

**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' MOTION FOR SUMMARY JUDGMENT**

Pursuant to Federal Rule of Civil Procedure 56, Plaintiffs COAKLEY  
PENDERGRASS, TRIANA ARNOLD JAMES, ELLIOTT HENNINGTON,  
ROBERT RICHARDS, JENS RUECKERT, and OJUAN GLAZE, for the reasons

set forth herein and in the memorandum of law filed concurrently with this motion, and as supported by the materials submitted therewith, respectfully move for an order granting summary judgment in Plaintiffs' favor.

Summary judgment is warranted because the evidence adduced by Plaintiffs proves that Georgia's enacted congressional map violates Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, by failing to include an additional congressional district in which Black voters have the opportunity to elect their preferred candidates. Georgia has a Black population sufficiently large and geographically compact to create an additional majority-Black congressional district in the western Atlanta metropolitan area. The enacted congressional map limits the ability of Black Georgians in this area to elect their candidates of choice to Congress, thus diluting the voting strength of a politically cohesive minority group in violation of Section 2. *See Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994).

Ultimately, there is no genuine dispute that Plaintiffs have satisfied the threshold preconditions established in *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986), and that, considering the totality of circumstances, “the political processes leading to nomination or election in the State or political subdivision are not equally open to participation” by members of Georgia's Black community, 52 U.S.C. § 10301(b). Plaintiffs therefore request that the Court issue an order granting

summary judgment in their favor and requiring the adoption of a lawful congressional map in advance of the 2024 congressional elections.

Dated: March 20, 2023

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing *Plaintiffs' Motion for Summary Judgment* 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: March 20, 2023

**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 *Plaintiffs' Motion for Summary Judgment* 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: March 20, 2023

**Adam M. Sparks**

*Counsel for Plaintiffs*

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**BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY  
JUDGMENT**

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## INTRODUCTION

Last February, this Court concluded that Plaintiffs “have shown that they are likely to ultimately prove that certain aspects of the State’s redistricting plans are unlawful.” ECF No. 97 (“PI Order”) at 10. What was true at the preliminary injunction stage is still true today: This matter is a textbook Section 2 case. By failing to include a district in the western Atlanta metropolitan area where Black voters can elect their preferred candidates, Georgia’s congressional map denies them equal access to the political process in violation of the Voting Rights Act.

Plaintiffs’ experts have reaffirmed and reinforced their opinions and reports since the Court’s ruling last year. William Cooper, Plaintiffs’ demographic and mapping expert, reestablished that a compact majority-Black district can be readily drawn in the western Atlanta suburbs. Dr. Maxwell Palmer, who analyzed racially polarized voting, and Dr. Loren Collingwood, who examined socioeconomic and political disparities between Black and white Georgians, supplemented and reconfirmed their findings using 2022 election data. And Dr. Orville Vernon Burton, who explored Georgia’s history of discriminatory voting practices and racialized politics, expanded his discussion of the factors relevant to the Section 2 inquiry.

Defendants’ experts, by striking contrast, have done *nothing* in the past 12 months to remedy the analytical and evidentiary shortcomings that the Court



highlighted in its preliminary injunction order. John Morgan submitted a cursory rebuttal report that fails to challenge Mr. Cooper’s illustrative map on any meaningful metric. Dr. John Alford *confirmed* Dr. Palmer’s findings of racially polarized voting, offering only his (misguided) views on the legal significance of these undisputed facts. And Plaintiffs’ expert evidence on the other components of the Section 2 inquiry has gone completely unaddressed and unrefuted. In short, Defendants have failed to raise *any* genuine dispute of material fact relevant to the elements of Plaintiffs’ claim.

The denial of Plaintiffs’ preliminary injunction motion was based not on the merits—indeed, the Court concluded that “the *Pendergrass* Plaintiffs have satisfied their burden to show a substantial likelihood of success as to Illustrative Congressional District 6”—but instead on the determination that there was “insufficient time to effectuate remedial relief for purposes of the 2022 election cycle.” *Id.* at 220, 236–37. Freed from those equitable concerns and considering virtually the same body of evidence that informed the Court’s earlier ruling, Plaintiffs respectfully submit that summary judgment is now warranted, and that a new congressional map that complies with Section 2 and ensures Black Georgians equal access to the political process is required.

## BACKGROUND

The Court’s preliminary injunction order recounted much of the factual and procedural background in this matter, including the Georgia General Assembly’s enactment of the Georgia Congressional Redistricting Act of 2021 and the litigation that followed. *See* PI Order 11–16. Plaintiffs will therefore focus this section on the demographic developments in Georgia over the past decade.

Between 2010 and 2020, Georgia’s population grew by over 1 million people—a 10.57% increase that can be attributed entirely to gains in the state’s minority population. Statement of Undisputed Material Facts in Supp. of Pls.’ Mot. for Summ. J. (“SUMF”) ¶¶ 1–2; Ex. 1 (“Cooper Report”) ¶¶ 13–14, fig.1.<sup>1</sup> During that decade, Georgia’s Black population grew by 484,048 people, accounting for 47.26% of the state’s overall population gain. SUMF ¶¶ 3–4; Cooper Report ¶ 15, fig.1. Georgia’s any-part Black population now constitutes 33.03% of the statewide population and is the largest minority group in the state. SUMF ¶¶ 5–6; Cooper Report ¶ 16, fig.1. By contrast, Georgia’s white population *decreased* by 51,764 people between 2010 and 2020; non-Hispanic white Georgians now comprise a

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<sup>1</sup> All exhibits are attached to the Declaration of Jonathan P. Hawley, filed concurrently with this motion.

razor-thin majority of the state’s population at only 50.06%. SUMF ¶¶ 7–8; Cooper Report ¶¶ 15, 17, fig.1.

The Atlanta Metropolitan Statistical Area (“MSA”) has been the key driver of population growth in Georgia during this century, led in no small measure by a large increase in the region’s Black population. SUMF ¶ 16; Cooper Report ¶ 25, fig.4.<sup>2</sup> The population gain in the Atlanta MSA between 2010 and 2020 amounted to 803,087 people—more than the population of one congressional district—with about half of that gain coming from an increase in the region’s Black population. SUMF ¶ 17; Cooper Report ¶ 30, fig.5. Over the past two decades, the Black population in the Atlanta MSA has grown from 1,248,809 in 2000 to 2,186,815 in 2020—an increase of 938,006 people—accounting for 75.1% of the statewide Black population increase and 51.4% of the Atlanta MSA’s total increase during that period. SUMF ¶ 19; Cooper Report ¶ 26, fig.4. The decrease in the region’s white population has been just as evident: Under the 2000 census, the Atlanta MSA’s

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<sup>2</sup> As defined by the U.S. Office of Management and Budget, the Atlanta MSA consists of the following 29 counties: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton. SUMF ¶ 15; Cooper Report ¶ 12 n.3.

population was 60.42% non-Hispanic white, decreasing to 50.78% in 2010 and then to just 43.71% in 2020. SUMF ¶ 22; Cooper Report ¶ 27, fig.4.

According to the 2020 census, the 11 core counties comprising the Atlanta Regional Commission (“ARC”) service area account for more than half of the statewide Black population. SUMF ¶ 20; Cooper Report ¶ 28. The combined Black population in just four of these counties (Cobb, Fulton, Douglas, and Fayette) is 807,076 people, more than would be sufficient to constitute an entire congressional district—or a majority in two congressional districts. SUMF ¶ 26; Cooper Report ¶ 42, fig.8.

### **LEGAL STANDARD**

“The principal function of the motion for summary judgment is to show that one or more of the essential elements of a claim or defense . . . is not in doubt and that, as a result, judgment can be rendered as a matter of law.” *Tomlin v. JCS Enters., Inc.*, 13 F. Supp. 3d 1330, 1335 (N.D. Ga. 2014) (alteration in original) (quoting *Tippens v. Celotex Corp.*, 805 F.2d 949, 952 (11th Cir. 1986)). When there is no genuine dispute as to any material fact, the moving party is entitled to judgment as a matter of law on all or any part of a claim. Fed. R. Civ. P. 56(a).

Once the moving party has met its initial burden of proving that no genuine issue of material fact exists, the burden shifts to the opposing party to establish

otherwise. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585–86 (1986). To avoid summary judgment, the opposing party must “go beyond the pleadings” and designate specific facts establishing a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). In so doing, the opposing party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita*, 475 U.S. at 586. Rather, it “must come forward with significant, probative evidence demonstrating the existence of a triable issue of fact.” *Irby v. Bittick*, 44 F.3d 949, 953 (11th Cir. 1995) (quoting *Chanel, Inc. v. Italian Activewear of Fla., Inc.*, 931 F.2d 1472, 1479 (11th Cir. 1991)). “Evidence that is ‘merely colorable, or is not significantly probative’ of a disputed fact cannot satisfy a party’s burden, and a mere scintilla of evidence is likewise insufficient.” *Kernel Recs. Oy v. Mosley*, 694 F.3d 1294, 1301 (11th Cir. 2012) (citations omitted) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

## ARGUMENT

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). This includes the

manipulation of district lines [to] dilute the voting strength of politically cohesive minority group members, whether by fragmenting the

minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door.

*Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994); *see also Voinovich v. Quilter*, 507 U.S. 146, 153 (1993) (“Dividing the minority group among various districts so that it is a majority in none may prevent the group from electing its candidate of choice[.]”); PI Order 16–19, 27 (exploring history of Voting Rights Act).

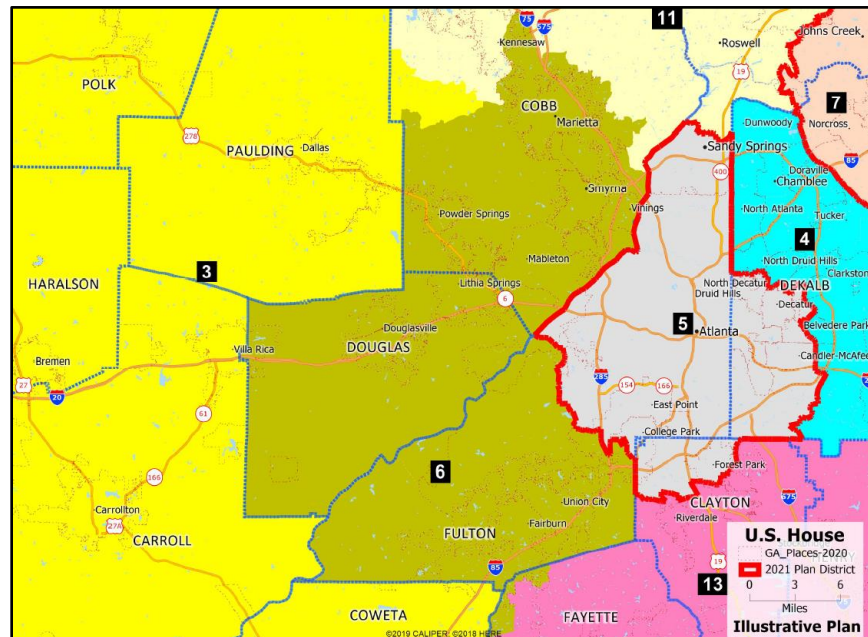
To prevail on their Section 2 claim, Plaintiffs must show that (1) the minority group is “sufficiently large and geographically compact to constitute a majority in a single-member district”; (2) the minority group “is politically cohesive”; and (3) “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986); *see also* PI Order 28–29 (describing *Gingles* preconditions). Once Plaintiffs have made this threshold showing, the Court must then examine “the totality of circumstances”—including the Senate Factors, which are the nine factors identified in the U.S. Senate report that accompanied the 1982 amendments to the Voting Rights Act—to determine whether “the political processes leading to nomination or election in the State or political subdivision are not equally open to participation” by members of the minority group. 52 U.S.C. § 10301(b); *see also Gingles*, 478 U.S. at 43–44; PI Order 29–32 (describing Senate Factors).

**I. *Gingles* One: An additional compact majority-Black congressional district can be drawn in the western Atlanta metropolitan area.**

Plaintiffs readily satisfy the first *Gingles* precondition because it is possible to “create[e] more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice.” *LULAC v. Perry*, 548 U.S. 399, 430 (2006) (plurality opinion) (quoting *De Grandy*, 512 U.S. at 1008); *see also* PI Order 51–55 (summarizing applicable legal standards, including numerosity and compactness requirements).

Expert demographer William Cooper has again offered an illustrative plan that unequivocally satisfies the first *Gingles* precondition, demonstrating that the Black community in the western Atlanta metropolitan area is sufficiently large and geographically compact to comprise more than 50% of the voting-age population in an additional congressional district. SUMF ¶¶ 31, 43; Cooper Report ¶ 10; Ex. 8 (“Morgan Dep.”) at 65:10–66:13; *see also* PI Order 35–38 (reviewing Mr. Cooper’s relevant experience and methodology and finding “his methods and conclusions [] highly reliable”). Given the striking increase in the Atlanta metropolitan area’s Black population during this century, *see supra* at 4–5, Mr. Cooper used this region as the focal point for his analysis. SUMF ¶ 34; Cooper Report ¶ 35. Mr. Cooper’s additional majority-Black district—illustrative Congressional District 6—is

anchored in the western Atlanta suburbs, encompassing all of Douglas and parts of Cobb, Fayette, and Fulton counties:



SUMF ¶¶ 32, 35; Cooper Report ¶¶ 10, 51, 86–87, Ex. I-2. The Black population of Mr. Cooper’s illustrative Congressional District 6 exceeds 50% under various metrics, SUMF ¶¶ 36–39; Cooper Report ¶ 73, figs.11 & 14; Ex. 6 (“Morgan Report”) ¶ 12, and his illustrative plan includes this additional district without reducing the number of preexisting majority-Black districts in the enacted plan, SUMF ¶ 33; Cooper Report ¶ 73, fig.14; Morgan Dep. 65:10–66:13.

Mr. Cooper’s illustrative plan undeniably complies with traditional redistricting principles, including the guidelines adopted by the General Assembly to inform its 2021 redistricting efforts. SUMF ¶ 46; Exs. 10–11. As in the enacted

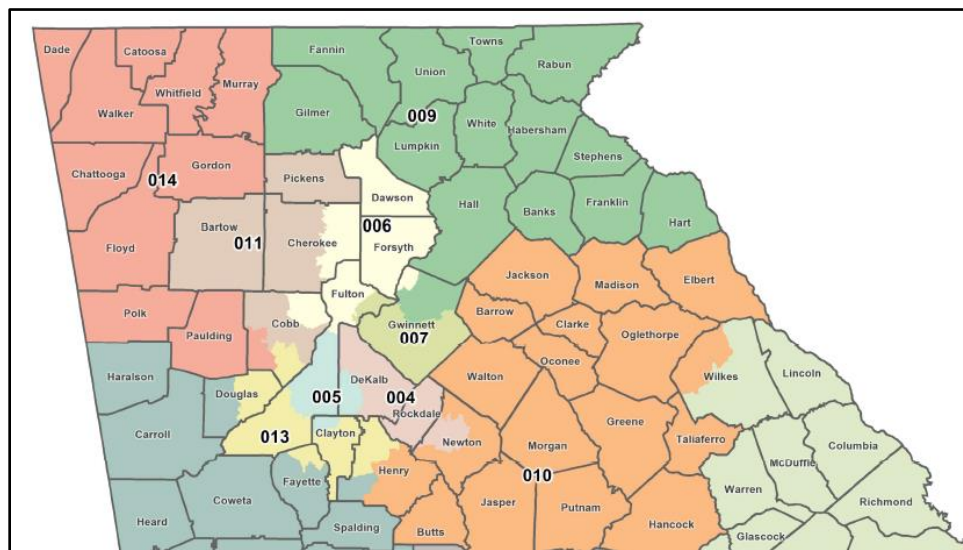


plan, population deviations in Mr. Cooper's illustrative plan are limited to plus-or-minus one person from the ideal district population, and his districts are contiguous. SUMF ¶¶ 47–49; Cooper Report ¶¶ 52–53, fig.11; Morgan Dep. 62:4–7, 62:14–17; *see also* PI Order 71, 76. The mean and lowest compactness scores of Mr. Cooper's illustrative plan are similar or identical to the corresponding scores for the enacted plan and Georgia's prior congressional plan. SUMF ¶¶ 50, 53; Cooper Report ¶¶ 78–79 & n.12, fig.13; Morgan Report ¶ 22; Morgan Dep. 55:18–57:5; *see also* PI Order 71–76. In particular, Mr. Cooper's additional majority-Black district, illustrative Congressional District 6, is as compact as the average for the enacted plan on the Polsby-Popper scale and *more* compact than the enacted plan's average on the Reock scale; it is also more compact than the enacted Congressional District 6 on both measures. SUMF ¶¶ 54–55; Cooper Report Exs. L-1 & L-3; Morgan Dep. 57:15–60:2.

Mr. Cooper's illustrative plan is also comparable to (and, in several instances, better than) the enacted plan in preserving political subdivisions. Although both Mr. Cooper's illustrative plan and the enacted plan split 15 counties, the illustrative plan scores better across four other metrics: county splits (unique county/district combinations), split municipalities, municipality splits (unique municipality/district combinations), and voting district splits. SUMF ¶¶ 58–60; Cooper Report ¶¶ 81–82,

fig.14; Morgan Report ¶¶ 20; Morgan Dep. 44:6–46:16, 54:7–11, 54:18–55:6; *see also* PI Order 76–79.

Mr. Cooper’s illustrative Congressional District 6 also better preserves communities with shared interests in the western Atlanta metropolitan area. The enacted map splits majority-non-white Cobb County among four congressional districts, including three majority-white districts—one of which, Congressional District 14, begins in southwest Cobb County and stretches up to Appalachian north Georgia and the Chattanooga suburbs:

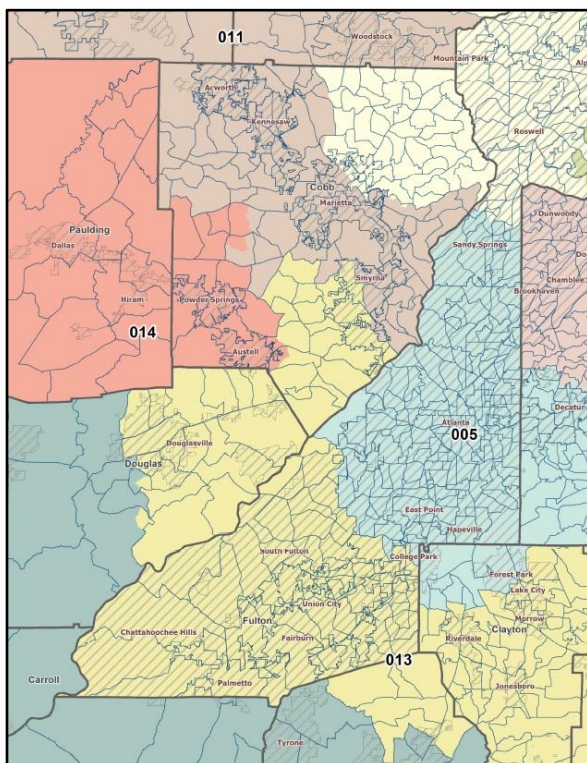


SUMF ¶¶ 61–63; Cooper Report ¶¶ 60, 65, 68, 73, fig.14, Ex. G. In Mr. Cooper’s plan, by contrast, Cobb County is split between only three districts,<sup>3</sup> and his

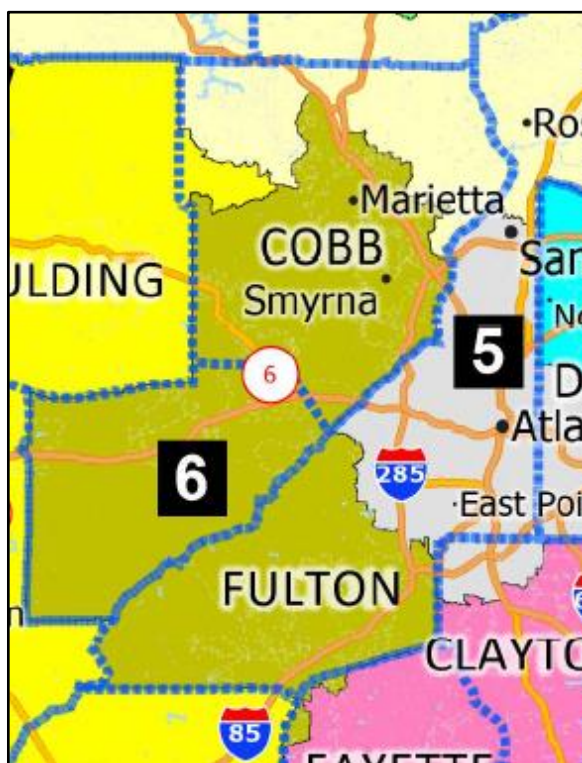
<sup>3</sup> As an additional improvement, Mr. Cooper assigned all but noncontiguous zero-population areas of Marietta (population 60,972) to his Congressional District 6,

illustrative Congressional District 6 unites Atlanta-area urban, suburban, and exurban voters in Cobb, Douglas, Fulton, and Fayette counties, all of which are core metro counties under the ARC:

*Enacted Plan*



*Mr. Cooper's Illustrative Plan*



SUMF ¶¶ 61, 63–64; Cooper Report ¶¶ 60, 65, 68, Exs. G & H-1; *see also* PI Order 79–85 (finding that “Mr. Cooper’s Illustrative Congressional Plan sufficiently respects communities of interest in the western Atlanta metropolitan area” given “the relative geographic proximity . . . of the proposed district” and “that the areas

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whereas the enacted plan divides populated areas of the city between Congressional Districts 6 and 11. SUMF ¶ 66; Cooper Report ¶ 69.

constituting illustrative Congressional District 6 are developed and suburban in nature and generally face the same infrastructure, medical care, educational, and other critical needs”).

Additionally, Dr. Maxwell Palmer confirmed that Black voters would be able to elect their preferred candidates in Mr. Cooper’s illustrative Congressional District 6. In the proposed district, Black-preferred candidates would have won all 31 statewide races from 2012 through 2021 with an average of 66.1% of the vote. SUMF ¶¶ 40–41; Ex. 2 (“Palmer Report”) ¶¶ 9, 23, 25, fig.5, tbl.8.<sup>4</sup> Plaintiffs therefore satisfy the first *Gingles* precondition. *See LULAC*, 548 U.S. at 430 (first *Gingles* precondition requires “reasonably compact districts with a sufficiently large minority population to elect candidates of its choice” (quoting *De Grandy*, 512 U.S. at 1008)).

Defendants’ mapping expert, John Morgan, has provided no opinions to contest this conclusion or otherwise undermine Plaintiffs’ satisfaction of the first *Gingles* precondition. *See* PI Order 42–46 (finding that Mr. Morgan’s “testimony lacks credibility” and thus “assign[ing] little weight to his testimony”). Indeed, he

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<sup>4</sup> Dr. Palmer also concluded that the candidates of choice for Black voters would continue to win in Congressional District 13, the only district from which Mr. Cooper’s illustrative Congressional District 6 was drawn that previously performed for Black-preferred candidates. SUMF ¶ 42; Palmer Report ¶ 26.

*does not dispute* that the Black population in the Atlanta metropolitan area is sufficiently numerous and geographically compact to allow for the creation of an additional majority-Black congressional district consistent with traditional redistricting principles. *See* Morgan Dep. 65:10–66:13; *see also* PI Order 69–71 (finding that earlier iteration of illustrative Congressional District 6 “comports with traditional redistricting principles” and thus satisfied compactness requirement). Indeed, Mr. Morgan does not dispute that Mr. Cooper’s illustrative plan equalizes population, *see* Morgan Dep. 62:4–7; is contiguous, *see id.* at 62:14–17; is similarly compact as the enacted plan, *see* Morgan Report ¶ 22; Morgan Dep. 55:18–57:5; and preserves political subdivisions the same as or better than the enacted plan, *see* Morgan Report ¶ 20; Morgan Dep. 44:6–46:16, 54:7–11, 54:18–55:6—in other words, satisfies the redistricting principles that the General Assembly itself adopted as guidelines when drawing Georgia’s enacted congressional districts. SUMF ¶ 46; Exs. 10–11.

Mr. Morgan’s only apparent complaints with Mr. Cooper’s illustrative plan are neither persuasive nor meaningful. First, he objects to the illustrative plan’s “discontinuity” with Georgia’s prior congressional plan and the enacted plan. Morgan Report ¶¶ 14, 18. But, as the Court previously noted, the preservation of existing district cores was not an enumerated guideline adopted by the General

Assembly. *See* PI Order 85–86. And, in any event, Mr. Cooper’s illustrative plan leaves six of the 14 districts in the enacted plan unchanged, SUMF ¶ 68; Cooper Report ¶¶ 11, 51; Morgan Report ¶ 18—a degree of core retention that previously led the Court to “find[] that not only does Mr. Cooper’s Illustrative Congressional Plan comply with the traditional districting principles and the General Assembly’s guidelines, his plan also does not alter existing district cores in a manner that counsels against finding that it satisfies the first *Gingles* precondition,” PI Order 86–87.

Second, Mr. Morgan offers a single sentence claiming that “care [was] taken” by Mr. Cooper “to avoid changing the racial make-up” of his illustrative Congressional District 6. Morgan Report ¶ 17. But this conclusory assertion is, as Mr. Morgan implicitly conceded in his deposition, wholly unsupported by any meaningful analysis or discussion in his expert report. *See* Morgan Dep. 52:1–53:4. Mr. Morgan’s idle speculation does not meaningfully counter Mr. Cooper’s assertion that no one factor—neither racial considerations nor anything else—predominated in the drawing of his illustrative congressional plan. SUMF ¶ 45; Cooper Report ¶ 50; *see also* PI Order 37, 87–92. And baseless conjecture can hardly serve as evidence sufficient to defeat summary judgment. *See Kernel Recs. Oy*, 694 F.3d at 1301 (“Although all justifiable inferences are to be drawn in favor of the nonmoving



party,’ ‘inferences based upon speculation are not reasonable.’” (citations omitted) (first quoting *Baldwin County v. Purcell Corp.*, 971 F.2d 1558, 1563–64 (11th Cir. 1992); and then quoting *Marshall v. City of Cape Coral*, 797 F.2d 1555, 1559 (11th Cir. 1986))).

Ultimately, Mr. Morgan’s brief declaration in this matter is little more than a recitation of the metrics already reported by Mr. Cooper, and certainly does nothing to dispute that Plaintiffs’ illustrative map fulfills the applicable criteria under Section 2. Indeed, by acknowledging the numerosity and compactness of the Atlanta metropolitan area’s Black population and recognizing that Mr. Cooper’s illustrative plan satisfies the relevant neutral criteria, Mr. Morgan has all but conceded Plaintiffs’ compliance with the first *Gingles* precondition.

## **II. *Gingles* Two: Black Georgians in the focus area are politically cohesive.**

Plaintiffs satisfy the second *Gingles* precondition because Black voters in the area where Mr. Cooper has drawn an additional majority-Black congressional district are politically cohesive. *See* 478 U.S. at 49. “Bloc voting by blacks tends to prove that the black community is politically cohesive, that is, it shows that blacks prefer certain candidates whom they could elect in a single-member, black majority district.” *Id.* at 68; *see also* PI Order 172 (explaining second *Gingles* precondition).

Dr. Palmer analyzed political cohesion and racially polarized voting in a focus area comprising the five congressional districts from which Mr. Cooper’s illustrative majority-Black district was drawn. SUMF ¶ 69; Palmer Report ¶ 10, fig.1. To perform his analysis, Dr. Palmer examined precinct-level election results and voter turnout by race and employed a widely accepted methodology called ecological inference analysis. SUMF ¶¶ 70–72; Palmer Report ¶¶ 8, 11, 13–14; Ex. 9 (“Alford Dep.”) at 36:11–37:12; *see also, e.g., Wright v. Sumter Cnty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1305 (M.D. Ga. 2018) (recognizing ecological inference as “the ‘gold standard’ for use in racial bloc voting analyses”), *aff’d*, 979 F.3d 1282 (11th Cir. 2020); PI Order 176–78 (finding that Dr. Palmer’s “methods and conclusions are highly reliable”).

Dr. Palmer found that Black voters in Georgia are extremely cohesive, with a clear candidate of choice in all 40 elections he examined—a conclusion with which Defendants’ expert, Dr. John Alford, readily agreed. SUMF ¶¶ 73–74; Palmer Report ¶¶ 15–16 & n.13, figs.2 & 3, tbl.1; Ex. 3 (“Suppl. Palmer Report”) ¶ 5, tbl.1; Ex. 7 (“Alford Report”) at 3; Alford Dep. 37:13–15. Across the focus area, Black voters supported their candidates of choice with an average of 98.4% of the vote in the 40 elections Dr. Palmer examined, a finding reflected in each of the five component congressional districts as well. SUMF ¶¶ 75–77; Palmer Report ¶¶ 7, 16,



19, fig.4, tbls.2, 3, 4, 5 & 6. Plaintiffs therefore satisfy the second *Gingles* precondition. *See* 478 U.S. at 56 (“A showing that a significant number of minority group members usually vote for the same candidates is one way of proving [] political cohesiveness[.]”); *see also* PI Order 185–86 (concluding that “Plaintiffs have satisfied their burden to establish that Black voters in Georgia (at least for those regions examined) are politically cohesive”).

### **III. *Gingles* Three: White Georgians engage in bloc voting to defeat Black-preferred candidates in the focus area.**

Finally, Plaintiffs satisfy the third *Gingles* precondition because, in the area where Mr. Cooper proposes a new majority-Black district, “the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” 478 U.S. at 51; *see also* PI Order 197–98 (explaining third *Gingles* precondition).

Dr. Palmer found high levels of white bloc voting in opposition to the candidates whom Black voters cohesively supported—another finding endorsed by Dr. Alford. SUMF ¶ 78; Palmer Report ¶ 17, figs.2 & 3, tbl.1; Suppl. Palmer Report ¶ 5, fig.1, tbl.1; Alford Report 3; Alford Dep. 38:20–39:8. In the same 40 elections Dr. Palmer analyzed, white voters in the focus area overwhelmingly opposed Black voters’ candidates of choice: On average, only 12.4% of white voters supported Black-preferred candidates, and in no election did white support exceed 17%. SUMF

¶ 79; Palmer Report ¶¶ 7, 17. Consequently, across the focus area, white-preferred candidates won the majority of the vote in all 40 elections. SUMF ¶ 82; Palmer Report ¶¶ 8, 22, tbl.7. Dr. Palmer reported the same results at the district level: White voters cohesively opposed Black-preferred candidates in each of the five congressional districts, and only in the majority-Black Congressional District 13 did Black-preferred candidates win larger shares of the vote in the 40 elections. SUMF ¶¶ 80–81, 83–85; Palmer Report ¶¶ 8, 20, 22, fig.4, tbls.2, 3, 4, 5, 6 & 7; Suppl. Palmer Report ¶ 4; Cooper Report ¶ 73, fig.14.

In short, Black voters’ candidates of choice are consistently defeated in the focus area by white bloc voting, except where Black voters make up a majority of eligible voters—thus satisfying the third *Gingles* precondition. *See* 478 U.S. at 68 (“Bloc voting by a white majority tends to prove that blacks will generally be unable to elect representatives of their choice.”); *see also* PI Order 198–200 (crediting “Dr. Palmer’s analysis and testimony” and concluding that “Plaintiffs have satisfied their burden under the third *Gingles* precondition”).

**IV. Under the totality of circumstances, the enacted map denies Black voters equal opportunity to elect their preferred candidates to Congress.**

Considering the “totality of circumstances,” Georgia’s enacted congressional map denies Black voters an equal opportunity to elect their preferred congressional representatives. 52 U.S.C. § 10301(b). Notably, “it will be only the very unusual

case in which the plaintiffs can establish the existence of the three *Gingles* [preconditions] but still have failed to establish a violation of § 2 under the totality of circumstances.” *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs*, 775 F.3d 1336, 1342 (11th Cir. 2015) (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)). Again, this is not an unusual case.

The factors outlined in the Senate Judiciary Committee report accompanying the 1982 Voting Rights Act amendments—the Senate Factors—are “typically relevant to a § 2 claim” and guide this analysis. *LULAC*, 548 U.S. at 426; *see also Gingles*, 478 U.S. at 36–37 (listing Senate Factors). They are not exclusive, and “there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” *Gingles*, 478 U.S. at 45 (quoting S. Rep. No. 97-417, pt. 1, at 29 (1982)).

Here, each of the relevant Senate Factors confirms that the enacted congressional map denies Black voters equal electoral opportunities.

**A. Senate Factor One: Georgia has an ongoing history of official voting-related discrimination.**

“It cannot be disputed that Black Georgians have experienced franchise-related discrimination.” PI Order 205. Indeed, “Georgia electoral history is marked by too many occasions where the State, through its elected officials, enacted discriminatory measures designed to minimize black voting strength.” *Brooks v.*

*State Bd. of Elections*, 848 F. Supp. 1548, 1572 (S.D. Ga. 1994); *see also, e.g., Fair Fight Action, Inc. v. Raffensperger*, 593 F. Supp. 3d 1320, 1342 (N.D. Ga. 2021) (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”). As the Eleventh Circuit has similarly acknowledged, “[t]he voting strength of blacks has historically been diminished in Georgia in numerous ways, including property ownership requirements, literacy tests, and the use of the county unit system which undermined the voting power of counties with large black populations.” *Brooks v. Miller*, 158 F.3d 1230, 1233 (11th Cir. 1998). Although these discriminatory actions have evolved over the years, they have persisted; as a result of this centuries-long effort to marginalize and disenfranchise Black Georgians, they still lack equal access to the state’s political processes today.

Dr. Orville Vernon Burton prepared an extensive (and unrebutted) examination of the history of voting-related discrimination in Georgia, emphasizing a sordid and recurring pattern: After periods of increased nonwhite voter registration and turnout, the State finds methods to disfranchise and reduce the influence of minority voters. SUMF ¶ 86; Ex. 4 (“Burton Report”) at 2, 9–10; *see also* PI Order 207 (finding Dr. Burton “highly credible,” his “historical analysis [] thorough and methodologically sound,” and his “conclusions . . . reliable”). Indeed, “[w]hile

Georgia was not an anomaly, no state was more systematic and thorough in its efforts to deny or limit voting and officeholding by African-Americans after the Civil War.” SUMF ¶ 95; Burton Report 10 (quoting Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia* 2–3 (2003)). Following Reconstruction, these tactics included poll taxes, a white-only primary system, and use of majority-vote requirements and at-large districts. SUMF ¶¶ 96–104; Burton Report 10–12, 14–26. Efforts at de jure disenfranchisement were reinforced by rampant political terror and violence against Black legislators and voters; between 1875 and 1930, Georgia witnessed 462 lynchings—second only to Mississippi—which, as Dr. Burton explained, “served as a reminder for Black Georgians who challenged the status quo” and “did not need to be directly connected to the right to vote to act as a threat against all Black Georgians who dared participate in the franchise.” SUMF ¶¶ 87–94; Burton Report 14–26.

While enactment of the Voting Rights Act altered Georgia’s trajectory, it did not end efforts to prevent the exercise of Black political power. SUMF ¶¶ 105–06; Burton Report 36–43. By 1976, among states subject to preclearance in their entirety, Georgia ranked second only to Alabama in the disparity in voter registration between its Black and white citizens; these disparities were directly attributable to Georgia’s continued efforts to enact policies designed to circumvent the Voting

Rights Act’s protections and suppress the rights of Black voters. SUMF ¶ 107; Burton Report 36. Notably, between 1965 and 1980, nearly 30% of the Department of Justice’s objections to voting-related changes under Section 5 were attributable to Georgia—more than any other state in the country. SUMF ¶ 108; Burton Report 3, 39. When Congress reauthorized the Voting Rights Act in 1982, it specifically cited systemic abuses by Georgia officials intended to obstruct Black voting rights. SUMF ¶ 109; Burton Report 3, 42.

Georgia’s voting-related discrimination extended to its redistricting efforts. SUMF ¶¶ 119–21; Burton Report 32. Prior to the effective termination of the Section 5 preclearance requirement following *Shelby County v. Holder*, 570 U.S. 529 (2013), federal challenges and litigation were common features of the state’s decennial redistricting—indeed, the Department of Justice objected to reapportionment plans submitted by Georgia during each of the four redistricting cycles following enactment of the Voting Rights Act because the maps diluted Black voting strength. SUMF ¶¶ 122–26; Burton Report 40–44; Exs. 12–13; *see also, e.g., Georgia v. United States*, 411 U.S. 526, 541 (1973) (affirming that Georgia’s 1972 reapportionment plan violated Section 5 in part because it diluted Black vote in Atlanta-based congressional district); *Busbee v. Smith*, 549 F. Supp. 494, 517 (D.D.C. 1982) (three-judge court) (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).

Significantly, racial discrimination in voting is not consigned to history books; efforts to dilute the political power of Black Georgians persist today. Following *Shelby County*, Georgia was the only former preclearance state that proceeded to adopt “all five of the most common restrictions that impose roadblocks to the franchise for minority voters, including (1) voter ID laws, (2) proof of citizenship requirements, (3) voter purges, (4) cuts in early voting, and (5) widespread polling place closures.” SUMF ¶ 111; Burton Report 48–49. Throughout the first two decades of the 21st century, the State investigated Black candidates and organizations dedicated to protecting the voting rights of Georgia’s minority voters; investigations into alleged voter fraud in the predominantly Black City of Quitman and into the efforts of the New Georgia Project and the Asian American Legal Advocacy Center ended without convictions or evidence of wrongdoing. SUMF ¶ 110; Burton Report 45–46. In 2015, Georgia began closing polling places in primarily Black neighborhoods; by 2019, 18 counties closed more than half of their polling places and several closed nearly 90%, depressing turnout in affected areas and leading to substantially longer waiting times at the polls. SUMF ¶¶ 112–13; Burton Report 49–50. The State has also engaged in “systematic efforts to purge the

voting rolls in ways that particularly disadvantaged minority voters and candidates”—between 2012 and 2018, Georgia removed 1.4 million voters from the eligible voter rolls, purges that disproportionately impacted Black voters. SUMF ¶¶ 115–16; Burton Report 50–51.

Ultimately, the growth of Georgia’s nonwhite population over the past 20 years—and the corresponding increase in minority voting power—has, in Dr. Burton’s words, “provide[d] a powerful incentive for Republican officials at the state and local level to place hurdles in the path of minority citizens seeking to register and vote.” SUMF ¶ 118; Burton Report 60. Georgia’s efforts to discriminate against Black voters has simply not stopped. *See* PI Order 205–09 (finding that “Plaintiffs have demonstrated the history of voting-related discrimination in Georgia” and “[t]he first Senate Factor thus weighs decisively in Plaintiffs’ favor”).

**B. Senate Factor Two: Georgia voters are racially polarized.**

Courts have repeatedly found that voting throughout Georgia is racially polarized. *See, e.g., Fayette Cnty.*, 775 F.3d at 1340 (Fayette County “[v]oters’ candidate preferences in general elections were racially polarized”); *Ga. State Conf. of NAACP v. Georgia*, 312 F. Supp. 3d 1357, 1360 (N.D. Ga. 2018) (three-judge court) (“[V]oting in Georgia is highly racially polarized.”); *Wright*, 301 F. Supp. 3d at 1319 (“Sumter County’s voters [are] highly polarized.”). These findings were



confirmed in the focus area and in its constituent congressional districts by Dr. Palmer's analysis discussed above: Black voters overwhelmingly support their candidates of choice, and white voters consistently and cohesively vote in opposition to Black-preferred candidates. SUMF ¶¶ 128–36; Palmer Report ¶¶ 7, 16–17, 19–20, figs.2, 3 & 4, tbls.1, 2, 3, 4, 5, & 6; Suppl. Palmer Report ¶¶ 4–5, fig.1, tbl.1; Alford Report 3; Alford Dep. 37:13–15, 38:20–39:8, 44:8–16, 45:10–12; *see also supra* at 16–19.

Far from disputing this polarization, Defendants' expert Dr. Alford confirmed it, both in his expert report, *see* Alford Report 3 (“As evident in Dr. Palmer's [reports], the pattern of polarization is quite striking.”), and in his deposition, *see* Alford Dep. 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.”). Voting in the focus area is undeniably polarized along racial lines, and the second Senate Factor thus tips strongly in Plaintiffs' favor.

Neither Dr. Alford's expert report nor Defendants' prior arguments change this conclusion. As at the preliminary injunction stage, Dr. Alford maintains that the polarization is better explained by partisanship than race. But his analysis is guided by the wrong question. The inquiry implicated by this Senate Factor is objective, not subjective: *how* Black and white Georgians vote, not *why* they vote that way. As this

Court previously explained, “to satisfy the second *Gingles* precondition, Plaintiffs need not prove the causes of racial polarization, just its existence.” PI Order 174. This critical emphasis on correlation rather than causation finds its basis in the concerns that animated revisions to Section 2 decades ago; as this Court explained,

applying the standard advocated by Defendants would undermine the congressional intent behind the 1982 amendments to the VRA—namely, to focus on the *results* of the challenged practices. Congress wanted to avoid “unnecessarily divisive [litigation] involv[ing] charges of racism on the part of individual officials or entire communities.” As the Eleventh Circuit long ago made clear, “[t]he surest indication of race-conscious politics is a pattern of racially polarized voting.”

*Id.* at 175–76 (alterations in original) (citations omitted) (first quoting S. Rep. No. 97-417, pt. 1, at 36; and then quoting *United States v. Marengo Cnty. Comm’n*, 731 F.2d 1546, 1567 (11th Cir. 1984)).

Dr. Alford conceded in his deposition that the relevance of his analysis hinges not on the *fact* of racial polarization, which is not in dispute, *see* Alford Report 3; Alford Dep. 44:8–16, 45:10–12, but on a threshold *legal* question, *see* Alford Dep. 114:13–21 (“[I]f the judge thinks the law doesn’t require anything other than that the two groups vote differently without any connection to race . . . , then that’s the law.”). That legal question has already been addressed—and resolved—by this Court. *See* PI Order 209–10 (concluding that “the Court’s analysis on the second and

third *Gingles* preconditions controls here” and “[t]he second Senate Factor thus weighs in Plaintiffs’ favor”).

**C. Senate Factor Three: Georgia’s voting practices enhance the opportunity for discrimination.**

As discussed above, Georgia has employed a variety of voting practices that have discriminated against Black voters. *See supra* at 20–25; *see also* SUMF ¶ 154; Burton Report 11–55. In addition to the malapportionment of legislative and congressional districts to dilute the votes of Black Georgians throughout the 20th century, SUMF ¶¶ 155–56; Burton Report 31, and the continuing use of polling place closures, voter purges, and other suppressive techniques, SUMF ¶ 159; Burton Report 49–55, numerous Georgia counties with sizeable Black populations shifted from voting by district to at-large voting following enactment of the Voting Rights Act, thus ensuring the electoral success of white-preferred candidates, SUMF ¶ 157; Burton Report 32–33.

Moreover, even though the *Gingles* Court specifically highlighted the use of majority-vote requirements as meaningful evidence of ongoing efforts to discriminate against minority voters, *see* 478 U.S. at 45, Georgia continues to impose a majority-vote requirement in general elections, including elections to the U.S. House of Representatives, SUMF ¶ 158; Burton Report 34; O.C.G.A. § 21-2-501. The combination of a majority-vote requirement and racially polarized voting

ensures that Black voters cannot elect their candidates of choice when they are a minority of a jurisdiction's population, even when the white vote is split. *See City of Port Arthur v. United States*, 459 U.S. 159, 167 (1982) (describing how such circumstances “permanently foreclose a black candidate from being elected”); *see also* PI Order 210–11 (finding that “Plaintiffs have shown there has been a history of voting practices or procedures in Georgia that have enhanced the opportunity for discrimination against Black voters” and “this factor weighs in Plaintiffs’ favor”).

**D. Senate Factor Four: Georgia has no history of candidate slating for congressional elections.**

Because Georgia's congressional elections do not use a slating process, this factor has no relevance to Plaintiffs' claim. SUMF ¶ 160; PI Order 211.

**E. Senate Factor Five: Georgia's discrimination has produced severe socioeconomic disparities that impair Black Georgians' participation in the political process.**

Georgia's Black community continues to suffer as a result of the state's history of discrimination. Dr. Loren Collingwood's (also un rebutted) expert report concluded that, “[o]n every metric, Black Georgians are disadvantaged socioeconomically relative to non-Hispanic White Georgians,” disparities that “have an adverse effect on the ability of Black Georgians to participate in the political process, as measured by voter turnout and other forms of political participation.” SUMF ¶ 161; Ex. 5 (“Collingwood Report”) at 3; *see also* PI Order 214 (finding

“Dr. Collingwood to be credible, his analysis methodologically sound, and his conclusions reliable”). While “the burden is not on the plaintiffs to prove” that these disparities are “causing reduced political participation,” *Marengo Cnty.*, 731 F.2d at 1569, Dr. Collingwood has concluded that this is the case, as the data show a significant relationship between turnout and socioeconomic disparities; as health, education, and employment outcomes increase, so does voter turnout. SUMF ¶ 162; Collingwood Report 3.

The disparities and disadvantages experienced by Black Georgians impact nearly every aspect of daily life:

- The unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%). SUMF ¶ 163; Collingwood Report 4.
- White households are twice as likely as Black households to report an annual income above \$100,000. SUMF ¶ 164; Collingwood Report 4.
- Black Georgians are more than twice as likely as white Georgians to live below the poverty line—and Black children more than *three times* as likely. SUMF ¶ 165; Collingwood Report 4.
- Black Georgians are nearly three times as likely as white Georgians to receive SNAP benefits. SUMF ¶ 166; Collingwood Report 4.

- Black adults are more likely than white adults to lack a high school diploma—13.3% as compared to 9.4%. SUMF ¶ 167; Collingwood Report 4.
- Thirty-five percent of white Georgians over the age of 25 have obtained a bachelor's degree or higher, compared to only 24% of Black Georgians over the age of 25. SUMF ¶ 168; Collingwood Report 4.

Dr. Collingwood further concluded that these racial disparities hold across nearly every county in the state. SUMF ¶ 169; Collingwood Report 4–6.

The evidence strongly suggests that the socioeconomic disparities imposed on Black Georgians impact their levels of political participation. Dr. Collingwood explained that extensive literature in the field of political science demonstrates a strong and consistent link between socioeconomic status and voter turnout: In general, voters with higher income and education are disproportionately likely to vote and participate in American politics. SUMF ¶¶ 171–72; Collingwood Report 7. This pattern is evident in Georgia. Dr. Collingwood found that, in elections between 2010 and 2022, Black Georgians consistently turned out to vote at lower rates than white Georgians—a gap of at least 3.1 percentage points (during the 2012 general election) that reached its peak of 13.3 percentage points during the 2022 general election. SUMF ¶ 173; Collingwood Report 7–8. This trend can be seen at the local level as well, including in the Atlanta metropolitan area: During each general

election, white voters exceeded the turnout rates of Black voters in all but a handful of Georgia's 159 counties, and white voters had higher rates of turnout in 79.2% of the 1,957 precincts analyzed. SUMF ¶¶ 174–75; Collingwood Report 8–19. White Georgians are also more likely than Black Georgians to participate in a range of political activities, including attending local meetings, demonstrating political participation through lawn signs and bumper stickers, working on campaigns, attending protests and demonstrations, contacting public officials, and donating money to campaigns and political causes. SUMF ¶ 178; Collingwood Report 34–38.

Comparing rates of Black voter turnout with educational attainment, Dr. Collingwood found that each 10-point increase in the percentage of the Black population without a high school degree decreases Black turnout by 3.5 percentage points, and that Black turnout rises 2.3 percentage points for each 10-point increase in the percentage of the Black population with a four-year degree. SUMF ¶ 176; Collingwood Report 24–26. The pattern holds between voter turnout and poverty: Black turnout falls 4.9 percentage points for each 10-point increase in the percentage of the Black population below the poverty line, SUMF ¶ 177; Collingwood Report 28, confirming the link between socioeconomic disadvantage and depressed political participation, *see* PI Order 211–15 (finding that “Plaintiffs have offered un rebutted evidence that Black Georgians suffer socioeconomic hardships stemming

from centuries-long racial discrimination, and that those hardships impede their ability to fully participate in the political process,” and concluding that “Plaintiffs’ evidence on this factor weighs in favor of a finding of vote dilution”).

**F. Senate Factor Six: Racial appeals are prevalent in Georgia’s political campaigns.**

As Dr. Burton concluded, “[r]acism, whether dog whistled or communicated directly, became a hallmark of” Georgia politics during the second half of the 20th century. SUMF ¶ 183; Burton Report 66. Although *explicit* racial appeals are no longer commonplace, *implicit* racial appeals—which, as political scientists have explained, use coded language, subtext, and visuals to activate racial thinking—are still a recurring feature of Georgia campaigns and contribute to the state’s polarized voting. SUMF ¶¶ 179–82; Burton Report 62–64.

Georgia politicians have long employed implicit racial appeals to win elected office, from future U.S. House Speaker Newt Gingrich’s invocation of “welfare cheaters” during his first run for Congress in 1978—one campaign aide later said, “[W]e went after every rural southern prejudice we could think of”—to Governor Brian Kemp’s repeated use of coded language and insinuation during his (successful) campaigns against Stacey Abrams in 2018 and 2022. SUMF ¶¶ 184–90, 194; Burton Report 65–70 (quoting Dana Milbank, *The Destructionists: The Twenty-Five Year Crack-up of the Republican Party* 66 (2022)). During the 2022



gubernatorial election, Governor Kemp’s campaign deliberately darkened Abrams’s face in campaign advertisements “to create a darker, more menacing image,” while the 2020 U.S. Senate race saw implicit racial attacks on now-Senator Raphael Warnock and his church, the landmark Ebenezer Baptist Church. SUMF ¶¶ 191–93, Burton Report 68–70. These and other racial appeals have been amplified by local, state, and national news outlets since the 2016 election, SUMF ¶ 200; Exs. 14–25—thus ensuring that racialized campaigning remains an ingrained feature of Georgia’s political environment.

Notably, some racial appeals from recent Georgia campaigns carry haunting echoes of the state’s tragic history of discrimination and disenfranchisement. After Abrams planned a campaign rally in Forsyth County during the 2022 election, the local Republican Party issued a digital flyer attacking her and Senator Warnock and urging “conservatives and patriots” to “save and protect our neighborhoods”—a call reminiscent of the infamous Forsyth County pogrom in 1912, when Black residents were forcibly expelled. SUMF ¶ 195; Burton Report 70 (quoting Maya King, *In Georgia County With Racist History, Flier Paints Abrams as Invading Enemy*, N.Y. Times (Sept. 16, 2022), <https://www.nytimes.com/2022/09/16/us/politics/stacey-abrams-forsyth-georgia-republicans.html>).

Governor Kemp and other Georgia politicians have recently embraced another gambit with familiar undertones: the unsubstantiated specter of voter fraud in the Atlanta metropolitan area and other areas with large Black populations, which mirrors the efforts of white Georgians during and after Reconstruction to restrict and eliminate Black suffrage. SUMF ¶¶ 196, 199; Burton Report 70–74. Plurality-Black Fulton County has been at the center of these baseless allegations of fraud, with former President Donald Trump spreading conspiracy theories about the county as part of his effort to overturn Georgia’s 2020 election results. SUMF ¶ 197; Cooper Report Ex. D; Burton Report 73–74. In one particularly pernicious incident, two Black poll workers in Fulton County, Ruby Freeman and Shaye Moss, were targeted by former President Trump and his campaign with allegations that they had engaged in “surreptitious illegal activity”; the two women received harassing phone calls and death threats, often laced with racial slurs, with suggestions that they should be “strung up from the nearest lamppost and set on fire”—in Dr. Burton’s words, “horribly echoing the calls for lynchings of Black citizens from earlier years who were attempting to participate in the political process.” SUMF ¶ 198; Burton Report 73–74 (quoting Jason Szep & Linda So, *Trump Campaign Demonized Two Georgia Election Workers—and Death Threats Followed*, Reuters (Dec. 1, 2021), <https://www.reuters.com/investigates/special-report/usa-election-threats-georgia>).

Ultimately, although racial appeals might have become more coded in recent campaigns, they are no less insidious—and no less a facet of Georgia’s political landscape. *See* PI Order 215–17 (finding that “Plaintiffs have presented sufficient evidence for this factor to weigh in their favor”).

**G. Senate Factor Seven: Black candidates in Georgia are underrepresented in office and rarely succeed outside of majority-minority districts.**

As a consequence of Georgia’s history of voter suppression and racial discrimination, Black Georgians have struggled to win election to public office.

At the time of the Voting Rights Act’s passage, Black Georgians constituted 34% of the state’s voting-age population, and yet Georgia had only *three* elected Black officials. SUMF ¶ 201; Burton Report 35. By 1980, Black Georgians comprised just 3% of county officials in the state, the vast majority of whom were elected from majority-Black districts or counties. SUMF ¶ 202; Burton Report 41. That particular trend has not changed: While more Black Georgians have been elected to office in recent years, those officials are almost always from near-majority- or outright-majority-Black districts. SUMF ¶ 203; Burton Report 55–57. In the 2020 legislative elections, for example, no Black members of the Georgia House of Representatives were elected from districts where white voters exceeded 55% of the voting-age population, and no Black members of the Georgia State

Senate were elected from districts where white voters exceeded 47%. SUMF ¶ 204; Burton Report 56; *see also supra* at 19 (noting that Black-preferred candidates prevail only in focus area’s majority-Black congressional district).

Although Black Georgians now comprise more than 33% of the state’s population, SUMF ¶ 5; Cooper Report ¶ 16, fig.1, the Georgia Legislative Black Caucus had only 16 members in the State Senate and 52 members in the House after the 2020 election—less than 30% of each chamber. SUMF ¶ 205; Burton Report 56. Black officials have been underrepresented across Georgia’s statewide offices as well: Although Georgia recently reelected a Black member of the U.S. Senate, Senator Raphael Warnock is the *first* Black Georgian to hold that office—after more than 230 years of white senators. SUMF ¶ 206; Burton Report 53, 68; *see also* PI Order 217–18 (finding that “[b]ased on the evidence presented, . . . this factor [] weighs in Plaintiffs’ favor”).

**H. Senate Factor Eight: Georgia is not responsive to its Black residents.**

Although the Eleventh Circuit has noted that “[u]nresponsiveness is considerably less important under” a Section 2 results claim, *see Marengo Cnty.*, 731 F.2d at 1572, it is nonetheless true that Georgia has long neglected the needs of its Black residents. As discussed above, *see supra* at 29–33, Black Georgians face clear and significant disadvantages across a range of socioeconomic indicators,

including education, employment, and health, SUMF ¶ 207; Collingwood Report 3; Cooper Report ¶¶ 83–85. Dr. Collingwood articulated the inevitable conclusion; as he explained, “[i]t follows that the political system is relatively unresponsive to Black Georgians; otherwise, we would not observe such clear disadvantages in healthcare, economics, and education.” SUMF ¶ 208; Collingwood Report 4; *see also* PI Order 218–19 (finding that this factor “weighs in [Plaintiffs’] favor”).<sup>5</sup>

**I. Senate Factor Nine: The justification for the new congressional map is tenuous.**

Finally, no legitimate governmental interest justifies denying Black Georgians the ability to elect their candidates of choice. Defendants cannot justify the refusal to draw an additional majority-Black congressional district in the western Atlanta metropolitan area, especially given that drawing districts to account for the numerosity and compactness of Georgia’s Black community is required by the

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<sup>5</sup> As if to underscore the apathy (and antipathy) of certain elected officials, one of the districts into which Cobb County’s Black voters are cracked, Congressional District 14, *see supra* at 11, is currently represented by Congresswoman Marjorie Taylor Greene, who has a history of making racist statements and videos—claiming, among other things, that the Black community’s progress is hindered by Black gang activity, drugs, lack of education, Planned Parenthood, and abortions, SUMF ¶ 187; Burton Report 69. During the 117th Congress, the U.S. House of Representatives voted to strip Congresswoman Greene of her assignments on the House Budget and Education and Labor committees “in light of conduct she has exhibited.” SUMF ¶ 209; Exs. 26–27.

Voting Rights Act. *See* PI Order 219 (concluding that “[t]his factor [] weighs in Plaintiffs’ favor” because “Mr. Cooper’s illustrative maps demonstrate that it is possible to create such maps while respecting traditional redistricting principles—just as the Voting Rights Act requires”).

Nor, for that matter, can the enacted congressional map’s treatment of Cobb County and the western Atlanta suburbs be justified. As discussed above, *see supra* at 11–13, the enacted plan splits majority-non-white Cobb County into parts of four districts, including three majority-white districts: Congressional Districts 6, 11, and 14. SUMF ¶ 210; Cooper Report ¶¶ 60, 65, 73, fig.14. Southwest Cobb County—including its constituent Black voters—is inexplicably included in Congressional District 14, which stretches into Appalachian north Georgia and the suburbs of Chattanooga. SUMF ¶ 211; Cooper Report ¶¶ 60, 68, Ex. G. Douglas County is similarly divided; its western half is drawn into Congressional District 3, which stretches west and south into majority-white counties along the Alabama border. SUMF ¶ 212; Cooper Report Exs. D & G. While equal-population requirements might sometimes justify combining urban and rural voters, Mr. Cooper’s illustrative plan demonstrates that voters in the western Atlanta metropolitan area can be united in a single district comprising Douglas County and

parts of Cobb, Fulton, and Fayette counties, all of which are core counties under the ARC. SUMF ¶ 213; Cooper Report ¶ 68, Ex. H-1.

### **CONCLUSION**

Despite having more than a year to prepare a defense of the enacted congressional plan, Defendants have left Plaintiffs' evidence effectively unrefuted. Any disputes that they and their experts have managed to raise are of a purely legal character—and were already considered by the Court and resolved in Plaintiffs' favor following last year's preliminary injunction proceeding.

Given that they have submitted credible, un rebutted expert evidence proving the required elements of a Section 2 vote-dilution claim, Plaintiffs respectfully request that the Court grant summary judgment in their favor and order the adoption of a new congressional plan for Georgia that complies with the requirements of federal law.

Dated: March 20, 2023

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing *Brief in Support of Plaintiffs' Motion for Summary Judgment* 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: March 20, 2023

**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 *Brief in Support of Plaintiffs' Motion for Summary Judgment* 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: March 20, 2023

**Adam M. Sparks**

*Counsel for Plaintiffs*

**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

**STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT**

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

The following facts are undisputed and constitute all material facts necessary to a determination in Plaintiffs' favor.

**I. First *Gingles* Precondition: Numerosity and Compactness**

**A. Numerosity**

**1. Demographic Developments**

**a. Statewide**

1. Between 2010 and 2020, Georgia's population grew by over 1 million people to 10.71 million, up 10.57% from 2010. Ex. 1 ("Cooper Report") ¶ 13, fig.1.<sup>1</sup>

2. Georgia's population growth since 2010 can be attributed entirely to gains in the overall minority population. Cooper Report ¶ 14, fig.1.

3. Between 2010 and 2020, Georgia's Black population increased by 484,048 people, up almost 16% since 2010. Cooper Report ¶ 15, fig.1.

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<sup>1</sup> All exhibits are attached to the Declaration of Jonathan P. Hawley, filed concurrently with Plaintiffs' motion.

4. Between 2010 and 2020, 47.26% of the state's population gain was attributable to Black population growth. Cooper Report fig.1.

5. Georgia's Black population, as a share of the overall statewide population, increased between 2010 and 2020, from 31.53% in 2010 to 33.03% in 2020. Cooper Report ¶ 16, fig.1.

6. As a matter of total population, any-part ("AP") Black Georgians comprise the largest minority population in the state, at 33.03%. Cooper Report fig.1.

7. Between 2010 and 2020, Georgia's white population decreased by 51,764 people, or approximately 1%. Cooper Report ¶ 15, fig.1.

8. Non-Hispanic white Georgians now comprise a majority of the state's population at 50.06%. Cooper Report ¶ 17.

9. Georgia's Black population has increased in absolute and percentage terms since 1990, from about 27% in 1990 to 33% in 2020. Cooper Report ¶ 22, fig.3.

10. Over the same time period, the percentage of the population identifying as non-Hispanic white has dropped from about 70% to 50%. Cooper Report ¶ 22, fig.3.

11. Since 1990, the Black population has more than doubled: from 1.75 million to 3.54 million, an increase that is the equivalent of the populations of more than two congressional districts. Cooper Report ¶ 23, fig.3.

12. The non-Hispanic white population has also increased, but at a much slower rate: from 4.54 million to 5.36 million, amounting to an increase of about 18% over the three-decade period. Cooper Report ¶ 23, fig.3.

13. 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.

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

**b. Atlanta Metropolitan Area**

15. As defined by the U.S. Office of Management and Budget, the Atlanta Metropolitan Statistical Area (“MSA”) consists of the following 29 counties: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton. Cooper Report ¶ 12 n.3.

16. The Atlanta MSA has been the key driver of population growth in Georgia during this century, led in no small measure by a large increase in the region's Black population. Cooper Report ¶ 25, fig.4.

17. The population gain in the Atlanta MSA between 2010 and 2020 amounted to 803,087 persons—greater than the population of one of the state's congressional districts—with about half of the gain coming from an increase in the region's Black population, which increased by 409,927 (or 23.07%). Cooper Report ¶ 30, fig.5.

18. Under the 2000 census, the population in the 29-county Atlanta MSA was 29.29% AP Black, increasing to 33.61% in 2010 and then to 35.91% in 2020. Cooper Report ¶ 26, fig.4.

19. The Black population in the Atlanta MSA has grown from 1,248,809 in 2000 to 2,186,815 in 2020—an increase of 938,006 people—accounting for 75.1% of the statewide Black population increase and 51.4% of the Atlanta MSA's total population increase. Cooper Report ¶ 26, fig.4.

20. According to the 2020 census, the 11 core counties comprising the Atlanta Regional Commission (“ARC”) service area account for more than half (54.7%) of the statewide Black population. Cooper Report ¶ 28.



21. After expanding the region to include the 29 counties in the Atlanta MSA (including the 11 ARC counties), the Atlanta metropolitan area encompasses 61.81% of the state's Black population. Cooper Report ¶ 28.

22. Under the 2000 census, the population in the Atlanta MSA was 60.42% non-Hispanic white, decreasing to 50.78% in 2010 and then to 43.71% in 2020. Cooper Report ¶ 27, fig.4.

23. Between 2010 and 2020, the non-Hispanic white population in the Atlanta MSA decreased by 22,736 persons. Cooper Report ¶ 30, fig.5.

24. According to the 2020 census, the Atlanta MSA has a total voting-age population of 4,654,322 persons, of whom 1,622,469 (34.86%) are AP Black. Cooper Report ¶ 31, fig.6.

25. The non-Hispanic white voting-age population in the Atlanta MSA is 2,156,625 (46.34%). Cooper Report ¶ 31, fig.6.

26. Based on the 2020 census, the combined Black population in Cobb, Fulton, Douglas, and Fayette counties is 807,076 persons, more than would be sufficient to constitute an entire congressional district—or a majority in two congressional districts. Cooper Report ¶ 42, fig.8.

27. More than half (53.27%) of the total population increase in these four counties since 2010 can be attributed to the increase in the Black population. Cooper Report ¶ 43.

## **2. Enacted Congressional Plan**

28. The enacted congressional plan reduces Congressional District 6’s AP Black voting-age population (“BVAP”) from 14.6% under the prior congressional plan to 9.9%. Cooper Report ¶ 40.

29. Under the enacted plan, Congressional District 13 has an AP BVAP of 66.75%. Cooper Report ¶ 41.

30. Another district in the Atlanta MSA, Congressional District 4, also has an AP BVAP in the 60% range. Cooper Report ¶ 40.

## **3. Illustrative Congressional Plan**

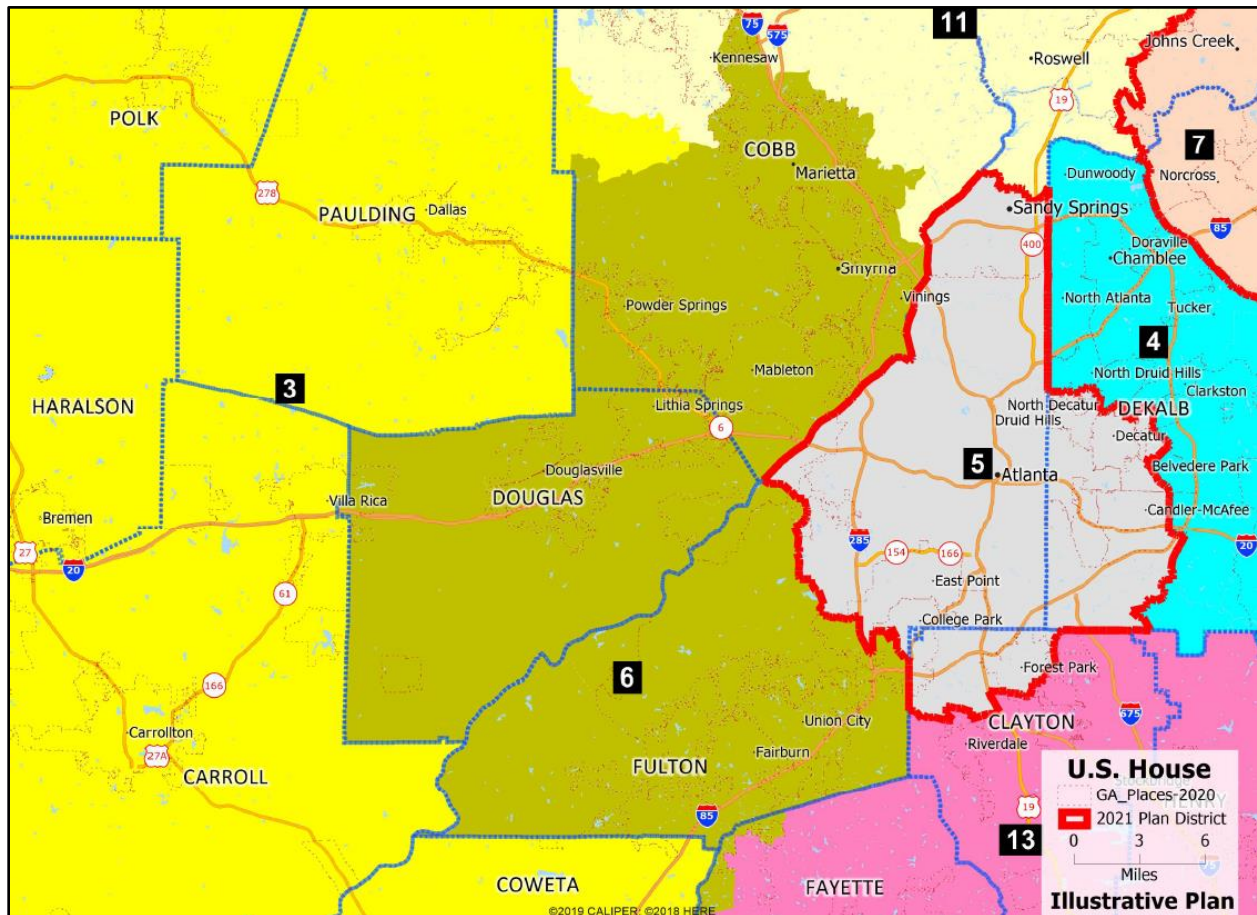
31. As Plaintiffs’ mapping expert, William S. Cooper, concluded—and Defendants’ mapping expert, John Morgan, does not dispute—the Black population in the Atlanta metropolitan area is sufficiently numerous to allow for the creation of an additional majority-Black congressional district. Cooper Report ¶ 10; Ex. 8 (“Morgan Dep.”) at 65:10–66:13 (not disputing this conclusion).

32. Mr. Cooper prepared an illustrative congressional plan with an additional majority-Black district anchored in the western Atlanta metropolitan area—Congressional District 6. Cooper Report ¶¶ 10, 86–87.

33. Mr. Cooper’s illustrative congressional plan adds an additional majority-Black district without reducing the number of preexisting majority-Black districts in the enacted congressional plan. Cooper Report ¶ 73, fig.14; Morgan Dep. 65:10–66:13 (not disputing this conclusion).

34. Given the increase in the Atlanta metropolitan area’s Black population during this century, Mr. Cooper used this area as the focal point for his illustrative majority-Black district. Cooper Report ¶ 35.

35. Mr. Cooper's illustrative Congressional District 6 encompasses all of Douglas and parts of Cobb, Fayette, and Fulton counties:



Cooper Report ¶ 51, Ex. I-2.

36. Mr. Cooper's illustrative Congressional District 6 has an AP Black population of 396,891 people, or 51.87% of the district's population. Cooper Report fig.11.

37. Mr. Cooper's illustrative Congressional District 6 has an AP Black voting-age population of 50.23%. Cooper Report ¶ 73, fig.14; Ex. 6 ("Morgan

Report”) ¶ 12 (agreeing that Mr. Cooper’s illustrative Congressional District 6 has “50.23% any-part Black voting age population”).

38. Mr. Cooper’s illustrative Congressional District 6 has a non-Hispanic Black citizen voting-age population of 50.18%. Cooper Report ¶ 73, fig.14.

39. Mr. Cooper’s illustrative Congressional District 6 has a non-Hispanic Department of Justice (“DOJ”) Black citizen voting-age population of 50.98% Cooper Report ¶ 73, fig.14.<sup>2</sup>

40. Plaintiffs’ racially polarized voting expert, Dr. Maxwell Palmer, analyzed the performance of Black-preferred candidates in Mr. Cooper’s illustrative Congressional District 6. Ex. 2 (“Palmer Report”) ¶ 23.

41. In each of the 31 statewide races from 2012 through 2021, the Black-preferred candidate won a larger share of the vote in Mr. Cooper’s illustrative Congressional District 6, with an average of 66.1%. Palmer Report ¶¶ 9, 23, 25, fig.5, tbl.8.

42. In the 31 statewide races from 2012 through 2021, the Black-preferred candidate also won a larger share of the vote in Mr. Cooper’s illustrative

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<sup>2</sup> The non-Hispanic DOJ Black citizen voting-age population includes voting-age citizens who are either non-Hispanic single-race Black or non-Hispanic Black and white. Cooper Report ¶ 57 n.10.

Congressional District 13 (the only district from which Mr. Cooper’s illustrative Congressional District 6 was drawn that previously performed for Black-preferred candidates), with an average of 62.3%. Palmer Report ¶ 26.

## **B. Geographic Compactness**

43. As Mr. Cooper, concluded—and Mr. Morgan does not dispute—the Black population in the Atlanta metropolitan area is sufficiently geographically compact to allow for the creation of an additional majority-Black congressional district consistent with traditional redistricting principles. Cooper Report ¶ 10; Morgan Dep. 65:10–66:13 (not disputing this conclusion).

44. In drafting his illustrative plan, Mr. Cooper sought to minimize changes to the enacted congressional plan while abiding by traditional redistricting principles: population equality, compactness, contiguity, respect for political subdivision boundaries, respect for communities of interest, and the non-dilution of minority voting strength. Cooper Report ¶¶ 48, 50.

45. Mr. Cooper balanced these considerations, and no one factor predominated. Cooper Report ¶ 50.

46. The guidelines for drafting congressional plans adopted by the redistricting committees of the Georgia State Senate and Georgia House of Representatives during the 2021 cycle included the following: population equality

(“plus or minus one person from the ideal district size”), contiguity, compactness, consideration of the boundaries of counties and precincts, and consideration of communities of interest. Exs. 10–11.

### **1. Population Equality**

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

48. 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; Morgan Dep. 62:4–7 (not disputing that Mr. Cooper’s illustrative congressional plan achieves population equality).

### **2. Contiguity**

49. 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).

### **3. Compactness**

50. 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; 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).

51. The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact. Cooper Report ¶ 79 n.13.

52. The Polsby-Popper test computes the ratio of each district area to the area of a circle with the same perimeter. The measure is always between 0 and 1, with 1 being the most compact. Cooper Report ¶ 79 n.14.



53. 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:

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

Cooper Report ¶ 79, fig.13.

54. 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).

55. 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).

#### **4. Preservation of Political Subdivisions**

56. Mr. Cooper drew his illustrative plan to follow, to the extent possible, county boundaries. Cooper Report ¶ 49.

57. Where Mr. Cooper split counties to comply with one-person, one-vote requirements, he generally used whole 2020 census voting districts (“VTDs”) as sub-county components; where VTDs were split, he followed census-block boundaries that are aligned with roads, natural features, municipal boundaries, census-block groups, and post-2020-census county commission districts. Cooper Report ¶ 49.

58. 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.

59. 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:

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

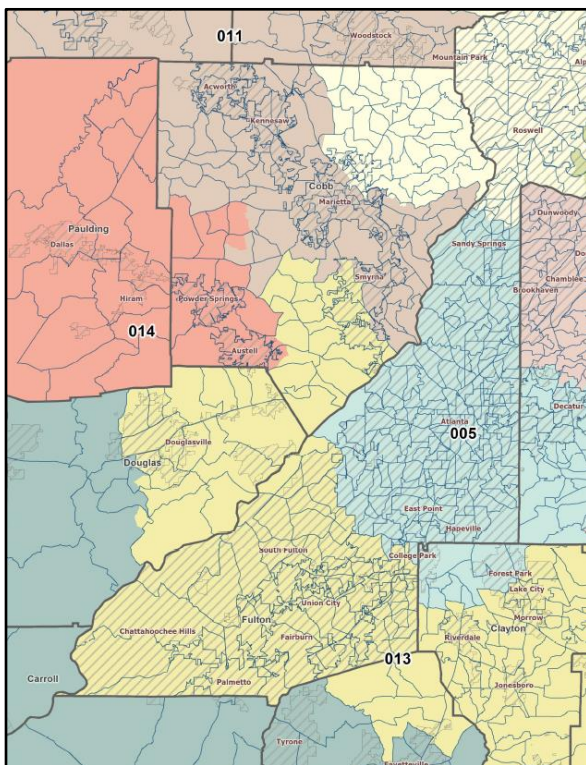
Cooper Report ¶ 81, fig.14.

60. 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).

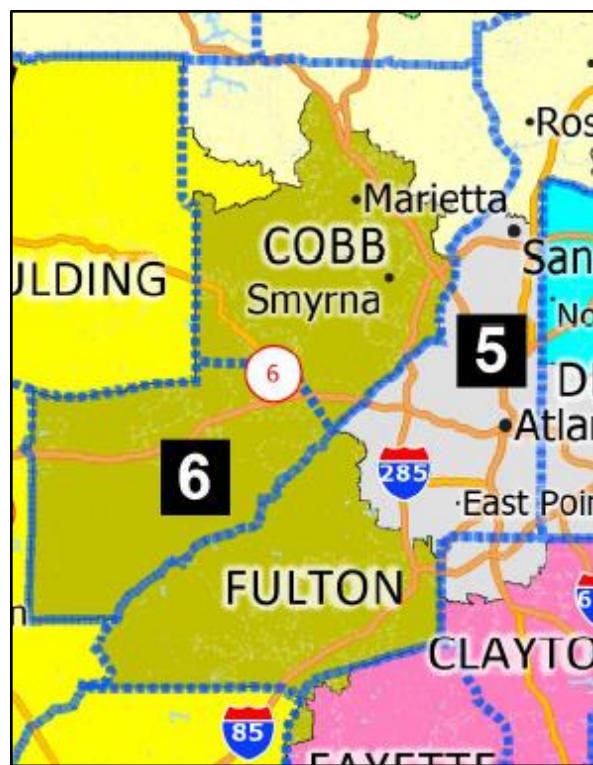
## 5. Preservation of Communities of Interest

61. 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*

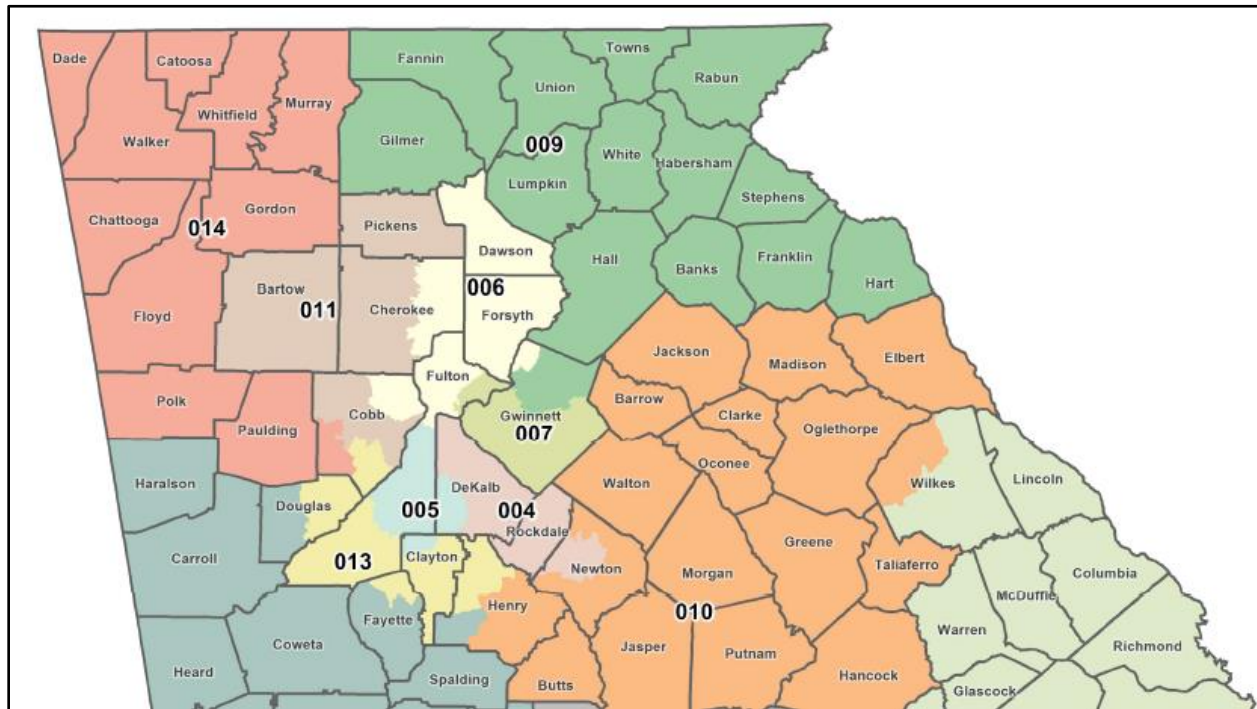


### *Mr. Cooper's Illustrative Plan*



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

62. Under the enacted congressional plan, southwest Cobb County is in Congressional District 14, which stretches to the suburbs of Chattanooga in northwest Georgia:



Cooper Report ¶ 60, Ex. G.

63. 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.

64. 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 ARC. Cooper Report ¶ 68.

65. Douglas County is contained entirely in Mr. Cooper’s illustrative Congressional District 6, whereas the enacted congressional plan divides the county between Congressional Districts 6 and 11, splitting Douglasville (population 34,650). Cooper Report ¶ 70.

66. In Cobb County, Mr. Cooper’s illustrative congressional plan assigns all but noncontiguous zero-population areas of Marietta (population 60,972) to Congressional District 6, whereas the enacted congressional plan divides populated areas of Marietta between Congressional Districts 6 and 11. Cooper Report ¶ 69.

67. The enacted congressional plan also divides populated areas of Smyrna (population 55,663) between Congressional Districts 11 and 13, whereas Smyrna is not split in Mr. Cooper’s illustrative plan. Cooper Report ¶ 69, Ex. M-4.

## **6. Core Retention**

68. Mr. Cooper’s illustrative plan leaves six of the 14 districts in the enacted plan unchanged: Congressional Districts 1, 2, 5, 7, 8, and 12. Cooper Report ¶¶ 11, 51; Morgan Report ¶ 18 (agreeing that “[i]n the Cooper [] congressional plan, six districts are the same as the enacted plan (1, 2, 5, 7, 8 and 12)”).



## II. Second *Gingles* Precondition: Political Cohesion

69. Dr. Palmer conducted a racially polarized voting analysis of enacted Congressional Districts 3, 6, 11, 13, and 14, both as a region (the “focus area”) and individually. Palmer Report ¶ 10, fig.1.

70. Dr. Palmer employed a statistical method called ecological inference (“EI”) to derive estimates of the percentages of Black and white voters in the focus area that voted for each candidate in 40 statewide elections between 2012 and 2022. Palmer Report ¶¶ 8, 11, 13–14; Ex. 9 (“Alford Dep.”) at 36:11–37:12 (agreeing that EI is best available method for estimating voting behavior by race and with Dr. Palmer’s methodology and results).

71. Dr. Palmer’s EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. Palmer Report ¶ 11.

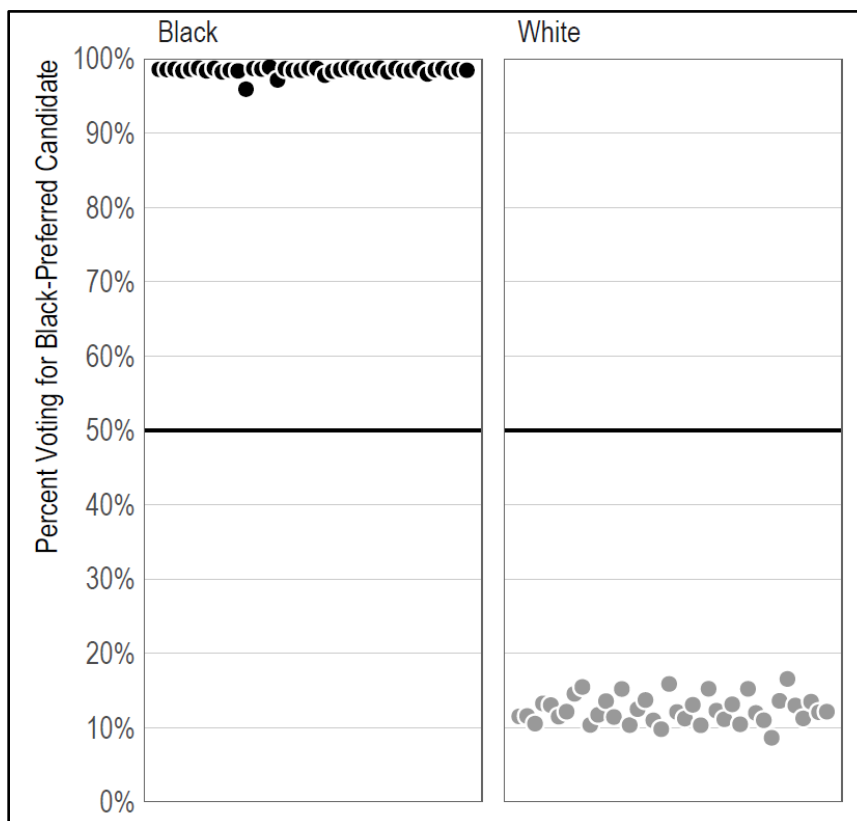
72. Dr. Palmer’s EI process proceeded as follows: First, he examined each racial group’s support for each candidate to determine if members of the group voted cohesively in support of a single candidate in each election and, if a significant majority of the group supported a single candidate, then identified that candidate as the group’s candidate of choice; and second, he compared the preferences of white voters to the preferences of Black voters. Palmer Report ¶ 14.

73. 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; Ex. 3 (“Suppl. Palmer Report”) ¶ 5, fig.1, tbl.1; Ex. 7 (“Alford Report”) at 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).

74. The following table presents the estimates of support for the Black-preferred candidates in the 40 elections Dr. Palmer examined; the solid dots correspond to an estimate in a particular election, and the gray vertical lines behind



each dot (which might not be visible because they are relatively small) are the 95% confidence intervals for the estimate:

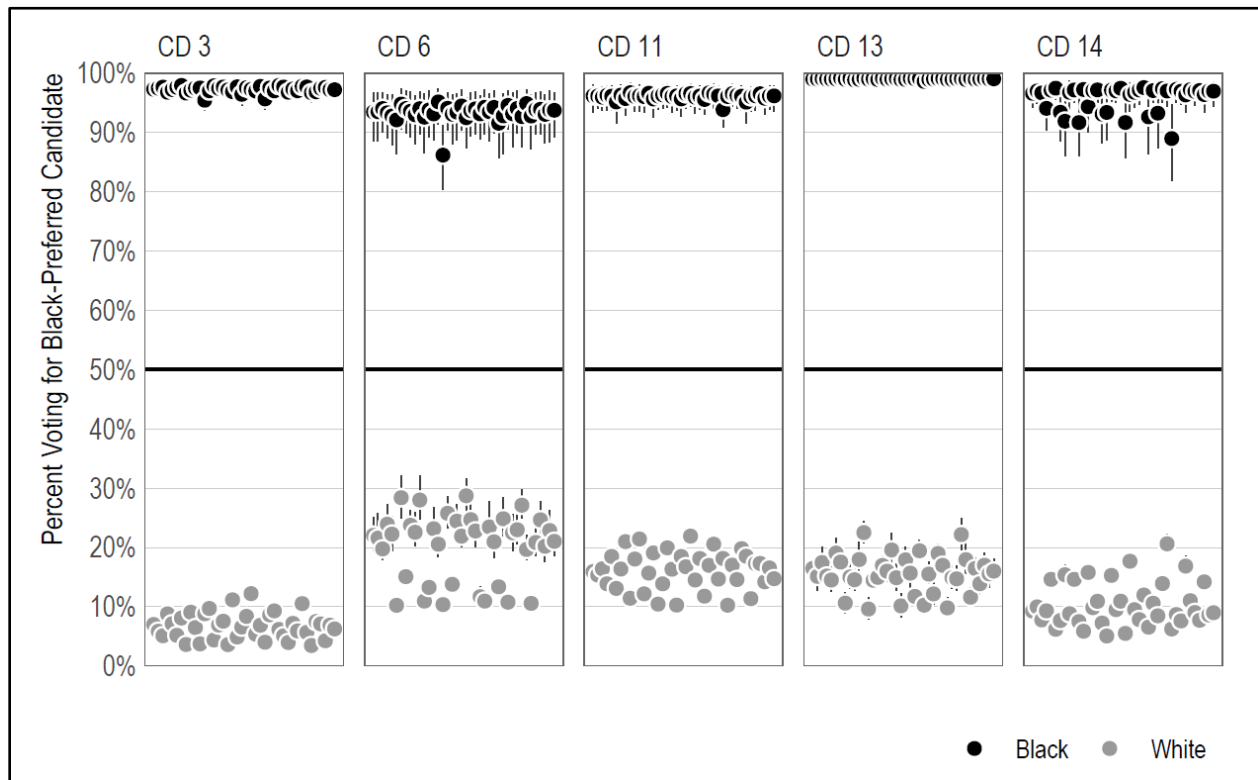


Palmer Report ¶ 15 & n.13, fig.2.

75. 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.

76. 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.

77. 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.

### **III. Third *Gingles* Precondition: Bloc Voting**

78. White voters in Georgia 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).

79. 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.

80. 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.

81. 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.

82. Across the focus area, white-preferred candidates won the majority of the vote in all 40 elections Dr. Palmer examined. Palmer Report ¶¶ 8, 22, tbl.7.

83. The white-preferred candidate also received a larger share of the vote than the Black-preferred candidate in all 40 elections Dr. Palmer examined in Congressional Districts 3, 6, 11, and 14. Palmer Report ¶¶ 8, 22, tbl.7.

84. Only in the majority-Black Congressional District 13 did the Black-preferred candidate win a larger share of the vote in the 40 elections Dr. Palmer examined. Cooper Report ¶ 73, fig.14; Palmer Report ¶¶ 8, 22, tbl.7.

85. These findings were confirmed by the endogenous election results from the 2022 general election, in which Black-preferred candidates were defeated in Congressional Districts 3, 6, 11, and 14. Suppl. Palmer Report ¶ 4.

#### **IV. Totality of Circumstances**

##### **A. Senate Factor One: History of Voting-Related Discrimination**

86. Georgia has an extensive and well-documented history of discrimination against its Black citizens that has touched upon their right to register, vote, and otherwise participate in the political process; as Dr. Orville Vernon Burton explained, throughout the history of the state of Georgia, voting rights have followed a pattern where, after periods of increased nonwhite voter registration and turnout,

the State has passed legislation, and often used extralegal means, to disenfranchise minority voters. Ex. 4 (“Burton Report”) at 10.

### **1. Political Violence Against Black Georgians**

87. Between 1867 and 1872, at least one-quarter of the state’s Black legislators were jailed, threatened, bribed, beaten, or killed. Burton Report 14.

88. This violence, often perpetrated by the Ku Klux Klan, enabled white Georgians to regain control of the levers of power in the state. Burton Report 14–17.

89. After seizing control of the state legislature through a campaign of violence and intimidation, white Democrats called a new constitutional convention chaired by the former Confederate secretary of state; that convention resulted in the Constitution of 1877, which effectively barred Black Georgians from voting through the implementation of a cumulative poll tax. Burton Report 17.

90. Violence, and the threat of it, was constant for many Black Georgians as white Democrats controlled the state in the late-19th and first part of the 20th centuries. Burton Report 23.

91. In addition to mob violence, Black Georgians endured a form of state-sanctioned violence through debt peonage and the convict lease system, which effectively amounted to “slavery by another name.” Burton Report 24.

92. Violence against Black Georgians surged after the First World War, with many white Georgians holding “a deep antipathy” toward Black veterans. Burton Report 25.

93. Between 1875 and 1930, there were 462 lynchings in Georgia; only Mississippi had more reported lynchings during that time. Burton Report 26.

94. These lynchings “served as a reminder for Black Georgians who challenged the status quo, and in practice lynchings did not need to be directly connected to the right to vote to act as a threat against all Black Georgians who dared to participate in the franchise.” Burton Report 26.

## **2. Pre-Voting Rights Act**

95. “While Georgia was not an anomaly, no state was more systematic and thorough in its efforts to deny or limit voting and officeholding by African-Americans after the Civil War.” Burton Report 10 (quoting Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia* 2–3 (2003)).

96. Although Georgia’s 1865 constitution abolished slavery, it limited the franchise to white citizens and barred Black Georgians from holding elected office. Burton Report 11.

97. The federal government forced Georgia to extend the right to vote to Black males in 1867, but the State responded with a series of facially neutral policies

that had the intent and effect of “render[ing] black participation in politics improbable.” Burton Report 12, 18.

98. Georgia’s 1877 constitution, for example, did not explicitly disenfranchise Black citizens but made it practically impossible for Black Georgians to vote by implementing a cumulative poll tax for elections, such that a potential voter had to pay all previous unpaid poll taxes before casting a ballot. Burton Report 17.

99. Relatedly, Georgia prohibited Black voters from participating in Democratic Party primaries; because Georgia was a one-party Democratic state, the “white primary” effectively eliminated Black participation in the state’s politics. Burton Report 19.

100. In 1908, Georgia enacted the Felder-Williams Bill, which broadly disenfranchised many Georgians but contained numerous exceptions that allowed most white citizens to vote, including owning 40 acres of land or 500 dollars’ worth of property; being able to write or to understand and explain any paragraph of the U.S. or Georgia constitution; and being “persons of good character who understand the duties and obligations of citizenship.” Burton Report 20 (quoting McDonald, *supra*, at 41).

101. In conjunction with the Felder-Williams Bill, Georgia enacted a voter-registration law allowing any citizen to contest the right of registration of any person whose name appeared on the voter list. Burton Report 21.

102. These laws “were devastatingly effective at eliminating both Black elected officials from seats of power and Black voters from the franchise”: At the time of the Felder-Williams Bill, there were 33,816 Black Georgians registered to vote, while two years later, only 7,847 Black voters were registered—a decrease of more than 75%. Burton Report 22.

103. From 1920 to 1930, the combined Black vote total in Georgia never exceeded 2,700, and by 1940, the total Black registration in Georgia was still only approximately 20,000, around 2–3% of eligible Black voters. Burton Report 22.

104. By contrast, less than 6% of white voters were disenfranchised by Georgia’s new election laws. Burton Report 22.

### **3. Post-Voting Rights Act**

105. Congress enacted the Voting Rights Act of 1965 to address these discriminatory practices; among its provisions was the preclearance requirement that prohibited certain jurisdictions with well-documented practices of discrimination—including Georgia—from making changes to their voting laws without approval from the federal government. Burton Report 36.



106. The Voting Rights Act, however, did not translate into instant success for Black political participation in Georgia. Burton Report 36.

107. Among states subject to preclearance in their entirety, Georgia ranked second only to Alabama in the disparity in voter registration between its Black and white citizens by 1976, and these disparities were directly attributable to Georgia's continued efforts to enact policies designed to circumvent the Voting Rights Act's protections and suppress the rights of Black voters. Burton Report 36.

108. Between 1965 and 1980, nearly 30% of the U.S. Department of Justice's objections to voting-related changes under Section 5 were attributable to Georgia—more than any other state in the country. Burton Report 3, 39.

109. When Congress reauthorized the Voting Rights Act in 1982, it specifically cited systemic abuses by Georgia officials intended to obstruct Black voting rights. Burton Report 3, 42.

110. Throughout the first two decades of the 21st century, the State initiated investigations of Black candidates and organizations dedicated to protecting the franchise rights of Georgia's minority voters; investigations into alleged voter fraud in the predominantly Black City of Quitman and the efforts of the New Georgia Project and the Asian American Legal Advocacy Center ended without convictions or evidence of wrongdoing. Burton Report 45–46.

111. After the U.S. Supreme Court effectively ended the Voting Rights Act’s preclearance requirement in *Shelby County v. Holder*, 570 U.S. 529 (2013), Georgia was the only former preclearance state that proceeded to adopt “all five of the most common restrictions that impose roadblocks to the franchise for minority voters, including (1) voter ID laws, (2) proof of citizenship requirements, (3) voter purges, (4) cuts in early voting, and (5) widespread polling place closures.” Burton Report 48–49.

112. In 2015, for example, Georgia began closing polling places in primarily Black neighborhoods. Burton Report 49.

113. By 2019, 18 counties in Georgia closed more than half of their polling places and several closed almost 90%, depressing turnout in affected areas and leading to substantially longer waiting times at the polls. Burton Report 50.

114. According to one study, in 2020, about two-thirds of the polling places that had to stay open late for the June primary to accommodate waiting voters were in majority-Black neighborhoods, even though they made up only about one-third of the state’s polling places. Burton Report 50.

115. Georgia also engaged in “systematic efforts to purge the voting rolls in ways that particularly disadvantaged minority voters and candidates” in the aftermath of *Shelby County*. Burton Report 50.

116. In the period from 2012 to 2018, Georgia removed 1.4 million voters from the eligible voter rolls—purges that disproportionately impacted Black voters. Burton Report 50–51.

117. Following significant increases in Black voter turnout, Georgia enacted Senate Bill (“SB”) 202 in the spring of 2021, which targeted methods of voting that Black voters used extensively in the 2020 general election; among other things, SB 202 (1) increases identification requirements for absentee voting, (2) bans state and local governments from sending unsolicited absentee-ballot applications, (3) limits the use of absentee-ballot drop boxes, (4) bans mobile polling places (except when the governor declares an emergency), and (5) prohibits anyone who is not a poll worker from giving food or drink to voters in line to vote. Burton Report 53.

118. The growth of Georgia’s nonwhite population over the past 20 years and the corresponding increase in minority voting power has, as Dr. Burton explained, “provide[d] a powerful incentive for Republican officials at the state and local level to place hurdles in the path of minority citizens seeking to register and vote.” Burton Report 60.

#### **4. Redistricting-Related Discrimination**

119. Georgia's legislative and congressional districts were grievously malapportioned in the years preceding the enactment of the Voting Rights Act. Burton Report 32.

120. In 1957, the Atlanta-based Congressional District 5 was the second-most populous congressional district in the United States, with an estimated population of 782,800—about twice the size of the average congressional district. Burton Report 32.

121. By 1960, Fulton County was the most underrepresented county in a state legislature of any county in the United States; DeKalb County was the third-most-underrepresented county. Burton Report 32.

122. Georgia's redistricting plans were subject to the Voting Rights Act's preclearance requirement, and in the 40 years following its enactment, Georgia did not complete a redistricting cycle without objection from the U.S. Department of Justice. Burton Report 40–44.

123. The Atlanta metropolitan area was often the focal point of Georgia's efforts to suppress Black political influence through redistricting; for example, the U.S. Department of Justice rejected Georgia's 1971 congressional plan, which cracked voters throughout Congressional Districts 4, 5, and 6 to give the Atlanta-

based Congressional District 5 a substantial white majority. Burton Report 40; *Georgia v. United States*, 411 U.S. 526, 541 (1973) (affirming that Georgia’s 1972 reapportionment plan violated Section 5 of Voting Rights Act).

124. The U.S. Department of Justice also rejected the congressional redistricting plan passed by Georgia following the 1980 census, which contained white majorities in nine of the state’s 10 congressional districts, even though Georgia’s population was nearly 30% Black. Burton Report 40; *Busbee v. Smith*, 549 F. Supp. 494, 517 (D.D.C. 1982) (three-judge court) (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); Ex. 12 (1982 objection letter from U.S. Department of Justice asserting that “the proposed [congressional] plan divides an apparently cohesive black community of Fulton and DeKalb Counties”).

125. During the 1990 redistricting cycle, the U.S. Department of Justice twice rejected Georgia’s state reapportionment plan before finally approving the third submission. Burton Report 42; Ex. 13 (1992 objection letter from U.S. Department of Justice asserting that “the submitted [congressional] plan minimizes the electoral potential of large concentrations of black population in several areas of the state”).

126. During the 2000 redistricting cycle, the U.S. District Court for the District of Columbia refused to preclear Georgia’s State Senate redistricting plan, which decreased the Black voting-age population in the districts surrounding Chatham, Albany, Dougherty, Calhoun, Macon, and Bibb counties. Burton Report 43.

127. In 2015, after *Shelby County*, the General Assembly engaged in mid-cycle redistricting, reducing the Black and Latino voting-age populations in House Districts 105 and 111, both of which had become increasingly diverse over the prior half-decade. Burton Report 40, 44.

## **B. Senate Factor Two: Racially Polarized Voting**

### **1. Quantitative Evidence**

128. Dr. 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. Palmer Report ¶ 7; Suppl. Palmer Report ¶ 4; Alford Report 3 (“As evident in Dr. Palmer’s [reports], the pattern of polarization is quite striking.”); Alford Dep. 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.”).

129. 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).

130. 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.

131. 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.

132. 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.

133. 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).

134. 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.

135. 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.

136. 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.



## **2. Qualitative Evidence**

137. Dr. Burton explored the relationship between race and partisanship in Georgia politics. Burton Report 57–62.

138. 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.

139. 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.

140. 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.

141. 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.

142. 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.

143. 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.

144. 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.

145. 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.

146. 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)).

147. 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.

148. Georgia is a flash point of this modern strategy: According to Dr. Peyton McCrary, an historian formerly with the U.S. Department of Justice, “[i]n Georgia politics since 2002, state government is dominated by the Republican Party, the party to which now most non-Hispanic white persons belong. The greatest electoral threat to the Republican Party and Georgia’s governing elected officials is

the growing number of African American, Hispanic, and Asian citizens, who tend strongly to support Democratic candidates. The increase in minority population and the threat of increasing minority voting strength provides a powerful incentive for Republican officials at the state and local level to place hurdles in the path of minority citizens seeking to register and vote. That is what has happened.” Burton Report 60 (quoting Expert Rep. of Dr. Peyton McCrary at 8, *Fair Fight Action v. Raffensperger*, No. 1:18-cv-05391-SCJ (N.D. Ga. Apr. 24, 2020), ECF No. 339)).

149. 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.

150. 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)).

151. 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.

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

153. 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 believe that racism is a serious problem in policing, 65% voted for Biden and 33% voted for Trump. Burton Report 76.

**C. Senate Factor Three: Discriminatory Voting Procedures**

154. Georgia—from the end of the Civil War to the present day—has enacted a wide variety of discriminatory voting procedures that have burdened Black Georgians’ right to vote, including unusually large election districts and majority-vote requirements. Burton Report 11–55.

155. Georgia deliberately malapportioned its legislative and congressional districts to dilute the votes of Black Georgians throughout the 20th century; in 1957, for example, Georgia’s Congressional District 5—consisting of Fulton, DeKalb, and Rockdale counties—was the second-most-populous congressional district in the United States. Burton Report 31.

156. By 1960, Fulton County was the most underrepresented county in its state legislature of any county in the United States; DeKalb County was the third-most-underrepresented county. Burton Report 31.

157. After enactment of the Voting Rights Act, numerous Georgia counties with sizeable Black populations shifted from voting by district to at-large voting, ensuring that the white population could elect all representatives in the voting district at issue. Burton Report 32–33.

158. Georgia also adopted a majority-vote requirement, “numbered-post voting,” and staggered voting in the 1960s and 1970s to limit Black voting strength. Burton Report 34.

159. These efforts have persisted well into the 21st century: Georgia shuttered polling places in predominantly Black communities beginning in 2015, perpetrated extensive purges from the state’s voter-registration rolls that disproportionately affected Black voters from 2012 to 2018, and enacted SB 202 in the spring of 2021, which restricted methods of voting used by Black Georgians to vote in record numbers during the 2020 election. Burton Report 49–55.

**D. Senate Factor Four: Candidate Slating**

160. Georgia has no history of candidate slating for congressional elections. ECF No. 97 at 211.

**E. Senate Factor Five: Contemporary Socioeconomic Disparities**

161. Dr. Loren Collingwood concluded that, “[o]n every metric, Black Georgians are disadvantaged socioeconomically relative to non-Hispanic White Georgians,” disparities that “have an adverse effect on the ability of Black Georgians to participate in the political process, as measured by voter turnout and other forms of political participation.” Ex. 5 (“Collingwood Report”) at 3.

162. The data show a significant relationship between turnout and disparities in health, employment, and education; as health, education, and employment outcomes increase, so does voter turnout in a material way. Collingwood Report 3.

163. The unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%). Collingwood Report 4.

164. White households are twice as likely as Black households to report an annual income above \$100,000. Collingwood Report 4.

165. Black Georgians are more than twice as likely as white Georgians to live below the poverty line—and Black children more than three times as likely. Collingwood Report 4.

166. Black Georgians are nearly three times more likely than White Georgians to receive SNAP benefits. Collingwood Report 4.

167. Black adults are more likely than white adults to lack a high school diploma—13.3% as compared to 9.4%. Collingwood Report 4.

168. Thirty-five percent of white Georgians over the age of 25 have obtained a bachelor's degree or higher, compared to only 24% of Black Georgians over the age of 25. Collingwood Report 4.

169. These racial disparities across economics, health, employment, and education hold across nearly every county in the state. Collingwood Report 4–6.



170. The socioeconomic data provided by Mr. Cooper (based on the 5-Year 2015–2019 American Community Survey) further demonstrate that socioeconomic disparities by race exist at the county and municipal levels throughout Georgia, with non-Hispanic white Georgians consistently maintaining higher levels of socioeconomic wellbeing. Cooper Report ¶¶ 83–85.

171. Extensive literature in the field of political science demonstrates a strong and consistent link between socioeconomic status and voter turnout. Collingwood Report 7.

172. In general, voters with higher income and education are disproportionately likely to vote and participate in American politics. Collingwood Report 7.

173. In elections between 2010 and 2020, Black Georgians consistently turned out to vote at lower rates than white Georgians—a gap of at least 3.1 percentage points (during the 2012 general election) that reached its peak of 13.3 percentage points during the 2022 general election. Collingwood Report 7–8.

174. This trend can be seen at the local level as well: During each general election, white voters exceeded the turnout rates of Black voters in all but a handful of Georgia’s 159 counties, and of 1,957 precincts Dr. Collingwood analyzed, white voters had higher rates of turnout in 79.2% of precincts. Collingwood Report 8–15.

175. Voter turnout in the Atlanta metropolitan area is consistent with the overall statewide trend. Collingwood Report 16–19.

176. Each 10-percentage-point increase in the size of the Black population without a high school degree decreases Black turnout by 3.5 percentage points, and Black turnout rises 2.3 percentage points for each 10-percentage-point increase in the percentage of the Black population with a four-year degree. Collingwood Report 24–26.

177. Black turnout falls 4.9 percentage points for each 10-percentage-point increase in the percentage of the Black population below the poverty line. Collingwood Report 28.

178. White Georgians are more likely than Black Georgians to participate in a range of political activities, including attending local meetings, demonstrating political participation through lawn signs and bumper stickers, working on campaigns, attending protests and demonstrations, contacting public officials, and donating money to campaigns and political causes. Collingwood Report 34–38.

**F. Senate Factor Six: Racial Appeals in Georgia Campaigns**

179. Although explicit racial appeals are no longer commonplace, implicit racial appeals remain common and contribute to Georgia’s racially polarized voting. Burton Report 62.

180. In the words of Princeton University political scientist Tali Mendelberg, an implicit racial appeal “contains a recognizable—if subtle—racial reference, most easily through visual references.” Burton Report 63–64 (quoting Tali Mendelberg, *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality* 9, 11 (2001)).

181. Ian Haney López, the Chief Justice Earl Warren Professor of Public Law at Berkeley Law, described an implicit racial appeal as a “*coded* racial appeal,” with “one core point of the code being to foster deniability” since the “explicit racial appeal of yesteryear now invites political suicide”; accordingly, one characteristic of implicit racial appeals is that they are usually most successful when their racial subtext goes undetected. Burton Report 63 (quoting Ian Haney López, *Dog Whistle Politics: How Coded Racial Appeals Have Reinvented Racism and Wrecked the Middle Class* 4, 130 (2013)).

182. Implicit racial appeals use coded language to activate racial thinking and prime racial attitudes among voters; such racial cues include phrases like “welfare queen,” “lazy,” “criminal,” “taking advantage,” “corruption,” “fraud,” “voter fraud,” and “law and order.” Burton Report 63–64.

183. Dr. Burton explained that “[r]acism, whether dog whistled or communicated directly, became a hallmark of” Georgia politics during the second half of the 20th century. Burton Report 66.

184. During his first successful campaign for Congress in 1978, future U.S. Speaker of the House Newt Gingrich ran against Virginia Shephard, a white Democrat; he distributed a flyer showing his opponent in a photo with Black Representative Julian Bond, which read: “If you like welfare cheaters, you’ll love Virginia Shephard. In 1976, Virginia Shephard voted to table a bill to cut down on welfare cheaters. People like Mrs. Shephard, who was a welfare worker for five years, and Julian Bond fought together to kill the bill.” Burton Report 65 (quoting Dana Milbank, *The Destructionists: The Twenty-Five Year Crack-up of the Republican Party* 66 (2022)).

185. One of Gingrich’s campaign aides later said, “[W]e went after every rural southern prejudice we could think of.” Burton Report 65 (quoting Milbank, *supra*, at 66).

186. In the 1990s, Republican Congressman Bob Barr addressed the Council of Conservative Citizens, a descendant of the Jim Crow-era white citizens councils. Burton Report 66.

187. North Georgia Congresswoman Marjorie Taylor Greene has recorded videos stating, among other things, that Black people's progress is hindered by Black gang activity, drugs, lack of education, Planned Parenthood, and abortions. Burton Report 69.

188. Georgia's more recent campaigns were rife with racial appeals; for example, during the 2018 gubernatorial election, now-Governor Brian Kemp circulated a photograph of members of the New Black Panther Party attending a rally for his opponent, Stacey Abrams, with the accompanying message: "The New Black Panther Party is a virulently racist and antisemitic organization whose leaders have encouraged violence against whites, Jews, and police officers. SHARE if you agree that Abrams and the Black Panthers are TOO EXTREME for Georgia!" Burton Report 67.

189. During that same election, a robocall created by a fringe right-wing group circulated in the Atlanta suburbs before the election, with a speaker imitating Oprah Winfrey and stating, "This is the magical Negro, Oprah Winfrey, asking you to make my fellow Negro, Stacey Abrams, governor of Georgia." Burton Report 68.

190. Ultimately, as one commentator noted following the 2018 election, the use of racial appeals in Georgia and elsewhere helped candidates during that election cycle. Burton Report 68 (citing Jarvis DeBerry, *The Dirty South: Racist Appeals*

*Didn't Hurt White Candidates; Did They Help Them Win?*, NOLA.com (Nov. 17, 2018), [https://www.nola.com/opinions/article\\_2affbc92-aaf4-5c6c-88d6-9fe1db466492.html](https://www.nola.com/opinions/article_2affbc92-aaf4-5c6c-88d6-9fe1db466492.html)).

191. The 2020 election for the U.S. Senate also saw use of racial appeals, with attacks on now-Senator Raphael Warnock and the Ebenezer Baptist Church, where Senator Warnock preaches. Burton Report 68–69.

192. During that election, Warnock's opponent, former Senator Kelly Loeffler, was photographed with Chester Doles, a former "Grand Klaliff" of the Ku Klux Klan in North Georgia and a member of the neo-Nazi National Alliance, and did an interview on the One America News Channel with Jack Posobiec, "a TV pundit associated with white supremacy and Nazism." Burton Report 69 (quoting Leon Stafford, *Campaign Check: Warnock Tests Loeffler's View That She's Not Racist*, Atlanta J.-Const. (Dec. 22, 2020), <https://www.ajc.com/politics/senate-watch/campaign-check-warnock-tests-loefflers-view-that-shes-not-racist/SOWX3GL3ARDJNBFDWWZYQ75BVM>).

193. During the 2022 gubernatorial election—a rematch between Governor Kemp and Stacey Abrams—Governor Kemp's campaign deliberately darkened images of Abrams's face in campaign advertisements "in an effort to create a darker, more menacing image." Burton Report 70.

194. Governor Kemp repeatedly attacked Abrams in the general election as “upset and mad”—“evoking the trope and dog whistle of the ‘angry Black woman’”—while his Republican primary opponent, former Senator David Perdue, said in a televised interview that Abrams was “demeaning her own race” and should “go back where she came from.” Burton Report 70 (first quoting Abby Vesoulis, *Did Brian Kemp Deploy a Dog Whistle During His Debate Against Stacey Abrams?*, Mother Jones (Oct. 18, 2022), <https://www.motherjones.com/politics/2022/10/Georgia-debate-governor-abrams-kemp>; and then quoting Ewan Palmer, *David Perdue Doubles Down on ‘Racist’ Stacey Abrams Remarks in TV Interview*, Newsweek (May 24, 2022), <https://www.newsweek.com/david-perdue-racist-stacey-abrams-go-back-georgia-1709429>).

195. After Abrams planned a campaign rally in Forsyth County, in suburban Atlanta, the Republican Party of Forsyth County issued a digital flyer that was “a ‘call to action’ encouraging ‘conservatives and patriots’ to ‘save and protect our neighborhoods,’” and accused both Abrams and Senator Warnock of being “designers of destructive [radicalism]” that would be “crossing over our county border”; the flier carried echoes of the infamous pogrom in Forsyth County in 1912, when most of the Black people in the county were forcibly expelled. Burton Report 70 (quoting Maya King, *In Georgia County With Racist History, Flier Paints*

*Abrams as Invading Enemy*, N.Y. Times (Sept. 16, 2022), <https://www.nytimes.com/2022/09/16/us/politics/stacey-abrams-forsyth-georgia-republicans.html>).

196. Governor Kemp and other Georgia politicians have also spread the unsubstantiated specter of “voter fraud” in the Atlanta metropolitan area and other areas with large Black populations—another coded term that echoes the efforts of conservative white Georgians during and after Reconstruction to restrict and eliminate Black suffrage. Burton Report 70–74.

197. Plurality-Black Fulton County has been at the center of these allegations of voter fraud, with former President Donald Trump promoting baseless conspiracy theories about the county as part of his effort to overturn the 2020 election results in Georgia. Cooper Report Ex. D; Burton Report 73–74.

198. Two Black poll workers in Fulton County, Ruby Freeman and Shaye Moss, were targeted by former President Trump, his campaign, and Rudy Giuliani with allegations that they had engaged in “surreptitious illegal activity”; the two women received harassing phone calls and death threats, often laced with racial slurs, with suggestions that they should be “strung up from the nearest lamppost and set on fire”—in Dr. Burton’s words, “horribly echoing the calls for lynchings of Black citizens from earlier years who were attempting to participate in the political



process.” Burton Report 73–74 (quoting Jason Szep & Linda So, *Trump Campaign Demonized Two Georgia Election Workers—and Death Threats Followed*, Reuters (Dec. 1, 2021), <https://www.reuters.com/investigates/special-report/usa-election-threats-georgia>).

199. During the 2022 election cycle, other political candidates—including Governor Kemp, Congressman Jody Hice (running for secretary of state), and State Senator Butch Miller (running for lieutenant governor)—continued to sound the drumbeat of voter fraud, with particular focus remaining on Fulton County. Burton Report 74.

200. Since the 2016 election, local, state, and national news outlets have repeatedly reported on instances of racial appeals in Georgia campaigns. Exs. 14–25.

#### **G. Senate Factor Seven: Underrepresentation of Black Georgians in Elected Office**

201. At the time of the Voting Rights Act’s passage, Black Georgians constituted 34% of the voting-age population, and yet the state had only three elected Black officials. Burton Report 35.

202. By 1980, Black Georgians comprised only 3% of county officials in the state, the vast majority of whom were elected from majority-Black districts or counties. Burton Report 41.

203. While more Black Georgians have been elected in recent years, those officials are almost always from near-majority- or outright-majority-Black districts. Burton Report 55–57.

204. In the 2020 legislative elections, no Black members of the Georgia House of Representatives were elected from districts where white voters exceeded 55% of the voting-age population, and no Black members of the Georgia State Senate were elected from districts where white voters exceeded 47% of the voting-age population. Burton Report 56.

205. After the 2020 elections, the Georgia Legislative Black Caucus had only 16 members in the Georgia State Senate and 52 members in the Georgia House of Representatives—less than 30% of each chamber. Burton Report 56.

206. Senator Raphael Warnock is the first Black Georgian to serve Georgia in the U.S. Senate after more than 230 years of white senators. Burton Report 53, 68.

#### **H. Senate Factor Eight: Official Nonresponsiveness**

207. Black Georgians face clear and significant disadvantages across a range of socioeconomic indicators, including education, employment, and health. Collingwood Report 3; Cooper Report ¶¶ 83–85.

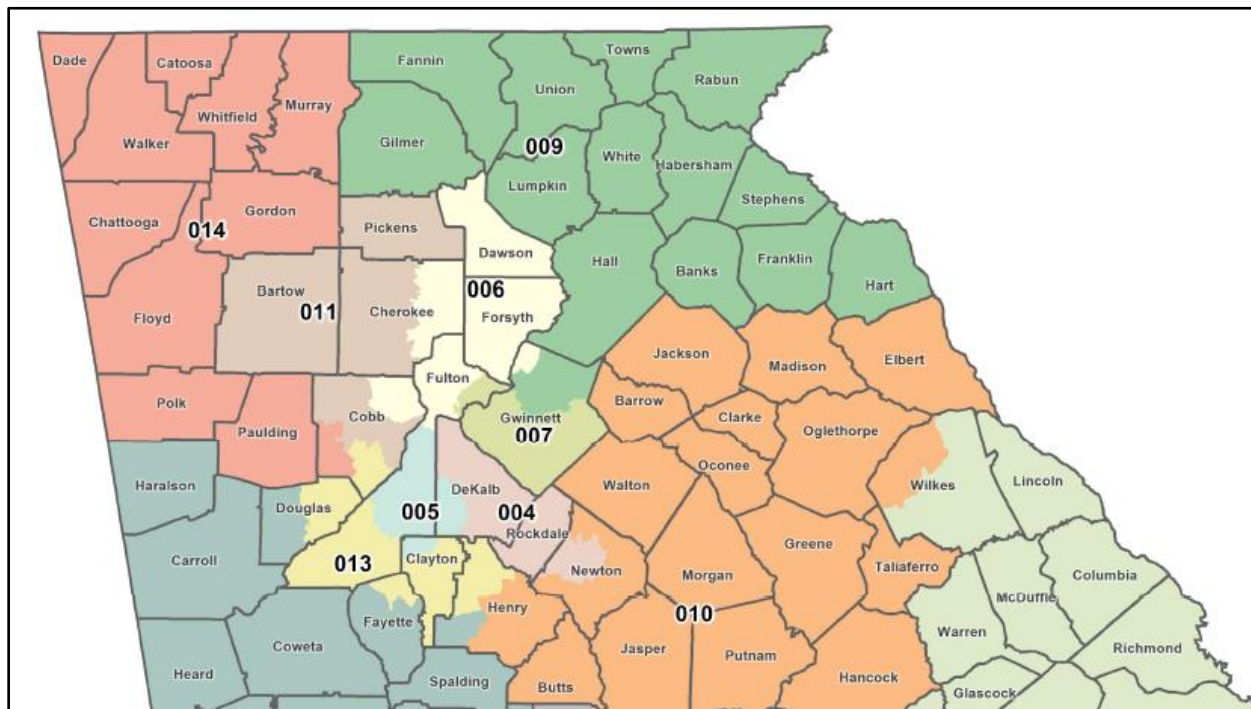
208. As Dr. Collingwood explained, “[i]t follows that the political system is relatively unresponsive to Black Georgians; otherwise, we would not observe such clear disadvantages in healthcare, economics, and education.” Collingwood Report 4.

209. During the 117th Congress, the U.S. House of Representatives voted to remove Congresswoman Marjorie Taylor Greene from the House Committee on the Budget and the House Committee on Education and Labor “in light of conduct she has exhibited.” Exs. 26–27.

**I. Senate Factor Nine: Absence of Justification for Enacted Congressional Plan**

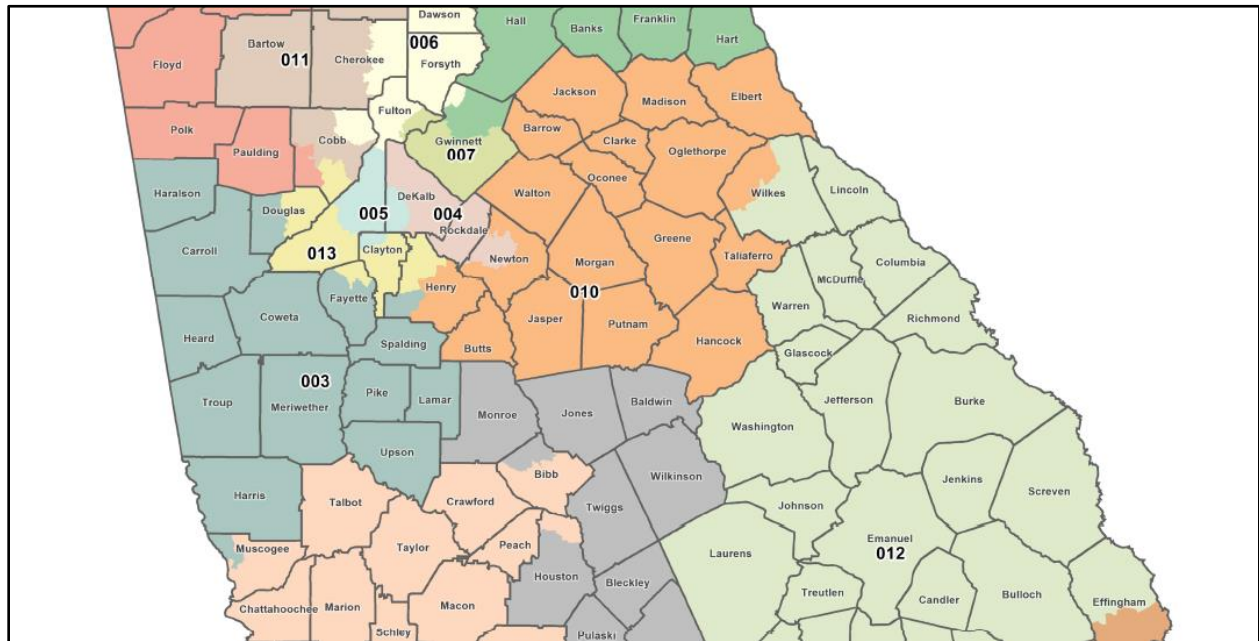
210. The enacted congressional plan splits majority-non-white Cobb County into parts of four districts, including three majority-white districts: Congressional Districts 6, 11, and 14. Cooper Report ¶¶ 60, 65, 73, fig.14.

211. Under the enacted congressional plan, southwest Cobb County is included in Congressional District 14, which stretches into Appalachian north Georgia and the suburbs of Chattanooga:



Cooper Report ¶¶ 60, 68, Ex. G.

212. Under the enacted congressional plan, western Douglas County is included in Congressional District 3, which stretches west and south into majority-white counties along the Alabama border:



Cooper Report Exs. D &amp; G.

213. While the population requirements of congressional districts might sometimes require mixing urban and rural voters, Mr. Cooper's illustrative congressional plan demonstrates that the western Atlanta metropolitan area can be united in a district with all or part of Cobb, Douglas, Fulton, and Fayette counties, all of which are core counties under the ARC. Cooper Report ¶ 68, Ex. H-1.

## **J. Proportionality**

214. 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.

215. Mr. Cooper's illustrative congressional plan includes three 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 five majority-Black districts based on percentage non-Hispanic DOJ Black citizen voting-age population. Cooper Report ¶ 73, fig.14.

216. 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.

217. 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: March 20, 2023

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**CERTIFICATE OF SERVICE**

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing *Statement of Undisputed Material Facts in Support of Plaintiffs' Motion for Summary Judgment* 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: March 20, 2023

**Adam M. Sparks**

*Counsel for Plaintiffs*



**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

**PROPOSED ORDER GRANTING PLAINTIFFS' MOTION FOR  
SUMMARY JUDGMENT**

This Court has considered Plaintiffs' motion for summary judgment (ECF No. \_\_), supporting authorities, the submissions of the other parties, and the

evidence and pleadings of record and finds that the Georgia Congressional Redistricting Act of 2021 (“SB 2EX”) violates Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301.

Specifically, the Court finds that:

1. The Black population in the western Atlanta metropolitan area is sufficiently large and geographically compact to comprise a majority of the voting-age population in an additional congressional district, *see Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986);

2. Black Georgians in this region are politically cohesive, *see id.*;

3. white Georgians in this region engage in bloc voting that enables them usually to defeat Black-preferred candidates, *see id.*; and

4. under the totality of circumstances—including Georgia’s ongoing history of official, voting-related discrimination; the state’s racially polarized voting; voting practices that enhance the opportunity for discrimination in the state; severe socioeconomic disparities that impair Black Georgians’ participation in the political process; the prevalence of racial appeals in the state’s political campaigns; the underrepresentation of Black officeholders in the state; Georgia’s nonresponsiveness to its Black residents; and the absence of legitimate justifications for the congressional map drawn by SB 2EX—the state’s “political processes

leading to nomination or election . . . are not equally open to participation” by Georgia’s Black community. 52 U.S.C. § 10301(b); *see also Gingles*, 478 U.S. at 43–44.

Because summary judgment in favor of Plaintiffs is appropriate, the motion is therefore **GRANTED**.

Defendants, as well as their agents and successors in office, are **PERMANENTLY ENJOINED** from enforcing or giving any effect to the boundaries of the congressional districts as drawn in SB 2EX, including conducting any further congressional elections under the enacted map.

**IT IS SO ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

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**HONORABLE STEVE C. JONES**  
**UNITED STATES DISTRICT JUDGE**

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing *Proposed Order Granting Plaintiffs' Motion for Summary Judgment* 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: March 20, 2023

**Adam M. Sparks**

*Counsel for Plaintiffs*