

Pendergrass, Coakley, et al. v. Raffensperger, Brad, Et Al.

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

CASE NUMBER: 1:21-CV-05339-SCJ

COAKLEY PENDERGRASS, et al.,
PLAINTIFFS,

V.

BRAD RAFFENSPERGER, et al.,
DEFENDANTS.

DEPOSITION TESTIMONY OF:

ELLIOTT HENNINGTON

December 13, 2022

S T I P U L A T I O N S

IT IS STIPULATED AND AGREED by and
between the parties through their respective
counsel that the deposition of ELLIOTT
HENNINGTON may be taken before Mallory B.

1 Gray, CCR, RPR, a Court Reporter and Notary
2 Public for the State at Large, via Zoom, on
3 the 13th of December 2022, commencing at
4 approximately 1:00 p.m.

5 IT IS FURTHER STIPULATED AND AGREED
6 that the signature to and the reading of the
7 deposition by the witness is waived, the
8 deposition to have the same force and effect
9 as if full compliance had been had with all
10 laws and rules of Court relating to the
11 taking of the depositions.

12 IT IS FURTHER STIPULATED AND AGREED
13 that it shall not be necessary for any
14 objections to be made by counsel to any
15 questions except as to form or leading
16 questions and that counsel for the parties
17 may make objections and assign grounds at the
18 time of trial or at the time said deposition
19 is offered in evidence, or prior thereto.

20 In accordance with Rule 5(d) of the
21 Alabama Rules of Civil Procedure, as amended,
22 effective May 15, 1998, I, Mallory B. Gray,
23 am hereby delivering to Dan Weigel, the

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1 original transcript of the oral testimony
2 taken the 13th of December 2022, along with
3 the exhibit.

4 Please be advised that this is the
5 same and not retained by the Court Reporter,
6 nor filed with the Court.

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(The exhibits were not provided to the court reporter.)

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A P P E A R A N C E S

FOR THE PLAINTIFFS:

BY: Mike Jones

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Washington, DC 20002

FOR THE DEFENDANTS:

BY: Dan Weigel

Bryan Jacoutot

Taylor English Duma, LLP

1600 Parkwood Circle

Suite 200

Atlanta, Georgia 30339

1 I, Mallory Bradberry Gray, a Court
2 Reporter and Notary Public, State of Alabama
3 at Large, acting as Commissioner, certify
4 that on this date, pursuant to the Alabama
5 Rules of Civil Procedure and the foregoing
6 stipulation of counsel, there came before me
7 via Zoom, commencing at approximately 1:00
8 p.m. On the 13th of December 2022, Elliott
9 Hennington, witness in the above cause, for
10 oral examination, whereupon the following
11 proceedings were had:

12
13
14 (Witness sworn.)

15 COURT REPORTER: Usual stipulations?

16 MR. JACOUTOT: Dan, are you going to
17 handle the -- well, let me just -- I'm
18 sorry --

19 MR. WEIGEL: Yeah, I was going to
20 let you go first.

21 MR. JACOUTOT: Yeah, this is Bryan
22 Jacoutot for the State Defendants, and I just
23 want to, for the record, state that Dan

1 Weigel of our firm, Taylor English Duma, will
2 be taking the deposition of Mr. Hennington
3 today.

4 And, Mr. Jones, I just want to
5 confirm on the record that that's agreeable
6 to you?

7 MR. JONES: Yes, it is, Bryan. We
8 have no objections.

9 MR. JACOUTOT: Okay. Thank you.

10 And, Dan, you can go ahead.

11 MR. WEIGEL: So this will be the
12 deposition of Elliott Hennington taken by
13 Defendant Secretary of State Brad
14 Raffensperger and members of the state
15 election board for the purpose of discovery
16 and all purposes allowed under the Federal
17 Rules of Civil Procedure.

18 All objections except of those going
19 to the form of the question and the
20 responsiveness of the answer are reserved
21 until trial for the first use of the
22 deposition.

23 Are those stipulations agreeable to

1 you, Counsel?

2 MR. JONES: They are.

3 MR. WEIGEL: And how do you wish to
4 handle the signature, Counsel?

5 MR. JONES: I would like to review
6 and sign.

7 MR. WEIGEL: And has the witness
8 been sworn in? I believe he has; is that
9 correct?

10 MR. JONES: I believe so.

11 MR. WEIGEL: Awesome.

12 ELLIOTT HENNINGTON

13 was sworn (affirmed) and testified as
14 follows:

15 EXAMINATION

16 BY MR. WEIGEL:

17 Q. Well, as Mr. Jacoutot introduced me
18 at the beginning, my name is Dan Weigel from
19 the law firm of Taylor English Duma. I'm, of
20 course, here alongside my colleague,
21 Mr. Jacoutot.

22 MR. WEIGEL: And if counsel for the
23 witness could make his appearance?

1 MR. JONES: Sure.

2 I'm Mike Jones from Elias Law Group.

3 I'm representing Mr. Hennington today.

4 MR. WEIGEL: Thank you.

5 Q. (By Mr. Weigel) Now,
6 Mr. Hennington, I'm going to ask you a series
7 of questions. And just to start off, if at
8 any time during this deposition you don't
9 understand a question that I've asked or if
10 you're not sure you've heard me, just let me
11 know, and I can repeat it.

12 And if you don't ask me to repeat
13 the question or rephrase it or that you don't
14 understand it, I'm going to presume that you
15 understood it.

16 Now, the purpose of this deposition
17 is not to confuse you, so if I -- again, if I
18 ask you anything, just -- and that you don't
19 understand, just ask me to rephrase.

20 And since this is a virtual
21 deposition and there will likely already be
22 some audio issues that we encounter, for the
23 court reporter, it's going to be important

1 that we do a couple things.

2 First, we need you to speak loudly
3 and clearly so that the court reporter can
4 hear you.

5 And second, especially for
6 yes-and-no answers, where your instincts may
7 be to nod or to say uh-huh, be sure to say
8 yes or no audibly for the record.

9 And, finally, we have to do -- both
10 do our best not to speak over each other or
11 cut each other off. So even if you know the
12 answer to a question before I've finished it,
13 just please wait for me to finish the
14 question before you answer, and I will
15 likewise do my best to wait until you've
16 completed and answered before I start with my
17 next question.

18 Likewise, if your attorney objects
19 to a question that I ask, the best practice
20 is that you just stop so we can get that
21 objection on record, and then we'll proceed
22 to your answer or either rephrasing the
23 question.

1 Is that agreeable, Mr. Hennington?

2 A. Yes.

3 Q. And also, if you need a break at any
4 time, just let me know. The only thing that
5 I ask is that if I asked a question, so the
6 question is out there, that you answer the
7 question and then request the break.

8 And, finally, with this, again,
9 being a virtual deposition, it is important
10 that we confirm that you don't have any
11 electronic devices out and open for you to
12 see during the deposition. And that's going
13 to include your cell phone.

14 So please make sure that you have it
15 off or is silenced, as well as any e-mail,
16 not have it open on your computer.

17 And, again, with this being a
18 virtual deposition, you obviously need to
19 have Zoom open, and if we have any exhibits,
20 you're going to be taking a look at that, so
21 we certainly understand that.

22 But we just -- it's important that
23 we confirm for the record that the items I've

1 discussed, anything of that nature, that you
2 do not have your cell phone on or e-mail or
3 text messaging.

4 So can you confirm that for us?

5 A. Yes.

6 Q. Sounds great. So let's get going.

7 So what I'm going to start off with
8 doing is sharing my screen with what's going
9 to be marked as Defendants' Exhibit 1.
10 (Whereupon, Defendants' Exhibit No. 1 was
11 marked for identification.)

12 Q. (By Mr. Weigel) Mr. Hennington,
13 we're going to start off with, again,
14 Defendants' Exhibit 1, and this is going to
15 be the Notice of Deposition.

16 I'm going to scroll through it real
17 fast, so if you could just let me know when I
18 get through it if you're familiar with this
19 document and if it looks like the Notice of
20 Deposition that was issued to you in
21 connection with the deposition that you're
22 providing today?

23 MR. JACOUTOT: Did we lose Dan on

1 that? I think we lost him, because I don't
2 see a screen share anymore either.

3 MR. JONES: Yeah, we can take a
4 break. That's okay with me.

5 Hold on, Mr. Hennington.

6 Can we just go off the record?

7 MR. WEIGEL: That's fine with me,
8 yeah.

9 MR. JONES: And can the court
10 reporter, can you just confirm that we're not
11 on the record?

12 COURT REPORTER: Yes, sir.

13 MR. JONES: Okay. Thank you.

14 (Discussion held off the record.)

15 MR. WEIGEL: Are we ready to get
16 back on the record?

17 MR. JONES: Sure.

18 MR. WEIGEL: Awesome.

19 Q. (By Mr. Weigel) Now, at the risk of
20 showing Exhibit 1 again, Mr. Hennington, did
21 you see Exhibit 1 and did you recognize that
22 document?

23 A. Yes.

1 Q. So that is the accurate Notice of
2 Deposition that you were issued in connection
3 with this matter?

4 A. Yes.

5 Q. All right. Thank you.

6 All right. Now that we've gotten
7 through that, sorry again for the technical
8 difficulties, Mr. Hennington, I'm going to
9 want to start off your testimony by asking,
10 have you ever given testimony prior to this,
11 whether in a deposition or at trial?

12 A. No.

13 Q. And have you taken any medications
14 today that would keep you from fully and
15 truthfully participating in today's
16 deposition?

17 A. No.

18 Q. And do you have any medical
19 conditions that would keep you from fully and
20 truthfully participating in today's
21 deposition?

22 A. No.

23 Q. All right. And now we'll shift

1 gears a little bit.

2 Have you ever filed any
3 election-related lawsuits in the past?

4 A. No.

5 Q. And have any direct family members
6 of yours ever filed any election-related
7 cases?

8 A. No, that I know of.

9 Q. And have you ever been charged with
10 a crime?

11 A. No.

12 Q. Have you ever been arrested?

13 A. Yes.

14 Q. And what were the circumstances
15 involved there?

16 A. A traffic accident.

17 Q. Okay. So aside from the traffic
18 accident, have you ever been arrested in any
19 other matter?

20 A. No.

21 Q. And safe to assume that you've also
22 not been convicted in any other criminal
23 matter?

1 A. No.

2 Q. And have you discussed this case
3 with anyone other than your lawyer?

4 A. No.

5 Q. Have you discussed this deposition
6 with anyone other than your lawyer?

7 A. No.

8 Q. Did you review anything prior in
9 preparation for this deposition?

10 A. Just discussion with my lawyer.

11 Q. And do you have any documents or
12 notes physically with you today?

13 A. No.

14 Q. And so we've got through that.
15 That's pretty easy. We'll shift gears again.
16 Could you just again state your full
17 name for the record.

18 A. Elliott Hennington.

19 Q. And, Mr. Hennington, what is your
20 current address?

21 A. [REDACTED] Powder Springs,
22 Georgia [REDACTED]

23 Q. And is it correct that that address

1 is in Cobb County?

2 A. Yes.

3 Q. And could you repeat that city name
4 one more time? Sorry.

5 A. That's okay. Powder Springs; Powder
6 Springs, Georgia.

7 Q. And how long have you lived at that
8 address in Powder Springs?

9 A. Since August of 2004.

10 Q. Since living at that address in
11 Powder Springs in August 2004, have you lived
12 or resided at any other address?

13 A. No.

14 Q. And where did you live before that
15 address in 2004?

16 A. Mount Holly, New Jersey.

17 Q. Did you say Mount Holly?

18 A. Yes, Mount Holly, New Jersey.

19 Q. And can you describe for us how --
20 the type of geographic region that Mount
21 Holly, New Jersey is?

22 A. South of New York, a little north of
23 Philadelphia, right off of the turnpike,

1 Exit 5.

2 Q. So is it safe to say that that is
3 the more urban part of New Jersey then, not
4 the rural?

5 A. Yes.

6 Q. And how long did you live in New
7 Jersey?

8 A. Approximately three years.

9 Q. Where did you live before that?

10 A. Little Rock, Arkansas.

11 Well, really, Jacksonville,
12 Arkansas. I was in the military at Little
13 Rock Air Force Base.

14 Q. So we'll get into your important
15 past a little bit deeper in my upcoming
16 questions, so before -- when you -- strike
17 that. Sorry.

18 Before Arkansas, where else did you
19 live?

20 A. Texas; Fort Worth, Texas.

21 Q. And are these all in connection with
22 your military past?

23 A. Yes.

1 Q. So if you could -- it might be
2 quickest -- strike that. Sorry.

3 Just go through all the states that
4 you lived in in connection with the military.

5 A. Las Vegas, Nevada; Plattsburgh, New
6 York; Fort Worth, Texas; then Little Rock,
7 Arkansas.

8 Q. And then before joining the
9 military, where did you live?

10 A. Brooklyn, New York.

11 Q. Grew up your whole life there?

12 A. I was born in Detroit and moved to
13 New York when I was one year old. So from
14 one to I graduated from high school.

15 Q. All right. Looks like we've got
16 that covered.

17 Now, to shift a little bit again,
18 really quickly, because this deposition is
19 occurring virtually, can you provide the
20 address from which you are testifying?

21 A. [REDACTED] Powder Springs,
22 Georgia, ZIP code [REDACTED]

23 Q. So that is --

1 MR. WEIGEL: Real quick, can we go
2 off record? Sorry. My video has turned off.

3 MR JONES: Yeah, we can go off.

4 (Discussion held off the record.)

5 MR. WEIGEL: So we are now back on
6 the record.

7 Q. (By Mr. Weigel) I believe we just
8 covered the address from which you are
9 providing this testimony today, and that was
10 your home address, correct, Mr. Hennington?

11 A. Yes.

12 Q. Okay. Perfect.

13 And, you know, though I can see, is
14 your lawyer there with you?

15 A. Yes.

16 Q. And is anyone else present with you?

17 A. No. Somebody's in the -- my son is
18 in the house but not here with me.

19 Q. Okay. But not in the same room that
20 you're in?

21 A. Correct.

22 Q. Now, we went over your home address
23 a little bit.

1 Now, do you own any other
2 properties?

3 A. No.

4 Q. Do you own any rental properties?

5 A. No.

6 Q. And do you rent any properties
7 yourself?

8 A. No.

9 Q. So is it fair to say that the
10 residence that you've identified in Cobb
11 County is your sole residence?

12 A. Yes. Correct.

13 Q. And we went over this a little bit
14 before, but now let's shift gears and talk
15 about your education.

16 What was the highest level of
17 education that you have completed?

18 A. An MBA.

19 Q. And when was that completed?

20 A. I would say back in 1997.

21 Q. So you had mentioned your military
22 experience before.

23 Was that after you completed your

1 military career or during?

2 A. During.

3 Q. Where was that MBA completed?

4 A. At Little Rock Air Force Base.

5 Q. And in connection with that, was
6 there any other degrees or education that
7 you -- strike that. Sorry for the phrasing.

8 Other than the MBA, what is the
9 highest level of education that you
10 completed?

11 A. Again, I would assume my MBA.

12 Q. Aside from that. Sorry.

13 A. That's all right. Well, you know,
14 associate's and bachelor's in order to get my
15 MBA. High school.

16 Q. And where was that completed?

17 A. All in Little Rock, Arkansas.

18 Q. Okay.

19 A. Air Force Base.

20 Q. And you mentioned that you grew up
21 in Brooklyn.

22 Is that where you graduated high
23 school?

1 A. Yes.

2 Q. And could you estimate what year
3 that was?

4 A. '76; 1976.

5 Q. And so aside from those, you know,
6 kind of threshold degrees, do you have any
7 other licenses?

8 A. I have a general contractor license
9 in the state of Georgia.

10 Q. And how long have you had that?

11 A. Since 2008.

12 Q. And are you in good standing with
13 that?

14 A. Yes.

15 Q. Any other licenses?

16 A. No.

17 Q. What about certifications?

18 A. No.

19 Q. Any vocational training that you've
20 had?

21 A. That that I got while I was in the
22 military.

23 Q. And what was that?

1 A. I was a lineman, climbing telephone
2 poles, high voltage.

3 Q. And when did you get that training?

4 A. Back in 1977.

5 Q. And how long were you a lineman for?

6 A. During my -- just about during my
7 whole career in the military.

8 Q. And is there any continuing
9 education that you receive, aside from the
10 general contractors, I would assume?

11 A. No, huh-uh.

12 Q. But you do receive continuing
13 education for that?

14 A. For my license, yes.

15 Q. Yeah.

16 And then, you know, any other broad
17 training that you would describe in any other
18 field or any education?

19 A. No. I've taken some classes --
20 or getting ready to take a class in erosion
21 control.

22 Q. And is that for a hobby or is it
23 a connection with anything?

1 A. In a connection with my license,
2 my --

3 Q. Okay.

4 A. -- general contractor license.

5 Q. Any other training?

6 A. No.

7 Q. All right. Well, let's shift gears
8 yet again and talk about social
9 organizations.

10 Are you currently a member of any
11 social organizations?

12 A. Yes.

13 Q. And what are those?

14 A. The Powder Springs Community
15 Taskforce and the Austell Community
16 Taskforce.

17 Q. Let's start with the one you just
18 named.

19 What kind of organization is that?

20 A. It's a 501(c)(3) nonprofit volunteer
21 base, and we just give out backpacks to kids
22 going to school, do mentoring programs, give
23 out toys during Christmas break,

1 community-based -- I'm sorry for that.

2 Q. Oh, no, no. I was just going to
3 ask, now, how long have you done that?

4 A. And I would say, I guess,
5 since 2010.

6 Q. And do you have any social role or
7 is it more just a volunteer basis?

8 A. The one in Powder Springs, I'm the
9 chair.

10 Q. And how long have you been the
11 chair?

12 A. About eight years.

13 Q. And were you involved in the
14 organization before you were the chair?

15 A. Yes.

16 Q. And how long was that?

17 A. About two years.

18 Q. And did you have any specific role
19 before being the chair?

20 A. No. Just a member.

21 Q. And aside from those two, any other
22 social organizations you're currently
23 involved in?

1 A. No.

2 Q. How about political organizations?

3 A. No.

4 Q. Any other activist organizations --
5 strike that. Sorry.

6 Are you involved in any activist
7 organizations?

8 A. No.

9 Q. And so during your time living in
10 Cobb County since 2004, are those two
11 organizations you identified the only
12 organizations that you have been involved in?

13 A. No, no. Huh-uh.

14 Q. And could you describe the others.

15 A. I was a member of the NAACP at one
16 time.

17 Q. And how long ago was that?

18 A. It's been some time now. I would
19 say about six years ago now.

20 Q. And how long were you a member of
21 that organization?

22 A. Maybe about a year.

23 Q. Any specific reason that you left

1 the organization?

2 A. No.

3 Q. Any specific reason that you joined
4 the organization?

5 A. No, I just was interested in seeing
6 what they was doing.

7 Q. And aside from the NAACP six years
8 ago, any other organizations that you would
9 characterize yourself in being involved with?

10 A. No.

11 Q. Now, I know it was a long time ago,
12 but how about before you were living in Cobb
13 County; so I guess that would've -- now,
14 let's go back a little bit. Sorry if I'm
15 rambling a little bit.

16 What was the gap -- and, again, I'll
17 get into it a little bit more later -- but
18 what was the gap between your military career
19 ending and you moving to Cobb County in 2004?

20 A. I was -- about five years.

21 Q. And what were you doing during that
22 time?

23 A. I was civil service working as a

1 civilian employee for the United States Air
2 Force.

3 Q. And, I guess, I'll get into it a
4 little bit with your employment history.

5 So what brought you to Cobb County?

6 A. My son wanted to come live with his
7 dad, and I was ready to start my own
8 business. We decided to move to Cobb County.

9 Q. What kind of business was that?

10 A. General contracting.

11 Q. Okay.

12 A. Uh-huh.

13 Q. And do you own that business?

14 A. Yes.

15 Q. And have you always owned that
16 business since getting into that area?

17 A. Yes.

18 Q. Has it always been the same
19 business?

20 A. Yes.

21 Q. Can you give me the name of it?

22 A. Trimen Enterprises, T-r-i-m-e-n,
23 Enterprises.

1 Q. Very fascinating. There's this
2 story -- so I guess what I would shift to now
3 is just kind of describe how that business
4 has gone for you, you know, whether it's
5 stayed the same or not.

6 A. Peaks and valleys, you know.
7 With the market -- housing market
8 crashing in 2008 was a -- it was a valley.

9 Q. And has it always been residential?

10 A. Yes.

11 Q. Do you have any employees?

12 A. No.

13 Q. And so let's go back a little bit.

14 Now, I believe you mentioned you
15 were in the civil service prior to moving to
16 Cobb County.

17 Can you describe a little bit your
18 job responsibilities and role there?

19 A. Facility manager.

20 Q. And that was the whole time between
21 you leaving the military and moving to Cobb
22 County?

23 A. Well, that was a -- I started civil

1 service in Little Rock, Arkansas, where I was
2 just a planner, working with plans.

3 And then I moved to New Jersey as a
4 facility manager.

5 Q. So safe to describe it as leave the
6 military, you're a planner in Little Rock,
7 upgrade, for lack of a better term, to
8 facility manager in New Jersey, then end up
9 in Cobb County?

10 A. Correct.

11 Q. And going back a little bit further,
12 what led you to leave the military?

13 A. Retirement; 21 years and 10 months.

14 Q. And you said you were a lineman.

15 And you were you a lineman for how
16 long in the military?

17 A. Close to 15 years.

18 Q. And for the time period that you
19 weren't a lineman, if you could just quickly
20 describe what your roles in the military
21 were.

22 A. I went to the engineering
23 department, looked over electrical projects,

1 plans.

2 Q. And what led you to join the
3 military from living in Brooklyn?

4 A. To see the world. I did -- I stayed
5 stateside, but that's my -- that was my --
6 that was my plan.

7 Q. So I guess that's one question I did
8 not get to.

9 You were never stationed overseas or
10 outside of the United States?

11 A. Yes, I was in Korea twice; Kusong,
12 Korea.

13 Q. In what years -- strike that.

14 What time periods were you in Korea?

15 A. I can give you years; from '77 to
16 '78 and '85 to '86.

17 Q. And how was that?

18 A. An experience.

19 Q. All right. Well, I think that
20 covers your employment background. Now let's
21 shift a little bit to a subject matter closer
22 to our case at hand here. Let's talk about
23 voting.

1 Are you currently registered to vote
2 in Georgia?

3 A. Yes.

4 Q. And where did you register?

5 A. When I got my driver's license at
6 the DMV.

7 Q. I'm not really familiar with that
8 process.

9 Can you describe how that works?

10 A. Well, they actually -- when you go
11 to -- when they ask you to fill out the
12 driver's license and everything, I think --
13 it's been a while, I think it's a
14 questionnaire, would you like to register to
15 vote. Yes.

16 Q. And how soon after moving down to
17 Cobb County did that occur?

18 A. Normally, probably within months or
19 within -- before 2004 is over with.

20 Q. And I know with your extensive
21 military background, being around everywhere,
22 can you go through where else you've been
23 registered to vote?

1 A. Little Rock, Arkansas. I want to
2 say Plattsburgh, New York.

3 Q. So it's safe to say that you have
4 been registered to vote in three states:
5 Arkansas, New York, and Georgia?

6 A. Correct.

7 Q. And, currently, are you registered
8 to vote at your current address that you
9 described earlier?

10 A. Yes.

11 Q. In connection with that, do you know
12 what voting district you presently reside in?

13 A. No, not without having my card in
14 front of me, no.

15 Q. All right. And have you voted in
16 each election since you've been registered to
17 vote in Georgia?

18 A. Yes.

19 Q. So every presidential primary?

20 A. Yes.

21 Q. How about other primaries?

22 A. Other primaries prior to Georgia,
23 or -- I didn't quite understand the question.

1 Q. Sorry. I will clarify.

2 In Georgia, have you voted in every
3 primary election since --

4 A. Yes.

5 Q. -- being registered to vote?

6 A. Yes.

7 Q. Every general election?

8 A. Yes.

9 Q. How about every special election?

10 A. I can't say if I have.

11 Q. And when you voted in the most -- I
12 guess it would be prior to the special
13 election, or both -- well, strike that then.

14 A. The question: Is a runoff
15 considered a special election?

16 Q. Yes. Yeah.

17 A. Well, yes, I did vote in special
18 elections.

19 Q. And when you last voted, what
20 precinct did you vote in?

21 A. I want -- I'm not sure. I want to
22 say Precinct 7, but I -- can't quote me on
23 that. I'm guessing.

1 Q. Can you give a description of where
2 you voted?

3 A. Yes, at advance voting place at
4 south Ron Anderson building, recreation
5 center, in Powder Springs, New York.

6 Q. So you voted early?

7 A. Correct.

8 Q. And how about -- so -- sorry to --
9 to go back a little bit, was that in the
10 runoff or the most recent general election?

11 A. The last one was a special and a
12 runoff.

13 Q. And that was the one we were just
14 describing, right?

15 A. Correct.

16 Q. And then how about in the general;
17 do you remember which precinct you voted
18 there?

19 A. It would've been the same one.

20 Q. Same.

21 A. Same location.

22 Q. Let's shift a little bit.

23 Do you consider yourself to be a

1 member of the Democratic Party?

2 A. Yes.

3 Q. And for how long have you considered
4 that?

5 A. I guess ever since I been voting
6 regularly.

7 Q. So would that have been probably the
8 mid '70s?

9 A. Yes. More like the '80s.

10 Q. And have you ever held any
11 leadership position in the Democratic Party?

12 A. No.

13 Q. Have you ever held any position or
14 served on any committee in the Democratic
15 Party?

16 A. No.

17 Q. And have you participated in
18 activities of the Democratic Party?

19 A. No, no.

20 Q. And so is it safe to say that you've
21 never considered yourself a member of the
22 Republican Party?

23 A. Yes.

1 Q. And it would also be fair to say you
2 generally support Democratic candidates for
3 election in Georgia?

4 A. Yes.

5 Q. And so have you ever voted for a
6 Republican candidate?

7 A. Not to my knowledge.

8 Q. And we've kind of covered it
9 earlier, but just real quick, have you ever
10 been a member or held a position in
11 connection with any other political party?

12 A. No.

13 Q. Have you ever worked on any
14 political campaigns?

15 A. Yes.

16 Q. Which ones?

17 A. President Obama's campaign.

18 Q. And how would you describe your role
19 in working on that political campaign?

20 A. Just at one of the headquarters,
21 getting people registered to vote, opening
22 and closing the building, phone banking.

23 Q. And was that for both Obama

1 campaigns or just one?

2 A. More so the first one.

3 Q. But maybe a little bit with the
4 second one?

5 A. Yes.

6 Q. And, again, this is something we
7 covered a little bit earlier, but have you
8 had any type of involvement with voter
9 advocacy groups ever?

10 A. No.

11 Q. And so let's now shift to discussing
12 the lawsuit.

13 How did you first hear about the
14 lawsuit that you got involved with?

15 A. I was approached.

16 Q. And who were you approached by?

17 A. I guess my name was given to the --
18 to the law firm that's representing me.

19 Q. And can you describe the nature of
20 the initial contact that occurred?

21 MR. JONES: We'll just object to the
22 extent that this question seeks any
23 information that's covered by the

1 attorney/client privilege.

2 Mr. Hennington, you may answer the
3 question if you can do so without revealing
4 any privileged information.

5 THE WITNESS: There was -- can
6 you -- can you rephrase that question?

7 Q. (By Mr. Weigel) Yes, yes. Sorry.
8 I'll quickly rephrase it to state, how would
9 you describe the facts and circumstances --
10 not -- not the nature of any conversations
11 that occurred, but what was the type of
12 contact that occurred?

13 MR. JONES: And, again, we'll just
14 restate that objection to the extent it calls
15 for any information protected by the
16 attorney/client privilege.

17 Q. (By Mr. Weigel) So, Mr. Hennington,
18 was it a phone call?

19 A. Yes.

20 Q. And, again -- sorry to cut you off
21 there, but you certainly don't describe the
22 contents of any of these conversations.

23 So was it one phone call?

1 A. Yes.

2 Q. And then you joined the lawsuit?

3 A. (Witness nods head.)

4 Q. And you described earlier that you
5 believe that your name had been submitted and
6 then they reached out to you?

7 A. Correct.

8 Q. And just to quickly go through a --
9 why did you get involved in the lawsuit?

10 A. It was very -- it was interesting,
11 and it struck my interest.

12 Q. You stated it struck your interest.
13 How did it strike your interest?

14 A. How the redistricting was done.

15 Q. Can you expand on that a little bit?

16 A. A lot of times, I just believe we
17 get redistricting, not making the contentions
18 so well of what's going on until after the
19 fact.

20 Q. So prior to this lawsuit, prior to
21 the current redistricting, did you have
22 strong thoughts or feelings about the way the
23 districts were drawn then?

1 A. Yes.

2 Q. And how would you describe those
3 feelings?

4 A. Not able to speak up or say anything
5 or our concerns about their community being
6 redistricting under different candidates or
7 leaders.

8 Not having a voice.

9 Q. So is it fair to say you were not
10 happy with the way the districts were drawn
11 both before and after the redistricting?

12 A. Well, I'm not going to say before,
13 but after.

14 Q. And how about before?

15 A. I was fine with my representative at
16 that time.

17 Q. Do you know who that representative
18 was?

19 A. No, I can't remember right now.

20 Q. So, again, you've gone over a little
21 bit, and I just want to kind of ask a little
22 bit further about -- so as far as your
23 feelings on redistricting, would you say that

1 it's more of a general unhappiness or a
2 specific unhappiness?

3 A. I only can express -- you know, for
4 me, I would say general, but, again, that's
5 just an assumption on my part.

6 Q. So fair to say an unhappiness with
7 the way all the districts are drawn?

8 A. Correct.

9 Q. Not just your specific district?

10 A. Correct.

11 Q. And prior to the redistricting and
12 getting involved in this lawsuit, I believe
13 we went over earlier you had not filed any
14 lawsuit before that, correct?

15 A. Correct.

16 Q. And it's fair to say that that's
17 because, to your earlier testimony, you were
18 happy with your specific representative?

19 A. Correct.

20 Q. And then how would you describe your
21 overall goal with this lawsuit?

22 A. Having a voice in the community.

23 Q. And can you go a little bit more

1 specific into that? What would that mean?

2 A. Well, being involved in some of
3 those civic groups that I mentioned earlier,
4 people tend to look up to you to express, you
5 know, different things in the community
6 that's going on; for instance, like the
7 redistricting, you know, being able to speak
8 to local representatives.

9 Q. So then would it be fair to say that
10 your involvement in this lawsuit, your goal
11 in this lawsuit, is kind of an extension of
12 how you see your role in your current
13 community?

14 A. Yes.

15 Q. And so shifting back a little bit to
16 when you got involved with the lawsuit --
17 and, again, to your attorney's point, don't
18 reveal any -- the nature of any conversations
19 you had with your attorney -- but did you,
20 yourself, research any issues in connection
21 with this case prior to getting involved?

22 A. No, just heard about -- you know,
23 heard about what was going on through the

1 news --

2 Q. Yeah.

3 A. -- through the news.

4 Q. And it's fair to say that's kind of
5 consistent with your prior testimony, that
6 you felt your voice and your community's
7 voice wasn't being heard?

8 A. Correct.

9 Q. And I think we kind of answered this
10 question, but it's fair to say you probably
11 did not do any research concerning the
12 attorneys that are representing you in this
13 case, correct?

14 A. Investigating of the attorneys? I
15 guess I just want to make a clear
16 understanding of the question.

17 Q. Yeah, sorry, the phrasing was a
18 little poor on that.

19 Prior to agreeing to have the
20 attorneys that represent you represent you in
21 this matter, did you do any research
22 concerning those attorneys?

23 A. No.

1 Q. And what type of contract, if any,
2 have you signed with your attorneys in this
3 case?

4 A. That, I guess -- I'm trying to
5 think. That sheet that you showed me, those
6 exhibits, I don't even remember. You know,
7 some paperwork saying to be a Plaintiff, that
8 I know of.

9 Q. So it's fair to characterize it as
10 the document that you signed was essentially
11 to be a Plaintiff in this case?

12 A. Correct.

13 Q. And do you know how the fees and
14 expenses for your attorneys are being paid in
15 this case?

16 A. No.

17 Q. Do you know if your attorneys have
18 been paid in this case?

19 A. No.

20 Q. And have you been paid or received
21 anything of value in exchange for your
22 participation as a Plaintiff in this lawsuit?

23 A. No.

1 MR. WEIGEL: Now, looks like we're
2 going to shift gears a little bit.

3 How you doing, Mr. Hennington? You
4 want to keep going or do you need a break?

5 THE WITNESS: No, I can keep going.
6 I'm just, you know, moving around in my chair
7 a little bit, just stretching these old
8 bones.

9 MR. WEIGEL: I am too.

10 Q. (By Mr. Weigel) So I'm going to ask
11 my colleague, Bryan, to share -- introduce
12 into the record Defendants' Exhibit 2, which
13 will be the Amended Complaint filed by
14 Plaintiffs.

15 (Whereupon, Defendants' Exhibit No. 2 was
16 marked for identification.)

17 Q. (By Mr. Weigel) Mr. Hennington, are
18 you familiar with this document?

19 A. Yes.

20 Q. So you've seen it before?

21 A. Yes.

22 Q. Have you read the whole document?

23 A. Yes.

1 Q. And so you're familiar with the
2 allegations that are in this Complaint?

3 A. Correct.

4 Q. And so it would also be fair to say
5 that you're familiar with the allegations
6 concerning you in the Complaint?

7 A. Yes.

8 Q. So we're going to do that right now;
9 we're going to scroll down to paragraph 13 of
10 the Complaint, and it's going to start on
11 page 5 and continue on page 6.

12 Do you see that, Mr. Hennington?

13 A. Yes.

14 Q. And if you could, quickly read
15 through that and just let Bryan know when
16 you've kind of gotten through the first half
17 on page 5, and then read through the rest on
18 page 6.

19 A. You're talking about at 13, right?

20 Q. Correct.

21 A. Plaintiff --

22 Q. Oh, sorry, Mr. Hennington. You can
23 just read it to yourself real fast. Sorry.

1 A. Oh, I'm sorry.

2 Q. No, no, that was my poor phrasing
3 there.

4 A. Okay. Next page?

5 Yes, I'm done. Thank you.

6 Q. So we touched on this, but do you
7 recognize the allegations contained in that
8 paragraph?

9 A. Yes.

10 Q. And is that information contained in
11 the paragraph accurate as it relates to you?

12 A. Yes.

13 Q. Now, I know we had some questions
14 about it earlier, but did you see in the
15 paragraph the congressional district in which
16 you reside?

17 A. Yes.

18 Q. So are you familiar now that it is
19 the 14th Congressional District?

20 A. Yes.

21 Q. And you mentioned you voted in
22 the 2022 general election, correct?

23 A. Yes.

1 Q. So you would've voted for the
2 candidate that -- strike that.

3 So you would've voted in connection
4 with the 14th Congressional District in
5 the 2022 general election, correct?

6 A. Yes.

7 Q. And do you remember which candidate
8 you voted for?

9 A. That would've been Marcus Flowers.

10 Q. And did the candidate you vote for
11 in that election succeed?

12 A. No.

13 Q. And going back to 2020, you voted in
14 that general election, correct?

15 A. Yes.

16 Q. Do you remember the congressional
17 candidate you voted for then?

18 A. No.

19 Q. So you wouldn't know whether that
20 candidate succeeded or not?

21 A. I don't remember. I know I voted
22 Democratically on that election.

23 Q. So it would be -- strike that.

1 Do you remember if you were in the
2 same congressional district back in 2020?

3 A. Yes. It covered this area, yes.

4 Q. So it would've been the 14th; is
5 that accurate?

6 A. Yes.

7 Q. And then going back one more,
8 to 2018, you voted in that election, correct?

9 A. Yes.

10 Q. And, again, you voted for the
11 Democratic candidate, correct?

12 A. Yes.

13 Q. And do you remember if that
14 candidate won or lost?

15 A. I don't remember.

16 Q. Shifting a little bit, and we
17 touched on this earlier, prior to the Georgia
18 legislature passing the redistricting plan
19 that is presently being challenged, did you
20 reach out to any legislator during the 2021
21 special session concerning the redistricting
22 issues that you raised in the Complaint?

23 A. No.

1 Q. How about after it?

2 A. No.

3 Q. So would it be fair to say -- strike
4 that.

5 Did you testify in the Georgia
6 assembly on those issues or any issues
7 pertaining to redistricting in 2021?

8 A. No.

9 Q. And did you attend any hearings in
10 the Georgia legislature pertaining to the
11 same?

12 A. No.

13 Q. And did you attend any meetings,
14 whether they be community meetings or
15 anything else, in connection with the
16 redistricting plan before or after it was
17 passed by the Georgia legislature?

18 A. No.

19 Q. And so we're going to shift again.
20 We kind of had touched on this a little bit
21 with your prior testimony, but we're going to
22 turn to the phrase "community of interest."

23 Are you familiar with how that

1 phrase is used in your Complaint?

2 A. No.

3 Q. Do you have a general idea of how
4 the community that you live in relates to the
5 claims that you have asserted in this
6 lawsuit?

7 MR. JONES: Objection. Vague.

8 You may answer.

9 THE WITNESS: (No response.)

10 Q. (By Mr. Weigel) Would you like me
11 to rephrase, Mr. Hennington?

12 A. Yes.

13 Q. And it's going to go back a little
14 bit to what you were talking about earlier,
15 but how would you relate the community that
16 you live in to the allegations and claims
17 that you are making in the current lawsuit?

18 MR. JONES: Objection. Vague.

19 You may answer.

20 THE WITNESS: I just think that as
21 part of these organizations, that the
22 community may look -- what's the word I'm
23 wanting? -- you know, thank me for trying to

1 take some action in this lawsuit, you know.

2 Q. (By Mr. Weigel) So you described
3 those organizations, and you touched on that
4 earlier as well.

5 Would you consider those
6 organizations part of your community?

7 A. Yes.

8 Q. And to the best of your ability, how
9 would you describe that relationship that you
10 have with those organizations and how it
11 relates to your community?

12 MR. JONES: Objection. Vague.

13 You may answer, Mr. Hennington.

14 THE WITNESS: Being a servant, like
15 I said, passing out backpacks, toys, doing
16 mentoring programs, just giving back into the
17 community, and some people may view that as
18 somebody that takes leadership roles in the
19 community.

20 Q. (By Mr. Weigel) And ask you quickly
21 describe for me where all -- strike that.

22 What is the best way to describe the
23 sorts of places that you go to in connection

1 with those organizations?

2 MR. JONES: Objection --

3 THE WITNESS: Community -- I'm
4 sorry.

5 MR. JONES: Objection. Vague.

6 You may answer.

7 THE WITNESS: Community centers.

8 Q. (By Mr. Weigel) And where are those
9 community centers located?

10 A. In Powder Springs and Austell --
11 Powder Springs, Georgia and Austell, Georgia.

12 Q. Shifting again, Mr. Hennington, in
13 addition to those organizations, do you
14 participate in any neighborhood or community
15 associations?

16 A. I'm part of my HOA.

17 Q. And how long have you been a part of
18 your HOA?

19 A. Oh, back and forth since I've been
20 living here. I guess since 2004.

21 Q. And do you have any specific role in
22 your HOA?

23 A. Yeah, architect chair.

1 Q. And has that always been your role
2 in the HOA?

3 A. No, I've been president also at one
4 time.

5 Q. When were you president?

6 A. I can't even remember. I want to
7 say -- I -- I'd be guessing, about 2014,
8 something like that.

9 Q. And was there any specific reason
10 why you became president?

11 A. Just came about my community within
12 I live, where I live at.

13 Q. So just it was kind of your time to
14 be the president with the HOA?

15 A. Got voted in.

16 Q. And then do you remember why your
17 role as president ended in the HOA?

18 A. Too much stuff on my plate. Time to
19 give it up.

20 Q. And is that when you shifted back to
21 the president role that you're in in the HOA?

22 A. Correct.

23 Q. And how would you generally describe

1 your engagement with the HOA?

2 A. Just riding around looking at the
3 houses inside our subdivisions; grass
4 cutting, signs.

5 Q. Would you say that you enjoy your
6 role in the HOA being involved in your local
7 neighborhood like that?

8 A. It has its rewards, and it has its
9 challenges.

10 Q. Let's go into that a little bit
11 deeper.

12 What are the rewards?

13 A. Seeing the people upkeeping their
14 houses and that the houses in the
15 neighborhood looks good.

16 And then with those community
17 organizations, when giving those backpacks
18 and toys away to the kids, seeing the smile
19 on their face.

20 Q. And then what was -- did you
21 describe it as drawbacks?

22 A. Challenges. Yeah, sometimes when
23 you take the lead role, a lot of people are

1 looking for you to get things done, which,
2 you know, requires a lot of energy and work
3 to make things happen.

4 Q. Would it be fair to say that you
5 still take pride in that aspect of it,
6 though?

7 A. Yes.

8 Q. And how about any faith-based
9 organizations?

10 A. Yes, I serve as a deacon at Destiny
11 World Church, in Austell, Georgia.

12 Q. And how close is that to your home?

13 A. Twenty minutes.

14 Q. And how long have you been a deacon
15 there?

16 A. Probably since 2010.

17 Q. And what kind of role and
18 responsibility does the position of deacon in
19 your church play?

20 A. Open and close the door during
21 service, collecting offering, praying for
22 people when they ask for prayer.

23 Q. And so would it be fair to say that

1 you are fairly involved in your church then?

2 A. Yes. Very involved.

3 Q. You described the activities that
4 you did in connection with the organizations
5 earlier.

6 What kind of activities does your --
7 strike that.

8 What role -- how would you describe
9 the role that your church plays within the
10 surrounding community that it's in?

11 A. Well, it's supportive of our
12 outreach ministry that helps support certain
13 events that the community puts out, like I
14 mentioned the backpack giveaway, that the
15 church makes a donation to help buy
16 backpacks.

17 Same thing with the Toys for Tot
18 program. You know, they -- they sponsor so
19 many toys through these communities.

20 Q. In those communities that benefit
21 from those activities and events, would you
22 describe that as closely surrounding the
23 church in geographical proximity?

1 A. Yes.

2 Q. And moving on, are you involved in
3 any school associations or activities?

4 A. No.

5 Q. And outside of work and church and
6 you described kind of the role and
7 responsibility you play in the community
8 itself, how do you spend most of your time
9 outside of that?

10 A. That eats up just about 90 percent
11 of my time, most of my time.

12 Q. I was about to say, I was describing
13 quite a bit.

14 So anything else you do in your
15 spare time?

16 MR. JONES: Objection. Relevance.
17 You may answer.

18 THE WITNESS: Watch basketball and
19 play bid whist, cards.

20 Q. (By Mr. Weigel) And do you play
21 cards with people that live near you?

22 MR. JONES: Objection. Relevance.

23 THE WITNESS: Some --

1 MR. JONES: You can answer.

2 THE WITNESS: Some do and some
3 don't.

4 MR. WEIGEL: Now, Mr. Hennington,
5 we're going to shift to kind of a quick-fire
6 question-and-answer, depending on the
7 answers, but it's kind of relating to the
8 specific legal claims in the lawsuit.

9 So before we get there, are you
10 still okay as far as going through this or do
11 you want to take a break?

12 THE WITNESS: No, I'm fine.

13 MR. WEIGEL: Okay. Perfect. Let's
14 go then.

15 Q. (By Mr. Weigel) So first question,
16 have you ever been prohibited from
17 registering to vote based on your race?

18 A. No.

19 Q. And have you ever been prohibited
20 from participating in the political process
21 based on your race?

22 A. No.

23 Q. And do you have any personal

1 knowledge of discrimination by the government
2 of Georgia against members of a minority
3 group relating to participation in the
4 democratic process?

5 A. No.

6 Q. And going back to another term -- or
7 phrase, excuse me -- that is used in your
8 Complaint, do you know what the phrase
9 "racially polarized voting" means?

10 A. I have a general idea.

11 Q. And what would that general idea be?

12 A. I guess particularly holding certain
13 cultures apart, I guess, from doing different
14 activities or voting.

15 Q. You used the phrase "holding certain
16 cultures apart."

17 What did you mean by that?

18 A. Well, different races. You know, we
19 have a lot of different races out here.

20 Q. And how do you think that relates to
21 voting?

22 A. Well, I'm sure it would have an
23 impact.

1 Q. And what do you think that impact
2 would be?

3 A. Well, on their outcome or people
4 being able to vote.

5 Q. And expanding on that just a little
6 bit, how do you think tying those two
7 things -- strike that.

8 Tying the outcome to those groups as
9 you have described, how do you think that
10 occurs?

11 MR. JONES: Objection. Vague.

12 THE WITNESS: I'm not sure if I
13 understand the question completely.

14 Q. (By Mr. Weigel) Yeah. Sorry about
15 that. I phrased it a little bit poorly.

16 So we were talking about these
17 different cultures and the voting outcomes.

18 I guess I would ask -- just expand a
19 little bit more on how do you think that
20 plays out directly in the voting process.

21 MR. JONES: Objection. Vague.

22 THE WITNESS: I think some of them
23 might defer people from voting.

1 Q. (By Mr. Weigel) Okay. And we'll
2 move on from that.

3 In your opinion, do black voters in
4 Georgia generally vote for Democratic
5 candidates?

6 A. That's my -- yes. That's just my
7 opinion.

8 Q. And do you personally know any black
9 voters who've told you that they've voted for
10 Republican candidates?

11 A. Yes.

12 Q. And can you remember any specifics
13 with that?

14 A. No.

15 Q. And do you know if Georgia uses a
16 majority vote requirement in its elections?

17 A. No, I don't know.

18 Q. So going a little bit back to the
19 last runoff that occurred, would you agree
20 that that runoff occurred because of the
21 majority vote requirement?

22 MR. JONES: Objection. Leading.

23 MR. WEIGEL: I'll rephrase.

1 Q. (By Mr. Weigel) In your opinion,
2 why did the runoff that just occurred between
3 Raphael Warnock and Herschel Walker occur?

4 A. I guess -- I guess the numbers were
5 too close. One had to get to 51 percent.

6 Q. Do you remember how Senator Warnock
7 was originally elected to the Senate?

8 A. Vaguely. He won, what, two years
9 ago; he entered the race two years ago.

10 Q. And do you recall if that was a
11 similar special runoff election that he won?

12 A. No.

13 Q. And do you know how the other
14 Georgia senator, Senator Ossoff, originally
15 won the seat that he now holds?

16 A. Popular vote.

17 Q. And do you recall if you voted for
18 Senator Ossoff?

19 A. Yes.

20 Q. And you recall that he won his
21 election, correct?

22 A. Yes.

23 Q. And same question for Senator

1 Warnock; do you recall if you voted for
2 Senator Warnock --

3 A. Yes.

4 Q. -- the last time?

5 A. Yes.

6 Q. And the time before that?

7 A. Yes.

8 Q. And you recall that he won both of
9 those races, correct?

10 A. Correct.

11 Q. And moving on, we're going to use
12 some more phrases that appear in the
13 Complaint.

14 Are you familiar with the term
15 "candidate-slating process"?

16 A. No.

17 Q. And so would it be fair to say that
18 you don't know if there's a candidate-slating
19 process in Georgia?

20 A. No, I don't know.

21 Q. Moving on a little bit back to you
22 personally, has a lack of education kept you
23 from participating in Georgia politics?

1 A. No.

2 Q. And has a lack of employment
3 opportunities kept you from participating in
4 Georgia politics?

5 A. No.

6 Q. How about a lack of access to
7 adequate healthcare services; has that kept
8 you from participating in Georgia politics?

9 A. No.

10 Q. Are you aware of the term "racial
11 appeals" as it is used in the context of
12 elections?

13 A. No.

14 Q. Have you personally seen campaigns
15 in Georgia that you would characterize as
16 racial appeals?

17 MR. JONES: Objection. Foundation.

18 THE WITNESS: No.

19 Q. (By Mr. Weigel) Yeah -- okay. I --
20 I would -- I can strike that.

21 And do you know how many black
22 people have run for office in Georgia?

23 A. A lot.

1 No, I don't.

2 Q. So you would say a lot?

3 A. Yes.

4 Q. And similar question, do you know
5 how many black people have been elected to
6 public office in Georgia?

7 A. No.

8 Q. Are you familiar with the former
9 chief justice of the Georgia Supreme Court,
10 Harold Melton?

11 A. No.

12 Q. Shifting back a little bit to the
13 recent Senate race, you're aware that in the
14 special runoff election, both Raphael Warnock
15 and Herschel Walker are black?

16 A. Yes.

17 Q. And as we mentioned earlier, Raphael
18 Warnock won that race against Herschel
19 Walker, correct?

20 A. Yes.

21 Q. And you're aware that Herschel
22 Walker ran on the Republican ticket?

23 A. Correct. Yes.

1 Q. And you understand that that means
2 he won the Republican primary against other
3 Republican candidates, correct?

4 A. Yes.

5 Q. And are you aware that he won by
6 quite a wide margin as well?

7 A. I'm not -- I don't remember the
8 margin.

9 Q. And moving on, do you believe that
10 there are any needs of the minority community
11 in Georgia that, in your opinion, differ from
12 those of white residents?

13 A. No.

14 MR. WEIGEL: All right. Well, that
15 is all I have for now.

16 Mr. Jones, would it be all right if
17 I took just a brief probably five-minute
18 break just to confer with Bryan real fast to
19 see if we have anything further?

20 MR. JONES: Yeah, that's fine. And
21 when we -- when we get back, I will have just
22 a very short direct.

23 MR. WEIGEL: Okay, okay. Yeah.

1 Sorry about that. I jumped the gun a little
2 bit.

3 MR. JONES: Not a problem. Yeah.
4 Happy to take a short break.

5 MR. WEIGEL: Okay. Perfect. So I
6 guess we'll be back on in -- do we want to
7 say maybe 2:35?

8 MR. JONES: Yeah, that's fine.

9 MR. WEIGEL: Perfect. Thank you.

10 MR. JONES: No problem.

11 And can -- would the court reporter,
12 would you just mind confirming when we're off
13 the record?

14 COURT REPORTER: Yes, sir.

15 Yes, sir, we're off.

16 (Short recess.)

17 MR. WEIGEL: All right. Mr. Jones,
18 that completes our questioning, so I will
19 defer to you now.

20 MR. JONES: Okay.

21

22

23

EXAMINATION

1 BY MR. JONES:

2 Q. Mr. Hennington, I just have a few
3 short questions for you.

4 A. Yes.

5 Q. So you testified earlier that you
6 were a member of the Democratic Party; is
7 that right?

8 A. Yes.

9 Q. Why are you a member of the
10 Democratic Party?

11 A. Well, I believe in the Democratic
12 Party, plus I pay my dues.

13 Q. And can you tell us why you believe
14 in the Democratic Party?

15 A. I just like some of the -- mainly
16 the beliefs and their values that they hold
17 for -- for the community or for the nation.

18 Q. And is it fair to say that you share
19 those beliefs and values?

20 A. Yes.

21 Q. You testified that in 2020 and past
22 elections, you voted in Cobb County; is that
23 correct?

1 A. Yes.

2 Q. And in 2020 and, you know, elections
3 immediately preceding it, at that time, were
4 you represented by Congressman David Scott?

5 A. Yes.

6 Q. Do you feel that Congressman Scott
7 represented your values?

8 A. Yes.

9 Q. Why is that?

10 A. Because he did a lot of programs --
11 what do you call that? -- workshops, so when
12 there are employment opportunities, you
13 always see him promoting certain programs,
14 medical -- mental health -- medical health,
15 different things in the community.

16 Q. And is it fair to say that when you
17 say "in the community," you mean that he's
18 promoting these health and employment
19 opportunities in the African-American
20 community?

21 A. That plus all of those under his
22 district.

23 Q. Okay.

1 A. Yeah.

2 Q. And I believe you also testified
3 earlier that you were not happy with your
4 current congressional representative; is that
5 right?

6 A. Correct.

7 Q. Do you remember who your current
8 representative in Congress is?

9 A. That's a good question.

10 Current -- I want to say Ms. Green.

11 Q. Okay. Are you referring to Marjorie
12 Taylor Green?

13 A. Marjorie Taylor Green, yes.

14 Q. And can you tell us why you're
15 unhappy with her?

16 A. I don't feel that she ever came down
17 here to speak to us, any programs, in here to
18 make herself known to her constituents.

19 Q. All right. Do you feel like she
20 represents your community's values?

21 MR. WEIGEL: Objection. Leading.
22 You may answer.

23 THE WITNESS: Not being aware of

1 what our values are, yes.

2 MR. JONES: Great. All right.

3 That's the end of my questioning. Thank you,
4 Mr. Hennington.

5 THE WITNESS: You're welcome.

6 MR. JONES: All right. Dan, do you
7 have anything else?

8 MR. WEIGEL: Nothing further.

9 I believe that completes your
10 deposition today, Mr. Hennington. Thank you
11 so much for taking the time to sit down for
12 this deposition, and I hope you have a great
13 rest of your day.

14 THE WITNESS: All right. Thank you.
15 Y'all take care.

16 FURTHER DEPONENT SAITH NOT

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1 CERTIFICATE

2 STATE OF ALABAMA)
) ss:
3 COUNTY OF MARSHALL)
4

5 I hereby certify that the above and
6 foregoing proceeding was taken down by me by
7 stenographic means, and that the content
8 herein was produced in transcript form by
9 computer aid under my supervision, and that
10 the foregoing represents, to the best of my
11 ability, a true and correct transcript of the
12 proceedings occurring on said date at said
13 time.

14 I further certify that I am neither
15 of counsel nor of kin to the parties to the
16 action, nor am I in anywise interested in the
17 result of said cause.

18 

19 Mallory B. Gray, CCR
CCR #558, Expires 9/30/2023
20 Commissioner for the
21 State of Alabama at Large
22 Notary Public, Expires 02/23
23

[02/23 - answer]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

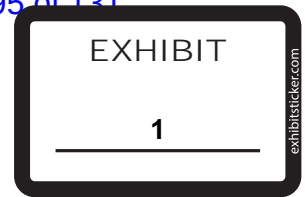
VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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.

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**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' NOTICE TO TAKE THE DEPOSITION
OF ELLIOTT HENNINGTON**

PLEASE TAKE NOTICE that, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, counsel for Defendants Brad Raffensperger, in his official capacity as Secretary of State of Georgia; William S. Duffey Jr., in his official capacity as chair of the State Election Board; and Matthew Mashburn, Sara Tindall Ghazal, Edward Lindsey, and Janice Johnston will take the oral examination of Plaintiff Elliott Hennington on Tuesday, December 13, 2022, beginning at 1:00 p.m. and continuing thereafter until completed via Zoom videoconferencing through Veritext Legal Solutions. Details regarding the videoconferencing will be emailed to those participating once all arrangements are finalized.

The deposition shall be taken before a Notary Public or some other officer authorized by law to administer oaths for use at trial. The deposition will be taken by oral examination with a written and/or sound and visual record made thereof (*e.g.*, videotape, LiveNote, etc.). The deposition will be taken for the purposes of cross-examination, discovery, and for all other purposes permitted under the Federal Rules of Civil Procedure or any other applicable law.

This 12th day of December, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2022, I caused a copy of the foregoing to be served by electronic mail on all counsel of record.

/s/ Bryan P. Tyson

Bryan P. Tyson

Counsel for Defendants

EXHIBIT

2

**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;
WILLIAM S. DUFFEY, JR., in his official
capacity as chair of the State Election
Board; MATTHEW MASHBURN, in his
official capacity as a member of the State
Election Board; SARA TINDALL
GHAZAL, in her official capacity as a
member of the State Election Board;
EDWARD LINDSEY, in his official
capacity as a member of the State Election
Board; and JANICE W. JOHNSTON, in
her official capacity as a member of the
State Election Board,

Defendants.

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

AMENDED COMPLAINT

1. Plaintiffs bring this action to challenge the Georgia General Assembly's congressional redistricting plan, the Georgia Congressional

Redistricting Act of 2021 (“SB 2EX”), on the ground that it violates Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301.

2. In undertaking the latest round of congressional redistricting following the 2020 decennial census, the General Assembly has diluted the growing electoral strength of the state’s communities of color. Faced with Georgia’s changing demographics, the General Assembly has ensured that the growth of the state’s Black population will not translate to increased political influence at the federal level.

3. The 2020 census data make clear that minority voters in Georgia are sufficiently numerous and geographically compact to form a majority of eligible voters—which is to say, a majority of the voting age population¹—in multiple congressional districts throughout the state, including an additional majority-Black

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

district in the western Atlanta metropolitan area. This additional majority-Black district can be drawn without reducing the total number of districts in the region and statewide in which Black voters have the opportunity to elect candidates of their choice.

4. Rather than draw this additional congressional district to allow Georgians of color the opportunity to elect their preferred candidates, the General Assembly instead chose to “pack” some Black voters in the Atlanta metropolitan area and “crack” other Black voters among rural-reaching, predominantly white districts.

5. Section 2 of the Voting Rights Act prohibits this result and requires the General Assembly to draw an additional congressional district in which Black voters have the opportunity to elect their candidate of choice.

6. By failing to create this district, the General Assembly’s response to Georgia’s changing demographics has had the effect of diluting minority voting strength in the state.

7. Accordingly, Plaintiffs seek an order (i) declaring that SB 2EX violates Section 2 of the Voting Rights Act; (ii) enjoining Defendants from conducting future elections under SB 2EX; (iii) requiring adoption of a valid plan for new

congressional districts in Georgia that comports with Section 2 of the Voting Rights Act; and (iv) providing any and such additional relief as is appropriate.

JURISDICTION AND VENUE

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

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

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

PARTIES

11. Plaintiff Coakley Pendergrass is a Black citizen of the United States and the State of Georgia. The Rev. Pendergrass is a registered voter and intends to vote in future congressional elections. He is a resident of Cobb County and located in the Eleventh Congressional District under the enacted plan, where he is unable to elect candidates of his choice to the U.S. House of Representatives despite strong electoral support for those candidates from other Black voters in his community. The Rev. Pendergrass resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn congressional district in which Black voters would have the opportunity to

elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like the Rev. Pendergrass and denies them an equal opportunity to elect candidates of their choice to the U.S. House of Representatives.

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

13. Plaintiff Elliott Hennington is a Black citizen of the United States and the State of Georgia. Mr. Hennington is a registered voter and intends to vote in future congressional elections. He is a resident of Cobb County and located in the Fourteenth Congressional District under the enacted plan, where he is unable to elect

candidates of his choice to the U.S. House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Hennington resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn congressional district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Hennington and denies them an equal opportunity to elect candidates of their choice to the U.S. House of Representatives.

14. Plaintiff Robert Richards is a Black citizen of the United States and the State of Georgia. Mr. Richards is a registered voter and intends to vote in future congressional elections. He is a resident of Cobb County and located in the Fourteenth Congressional District under the enacted plan, where he is unable to elect candidates of his choice to the U.S. House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Richards resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn congressional district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of

Black voters like Mr. Richards and denies them an equal opportunity to elect candidates of their choice to the U.S. House of Representatives.

15. Plaintiff Jens Rueckert is a Black citizen of the United States and the State of Georgia. Mr. Rueckert is a registered voter and intends to vote in future congressional elections. He is a resident of Cobb County and located in the Fourteenth Congressional District under the enacted plan, where he is unable to elect candidates of his choice to the U.S. House of Representatives despite strong electoral support for those candidates from other Black voters in his community. Mr. Rueckert resides in a region where the Black community is sufficiently large and geographically compact to constitute a majority of eligible voters in a newly drawn congressional district in which Black voters would have the opportunity to elect their preferred candidates. The enacted redistricting plan dilutes the voting power of Black voters like Mr. Rueckert and denies them an equal opportunity to elect candidates of their choice to the U.S. House of Representatives.

16. Plaintiff Ojuan Glaze is a Black citizen of the United States and the State of Georgia. Mr. Glaze is a registered voter and intends to vote in future congressional elections. He is a resident of Douglas County and located in the Thirteenth Congressional District under the enacted plan. The Thirteenth Congressional District is a district in which Black voters like Mr. Glaze are packed,

preventing the creation of an additional majority-Black district as required by the Voting Rights Act.

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

18. Defendant Judge William S. Duffey, Jr. is the Chair of the State Election Board and is named in his official capacity. In this role, he must “formulate, adopt, and promulgate such rules and regulations, consistent with law, as will be conducive to the fair, legal, and orderly conduct of primaries and elections.” *Id.* § 21-2-31(2).

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

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

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

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

LEGAL BACKGROUND

23. Section 2 of the Voting Rights Act prohibits any “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the

United States to vote on account of race or color.” 52 U.S.C. § 10301(a). Thus, in addition to prohibiting practices that deny the exercise of the right to vote, Section 2 prohibits vote dilution.

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

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

26. In *Thornburg v. Gingles*, the U.S. Supreme Court identified three necessary preconditions for a claim of vote dilution under Section 2: (i) the minority group must be “sufficiently large and geographically compact to constitute a majority in a single-member district”; (ii) the minority group must be “politically

cohesive”; and (iii) the majority must vote “sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Id.* at 50–51.

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

28. The Senate Report on the 1982 amendments to the Voting Rights Act identified several nonexclusive factors that courts should consider when determining if, under the totality of circumstances in a jurisdiction, the operation of the challenged electoral device results in a violation of Section 2. *See Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1288–89 (11th Cir. 2020). These “Senate Factors” include:

- a. the history of official voting-related discrimination in the state or political subdivision;
- b. the extent to which voting in the elections of the state or political subdivision is racially polarized;
- c. the extent to which the state or political subdivision has used voting practices or procedures that tend to enhance the opportunity for

discrimination against the minority group, such as unusually large election districts, majority-vote requirements, or prohibitions against bullet-voting;

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

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

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

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

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

FACTUAL BACKGROUND

The 2020 Census

30. Between 2010 and 2020, Georgia's population increased by more than 1 million people. As a result of this population growth, the state will retain 14 seats in the U.S. House of Representatives.

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

The 2021 Congressional Redistricting Plan

32. In enacting Georgia's new congressional map, the Republican-controlled General Assembly diluted the political power of the state's minority voters.

33. On November 22, 2021, the General Assembly passed SB 2EX, which adopted a new congressional redistricting plan that revised existing congressional district boundaries. Republican Governor Brian Kemp signed SB 2EX into law on December 30, 2021.

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

35. Rather than create an additional congressional district in the western Atlanta metropolitan area in which Georgia's growing Black population would have the opportunity to elect candidates of its choice, the General Assembly did just the opposite: it packed and cracked Georgia's Black voters to dilute their influence.

36. SB 2EX packs Black voters into the Atlanta metropolitan area, particularly into the new Thirteenth Congressional District, which includes significant Black populations in south Fulton, Douglas, and Cobb Counties. The remaining Black communities in Douglas and Cobb Counties are cracked among the new Third, Sixth, Eleventh, and Fourteenth Congressional Districts—predominantly white districts that stretch into the rural reaches of western and northern Georgia.

37. This combination of cracking and packing dilutes the political power of Black voters in the Atlanta metropolitan area. The General Assembly could have instead created an additional, compact congressional district in which Black voters, including Plaintiffs, comprise a majority of eligible voters and have the opportunity

to elect their preferred candidates, as required by Section 2 of the Voting Rights Act. Significantly, this could have been done without reducing the number of other districts in which Black voters have the opportunity to elect candidates of their choice.

38. Unless enjoined, SB 2EX will deny Black voters an equal opportunity to elect candidates of their choice.

39. The relevant factors and considerations readily require the creation of an additional majority-Black district under Section 2.

Racial Polarization

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

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

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

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

History of Discrimination

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

45. This history dates back to the post-Civil War era, when Black Georgians first gained the right to vote and voted in their first election in April 1868. Soon after this historic election, a *quarter* of the state’s Black legislators were either jailed, threatened, beaten, or killed. In 1871, the General Assembly passed a resolution that expelled 25 Black representatives and three senators but permitted the four mixed-race members who did not “look” Black to keep their seats. The General Assembly’s resolution was based on the theory that Black Georgians’ right

of suffrage did not give them the right to hold office, and that they were thus “ineligible” to serve under Georgia’s post-Civil War state constitution.

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

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

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

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

50. Other means of disenfranchising Georgia's Black citizens followed. The state adopted virtually every one of the "traditional" methods to obstruct the exercise of the franchise by Black voters, including literacy and understanding tests, strict residency requirements, onerous registration procedures, voter challenges and purges, the deliberate slowing down of voting by election officials so that Black voters would be left waiting in line when the polls closed, and the adoption of "white primaries."

51. Attempts to minimize Black political influence in Georgia have also tainted redistricting efforts. During the 1981 congressional redistricting process, in opposing a bill that would maintain a majority-Black district, Joe Mack Wilson—a

Democratic state representative and chair of the House Reapportionment Committee—openly used racial epithets to describe the district: following a meeting with officials of the U.S. Department of Justice, he complained that “the Justice Department is trying to make us draw [n*****] districts and I don’t want to draw [n*****] districts.” Speaker of the House Tom Murphy objected to creating a district where a Black representative would certainly be elected and refused to appoint any Black lawmakers to the conference committee, fearing that they would support a plan to allow Black voters to elect a candidate of their choice. Several senators also expressed concern about being perceived as supporting a majority-Black congressional district.

52. Indeed, federal courts have invalidated Georgia’s redistricting plans for voting rights violations numerous times. In *Georgia v. United States*, the U.S. Supreme Court affirmed a three-judge panel’s decision that Georgia’s 1972 reapportionment plan violated Section 5 of the Voting Rights Act, at least in part because it diluted the Black vote in an Atlanta-based congressional district in order to ensure the election of a white candidate. *See* 411 U.S. 526, 541 (1973); *see also* *Busbee v. Smith*, 549 F. Supp. 494, 517 (D.D.C. 1982) (three-judge panel) (denying preclearance based on evidence that Georgia’s redistricting plan was product of purposeful discrimination in violation of Voting Rights Act), *aff’d*, 459 U.S. 1166

(1983); *Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) (per curiam) (three-judge panel) (invalidating state legislative plans that reduced number of majority-minority districts).

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

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

55. Georgia’s history of racial discrimination in voting, here only briefly recounted, has been thoroughly documented by historians and scholars. Indeed, “[t]he history of the state[’s] segregation practice and laws at all levels has been rehashed so many times that the Court can all but take judicial notice thereof.” *Brooks v. State Bd. of Elections*, 848 F. Supp. 1548, 1560 (S.D. Ga. 1994); *see also*, e.g., *Fair Fight Action, Inc. v. Raffensperger*, No. 1:18-CV-5391-SCJ, slip op. at 41

(N.D. Ga. Nov. 15, 2021), ECF No. 636 (taking judicial notice of fact that “prior to the 1990s, Georgia had a long sad history of racist policies in a number of areas including voting”).

56. Ultimately, as this Court has noted, “Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather than the exception.” *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs*, 950 F. Supp. 2d 1294, 1314 (N.D. Ga. 2013) (quoting *Brooks*, 848 F. Supp. at 1560), *aff’d in part, rev’d in part on other grounds*, 775 F.3d 1336 (11th Cir. 2015).

Use of Racial Appeals in Political Campaigns

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

58. In 2016, Tom Worthan, former Republican Chair of the Douglas County Board of Commissioners, was caught on video making racist comments aimed at discrediting his Black opponent, Romona Jackson-Jones, and a Black candidate for sheriff, Tim Pounds. During the recorded conversation with a Douglas County voter, Worthan asked, “[D]o you know of another government that’s more

black that's successful? They bankrupt you." Worthan also stated, in reference to Pounds, "I'd be afraid he'd put his black brothers in positions that maybe they're not qualified to be in."

59. In the 2017 special election for Georgia's Sixth Congressional District—a majority-white district that had over the previous three decades been represented by white Republicans Newt Gingrich, Johnny Isakson, and Tom Price—the husband of the eventual Republican victor, Karen Handel, shared an image over social media that urged voters to "[f]ree the black slaves from the Democratic plantation." The image also stated, "Criticizing black kids for obeying the law, studying in school, and being ambitious as 'acting white' is a trick the Democrats play on Black people to keep them poor, ignorant and dependent." The image was then shared widely by local and national media outlets.

60. During that same election, Jere Wood—the Republican Mayor of Roswell, Georgia's eighth-largest city—insinuated that voters in the Sixth Congressional District would not vote for Democratic candidate Jon Ossoff because he has an "ethnic-sounding" name. When describing voters in that district, Wood said, "If you just say 'Ossoff,' some folks are gonna think, 'Is he Muslim? Is he

Lebanese? Is he Indian?’ It’s an ethnic-sounding name, even though he may be a white guy, from Scotland or wherever.”²

61. On a separate occasion, State Senator Fran Millar alluded to the fact that the Sixth Congressional District was gerrymandered in such a way that it would not support candidate Ossoff—specifically, because he was formerly an aide to a Black member of Congress. State Senator Millar said, “I’ll be very blunt. These lines were not drawn to get Hank Johnson’s protégé to be my representative. And you didn’t hear that. They were not drawn for that purpose, OK? They were not drawn for that purpose.”

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

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

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

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

65. The 2020 campaigns for Georgia’s two U.S. Senate seats were also rife with racial appeals. In one race, Republican incumbent Kelly Loeffler ran a paid advertisement on Facebook that artificially darkened the skin of her Democratic opponent, now-Senator Raphael Warnock. In the other race, Republican incumbent David Perdue ran an advertisement against Democratic nominee Ossoff that employed a classic anti-Semitic trope by artificially enlarging now-Senator Ossoff’s nose.

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

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

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

Ongoing Effects of Georgia’s History of Discrimination

69. State-sponsored segregation under Georgia’s Jim Crow laws permeated all aspects of daily life and relegated Black citizens to second-class status. State lawmakers segregated everything from public schools to hospitals and graveyards. Black Georgians were also precluded from sitting on juries, which effectively denied Black litigants equal justice under the law. Moreover, Black Georgians were excluded from the most desirable manufacturing jobs, which limited their

employment opportunities to primarily unskilled, low-paying labor. And in times of economic hardship, Black employees were the first to lose their jobs.

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

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

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

73. Black Georgians also have lower homeownership rates than white Georgians. The 2019 ACS 1-Year Estimate shows that 52.6 percent of Black Georgians live in renter-occupied housing, compared to 24.9 percent of white Georgians. And Black Georgians also spend a higher percentage of their income on

rent than white Georgians. The 2019 ACS 1-Year Estimate shows that in Georgia, the percent of income spent on rent is a staggering 54.9 percent for Black Georgians, compared to 40.6 percent for white Georgians.

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

75. These disparities impose hurdles to voter participation including working multiple jobs, working during polling place hours, lack of access to childcare, lack of access to transportation, and higher rates of illness and disability. All of these hurdles make it more difficult for poor and low-income voters to participate effectively in the political process.

CAUSES OF ACTION

COUNT I:

SB 2EX Violates Section 2 of the Voting Rights Act

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

77. Section 2 of the Voting Rights Act prohibits the enforcement of any “standard, practice, or procedure” that “results in a denial or abridgement of the right

of any citizen of the United States to vote on account of race or color, or” membership in a language minority group. 52 U.S.C. § 10301(a).

78. Georgia’s congressional district boundaries, as currently drawn, crack and pack minority populations with the effect of diluting their voting strength, in violation of Section 2 of the Voting Rights Act.

79. Black Georgians in the northwestern and western Atlanta metropolitan area are sufficiently numerous and geographically compact to constitute a majority of eligible voters in an additional congressional district, without reducing the number of minority-opportunity districts already included in the enacted map.

80. Under Section 2 of the Voting Rights Act, the General Assembly was required to create an additional congressional district in which Black voters in this area would have the opportunity to elect their candidates of choice.

81. Black voters in Georgia, including in and around this area, are politically cohesive. Elections in this area reveal a clear pattern of racially polarized voting that allows blocs of white voters usually to defeat Black voters’ preferred candidates.

82. The totality of the circumstances establishes that the enacted congressional map has the effect of denying Black voters an equal opportunity to

participate in the political process and elect candidates of their choice, in violation of Section 2 of the Voting Rights Act.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that this Court:

- A. Declare that SB 2EX violates Section 2 of the Voting Rights Act;
- B. Enjoin Defendants, as well as their agents and successors in office, from enforcing or giving any effect to the boundaries of the congressional districts as drawn in SB 2EX, including an injunction barring Defendants from conducting any further congressional elections under the enacted map;
- C. Hold hearings, consider briefing and evidence, and otherwise take actions necessary to order the adoption of a valid congressional redistricting plan that includes an additional congressional district in the western Atlanta metropolitan area in which Black voters have the opportunity to elect their preferred candidates, as required by Section 2 of the Voting

Rights Act, without reducing the number of minority-opportunity districts currently drawn in SB 2EX;

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

Dated: October 28, 2022

By: **Adam M. Sparks**

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing **AMENDED COMPLAINT** has been prepared in accordance with the font type and margin requirements of LR 5.1, NDGa, using font type of Times New Roman and a point size of 14.

Dated: October 28, 2022

Adam M. Sparks

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing **AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to counsel of record.

Dated: October 28, 2022

Adam M. Sparks

Counsel for Plaintiffs