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

ANNIE LOIS GRANT; QUENTIN T. HOWELL; ELROY TOLBERT; TRIANA ARNOLD JAMES; EUNICE SYKES; ELBERT SOLOMON; DEXTER WIMBISH; GARRETT REYNOLDS; JACQUELINE FAYE ARBUTHNOT; JACQUELYN BUSH; and MARY NELL CONNER,

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. 1:22-CV-00122-SCJ

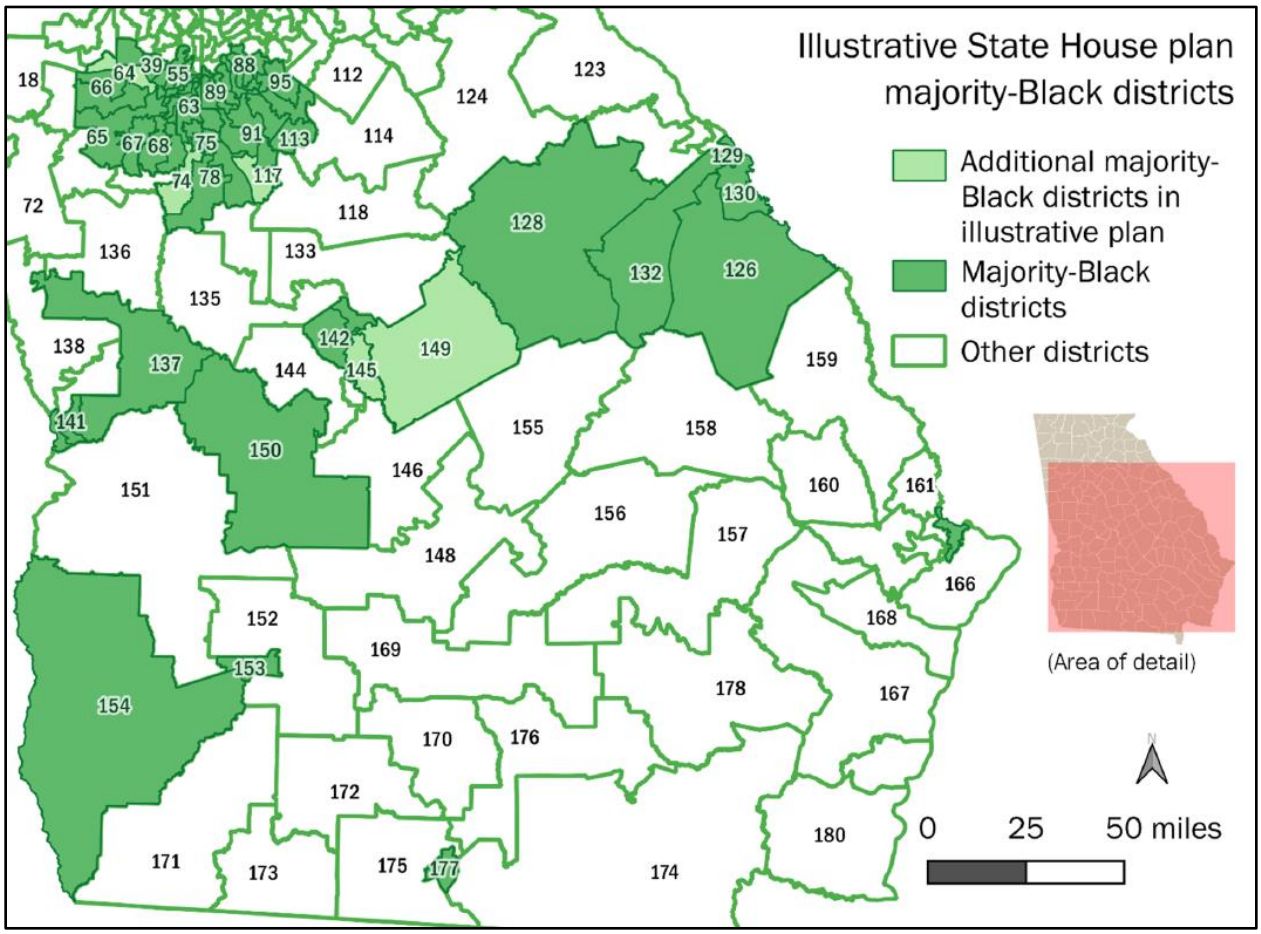
PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56, Plaintiffs ANNIE LOIS GRANT, QUENTIN T. HOWELL, ELROY TOLBERT, TRIANA ARNOLD JAMES, EUNICE SYKES, ELBERT SOLOMON, DEXTER WIMBISH, GARRETT REYNOLDS, JACQUELINE FAYE ARBUTHNOT, JACQUELYN BUSH, and MARY NELL CONNER, 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 partial summary judgment in Plaintiffsô favor.

Partial summary judgment is warranted here because the evidence adduced by Plaintiffs proves that the enacted maps for the Georgia State Senate and Georgia House of Representatives violate Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301, by failing to include additional legislative districts in which Black voters have the opportunity to elect their preferred candidates. Georgia has a Black population sufficiently large and geographically compact to create additional majority-Black State Senate and House districts in the Atlanta metropolitan area and central Georgia Black Belt region. The enacted legislative maps limit the ability of Black Georgians in these areas to elect their candidates of choice to the Georgia General Assembly, thus diluting the voting strength of a politically cohesive

164:8–165:14, 197:15–19 (not disputing that it is possible to draw five additional majority-Black House districts in Georgia).

31. Mr. Esselstyn prepared an illustrative House plan with five additional majority-Black districts[2] illustrative House Districts 64, 74, 117, 145, and 149[3] for a total of 54 majority-Black House districts:



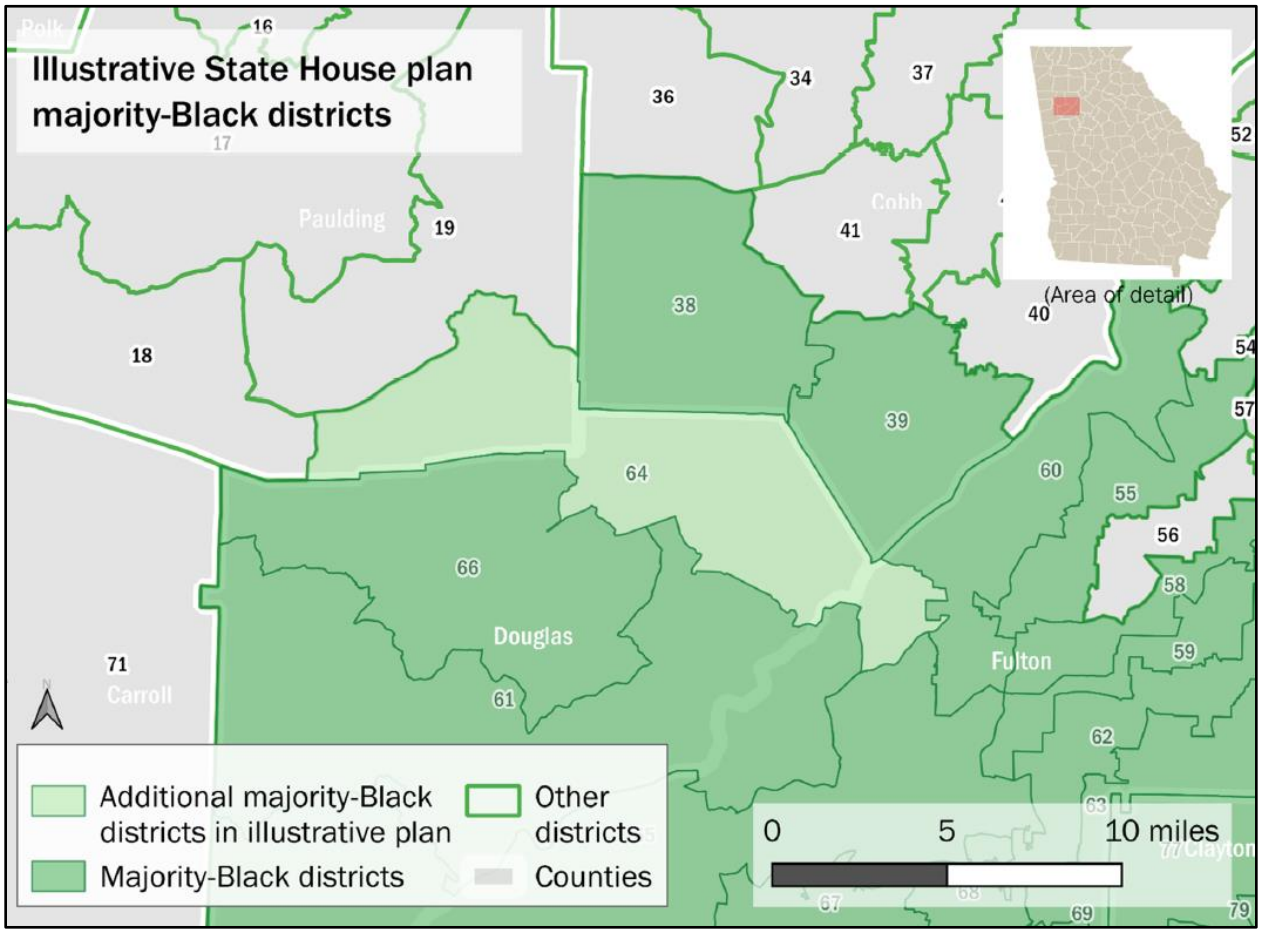
Esselstyn Report ¶ 48, fig.13, tbl.5.

32. The following table reports the Black voting-age populations of the 54 majority-% O D F N G L V W U L F W V L Q 0 U House plan: V H O V W \ Q ¶ V L O O X

District	BVAP%	District	BVAP%	District	BVAP%	District	BVAP%
38	54.23%	69	62.73%	91	60.01%	137	52.13%
39	55.29%	74	53.94%	92	68.79%	140	57.63%
55	55.38%	75	66.89%	93	65.36%	141	57.46%
58	63.04%	76	67.23%	94	69.04%	142	50.14%
59	70.09%	77	76.13%	95	67.15%	143	50.64%
60	63.88%	78	51.03%	113	59.53%	145	50.38%
61	53.49%	79	71.59%	115	53.77%	149	51.53%
62	72.26%	84	73.66%	116	51.95%	150	53.56%
63	69.33%	85	62.71%	117	51.56%	153	67.95%
64	50.24%	86	75.05%	126	54.47%	154	54.82%
65	63.34%	87	73.08%	128	50.41%	165	50.33%
66	53.88%	88	63.35%	129	54.87%	177	53.88%
67	58.92%	89	62.54%	130	59.91%		
68	55.75%	90	58.49%	132	52.34%		

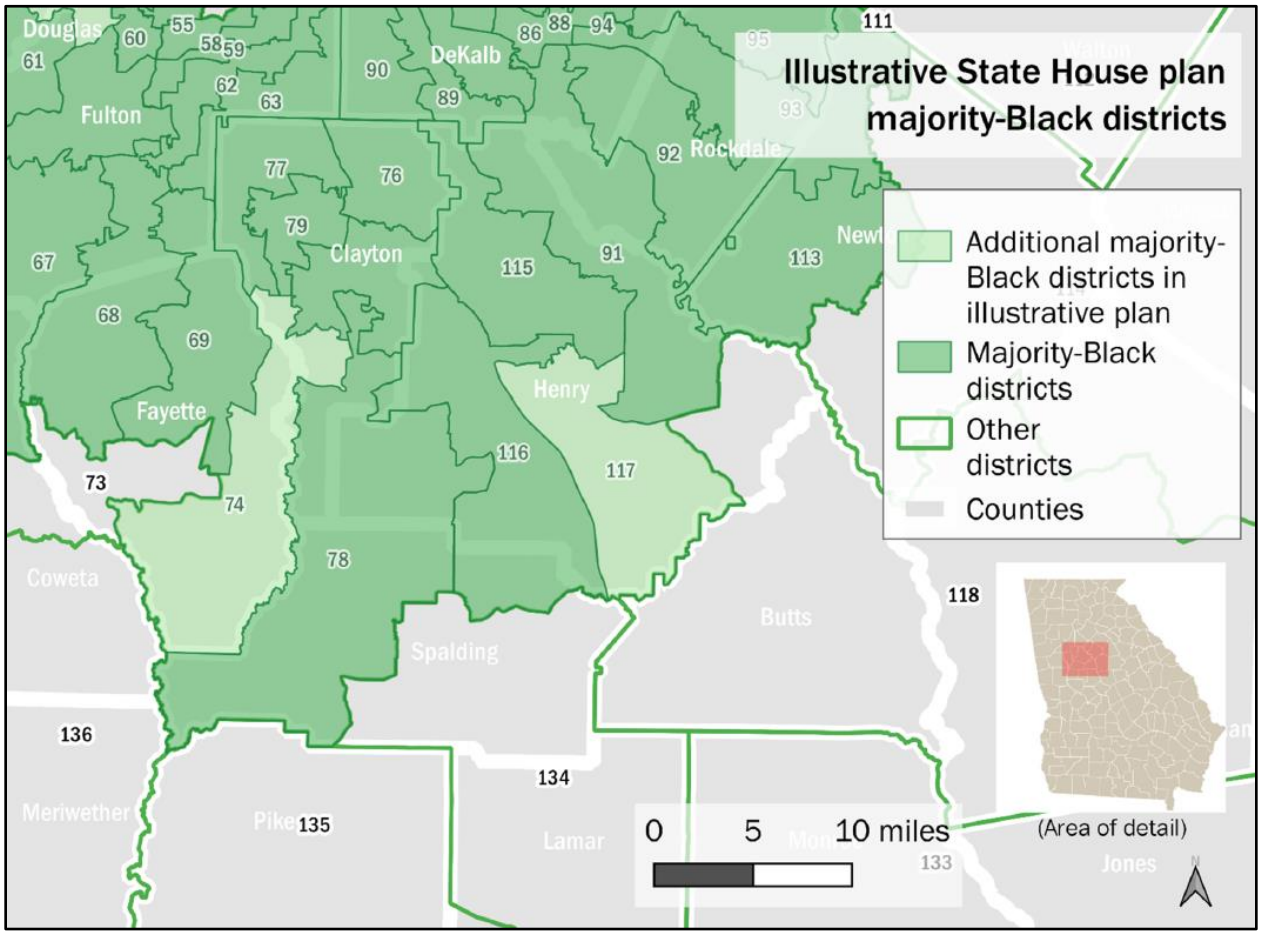
Esselstyn Report ¶ 48, tbl.5; Morgan Dep. 74:11 + Q R W G L V S X W L Q J 0 U demographic statistics).

33. 0 U (V V H O V W \ QH¶v House District 64, located in the western Atlanta metropolitan area, is composed of portions of Douglas, Fulton, and Paulding counties



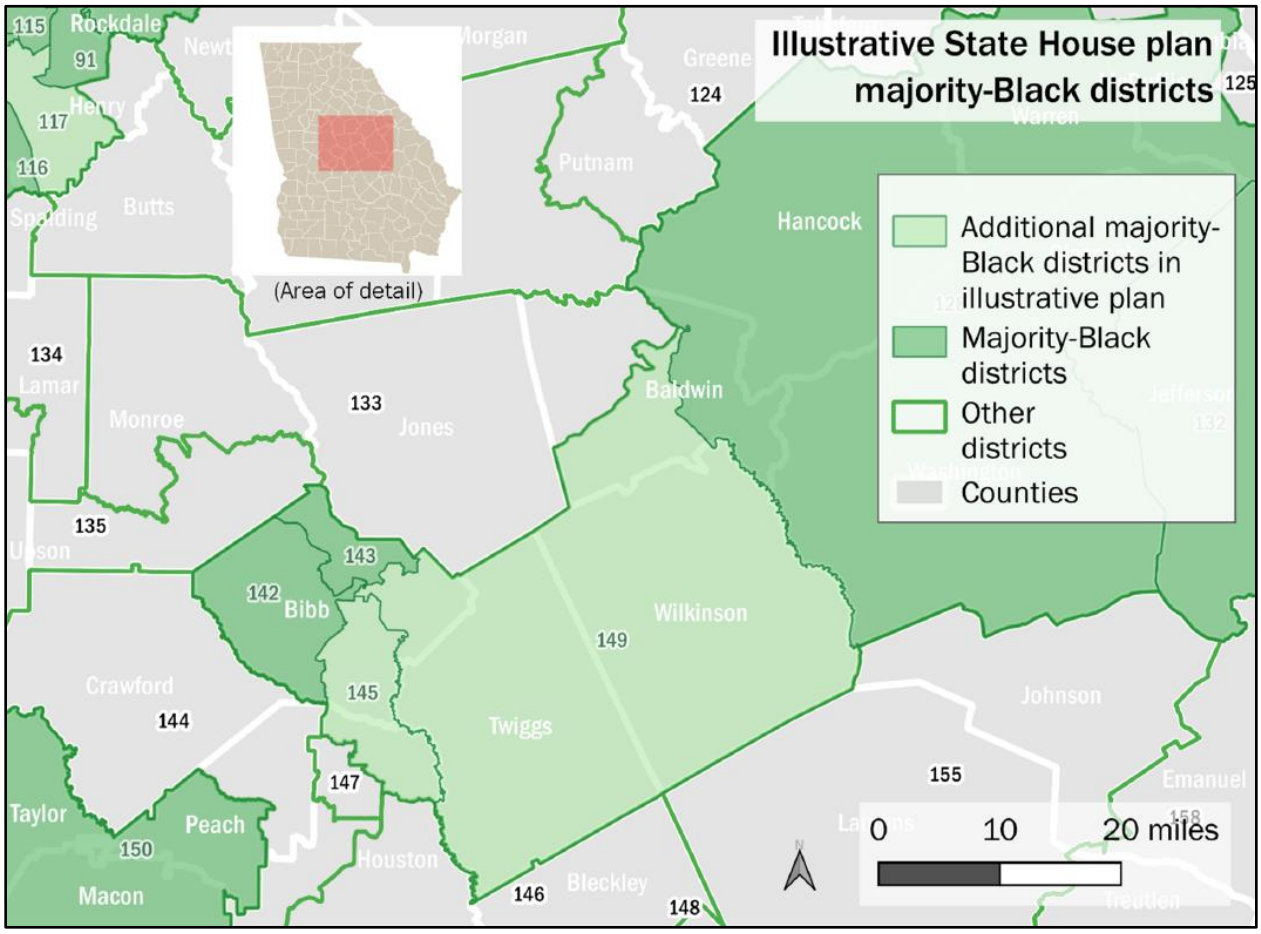
Esselstyn Report ¶ 49, fig.14.

34. 0 U (V V H O V W \ Q House Districts 74 and 117 are located in the southern Atlanta metropolitan area, composed of portions of Clayton, Fayette, and Henry counties.



Esselstyn Report ¶ 50, fig.15.

35. 0 U (V V H O V W \ Q H ¶ V Districts 145 and 149 located in the central Black Belt region, are composed of portions of Baldwin, Macon-Bibb, and Houston counties and all of Twiggs and Wilkinson counties.



Esselstyn Report ¶ 51, fig.16.

36. Dr. Palmer analyzed the performance of Black-preferred candidates in 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y H S O D Q 3 D Report ¶¶ 22-23. + R X V H S O D Q 3 D

37. In the 31 statewide races from 2012 through 2021, the Black-preferred candidate won a larger share of the vote in Mr. Esselstyn's House Districts 64, 74, and 149. Palmer Report ¶ 24, fig. 5, tbl. 9.

38. In the 31 statewide races from 2012 through 2021, the Black-preferred candidate won all 19 elections since 2018. Palmer Report ¶ 24, fig. 5, tbl. 9.

39. In the 31 statewide races from 2012 through 2021, the Black-preferred candidate won all 19 elections since 2018, and 27 of the 31 elections overall. Palmer Report ¶ 24, fig. 5, tbl. 9.

40. 8 Q G H U 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y H % O D F N G L V W U L F W V I U R P Z K L F K 0 U (V V H O V W \ Q ¶ V D

House plan, the pre-existing majority-Black districts were drawn will continue to perform for Black-preferred candidates with similar or higher vote shares. Palmer Report ¶ 25.

B. Geographic Compactness

41. As Mr. Esselstyn concluded, it is possible to create at least two additional majority-Black districts in the State Senate plan and at least four additional majority-Black districts in the House plan in accordance with traditional redistricting principles. Esselstyn Report 1¶3¶ 63; Morgan Dep. 202:1014

(agreeing that it is possible to create additional majority-Black House districts in accordance with traditional redistricting principles).

42. In drafting his illustrative State Senate and House plans, Mr. Esselstyn balanced a number of considerations, and there was no one dominant factor or metric. Esselstyn Report ¶ 25.

43. 2 Q H R I 0 U (V V H O V W \ Q ¶ V J X L G L Q J S U L Q F L S O minimize changes to the enacted plan while adhering to other neutral criteria. Esselstyn Report ¶¶ 26, 47.

44. Modifying one district necessarily requires changes to districts adjacent to the original modification, and harmonizing those changes with traditional redistricting criteria (such as population equality and intactness of counties) often results in cascading changes to other surrounding districts. Esselstyn Report ¶ 26.

45. The general guidelines for drafting legislative plans adopted by the redistricting committees of the State Senate and House during the 2021 cycle included the following: population equality (with [3] each legislative district … drawn to achieve a total population that is substantially equal as practicable, given the other enumerated criteria); contiguity, compactness, consideration of the boundaries of counties and precincts, consideration of communities of interest, and avoiding the unnecessary pairing of incumbents. Esselstyn Report ¶¶ 33, 54, attachs. F & K.

46. Mr. Esselstyn drew his illustrative State Senate and House plans to F R P S O \ Z L W K D Q G E D O D Q F H W K H ' H Q H U D O $ V V H P guidelines. Esselstyn Report ¶ 33.

1. Illustrative State Senate Plan

a. Population Equality

47. , Q 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y H 6 W D populations are within plus-or-minus 1% of the ideal, and a small minority are within between plus-or-minus 1% and 2%. Esselstyn Report ¶ 34, attach. H.

48. No G L V W U L F W L Q 0 U (V V H O V W \ Q ¶ V has a L O O X V W population deviation of more than 2%. Esselstyn Report ¶ 34, attach. H.

49. Under the enacted State Senate plan, the relative average population deviation is 0.53%, under 0 U (V V H O V W \ Q ¶ V illustrative plan, the relative average deviation is 0.67%. Esselstyn Report ¶ 34, attach. H.

b. Contiguity

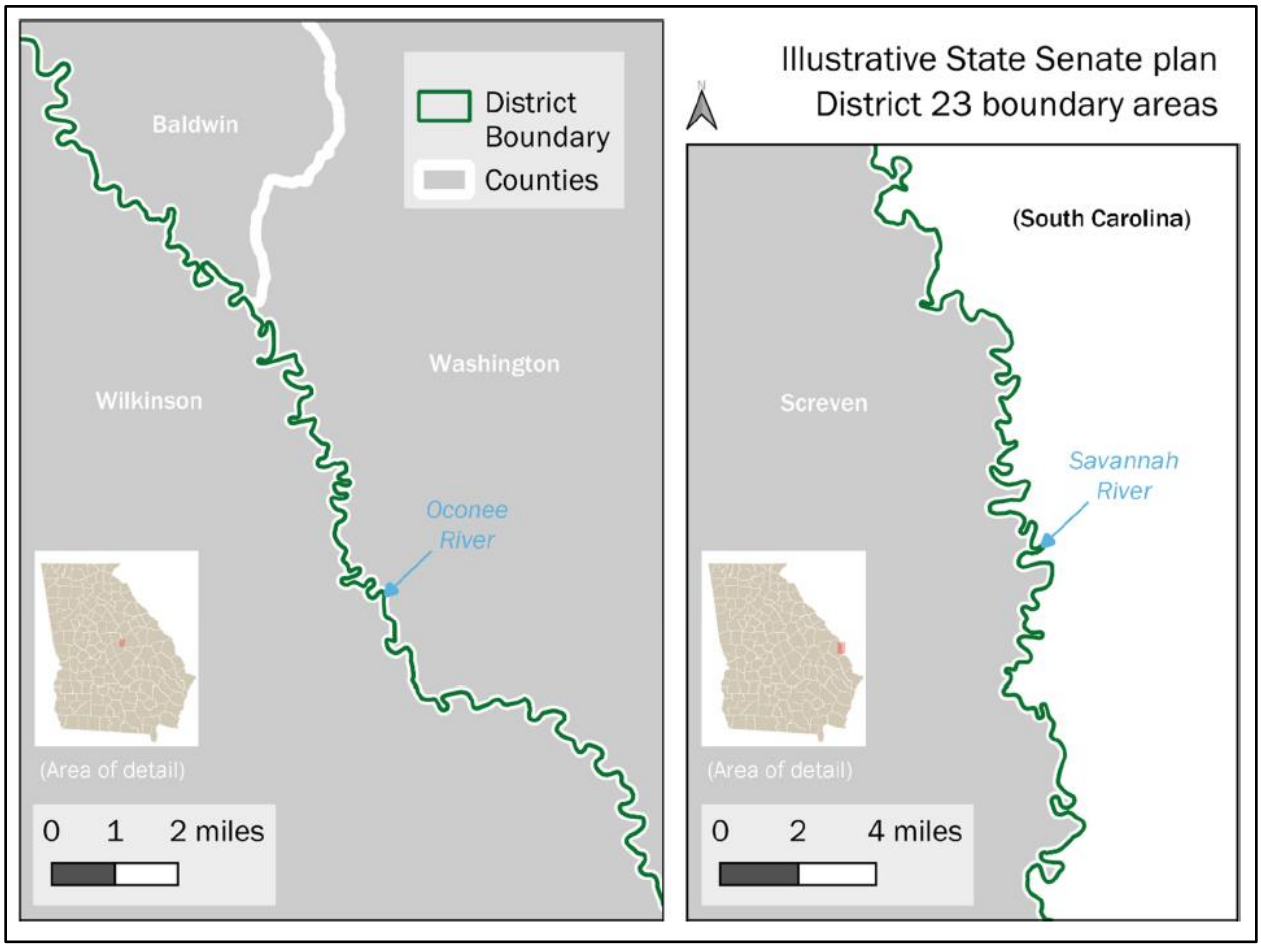
50. 7 K H G L V W U L F W V L Q 0 U (V V H O V W \ Q ¶ V satisfy the L O O X V contiguity requirement in the same manner as the enacted plan. Esselstyn Report ¶ 35.

c. Compactness

51. Numerous measures exist for quantifying compactness of districts. The Reock, Polsby-Popper, and Area/Convex Hull measures all provide scores between zero and one, with scores closer to one (i.e., higher values) indicating more compactness; the Schwartzberg measure provides scores greater than or equal to one, with scores closer to one (i.e., lower values) indicating more compactness; and for the Number of Cut Edges[3] which is only meaningful for comparing entire plans, not individual districts[3] a lower score indicates more compactness. Esselstyn Report ¶ 36 & n.9, attach. G.

52. Different compactness measures weight boundary features in different ways, and a district ¶ V U H O D W L Y H F R P S D F W Q H V V P L J K W Y D U used; for example, the Polsby-3 R S S H U P H D V X U H Z K L F K F R Q V L perimeter in its formula, heavily penalizes a district if it has a wiggly border, even if W K H G L V W U L F W ¶ V R Y H U D O O V[4] As is the case with Mr. V W U L C

(V V H O V W \ Q ¶ V L O O X V W the boundary of which at places follows L F W serpentine county boundaries that themselves follow significant rivers:



Esselstyn Report ¶ 38, fig.9.

53. The following table reports compactness measures for the enacted State

6 H Q D W H S O D Q D Q G 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L

	Reock (average)	Schwartzberg (average)	Polsby-Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.42	1.75	0.29	0.76	11,005
Illustrative	0.41	1.76	0.28	0.75	11,003

Esselstyn Report ¶ 36, tbl.2; Morgan Dep. 90:6-17 D J U H H L Q J W K D W 0 U (illustrative plan has similar mean compactness to enacted plan using Reock and Polsby-Popper measures)

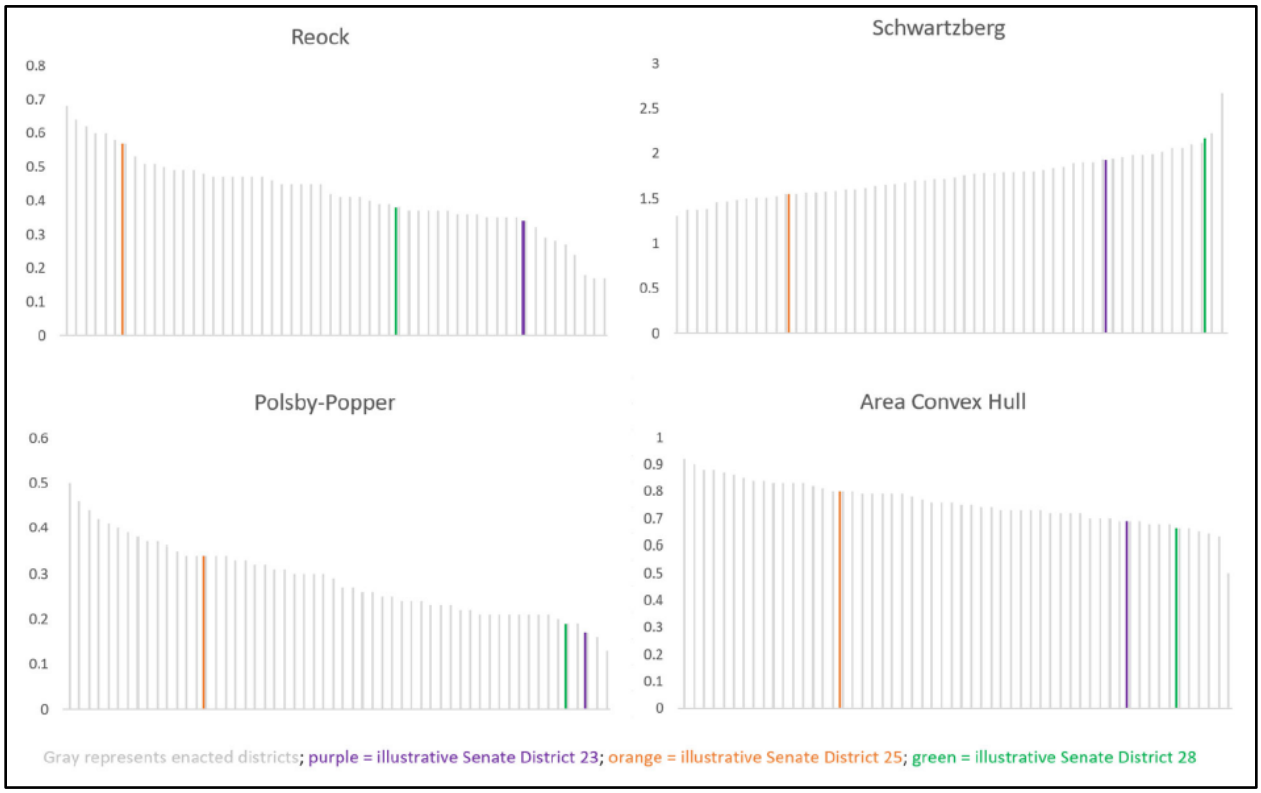
54. The compactness scores of the three additional majority-Black districts

L Q 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y H 6 H Q D

Senate Districts 23, 25, and 28 all fall within the range of compactness scores of the districts in the enacted plan using the Reock, Schwartzberg, Polsby-Popper and Area/Convex Hull measures. Esselstyn Report ¶ 37, attach. H.

55. The following charts depict the compactness scores of the three additional majority-% O D F N G L V W U L F W V L Q 0 U (V V H O V W \ Q ¶ V and the compactness scores of the districts in the enacted plan; the gray lines represent the compactness scores of each of the enacted districts, in sorted order, and

the purple, orange, and green lines represent the scores of illustrative Senate Districts 23, 25, and 28, respectively:



Esselstyn Report ¶ 37, fig.8.

56. The following table reports the associated compactness scores:

	Measures of Compactness			
	Reock	Schwartzberg	Polsby-Popper	Area/ Convex Hull
Enacted plan least compact score	0.17	2.67	0.13	0.50
Enacted plan median score	0.415	1.725	0.28	0.755
Illustrative District 23 score	0.34	1.93	0.17	0.69
Illustrative District 25 score	0.57	1.55	0.34	0.80
Illustrative District 28 score	0.38	2.17	0.19	0.66

Esselstyn Report ¶ 37, tbl.3.

d. Preservation of Political Subdivisions

57. The following table compares political subdivision splits between the enacted State Senate plan and Mr. Esselstyn's illustrative State Senate plan:

	Intact Counties	Split Counties	Split VTDs
Enacted	130	29	47
Illustrative	125	34	49

Esselstyn Report ¶ 39, tbl.4; attach. H.

e. Preservation of Communities of Interest

58. While communities of interest can be larger than a county or smaller than a college campus, and individuals might have different opinions about their exact geographic extents, in drawing his illustrative State Senate and House plans, Mr. Esselstyn generally referred to recognizable entities visible in the Maptitude for

Redistricting software interface (such as municipalities and landmark areas), as well as areas and communities described by Georgians (either in his personal conversations or in statements made in public hearings). Esselstyn Report ¶ 41.

59. 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y H 6 W D W H 6 County in one majority-Black State Senate district, rather than dividing it between two districts as it is in the enacted plan. Esselstyn Report ¶ 31 n.8.

60. 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y H 6 W D W H 6 County in a single majority-Black district, consistent with recommendations made during the public hearing in Macon on July 29, 2021. Whereas Macon-Bibb County is divided in the enacted plan. Esselstyn Report ¶ 29 n.7.

61. 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y H 6 W D W H 6 of Georgia College together in the same district. Esselstyn Report ¶ 41.

f. Incumbent Pairings

62. 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y H 6 W D W H incumbent senators in the same district. Esselstyn Report ¶ 42.

g. Core Retention

63. , Q 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y H 6 W D W districts were modified, leaving the other 34 unchanged. Esselstyn Report ¶ 26.

2. Illustrative House Plan

a. Population Equality

64. In Mr. Esselstyn's illustrative House plan, most districts' populations are within plus-or-minus 1% of the ideal, and a small minority are within between plus-or-minus 1% and 2%. Esselstyn Report ¶ 55, attach. L.

65. No district in Mr. Esselstyn's illustrative House plan has a population deviation of more than 2%. Esselstyn Report ¶ 55, attach. L.

66. Under the enacted House plan, the relative average population deviation is 0.61%. Under Mr. Esselstyn's illustrative House plan, the relative average population deviation is 0.64%. Esselstyn Report ¶ 55, attach. L.

b. Contiguity

67. The districts in Mr. Esselstyn's illustrative House plan satisfy the contiguity requirement in the same manner as the enacted plan. Esselstyn Report ¶ 56.

c. Compactness

68. The following table reports compactness measures for the enacted House S O D Q D Q G 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y H S

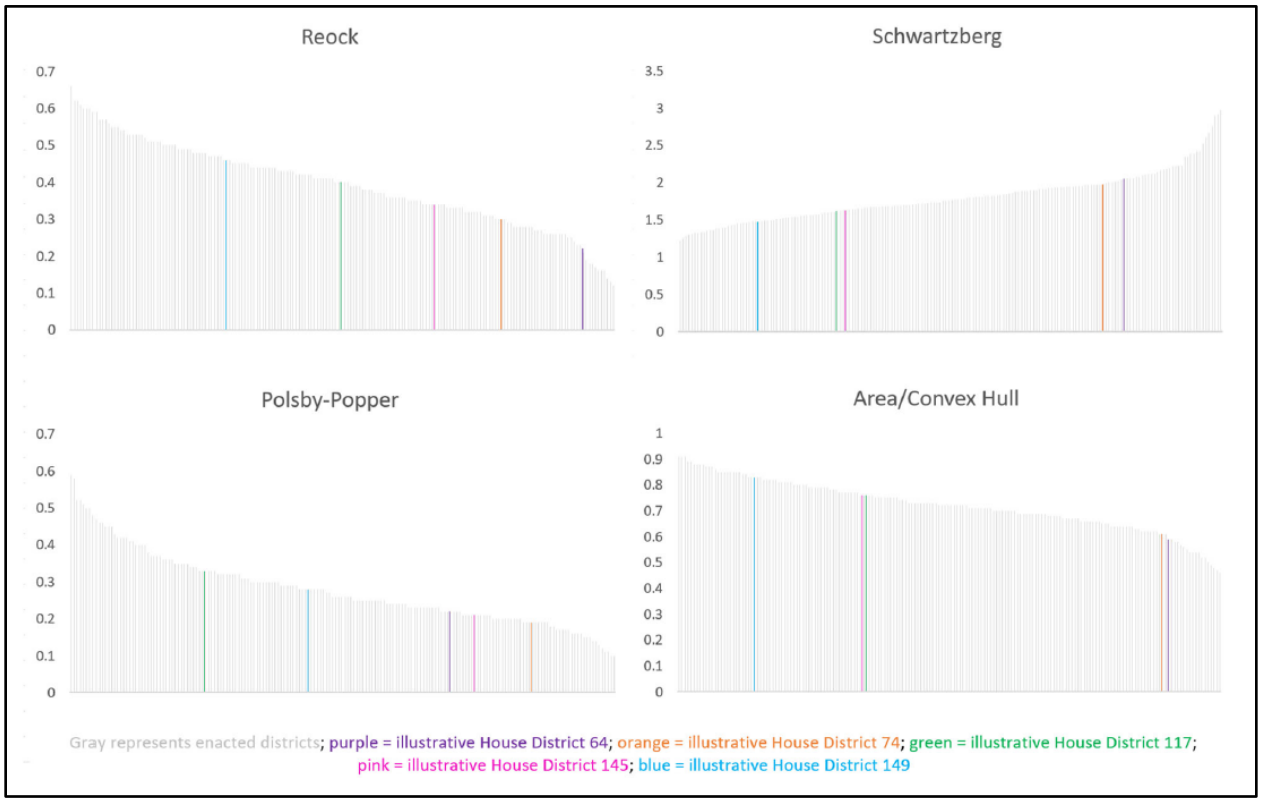
	Reock (average)	Schwartzberg (average)	Polsby-Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.39	1.80	0.28	0.72	22,020
Illustrative	0.39	1.81	0.28	0.72	22,359

Esselstyn Report ¶ 57, tbl.6; Morgan Dep. 168:8–11 (acknowledging that Mr. (V V H O V W \ Q ¶ V L O O X V W U D W L Y H - P o r g a n ' s P o l s b y - P o p p e r s c o r e s i d e n t i c a l t o D V 5 H enacted plan to two decimal places).

69. The compactness scores of the five additional majority-Black districts L Q 0 U (V V H O V W \ Q ¶ V I l l u s t r a t i v e H o u s e D i s t r i c t s 6 4 , 7 4 , 1 1 7 , 1 4 5 , a n d 149² all fall within the range of compactness scores of the districts in the enacted plan using the Reock, Schwartzberg, Polsby-Popper and Area/Convex Hull measures. Esselstyn Report ¶ 58, attach. L.

70. The following charts depict the compactness scores of the five additional majority-% O D F N G L V W U L F W V L Q 0 U (V V H O V W \ Q ¶ V I l l u s t r a t i v e H o u s e p l a n a n d t h e compactness scores of the districts in the enacted plan; the gray lines represent the compactness scores of each of the enacted districts, in sorted order, and the

orange, green, pink, and blue lines represent the scores of illustrative House Districts 64, 74, 117, 145, and 149, respectively



Esselstyn Report ¶ 58, fig.17.

71. The following table reports the associated compactness scores:

	Measures of Compactness			
	Reock	Schwartzberg	Polsby-Popper	Area/Convex Hull
Enacted plan least compact score	0.12	2.98	0.10	0.46
Enacted plan median score	0.40	1.765	0.26	0.72
Illustrative District 64 score	0.22	2.05	0.22	0.59
Illustrative District 74 score	0.30	1.98	0.19	0.61
Illustrative District 117 score	0.40	1.62	0.33	0.76
Illustrative District 145 score	0.34	1.63	0.21	0.76
Illustrative District 149 score	0.46	1.48	0.28	0.83

Esselstyn Report ¶ 58, tbl. 7.

d. Preservation of Political Subdivisions

72. The following table compares political subdivision splits between the enacted House S O D Q D Q G 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y

	Intact Counties	Split Counties	Split VTDs
Enacted	90	69	185
Illustrative	89	70	186

Esselstyn Report ¶ 59, tbl. 8, attach. L.

e. Preservation of Communities of Interest

73. 0 U (V V H O V W \ Q ¶ V L O O X V W U D W L Y H divides R X V H S C Macon-Bibb County into four districts, two of which (Illustrative House Districts 142 and 143) are wholly contained in Macon-Bibb County. Esselstyn Report ¶ 51.

74. The orientation of illustrative House Districts 142 and 143 ensures that the northern portions of Macon-Bibb County stay in a Macon-Bibb County district with portions of Macon, rather than being put in a district with a more rural neighboring county like Monroe; this type of arrangement was specifically recommended during public comment at a Joint Reapportionment Committee hearing. Esselstyn Report ¶ 51 & n.13.

75. Twiggs and Wilkinson counties[2] described by Gina Wright, the ([HFXWLYH 'LUHFWRU RI WKH *HQHUDO $VVHPEO\ 5HDSSRUWLRQPHQW 2IILFHe DV [3] FRQ\WLW\ XW > LQJ @ LQFOXGHG LQ WKHLU HQWLUHW\ LQ 0149. Esselstyn Report ¶ 51 & n.12 (alteration in original) (quoting ECF No. 55 at 9).

76. Illustrative House District 149 generally follows the orientation of the Georgia Fall Line geological feature, which brings with it shared economic, historic, and ecological similarities. Esselstyn Report ¶ 52 & n.14.

77. Macon and Milledgeville, parts of which are in illustrative House District 149, are both chaU DFWHUL]HG DV ´[3]) DOO /LQH &L WLHV and were identified in public comment E HIRUH WKH *HQHUDO $VVHPEO\ ¶V -RLQW as two cities that should be kept in the same district. Esselstyn Report ¶ 52 & nn.15±16.

78. Mr. Esselstyn's illustrative House plan keeps the two campuses of Georgia College together in the same district. Esselstyn Report ¶ 60.

f. Incumbent Pairings

79. Mr. Esselstyn's illustrative House plan would pair a total of eight incumbents in the same districts—the same number of incumbent pairings reported for the enacted plan in the declaration submitted by Defendants' John Morgan, during the preliminary injunction proceedings in this matter. Esselstyn Report ¶ 61 & nn.17–18.

g. Core Retention

80. In Mr. Esselstyn's illustrative House plan, 25 of the enacted districts were modified, leaving the other 155 unchanged. Esselstyn Report ¶ 47.

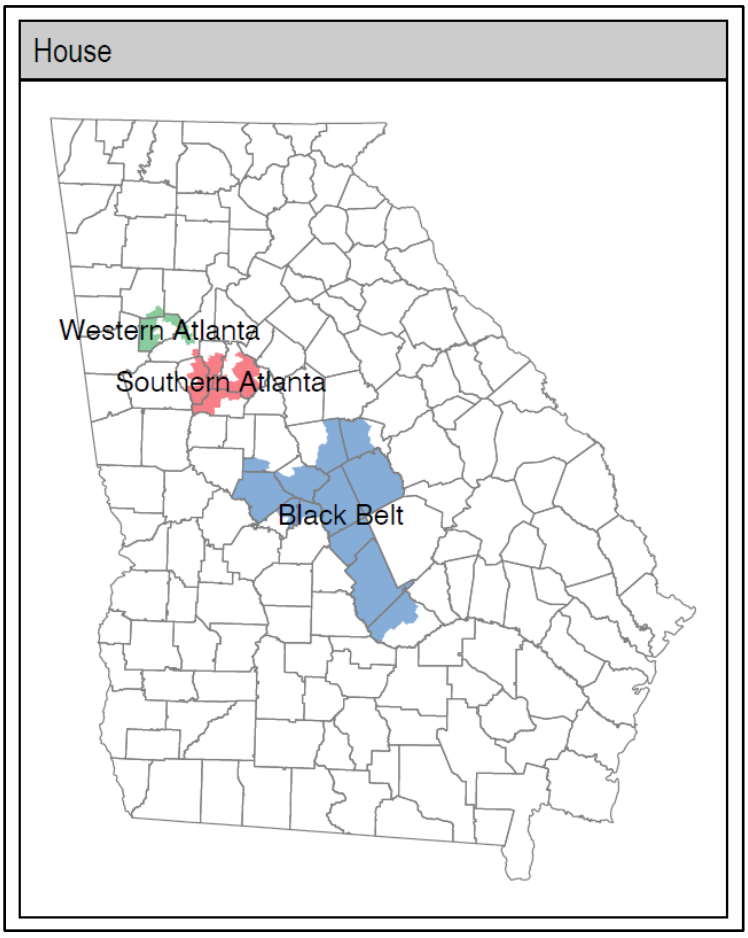
II. Second *Gingles* Precondition: Political Cohesion

81. Dr. Palmer conducted racially polarized voting analyses across five different focus areas, comprising the districts from which Mr. Esselstyn's ad majority-Black legislative districts were drawn. Palmer Report ¶ 10.

82. Dr. Palmer examined the following areas of the enacted House plan:

- Black Belt House Districts 133, 142, 143, 145, 147, and 149, which include Bleckley, Crawford, Dodge, Twiggs, and Wilkinson counties and parts of Baldwin, Bibb, Houston, Jones, Monroe, Peach, and Telfair counties;

- Southern Atlanta—House Districts 69, 74, 75, 78, 115, and 117, which include parts of Clayton, Fayette, Fulton, Henry, and Spalding counties; and
- Western Atlanta—House Districts 61 and 64, which include parts of Douglas, Fulton, and Paulding counties.

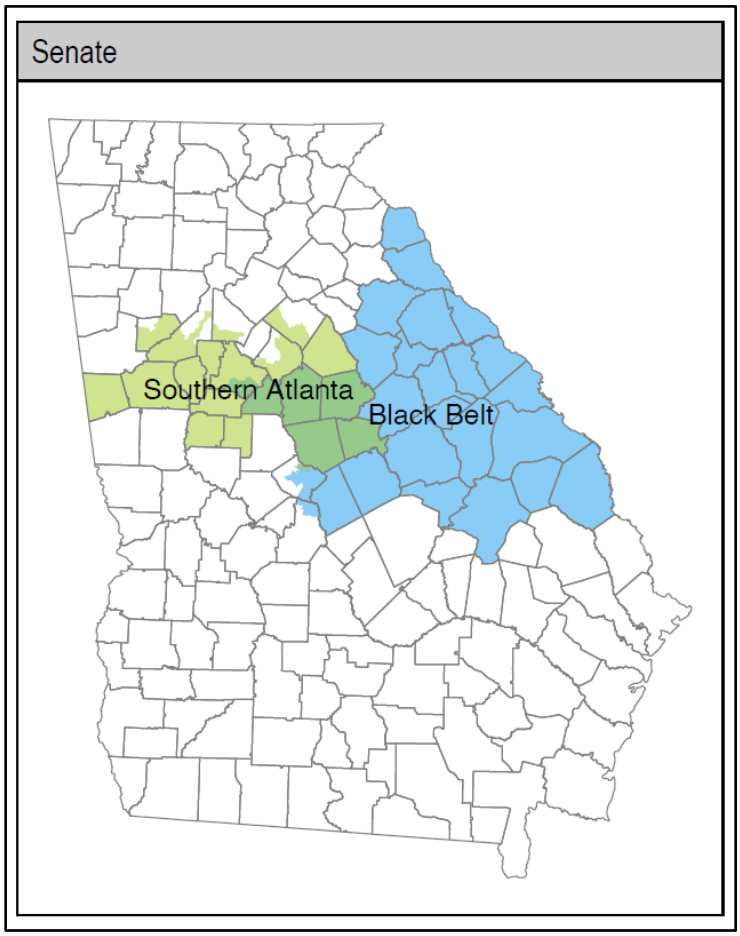


Palmer Report ¶ 11, fig.1.

83. Dr. Palmer examined the following areas of the enacted State Senate plan:

- Black Belt Senate Districts 22, 23, 24, 25, and 26, which include Baldwin, Burke, Butts, Columbia, Elbert, Emanuel, Glascock, Greene, Hancock, Hart, Jasper, Jefferson, Jenkins, Johnson, Jones, Lincoln, Mcduffie, Oglethorpe, Putnam, Richmond, Screven, Taliaferro, Twiggs, Warren, Washington, Wilkes, and Wilkinson counties and parts of Bibb, Henry, and Houston counties; and
- Southern Atlanta: Senate Districts 10, 16, 17, 25, 28, 34, 35, 39, and 44, which include Baldwin, Butts, Clayton, Coweta, Fayette, Heard, Jasper, Jones,

Lamar, Morgan, Pike, Putnam, and Spalding counties and parts of Bibb, DeKalb, Douglas, Fulton, Henry, Newton, and Walton counties.



Palmer Report ¶ 12, fig.1.

84. Dr. Palmer employed a statistical method called Ecological Inference [3] (´(,´) WR GHULYH HVWLPDWHV RI WKH SHUFHQWDJH areas that voted for each candidate in 40 statewide elections between 2012 and 2022. Palmer Report ¶¶ 10, 15; Ex. 9 [3] $ O I RHUSG at 36:11–37:12 (agreeing that EI is

best available method for estimating voting behavior by race DQG ZLWK 'U 3DO

methodology and results)

85. 'U 3DOPHU¶V (, DQDO\VLV -level election results and SUH

voter turnout by race, as compiled by the State of Georgia. Palmer Report ¶ 13.

86. Dr. Palmer¶V (, SURFHVV SURF First, he examined each IROORZ

UDFLDO JURXS¶V VXSSRUW IRU HDFK FDQGLGDWH W

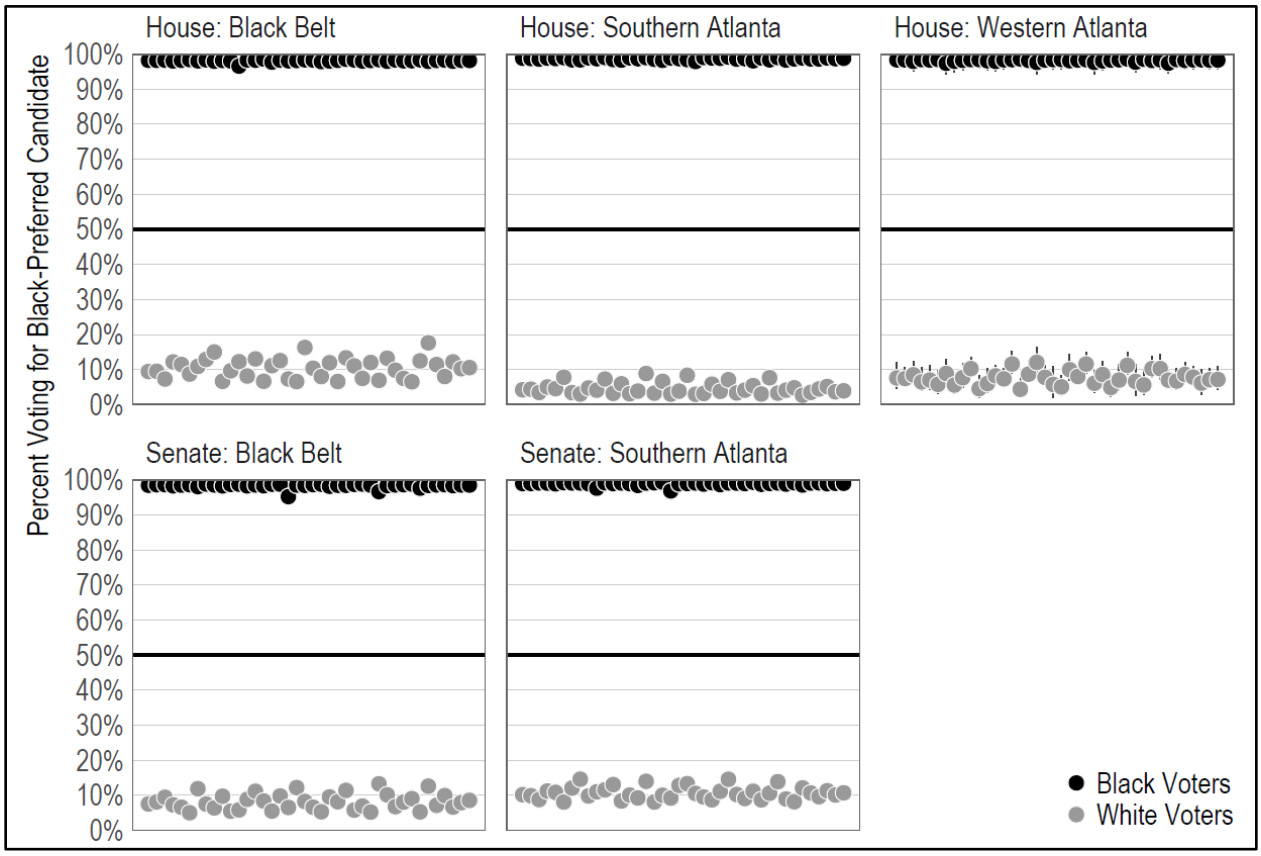
cohesively in support of a single candidate in each election; and, if a significant

majority of the group supported a single candidate, then identified that candidate as

WKH JURXS¶V FDQGLGDWH RI FKRLFH; and second, he compared the preferences of white

voters to the preferences of Black voters. Palmer Report ¶ 16.

87. Black voters in the focus areas are extremely cohesive, with a clear candidate of choice in all 40 elections Dr. Palmer examined.



Palmer Report ¶ 18, fig.2, tbls.1, 2, 3, 4, 5, & 6; Ex. 3 (Palmer Report) ¶ 6, fig.1, tbl.1; Ex. 7 (Alford Report) ¶ 8. 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).

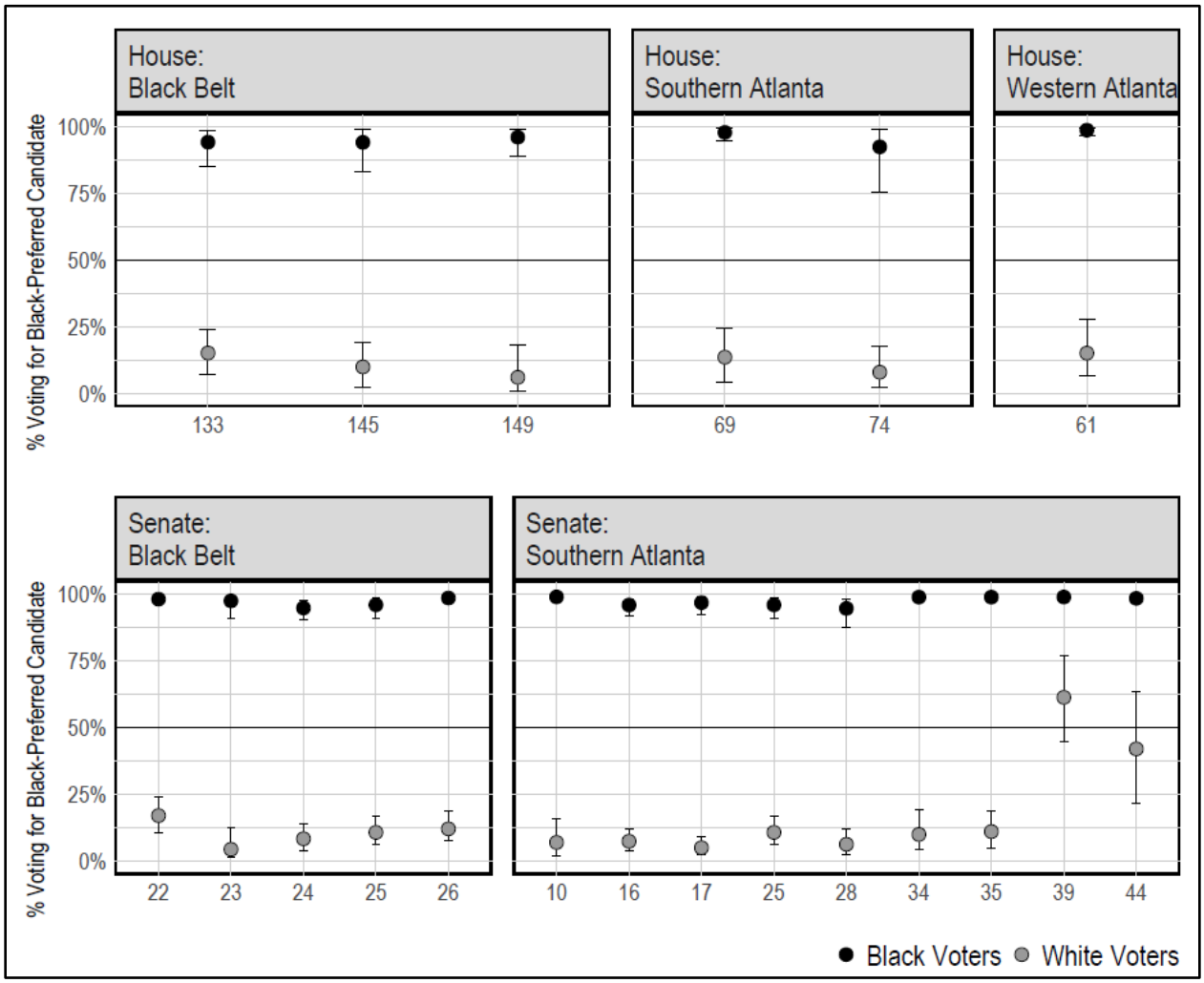
88. The estimates for support for Black preferred candidates by Black voters are all significantly above 50% across the five focus areas:

	Focus Area	Black Voters	White Voters
House	Black Belt	98.1%	10.4%
	Southern Atlanta	98.7%	4.6%
	Western Atlanta	98.2%	7.7%
Senate	Black Belt	98.4%	8.2%
	Southern Atlanta	98.9%	10.7%

Palmer Report ¶ 16, tbl.1.

89. On average across the five focus areas, Black voters supported their candidates of choice with 98% of the vote in the 40 elections Dr. Palmer examined. Palmer Report ¶ 18.

90. Black voters are also cohesive in each of the districts that comprise the focus areas and contain 15 or more precincts, with an average estimated level of support for Black-preferred candidates of at least 92.5%.



Palmer Report ¶ 19 & nn.14–15, fig.3, tbl.7.

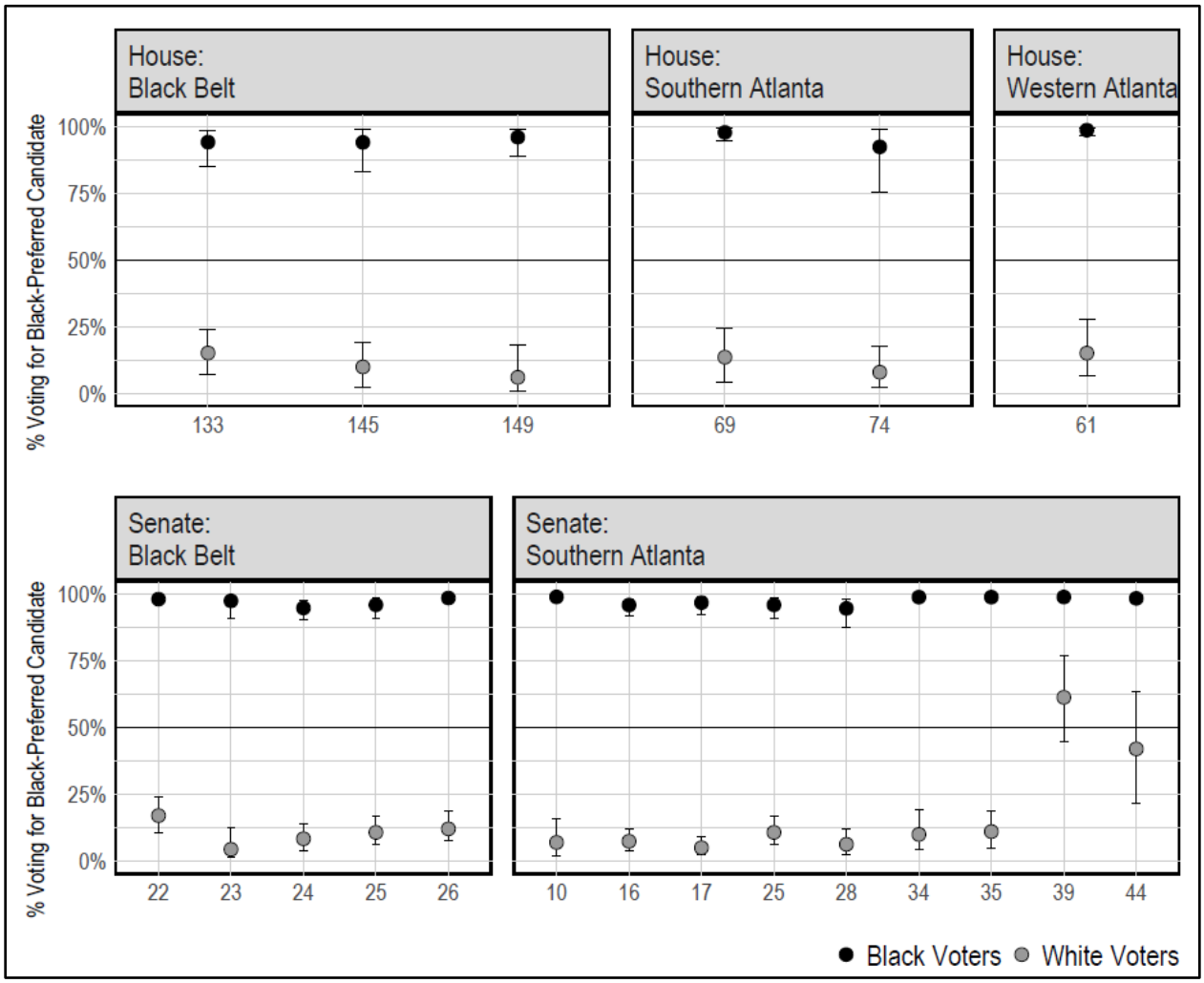
III. Third *Gingles* Precondition: Bloc Voting

91. White voters across the five focus areas are highly cohesive in voting in opposition to the Black-preferred candidate in every election Dr. Palmer

examined. Palmer Report ¶ 18, fig. 2, tbl. 1; Suppl. Palmer Report ¶ 6, fig. 1, tbl. 1; Alford Report Q R W L Q ³ W K D W ³ estimated white voter opposition to the Black preferred candidate is typically above 80 percent. D Q G L V ³ U H P D ; U N D E O V 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.)

92. On average, across the five focus areas, white voters supported Black-preferred candidates with only 8.3% of the vote, and in no election that Dr. Palmer examined did this estimate exceed 17%. Palmer Report ¶ 18.

93. Of the districts in the focus areas that contain 15 or more precincts, white voters are cohesive in voting in opposition to Black-preferred candidates in each House district and in 12 of 14 State Senate districts.



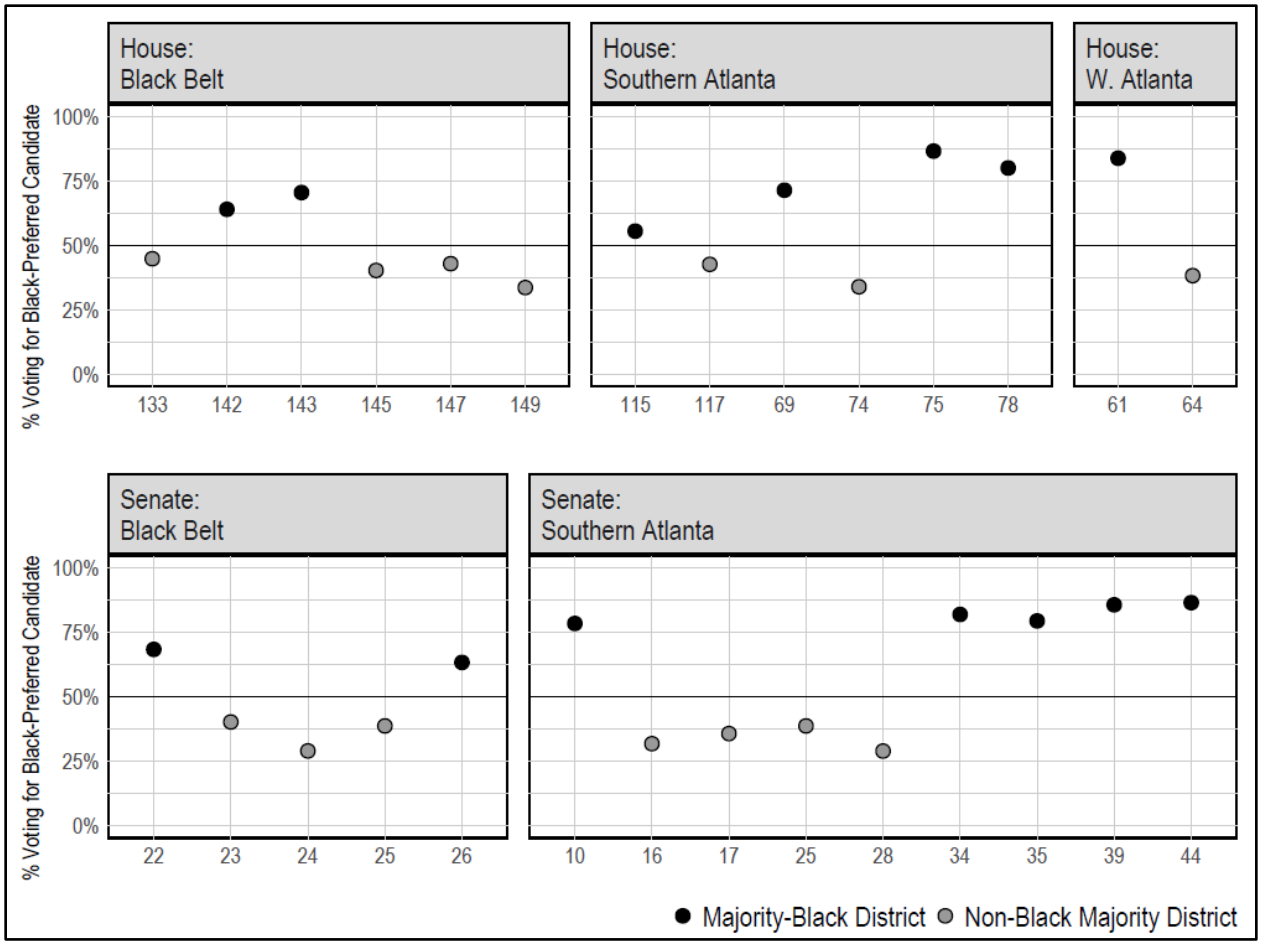
Palmer Report ¶ 19 & nn.14–15, fig.3, tbl.7.

94. On average, white-preferred candidates prevailed in the elections Dr. Palmer examined in two of the three focus areas; in the other three focus areas, Black-preferred candidates were able to prevail on average only due to the high

support for Black-preferred candidates in majority-Black districts. Palmer Report ¶ 20, tbl.8.

95. In the districts that comprise the five focus areas, Black-preferred candidates win almost every election in majority-Black districts but lose almost every election in non-majority-Black districts. Palmer Report ¶ 21.

96. On average, in the districts that comprise the five focus areas, Black-preferred candidates prevail only in majority-Black districts:



Palmer Report ¶ 21, fig.4.

97. These findings were confirmed by the endogenous election results from the 2022 general election, in which Black-preferred State Senate and House candidates were defeated in every majority-white district and elected in every majority-Black district in the focus areas. Suppl. Palmer Report ¶ 5, tbl.2.

IV. Totality of Circumstances

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

98. 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

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

100. 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.

101. 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.

102. 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.

103. 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 ³VODYHU\ E\ DQRWKHU´ Burton Report 24. DPH

104. Violence against Black Georgians surged after the First World War, ZLWK PDQ\ ZKLWH *HRUJLDQV KROGLQJ ³D GHHS Burton Report 25.

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

106. 7KHVH O\QFKLQJV ³VHUYHG DV D UHPLQGH 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 part L F L S D W H L Q W K H L U D Q F K L V H ´ Burton Report 26.

2. Pre-Voting Rights Act

107. ³ : K L O H * H R U J L D Z D V Q R W D Q D Q R P D O \ Q R V thorough in its efforts to deny or limit voting and officeholding by African- $ P H U L F D Q V D I W H U W K H & L Y L O Burton Report 10 (quoting Daughlin McDonald, A Voting Rights Odyssey: Black Enfranchisement in Georgia 2-3 (2003)).

108. $ O W K R X J K * H R U J L D ¶ V constitution abolished slavery, it limited the franchise to white citizens and barred Black Georgians from holding elected office. Burton Report 11.

109. 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 W K D W K D G W K H L Q W H Q W D Q G H I I H F W R I ³ U H Q G H L P S U R E D E O H Burton Report 12, 18.

110. * H R U J L D ¶ V 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.

111. Relatedly, Georgia prohibited Black voters from participating in Democratic Party primaries; because Georgia was a one-party Democratic state, the ³ZKLWH SULPDU\´ HIIHFWLYHO\ HOLPLQDWHG %ODF Burton Report 19.

112. 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 EHLQJ ³SHUVRQV RI JRRG FKDUD WKH GXWLHV DQG REOLJDWLRQV RI FLWL]HQVKLS Burton Report 20 (quoting McDonald, supra, at 41).

113. 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.

114. 7KHVH ODZV ³ZHUH GHYDVWDWLQJO\ HIIHFW 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 7%. Burton Report 22.

115. 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.

116. By contrast, less than 6% of white voters were disenfranchised by *HRUJLD¶V QHZ Burton Report 22. QO DZV

3. Post-Voting Rights Act

117. Congress enacted the Voting Rights Act of 1965 to address these discriminatory practices, and 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.

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

119. 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. QG WKHVH GLVSDULWLHV ZHUH GLUHFWO\ FRQWLQXHG HIIRUWV WR HQDFW SROLFLHV GHVLJQ

protections and suppress the rights of Black voters. Burton Report 36.

120. Between 1965 and 1980, nearly 30% of the U.S. Department of Justice-related changes under Section 5 were attributable to Georgia[2] more than any other state in the country. Burton Report 3, 39.

121. 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.

122. Throughout the first two decades of the 21st century, the State initiated investigations of Black candidates and organizations dedicated to protecting the franchise. 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.

123. After the U.S. Supreme Court effectively ended the Voting Rights Act preclearance requirements in Shelby County v. Holder, 570 U.S. 529 (2013), Georgia Z D V W K H R Q O \ I R U P H U S U H F O H D U D Q F H V W D W H W K D 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) Z L G H V S U H D G S R O O L Q J S O D F H Burton Report 48 ± 49.

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

125. 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.

126. 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 RI WKH Vting places. Burton Report 50.

127. *HRUJLD DOVR HQJDJHG LQ ³VWHPDWLF HIZD\V WKDW SDUWLFXODUO\ GLVDGYDQWDJHG PLQ aftermath of Shelby County. Burton Report 50.

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

129. Following significant increases in Black voter turnout, Georgia enacted 6HQDWH %LOO ³6%´, 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.

130. 7KH JURZWK RI *HRUJLD¶V QRQZKLWH SRSX and the corresponding increase in minority voting power, has Dr. Burton explained, ³SURYLGH>G@ D SRZHUIXO LQFHQWLYH IRU 5 local level to place hurdles in the path of minority citizens seeking to register and YRWH´ Burton Report 60.

4. Redistricting-Related Discrimination

131. *HRUJLD¶V Congressional districts were grievously malapportioned in the years preceding the enactment of the Voting Rights Act. Burton Report 32.

132. 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.

133. 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.

134. *HRUJLD¶V UHGLVWULFWLQJ SODQV ZHUH V 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.

135. 7KH $WODQWD PHWURSROLWDQ DUHD ZDV R efforts to suppress Black political influence through redistricting. For example, the U.S. 'HSDUWPHQW RI -XVWLFH UHMHFWHG *HRUJLD¶ 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, 8 6 DIILUPLQJ WKDW reapportionment plan violated Section 5 of Voting Rights Act).

136. The U.S. Department of Justice also rejected the congressional redistricting plan passed by Georgia following the 1980 census, which contained ZKLWH PDMRULWLHV LQ Congressional districts, even though *HRUJLD¶V *HRUJLD¶V SRSXODWLRQ Black population. Busbee v. Smith, 549 F. Supp. 494, 517 (D.D.C. 1982) (three-judge court) (denying preclearance

based on evLGHQFH WKDW *HRUJLD¶V UHGLVWULFWLQJ discrimination in violation of Voting Rights Act), *aff'd*, 459 U.S. 1166 (1983); Ex. 10 (1982 objection letter from U.S. 'HSDUWPHQW RI -XVWLFH DVV proposed [congressional] plan divides an apparently cohesive black community of)XOWRQ DQG 'H.DOE &RXQWLHV´

137. During the 1990 redistricting cycle, the U.S. Department of Justice WZLFH UHMHFWHG *HRUJLD¶V reapportionment plan before finally approving the third submission. Burton Report 42; Ex. 11 (1992 objection letter from U.S. 'HSDUWPHQW RI -XVWLFH DVVHUWLQJ WKDW ³WKH the electoral potential of large concentrations of black population in several areas of WKH VWDWH´.

138. During the 2000 redistricting cycle, the U.S. District Court for the 'LVWULFW RI &ROXPELD UHIXVHG WR SUHFOHDU *H which decreased the Black voting-age population in the districts surrounding Chatham, Albany, Dougherty, Calhoun, Macon, and Bibb counties. Burton Report 43.

139. 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

140. Dr. Palmer found strong evidence of racially polarized voting across the focus areas he examined and within the State Senate and House districts comprising them. Palmer Report ¶¶ 7, 18 ± 19; Suppl. Palmer Report ¶ 4; Alford Report 3 (³ As evident in Dr. Palmer [¶ V reports], the pattern of polarization is quite striking ´; Alford Dep. 44:8 ± 16, 45:10 ± ³ 7 K L V L V F O H D U O \ S R O D U the stability of it across time and across office and across geography is really pretty U H P D U N D E O H ´

141. Black voters in the focus areas are extremely cohesive, with a clear candidate of choice in all 40 elections Dr. Palmer examined. Palmer Report ¶ 18, fig.2, tbls.1, 2, 3, 4, 5, & 6; Suppl. Palmer Report ¶ 6, fig.1, tbl.1; Alford Report 3 ³ % O D F N Y R W H U V X S S R U W I R U W K H L U S U H I H U U H G F 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 - E D O O R W F R Q W H V W V O L N H 3 X E O L F 6 H U Y L

37:13± D J U H H L Q J Z L W K ' U 3 D O P H U ¶ V F R Q F O X V L R
politically cohesive).

142. The estimates for support for Black-preferred candidates by Black voters are all significantly above 50% across the five focus areas. Palmer Report ¶ 16, tbl.1.

143. On average, across the five focus areas, Black voters supported their candidates of choice with 98.5% of the vote in the 40 elections Dr. Palmer examined. Palmer Report ¶ 18.

144. Black voters are also cohesive in each of the districts that comprise the focus areas and contain 15 or more precincts, with an average estimated level of support for Black-preferred candidates of at least 92.5%. Palmer Report ¶ 19 & nn.14±15, fig.3, tbl.7.

145. White voters across the five focus areas are highly cohesive in voting in opposition to the Black-preferred candidate in every election Dr. Palmer examined. Palmer Report ¶ 18, fig.2, tbl.1; Suppl. Palmer Report ¶ 6, fig.1, tbl.1; Alford Report 3 (not L Q J V K D W ³ estimated white voter opposition to the Black-preferred candidate is typically above 80 percent D Q G L V ³ U H P D U N D E O V 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).

146. On average, across the five focus areas, white voters supported Black-preferred candidates with only 8.3% of the vote, and in no election that Dr. Palmer examined did this estimate exceed 17.7%. Palmer Report ¶ 18.

147. Of the districts in the focus areas that contain 15 or more precincts, white voters are cohesive in voting in opposition to Black-preferred candidates in each House district and in 12 of 14 State Senate districts. Palmer Report ¶ 19 & nn.14±15, fig. 3, tbl. 7.

2. Qualitative Evidence

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

149. $V 'U %XUWRQ H[SODLQHG ³[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 GRPLQDQFH GLG QRW FKDQJH´ %XUWRQ Report 57.

150. 1RWDEO\ WKH 'HPRFUDWLF 3DUW\¶V HPEUD DQG WKH 5HSXEOLFDQ 3DUW\¶V RSSRVLWLRQ WR was the catalyst of this political transformation, as WKH 'HPRFUDWLF 3DUW\¶V HPE race 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.

151. , Q W X U Q W K H ' H P R F U D W L F 3 D U W \ ¶ V H P E U 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.

152. The 1948 presidential election illustrated this phenomenon: South Carolina Governor J. Strom Thurmond mounted a third-party challenge to ' H P R F U D W L F 3 U H V L G H Q W + D U U \ 7 U X P D Q L Q S U R W H 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 V \ P E R O 7 K X U P R Q G ¶ V F D P S D L J Q H Q G H S ' H P R F U D W L Deep South states by winning South Carolina, Alabama, Mississippi, and Louisiana. Burton Report 58.

153. 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 * H R U J L D ¶ V H O H F W R U D O Y R W H V Burton Report 58.

154. Goldwater told a group of Republicans from Southern states that it was better for the Republican Party to forgo Southerners who opposed equal rights. Burton Report 59.

155. Four years later, George Wallace, another third-party presidential candidate who ran on a platform of vociferous opposition to civil rights legislation. Burton Report 58.

156. The effectiveness of what was called Richard Nixon's presidency had a profound impact on the all-white modern Republican Party in the South. Burton Report 59.

157. Matthew D. Lassiter, a historian of the Atlanta suburbs, observed that "the Republican platform at the center of Nixon's appeal to Middle American resentment toward the war demonstrators and black militants but consciously employed a color-blind discourse that deflected charges of racial demagoguery." Burton Report 59 (quoting Matthew D. Lassiter, The Silent Majority: Suburban Politics in the Sunbelt South 234 (2006)).

158. As Dr. Burton concluded, "white voters migrated from 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 F R Q V H U Y D W L Y H Z K L W H Y R W H U V ´ % X U W R Q Rep. ¶ 59.

159. Georgia is a flash point of this modern strategy: According to Dr. 3 H \ W R Q 0 F & U D U \ D Q K L V W R U L D Q I R U P H U O \ Z L W K 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 H O H F W R U D O W K U H D W W R W K H 5 H S X E O L F D Q 3 D U W \ 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 P L Q R U L W \ F L W L] H Q V V H H N L Q J W R U H J L V W H U D Q G 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)).

160. 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 ´ % X U W R Q Rep. ¶ 60.

161. ' U % X U W R Q I X U W K H U Q R W H G W K D W Z K L O H Republicans nominated a Black candidate[2] Herschel Walker, a former University of Georgia football legend[2] to challenge Senator Raphael Warnock in the 2022 general election for U.S. Senate[3]: D O N H U ¶ V Q R P L Q D W L R Q R Q O \ X Q G H U V F R U H V W K H 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[¶] ´ % X U W R Q 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)).

162. 7 K H V L J Q L I L F D Q W L P S D F W R I U D F H R Q * H R 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 D Q G 5 H S X E O L F D Q P H P E H U V R I * H R U J L D ¶ V F R Q J U H V one another on issues relating to civil rights, based on a report prepared by the NAACP. Burton Report 74 ± 75.

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

164. 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 YRWHUV ZKR EHOLHYHG WKDW UDFLVP ZDV ³QRW V 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

165. 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 *HRUJLDQV¶ ULJKW WR YRWH LQFOXGLQJ XQXVXD vote requirements. Burton Report 11–55.

166. Georgia deliberately malapportioned its legislative and congressional districts to dilute the votes of Black Georgians throughout the 20th century; in 1957, IRU H[DPSOH *HRUJLD¶V ³)LIWK &RQJUHVVLRQDO 'LVWULF consisting of Fulton, DeKalb, and Rockdale counties—was the second-most-populous congressional district in the United States. Burton Report 31.

167. 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.

168. 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 representatives in the voting district at issue. Burton Report 32-33.

169. Georgia also adopted a majority-Y R W H U H T X L U H P H Q W ³ Q X Y R W L Q J ´ D Q G V W D J J H U H 1970s to limit Black voting strength. V D Q Burton Report 34.

170. 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 W D W H ¶ V Y R W H U 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

171. Georgia has no history of candidate slating for legislative elections. ECF No. 91 at 211.

E. Senate Factor Five: Contemporary Socioeconomic Disparities

172. Dr. Loren Collingwood concluded that "[o]n every metric, Black Georgians are disadvantaged socioeconomically relative to Hispanic White Georgians," which has 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.

173. The data show a significant relationship between income 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.

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

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

176. 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.

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

178. Black adults are more likely than white adults to lack a high school diploma² 13.3% as compared to 9.4%. Collingwood Report 4.

179. Thirty-five percent of white Georgians over the age of 25 have obtained D EDFKHORU¶V GHJUHH RU KLJKHU FRPSDUHG WR age of 25. Collingwood Report 4.

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

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

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

183. 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.

184. 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

R I * H R U J L D ¶ V and of 1,957 precincts Dr. Collingwood analyzed, white voters had higher rates of turnout in 79.2% of precincts Collingwood Report 8–15.

185. Voter turnout in the Atlanta metropolitan area and the Black Belt is consistent with the overall statewide trend. Collingwood Report 16–23.

186. 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.

187. 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.

188. 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

189. Although explicit racial appeals are no longer commonplace, implicit rDFLDO DSSHDOV UHPDLQ FRPPRQ DQG FRQWULEXW Burton Report 62.

190. In the words of Princeton University political scientist Tali 0HQGHOEHUJ DQ LPSOLFLW UDFLDO DSSHDO ³ contains a recognizable but 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)).

191. Ian Haney López, the Chief Justice Earl Warren Professor of Public Law at Berkeley Law, described an LPSOLFLW UDFLDO coded racial appeal DSSHDO DSSHDO ZLWK ³RQH FRUH SRLQW RI WKH FRGH EHLQJ WR IR DSSHDO RI \HVWHU\HDU QR 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)).

192. Implicit racial appeals use coded language to activate racial thinking and prime racial attitudes among voters; such racial cues include phrases like

³ZHOIDUH TXHHQ´ ³OD]\´ ³FULPLQDO´ ³WDNLQJ D

³YRWHU IUDXG´ DQG ³OD´Z% XUWRQ 5HSRUW ±64. Burton Report 64.

193. 'U % XUWRQ H[SODLQV whether KDW dog whistle ³>or

communicated directly, became a hallmark´ of Georgia politics during the second half of the 20th century. Burton Report 66.

194. 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: ³If you lik H ZHOIDUH FKHDWHUV 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)).

195. 2QH RI *LQJULFK¶V FDPSDLJQ ³[W]e went after every OD WHU UXUDO VRXWKHUQ SUHMXGLFH ZH FRXOG WKLQN R Burton Report 65 (quoting Milbank, supra, at 66).

196. 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.

197. North Georgia Congresswoman Marjorie Taylor Greene has recorded videos stating D P R Q J R W K H U W K L Q J V W K D W % O D F N S H R S gang activity, drugs, lack of education, Planned Parenthood, and abortions. Burton Report 69.

198. * H R U J L D ¶ V P R 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 at a rally for his opponent, Stacey Abrams, with W K H D F F R P S D Q \ L Q J P H V V D J H Panther Party is a virulently racist and antisemitic organization whose leaders have encouraged violence against whites, Jews, and police officers. SHARE if you agree W K D W $ E U D P V D Q G W K H % O D F N 3 D Q W K H U V D U H 7 Report 67.

199. 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, ³ 7 K L V L V W K H P D J L F D O 1 H J U R 2 S U D to make my fellow Negro, Stacey Abrams, governor of Georgia´ % X U W R Q Report 68.

200. 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-a2f4-5c6c-88d6-9fe1db466492.html).

201. 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.

202. 'XULQJ WKDW HOHFWLRQ :DUQRFN¶V RSSR Loeffler, ZDV SKRWRJUDSKHG ZLWK &KHVWHUURRWKH .DX Klux Klan in North Georgia and a member of the neo-Nazi National Alliance, and GLG DQ LQWHUYLHZ RQ WKH 2QH $PHULFD 1HZV & pundit associated with white supremacy and Nazism. % XUWRQ 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).

203. During the 2022 gubernatorial election[2] a rematch between Governor Kemp and Stacey Abrams[2] Governor . H P S ¶ V F D P S D L J Q G H O L E H U D images of $ E U D P V ¶ V I D F H L Q F D P S D L J Q D G Y H U W L V H P H Q in an effort to create a darker, more menacing image Burton Report 70.

204. Governor Kemp repeatedly attacked Abrams in the general election as [3] X S V H W D´ Q [3] G P D G evoking the trope and dog whistle of the angry Black woman¶ [2] while his Republican primary opponent, former Senator David Perdue, said in a televised int H U Y L H Z W K D W $ E U D P V Z D V [3] G H P H D Q L Q J [3] J R E D F N Z K H U H V´ K H 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).

205. After Abrams planned a campaign rally in Forsyth County, in suburban $ W O D Q W D W K H 5 H S X E O L F D Q 3 D U W \ R I) R U V \ W K & R µ F D O O W R F R X W L J L Q ¶ J µ F R Q V H U Y D W L Y H V D Q G S D W U Q H L J K E R U K R R G V ¶´ D Q G D F F X V H G E R W K $ E U D P V

[3] G H V L J Q H U V R [radicalism] W U X K D W L Y H R X O G E H [3] F U R V V L Q J E R U ; G H U ´ 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).

206. Governor Kemp and other Georgia politicians have also spread the unsubstantiated specter of [3] voter fraud ´ in the Atlanta metropolitan area and other areas with large Black populations [2] 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.

207. 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. Esselstyn Report attach. C; Burton Report 73 – 74.

208. 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 K D G H Q J D J H G ´ Q U H G ´ L Q [3] illegal activity ´ W K H W Z R

women received harassing phone calls and death threats, often laced with racial V O X U V Z L W K V X J J H V W L R Q V W K D W W K H \ V K R X O G E H from the nearest lamppost and set on fire´ ² L Q ' U % X U W R Q ¶ V Z R U G V ³ Morphy 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).

209. During the 2022 election cycle, other political candidates² including Governor Kemp, Congressman Jody Hice (running for secretary of state), and State Senator Butch Miller (running for lieutenant governor)² continued to sound the drumbeat of voter fraud, with particular focus remaining on Fulton County. Burton Report 74.

210. Since the 2016 election, local, state, and national news outlets have repeatedly reported on instances of racial appeals in Georgia campaigns. Exs. 1 ± 23.

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

211. $W WKH WLPH RI WKH 9RWLQJ 5LJKWV $FW constituted 3% of the voting-age population, and yet the state had only three elected Black officials. Burton Report 35.

212. By 1980, Black Georgians comprised only 9% of county officials in the state, the vast majority of whom were elected from majority-Black districts or counties. Burton Report 41.

213. 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.

214. 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.

215. 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.

216. 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

217. Black Georgians face clear and significant disadvantages across a range of socioeconomic indicators, including education, employment, and health. Collingwood Report 3.

218. As Dr. Collingwood explained, "[i]t follows that the political system is relatively unresponsive to Black Georgians; otherwise, we would not observe such F O H D U G L V D G Y D Q W D J H V L Q K H D O W K F D U H H F R Q Report 4.

I. Senate Factor Nine: Absence of Justification for Enacted Legislative Plans

219. Mr. Esselstyn concluded that it is possible to create three additional majority-Black districts in the State Senate plan and five additional majority-Black districts in the House plan in accordance with traditional redistricting principles. Esselstyn Report ¶¶ 13, 63.

J. Proportionality

220. Of the 56 enacted State Senate districts, 14 are majority-Black in terms of the any-part Black voting-age population. Esselstyn Report ¶ 22 & n.6, attach. D.

221. Mr. Esselstyn prepared an illustrative State Senate plan with three additional majority-Black districts, for a total of 17 majority-Black State Senate districts. Esselstyn Report ¶ 27, fig.4, tbl.1.

222. Of the 180 enacted House districts, 49 are majority-Black in terms of the any-part Black voting-age population. Esselstyn Report ¶¶ 22 n.6, 45, attach. I.

223. Mr. Esselstyn prepared an illustrative House plan with five additional majority-Black districts, for a total of 54 majority-Black House districts. Esselstyn Report ¶ 48, fig.13, tbl.5

Dated March 20, 2023.

Respectfully submitted,

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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 Partial 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

ANNIE LOIS GRANT; QUENTIN T. HOWELL; ELROY TOLBERT; TRIANA ARNOLD JAMES; EUNICE SYKES; ELBERT SOLOMON; DEXTER WIMBISH; GARRETT REYNOLDS; JACQUELINE FAYE ARBUTHNOT; JACQUELYN BUSH; and MARY NELL CONNER,

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. 1:22-CV-00122-SCJ

PROPOSED ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

This Court has considered Plaintiffs' motion for partial summary judgment (ECF No. __), supporting authorities, the submissions of the other parties, and the evidence and pleadings of record and finds that the Georgia Senate Redistricting Act of 2021 ("SB 1EX") and the Georgia House of Representatives Redistricting Act of 2021 ("HB 1EX") violate Section 2 of the Voting Rights Act of 1965, 52 U.S.C. § 10301.

Specifically, the Court finds that:

1. The Black populations in the Atlanta metropolitan area and central Georgia Black Belt region are sufficiently large and geographically compact to comprise majorities of the voting-age population in at least two additional Georgia State Senate districts and at least four additional Georgia House of Representatives districts, *see Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986);

2. Black Georgians in these regions are politically cohesive, *see id.*;

3. white Georgians in these regions engage in bloc voting that enables them 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 legislative maps drawn by SB 1EX and HB 1EX—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 partial summary judgment in favor of Plaintiffs is appropriate, the motion is therefore **GRANTED**.

IT IS SO ORDERED, this _____ day of _____, 2023.

_____

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 Partial 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