

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

PAMELIA DWIGHT, an individual;
BENJAMIN DOTSON, an individual;
MARION WARREN, an individual;
AMANDA HOLLOWELL, an individual;
DESTINEE HATCHER, an individual; and
WILBERT MAYNOR, an individual,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his
official capacity as Secretary of State of
the State of Georgia,

Defendant.

Civil Action No. 1:18-cv-2869-JPB

**PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT**

I. Introduction

Defendant's Opposition to Plaintiffs' Motion for Partial Summary Judgment reveals his fundamental misunderstanding of the legal standards applicable to Section 2 claims, and offers only irrelevant, misleading, and unsupported conclusions that fail to refute any of Plaintiffs' evidence establishing the three *Gingles* preconditions.

First, Defendant presents a false choice between having a "majority-minority" district in CD 12 or in CD 2, omitting the fact that CD 2 is not now and has never been a majority-minority district, and has always been able to elect the African-American voters' candidate of choice with black voting age population ("BVAP") levels lower than those presented in Plaintiffs' illustrative plans.

Second, despite admitting that the evidence "show[s] significant polarization in the elections" in central and southeast Georgia, Def.'s Response in Opp. to Pls.' Mot. for Partial Summ. J. ("Opp."), Dkt. 71, at 5, Defendant invents a requirement that Plaintiffs must disprove the role of partisanship in polarized voting patterns as part of their burden in establishing the second and third *Gingles* preconditions (*Gingles* 2 and 3). But courts in this circuit have made clear that non-racial explanations for racial bloc voting are only relevant, if at all, to the court's assessment of the totality of the circumstances, which occurs during the second

phase of a Section 2 analysis. *See Nipper v. Smith*, 39 F.3d 1494, 1524 n.60 (11th Cir. 1994). And even then, it is Defendant’s burden to demonstrate that a non-racial factor caused the polarized voting patterns. *Id.* Defendant’s argument on this score is thus wholly irrelevant to the *Gingles* preconditions at issue in Plaintiffs’ Motion.

For these reasons, Plaintiffs request that the Court grant their motion for partial summary judgment on the three *Gingles* preconditions.

II. Plaintiffs Have Satisfied *Gingles* 1

Defendant cannot dispute that Georgia’s 2011 congressional districting plan (“2011 Plan”) cracked the African-American population in CD 12, *see* Decl. of William S. Cooper (“Cooper Report”), Dkt. 66-4, ¶ 59, fig. 13, which impaired the ability of African Americans in that district to elect their candidates of choice. Nor can he dispute the fact that voters in CD 2 consistently elected the African-American candidate of choice, Sanford Bishop, in each election since 1992. Pls.’ Resp. to Def.’s Stat. of Undisputed Material Facts (“Pls.’ SUMF Resp.”), Dkt. 72-1, ¶ 17; Expert Report of Gina H. Wright (“Wright Report”), Dkt. 66-5, at 5. Plaintiffs’ illustrative plans not only create a new majority-minority CD 12—reuniting African-American communities in CD 12 that were dispersed under the 2011 Plan—they return the African-American population of CD 2 to just above its previous levels under the benchmark 2005 plan, create districts that are well within the norm of

objective compactness scores, and adhere to traditional redistricting principles. Mem. in Supp. of Pls.’ Mot. for Partial Summ. J. (“Pls.’ Mem.”), Dkt. 66-1, at 12–19. Defendant’s Opposition fails to identify, much less apply, the appropriate legal standards for assessing compliance with *Gingles* 1.

A. Plaintiffs’ Illustrative Plans Create a New Majority-Minority District in CD 12, While Still Allowing African Americans in CD 2 to Elect Their Preferred Candidates

Defendant claims erroneously that each of Plaintiffs’ illustrative plans engages in a “swap of [a] majority-African-American district[]” from CD 2 to CD 12. Opp. at 9. This assertion at best ignores, and at worst conceals, the applicable standards and authorities.

In fact, no “swap” will occur because CD 2 was never a majority-African-American district to begin with. A district is “majority-minority” for purposes of *Gingles* 1 only if the minority group constitutes more than half of the district’s voting age population. Pls.’ Mem. at 10–12; Pls.’ Opp. to Def.’s Mot. for Summ. J. (“Pls.’ Opp.”), Dkt. 72, at 18–19; *Negron v. City of Miami Beach, Fla.*, 113 F.3d 1563, 1568–69 (11th Cir. 1997). It is undisputed that CD 2’s voting-age population is currently less than 50% African American. Cooper Report Ex. G-2, Dkt. 66-4, at Page 80 of 306; Wright Report Ex. 5, Dkt. 66-5, at Page 39 of 65. Defendant argues that more than 50% of the *registered* voters in CD 2 are African American, Opp. at

9 n.3, yet fails to identify a single case that relied on that metric in conducting a *Gingles* 1 analysis.¹ To the contrary, courts have made clear that the voting-age population is the proper statistic as it includes voting-eligible individuals “who can readily become voters through the simple step of registering to vote.” *Negron*, 113 F.3d at 1569.²

Furthermore, the assertion that African Americans in CD 2 would lose the ability to elect candidates of their choice defies reality. It is undisputed that in elections prior to 2011, CD 2 consistently elected the African-American-preferred candidate, *see* Pls.’ SUMF Resp. ¶ 17; Wright Rep. at 5, even with a BVAP *lower*

¹ Even if it were proper to consider voter registration numbers in this analysis, Defendant is incorrect that Plaintiffs’ Illustrative Plans would reduce the African-American community to less than 50% of registered voters in CD 2. Under Illustrative Plans 1, 2, and 3, African Americans respectively constitute 50.93%, 51.10%, and 50.85% of the registered voters in CD 2. Cooper Report, Exs. H-5, I-5, Dkt. 66-4, at Pages 100, 112 of 306; Second Decl. of William S. Cooper (“Second Cooper Report”), Ex. B-5, Dkt. 66-6, at Page 32 of 40. While Ms. Wright asserts that these percentages are lower, her method of calculating this figure is deeply flawed. She assumes that *none* of the registered voters in Georgia whose race is “unknown”—almost 10% of the state’s registered voters—are African American. Second Cooper Report ¶ 15. This “preposterous” assumption greatly underestimates the number of African-American registered voters in CD 2. *Id.*; Third Declaration of Abha Khanna (“Third Khanna Decl.”), Ex. 1, Deposition of William S. Cooper, Dkt. 60, at 157:18–24.

² In fact, in his motion to dismiss, Defendant expressly recognized that voting age population was the proper metric in this analysis, arguing that Plaintiffs’ claim failed because they had not “allege[d] that it is possible to draw CD 12 in a manner that increases the African-American **voting age population** above 50%.” Def.’s Br. in Supp. of Mot. to Dismiss, Dkt. 13-1, at 6–7.

than that in Plaintiffs' illustrative CD 2s. *See* Wright Rep. Exs. 2B, 2C; Cooper Report Exs. G-2 & H-2, Dkt. 66-4, at Pages 91, 103 of 306; Second Cooper Report Ex. B-2, Dkt. 66-6, at Page 21 of 40. Thus, none of the illustrative plans would in any way risk depriving African Americans in CD 2 the opportunity to continue to elect their candidate of choice.

These facts reveal the absurdity of Defendant's assertion that Georgia had to increase CD 2's African-American population in 2011 to avoid retrogression. For one, that argument contradicts the testimony of Defendant's own expert and the architect of the 2011 Plan, Gina Wright, who admitted that avoiding retrogression or complying with any other legal standard *was not* the reason why she added Bibb County to CD 2. Pls.' Second Stat. of Undisputed Material Facts, Dkt. 72-2, ¶ 3 (Third Khanna Decl. Ex. 2, Deposition of Gina H. Wright ("Wright Dep."), Dkt. 64, at 92:4–20, 164:14–21). Moreover, as explained at length in Plaintiffs' prior briefing, Defendant makes no attempt to reconcile his argument with the legal standard for retrogression, which imposes no magic number requirement, but instead focuses on the ability of African-American voters to elect their candidates of choice. *Ala. Legislative Black Caucus v. Ala.*, 135 S. Ct. 1257, 1272 (2015) ("Section 5 . . . does not require a covered jurisdiction to maintain a particular numerical minority percentage."); Pls.' Opp. at 16–17. Tellingly, Defendant does not claim that the

BVAP or African-American registered voter percentages in Plaintiffs’ illustrative CD 2s would actually impair the ability of African Americans to elect their preferred candidate. *See Alabama*, 135 S. Ct. at 1273 (“[Section] 5 is satisfied if minority voters retain the ability to elect their preferred candidates.”). That argument would make little sense given the success of African Americans in electing their preferred candidate even with lower population percentages than proposed in Plaintiffs’ plans. Pls.’ Opp. at 16–20. Defendant’s vague references to retrogression without any attempt to apply the relevant standards are woefully insufficient to avoid summary judgment. *Ellis v. England*, 432 F.3d 1321, 1327 (11th Cir. 2005) (per curiam) (“unsupported, conclusory statements” cannot “demonstrate . . . a genuine issue of material fact”).³

B. Plaintiffs’ Illustrative Plans Reunite Sufficiently Compact African-American Communities in CD 12, While Complying with Traditional Redistricting Principles

In response to Plaintiffs’ evidence that their illustrative plans adhere to

³ Defendant claims that Plaintiffs’ expert Dr. McDonald testified that “eliminating District 2 as a majority-minority-African-American district would have been retrogressive in 2011.” Opp. at 4 (citing McDonald Dep. at 40:22–41:3, 41:12–16). Dr. McDonald said no such thing. He noted only that “*dismantling* or [] making [CD 2] *unwinnable* for Congressman Bishop,” could have elicited an objection from the Department of Justice, Third Khanna Decl. Ex. 3, Deposition of Laughlin McDonald, Dkt. 61, at 40:22–41:3, 41:12–16 (emphases added), neither of which justified adding *more* African-American voters to CD 2. Pls.’ Opp. at 16–20.

traditional redistricting principles—that is, that they all contain a CD 12 that is similarly compact to its current configuration, reunite African-American communities that previously comprised CD 12, follow political boundaries, displace fewer CD 12 residents than the current plan, are contiguous, achieve population equality, and avoid pairing incumbents, *see* Pls.’ Mem. at 12–19—Defendant offers only bare assertions and excerpts of inconclusive deposition testimony.

Defendant argues, for instance, that his expert concluded that “the minority community in Plaintiffs’ proposed District 12 is not geographically compact,” Opp. at 13 (citing Wright Dep. at 141:10–14), but in doing so ignores testimony in which Ms. Wright expressly disclaimed reaching that conclusion.⁴ When asked whether the African-American population in Plaintiffs’ proposed CD 12s was sufficiently compact, she responded that Plaintiffs’ expert’s ability to “draw this district and achieve the percentages that would yield it to be a majority-minority district . . . impl[ies] that it is.” Wright Dep. at 140:10–18. She later confirmed that the *only*

⁴ The testimony upon which Defendant relies refers to the compactness of the district, rather than the minority population, demonstrated by the fact that Ms. Wright relied on Reock and Polsby-Popper district compactness tests to reach her conclusion. Wright Dep. at 142:18–143:2. The Section 2 compactness inquiry, however, “refers to the compactness of the minority population, not . . . the contested district.” *Ga. State Conf. of NAACP v. Fayette Cty. Bd. of Commr’s*, 996 F. Supp. 2d 1353, 1361 n.10 (N.D. Ga. 2014) (quoting *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006) (“*LULAC*”)).

opinion she has offered on the issue of compactness is that Plaintiffs' illustrative CD 12s are "less compact than the current C.D. 12." *Id.* at 146:7–12. It is well-settled, meanwhile, that plaintiffs in Section 2 cases are not required to demonstrate that their proposed districts are more compact than the offending districts. *See* Pls.' Mem. at 14–17.

With respect to traditional redistricting principles, Defendant's reliance on Ms. Wright's report and testimony also falls short because she fails to rebut Plaintiffs' evidence with anything other than (1) conclusory assertions that race predominated in the drawing of the illustrative plans, and (2) compactness scores that she admittedly does not understand. For instance, Ms. Wright's report faulted Plaintiffs' illustrative plans for splitting precincts and highlighted this as evidence of racial predominance, but she later testified that splitting precincts, even with the specific goal of reaching a certain number of African-American voters, does not mean that race predominated in drawing a district. Wright Dep. at 226:4–16; *see also* Pls.' Opp. at 23 n.7 (explaining that the predominance inquiry is not relevant at the *Gingles* precondition stage). And while Ms. Wright's report produced compactness scores for Plaintiffs' illustrative CD 12s, she was unable to explain what those scores meant and testified that she has not used the scores throughout her career for any purpose other than preparing an expert report. Wright Dep. at 56:10–59:3.

Defendant, moreover, does not dispute that the compactness scores for Plaintiffs' illustrative CD 12s are within the range of scores for districts in the current plan, or that the illustrative plans split fewer counties than the 2005 benchmark plan and only one (Illustrative Plans 1 and 3) or two (Illustrative Plan 2) more counties than the current plan. Nor does Defendant contest the fact that the illustrative plans are contiguous, achieve population equality, and avoid pairing incumbents, all of which are traditional redistricting principles. *See* Pls.' Mem. at 12–19.

Finally, Defendant points to nothing other than the geographic locations of the so-called “far-flung” communities to conclude that they do not belong in the same district.⁵ His conclusory assertions, once again, are refuted by testimony from his own expert, Gina Wright, who stated that “[congressional] districts are so large, communities of interest is not a conversation that’s normally held about a congressional district.” Wright Dep. at 67:12–15. But more importantly, Defendant avoids entirely the undisputed facts that the illustrative CD 12s: (1) *reunite* African-American voters who, prior to being dispersed in 2011, were located in CD 12, *see*

⁵ Even if the distance between the communities connected by Plaintiffs' illustrative CD 12 could be considered unusually large, that fact would not render the illustrative districts non-compact. Defendant has offered no evidence that the communities have disparate needs or interests. *See* Pls.' Opp. at 21–22; *LULAC*, 548 U.S. at 435 (an “enormous geographical distance separating [] communities, *coupled* with the disparate needs and interests of th[o]se populations—*not either factor alone*” renders a district joining such communities non-compact) (emphases added).

Cooper Report ¶ 59, fig. 13 and Exs. H-1 & I-1, Dkt. 66-4, Pages 90, 102 of 306; Second Cooper Report Ex. B-1, Dkt. 66-6, Page 20 of 40; (2) incorporate a portion of Bibb County that already shares a senate district with several counties in the illustrative CD 12s, *see* Cooper Report, Ex. E, Dkt. 66-6, Pages 66–73 of 306; *see also* Pls.’ Mem. at 13–14; and (3) are located in the same area as the current CD 12, Wright Dep. at 244:13–14.

Defendant’s failure to address these undisputed facts is yet another example of his attempt to defeat summary judgment with buzzwords over substance. *See Irby v. Bittick*, 44 F.3d 949, 953 (11th Cir. 1995) (to defeat summary judgment, the nonmoving party “must come forward with significant, probative evidence demonstrating the existence of a triable issue of fact”). Defendant offers no argument—much less evidence—to explain why it would be improper to reunite counties that were previously in CD 12, or why Bibb County can share a state senate district (SD 26) with other CD 12 counties like Twiggs, Wilkinson, Washington, and Hancock, and yet cannot share the same congressional district. *Welch v. Delta Air Lines, Inc.*, 978 F. Supp. 1133, 1137 (N.D. Ga. 1997) (by failing to respond to an argument offered in a summary judgment motion, the nonmovant “necessarily does not oppose” the argument or the movant’s “characterization” of the relevant facts).

Neither the evidence, authorities, nor logic supports Defendant’s criticisms of

Plaintiffs’ illustrative plans; therefore, Plaintiffs are entitled to summary judgment on the first *Gingles* precondition.

III. There Is No Dispute That African Americans in Central and Southeast Georgia are Politically Cohesive, and the Majority Votes as a Bloc to Defeat the African-American-Preferred Candidate

Defendant’s Opposition attempts to create a factual dispute where none exists by conflating the *Gingles* preconditions with the separate and distinct totality-of-the-circumstances analysis, which is reached only *after* the preconditions have been met.⁶ On the issues relevant to Plaintiffs’ motion—whether African Americans are “politically cohesive” (*Gingles* 2) and whether the white majority votes “sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate” (*Gingles* 3), *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986)—the parties’ experts are in agreement. African Americans in central and southeast Georgia are “politically cohesive,” voting for the same candidate 88 to 98 percent of the time,

⁶ Defendant’s confusion on this point is apparent when he argues that “Plaintiffs are not entitled to summary judgment” because “courts repeatedly find that totality-of-the-circumstances inquiries are not appropriate for summary judgment.” Opp. at 18. Defendant either fundamentally misunderstands the nature of Plaintiffs’ motion, which seeks partial summary judgment only on the *Gingles* preconditions, or has conflated the relevant legal standards. The totality-of-the-circumstances test does not apply to the Court’s threshold inquiry under the *Gingles* preconditions and is not at issue in Plaintiffs’ Motion. Moreover, courts can and do grant summary judgment in favor of plaintiffs on the *Gingles* factors. See, e.g., *United States v. Charleston Cty.*, 318 F. Supp. 2d 302 (D.S.C. 2002); *Harper v. City of Chi. Heights*, 824 F. Supp. 786 (N.D. Ill. 1993).

Pls.’ Stat. of Undisputed Material Facts (“SUMF”), Dkt. 66-2, ¶ 59 (Expert Report of Maxwell Palmer (“Palmer Report”), Dkt. 66-8, tbls. 1–5); Rebuttal Report of Maxwell Palmer (“Second Palmer Report”), Dkt. 66-9, tbls. 1–5; Third Khanna Decl. Ex. 4, Deposition of John R. Alford (“Alford Dep.”), Dkt. 63, at 87:19–88:12), and the white majority has voted as a bloc to defeat the African-American candidate of choice in every election examined except one, SUMF ¶ 64 (Palmer Report at 6–8, tbls. 1–5; *id.* at ¶ 64 (Alford Dep. at 206:17–22)).⁷

Neither *Nipper v. Smith* nor any other case Defendant cites places upon plaintiffs an affirmative burden to disprove partisanship as an alternative explanation for the electoral defeats of minority-preferred candidates, and certainly not at the *Gingles* preconditions stage. Instead, *Nipper* makes clear that evidence of partisanship is considered only under the totality-of-the-circumstances test, and has no bearing on the *Gingles* preconditions. 39 F.3d 1494, 1524 (11th Cir. 1994).

⁷ Defendant argues that Dr. Alford agreed with Dr. Palmer’s methodology, and not his methods, but makes no attempt to explain the meaning of this distinction. Opp. at 22. The only actual disagreement that Defendant has identified is Dr. Palmer’s use of the label “racially polarized voting,” which falls well short of Defendant’s burden to demonstrate a genuine dispute of material fact on *Gingles* 2 and 3. See *Fabela v. City of Farmers Branch, Tex.*, No. 3:10-CV-1425-D, 2012 WL 3135545, at *9 (N.D. Tex. Aug. 2, 2012) (finding *Gingles* 2 and 3 satisfied where parties’ experts’ substantially agreed upon factual data and “disagreement lie[d] instead in the legal significance of the data”).

Nipper further clarified that by presenting partisanship evidence, “a defendant is not rebutting the plaintiff’s evidence of racial bloc voting.” *Id.* at 1525 n.60. Rather, such evidence is one of the “non-racial factors” a defendant may attempt to establish “under the *totality of the circumstances standard.*” *Id.* at 1513 (emphasis added); *see also Ga. State Conference of the NAACP v. Fayette Cty. Bd. of Comm’rs*, 118 F. Supp. 3d 1338, 1345–46 (N.D. Ga. 2015) (defendant’s contention that “racial bloc voting is actually nothing more than partisanship at work . . . brings the Court to the final step of the analysis—[] the ‘totality of the circumstances’”).⁸ This is consistent with the Supreme Court’s plurality opinion in *Gingles*, which held that “the reasons black and white voters vote differently have no relevance to the central inquiry of § 2” under the *Gingles* factors. *Gingles*, 478 U.S. at 63.

In any event, even if *Gingles* 2 and 3 required evidence of causation in addition to polarization, Plaintiffs’ expert Dr. Vincent Hutchings’ un rebutted testimony and report establish that “[r]ace is the single greatest demographic factor shaping the current partisan divide in the South” and “partisan polarization is . . .

⁸ Defendant’s reliance on *Wright* and *Fayette County* is also misplaced. In both cases, summary judgment was reversed due to improper credibility determinations or impermissible weighing of evidence under the totality of the circumstances, and not at the *Gingles* preconditions phase. *See Wright v. Sumter Cty. Bd. of Elections & Registration*, 657 F. App’x 871, 873 (11th Cir. 2016); *Ga. State Conference of NAACP v. Fayette Cty. Bd. of Comm’rs*, 775 F.3d 1336, 1348 (11th Cir. 2015).

inextricably linked with race.” Decl. of Vincent Hutchings, Dkt. 66-12, ¶ 1.⁹ Dr. Alford, meanwhile, made clear that he was “not offering an opinion” “as to the reason why African-American voters . . . vote cohesively in favor of Democratic candidates.” SUMF ¶¶ 70, 77 (Alford Dep. 124:9–125:21). The only evidence of “partisan polarized voting” that Defendant offers is Dr. Alford’s observation that “the race of the candidates does not appear to be particularly influential,” Opp. at 23 (citing Dr. Alford Rep. at 7–10), despite the Eleventh Circuit’s admonition that the race of the candidate is not relevant to whether racially polarized voting exists. *City of Carrollton Branch of the N.A.A.C.P. v. Stallings*, 829 F.2d 1547, 1557 (11th Cir. 1987) (“Under Section 2, it is the status of the candidate as the chosen representative

⁹ Defendant’s attempt to distinguish between racial conservatism and racism has no legal relevance to the Section 2 analysis. *See Askew v. City of Rome*, 127 F.3d 1355, 1382 (11th Cir. 1997) (“The Court is compelled to make clear that it does not understand the law to require Plaintiffs to prove racism determines the voting choices of the white electorate in order to succeed in a voting rights case.”) (quoting and affirming district court order). Dr. Hutchings’s report and testimony establish that partisanship cannot explain the polarized voting patterns because party affiliation is often driven by factors, like racial conservatism, that are unmistakably about race. Third Khanna Decl. Ex. 5, Deposition of Vincent Hutchings, Dkt. 70, at 102:7–24. Thus, Defendant has failed to present any evidence of a non-racial cause of polarization. *See Nipper*, 39 F.3d at 1525–26 (“[P]roof of the second and third *Gingles* factors will ordinarily create a sufficient inference that racial bias is at work . . . the standard we articulate today simply allows a defendant to rebut proof of vote dilution by showing that losses by minority-preferred candidates are attributable to non-racial causes.”)

of a particular racial group, not the race of the candidate that is important.”); *Williams v. Orange Cty., Fla.*, 783 F. Supp. 1348, 1361 (M.D. Fla. 1992), *aff’d sub nom. Williams v. Orange Cty., Fla., Bd. of Cty. Comm’rs*, 979 F.2d 1504 (11th Cir.) (same).¹⁰ Because Defendant offers one ultimately irrelevant factor—the race of the candidates—to refute Plaintiffs’ evidence under the second and third *Gingles* preconditions, Defendant fails to demonstrate a genuine dispute of material fact. *See, e.g., Brown v. Parker Hannifin Corp.*, No. CIV98-616CIV-ORL18C, 1999 WL 1449761, at *13 (M.D. Fla. Oct. 13, 1999) (“misplaced reliance” on “irrelevant evidence . . . is insufficient to overcome [a] summary judgment motion”).

IV. Conclusion

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs’ Motion for Partial Summary Judgment.

¹⁰ Contrary to Defendant’s suggestion, Opp. at 6, Dr. Palmer never endorsed Defendant’s partisan-polarization theory. Rather, he declined to opine on these issues, noting that his opinion only extended to “identifying candidates of choice for each group” without “the reason behind how they choose their candidate of choice,” Third Khanna Decl. Ex. 6, Deposition of Maxwell Palmer, Dkt. 62, at 96:8–12—which is the only relevant inquiry under *Gingles* 2 and 3.

Dated: June 20, 2019

Respectfully submitted,

By /s/ Uzoma N. Nkwonta

Marc Erik Elias*

Bruce V. Spiva*

Uzoma N. Nkwonta*

Perkins Coie, LLP

700 13th St. N.W., Suite 600

Washington, D.C. 20005-3960

Phone: (202) 654-6338

Fax: (202) 654-9106

Email: MElias@perkinscoie.com

Email: BSpiva@perkinscoie.com

Email: UNkwonta@perkinscoie.com

Abha Khanna*

Perkins Coie, LLP

1201 Third Avenue, Ste. 4900

Seattle, WA 98101-3099

Phone: (206) 359-8000

Fax: (206) 359-9000

Email: AKhanna@perkinscoie.com

Halsey G. Knapp, Jr.

Georgia Bar No. 425320

Adam M. Sparks

Georgia Bar No. 341578

KREVOLIN & HORST, LLC

One Atlantic Center

1201 W. Peachtree St., NW; Suite 3250

Atlanta, GA 30309

Email: hknapp@khlawfirm.com

Email: sparks@khlawfirm.com

Phone: (404) 888-9700

Fax: (404) 888-9577

Attorneys for Plaintiffs

*Admitted pro hac vice

LOCAL RULE 7.1(D) CERTIFICATION OF COMPLIANCE

I certify that this pleading has been prepared with Times New Roman 14 point,
as approved by the Court in L.R. 5.1(C), N.D. Ga.

Respectfully submitted, this 20th day of June, 2019.

/s/ Uzoma Nkwonta

Counsel for Plaintiffs

PERKINS COIE, LLP

700 Thirteenth St., N.W., Ste. 600

Washington, DC 20005-3960

Telephone: (202) 654-6338

Facsimile: (202) 654-9106

Email: UNkwonta@perkinscoie.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2019, I filed a copy of the foregoing Reply in Support of Plaintiffs' Motion for Partial Summary Judgment with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Uzoma N. Nkwonta

Uzoma N. Nkwonta

Perkins Coie, LLP

700 13th St. N.W., Suite 600

Washington, D.C. 20005-3960

Phone: (202) 654-6338

Fax: (202) 654-9106

Email: UNkwonta@perkinscoie.com

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

PAMELIA DWIGHT, an individual;
BENJAMIN DOTSON, an individual;
MARION WARREN, an individual;
AMANDA HOLLOWELL, an individual;
DESTINEE HATCHER, an individual; and
WILBERT MAYNOR, an individual,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the State of
Georgia,

Defendant.

Civil Action No. 1:18-cv-2869-JPB

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

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>1. According to the 2010 Census, Georgia has a total population of 9,687,653. Non-Hispanic Whites are a majority of the population (55.88 percent). African Americans comprise 31.53 percent of the population. Latinos comprise 8.81 percent of the population. The 2010 total minority population in Georgia is 44.12 percent, consisting of all persons who are not non-Hispanic White. Declaration of William S. Cooper ¶ 26, Khanna Decl. Ex. 1 (hereinafter "Cooper Report").</p>	<p>Undisputed. The African-American percentage listed includes anyone who identifies as any-part Black, including persons that identify as both White and Black, and regardless of whether those persons identify as Hispanic or not. The non-Hispanic White percentage includes only persons identified as non-Hispanic White and no part any other race. Cooper Report, ¶ 26.</p>	<p>Any-part Black is the proper measure for determining the minority population in a district when, as here, "the case involves an examination of only one minority group's effective exercise of the electoral franchise." <i>Georgia v. Ashcroft</i>, 539 U.S. 461, 473 n.1 (2003).</p>
<p>2. According to the 2010 Census, the statewide voting age population is 7,196,101, of whom 29.75 percent are African American and 58.96 percent are non-Hispanic White. Cooper Report ¶ 38, n.7.</p>	<p>Undisputed. The African-American percentage listed includes anyone who identifies as any-part Black, including persons that identify as both White and Black, and regardless of whether those persons identify as Hispanic or not. The non-Hispanic White percentage includes only persons identified as</p>	<p>See Plaintiffs' reply regarding Statement #1, above.</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
	non-Hispanic White and no part any other race. Cooper Report, ¶ 38, n.7.	
<p>3. Plaintiffs contend that the African American population within the Focus Area (defined as CD 12 and the immediately surrounding districts under the current congressional districting plan—CD 1, CD 8, CD 10, and CD 12—with the exception of counties within the Atlanta and Athens metropolitan statistical areas) is sufficiently large and geographically compact to constitute a majority in a congressional district. Cooper Report ¶ 18.</p>	<p>Undisputed only to the extent that this statement is what Plaintiffs contend. Fact No. 3 is a statement of an issue or a legal conclusion, <i>i.e.</i>, <i>Gingles</i> prong one, and therefore is improper under Local Rule 56. To the extent the Court determines that the matter is a mixed question of law and fact, the citation to the Cooper Report does not support the statement. Plaintiffs' "Focus Area" also includes at least one county located in Congressional District 2. Report of Gina Wright [Doc. 65-3] ("Wright Report"), p. 10. The selection by Mr. Cooper of a group of counties is arbitrary and not used by Georgia mapdrawers in creating redistricting plans. Wright Report, p. 9. Defendant Raffensperger's expert concluded that the African-American population is not</p>	<p>Mr. Cooper used the Focus Area as a means of limiting the impact of changes his illustrative plans made to the existing congressional plan. <i>See</i> Deposition of William Cooper ("Cooper Dep."), Dkt. 60, at 72:1-3. He also did so to avoid disturbing the communities of interest that exist in the Atlanta and Athens-Clarke County metropolitan statistical areas. <i>Id.</i> at 71:19-72:21.</p> <p>Ms. Wright testified that she is "not suggesting that the African-American population is not sufficiently compact," Deposition of Gina H. Wright ("Wright Dep."), Dkt. 64, at 141:10-14, and that she had no "opinions on the compactness of Bill Cooper's illustrative C.D. 12" "[b]eyond the fact that the proposed illustrative</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
	<p>geographically compact enough for the creation of an additional majority-minority district. Wright Report, pp. 23-24.</p>	<p>C.D. 12 is less compact than the current C.D. 12,” <i>id.</i> at 146:7-12. When asked whether the African-American population in Mr. Cooper’s illustrative CD 12 was sufficiently compact, Ms. Wright testified that: “He is able to draw this district and achieve the percentages that would yield it to be a majority-minority district, which would imply that it is.” <i>Id.</i> at 140:10-18.</p> <p>Finally, the conclusion regarding the geographic compactness of the African-American communities referenced in Ms. Wright’s report merely states that “Plaintiffs’ illustrative district plans do not demonstrate that the African-American population is geographically compact enough to allow for the creation of an <i>additional</i> majority-minority district.” Wright Report at 23-24</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
		(emphasis in original). Ms. Wright does not state anywhere that the African-American population in illustrative CD 12 is not geographically compact, and Ms. Wright's report does not include any further discussion or analysis of the compactness of the minority group in Mr. Cooper's illustrative CD 12.
4. Under Georgia's 2005 congressional plan (the "2005 Plan"), two of Georgia's thirteen districts were majority-African American (CD 4 and CD 5), both of which overlapped with the Atlanta metropolitan statistical area. Wright Report at 6.	Undisputed. The proper citation for this statement is to the Wright Report on page 4.	
5. CD 12 under the 2005 Plan was entirely contained within the Focus Area. Based on 2010 Census data, the African American population in CD 12 was 44.24 percent and the	Undisputed, but Defendant further states that these numbers include persons that identify as both White and Black, and regardless of whether those persons identify as	With respect to Defendant's statement regarding the "any-part Black" designation, see Plaintiffs'

PLAINTIFFS’ STATEMENT	DEFENDANT’S RESPONSE	PLAINTIFFS’ REPLY
<p>African American voting age population (“BVAP”) was 41.50 percent. Cooper Report ¶ 49, fig. 10.</p>	<p>Hispanic or not. The selection by Mr. Cooper of a group of counties is arbitrary and not used by Georgia mapdrawers in creating redistricting plans. Wright Report, p. 9.</p>	<p>reply regarding Statement #1, above.</p> <p>With respect to Defendant’s statement regarding the use of the Focus Area, see Plaintiffs’ reply regarding Statement #3, above.</p>
<p>6. Based on the increase in Georgia’s population as reflected in the 2010 Census, an additional congressional district was added in Georgia, raising the number of districts (and, therefore, the number of representatives from Georgia in Congress) from 13 to 14. Cooper Report ¶ 44; Expert Report of Gina H. Wright at 6, Khanna Decl. Ex. 2 (hereinafter “Wright Report”).</p>	<p>Undisputed.</p>	
<p>7. The Legislative and Congressional Reapportionment Office of the Georgia General Assembly received the 2010 Census data for Georgia in early 2011, and</p>	<p>Undisputed.</p>	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
the General Assembly enacted a new legislative redistricting plan that same year (the "2011 Plan"). Wright Report at 6.		
8. The 2011 Plan reduced the BVAP of CD 12 by over 8 percentage points from the 2005 Plan—from 41.5 percent to 33.30 percent. Cooper Report ¶ 58.	Undisputed, but Defendant further states that these numbers include persons that identify as both White and Black, and regardless of whether those persons identify as Hispanic or not.	See Plaintiffs' reply regarding Statement #1, above.
9. Most of the counties that were shifted out of CD 12 under the 2011 Plan have African American populations that exceed 50 percent BVAP. Cooper Report ¶¶ 60, 61, fig. 13.	This fact is not supported by a citation to evidence. The cited reference does not specify the total number of counties moved out of CD 12 and includes parts of counties. According to the cited reference, the population moved out of Congressional District 12 was less than 50% BVAP.	Defendant's statement that "this fact is not supported by a citation to evidence" is false. The cited evidence includes a table showing all counties moved out of CD 12 between the 2005 Plan and the 2011 Plan. Seven of the ten counties moved out of CD 12 had BVAPs over 50%.
10. By contrast, all counties that were shifted into CD 12 under the 2011 Plan have BVAPs below 50	This fact is not supported by a citation to evidence. The cited reference does not specify the total	Defendant's statement that "this fact is not supported by a citation to evidence" is false. The cited

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>percent. Cooper Report ¶¶ 60, 61, fig. 13.</p>	<p>number of counties moved in to CD 12 and does not indicate whether other changes were made to the district.</p>	<p>evidence includes a table showing all counties moved into CD 12 between the 2005 Plan and the 2011 Plan. Every one of these seven counties had a BVAP below 50%.</p>
<p>11. In total, under the 2011 Plan, 46.61 percent of total population shifted out of CD 12 (324,598) was African American; whereas only 27.89 percent of the total population that the 2011 Plan shifted into CD 12 (324,044) was African American. This results in a BVAP decrease in CD 12 from 41.50 percent under the 2005 Plan to 33.30 percent under the 2011 Plan. Cooper Report ¶ 62.</p>	<p>Undisputed, but Defendant further states that these numbers include persons that identify as both White and Black, and regardless of whether those persons identify as Hispanic or not.</p>	<p>See Plaintiffs' reply regarding Statement #1, above.</p>
<p>12. The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible, and assigns a score on a range between 0 and 1, with 1 being the</p>	<p>Undisputed.</p>	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
most compact. Cooper Report ¶ 75, n.16.		
13. CD 12 under the 2011 Plan has a Reock score of 0.41. Cooper Report fig. 18. The thirteen remaining districts in the 2011 Plan have Reock scores ranging between 0.33 and 0.55. Cooper Report Ex. J-2. Overall, the districts in the 2011 Plan have a mean Reock score of 0.45. Cooper Report fig. 18.	Undisputed, but not material because this Court considers the compactness of the minority population, not the compactness of a district. <i>League of United Latin Am. Citizens v. Perry</i> , 548 U.S. 399, 433, 126 S. Ct. 2594, 2618 (2006).	Courts consider the Reock and Polsby-Popper scores of proposed majority-minority districts when determining whether the district's boundaries are compact, which is relevant to determining whether the districts comply with traditional redistricting principles. <i>See, e.g., Ga. State Conference of NAACP v. Fayette Cty. Bd. of Comm'rs</i> , 952 F. Supp. 2d 1360, 1364 (N.D. Ga. 2013). Defendant's expert Ms. Wright testified that she used the same scores to evaluate the compactness of Plaintiffs' illustrative districts. Wright Dep. at 142:18-143:16.
14. The Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter, and assigns a score	Undisputed.	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
between 0 and 1, with 1 being the most compact. Cooper Report ¶ 75, n.16.		
15. CD 12 under the 2011 Plan has a Polsby-Popper compactness score of 0.18. Cooper Report fig. 18. The thirteen remaining districts in the 2011 Plan have Polsby-Popper scores ranging between 0.16 and 0.37. Cooper Report Ex. J-2. Overall, the districts in the 2011 Plan have a mean Polsby-Popper score of 0.26. Cooper Report fig. 18.	Undisputed, but not material because this Court considers the compactness of the minority population, not the compactness of a district. <i>League of United Latin Am. Citizens v. Perry</i> , 548 U.S. 399, 433, 126 S. Ct. 2594, 2618 (2006).	See Plaintiffs' reply regarding Statement #13, above.
16. A voting tabulation district ("VTD") is a census bureau term, which generally corresponds to voting precincts. Cooper Report ¶ 77, n.18.	Undisputed only to the extent that a VTD generally corresponds to 2010 voting precincts, not current voting precincts. More current voting precinct information is available than the Census Bureau VTDs. Wright Report, pp. 12, 15-16.	Mr. Cooper uses the term VTD to refer to precincts. <i>See</i> Wright Report at 15 (referring to Mr. Cooper's "VTDs" as "precincts"). Mr. Cooper relies on the same data for his analysis as Ms. Wright— data supplied by Ms. Wright's

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
		office from the November 2016 general election. <i>Id.</i> at 12.
17. CD 12 under the 2011 Plan splits five 2016 VTDs. Cooper Report fig. 19.	Disputed as stated. District 12 under the 2011 plan splits five 2016 <i>precincts</i> . VTDs are a Census Bureau term and do not change during the decade, so there is no such thing as a "2016 VTD." Wright Report, p. 12.	Plaintiffs and Defendant agree that CD 12 under the 2011 plan split five precincts.
18. The 2011 Plan overall splits 16 counties and includes 38 populated splits of 2016 VTDs. Cooper Report fig. 19.	Undisputed as to the number of split counties. Disputed as stated regarding VTD splits. There are no 2016 VTDs, because VTDs do not change during the decade. Ms. Wright's analysis indicated that there were only 34 populated splits of 2016 precincts. Wright Report, p. 15.	See Plaintiffs' reply regarding Statement #16, above.
19. The 2011 Plan contains 22 discrete county splits, <i>i.e.</i> unique county-district combinations. Cooper Report ¶ 63; Second	Undisputed as stated. Ms. Wright testified that the total number of	Because certain counties in the 2011 Plan have multiple splits, the number of split counties (16), as reported by Ms. Wright, does not

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
Declaration of William S. Cooper ¶ 31, Khanna Decl. Ex. 3 (hereinafter "Second Cooper Report").	split counties on the 2011 plan is 16. Wright Report, p. 13.	fully reflect the number of county splits (22).
20. The 2011 Plan splits Henry County between three districts—CD 3, CD 10, and CD 13. Cooper Report ¶ 63.	Undisputed.	
21. Plaintiffs submitted three illustrative plans, each of which contains one additional majority-African American district than under the 2011 Plan. Cooper Report ¶¶ 6, 63-79; Second Cooper Report ¶¶ 34-47.	Disputed. Ms. Wright testified that Mr. Cooper's Illustrative Plans did not increase the number of majority-African-American districts, but exchanged District 2 for District 12. Wright Report, p. 11. Each of the Illustrative Plans reduced District 2 from majority-African-American on voter registration to less than 50% African-American. Wright Supp. Report, p. 1. Mr. Cooper agreed that his Illustrative Plans reduced District 2 below 50% any-part black	Defendant's statement is incorrect. No "exchange" occurs under the Illustrative Plans because CD 2 does not have a BVAP higher than 50%. A district is "majority-minority" for purposes of <i>Gingles</i> 1 only if the minority group constitutes more than half of the district's BVAP. <i>Negron v. City of Miami Beach, Fla.</i> , 113 F.3d 1563, 1568–69 (11th Cir. 1997). The African-American portion of the total population (as opposed to voting-age population) is therefore not relevant. <i>Id.</i>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
	<p>for total population. Cooper Dep., 116:13-17.</p>	<p>Both Mr. Cooper and Ms. Wright agree that African Americans currently constitute less than 50% of the voting-age population of CD 2. Cooper Report Ex. G-2, Dkt. 66-4, at Page 80 of 306; Wright Report Ex. 5, Dkt. 66-5, at Page 39 of 65.</p> <p>Defendant is also incorrect that Plaintiffs' Illustrative Plans would reduce the African-American community in CD 2 to less than 50% of registered voters. Under Illustrative Plans 1, 2, and 3, African Americans respectively constitute 50.93%, 51.10%, and 50.85% of the registered voters in CD 2. Cooper Report, Exs. H-5, I-5, Dkt. 66-4, at Pages 100, 112 of 306; Second Cooper Report Ex. B-5, Dkt. 66-6, at Page 32 of 40. Ms. Wright's figures underestimate the number of African-American registered voters in CD 2 because her method of calculation assumes</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
		that none of the registered voters in Georgia whose race is “unknown”—almost 10% of the state’s registered voters—are African American. Second Cooper Report ¶ 15. That assumption, as Mr. Cooper explained in his deposition, is “preposterous.” Cooper Dep. at 157:18-24.
22. Defendant’s expert, Gina Wright, agrees that the Illustrative Plans increase by one the number of districts with an African American voting age population above 50 percent. Deposition of Gina Wright at 119:9-14, Khanna Decl. Ex. 4 (hereinafter “Wright Dep.”).	Undisputed as stated. But the Illustrative Plans did not increase the number of districts with more than 50% African-American voter registration or total population. Wright Report, p. 11; Wright Supp. Report, p. 1.	See Plaintiffs’ reply regarding Statement #21, above.
23. Each illustrative plan consists of 14 single-member congressional districts. Cooper Report figs. 14, 16, Exs. H-2, I-2; Second Cooper Report fig. 2, Ex. B-2.	Undisputed.	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>24. Each illustrative plan contains four districts in which the BVAP is above 50 percent. Cooper Report figs. 14, 16, Exs. H-2, I-2; Second Cooper Report fig. 2, Ex. B-2.</p>	<p>Undisputed as stated. But the Illustrative Plans have the same number of districts as the 2011 Plan with more than 50% African-American voter registration or total population. Wright Report, p. 11; Wright Supp. Report, p. 1.</p>	<p>See Plaintiffs' reply regarding Statement #21, above.</p>
<p>25. In each of the illustrative plans, the proposed, new majority-African American district ("Proposed District 12") is located in the Focus Area. Cooper Report ¶ 7, n.4, figs. 14, 16; Second Cooper Report ¶ 35, fig. 2.</p>	<p>Disputed. District 12 is not a "new" majority-African American district and contains less than 50% African-American registered voters. Wright Report, p. 11; Wright Supp. Report, p. 1.</p>	<p>It is undisputed that, under the 2011 Plan, CD 12 has a BVAP below 50%, and that under each Illustrative Plan, CD 12 would have a BVAP above 50%. <i>Compare</i> Cooper Report ¶¶ 57-58 & fig. 12; <i>with id.</i> ¶ 67 & fig. 15; <i>id.</i> ¶ 72 & fig. 17; <i>and</i> Second Cooper Report ¶ 35 & fig. 3.</p> <p>Moreover, Defendant's statement that African Americans would constitute less than 50% of CD 12's registered voters under each of Plaintiffs' Illustrative Plans is neither material nor relevant to any of the issues before the Court on</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
		<p>Plaintiffs' Motion for Partial Summary Judgment (as explained in Plaintiffs' reply regarding Statement #21). In any case, African Americans would be more than 50% of CD 12's registered voters under all three of Plaintiffs' Illustrative Plans. Cooper Report ¶¶ 67, 72; Second Cooper Report ¶ 35. Ms. Wright's method underestimates the number of African-American registered voters in a given district (again, as explained in Plaintiffs' reply regarding Statement #21).</p> <p>Finally, Defendant does not dispute that all of the CD 12s in Plaintiffs' illustrated plans are located in the Focus Area.</p>
<p>26. Each illustrative plan includes portions of Bibb County in the Proposed District 12. Cooper Report</p>	<p>Undisputed.</p>	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
¶ 7, n.4, figs. 14, 16; Second Cooper Report ¶ 35, fig. 2.		
27. Bibb County is currently split between CD 8 and CD 2, and a portion of Bibb County shares the same state Senate district with other counties in the illustrative plans' Proposed District 12, including Hancock and Washington counties. Cooper Report ¶ 14, Ex. E; Second Cooper Report fig. 2.	The citation to the Cooper Reports do not support this statement. To the extent Fact No. 27 is that a state Senate district that has some population in Bibb County also includes Hancock and Washington counties, that statement is undisputed.	Plaintiffs' citation to Mr. Cooper's report does support this assertion. Paragraph 14 of Mr. Cooper's report states that Bibb County is currently split between CD 8 and CD 2. Exhibit E to Mr. Cooper's report shows that the state Senate plan joins a portion of Bibb County with Hancock and Washington Counties, just as the CD 12 in each Illustrative Plan does.
28. The Proposed District 12 in the illustrative plans is generally in the same location as the current CD 12 under the 2011 Plan. Wright Dep. at 244:8-14.	Undisputed as stated, but Ms. Wright testified that "generally in the same location" is the entirety of "east central Georgia." Wright Dep. at 244:8-14.	Defendant mischaracterizes Ms. Wright's testimony. Ms. Wright was not referring to the "entirety" of east central Georgia. Rather, she testified: "[Mr. Cooper's CD] 12 is in the same east central Georgia [location] that the current 12 is." Wright Dep. at 244:13-14.

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>29. Ms. Wright examined Mr. Cooper's illustrative plans and does not contend that the Proposed District 12 in the illustrative plans are "not compact." Rather, Ms. Wright's conclusion is that the Proposed District 12 is less compact than the current CD 12. Wright Dep. at 145:1-13; 146:7-12.</p>	<p>Undisputed as stated, but Ms. Wright testified that compactness scores cannot be used to say something is or is not compact. Wright Dep., 144:11-22. Instead, compactness is measured in comparison to something. Wright Dep., 143:9-144:10; Cooper Report, p. 33. Ms. Wright concluded that District 12 on the Illustrative Plans is less than compact than District 12 on the 2011 Plan. Wright Dep. at 145:1-13; 146:7-12.</p>	
<p>30. Ms. Wright also does not contend that the African American communities within Mr. Cooper's Proposed District 12 are not sufficiently compact. Rather, Ms. Wright's conclusion is that the African American community in the Proposed District 12 is "less compact than what you would find</p>	<p>Disputed. Ms. Wright testified that the African-American communities in the Illustrative Plans were not geographically compact. Wright Report, pp. 23-24; Wright Dep. 140:7-141:14. She further testified that the Illustrative Plans connect geographically dispersed communities. Wright Dep., 136:6-12, 137:15-138:8.</p>	<p>Defendant mischaracterizes Ms. Wright's testimony. Ms. Wright testified that she is "not suggesting that the African-American population is not sufficiently compact," but instead she claims that the illustrative district itself is not compact. Wright Dep. at 141:10-143:1. She also confirmed that she had no "opinions on the compactness of Bill Cooper's</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>for the District 2 area.” Wright Dep. at 134:9-136:12.</p>		<p>illustrative C.D. 12” “[b]eyond the fact that the proposed illustrative C.D. 12 is less compact than the current C.D. 12.” <i>Id.</i> at 146:7-12.</p>
<p>31. Based on the 2010 Census, Proposed District 12 in Illustrative Plan 1 has a BVAP of 50.32 percent. As of December 2017, 55.4 percent of registered voters in Proposed District 12 under Illustrative Plan 1 are non-Hispanic Black. Cooper Report ¶ 67.</p>	<p>Undisputed regarding the BVAP in District 12 on Illustrative Plan 1. Disputed regarding the percentage of registered voters. Mr. Cooper used an imprecise method of calculating registered voter data which also excludes voters of an unknown race from the total number of voters. Wright Report, pp. 11-12. Ms. Wright’s analysis showed that the percentage of African-American registered voters in District 12 is less than 50%. Wright Supp. Report, p. 1. Mr. Cooper testified that he did not disagree with the approach used by Ms. Wright to</p>	<p>Defendant mischaracterizes Mr. Cooper’s testimony. Mr. Cooper made clear that he disagreed with Ms. Wright’s method for calculating Black registered voters and that he believes it is deeply flawed because she assumed that <i>none</i> of the individuals whose voter registration indicates an “unknown” race—nearly 10% of registered voters in the State—are African American. Second Cooper Report ¶¶ 14-15. Mr. Cooper called this assumption a “major problem” that was “preposterous on its face.” <i>Id.</i> at 155:5-8, 157:7-24.</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
	calculate registered voters. Cooper Dep., 157:7-24.	
32. Proposed District 12 in Illustrative Plan 1 has a Reock compactness score of 0.35. The thirteen remaining districts in Illustrative Plan 1 have Reock scores ranging between 0.26 and 0.54. Overall, the districts in Illustrative Plan 1 have a mean Reock score of 0.44. Cooper Report fig. 18, Ex. J-3; Wright Report at 17.	Undisputed as to the Reock compactness scores for District 12 and the 13 other districts on Illustrative Plan 1. Disputed as to the mean Reock score for all districts on Illustrative Plan 1. Ms. Wright testified that that the mean Reock score for Illustrative Plan 1 is 0.42. Wright Report, p. 22.	This alleged difference is negligible.
33. Proposed District 12 in Illustrative Plan 1 has a Polsby-Popper compactness score of 0.16. The thirteen remaining districts in Illustrative Plan 1 have Polsby-Popper scores ranging between 0.14 and 0.37. Overall, the districts in Illustrative Plan 1 have a mean Polsby-Popper score of 0.24.	Undisputed.	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
Cooper Report fig.18, Ex. J-3; Wright Report at 18.		
34. Proposed District 12 under Illustrative Plan 1 splits three 2016 VTDs. Cooper Report fig. 19.	Undisputed, but the Illustrative Plan 1 increases the number of split precincts over the 2011 Plan. Wright Report, pp. 15-16.	<p>Mr. Cooper uses the term VTD to refer to precincts. <i>See</i> Wright Report at 15 (referring to Mr. Cooper's "VTDs" as "precincts"). Mr. Cooper relies on the same data for his analysis as Ms. Wright—data supplied by Ms. Wright's office from the November 2016 general election. <i>Id.</i> at 12.</p> <p>Defendant's statement does not dispute Plaintiffs' assertion. CD 12 in Illustrative Plan 1 splits two fewer VTDs or precincts than CD 12 in the 2011 Plan. Cooper Report ¶ 79.</p>
35. Illustrative Plan 1 splits 17 counties overall and contains 38 populated splits of 2016 VTDs. Cooper Report fig. 19.	Undisputed, but this is an increase of split counties over the 2011 Plan. Wright Report, pp. 13-14.	Illustrative Plan 1 splits only one more county than the 2011 Plan. Cooper Report fig. 19.

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
36. Illustrative Plan 1 contains 22 discrete county splits, <i>i.e.</i> unique county-district combinations. Cooper Report ¶¶ 63, 78; Second Cooper Report ¶ 31.	Undisputed.	
37. Illustrative Plan 1 eliminates the three-district split (CD 3, CD 10, and CD 13) of Henry County that occurred under the 2011 Plan. Henry County is split between two districts in Illustrative Plan 1 (Districts 10 and 13). Cooper Report ¶ 63.	Undisputed, but to eliminate the three-district split of Henry County, Illustrative Plan 1 splits Butts County, which has a total population of only 23,655 people—less than each of the currently split portions of Henry county. Wright Report, pp. 13-14.	Mr. Cooper testified that “counties must be split in order to meet one-person one-vote requirements in congressional plans.” Cooper Second Report ¶ 27. Plaintiffs’ Illustrative Plan 1 eliminates a three-district split of Henry County and instead splits Butts County between two districts.
38. All of the districts in Illustrative Plan 1 are contiguous. Cooper Report ¶ 63, fig. 14.	Undisputed.	
39. No incumbents elected in 2018 are paired in the same district under	Disputed. Mr. Cooper did not know whether any incumbents were paired or whether any incumbents elected or appointed using	Defendant has not offered any evidence suggesting that any

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>Illustrative Plan 1. Cooper Report ¶ 63.</p>	<p>Congressional districts were paired on Illustrative Plan 1. Cooper Dep., 47:21-50:2.</p>	<p>incumbents are paired in the same district under Illustrative Plan 1.</p> <p>Based on publicly available information, Mr. Cooper determined that no incumbents elected in 2018 are paired in the same district under Illustrative Plan 1. Cooper Report ¶ 63; <i>id.</i> at n.12 (“I determined incumbent residences to the best of my knowledge based on publicly available information. It is my understanding that the Defendant in this case has refused to provide those addresses in the course of discovery.”).</p>
<p>40. Based on the 2010 Census, Proposed District 12 in Illustrative Plan 2 has a BVAP of 50.26 percent. As of December 2017, 55.27 percent of registered voters in Proposed District 12 under</p>	<p>Undisputed regarding the BVAP in District 12 on Illustrative Plan 2. Disputed regarding the percentage of registered voters. Mr. Cooper used an imprecise method of calculating registered voter data</p>	<p>See Plaintiffs’ reply regarding Statement #31, above.</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>Illustrative Plan 2 are non-Hispanic black. Cooper Report ¶ 72.</p>	<p>which also excludes voters of an unknown race from the total number of voters. Wright Report, pp. 11-12. Ms. Wright's analysis showed that the percentage of African-American registered voters in District 12 is less than 50%. Wright Supp. Report, p. 1. Mr. Cooper testified that he did not disagree with the approach used by Ms. Wright to calculate registered voters. Cooper Dep., 157:7-24.</p>	
<p>41. Proposed District 12 in Illustrative Plan 2 has a Reock compactness score of 0.34. The thirteen remaining districts in Illustrative Plan 2 have Reock scores ranging between 0.34 and 0.54. Overall, the districts in Illustrative Plan 2 have a mean Reock score of 0.44. Cooper Report fig. 18, Ex. J-4; Wright Report at 22.</p>	<p>Undisputed.</p>	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>42. Proposed District 12 in Illustrative Plan 2 has a Polsby-Popper compactness score of 0.17. The thirteen remaining districts in Illustrative Plan 2 have Polsby-Popper scores ranging between 0.15 and 0.37. Overall, the districts in Illustrative Plan 2 have a mean Polsby-Popper score of 0.25. Cooper Report fig. 18, Ex. J-4; Wright Report at 23.</p>	<p>Undisputed.</p>	
<p>43. Proposed District 12 under Illustrative Plan 2 splits five 2016 VTDs. Cooper Report fig. 19.</p>	<p>Undisputed, but the Illustrative Plan 2 increases the number of split precincts over the 2011 Plan. Wright Report, pp. 15-16.</p>	<p>Mr. Cooper uses the term VTD to refer to precincts. <i>See</i> Wright Report at 15 (referring to Mr. Cooper's "VTDs" as "precincts"). Mr. Cooper relies on the same data for his analysis as Ms. Wright—data supplied by Ms. Wright's office from the November 2016 general election. <i>Id.</i> at 12.</p> <p>Defendant's statement does not dispute Plaintiffs' assertion. CD 12 in Illustrative Plan 2 splits the same</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
		number of VTDs or precincts as CD 12 in the 2011 Plan. Cooper Report ¶ 79.
44. Illustrative Plan 2 splits 18 counties overall and contains 39 populated splits of 2016 VTDs. Cooper Report fig. 19.	Undisputed, but this is an increase of split counties over the 2011 Plan. Wright Report, p. 19.	Illustrative Plan 2 splits just two more counties than the 2011 Plan. Cooper Report fig. 19.
45. Illustrative Plan 2 contains 23 discrete county splits, <i>i.e.</i> unique county-district combinations. Cooper Report ¶¶ 63, 78.	Undisputed.	
46. Illustrative Plan 2 eliminates the three-district split (CD 3, CD 10, and CD 13) of Henry County that occurred under the 2011 Plan. Henry County is split between two districts in Illustrative Plan 2 (Districts 10 and 13). Cooper Report ¶ 63.	Undisputed, but to eliminate the three-district split of Henry County, Illustrative Plan 2 splits Butts County, which has a total population of only 23,655 people—less than each of the currently split portions of Henry County. Wright Report, pp. 19-20.	Mr. Cooper testified that “counties must be split in order to meet one-person one-vote requirements in congressional plans.” Cooper Second Report ¶ 27. Plaintiffs’ Illustrative Plan 2 eliminates a three-district split of Henry County and instead splits Butts County between two districts.

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
47. All of the districts in Illustrative Plan 2 are contiguous. Cooper Report ¶ 63, fig. 16.	Undisputed.	
48. No incumbents elected in 2018 are paired in the same district under Illustrative Plan 2. Cooper Report ¶ 63.	Disputed. Mr. Cooper did not know whether any incumbents were paired or whether any incumbents elected or appointed using Congressional districts were paired on Illustrative Plan 2. Cooper Dep., 47:21-50:2.	<p>Defendant has not offered any evidence suggesting that any incumbents are paired in the same district under Illustrative Plan 2.</p> <p>Based on publicly available information, Mr. Cooper determined that no incumbents elected in 2018 are paired in the same district under Illustrative Plan 2. Cooper Report ¶ 63; <i>id.</i> at n.12 (“I determined incumbent residences to the best of my knowledge based on publicly available information. It is my understanding that the Defendant in this case has refused to provide those addresses in the course of discovery.”).</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>49. Based on the 2010 Census, Proposed District 12 in Illustrative Plan 3 has a BVAP of 50.20 percent. As of December 2017, 55.25 percent of registered voters in Proposed District 12 under Illustrative Plan 3 are non-Hispanic black. Second Cooper Report ¶ 35.</p>	<p>Undisputed regarding the BVAP in District 12 on Illustrative Plan 3. Disputed regarding the percentage of registered voters. Mr. Cooper used an imprecise method of calculating registered voter data which also excludes voters of an unknown race from the total number of voters. Wright Report, pp. 11-12. Ms. Wright's analysis using a more-reliable method showed that the percentage of African-American registered voters in District 12 on Illustrative Plans 1 and 2 is less than 50%. Wright Supp. Report, p. 1. Mr. Cooper testified that he did not disagree with the approach used by Ms. Wright to calculate registered voters. Cooper Dep., 157:7-24.</p>	<p>See Plaintiffs' reply regarding Statement #31, above.</p>
<p>50. Proposed District 12 in Illustrative Plan 3 has a Reock compactness score of 0.34. The thirteen remaining districts in Illustrative Plan 3 have Reock</p>	<p>Undisputed as to the Reock score for District 12 on Illustrative Plan 3 and the mean score for the districts on Illustrative Plan 3. The report cited shows that the range of Reock</p>	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
scores ranging between 0.35 and 0.54. Overall, the districts in Illustrative Plan 3 have a mean Reock score of 0.44. Second Cooper Report ¶ 39, Ex. B-7.	scores for Illustrative Plan 3 is between 0.34 and 0.54. Cooper Report ¶ 39, Ex. B-7.	
51. Proposed District 12 in Illustrative Plan 3 has a Polsby-Popper compactness score of 0.17. The thirteen remaining districts in Illustrative Plan 3 have Polsby-Popper scores ranging between 0.14 and 0.37. Overall, the districts in Illustrative Plan 3 have a mean Polsby-Popper score of 0.25. Second Cooper Report ¶ 40, Ex. B-8.	Undisputed.	
52. Illustrative Plan 3 splits 17 counties overall and contains 39 populated splits of 2016 VTDs. Second Cooper Report ¶ 38, Ex. B-3.	Undisputed, but this is an increase of split counties over the 2011 Plan. Wright Report, pp. 13-14	Illustrative Plan 3 splits only one more county than the 2011 Plan. Cooper Report fig. 19; Second Cooper Report ¶ 38, Ex. B-3.

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>53. Illustrative Plan 3 eliminates the three-district split (CD 3, CD 10, and CD 13) of Henry County that occurred under the 2011 Plan. Henry County is split between two districts in Illustrative Plan 3 (CD 3 and CD 13). Second Cooper Report, Ex. B-3.</p>	<p>Undisputed, but to eliminate the three-district split of Henry County, Illustrative Plan 3 splits Monroe County, which has a total population of only 26,173 people—less than each of the currently split portions of Henry county. Wright Report, pp. 13-14; U.S. Census Bureau QuickFacts¹ for Monroe County, Georgia, https://www.census.gov/quickfacts/fact/table/monroecountygeorgia/INC110217</p>	<p>Ms. Wright has not offered any analysis of Plaintiffs' Illustrative Plan 3.</p>
<p>54. All of the districts in Illustrative Plan 3 are contiguous, and Illustrative Plan 3 displaces fewer residents from CD 12 than the 2011 Plan by retaining 64 percent of the CD 12 population (from the 2005 Plan) compared to 53 percent</p>	<p>Undisputed.</p>	

¹ Courts can take judicial notice of Census information. *United States v. Phillips*, 287 F.3d 1053, 1055 n.1 (11th Cir. 2002).

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
retained in the 2011 Plan. Second Cooper Report ¶¶ 44-45, 47, fig. 2.		
55. No incumbents elected in 2018 are paired in the same district under Illustrative Plan 3. Second Cooper Report ¶ 47.	Disputed. Mr. Cooper did not know whether any incumbents were paired or whether any incumbents elected or appointed using Congressional districts were paired on Illustrative Plan 2. Cooper Dep., 47:21-50:2.	Defendant has not offered any evidence suggesting that any incumbents are paired in the same district. Based on publicly available information, Mr. Cooper determined that no incumbents elected in 2018 are paired in the same district. Second Cooper Report ¶ 47; <i>see also</i> Cooper Report ¶ 63; <i>id.</i> at 26 n.12 (“I determined incumbent residences to the best of my knowledge based on publicly available information. It is my understanding that the Defendant in this case has refused to provide those addresses in the course of discovery.”).
56. Dr. Maxwell Palmer employed a statistical method called Ecological	Undisputed.	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>Inference (“EI”) to derive his estimates of the percentage of each group (African American and white voters) that voted for each candidate in elections for U.S. Congress and statewide elections for U.S. President, U.S. Senate, Governor, Lieutenant Governor, Secretary of State, Attorney General, Commissioner of Agriculture, Commissioner of Insurance, Commissioner of Labor, and School Superintendent from 2012-2018. Expert Report of Maxwell Palmer at 5, figs. 2-6, tbls. 1-5, Khanna Decl. Ex. 5 (hereinafter “Palmer Report”); Rebuttal Report of Maxwell Palmer at 2, Khanna Decl. Ex. 6 (hereinafter “Second Palmer Report”).</p>		
<p>57. Dr. Alford replicated Dr. Palmer’s EI analysis in estimating the level of support among African American and white voters for</p>	<p>Undisputed.</p>	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>candidates in statewide and congressional races in the 2012-2018 general elections. Expert Report of John Alford at 4, 6-7, tbls. 1-6, Khanna Decl. Ex. 7 (hereinafter "Alford Report").</p>		
<p>58. Dr. Alford does not dispute Dr. Palmer's methods or the empirical results in Dr. Palmer's Report. Alford Report at 4; Deposition of John Alford at 77:8-22; 86:2-87:18, Khanna Decl. Ex. 8 (hereinafter "Alford Dep.>").</p>	<p>Disputed. Dr. Alford testified that he did not disagree with Dr. Palmer's methodology or the EI results, but did not state that he agreed with Dr. Palmer's methods. Alford Dep. 77:8-78:11.</p>	<p>Dr. Alford has no disagreement with how Dr. Palmer performed his ecological inference analysis. Alford Dep. at 78:6-11.</p>
<p>59. Among the elections analyzed, in each of the four districts individually and the Focus Area as a whole, the estimate of the African American vote share for the African American-preferred candidate is over 88 percent, and in all but one individual contest, the estimate surpassed 90 percent. Palmer</p>	<p>Undisputed.</p>	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
Report, tbls. 1-5; Second Palmer Report, tbls. 1-5; Alford Report at 4.		
60. Among the elections analyzed, in each of the four districts individually and the Focus Area as a whole, the estimate of the white vote for the African American-preferred candidate is below 27.5 percent. Palmer Report, tbls. 1-5; Second Palmer Report, tbls. 1-5; Alford Report at 4. (Excluding John Barrow in the 2012 CD 12 election, the maximum level of support by White voters for an African American-preferred candidate of choice was 18.6 percent. Palmer Report at 7.)	Undisputed.	
61. In the 2012, 2014, and 2016 elections, the average difference in support between African American voters and white voters for the African American-preferred candidate was 86.5 percentage	Undisputed.	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>points in CD 12, 82.2 percentage points in CD 1, 87.7 percentage points in CD 8, 88.4 percentage points in CD 10, and 87.7 percentage points in the Focus Area as a whole. Palmer Report at 7.</p>		
<p>62. In the 2018 elections, the average difference in support between African American voters and white voters for the African American candidate of choice in each district was 91.7 percentage points in CD 12, 81.6 percentage points in CD 1, 91.1 percentage points in CD 8, 91.3 percentage points in CD 10, and 90.1 percentage points in the Focus Area. Second Palmer Report at 2.</p>	<p>Undisputed.</p>	
<p>63. African Americans in the Focus Area vote cohesively for their candidates of choice. Palmer Report at 6-8, tbls. 1-5; Second Palmer</p>	<p>Undisputed. The candidates of choice of African-American voters are all Democrats. Alford Dep., 95:22-96:22; 137:22-138:14.</p>	<p>Defendant does not dispute Statement #63, and his accompanying explanation is neither material nor relevant to any of the issues before the Court on</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
Report, tpls. 1-5; Alford Report, tpls. 1-6; Alford Dep. at 86:5- 19.		Plaintiffs' Motion for Partial Summary Judgment.
64. The white majority usually votes as a bloc to defeat the African American candidate of choice. Palmer Report at 6-8, tpls. 1-5; Second Palmer Report, tpls. 1-5; Alford Dep. at 206:17-22. In all but one of the elections examined, the white-preferred candidate defeated the African American-preferred candidate. The only exception occurred in 2012, when four-time incumbent John J. Barrow, the candidate of choice among African-Americans, won reelection in CD 12, with 94.3 percent of the African American vote and 27.5 percent of the white vote. Barrow was defeated in 2014; although he received a whopping 97.5 percent of the African American vote, he received	Undisputed. White voters vote overwhelmingly vote for Republican candidates. Alford Dep., 95:22-96:22; 137:22-138:14.	Defendant does not dispute Statement #64, and his accompanying explanation is neither material nor relevant to any of the issues before the Court on Plaintiffs' Motion for Partial Summary Judgment.

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
only 17.4 percent of the white vote. Palmer Report at 6-8, tbls. 1-5.		
65. Dr. Alford agrees that Dr. Palmer's EI analysis demonstrates that African Americans in the Focus Area vote cohesively in support of the same candidates. Alford Dep. at 86:2-87:18; Alford Report at 9.	Undisputed. The candidates of choice of African-American voters are all Democrats. Alford Dep., 95:22-96:22; 137:22-138:14.	Defendant does not dispute Statement #65, and his accompanying explanation is neither material nor relevant to any of the issues before the Court on Plaintiffs' Motion for Partial Summary Judgment.
66. Dr. Alford agrees that the white majority usually votes as a bloc to defeat the African American candidate of choice. Alford Dep. at 206:17-22.	Undisputed. White voters vote overwhelmingly for Republican candidates. Alford Dep., 95:22-96:22; 137:22-138:14.	Defendant does not dispute Statement #66, and his accompanying explanation is neither material nor relevant to any of the issues before the Court on Plaintiffs' Motion for Partial Summary Judgment.
67. Dr. Alford's report states party polarization best explains the voting patterns in the Focus Area. Alford Report at 9.	Undisputed.	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>68. Dr. Alford agrees that Dr. Palmer's report shows that voting is highly polarized, and that highly polarized voting is a characteristic that has always served as a strong indicator of racially polarized voting. Alford Dep. at 121:15-122:2.</p>	<p>Disputed. Dr. Alford agreed that Dr. Palmer's report showed voting is highly polarized, but did not include enough information to reach a conclusion about whether racial polarization was actually occurring. Alford Dep., 119:21-122:2. Dr. Alford concluded that race was not the cause of the polarization. Alford Report, p. 10; Alford Dep., 124:21-125:4.</p>	<p>Defendant's response does not dispute the assertion in this statement.</p>
<p>69. Dr. Alford does not claim that racial polarization is absent in Georgia or in the Focus Area. <i>Id.</i></p>	<p>Disputed. Dr. Alford agreed that Dr. Palmer's report showed voting is highly polarized, but did not include enough information to reach a conclusion about whether racial polarization was actually occurring. Alford Dep., 119:21-122:2. Dr. Alford concluded that race was not the cause of the polarization. Alford Report, p. 10; Alford Dep., 124:21-125:4.</p>	<p>Defendant's response does not dispute the assertion in this statement and misstates Dr. Alford's testimony. Dr. Alford stated in his deposition: "I'm not proving there's no racially polarized voting." Alford Dep. at 121:15-122:2.</p> <p>Moreover, Dr. Alford's conclusion that race was not the cause of the polarization documented by Dr. Palmer is based on his conclusions about the impact of a candidate's</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
		<p>race on voting patterns. Alford Report at 10. But the race of a candidate is not relevant to whether a racially polarized voting exists; rather, it is whether a candidate has become the “chosen representative of a particular racial group.” <i>City of Carrollton Branch of the N.A.A.C.P. v. Stallings</i>, 829 F.2d 1547, 1557 (11th Cir. 1987).</p>
<p>70. Dr. Alford does not offer any opinion or evidence as to the reason why African American voters supported Democratic candidates in the elections analyzed. Alford Dep. 125:14-21.</p>	<p>Undisputed.</p>	
<p>71. The majority of white voters in Georgia identify as Republican, while the majority of African American voters identify as Democrats. Expert Report of Vincent Hutchings ¶¶ 9-10, Khanna</p>	<p>Undisputed.</p>	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
Decl. Ex. 9 (hereinafter "Hutchings Report").		
72. Partisan preferences in the South, including Georgia, are influenced by racial attitudes. Hutchings Report ¶ 19.	Disputed. Dr. Alford and Dr. Hutchings testified that a number of factors can predict partisanship, of which race is only one. Alford Dep., 41:5-43:18; Deposition of Vincent Hutchings [Doc. 70] ("Hutchings Dep."), 55:24-57:15.	Defendant's response does not dispute the assertion in this statement, and Defendant's characterizations of Dr. Alford and Dr. Hutchings' testimony are inaccurate. Dr. Alford made clear that he was "not offering an opinion" "as to the reason why African-American voters . . . vote cohesively in favor of Democratic candidates." Alford Dep. 124:9–125:21. And Dr. Hutchings' concluded that "[r]ace is the single greatest demographic factor shaping the current partisan divide in the South" and that "partisan polarization . . . is inextricably linked with race." Hutchings Report ¶ 1.
73. Results from surveys conducted in 2012 and 2016 by the American	Undisputed as to all statements but the last sentence. The cited	Table 3, located at the end of Dr. Hutchings' report and cited in

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>National Election Study (“ANES”) revealed that the estimated probability of identifying with the Democratic Party for Whites in the South who endorse the perception that African Americans exert too much influence in politics was 0.13 in 2012, and 0.04 in 2016, even after controlling for ideological views on the preferred size of government. And these results are statistically significant at the .05 level. Hutchings Report ¶¶ 6, 19-20.</p>	<p>paragraphs do not support the findings regarding statistical significance.</p>	<p>Paragraph 20, indicates that these results were statistically significant at the .05 level. Hutchings Report ¶ 20, tbl. 3.</p>
<p>74. For many southern, white voters, the appeal of the Republican Party is its embrace of racial conservatism, often expressed through opposition to government efforts to reduce racial inequities. Hutchings Report ¶ 23.</p>	<p>Disputed. Dr. Hutchings testified that the term “racial conservatism” is not racism or racial intolerance. Hutchings Dep., 97:17-99:17. Racial conservatism as used by Dr. Hutchings is based on the Republican Party’s historical lack of support of issues that were important to African-American voters, going back to the 1960s. Hutchings Dep., 100:5-101:11.</p>	<p>Defendant’s response does not dispute the assertion in this statement.</p> <p>Moreover, Defendant mischaracterizes Dr. Hutchings’ testimony. Dr. Hutchings explained that racial conservatism is “a descriptive term . . . that is designed to identify individuals who adopt conservative positions on race-</p>

PLAINTIFFS’ STATEMENT	DEFENDANT’S RESPONSE	PLAINTIFFS’ REPLY
	<p>Republican primary voters in Georgia cast more than 50% of their voters for minority candidates in the 2016 Presidential Preference Primary. Hutchings Dep., 105:12-106:20. That is why Dr. Hutchings concluded that there was no racism or racial intolerance present in Republican Party primary voters. Hutchings Dep. 105:12-106:20. This is also consistent with Dr. Alford’s conclusion that partisan, rather than racial, polarization best explains the voting patterns found by Dr. Palmer—the results were unchanged even when the race of the candidate changed. Alford Report, p. 9.</p>	<p>related matters.” Hutchings Dep. at 98:2-15. He also explained that “partisan polarization is not an independent cause of the divergent voting patterns of African-American and White voters, but rather is a symptom of racial polarization and is informed by racial group membership; therefore it is inextricably linked with race.” Hutchings Report ¶ 1. Dr. Hutchings further testified that “it is not my testimony, and my report is not designed to assess the extent to which racial animus or racial intolerance influences voting decisions. This is not to say that they don’t have an influence on voting decisions[.]” Hutchings Dep. at 119:2-8.</p> <p>Finally, Dr. Alford’s conclusion that race was not the cause of the polarization documented by Dr.</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
		Palmer is based on his conclusions about the impact of a candidate's race on voting patterns. Alford Report at 10. But the race of a candidate is not relevant to whether a racially polarized voting exists; rather, it is whether a candidate has become the "chosen representative of a particular racial group." <i>City of Carrollton Branch of the N.A.A.C.P. v. Stallings</i> , 829 F.2d 1547, 1557 (11th Cir. 1987).
75. Dr. Hutchings finds that partisanship is not an independent cause of the divergent voting patterns of African American and White voters, but rather is a symptom of racial polarization, and thus is inextricably linked with race. Hutchings Report ¶ 1.	Disputed. Dr. Hutchings testified that the reputation of political parties over time with respect to race is what has led to partisan polarization. Hutchings Dep., 51:5-52:12. That kind of polarization is unrelated to particular candidates and was not based on any racism or racial intolerance. Hutchings Dep., 52:2-12; 97:17-99:17. Many of the sources relied on by Dr. Hutchings	Defendant's response does not dispute the assertion in this statement. Defendant mischaracterizes Dr. Hutchings' testimony. Dr. Hutchings testified that "it is not my testimony, and my report is not designed to assess the extent to which racial animus or racial intolerance influences voting

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
	<p>are dated and do not rely on current research. Alford Dep., 123:14-124:2.</p>	<p>decisions. This is not to say that they don't have an influence on voting decisions[.]” Hutchings Dep. at 119:2-8.</p> <p>Defendant has offered no evidence and has cited no authority suggesting that Dr. Hutchings’ sources are unreliable or inapplicable. Though Defendant claims the sources are “dated,” he offers no explanation for why the age of any sources makes them incorrect or inapplicable.</p>
<p>76. Dr. Alford agrees that if the diverging vote patterns of African Americans and Whites are consistent with preferences on issue positions relating to racial issues, then those vote patterns would be consistent with racially polarized voting. Alford Dep. at 93:6-94:16.</p>	<p>Disputed. The cited authority does not support the stated fact. Dr. Alford was responding to a hypothetical about two candidates and two political parties, one who supported segregation and one who did not. Alford Dep. 93:6-22. Dr. Alford testified that voting “might be racially polarized,” but that if the breakdown was also partisan, you</p>	<p>Dr. Alford was indeed responding to a hypothetical about two candidates from two political parties, one of which supported segregation for whom the majority voted for, defeating the candidate who did not support segregation for whom the minority group voted for. Alford Dep. at 93:6-22. Dr. Alford testified that the hypothetical</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
	<p>were left with two competing explanations. Alford Dep. 94:1-15. He was not talking about “racial issues” generally and Dr. Hutchings specifically testified that there was no racism or racial intolerance present in Georgia Republican Party primary voters. Hutchings Dep. 105:12-106:20.</p>	<p>“certainly sounds like an instance in which voting might be racially polarized.” <i>Id.</i> at 94:1-2. He further said that if the “preferences on that issue position, an explicitly racial issue, is [] what you’d expect to be the positions of a racially polarized community, then that certainly is consistent with racially polarized voting.” <i>Id.</i> at 94:2-9.</p> <p>Again, Defendant mischaracterizes Dr. Hutchings’ testimony. At no point in his deposition did Dr. Hutchings testify that there was no racism or racial intolerance present in the Georgia Republican Party. Rather, he testified that “it is not my testimony, and my report is not designed to assess the extent to which racial animus or racial intolerance influences voting decisions,” but that “[wa]s not to say that they don’t have an</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
		influence on voting decisions[.]” Hutchings Dep. at 119:2-8.
<p>77. Dr. Alford is not commenting on Dr. Hutchings’ analysis of the factors influencing party identification. The topics addressed in Dr. Hutchings’ expert report are “not an area [Dr. Alford] do[es] work in.” Alford Dep. 124:9-125:13.</p>	<p>Disputed. Dr. Alford testified that Dr. Hutchings did not do any analysis of an alternative reason for voting polarization in Georgia. Alford Dep., 125:5-13. The cited quotes from Dr. Alford’s deposition leave out the context of Dr. Alford commenting on Dr. Hutchings’ attempt to refute Dr. Alford’s report. Alford Dep., 123:14-125:13.</p>	<p>Defendant’s response does not dispute the assertions in this statement. Dr. Alford made clear that he was “not commenting on” Dr. Hutchings’ discussion of, for example, the “reason why African-American voters strongly identify with the Democratic Party or vote cohesively in favor of Democratic candidates” because that is not an area Dr. Alford “work[s] in.” Alford Dep. 124:3-17.</p> <p>Moreover, Dr. Hutchings considered numerous factors influencing party identification and polarization in Georgia and found that “racial group membership is a stronger predictor of partisan support than other socio-demographic indicators like gender,</p>

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
		income, religiosity, etc.” Hutchings Report ¶ 1.
78. Plaintiff Destinee Hatcher testified that she votes for Democratic candidates “because they were the party that reached out to my community, African-Americans.” Deposition of Destinee Hatcher at 37:9-14, Khanna Decl. Ex. 10.	Undisputed. But Ms. Hatcher also testified that she did not know any African-American individuals in her community who support Republican candidates. Hatcher Dep., 38:7-15.	Ms. Hatcher also testified that in her experience, approximately half of the African Americans she knows support Democratic candidates. Hatcher Dep. at 38:7-10.
79. Plaintiff Amanda Hollowell testified that she “vote[s] for candidates who are actually looking to represent the platform in progressive issues that affect African-Americans, myself.” Deposition of Amanda Hollowell at 21:8-17, Khanna Decl. Ex. 11.	Undisputed. But Ms. Hollowell also identifies herself as a Democrat. Hollowell Dep., 36:2-7.	
80. Plaintiff Marion Warren testified that “African Americans feel that the Democrat is the inclusive party . . . [t]he Republican Party has never ever offered the	Undisputed. But Mr. Warren also testified that he had never voted for a Republican candidate and had exclusively worked on Democratic campaigns. Warren Dep., 9:5-12:16;	

PLAINTIFFS' STATEMENT	DEFENDANT'S RESPONSE	PLAINTIFFS' REPLY
<p>black race anything “ Deposition of Marion Warren at 61:11-63:17, Khanna Decl. Ex. 12.</p>	<p>43:2-8. Mr. Warren has considered himself a Democrat ever since he first registered to vote. Warren Dep., 60:10-17.</p>	

Dated: June 20, 2019

Respectfully submitted,

By: /s/ Uzoma N. Nkwonta

Marc Erik Elias*

Bruce V. Spiva*

Uzoma N. Nkwonta*

Perkins Coie, LLP

700 13th St. N.W., Suite 600

Washington, D.C. 20005-3960

Phone: (202) 654-6338

Fax: (202) 654-9106

Email: MElias@perkinscoie.com

Email: Bspiva@perkinscoie.com

Email: Unkwonta@perkinscoie.com

Abha Khanna*

Perkins Coie, LLP

1201 Third Avenue, Ste. 4900

Seattle, WA 98101-3099

Phone: (206) 359-8000

Fax: (206) 359-9000

Email: Akhanna@perkinscoie.com

Halsey G. Knapp, Jr.

Georgia Bar No. 425320

Adam M. Sparks

Georgia Bar No. 341578

KREVOLIN & HORST, LLC

One Atlantic Center

1201 W. Peachtree St., NW; Suite 3250

Atlanta, GA 30309

Email: hknapp@khlawfirm.com

Email: sparks@khlawfirm.com

Phone: (404) 888-9700

Fax: (404) 888-9577

Attorneys for Plaintiffs

*Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2019, I filed a copy of the foregoing Plaintiffs' Reply to Defendant's Responses to Plaintiffs' Statement of Undisputed Material Facts with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Uzoma N. Nkwonta

Uzoma N. Nkwonta

Perkins Coie, LLP

700 13th St. N.W., Suite 600

Washington, D.C. 20005-3960

Phone: (202) 654-6338

Fax: (202) 654-9106

Email: UNkwonta@perkinscoie.com

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

PAMELIA DWIGHT, an individual;
BENJAMIN DOTSON, an individual;
MARION WARREN, an individual;
AMANDA HOLLOWELL, an individual;
DESTINEE HATCHER, an individual; and
WILBERT MAYNOR, an individual,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the State of
Georgia,

Defendant.

Civil Action No. 1:18-cv-2869-JPB

**PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF
ADDITIONAL MATERIAL FACTS**

Defendant's Statement	Plaintiffs' Response
<p>1. Dr. Alford sees two possible explanations for the polarization found by Dr. Palmer: race-based voting or partisan-based voting. [Doc. 34-2, p. 10]; Alford Dep., 124:21-125:4.</p>	<p>Disputed. Plaintiffs dispute that Dr. Alford's references to partisan-based voting and race-based voting can be considered <i>two separate</i> explanations for polarization. Partisan-based voting in Georgia is driven by race and is therefore race-based. <i>See</i> Hutchings Report ¶¶ 1, 22-28, Dkt. 66-12.</p> <p>Moreover, Dr. Alford's explanation for polarization among black and white voters is neither material nor relevant to any of the <i>Gingles</i> preconditions at issue in Plaintiffs' Motion for Partial Summary Judgment. <i>See Nipper v. Smith</i>, 39 F.3d 1494, 1525 n.60 (11th Cir. 1994) ("By demonstrating absence of racial bias, a defendant is not rebutting the plaintiff's evidence of racial bloc voting."); <i>see also Thornburg v. Gingles</i>, 478 U.S. 30, 63 (1986) ("[T]he reasons black and white voters vote differently have no relevance to the central inquiry of § 2.").</p>
<p>2. Dr. Alford concluded that partisan polarization better explains the numbers, because the race of the candidate is irrelevant—African-American voters support Democratic candidates regardless of their race, just as white voters support Republican candidates regardless of their race. [Doc. 34-2, pp. 6, 9-10].</p>	<p>Disputed. Partisanship is not an explanation of the polarization between black and white voters because in Georgia, partisanship itself is driven by race. <i>See</i> Hutchings Report ¶¶ 1, 22-28.</p> <p>Moreover, Dr. Alford's explanation for polarization among black and white voters is neither material nor relevant to any of the <i>Gingles</i> preconditions at issue in Plaintiffs' Motion for Partial Summary Judgment. <i>See Nipper</i>, 39</p>

	<p>F.3d at 1525 n.60; <i>see also Gingles</i>, 478 U.S. at 63.</p> <p>Finally, the results of any analysis Dr. Alford conducted regarding the race of the candidate are neither material nor relevant to any of the <i>Gingles</i> preconditions at issue in Plaintiffs' Motion for Partial Summary Judgment. <i>See City of Carrollton Branch of the NAACP v. Stallings</i>, 829 F.2d 1547, 1559 (11th Cir. 1987) (“[T]he race of the candidate per se is irrelevant to racial bloc voting analysis.”) (quoting <i>Gingles</i>, 478 U.S. at 67).</p>
<p>3. Ms. Hatcher testified that she did not know any African-American individuals in her community who support Republican candidates. Hatcher Dep. [Doc. 59], 38:7-15.</p>	<p><u>Disputed.</u> This statement is neither material nor relevant to any issue before this Court. Furthermore, Ms. Hatcher testified that in her experience, approximately half of the African Americans she knows support Democratic candidates. Hatcher Dep. at 38:7-10.</p>
<p>4. Ms. Hollowell identifies herself as a Democrat. Hollowell Dep. [Doc. 58], 36:2-7.</p>	<p><u>Disputed.</u> This statement is neither material nor relevant to any issue before this Court. Furthermore, when asked whether she votes for Democratic candidates, Ms. Hollowell testified that she “vote[s] for candidates who are actually looking . . . to represent the platform in progressive issues that affect African-Americans, myself.” Hollowell Dep. at 21:8-17.</p>
<p>5. Mr. Warren testified that he had never voted for a Republican candidate and had exclusively worked on</p>	<p><u>Disputed.</u> This statement is neither material nor relevant to any issue before this Court. Furthermore, Mr.</p>

<p>Democratic campaigns. Warren Dep. [Doc. 57], 9:5-12:16; 43:2-8.</p>	<p>Warren testified that he had never seen a Republican offer the things that his community needs, Warren Dep. at 50:6-8, and if another party came along and with a platform responsive to African-American needs, particularly on issues involving race, he would consider supporting that party. <i>Id.</i> at 63:11-17.</p>
<p>6. Mr. Warren has considered himself a Democrat ever since he first registered to vote, Warren Dep., 60:10-17, and explained that his goal in this litigation was to ensure there would be an additional Democratic district, Warren Dep., 31:16-32:4.</p>	<p><u>Disputed.</u> This statement is neither material nor relevant to any issue before this Court. Furthermore, Mr. Warren testified that he has supported the Democrats over Republicans because of the parties’ treatment of African Americans. Warren Dep. at 61:11-62:25. Mr. Warren also testified that his current Republican Representative is “paying absolutely no attention” to “what is needed in the black community.” Warren Dep. at 32:14-21.</p>
<p>7. Dr. Palmer had no opinion about whether race or partisanship explained the polarization, instead limiting his opinion to the existence of the polarization alone because he does not believe race and partisanship can be separated. Palmer Dep. [Doc. 62], 91:4-11; 95:9-14.</p>	<p><u>Disputed.</u> Dr. Palmer declined to offer an opinion on “politically polarized voting,” because he did not set out to analyze “politically polarized voting” in his report. Palmer Dep. at 91:4-11. Rather he set out to “identif[y] candidates of choice for each group,” not to determine “the reason behind how they choose their candidate of choice.” Palmer Dep. 96:8-12. In response to a question about whether the data reveals “politically polarized voting,” Dr. Palmer responded: “I’m not looking at politically polarized voting. I’m looking at voting by racial group, and I find strong evidence that</p>

	<p>members of different groups prefer different candidates.” <i>Id.</i> at 91:4-11.</p> <p>In any event, the cause of the polarization among black and white voters is neither material nor relevant to any of the <i>Gingles</i> preconditions at issue in Plaintiffs’ Motion for Partial Summary Judgment. <i>See Nipper</i>, 39 F.3d at 1525 n.60 (“By demonstrating absence of racial bias, a defendant is not rebutting the plaintiff’s evidence of racial bloc voting.”); <i>see also Gingles</i>, 478 U.S. at 63 (“[T]he reasons black and white voters vote differently have no relevance to the central inquiry of § 2.”).</p>
<p>8. Dr. Hutchings does not believe any racial animus existed in voting patterns, especially because more than half of Republican voters in 2016 supported non-white candidates in the Presidential Preference Primary. Deposition of Vincent Hutchings [Doc. 70] (“Hutchings Dep.”), 105:12-106:20.</p>	<p><u>Disputed.</u> Dr. Hutchings did not make any such statement, and Defendant mischaracterizes Dr. Hutchings’ testimony. Dr. Hutchings testified that “it is not my testimony, and my report is not designed to assess the extent to which racial animus or racial intolerance influences voting decisions. This is not to say that they don’t have an influence on voting decisions[.]” Hutchings Dep. at 119:2-8. He further stated that racially polarized voting is “evidence [] of the fact that race was a factor in drawing [voters’] electoral decisions.” <i>Id.</i> at 119:20-25.</p> <p>In any event, the absence of racial animus in voting patterns is neither material nor relevant to any of the <i>Gingles</i> preconditions at issue in Plaintiffs’ Motion for Partial Summary</p>

	Judgment. <i>See Nipper</i> , 39 F.3d at 1525 n.60; <i>see also Gingles</i> , 478 U.S. at 63.
<p>9. Dr. Hutchings explained that his connecting point of partisanship and race, the term “racial conservatism,” is not racism or racial intolerance. Hutchings Dep., 97:17-99:17.</p>	<p><u>Disputed.</u> Dr. Hutchings testified that his discussion of racial conservatism is not meant to suggest that racial intolerance or racial animus does not have an influence on voting decisions. Hutchings Dep. at 119:2-13. Dr. Hutchings also testified that “the presence of racial polarization is strongly suggestive of racial considerations influencing voting decisions.” <i>Id.</i> at 120:1-5.</p> <p>In any event, the presence (or absence) of racism or racial intolerance in voting decisions is neither material nor relevant to any of the <i>Gingles</i> preconditions at issue in Plaintiffs’ Motion for Partial Summary Judgment. <i>See Nipper</i>, 39 F.3d at 1525 n.60; <i>Askew v. City of Rome</i>, 127 F.3d 1355, 1382 (11th Cir. 1997) (“The Court is compelled to make clear that it does not understand the law to require Plaintiffs to prove racism determines the voting choices of the white electorate in order to succeed in a voting rights case.”) (quoting and affirming district court order); <i>see also Gingles</i>, 478 U.S. at 63.</p>
<p>10. Racial conservatism as used by Dr. Hutchings is based on the Republican Party’s historical lack of support of issues that were important to African-American voters, going back to the 1960s. Hutchings Dep., 100:5-101:11.</p>	<p><u>Disputed.</u> This statement is inaccurate. Dr. Hutchings testified that racial conservatism is “a descriptive term . . . that is designed to identify individuals who adopt conservative positions on race-related matters.” Hutchings Dep.</p>

	<p>at 98:2-15. Dr. Hutchings offered as an example of racial conservatism Barry Goldwater’s lack of support for the 1964 Civil Rights Act, which President Lyndon B. Johnson supported. <i>Id.</i> at 100:11-20.</p> <p>In any event, this statement is neither material nor relevant to any of the <i>Gingles</i> preconditions at issue in Plaintiffs’ Motion for Partial Summary Judgment. <i>See Nipper</i>, 39 F.3d at 1525 n.60; <i>see also Gingles</i>, 478 U.S. at 63.</p>
<p>11. Republican primary voters in Georgia cast more than 50% of their voters for minority candidates in the 2016 Presidential Preference Primary. Hutchings Dep., 105:12-106:20.</p>	<p><u>Disputed.</u> This statement is neither material nor relevant to any issue before this Court because the race of the Republican candidate is irrelevant to the racial bloc voting analysis under the second and third <i>Gingles</i> preconditions. <i>City of Carrollton Branch of the NAACP v. Stallings</i>, 829 F.2d 1547, 1559 (11th Cir. 1987) (“[T]he race of the candidate per se is irrelevant to racial bloc voting analysis.”) (quoting <i>Gingles</i>, 478 U.S. at 67). Moreover, only 6.23% of voters in the 2016 Republican primary voted for an African-American candidate.</p>
<p>12. Dr. Hutchings concluded that there was no racism or racial intolerance present in Republican Party primary voters. Hutchings Dep. 105:12-106:20.</p>	<p><u>Disputed.</u> This statement mischaracterizes Dr. Hutchings’ testimony. Dr. Hutchings testified that each of the Republican candidates for president “embrace the Republican philosophy, part of which is racial conservatism.” Hutchings Dep. at 106:2-20. Dr. Hutchings did not conclude that “there was no racism or</p>

	<p>racial intolerance present in Republican primary voters,” as Defendant claims.</p> <p>In any event, the existence (or absence) or racism or racial intolerance in the Republican Party Primary is neither material nor relevant to any of the <i>Gingles</i> preconditions at issue in Plaintiffs’ Motion for Partial Summary Judgment. <i>See Nipper</i>, 39 F.3d at 1525 n.60; <i>see also Gingles</i>, 478 U.S. at 63.</p>
<p>13. Ms. Wright affirmatively stated in her deposition that the minority population in the proposed CD 12 was not geographically compact. Wright Dep. [Doc. 64], 141:10-14.</p>	<p><u>Disputed.</u> Defendant’s citation does not support this statement, and Defendant mischaracterizes Ms. Wright’s testimony. Ms. Wright confirmed that she is “not suggesting that the African-American population is not sufficiently compact,” but instead she claims that the illustrative district itself is not compact. Wright Dep. at 141:10-143:1. She also confirmed that she had no “opinions on the compactness of Bill Cooper’s illustrative C.D. 12” “[b]eyond the fact that the proposed illustrative C.D. 12 is less compact than the current C.D. 12.” <i>Id.</i> at 146:7-12.</p>
<p>14. It is not possible to make District 12 a majority-minority district without disregarding traditional redistricting principles and making race the predominant factor. Wright Report [Doc. 65-3], p. 24-25.</p>	<p><u>Disputed.</u> This is false. All three illustrative plans comply with traditional redistricting principles. Cooper Report ¶ 63; Cooper Second Report ¶ 47-48. Race was not the “predominant factor” in drawing the districts. Cooper Dep. at 104:22-106:12.</p>
<p>15. Many of the county and precinct splits in the illustrative plans are targeted to select small sections of</p>	<p><u>Disputed.</u> This is false. Mr. Cooper testified that in splitting counties, he followed traditional redistricting</p>

<p>population based on the race of those individuals alone. Wright Report [Doc. 65-3], pp. 13-16, 19-22.</p>	<p>principles, including historical boundaries and communities of interest, Cooper Dep. at 104:22-106:12, adjusting for population differences, and he also concluded that some splits were a more obvious way to divide districts, <i>id.</i> at 103:10-104:21.</p>
<p>16. Plaintiffs’ expert Laughlin McDonald testified that significant changes to District 2 would hurt minority voting strength—and would be a basis for an objection by the Attorney General to any congressional plan. McDonald Dep., 40:22-41:3, 41:12-16</p>	<p><u>Disputed.</u> This statement mischaracterizes the questions that Mr. McDonald was asked—and the answers that he gave—in the portion of his deposition cited by Defendant. Mr. McDonald did not testify that <i>any</i> significant changes to District 2 would hurt minority voting strength or that such changes would be a basis for an objection by the Attorney General. Mr. McDonald testified that “dismantl[ing] Congressman Bishop’s district [CD 2]” “should be” a “basis for objection by the Department of Justice,” McDonald Dep. 40:22-41:3, and that he would “probably” “view as a continuation of [the] process of hurting minority voting strength” the “dismantling or significantly basically making a district unwinnable for Congressman Bishop,” <i>id.</i> at 41:12-16.</p>

Dated: June 20, 2019

Respectfully submitted,

By: /s/ Uzoma N. Nkwonta

Marc Erik Elias*

Bruce V. Spiva*

Uzoma N. Nkwonta*

Perkins Coie, LLP

700 13th St. N.W., Suite 600

Washington, D.C. 20005-3960

Phone: (202) 654-6338

Fax: (202) 654-9106

Email: MElias@perkinscoie.com

Email: Bspiva@perkinscoie.com

Email: Unkwonta@perkinscoie.com

Abha Khanna*

Perkins Coie, LLP

1201 Third Avenue, Ste. 4900

Seattle, WA 98101-3099

Phone: (206) 359-8000

Fax: (206) 359-9000

Email: Akhanna@perkinscoie.com

Halsey G. Knapp, Jr.

Georgia Bar No. 425320

Adam M. Sparks

Georgia Bar No. 341578

KREVOLIN & HORST, LLC

One Atlantic Center

1201 W. Peachtree St., NW; Suite 3250

Atlanta, GA 30309

Email: hknapp@khlawfirm.com

Email: sparks@khlawfirm.com

Phone: (404) 888-9700

Fax: (404) 888-9577

Attorneys for Plaintiffs

*Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2019, I filed a copy of the foregoing Response to Defendant's Statement of Additional Material Facts with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Uzoma N. Nkwonta

Uzoma N. Nkwonta

Perkins Coie, LLP

700 13th St. N.W., Suite 600

Washington, D.C. 20005-3960

Phone: (202) 654-6338

Fax: (202) 654-9106

Email: UNkwonta@perkinscoie.com

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

PAMELIA DWIGHT, an individual;
BENJAMIN DOTSON, an individual;
MARION WARREN, an individual;
AMANDA HOLLOWELL, an individual;
DESTINEE HATCHER, an individual;
and WILBERT MAYNOR, an individual,

Plaintiff,

v.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the State
of Georgia,

Defendant.

Civil Action No. 1:18-cv-2869-JPB

**THIRD DECLARATION OF ABHA KHANNA IN SUPPORT
OF PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PARTIAL
SUMMARY JUDGMENT**

I, Abha Khanna, hereby declare:

I am a partner with the law firm of Perkins Coie LLP and one of the attorneys for Plaintiffs in the above-captioned matter. I am over the age of 18 and am competent to testify.

1. Attached hereto as Exhibit 1 is a true and correct copy of an excerpt from the Deposition of William S. Cooper, dated March 27, 2019.

2. Attached hereto as Exhibit 2 is a true and correct copy of excerpts from the Deposition of Gina H. Wright, dated March 19, 2019.

3. Attached hereto as Exhibit 3 is a true and correct copy of an excerpt from the Deposition of Laughlin McDonald, dated March 11, 2019.

4. Attached hereto as Exhibit 4 is a true and correct copy of excerpts from the Deposition of John R. Alford, dated March 28, 2019.

5. Attached hereto as Exhibit 5 is a true and correct copy of an excerpt from the Deposition of Vincent Lamont Hutchings, dated March 25, 2019.

6. Attached hereto as Exhibit 6 is a true and correct copy of an excerpt from the Deposition of Maxwell B. Palmer, dated March 21, 2019.

EXECUTED at Seattle, Washington this 20th day of June 2019.

s/ Abha Khanna

Abha Khanna*

AKhanna@perkinscoie.com

Perkins Coie LLP

1201 Third Avenue, Ste. 4900

Seattle, WA 98101-3099

Ph.: (206) 359-8000 / F: (206) 359-9000

*Admitted pro hac vice

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2019, I filed a copy of the foregoing Third Declaration of Abha Khanna in Support of Plaintiffs' Reply in Support of Motion for Partial Summary Judgment with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

/s/ Uzoma N. Nkwonta

Uzoma N. Nkwonta

UNkwonta@perkinscoie.com

Perkins Coie LLP

700 13th St. N.W., Suite 600

Washington, D.C. 20005-3960

Phone: (202) 654-6338

Fax: (202) 654-9106

EXHIBIT 1

In The Matter Of:
PAMELIA DWIGHT, et al. vs.
SECRETARY OF STATE BRAD RAFFENSPERGER

WILLIAM SEXTON COOPER
March 27, 2019



JPA REPORTING, LLC

CERTIFIED COURT REPORTERS

404-853-1811 1-888-947-2963

Original File 0327Cooper19.txt

Min-U-Script® with Word Index

1 Q. Is it better or worse than a geocoded
2 method?

3 A. It would be for a whole county fine and
4 perhaps even better. I wouldn't expect there to be
5 any real difference, but we'd be looking at tenths of
6 a percentage point maybe.

7 Q. And for a whole precinct, wouldn't the
8 number of registered voters as reported by the
9 registrar be a better metric than geocoding for
10 determining the African American registered voters in
11 that precinct if the precinct was whole?

12 A. Yes, or as good. I mean, the differences
13 would be very small. And when aggregated, things
14 would wash out. Again, I keep stressing that I don't
15 disagree with the numbers that Ms. Wright is reporting
16 for black registered voters in her latest supplemental
17 declaration. It's going to be under 50 percent in
18 both District 12 and District 2. But that all
19 changes, that all changes, when you do not assume that
20 every single unknown voter is nonblack, which is
21 preposterous on its face. Even you and me, both of
22 whom are not grand mathematicians, can figure that
23 out, right. How could you not understand that is what
24 I want to know.

25 Q. Have you ever read or researched at all

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

PAMELIA DWIGHT, an)
individual; BENJAMIN DOTSON,)
an individual; HUDMAN EVANS,)
SR., an individual; MARION)
WARREN, an individual; AMANDA)
HOLLOWELL, an individual;)
DESTINEE HATCHER, an)
individual; and WILBERT)
MAYNOR, an individual,)
Plaintiffs,)
) CIVIL ACTION NO.
vs.)
) 1:18-CV-2869-RWS
BRAD RAFFENSPERGER, in his)
official capacity as)
Secretary of State of the)
State of Georgia,)
Defendant.)

VIDEOTAPED DEPOSITION OF GINA H. WRIGHT
(Taken by Plaintiffs)
March 19, 2019 at 8:38 a.m.
18 Capitol Square, Suite 410
Atlanta, Georgia

Reported by: Debra M. Druzisky, CCR-B-1848

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 to do it going forward now or if you're asking how
2 I used to do it or normally did that up until?

3 Q. How you would do it going forward now.

4 A. Well, I think now I would start with
5 erring on the way I've always done it, which is to
6 look at it and determine it by visual analysis.
7 But because of these issues being brought to light
8 with these reports, I would probably run these
9 tests as well just to see what they yielded.

10 Q. Before you started working on this case,
11 had you used the compactness measurements before?

12 And I'm specifically talking about the
13 Reock test and the Polsby-Popper test, had you used
14 those compactness measurements before to determine
15 whether a district was compact?

16 A. As I mentioned I used them in the
17 previous case, the house district case. But before
18 that, no.

19 Q. What does a Reock score measure?

20 A. Compactness.

21 Q. How does a Reock score tell you whether a
22 district is compact or not?

1 A. So I have to always go back and look to
2 make sure, because the two tests measure it
3 different ways. There's the Reock and the
4 Polsby-Popper, and I forget which one does what.

5 But they both, as the score gets closer
6 to one, it indicates that a district is more
7 compact. But to explain exactly the details of
8 what they do, I'd have to go back and look.
9 Because as I said, these are not things that I've
10 used throughout my 18 years.

11 Q. So as we sit here today, you can't tell
12 us what a -- how a Reock score measures
13 compactness?

14 A. Right. I would look it up to make sure I
15 understood it correctly and explained it correctly
16 in the report. One of them has to do with a circle
17 fitting around it and the measurement of that.

18 But yeah, again, these are not things I
19 normally utilize, so no, I don't -- I couldn't tell
20 you. I couldn't explain those in detail.

21 Q. And I'll ask the same question about the
22 Polsby-Popper scores. As you sit here today, you

1 can't tell me what -- how the Polsby-Popper score
2 measures compactness; is that right?

3 A. Right. As I said, the scores yield -- as
4 they get closer to one, they indicate they are more
5 compact. Which when you read the report, that's
6 what you would be looking for is those numerical
7 values.

8 Now, the underlying what does it do to
9 measure that, like I said, I mix up the two because
10 I don't use them very frequently. So I'd have to
11 go back and look to see what that explanation was
12 and what the means...

13 One of them, I think, like I said, has to
14 do with the circle, one of them has to do with a --

15 THE REPORTER: Please slow down.

16 THE WITNESS: I'm sorry. How far?

17 Should I wait a minute?

18 THE REPORTER: One of them has to do
19 with the circle.

20 THE WITNESS: Okay. And the other
21 one has to do with, I think, the
22 perimeter of a district, the measurement

1 there. But I'd have to do research to
2 make sure I tell you exactly which one
3 does what.

4 BY MR. NKWONTA:

5 Q. Can you determine by looking at a Reock
6 score if a district is not compact?

7 A. If a score was farther away from -- the
8 farther a score is away from zero would mean that
9 it is, according to those reports, less compact.

10 Q. At what point on the Reock score scale
11 would you consider a plan to not be compact?

12 A. I don't know what the threshold for that
13 would specifically be. But if I was comparing it
14 to another map and you ran an identical report, an
15 identical test, then you can say that a district or
16 a map, or whichever analysis you're doing, is more
17 or less compact according to those scores than what
18 the one -- the original one you were comparing to
19 was.

20 Q. So you would not use a Reock score to
21 determine whether a district was not compact, you
22 would only use it to determine whether it was more

1 Q. I understand it's not a priority. I just
2 want to understand --

3 A. Well, it's always a priority. It's just
4 not always the focus.

5 Q. Fair enough.

6 I just want to understand what you would
7 do to determine what the communities of interest
8 are, and specifically what you've done to determine
9 what the communities of interest are in a
10 congressional district, for instance, when you drew
11 the 2011 congressional districting plan.

12 A. So as I said, the districts are so large,
13 communities of interest is not a conversation
14 that's normally held about a congressional
15 district.

16 If you were talking about a smaller size
17 district, it's a more compact district such as
18 maybe a house district or a local commission or
19 school board, then it's much easier to discuss
20 where the communities of interest fall.

21 And I think in either this report or one
22 of my previous reports I talk about the fact that

1 because of all the other factors you mentioned?

2 A. I think it was a combination of all those
3 factors.

4 Q. And you actually increased the V.A.P.
5 black voting age population and registered voter
6 population in C.D. 2 in the 2011 plan; correct?

7 A. Yes. I think so.

8 Q. Did you increase that population because
9 of what you perceived to be a legal requirement?

10 A. No. I believe Congressional District 2
11 was in need of -- population was low in terms of
12 its deviation on that plan and where it fell. And
13 to increase that population, you would go to where
14 there was a large area of population.

15 And that population happened to be in a
16 county that also had a large percentage of
17 African-American population. So in adding that in
18 to balance the district in size, then that also
19 maintained that percentage, or in this case did
20 increase it some.

21 Q. So if there were a county within the area
22 where you could have increased the population

1 Q. Exhibit 4 is a copy of Bill Cooper's
2 illustrated plans one and two. I believe they're
3 Exhibits I and J or H and I from his report.

4 MR. TYSON: His report? Okay.

5 Great.

6 BY MR. NKWONTA:

7 Q. So in talking about compactness, first I
8 want to talk about the compactness of the
9 African-American population.

10 So when you look at Bill Cooper's
11 illustrative plan one and illustrative plan two and
12 what he has drawn as C.D. 12, is it your opinion
13 that the African-American population within that
14 proposed C.D. 12 is not sufficiently compact?

15 A. He is able to draw this district and
16 achieve the percentages that would yield it to be a
17 majority-minority district, which would imply that
18 it is.

19 However, he's also running down the side
20 of the state into Savannah to gain additional
21 population to reach that threshold and coming
22 across into Bibb County also to reach that

1 that's not very geographically compact.

2 Anytime you see counties that stick into
3 the middle of a district or stick up out of a
4 district, that's usually a red flag to me that's
5 not as compact as it could be, and it's not a
6 logical conclusion of how you would draw that.

7 Q. So to inform your opinion that that
8 illustrative district or those illustrative
9 districts are not geographically compact, you
10 looked at the districts and identified things that
11 didn't look right to you; is that fair?

12 A. Sure.

13 Q. Did you do anything else to come to that
14 conclusion?

15 A. Well, I did a lot of analysis of the
16 numbers and all, but that's all included in my
17 report. So I don't have to restate all that, do I?

18 Q. Well, I would like you to. What specific
19 analysis, other than looking at the district, did
20 you do to determine that it was not geographically
21 compact?

22 A. Well, there's the compactness scores that

1 are in here that were run. I did do those tests as
2 well. I know I --

3 Q. And you --

4 A. -- mentioned those.

5 Q. And you mentioned that you don't
6 typically rely on those tests --

7 A. Right.

8 Q. -- to run. So.

9 A. In comparison to the benchmark, it shows
10 you the -- what's the word I'm looking for? --
11 reduction in compactness, I guess I can say, from
12 the current map to what this one would yield.

13 So those do it. As I said, I do use them
14 as a comparison, and I did in this report, to show
15 that there was less compactness than there was on
16 the existing map. So those are in there.

17 You're look -- like I said, compactness
18 is a hard thing to explain, because it's -- there
19 are tests that can do that, that measure it in a
20 certain way.

21 But any expert, if you do any research on
22 trying to measure compactness, will tell you it's a

1 Polsby-Popper test show illustrative
2 plan one to be less compact than the
3 current congressional map, Congress12."

4 That's what I stated. That's what I say.

5 Q. And --

6 A. Does that answer you?

7 Q. Beyond the fact that the proposed
8 illustrative C.D. 12 is less compact than the
9 current C.D. 12, do you have any other opinions on
10 the compactness of Bill Cooper's illustrative
11 C.D. 12?

12 A. No.

13 Q. I want you to turn to Page 3 of your
14 report. If you could look at the last paragraph
15 before the History of Georgia Congressional Maps
16 and Representations section. It starts with,
17 "based on my analysis, as discussed below"?

18 A. Uh-huh.

19 Q. And there it appears that you summarize
20 your analyses and list out some of your
21 conclusions. And I want to go through those
22 individually.

1 THE WITNESS: Well, when you say
2 "lower," you mean what? Lower than what?
3 Lower than 50 percent?

4 BY MR. NKWONTA:

5 Q. Lower than what it is currently under the
6 2011 plan.

7 A. Yes.

8 Q. And do you agree that the
9 African-American population in C.D. 2 can still
10 elect, like, a candidate of their choice with a
11 black registered voter population lower than what
12 it currently is in the 2011 plan?

13 A. Say that one more time.

14 Q. Sure.

15 Do you agree that the African-American
16 population in C.D. 2 can still elect a candidate of
17 their choice even if the black registered voter
18 population is lower than what it currently is in
19 the 2011 plan?

20 A. I think they can elect the candidate of
21 their choice, yes.

22 Q. I want to look at the last paragraph on

1 There are things to consider beyond just
2 solely making that percentage figure. You can
3 consider a lot of other factors.

4 Q. So even if your goal is to make sure that
5 a district got to a certain percentage of
6 African-American voters when splitting precincts,
7 race does not predominate if you do so by following
8 certain boundaries?

9 A. Race does not predominate if you are
10 considering other factors other than race.

11 Q. So it's possible to split a precinct in
12 order to achieve a racial goal of getting over
13 50 percent African-American voters in a particular
14 district while not making race predominate in that
15 decision?

16 A. Yes, I think so.

17 Q. I want to turn back to your report, Pages
18 14 and 15. And you talk about, on the last
19 paragraph of Page 14, Mr. Cooper's decision to move
20 Lee County from District 2 into District 8;
21 correct?

22 A. Correct.

1 then to point 34 from plan one to plan two.

2 Q. But the district --

3 A. So I wouldn't --

4 Q. -- is in a different location, so what --
5 why is that the --

6 A. Not really.

7 Q. -- relevant analysis?

8 A. I mean, it's still generally in the same
9 location.

10 Q. Oh, it is?

11 A. 12? Yeah.

12 Q. Okay.

13 A. His 12 is in the same east central
14 Georgia that the current 12 is.

15 Q. Okay.

16 A. But District 9 is in the mountains. So
17 you're comparing a district down there to a
18 district the compactness in the mountains?

19 Q. In Page 15 -- on Pages 15 to 16 of your
20 report, you identify a few neighborhood splits, one
21 in Muscogee County and one in Effingham in the town
22 of Guyton.

EXHIBIT 3

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

PAMELIA DWIGHT, an individual;
BENJAMIN DOTSON, an individual;
HUDMAN EVANS, SR., an individual;
MARION WARREN, an individual;
AMANDA HOLLOWELL, an individual;
DESTINEE HATCHER, an individual;
and WILBERT MAYNOR, an individual,

Plaintiffs,

vs.

BRAD RAFFENSPERGER, in his
official capacity as Secretary of
State of the State of Georgia,

Defendant.

CIVIL ACTION

FILE NO.

1:18-cv-2869-RWS

DEPOSITION OF

LAUGHLIN McDONALD

Monday, March 11, 2019
9:00 a.m.

One Atlantic Center, Suite 3250
1201 West Peachtree Street
Atlanta, Georgia

Linda C. Ruggeri, CCR-A-261



JPA REPORTING, LLC

CERTIFIED COURT REPORTERS

404-853-1811 1-888-947-2963

1 know that the D.C. court precleared the House and
2 Congressional plans but objected to the Senate plan,
3 specifically Senate District 2, District 12. And it
4 found, of course, the presence of racially polarized
5 voting in the benchmark Senate districts. And there
6 was also lay testimony of racially polarized voting.
7 And the State failed to demonstrate that the
8 reapportionment plan for the State would not have a
9 retrogressive effect. So we had these findings of
10 violations of Section 2.

11 Q. And then in 2011 the House, Senate, and
12 congressional plans were precleared by the Department
13 of Justice you reference there, correct?

14 A. Yes.

15 Q. Are you aware if that was the first time
16 all three plans had been prepared in the State of
17 Georgia?

18 A. It might have been. I'm not sure.

19 Q. And President Obama was president in 2011,
20 correct?

21 A. Yes.

22 Q. Based on your understanding and knowledge
23 of redistricting and the Voting Rights Act and
24 preclearance particularly, if the Legislature in 2011
25 had decided to dismantle Congressman Bishop's

1 district, would you believe that would be a basis for
2 objection by the Department of Justice?

3 A. It should be.

4 Q. And why would that be?

5 A. Well, because you interfere with the
6 ability of minorities to elect representatives of
7 their choice and participate in the political process.
8 I mean, we have such a history of discrimination based
9 on race and excluding blacks in the political process
10 that I think that there's been overwhelming obligation
11 to make certain that that doesn't continue.

12 Q. And dismantling or significantly basically
13 making a district unwinnable for Congressman Bishop
14 you would view as a continuation of that process of
15 hurting minority voting strength?

16 A. Yes. I think it probably would, yeah.

17 Q. So let's talk a little bit about Shelby
18 County and kind of what happened after Shelby County.
19 That was obviously a major change in terms of the
20 Voting Rights Act. Now, you listed Shelby County as
21 one of the cases that you were involved in. Do you
22 recall what your role was or who you were representing
23 in that case?

24 A. Well, I think we were, you know, defending
25 the constitutionality of Section 5 coverage.

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
Civil Action File No. 1:18-cv-2869-RWS

PAMELIA DWIGHT, an individual;
BENJAMIN DOTSON, an individual;
HUDMAN EVANS, SR., an individual;
MARION WARREN, an individual;
AMANDA HOLLOWELL, an individual;
DESTINEE HATCHER, an individual;
and WILBERT MAYNOR, an individual,
Plaintiffs,

vs.

BRAD RAFFENSPERGER, in his official
capacity as Secretary of State of the
State of Georgia,
Defendant.

VIDEOTAPED DEPOSITION OF
JOHN R. ALFORD, PhD
Atlanta, Georgia
Thursday, March 28, 2019 at 9:01 a.m.
Court Reporter: Michelle M. Boudreaux, RPR

Videotaped deposition of
JOHN R. ALFORD, PhD, held at the offices of Taylor
English Duma LLP, 1600 Parkwood Circle, Suite 400,
Atlanta, Georgia, pursuant to Agreement before
Michelle M. Boudreaux, a Registered Professional
Reporter in the State of Georgia.

DIGITAL EVIDENCE GROUP
1730 M Street, NW, Suite 812
Washington, D.C. 20036
(202) 232-0646

1 cohesively?

2 A Okay, so now we're moving -- so we're talking
3 about black cohesion, right? So clearly, across all
4 these elections, blacks are voting cohesively for a
5 candidate of choice, the Democrat.

6 So we have hundreds or at least a hundred
7 elections here, I think; and every single one of them,
8 it's the same candidate of choice. So, right, this
9 chart demonstrates that black voters in Georgia vote
10 overwhelming for Democratic candidates.

11 Q I was asking about --

12 A That's not a question.

13 Q I was asking about cohesion, and so is it --

14 A Right, they are --

15 Q -- true in all of these elections that the
16 black voters voted cohesively for their candidate of
17 choice?

18 A Yes.

19 Q And would you agree that the white voters in
20 all of these elections voted cohesively for the
21 opposing candidate?

22 A I think sort of that first one that we see at

1 the top of that chart where the crossover is getting
2 close to 30 percent, that seems to me like it's not as
3 cohesive as the others, but the general pattern
4 certainly looks like cohesive voting typically is in
5 the 80 percent plus range, so 90 percent plus typically
6 for blacks, 80 percent plus for whites, and 80 percent
7 plus, I think, is evidence of cohesion.

8 Q So you agree that the white voters are voting
9 cohesively for the opposing candidates?

10 A They're voting cohesively for their candidate
11 of choice, and it's not the same candidate of choice as
12 the black voters.

13 Q Now I want to talk about racially polarized
14 voting. And before we get into that, I have another
15 hypothetical for you with no numbers.

16 Assume there are two candidates, Candidate A
17 and Candidate B. Candidate A belongs to Party A.
18 Candidate B belongs to Party B. Candidate A runs a
19 campaign in which one of his or her platforms is to
20 bulldoze certain minority neighborhoods to build a
21 shopping mall or whatever. Candidate B runs a campaign
22 in which his platform is to protect the minority

1 and I don't -- my recollection is he didn't cite any of
2 it.

3 Q I don't think that's what his report is
4 about, but assuming that that's your view of what his
5 report is about, are you offering any opinions as to
6 the reason why African-American voters strongly
7 identify with the Democratic party or vote cohesively
8 in favor of Democratic candidates?

9 A So there's a lot of research on the
10 competition between party and racial cues.
11 Dr. Hutchings doesn't seem to be addressing that. He
12 seems to be addressing something about, you know,
13 the -- some origin of parties, something like that.

14 Q I'll --

15 A I'm not interested -- I'm not -- it's not an
16 area I do work in, and I'm not commenting on that with
17 regard to his report. But he prefaces his report by
18 saying that this refutes what's in my report, and then
19 I've been -- presumptively refutes somehow what's in
20 Dr. Palmer's report.

21 But what's in my report and Dr. Palmer's
22 report is an analysis of voting in these elections, and

1 it shows that the elections are polarized on the basis
2 of party and that to the extent that race can be
3 measured as a factor in a cue, it's not driving that
4 polarization.

5 So he has an alternative theory about -- and,
6 again, I skimmed his report because -- primarily
7 because I was looking for some indication that if he
8 was writing in opposition to my report, that he had
9 done some analysis of voting polarization to show that
10 elections in Georgia in this period are polarized on
11 the basis of something other than party, and my
12 recollection is there is no analysis of that sort in
13 his report.

14 Q I'm going to restate my question just to make
15 sure I get a responsive answer to that.

16 Are you offering any opinions as to the
17 reason why African-American voters strongly identify
18 with the Democratic party or vote cohesively in favor
19 of Democratic candidates?

20 A I've not seen any analysis of that, and I'm
21 not offering an opinion on that.

22 Q You mentioned -- or you've mentioned racial

1 but I understand what's she's separating
2 here.

3 And to the extent you separate the two,
4 then the evidence you need to get over the
5 threshold is different than the evidence that
6 you need to demonstrate racial bloc voting.

7 And I think there is a good argument --
8 since there's a threshold standard, I think
9 there's a good argument for, in fact,
10 bifurcating those two things. But I think if
11 you're going to take that view, as this judge
12 did, then I think you have to be careful
13 about what it is Palmer has demonstrated.

14 There is -- he has no demonstration of
15 racially polarized voting, and so that's
16 going to be an issue in the case.

17 Q (By Mr. Nkwonta) Fair enough, but you do
18 agree that Drs. -- Dr. Palmer's report and analysis
19 demonstrates white bloc voting that usually defeats the
20 candidate of choice of African-American voters in
21 Georgia?

22 A Yes.

EXHIBIT 5

In The Matter Of:
PAMELIA DWIGHT, et al. vs.
SECRETARY OF STATE BRAD RAFFENSPERGER

VINCENT LAMONT HUTCHINGS
March 25, 2019



JPA REPORTING, LLC

CERTIFIED COURT REPORTERS

404-853-1811 1-888-947-2963

Original File 0325Hutchings19.txt

Min-U-Script® with Word Index

1 Q. So I'm just trying to tease out to make
2 sure I've got it. So what are racial policies, then?
3 So we've said the Civil Rights Act, the role of
4 government, which to me sounds more like a
5 philosophical question, but how is that racial policy
6 or what are other racial policies?

7 A. Well, the Civil Rights Act was clearly
8 about the ability of African Americans to, you know,
9 get access to public accommodations, so the racial
10 context was unmistakable. There was no ambiguity
11 about that. The Voting Rights Act was about allowing
12 for African American populations to have free access
13 to the franchise, to the ballot, et cetera. Again,
14 there's no ambiguity about the racial content. So
15 these are about policies that have unmistakable,
16 unambiguous racial implications.

17 We can say the same about affirmative
18 action policies. There's no hidden agenda there.
19 It's perfectly, you know, unmistakable, that it's
20 about race. And someone could adopt a conservative
21 position with respect to affirmative action, not
22 because they believe that African Americans are
23 biologically inferior, although that could be one
24 motivation certainly. But the point that I'm making
25 and the point that the literature makes is that we

EXHIBIT 6

Maxwell Palmer

March 21, 2019

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

PAMELIA DWIGHT, an)	
individual; BENJAMIN)	
DOTSON, an individual;)	
HUDMAN EVANS, SR., an)	
individual; MARION)	
WARREN, an individual;)	
AMANDA HOLLOWELL, an)	CIVIL ACTION
individual; DESTINEE)	FILE NO.
HATCHER, an individual;)	1:18-cv-2869-RWS
and WILBERT MAYNOR, an)	
individual.)	
Plaintiffs,)	
)	
v.)	
)	
BRAD RAFFENSPERGER, in)	
his official capacity)	
as Secretary of State)	
of the State of)	
Georgia,)	
Defendant.)	

DEPOSITION OF MAXWELL B. PALMER, an expert witness
in the above-entitled cause, taken before Susan
Lozzi, Registered Professional Reporter and Notary
Public in and for Essex County, pursuant to Rules 26
and 30 of the Federal Rules of Civil Procedure, at
Hinckley Allen, 28 State Street, Boston,
Massachusetts, on Thursday, March 21, 2019,
commencing at 8:58 a.m.

1 problems. Is that -- is that an area you're
2 familiar with at all?

3 MR. NKWONTA: Objection. Form.

4 Q. You can answer.

5 A. I'm not sure we need to identify that
6 difference.

7 Q. And why not?

8 A. We're interested in identifying candidates
9 of choice for each group and if minority groups are
10 able to elect their candidate of choice, and I don't
11 see anything there and the reason behind how they
12 choose their candidate of choice.

13 Q. So as a political scientist, you wouldn't
14 have any concern if a particular statute was
15 essentially locking in a political party as a result
16 if it just happened to correspond to a racial issue?

17 A. I'm sorry. Can you repeat that?

18 Q. As a political scientist and someone who
19 studied American politics, would it concern you at
20 all if a federal statute was locking in a particular
21 partisan outcome as opposed to protecting a racial
22 minority?

23 A. I don't have an opinion on that.

24 Q. Okay. In your work and research, have
25 you -- do you have an opinion about whether