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**VIA CM/ECF FILING**

Hon. Adalberto Jordan  
Hon. Jill A. Pryor  
Hon. Federico A. Moreno  
United States Court of Appeals  
for the Eleventh Circuit  
56 Forsyth Street N.W.  
Atlanta, GA 30303

Re: Response to Plaintiffs' Letter Briefs in  
*Alpha Phi Alpha v. Secretary of State of Georgia*, No. 24-10230  
*Pendergrass v. Secretary of State of Georgia*, No. 24-10231  
*Grant v. Secretary of State of Georgia*, No. 24-10241

Dear Judges Jordan, Pryor, and Moreno,

The Secretary submits this combined response to Plaintiffs' multiple post-argument letter briefs.

It should go without saying that, where the district court is due deference upon deference, *see* APA.Secretary.Br.14, Plaintiffs' post-argument, unrequested, fact-intensive letter-briefs cannot undermine the district court's conclusion. Regardless, Plaintiffs continue to blatantly misrepresent the law, what the district court ordered, and the underlying facts.

As to the law. Where there is a violation, § 2 mandates a certain number of majority-minority *districts*, not a particular (and highly subjective) number of minority voters *in* majority-minority districts. Plaintiffs' theory is that the remedial maps somehow "fail[] to include injured voters" in the new majority-black districts, ACLU.Letter.2, and

at argument they repeatedly asserted that a complete remedy requires every injured voter to be placed in a majority-black district. *See also* APA Doc. 372 at 71:13–72:19, 80:22–81:9, 87:23–88:19, 91:9–15, 93:1–2; Grant.App.Br.11–12. That is objectively false, and it is telling that in their six briefs, three rounds of oral argument, and new letter briefs, Plaintiffs never even *address* the basic point that no individual, not even “a § 2 plaintiff[,] has the right to be placed in a majority-minority district once a violation of the statute is shown.” *Shaw v. Hunt*, 517 U.S. 899, 917 n.9 (1996). The “complete” remedy here is a *map* with the correct number of compact majority-black districts, not a map with the most black voters in majority-black districts.

And in a situation like this one, where the State created the maximum possible number of compact, majority-black districts in the region, it is impossible for the map to violate § 2 because no plaintiff could even in principle prove the first *Gingles* prerequisite. The Court need go no further in affirming the district court.

But Plaintiffs’ errors do not stop there, as they continue to misrepresent what the district court ordered. They pretend that the district court ordered the State to produce new majority-black districts within the boundaries of the previous, challenged district lines. Elias.Letter.1. They go so far as to declare that the Secretary’s use of the term “region” is equivalent to their use of the term “vote dilution area.” *Id.* Not so. The district court explicitly rejected their assertion that the State was required to create new districts within or around the area of the previous districts: “Rather, the Court set forth geographic guidance by specifying the addition of Black-majority districts in the following regions: south-metro Atlanta; west-metro Atlanta, and in-and-around Macon-Bibb.” APA Doc. 375 at 9–10; *see also* Grant Doc. 333 at 8; Pendergrass Doc. 334 at 8. The district court’s use of particular district numbers in its order was simply “to distinguish areas of the State where Plaintiffs satisfied their burden of proving Section 2 violations and those areas where they failed to carry their burden.” *Id.* at 9.

Plaintiffs’ continued misrepresentation of the district court’s order infects their statistical sleights-of-hand in their post-argument letters.

Their statistical argument is based on voters in their challenged *districts*, not the relevant *region*. Attached as an appendix to this letter are statistics including districts from the broader regions, rather than the gerrymandered “vote dilution zones” Plaintiffs rely upon. Of course, the Court need not—should not—delve into any of this. The Secretary provides these numbers just to demonstrate that Plaintiffs are engaged in “the sort of statistical manipulation” that the Supreme Court has rejected. *Brnovich v. Democratic Nat’l Comm.*, 594 U.S. 647, 681 (2021).

No § 2 case permits or requires an analysis of whether a map with the correct number of compact majority-minority districts placed a certain number of minority voters into those districts, and it would be impossible to apply such a standard. Plaintiffs want more black voters in majority-black districts because the geography here makes that beneficial to their partisan ends, but in most cases Plaintiffs would want the opposite (i.e., *fewer* minority voters in majority-minority districts). Section 2 does not require this sort of arbitrary political analysis.<sup>1</sup>

Sincerely,

/s/ Bryan P. Tyson

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<sup>1</sup> The *Pendergrass* and *Grant* Plaintiffs acknowledge that there is no precise vehicle for their unrequested, post-argument, supplemental briefs, and so do not abide by the 350-word limit for 28(j) letters. Accordingly, the Secretary has also not limited his response to 350 words, especially because this single letter responds to Plaintiffs’ multiple letters across the appeals.

## Appendix A<sup>2</sup>

### State Senate

There are 16 districts that have all or part of their boundaries south of I-20 (*i.e.*, south-metro Atlanta) in the 2021 and 2023 Senate plans:

Districts 006, 010, 016, 017, 025, 028, 034, 035, 036, 038, 039, 041, 042, 043, 044, 055.

Using that 16-district area as a rough proxy for the south-metro Atlanta region (as opposed to Plaintiffs' "vote dilution zone"), 91,373 BVAP individuals who were not in a majority-black district under the 2021 Senate plan are in a majority-black district under the 2023 Senate plan.

In terms of percentage, in the 2021 plan, 20.08% of BVAP in the 16-district region was not in a majority-black district (242,394). But on the 2023 plan, that percentage drops to 12.44% of black voters (151,021). Out of the 1,214,211 BVAP population in that region, 1,063,190 are in majority-black districts on the 2023 Senate plan—87.56% of BVAP.

### State House

Applying same logic as with the Senate (districts with portions south of I-20), there are 51 districts in a region using 2023 district numbers:

038, 039, 040, 041, 042, 055, 056, 057, 059, 060, 061, 062, 063, 064, 065, 066, 067, 068, 069, 070, 073, 074, 075, 076, 077, 078, 079, 081, 082, 083, 084, 085, 086, 087, 088, 089, 090, 091, 092, 093, 094, 095, 101, 113, 114, 115, 116, 117, 118, 135, 136.

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<sup>2</sup> All of the statistics in this section are in the record and are derived from comparing the relevant population numbers for the listed districts located for the Senate at APA Doc. 356-5 at 3 (the 2023 Senate districts) and APA Doc. 356-4 at 3 (the 2021 Senate districts), for the House at APA Doc. 356-22 at 2–8 (the 2023 House districts) and APA Doc. 356-21 at 2–8 (the 2021 House districts), and for Congress at Pendergrass Doc. 318-2 at 1 (the 2023 congressional districts) and Pendergrass Doc. 318-3 at 1 (the 2021 congressional districts).

In that area, 59,237 BVAP individuals who were not in a majority-black district in the 2021 House plan are in a majority-black district on the 2023 House plan. Under the 2021 map, 17.84 % of BVAP in the region was not in a majority-black district (218,999). But on the 2023 plan, that percentage drops to 13.21 % of BVAP. Out of the 1,209,779 BVAP population in the region, 1,050,017 are in majority-black districts on the 2023 House plan—meaning that 86.79% of BVAP in the south and west metro Atlanta regions are in a majority-black House district under the 2023 plan.

## **Congress**

Congressional districts in metro Atlanta consist of districts that have at least a portion of their boundaries in the Atlanta area. Those eight districts are: 003, 004, 005, 006, 007, 011, 013, 014.

In the eight-district area, 215,330 BVAP individuals who were not in a majority-Black district on total population in the 2021 plan are in a majority-Black district on total population in the 2023 plan.

Under the 2021 plan, 35.28% of BVAP in the eight-district region was not in a majority-black district (552,267). But under the 2023 plan in that same eight-district region, that percentage drops to 21.78% of BVAP (336,937). Thus, out of the 1,546,836 BVAP population in the region, 1,209,899 are in majority-Black districts, meaning that 78.22% of BVAP in the metro Atlanta region is in a majority-black Congressional district on the 2023 plan.