

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

COAKLEY PENDERGRASS, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER, *et al.*,

Defendants.

CIVIL ACTION

FILE NO. 1:21-CV-05339-SCJ

DEFENDANTS’ STATEMENT OF UNDISPUTED MATERIAL FACTS

Defendants Brad Raffensperger, in his official capacity as Secretary of State; and State Election Board Members William S. Duffey, Sara Tindall Ghazal, Janice Johnston, Edward Lindsey, and Matthew Mashburn, also in their official capacities (collectively, “Defendants”) pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1 submit this Statement of Material Facts as to Which There is No Genuine Issue to be Tried.

1. Census data showed that the increase in the percentage of Black voters in Georgia from 2010 to 2020 was slightly more than two percentage points statewide. Report of William Cooper, attached as Ex. A (“Cooper Report”), ¶ 14, Figure 1.

2. Other Census data has shown decreases in the Black Citizen Voting Age Population between 2019 and 2021. Deposition of William Cooper [Doc. 167] (“Cooper Dep.”) 38:24-39:10.

3. 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. 170] (“Wright Dep.”) 68:17-69:7.

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

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

6. After holding a committee education day where a variety of stakeholder groups presented about map-drawing, the committees adopted guidelines to govern the map-drawing process. Kennedy Dep. 161:1-4; Deposition of Bonnie Rich [Doc. 172] (“Rich Dep.”) 214:19-215:7.

7. To prepare maps, Gina Wright, the director of the Joint Reapportionment Office, worked with a leadership group to work on the

congressional map from an earlier draft from Sen. Kennedy. Wright Dep. 28:19-30:23.

8. Political considerations were important, including placing portions of Cobb County into District 14 to increase political performance in other parts of the state. Wright Dep. 111:16-112:10; 158:4-21.

9. The resulting Congressional map reduced the number of split counties from the prior plan. Cooper Report, ¶ 81, Figure 14.

10. The Governor signed the plan on December 30, 2021, and it was used in the 2022 elections. Amended Complaint [Doc. 120], ¶ 33.

11. The only material fact regarding the role of the State Election Board (SEB) is what the SEB said in its responses to interrogatories, that they “were not involved in the map-drawing process.” Responses to Interrogatories, attached as Ex. B, Response No. 2.

12. Triana Arnold James (“James”) resided in Villa Rica, Georgia, at the time of the filing of the initial Complaint in *Pendergrass* on December 30, 2021. Deposition of Triana Arnold James [Doc. 160] (“James Dep.”) at 14:10-18.

13. James is registered to vote in Douglas County, Georgia. *Id.* at 37:5-8.

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

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

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

17. Coakley Pendergrass (“Pendergrass”) resided in Marietta, Georgia, at the time of the filing of the initial Complaint in *Pendergrass* on December 30, 2021. Deposition of Coakley Pendergrass [Doc. 159] (“Pendergrass Deposition”) at 11:21-12:3.

18. Pendergrass is a member of the Democratic Party. *Id.* at 25:17-19.

19. Pendergrass was a state committee member for the Democratic Party from 2016-22. *Id.* at 26:4-5, 9-15.

20. Pendergrass was vice president of the Cobb County Democratic Committee from 2011-21. *Id.* at 26:5-6, 26:21-27:8.

21. Pendergrass was vice president of the Democratic Party of Georgia’s African-American Caucus from 2011-15. *Id.* at 26:6-8, 27:20-25.

22. Pendergrass has participated in voter registration drives for the Democratic Party at the local and state levels. *Id.* at 28:4-12.

23. Pendergrass has supported local Democratic candidates in Cobb County through volunteering or donations. *Id.* at 30:3-17.

24. Plaintiff Elliott Hennington has resided in Powder Springs, Georgia in Cobb County, Georgia since 2004. Deposition of Plaintiff Elliott Hennington [Doc. 164] (“Hennington Dep.”) at 16:19-17:9.

25. Hennington has considered himself to be a member of the Democratic Party since the 1980’s. *Id.* at 36:23-37:9.

26. During the time that he has been a member of the Democratic Party, Hennington’s activities for the Democratic Party have included volunteering on political campaigns for Democratic Party candidates. *Id.* at 39:5.

27. According to Hennington, he has never considered himself a member of the Republican Party, and to his knowledge has never voted for a Republican Party candidate. *Id.* at 37:20-38:7.

28. Robert Richards has lived in Powder Springs, Cobb County, Georgia since 2016. Deposition of Robert Richards [Doc. 161] (“Richards Dep.”) at 21:13-25.

29. Richards is a member of the Democratic Party. *Id.* at 44:21-23.

30. Plaintiff Jens Rueckert has resided in Powder Springs, Georgia in Cobb County since 2014. Deposition of Plaintiff Jens Rueckert [Doc. 162] (“Rueckert Dep.”) at 14:13-18:2.

31. Mr. Rueckert has considered himself to be a member of the Democratic Party since he has been old enough to vote. *Id.* at 29:7-13.

32. Mr. Rueckert does not recall ever voting for a member of the Republican Party in an election. *Id.* at 30:20-23.

33. O’Juan Glaze lives in, Marietta, Cobb County, Georgia. Deposition of O’Juan Glaze [Doc. 163] (“Glaze Dep.”) at 11:16-17.

34. Mr. Glaze identifies as a member of the Democratic Party. *Id.* at 33:9-11.

35. Mr. Glaze has voted for members of the Republican Party when there were no Democrat candidates on the ballot in that election. *Id.* at 34:10-25.

36. Plaintiffs began planning for this litigation before the Georgia maps were even complete—retaining experts to work on alternative maps around the same time as the special session convened. Cooper Dep. 8:14-23.

37. Plaintiffs' goal in offering their illustrative plans was to determine whether they could draw one additional majority-Black district beyond those drawn by the state plans. Cooper Dep. 14:15-15:2.

38. Map-drawers distinguish "majority-minority" from "majority-Black." Majority-minority districts have a majority of non-white and Latino voters, while majority-Black districts are districts where Black voters as a single racial category constitute a majority of a district. Cooper Dep. 16:14-20.

39. Five of Georgia's fourteen members of Congress are Black individuals. Cooper Dep. 19:19-21.

40. When Mr. Cooper was creating his illustrative maps, he turned on features in the software to indicate where Black individuals were located. Cooper 24:12-25:6.

41. Unlike the legislature, Mr. Cooper did not have any political data available to him. Wright Dep. 55:25-56:7; 140:3-11; 140:17-19; 257:21-258:1; 258:2-14; Cooper Dep. 56:8-11.

42. Mr. Cooper's preliminary injunction plans contained the maximum number of Black districts he drew for any congressional plan in Georgia. Cooper Dep. 14:15-15:2.

43. Mr. Cooper created one additional majority-Black congressional district on his illustrative plan, which is titled District 6. Cooper Report, ¶ 53.

44. Five years ago, in a different Section 2 case challenging Georgia congressional districts, Mr. Cooper analyzed a south Georgia area to create a majority-Black district in rural Georgia. Cooper Dep. 42:10-42:18, 43:4-13.

45. Despite relying on the existence of four state Senate districts in the same area, Cooper Report, ¶ 45, large geographic areas of Senate Districts 39 and 38 in Fulton County were not included in illustrative District 6. Cooper Dep. 49:5-49:15.

46. Unlike Mr. Cooper's preliminary injunction plan, Cobb County is split three ways in the plan he submitted with his expert report. Cooper Dep., 51:3-6.

47. To create the one additional majority-Black district, Mr. Cooper had to alter eight of the existing 14 congressional districts, but avoided altering Districts 2, 5, and 7, all of which currently elect Black Democratic members of Congress. Cooper Report, ¶ 51; Cooper Dep. 36:5-36:14.

48. In illustrative District 6, the only portion of a county in the district that is majority-Black in voting age population is Fulton County. Cooper Dep. 77:12-17.

49. Without the portion of Fulton that Mr. Cooper moved out of District 13 into illustrative District 6, the remaining components of the district would not allow it to be majority-Black. Cooper Dep. 78:6-11.

50. Mr. Cooper connected urban areas in North Fulton with rural areas in Bartow County. Cooper Dep. 59:6-60:1.

51. Mr. Cooper connected Cobb County with rural parts of Georgia going all the way down to Columbus, Georgia in District 3. Cooper Dep. 63:15-24, 64:17-65:4.

52. The only connection Mr. Cooper could identify to this similar configuration of enacted District 14 was that Heard and Troup counties were closer to Atlanta. Cooper Dep. 65:20-66:2.

53. Mr. Cooper agreed that his illustrative 13 connected urban (and heavily Black) parts of Clayton County with rural areas out to Jasper County. Cooper Dep. 73:13-17.

54. Mr. Cooper only identified population equality as the reason why he connected majority-Black Hancock County (from the Black Belt, according to his testimony in other cases) to the North Carolina border. Cooper Dep. 68:6-69:2, 70:16-22; 86:5-8.

55. Mr. Cooper also could not explain why he included Athens/Clarke County in the same district as Hancock County and Rabun County. Cooper Dep. 71:21-72:11

56. Mr. Cooper could identify practically nothing beyond the race of the voters in a number of his districts that united them. Cooper Dep. 68:6-69:2, 70:16-22, 73:13-17, 86:5-8.

57. Dr. Palmer did not review any primary results in his report. Deposition of Maxwell Palmer [Doc. 168] (“Palmer Dep.”) at 59:23-60:01; Deposition of John Alford [Doc. 158] (“Alford Dep.”) 29:07-30:01.

58. Dr. Palmer’s data only demonstrates two things: The race of the candidate *does not* change voting behavior of Georgia voters; and the party of the candidate *does*. Alford Dep. 54:18-22.

59. In the 2022 election cycle, the 2021 congressional plan elected five Black Democratic candidates to the 14 congressional districts. Cooper Dep. 19:19-21.

60. The Any-Part Black VAP for Georgia as a whole is 31.73%, and the 2021 AP Black CVAP is 33.3%. Cooper Report, ¶ 18, Figure 2.

61. 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). Palmer Dep. 53:2-54:2.

Respectfully submitted this 20th 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

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