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.*	CIVIL ACTION FILE NO. 1:21-CV-5338-ELB-SCJ-SDG

DEFENDANTS' STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendants the State of Georgia; Brian Kemp, in his official capacity as the Governor of the State of Georgia; and Brad Raffensperger, in his official capacity as Secretary of State of Georgia (collectively, "Defendants") pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1 submits this Statement of Material Facts as to Which There is No Genuine Issue to be Tried.

1. The Georgia General Assembly held town hall meetings before redistricting maps were published in 2001, 2011, and 2021. Deposition of Joseph Bagley, Ph.D. [Doc. 128] (Bagley Dep.) 68:15-23, 73:25-74:9.

2. The town hall meetings in 2001, 2011, and 2021 were all "listening sessions" that took community comment without legislators responding to questions. Bagley Dep. 69:25-70:8, 73:25-74:9.

3. Redistricting has historically been conducted in special legislative sessions. Bagley Dep. Exs. 8-10.

4. The timeline for consideration of redistricting plans in 2001, 2011, and 2021 was similar. Bagley Dep. 101:7-101:12, 105:11-15, 138:18-24.

5. The 2021 redistricting process was "generally analogous" to the 2001 and 2011 cycle. Bagley Dep. 140:13-140:17.

6. The 2001, 2011, and 2021 redistricting processes were procedurally and substantively similar to each other. Bagley Dep. 86:25-87:19.

7. The 2020 Census data showed that the increase in the percentage of Black voters in Georgia from 2010 to 2020 was slightly more than two percentage points statewide. Deposition of Moon Duchin, Ph.D. [Doc. 134] (Duchin Dep.) 48:5-12.

8. Following the delayed release of Census data in 2021, the Georgia General Assembly began working on redistricting maps ahead of the November 2021 special session. Bagley Dep. Ex. 5.

9. Both chairs of the House and Senate committees with jurisdiction over redistricting sought to meet with all of their colleagues, both Republican

and Democratic, to gain input on their areas of the state. Deposition of Gina Wright [Doc. 132] (Wright Dep.) 68:17-69:7.

10. For the first time in 2021, the General Assembly created a public comment portal to gather comments. Wright Dep. 252:20-253:4.

11. After holding a committee education day with stakeholder presentations, the committees adopted guidelines to govern the map-drawing process. Deposition of John F. Kennedy [Doc. 129] (Kennedy Dep.) 161:1-4; Deposition of Bonnie Rich [Doc. 131] (Rich Dep.) 214:19-215:7; Bagley Dep. 89:9-18.

12. To draw the congressional map, Ms. Wright worked with a group to finalize a plan based on an earlier draft plan from Sen. Kennedy. Wright Dep. 28:19-30:23.

13. Political considerations were key to drawing the congressional map, including placing portions of Cobb County into District 14 to increase political performance. Wright Dep. 111:16-112:10, 115:8-11, 115:17-24, 158:4-21.

14. Georgia's prior 2011 districts were precleared on the first attempt by the U.S. Department of Justice and were never found by any court to be unlawful or unconstitutional. Bagley Dep. 56:20-57:8, 58:4-11.

15. For the legislative maps, Ms. Wright first drafted "blind" maps for the House and Senate, drawing based on her own knowledge of Georgia and the historic districts. Wright Dep. 45:15-25 (Senate map); 62:17-62:24 (House map).

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

17. Some changes requested by Democrats were included. Wright Dep. 59:5-60:7 (Sen. Rhett); Bagley Dep. 107:3-11.

18. Information about draft maps was also shared with members of the Democratic caucus, and Democratic members were able to work with the joint Reapportionment Office. Wright Dep. 223:14-224:4, 226:11-17; Bagley Dep. 116:1-7.

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

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

21. When drawing redistricting plans, Ms. Wright never used tools that would color the draft maps by racial themes. Wright Dep. 259:24-260:8.

22. The office included estimated election returns at the Census block level, so political data was available across all layers of geography. Wright Dep. 140:3-11.

23. The past election data was displayed on the screen with other data. Wright Dep. 140:17-19.

24. The chairs evaluated the political performance of draft districts with political goals. Wright Dep. 178:5-22, 191:25-193:3, 206:13-207:16.

25. After releasing draft maps, legislators received public comment at multiple committee meetings. Bagley Dep. 91:8-15, 93:8-10, 94:21-23, 95:14-96:6, 100:8-11, 111:24-112:1, 113:6-10, 115:4-11.

26. Democratic leadership presented alternative plans for Congress, state Senate, and state House that were considered in committee meetings. Bagley Dep. 109:15-110:1 (Congress), 112:18-22 (Congress), 93:2-13 (Senate), 93:21-94:5 (House).

27. After the plans were considered, they were passed by party-line votes in each committee before passing almost completely along party lines on the floor of the Senate and House. Bagley Dep. 93:14-20, 105:16-106:1, 113:22-114:4, 115:12-17, 117:2-4.

28. Dr. Bagley agreed that he couldn't say the 2021 redistricting maps were an abuse of power by Republicans. Bagley Dep. 63:25-64:3.

29. Dr. Duchin said that she was not "criticizing Georgia for not doing enough" in her report. Duchin Dep. 81:25-82:16.

30. The enacted congressional map resulted in five districts that elected Black- and Latino- preferred candidates Report of Moon Duchin, attached as Ex. A (Duchin Report), ¶¶ 4.1, 6.3.

31. The enacted congressional map reduced the number of split counties from the 2011 plan. Duchin Report, ¶¶ 4.1, 6.3.

32. The enacted state Senate map reduced the number of split counties from the prior plan. Duchin Report, ¶¶ 6.3, 6.4; Kennedy Dep. 106:4-11.

33. The enacted state Senate map did not pair incumbents of either party running for re-election. Duchin Report, ¶¶ 6.3, 6.4; Kennedy Dep. 106:4-11.

34. The enacted state Senate map maintained the same number of majority-Black districts as the prior plan. Duchin Report, ¶¶ 6.3, 6.4; Kennedy Dep. 106:4-11.

35. The enacted state House map also reduced the number of split counties from the 2011 plan. Duchin Report, ¶¶ 6.3, 6.4.

36. The enacted state House map increased the number of majority-Black districts from the prior plan. Duchin Report, ¶¶ 6.3, 6.4.

37. One of Plaintiffs' proposed Senate plans increases the number of majority-Black voting age population (VAP) districts by three and another decreases the number of majority-Black VAP districts by six when compared with the enacted plan. Duchin Report, ¶¶ 6.4.

38. Plaintiffs' proposed House plans either increase the number of majority-Black VAP districts by one or decrease them by 12 when compared with the enacted plan. Duchin Report, ¶¶ 6.4; Duchin Dep. 29:15-22; 113:9-114:8.

39. Dr. Duchin's goal in creating the proposed plans was to create districts that "meet a 50 percent plus one threshold" for minority voters. Duchin Dep. 47:10-48:4; 76:2-15.

40. Dr. Duchin's proposed congressional plan does not convert District 6 into a majority-Black district but instead converts District 3 to be majority-Black. Duchin Dep. 119:25-120:11.

41. When describing the process of drawing the congressional plan, Dr. Duchin was unable to identify a reason why she connected various rural and urban areas. Duchin Dep. 58:18-59:13; 71:14-19.

42. Dr. Duchin also could not explain the reasoning behind the various alternative configurations of her Senate and House plans, instead relying on various computer-drawn drafts. Duchin Dep. 64:24-66:20, 71:7-13, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

43. Some of Dr. Duchin's legislative plans included Senate districts with Black VAP percentages as high as 86.5% and multiple House districts with more than 80% Black VAP, including one over 90%. Duchin Dep. 123:24-127:8, 137:22-139:2, 162:8-22.

44. Dr. Duchin did not consider those districts "packed." Duchin Dep. 123:24-127:8, 137:22-139:2, 162:8-22.

45. All of Dr. Duchin's legislative plans have population deviations higher than the enacted plans. Duchin Dep. 101:18-23 (Senate), 101:24-102:2 (House).

46. Two of the three Senate plans have the same or more county splits than the enacted plan. Duchin Dep. 107:10-15.

47. All of the House plans split the same or more counties than the enacted plan. Duchin Dep. 107:16-21.

48. While all of the compactness scores are generally similar, Dr. Duchin also reviewed compactness reports while drawing her plans and modified them to improve the scores. Duchin Dep. 103:17-105:20, 69:11-16.

49. Dr. Duchin was not able to categorize whether the differences in the various compactness scores were significant. Duchin Dep. 103:17-105:14.

50. The only consistent metric across all of Dr. Duchin's plans is that each one increases Democratic political performance over the comparable enacted plan. Expert Report of John Morgan, attached as Ex. B (Morgan Report), ¶ 12.

51. Those differences run from two additional Democratic-leaning seats on the congressional plan, Morgan Report, Chart 7, to ten additional Democratic-leaning seats on the Senate plan, Morgan Report, Chart 4, to 12 additional Democratic-leaning seats on the House plan, Morgan Report, Chart 1.

52. The Ga. NAACP plaintiffs put forth only one member's name in discovery and could not identify how many members were affected by redistricting. Deposition of Gerald Griggs [Doc. 136] (Griggs Dep.) 79:1-13.

53. The Ga. NAACP never identified any legislative districts in which that member lived and only that testified that the member had previously been in congressional District 6 and now was in District 7. Griggs Dep. 79:1-13.

54. The Georgia Coalition for the Peoples' Agenda plaintiffs designated just one member to establish standing, and provided no information as to that member's residence, their voter-registration status, or a process by

which they determine they had members in all districts named in the Complaint. Deposition of Helen Butler [Doc. 138] (Butler Dep.) 74:7-76:13.

55. The GALEO plaintiffs designated just one member to establish standing, and provided no information as to that member's residence, their voter-registration status, or a process by which they determine they had members in all districts named in the Complaint. Deposition of Geraldo Gonzalez [Doc. 139] (Gonzalez Dep.) 81:6-82:25.

56. The evidence from legislative depositions demonstrates that legislators were concerned about political performance, not race. Wright Dep. 55:25-56:7, 111:16-112:10, 115:8-11, 115:17-24, 140:3-11, 140:17-19, 158:4-21, 257:21-258:1, 258:2-14.

57. Legislators had political data at all levels of geography and regularly evaluated the political performance of districts as they were drawn. Wright Dep. 140:3-11, 178:5-22, 191:25-193:3, 206:13-207:16.

58. For the Congress plan, Plaintiffs only asked about Congressional District 6 (Wright Dep. 111:16-125:25, 130:22-133:17; Kennedy Dep. 176:3-179:13), the boundary between Congressional Districts 4 and 10 (Wright Dep. 133:18-138:1, 143:5-15), Congressional District 13 (Wright Dep. 168:22-171:7, 175:5-11; Kennedy Dep. 180:1-181:21), and Congressional District 14 (Wright

Dep. 152:9-158:21; Kennedy Dep. 182:2-188:1; Rich Dep. 135:13-141:9, 142:3-16).

59. In each case, Ms. Wright or the Chairs testified either unequivocally about race-neutral or political goals for the creation of each district or did not testify as to any racial motivations. *Id*.

60. For the Senate, Plaintiffs only asked about Senate District 17 (Wright Dep. 185:12-187:3; Kennedy Dep. 250:16-253:3) and Senate District 48 (Wright Dep. 188:8-14, 190:21-193:3; Kennedy Dep. 244:7-245:2).

61. In both cases, Ms. Wright or Chairman Kennedy testified either unequivocally about race-neutral or political goals for the creation of each district or did not testify as to any racial motivations. *Id*.

62. For the House, Plaintiffs asked about House District 44 (Wright Dep. 215:16-218:17; Rich Dep. 145:21-148:4), House District 48 (Wright Dep. 213:19-215:15; Rich Dep. 148:5-149:11), House District 49 (Wright Dep. 199:14-205:8; Rich Dep. 149:15-150:6), House District 52 (Rich Dep. 150:7-21), and House District 104 (Wright Dep. 205:19-207:16, 210:7-22; Rich Dep. 150:22-152:12).

63. In each case, Ms. Wright and Chairman Rich testified either unequivocally about race-neutral or political goals for the creation of each district or did not testify as to any racial motivations. *Id*.

64. None of Plaintiffs' experts besides Dr. Duchin provided opinions about district boundaries. Deposition of Peyton McCrary [Doc. 130] (McCrary Dep.) 48:19-21; Bagley Dep. 28:19-29:6; Report of Benjamin Schneer, attached as Ex. C (Schneer Report), ¶¶ 5-8.

65. Dr. Duchin's report evaluates core retention and "racial swaps" only for Congressional Districts 6 and 14; Senate Districts 14, 17, and 48 (with a brief reference to Senate District 7); and House Districts 44, 48, 49, 52, and 104. Duchin Report, ¶ 10.1.

66. Dr. Duchin acknowledges that there were "many other considerations" in play besides core retention. Duchin Dep. 171:22-172:7.

67. Dr. Duchin acknowledged that racial population shifts are not conclusive evidence of racial predominance and that she could not say that the various metrics she reviewed showed racial predominance. Duchin Dep. 180:18-23, 198:6-21 (Congress), 200:11-20 (Congress), 201:8-21 (Senate), 202:24-203:12 (House).

68. Dr. Duchin provides information about what she says are racial splits of counties in Congressional Districts 2, 3, 4, 6, 8, 10, 13, and 14 and what she says are racial splits of precincts in Congressional Districts 4, 6, 10, and 11. Duchin Report, ¶ 10.2.1; Duchin Dep. 167:5-15. 174:9-14, 186:17-23.

69. Dr. Duchin did not look at the political data behind those county splits on the congressional plan. Duchin Report, ¶ 10.2.1; Duchin Dep. 167:5-15, 174:9-14, 186:17-23.

70. The only state Senate districts Dr. Duchin discusses regarding racial splits are Senate Districts 1, 2, 4, and 26. Duchin Report, ¶ 10.2.2.

71. Dr. Duchin does not identify any state House districts with racial splits. Duchin Report, ¶ 10.2.3; Duchin Dep. 189:2-19.

72. Dr. Duchin did not describe any House districts as drawn "primarily" based on race. Duchin Report, ¶ 10.2.3; Duchin Dep. 189:2-19.

73. Dr. Duchin created her draft plans with the goal of drawing majority-minority districts. Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

74. Dr. Duchin was unable to identify why particular counties were connected on her various plans. Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

75. When asked about particular district decisions, Dr. Duchin fell back to her maps being "demonstrations." Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

76. Dr. Duchin's plans do not attempt to evaluate traditional redistricting principles beyond the ones she can represent numerically. Duchin

Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

77. Dr. Duchin does not profess to have a knowledge of communities in Georgia. Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

78. Plaintiffs also offer a variety of plans that *decrease* the number of *majority-Black* districts while increasing the number of *majority-minority* districts, primarily by combining Black and Latino individuals as a "minority" category. Duchin Report, ¶¶ 6.4; Duchin Dep. 29:15-22; 113:9-114:8.

79. Plaintiffs have not offered evidence on polarization from primary elections in Georgia. Schneer Report, ¶ 20.

80. Black voters in Georgia overwhelmingly vote for Democrats. Deposition of Benjamin Schneer [Doc. 135] (Schneer Dep.) 48:14-20.

81. Dr. Schneer's decision not to review any primary election results in his report undermines the usefulness of the data and analysis he presents as purported evidence of racial polarization in Georgia's elections. Schneer Report, ¶ 20; Schneer Dep. 60:11-61:20.

82. Dr. Schneer's data demonstrates two things: The race of the candidate *does not* change voting behavior of Georgia voters; and the party of

the candidate *does*. Report of John Alford, attached as Ex. D (Alford Report), p. 3; Schneer Report, ¶ 21 n.18.

83. The 2021 congressional plan has five districts where Black-preferred candidates succeed. Duchin Report, ¶¶ 4.1.

84. The Any-Part Black VAP for Georgia as a whole is 31.73%. Duchin Report, ¶ 3.3.

85. Both of Georgia's U.S. senators are Black-preferred candidates because they are Democrats (Sen. Ossoff was elected in 2021 and Sen. Warnock was re-elected in 2022). Schneer Report, p. 78, Table 10.

86. Dr. Bagley found no "obvious discriminatory intent." Bagley Dep. 27:22-28:1.

87. While Dr. Bagley analyzed the second, third, fourth, and fifth *Arlington Heights* factors, he did not opine that discriminatory intent was the driving factor of the legislature or that there was discriminatory intent in the legislative process of redistricting. Bagley Report, p. 7; Bagley Dep. 27:22-28:1; 123:3-14.

88. Dr. Bagley did not opine that the specific sequence of events leading to the adoption of the plans was discriminatory, but only that it would "lend credence" to a finding of discriminatory intent. Bagley Dep. 122:14-123:1.

89. Dr. Bagley did not opine that the Georgia district lines were drawn to deny voters of color their equitable right to participate in the political process, although he believed a court could make that finding. Bagley Dep. 133:11-20.

90. Dr. Bagley found no procedural or substantive departures in the 2021 redistricting process when compared to the 2001 and 2011 processes and agreed that the process was not rushed when compared to those prior cycles. Bagley Dep. 86:25-87:19, 138:18-24.

91. Dr. Bagley found one contemporary comment that concerned him, when Chair Rich stated in committee that there was not a "magic formula" for compliance with the Voting Rights Act. Bagley Dep. 110:2-111:23, 121:11-122:13.

92. Dr. McCrary did not offer any opinion about discriminatory intent or about the design of the districts. McCrary Dep. 48:9-21.

93. Dr. Duchin did not offer any opinion about discriminatory intent, but rather offered that she could provide "evidence that might be persuasive in terms of discerning intent" but that she could not "make hard and fast conclusions about what was in the hearts and minds of the legislators or . . . staff." Duchin Dep. 34:11-22; *see also* Duchin Dep. 34:23-35:6.

Respectfully submitted this 27th day of March, 2023.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing Statement has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/Bryan P. Tyson

Bryan P. Tyson