

**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' STATEMENT OF ADDITIONAL MATERIAL FACTS

Pursuant to Federal Rule of Civil Procedure 56 and LR 56.1(B)(2)(b), NDGa, Plaintiffs COAKLEY PENDERGRASS, TRIANA ARNOLD JAMES, ELLIOTT HENNINGTON, ROBERT RICHARDS, JENS RUECKERT, and OJUAN GLAZE file this statement of additional material facts in opposition to Defendants’ motion for summary judgment.¹

1. When asked in his deposition whether he “display[ed] racial demographic information on the screen at any point” while he “work[ed] on the illustrative plans [he] created in this case,” Plaintiffs’ mapping expert, William Cooper, responded, “Sometimes I had demographic information displayed, either through the data view that is part of the Maptitude software indicating what the population is in a particular district and break out the race of the component parts. . . . I think I mentioned in my last testimony that I used sometimes little dots showing where the minority population is concentrated. So I was aware of that.” Ex. 7 (“Cooper Dep.”) at 24:12–25:6.²

¹ LR 56.1(B)(2)(b), NDGa, requires Plaintiffs to submit “[a] statement of additional facts which [they] contend[] are material and present a genuine issue for trial.” For the reasons discussed in their motion for summary judgment and associated filings, *see* ECF No. 173, Plaintiffs maintain that there are no genuine issues to be tried and that summary judgment in their favor is warranted.

² All exhibits are attached to the Declaration of Jonathan P. Hawley, filed concurrently with Plaintiffs’ response in opposition to Defendants’ motion for summary judgment.

2. When asked in his deposition about maximizing majority-Black districts, Mr. Cooper responded, “When I draw plans, I’m always trying to balance traditional redistricting principles. So I would never have that as a goal unless it was just some sort of hypothetical example to show what could be drawn, perhaps even showing that well, it could be drawn, but it would violate traditional redistricting principles.” Cooper Dep. 18:18–19:18.

3. Mr. Cooper was asked to “determine whether the African American population in Georgia is ‘sufficiently large and geographically compact’ to allow for the creation of an additional majority-Black congressional district in the Atlanta metropolitan area.” Ex. 1 (“Cooper Report”) ¶ 8 (footnotes omitted).

4. Mr. Cooper concluded that “[t]he Black population in metropolitan Atlanta is sufficiently numerous and geographically compact to allow for the creation of an additional majority-Black congressional district anchored in Cobb, Douglas, and Fulton Counties (CD 6 in the Illustrative Plan) consistent with traditional redistricting principles.” Cooper Report ¶ 10.

5. Mr. Cooper reported that, “[i]n drafting the Illustrative Plan, I sought to minimize changes to the 2021 Plan while abiding by all of the traditional redistricting principles listed above. I balanced all of these considerations, and no one factor predominated in my drawing of the Illustrative Plan.” Cooper Report ¶ 50.

6. Mr. Cooper's illustrative Congressional District 6 has a total population of 765,137 people. Cooper Report fig.11.

7. As in the enacted congressional plan, population deviations in Mr. Cooper's illustrative plan are limited to plus-or-minus one person from the ideal district population of 765,136. Cooper Report ¶ 53, fig.11; Ex. 9 ("Morgan Dep.") at 62:4–7 (not disputing that Mr. Cooper's illustrative congressional plan achieves population equality).

8. The districts in Mr. Cooper's illustrative congressional plan are contiguous. Cooper Report ¶ 52; Morgan Dep. 62:14–17 (not disputing that districts in Mr. Cooper's illustrative congressional plan are contiguous).

9. The average and low compactness scores of Mr. Cooper's illustrative congressional plan are similar or identical to the corresponding scores for the enacted congressional plan and Georgia's prior congressional plan, and within the norm for plans nationwide. Cooper Report ¶ 78 & n.12, fig.13; Ex. 5 ("Morgan Report") ¶ 22 (agreeing that "Cooper [] congressional plan has similar mean compactness scores to the 2021 enacted plan"); Morgan Dep. 55:18–57:5 (agreeing that Mr. Cooper's illustrative congressional plan has similar mean compactness scores to enacted congressional plan and same mean Polsby-Popper score as enacted congressional plan).

10. The following table compares the compactness scores for Mr. Cooper's illustrative congressional plan, the enacted congressional plan, and the state's prior congressional plan adopted in 2012:

	Reock		Polsby-Popper	
	<i>Mean</i>	<i>Low</i>	<i>Mean</i>	<i>Low</i>
Illustrative Plan	.43	.28	.27	.18
Enacted Plan	.44	.31	.27	.16
Prior Plan	.45	.33	.26	.16

Cooper Report ¶ 79, fig.13.

11. The Reock score for Mr. Cooper's illustrative Congressional District 6 is 0.45, which is more compact than the average Reock score of the enacted congressional plan (0.44) and the Reock score of the enacted Congressional District 6 (0.42). Cooper Report Exs. L-1 & L-3; Morgan Dep. 57:15–59:6 (agreeing that Mr. Cooper's illustrative Congressional District 6 scores 0.03 higher on Reock scale than enacted Congressional District 6).

12. The Polsby-Popper score for Mr. Cooper's illustrative Congressional District 6 is 0.27, which is as compact as the average Polsby-Popper score of the enacted congressional plan (0.27) and more compact than the Polsby-Popper score of the enacted Congressional District 6 (0.20). Cooper Report Exs. L-1 & L-3; Morgan Dep. 59:7–60:2 (agreeing that Mr. Cooper's illustrative Congressional

District 6 scores 0.07 higher on Polsby-Popper scale than enacted Congressional District 6).

13. Mr. Cooper's illustrative congressional plan is comparable to—if not better than—the enacted congressional plan and prior congressional plan in terms of split counties and municipalities and county, municipality, and VTD splits. Cooper Report ¶ 81, fig.14.

14. The following table compares political subdivision splits (excluding unpopulated areas) for Mr. Cooper's illustrative congressional plan, the enacted congressional plan, and the prior congressional plan:

	Split Counties	County Splits	Split Cities/Towns	City/Town Splits	VTD Splits
Illustrative Plan	15	18	37	78	43
Enacted Plan	15	21	43	91	46
Prior Plan	16	22	40	85	43

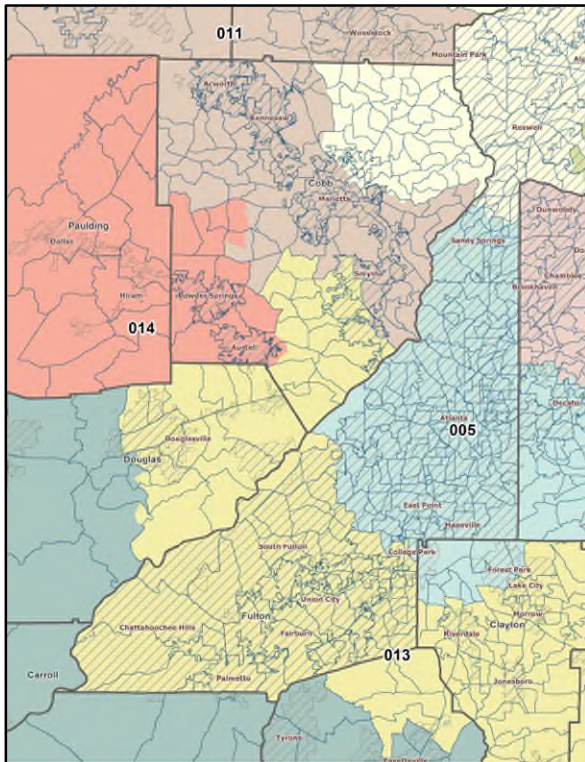
Cooper Report ¶ 81, fig.14.

15. Although both Mr. Cooper's illustrative congressional plan and the enacted congressional plan split 15 counties, the illustrative plan scores better across the other four categories: county splits (i.e., unique county/district combinations), split municipalities, municipality splits (i.e., unique municipality/district combinations), and VTD splits. Cooper Report ¶ 82, fig.14; Morgan Report ¶ 20

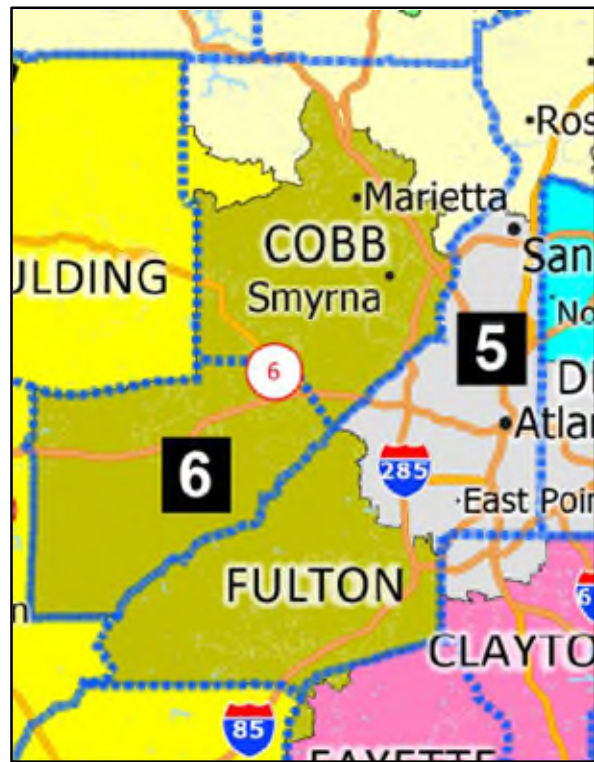
(agreeing that “[t]he Cooper [] congressional plan splits the same number of counties as the 2021 adopted congressional plan at 15”); Morgan Dep. 44:6–46:16, 54:7–11, 54:18–55:6 (not disputing numbers of split counties, county splits, split cities/towns, city/town splits, and VTD splits reported by Mr. Cooper).

16. Mr. Cooper’s illustrative plan splits majority-non-white Cobb County among three congressional districts, whereas the enacted congressional plan divides the county among four, including three majority-white districts—Congressional Districts 6, 11, and 14:

Enacted Plan



Mr. Cooper’s Illustrative Plan



Cooper Report ¶¶ 60, 65, 73, fig.14, Exs. G & H-1.

17. Mr. Cooper’s illustrative Congressional District 6 unites Atlanta-area urban, suburban, and exurban voters, whereas the enacted congressional plan combines Appalachian north Georgia with the Atlanta suburbs. Cooper Report ¶ 68.

18. Mr. Cooper’s illustrative congressional plan combines voters in the western Atlanta metropolitan area: Illustrative Congressional District 6 unites all or part of Cobb, Douglas, Fulton, and Fayette counties, all of which are core counties under the Atlanta Regional Commission. Cooper Report ¶ 68.

19. Mr. Cooper explained that “it simply makes more sense to anchor Illustrative CD 6 in the western part of Metro Atlanta. As the Illustrative Plan demonstrates, CD 6 can be drawn in a compact fashion that keeps Atlanta-area urban/suburban/exurban voters together. In sharp contrast, the 2021 Plan—its treatment of Cobb County in particular—inexplicably mixes Appalachian North Georgia with urban/suburban Metro Atlanta. In some redistricting plans, it might be necessary to mix urban and rural voters in a sprawling congressional district. But that is not the case here: Cobb County can be combined in a congressional district with all or part of Douglas, Fulton, and Fayette Counties, all of which are core Metro Atlanta counties under the Atlanta Regional Commission map. Illustrative CD 6 thus unites Georgians in the Metro Atlanta area with shared interests and concerns.” Cooper Report ¶ 68.

20. Plaintiffs’ quantitative expert, Dr. Maxwell Palmer, found strong evidence of racially polarized voting across the focus area he examined and in each of Congressional Districts 3, 6, 11, 13, and 14. Ex. 2 (“Palmer Report”) ¶ 7; Ex. 3 (“Suppl. Palmer Report”) ¶ 4; Ex. 6 (“Alford Report”) at 3 (“As evident in Dr. Palmer’s [reports], the pattern of polarization is quite striking.”); Ex. 10 (“Alford Dep.”) at 44:8–16, 45:10–12 (“This is clearly polarized voting, and the stability of it across time and across office and across geography is really pretty remarkable.”).

21. Black voters in Georgia are extremely cohesive, with a clear candidate of choice in all 40 elections Dr. Palmer examined. Palmer Report ¶ 16, figs.2 & 3, tbl.1; Suppl. Palmer Report ¶ 5, fig.1, tbl.1; Alford Report 3 (“Black voter support for their preferred candidate is typically in the 90 percent range and scarcely varies at all across the ten years examined from 2012 to 2022. Nor does it vary in any meaningful degree from the top of the ballot elections for U.S. President to down-ballot contests like Public Service Commissioner.”); Alford Dep. 37:13–15 (agreeing with Dr. Palmer’s conclusion that Black Georgians are politically cohesive).

22. On average, across the focus area, Black voters supported their candidates of choice with 98.4% of the vote in the 40 elections Dr. Palmer examined. Palmer Report ¶¶ 7, 16.

23. Black voters are also extremely cohesive in each congressional district that comprises the focus area, with a clear candidate of choice in all 40 elections Dr. Palmer examined. Palmer Report ¶ 19, fig.4, tbls.2, 3, 4, 5 & 6.

24. On average, in the 40 elections Dr. Palmer examined, Black voters supported their candidates of choice with 97.2% of the vote in Congressional District 3, 93.3% in Congressional District 6, 96.1% in Congressional District 11, 99.0% in Congressional District 13, and 95.8% in Congressional District 14. Palmer Report ¶ 19.

25. White voters in Georgia, by contrast, are highly cohesive in voting in opposition to the Black-preferred candidate in every election Dr. Palmer examined. Palmer Report ¶ 17, figs.2 & 3, tbl.1; Suppl. Palmer Report ¶ 5, fig.1, tbl.1; Alford Report 3 (noting that “estimated white voter opposition to the Black-preferred candidate is typically above 80 percent” and is “remarkably stable”); Alford Dep. 38:20–39:8 (agreeing that white voters generally vote in opposition to Black voters, which can operate to defeat minority-preferred candidates).

26. On average, across the focus area, white voters supported Black-preferred candidates with only 12.4% of the vote, and in no election that Dr. Palmer examined did this estimate exceed 17%. Palmer Report ¶¶ 7, 17.

27. White voters are also highly cohesive in voting in opposition to the Black-preferred candidate in each district that comprises the focus area. Palmer Report ¶ 20, fig.4, tbls.2, 3, 4, 5 & 6.

28. On average, in the 40 elections Dr. Palmer examined, white voters supported Black-preferred candidates with 6.7% of the vote in Congressional District 3, 20.2% in Congressional District 6, 16.1% in Congressional District 11, 15.5% in Congressional District 13, and 10.3% in Congressional District 14. Palmer Report ¶ 20.

29. Defendants' quantitative expert, Dr. John Alford, explained that the data "doesn't demonstrate that" partisan behavior is not "actually being driven by racial considerations." Alford Dep. 109:15–111:1.

30. Dr. Alford acknowledged that the race of candidates is not the only role race might play in a voter's decision and that race likely plays a role in shaping voters' party preferences. Alford Dep. 99:14–100:7, 134:19–135:18 ("[T]here's certainly room for race to be involved in decision-making in a wide variety of ways.").

31. Dr. Alford did not explore the role of race in shaping political behavior, either generally or in this case. Alford Dep. 12:15–18, 115:12–116:10, 132:8–133:15.

32. Dr. Alford acknowledged that he could not draw conclusions about the causes of voting behavior based only on the results of Dr. Palmer’s ecological inference analysis. Alford Dep. 82:17–84:14, 90:4–91:9 (“EI is never going to answer a causation question. . . . Establishing causation is a very difficult scientific issue[.]”).

33. Plaintiffs’ Senate Factors expert, Dr. Orville Vernon Burton, explored the relationship between race and partisanship in Georgia politics. Ex. 4 (“Burton Report”) at 57–62.

34. Dr. Alford did not review Dr. Burton’s analysis. Alford Dep. 16:3–14.

35. As Dr. Burton explained, “[s]ince Reconstruction, conservative whites in Georgia and other southern states have more or less successfully and continuously held onto power. While the second half of the twentieth century was generally marked by a slow transition from conservative white Democrats to conservative white Republicans holding political power, the reality of conservative white political dominance did not change.” Burton Report 57.

36. Notably, the Democratic Party’s embrace of civil rights legislation—and the Republican Party’s opposition to it—was the catalyst of this political transformation, as the Democratic Party’s embrace of civil rights policies in the mid-

20th century caused Black voters to leave the Republican Party (the “Party of Lincoln”) for the Democratic Party. Burton Report 57–58.

37. In turn, the Democratic Party’s embrace of civil rights legislation sparked what Earl Black and Merle Black describe as the “Great White Switch,” in which white voters abandoned the Democratic Party for the Republican Party. Burton Report 58.

38. The 1948 presidential election illustrated this phenomenon: South Carolina Governor J. Strom Thurmond mounted a third-party challenge to Democratic President Harry Truman in protest of Truman’s support for civil rights, including his integration of the armed forces. Thurmond ran on the ticket of the so-called Dixiecrat Party, which claimed the battle flag of the Confederacy as its symbol. Thurmond’s campaign ended Democratic dominance of Deep South states by winning South Carolina, Alabama, Mississippi, and Louisiana. Burton Report 58.

39. This trend continued into the 1964 and 1968 elections. In 1964, the Republican nominee, Barry Goldwater, won only six states in a landslide defeat to President Lyndon B. Johnson: his home state of Arizona and all five states comprising the Deep South (South Carolina, Georgia, Alabama, Mississippi, and Louisiana). Goldwater was the first Republican presidential candidate to win Georgia’s electoral votes. Burton Report 58.

40. Goldwater told a group of Republicans from Southern states that it was better for the Republican Party to forgo the “Negro vote” and instead court white Southerners who opposed equal rights. Burton Report 59.

41. Four years later, Georgia’s electoral votes were won by George Wallace, another third-party presidential candidate who ran on a platform of vociferous opposition to civil rights legislation. Burton Report 58.

42. The effectiveness of what was called the “Southern strategy” during Richard Nixon’s presidency had a profound impact on the development of the nearly all-white modern Republican Party in the South. Burton Report 59.

43. Matthew D. Lassiter, an historian of the Atlanta suburbs, observed that “the law-and-order platform at the center of Nixon’s suburban strategy tapped into Middle American resentment toward antiwar demonstrators and black militants but consciously employed a color-blind discourse that deflected charges of racial demagoguery.” Burton Report 60 (quoting Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* 234 (2006)).

44. As Dr. Burton concluded, “[w]hite southerners abandoned the Democratic Party for the Republican Party because the Republican Party identified itself with racial conservatism. Consistent with this strategy, Republicans today

continue to use racialized politics and race-based appeals to attract racially conservative white voters.” Burton Report 59.

45. The significant impact of race on Georgia’s partisan divide can be further seen in the opposing positions taken by officeholders in the two major political parties on issues inextricably linked to race; for example, the Democratic and Republican members of Georgia’s congressional delegation consistently oppose one another on issues relating to civil rights, based on a report prepared by the NAACP. Burton Report 74–75.

46. In a poll of 3,291 likely Georgia voters conducted just before the 2020 election, among voters who believed that racism was the most important issue facing the country, 78% voted for Joe Biden and 20% voted for Donald Trump; among voters who believed that racism was “not too or not at all serious,” 9% voted for Biden and 90% voted for Trump; and among voters who believed that racism is a serious problem in policing, 65% voted for Biden and 33% voted for Trump. Burton Report 76.

47. The Pew Research Center found a similar divergence on racial issues between Democratic and Republican voters nationwide. Burton Dec. 75–76.

48. Dr. Burton further noted that while “Republicans nominated a Black candidate—Herschel Walker, a former University of Georgia football legend—to

challenge Senator Raphael Warnock in the 2022 general election for U.S. Senate[,] Walker’s nomination only underscores the extent to which race and partisanship remain intertwined. Republican leaders in Georgia admittedly supported Walker because they wanted to ‘peel[] off a handful of Black voters’ and ‘reassure white swing voters that the party was not racist.’” Burton Report 61 (quoting Cleve R. Wootson Jr., *Herschel Walker’s Struggles Show GOP’s Deeper Challenge in Georgia*, Wash. Post, <https://www.washingtonpost.com/politics/2022/09/22/herschel-walker-georgia-black-voters> (Sept. 22, 2022)).

49. Dr. Burton explained that racial bloc voting “is so strong, and race and partisanship so deeply intertwined, that statisticians refer to it as multicollinearity, meaning one cannot, as a scientific matter, separate partisanship from race in Georgia elections.” Burton Report 61.

50. Georgia’s enacted congressional plan includes two majority-Black districts based on percentage Black voting-age population, three majority-Black districts based on percentage non-Hispanic Black citizen voting-age population, and four majority-Black districts based on percentage non-Hispanic DOJ Black citizen voting-age population. Cooper Report ¶ 73, fig.14.

51. Georgia has a total voting-age population of 8,220,274, of whom 2,607,986 (31.73%) are AP Black. Cooper Report ¶ 18, fig.2.

52. The total estimated citizen voting-age population in Georgia in 2021 was 33.3% AP Black. Cooper Report ¶ 20, fig.2.

53. Only 49.96% of Black voters in Georgia reside in majority-Black districts under the enacted congressional plan, while 82.47% of non-Hispanic white voters live in majority-white districts—a difference of 32.51 percentage points. Cooper Report ¶ 74, fig.15.

54. Under Mr. Cooper’s illustrative congressional plan, 57.48% of the Black voting-age population resides in majority-Black districts, while 75.50% of the non-Hispanic white voting-age population resides in majority-white districts—a difference of 18.01 percentage points. Cooper Report ¶ 74, fig.15.

Dated: April 19, 2023

By /s/ Adam M. Sparks
Joyce Gist Lewis
Georgia Bar No. 296261
Adam M. Sparks
Georgia Bar No. 341578
KREVOLIN & HORST, LLC
One Atlantic Center
1201 West Peachtree Street, NW,
Suite 3250
Atlanta, Georgia 30309
Telephone: (404) 888-9700
Facsimile: (404) 888-9577
Email: JLewis@khlawfirm.com
Email: Sparks@khlawfirm.com

Respectfully submitted,

Abha Khanna*
Jonathan P. Hawley*
Makeba A.K. Rutahindurwa*
ELIAS LAW GROUP LLP
1700 Seventh Avenue,
Suite 2100
Seattle, Washington 98101
Phone: (206) 656-0177
Facsimile: (206) 656-0180
Email: AKhanna@elias.law
Email: JHawley@elias.law
Email: MRutahindurwa@elias.law

Michael B. Jones
Georgia Bar No. 721264
ELIAS LAW GROUP LLP
250 Massachusetts Avenue NW,
Suite 400
Washington, D.C. 20001
Phone: (202) 968-4490
Facsimile: (202) 968-4498
Email: MJones@elias.law

Counsel for Plaintiffs

*Admitted *pro hac vice*

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing Plaintiffs' Statement of Additional 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
Counsel for Plaintiffs