

**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

**PLAINTIFFS' RESPONSE TO DEFENDANTS' STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Pursuant to Federal Rule of Civil Procedure 56 and LR 56.1(B)(2)(a), NDGa, Plaintiffs COAKLEY PENDERGRASS, TRIANA ARNOLD JAMES, ELLIOTT HENNINGTON, ROBERT RICHARDS, JENS RUECKERT, and OJUAN GLAZE respond to Defendants' statement of undisputed facts.

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

Plaintiffs' Response: Disputed. The cited paragraph and figure from Mr. Cooper's report contain statewide population statistics relating to *all* Black Georgians, not Black *voters* specifically. Mr. Cooper's report does not otherwise describe the percentage increase in Black voters between 2010 and 2020.

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

Plaintiffs' Response: Undisputed.

3. Both chairs of the House and Senate committees with jurisdiction over redistricting sought to meet with all of their colleagues, both Republican and Democratic, to gain input on their areas of the state. Deposition of Gina Wright [Doc. 170] (“Wright Dep.”) 68:17-69:7.

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

7. To prepare maps, Gina Wright, the director of the Joint Reapportionment Office, worked with a leadership group to work on the congressional map from an earlier draft from Sen. Kennedy. Wright Dep. 28:19-30:23.

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. The State Election Board members “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.” O.C.G.A. § 21-2-31(2).

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs' Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. Mr. Glaze currently resides in Douglasville, Douglas County, Georgia. *See* Ex. 11 at 10:8–11:8.*

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

* Plaintiffs’ exhibits are attached to the Declaration of Jonathan P. Hawley, filed concurrently with Plaintiffs’ response in opposition to Defendants’ motion for summary judgment.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. Plaintiffs’ goal in offering Mr. Cooper’s illustrative congressional plan was to determine whether they could draw “an additional majority-Black congressional district . . . *consistent with traditional redistricting principles.*” Ex. 1 (“Cooper Report”) ¶ 10 (emphasis added).

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. The cited excerpts from Mr. Cooper’s deposition transcripts demonstrate only that he “[s]ometimes [] had demographic information displayed” and “sometimes [used] little dots showing where the minority population is concentrated” when working in the Maptitude software. Ex. 7 (“Cooper Dep.”) at 24:12–25:6 (emphases added).

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Disputed. Mr. Cooper prepared only a single illustrative congressional plan as part of the preliminary injunction proceedings, not multiple plans. *See* ECF Nos. 34-1, 46-1.

Plaintiffs do not dispute, as the cited excerpt from Mr. Cooper's deposition transcript demonstrates, that Mr. Cooper did not attempt to draw more than one additional majority-Black district as part of his analysis of Georgia's congressional plan.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs’ Response: Disputed. This statement is neither material nor relevant to any issue before the Court.

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

Plaintiffs’ Response: Disputed. Mr. Cooper’s expert report stated only that “the composition of newly enacted Georgia State Senate districts in Metro Atlanta” “*confirmed*” that “an additional majority-Black district can readily be drawn.” Cooper Report ¶ 44 (emphasis added). At no point in his report did Mr. Cooper state that he “*rel[ie]d*” on the existence of four state Senate districts” when drawing his illustrative Congressional District 6.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. Mr. Cooper’s expert report stated only that an “additional majority-Black congressional district *can* be merged into the enacted 2021 Plan without making changes to six of the 14 districts.” Cooper Report ¶ 11 (emphasis added). At no point in his report did Mr. Cooper state that he “*had to*” or was otherwise required to alter any particular number of the state’s 14 congressional districts in order to create an additional majority-Black district, or that he “*avoided*” altering any particular districts.

Plaintiffs do not dispute that Mr. Cooper’s illustrative congressional plan does not alter the enacted boundaries of Congressional Districts 2, 5, or 7, or that those districts are currently represented by Black members of Congress.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Disputed. The cited excerpt from Mr. Cooper's deposition transcript demonstrates only that, in illustrative Congressional District 3, Heard and Troup counties share a community of interest with portions of west Cobb and Paulding counties. Mr. Cooper did not state that this was the only common connection that he could identify.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Undisputed.

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

Plaintiffs' Response: Disputed. The cited excerpt from Mr. Cooper's deposition transcript demonstrates only that illustrative Congressional District 10 includes socioeconomically diverse communities. Mr. Cooper did not state that he "could not explain why he included Athens/Clarke County in the same district as Hancock County and Rabun County."

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

Plaintiffs’ Response: Disputed. The cited excerpts from Mr. Cooper’s deposition transcript demonstrate only that (1) the one-person, one-vote requirement motivated the configuration of illustrative Congressional District 10, *see* Cooper Dep. 68:6–69:2; (2) illustrative Congressional District 10 includes two counties that are “different” and might not share common interests, *see id.* at 70:16–22; (3) illustrative Congressional District 13 includes urban areas in Clayton County and rural areas in Fayette, Spalding, Butts, and Jasper counties, *see id.* at 73:13–17; and (4) illustrative Congressional District 10 includes Appalachian north Georgia and parts of the Black Belt in eastern Georgia, *see id.* at 86:5–8. In none of these excerpts did Mr. Cooper identify race as a common interest shared by the communities in these illustrative congressional districts, nor does that expansive inference follow from the limited information demonstrated in those excerpts.

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

Plaintiffs’ Response: Undisputed.

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

Plaintiffs’ Response: Disputed. The cited excerpt from Dr. Alford’s deposition transcript addresses only the observed voting patterns of Black voters, not the reasons why Black voters preferred certain candidates. Moreover, Dr. Palmer and Dr. Alford both testified that it is not possible to determine causation—which is to say, the reasons voters cast ballots for particular candidates—using the data and methodology employed by Dr. Palmer. *See* Ex. 8 (“Palmer Dep.”) at 88:11–17; Ex. 10 (“Alford Dep.”) at 82:17–84:14, 90:4–91:9. Finally, Dr. Palmer’s data do not demonstrate “*only*” the “two things” Defendants reference; his report further demonstrated that Black voters in the area of Georgia he examined are extremely cohesive, *see* Ex. 2 ¶¶ 7, 15–16, 18–19; that white voters consistently and cohesively vote in opposition to Black-preferred candidates, *see id.* ¶¶ 7, 17–18, 20; that Black-preferred candidates are largely unable to win elections in this area, *see id.* ¶¶ 7, 21–22; and that Black-preferred candidates would be able to win elections in Mr. Cooper’s illustrative Congressional District 6, *see id.* ¶¶ 7, 23–26.

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

Plaintiffs’ Response: Disputed. Although Plaintiffs do not dispute that, as Mr. Cooper testified, Georgia’s congressional delegation currently includes five Black members, *see* Cooper Dep. 19:19–21, the *voters* of those congressional districts elected their members of Congress, not “the 2021 congressional plan.”

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

Plaintiffs’ Response: Undisputed.

61. Georgia’s U.S. senators are Black-preferred candidates because they are Democrats (Sen. Ossoff was elected in 2021 and Sen. Warnock was re-elected in 2022). Palmer Dep. 53:2-54:2.

Plaintiffs’ Response: Disputed. The cited excerpt from Dr. Palmer’s deposition does not address the reasons why Black voters select their candidates of choice. Moreover, Dr. Palmer and Dr. Alford both testified that it is not possible to determine causation—which is to say, the reasons voters cast ballots for particular candidates—using the data and methodology employed by Dr. Palmer. *See* Palmer Dep. 88:11–17; Alford Dep. 82:17–84:14, 90:4–91:9.

Plaintiffs do not dispute that Senator Ossoff was elected in 2021 and Senator Warnock was reelected in 2022.

Dated: April 19, 2023

By /s/ Adam M. Sparks
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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Plaintiffs' Response to Defendants' Statement of Undisputed Material Facts 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: April 19, 2023

/s/ Adam M. Sparks
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