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

COMMON CAUSE, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 1:22-CV-00090-ELB-SCJ-SDG
	)	
BRAD RAFFENSPERGER	)	
	)	
Defendant.	)	

PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF UNDISPUTED MATERIAL FACTS

Pursuant to L.R. 56.1(B)(2)(a)(2), Plaintiffs respond to Defendant Brad Raffensperger's Statement of Undisputed Material Facts in Support of Their Motion for Summary Judgment ("SMF") as follows:

1. The Georgia General Assembly held town hall meetings before redistricting maps were published in 2001, 2011, and 2021. Deposition of Joseph Bagley, Ph.D. [Doc. 82] (Bagley Dep.) 68:15-23, 73:25-74:9.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 1 on the basis that the 2001 and 2011 redistricting cycles are not relevant.

Undisputed that there were meetings held. Disputed to the extent the town halls held in 2001 and 2011 are irrelevant and thus not material to this Action. Disputed to the extent Defendant implies that any similarity between redistricting

town halls across cycles suggests that the town halls conducted in 2021 were reasonable or proper.

2. The town hall meetings in 2001, 2011, and 2021 were all "listening sessions" that took community comment without legislators responding to questions. Bagley Dep. 69:25-70:8, 73:25-74:9.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 2 on the basis that the 2001 and 2011 redistricting cycles are not relevant.

Undisputed that the "town hall meetings" took certain comments from the community, "without legislators responding to questions." Undisputed that the Georgia General Assembly held meetings in the months before the 2021 redistricting maps were published.

Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent that town halls held in 2001 and 2011 are irrelevant and thus not material to this Action. Disputed to the extent that Defendant implies that the public had an opportunity to provide meaningful comment. *See e.g.*, Ex.11,[1] Rich Dep. 183:16-185:12 (testifying that the Census data was released on September 16—over a month after the last town hall); Ex. 12, Bagley Dep.[2] 73:16-75:14 (the redistricting committee ignored public

[1] Unless otherwise stated herein, all references to "Ex.," refer to the Exhibits attached to the Declaration of Cassandra N. Love-Olivo ("Love Decl."), filed concurrently herewith. All terms not herein defined have the meanings ascribed to them in the Love Decl.

[2] Joseph Bagley, Ph.D. was retained by Plaintiffs Georgia State Conference of the NAACP, et al. in their case against the State of Georgia, et al., Case No. 1:21-cv-

concerns about the manner in which it conducted town halls, including the timing in relation to the availability of census data and draft maps); Ex. 32, Dugan Dep. 64:1-3 ("The chairs of both chambers both said we would much prefer to have all the data in everybody's hands before we have the town halls. . . .").

3. Redistricting has historically been conducted in special legislative sessions. Bagley Dep. Exs. 8-10.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 3 on the basis that former redistricting cycles are not relevant.

Undisputed that there were special sessions during the 2001 and 2011 election cycles related to redistricting. Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent Defendant implies that any similarity in timelines across multiple redistricting cycles suggests the timeline is reasonable or fair.

4. The timeline for consideration of redistricting plans in 2001, 2011, and 2021 was similar. Bagley Dep. 101:7-101:12, 105:11-15, 138:18-24.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the 2001 and 2011 redistricting cycles are not relevant. Plaintiffs further object to the terms "redistricting plans" and "similar" as vague and ambiguous.

Disputed. The Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent Defendant implies that any similarity in timelines across multiple redistricting cycles suggests the timeline

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5338-ELB-SCJ-SDG, pending in the United States District Court for the Northern District of Georgia.

is reasonable or fair. *See e.g.,* Ex. 12, Bagley Dep. 138:22-24 (testifying that the 2001 and 2011 cycles were also rushed insofar as "voters want more time with the publication of maps"). Disputed to the extent that 2001 and 2011 redistricting is irrelevant and thus not material to this action.

5. The 2021 Redistricting Process was "generally analogous" to the 2001 and 2011 cycle. Bagley Dep. 140:13-140:17.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 5 on the basis that the 2001 and 2011 redistricting cycles are not relevant. Plaintiff further objects to the term "generally analogous" as vague and ambiguous. Plaintiffs further object on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Among other changes, the 2021 Redistricting Process was the first post-Census redistricting to occur in Georgia following the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 59 (2013), and therefore differed in that Georgia was no longer subject to preclearance requirements. Disputed to the extent that Defendant implies that any similarity between the 2001, 2011, and/or 2021 Redistricting Processes indicate that the process or outcome of the 2021 Redistricting Process was reasonable, fair, or just. Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent that 2001 and 2011 redistricting is irrelevant and thus not material to this action.

6. The 2001, 2011, and 2021 Redistricting Processes were procedurally and substantively similar to each other. Bagley Dep. 86:25-87:19.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 6 on the basis that the 2001 and 2011 redistricting cycles are not relevant. Plaintiff further objects to the term "procedurally and substantively similar" as vague and ambiguous because Defendant does not explain these alleged "similarities". Plaintiffs further object on the basis that this Paragraph is misleading because it mischaracterizes the cited evidence.

Disputed. Among other changes, the 2021 Redistricting Process was the first post-Census redistricting to occur in Georgia following the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 59 (2013), and therefore differed in that Georgia was no longer subject to preclearance requirements. Disputed to the extent that Defendant implies that any similarity between the 2001, 2011, and 2021 Redistricting Processes indicate that the process or outcome of the 2021 Redistricting Process was reasonable, fair, or just. Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent that 2001 and 2011 redistricting is irrelevant and thus not material to this action.

7. The 2020 Census data showed that the increase in the percentage of Black voters in Georgia from 2010 to 2020 was slightly more than two percentage points statewide. Deposition of Moon Duchin, Ph.D. [Doc. 88] (Duchin Dep.) 48:5-12.

PLAINTIFFS' RESPONSE: Plaintiffs object to the phrase "slightly more" as vague and ambiguous.

Disputed to the extent that Dr. Duchin testified as to Black Voting Age Population changes according to the American Community Survey (not the Census) between 2010 and 2019—not 2020. Ex. 38, Duchin Dep. 46:22-48:12. Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent Defendant implies that there was only a slight demographic shift in Georgia's electorate. As Dr. Duchin identified in her expert report, while Black and Latino residents saw their populations grow in the time between the 2010 and 2020 Census, the non-Hispanic White population of Georgia decreased in the same time frame, meaning there was a larger increase of minority voters as a percent of all Georgia voters, such that the state was split within a tenth of a percent between white and nonwhite residents. Ex. 24, Duchin Rpt. ¶ 3.3.[3]

8. Following the delayed release of Census data in 2021, the Georgia General Assembly began working on redistricting maps ahead of the November 2021 special session. Bagley Dep. Ex. 5.

PLAINTIFFS' RESPONSE: Undisputed that certain members of the General Assembly began drafting maps in September 2021. Ex. 13, Wright Dep. 20:15-19. Disputed to the extent Defendant's characterization or contextualization

[3] Since filing her Rebuttal Report, Dr. Duchin has identified errata in her initial report—none of which changes any of her analysis, opinions, "ultimate findings [or] conclusions." She has since served a notice of errata, attached to the Love Decl. for full completeness. None of the changes described in the errata alter Plaintiffs' positions or claims herein. Ex. 37, Notice of Errata to Dr. Moon Duchin January 13, 2023 Expert Report, at 2.

differs from the exhibit cited, which speaks for itself. Disputed to the extent that Defendant implies that all members of the General Assembly began working on redistricting maps ahead of the November 2021 special session, that any of those draft maps became public, that any of those maps were the final enacted SB 2EX, or that the public had a meaningful opportunity to provide input or participate in the Redistricting Process.

9. Both chairs of the House and Senate committees with jurisdiction over redistricting sought to meet with all of their colleagues, both Republican and Democratic, to gain input on their areas of the state. Deposition of Gina Wright [Doc. 86] (Wright Dep.) 68:17-69:7.

PLAINTIFFS' RESPONSE: Plaintiffs object to the term "sought to" as vague and ambiguous. Plaintiffs further object Dir. Wright's testimony as it is inadmissible under FRE 602 and FRE 801, as the testimony is about conversations of which Dir. Wright lacks personal knowledge and is references multiple layers of hearsay.

Disputed. The record in this action is devoid of evidence that the chairs of the House and Senate committees with jurisdiction over redistricting sought to meet with *all* of their colleagues—either Republican and Democrat—and with respect to the minority party, the record supports that the Redistricting Process had a bias against them. Ex. 13, Wright Dep. 111:16-112:10, 115:8-11, 115:17-24, 158:4-21. Further disputed to the extent Defendant's characterization or contextualization differs from the exhibit cited, which speaks for itself. Defendant's citation states only that "both chairmen were meeting with members," Ex. 13, Wright Dep. 68:21-

24, but does not support the contention that both chairs sought to meet with "all of their colleagues, both Republican and Democratic, to gain input on their areas of the state," in addition to the testimony being inadmissible pursuant to the FRE.

10. For the first time in 2021, the General Assembly created a public comment portal to gather comments. Wright Dep. 252:20-253:4.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 10 on the basis that the term "public comment portal" as vague and ambiguous because it fails to clarify the parameters surrounding such a platform including when and where it was available, and what type of comments could be made.

Disputed to the extent Defendant's characterization or contextualization differs from the testimony cited, which speaks for itself. Disputed further to the extent that Defendant implies that this "public comment portal" allowed the public an opportunity to meaningfully provide input and/or engage in the Redistricting Process, as the online platform that the General Assembly made available at certain points during the 2021 Redistricting Process, included significant limitations, including the inability of the public to upload their own suggested maps and/or map boundaries. Ex. 8, Bagley Rpt. 78-79. Further disputed to the extent that Defendant implies that the comments made in this online platform were taken into account during the Redistricting Process, as the Redistricting Committees of the General Assembly ignored the vast majority of input from the public. Ex. 13, Wright Dep. 61:9-23 (stating that she did not "have time to spend a lot of time reading" the public portal comments; *see also* Ex. 24, Duchin Rpt., § 10.3 at 79-80 (describing community input).

11. After holding a committee education day with stakeholder presentations, the committees adopted guidelines to govern the map-drawing process. Deposition of John F. Kennedy [Doc. 83] (Kennedy Dep.) 161:1-4; Deposition of Bonnie Rich [Doc. 85] (Rich Dep.) 214:19-215:7; Bagley Dep. 89:9-18.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 11 on the basis that the terms "stakeholder" and "committee education day" are vague and ambiguous.

Undisputed that there was a meeting with presentations and that the Redistricting Committees adopted guidelines. Disputed to the extent Defendant implies that the committee integrated the information delivered by voting rights organizations into its redistricting guidelines. The committee testimony belies such an assertion. For example, then-speaker pro tempore Jan Jones testified that she did not remember receiving *any* training on redistricting and did not even attend the presentation held by the voting rights organizations. Ex. 33, Jones Dep. 29:3-10, 30:22-23, 31:1-3. Rep. Bonnie Rich also testified that she did not know if any of the recommendations made by the NAACP were incorporated and could not produce a single example of a suggestion that was enacted by the committee. Ex. 11, Rich Dep. 191:17-23.

12. To draw the congressional map, Ms. Wright worked with a group to finalize a plan based on an earlier draft plan from Sen. Kennedy. Wright Dep. 28:19-30:23.

PLAINTIFFS' RESPONSE: The Plaintiffs object to Paragraph 12 on the basis that the terms "worked with" and "group" as used by Defendant are vague and ambiguous.

Disputed. Defendant provides no evidence that the Kennedy map was the template for the final map, and the quote that cited does not say anything about the starting point for the enacted map. *See* Ex. 13, Wright Dep. 28:19-30:23. To the contrary, Dr. Duchin's report, for example, shows that there are significant changes between the Kennedy map and the enacted map. Ex. 24, Duchin Rpt. 10-12, 20, 21-24, 46, 69. Rep. Fleming could not recall anything about the Kennedy map, Rep. Rich stated that merely looking at the map was "the sum total" of her analysis, Sen. Dugan stated that he looked at the map and knew that "whatever product is going to look like at the end is not this one," *see e.g.,* Ex. 34, Fleming Dep. 81:9-15; Ex. 11, Rich Dep. 77:3-79:23; Ex. 32, Dugan Dep. 108:20-110:21. Because counsel for Dir. Wright and the legislators has represented in this action that no draft congressional maps or progress on the same were saved or preserved, and the bases for and evolution of the final congressional map remains an open issue of material fact. Further disputed to the extent Defendant's characterization or contextualization differs from the testimony cited, which speaks for itself.

13. Political considerations were key to drawing the congressional map, including placing portions of Cobb County into District 14 to increase political performance. Wright Dep. 111:16-112:10, 115:8-11, 115:17-24, 158:4-21.

PLAINTIFFS' RESPONSE: Disputed. The record supports that political considerations were not the basis for the map boundaries. *See e.g.*, Ex. 32, Dugan Dep. 29:20-22 ("We . . . interacted in a bipartisan manner as much as we possibly could."), 46:11-15 ("The senate committee was responsible for working together in a bipartisan manner to create and draft . . . and vote on and approve the congressional districts."), 101:15-17 (affirming that, to Sen. Dugan's knowledge, "partisan data" was not "relied on during the Redistricting Process."). The Senate Committee released a video on Nov. 4, 2021, in which the narrator refuted the idea that redistricting is "all political driven," suggesting instead that the Redistricting Process was designed to merely address population shifts. Ex. 35, Kennedy Dep. 199:13-17, 200:20-201:3.

It is disputed that such considerations were "key" for the map drawing process. Ex. 35, Kennedy Dep. 105:12-16 (affirming that, at best, "partisan consideration was *at times* a part of the process" (emphasis added)). Rather, the record supports that racial considerations were key to drawing the congressional map, including placing portions of Cobb County in CD 14. *See e.g.,* Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations were significant in the Redistricting Process); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence of intent to draw lines in a racially motivated way); Ex. 27, Duchin Supp. Rpt. ¶ 2.1 (finding that racial sorting was likely prioritized at the expense of political considerations). Further disputed to the extent Defendant's characterization or contextualization differs from the testimony cited, which speaks for itself.

14. Although racial data was available, the chairs of each committee focused on past election data to evaluate the partisan impact of the new plans while drawing with awareness of Republican political performance. Wright Dep. 55:25-56:7, 140:3-11, 140:17-19, 257:21-258:1, 258:2-14.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 14 on the basis that the term "past election data" as used by Defendant is vague and ambiguous. There are thousands of election outcomes that Defendant could be referencing, and Defendant does not clarify at what level (*i.e.*, congressional district, precinct, etc.) data was utilized.

Disputed. The chairs of each committee considered racial data when drafting the congressional map, and further used race as a proxy for partisanship where the legislature lacked partisan or past election result data (*i.e.,* at the block level). Ex. 13, Wright Dep. 140:5-11 ("when we build our precinct layer, we do allocate the election data to the block level, so we have that political data at that level. It's estimating, *based on the demographics in there*. . . ")(emphasis added); Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process; also explaining that block-level partisan data is unavailable to legislators while block-level racial data is available, heightening the likelihood that racial data is used to approximate partisanship); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion).

Further disputed to the extent Defendant's characterization or contextualization differs from the testimony cited, which speaks for itself. *See e.g.,* Ex. 13, Wright Dep. 55:25-56:13 ("Chairman Kennedy consider[ed]" race data "when making instructions about how to draw the lines…"). Nowhere in the evidence to which Defendant cites does Wright postulate that either committee chair "focused" on past election data nor that they were drawing with awareness of republican political performance.

15. When drawing redistricting plans, Ms. Wright never used tools that would color the draft maps by racial themes. Wright Dep. 259:24-260:8.

PLAINTIFFS' RESPONSE: Plaintiffs object to the terms "tools" and "color" in Paragraph 15 as vague and ambiguous. For purposes of Plaintiffs' response to this statement, Plaintiffs will construe "tools" to mean features of the Maptitude software program and "color" to mean using an algorithm to overlay certain colors related to certain racial ratios on a draft map.

Undisputed that Dir. Wright stated she did not use tools that would *color the draft maps* by racial themes. Disputed to the extent Defendant's characterization or contextualization differs from the testimony cited, which speaks for itself. Disputed to the extent Defendant implies that Dir. Wright did not use racial data tools. For example, Dir. Wright testified not only that "data related to the race of the populations" could be "projected onto the screen," but that such data was in fact projected "[m]ost of the time," allowing legislators to view in real time how boundary shifts affected the racial composition of congressional districts. Ex. 13,

Wright Dep. 55:25-56:7 ("We usually projected all the race data that we would use on the reports . . ."); *see also* Ex. 36, O'Connor Dep. 74:11-17 (stating that population, voting age, and racial demographic data is displayed on the screen).

16. The office included estimated election returns at the Census block level, so political data was available across all layers of geography. Wright Dep. 140:3-11.

PLAINTIFFS' RESPONSE: Disputed. Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Dir. Wright stated that, "*based on registered voter demographics*," data can be *estimated* at the block level, Ex. 13, Wright Dep. 140:3-11 (emphasis added), thus political data was *not* available across all layers of geography. Rather, estimates predicated on voter demographics were available at certain levels, suggesting racial data was used as a proxy to estimate partisanship at the block level. *See e.g.,* Ex. 13, Wright Dep. 140:5-11; Ex. 28, Strangia Dep. 94:23-95:5 103:3-23, 117:13-119:25 (testifying that racial data exists at the block level whereas the political makeup of a block is "not accurate").

17. The past election data was displayed on the screen with other data. Wright Dep. 140:17-19.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the phrases "past election data" and "other data" are vague and ambiguous.

Undisputed that certain past election data, where available, may have been displayed on the screen at certain times while maps were being drafted. Disputed to the extent Defendant's characterization and contextualization differs from the

testimony cited, which speaks for itself. Further disputed to the extent Defendant implies past election data was the only relevant data shown on the screen. To the contrary, Dir. Wright affirmatively stated that racial data was also available and displayed on the screen during the map drawing process. Ex. 13, Wright Dep. 116:10-21. She further testified that as congressional district boundary lines were changes, the racial data would update in real time for members to consider. Ex. 13, Wright Dep. 116:23-118:25.

18. The chairs evaluated the political performance of draft districts with political goals. Wright Dep. 178:5-22, 191:25-193:3, 206:13-207:16.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the phrase "political goals" is vague and ambiguous. For purposes of responding, Plaintiffs will construe "political goals" to mean objectives that favor partisan advantage with respect to the majority party.

Disputed. The chairs of each committee considered racial data when drafting the congressional map, and further used race as a proxy for partisanship where the legislature lacked partisan or past election result data (*i.e.*, at the block level). Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion); Ex. 24, Duchin Rpt. 75 (finding split precincts at the border of CD 6 "show significant racial disparity, consistent with an effort to diminish the electoral effectiveness of CD 6 for Black voters."). Further disputed to the extent Defendant's characterization or

contextualization differs from the testimony cited, which speaks for itself. *See e.g.*, Ex. 13, Wright Dep. 55:25-56:13 ("Chairman Kennedy consider[ed]" race data "when making instructions about how to draw the lines…"). Further disputed because the evidence to which Defendant cites does not demonstrate that the chairs of the committees focused on past election data to evaluate the partisan impact of the new plans while drawing with awareness of republican political performance.

19. The chairs and Ms. Wright also consulted with counsel about compliance with the Voting Rights Act. Wright Dep. 92:8-20.

PLAINTIFFS' RESPONSE: Undisputed that Dir. Wright testified that she consulted with counsel about compliance with the Voting Rights Act ("VRA"). Disputed to the extent Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Disputed to the extent that, Defendant's counsel in this action is the same counsel that allegedly advised Defendant and the Redistricting Committees on SB 2EX. *See e.g.,* Ex. 34, Fleming Dep. 15:18-16:2. Due to Defendant's assertion of attorney-client privilege over conversations during the Redistricting Process, including any advisement on the Congressional maps or the VRA, Plaintiffs are unable to meaningfully assess the validity or extent of any alleged consultation with counsel with respect to SB 2EX's adherence, or lack thereof, to the VRA.

20. After releasing draft maps, legislators received public comment at multiple committee meetings. Bagley Dep. 91:8-15, 93:8-10, 94:21-23, 95:14-96:6, 100:8-11, 111:24-112:1, 113:6-10, 115:4-11.

PLAINTIFFS' RESPONSE: Undisputed that legislators held public hearings.

Disputed to the extent Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Further disputed to the extent that Defendant uses these allegations as a basis to claim that the Redistricting Process was interactive and informed by public comment. *See e.g.,* Ex. 12, Bagley Dep. 96:1-6 (Noting that the timeline was far too rushed according to a great number of people."). SB 2EX was introduced on November 17, 2021, and passed through both the Senate and House within 5 days. Rep. Jones herself admitted "[w]e probably didn't have too many hearings." Ex. 33, Jones Dep. 94:3-95:19.

21. Democratic leadership presented alternative plans for Congress, state Senate, and state House that were considered in committee meetings. Bagley Dep. 109:15-110:1 (Congress), 112:18-22 (Congress), 93:2-13 (Senate), 93:21-94:5 (House).

PLAINTIFFS' RESPONSE: Plaintiffs object to the term "considered" as vague and ambiguous.

Disputed. Defendant wrongfully suggests that the Georgia Democratic Caucus map was meaningfully considered—it was not. Rep. Jones testified: (i) she could not recall a single conversation with *any* legislators about the draft map, "including the Democrat Caucus that released it"; (ii) she did not evaluate the maps designed by Democrats enough to "come to any conclusions" about their compliance with redistricting criteria; and (iii) she could not recall any communications from her constituents regarding the maps released by the Democratic Caucus. Ex. 33,

Jones Dep. 91:21-92:14. Though Rep. Fleming asserted for litigation purposes that the House Committee "considered" the Democratic Caucus congressional map proposal, the record is devoid of any contemporaneous evidence the committee actually did so, and Rep. Fleming himself could not recall its most basic features such as whether it contained more Black-majority districts, a key VRA consideration. Ex. 34, Fleming Dep. 90:23-91:10.

22. After the plans were considered, they were passed by party-line votes in each committee before passing almost completely along party lines on the floor of the Senate and House. Bagley Dep. 93:14-20, 105:16-106:1, 113:22-114:4, 115:12-17, 117:2-4.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the phrase "plans" is vague and ambiguous. For purposes of responding, Plaintiffs will construe "plans" to mean SB 2EX.

Undisputed that the SB 2EX passed out of committee and that all Republican committee members voted in favor of, and all Democrat committee members voted against the bill in committee. Disputed to the extent that Defendant implies the partisan split suggests that the alleged partisan motivations underlying the map caused the split. Because not one Black representative or senator voted in favor of the SB 2EX, the vote count at least equally implicates that racially discriminatory content in the bill was the basis for the members' votes. *See* Ex. 5, Georgia General

Assembly, SB 2EX Status History & Votes;[4] Ex. 6, Georgia General Assembly, Passage, SB 2EX;[5] Ex. 8, Bagley Rpt., at 76-78, 81-82.

23. Dr. Bagley agreed that he couldn't say the 2021 redistricting maps were an abuse of power by Republicans. Bagley Dep. 63:25-64:3.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 23 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Dr. Bagley testified that he found evidence supporting a finding of Republicans' abuse of power. Ex. 12, Bagley Dep. 63:18-24, 64:19-20.

24. Dr. Duchin said that she was not "criticizing Georgia for not doing enough" in her report. Duchin Dep. 81:25-82:16.

PLAINTIFFS' RESPONSE: Disputed. Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Dr. Duchin does not state whether she is criticizing Georgia for "not doing enough." Ex. 38, Duchin Dep. 82:12-24. The questioner asked Dr. Duchin whether a methodological section of her report criticizes "Georgia for not drawing enough majority minority districts," to which she replies, "I wouldn't say so…what I'm trying to do here is create a framework for measurement. And then, as I say, in the section we've already reviewed, providing maps that demonstrate that it's possible to get more opportunity while being very respectful to [redistricting principles]. But

[4] Available at https://www.legis.ga.gov/legislation/60895.
[5] Available at https://www.legis.ga.gov/legislation/60895.

I don't think it amounts to criticism per se…my goal is to…give a framework and offer alternatives not to criticize per se." Ex. 38, Duchin Dep. 82:12-83:3. Her answer is therefore a nuanced commentary on how she sees her role: evaluate ways in which the enacted map needlessly restricted minority opportunity and demonstrate that better alternatives were available without compromising other traditional redistricting factors.

Further disputed to the extent that Defendant implies that Dr. Duchin did not find evidence of racial gerrymandering by the General Assembly. She did. Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion); Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and thereby the dilution of Black and Latino votes, figured into the map drawing process and resulted in the final maps).

25. The enacted congressional map resulted in five districts that elected Black- and Latino- preferred candidates. Report of Moon Duchin, attached as Ex. A (Duchin Report), ¶¶ 4.1, 6.3.

PLAINTIFFS' RESPONSE: Undisputed that five Black Democratic congressional candidates were elected under the new map.

Disputed that such an outcome makes the map constitutional. To the contrary, Dr. Duchin found evidence that the legislature weaponized racial data to dilute Black and Latino voting power. Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion); Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and thereby the dilution of Black and Latino votes, figured into the map drawing process and

resulted in the final maps). Dr. Duchin generated thousands of alternatives with less racial packing and cracking that better complied with traditional redistricting principles and provided Republicans' an equal or better electoral outlook. Ex. 27, Duchin Supp. Rpt. ¶ 2.1. This is compelling evidence that the enacted map prioritized racial sorting at the expense of partisan considerations.

Further disputed insofar as Defendant implies the new map *created* minority-opportunity districts, when Moon shows that the number of minority-performing districts was *reduced* from six to five, despite the growth of Georgia's minority population and shrinkage of its white population. Ex. 24, Duchin Rpt. ¶ 4.1.

26. The enacted congressional map reduced the number of split counties from the 2011 plan. Duchin Rpt., ¶¶ 4.1, 6.3.

PLAINTIFFS' RESPONSE: Undisputed to the extent that the number of splits in the 2011 congressional map included 16 county splits and the newly enacted map had 15. Disputed that such an outcome makes the map constitutional. To the contrary, the maps were racially gerrymandered. Ex. 24, Duchin Rpt. ¶ 2 ("CD 13 has been kept highly packed, which is cemented in the enacted plan through race-conscious county splitting"). Alternative maps were available that would have resulted in fewer county splits than the enacted map with more majority-minority districts and superior compactness scores by all metrics. *See* Ex. 24, Duchin Rpt. ¶ 7.1.

27. The representative for Common Cause was asked directly by counsel for Defendant in her deposition whether the organization would be willing to produce a list of its members living in the challenged districts

and purportedly injured by the maps. Deposition of Audra [sic] Dennis [Doc. 90] (Dennis Dep.) 77:19-79:23.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 27 on the basis that the cited question was outside the scope of the noticed topics for the deposition and thus any testimony thereafter cannot bind the organization. *See cf. McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 241 F. Supp. 3d 737, 752 (N.D. Tex. 2017) ("[Q]uestions and answers exceeding the scope of the 30(b)(6) notice will not bind the [organization].").

Disputed. Defendant's characterization or contextualization differs from the deposition transcript cited, which speaks for itself. Further disputed to the extent that Defendant implies that the deponent refused to produce a membership list. In fact, when Defendant's counsel referenced a membership list (which was not ever sought by counsel prior to or after the cited deposition), Plaintiffs' counsel stated: "If we're going to discuss that, I think we should go off the record and we can confer. . ." Ex. 19, Dennis Dep. 79:18-21. Thereafter, counsel for the parties conferred off the record and Plaintiffs' counsel indicated that Defendant should formally seek such a list if he so desired, but he never did so.

28. Counsel for Common Cause instructed the witness not to answer on the basis of an associational privilege objection. Dennis Dep. 77:19-79:23.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 28 on the basis that the cited question was outside the scope of the noticed topics for the deposition and thus any testimony thereafter cannot bind the organization. *See cf. McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 241 F. Supp. 3d 737,

752 (N.D. Tex. 2017) ("[Q]uestions and answers exceeding the scope of the 30(b)(6) notice will not bind the [organization].").

Disputed. Defendant's characterization or contextualization differs from the deposition transcript cited, which speaks for itself. Further disputed to the extent that Defendant implies that the deponent refused to produce a membership list. In fact, when Defendant's counsel referenced a membership list (which was not ever sought by counsel prior to or after the cited deposition), Plaintiffs' counsel stated: "If we're going to discuss that, I think we should go off the record and we can confer . . ." Ex. 19, Dennis Dep. 79:18-21. Thereafter, counsel for the parties conferred off the record and Plaintiffs' counsel indicated that Defendant should formally seek such a list if he so desired, but Defendant's counsel never did so.

29. Common Cause never identified any individual in discovery or otherwise that might provide the requisite evidence to show the organization's associational standing. Dennis Dep. 77:19-79:23.

Plaintiffs' Response: Plaintiffs object to Paragraph 29 on the basis that the phrase "the requisite evidence" is vague and ambiguous.

Disputed. Plaintiffs have given sworn testimony from both the Organizational Plaintiffs—Common Cause and the League of Women Voters—that they each have members who reside within each Challenged District. Thus, Plaintiffs have provided the requisite evidence to establish the Organizational Plaintiffs have associational standing. Ex. 22, Bolen Dep. 59:2-6; Ex. 19, Dennis Dep. 77:16-25, 78:1-3, 93:15-16, 101:22-10; Ex. 20, Dennis Decl. ¶¶ 2-5, 17, 19; Ex. 23, Bolen Decl. ¶¶ 4-8, 20-23. Disputed to the extent Defendant's characterization or contextualization differs

from the deposition transcript cited, which speaks for itself. Disputed further to the extent Defendant implies that Plaintiffs are required to reveal their membership list in order to demonstrate associational standing. *See Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1161 (11th Cir. 2008) (recognizing that the Circuit does not "require[] that the organizational name names" where the harm is prospective); *see also Doe v. Stincer*, 175 F.3d 879, 882, 884 (11th Cir. 1999) (ruling that the Circuit "h[as] never held that a party suing as a representative must specifically name the individual on whose behalf the suit is brought").

30. The League of Women Voters (LWV) representative was directed by her counsel not to identify any members who were impacted by the 2021 redistricting plans and never identified any individuals in discovery. Deposition of Julie Bolen [Doc. 91] (Bolen Dep.) 59:13-60:25.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the cited question was outside the scope of the noticed topics for the deposition and thus any testimony thereafter cannot bind the organization. *See cf. McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 241 F. Supp. 3d 737, 752 (N.D. Tex. 2017) ("[Q]uestions and answers exceeding the scope of the 30(b)(6) notice will not bind the [organization].").

Disputed. Plaintiffs have given sworn testimony from both the Organizational Plaintiffs—Common Cause and the League of Women Voters—that they each have members who reside within each Challenged District. Thus, Plaintiffs have provided the requisite evidence to establish the Organizational Plaintiffs associational

standing. Ex. 22, Bolen Dep. 59:2-6; Ex. 19, Dennis Dep. 77:16-25, 78:1-3, 93:15-16, 101:22-10; Ex. 20, Dennis Decl. ¶¶ 2-5, 17, 19; Ex. 23, Bolen Decl. ¶¶ 4-8, 20-23. Disputed to the extent Defendant's characterization or contextualization differs from the deposition transcript cited, which speaks for itself. Disputed further to the extent that the League's 30(b)(6) representative, Julie Bolen, testified in her deposition that she is a member of the League, and she resides in Congressional District 6. Ex. 22, Bolen Dep. 42:13. Disputed further to the extent Defendant implies that Plaintiffs are required to reveal their membership list in order to demonstrate associational standing. *See Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1161 (11th Cir. 2008) (recognizing that the Circuit does not "require[] that the organizational name names" where the harm is prospective); *see also Doe v. Stincer*, 175 F.3d 879, 882, 884 (11th Cir. 1999) (ruling that the Circuit "h[as] never held that a party suing as a representative must specifically name the individual on whose behalf the suit is brought").

31. While LWV looked at ZIP codes and some addresses of members, LWV could not state if it was sure if there were any current members in any of the challenged districts. Bolen Dep. 58:22-59:12.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the cited question was outside the scope of the noticed topics for the deposition and thus any testimony thereafter cannot bind the organization. *See cf. McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 241 F. Supp. 3d 737, 752 (N.D. Tex. 2017) ("[Q]uestions and answers exceeding the scope of the 30(b)(6) notice will not bind the [organization].").

Disputed. Defendant's characterization or contextualization differs from the deposition transcript cited, which speaks for itself. Ms. Bolen testified that the League has members in each of the Challenged Districts. In her deposition, Ms. Bolen stated that the League "ha[s] a membership chair who has a roster of all the places where our members live." Ex. 22, Bolen Dep. 39:3-6. As a result, the League can overlay those addresses "against the congressional maps to see if [the League] ha[s] members in all of those districts." *Id.* In particular, the League used its "membership roster to look at . . . ZIP codes that were part of the three disputed districts." Ex. 22, Bolen Dep. 59:2-4. Based on its analysis, the League confirmed that is "ha[s] members in every district." Ex. 22, Bolen Dep. 59:9. More specifically, the League confirmed in its deposition that "[they] have members in every district." Disputed further to the extent that the League's 30(b)(6) representative, Julie Bolen, testified in her deposition that she is a member of the League, and she resides in Challenged District 6. *See* Ex. 22, Bolen Dep. 6:5-13; 13:16-20; Ex. 23, Bolen Decl. ¶¶ 8-11.

32. The evidence from legislative depositions demonstrates that legislators were concerned about political performance, not race. Wright Dep. 55:25-56:7, 111:16-112:10, 115:8-11, 115:17-24, 140:3-11, 140:17-19, 158:4-21, 257:21-258:1, 258:2-14.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 32 on the basis that the term "concerned" is vague and ambiguous. For purposes of Plaintiffs' response to this statement, Plaintiffs will construe Defendant's use of "concerned" to mean that partisan sorting was utilized in the Redistricting Process and race was

not. Plaintiffs further object to Paragraph 32 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization or contextualization differs from the deposition transcript cited, which speaks for itself. Legislators considered racial data when drafting the congressional map, and further used race as a proxy for partisanship where the legislature lacked partisan or past election result data (*i.e.,* at the block level). *See e.g.,* Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process and that racial data at the most discrete unit is available where partisan data is not); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion); Ex. 13, Wright Dep. 55:25-56:13 ("Chairman Kennedy consider[ed]" race data "when making instructions about how to draw the lines…"), 140:5-11 (showing that use of political data implicates the use of racial data: "when we build our precinct layer, we do allocate the election data to the block level, so we have that political data at that level. It's estimating, based on the demographics in there. . ."). The Plaintiffs further object to Paragraph 32 on the basis that it is misleading as it mischaracterizes the cited evidence. Specifically, the evidence cited by Defendant does not demonstrate that legislators were "concerned about political performance, not race." The record supports that political considerations were not the basis for the map boundaries. *See* Ex. 32, Dugan Dep. 29:20-22 ("We . . . interacted in a bipartisan manner as much as we possibly could."), 46:11-15 ("The senate committee was responsible for working together in a bipartisan manner to

create and draft . . . and vote on and approve the congressional districts."), 101:15-17 (affirming that, to Sen. Dugan's knowledge, "partisan data" was not "relied on during the Redistricting Process."). For instance, the Senate Committee released a video on Nov. 4, 2021, in which the narrator denied that the process "is all political driven," instead arguing that the lines must be redrawn to account for population shifts. Ex. 35, Kennedy Dep. 199: 13-17, 200:20-201:3. Rather, the record supports that legislators were concerned with race, and race was key to drawing the congressional map. *See e.g.,* Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations were significant in the Redistricting Process); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence of intent to draw lines in a racially motivated way); Ex. 35, Kennedy Dep. 76:9-12 (affirming that communities of interest share an interest based on race); Ex. 32, Dugan Dep. 92:11-93:2 (admitting that the Senate Committee considered and discussed Georgia's "increased diversity," including, but not limited to, "various races and ethnicities").

33. Legislators had political data at all levels of geography and regularly evaluated the political performance of districts as they were drawn. Wright Dep. 140:3-11, 178:5-22, 191:25-193:3, 206:13-207:16.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 33 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. The Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Defendant mischaracterizes the testimony of their own witness, who is only discussing specific House and Senate Districts in the cited testimony—not congressional.

Plaintiffs further object to Paragraph 33 on the basis that it is misleading as it mischaracterizes the cited evidence. Dir. Wright testified that the precinct level was the smallest unit at which "political performance" data was available, and that block level demographic data was employed to try to approximate that missing electoral data. Ex. 13, Wright Dep. 140:5-11 ("when we build our precinct layer, we do allocate the election data to the block level, so we have that political data at that level. It's estimating, *based on the demographics in there*. . . ") (emphasis added); *See also* Ex. 28, Strangia Dep. 94:23-95:5 (explaining that a method is used to estimate block level electoral data because electoral data is only available down to the precinct level).

Additionally, the chairs of each committee considered racial data when drafting the congressional map, and further used race as a proxy for partisanship where the legislature lacked partisan or past election result data (*i.e.*, at the block level). Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process; also explaining that block-level partisan data is unavailable to legislators while block-level racial data is available, heightening the likelihood that racial data is used to approximate partisanship); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion).

34. Plaintiffs asked about Congressional District 6 (Wright Dep. 111:16-125:25, 130:22-133:17; Kennedy Dep. 176:3-179:13), Congressional District 13 (Wright Dep. 168:22-171:7, 175:5-11; Kennedy Dep. 180:1-

181:21), and Congressional District 14 (Wright Dep. 152:9-158:21; Kennedy Dep. 182:2-188:1; Rich Dep. 135:13-141:9, 142:3-16).

PLAINTIFFS' RESPONSE: Undisputed that throughout the discovery process, Plaintiffs have asked deponents questions relating to the Challenged Districts. Disputed to the extent that Defendant's characterization and contextualization differs from the testimony, which speaks for itself.

35. For Districts 6, 13, and 14, Ms. Wright or the chairs testified either unequivocally about race-neutral or political goals for the creation of each district or did not testify as to any racial motivations. *Id*.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 35 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself**.** Nowhere in her testimony did Ms. Wright state that she, or the chairs, had unequivocally race-neutral or political goals for the creation of each district. In fact, in her testimony, she said that her office would project race data on the screen during meetings with legislators, therefore race was at least one consideration used in the development of the redistricting plan. Ex. 13, Wright Dep. 56:4-7. She also suggested that political data on the block level is approximated using racial data. Ex. 13, Wright Dep. 140:5-11 (showing that use of political data implicates the use of racial data: "when we build our precinct layer, we do allocate the election data to the block level, so we have that political data at that level. It's estimating, based on the demographics in there. . ."). Senator Kennedy

also testified that race "*has to be*" considered in the Redistricting Process to comply with the VRA. Ex. 35, Kennedy Dep. 67:21-68:2.

36. Dr. Bagley found no "obvious discriminatory intent." Bagley Dep. 27:22-28:1.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 36 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Disputed to the extent that Defendant uses these allegations as a basis to claim that Dr. Bagley found no evidence of discriminatory intent. Dr. Bagley found the contrary, that there was evidence supporting a finding of discriminatory intent. *See e.g.,* Ex. 12, Bagley Dep. 26:4-21. Further, disputed to the extent Dr. Bagley testified that he found evidence supporting a finding of Republicans' abuse of power. *See* Ex. 12, Bagley Dep. 63:18-24, 64:19-20.

37. When While Dr. Bagley analyzed the second, third, fourth, and fifth *Arlington Heights* factors, he did not opine that discriminatory intent was the driving factor of the legislature or that there was discriminatory intent in the legislative process of redistricting. Bagley Report, p. 7; Bagley Dep. 27:22-28:1; 123:3-14.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 37 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony and Expert Report, which speak for themselves. Further disputed to the

extent that Defendant's cited evidence does not support the stated contention. Rather, Dr. Bagley explicitly testified that the redistricting plans were adopted with discriminatory intent. Ex. 12, Bagley Dep. 26:4-21. And Defendant's counsel admitted in questioning that Dr. Bagley's opinion was that discriminatory intent occurred in the Redistricting Process. *See e.g.,* Ex. 12, Bagley Dep. 123:3-8 ("[I]t's [Dr. Bagley's] opinion that someone could find that there was discriminatory intent in the process.").

38. Dr. Bagley did not opine that the specific sequence of events leading to the adoption of the plans was discriminatory, but only that it would "lend credence" to a finding of discriminatory intent. Bagley Dep. 122:14-123:1.

PLAINTIFFS' RESPONSE: Undisputed that Bagley found that the sequence of events lends credence to a finding of discriminatory intent.

Disputed to the extent that the Defendant's characterization and contextualization differs from the Dr. Bagley's testimony, which speaks for itself. Disputed to the extent Defendant implies Dr. Bagley was required to reach the ultimate conclusion that the legislature acted with discriminatory intent. Dr. Bagley provides evidence that the new maps "were drawn . . . to deny voters of color their equitable right to participate in the political process" upon which a factfinder could base such a conclusion on. Ex. 8, Bagley Rpt. 86.

39. Dr. Bagley did not opine that the Georgia district lines were drawn to deny voters of color their equitable right to participate in the political

process, although he believed a court could make that finding. Bagley Dep. 133:11-20.

Plaintiffs' Response: Plaintiffs further object to Paragraph 39 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. Dr. Bagley testified that in his opinion there is enough evidence for the Court to make the final determination that Georgia district lines were drawn in a discriminatory way to deny minority voters their equitable right to participate in the political process. *See* Ex. 8, Bagley Rpt. 86. Dr. Bagley found evidence that race was considered in making decisions and changing boundaries in the new Congressional map, such that the ultimate factfinder could support a determination that the Challenged Districts were racially gerrymandered.

40. Dr. Bagley found no procedural or substantive departures in the 2021 Redistricting Process when compared to the 2001 and 2011 processes and agreed that the process was not rushed when compared to those prior cycles. Bagley Dep. 86:25-87:19, 138:18-24.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 40 on the basis that the phrase "procedural and substantive departures" is vague and ambiguous. Plaintiffs further object on the grounds that the 2001 and 2011 redistricting cycles are not relevant. Plaintiffs further object to Paragraph 40 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. The 2001 and 2011 redistricting processes are irrelevant and thus not material to this Action. Any similarities between redistricting cycles do not

provide evidence that the 2021 redistricting process or newly enacted maps were fair or proper.

Further disputed to the extent that Defendant's characterization and contextualization differs from the testimony, which speaks for itself. Further disputed to the extent Defendant implies that Dr. Bagley concluded the process was "not rushed." To the contrary, Dr. Bagley testified that the comparison to the 2001 and 2011 processes "would indicate to [him] that [the process] was also rushed in those cycles," Ex. 12, Bagley Dep. 138:22-24. He also found that there was a departure from the committees' objectives and guidelines, *Id.* at 86:25-87:19, and that there were problems in "[f]ailing to account for public comment after the maps are published, [and] refusal to allow access to the map drawing process and rushing the process in general…" *Id.* at 138:2-5.

41. Dr. Bagley found one contemporary comment that concerned him, when Chair Rich stated in committee that there was not a "magic formula" for compliance with the Voting Rights Act. Bagley Dep. 110:2-111:23, 121:11-122:13.

PLAINTIFFS' RESPONSE: Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. Undisputed that Dr. Bagley affirmed his concern regarding Chair Rich's comment that there was not a "magic formula" for VRA compliance. Disputed to the extent Defendant implies that this comment was the only comment that concerned him. *See* Ex. 12, Bagley Dep. 122:6-10.

42. Dr. McCrary did not offer any opinion about discriminatory intent or about the design of the districts. Deposition of Peyton McCrary [Doc. 84] (McCrary Dep.) 48:19-21.

PLAINTIFFS' RESPONSE: Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. Disputed to the extent that Defendant implies that Dr. McCrary[6] did not find evidence of discriminatory intent, or any issues with the design of the districts. Ex. 30, McCrary Rpt. 92-93 ("Assuming that the plaintiffs meet the *Gingles* preconditions, it is my expert opinion that the Senate Factors I have examined weigh in favor of finding that Georgia has violated Section 2 of the Voting Rights Act.").

43. Dr. Duchin did not offer any opinion about discriminatory intent, but rather offered that she could provide "evidence that might be persuasive in terms of discerning intent" but that she could not "make hard and fast conclusions about what was in the hearts and minds of the legislators or . . . staff." Duchin Dep. 34:11-22; *see also* Duchin Dep. 34:23-35:6.

PLAINTIFFS' RESPONSE: Plaintiffs further object to Paragraph 43 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. Dr. Duchin offered several remarks explicitly stating that the legislature drew the enacted districts with racially discriminatory

[6] Peyton McCrary was retained by Plaintiffs Georgia State Conference of the NAACP, et al. in their case against the State of Georgia, et al., Case No. 1:21-cv-5338-ELB-SCJ-SDG, pending in the United States District Court for the Northern District of Georgia.

intent. *See e.g.,* Ex. 24, Duchin Rpt. ¶ 2 ("an examination of recent electoral history shows that the enacted plans at all three levels are conspicuously uncompetitive, which has been fueled by acutely race-conscious moves in the recent redistricting"…"CD 13 has been kept highly packed, which is cemented in the enacted plan through race-conscious county splitting"), ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process); Ex. 38, Duchin Dep. 34:3-7 ("what I observe in the plans is consistent with a pursuit of partisan ends but one in which race was clearly used to achieve those ends"), 35:4-12 ("offering evidence that the Court can use to make a determination of intent"), 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion).

44. None of Plaintiffs' experts besides Dr. Duchin provided opinions about district boundaries. McCrary Dep. 48:9-21; Bagley Dep. 28:19-29:6; Report of Benjamin Schneer, attached as Ex. B (Schneer Report), ¶¶ 5-8.

PLAINTIFFS' RESPONSE: Plaintiffs further object to Paragraph 44 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization or contextualization differs from the testimony cited. Dr. Bagley stated in his deposition that he did not evaluate district boundaries "the way that a political scientist would," which is a given, since Dr. Bagley is a historian, not a political scientist. Ex. 12, Bagley Dep. 28:19-29:6; Ex. 8, Bagley Rpt. 42 (summarizing town hall participants' concerns about packing and cracking). Second, Dr. McCrary also delivers his expert opinion on district

boundaries. For example, in his report, Dr. McCrary argues that Lucy McBath's district boundaries were "realigned beyond recognition," which has relevance to this action in the context of Georgia's history of obstructing minority political participation that McCrary details. Ex. 30, McCrary Rpt. ¶ 107. Last, Dr. Schneer[7] also opined about the enacted district boundaries. For example, he conducted an analysis of the enacted district boundaries in comparison to the illustrative maps that Dr. Duchin drew, finding that the Duchin map "offer[ed] an increased ability to elect the minority-referred candidates in the districts [he was] asked to examine." Ex. 31, Schneer Rpt. ¶ 7.

45. Dr. Duchin's report evaluates core retention and "racial swaps" only for Congressional Districts 6 and 14, not District 13. Duchin Report, ¶ 10.1.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 45 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differ from the expert report cited, which speaks for itself. Defendant misstates and mischaracterizes Dr. Duchin's Expert Report, in which Dr. Duchin states that she will "examine the core retention, or conversely, the population displacement, of *the districts in the enacted plan*…[and] will pay particular attention to the tendency to use racially imbalanced transfers of population in rebalancing *the districts*." Ex. 24, Duchin Rpt.,

[7] Benjamin Schneer was retained by Plaintiffs Georgia State Conference of the NAACP, et al. in their case against the State of Georgia, et al., Case No. 1:21-cv-5338-ELB-SCJ-SDG, pending in the United States District Court for the Northern District of Georgia.

¶ 10.1 (emphasis added). In discussing the districts in the enacted plan, she evaluated Congressional District 13, and nowhere in the report did Dr. Duchin state that she excluded Congressional District 13 in her evaluation of core retention and racial swaps. *See generally* Ex. 24, Duchin Rpt. Further, Dr. Duchin affirmatively states that the enacted map cemented the "packed" function of Congressional District 13 in the Defendant's redistricting scheme, which necessitates racial swapping. Ex. 24, Duchin Rpt. ¶ 2 ("CD 13 has been kept highly packed, which is cemented in the enacted plan through race-conscious county splitting").

46. Dr. Duchin acknowledges that there were "many other considerations" in play besides core retention. Duchin Dep. 171:22-172:7.

PLAINTIFFS' RESPONSE: Undisputed that core retention was not the only factor, and that the low level of core retention is consistent with a redistricting strategy that prioritized racial sorting: the legislature prioritized racial gerrymandering at the expense of core retention and other traditional redistricting criteria.

47. Dr. Duchin acknowledged that racial population shifts are not conclusive evidence of racial predominance and that she could not say that the various metrics she reviewed showed racial predominance. Duchin Dep. 180:18-23, 198:6-21 (Congress), 200:11-20 (Congress).

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 47 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. In her deposition, Dr. Duchin explains that it is

reasonable to conclude that "race-inflected decision making predominated over TDPs" and that she presented evidence in her Report that "shows that decisions with a marked racial character were made in ways that made traditional principles worse." Ex. 38, Duchin Dep. 182:5-14.

She provides several other claims in support of a finding of racial predominance in the Redistricting Process. *See e.g.,* Ex. 24, Duchin Rpt. ¶ 2 ("an examination of recent electoral history shows that the enacted plans at all three levels are conspicuously uncompetitive, which has been fueled by acutely race-conscious moves in the recent redistricting"… "CD 13 has been kept highly packed, which is cemented in the enacted plan through race-conscious county splitting"), ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process); Ex. 38, Duchin Dep. 34:3-7 ("what I observe in the plans is consistent with a pursuit of partisan ends but one in which race was clearly used to achieve those ends"), 35:4-12 ("offering evidence that the Court can use to make a determination of intent"), 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion).

48. Dr. Duchin provides information about what she says are racial splits of counties in Congressional Districts 2, 3, 4, 6, 8, 10, 13, and 14 and what she says are racial splits of precincts in Congressional Districts 4, 6, 10, and 11. Duchin Rpt., ¶ 10.2.1; Duchin Dep. 167:5-15, 174:9-14, 186:17-23.

PLAINTIFFS' RESPONSE: Undisputed that Dr. Duchin provides information about racial splits in several counties and precincts. Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Further disputed to the extent Defendant implies that the racial splits are limited to those listed here.

49. Dr. Duchin did not look at the political data behind those county splits on the congressional plan. Duchin Report, ¶ 10.2.1; Duchin Dep. 167:5-15, 174:9-14, 186:17-23.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 49 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. In Defendant's last citation, Dr. Duchin was asked whether her analysis of possible partisan explanations for racial sorting was housed in her rebuttal report. *See* Ex. 38, Duchin Dep. 184:15-186-23. She responded no—her original report analyzed precinct splits, which are especially probative of partisan intent, since precincts "are the level at which votes are reported. And so if you're splitting precincts… you cannot claim to be confidently doing so on the basis of election history." *Id*. The citation Defendant chose thus completely misstates the substance of the quote by focusing on county splits.

Furthermore, Dr. Duchin pointed to specific appendix tables she created in her original Expert Report, including Table 55: "All county splits in the enacted Congressional map," which contains the very political data that Defendant here tries

to claim Dr. Duchin did not look at. Ex. 38, Duchin Dep. 167:9-15; Ex. 24, Duchin Rpt. Table 55.

Dated this 26th day of April 2023.

Respectfully submitted,

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Northern District of Georgia Local Rule 7.1 Certification

Pursuant to N.D. Ga. L.R. 7.1(D), I, Jack Genberg, certify that this brief was prepared using Times New Roman 14 pt. font, which is one of the fonts and point selections approved by the Court in L.R. 5.1(B).

Dated this 26th day of April, 2023

Respectfully submitted,

/s/ Jack Genberg
Jack Genberg (Ga. Bar 144076)