criminal Appeals; Texas had long history of official racial discrimination with respect to voting rights, vestiges of discrimination were felt in racial disparities in socioeconomic conditions, which depressed political participation among minority voters, but minority did not identify any specific history of official discrimination with respect to establishing or maintaining multimember nature of voting for Texas' high courts. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[66] **Election Law** Racially polarized or bloc voting

Racial polarization of elections weighed moderately in favor of Hispanic minority in totality of circumstances analysis required to prove racially-correlated vote dilution based on use of a multimember district related to system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; whether running as Democrats or Republicans, Hispanic candidates for high judicial office tended to slightly outperform non-Hispanic candidates with non-Hispanic voters, and Hispanic incumbents were more likely than white incumbents to draw primary challengers. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

1 Case that cites this headnote

[67] **Election Law** Vote Dilution

Practices that enhance discrimination in voting weighed slightly in favor of Hispanic minority in totality of circumstances analysis required to prove racially-correlated vote dilution based on use of a multimember district related to system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; system was chosen or maintained because of potential to dilute a racial minority's vote, runoff often had effect of pitting minority-preferred candidate against majority-preferred candidate, and numbered-seat requirement allowed majority to use dominant voting position to prevent cohesive minority from succeeding in any individual judicial races. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

1 Case that cites this headnote

[68] **Election Law** Vote Dilution

Exclusive slating processes did not weigh in favor of or against of Hispanic minority in totality of circumstances analysis required to prove racially-correlated vote dilution based on use of a multimember district related to system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; Hispanic judges and justices enjoyed less of incumbency advantage than non-Hispanic judges and justices and faced greater likelihood of drawing primary challenger once appointed, but, at least in some instances, partisanship interfered with Hispanic candidates accepting incumbency's advantages. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[69] **Election Law** Vote Dilution

Legacy of discrimination hindering minority participation weighed heavily in favor of Hispanic minority in totality of circumstances analysis required to prove racially-correlated vote dilution based on use of a multimember district related to system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; Hispanics generally suffered socioeconomic status and voter registration rate significantly lower than those of white persons, and causal nexus between history of discrimination and Hispanic's current weaker political power was unnecessary when history, socioeconomic status, and political conditions were aligned. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[70] **Election Law** Vote Dilution

Racial appeals weighed slightly in favor of Hispanic minority in totality of circumstances analysis required to prove racially-correlated

vote dilution based on use of a multimember district related to system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals, where only one instance of patent racial appeal in a judicial race was offered. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[71] **Election Law** Vote Dilution

Number of successful minority candidates did not weigh in favor of or against of Hispanic minority in totality of circumstances analysis required to prove racially-correlated vote dilution based on use of a multimember district related to system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; there was underrepresentation of Hispanics on high courts which persisted despite large number of Hispanic attorneys qualified to run for high court positions, and Hispanic candidates for high judicial office running as Democrats suffered same fate as nearly all Democrats running in statewide elections. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[72] **Election Law** Vote Dilution

Lack of responsiveness to minority needs did not weigh in favor of or against of Hispanic minority in totality of circumstances analysis required to prove racially-correlated vote dilution based on use of a multimember district related to system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; high courts had jurisdiction over many issues of particular interest to Hispanics, but unlike other elected officials, those in judicial positions or candidates for such positions, could not have espoused special interest agenda. Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[73] **Election Law** Vote Dilution

Reasoning behind method of selecting judges weighed heavily in favor of State, rather than Hispanic minority, in totality of circumstances analysis required to prove racially-correlated vote dilution based on use of a multimember district related to system of voting for justices of Supreme Court of Texas and judges on Texas Court of Criminal Appeals; method was State's deliberate choice for governing citizens, and method was left undisturbed over significant time. Tex. Const. art. 5, §§ 2, 3, 4, 5; Voting Rights Act of 1965 § 2, 52 U.S.C.A. § 10301(a).

[74] **States** Powers Reserved to States

Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign.

[75] **States** Powers of United States and Infringement on State Powers

It is obviously essential to the independence of the States, and to their peace and tranquility, that their power to prescribe the qualifications of their own officers should be exclusive, and free from external interference, except so far as plainly provided by the Constitution of the United States.

[76] **Judges** Appointment or election

The decision to make jurisdiction and electoral bases coterminous is more than a decision about how to elect state judges.

[77] **Judges** Appointment or election

The decision to make jurisdiction and electoral bases coterminous is a decision of what constitutes a state court judge.

[78] **Judges** Appointment or election

The decision to make jurisdiction and electoral bases coterminous is as much a decision about the structure of the judicial office as the office's

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explicit qualifications such as bar membership or the age of judges.

Attorneys and Law Firms

***599** Brendan Downes, Ezra D. Rosenberg, Pro Hac Vice, Lawyers Committee for Civil Rights Under Law, Jon M. Greenbaum, Attorney at Law, Washington, DC, Debra D. O'Gorman, Neil A. Steiner, Negin Hadaghian, Siobhan Namazi, Pro Hac Vice, Dechert LLP, New York, NY, Lindsey Beth Cohan, Amy Lynne Rudd, Dechert LLP, Austin, TX, Martin Golando, Michael Patrick Moran, Garza Golando Moran, PLLC, Jose Garza, Texsa Riogrande Legal Aid, Rolando L. Rios, Attorney at Law, San Antonio, TX, for Plaintiffs.

Patrick K. Sweeten, Todd Lawrence Disher, Adam Nicholas Bitter, Office of the Attorney General, Austin, TX, for Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

NELVA GONZALES RAMOS, UNITED STATES DISTRICT JUDGE

Plaintiffs challenge statewide, at-large elections of all justices to the Supreme Court of Texas and judges to the Texas Court of Criminal Appeals under Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301. They allege that at-large voting has diluted the voting strength of registered voters who are Hispanic. To remedy this, they request that the Court order the imposition of single member districts to be drawn up, in the first instance, by the Texas legislature.

This action was tried to the bench from February 12 to 15, 2018. For the reasons set out below, the Court holds that three of the individual Plaintiffs and Plaintiff La Unión Del Pueblo Entero (LUPE) have standing. The Court holds that Plaintiffs have satisfied the three preconditions set forth in *Thornburg v. Gingles*, 478 U.S. 30, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986). However, under the totality of the circumstances test, they have failed to satisfy their burden of demonstrating that the lack of electoral success by Hispanic-preferred candidates for high judicial office is on account of race rather than other factors, including partisanship. Thus, they have not demonstrated a Section 2 violation and they are not entitled to relief.

STANDING

The Court begins by addressing whether Plaintiffs have standing to bring their suit. A plaintiff seeking to establish Article III standing must show "that he '(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.' " *Gill v. Whitford*, —— U.S. ——, 138 S.Ct. 1916, 1929, 201 L.Ed.2d 313 (2018) (quoting *Spokeo, Inc. v. Robins*, —— U.S. ——, 136 S.Ct. 1540, 1547, 194 L.Ed.2d 635 (2016)). The injury in fact must involve the " 'invasion of a legally protected interest' that is 'concrete and particularized,' *i.e.*, which 'affect[s] the plaintiff in a personal and individual way.' " *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 & n.1, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)) (alterations in original).

Individual Plaintiffs. Beginning with the seven individual Plaintiffs,[1] it is settled ***600** that "voters who allege facts showing disadvantage to themselves as individuals have standing to sue." *Baker v. Carr*, 369 U.S. 186, 206, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962). Here, three of the Plaintiffs —Isabel Araiza, Lena Lorraine Lozano Solis, and Carmen Rodriguez—testified that they are of Hispanic descent and that they vote regularly. They also all reside in parts of Texas that are within the proposed Hispanic-majority districts under Plaintiffs' illustrative redistricting schemes. Each of these Plaintiffs has therefore demonstrated an injury-in-fact, traceable to Texas's method of selecting high-court justices and judges, which may be remedied through this litigation. This is sufficient to establish standing.

1 Those Plaintiffs are Lionel Lopez, Isabel Araiza, Arlene Lira Easter, Alicia Benavidez, Andres Rosas, Lena Lorraine Lozano Solis, and Carmen Rodriguez.

The same cannot be said for the four Plaintiffs who did not testify,[2] as "[t]he facts necessary to establish standing ... must not only be alleged at the pleading stage, but also proved at trial." *See* *Gill*, 138 S.Ct. at 1931. No such

evidence was presented as to these Plaintiffs. Plaintiffs cite *Crawford v. Marion County Election Board*, 553 U.S. 181, 189 n.7, 128 S.Ct. 1610, 170 L.Ed.2d 574 (2008), for the proposition that the court need not examine whether all plaintiffs have standing so long as one plaintiff demonstrates standing. *Crawford*, however, was decided on summary judgment, where it makes sense to proceed to overarching questions of liability after determining that any single plaintiff can establish standing. Here, the burden at trial was on each Plaintiff to demonstrate his or her actual injury in fact. That burden was not met for the non-testifying Plaintiffs, who for that reason are dismissed.

2 Those Plaintiffs are Lionel Lopez, Arlene Lira Easter, Alicia Benavidez, and Andres Rosas.

LUPE. Also joining as a Plaintiff is the organization LUPE. Founded by César Chávez and Dolores Huerta in 1989 as a means to improve the lives of farmworkers, LUPE is a non-profit, non-partisan organization of more than 7,000 members, many of whom are Hispanic voters residing in Texas.

A three-part test is used to determine whether an organization such as LUPE may establish standing. Under that test, an organization "has standing to bring suit on behalf of its members when [1] its members would otherwise have standing to sue in their own right, [2] the interests at stake are germane to the organization's purpose, and [3] neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 181, 120 S.Ct. 693, 145 L.Ed.2d 610 (2000).

That test is met. According to testimony from LUPE executive director Juanita Valdez-Cox, LUPE's members include voters who reside in the heavily Hispanic areas of South and West Texas where the alleged dilutive effects of statewide judicial elections are felt most keenly. The interests at stake are also germane to LUPE's mission of promoting political engagement among its members, which LUPE furthers by encouraging voter registration and hosting events at which candidates for elected office, including judicial office, are invited to appear. Finally, the nature of the requested relief does not require every LUPE member to participate in the case.

For these reasons, LUPE and Plaintiffs Isabel Araiza, Lena Lorraine Lozano Solis, and Carmen Rodriguez have standing. The Court turns next to the merits of their claims.

*601 STANDARD OF REVIEW

Recurring throughout this case are incorrect assertions—from both sides—as to the parties' relative burdens of proof. At the heart of the confusion are two issues: (1) a failure to separate the different purposes of, and properly apply, the *Gingles* preconditions analysis and the *Gingles* totality of circumstances test; and (2) a loose extrapolation of Fifth Circuit opinions, *LULAC*[3] and *Teague*[4], beyond their respective holdings. The Court has examined *Gingles* and its progeny at some length and will adjudicate this case pursuant to the untangled burdens of proof described below. The Court will further interpret the holdings in *LULAC* and *Teague* in the context of their respective factual records.

3 *League of United Latin Am. Citizens (LULAC) v. Clements*, 999 F.2d 831 (5th Cir. 1993) (en banc).

4 *Teague v. Attala Cnty., Miss.*, 92 F.3d 283 (5th Cir. 1996).

I. Burden of Proof on Plaintiffs' Claims

[1] [2] [3] Plaintiffs' entitlement to Section 2 relief—as it applies to this case—requires showing vote dilution on account of race. Vote dilution is a question of fact subject to the clearly-erroneous appellate standard of review of Federal Rule of Civil Procedure 52(a). *Gingles*, 478 U.S. at 78, 106 S.Ct. 2752; *Teague*, 92 F.3d at 287. The evidence relevant to its determination "must be made over time and over the course of many elections. How many elections must be studied to make this determination depends on the particular circumstances of the locale." *Teague*, 92 F.3d at 288-89 (citing *Gingles*, 478 U.S. at 57 n.25, 106 S.Ct. 2752). The factors to be considered in a racially-correlated vote dilution case based on the use of a multimember district are well-established and undisputed. They are derived from *Gingles*, 478 U.S. at 50–51, 106 S.Ct. 2752, which sets out three preconditions and a test based upon the totality of the circumstances.

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A. The *Gingles* Preconditions

[4] **[5]** Plaintiffs must first "offer evidence of the circumstances of the local political landscape—evidence demonstrating that 'its members have less opportunity than other members of the electorate to participate in the political process and elect representatives of their choice.' " *Magnolia Bar Ass'n, Inc. v. Lee*, 994 F.2d 1143, 1146 (5th Cir. 1993) (quoting Section 2). The Supreme Court set out the three preconditions for proving vote dilution as follows:

- "First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district."
- "Second, the minority group must be able to show that it is politically cohesive."
- "Third, the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances, such as the minority candidate running unopposed—usually to defeat the minority's preferred candidate."

Gingles, 478 U.S. at 50-51, 106 S.Ct. 2752 (citations omitted). While the preconditions are not applied in isolation, plaintiffs must prove each of them by a preponderance of the evidence. *Magnolia*, 994 F.2d at 1146.

[6] **[7]** **[8]** **[9]** **[10]** The First Circuit has summarized the function of the different elements of the *Gingles* inquiries. "The first two *Gingles* preconditions look to whether, putting the challenged practice, procedure, or structure to one side, minority voters within a given constituency have the potential to elect representatives of their ***602** choice." *Uno v. City of Holyoke*, 72 F.3d 973, 979 (1st Cir. 1995). "The third *Gingles* precondition ... addresses whether the challenged practice, procedure, or structure is the cause of the minority group's inability to mobilize its potential voting power and elect its preferred candidates." *Id.* at 980. "Proof of all three preconditions creates an inference that members of the minority are in fact harmed by the challenged electoral practice, procedure, or structure. However, the inference is rebuttable." *Id.* The totality of circumstances test is the means by which the inference of vote dilution may be rebutted or cemented. *Id.*; *see also* *Teague*, 92 F.3d at 292.

B. The *Gingles* Totality of Circumstances Test

[11] **[12]** Section 2 relief is justified when the voting methodology "results in a denial or abridgement of the right of any citizen of the United States to vote ***on account of race or color*** ...." 52 U.S.C. § 10301(a) (emphasis added). The court must balance a number of considerations to determine whether there is unlawful vote dilution under the totality of the circumstances. Those factors include:

1. The history of official discrimination in voting;
2. Racial polarization of elections;
3. Voting practices that enhance the potential for discrimination against minorities;
4. Exclusive slating processes;
5. The social, educational, and financial legacy of discrimination that hinders effective minority participation in the political process;
6. Racial appeals in elections;
7. The number of minorities elected to public office;
8. Elected representatives' lack of responsiveness to the minority's particularized needs; and
9. Whether the reasoning for imposing the challenged voting methodology is tenuous.

Gingles, 478 U.S. at 37-38, 106 S.Ct. 2752. These issues present questions of fact for the court. *Salas v. Sw. Texas Jr. Coll. Dist.*, 964 F.2d 1542, 1555 (5th Cir. 1992).

C. Relationship Between Preconditions and Totality of Circumstances

[13] **[14]** **[15]** With respect to the interaction between the three preconditions and the nine factors relevant to the totality of circumstances test,

> [I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of § 2 under the totality of circumstances. In such cases, the district court must explain with particularity why it has concluded, under the particular facts of that case, that an electoral system that routinely results in white voters voting as a bloc to defeat the candidate of choice of a politically cohesive minority group is not violative of § 2 of the Voting Rights Act.

Clark v. Calhoun Cty., Miss., 21 F.3d 92, 97 (5th Cir. 1994) (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir.1993)). The *Clark* case notes that it will be unusual for the fact of minority vote dilution to be unrelated to racial bias, but separating the two tests—the three preconditions and the totality of circumstances— ensures that the evidence supports both and that relief is not granted where they are not both tethered. The "unusual case" that *Clark* refers to is a case, like *LULAC*, where the racial minority is closely aligned with the losing political party and the evidence on the totality of circumstances renders political partisanship the better explanation for the ***603** defeat of minority-preferred candidates at the polls. *LULAC*, 999 F.2d at 859-60.

II. Burden of Proof on Defensive Issues

While offering evidence on several of the factors to be considered, the State has defended this action on the basis of two main themes: (1) the electoral results represent partisan defeats, not voter dilution; and (2) the State has an insurmountable linkage interest in having all of the high court justices and judges elected on a statewide basis. Because these two themes are so prominently featured in this case and because the parties have advocated for the application of equally extreme, yet opposing, burdens of proof, the Court must determine at the outset where those burdens on defensive issues lie and what standard of proof must be met.

A. Partisan Politics

Plaintiffs argue that, if they have demonstrated racially polarized voting, "the burden then shifts to the defendant to prove that a race-neutral reason is the cause of the polarization" with a burden to demonstrate that "the record *indisputably* proves that partisan affiliation, *not race*, best explains the divergent voting patterns." D.E. 102, pp. 32-33 (quoting *LULAC*, 999 F.2d at 850 (emphasis Plaintiffs') and *Teague*, 92 F.3d at 290). However, those cases did not articulate such an all-or-nothing test. And that test is contrary to the nine-factor totality of the circumstances balancing test arising out of both the Senate Report [5] compiled when Congress amended Section 2 and the *Gingles* opinion that enunciated the new test. An evaluation of the *LULAC* and *Teague* opinions in the context of their respective evidentiary records makes this clear.

5 S. Rep. No. 417 (1982), *reprinted in* 1982 U.S. C.C.A.N. 177.

[16] The *LULAC* opinion considered the issue of race versus partisanship at significant length. 999 F.2d at 849-63. The trial court had refused to consider nonracial causes of voting outcomes. On appeal, the defendants argued that—to support a vote dilution case—white bloc voting must be analyzed with respect to evidence of considerations alternative to racial bias, such as partisanship. The Fifth Circuit agreed. Citing *Whitcomb v. Chavis* [6] and *White v. Regester*, [7] the *LULAC* court discussed the interaction between polarized voting and the other factors affecting minority access to the political system. Without diminished minority access, a vote dilution claim is a "mere euphemism for political defeat at the polls." 999 F.2d at 854 (quoting *Whitcomb*, 403 U.S. at 153, 91 S.Ct. 1858).

6 403 U.S. 124, 91 S.Ct. 1858, 29 L.Ed.2d 363 (1971).

7 412 U.S. 755, 93 S.Ct. 2332, 37 L.Ed.2d 314 (1973).

The *LULAC* opinion does not support Plaintiffs' representation that they have shifted the burden of proof and that it is up to the State to prove that partisanship indisputably explains the evidence that Plaintiffs interpret as demonstrating voter dilution. The *LULAC* decision is inextricably tied to its evidence:

> It is difficult to see how ***the record in this case*** could possibly support a finding of liability under the approach outlined in the Senate Report. ***Plaintiffs have not even attempted to establish proof of racial bloc voting by demonstrating that "race,"*** not, as defendants contend, partisan affiliation, ***"is the predominant determinant of political preference."*** They have instead maintained in the very teeth of the Senate Report, that such a showing is unnecessary. Because the district court accepted this argument, the test employed at trial ***604** enabled plaintiffs to prevail by proving little more than a lack of success at the polls and a history of discrimination.

999 F.2d at 855 (emphasis added).

The Fifth Circuit discussion of the race-versus-partisanship issue includes some support for the idea that plaintiffs have the burden to distinguish racially polarized voting from partisan voting patterns by reference to the other factors in the totality of the circumstances test. However, the court refused to articulate a burden of proof. "[W]e need not resolve the debate today. Whether or not the burden of the plaintiffs to prove bloc voting includes the burden to explain partisan influence, the result is the same. This is so even if the partisan voting is viewed as a defensive parry." 999 F.2d at 860.

[17] In the end, the *LULAC* court found, as a matter of fact, "Because the evidence in most instances unmistakably shows that divergent voting patterns among white and minority voters are best explained by partisan affiliation, we conclude that plaintiffs have failed to establish racial bloc voting in most, but not all, of the counties." 999 F.2d at 861. The fact that the record made it "unmistakable" there does not mean that the burden falls on a defendant to show that it is "unmistakable" in every case. By the same token, "Plaintiffs are ... entirely correct in maintaining that courts should not summarily dismiss vote dilution claims in cases where racially divergent voting patterns correspond with partisan affiliation as 'political defeats' not cognizable under § 2." 999 F.2d at 860-61. In sum, the *LULAC* opinion calls upon the court to look at all of the evidence regarding each of the factors to determine whether racial bias or partisan politics better explains the voting patterns.

[18] The *Teague* opinion did not change the analysis. That opinion notes that plaintiffs do not bear the burden in the first instance to eliminate factors other than race as influencing voters. *Teague*, 92 F.3d at 290.

> Plaintiffs are to present evidence of racial bias operating in the electoral system by proving up the *Gingles* factors. Defendants may then rebut the plaintiffs' evidence by showing that no such bias exists in the relevant voting community.... The lack of evidence in the record on this point favors the plaintiffs, not the defendants.

Id. In the absence of evidence that other issues explain minority electoral defeat, some evidence of racial bias in voting will satisfy plaintiffs' burden.

[19] **[20]** **[21]** *LULAC* involved indisputable and unmistakable evidence of a factor other than racial bias influencing voting. *Teague* involved the opposite—no evidence of any other factor at all. Those are the two extremes, and as such they do not articulate the entirety of the relevant burden of proof. Consistent with *Gingles*, the Court holds that Plaintiffs have the duty, in the first instance, to demonstrate some evidence of racial bias through the factors

used in the preconditions and totality of circumstances test. Upon doing so, the burden shifts to the State to demonstrate some evidence of partisan politics (or some other issue) influencing voting patterns. If the State does so, then the Court must balance the relative strength of the evidence directed to each of the totality of circumstances factors to determine whether racial bias best explains the alleged vote dilution.

B. Linkage

[22] **[23]** **[24]** **[25]** A voting methodology that correlates the jurisdiction of the elected official with his or her constituency is expressive of the State's linkage interest. The reasoning behind linkage is to promote the State's substantial interest in judicial effectiveness by balancing accountability and ***605** independence. *LULAC*, 999 F.2d at 868-69. The weight of such a substantial state interest is a question of law. *Id.* at 868, 871. In a Section 2 case, the court must balance that interest against localized evidence of racial vote dilution. *Id.*

[26] **[27]** **[28]** The Fifth Circuit expressly rejected the extremes "that the linkage interest either always or never defeats § 2 liability." *Id.* at 871 (quoting *Houston Lawyers' Ass'n v. Attorney Gen. of Texas*, 501 U.S. 419, 427, 111 S.Ct. 2376, 115 L.Ed.2d 379 (1991)). Thus linkage does not automatically wield dispositive weight, but is part of the totality of circumstances balancing test. It will fall only to substantial proof of racial vote dilution. *Id.* at 868-71. Plaintiffs must produce evidence of racial dilution in voting pursuant to the factors of the totality of circumstances test. If the state raises the linkage interest, the court determines the weight of that interest as a question of law and then balances that, along with the other factors, to determine if racial dilution, rather than an appropriate state interest in linking an elected official with the office's constituency, explains the alleged Section 2 violation.

III. Summary

Despite the parties' claims to the contrary, they have advanced no single dispositive issue or burden of proof that bypasses the need to work through all of the *Gingles* elements. Therefore, the Court will first determine whether Plaintiffs have met the three *Gingles* preconditions. If so, the Court will then consider whether Plaintiffs have produced some evidence of racial bias in the electoral system in the factors of the totality of circumstances test. If so, the Court considers whether the State has advanced alternative explanations. If so, the Court will find as a matter of fact or law—as required for each interest—the weight to be accorded each issue, including partisan politics and linkage. After doing so, the Court will balance the resulting factors against each other to determine whether, on the whole, Plaintiffs as Hispanic voters have had their voting power for electing judges and justices of Texas's high courts diluted on account of race.

DISCUSSION

I. Facts

The record is largely comprised of public records related to Texas statewide election contests and precinct voting patterns, as well as expert statistical analysis of those records. Demographic data, extracted and compared against the election results, reveal how different racial groups have voted in recent years. The underlying evidence, methodologies for analysis, and ultimate statistical results are not disputed. Rather, the controversy of this case relates to whether certain contests, particularly party primaries and those in which the candidates are not racially diverse, are probative on the question of voter dilution. That statistical information, the anecdotal accounts, and other evidence will be discussed in the context of the legal issues to which they relate.

II. *Gingles* and Section 2

[29] **[30]** **[31]** **[32]** **[33]** It is well understood that Section 2 does not provide an assurance of success at the polls for minorities. *Johnson v. De Grandy*, 512 U.S. 997, 1013-14 n.11, 114 S.Ct. 2647, 129 L.Ed.2d 775 (1994). What it seeks to provide is an assurance of fairness. *Uno*, 72 F.3d at 979. "Thus, when 'a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by [minority] and white voters to elect their preferred representatives,' a section 2 claim lies." *Id.* (citing *Gingles*, 478 U.S. at 47, 106 S.Ct. 2752). The *Gingles* preconditions are designed ***606** to demonstrate whether the electoral structure is such that minority votes are consistently defeated. The totality of circumstances test is designed to show whether that result is a matter of race-based dilution or some other phenomenon.

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A. Discussion of Preconditions

1. Minority-Majority District

[34] **[35]** **[36]** The first *Gingles* precondition "requires submitting as evidence hypothetical redistricting schemes in the form of illustrative plans." *Gonzalez v. Harris Cty., Tex.*, 601 F. App'x 255, 258 (5th Cir. 2015) (per curiam). Such a plan is not proposed as a final remedy, but as a feasible alternative. *Clark*, 21 F.3d at 95. It must demonstrate that the minority population exceeds fifty percent (50%) of Citizen Voting Age Population (CVAP) in an illustrative single-member district. *Valdespino v. Alamo Heights Indep. Sch. Dist.*, 168 F.3d 848, 853 (5th Cir. 1999); *Campos v. City of Houston*, 113 F.3d 544, 548 (5th Cir. 1997).

[37] Plaintiffs offered the testimony of Dr. Lisa Handley,[8] who had drawn up two hypothetical single-member district plans. One divided the state into nine districts on the premise that each of the nine judges and justices for the respective courts would be elected in a separate single-member district. PTX 128. The other plan divided the state into eight districts, on the premise that only eight of the judges or justices would be elected in single-member districts and the chief judge or justice would be elected at large. PTX 129.

8 Dr. Handley is a political scientist who works as an election consultant in the United States and internationally. In the United States, she concentrates her work on Section 2 issues, such as redistricting and minority vote dilution. 2 Tr. 135. She has utilized her expertise on behalf of state and county jurisdictions, along with the U.S. Department of Justice. *Id.* at 136-37. The State did not object to Dr. Handley testifying as an expert witness. 2 Tr. 141-42.

Each of Dr. Handley's plans created two minority-majority districts along the southern border of the state. With respect to CVAP, each reflects Hispanic CVAP comfortably over 50%. The nine-district map lists districts 2 and 3 with Hispanic CVAP of 59.69% and 59.19%, respectively. 2 Tr. 146-47. The eight-district map lists districts 1 and 8 with Hispanic CVAPs of 55% and 58%. 2 Tr. 152.

The proposed districts also comply with the principle of one person, one vote because the population of each illustrative district did not vary more than 2% from the ideal number achieved by dividing total CVAP by the number of districts created. 2 Tr. 149. The Supreme Court has held that deviations up to 10% of mathematical equality are permissible, as population counts are inexact snapshots and other considerations (such as administrative integrity and contiguity) may be of sufficient importance to justify minor deviations. *Brown v. Thomson*, 462 U.S. 835, 842, 103 S.Ct. 2690, 77 L.Ed.2d 214 (1983). All of the districts are contiguous and follow administrative (county) boundaries with the exception of the districts that bisect Harris County. 2 Tr. 148-49. Dr. Handley explained that Harris County was too populous to be placed in any single district. 2 Tr. 149. Thus, its separation was a statistical necessity rather than a strategic choice.

[38] **[39]** The State argued that Plaintiffs' proof was insufficient because they did not show that the two majority-minority districts will, in fact, result in the election of minority-preferred candidates. As Plaintiffs point out, no such requirement is stated in *Gingles*. The plans need only be illustrative. *See* *Valdespino*, 168 F.3d at 852-53. Whether the districts would actually perform effectively is a question that can be considered at the remedial phase. ***607** *Johnson*, 512 U.S. at 1013-14 & n.11, 114 S.Ct. 2647; *Pope v. Cty. of Albany*, 687 F.3d 565, 576 (2d Cir. 2012). It is not an element of proving liability. *Dickinson v. Indiana State Election Bd.*, 933 F.2d 497, 503 (7th Cir. 1991) (citing *Gingles*, 478 U.S. at 50–51, 106 S.Ct. 2752); *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1019 (8th Cir. 2006); *Nipper v. Smith*, 39 F.3d 1494, 1532-33 (11th Cir. 1994) (en banc).

[40] The hypothetical plan must also show that the minority group is geographically compact under traditional redistricting principles. *Abrams v. Johnson*, 521 U.S. 74, 92, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997); *Fairley v. Hattiesburg, Miss.*, 584 F.3d 660, 669 (5th Cir. 2009). Dr. Handley testified to the compact nature of her plans. 2 Tr. 151:7-11. The single-member districts are contiguous (each district is a single connected piece), follow existing administrative boundaries (counties), and should take into consideration any known communities of interest. *League*

of United Latin Am. Citizens v. Perry, 548 U.S. 399, 433, 126 S.Ct. 2594, 165 L.Ed.2d 609 (2006).

[41] The State did not offer a controverting expert analysis of Dr. Handley's maps. Instead, it challenged Dr. Handley's analysis on three bases: (1) failure to consider communities of interest; (2) failure to apply objective measures of compactness; and (3) *ipse dixit.* The first two issues are components of an overall determination of whether the plans comport with traditional redistricting principles: "Such principles include, *inter alia* : compactness, contiguity, and respect for political subdivisions; avoiding contests between incumbent representatives; not disrupting preexisting electoral minority-opportunity districts; and maintaining communities of interest and traditional boundaries." *Gonzalez*, 601 F. App'x at 259 (citations omitted).

[42] **[43]** Any variation in districting plans will, by necessity, value some principles over others. Thus, the objective of a challenge is to show that the legitimate political objectives sought are comparably consistent with these principles. *Id.* It is the Court's unwelcome task to make this imprecise determination. The Court FINDS on this record that the challenges to Plaintiffs' illustrative plans are insufficient to defeat the first precondition.

[44] **Communities of Interest.** It is true that Dr. Handley did not testify as to whether her illustrative single-member district plans interfered with, or accommodated, separate communities of interest. And although the State questioned her about the size of the districts and the various regions and cities that were combined or separated by the districts drawn in the demonstrative map, there was no evidence regarding what communities of interest might have existed and whether they were improperly combined or separated. 3 Tr. 17-20. Neither has the State cited any authority for a holding that silence on this consideration is fatal to proof of the first precondition.

Because it is only one factor to be considered on the issue of comportment with traditional redistricting principles, the Court declines to find its omission on this record to be a defect in prima facie proof. Dr. Handley testified credibly as to having successfully accommodated interests of compactness, contiguity, and respect for political subdivisions, all of which are legitimate considerations. Absent evidence that the illustrative plans affirmatively violate a redistricting principle related to communities of interest, the Court rejects the challenge.

[45] **Objective Measures.** The State suggests that Dr. Handley's illustrative maps and her testimony supporting them are also defective because she did not apply any objective tests that provide a concrete measure of compactness. *See* ***608** *Rodriguez v. Harris Cty., Tex.*, 964 F.Supp.2d 686, 740 (S.D. Tex. 2013) (discussing statistical measures of compactness, referring to "area rubber band, perimeter-to-area, and population-rubber band" metrics), *aff'd sub nom.*, *Gonzalez*, 601 F. App'x at 255; *see also* *Comm. for a Fair & Balanced Map v. Illinois State Bd. of Elections*, 835 F.Supp.2d 563, 570 (N.D. Ill. 2011) (discussing the Polsby–Popper measure and the Reock indicator). Yet, the State did not conduct its own objective statistical measure of compactness and has not identified any feature of the illustrative maps that is particularly vulnerable to objections on this basis.

As was the case with the State's objection based on communities of interest, the State faults Plaintiffs for failing to defend their demonstrative maps on a basis that has not been attacked. And despite the existence of mathematical measures, there is still the "eyeball test" by which the Court may make a visual inspection of the map to determine whether the district is compact or unduly contorted. *Commission*, 835 F.Supp.2d at 570. Plaintiffs' maps pass that test.

The Court has reviewed the maps and Dr. Handley's testimony as to how she created them. The Court is satisfied that the districts are reasonably compact without application of mathematical metrics. Again, the compactness of the districts is only one factor to be considered in determining whether the maps are consistent with traditional redistricting principles. The Court rejects the challenge that the failure to calculate objective metrics is dispositive of the first precondition.

Ipse Dixit. Dr. Handley testified that the Hispanic population groups in her single-member districts are sufficiently large and geographically compact as to satisfy the first *Gingles* precondition. 2 TR 151:7-11. The State objects to this testimony as inadmissible *ipse dixit*, devoid of evidentiary value. *Guile v. United States*, 422 F.3d 221, 227 (5th Cir. 2005). This challenge suggests that her ultimate opinion, stated in the cited reference, was unsupported in the rest of her testimony. Rather, this opinion testimony was a summation

of the evidence she had developed regarding Hispanic CVAP, demographics, voting patterns, and the division of the state into geographic districts. The Court rejects this challenge.

The Court FINDS that Plaintiffs have met the first precondition. The Hispanic minority group is sufficiently large and geographically compact to constitute a majority in a single-member district.

2. Politically Cohesive Minority

[46] **[47]** The second and third preconditions are components of the Supreme Court's definition of racially polarized voting, which in turn is—as a single concept—a factor of the totality of circumstances test. "The purpose of inquiring into the existence of racially polarized voting is twofold: to ascertain ***whether minority group members constitute a politically cohesive unit*** and to determine whether ***whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates.***" *Gingles*, 478 U.S. at 56, 106 S.Ct. 2752 (emphasis added).

> The [trial] court used the term "racial polarization" to describe this [statistically significant] correlation [between the race of the voter and the voter's choice of certain candidates]. It adopted Dr. Grofman's definition —"racial polarization" exists where there is "a consistent relationship between [the] race of the voter and the way in which the voter votes," or to put it differently, where "black voters and white voters vote differently." We, too, adopt this definition ***609** of "racial bloc" or "racially polarized" voting.

Id. at 54 n.21, 106 S.Ct. 2752.

[48] **[49]** **[50]** **[51]** **[52]** "If the minority group is not politically cohesive, it cannot be said that the selection of a multimember electoral structure thwarts distinctive minority group interests." *Id.* at 51, 106 S.Ct. 2752. "For purposes of § 2, the legal concept of racially polarized voting incorporates neither causation nor intent. It means simply that the race of voters correlates with the selection of a certain candidate or candidates; that is, it refers to the situation where different races (or minority language groups) vote in blocs for different candidates." *Id.* at 62, 106 S.Ct. 2752. Correlation rather than causation is the test because "the reasons black and white voters vote differently have no relevance to the central inquiry of § 2. By contrast, the correlation between race of voter and the selection of certain candidates is crucial to that inquiry." *Id.* at 63, 106 S.Ct. 2752.

[53] **[54]** **[55]** Therefore, this precondition is proven by statistical evidence that "a significant number of minority group members usually vote for the same candidates." *Id.* at 56, 106 S.Ct. 2752. The preferred candidate need not be a member of the minority group. *E. Jefferson Coal. for Leadership & Dev. v. Par. of Jefferson*, 926 F.2d 487, 493 (5th Cir. 1991). And the analysis preferably covers a sufficient time to display a consistent pattern of racial bloc voting. *Gingles*, 478 U.S. at 57 & n.25, 106 S.Ct. 2752. A statistically significant level of cohesion to satisfy this precondition has been found at a level as low as 51%. *Patino v. City of Pasadena*, 230 F.Supp.3d 667, 710-11 (S.D. Tex. 2017) (51%); *Fabela v. City of Farmers Branch, Tex.*, No. 3:10-CV-1425-D, 2012 WL 3135545, at *11 (N.D. Tex. Aug. 2, 2012) (54.1%, considered in context with a range of elections with higher cohesion levels).

[56] Dr. Handley performed the necessary statistical analysis using three established techniques: homogenous precinct analysis, ecological regression, and King's ecological inference. 2 Tr. 156. *See generally* *Teague*, 92 F.3d at 290 (there is an "established acceptance of regression analysis as a standard method for analyzing racially polarized voting," citing *Gingles*, 478 U.S. at 52-53 n.20, 106 S.Ct. 2752). She used Texas's Spanish surname database to analyze Hispanic voting preferences in statewide judicial elections. 2 Tr. 160-61. There was no suggestion that these techniques were infirm. Rather, the State's expert, Dr. John Alford, used the same tools and reached the same results. 3 Tr. 207, 249-50.

Dr. Handley demonstrated that in 11 of the 13 relevant electoral contests, at least 70% of Latino voters preferred the same candidate. *E.g.*, 2 Tr. 181. Dr. Alford produced similar results, although he advocated a higher threshold for finding legally significant minority political cohesion. 3 Tr. 235, 282 (recommending requiring 80 to 90% cohesion). While Dr. Alford suggested that cohesion levels of 60-70% were too low to be significant, he did not articulate any factual or methodological reason for his opinion and he agreed that Hispanics voted cohesively for their preferred candidate. 3 Tr. 258-60. His testimony that over 70% was required

for compliance with *Gingles* is not corroborated in the briefing. *See* 3 Tr. 236.

The Court FINDS that Plaintiffs have met the second *Gingles* precondition. The record demonstrates that the minority group members—Latinos—constitute a politically cohesive unit.

3. Majority Bloc Voting

[57] **[58]** **[59]** As with the second precondition, the third *Gingles* precondition is demonstrated through statistical evidence that the submergence of the minority group in ***610** a white majority multimember district impedes the minority group's ability to elect its chosen representatives. *See generally League of United Latin Am. Citizens # 4552 (LULAC) v. Roscoe Indep. Sch. Dist.*, 123 F.3d 843, 847 (5th Cir. 1997). While the results need not show invariable white bloc voting success, white bloc success must be the usual result. *Teague*, 92 F.3d at 288.

> The amount of white bloc voting that can generally "minimize or cancel" black voters' ability to elect representatives of their choice, however, will vary from district to district according to a number of factors, including the nature of the allegedly dilutive electoral mechanism; the presence or absence of other potentially dilutive electoral devices, such as majority vote requirements, designated posts, and prohibitions against bullet voting; the percentage of registered voters in the district who are members of the minority group; the size of the district; and, in multimember districts, the number of seats open and the number of candidates in the field.

Gingles, 478 U.S. at 56, 106 S.Ct. 2752 (citations omitted).

[60] Dr. Handley used her three statistical techniques to analyze the data. To get an even better understanding of the white bloc data, she used United States census results in an effort to carve out black voters from the non-Hispanic group, rendering a better comparison of Latinos to white voters. 2 Tr. 211-12. She again demonstrated that non-Hispanic voters consistently preferred different candidates from those preferred by Hispanics and did so at rates of over 60%. *E.g.*, 2 Tr. 174. When she included the census results, the white bloc voting rate was as high as 84.4% in an election involving candidates from both major parties. PX 127.

Dr. Alford's analysis did not negate the results Dr. Handley reached. The pattern of voting demonstrated that white voters often voted as a bloc for a candidate that the minority group opposed. 3 Tr. 212-16. The difference in Dr. Alford's testimony is that he focused on issues other than the ethnicity of the voters and their preferred candidates—which are the issues relevant to bloc voting. He instead looked at elections from the point of view of the ethnicity or race of the candidate, suggesting that there was no racial polarization in contests where Hispanic voters voted for the white candidate over the Hispanic candidate. 3 Tr. 213-16. And he attributed results strictly to partisan preference rather than racial bloc voting. *Id.*

[61] **[62]** At this juncture, the Court is only concerned with whether there is a pattern of white bloc voting that consistently defeats minority-preferred candidates. That analysis requires a determination that the different groups prefer different candidates, as they do. It does not require a determination of why particular candidates are preferred by the two groups.

The Court FINDS that Plaintiffs have met the third *Gingles* precondition. Plaintiffs have demonstrated that the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances—usually to defeat the minority's preferred candidate.

B. The Three Preconditions Have Been Met

[63] The State argues that Plaintiffs run afoul of direct Fifth Circuit precedent when their proof on the three preconditions fails to relate their preferred candidates' lack of electoral success to racial bias in the electoral system. D.E. 108, pp. 8-9, 11 (citing *LULAC*, 999 F.2d at 851, 857). As

addressed in the section on the standard of review, *LULAC* did not assign any racial bias issue to the three *Gingles* preconditions. The preconditions require ***611** showing that there is a racial divide among the voters and that single-member districts would provide the minority group with fair access in contrast to the at-large elections in which white bloc voting consistently defeats their preferred candidate.

The State's argument treats the preconditions as the sum total of Plaintiffs' case. It is not. Rather, Plaintiffs must still demonstrate that the vote dilution of which they complain is "on account of race." And they still have the totality of circumstances test in which to do so. Nothing in *LULAC* cabins racial bias issues inside the boundaries of the proof required on the preconditions. Thus the State is correct that Plaintiffs' case must include evidence of racial bias, but it is not correct that that evidence is part of the *Gingles* preconditions; it is part of the totality of the circumstances test.

Plaintiffs have met all three *Gingles* preconditions. Thus, they have demonstrated that the at-large system of voting for justices of the Supreme Court of Texas and judges on the Texas Court of Criminal Appeals works to their disadvantage and that it is possible to remedy that disadvantage through single-member districts. However, they are not entitled to relief unless they also show that, under the totality of the circumstances, their electoral disadvantage is "on account of race," as discussed below.

III. Totality of the Circumstances

[64] When the *Gingles* preconditions are met, the court then "considers whether, on the totality of circumstances, minorities have been denied an equal opportunity to participate in the political process and to elect representatives of their choice." *Abrams v. Johnson*, 521 U.S. 74, 91, 117 S.Ct. 1925, 138 L.Ed.2d 285 (1997) (internal quotation marks omitted; citing Section 2); *N.A.A.C.P. v. Fordice*, 252 F.3d 361, 366 (5th Cir. 2001). After hearing the evidence set out in more detail below, the Court FINDS that Plaintiffs have produced some evidence of racial bias in the electoral system in the factors of the totality of circumstances test. Likewise, the Court FINDS that the State has advanced evidence of alternative explanations.

Therefore, the Court proceeds to consider the weight to be accorded to the evidence under each of the factors, and balances it to determine whether Plaintiffs, as Hispanic voters or an organization advocating for the interests of Hispanic voters, have had their voting power for electing justices and judges of Texas's high courts diluted on account of race. Plaintiffs need not prevail on all or a particular number of the factors. *Clark v. Calhoun County, Miss.*, 88 F.3d 1393 1401 (5th Cir. 1996). However, before a remedy may be imposed, the Court must be convinced that, on balance, the State has violated Section 2's concern over discrimination in elections on account of race.

A. Discussion and Weighing of Factors

1. History of Official Discrimination

[65] Texas has a long history of official racial discrimination with respect to voting rights. *Veasey v. Abbott*, 830 F.3d 216, 257 n.53 (5th Cir. 2016), *cert. denied*, —— U.S. ——, 137 S.Ct. 612, 197 L.Ed.2d 78 (2017); 2 Tr. 11-15 (Dr. Henry Flores's testimony regarding Texas's poll tax, white primaries, and at-large voting for legislators). The vestiges of that discrimination continue to be felt in racial disparities in socioeconomic conditions, which depress political participation among minority voters. *Veasey, supra.*; *Teague*, 92 F.3d at 294; 2 Tr. 45-46. Noting this context, the Court focuses its analysis on recent evidence of discrimination. *See* *McCleskey v. Kemp*, 481 U.S. 279, 298 n.20, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987).

***612** The Fifth Circuit, sitting en banc, upheld this Court's finding that the 2011 Texas voter identification law produced discriminatory results. *Veasey, supra.* The State further defended a racial gerrymandering case addressing legislative districts, resulting in a Supreme Court holding that one such district was racially gerrymandered. *Abbott v. Perez*, —— U.S. ——, 138 S.Ct. 2305, 2335, 201 L.Ed.2d 714 (2018). Plaintiffs have not, however, identified any specific history of official discrimination with respect to establishing or maintaining the multimember nature of voting for the State's high courts. The Court thus FINDS that this factor has only slight weight, favoring Plaintiffs.

2. Racially Polarized Elections

[66] The bulk of the evidence at trial involved the analysis of Texas high court elections since 2002,[9] demonstrating significant polarization. While it is undeniable and effectively conceded that Hispanic-preferred candidates for judicial office have consistently fared poorly in statewide elections, the impetus behind that phenomenon is the crux of this case. *See* 2 Tr. 180. Plaintiffs claim that it is a racial issue; the State claims that it is a partisanship issue, which only happens to correlate with race.[10] Thus, the decision requires parsing of closely aligned evidence of race and party.

9 Dr. Handley testified that she used this time frame because it provided a sufficient number of elections to support statistical conclusions and because 2002 was the first year the necessary data was available on the Texas legislative website. 2 Tr. 163.

10 Dr. Handley agreed that most Hispanics are Democrats or vote for Democratic candidates. 2 Tr. 197.

Most of the election contests shine little light on this nuanced issue. Time and again, when a general election race involved both major parties, the white-preferred candidate won over the Latino-preferred candidate. Consistently throughout the election cycles considered here, the white-preferred candidate ran as a Republican and the Latino-preferred candidate ran as a Democrat.[11] The two-major-party general election contests and their uniform results facially support equal inferences in favor of racial polarization and partisan polarization. So the key lies somewhere outside of the macro-analysis of Republican versus Democratic candidate or Latino versus non-Latino voter.

11 In 11 out of 13 contested general elections for statewide judicial offices from 2002 to 2016, Hispanic voters preferred the Democratic candidate at levels of 70 to 85%. PX 124; 2 Tr. 202-203. Most non-Hispanic voters preferred the Republican candidates, although 30 to 40% of non-Hispanic voters supported the Democratic candidates. PX 124; 2 TR. 220.

Race of the Candidate. Ordinarily, in considering vote dilution, the race of the candidate is not the relevant issue. Instead, it is whether minority-preferred candidates (of whatever race) are consistently defeated. *Gingles*, 478 U.S. at 68, 106 S.Ct. 2752. However, when faced with the challenge of determining whether race rather than partisanship explains polarization, looking at the race of the candidate may offer some insight. *LULAC*, 999 F.2d at 854 (discussing the need to investigate built-in bias) and 861 (crediting evidence that there was consistency in partisanship even where the race of the candidate varied); 2 Tr. 234.

The State took great care to point out that the data shows a highly consistent correlation—across elections and election cycles—between racial group voting and political parties. 2 Tr. 209-20. More to the point, the distribution of votes between political parties remained at comparable levels even when the race of the candidate ***613** varied or when the same candidate switched parties. *Id.*; 2 Tr. 262-64.

As an important case in point, in 2016, Justice Eva Guzman—a Latina incumbent running as a Republican—did not get the Latino vote, which went to the Democratic candidate. Justice Guzman nonetheless won more non-Hispanic support than white incumbent Justice Paul Green. PX 124, p. 4. In fact, Justice Guzman received more votes than any other candidate for statewide judicial office in Texas history. DX 40, p. 4.

While Plaintiffs point out that this single example does not support a finding of a pattern of a lack of racial bias, it is consistent with other evidence demonstrating that the race of the candidate is less important to voters than the candidate's party. In fact, whether running as Democrats or Republicans, Hispanic candidates for high judicial office have tended to slightly outperform non-Hispanic candidates with non-Hispanic voters. 2 Tr. 223, 227; DX 25, DX 26. This evidence supports a finding that partisanship is a better explanation for defeats of Hispanic-preferred candidates than racial vote dilution.

Party Primaries. Dr. Handley concluded that two of the three Democratic primaries she analyzed were polarized and, between them, the Latino-preferred candidate won once and lost once. 2 Tr. 266-68. These results do not reveal a pattern. For that very reason, it is interesting to note that the premise for a Latino vote dilution claim erodes when only Democratic candidates are before the voters. This is some evidence that partisanship is the dominant factor in election results.

On the flip side, Dr. Handley opined that Republican primaries were not probative because none of the three

Republican primaries and the one Republican runoff she analyzed drew more than 1% of registered Hispanic voters. 2 Tr. 165, 183-85. Nonetheless, both she and Dr. Alford reviewed the data on those elections, using Dr. Alford's data because it more accurately controlled for low turnout. Using his data for the Republican primaries and runoff she analyzed, Dr. Handley testified that the Hispanic-preferred candidate won all four. 2 Tr. 279; PX 126. Expanding the analysis to 37 total Republican primaries or runoffs, half were racially polarized and half were not. 2 Tr. 188, 280; PX 132, 134. Again, without the Democrat versus Republican dichotomy, data show that the premise for vote dilution erodes.

However, Plaintiffs argue that simply analyzing voting data understates the relative disenfranchisement of Hispanic voters because such analysis does not reflect the phenomenon whereby Hispanic incumbents are more likely than white incumbents to draw primary challengers. That is, using Republican primaries for Supreme Court of Texas seats as an example, white candidates have challenged incumbent Latino justices at a rate of 80%, compared to just 50% for white incumbents. 1 Tr. 136-37. And when challenged, only 60% of Latino incumbents have prevailed, compared to 95% of white incumbents. 1 Tr. 137. The only white incumbent to lose, Steven Wayne Smith, lost multiple times against white opponents; his sole victory was against Hispanic Xavier Rodriguez. 1 Tr. 141, 145-46. Judge Elsa Alcala testified that her vulnerability as a Latina to this phenomenon influenced her decision not to seek reelection in 2018. 1 Tr. 265-67. This is some evidence that racial bias affects vote dilution.

Races without a Democratic Candidate. In approximately two-thirds of the analyzed general elections in which there was no Democratic candidate, Latino voters supported third-party candidates over Republican ones and the election was polarized. 2 Tr. 190 (11 out of 16 contests). However, with the exception of one race in ***614** which 60.4% of Latinos voted for the Libertarian candidate, the Latino support for the losing candidate did not exceed 60%, so those contests could not be considered cohesive. 2 Tr. 242, 246-57.

Other times, Latino voters joined non-Latino voters in supporting the Republican candidate. 2 Tr. 239-41, 247. As a result, those elections were not polarized. 2 Tr. 240-241. For instance, at the time of the analysis, only one sitting judge, Judge Alcala, had won election to a Texas high court as the Hispanic-preferred judge. 2 Tr. 199-200; PX 133. Judge Alcala ran in 2012 as a Republican and, with the support of a majority of Hispanic voters, prevailed against a Libertarian candidate. 2 Tr. 199-200; PX 127. These races support the conclusion that, once again, the evidence of vote dilution weakens when the Democrat-Republican partisan divide is absent.

The State's statistical analysis supporting the partisan explanation was compelling. In each area where racial bias fails and partisanship appears to dominate voter decisions, Plaintiffs have challenged the evidence as not probative. However, as explained, this is a nuanced question and it depends not upon strong trends, but subtle cues. The Court FINDS that partisan polarization better explains results in recent Texas statewide elections for high judicial office. Because it is reflected only in non-dominant themes, and because the primary challenge phenomenon is concerning, the Court gives it only moderate weight. Therefore, this factor weighs moderately in favor of the State.

3. Practices that Enhance Discrimination in Voting

[67] Under this factor, Plaintiffs cite three circumstances or practices in high court elections that enhance discrimination in voting: (1) the unusually large election district; (2) the majority-vote requirement; and (3) the numbered-place requirement. The Court will consider each in turn.

Large District. The size of the election district is a function of the size of the state. And the State's linkage interest will be addressed separately within. While discriminatory intent is not a requirement of the burden of proof, nothing in Plaintiffs' evidence suggests that the State's at-large system was chosen or maintained because of its potential to dilute a racial minority's vote.

Given the lower socioeconomic status of minority voters, Plaintiffs' complaint is that the size of the district presents particularly formidable obstacles for minority-preferred candidates to campaign across the state and to raise sufficient funds to be competitive. D.E. 102, pp. 22-23. However, the challenges of physically covering the entire state are shared by all candidates. And to the extent that additional funds are necessary, the socioeconomic legacy of discrimination is part of the fifth factor, addressed below.

Fifty-Percent Threshold Majority Vote. The majority vote requirement ensures a runoff between the two candidates receiving the highest number of votes if no candidate receives over 50%. While minority-preferred candidates have

occasionally garnered the most votes when the white vote is split, a runoff often has the effect of pitting a minority-preferred candidate against a majority-preferred candidate. This precise scenario occurred with respect to the 2012 Republican primary election that included Justice David Medina, who earned the most votes cast in a three-way race, but lost the runoff to the majority-preferred candidate who went on to win the general election. 2 Tr. 186-87. The record contains no evidence of the rationale for imposing the majority vote requirement. This works in Plaintiffs' favor.

***615 Numbered Place.** According to Plaintiffs, the numbered-seat requirement offers two features that work to disadvantage minority voters. First, it allows the majority to use its dominant voting position to prevent a cohesive minority from succeeding in any of the individual judicial races. *Rogers v. Lodge*, 458 U.S. 613, 627, 102 S.Ct. 3272, 73 L.Ed.2d 1012 (1982). Second, it allows candidates to challenge specific incumbents, more often the incumbents preferred by the minority. *See generally* 1 Tr. 247. These arguments are two sides of the same coin. And the Supreme Court has held that the use of a numbered place system is not infirm, merely because it has this effect. *Whitcomb*, 403 U.S. at 159, 91 S.Ct. 1858. Indeed, Dr. Henry Flores was unaware of any state electing multimember bodies that does not use a place system. 2 Tr. 82.

The Court FINDS that the practices associated with a large multimember district with a majority vote requirement and numbered places have little weight because there is no evidence that racial bias rather than practical necessity motivated the adoption of these practices. That weight slightly favors Plaintiffs.

4. Exclusive Slating Processes

The Texas system of voting for justices and judges for the high courts does not involve a formal slating process. Yet candidates can achieve an incumbency advantage if first appointed by the governor to fill an unexpired term. This is a fairly common scenario, as over half of the justices who have held seats on the Supreme Court of Texas and a third of the judges on the Court of Criminal Appeals over the analyzed period began their tenure with gubernatorial appointments. 2 Tr. 31, 33; 3 Tr. 28-30; PX 106, 106A.

[68] While all of the governors responsible for selecting the appointees have been white and the majority of appointees have been white, Latinos who have been appointed to high judicial office have enjoyed some incumbency advantage, even if it is less of an incumbency advantage than white judges and justices. For instance, Supreme Court Justices Medina and Guzman and Court of Criminal Appeals Judge Alcala all won reelection after their appointments. 1 Tr. 142; 2 Tr. 102. In addition, there is some evidence that Republican governors have prioritized appointing Latinos to high judicial office and have looked beyond members of their own party when considering candidates for appointment. *See* 3 Tr. 74-75, 174. But for instance, Justices Linda Yanez and Gina Benavides, both of whom are Democrats who have served on the Thirteenth Court of Appeals, chose not to pursue potential appointments at least in part because they were asked to pledge to run for reelection as Republicans. They declined the appointments because they either identified more with the Democratic party or because they did not believe that they could get elected as Republicans. *Id.*

Plaintiffs discount this evidence as anecdotal. And it does not account for eventual targeted challenges from white candidates in the Republican primaries, making the advantage of incumbency less useful for Hispanic candidates in the long run.

In short, it appears that once appointed, Hispanic judges and justices enjoy less of an incumbency advantage than non-Hispanic judges and justices and they face a greater likelihood of drawing a primary challenger. Yet at least in some instances, partisanship has interfered with Hispanic candidates accepting incumbency's advantages. On the whole, the competing forces involved in accepting and benefiting from appointments and incumbency are such that the Court gives this, as a slating issue, little weight and neutral benefit between the parties.

*616 5. Legacy of Discrimination Hindering Minority Participation

[69] As noted above, Texas is no stranger to discrimination against Hispanics. It is also undisputed that Latinos, generally speaking, suffer a socioeconomic status and voter registration rate significantly lower than those of whites. 2 Tr. 35-46; PTX 102, 103, 104, 104A, 105A, 109, 110. Therefore, Plaintiffs argue that the fifth factor weighs in their favor.

The State argues that Plaintiffs have failed to establish a causal nexus between the history of discrimination and Latino's current weaker political power. 2 Tr. 97-98. But the Fifth Circuit has held that such causal evidence is unnecessary when the history, socioeconomic status, and political conditions are aligned as they are here. *Teague*, 92 F.3d at 294. The Court gives this factor heavy weight in favor of Plaintiffs.

6. Racial Appeals

[70] The evidence contains a single instance of a patent racial appeal in a judicial race. Justice Yanez testified that, during her supreme court candidacy, her white opponent's surrogates argued that she was and, if elected, would be a representative of the Mexican government on the Texas court. 3 Tr. 170-71, 182. Because this is the only such instance of racial appeals offered, this merits slight weight in Plaintiffs' favor.

7. Number of Successful Minority Candidates

[71] It is undisputed that no Latino candidate has ever been elected to the Supreme Court of Texas or the Texas Court of Criminal Appeals without first having been appointed to an unexpired term. Of 18 appointments to both courts from 1996 to 2016, only five (27%) were given to Hispanics. DX 42. The evidence noted above shows that there might have been more Hispanic appointments, but they were declined, either for partisan reasons or a belief of inability to get elected as a Republican. And whatever the number of appointments, the reduced incumbency advantage likely makes high judicial office less attractive for Hispanic attorneys who might otherwise be inclined to pursue appointments.

This is reflected in the overall underrepresentation of Hispanics on the high courts which persists, despite the large number of Latino attorneys qualified to run for the high court positions. DX 32, 33. *See generally* *Johnson*, 512 U.S. at 1014 n.11, 114 S.Ct. 2647; *LULAC*, 999 F.2d at 865. The statistical gap between voting population and successful candidates is not quite as extensive as Plaintiffs represent, because their statistics include a broad time period going back to 1945 and 1966 for the high courts. PX 106rev, 106A. Yet their quantitative analysis of racially polarized voting dates back only to 2002. The Court does not credit statistical evidence of the alleged effect of vote dilution that predates the evidence of vote dilution as the cause. *See* *Uno*, 72 F.3d at 990 (vote dilution must be evaluated in the present tense).

As the State notes, Hispanic candidates for high judicial office running as Democrats have suffered the same fate as nearly all Democrats running in statewide elections since 2002. At the same time, Justice Guzman, a Latina running as a Republican, received the most votes of any Supreme Court of Texas candidate in history. DX 40, p. 4. When the issue is whether race or partisanship explains the pattern of electoral outcomes, rather than whether or not there is vote dilution, this factor's significance evaporates. The influences on the number of successful minority candidates are better explained by other factors in the totality of the circumstances test. The Court treats this factor as neutral.

*617 8. Lack of Responsiveness to Minority Needs

[72] Plaintiffs point out that the high courts have jurisdiction over many issues of particular interest to Hispanics. However, they have not identified any examples of decisions that are non-responsive to minority needs or wrongly decided in the overall interest of equal justice. The Texas Office of Court Administration Public Trust and Confidence in the Court Survey, upon which Dr. Jose Juarez relied, found that Hispanics, as a racial group, expressed the highest degree of confidence in the courts. 1 Tr. 212. And unlike other elected officials, those in judicial positions or candidates for such positions, cannot espouse a special interest agenda. Thus, this factor has slight, if any, weight in the balance of the totality of the circumstances and it is neutral here.

9. Tenuous Reasoning Behind Methodology—Linkage

[73] **[74]** **[75]** The Court recognizes that its consideration of the State's method of selecting judges implicates important concerns of federalism. For instance, when considering issues related to a state's mandatory retirement age for judges, the Supreme Court wrote:

> Through the structure of its government, and the character of those who exercise government authority, a State defines itself as a sovereign. "It is obviously essential to the independence of the States, and to their peace and tranquility, that their power to prescribe the qualifications of their own officers ... should be exclusive, and free from

external interference, except so far as plainly provided by the Constitution of the United States."

Gregory v. Ashcroft, 501 U.S. 452, 460, 111 S.Ct. 2395, 115 L.Ed.2d 410 (1991) (quoting *Taylor v. Beckham*, 178 U.S. 548, 570-571, 20 S.Ct. 890, 44 L.Ed. 1187 (1900), and citing *Boyd v. Nebraska ex rel. Thayer*, 143 U.S. 135, 161 (1892)).

[76] **[77]** **[78]** At-large judicial districts have a salutary function. "The distrust of judicial subdistricts does not rest on paternalism. It recognizes Texas' historic interest in having district judges remain accountable to all voters in their district." *LULAC*, 999 F.2d at 873.

> The decision to make jurisdiction and electoral bases coterminous is more than a decision about how to elect state judges. It is a decision of what constitutes a state court judge. Such a decision is as much a decision about the structure of the judicial office as the office's explicit qualifications such as bar membership or the age of judges. The collective voice of generations by their unswerving adherence to the principle of linkage through times of extraordinary growth and change speaks to us with power. Tradition, of course, does not make right of wrong, but we must be cautious when asked to embrace a new revelation that right has so long been wrong.

LULAC, 999 F.2d at 872. The Court thus proceeds with caution.

Plaintiffs criticize the State for not submitting evidence of its linkage interest. Yet, as noted above, it is a question of law. "[T]he weight of a state's interest has always been a legal question, not a factual one." *Id.* at 871. It is true that the *LULAC* case involved trial court judges instead of high court appellate judges. Still, any differences in the State's interest associated with what constitutes high court appellate judges are entitled to some deference.

Law professor and legal historian, Michael Ariens, testified that Texas tried several alternate systems before settling on the statewide, at-large election model for its high courts for purposes of promoting independence and accountability. Under ***618** the 1836 Constitution of the Republic of Texas, the legislature elected the justices. Associate justices, assigned to divisions of the state, had both trial and appellate functions, while the chief justice had exclusively appellate jurisdiction. Jointly, their jurisdiction was coterminous with the geographical limits of the state. 3 Tr. 87-88. In 1845, Texas adopted a gubernatorial appointment method. *Id.*, p. 90. A referendum resulted in a constitutional amendment approved by popular vote and ratified by the legislature, effective in 1850, which provided for the popular election of supreme court justices. *Id.*, pp. 90-91. In 1869, when Texas was under congressional reconstruction, supreme court justices were nominated by the governor and confirmed by the senate. *Id.*, p. 94.

Since 1876, the Texas constitution has required statewide popular election for all justices for the Supreme Court of Texas. *Id.*, pp. 95-96; Tex. Const. art. V, § 2. The same is true with respect to the judges of the Court of Criminal Appeals, since 1891. Tex. Const. art. V, § 4. Furthermore, the corresponding jurisdiction of both high courts has been coterminous with the limits of the State. Tex. Const. art. V, §§ 3, 5. Just because the State's adoption of this method of judicial selection is at the constitutional level and dates back to 1876 does not make it immune from attack. [12] However, it is indicative of the State's deliberate choice, left undisturbed over significant time and with substantial alternate experience, for governing its citizens.

12 Plaintiffs point out that the 1876 Texas constitution had provisions that have been challenged and eliminated, such as male-only juries, paupers not allowed to vote, poll taxes, and mandated school segregation. Tex. Const. of 1876, art. V, § 13; art. VI, §§ 1, 3; art. VII, § 7, available at: http://tarlton.law.utexas.edu/constitutions/texas1876.

Plaintiffs argue that linkage is not a compelling state interest at the level of the high courts because all nine justices and judges on each court rule as a collegial body, with

each individual justice having an opportunity to affect case outcomes. *See generally* *LULAC*, 999 F.2d at 873 (distinguishing the issue of single-member trial courts). "The ability to bring diverse perspectives to the court, not the prospect of outright dealmaking, would be relevant in [an appellate court] context." *Nipper v. Smith*, 39 F.3d 1494, 1535 n.78 (11th Cir. 1994). Dr. Juarez testified that, in the context of a multimember body, single-member districts are preferable because they: advance judicial effectiveness; balance accountability and judicial effectiveness; ensure judicial independence; and avoid prejudice and bias towards the parochial interest of a narrow constituency. 1 Tr. 152-62. *See also* *LULAC*, 999 F.2d at 869 (quoting John L. Hill, Jr., *Taking Texas Judges Out of Politics: An Argument for Merit Election*, 40 Baylor L. Rev. 339, 364 (1988) (emphasis omitted)).

Even assuming some benefit, however, single-member districts have fundamental drawbacks. For instance, the State notes that it would inject legislative control into the drawing of judicial districts, contrary to the State's sovereign interest in a governing model that includes separation of powers. *See generally* Tex. Const. art. V, § 7a(g), (h) (providing for legislative oversight and approval of the determinations of a Judicial Districts Board created to reapportion the state's judicial districts); Tex. Gov't Code § 22.201 (setting out legislatively-approved composition of courts of appeals districts).

It would also reduce any given voter's opportunity to have an impact on the personnel on the courts from a vote for each of nine (the full composition of the courts) to one justice or judge on each court (or one vote for the judge or justice from one's ***619** own district and one vote for the chief judge or justice to be elected at-large). This is significant because the Supreme Court of Texas is empowered to determine cases by a majority vote of five justices. Tex. Const. art. V, § 2. The Court of Criminal Appeals decides cases in panels of three and by a vote of two judges, unless convened en banc, in which case a vote of five judges will determine the case. Tex. Const. art. V, § 4. The collegial nature of a multimember body does not prevent it from, in practice, running roughshod over any given minority of judges. Single-member districts could have the unintended effect of increasing the power of a majority of judges elected from districts with wider polarization levels in favor of white voters.

The State also points out that the creation of single-member districts, as Plaintiffs advocate, is not a foregone conclusion even if they prevail. Single-member districts are only one remedy that might ultimately be imposed if liability is found. D.E. 106, p. 15. *See* *Clark*, 21 F.3d at 95 ("If a § 2 violation is found, the [state] will be given the first opportunity to develop a remedial plan."). But Plaintiffs have predicated this entire case on the argument that it is the at-large method of voting that is infirm. If that method has a purpose, it is entirely appropriate to consider that purpose in determining whether liability should be imposed. The Court gives this factor heavy, but not dispositive, weight in favor of the State.

B. Summation of the Totality of the Circumstances

Having considered each of the established factors, the Court has assigned each its weight and has determined which party is favored by each individual factor. When all factors are considered together, the Court FINDS that, given the totality of the circumstances, Plaintiffs have not satisfied their burden to show that the voting methodology results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color. Instead, the Court FINDS that partisanship rather than race better explains Hispanic defeat at the polls and the evidence was insufficient to overcome that, combined with the State's linkage interest.

CONCLUSION

Plaintiffs Araiza, Solis, Rodriguez, and LUPE have standing to bring their claims. While Plaintiffs did satisfy the three *Gingles* preconditions for complaining of vote dilution, the Court concludes that they did not also demonstrate that race rather than partisanship better explains their preferred candidates' lack of success at the polls and they did not overcome the State's interest in electing Supreme Court of Texas justices and Court of Criminal Appeals judges in an at-large system, coterminous with the geographic limits of the State. The State is entitled to judgment that Plaintiffs take nothing by their claims.

ORDERED this 12th day of September, 2018.

All Citations

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

COAKLEY PENDERGRASS; TRIANA ARNOLD JAMES; ELLIOTT HENNINGTON; ROBERT RICHARDS; JENS RUECKERT; and OJUAN GLAZE, Plaintiffs, v. BRAD RAFFENSPERGER, in his official capacity as the Georgia Secretary of State; SARA TINDALL GHAZAL, in her official capacity as a member of the State Election Board; ANH LE, in her official capacity as a member of the State Election Board; EDWARD LINDSEY, in his official capacity as a member of the State Election Board; and MATTHEW MASHBURN, in his official capacity as a member of the State Election Board, Defendants.*	CIVIL ACTION FILE NO. 1:21-CV-05339-SCJ

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

* Pursuant to Federal Rule of Civil Procedure 25(d), Plaintiffs have automatically substituted Edward Lindsey, in his official capacity, for Rebecca N. Sullivan, in her official capacity, based on Defendants' representation in their status report of January 11, 2022. *See* Defs.' Status Report 2 n.1, ECF No. 31.

Exhibit
0005

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INTRODUCTION

After final enactment of Georgia's new congressional map was delayed to stymie any legal challenges ahead of the 2022 midterm elections, Defendants now assert that there is no time to remedy a violation of federal law—even though election day is more than *nine months* away. Defendants cannot manufacture arbitrary deadlines to forestall relief for Georgia's Black voters. And hollow appeals to administrative convenience cannot trump "[t]he law that confronted one of this country's most enduring wrongs; pledged to give every American, of every race, an equal chance to participate in our democracy; and now stands as the crucial tool to achieve that goal." *Brnovich v. DNC*, 141 S. Ct. 2321, 2373 (2021) (Kagan, J., dissenting).

Rather than seriously contest Plaintiffs' case, Defendants mischaracterize applicable legal standards and quibble with (but neither refute nor even undermine) the evidence Plaintiffs have submitted in support of their claim. Once Defendants' distortions are corrected, the Court is left with one conclusion: Plaintiffs are substantially likely to succeed on the merits of their Section 2 claim. And because the equities favor a lawful congressional map—which the Georgia General Assembly or this Court can readily adopt well in advance of election day—a preliminary injunction should be issued.

ARGUMENT

I. Plaintiffs are substantially likely to succeed in showing that Georgia's new congressional map violates Section 2.

Contrary to Defendants' assertions, *see* Defs.' Resp. in Opp'n to Pls.' Mot. for Prelim. Inj. ("Opp'n"), ECF No. 40, Plaintiffs are likely to prove—and, indeed, have already proven—that the Georgia Congressional Redistricting Act of 2021 ("SB 2EX") violates Section 2 of the Voting Rights Act of 1965.[1]

A. Plaintiffs have shown that a compact majority-Black congressional district can be drawn in the western Atlanta metropolitan area.

To satisfy the first *Gingles* precondition, Plaintiffs must show that the Black population in the western Atlanta metropolitan area is "sufficiently large and geographically compact to constitute a majority in a single-member district." *Thornburg v. Gingles*, 478 U.S. 30, 50 (1986). William S. Cooper's illustrative plan demonstrates that this requirement is easily satisfied here. *See* Ex. 1 ¶¶ 42–51.[2]

In response, Defendants first suggest that Plaintiffs have failed to demonstrate compactness because "they must demonstrate connections between the disparate

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[1] Defendants maintain that this Court lacks jurisdiction to grant relief. *See* Opp'n 25. Plaintiffs incorporate by reference their arguments that only a single-judge district court can hear their purely statutory claim and that Section 2 confers a private right of action. *See* Pls.' Opp'n to Defs.' Mot. to Dismiss, ECF No. 39.

[2] Unless otherwise noted, exhibits are attached to the Declaration of Kevin J. Hamilton, filed concurrently with Plaintiffs' motion. *See* ECF No. 34.

geographic communities they unite that go beyond race." Opp'n 10–11. But Plaintiffs have done precisely what is required of them: "show that it would be possible to design an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a minority candidate." *Davis v. Chiles*, 139 F.3d 1414, 1425 (11th Cir. 1998); *see also LULAC v. Perry*, 548 U.S. 399, 433 (2006) ("While no precise rule has emerged governing § 2 compactness, the inquiry should take into account traditional districting principles such as maintaining communities of interest and traditional boundaries." (cleaned up) (quoting *Abrams v. Johnson*, 521 U.S. 74, 92 (1997))).

Mr. Cooper's illustrative majority-Black district has been drawn consistent with traditional redistricting principles such as "compactness, contiguity, and respect for political subdivisions," *Shaw v. Reno*, 509 U.S. 630, 647 (1993), which were also criteria adopted by the General Assembly to guide its own redistricting efforts. *See* Ex. 17. Defendants try to dispute whether Mr. Cooper's illustrative map satisfies these criteria, *see* Opp'n 7, but "there is more than one way to draw a district so that it can reasonably be described as meaningfully adhering to traditional principles," *Chen v. City of Houston*, 206 F.3d 502, 519 (5th Cir. 2000), and an illustrative plan can be accepted even if it is "far from perfect." *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1326 (M.D. Ga. 2018) ("*Wright I*"),

aff'd, 979 F.3d 1282 (11th Cir. 2020) ("*Wright II*"). Mr. Cooper's illustrative plan, which only marginally deviates from SB 2EX in terms of the relevant criteria, more than adequately satisfies traditional redistricting principles and is therefore sufficiently compact for purposes of the first *Gingles* precondition. *See* Ex. 1 ¶¶ 43–46, 53–58; Second Declaration of Kevin J. Hamilton ("Second Hamilton Decl."), Ex. 1 ¶ 3.[3]

Defendants further claim that "Plaintiffs cannot succeed because their illustrative plan is not a proper remedy." Opp'n 11–14. Their arguments do not hold up under scrutiny. Though Defendants fault Plaintiffs' illustrative plan for "not defer[ring] to the legislature's policy choices for the majority of districts in Georgia," noting in particular that Mr. Cooper's illustrative plan "maintains far fewer district cores from the existing 2012 congressional plan, including placing less than 5% of the prior District 6 into the new District 6," *id.* at 7, 12, they cite no authority holding that an existing map must be scrupulously preserved when remedying a Section 2 violation. Nor would such a requirement make sense; under Section 2, Plaintiffs are *required* to demonstrate that the State could have created a new majority-Black district that does not currently exist, so they can hardly be

[3] The Second Declaration of Kevin J. Hamilton and accompanying exhibits will be filed concurrently with this reply.

faulted for failing to maintain the same district configurations that they claim are unlawful. Moreover, preservation of previous districts was not a criterion adopted by the General Assembly, *see* Ex. 17, and even if it were, "an interest in core retention cannot trump compliance with the [Voting Rights Act]." *Chestnut v. Merrill*, 446 F. Supp. 3d 908, 919 (N.D. Ala. 2020).[4]

Plaintiffs' proposed map *does*, incidentally, respect a critical policy choice made by the General Assembly: it ensures that Georgia's congressional map "compl[ies] with Section 2 of the Voting Rights Act of 1965," just as the legislature intended. Ex. 17. And Mr. Cooper's illustrative map accomplishes this goal while limiting the number of enacted districts that must be redrawn. *See* Ex. 1 ¶ 11; Second Hamilton Decl., Ex. 1 ¶ 4.

Finally, Defendants suggest that "the boundaries of the districts [in] the illustrative plan are 'unexplainable other than on the basis of race,' which is

[4] Defendants cite *Wise v. Lipscomb*, 437 U.S. 535 (1978) (plurality op.), to suggest that federal courts cannot redraw congressional maps when remedying Section 2 violations. *See* Opp'n 12. But *Wise* counseled legislative deference when drawing remedial maps, not when scrutinizing enacted maps. *See* 437 U.S. at 540 ("When a federal court declares an existing apportionment scheme unconstitutional, it is therefore, appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure . . . ."). And even then, the *Wise* Court acknowledged that "when those with legislative responsibilities do not respond, or the imminence of a state election makes it impractical for them to do so," judicial redistricting is appropriate. *Id.*

unconstitutional." Opp'n 13 (quoting *Miller v. Johnson*, 515 U.S. 900, 910 (1995)). Defendants are wrong as a matter of fact and as a matter of law. Factually, Mr. Cooper's illustrative map is not "based predominantly on race"; his proposed districts "are compact; they are contiguous; and they respect precinct borders," *Davis*, 139 F.3d at 1425, which "serve[s] to defeat a claim that a district has been gerrymandered on racial lines." *Shaw*, 509 U.S. at 647. That race was a factor in Mr. Cooper's map-drawing is not impermissible, but inevitable: as the Eleventh Circuit has explained, "we *require* plaintiffs to show that it is possible to draw majority-minority voting districts." *Davis*, 139 F.3d at 1426. Indeed, "[t]o penalize [Plaintiffs] . . . for attempting to make the very showing that *Gingles*, *Nipper* [*v. Smith*, 39 F.3d 1494 (11th Cir. 1994) (en banc)], and *SCLC* [*of Ala. v. Sessions*, 56 F.3d 1281 (11th Cir. 1995) (en banc),] demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section Two action." *Id.* at 1425; *see also Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338, 1344–45 (N.D. Ga. 2015) (rejecting same argument Defendants offer here).

As a legal matter, Defendants misapply the racial gerrymandering standard to this Section 2 case. The Eleventh Circuit has expressly rejected Defendants' "attempt to apply authorities such as *Miller* to [a] Section Two case, . . . because the

Miller and *Gingles*/*Nipper*/*SCLC* lines address very different contexts." *Davis*, 139 F.3d at 1425.

Even if the racial gerrymandering doctrine could be applied to Plaintiffs' Section 2 claim—it cannot—and even if race predominated over other factors in the illustrative plan—it does not—"a district created to comply with § 2 that uses race as the predominant factor in drawing district lines may survive strict scrutiny." *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 950 F. Supp. 2d 1294, 1305 (N.D. Ga. 2013), *aff'd in part, rev'd in part on other grounds*, 775 F.3d 1336 (11th Cir. 2015); *see also Miller*, 515 U.S. at 916, 920 (applying strict scrutiny to racial gerrymandering claims and requiring that such maps be "narrowly tailored to achieve a compelling interest"); *Bethune-Hill v. Va. State Bd. of Elections*, 137 S. Ct. 788, 801 (2017) ("As in previous cases . . . the Court assumes, without deciding, that the State's interest in complying with the Voting Rights Act was compelling."); Ex. 17 ("All plans adopted by the [House Legislative and Congressional Reapportionment] Committee will comply with Section 2 of the Voting Rights Act of 1965, as amended."). In this context, narrow tailoring does not "require an exact connection between the means and ends of redistricting," but rather just "'*good reasons*' to draft a district in which race predominated over traditional districting criteria." *Ala. Legis. Black Caucus v. Alabama*, 231 F. Supp. 3d 1026, 1064 (M.D.

Ala. 2017) (quoting *Ala. Legis. Black Caucus v. Alabama*, 575 U.S. 254, 278 (2015)). Compliance with the Voting Rights Act is an indisputably "good reason" to draw a district that considers race, and therefore Plaintiffs' illustrative plan—which remedies vote dilution under Section 2—would satisfy the requirements of strict scrutiny against a hypothetical racial gerrymandering claim.

B. Plaintiffs have shown that voting in Georgia is racially polarized.

Defendants question the findings of Dr. Maxwell Palmer—who clearly demonstrated that Black Georgians are politically cohesive, that white Georgians engage in bloc voting to defeat Black-preferred candidates, and that voting in Georgia is racially polarized, *see* Pls' Mem. of Law in Supp. of Mot. for Prelim. Inj. 7–10, 15–16, ECF No. 32-1; Ex. 2—by suggesting that "partisanship explains the polarization better than race." Opp'n 14–16.

Defendants once again try to move the goalposts. The Eleventh Circuit has never held that Section 2 requires a determination that voters are motivated by race when evaluating the existence of racially polarized voting. In fact, it has indicated the *opposite*, reversing a district court's insistence that a Section 2 plaintiff "indicate that race was an overriding or primary consideration in the election of a candidate." *City of Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547, 1556 (11th Cir. 1987). In so doing, the court reiterated the *Gingles* plurality position on this issue:

"racially polarized voting, as it relates to claims of vote dilution, refers only to the existence of a correlation between the race of voters and the selection of certain candidates." *Id.* at 1557 (quoting *Gingles*, 478 U.S. at 74); *see also Gingles*, 478 U.S. at 73 ("All that matters under § 2 and under a functional theory of vote dilution is voter behavior, not its explanations."). Thus, "Plaintiffs need not prove causation or intent in order to prove a prima facie case of racial bloc voting and defendants may not rebut that case with evidence of causation or intent." *Carrollton Branch of NAACP*, 829 F.2d at 1557–58 (quoting *Gingles*, 478 U.S. at 74).[5]

At any rate, even under Defendants' theory of Section 2, it would be *their* burden to "affirmatively prove . . . that racial bias does *not* play a major role in the political community." *Nipper*, 39 F.3d at 1524–26 & nn.60, 64 (op. of Tjoflat, C.J.) (emphasis added) (quoting *Solomon v. Liberty County*, 899 F.2d 1012, 1034 (11th

[5] Defendants cite *Solomon v. Liberty County Commissioners*, 221 F.3d 1218 (11th Cir. 2000) (en banc), to support their argument that proof of causation is needed as part of the racially polarized voting inquiry. But the district court decision that the en banc Eleventh Circuit affirmed concluded that Section 2 liability is *not* dependent upon the subjective thoughts of voters. *See Solomon v. Liberty County*, 957 F. Supp. 1522, 1543 (N.D. Fla. 1997) ("[T]he presence or absence of racial bias within the voting community is not dispositive of whether liability has been established under Section 2."). Moreover, aside from the single-sentence dictum Defendants cite, the Eleventh Circuit's decision did not discuss any causation requirement for the racially polarized voting analysis; rather, it focused on Senate Factors Seven (minority candidate success) and Nine (tenuousness of the policy at issue).

Cir. 1990) (en banc) (Tjoflat, C.J., specially concurring)).[6] Defendants have fallen woefully short of meeting that burden. Their only evidence is the simple observation that "[t]he support of Black voters for candidates in every race [Dr. Palmer] analyzes are virtually identical," which "holds true for every general election Republican versus Democratic matchup Dr. Palmer analyzed, regardless of the race of the candidate." Opp'n 14. But this phenomenon is just as consistent with *racially* polarized voting as *politically* polarized voting. The mere existence of a partisan divide would reveal nothing about *why* Black and white voters support candidates from different parties. At most, "Defendants have raised an interesting possibility that partisanship, not race," is causing Georgia's racially polarized voting; but that is not enough to meet their burden. *Ga. State Conf. of NAACP*, 118 F. Supp. 3d at 1347. And in any event, as Dr. Orville Vernon Burton's supplemental report explains, race—and issues inextricably linked with race—unquestionably contribute to the partisan divide among Black and white voters in Georgia. *See* Second Hamilton Decl., Ex. 2. That fact is underscored by the opposing positions the two

[6] While his opinion is often referred to as the "plurality opinion" in *Nipper*, then-Chief Judge Tjoflat's discussion of this issue was joined by only one other judge. The remainder of the en banc court refused to join it, either because it was unnecessary to reach the outcome of the case, *see id.* at 1547 (Edmondson, J., concurring in the opinion in part and concurring in the result), or out of explicit disagreement, *see id.* (Hatchett, J., dissenting).

major parties have taken on issues related to race, as well as the differing views on those issues held by the members of the two parties. *See id.* In short, Defendants have failed to satisfy their own artificially heightened burden.

C. Plaintiffs have shown that the Senate Factors weigh in their favor.

Rather than seriously engage with Plaintiffs' evidence—or, for that matter, Georgia's undeniable history of racial discrimination, the consequences of which persist today—Defendants mischaracterize cherry-picked pieces of evidence and try to poke holes in Plaintiffs' case. In so doing, they leave the vast majority of Plaintiffs' evidence unrebutted, evidence that proves that, under the totality of circumstances, Georgia's political processes "are not equally open to participation" by members of the state's Black community. 52 U.S.C. § 10301(b).

At the outset, Defendants suggest that "[t]his type of analysis is particularly ill-suited to emergency relief because the totality is generally weighed after significant discovery and a bench trial." Opp'n 17. But while analyzing the totality of circumstances in a Section 2 case is undoubtedly a fact-intensive process, it is certainly compatible with expedited consideration. Contrary to Defendants' intimations, "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1566 n.33 (11th Cir. 1984) (quoting S. Rep. No. 97-

417, pt. 1, at 29 (1982)). What's more, certain of the Senate Factors—in particular the history of discrimination—are not subject to good-faith dispute. *See, e.g.*, *Wright I*, 301 F. Supp. 3d at 1310 ("Georgia's history of discrimination 'has been rehashed so many times that the Court can all but take judicial notice thereof.'" (quoting *Brooks v. State Bd. of Elections*, 848 F. Supp. 1548, 1560 (S.D. Ga. 1994)). And the Eleventh Circuit has made clear that "it will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* [preconditions] but still have failed to establish a violation of § 2 under the totality of the circumstances." *Ga. State Conf. of NAACP*, 775 F.3d at 1342 (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)). Accordingly, any suggestion that either Plaintiffs or the Court must engage in the protracted exercise of proving or disproving every Senate Factor misunderstands the legal standard.

The individual pieces of evidence that Defendants flag for scrutiny do not undermine Plaintiffs' case. Both Dr. Burton and the U.S. Supreme Court have noted that the use of majority-vote requirements is meaningful evidence of ongoing efforts to discriminate against minority voters. *See* Ex. 3 at 31, 35; *Gingles*, 478 U.S. at 45. While it is true that Senators Raphael Warnock and Jon Ossoff recently won run-off elections, *see* Opp'n 18, the very recent success of just two candidates cannot refute decades of officially sanctioned discrimination and the tools with which it was

effectuated—nor, for that matter, remedy more than a century of underrepresentation by Black officeholders. *Cf. Gingles*, 478 U.S. at 75 ("[P]roof that some minority candidates have been elected does not foreclose a § 2 claim.").

Similarly, to rebut Plaintiffs' vast evidence of the long history of discrimination in voting, Defendants note "the DOJ approval of the 2011 Republican-drawn plans on which the 2021 congressional plan was based." Opp'n 18–19. But the Department of Justice's previous determination under a different legal framework—Section 5's retrogression standard—does not insulate SB 2EX from scrutiny under Section 2's vote-dilution standard. *See, e.g.*, *Georgia v. Ashcroft*, 539 U.S. 461, 478 (2003). That is especially true in this case, where Mr. Cooper demonstrated that the new map dilutes Black voting strength "in an area that has experienced significant growth in the Black population since the 2010 Census." Ex. 1 ¶¶ 38–41.

Defendants further fault Plaintiffs for "cit[ing] practices over which Defendants have no control or that have been found constitutional, including polling place closures and voter-list maintenance," Opp'n 19, but they cite no authority suggesting that either of these facts constitutes a safe harbor or otherwise reduces the probity of Plaintiffs' evidence.

Finally, Defendants boldly suggest that Plaintiffs' voluminous evidence of racial appeals in political campaigns from the past five years "hardly indicates racism permeates Georgia political campaigns," and that "Herschel Walker's widely reported frontrunner status as the Republican nominee for U.S. Senate *would tend to indicate a lack of racism in Georgia politics*." Opp'n 19 (emphasis added) (footnote omitted). As Defendants themselves note, consideration of the Senate Factors requires "an 'intensely local appraisal' of the facts in the local jurisdiction." *Id.* at 18 (quoting *White v. Regester*, 412 U.S. 755, 769 (1973)). A fair, thorough appraisal of Georgia's political and demographic history—informed by both local experience and Plaintiffs' unrebutted evidence of historic and recent racial discrimination, markedly polarized voting, glaring socioeconomic disparities between Black and white Georgians, and sustained official indifference to the same—will certainly belie Defendants' risibly rose-colored assessment.

Ultimately, it is simply disingenuous to suggest that "Plaintiffs [] offer scant evidence for many of the factors." *Id.* Four experts and dozens of accompanying exhibits prove that SB 2EX has the effect of diluting the votes of Black Georgians. Defendants have shown nothing to the contrary.

D. Defendants misapply the test for proportionality.

Defendants also contend that, "[w]ith five districts that are majority non-white on the adopted 2021 congressional plan, if Black voters are able to elect their candidates of choice in all five districts, their candidates of choice will hold 35.7% of the districts in the state (5 districts divided by 14 total districts)"—a result, they claim, "[t]hat provides at least a significant basis 'rough proportionality' that would indicate no violation of Section 2." Opp'n 19–21 (quoting *Johnson v. De Grandy*, 512 U.S. 997, 1023 (1994)). Setting aside the fact that proportionality is not a "safe harbor" in vote-dilution cases, *De Grandy*, 512 U.S. at 1017–21, Defendants' analysis conflates *majority-Black* districts with *majority-minority* districts—an inappropriate approach under *De Grandy*. As one court has explained,

> [t]he *De Grandy* Court provided an explicit definition of proportionality: "'Proportionality' as the term is used here links the number of majority-minority voting districts to minority members' share of the relevant population." The Court's subsequent application of this definition eliminates any conceivable ambiguity in the term "majority-minority." In conducting its proportionality analysis, the Court counted *only* those districts with "a clear majority of black voters," and did not count a district in which black voters, although not a majority, had been "able to elect representatives of their choice with the aid of cross-over votes." Consequently, *De Grandy* provides inadequate support for including "opportunity districts" in a proportionality calculation.

Black Pol. Task Force v. Galvin, 300 F. Supp. 2d 291, 312 (D. Mass. 2004) (three-judge court) (citations omitted) (quoting *De Grandy*, 512 U.S. at 1014 n.11, 1023);

see also Wright II, 979 F.3d at 1289 (proportionality inquiry "asks whether 'minority voters form effective voting *majorities* in a number of districts roughly proportional to the minority voters' respective shares in the voting-age population'" (emphasis added) (quoting *De Grandy*, 512 U.S. at 1000)).[7]

While "five districts [] are majority non-white [in] the adopted 2021 congressional plan," Opp'n 21, at most only *four* of those districts have Black voting-age populations that exceed 50 percent. *See* Second Hamilton Decl., Ex. 1 ¶ 5 & Fig. 1. Under *De Grandy*, the Black share of the state's new congressional map (four of 14 seats) is therefore less than 29 percent—below the statewide 33.8 percent Black citizen voting-age population (and, for that manner, every other statewide measurement of the Black population). *See* Ex. 1 ¶¶ 18 & Fig. 2, 21 & Fig. 3, 24 & Fig. 4. Proportionality therefore does not weigh against Plaintiffs' claim.

[7] While the *LULAC* Court referred to minority "opportunity districts" in its analysis of proportionality, 548 U.S. at 436, its opinion did not displace *De Grandy*'s method for determining how many such districts exist in a given map—which is to say, counting the number of districts in which the relevant minority group constitutes an effective voting majority of the population. *See, e.g.*, *Mo. State Conf. of NAACP v. Ferguson-Florissant Sch. Dist.*, 894 F.3d 924, 940 n.12 (8th Cir. 2018) ("[I]n most cases, the proportionality inquiry is focused on the number of minority-majority districts being created . . . ."); *Fairley v. Hattiesburg*, 584 F.3d 660, 673 (5th Cir. 2009) (citing *LULAC* and describing inquiry as "whether the number of districts in which the minority group forms an effective *majority* is roughly proportional to its share of the population in the relevant area" (emphasis added)).

II. The remaining preliminary injunction factors weigh in favor of relief.

Defendants apparently do not dispute that Plaintiffs and other Black Georgians will suffer irreparable harm if the new congressional map violates Section 2. *See* Opp'n 22. This is a sensible concession. Because vote dilution is clearly a harm for which no court can provide retrospective relief, "plaintiffs seeking preliminary injunctive relief under section 2 'should not be and are not required to make the usual showing of irreparable injury as a prerequisite to relief; rather, such injury is presumed by law.'" *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986) (quoting *Harris v. Graddick*, 593 F. Supp. 128, 135 (M.D. Ala. 1984)). Defendants' suggestion that vindicating Plaintiffs' and other Black voters' fundamental rights is not in the public interest, *see* Opp'n 22, cannot be squared with controlling law instructing that "cautious protection of . . . franchise-related rights is without question in the public interest." *Charles H. Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349, 1355 (11th Cir. 2005).

Whatever inefficiencies a preliminary injunction might cause to Georgia's election administration, *see* Opp'n 23–25, do not remotely outweigh the irreparable vote-dilution harm that Plaintiffs and other Black Georgians will face if SB 2EX is used in the 2022 elections. As an initial matter, Defendants' timing-related concerns ring hollow in light of the State's unclean hands. As Defendants note, the General

Assembly passed SB 2EX on November 22, 2021. Opp'n 3. And yet even though time was of the essence, Governor Brian Kemp waited *more than a month* to finally sign SB 2EX into law, significantly delaying Plaintiffs' ability to file this suit. *See* Ex. 15.[8] Countenancing these acts of gamesmanship and Defendants' related arguments would create a perverse incentive for states around the country: evade timely judicial review of new redistricting plans simply by delaying enactment until it is too late for courts to intervene.

Even if the State's hands were clean, Defendants offer no convincing reason why this Court should not vindicate Plaintiffs' and other Black Georgians' fundamental right to vote ahead of the 2022 elections. The candidate qualification period does not even begin until March, and the primary election is not scheduled until the end of May. *See* Ex. 43. The Secretary of State's suggestion that counties complete their voter-to-district allocations by February 18, Opp'n 23, is tied to the candidate qualification period. *See id.*, Ex. B at Ex. 2 (letter to counties suggesting changes by February 18 "for qualifying to occur the week of March 7"). Thus, if this Court finds it necessary to give counties more time to complete that process, it could delay the candidate qualification period *without* needing to adjust the primary

[8] Plaintiffs, by contrast, wasted no time in bringing suit, filing this action just hours after Governor Kemp signed SB 2EX into law.

election date. *See Sixty-Seventh Minn. State Senate v. Beens*, 406 U.S. 187, 201 n.11 (1972) (per curiam) (federal courts "ha[ve] the power appropriately to extend the time limitations [set by election calendars] imposed by state law"); *Larios v. Cox*, 305 F. Supp. 2d 1335, 1343 (N.D. Ga. 2004) (per curiam) (three-judge court) (ordering that new statewide maps be drawn in time for upcoming primary election).

Nothing proposed or requested by Plaintiffs would prevent the Court from giving the General Assembly (now in session) the opportunity to draw a new plan in the first instance. *Cf.* Opp'n 24. If the Court invalidated SB 2EX under Section 2, then the General Assembly would have clear direction as to what must be done to remedy the congressional map's flaws. Consistent with the practice of other courts in recent cases, this Court would need to give the General Assembly mere weeks to craft a remedial plan. *See League of Women Voters of Ohio v. Ohio Redistricting Comm'n*, Nos. 2021-1193, 2021-1198, 2021-1210, 2022 WL 110261, at *28 (Ohio Jan. 12, 2022) (providing ten days for redistricting body to adopt new legislative plans); *Harris v. McCrory*, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (providing 14 days for legislature to adopt new congressional plan, starting on February 5 of election year); *Larios v. Cox*, 300 F. Supp. 2d 1320, 1357 (N.D. Ga. 2004) (per curiam) (three-judge court) (providing two-and-a-half weeks for General Assembly to adopt new legislative plans, starting on February 10 of election year).

Neither case on which Defendants rely counsels otherwise. *See* Opp'n 22–23. In *Favors v. Cuomo*, plaintiffs sought a preliminary injunction in *April* of an election year, *see* 881 F. Supp. 2d 356, 362 (E.D.N.Y. 2012) (three-judge court)—more than three months later than Plaintiffs' motion here. *Purcell v. Gonzalez*, 549 U.S. 1 (2006) (per curiam), is even less applicable. There, the Supreme Court worried that a *last-minute* injunction against a voter-identification law would "result in voter confusion and consequent incentive to remain away from the polls." *Id.* at 4–5. But this litigation does not impact whether a given voter can *cast* a ballot; it impacts only the candidates listed on their ballot. Defendants' hyperbolic claim that relief would somehow result in "outright disenfranchisement," Opp'n 25, is entirely baseless.

The equitable considerations in this case are clear. Plaintiffs and other Black Georgians will suffer irreparable harm if required to vote under SB 2EX's new congressional map. The Court has ample time to remedy the Section 2 violation without interrupting this year's midterms. And Defendants' concerns about timing ultimately stem from the State's own actions to evade timely judicial review.

CONCLUSION

For the foregoing reasons, Plaintiffs request that the Court preliminarily enjoin implementation of SB 2EX and ensure the creation of an additional majority-Black congressional district in the western Atlanta metropolitan area.

Dated: January 20, 2022

Respectfully submitted,

By: **Adam M. Sparks**
Joyce Gist Lewis
Georgia Bar No. 296261
Adam M. Sparks
Georgia Bar No. 341578
KREVOLIN & HORST, LLC
One Atlantic Center
1201 West Peachtree Street, NW,
Suite 3250
Atlanta, Georgia 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
Email: JLewis@khlawfirm.com
Email: Sparks@khlawfirm.com

Kevin J. Hamilton*
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, Washington 98101
Phone: (206) 359-8000
Facsimile: (206) 359-9000
Email: KHamilton@perkinscoie.com

Abha Khanna*
Jonathan P. Hawley*
ELIAS LAW GROUP LLP
1700 Seventh Avenue, Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
Email: AKhanna@elias.law
Email: JHawley@elias.law

Daniel C. Osher*
Christina A. Ford*
Graham W. White*
Michael B. Jones
Georgia Bar No. 721264
ELIAS LAW GROUP LLP
10 G Street NE, Suite 600
Washington, D.C. 20002
Phone: (202) 968-4490
Facsimile: (202) 968-4498
Email: DOsher@elias.law
Email: CFord@elias.law
Email: GWhite@elias.law
Email: MJones@elias.law

Counsel for Plaintiffs

*Admitted *pro hac vice*

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Plaintiffs' Reply in Support of Motion for Preliminary Injunction has been prepared in accordance with the font type and margin requirements of LR 5.1, NDGa, using font type of Times New Roman and a point size of 14.

Dated: January 20, 2022

Adam M. Sparks
Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing Plaintiffs' Reply in Support of Motion for Preliminary Injunction with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to counsel of record.

Dated: January 20, 2022

Adam M. Sparks
Counsel for Plaintiffs

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

GEORGIA STATE CONFERENCE OF THE NAACP, et al. *Plaintiffs*, v. STATE OF GEORGIA, et al. *Defendants*.	Case No. 1:21-CV-5338-ELB-SCJ-SDG
COMMON CAUSE, et al., *Plaintiffs*, v. BRAD RAFFENSPERGER *Defendant*.	Case No. 1:22-CV-00090-ELB-SCJ-SDG

Served on behalf of the Georgia State Conf. of the NAACP Plaintiffs

Expert Report of Dr. Benjamin Schneer

Exhibit
0006

Racially Polarized Voting Analysis: Georgia

Benjamin Schneer

January 13, 2023

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Introduction

1. My name is Benjamin Schneer and I am an Assistant Professor of Public Policy at the Harvard Kennedy School. I joined Harvard's faculty in 2018, after working for two years as an Assistant Professor of Political Science at Florida State University. In 2016 I completed my Ph.D in Political Science in the Department of Government at Harvard University, where my dissertation won the Richard J. Hernstein Prize. At the Harvard Kennedy School, I teach a course on Empirical Methods and a course on Data Science for Politics.

2. My research is focused on American politics, particularly elections, political representation, and redistricting. I have published research articles in several leading peer-reviewed academic journals including *Science*, *American Journal of Political Science*, *Journal of Politics*, *Quarterly Journal of Political Science*, *Political Behavior*, *Studies in American Political Development*, and *Legislative Studies Quarterly*. My work received the annual Best Paper Award from the *American Journal of Political Science* in 2018, and other research of mine has received media coverage in outlets including *The New York Times*, *The Washington Post*, *The Los Angeles Times*, and *The Economist*.

3. I have worked as a consultant on several matters related to voting rights and redistricting. I co-authored, along with Professor Gary King, the analyses of the Arizona Independent Redistricing Commission Congressional and Legislative District maps submitted on behalf of the commission to the Department of Justice in 2012 – resulting in maps that were pre-cleared on the first attempt

for the first time in Arizona's history. I also have worked as a consultant on the Racially Polarized Voting Analysis prepared for the Virginia Redistricting Commission in 2021.

4. I have been retained to analyze the extent of legally significant racially polarized voting in Georgia's congressional, State Senate and State House district maps passed by the General Assembly in the 2021 redistricting cycle. In this report, I estimate voting behavior in these districts, examine the extent of racially polarized voting, and make an assessment of the performance of these districts in terms of the ability of minority groups to elect their candidates of choice. Then, I consider new illustrative districts proposed by the plaintiffs, again examining the extent of racially polarized voting and the ability of minority groups to elect their candidates of choice in the illustrative districts.

Executive Summary

5. Based on my analysis, I find that there is evidence of racially polarized voting in Georgia overall as well as for specific congressional districts (CDs), state Senate districts (SDs), and state House districts (LDs). Black and Hispanic voters tend to vote cohesively and White voters tend to oppose them. I have primarily analyzed racially polarized voting between Black and White voters; in a handful of districts identified by the plaintiffs, I have analyzed racially polarized voting between Black and Hispanic voters on the one hand and White voters on the other hand.

6. Based on my analysis, I view the voter behavior that I have examined

in the state of Georgia to be consistent with racially polarized voting between minority and majority racial groups in (1) all enacted CDs other than CD 5, (2) in all Illustrative Map CDs other than CD 4, (3) in enacted SDs 6, 9, 16, 17, 22, 23, 25, 26, 28, 34, 35, 38, 40, 43, 44, and 55, (4) in all Illustrative Map SDs I analyze (with the possible exception of Illustrative Map 1 SD 40, which is borderline), (5) in enacted LDs 61, 65, 74, 78, 115, 116, 117, 142, 143, 151, 154, 161, 163, 165 and 171, (6) and in all Illustrative Map LDs I analyze.

7. In terms of minority groups' ability to elect their candidates of choice in the enacted congressional, state Senate and state House districts that I examine, revised maps could clearly result in greater minority representation. Furthermore, some districts with meaningful minority population levels nonetheless offer minority groups a limited ability to elect their candidates of choice based on past elections.

8. The Illustrative Maps drawn by the plaintiffs' map-drawing expert Moon Duchin offer an increased ability to elect the minority-preferred candidates in the districts I have been asked to examine. When looking across statewide elections since 2012 where minority candidates ran against non-minority candidates, in the Illustrative Congressional District Map minority candidates won these elections more than half the time in 6 of the 14 districts (43%); this contrasts with the enacted Congressional District Map, where minority candidates won more than half the time in such elections in 5 of the 14 districts (36%). In the Illustrative State Senate Maps, minority candidates won more than half the time in such elections in 5 of the 5 districts that I examined in Illustrative

Map 1 (100%) and in 2 of the 2 districts that I examined in Illustrative Map 2 (100%). This performance contrasts with the enacted Senate Districts I have examined, where minority candidates won more than half the time in 67% of districts. The Illustrative Maps for the State House outperform the enacted map in terms of ability to elect minority candidates as well.

Methodological Approach

Identifying Racially Polarized Voting

9. Racially polarized voting (RPV) occurs when the majority group and a minority racial group vote differently. To identify instances of RPV in Georgia, I examine (1) whether members of a minority group of interest appear to be *cohesive* in their electoral support for a candidate of choice (Specifically, does more than half of a given minority group support the same candidate?); and, (2) whether White voters oppose this candidate (Specifically, do more than half of White voters oppose the minority candidate of choice?).[1]

10. To make these determinations, I analyze historical voting behavior from Georgia elections since 2012. The Georgia Secretary of State tracks turnout data by racial group in each precinct, along with aggregate vote totals for each candidate in each precinct. While elections from 2012 to 2021 were conducted

[1]For a detailed discussion of cohesion, see Bernard Grofman, Lisa Handley, and Richard G. Niemi, Minority representation and the quest for voting equality, Cambridge University Press, 1992. The authors note that courts have concluded that cohesiveness "is to be measured with reference to voting patterns" (p. 68), and that "minority groups are politically cohesive if they vote together for minority candidates" (p. 73).

under the previous district maps, I focus primarily on elections for which changes in district lines are unlikely to affect vote choice. Specifically, I use historical national and state-wide elections to evaluate congressional, state House and state Senate districts. I discuss in more detail the specific elections I have selected to study, and the rationale for my choices, in the next section.

11. Because elections are conducted under a secret ballot, it is not possible to tally vote choice directly for each racial group in order to assess voter behavior in each enacted district. Instead, I estimate racial-group-level vote totals based on the precinct-level election data, producing estimates for each racial group's vote share in support of each candidate.[2]

12. To do this, I employ a standard approach in the political science literature and in redistricting litigation when one must estimate the voting behavior of specific racial groups based on aggregate vote totals: ecological inference (EI).[3] Ecological inference makes use of (1) the statistical information captured by how strongly a candidate's level of support varies in tandem with variation in each racial group's population share across precincts, and (2) deterministic information captured in precincts that consist primarily of one racial group. For example, if a precinct is relatively homogeneous, one can place bounds on the range of possible voting behaviors for a racial group in that precinct, with the

[2]On the value of both statewide elections and precinct-level data, see Gary King, A Solution to the Ecological Inference Problem: Reconstructing Individual Behavior from Aggregate Data, Princeton University Press, 1997. King writes: "For electoral applications, choosing data in which all geographic units have the same candidates (such as precincts from the same district or counties form the same statewide election) is advisable so that election effects are controlled" (p. 28).

[3]King, 1997.

most extreme version of this occurring when a precinct is entirely homogeneous.[4] The key advantage of EI is that it combines both the statistical and deterministic information I have just described. Technical summaries of the EI approach can be found in a variety of sources, including King, Rosen and Tanner (2004).[5] In this report, I use the RxC method of ecological inference, allowing me to identify voting patterns across all the primary racial groups in Georgia at once. This approach is based upon the hierarchical model described in Rosen, Jiang, King and Tanner (2001),[6] and the draws from this model's posterior distribution are obtained using a Metropolis-within-Gibbs sampling algorithm.[7] Previous research comparing approaches including ecological regression, 2x2 ecological inference and the Rosen et al. (2001) method has found that these approaches tend to yield similar results, with Rosen et al. (2001) having a slight edge in instances with more than two racial groups.[8] Additionally, a variety of published research and legal cases have made use of this method.[9]

[4]Otis Dudley Duncan and Beverly Davis, "An alternative to ecological correlation," *American Sociological Review* (1953).

[5]Gary King, Ori Rosen, and Martin A. Tanner, "Information in ecological inference: An introduction," In *Ecological Inference: New Methodological Strategies*, pp. 1-12, Cambridge University Press, 2004.

[6]Ori Rosen, Wenxin Jiang, Gary King, and Martin A. Tanner, "Bayesian and frequentist inference for ecological inference: The R× C case," *Statistica Neerlandica* 55, no. 2 (2001): 134-156.

[7]Olivia Lau, Ryan T. Moore, and Michael Kellermann, "eiPack: R× C ecological inference and higher-dimension data management," *New Functions for Multivariate Analysis* 7, no. 1 (2007): 43, Available at https://cran.r-project.org/web/packages/eiPack/index.html.

[8]Justin de Benedictis-Kessner, "Evidence in voting rights act litigation: Producing accurate estimates of racial voting patterns," *Election Law Journal* 14, no. 4 (2015): 361-381.

[9]Research articles making use of this approach include: Michael C. Herron and Jasjeet S. Sekhon, "Black candidates and black voters: Assessing the impact of candidate race on uncounted vote rates," *The Journal of Politics* 67, no. 1 (2005): 154-177. Matt Barreto, Loren Collingwood, Sergio Garcia-Rios, and Kassra AR Oskooii. "Estimating candidate support in Voting Rights Act cases: Comparing iterative EI and EI-R×C methods." *Sociological Methods & Research* 51, no. 1 (2022): 271-304. Legal cases where experts have presented opinions

Measuring District Performance

13. I also examine the performance of the districts being challenged along with newly proposed districts to assess if they allow minority groups to elect candidates of choice. I again use historical elections re-aggregated to the new districts to make this assessment, and I focus on several related questions: (1) What is the minority share of the electorate in the newly enacted districts? (2) In what share of past elections would the minority candidate of choice have won in these historical elections? (3) Given the results for the previous two questions, does the district as drawn constitute sufficient minority voting strength for minority voters to elect candidates of choice?[10]

Data Sources

14. To perform the analyses in this report, I rely on elections data from the Georgia Secretary of State's office and the Georgia General Assembly's Legislative and Congressional Reapportionment Office. Georgia, unlike many other states, records turnout data by race for all elections. As a result, there is no uncertainty about the turnout of different racial groups in Georgia and ecological inference analysis only needs to be used to determine voter preferences by race.

making use of RxC ecological inference include: *League of Women Voters of Ohio, et al. v. Ohio Redistricting Commission*, *Caster v. Merrill*, *Milligan v. Merrill*, and previous filings in this case among others.

[10]See Grofman, Handley and Niemi, 1992. They write: "What is clearly established by *Gingles* is that white bloc voting is legally significant, regardless of the actual percentages of whites voting against minority-preferred candidates, when it usually results in the defeat of the minority-preferred candidates" (p. 73).

15. The state has produced reapportionment reports that contained precinct-level voter registration and turnout by race[11] along with precinct-level vote totals for all general elections between 2014 and 2020. I also requested the data from the 2012 reapportionment report but the state did not provide it; as a result, I instead used 2012 reapportionment report data that I received directly from the Lawyers' Committee for Civil Rights. For the 2022 election, I received data on turnout from the Secretary of State's office but I did not receive precinct-level election totals. As a result, I again used data received from the Lawyers' Committee for Civil Rights.[12]

16. To analyze the 2018 and 2021 runoff elections, I used data compiled by the Voting and Election Science Team (VEST).[13] These files include precinct-level general election results and turnout data.

Maps

17. To use past election data to understand potential voter behavior in newly-drawn districts, I assign precincts to the enacted congressional and legislative

[11]Georgia includes the following options for voters to select as their race and/or ethnicity: American Indian, Asian/Pacific Islander, Black, Hispanic/Latino, Other, and White. For the purposes of this report, I focus on the behavior of Black, Hispanic/Latino, and White voters and I combine all other categories into the Other category. When analyzing RPV between Black, Hispanic and White voters I estimate vote shares for each of these four categories but only report the Black, Hispanic and White vote shares. When analyzing RPV between Black and White voters only I include Hispanic voters in the Other category.

[12]The precinct-level election results for the 2022 data were downloaded from the Secretary of State's website at https://sos.ga.gov/index.php/elections/federalgeneral_election_runoff_turnout_by_demographics_january_2021 and compiled by the Lawyer's Committee for Civil Rights.

[13]Voting and Election Science Team. "2020 Precinct-Level Election Results", Harvard Dataverse V29, 2020, https://doi.org/10.7910/DVN/K7760H.

district boundaries as well as the illustrative boundaries. In order to accomplish this, I downloaded GIS shape files from the Legislative and Congressional Reapportionment Office page on the Georgia General Assembly website.[14] These included shape files for the passed map of congressional districts, the passed map of state House districts, the passed map of state Senate districts, and precinct shape files for 2012, 2014, 2016, 2018 and 2020. For 2022, I used precinct shape files provided to me by the Lawyers Committee for Civil Rights. For the illustrative maps presented by the plaintiffs, I received data assigning each census block in the state to a district, which I converted into district-level shape files. I then spatially joined precincts for each election year to the enacted and illustrative districts.[15] In practice, the spatial join amounts to finding which precincts are contained within congressional, state Senate and state House districts and then assigning them to the new districts.

Elections

18. I estimate EI models using statewide general elections occurring between 2012 and 2022.[16] These consist of: US Presidential Elections in 2012, 2016

[14] Available at https://www.legis.ga.gov/joint-office/reapportionment.

[15] Specifically, the join is based on a point within the interior of the precinct boundaries and towards the middle of the precinct. I do not use the centroid of the precinct because a centroid can be located outside the boundary of a precinct for non-convex precinct shapes. Split precincts occur rarely; in 2022, for example, 1.18% of precincts in congressional districts, 1.22% of precincts in state Senate districts, and 5.83% of precincts in state House districts were split such that more than 5% of their area was contained in multiple districts.

[16] I omit any elections without a candidate from each of the major political parties as well as the 2020 US Senate special election. This election occurred between multiple candidates of different parties, including Raphael Warnock (D), Kelly Loeffler (R), Doug Collins (R), Deborah Jackson (D) and Matt Lieberman (D). This election is qualitatively different from the others as it presents an expanded choice set of candidates, multiple minority candidates, and no candidate

and 2020; US Senatorial Elections in 2014, 2016, 2020, 2021 (Runoff), and 2022 (General and Runoff); State Gubernatorial Elections in 2014, 2018 and 2022; State Lieutenant Governor Elections in 2014, 2018 and 2022; Secretary of State Elections in 2014, 2018 (General and Runoff) and 2022; State Agriculture Commissioner Elections in 2014, 2018 and 2022, State Attorney General Elections in 2014, 2018 and 2022; State Insurance Commissioner Elections in 2014, 2018 and 2022; State Labor Commissioner Elections in 2014, 2018 and 2022; State Superintendent of Public Instruction Elections in 2014, 2018 and 2022; and, State Public Service Commissioner Elections in 2014, 2018 (General and Runoff), 2020 and 2021 (Runoff).

20. When studying the extent of legally significant racially polarized voting in general elections, I estimate ecological inference results for general elections but not for primaries. Primary elections can be of use in an RPV analysis, but in my view studying them is not necessary or sufficient for drawing conclusions about racially polarized voting in Georgia general elections. For example, if racially polarized voting occurs in a Georgia primary election it does not necessarily imply that racially polarized voting will occur in the general election, and vice versa. The primary electorate is often considerably different than the electorate in a general election. Indeed, political science research has found "consistent support for the argument that primary and general electorates diverge in their policy ideology."[17] Thus, in my judgment, it is sufficient in this case to examine

receiving a majority of votes. Due to these factors, the election poses a less clear test of racially polarized voting, and I do not attempt to draw any conclusions from it at the statewide level or in my subsequent analysis of voting behavior within specific districts.

[17]See Seth J. Hill, "Institution of nomination and the policy ideology of primary electorates,"

behavior in general elections in order to determine the extent of racially polarized voting in Georgia general elections.

21. While I estimate RPV results for all statewide general elections since 2012, I rely on those elections in which a minority candidate was one of the two major party candidates running for office as most probative for making inferences about racially polarized voting.[18] In Georgia between 2012 and 2022, among the statewide elections that I examine, a minority candidate ran against a non-minority candidate in the following instances:

- 2012 Presidential Election, Barack Obama (D)
- 2014 Insurance Commissioner Election, Liz Johnson (D)
- 2014 Labor Commissioner Election, Robbin Shipp (D)
- 2014 Lt. Governor Election, Connie Stokes (D)
- 2014 Secretary of State Election, Doreen Carter (D)
- 2014 Superintendent of Public Instruction, Valarie Wilson (D)
- 2014 Public Service Commissioner 4 Election, Daniel Blackman (D)
- 2018 Gubernatorial Election, Stacey Abrams (D)
- 2018 Insurance Commissioner Election, Janice Laws Robinson (D)
- 2018 Superintendent of Public Instruction Election, Otha Thornton (D)
- 2020 Public Service Commissioner 1 Election, Robert Bryant (D)

Quarterly Journal of Political Science 10, no. 4 (2015), p. 480.

[18] An election between a minority and a non-minority candidate provides variation in the race of the candidate and therefore offers a test of whether race might matter in vote choice among different voter groups. Some past cases have also placed more weight on elections between a minority and non-minority candidate: "Elections between white and minority candidates are the most probative in determining the existence of legally significant white bloc voting." See *Old Person v. Cooney*, 230 F.3d 1113, 112324 (9th Cir. 2000).

- 2020 Public Service Commissioner 4 Election, Daniel Blackman (D)
- 2020 US Senator Special Election, Raphael Warnock (D)
- 2021 Public Service Commissioner 4 Runoff, Daniel Blackman (D)
- 2021 US Senator Special Election Runoff, Raphael Warnock (D)
- 2022 Gubernatorial Election, Stacey Abrams (D)
- 2022 Secretary of State Election, Bee Nguyen (D)
- 2022 Agriculture Commissioner Election, Nakita Hemingway (D)
- 2022 Insurance Commissioner Election, Janice Laws Robinson (D)
- 2022 Labor Commissioner Election, William Boddie (D)
- 2022 Superintendent of Public Instruction Election, Alisha Searcy (D)

22. In addition to these elections, I also include elections in which no minority candidate ran or two minority candidates ran as major party candidates. These are useful for establishing a general pattern of vote choice for different racial groups, even if elections with a single minority candidate are most probative for determining the extent of RPV. In all of my subsequent RPV analysis, I examine the vote shares cast in support of the statewide minority-preferred candidate for a given election. I define the statewide minority-preferred candidate as the candidate who garnered the majority of votes cast by minority voters according to statewide EI estimates.[19]

[19]Note that for any given election it must still be determined whether the statewide minority-preferred candidate is supported cohesively by the minority groups considered in this report. But, whether or not this occurs, by definition there will always be one candidate who received a majority of votes cast by minority voters.

EI Analysis of Enacted Districts

Statewide

23. I begin by analyzing the extent of RPV that has occurred overall in historical statewide elections. At the state level, elections in Georgia exhibit an unambiguous and consistent pattern of racially polarized voting. I make this determination by examining the vote choices of racial groups across past elections.

24. Figure 1 plots the EI estimates for the set of statewide elections under consideration, which were held from 2012 to 2022. The labels on the left side of the plot indicate the specific elections considered. Elections for which one minority candidate ran against a non-minority candidate are indicated with a star. In the plot, the point estimates illustrating the level of support for a candidate are marked with a circle. In this and in all subsequent analyses, these circles represent my estimate of two-party vote share for the minority-preferred candidate (e.g., the votes cast for the preferred major party candidate divided by the sum of the votes cast for the candidates of both major parties) for a given election. The point estimates can be understood in this context as the vote shares that were most likely to have generated the pattern of data (e.g., votes cast for candidates and turnout among different racial groups) that occurred across precincts in a given election. Additionally, the horizontal lines emanating from either side of the circles indicate the bounds of the 95% confidence intervals. The 95% intervals reflect the uncertainty of each estimate; specifically, for the

EI model, they mark the interval for which there is a 95% probability that the true vote share is contained within the lower and upper bounds.[20] In instances where no confidence interval is visible, the intervals are narrow and not visible to the eye (though they still exist).

25. I will explain and interpret these plots in two steps.[21] First, the points clustered on the right side of the plot indicate large majorities of Black and Hispanic voters all supported minority candidates in each election in which they ran between 2012 and 2022 and were opposed by non-minority candidates. In elections without a minority candidate, these voters still acted cohesively to support other minority-preferred candidates.[22]

26. For example, in the 2018 gubernatorial election, I estimate that about 99% of Black voters supported Stacey Abrams, a minority candidate. This overwhelming level of support among Black voters for minority candidates running against non-minority candidates is similar across all other elections as well, including for Barack Obama in 2012 (98%), Connie Stokes in 2014 (98%), Doreen Carter in 2014 (98%), Otha Thornton in 2018 (99%) and Raphael Warnock in 2021 (99%).

[20]See Guido W. Imbens, "Statistical significance, p-values, and the reporting of uncertainty," *Journal of Economic Perspectives* 35, no. 3 (2021): 157-74. Also see Andrew Gelman, John B. Carlin, Hal S. Stern, and Donald B. Rubin, *Bayesian data analysis*, Chapman and Hall/CRC, 1995. Note that this interpretation of a 95% interval is in subtle contrast with a non-Bayesian or frequentist interpretation of the confidence intervals, which is that if this estimation were repeated for numerous iterations of a given election, the calculated 95% confidence intervals would contain the true value of a racial group's vote share 95% of the time.

[21]I have included with this report a digital Supplementary Appendix file recording individual estimates and confidence intervals for each election studied in a plot.

[22]Table 10 in the Appendix reports the full list of statewide minority-preferred candidates based on my estimates.

27. I estimate that about 96% of Hispanic voters supported Abrams in 2018. Again, the results are generally similar across other elections I examined with minority candidates. When a minority candidate was not one of the two major party candidates, minority voters continued to vote cohesively, supporting particular candidates at overwhelming rates. Overall, then, I conclude that Black and Hispanic voters' past behavior in statewide elections reveals that these groups had a clear *candidate of choice* in each election, with large majorities of these voters supporting the same candidate in each election and voting cohesively. And, in particular, when a minority candidate ran against a non-minority candidate in a general election, a clear majority of each racial minority group voted for the minority candidate.

28. Second, I study voting patterns of White voters. As an example, I estimate that in 2018 15% of White voters supported Abrams. Similarly, across all historical statewide elections between 2012 and 2022, considerably less than half of White voters supported minority candidates (when running against non-minority candidates). A majority of White voters voted against the candidate of choice of minority voters. With this information in mind, my assessment is that these historical elections exhibit clear evidence of racially polarized voting at the statewide level. Hispanic and Black voters cohere around the same candidates of choice, and White voters oppose them, consistent with RPV. Thus, any new districts proposed as a remedy would be drawing from a state where there is evidence of racially polarized voting affecting the minority groups considered in this report.

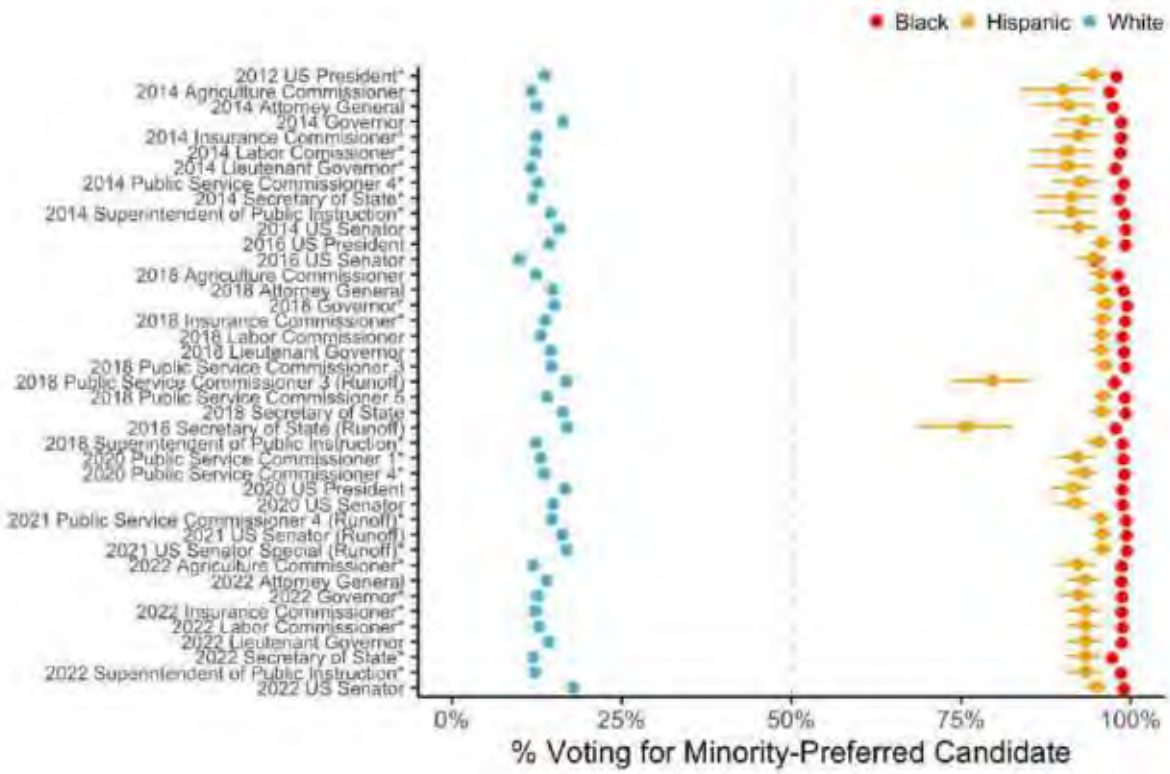

Figure 1: Ecological Inference Results — Statewide (Historical Elections, Two-Party Vote Shares), 3 Racial Groups

Congressional Districts

29. I have been asked to examine RPV between Black and White voters in all enacted congressional districts in the state. Figure 2 illustrates the boundaries of the state's congressional districts.

30. Table 1 records the share of the electorate comprised by each racial group in each congressional district. These estimates are based on averaging across the 2020 and 2022 turnout figures. Minority groups constitute a majority of the electorate in CDs 4, 5, 7 and 13 based on the turnout numbers from 2020 and 2022.

31. Figures 3 through 7 present the EI results for individual congressional districts. As before, the point estimate for a racial group's vote share in a given election is represented with a dot and the uncertainty in the estimate is reflected in the 95% confidence intervals that emanate from the point estimate.

32. For most districts, the analysis of RPV between White and Black voters is very straightforward. In CDs 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13 and 14, Black voters supported, by an overwhelming margin, the minority candidate in all historical elections in which they ran. When a minority candidate did not run or when multiple minority candidates ran, Black voters supported the statewide minority-preferred candidates in these districts: the confidence intervals never overlap with the threshold for majority support (e.g., 50%). White voters opposed the candidate of choice of Black voters in every historical election. Again, the confidence intervals on the estimates for White voters never

overlap with the the threshold for majority support.

33. For example, CD 3 demonstrates clear evidence of RPV between White and Black voters for all elections that I examine. For Black voters, I never estimate a minority-preferred candidate vote share below 92.8%. For White voters, I never estimate a minority-preferred candidate vote share above 12.2%.

34. As another example, CD 7 presents another strong example among the congressional districts of RPV, with Black voters cohering around minority candidates (and other minority-preferred candidates) and with White voters opposing these candidates of choice. In every election with a minority candidate running against a non-minority candidate, minority voters supported the minority candidate, often overwhelmingly. For example, in the 2018 Gubernatorial race, I estimate that 97% of Black voters supported Abrams. In contrast, 19% of White voters in the district supported Abrams according to my estimates. None of the confidence intervals overlapped with the threshold for majority support in this election. The same pattern generally holds in earlier election years where minority candidates ran. In my view, this pattern constitutes clear evidence of RPV.

35. CD 4 exhibits evidence of RPV between White and Black voters as well. In more recent elections a majority of White voters occasionally voted along with minority racial groups; however, this did not occur for any elections in which a minority candidate ran against a non-minority candidate. Two of the four instances where this occurred were lower salience elections, such as the 2018 Runoffs for Secretary of State and for Public Service Commissioner.

Overall, CD 4 suggests to me cohesive behavior across Black voters in support of minority candidates (and other minority-preferred candidates). White voters have reliably opposed the minority candidates of choice.

36. Unlike all other congressional districts in the state, CD 5 does not exhibit evidence of racially polarized voting. White voters in the district tended across a majority of elections to support the same candidate as minority voters. Based on my analysis, Black voters supported minority candidates in all historical elections, but White voters opposed this candidate of choice in only 15% of these elections.

37. To sum up, I observe RPV between Black voters on the one hand and White voters on the other hand when pooling across all CDs (e.g., statewide) as well as specifically for all CDs other than CD 5. In each of these congressional districts, when I focus specifically on elections with one minority candidate, Black voters supported that candidate and were opposed by White voters every time since 2012.

Figure 2: Map of Enacted Congressional Districts

Table 1: Percentage of Electorate by Race, Average of 2020 and 2022 Elections, Enacted CDs

CD	Black	Hispanic	White	Other
1	23.9%	1.8%	64.8%	9.5%
2	40.7%	1.1%	51.9%	6.3%
3	21.0%	1.8%	67.5%	9.7%
4	48.8%	2.3%	35.9%	12.9%
5	39.3%	2.3%	44.1%	14.2%
6	7.2%	3.3%	70.2%	19.2%
7	28.3%	6.5%	43.6%	21.5%
8	24.5%	1.2%	68.5%	5.7%
9	9.1%	4.0%	75.2%	11.7%
10	18.2%	2.1%	70.3%	9.3%
11	14.0%	3.6%	71.1%	11.2%
12	30.0%	1.4%	60.4%	8.2%
13	63.6%	2.8%	20.9%	12.7%
14	13.5%	3.1%	74.8%	8.6%

Note: This table reports the share of the electorate, based on the average across 2020 and 2022 turnout, of each racial group in a given congressional district.

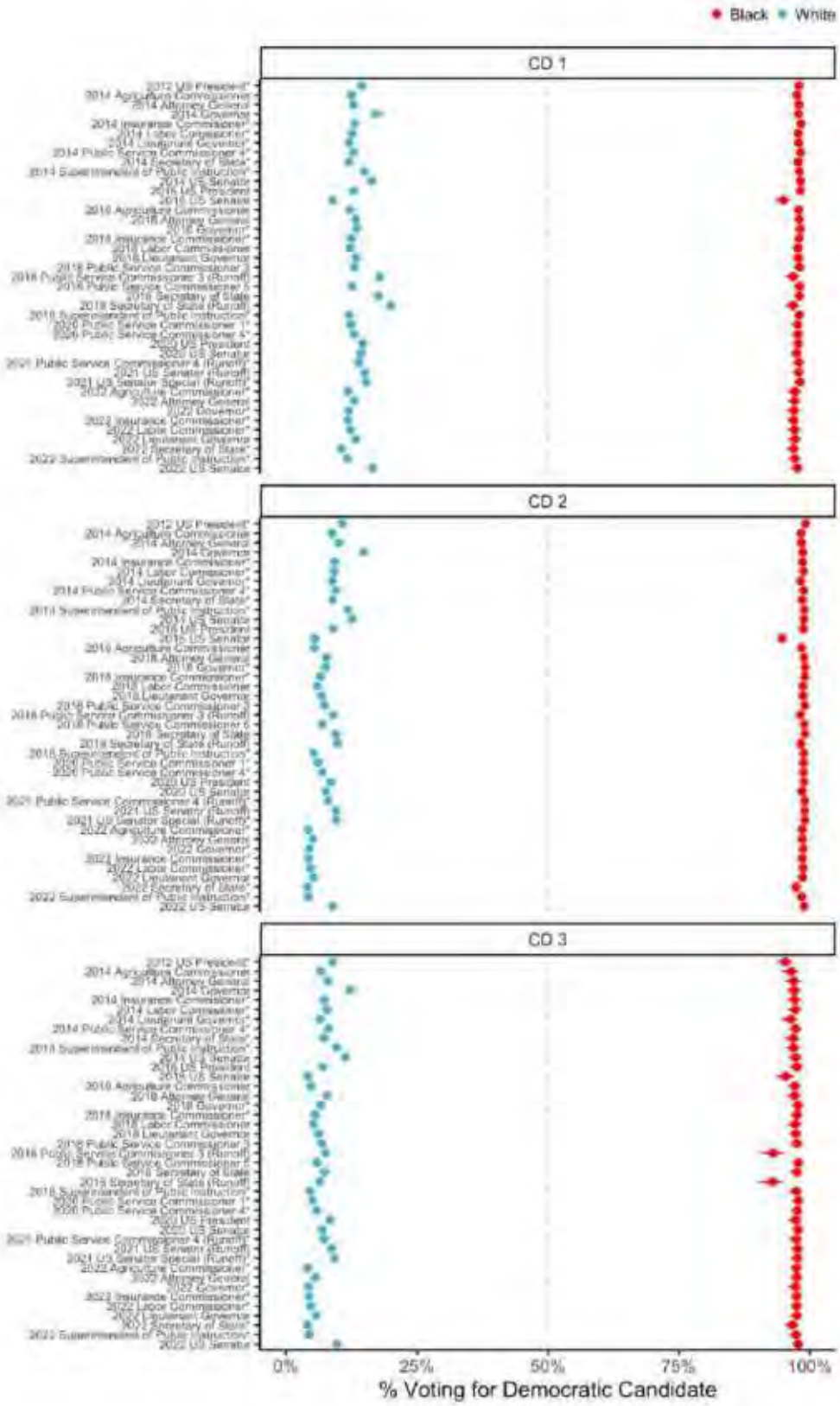

Figure 3: Ecological Inference Results — Enacted Congressional Districts (Historical Elections, Two-Party Vote Shares)

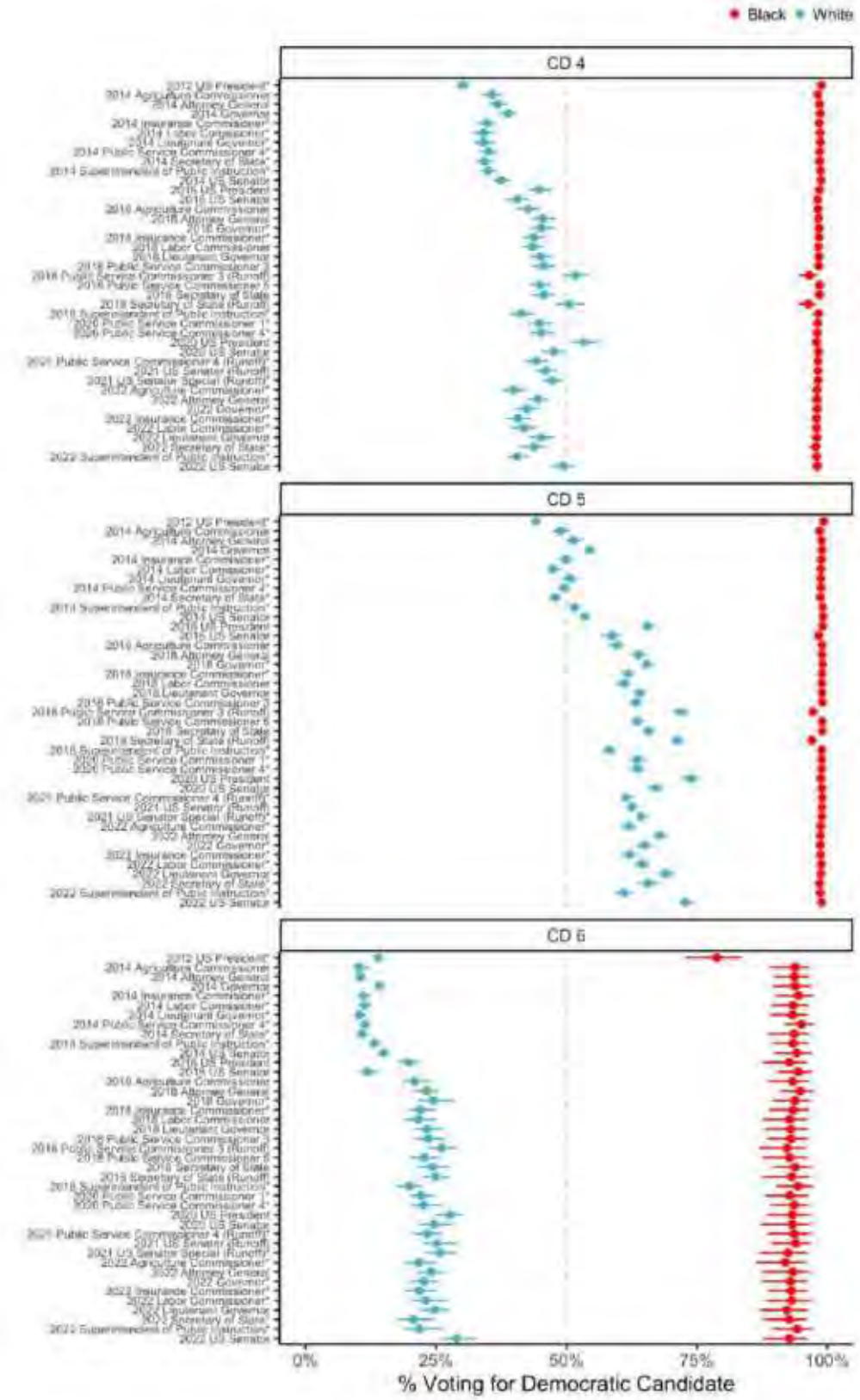

Figure 4: Ecological Inference Results — Enacted Congressional Districts (Historical Elections, Two-Party Vote Shares)

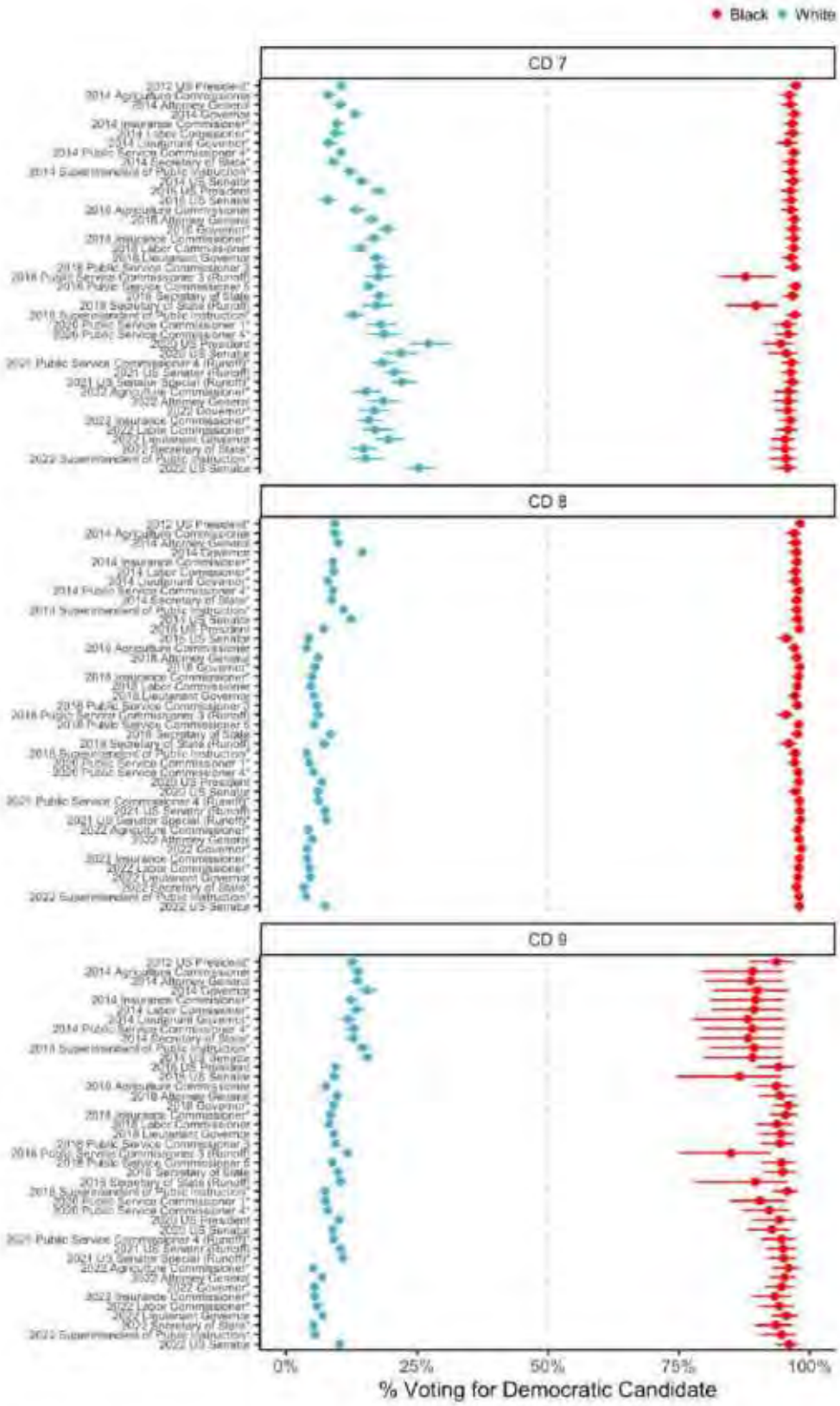

Figure 5: Ecological Inference Results — Enacted Congressional Districts (Historical Elections, Two-Party Vote Shares)

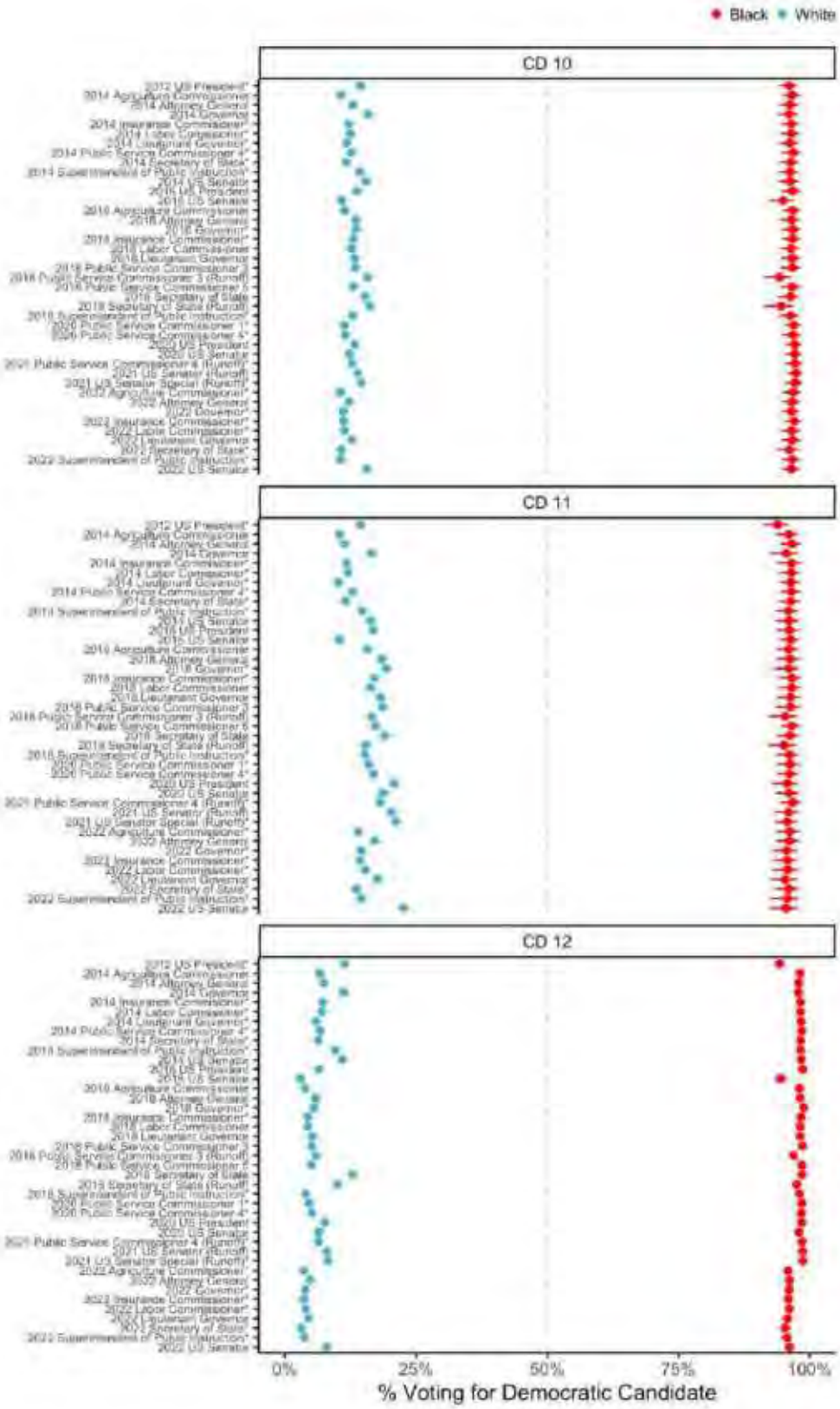

Figure 6: Ecological Inference Results — Enacted Congressional Districts (Historical Elections, Two-Party Vote Shares)

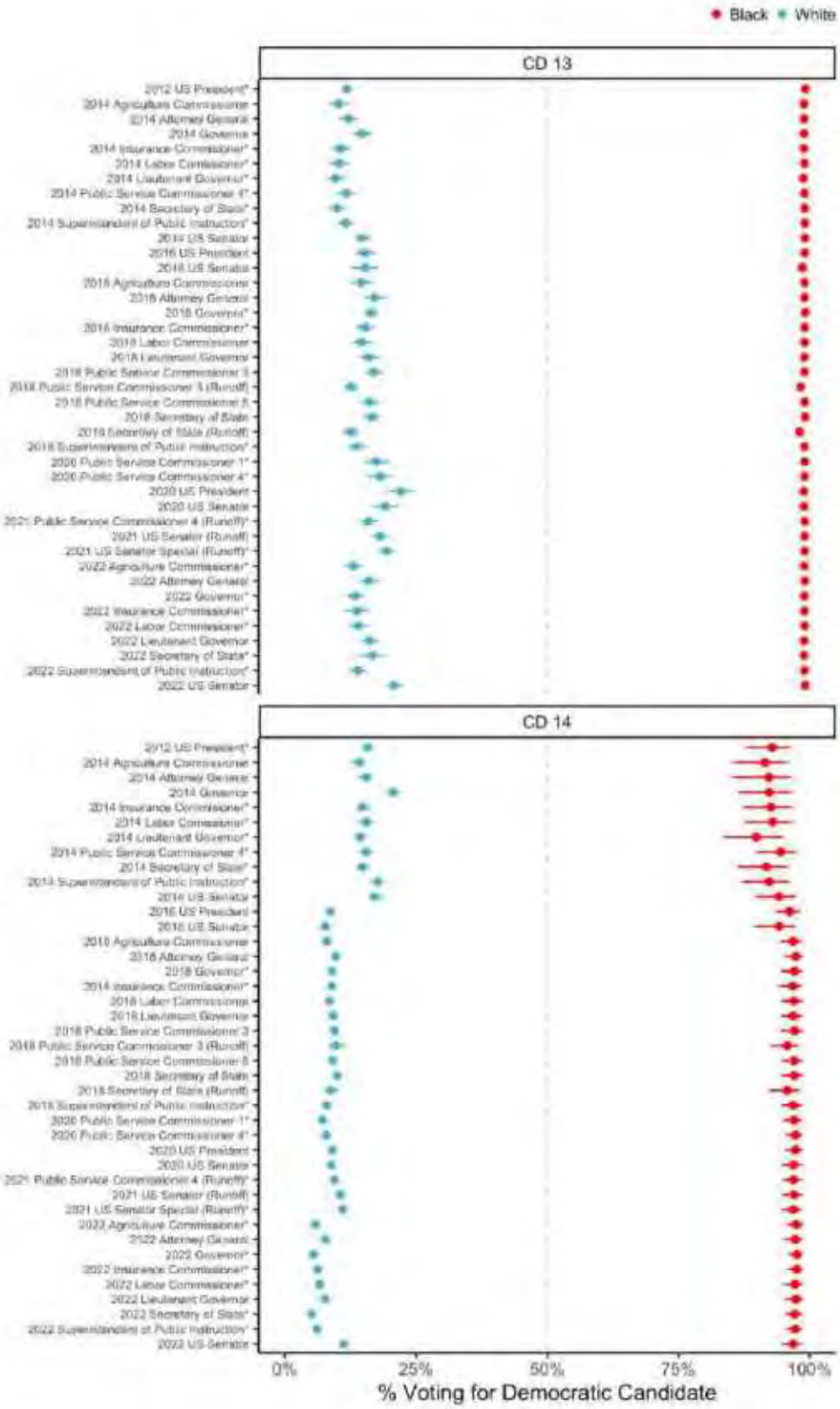

Figure 7: Ecological Inference Results — Enacted Congressional Districts (Historical Elections, Two-Party Vote Shares)

State Senate Districts

38. I was asked to examine enacted State Senate districts (SDs) that meaningfully overlapped with any focus illustrative SDs drawn by the plaintiffs' expert Moon Duchin. Therefore, I examine enacted SDs whose areas are comprised of 10% or more of an illustrative SD. Specifically, I analyze SDs 9, 16, 17, 22, 23, 25, 26, 28, 34, 35, 40, 41, 43, 44 and 55. Figure 8 presents a map of SDs in Georgia, with the districts in question shaded in dark gray. The SDs I am considering stretch in an almost contiguous band from west Georgia through Metro Atlanta to the eastern part of the state.

39. Of these districts, I have been asked to examine the extent of RPV between Black and Hispanic voters on the one hand and White voters on the other hand in SDs 16, 22, 23, 25, 26 and 44.[23] In all other SDs, I examine RPV between Black and White voters.

40. Figures 9-12 present the results of the EI analysis. I include estimates for Hispanic voter behavior in those districts where I have been instructed to examine it, and I omit it for the other districts. SDs 16, 22, 23, 25, 26 and 44 exhibit clear evidence of RPV with Black and Hispanic voters cohering around minority candidates and White voters opposing them in every historical election

[23]Since Hispanic voters comprise a small share of the electorate in many SDs, and the SDs sometimes contain a small number of precincts, when analyzing RPV with Hispanic voters I perform a statewide EI analysis to determine precinct-level estimates, then I aggregate the precinct-level estimates up to the district in question. Compared with an EI analysis restricted to a single district, this approach adds an assumption that racial group voting behavior outside of the district contains useful information about racial group voter behavior within the district. This is similar in nature to the maintained assumption in any district-level EI analysis that behavior in one precinct is informative about behavior in another.

with a minority candidate that I examine. SDs 9, 17, 28, 34, 35, 43 and 55 exhibit evidence of RPV between Black and White voters, again with Black voters cohering around the minority candidate and White voters opposing this candidate.

41. For SDs 40 and 41 the evidence is slightly less clear cut. In SD 41, White voters join Black voters in support for minority candidates more than half the time. In my judgment, there is not racially polarized voting in this district. Importantly, it is worth noting that SD 41's boundaries contain less than half of an Illustrative district.[24] On the other hand, in SD 40 White voters opposed minority candidates in all but a handful of elections. Given the overall record of historical elections, my assessment is that there is evidence of RPV in SD 40.

42. Aside from the above exceptions, there is evidence of racially polarized voting behavior between Black and White voters in every other State Senate district I analyzed. Black voters clearly supported the minority-preferred candidate in every election under study, including those elections with a minority candidate running. White voters opposed their candidate of choice. Similarly, in the districts where I have been asked to assess behavior among Hispanic voters, I find evidence of RPV with Black and Hispanic voters supporting the minority-preferred canddiate and White voters opposing them in every election.

[24]About 39.6% of Illustrative Map 1 SD 40 is contained in enacted SD 41.

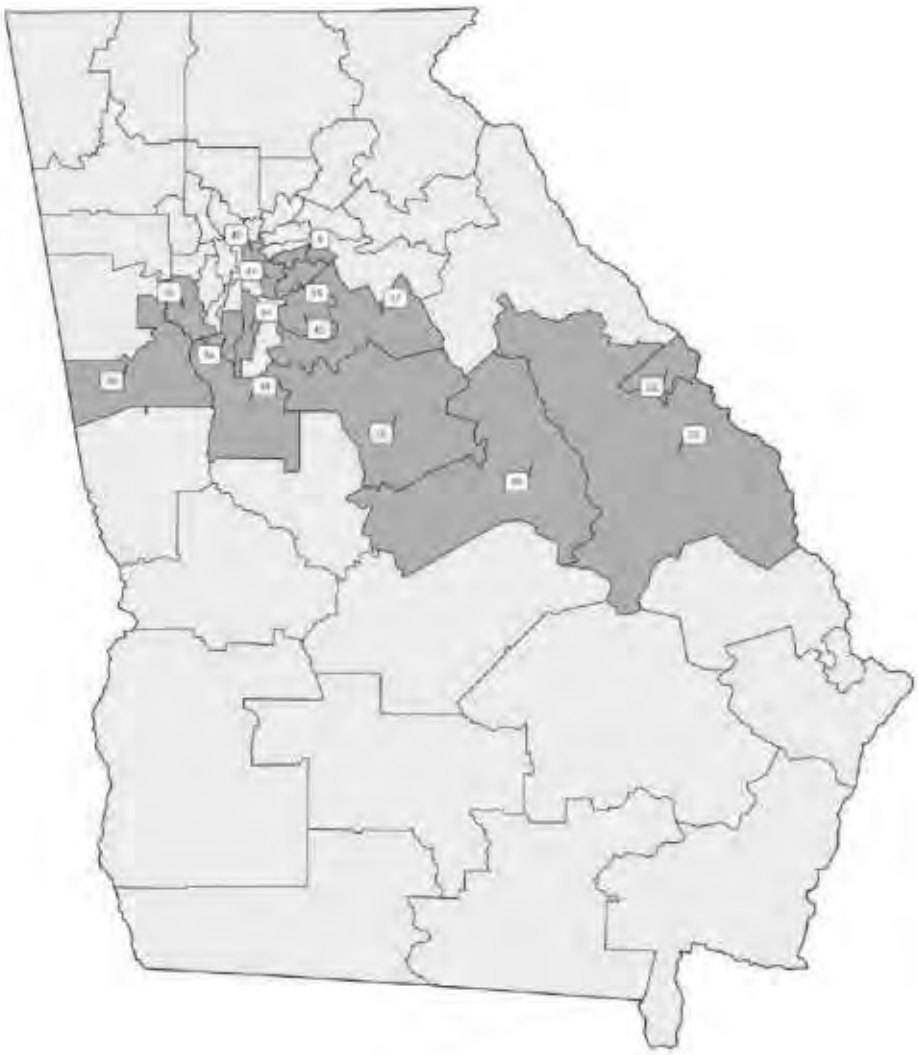

Figure 8: Map of Focus State Senate Districts

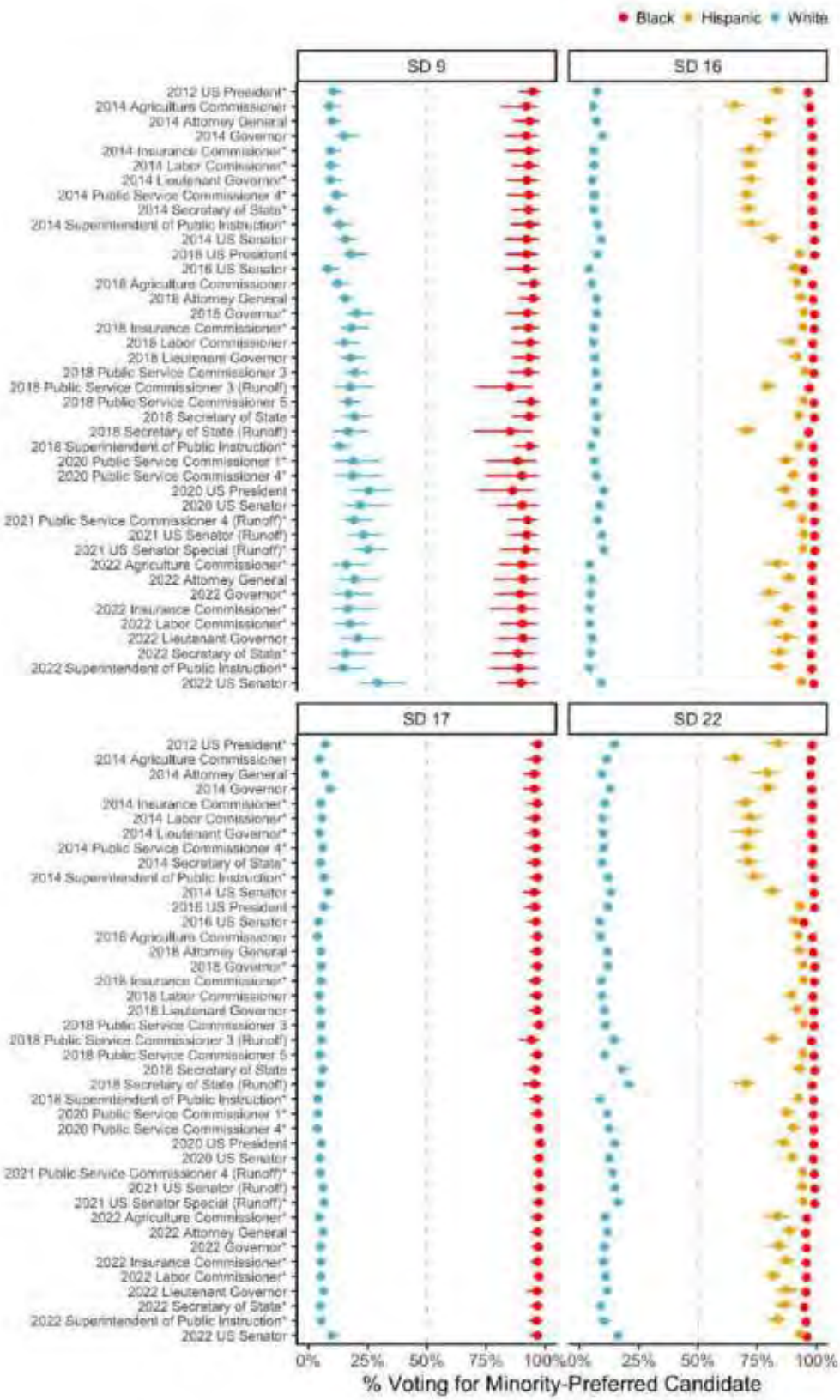

Figure 9: Ecological Inference Results — State Senate Districts (Historical Elections, Two-Party Vote Shares)

Figure 10: Ecological Inference Results — State Senate Districts (Historical Elections, Two-Party Vote Shares)

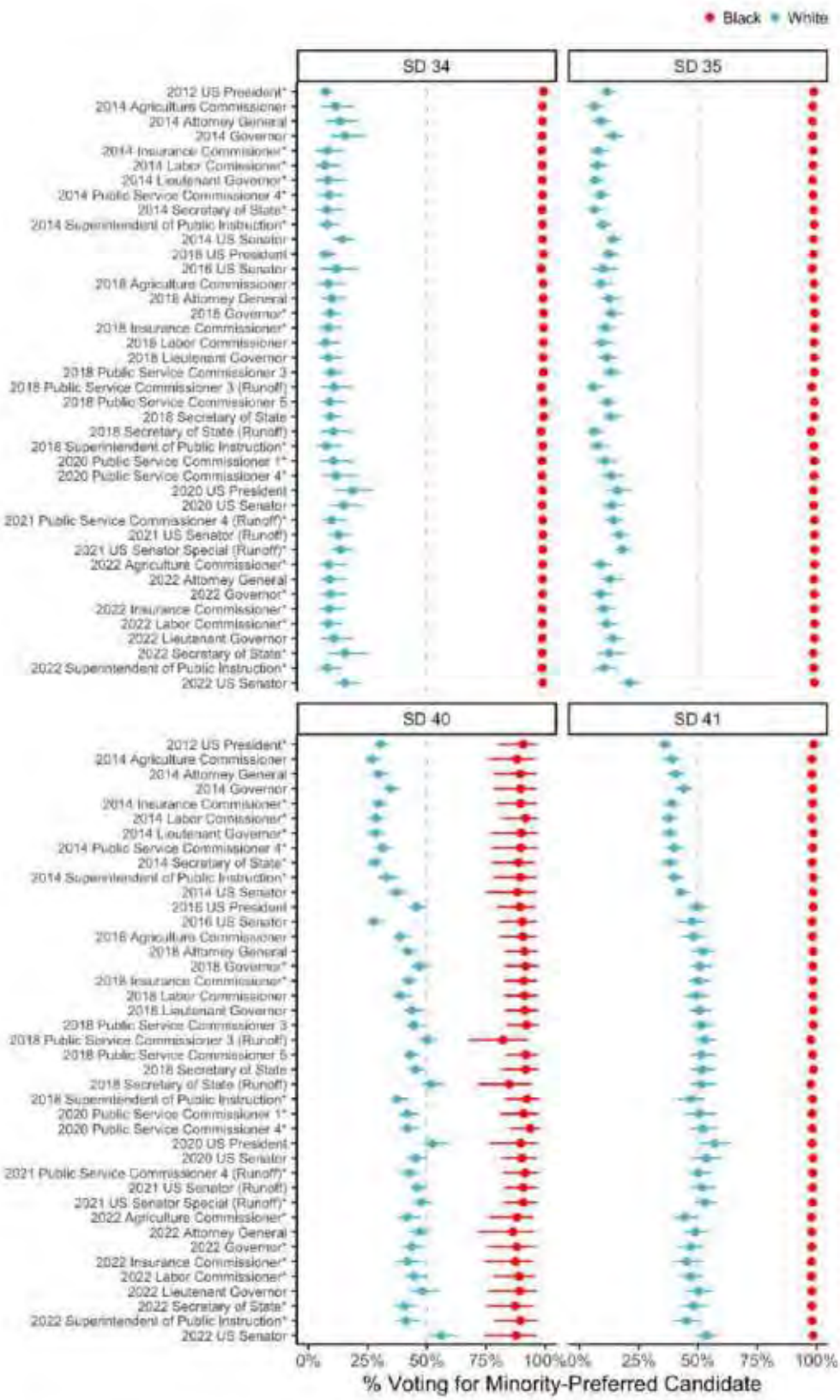

Figure 11: Ecological Inference Results — State Senate Districts (Historical Elections, Two-Party Vote Shares)

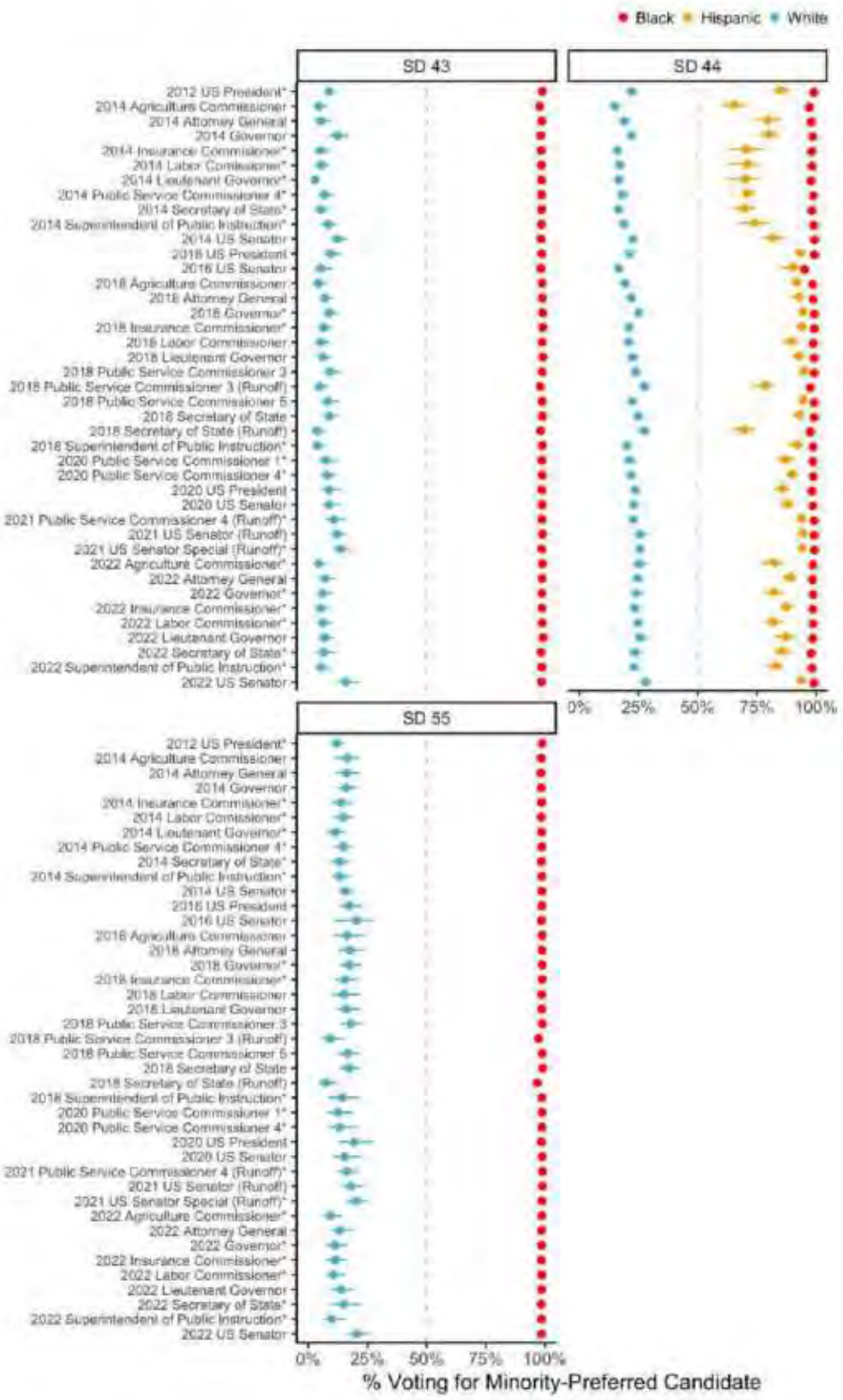

Figure 12: Ecological Inference Results — State Senate Districts (Historical Elections, Two-Party Vote Shares)

State House Districts

43. I was asked to examine enacted State House districts (LDs) that meaningfully overlapped with any focus illustrative LDs drawn by the plaintiffs' expert Moon Duchin. As before, I examine enacted LDs whose areas are comprised of 10% or more of an illustrative LD. Specifically, I analyze LDs 61, 64, 65, 66, 74, 78, 115, 116, 117, 140, 142, 143, 151, 154, 161, 163, 165 and 171. Figure 13 presents a map of LDs in Georgia, with the districts in question shaded in dark gray.

44. Of these districts, I have been asked to examine the extent of RPV between Black and Hispanic voters on the one hand and White voters on the other hand in LDs 161, 163 and 165.[25] In all other LDs, I examine RPV between Black and White voters.

45. Drawing conclusions from the EI analysis for the individual Georgia state House Districts can be slightly more challenging than for the other districts in the report since State House districts themselves are small and sometimes contain few precincts (e.g., less than fifteen). I have elected to report all results because with the Bayesian estimation methods used for EI they remain valid even for small samples; however, it is worth noting that some estimates will have wide confidence intervals, not necessarily due to voter behavior but simply because of the limited data available.

46. Figures 14-18 present the estimates for the House districts that I examine. LDs 61, 65, 74, 115, 142, 143, 151, 154 and 171 present clear evidence of RPV with Black voters selecting the minority candidates as their candidate of choice,

[25] I use the same method as with the State Senate districts to perform this analysis.

and White voters opposing these candidates in every historical election. LDs 161, 163 and 165 similarly present clear evidence of RPV with Black and Hispanic voters cohering to select the minority candidates as their candidate of choice, and White voters opposing these candidates in every historical election.

47. Of these districts with Black and Hispanic voters cohering, LDs 163 and 165 occasionally see White voters join with minority voters to support a minority-preferred candidate; however, this happens rarely and in fact never occurs when a minority candidate runs for election against a non-minority candidate.

48. For LDs 78 and 117 there is some uncertainty in the estimates for subsets of elections, but on balance the estimates show that Black voters supported minority candidates and were opposed by White voters in a vast majority of historical elections. For LD 116, the estimates reflect some uncertainty in the behavior of White voters, but there is significant evidence of RPV in 65% of elections and there is evidence of RPV in all 2022 statewide elections.

49. To sum up, then, I observe RPV between Black and White voters in LDs 61, 65, 74, 78, 115, 116, 117, 142, 143, 151, 154 and 171 and between Black and Hispanic voters on the one hand and White voters on the other in LDs 161, 163 and 165.

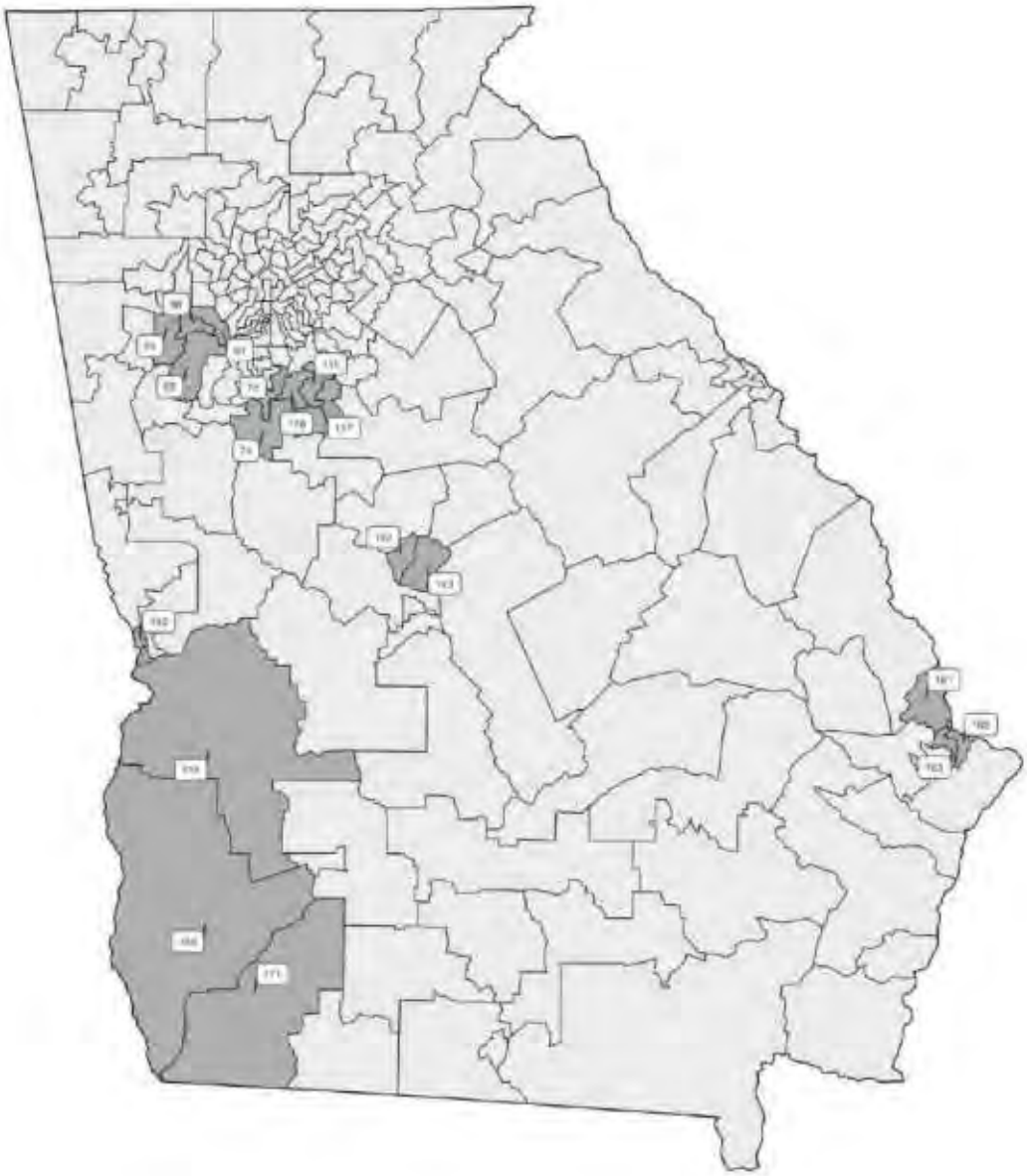

Figure 13: Map of Focus State House Districts

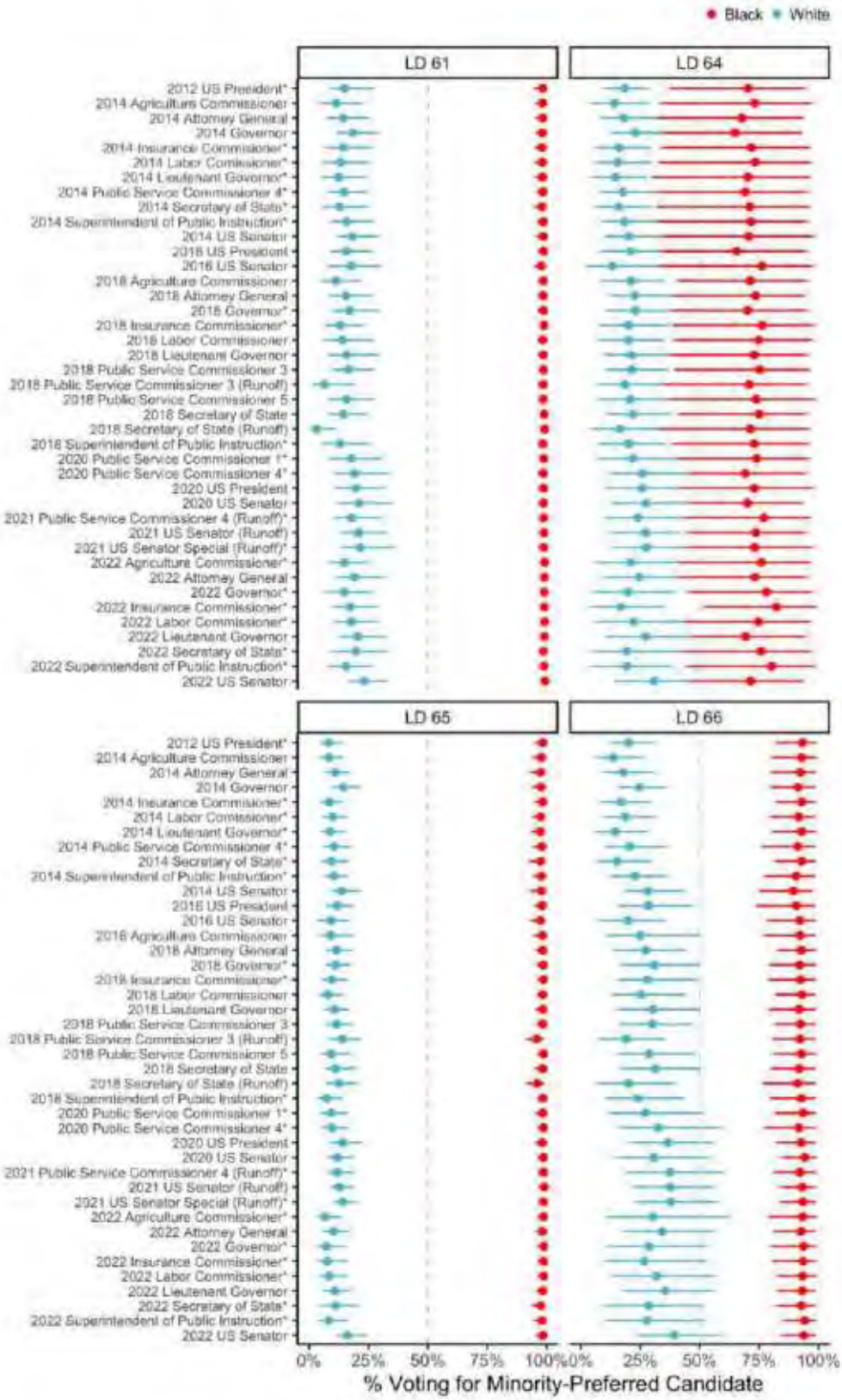

Figure 14: Ecological Inference Results — State House Districts (Historical Elections, Two-Party Vote Shares)

Figure 15: Ecological Inference Results — State House Districts (Historical Elections, Two-Party Vote Shares)

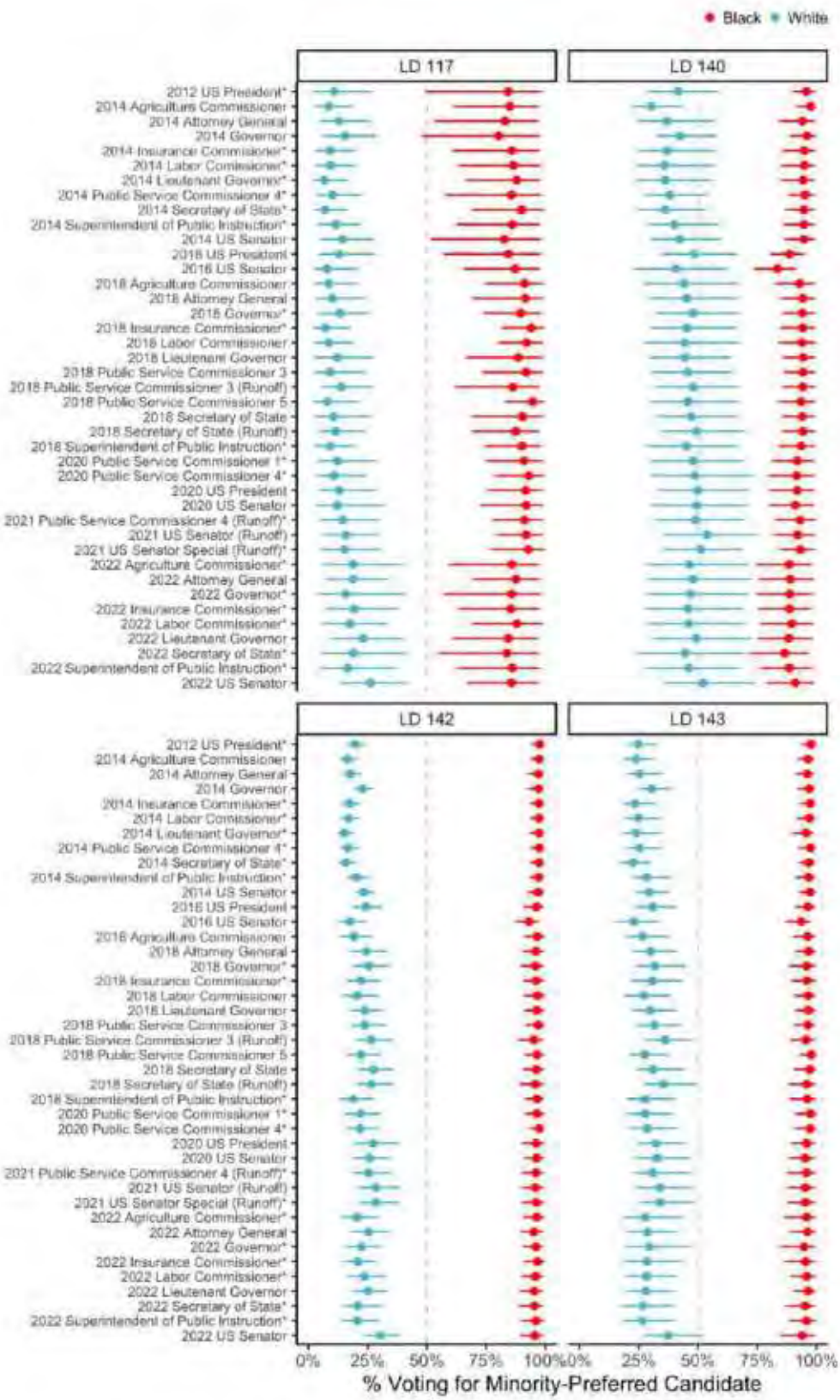

Figure 16: Ecological Inference Results — State House Districts (Historical Elections, Two-Party Vote Shares)

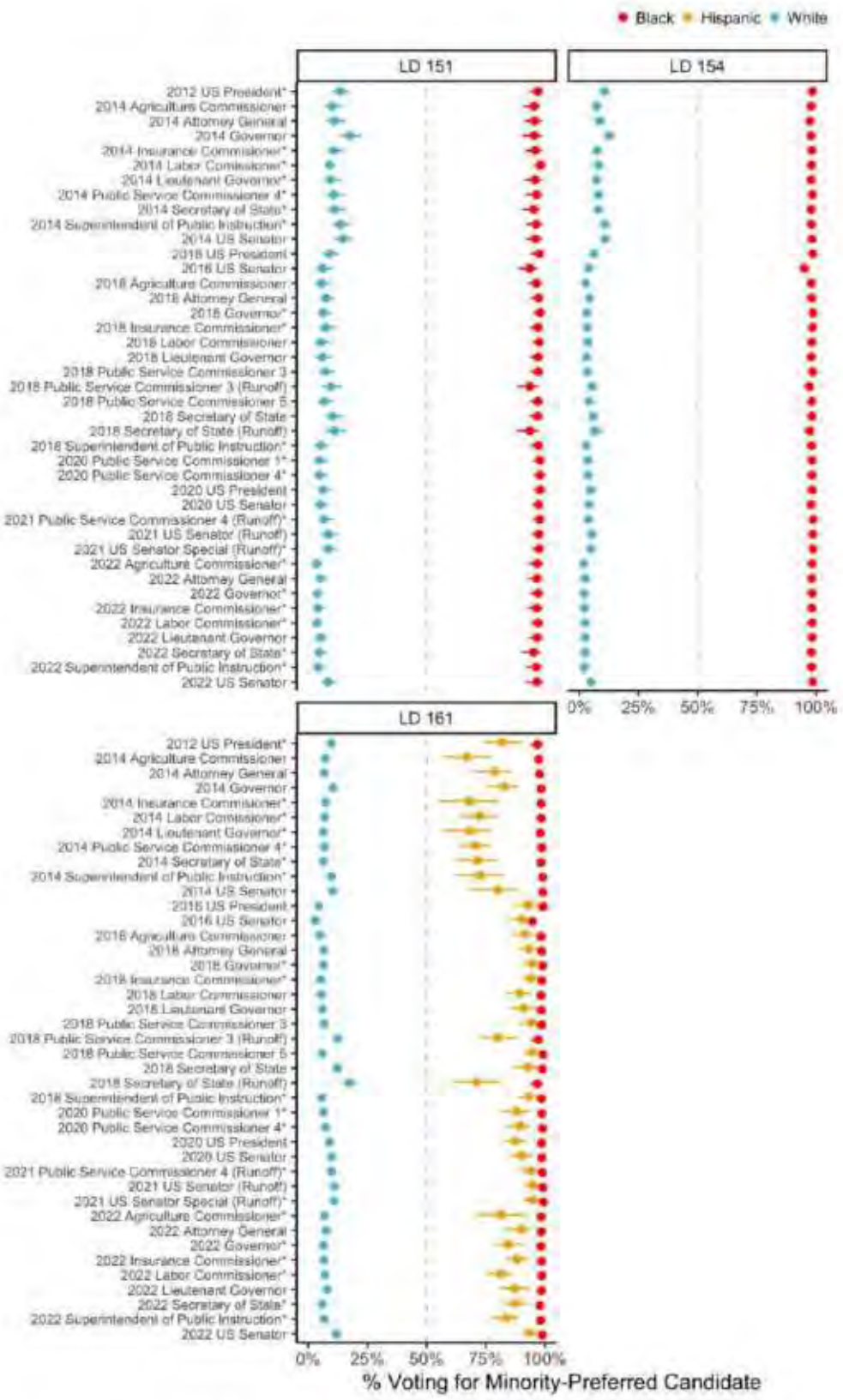

Figure 17: Ecological Inference Results — State House Districts (Historical Elections, Two-Party Vote Shares)

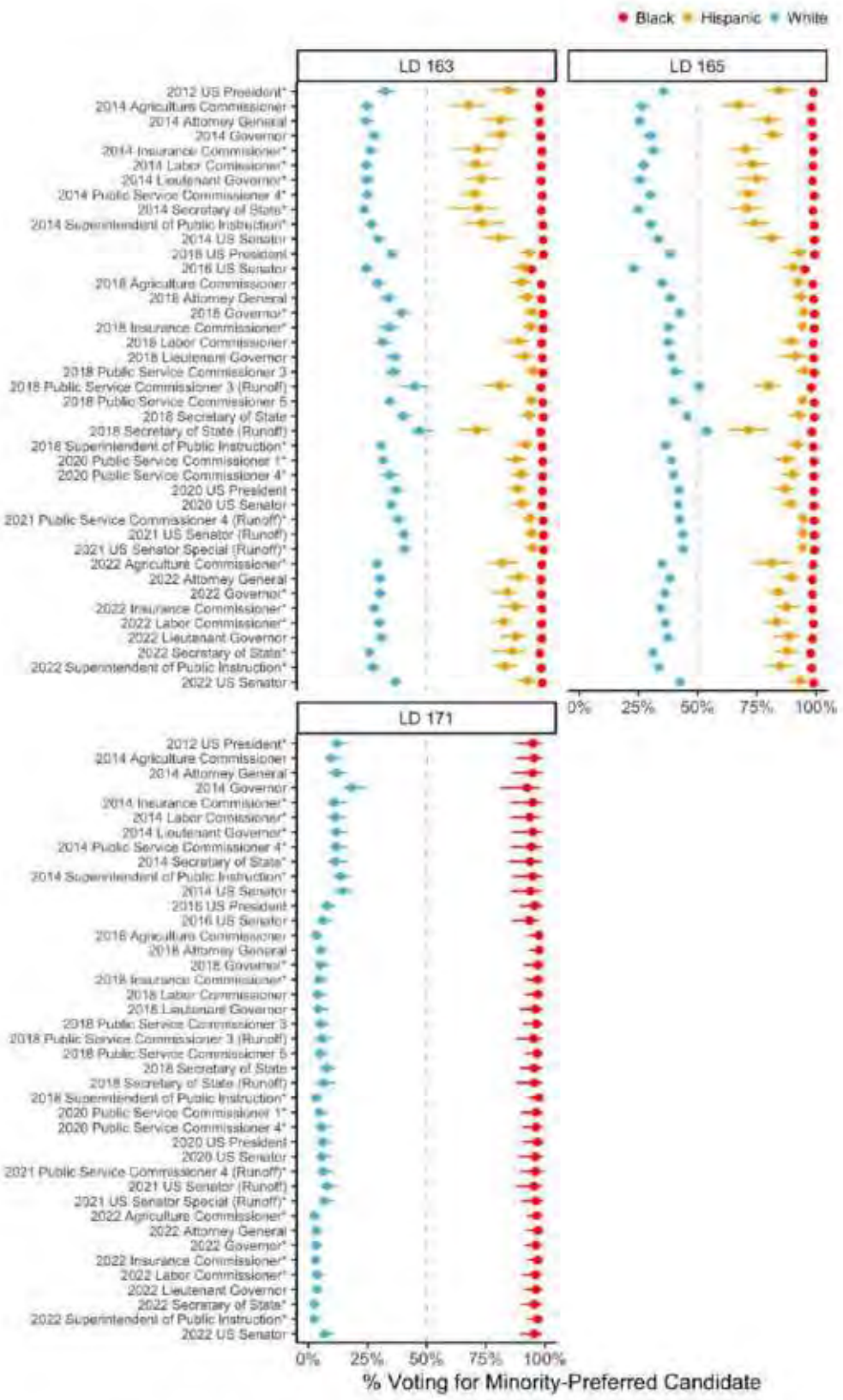

Figure 18: Ecological Inference Results — State House Districts (Historical Elections, Two-Party Vote Shares)

Clusters

50. I have also been asked to examine the extent of RPV in geographic clusters that were used as the starting point for drawing the plaintiffs' illustrative maps. Appendix Figure 30 depicts the geographic clusters given to me for the state Senate map. These clusters partition the state's Senate districts into the following broad geographic areas: Atlanta, East Black Belt, Gwinnett, Northwest, Southeast and Southwest. The plaintiffs' map-drawing expert Moon Duchin has created new illustrative Maps with districts focused in the Atlanta, East Black Belt and Gwinnett clusters. Therefore, I perform an EI analysis pooling the state Senate districts into these clusters. Figure 19 presents the results.

51. Across these clusters, I observe evidence of RPV between White and Black voters. For each cluster, Black voters cohesively support a candidate of choice and White voters oppose these candidates systematically. Furthermore, Hispanic voters tend to support the same candidates of choice as Black voters. In the Atlanta and Gwinnett clusters, Hispanic voters cohesively support the same candidate of choice as Black voters and the lower confidence interval on the vote share estimate does not overlap withe the 50% threshold in all elections where a minority candidate runs against a non-minority candidate. In fact, the only exceptions are two runoff elections in 2018. In the East Black Belt cluster, Hispanic voters also systematically support the same candidates of choice as Black voters. The estimates for elections before 2016 tend to be more uncertain, with the confidence intervals including the 50% threshold; however,

since 2016 the estimates are more certain and we can conclude that Hispanic voters supported the same candidates of choice as Black voters. Thus, based on the historical elections observed and in particular those since 2016, I conclude that for each of these clusters Black and Hispanic voters vote cohesively for the same candidate of choice and White voters oppose this candidate.

52. I perform a similar exercise for State House districts. Appendix Figure 31 illustrates the geographic starting clusters for the map drawing exercise for state House districts. As before, these clusters partition the state's House districts into the following broad geographic areas: Atlanta, Cobb, DeKalb, East Black Belt, Gwinnett, Southeast and Southwest. Note that though some of the names for these clusters are identical to the cluster names for the state Senate districts, the boundaries differ. Of these clusters, Moon Duchin has drawn new districts focused on the Atlanta, Southwest, East Black Belt and Southeast clusters. As a result, I perform an EI analysis pooling the relevant state House Districts into these clusters. Figure 20 presents the results.

53. Again, I observe evidence of RPV between White and Black voters across all state House clusters I examine. Black voters cohesively support a candidate of choice and White voters oppose this candidate. Based on my estimates, this is true in every cluster and for every statewide election that I examine.

54. Hispanic voters join Black voters in supporting the same candidate of choice in each cluster. In Atlanta, this is true for all past statewide elections pitting a minority candidate against a non-minority candidate, with the confidence intervals never overlapping with the 50% threshold for these elections. For the

other House clusters, while there are some uncertainties, my estimates again suggest that Hispanic voters supported the same candidates as Black voters in all of the past statewide elections that I examine.

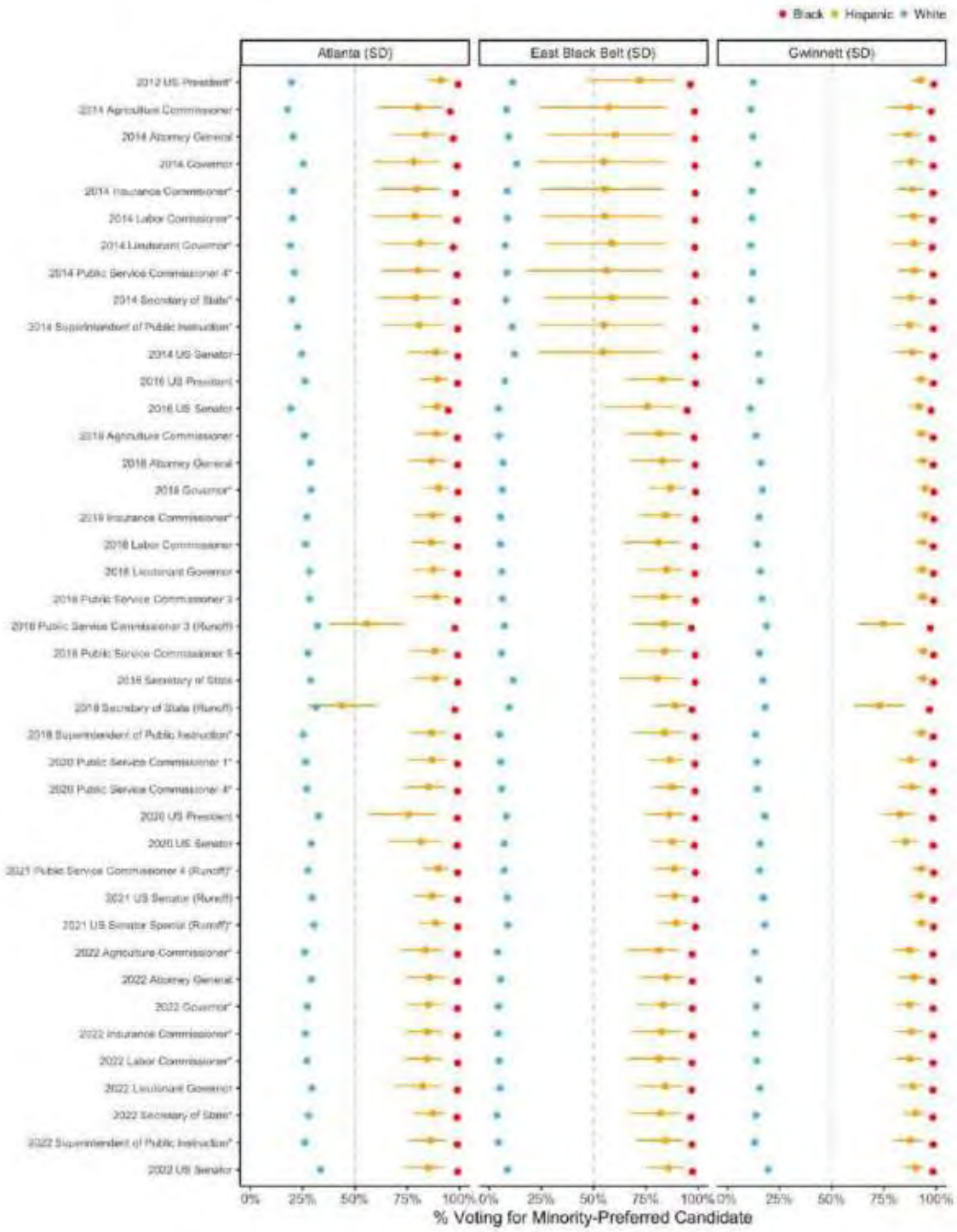

Figure 19: Ecological Inference Results — State Senate Clusters (Historical Elections, Two-Party Vote Shares)

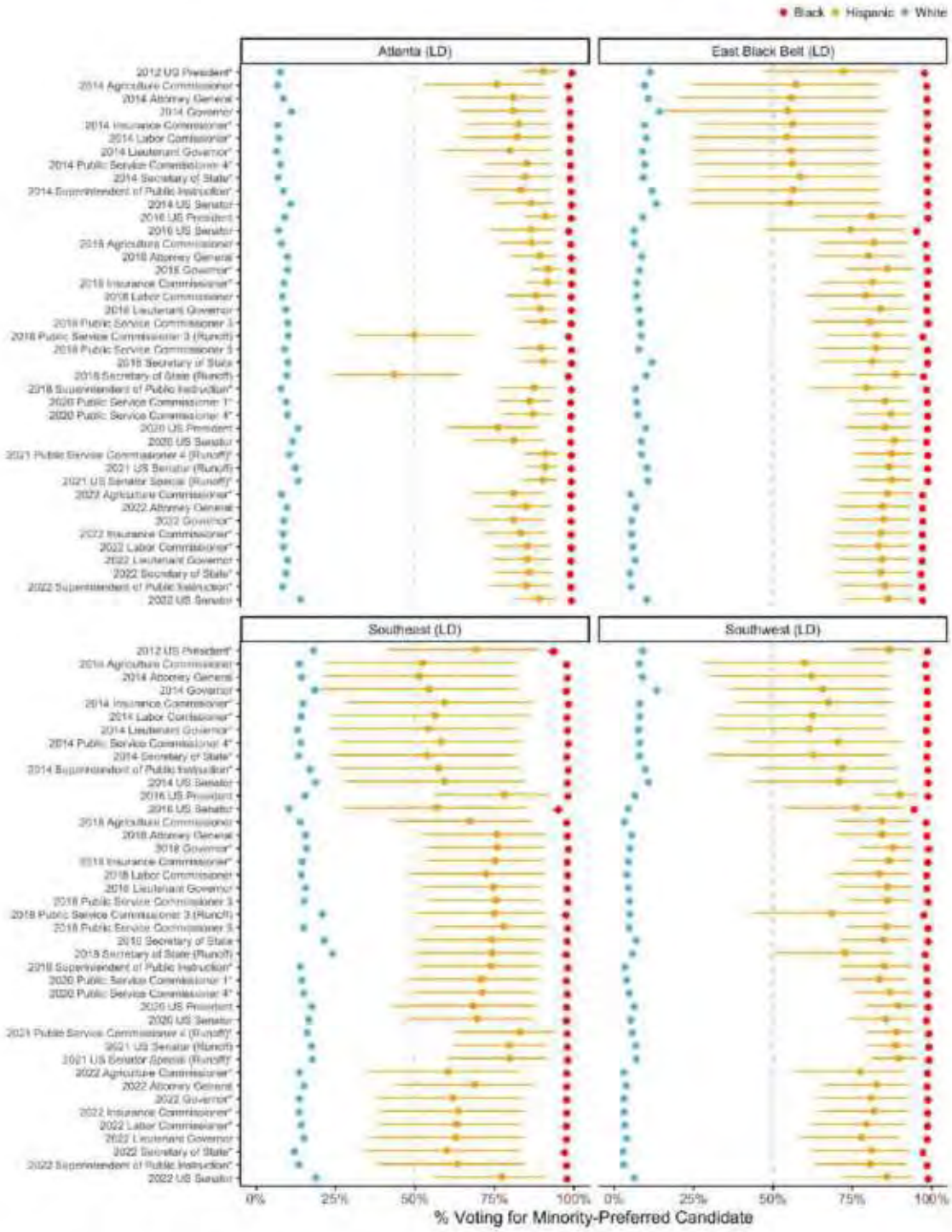

Figure 20: Ecological Inference Results — State House Clusters (Historical Elections, Two-Party Vote Shares)

Performance Analysis of Enacted Districts

55. I now examine the electoral performance of the enacted congressional districts along with the focus enacted state Senate and enacted state House districts. The previous analysis established that in Georgia, in those instances where one minority candidate runs for office and there is racially polarized voting, the candidate of choice for minority voters has historically been the minority candidate. As a result, I use historical election data to examine whether the enacted districts appear to offer minority voters an opportunity to elect their candidates of choice.

Congressional Districts

56. Table 2 presents the 2020 and 2022 share of the electorate for each minority group under consideration, along with several key summary statistics for district-wide electoral performance. To analyze district performance in terms of the ability to elect minority-preferred candidates, I examine the 20 statewide elections considered in this report in which a racial minority candidate ran against a non-minority candidate since 2012. Table 10 in the Appendix denotes these elections with a star and reports the names of these candidates. I report the mean two-party minority-preferred candidate vote share across all elections with a minority candidate that I examined. I also report the lowest vote share received by a minority candidate, in order to provide a sense of a lower bound of electoral performance. Finally, based on the historical elections, I report the share of elections in which minority candidates would have earned a

majority of the two-party vote in the district, along with the share of elections in which minority candidates would have earned over 55% of the vote, which is a conventional cutoff used in voting rights litigation to indicate a safer district.

57. In CDs 4 and 13, Black voters comprise a majority (or near-majority) of the electorate and, based on historical elections, these voters would be able to elect their candidates of choice if conditions in the districts remain similar. Minority-preferred candidates earned a majority of the two-party vote share in each election I examined for these districts, and the vote share surpassed 55% in every election in CDs 4 and 13.

58. In CDs 1, 3, 6, 8, 9, 10, 11, 12 and 14, White voters comprise a strong majority of the electorate. If conditions remain similar to historical elections, minority voters who preferred a minority candidate would not be able to elect that candidate: the minority-preferred candidate did not win in **any** of the historical elections I examine for these districts.

59. CD 7 is a multi-racial district in which no one racial group comprises a majority of the electorate. Based on historical elections, minority candidates in these statewide elections would have received a majority in the district 65.0% of the time. Candidates won "safely" (e.g., over 55% of the vote) at the same rate. Given the demographic composition of the district, and the fact that the previous RPV analysis showed strong evidence of Black voters cohesively supporting minority candidates, this is a district that could perform more strongly than it does as drawn (in terms of allowing minority voters to elect their candidates of choice).

60. CD 2 is split close to evenly between Black and White voters. In 2022, White voters comprised 56% of the electorate, and Black voters comprised 37%. Black voters retained the ability to elect candidates of choice in this district, with that candidate winning every statewide election I examined in this district.

61. CD 5 did not exhibit RPV in the previous analysis. White voters have historically voted along with minority voters to select minority voters' candidates of choice.

62. Overall, then, minority voters have a very strong chance of electing preferred candidates in three of fourteen congressional districts (CDs 4, 5 and 13). Minority voters have a chance of electing minority candidates slightly more than half the time in CDs 2 and 7. Finally, based on historical elections, minority voters have close to no chance of electing preferred candidates in the remaining nine congressional districts.

Table 2: Performance Analysis (Elections with a Minority Candidate), Enacted CDs

CD	Black 2020	Black 2022	Hispanic 2020	Hispanic 2022	Mean M Vote	Min M Vote	M Wins	M Over 55%
1	24.3%	23.5%	2.0%	1.6%	41.0%	39.0%	0.0%	0.0%
2	44.6%	36.9%	1.3%	0.9%	51.7%	44.4%	70.0%	25.0%
3	18.8%	23.2%	1.9%	1.8%	32.9%	28.1%	0.0%	0.0%
4	50.9%	46.7%	2.5%	2.1%	74.1%	69.0%	100.0%	100.0%
5	40.4%	38.2%	2.4%	2.3%	79.0%	73.9%	100.0%	100.0%
6	7.3%	7.2%	3.5%	3.2%	33.1%	24.1%	0.0%	0.0%
7	29.3%	27.4%	7.5%	5.5%	54.1%	43.4%	65.0%	60.0%
8	25.0%	24.0%	1.5%	0.9%	33.6%	31.3%	0.0%	0.0%
9	8.5%	9.7%	4.7%	3.3%	26.2%	21.4%	0.0%	0.0%
10	18.6%	17.9%	2.3%	2.0%	34.6%	30.8%	0.0%	0.0%
11	14.6%	13.4%	4.0%	3.2%	35.6%	28.1%	0.0%	0.0%
12	31.7%	28.1%	1.5%	1.3%	41.1%	37.5%	0.0%	0.0%
13	63.7%	63.4%	3.3%	2.4%	77.7%	71.8%	100.0%	100.0%
14	13.1%	14.0%	3.8%	2.4%	29.5%	27.8%	0.0%	0.0%

Note: This table reports the share of the electorate, based on 2020 and 2022 turnout, of each minority racial group in a given congressional district along with the mean and minimum minority candidate vote share (labelled M) in the district across statewide elections with a minority candidate since 2012.

State Senate Districts

63. In the state Senate districts under consideration, there appears to be only a handful of competitive districts. Most either offer no chance for the election of minority-preferred candidates or are, on the other hand, clear minority majority districts. Based on historical elections, the candidate preferred by minority voters would not have won in any election I examine between 2012 and 2022 in SDs 16, 17, 23, 25 and 28. Conversely, in SDs 22, 26, 34, 35, 41, 43, 44 and 55 the minority-preferred candidate would have won in all past elections I examine.

64. SDs 9 and 40 are the only focus districts with some evidence of possibly meaningful electoral competition. SD 9 is a multi-racial district that has elected minority voters' candidates of choice slightly more than half of the time. SD 40, a district with a majority White electorate, has performed similarly in past elections.

Table 3: Performance Analysis (Elections with a Minority Candidate), Enacted SDs

SD	Black 2020	Black 2022	Hispanic 2020	Hispanic 2022	Mean M Vote	Min M Vote	M Wins	M Over 55%
9	28.5%	28.8%	7.4%	5.9%	51.6%	38.8%	65.0%	60.0%
16	18.0%	26.3%	1.9%	1.9%	33.8%	26.8%	0.0%	0.0%
17	26.2%	24.4%	1.8%	1.7%	35.1%	29.3%	0.0%	0.0%
22	55.3%	51.8%	1.5%	1.2%	66.5%	62.6%	100.0%	100.0%
23	31.8%	26.1%	1.6%	1.4%	38.6%	34.0%	0.0%	0.0%
25	28.8%	27.5%	1.3%	0.8%	37.9%	35.6%	0.0%	0.0%
26	54.5%	44.3%	0.9%	0.8%	60.6%	52.3%	100.0%	70.0%
28	15.0%	24.8%	2.4%	1.7%	31.3%	24.6%	0.0%	0.0%
34	68.4%	68.6%	3.4%	2.6%	81.7%	76.8%	100.0%	100.0%
35	67.1%	68.5%	2.4%	1.6%	79.2%	71.5%	100.0%	100.0%
40	16.0%	13.9%	5.0%	4.1%	53.6%	42.5%	65.0%	65.0%
41	55.6%	51.1%	2.2%	1.9%	78.7%	73.9%	100.0%	100.0%
43	60.5%	60.1%	1.9%	1.4%	70.2%	62.9%	100.0%	100.0%
44	68.3%	67.3%	2.9%	2.2%	86.2%	82.1%	100.0%	100.0%
55	61.5%	58.6%	3.2%	2.3%	74.9%	69.0%	100.0%	100.0%

Note: This table reports the share of the electorate, based on 2020 and 2022 turnout, of each minority racial group in a given State Senate district along with the mean and minimum minority candidate vote share (labelled M) in the district across statewide elections with a minority candidate since 2012.

State House Districts

65. Based on historical elections, the candidate preferred by minority voters would not have won in any election I examine between 2012 and 2022 in LDs 16, 17, 23, 25 and 28. Conversely, in LDs 22, 26, 34, 35, 41, 43, 44 and 55 the minority-preferred candidate would have won in all past elections I examine.

66. LDs 115, 117, 151 and 154 are the only (possibly) competitive districts among the examined state House districts. The electorate for LD 151 is split roughly evenly between White and Black voters. Based on historical elections, the minority candidate of choice would have garnered a majority of the vote in this district in 65.0% of historical elections I examine. However, this does not appear to be a safe district by any means. In only 5.0% of elections was the margin at the level to call the district safe (e.g., over 55% of the two-party vote).

67. In LD 117, based on historical elections, minority voters are just now beginning to be able to elect minority-preferred candidates. Only in the three 2021 runoff elections and the 2022 general elections did minority candidates garner more than half the vote in this district, and in no cases was the margin of victory safe for the candidate of choice.

68. LDs 115 and 154 each offer minority voters the opportunity to elect minority candidates a bit more than half of the time based on historical elections.

Table 4: Performance Analysis (Elections with a Minority Candidate), Enacted LDs

LD	Black 2020	Black 2022	Hispanic 2020	Hispanic 2022	Mean M Vote	Min M Vote	M Wins	M Over 55%
61	70.6%	74.9%	2.1%	1.1%	84.3%	78.9%	100.0%	100.0%
64	26.8%	27.3%	3.2%	3.2%	38.0%	30.6%	0.0%	0.0%
65	54.2%	53.4%	1.8%	1.4%	67.5%	62.8%	100.0%	100.0%
66	50.9%	52.7%	3.3%	2.4%	63.5%	52.7%	100.0%	75.0%
74	21.2%	23.1%	2.2%	1.9%	32.6%	25.9%	0.0%	0.0%
78	67.9%	63.4%	3.2%	2.4%	78.4%	73.9%	100.0%	100.0%
115	45.5%	47.4%	2.7%	2.0%	55.8%	45.8%	65.0%	65.0%
116	52.5%	45.1%	2.9%	2.0%	59.5%	50.4%	100.0%	65.0%
117	34.5%	35.4%	2.4%	1.6%	42.8%	32.5%	10.0%	0.0%
140	58.6%	59.2%	2.4%	1.1%	75.2%	70.3%	100.0%	100.0%
142	53.9%	51.2%	0.8%	0.6%	62.0%	56.8%	100.0%	100.0%
143	58.3%	57.0%	0.9%	0.7%	70.2%	67.6%	100.0%	100.0%
151	44.3%	29.7%	0.9%	0.8%	46.8%	35.4%	65.0%	5.0%
154	49.8%	42.5%	0.4%	0.3%	52.5%	44.5%	70.0%	45.0%
161	22.4%	19.5%	3.1%	2.3%	34.1%	27.9%	0.0%	0.0%
163	42.8%	39.3%	1.8%	1.4%	67.4%	60.4%	100.0%	100.0%
165	54.5%	29.5%	1.2%	1.2%	72.0%	57.1%	100.0%	100.0%
171	32.4%	29.5%	1.0%	0.6%	38.0%	33.3%	0.0%	0.0%

Note: This table reports the share of the electorate, based on 2020 and 2022 turnout, of each minority racial group in a given State House district along with the mean and minimum minority candidate vote share (labelled M) in the district across statewide elections with a minority candidate since 2012.

EI Analysis of Illustrative Districts

69. I now turn to an EI analysis of the Illustrative Maps drawn by the plaintiffs' map-drawing expert Moon Duchin.

Congressional Districts

70. I have been instructed to analyze all congressional districts for RPV between Black and White voters in the Illustrative Map drawn by Moon Duchin. Appendix Figure 32 depicts the map of these illustrative districts.

71. Figures 21-25 report the results for my EI analysis. The results are quite straightforward. Illustrative CD 4 does not exhibit evidence of RPV between Black and White voters. In all other districts, there is essentially universal evidence of RPV between Black and White voters. In these districts, when a minority candidate runs Black voters support them and White voters oppose this candidate. In elections between no minority candidates or two minority candidates, Black voters support the minority-preferred candidate and White voters oppose them.

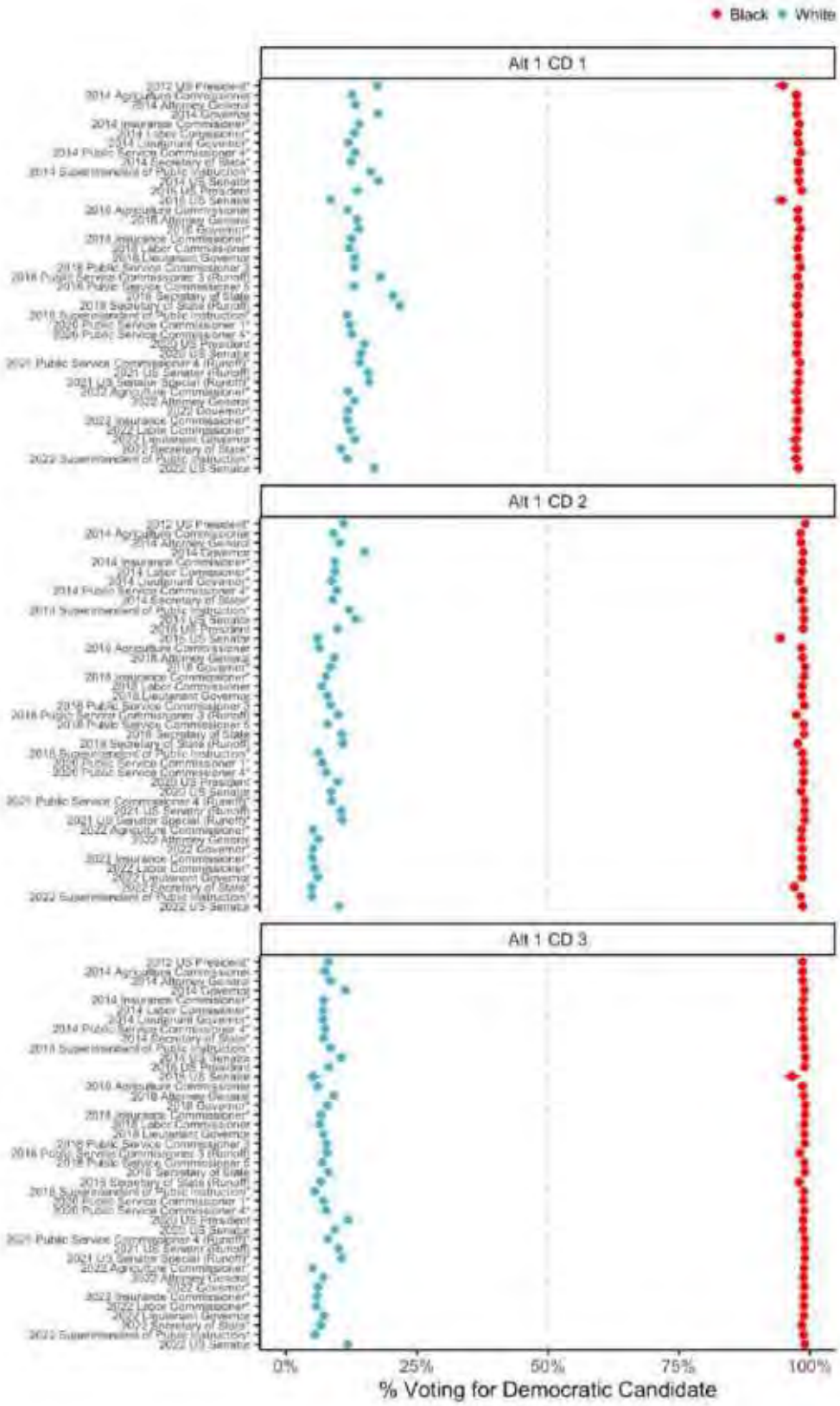

Figure 21: Ecological Inference Results — Illustrative Congressional Districts (Historical Elections, Two-Party Vote Shares)

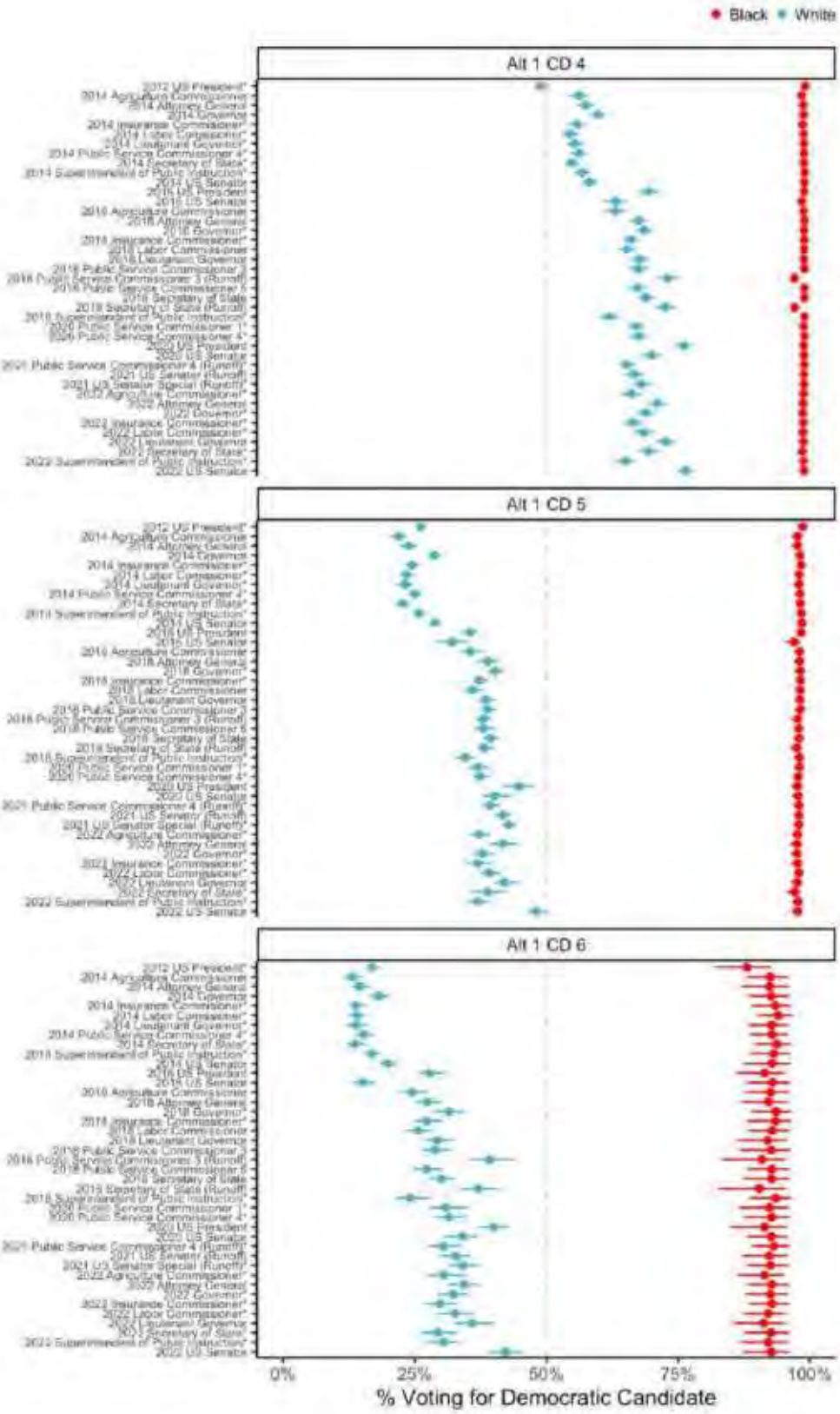

Figure 22: Ecological Inference Results — Illustrative Districts (Historical Elections, Two-Party Vote Shares)

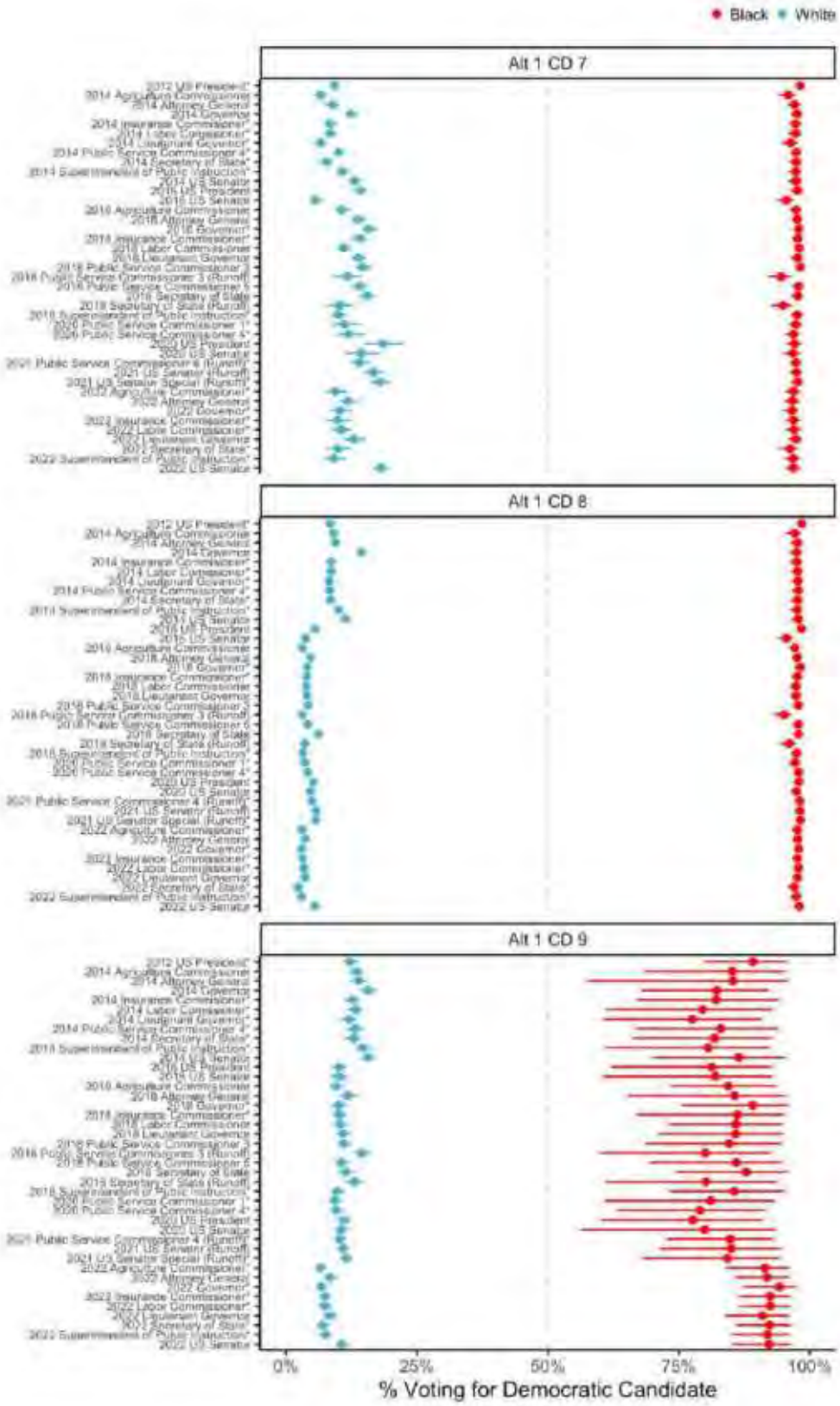

Figure 23: Ecological Inference Results — Illustrative Congressional Districts (Historical Elections, Two-Party Vote Shares)

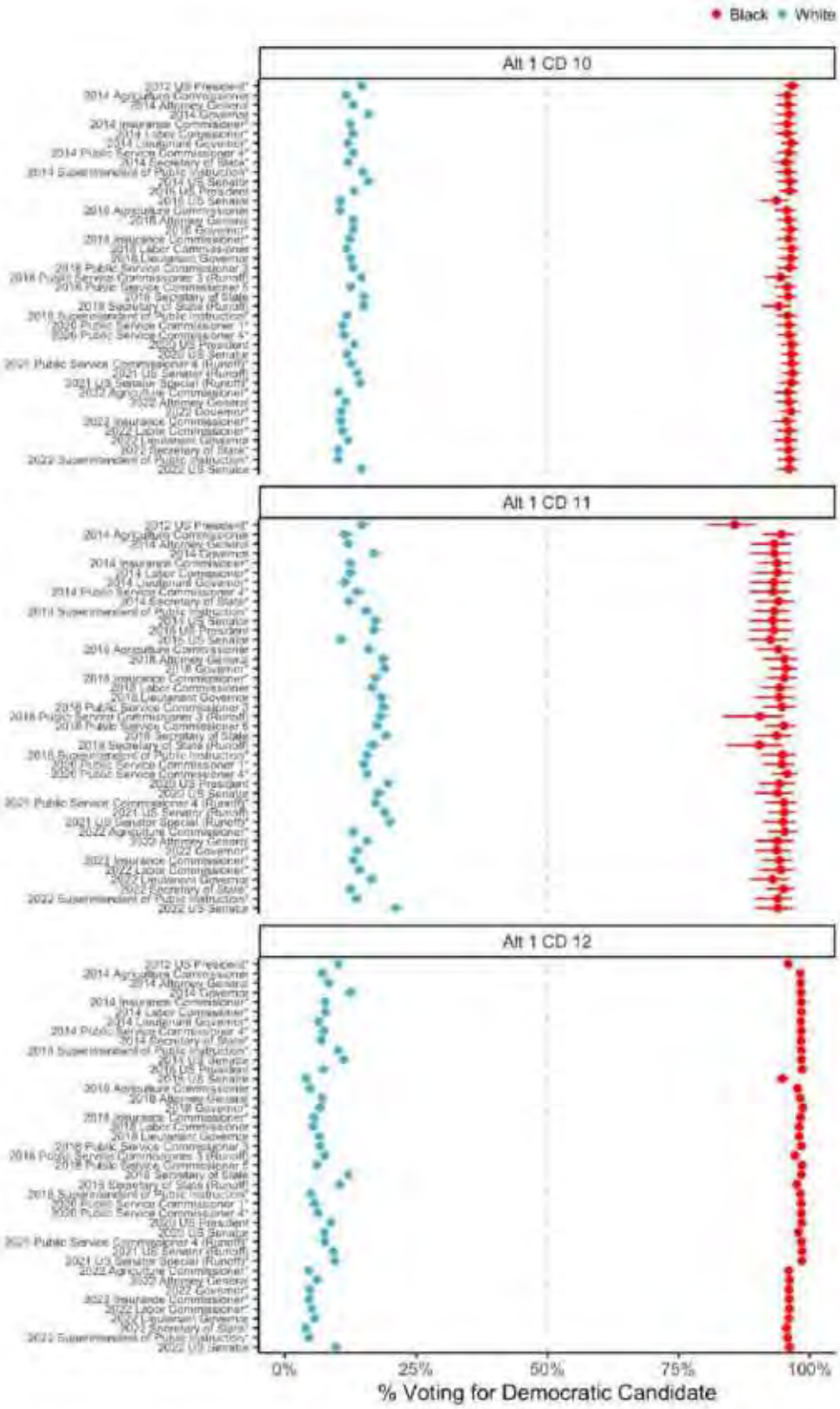

Figure 24: Ecological Inference Results — Illustrative Congressional Districts (Historical Elections, Two-Party Vote Shares)

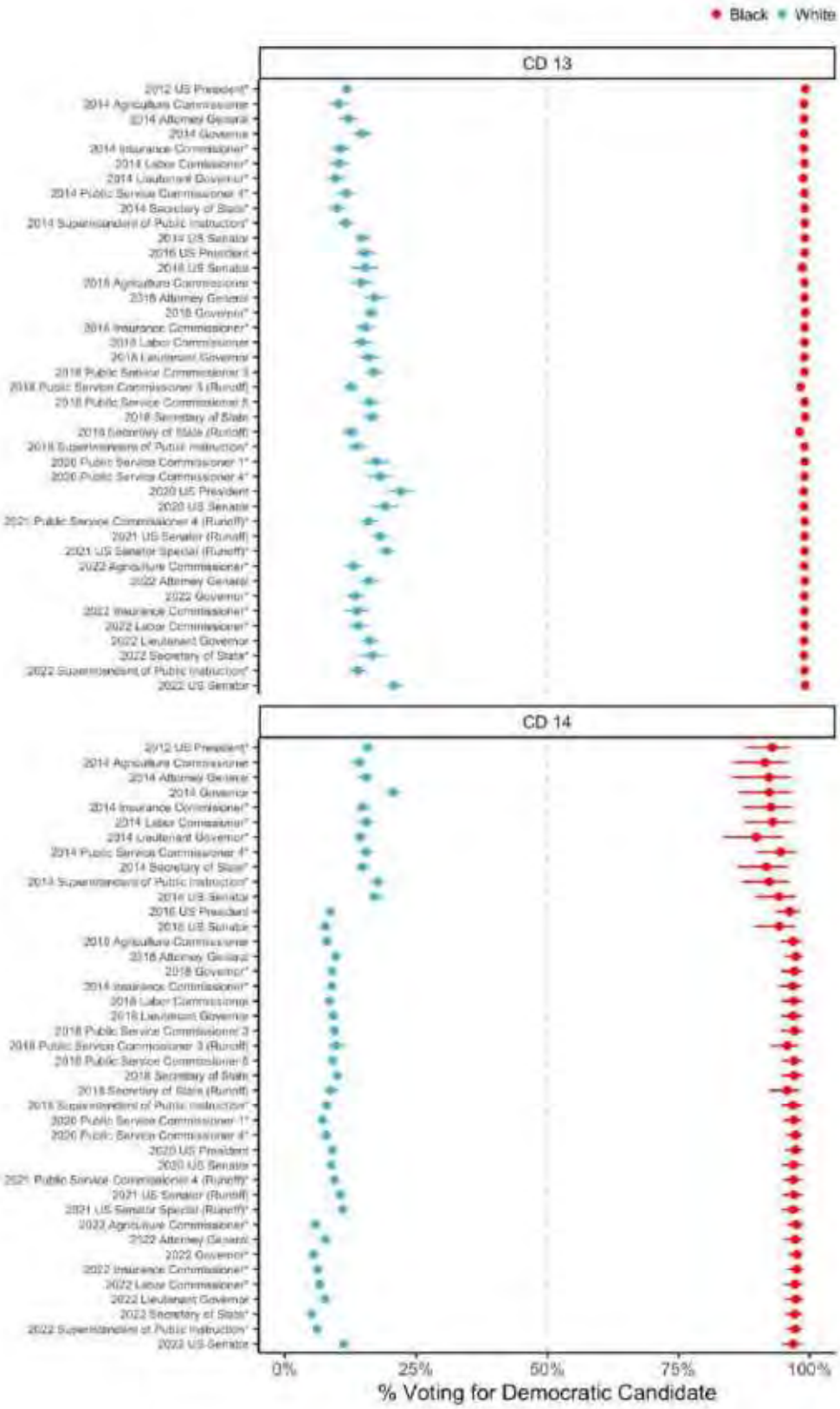

Figure 25: Ecological Inference Results — Illustrative Congressional Districts (Historical Elections, Two-Party Vote Shares)

State Senate Districts

72. I consider two Illustrative Maps of alternative State Senate Districts, and I apply the same methods of ecological inference as for the enacted map. Appendix Figures 33 and 34 depict the Illustrative State Senate maps, with the districts I have been instructed to focus upon highlighted.

73. I have been instructed to examine RPV for Black versus White voters in Illustrative Map 1 SDs 16, 17, 25, 28 and 40. I have been instructed to examine RPV for Black and Hispanic versus White voters in Illustrative Map 2 SDs 16 and 23.

74. Figure 26 reports the EI results for Illustrative State Senate Map 1, and Figure 27 reports the results for Illustrative State Senate Map 2.

75. For Map 1, I observe evidence of RPV between Black and White voters across all past statewide elections with a minority candidate running for SDs 16, 17, 25 and 28. In Illustrative Map 1 SD 40, I observe RPV 50% of the time in elections where a minority candidate ran. Furthermore, I observe evidence of RPV between Black and White voters in a majority (though not all) of elections with a minority-preferred candidate running.

76. For Map 2, I observe evidence of RPV with Black and Hispanic voters supporting minority candidates and White voters opposing them across all past statewide elections with a minority candidate running. When a minority candidate does not run, Black and Hispanic voters support the same minority-preferred candidate and White voters oppose this candidate.

Figure 26: Ecological Inference Results — Illustrative Map 1 State Senate Districts (Historical Elections, Two-Party Vote Shares)

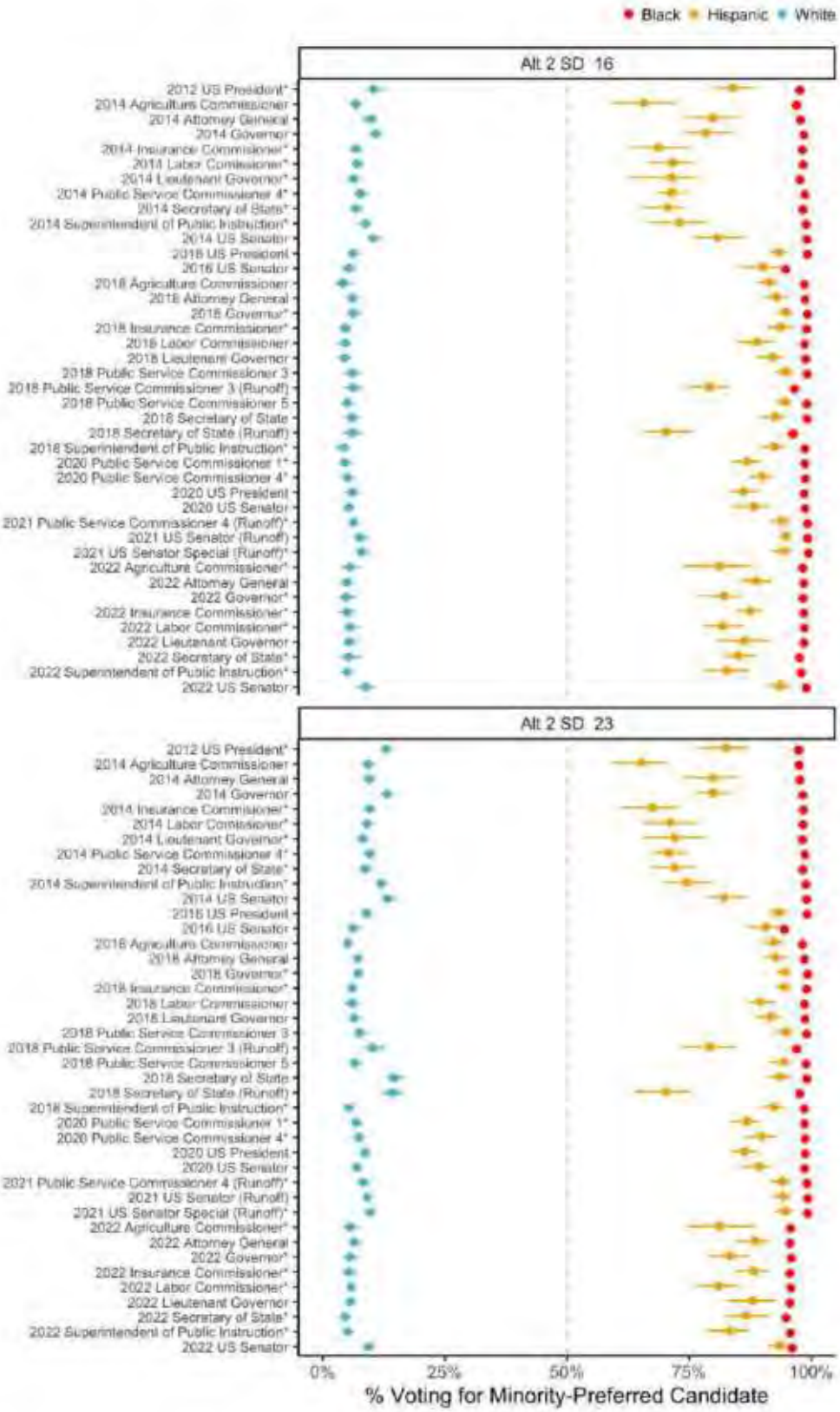

Figure 27: Ecological Inference Results — Illustrative Map 2 State Senate Districts (Historical Elections, Two-Party Vote Shares)

State House Districts

77. I also consider two Illustrative Maps of alternative State House Districts, and I apply the same methods of ecological inference as I did for the enacted map. Appendix Figures 35 and 36 depict the Illustrative State House maps, with the districts I have been instructed to focus upon highlighted.

78. I have been instructed to examine RPV for Black versus White voters in Illustrative Map 1 LDs 64, 74, 117, 144, 151 and 171 and for Black, Hispanic and White voters in Illustrative Map 1 LD 161. For Illustrative Map 2, I have been instructed to examine RPV for Black versus White voters in LDs 64, 117 and 144 and for Black, Hispanic and White voters in LD 161.

79. Figure 28 reports the results for Illustrative State House Map 1, and Figure 29 reports the results for Illustrative State House Map 2.

80. For Illustrative Map 1, I observe evidence of RPV between Black and White voters in all districts I have been asked to examine. Furthermore, in Illustrative Map 1 LD 161, where I also examine the behavior of Hispanic voters, I again observe RPV with Black and Hispanic voters supporting minority candidates and White voters opposing them.

81. For Illustrative Map 2, I again observe evidence of RPV between Black and White voters in all districts I examine. In LD 64, this occurs in every election. In LD 117, occasionally the confidence intervals on the estimates are wide enough to cross the 50% threshold but nonetheless, but even accounting for this Black voters support a minority candidate and White voters oppose them

in 95% of these elections. Similarly, in LD 144, Black voters support a minority candidate and White voters oppose them (with the confidence intervals on the estimates not overlapping with the 50% threshold) in 95% of such elections. Finally, in SD 161, I observe RPV with Black and Hispanic voters supporting a minority or minority-preferred candidate and White voters opposing them in all past elections that I study.

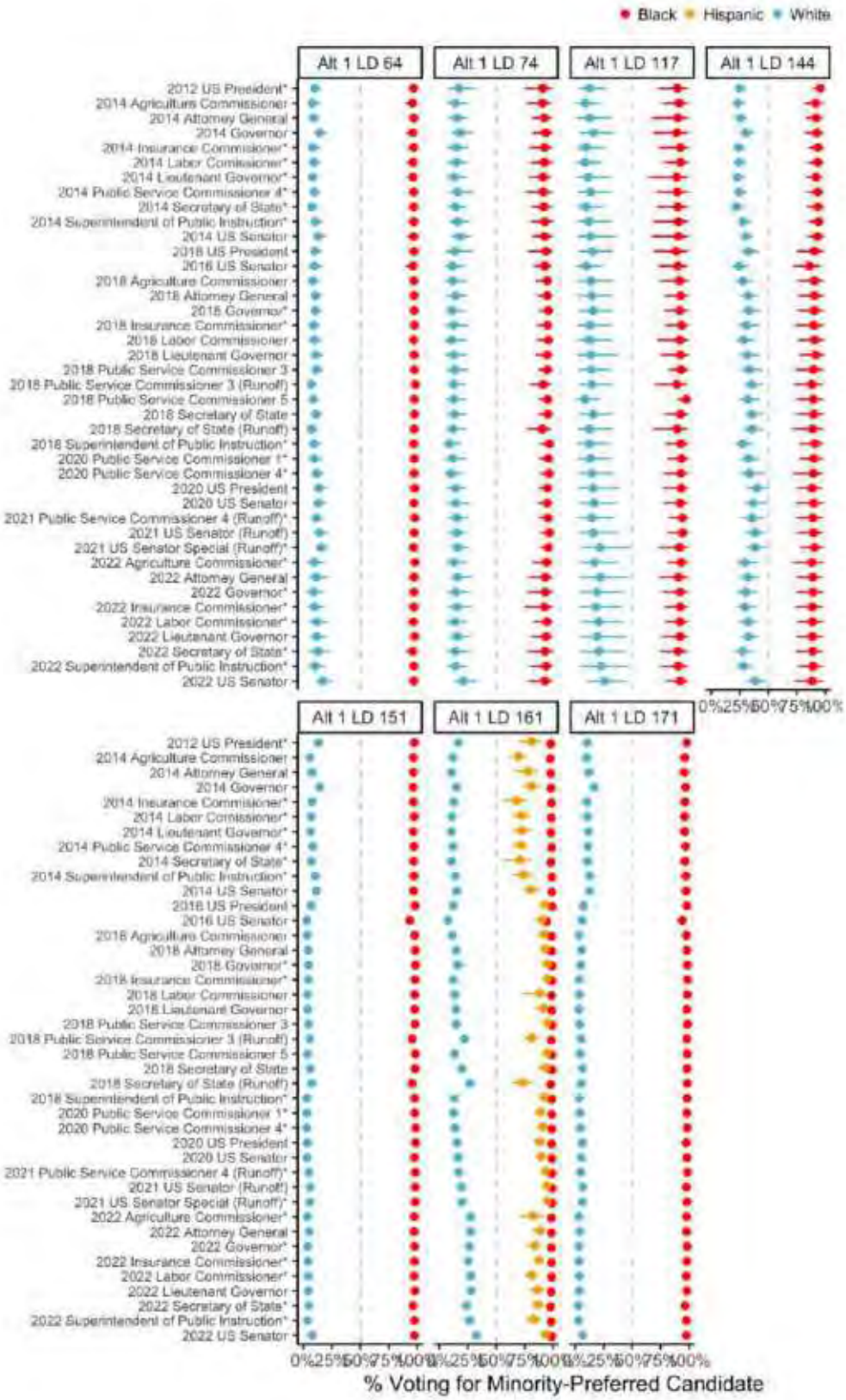

Figure 28: Ecological Inference Results — Illustrative Map 1 State House Districts (Historical Elections, Two-Party Vote Shares)

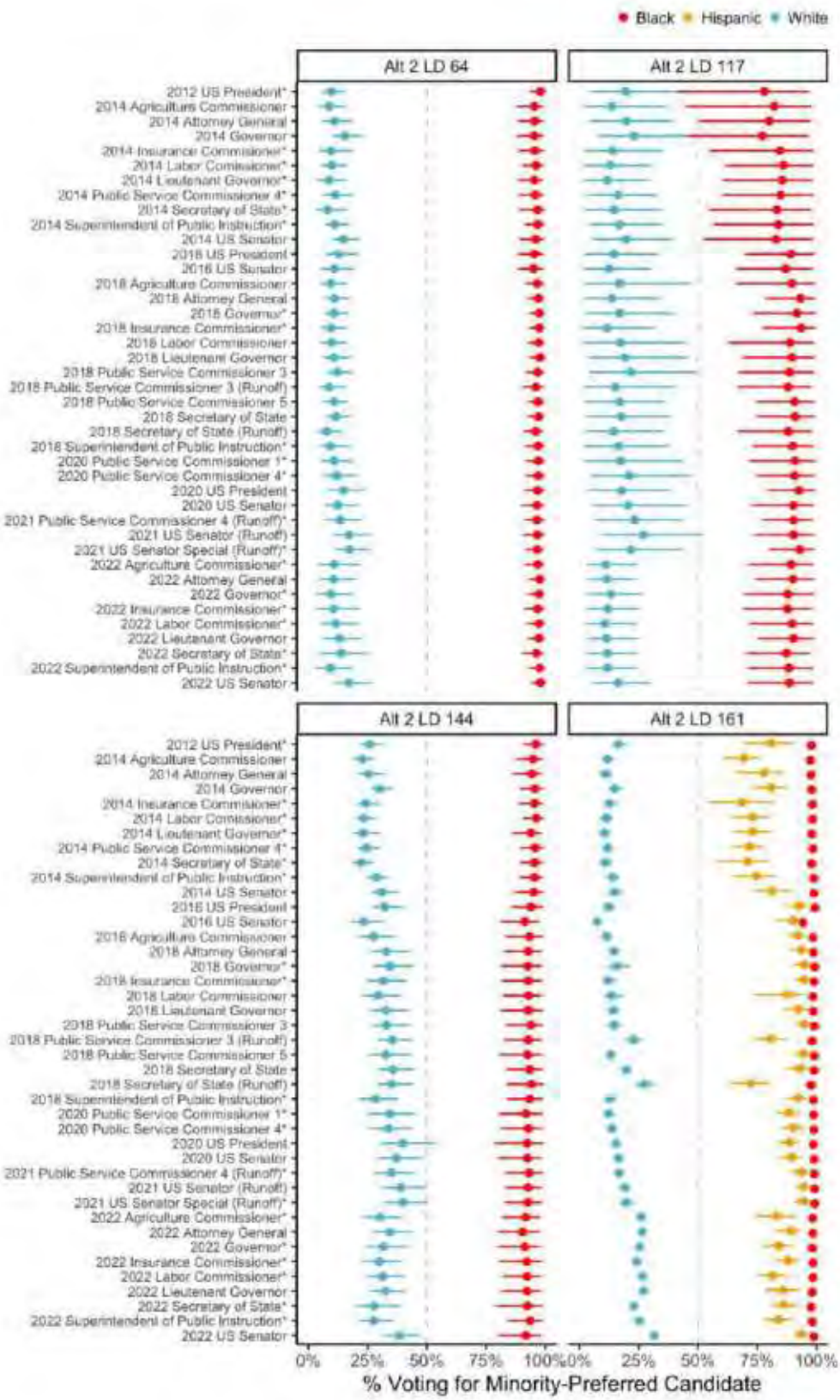

Figure 29: Ecological Inference Results — Illustrative Map 2 State House Districts (Historical Elections, Two-Party Vote Shares)

Performance Analysis of Illustrative Districts

82. I now turn to a performance analysis of the districts contained in the Illustrative Maps. To examine the performance of minority candidates in the Illustrative Maps, I examine the extent to which minority candidates have earned votes in past elections in the relevant districts. As before, I have determined the average vote share among minority candidates in each district, the minimum vote share earned by a minority candidate, the share of past elections a minority candidate won in each district, and the share of elections the minority candidate won safely (e.g., over 55% of the vote). I again draw upon the 20 statewide elections in which a racial minority candidate ran against a non-minority candidate since 2012. Table 10 in the Appendix denotes these elections with a star and reports the names of these candidates.

Congressional Districts

83. Table 5 presents the 2020 and 2022 share of the electorate for each minority group under consideration, along with the key summary statistics for district-wide electoral performance in the Illustrative congressional map.

84. Compared to the enacted map, there is one major difference and two slight differences. In the Illustrative Map, CD 3, which now reaches from the western part of the state into the Metro Atlanta area, becomes a district that performs in terms of the ability to elect minority candidates of choice. In the previous map, minority candidates never won an election in the district. In the

Illustrative Map, minority candidates now would have earned a majority in all past elections in which they ran.

85. Second, CDs 6 and 7 now provide a slightly stronger ability to elect minority candidates based on past elections. The share of past elections won by a minority candidate increased by 5% in CD 6 and by 15% in CD 7, compared to the enacted map. On the other hand, CDs 2 and 13 become more competitive, with CD 2 in particular now registering a safe victory for minority candidates in only a small share of past elections.

86. Overall, then, the Illustrative Map grants minority voters a very strong chance of electing preferred candidates in four of fourteen congressional districts (CDs 3, 4, 5 and 13). Minority voters still have a good chance of electing minority candidates in CDs 2 and 7, though with CD 2 considerably more competitive than in the enacted congressional map. Finally, based on historical elections, minority voters have a low chance of electing preferred candidates in the remaining congressional districts.

Table 5: Performance Analysis (Elections with a Minority Candidate), Illustrative Map CDs

CD	Black 2020	Black 2022	Hispanic 2020	Hispanic 2022	Mean M Vote	Min M Vote	M Wins	M Over 55%
1	25.8%	24.2%	2.0%	1.6%	42.0%	39.6%	0.0%	0.0%
2	42.6%	35.4%	1.3%	1.0%	50.1%	43.7%	70.0%	5.0%
3	43.9%	46.4%	2.2%	1.7%	58.7%	54.3%	100.0%	95.0%
4	45.0%	42.5%	2.4%	2.2%	80.7%	76.0%	100.0%	100.0%
5	45.2%	44.1%	4.1%	3.2%	71.0%	63.8%	100.0%	100.0%
6	11.1%	10.4%	3.9%	3.3%	42.0%	31.0%	5.0%	0.0%
7	34.8%	33.4%	8.3%	6.0%	57.8%	48.0%	80.0%	65.0%
8	21.5%	21.8%	1.5%	1.0%	30.4%	28.4%	0.0%	0.0%
9	2.8%	4.6%	3.3%	2.5%	19.8%	15.7%	0.0%	0.0%
10	14.0%	13.4%	2.6%	2.1%	30.9%	28.0%	0.0%	0.0%
11	14.0%	13.3%	3.2%	2.8%	34.0%	27.1%	0.0%	0.0%
12	34.8%	30.9%	1.6%	1.3%	44.5%	40.8%	0.0%	0.0%
13	47.2%	45.0%	2.2%	1.7%	56.8%	51.5%	100.0%	65.0%
14	5.5%	6.4%	3.8%	2.5%	23.5%	21.6%	0.0%	0.0%

Note: This table reports the share of the electorate, based on 2020 and 2022 turnout, of each minority racial group in a congressional district from the Illustrative Map along with the mean and minimum minority candidate vote share (labelled M) in the district across statewide elections with a minority candidate since 2012.

State Senate Districts

87. The tables below report the performance of the State Senate districts that I have analyzed under Illustrative Map 1 and 2. In Map 1, minority candidates win all past elections in SDs 16, 25, 28 and 40 and a strong majority of past elections in SDs 17. Several of these districts are relatively competitive, with the minority candidate winning by a narrow margin (e.g., less than 55%) at least a third of the time in SDs 17, 25 and 28.

88. In Map 2, minority candidates win all past elections in SD 16 and a majority of past elections in SD 23. Each district is relatively competitive, with the minority candidate earning less than 55% of the vote share 35% of the time in SD 16 and 80% of the time in SD 23.

89. To sum up, in the Illustrative State Senate Maps, minority-preferred candidates won more than half the time in every district I examine. This performance contrasts with the enacted Senate Districts I have examined, where minority candidates won more than half the time in 67% of districts.

Table 6: Performance Analysis (Elections with a Minority Candidate), Illustrative Map 1 SDs

SD	Black 2020	Black 2022	Hispanic 2020	Hispanic 2022	Mean M Vote	Min M Vote	M Wins	M Over 55%
16	45.2%	46.6%	1.9%	1.7%	56.4%	52.3%	100.0%	75.0%
17	44.1%	45.3%	2.6%	2.1%	57.8%	49.3%	90.0%	65.0%
25	43.0%	42.7%	1.3%	0.8%	53.4%	50.9%	100.0%	15.0%
28	43.5%	49.5%	2.3%	1.4%	58.8%	51.9%	100.0%	65.0%
40	49.4%	46.9%	3.9%	3.0%	75.6%	69.2%	100.0%	100.0%

Note: This table reports the share of the electorate, based on 2020 and 2022 turnout, of each minority racial group in a given Illustrave Map 1 State Senate district along with the mean and minimum minority candidate vote share (labelled M) in the district across statewide elections with a minority candidate since 2012.

Table 7: Performance Analysis (Elections with a Minority Candidate), Illustrative Map 2 SDs

SD	Black 2020	Black 2022	Hispanic 2020	Hispanic 2022	Mean M Vote	Min M Vote	M Wins	M Over 55%
16	44.1%	45.7%	1.9%	1.8%	55.4%	50.7%	100.0%	65.0%
23	45.7%	40.5%	0.9%	0.8%	52.4%	46.4%	70.0%	20.0%

Note: This table reports the share of the electorate, based on 2020 and 2022 turnout, of each minority racial group in a given Illustrave Map 2 State Senate district along with the mean and minimum minority candidate vote share (labelled M) in the district across statewide elections with a minority candidate since 2012.

State House Districts

90. The tables below report the performance of the State House districts that I have analyzed under Illustrative Map 1 and 2. In Map 1, minority candidates win all past elections in LDs 64, 144 and 161 and a majority of past elections in LDs 74, 117 and 151. Several of these districts are relatively competitive, with the minority candidate winning by a narrow margin (e.g., less than 55%) at least a third of the time in LDs 74, 117, 144 and 151. Finally, LD 171 offers some but by no means an overwhelming chance of electing minority candidates, as in this district minority candidates won 35% of past elections.

91. In Map 2, minority candidates win all past elections in LDs 64, 144 and 161. In LD 117, minority candidates won 35% of past elections.

92. To sum up, in each Illustrative State House Map, minority candidates won more than half the time in every district but one that I examine (86% and 75% of districts, respectively). This performance contrasts with the enacted House Districts I have examined, where minority candidates won more than half the time in 72% of districts.

93. I reserve the right to supplement this report if additional facts, testimony, and/or materials come to light. 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 11:30pm.

Signature: Ben Schneer

Table 8: Performance Analysis (Elections with a Minority Candidate), Illustrative Map 1 LDs

LD	Black 2020	Black 2022	Hispanic 2020	Hispanic 2022	Mean M Vote	Min M Vote	M Wins	M Over 55%
64	46.7%	51.2%	2.4%	1.8%	60.3%	53.5%	100.0%	80.0%
74	43.9%	36.2%	2.5%	1.9%	52.9%	48.0%	75.0%	35.0%
117	44.9%	50.5%	3.0%	1.8%	55.5%	45.7%	65.0%	60.0%
144	37.7%	33.7%	1.2%	0.9%	53.6%	50.4%	100.0%	30.0%
151	51.8%	35.5%	1.3%	0.6%	51.5%	39.5%	70.0%	45.0%
161	43.0%	36.7%	3.2%	2.9%	62.0%	57.4%	100.0%	100.0%
171	42.1%	39.2%	0.9%	0.5%	48.0%	42.3%	35.0%	0.0%

Note: This table reports the share of the electorate, based on 2020 and 2022 turnout, of each minority racial group in a given State Senate district along with the mean and minimum minority candidate vote share (labelled M) in the district across statewide elections with a minority candidate since 2012.

Table 9: Performance Analysis (Elections with a Minority Candidate), Illustrative Map 2 LDs

LD	Black 2020	Black 2022	Hispanic 2020	Hispanic 2022	Mean M Vote	Min M Vote	M Wins	M Over 55%
64	46.1%	50.5%	2.6%	1.9%	59.8%	53.0%	100.0%	75.0%
117	45.1%	33.6%	2.9%	1.7%	49.3%	42.0%	35.0%	35.0%
144	43.1%	39.5%	1.2%	0.9%	58.2%	54.7%	100.0%	95.0%
161	42.2%	35.4%	3.0%	2.7%	60.5%	56.2%	100.0%	100.0%

Note: This table reports the share of the electorate, based on 2020 and 2022 turnout, of each minority racial group in a given State Senate district along with the mean and minimum minority candidate vote share (labelled M) in the district across statewide elections with a minority candidate since 2012.

Appendix A

Additional Tables

Table 10: Statewide Minority-Preferred Candidates

Year	Office	Candidate
2020	2020 Public Service Commissioner 1*	Robert Bryant
2020	2020 Public Service Commissioner 4*	Daniel Blackman
2020	2020 US President	Joe Biden
2020	2020 US Senator	Jon Ossof
2021	2021 Public Service Commissioner 4 (Runoff)*	Daniel Blackman
2021	2021 US Senator (Runoff)	Raphael Warnock
2021	2021 US Senator Special (Runoff)*	Raphael Warnock
2022	2022 US Senator	Raphael Warnock
2022	2022 Governor*	Stacey Abrams
2022	2022 Lieutenant Governor	Charlie Bailey
2022	2022 Secretary of State*	Bee Nguyen
2022	2022 Attorney General	Jen Jordan
2022	2022 Agriculture Commissioner*	Nakita Hemingway
2022	2022 Insurance Commissioner*	Janice Laws Robinson
2022	2022 Labor Commissioner*	William Boddie
2022	2022 Superintendent of Public Instruction*	Alisha Searcy

Note: This table reports the overall minority-preferred candidate based on statewide ecological estimates for the elections considered in this report. A star denotes those offices where a minority candidate is preferred to a non-minority candidate by minority voters statewide.

Table 11: Statewide Minority-Preferred Candidates, Continued

Year	Office	Candidate
2012	2012 US President*	Barack Obama
2014	2014 Agriculture Commissioner	Christopher Irvin
2014	2014 Attorney General	Greg Hecht
2014	2014 Governor	Jason Carter
2014	2014 Insurance Commisioner*	Liz Johnson
2014	2014 Labor Comissioner*	Robbin Shipp
2014	2014 Lieutenant Governor*	Connie Stokes
2014	2014 Public Service Commissioner 4*	Daniel Blackman
2014	2014 Superintendent of Public Instruction*	Valarie Wilson
2014	2014 Secretary of State*	Doreen Carter
2014	2014 US Senator	Michelle Nunn
2016	2016 US President	Hilary Clinton
2016	2016 US Senator	Jim Barksdale
2018	2018 Agriculture Commissioner	Fred Swann
2018	2018 Attorney General	Charlie Bailey
2018	2018 Governor*	Stacey Abrams
2018	2018 Insurance Commissioner*	Janice Laws Robinson
2018	2018 Labor Commissioner	Richard Keatley
2018	2018 Lieutenant Governor	Sarah Riggs Amico
2018	2018 Public Service Commissioner 3	Lindy Miller
2018	2018 Public Service Commissioner 3 (Runoff)	Lindy Miller
2018	2018 Public Service Commissioner 5	Dawn Rudolph
2018	2018 Superintendent of Public Instruction*	Otha Thornton
2018	2018 Secretary of State	John Barrow
2018	2018 Secretary of State (Runoff)	John Barrow

Note: This table reports the overall minority-preferred candidate based on statewide ecological estimates for the elections considered in this report. A star denotes those offices where a minority candidate is preferred to a non-minority candidate by minority voters statewide.

Additional Maps: Clusters

Figure 30: Map of State Senate Clusters

Figure 31: Map of State House Clusters

Additional Maps: Illustrative Congressional Districts

Figure 32: Map 1 of Illustrative State Senate Districts

Additional Maps: Illustrative State Senate Districts

Figure 33: Map 1 of Illustrative State Senate Districts

Figure 34: Map 2 of Illustrative State Senate Districts

Additional Maps: Illustrative State House Districts

Figure 35: Map 1 of Illustrative State House Districts

Figure 36: Map 2 of Illustrative State House Districts

Benjamin Schneer

Harvard Kennedy School
79 JFK Street
Cambridge, MA 02138

Email: benjamin_schneer@hks.harvard.edu
Website: http://www.benjaminschneer.com
Phone: (617) 496-0666

Academic Employment

Harvard Kennedy School

Assistant Professor of Public Policy, 2018–Present.

Florida State University

Assistant Professor of Political Science, 2016–2018.

Education

Ph.D. Political Science, Harvard University, 2016.

Committee: Gary King, Daniel Carpenter, Stephen Ansolabehere

M.A. Political Science, Harvard University, 2012.

M.A. Economics, Stanford University, 2010.

B.A. Economics & History, *Summa Cum Laude*, Columbia University, 2005.

Research Interests

Political Communication, Elections, Congress, Politics and History, Redistricting

Publications

"The Popular Origins of Legislative Jurisdictions: Petitions and Standing Committee Formation in Revolutionary Virginia and the Early U.S. House" (with Tobias Resch, Maggie McKinley, and Daniel Carpenter). 2022. *Journal of Politics* 84 (3): 1727–1745.

"Partisan Alignment Increases Voter Turnout: Evidence from Redistricting" (with Bernard Fraga and Daniel J. Moskowitz). 2022. *Political Behavior* 44: 1883–1910.

"Congressional Representation by Petition: Assessing the Voices of the Voteless in a Comprehensive New Database, 1789-1949" (with Maggie Blackhawk, Tobias Resch, and Daniel Carpenter). 2021. *Legislative Studies Quarterly* 46 (3): 817–849.

"From the Halls of Congress to K Street: Government Experience and Its Value for Lobbying" (with Pamela Ban and Maxwell Palmer). 2019. *Legislative Studies Quarterly* 44 (4): 713–752.

"Reevaluating Competition and Turnout in U.S. House Elections" (with Daniel J. Moskowitz). 2019. *Quarterly Journal of Political Science* 14: 191-223.

"Postpolitical Careers: How Politicians Capitalize on Public Office" (with Maxwell Palmer). 2019. *Journal of Politics* 81 (2): 670-675.

"Suffrage Petitioning as Formative Practice: American Women Presage and Prepare for the Vote, 1840-1940" (with Daniel Carpenter, Zachary Popp, Tobias Resch, and Nicole Topich). 2018. *Studies in American Political Development* 32 (1): 24–48.

"Paths of Recruitment: Rational Social Prospecting in Petition Canvassing" (with Clayton Nall and Daniel Carpenter). 2018. *American Journal of Political Science* 62 (2): 192–209.

"Divided Government and Significant Legislation: A History of Congress from 1789–2010" (with Stephen Ansolabehere and Maxwell Palmer). 2018. *Social Science History* 42 (1): 81–108.

"How the News Media Activate Public Expression and Influence National Agendas" (with Gary King and Ariel White). 2017. *Science* 358 (6364): 776–780.

"Capitol Gains: The Returns to Elected Office from Corporate Board Directorships" (with Maxwell Palmer). 2016. *Journal of Politics* 78 (1): 181–196.

"What Has Congress Done?" (with Stephen Ansolabehere and Maxwell Palmer). 2016. *Governing in a Polarized Age: Elections, Parties, and Political Representation in America*, eds. Alan S. Gerber and Eric Schickler. New York: Cambridge University Press.

"Party Formation Through Petitions: The Whigs and the Bank War of 1832–1834" (with Daniel Carpenter). 2015. *Studies in American Political Development* 29 (2): 1–22.

Working Papers

"'Descended from Immigrants and Revolutionists': How Immigrant Background Shapes Legislative Behavior in Congress" (with James Feigenbaum and Maxwell Palmer). HKS Working Paper No. RWP19-028. *Under Revision*.

"When the Going Gets Tough, Members Go Home: Electoral Threat and Legislator Behavior in the U.S. Congress" (with Jaclyn Kaslovsky and Daniel J. Moskowitz).

"Why Party Leaders Tend to Be Extremists" (with David C. King and Richard Zeckhauser). HKS Working Paper No. RWP20-015.

"Policy Consequences of Civil Society: Evidence from German-American Counter-Mobilization to Prohibition" (with Tobias Reisch).

"A Partisan Solution to Partisan Gerrymandering: The Define-Combine Procedure" (with Maxwell Palmer and Kevin DeLuca). HKS Working Paper No. RWP22-012.

"Direct Election and Political Representation: Evidence from Congressional Petitioning."

"Bayesian Instrumental Variables Estimation with Relaxations of the Exclusion Restriction" (with Michael Gill and Arman Sabbaghi).

Current Projects

"Paywalls" (with Desmond Ang and Avinash Moorthy).

"Permanent Minority Rule? Uncovering the Limits of Partisan Gerrymandering" (with Maxwell Palmer).

"Coattail Effects and Candidate Quality" (with Kevin DeLuca and Dan Moskowitz).

"Misperceptions of Life Expectancy" (with Desmond Ang).

Reports, Other Publications and Selected Media

"Racially Polarized Voting Analysis for the Virginia Redistricting Commission" (with Maxwell Palmer). August 31, 2021.

"Drawing a Line." *Harvard Kennedy School Magazine*. Winter 2020.

"Review of Evaluating Media Bias, by Adam J. Schiffer." 2020. *American Review of Politics* 37 (1): 106–8.

"Drawing the Line on Gerrymandering." *HKS PolicyCast (Podcast)*, December 10, 2019.

"The Arizona Redistricting Commission: One State's Model for Gerrymandering Reform" (with Colleen Mathis and Daniel J. Moskowitz). *Ash Center Policy Brief*, 2019.

"Are Divided Governments the Cause of Delays and Shutdowns?" *The Science of Politics (Podcast)*, January 2, 2019.

"Canvassers Tend to Seek Out Supporters Who Are Like Themselves, and That's Not Good for Political Participation" (with Daniel Carpenter and Clayton Nall). *LSE USAPP Blog*, November 1, 2017.

"How and Why Retired Politicians Get Lucrative Appointments on Corporate Boards" (with Maxwell Palmer). *The Washington Post (Monkey Cage)*, February 1, 2015.

"An Analysis of the Arizona Independent Redistricting Commission Congressional District Map" (with Gary King). *Submitted to Department of Justice*, 2012.

"An Analysis of the Arizona Independent Redistricting Commission Legislative District Map" (with Gary King). *Submitted to Department of Justice*, 2012.

Conferences & Presentations

2022: Georgia State University (Economics), HKS Faculty Lunch Seminar, Harris School (University of Chicago CEG American Politics Conference), APSA

2021: Redistricting Algorithms, Law, and Policy (Radcliffe Institute), Metro Cities Council of the American Chamber of Commerce Executives, APSA

2020: HKS Faculty Lunch Seminar

2019: MPSA, Congress & History

2018: FSU (Colloquium), Congress & History, APSA

2017: Congress & History

2016: PolNet, APSA

2015: The Media Consortium, Boston University (Emerging Media Studies), MPSA, Iowa State, APSA, Harvard (Grad PE, APRW)

2014: SPSA, Texas A&M, The Media Consortium, Radcliffe (The Petition in North America), MPSA, Harvard (APRW x2, Grad PE, PE), NYU (Alexander Hamilton Center for Political Economy), PolMeth (Poster Session), APSA, Tobin Project

2013: Harvard (Grad PE), MPSA, The Media Consortium

2012: Harvard (APRW)

2011: Harvard (APRW)

Teaching

API 202: Empirical Methods II, Harvard Kennedy School, Spring 2022 & Spring 2023.

DPI 610: Data Science for Politics, Harvard Kennedy School, Spring 2020 & Spring 2021.

DPI 308: Translating Public Opinion into Policy Action, Harvard Kennedy School, Spring 2019, Fall 2020 & Spring 2021.

Forecasting Elections in 2020 (Summer Engagement Session), Harvard Kennedy School, Summer 2020.

POS 3263: Political Elites and Representation, Florida State University, Spring 2018.

POS 4424: Legislative Systems, Florida State University, Spring 2017, Fall 2017 & Spring 2018.

POS 5427: Legislative Politics, Florida State University, Spring 2017.

POS 5045: National Government (American Politics Core), Florida State University, Fall 2017.

Gov 30: American Government, Professor Paul E. Peterson, Harvard University, Fall 2013 (TF).

Gov 1300: The Politics of Congress, Professor Stephen Ansolabehere, Harvard University, Spring 2013 (TF).

Gov 1359: The Road to the White House, Carlos Diaz Rosillo, Harvard University, Fall 2012 (TF).

Econ 101: Economic Policy Analysis, Anamaria Pieschacon, Stanford University, Fall 2009 & Winter 2010 (TA).

Past Employment

Research Assistant, Professor Gary King, Harvard University, 2011–2016.

Research Assistant, Professor Daniel Carpenter, Harvard University, 2011–2014.

Research Assistant, Professor Gavin Wright, Stanford University, 2008–2009.

Research Analyst, LECG LLC, 2006–2007.

Research Fellow, Professor Alison Morantz, Stanford Law School 2005–2006, 2010.

Fellowships & Awards

American Journal of Political Science Best Paper Award (co-winner) for "Paths of Recruitment: Rational Social Prospecting in Petition Canvassing," 2018.

Summer Institute, Center for Advanced Study in the Behavioral Sciences, 2017.

First Year Assistant Professor Grant, Florida State University, 2017.

Richard J. Herrnstein Prize, awarded by the Harvard Graduate School of Arts and Sciences for "a dissertation that exhibits excellent scholarship, originality and breadth of thought, and a commitment to intellectual independence," 2016.

GSAS Dissertation Completion Fellowship, Harvard University, 2015–2016.

Term Time Merit Fellowship, Graduate Society, Harvard University, 2014–2015.

Dissertation Research Fellowship for Study of the American Republic, Center for American Political Studies, Harvard University, 2014–2015.

Jeanne Humphrey Block Dissertation Award, Institute for Quantitative Social Sciences, Harvard University, 2014–2015.

Graduate Research Grant, Institute for Quantitative Social Sciences, Harvard University, 2014–2015.

Fellow, Democracy & Markets, Tobin Project, 2014–2015.

Graduate Fellowship, Harvard University, 2010–2016.

NSF Travel Grant, Annual Conference of the Society for Political Methodology, 2014

Travel Grant, Institute for Quantitative Social Science, Harvard University, 2013, 2014, 2015.

Outstanding Teaching Assistant, Stanford University, 2009–2010.

Phi Beta Kappa, 2005.

Dean's List, Columbia University, 2001–2005.

Other

Affiliations

Taubman Center for State and Local Government, Harvard Kennedy School

Ash Center for Democratic Governance and Innovation, Harvard Kennedy School

Institute for Quantitative Social Science, Harvard University

Center for American Political Studies (CAPS), Harvard University

Multidisciplinary Program in Inequality and Social Policy, Harvard University

Political Analysis Track, Ph.D. Program in Health Policy, Harvard University

Service

Co-Organizer, American Politics Speaker Series, Harvard Kennedy School and Department of Government, 2019–Present.

DPI Junior American Politics Search Committee, Harvard Kennedy School, 2019–2020.

Host, Faculty Research Seminar, Harvard Kennedy School, 2019, 2021.

MPP Admissions Committee, Harvard Kennedy School, 2018–2019.

PhD Admissions Committee, Institutions and Politics Track, Harvard Kennedy School, 2021–2022.

Selected Consulting

Virginia Redistricting Commission (Voter Polarization Analysis, 2020s Redistricting Cycle)

Arizona Independent Redistricting Commission (2010s Redistricting Cycle)

New York Civil Liberties Union (*Hurrell-Harring et al. v. the State of New York*)

Other Projects/Cases: Illinois State Legislature (Redistricting), Texas (Voter ID)

Software Packages

R, Stata, SAS, Python, ArcGIS, LaTeX.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

GEORGIA STATE CONFERENCE OF NAACP, et al.,	)	No. 1:21-CV-5338-ELB-SCJ-SDG
Plaintiff,	)	
vs.	)	
STATE OF GEORGIA, et al.,	)	
Defendant.	)	

VIDEOTAPED 30(b)(6) and 30(b)(1) DEPOSITION OF
SENATE REDISTRICTING & REAPPORTIONMENT COMMITTEE
(MR. JOHN F. KENNEDY)
January 20, 2023
9:03 a.m.
18 Capitol Square SW
Atlanta, Georgia

Reported by: Marcella Daughtry, RPR, RMR
CA CSR 14315
GA No. 6595-1471-3597-5424

Exhibit
0007

Q BY MS. LIU: And is that how you determine whether a candidate can -- or sorry. I'll restart.

Is asking whether a group can get to 50 percent plus 1 of the votes how you determine whether that group can elect a candidate of their choice?

A Are we talking about a hypothetical group and a hypothetical election?

Q I am asking you how you would determine whether a group can elect a candidate of their choice.

A I think it's the same as any group that wants to be cohesive or together or however they're voting. You have to get 50 percent plus 1.

Q Okay. We now have a video to play for you. My colleague will be playing you a video in the room. This is excerpts from the Senate Committee on Reapportionment and Redistricting from November 4th, 2021, starting at 8 minutes and 55 seconds.

(Court reporter clarification.)

Playing video:

"We heard from the NCSL. We heard from the Georgia Democratic Party. We heard from the Georgia NAACP. We heard from other groups that came and addressed us that day.

"Fifth, we laid out our guidelines on August the 30th when most of the members came and met

here that would govern the drawing of the maps. Those guidelines focused on the 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 contiguity.

"Sixth, we saw the Democratic Senate plan and appreciated the input provided by the minority party.

"Seventh, we combined all of this in the form of our input, including some of the districts on the Democratic plan, and with the staff of the Reapportionment Office to come up with the draft that is what we have in your folders and what we're gonna be presenting today.

"We released a draft of this map on Tuesday, two days ago, to allow time for some comment, and we've made a few basic adjustments based on the input that I have received from various committee members.

"So, let's talk about what's here. Well, first of all, the responsibility and the respect for our constitution to make sure that our first responsibility is to balance the population pursuant to the direction of the U.S. Constitution. While a lot of people think this process is all political driven, the truth is, and the

of -- of those materials or names that were on any of those text messages.

Q Were they all texts between yourself and someone else?

A I don't remember, but they are a part of the production from the discovery process that presumably you have and that you've seen and you've reviewed.

Q Okay. Now, going back to that video that was played, you stated that there is racially -- you recognized racially polarized voting; is that right?

A I think I was speaking -- not me, but I think I was speaking that the process that we undertook and the work of the committee with my leadership as chair, again, which necessarily involved significant input from Gina Wright and counsel, did recognize that principle, yes.

Q What principle of racially polarized voting was recognized during this process?

A I think what I said was that there is racially polarized voting in Georgia.

Q How did you come to that conclusion?

A Quite frankly, it would have been on the advice of counsel. Understand, I am not -- I am not an elections expert. I am not a redistricting expert. I was chairing this process, and at the time that was made was on the front end of the committee process, but it was