

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

ALPHA PHI ALPHA FRATERNITY  
INC., a nonprofit organization on  
behalf of members residing in Georgia;  
SIXTH DISTRICT OF THE  
AFRICAN METHODIST  
EPISCOPAL CHURCH, a Georgia  
nonprofit organization; ERIC T.  
WOODS; KATIE BAILEY GLENN;  
PHIL BROWN; JANICE STEWART,

*Plaintiffs,*

vs.

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

*Defendant.*

**Case No. 1:21-cv-5337**

**PLAINTIFFS' UNOPPOSED MOTION FOR JUDICIAL NOTICE**

Pursuant to Rule 201(b)(2) of the Federal Rules of Evidence, the Alpha Plaintiffs respectfully request that for the purposes of the preliminary injunction hearing set to begin on February 7, 2022 the Court take judicial notice of demographic data produced by the Census Bureau and voter turnout data compiled and reported by the Georgia Secretary of State on its website. Plaintiffs conferred with Defendant, who does not oppose this motion.

### ARGUMENT

#### **A. Legal Authority**

Federal Rule of Evidence 201 requires courts to grant requests for judicial notice of relevant adjudicative facts that are “not subject to reasonable dispute because [they] can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2); *see also* Fed. R. Evid. 401 (setting forth the test for relevance). Plaintiffs move for judicial notice on two categories of relevant adjudicative facts: (1) U.S. Census Data and (2) data compiled and reported by the Georgia Secretary of State.

**(1) U.S. Census Data may be judicially noticed.** The Eleventh Circuit and courts within it routinely take judicial notice of census data under Rule 201. *See, e.g., United States v. Phillips*, 287 F.3d 1053, 1055 (11th Cir. 2002); *Hollis v. Davis*, 941 F.2d 1471, 1474 (11th Cir. 1991); *Whitaker v. Miami-Dade County*, 126 F.

Supp. 3d 1313, 1323 (S.D. Fla. 2015). Courts in the jurisdiction routinely take judicial notice of census data in cases brought under the Voting Rights Act. *See, e.g., Negron v. City of Miami Beach*, 113 F.3d 1563, 1565 (11th Cir. 1997) (endorsing district court’s judicial notice of census data on plaintiffs’ request); *Rose v. Raffensperger*, 2022 WL 205674, at \*13 (N.D. Ga. Jan. 24, 2022) (granting motion for judicial notice of census data); *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 2017 WL 10845104, at \*1 (M.D. Ga. Oct. 26, 2017) (same).<sup>1</sup>

**(2) Georgia Secretary of State data may be judicially noticed.** Another source of data subject to judicial notice are facts that can be “accurately and readily determined from public reports” prepared by a state agency that “cannot reasonably be questioned.” *See Dimanche v. Brown*, 783 F.3d 1204, 1213 (11th Cir. 2015) (taking notice of statistics prepared by the Florida Department of Corrections). This includes accurate data published on an official government website. *See, e.g., Common Case Ga. v. Kemp*, 347 F. Supp. 3d 1270, 1297 (N.D. Ga. 2018) (taking judicial notice of information available on the website of Georgia’s Secretary of

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<sup>1</sup> Census data for Georgia are available at: [https://www2.census.gov/programs-surveys/decennial/2020/data/01-Redistricting\\_File--PL\\_94-171/Georgia/](https://www2.census.gov/programs-surveys/decennial/2020/data/01-Redistricting_File--PL_94-171/Georgia/) (2020 Census data); [https://www2.census.gov/census\\_2010/01-Redistricting\\_File--PL\\_94-171/Georgia/](https://www2.census.gov/census_2010/01-Redistricting_File--PL_94-171/Georgia/) (2010 Census data); [https://www2.census.gov/census\\_2000/datasets/redistricting\\_file--pl\\_94-171/Georgia/](https://www2.census.gov/census_2000/datasets/redistricting_file--pl_94-171/Georgia/) (2000 Census data); [https://www2.census.gov/census\\_1990/](https://www2.census.gov/census_1990/) (1990 Census data). Upon request, Plaintiffs can provide the Court with a CD of the underlying data files.

State); *Johnson v. Wells Fargo & Co.*, 2020 WL 10054621, at \*5 n.3 (N.D. Ga. Sept. 25, 2020) (same); *Mont. Green Party v. Jacobsen*, 17 F.4th 919, 927 (9th Cir. 2021) (taking judicial notice of official election results from Department of State website); *Support Working Animals, Inc. v. DeSantis*, 457 F. Supp. 3d 1193, 1203 n.1 (N.D. Fla. 2020) (same). Georgia voter turnout data are official statistics compiled by the Georgia Secretary of State and available on its website. See Georgia Secretary of State, *Voter Turnout by Demographics*, [https://sos.ga.gov/index.php/Elections/voter\\_turn\\_out\\_by\\_demographics](https://sos.ga.gov/index.php/Elections/voter_turn_out_by_demographics). Because this information is readily available on a public government website, and “cannot reasonably be questioned,” it is subject to judicial notice. *Brown*, 783 F.3d at 1213.

#### **B. The Data Are Relevant to Plaintiff’s Case**

Each of the categories of information for which Plaintiffs seek judicial notice is unquestionably relevant to the claim before this Court. “Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” Fed. R. Evid. 401. The Alpha Plaintiffs bring their claim under Section 2 of the Voting Rights Act, for which the Supreme Court and Congress have outlined threshold requirements and factors for courts to consider when determining whether violations have occurred. See *Thornburg v. Gingles*, 478 U.S. 30, 44 (1986); see also S. Rep.

No. 97-417, at 28-30 (1982), *as reprinted in* 1982 U.S.C.C.A.N. 177, 205-08 (establishing what have come to be known as the “Senate Factors”). Census data will help establish the first *Gingles* factor—namely the existence of a geographically compact minority population. Additionally, census and voter-turnout data will establish the fifth Senate Factor, which is “[t]he extent to which members of the minority group in the state or political subdivision bear the effects of discrimination in such areas as education, employment and health, which hinder their ability to participate effectively in the political process.” S. Rep. No. 97-417, at 29, *as reprinted in* 1982 U.S.C.C.A.N. at 206. Census data will reveal information about the minority population’s education and employment, and voter-turnout information directly speaks to a minority group’s “ability to participate effectively in the political process.”

### **CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant their request for judicial notice.

Dated: February 6, 2022.

Respectfully submitted,

/s/ Rahul Garabadu

/s/ Sophia Lin Lakin

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**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 5.1**

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

*/s/ Rahul Garabadu* \_\_\_\_\_



**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused to be served the foregoing *Plaintiffs' Unopposed Motion for Judicial Notice* with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all counsel or parties of record on the service list:

This 6th day of February, 2022.

/s/ Rahul Garabadu