

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

PAMELIA DWIGHT, *et al.*

Plaintiffs,

v.

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

**SECRETARY OF STATE BRAD RAFFENSPERGER'S
RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

I. INTRODUCTION

Plaintiffs seek to force the creation of a new Democratic-majority district in southeast Georgia. Defendant Secretary of State Brad Raffensperger opposes this misuse of the Voting Rights Act (VRA). As explained below, Plaintiffs are not entitled to summary judgment.

First, Plaintiffs cannot use the VRA to force a partisan outcome by trading one majority district for another. As all the experts agree, Plaintiffs cannot create a majority-African-American District 12 without bringing District 2 below majority status. The VRA does not allow Plaintiffs to choose

where in the state a majority-African-American district will be drawn, especially when the State of Georgia had compelling reasons for making District 2 a majority-African-American district in 2011.

Second, significant disputes of fact remain about the meaning of the polarization statistics presented by Plaintiffs in support of *Gingles* prongs two and three. The only point of agreement between the experts is that there is polarization—but Plaintiffs’ experts claim it is racial; Defendant’s expert finds it is partisan. This dispute of fact alone prevents summary judgment in Plaintiffs’ favor at this stage of the proceedings, in addition to the Plaintiffs’ failure to carry their burden that partisanship is not the cause of the polarization, as required by the Eleventh Circuit.

This case should be resolved in favor of Defendant because (1) of Plaintiffs’ delay in bringing this case; (2) the undisputed facts demonstrate that Plaintiffs cannot prevail on prong one; and (3) Georgia’s congressional districts reflect, at a minimum, rough proportionality indicating that minority voters in Georgia have an equal opportunity to participate in the political process and to elect representatives of their choice. All of these bases are explained in the Brief in Support of Defendant’s Motion for Summary Judgment [Doc. 65-1]. But this case cannot and should not be resolved in favor of Plaintiffs on any of the *Gingles* prongs at summary judgment.

II. ADDITIONAL RELEVANT FACTS

A. Additional facts regarding *Gingles* prong one.

Plaintiffs reduce the legal requirements of *Gingles* prong one¹ to a mechanistic question: “is it possible to draw a compact majority-minority district in central and southeast Georgia?” [Doc. 66-1, p. 9]. Because their expert has drawn a district (even though it was drawn primarily based on race), they argue that they have met the first prong. *Id.* But the undisputed evidence shows that Plaintiffs are unable to draw their proposed majority-African-American District 12 without significantly altering District 2. As explained in Defendant’s Brief in Support of Motion for Summary Judgment, the General Assembly chose to make District 2 a majority district to satisfy the preclearance requirements of the VRA in 2011. [Doc. 65-1, pp. 4-5, 16-20].

The various scores and calculations about the illustrative plans trumpeted by Plaintiffs do not provide any useful information to the Court. Plaintiffs must do more than just draw a district—they must demonstrate connections between the disparate geographic communities they unite that go beyond race. [Doc. 65-1, pp. 20-21]; *League of United Latin Am. Citizens v.*

¹ The first prong of *Thornburg v. Gingles*, 478 U.S. 30, 106 S. Ct. 2752 (1986) requires a plaintiff to prove that the minority group is “sufficiently large and geographically compact to constitute a majority in a single district.” *Id.* at 50-51.

Perry, 548 U.S. 399, 433, 126 S. Ct. 2594, 2618 (2006) (*LULAC*); *Bush v. Vera*, 517 U.S. 952, 997, 116 S. Ct. 1941 (1996). The African-American population in District 12 on Plaintiffs' illustrative plans is not geographically compact. Wright Dep. [Doc. 64], 141:10-14.

In addition, the illustrative plans create a District 12 that is primarily based on race. Most of the county and precinct splits in the illustrative plans are targeted to select small sections of population based solely on the race of those individuals. Wright Report [Doc. 65-3], pp. 13-16, 19-22. As a result, the only way Plaintiffs created a majority-minority District 12 was to disregard traditional redistricting principles and focus exclusively on race. Wright Report [Doc. 65-3], p. 24-25.

Plaintiffs' illustrative plans do not increase the number of ability-to-elect districts in the State of Georgia. They simply trade the existing District 2 for their proposed District 12. Wright Report [Doc. 65-3], p. 11; Cooper Dep. [Doc. 60], 116:13-17. Given testimony by Plaintiffs' own expert that eliminating District 2 as a majority-African-American district would have been retrogressive in 2011, McDonald Dep. [Doc. 61], 40:22-41:3, 41:12-16, Plaintiffs have not shown that merely moving a majority-African-American district from one side of the state to the other meets the first *Gingles* prong.

B. Additional facts regarding prongs two and three.

Plaintiffs spend almost no time explaining their analysis of the second and third *Gingles* prongs,² again oversimplifying the standard.

All the experts agree that the appropriate method of calculating the polarization numbers is through a statistical estimating method called Ecological Inference (EI). [Doc. 65-10, p. 5]; [Doc. 34-2, pp. 4-5]. All the experts likewise agree that the EI estimates show significant polarization in the elections calculated. Alford Dep. [Doc. 63], 119:21-122:2.

But then the opinions diverge significantly. Dr. Alford sees two possible explanations: race-based voting or partisan-based voting. [Doc. 34-2, p. 10]; Alford Dep., 124:21-125:4. He concludes that partisan polarization better explains the numbers, because the race of the candidate is irrelevant—African-American voters support Democratic candidates regardless of the candidate’s race, just as white voters support Republican candidates regardless of their race. [Doc. 34-2, pp. 6, 9-10]. This conclusion is also supported by the words of Plaintiffs themselves—Ms. Hatcher testified that she did not know any African-American individuals in her community who

² The second and third prongs are “(2) that the minority group is ‘politically cohesive’; and (3) that sufficient racial bloc voting exists such that the white majority usually defeats the minority’s preferred candidate.” *Nipper v. Smith*, 39 F. 3d 1494, 1510 (11th Cir. 1994), quoting *Gingles*, 478 U.S. at 50-51.

support Republican candidates. Hatcher Dep. [Doc. 59], 38:7-15. Ms. Hollowell identifies herself as a Democrat. Hollowell Dep. [Doc. 58], 36:2-7. Mr. Warren testified that he had never voted for a Republican candidate and had exclusively worked on Democratic campaigns. Warren Dep. [Doc. 57], 9:5-12:16; 43:2-8. 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.

Plaintiffs' experts also apparently see merit in the partisan-polarization theory. 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. Dr. Hutchings explained that he did 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.

Given this strong evidence of partisanship and lack of evidence of race-based voting, Plaintiffs are left with an alternative explanation: that partisanship and race are too intertwined to separate. [Doc. 66-1, p. 24]. But

Dr. Hutchings was careful to limit his testimony on a number of points during his deposition, explaining that his connecting point of partisanship and race, 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. Republican primary voters in Georgia cast more than 50% of their votes 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.

III. ARGUMENT AND CITATION OF AUTHORITY

As explained by all parties, a plaintiff bears the burden of first proving each of the three *Gingles* preconditions to show a Section 2 violation. *Nipper*, 39 F. 3d at 1510. After a plaintiff establishes the three preconditions, a court then reviews the so-called “Senate Factors” to assess the totality of the circumstances. *Id.* at 1512; *Gingles*, 478 U.S. at 79; *Johnson v. De Grandy*, 512 U.S. 997, 1011, 114 S.Ct. 2647 (1994).

Grants of summary judgment to plaintiffs in Section 2 cases are “unusual.” *Ga. State Conference of the NAACP v. Fayette Cty. Bd. of Comm’rs*,

775 F. 3d 1336, 1345 (11th Cir. 2015) (“*Fayette*”). The Eleventh Circuit observes that “[n]ormally,” Section 2 claims “are resolved pursuant to a bench trial.” *Id.* at 1343. Granting summary judgment to a plaintiff is rarely appropriate “due to the fact-driven nature of the legal tests required by the Supreme Court and [Eleventh Circuit] precedent.” *Id.* at 1348. This remains true even when the parties agree on many basic facts:

Summary judgment may be inappropriate even where the parties agree on the basic facts, but disagree about the inferences that should be drawn from these facts. If reasonable minds might differ on the inferences arising from undisputed facts, then the court should deny summary judgment.

Burton v. City of Belle Glade, 178 F. 3d 1175, 1187 (11th Cir. 1999) (quoting *Clemons v. Dougherty Cty., Ga.*, 684 F. 2d 1365, 1369 (11th Cir. 1982)).

Courts considering Section 2 claims must conduct an “intensely local appraisal” of the facts in the local jurisdiction, which is not generally amenable to resolution as a matter of law. *De Grandy*, 512 U.S. at 1020-21 (no statistical shortcuts to determining vote dilution); *Gingles*, 478 U.S. at 45, 78 (stating that courts must conduct a “searching practical evaluation of the ‘past and present reality’” of the challenged electoral system and whether vote dilution is present is “a question of fact”); *White v. Regester*, 412 U.S. 755, 769-70 (1983) (assessing the impact “in light of past and present reality, political and otherwise”).

While the undisputed facts demonstrate that *Defendant* is entitled to summary judgment on prong one, there is a significant difference of opinion between the experts about what is causing the polarization that each expert agrees exists. As discussed below, this Court should grant summary judgment to Defendant, but at the very least should deny Plaintiffs' Motion due to the disputes of fact about the nature of the polarization.

A. The undisputed evidence demonstrates that Defendant is entitled to summary judgment on *Gingles* prong one.

i. Plaintiffs' swap of majority-African-American districts does not entitle them to summary judgment.

Plaintiffs' Motion falls woefully short of establishing they are entitled to judgment as a matter of law. Plaintiffs cannot establish the first prong because, as explained in Defendant's Motion for Summary Judgment [Doc. 65-1], they have not submitted any illustrative plan making District 12 a majority-African-American district without also reducing District 2 below ability-to-elect status.³ Instead, Plaintiffs put forth the conclusory and

³ Plaintiffs misquote *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009), in an attempt to argue that the only relevant metric is voting-age population. *Bartlett* considered the question of whether districts with less than 50% of a single minority population (called crossover and coalition districts) were protected by Section 2. *Id.* In 2011, Georgia maintained the ability-to-elect District 2 by ensuring it had a majority of African-American registered voters through adding Macon-Bibb County. Wright Rep. [Doc. 64-3], p. 7; Wright Supp. Rep. [Doc. 64-11], p. 2. This complied with the requirements of Section

unsupported statement that the 71-county area their expert used to create his illustrative plans was “an effort to respect traditional boundaries and maintain communities of interest.” [Doc. 66-1, p. 18]. Declaring this without any support, however, does not make it so. Defendant incorporates the arguments in his Motion for Summary Judgment on prong one [Doc. 65-1, pp. 15-21], but will respond to several additional issues raised by Plaintiffs.

The Georgia General Assembly made a reasonable policy decision to avoid retrogression by placing Macon-Bibb County into District 2, not District 12. [Doc. 65-1, pp. 15-20]. Plaintiffs second-guess that decision by pulling most of Macon-Bibb County away from District 2 in their illustrative plans but have impermissibly diluted minority voting power in that district, as their own expert agreed. [Doc. 65-1, pp. 18-20]. If this Court were to endorse a remedy that Plaintiffs’ own expert admits would have violated the VRA at the time of the current plan’s inception, it would create the historically unacceptable situation where state actors are “trapped between the competing hazards of liability.” *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 291 (1986); see also *Ala. Legislative Black Caucus*, 135 S. Ct. at 1273.

5 and is the correct analysis—not whether District 12 could be drawn as a majority district. See *Ala. Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1272 (2015).

Because the only way to create a majority-African-American District 12 is to significantly reduce the African-American voter percentages in District 2, Plaintiffs have not shown they have a proper remedy for this Court to consider, and their summary judgment motion should be denied.

Plaintiffs have gone to great pains to draw several illustrative District 12 maps in a way that creates a BVAP percentage of greater than 50%.⁴ But this destroys the overall compactness of their proposed District 12 and dilutes District 2—a district that historically allowed the minority community to elect the candidate of its choice. [Doc. 65-1, pp. 18-20]. This approach is not allowed by the VRA: “vote-dilution injuries suffered by these persons are not remedied by creating a safe majority-black district somewhere else in the State.” *LULAC*, 548 U.S. at 429 citing *Shaw v. Hunt*, 517 U.S. 899, 917 (1996). Put differently, “[i]f the inclusion of the plaintiffs would necessitate the exclusion of the others, then the State cannot be faulted for its choice.” *Id.*

⁴ Ms. Wright testified that it was not possible to draw District 12 as a majority-African-American district without making race the predominant factor—a significant dispute of fact with Mr. Cooper’s testimony. Wright Report [Doc. 65-3], p. 24-25. She documented the techniques used by Mr. Cooper to prioritize race over other factors that still resulted in a district that was under 50% African-American on voter registration. Wright Report [Doc. 65-3], pp. 13-16, 19-22; Wright Supp. Report [Doc. 65-9], p. 1. Both experts agreed that Macon-Bibb County was required to make either District 2 or District 12 a majority-African-American district. Wright Rep., p. 7; Cooper Dep., 76:8-18.

Plaintiffs' inclusion of a number of charts in their brief does not change the fact that they cannot explain why they believe the VRA should allow them to choose to place their preferred district in the place they wish—because they have to dismantle one majority-African-American district to create their preferred District 12 and still must draw primarily based on race to create it. Plaintiffs are not entitled to judgment as a matter of law because merely trading one district for another does not meet the first prong of *Gingles*.

ii. Plaintiffs have not submitted any evidence of the compactness of the minority population.

Plaintiffs also have presented no evidence that the African-American community in the proposed District 12 on the Illustrative Plans is geographically compact. This absence of evidence further supports the denial of the Plaintiffs' Motion.

Plaintiffs believe that compactness of the minority population can somehow be measured without taking into account the geographic area in which it is situated. Plaintiffs suggest that Defendant's expert, Ms. Wright, agreed that the minority communities in Plaintiffs' proposed District 12 are compact. *See* [Doc. 66-1 p. 16]. This is not a correct reflection of Ms. Wright's testimony on this important subject, which went on at some length.

Compactness of minority communities does not, as Plaintiffs suggest,

eliminate the need to consider the geographic boundaries in which those minority communities are situated. The Section 2 analysis of compactness is not centered on, “the relative smoothness [and contours] of the district lines,” but rather the compactness of the *minority population itself*. *LULAC*, 548 U.S. at 432-433. The inquiry, therefore, is whether “the minority group is geographically compact.” *Id.* at 433, quoting *Shaw II*, at 916. Contrary to what Plaintiffs suggest in their Motion, Ms. Wright affirmatively stated in her deposition that the minority population in their proposed District 12 was not geographically compact:

Q. So you’re not suggesting that the African-American population is not sufficiently compact, but you’re saying it’s [referring to the African American population] not geographically compact?

A. Right.

Wright Dep. [Doc. 64], 141:10-14. Ms. Wright affirmed without reservation that the minority community in Plaintiffs’ proposed District 12 is not geographically compact, which is the appropriate Section 2 analysis.

Given Ms. Wright’s testimony about the lack of geographic compactness of the minority population, Mr. Cooper’s inability to identify anything beyond the race of the individuals he included in District 12 on the illustrative plans⁵

⁵ Mr. Cooper could identify practically nothing beyond the race of the voters in Macon, Augusta, and Savannah that united them—in clear violation of the

demonstrates that Plaintiffs are not entitled to summary judgment, because they have simply united “far-flung segments of a racial group” based on nothing but their race. *LULAC*, 548 U.S. at 433. This Court should grant summary judgment to Defendant on the first *Gingles* prong.

B. There remains a significant dispute of fact about the nature of the polarization found by the experts in their analysis of *Gingles* prongs two and three.

As referenced above, courts tend to disfavor summary-judgment resolutions in favor of plaintiffs in Section 2 cases because of the “inherently fact-intensive” nature of vote dilution cases, especially where complex issues of politics and race are involved. *See, e.g., Nipper*, 39 F. 3d at 1498, 1527 (“[c]ourts must consider all relevant evidence” and “the types of evidence that would be relevant under [the *Gingles*] standard plainly defy categorization”); *McIntosh Cty. Branch of the NAACP v. City of Darien*, 605 F. 2d 753, 757 (5th Cir. 1979) (requiring that findings of fact and conclusions of law with sufficient detail to enable appellate review of the factual and legal basis for the court’s ultimate conclusion). Indeed, the Eleventh Circuit in *Nipper* had difficulty conceiving how any dispute about whether racial or partisan patterns explained electoral losses could ever be conclusively determined at

requirements of *LULAC*, 548 U.S. at 433. Cooper Dep., 105:19-106:6 (identifying a highway as a possible connection).

any phase before trial. *See Nipper*, 39 F. 3d at 1525 n. 61 (discussing how to practically approach trial on vote-dilution claims).

Recent Eleventh Circuit decisions in Section 2 cases reaffirm the reluctance to grant summary judgment where partisanship-versus-race issues are raised. In two cases, the court reversed summary judgment decisions, faulting the trial courts for improperly weighing evidence and making credibility determinations on issues virtually identical to those raised by Plaintiffs' Motion. The court found it improper at summary judgment to (1) make determinations about the reason minority candidates had not been elected to office (*i.e.*, on account of politics or race), (2) weigh the Senate factors to determine the totality of the evidence, and (3) find the evidence supported racially polarized voting. *See Fayette*, 775 F. 3d at 1347-48, and *Wright v. Sumter Cty. Bd. of Elections & Registration*, 657 F. App'x 871, 872 (11th Cir. 2016). For these same reasons, Plaintiffs are not entitled to summary judgment here.

i. Where electoral defeat is a result of partisanship, there is no Section 2 violation.

Section 2 plaintiffs bear the burden of proving that electoral losses are the result of racial bias—not partisan voting patterns. *Nipper*, 39 F. 3d at 1494; *Solomon v. Liberty County*, 220 F. 3d 1218 (11th Cir. 2000) (*en banc*);

League of United Latin Am. Citizens v. Clements, 999 F. 2d 831 (5th Cir.

1993) (*en banc*). As the Eleventh Circuit explained:

Courts must undertake the additional inquiry into the reasons for, or causes of, these electoral losses in order to determine whether they were the product of “partisan politics” **or** “racial vote dilution,” “political defeat” **or** “built-in bias.” It is only upon concluding that a minority group’s failure to prevail at the polls ... was the “result” or “function” of “racial vote dilution” or “built-in bias,” that a court may find that minority plaintiffs have suffered “a denial or abridgement of the right ... to vote on account of race or color.”

“Electoral losses that are attributable to partisan politics” ... “do not implicate the protections of Section 2.”

Nipper, 39 F. 3d at 1525 (quoting *Clements, supra*) (quotes and emphasis in original). Where partisanship causes the defeat of minority-preferred candidates, it is reversible error to find a Section 2 violation:

When the record indisputably proves that partisan affiliation, not race, best explains the divergent voting patterns among minority and white citizens in the contested counties, . . . the district court’s judgment [for plaintiffs] must be reversed.

39 F. 3d at 1525. This interpretation of Section 2 by both the Eleventh Circuit in *Nipper* and the Fifth Circuit in *LULAC* is based on the purpose and legislative history of the VRA itself:

[S]ection 2 . . . prohibits voting practices that deny minority voters equal access to the political process *on account of race*. Indeed, “[w]ithout an inquiry into the circumstances underlying unfavorable election returns, courts lack the tools to discern results that are in any sense ‘discriminatory,’ and any distinction

between deprivation and mere losses at the polls becomes untenable.”

* * *

Unless the tendency among minorities and white voters to support different candidates, and the accompanying losses by minority groups at the polls, are somehow tied to race, voting rights plaintiffs simply cannot make out a case of vote dilution.

39 F. 3d at 1523-24 (citations omitted) (emphasis in original).

This connection to racial bias is key, because Plaintiffs must prove “objective factors that, under the totality of the circumstances, show the exclusion of the minority group from meaningful access to the political process is due to the interaction of *racial bias in the community* with the challenged voting scheme.” *Id.* at 1524 (emphasis added). The voting community must be “driven by racial bias” which allows the bias “dilute the minority population’s voting strength.” *Id.* at 1524-25.

If the evidence demonstrates that racial bias “does not play a major role in the political community, and the plaintiff cannot overcome that proof, then obviously [Congress] did not intend the plaintiff to win, *even if the plaintiff has proven bloc voting.*” *Id.* at 1524 n.60 (emphasis in original).

Plaintiffs’ own evidence demonstrates that there is no racial bias present in the voting patterns they identify. Dr. Hutchings concluded that partisan polarization was unrelated to racism or racial intolerance.

Hutchings Dep., 52:2-12; 97:17-99:17; 105:12-106:20. This testimony supports Dr. Alford's conclusion that the polarization between white and African-American voters is the result of partisanship, not racial bias. [Doc. 34-2, pp. 6, 9-10]. Plaintiffs have submitted no evidence of a voting community "driven by racial bias." *Nipper*, 39 F. 3d at 1524-25.

Facing this evidentiary problem in light of *Nipper*, Plaintiffs attempt to modify their burden. They claim that they do not have to refute evidence of partisan politics, instead attempting to argue that partisan considerations are not relevant to the second and third *Gingles* preconditions and should be reserved for the later totality-of-the-circumstances analysis. [Doc. 66-1 at 23 (quoting *Nipper*, *supra* at 1525 n.60)]. These assertions are incorrect, as contrary to the plain language of *Nipper* and *LULAC*, which demonstrate that the question of racial or partisan polarization is relevant to whether legally significant bloc voting exists. At the very least, this demonstrates that Plaintiffs are not entitled to summary judgment: courts repeatedly find that totality-of-the-circumstances inquiries are not appropriate for summary judgment. *See, e.g., Fayette*, 775 F. 3d at 1347-48; *McNeil v. Springfield Park Dist.*, 851 F. 2d 937, 940-43 (7th Cir. 1988); *Johnson v. DeSoto Cty. Bd. of Comm'rs*, 868 F. Supp. 1376, 1382 (M.D. Fla. 1994), *rev'd on other grounds*, 72 F. 3d 1556 (11th Cir. 1996).

Plaintiffs cite just one case to support the concept that “courts consider[] evidence of non-racial explanations for bloc voting, if at all, in the second phase of the Section 2 analysis, after determining whether the *Gingles* preconditions had been met.” [Doc. 66-1 at 23.] But that case does not help their cause. In *Georgia State Conference of the NAACP v. Fayette Cty. Bd. of Comm’rs*, No. 3:11-cv-123-TCB (N.D. Ga.), no evidence related to partisanship was introduced until after the Eleventh Circuit reversed an initial grant of summary judgment, *see* 775 F. 3d at 1336, and the trial court did not resolve the partisanship question before the case settled.

Nipper clearly sets forth Plaintiffs’ affirmative burden to prove race—not partisan politics—caused the electoral defeats of minority-preferred candidates that they identified. On the present record, Plaintiffs have not met their burden to demonstrate the absence of disputed facts regarding whether the defeats of minority-preferred candidates were due to race. Indeed, Plaintiffs’ own evidence shows that racial bias plays no role in white bloc voting which usually defeats minority-preferred candidates—their own expert admitted that there was no racism or racial intolerance in Republican primary voters and that his baseline comparison of “racial conservatism” had nothing to do with racism. Hutchings Dep., 97:17-99:17; 105:12-106:20. Because Plaintiffs have not put forward evidence rebutting the significant

evidence of partisanship as an explanation for bloc voting, Plaintiffs' Motion should be denied.

ii. The evidence offered by Plaintiffs does not support a finding under the Gingles 2 and 3 criteria of political cohesion among minority voters, or that racial bloc voting causes the white majority to “usually defeat” the minority-preferred candidate.

Plaintiffs rely solely on Dr. Palmer for evidence that satisfies the second and third *Gingles* preconditions. Dr. Palmer's testimony as to these critical issues (including with respect to politics-versus-race), is challenged by Dr. Alford. In their attempt to gloss over the obvious factual disputes in the expert opinions, Plaintiffs repeatedly misrepresent Dr. Alford's testimony and unwittingly highlight examples of those very disputes.

For example, Plaintiffs state that “Dr. John Alford[] agree[d] that African Americans in an around CD 12 vote cohesively in support of the same candidates, and that the white majority votes as a bloc usually to defeat their candidates of choice.” [Doc. 66-1 at 21]. But the cited testimony from Alford's deposition, more fully explains his views beyond the simplistic re-reading offered by Plaintiffs:

- Q The black voters voted cohesively in favor of a candidate which was different from the voters -- from the candidate that the white voters supported cohesively?
- A Okay, so now we're moving -- so we're talking about black cohesion, right? *So clearly, across all these elections, blacks*

are voting cohesively for a candidate of choice, the Democrat.

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

Alford Dep., [Doc. 63], at 87:20-88:10 (emphasis added).

Plaintiffs also cherry-pick testimony in which Dr. Alford agreed that “Dr. Palmer’s report and analysis demonstrates white bloc voting that usually defeats the candidate of choice of African-American voters” [Doc. 66-1 at 21 (citing Doc. No. 63 at 206:17-22)] (emphasis added)), while ignoring the contemporaneous explanation clarifying Dr. Alford’s position and criticizing Dr. Palmer’s analysis and conclusion:

. . . [Y]ou asked me if it demonstrated racial bloc voting. I don’t think it demonstrates racial bloc voting I think you have to be careful about what it is Palmer has demonstrated. *There is -- he has no demonstration of racially polarized voting, and so that’s going to be an issue in the case.*

Alford Dep., 205:14-206:16 (emphasis added).

Plaintiffs broadly misrepresent that Dr. Alford “has no dispute with Dr. Palmer’s methods, nor does he dispute the results of Dr. Palmer’s analysis.” [Doc. 66-1 at 21]. This testimony applied only to Dr. Alford’s view of the EI calculations performed by Dr. Palmer; Dr. Alford never agreed with the result

of that analysis. And Dr. Alford explicitly clarified that it was the methodology—as distinct from the methods—applied by Dr. Palmer in conducting the analysis, with which Dr. Alford did not disagree. *See* Alford Dep., 77:9-78:11. Dr. Alford later explained, directly contrary to Plaintiffs’ representation, that he *does* disagree with Dr. Palmer’s election analysis, specifically including on the grounds of partisanship-versus-race issues overlooked or ignored by Dr. Palmer:

He’s left out the -- in terms of labeling, at least, he’s left out the variable that’s the most obvious explainer here, which is despite the coincidence that every single one of these candidates that's preferred is a Democrat, he doesn’t label party. He does label the race of the candidate. And it appears to make no difference. He makes no comment on it at all. Right?

So there are two factors here competing, as they always are in partisan elections: the possibility that this is racially polarized voting and the possibility that it’s just partisan polarized voting.

He’s eliminated the information that would suggest that it might be partisan by just not putting it in there, which is an odd thing to do. He’s included the evidence that would allow you to assess it was racial, and then he hasn’t used it.

Alford Dep., at 96:6-13; *see also* 98:4-99:5.

Dr. Alford independently analyzed Dr. Palmer’s EI calculations, the pertinent underlying voting data, and conducted his own analysis on election results within District 12 from 2012 to 2018. That analysis showed that, because black and white Democratic candidates received similar levels of

support from both minority voters and white voters, the party—not the race—of candidates determined voter preferences:

[T]he race of the candidates does not appear to be particularly influential. Black voter support for Black Democratic candidates is certainly high, in 2018 just as it was in 2012-2016, but Black voter support is in the same high range for white Democratic candidates as it is for Black Democratic candidates. Similarly, white voter support for Black Democratic candidates is low, in 2018 just as it was in 2012-2016, but white voter support for white Democratic candidates is also low.

In his report Dr. Palmer summarizes his conclusion about racially polarized vote by stating that ‘these results demonstrate high levels of racially polarized voting in CD 12 and its surroundings However, as the discussion above indicates *these are differences tied to the party of the candidate, not the race of the candidate.*

* * *

Both the election analysis report by Dr. Palmer for 2012-16, and the 2018 election analysis provided here show that Black voters cohesively support Democratic candidates, regardless of whether those candidates are Black or white. Similarly, white voters cohesively vote for Republican candidates, and in opposition to Democratic candidates, regardless of whether those candidates are Black or white. Thus it is cohesive Black voter support for Democratic candidates, and white voter support for Republican candidates that the election analysis reveals, not cohesive Black voter support for Black candidates and white voter support for white candidates. In short, *the election analysis provided here and in Dr. Palmer’s report demonstrates that party polarization, rather than racial polarization, is the best explanation for the voting patterns in these House districts.*

[Doc. 34-2, pp. 7-10] (emphasis added).

Finally, as Dr. Alford explained, this Court faces a real danger if it accepts Plaintiffs' invitation to conflate party and race where, as here, a factual dispute remains concerning the true cause of minority-preferred candidate political defeats:

[A]s is in this case, . . . if all you've established is that voting is polarized by party, . . . and then from that you [] simply assume that therefore it's racially polarized, then I think you haven't really done anything because *all partisan elections in the United States are party polarized. It's the nature of our system.*

Alford Dep., 63:4-13 (emphasis added). Plaintiffs have not shown sufficient evidence to support a grant of summary judgment on prongs 2 and 3 of the *Gingles* preconditions.

iii. Plaintiffs' effort to avoid the partisan explanation for the data they rely on does not resolve that disputed issue of material fact.

Plaintiffs present no evidence that refutes Dr. Alford's analysis of the relative importance of race and party in determining voter preferences, other than by exclaiming that partisanship in Georgia is inextricably intertwined with race.⁶ [Doc. 66-1 at 24]. Plaintiffs claim the expert analysis and testimony offered in support of this notion is uncontested, but comparing Dr. Hutchings' own testimony with Dr. Alford's indicates that there are facts in

⁶ This contention fails as a matter of law, however, because it ignores the Eleventh Circuit's binding precedent in *Nipper*.

dispute. *Compare* Hutchings Dep., at 51:5-52:12; 55:24-57:15; 97:17-99:17 *with* Alford Dep., 41:5-43:18; 123:14-124:2. Accordingly, even if an inextricable relationship between race and politics could satisfy *Nipper*, this Court cannot determine the disputed fact at summary judgment, because it would have to make a credibility determination. *Fayette*, 775 F. 3d at 1347-48.

Plaintiffs do not offer or cite any further supporting evidence refuting the obvious role of partisanship in the electoral outcomes because they cannot. Plaintiffs' evidence fails to prove that race, and not partisanship, is the "polarization" responsible for the election results and thus cannot support a grant of summary judgment as to *Gingles* prongs two and three.

IV. CONCLUSION

Plaintiffs are asking this Court to extend the VRA to the protection of Democratic districts, to the point of choosing where in the state each Democratic-majority district will be located. And they are asking the Court to do so on a record that is rife with disputes of fact about whether party or race is influencing voter decisions. This Court should decline that invitation.

Respectfully submitted this 29th day of May, 2019.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing SECRETARY OF STATE BRAD RAFFENSPERGER'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT was prepared double-spaced in 13-point Century Schoolbook pursuant to Local Rule 5.1(C).

/s/ Bryan P. Tyson

Bryan P. Tyson

Georgia Bar No. 515411

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2019, I served the within and foregoing SECRETARY OF STATE BRAD RAFFENSPERGER'S RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties to this matter via electronic notification or otherwise.

This 29th day of May, 2019.

/s/ Bryan P. Tyson

Bryan P. Tyson

Georgia Bar No. 515411

EXHIBIT A

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

PAMELIA DWIGHT, *et al.*

Plaintiffs,

v.

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

**SECRETARY OF STATE BRAD RAFFENSPERGER'S
RESPONSE TO PLAINTIFFS' STATEMENT OF UNDISPUTED
MATERIAL FACTS**

Defendant Secretary of State Brad Raffensperger, pursuant to Local Civil Rule 56.1(B)(2)(a) and this Court's Standing Order, provides his Response to Plaintiffs' Statement of Undisputed Material Facts, showing the Court the following:

I. GEORGIA DEMOGRAPHICS

1.

PLAINTIFFS' STATEMENT: 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”).

RESPONSE: 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.

2.

PLAINTIFFS’ STATEMENT: 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.

RESPONSE: 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, ¶ 38, n.7.

3.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.e.*, *Gingles* 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 geographically compact enough for the creation of an additional majority-minority district. Wright Report, pp. 23-24.

II. THE 2005 PLAN

4.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed. The proper citation for this statement is to the Wright Report on page 4.

5.

PLAINTIFFS' STATEMENT: 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 African American voting age population ("BVAP") was 41.50 percent. Cooper Report ¶ 49, fig. 10.

RESPONSE: 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. 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.

6.

PLAINTIFFS' STATEMENT: 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").

RESPONSE: Undisputed.

III. THE 2011 PLAN

7.

PLAINTIFFS' STATEMENT: The Legislative and Congressional Reapportionment Office of the Georgia General Assembly received the 2010 Census data for Georgia in early 2011, and the General Assembly enacted a new legislative redistricting plan that same year (the "2011 Plan"). Wright Report at 6.

RESPONSE: Undisputed.

8.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

9.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

10.

PLAINTIFFS' STATEMENT: By contrast, all counties that were shifted into CD 12 under the 2011 Plan have BVAPs below 50 percent. Cooper Report ¶¶ 60, 61, fig. 13.

RESPONSE: This fact is not supported by a citation to evidence. The cited reference does not specify the total number of counties moved in to CD 12 and does not indicate whether other changes were made to the district.

11.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

12.

PLAINTIFFS' STATEMENT: 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 most compact. Cooper Report ¶ 75, n.16.

RESPONSE: Undisputed.

13.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed, but not material because this Court considers the compactness of the minority population, not the compactness of a district. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433, 126 S. Ct. 2594, 2618 (2006).

14.

PLAINTIFFS' STATEMENT: 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 between 0 and 1, with 1 being the most compact. Cooper Report ¶ 75, n.16.

RESPONSE: Undisputed.

15.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed, but not material because this Court considers the compactness of the minority population, not the compactness of a district. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433, 126 S. Ct. 2594, 2618 (2006).

16.

PLAINTIFFS' STATEMENT: A voting tabulation district ("VTD") is a census bureau term, which generally corresponds to voting precincts. Cooper Report ¶ 77, n.18.

RESPONSE: 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.

17.

PLAINTIFFS' STATEMENT: CD 12 under the 2011 Plan splits five 2016 VTDs. Cooper Report fig. 19.

RESPONSE: Disputed as stated. District 12 under the 2011 plan splits five 2016 *precincts*. 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.

18.

PLAINTIFFS’ STATEMENT: The 2011 Plan overall splits 16 counties and includes 38 populated splits of 2016 VTDs. Cooper Report fig. 19.

RESPONSE: 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.

19.

PLAINTIFFS’ STATEMENT: The 2011 Plan contains 22 discrete county splits, i.e. unique county- district combinations. Cooper Report ¶ 63; Second Declaration of William S. Cooper ¶ 31, Khanna Decl. Ex. 3 (hereinafter “Second Cooper Report”).

RESPONSE: Undisputed as stated. Ms. Wright testified that the total number of split counties on the 2011 plan is 16. Wright Report, p. 13.

20.

PLAINTIFFS’ STATEMENT: The 2011 Plan splits Henry County between three districts—CD 3, CD 10, and CD 13. Cooper Report ¶ 63.

RESPONSE: Undisputed.

IV. PLAINTIFFS' ILLUSTRATIVE PLANS

21.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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 for total population. Cooper Dep., 116:13-17.

22.

PLAINTIFFS' STATEMENT: 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.").

RESPONSE: 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.

23.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed.

24.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

25.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

26.

PLAINTIFFS’ STATEMENT: Each illustrative plan includes portions of Bibb County in the Proposed District 12. Cooper Report ¶ 7, n.4, figs. 14, 16; Second Cooper Report ¶ 35, fig. 2.

RESPONSE: Undisputed.

27.

PLAINTIFFS’ STATEMENT: 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.

RESPONSE: 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.

28.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

29.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

30.

PLAINTIFFS' STATEMENT: 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 for the District 2 area." Wright Dep. at 134:9-136:12.

RESPONSE: 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.

Illustrative Plan 1

31.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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 calculate registered voters. Cooper Dep., 157:7-24.

32.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

33.

PLAINTIFFS' STATEMENT: 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. Cooper Report fig.18, Ex. J-3; Wright Report at 18.

RESPONSE: Undisputed.

34.

PLAINTIFFS' STATEMENT: Proposed District 12 under Illustrative Plan 1 splits three 2016 VTDs. Cooper Report fig. 19.

RESPONSE: Undisputed, but the Illustrative Plan 1 increases the number of split precincts over the 2011 Plan. Wright Report, pp. 15-16.

35.

PLAINTIFFS' STATEMENT: Illustrative Plan 1 splits 17 counties overall and contains 38 populated splits of 2016 VTDs. Cooper Report fig. 19.

RESPONSE: Undisputed, but this is an increase of split counties over the 2011 Plan. Wright Report, pp. 13-14.

36.

PLAINTIFFS' STATEMENT: Illustrative Plan 1 contains 22 discrete county splits, i.e. unique county-district combinations. Cooper Report ¶¶ 63, 78; Second Cooper Report ¶ 31.

RESPONSE: Undisputed.

37.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

38.

PLAINTIFFS' STATEMENT: All of the districts in Illustrative Plan 1 are contiguous. Cooper Report ¶ 63, fig. 14.

RESPONSE: Undisputed.

39.

PLAINTIFFS' STATEMENT: No incumbents elected in 2018 are paired in the same district under Illustrative Plan 1. Cooper Report ¶ 63.

RESPONSE: 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 1. Cooper Dep., 47:21-50:2.

Illustrative Plan 2

40.

PLAINTIFFS' STATEMENT: 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 Illustrative Plan 2 are non-Hispanic black. Cooper Report ¶ 72.

RESPONSE: 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 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.

41.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed.

42.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed.

43.

PLAINTIFFS' STATEMENT: Proposed District 12 under Illustrative Plan 2 splits five 2016 VTDs. Cooper Report fig. 19.

RESPONSE: Undisputed, but the Illustrative Plan 2 increases the number of split precincts over the 2011 Plan. Wright Report, pp. 15-16.

44.

PLAINTIFFS' STATEMENT: Illustrative Plan 2 splits 18 counties overall and contains 39 populated splits of 2016 VTDs. Cooper Report fig. 19.

RESPONSE: Undisputed, but this is an increase of split counties over the 2011 Plan. Wright Report, p. 19.

45.

PLAINTIFFS' STATEMENT: Illustrative Plan 2 contains 23 discrete county splits, i.e. unique county-district combinations. Cooper Report ¶¶ 63, 78.

RESPONSE: Undisputed.

46.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

47.

PLAINTIFFS' STATEMENT: All of the districts in Illustrative Plan 2 are contiguous. Cooper Report ¶ 63, fig. 16.

RESPONSE: Undisputed.

48.

PLAINTIFFS' STATEMENT: No incumbents elected in 2018 are paired in the same district under Illustrative Plan 2. Cooper Report ¶ 63.

RESPONSE: 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.

Illustrative Plan 3

49.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

50.

PLAINTIFFS' STATEMENT: 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 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.

Response: 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 scores for Illustrative Plan 3 is between 0.34 and 0.54. Cooper Report ¶ 39, Ex. B-7.

51.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed.

52.

PLAINTIFFS' STATEMENT: Illustrative Plan 3 splits 17 counties overall and contains 39 populated splits of 2016 VTDs. Second Cooper Report ¶ 38, Ex. B-3.

RESPONSE: Undisputed, but this is an increase of split counties over the 2011 Plan. Wright Report, pp. 13-14

53.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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/INC11021>

7

54.

PLAINTIFFS' STATEMENT: 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 retained in the 2011 Plan. Second Cooper Report ¶¶ 44-45, 47, fig. 2.

RESPONSE: Undisputed.

55.

PLAINTIFFS' STATEMENT: No incumbents elected in 2018 are paired in the same district under Illustrative Plan 3. Second Cooper Report ¶ 47.

RESPONSE: Disputed. Mr. Cooper did not know whether any incumbents were paired or whether any incumbents elected or appointed

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

using Congressional districts were paired on Illustrative Plan 2. Cooper Dep., 47:21-50:2.

V. ELECTIONS ANALYSIS

56.

PLAINTIFFS' STATEMENT: Dr. Maxwell Palmer employed a statistical method called Ecological 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").

RESPONSE: Undisputed.

57.

PLAINTIFFS' STATEMENT: Dr. Alford replicated Dr. Palmer's EI analysis in estimating the level of support among African American and white voters for 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”).

RESPONSE: Undisputed.

58.

PLAINTIFFS’ STATEMENT: 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.”).

RESPONSE: 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.

VI. SUMMARY OF VOTING PATTERNS

59.

PLAINTIFFS’ STATEMENT: 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 Report, tbls. 1-5; Second Palmer Report, tbls. 1-5; Alford Report at 4.

RESPONSE: Undisputed.

60.

PLAINTIFFS' STATEMENT: 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. FOOTNOTE 5: 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.

RESPONSE: Undisputed.

61.

PLAINTIFFS' STATEMENT: 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 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.

RESPONSE: Undisputed.

62.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed.

63.

PLAINTIFFS' STATEMENT: African Americans in the Focus Area vote cohesively for their candidates of choice. Palmer Report at 6-8, tbls. 1-5; Second Palmer Report, tbls. 1-5; Alford Report, tbls. 1-6; Alford Dep. at 86:5-19.

RESPONSE: Undisputed. The candidates of choice of African-American voters are all Democrats. Alford Dep., 95:22-96:22; 137:22-138:14.

64.

PLAINTIFFS' STATEMENT: The white majority usually votes as a bloc to defeat the African American candidate of choice. Palmer Report at 6-8, tbls. 1-5; Second Palmer Report, tbls. 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 only 17.4 percent of the white vote. Palmer Report at 6-8, tbls. 1-5.

RESPONSE: Undisputed. White voters vote overwhelmingly vote for Republican candidates. Alford Dep., 95:22-96:22; 137:22-138:14.

VII. ELECTION ANALYSIS CONCLUSIONS

65.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed. The candidates of choice of African-American voters are all Democrats. Alford Dep., 95:22-96:22; 137:22-138:14.

66.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed. White voters vote overwhelmingly for Republican candidates. Alford Dep., 95:22-96:22; 137:22-138:14.

67.

PLAINTIFFS' STATEMENT: Dr. Alford's report states party polarization best explains the voting patterns in the Focus Area. Alford Report at 9.

RESPONSE: Undisputed.

68.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

69.

PLAINTIFFS' STATEMENT: Dr. Alford does not claim that racial polarization is absent in Georgia or in the Focus Area. Id.

RESPONSE: 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.

70.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed.

71.

PLAINTIFFS' STATEMENT: 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 Decl. Ex. 9 (hereinafter "Hutchings Report").

RESPONSE: Undisputed.

72.

PLAINTIFFS' STATEMENT: Partisan preferences in the South, including Georgia, are influenced by racial attitudes. Hutchings Report ¶ 19.

RESPONSE: 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.

73.

PLAINTIFFS’ STATEMENT: Results from surveys conducted in 2012 and 2016 by the American 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.

RESPONSE: Undisputed as to all statements but the last sentence. The cited paragraphs do not support the findings regarding statistical significance.

74.

PLAINTIFFS’ STATEMENT: 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.

RESPONSE: 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. 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.

75.

PLAINTIFFS’ STATEMENT: 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.

RESPONSE: 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 are dated and do not rely on current research. Alford Dep., 123:14-124:2.

76.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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 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.

77.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

78.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: 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.

79.

PLAINTIFFS' STATEMENT: 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.

RESPONSE: Undisputed. But Ms. Hollowell also identifies herself as a Democrat. Hollowell Dep., 36:2-7.

80.

PLAINTIFFS' STATEMENT: Plaintiff Marion Warren testified that "African Americans feel that the Democrat is the inclusive party . . . [t]he Republican Party has never ever offered the black race anything " Deposition of Marion Warren at 61:11-63:17, Khanna Decl. Ex. 12.

RESPONSE: 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; 43:2-8. Mr. Warren has considered himself a Democrat ever since he first registered to vote. Warren Dep., 60:10-17.

Respectfully submitted this 29th day of May, 2019.

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EXHIBIT B

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

PAMELIA DWIGHT, *et al.*

Plaintiffs,

v.

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

**SECRETARY OF STATE BRAD RAFFENSPERGER'S
STATEMENT OF ADDITIONAL MATERIAL FACTS**

Defendant Secretary of State Brad Raffensperger, pursuant to Local Civil Rule 56.1(B)(2)(b) and this Court's Standing Order, provides his Statement of Additional Material Facts, showing the Court the following:

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.

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].

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.

4.

Ms. Hollowell identifies herself as a Democrat. Hollowell Dep. [Doc. 58], 36:2-7.

5.

Mr. Warren testified that he had never voted for a Republican candidate and had exclusively worked on Democratic campaigns. Warren Dep. [Doc. 57], 9:5-12:16; 43:2-8.

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.

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.

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.

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.

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.

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.

12.

Dr. Hutchings concluded that there was no racism or racial intolerance present in Republican Party primary voters. Hutchings Dep. 105:12-106:20.

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.

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.

15.

Many of the county and precinct splits in the illustrative plans are targeted to select small sections of population based on the race of those individuals alone. Wright Report [Doc. 65-3], pp. 13-16, 19-22.

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

Respectfully submitted this 29th day of May, 2019.

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EXHIBIT C

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.

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1 better job of predicting ideology.

2 Q Does socialization do a better job of
3 predicting partisanship?

4 A Yes.

5 Q And when you say socialization does a better
6 job of predicting partisanship, what do you mean by
7 that specifically?

8 A There's fairly substantial evidence that sort
9 of early socialization is important in the development
10 of partisanship. And because it's early, much of that
11 research focuses on parental socialization, including
12 active political socialization by parents.

13 In -- somewhat distinct for the U.S., we have
14 a different pattern of polarization than most western
15 democracies. So we have fairly strong kind of lifetime
16 partisan inclinations, so we have party identification.

17 Most other countries don't have party
18 identification; they have party preference. And
19 because party identification can be measured pretty
20 early in life -- people have measured it in
21 6-year-olds -- and it's compatible with a kind of model
22 that, particularly, if both parents share the same

1 racially polarized voting or, more broadly, the Senate
2 factor, totality of the circumstances, that the voting
3 is racially polarized.

4 And so that's -- my view is that -- as is in
5 this case, it's not that that can't be established or
6 that that may or may not be true. It's just that if
7 all you've established is that voting is polarized by
8 party, if that's all you -- all you have to do, and
9 then from that you can simply assume that therefore
10 it's racially polarized, then I think you haven't
11 really done anything because all partisan elections in
12 the United States are party polarized. It's the nature
13 of our system.

14 Q Well, you can establish racial polarization
15 and party polarization; is that right?

16 A Absolutely, you can establish those, but you
17 can't -- if all you do is establish party polarization,
18 I just don't believe you can assert that you've met the
19 burden of establishing racially polarized voting.
20 That's my view.

21 Q So in this case, I was specifically asking
22 about Lopez v. Abbott. I specifically asked whether,

1 technical aspects of it. I think you made a reference
2 earlier to ecological inference analysis that
3 Dr. Stevenson conducts. Is that correct?

4 A Correct.

5 Q Can you explain what ecological inference is?

6 A Yes, I think. Maybe not in a way that's
7 understandable, but I can -- I can explain.

8 Q Well, let me rephrase, then.

9 Do you have any objection or any disagreement
10 with the way Dr. Palmer conducted his ecological
11 inference analysis? And I'm speaking specifically of
12 the technical aspects of it, not the ultimate
13 conclusion.

14 A No. So our disagreement is not about -- it
15 sometimes, in these cases, is a disagreement about
16 methodology. Our disagreement is not about
17 methodology. I suspect that we not only agree on --
18 really, on what the EI analysis shows -- we could
19 probably do all this with ER and agree on that as well
20 and possibly even with extreme precinct analysis. So I
21 don't think that in any way this is a methodological
22 dispute.

1 Q So you would agree that his methodology was
2 sound?

3 A And I'm going to be careful because there --
4 as one of my colleagues says, there are methods and
5 methodology. Right?

6 So the method broadly embraces sort of, you
7 know, what data is important and what conclusions you
8 can draw and so forth, so -- but the application of the
9 methodology here, so his -- the data that he brought in
10 and the -- and the way in which the EIs were performed,
11 I have no disagreement with.

12 Q You mentioned ecological regression as
13 another alternative in conducting this type of racially
14 polarized voting analysis.

15 When you have turnout data by precinct and by
16 race, like you do in this case, would you agree that
17 ecological inference is a superior method of measuring
18 racially polarized voting?

19 A I'm inclined to say yes, but I have to say
20 that the -- so there was an early era when -- of EI in
21 which there was a lot of enthusiasm. Then there was an
22 era where sort of people kind of concluded that maybe,

1 A Yeah.

2 Q -- would you agree John Barrow was the
3 African-American candidate of choice in that election?

4 A I would.

5 Q And would you agree that African-American
6 voters voted cohesively in favor of John Barrow in that
7 election?

8 A Yes.

9 Q And just to streamline this, would you say
10 that is true for all the elections listed in Figures 2
11 to 6?

12 A Yes.

13 Q And would you also say that is true for all
14 of the elections listed in Dr. Palmer's rebuttal
15 report?

16 A Yes.

17 Q Would you also say that is true for all the
18 elections listed in your report?

19 A If I'm remembering my report correctly, yes.

20 Q The black voters voted cohesively in favor of
21 a candidate which was different from the voters -- from
22 the candidate that the white voters supported

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 likes look 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 other elections take place at the same time. You have
2 candidates that either don't take those positions or
3 maybe take contrary positions --

4 Q No, let me clarify the hypothetical.

5 A Okay.

6 Q So the issue now is segregation, and you have
7 one candidate, Candidate A, that is for segregation;
8 you have another candidate, Candidate B, that's against
9 segregation.

10 Candidate A's party, Party A, all of the
11 candidates, the down-ballot and up-ballot candidates in
12 that party also adopt the same position in favor of
13 segregation. Candidate B's party, up-ballot and
14 down-ballot, all the party -- all of the candidates
15 adopt the same position in opposition to segregation.

16 The minority group uniformly votes for
17 Candidate B and other candidates from Party B with over
18 90 percent of the vote share. And majority voters vote
19 for Candidate A and other candidates within Party A
20 with a 80 percent vote share.

21 Would you find racially polarized voting in
22 that instance?

1 A It certainly sounds like an instance in which
2 voting might be racially polarized. But, again, if
3 what you established there is that that vote pattern is
4 consistent with the issue positions and the -- and the
5 preferences on that issue position, an explicitly
6 racial issue, is -- the positions are compatible with
7 the -- what you'd expect to be the positions of a
8 racially polarized community, then that certainly is
9 consistent with racially polarized voting.

10 But if it's -- if they also -- if that break
11 also breaks along established party lines and people
12 are voting in the -- in that election on party lines,
13 then with that election alone, you have two competing
14 explanations for that pattern, one racially polarized
15 voting, the other partisan voting.

16 Q So in that case where the difference between
17 the party was support for segregation and opposition to
18 segregation and you also have the minority group and
19 the majority group taking opposite positions in terms
20 of the candidates they support, you still would not
21 have enough under your theory to find racially
22 polarized voting?

1 A Again, if you assume that -- if that's the
2 only election you have, then it's consistent with
3 either of those positions. If you have other elections
4 in which there's variation in that, right -- the
5 question is if the -- if the -- what you can't
6 differentiate there is whether the attraction for a
7 Democratic voter is the Democratic candidate because of
8 their policy position on segregation or the Democratic
9 candidate simply because they're the Democratic
10 candidate. So you'll need some information to let you
11 disaggregate that, which you typically will have.

12 Q So if you have information that suggests that
13 the minority group is voting for Candidate B and
14 members of Party B because of their stance on
15 segregation, would you then be able to find racially
16 polarized voting?

17 A You might be able to. Again, it's -- this
18 is -- it's an -- it's an -- it's an issue about what --
19 the evidence you have and the evidence you brought to
20 bear establishes what -- it's what the information can
21 tell you, right?

22 So my only objection to Dr. Palmer -- I have

1 no objection to what Dr. Palmer has done, and I don't
2 believe Dr. Palmer has done this analysis because of
3 some particular belief in what this might -- how this
4 might fit in in some broader pattern. I mean, what
5 he's done is he's done an election analysis, and he has
6 arrayed the candidates. He's left out the -- in terms
7 of labeling, at least, he's left out the variable
8 that's the most obvious explanator here, which is
9 despite the coincidence that every single one of these
10 candidates that's preferred is a Democrat, he doesn't
11 label party. He does label the race of the candidate.
12 And it appears to make no difference. He makes no
13 comment on it at all. Right?

14 So there are two factors here competing, as
15 they always are in partisan elections: the possibility
16 that this is racially polarized voting and the
17 possibility that it's just partisan polarized voting.

18 He's eliminated the information that would
19 suggest that it might be partisan by just not putting
20 it in there, which is an odd thing to do. He's
21 included the evidence that would allow you to assess it
22 was racial, and then he hasn't used it.

1 different -- I'm not addressing -- I'm certainly not
2 providing evidence that -- one way or the other on what
3 might be an issue in any particular election here.

4 I'm just saying that what Dr. Palmer has
5 presented is evidence on both those issues. He's
6 presented evidence on the general breakdown, and he's
7 removed the labels for party. But if we put them back
8 in, we can clearly see that he has very strong evidence
9 of party polarization.

10 He's also presented evidence that race may be
11 a factor as well, right, because he's flagged for us
12 all of the minority candidates. And his analysis shows
13 that in everything he's presented -- I take this to be
14 what the -- the entire set of evidence that he's
15 presenting in the case, and the evidence he's
16 presenting in the case does not bear in any way on the
17 question you proposed in the hypothetical, except to
18 the degree, right -- the only degree of evidence he has
19 here -- he has no policy evidence. He just has the
20 race of the candidate, which could -- in racially
21 polarized voting, the race of the candidate can be very
22 important.

1 In his case, the evidence he produces shows
2 that it is not important, and that suggests that you
3 can't establish racially polarized voting with this --
4 with his set of tables. It just doesn't establish
5 that.

6 Q So I believe you mentioned that with evidence
7 that the minority group was voting for Party B and
8 Candidate B because of issues related to race, that
9 could establish racially polarized voting under your
10 theory?

11 A And so what we need is an analysis of the
12 elections at hand in the jurisdiction at hand that
13 shows, as is always the case in Section 2 cases, that a
14 local appraisal of the empirical evidence shows that to
15 be the case.

16 Q And is empirical evidence, in your mind, the
17 only way to demonstrate that a minority group is voting
18 for a specific party because of issues related to race?

19 A To the extent that I'm involved, or as I take
20 this report to indicate that Dr. Palmer is involved,
21 the local evidence here is the standard approach to the
22 evidence that's provided and basically the suggestion

1 It's a Senate factor because it establishes something
2 about the context of elections. And then if you -- if
3 you want to have that help you with another piece of
4 the analysis, a separate piece, racially polarized
5 voting analysis, then you connect that up here.

6 So just as he flagged the -- presumably, for
7 good reason, flagged the candidates that were black,
8 you flag the contest in which there was -- the actual
9 campaign featured explicit racial appeals, and you look
10 at what the difference is.

11 So it -- in and of itself, it's not an
12 analysis of whether the voting is racially polarized.
13 It can be a useful input into the analysis, but it has
14 to -- it has to be an input into the analysis. If it's
15 not in the analysis, then all you've done is you've
16 established something that may be relevant to one of
17 the other Senate factors, but you haven't established
18 how that's related to both the Gingles 2 and 3 and then
19 more broadly to the Senate factor of racially polarized
20 voting.

21 Q So you're not suggesting or your opinion in
22 this case is not that there's no racially polarized

1 voting or racially polarized voting does not exist;
2 your opinion, as I understand it, is that the data in
3 Dr. Palmer's report does not establish racially
4 polarized voting? Is that fair?

5 A It's a little more than that, but that's --
6 the -- my main point is that nothing here has
7 established racially polarized voting in the analysis
8 of the elections at hand or in the analysis of any of
9 the other elections that have been analyzed.

10 Q So you're not offering the opinion that there
11 is no racially polarized voting in this -- in these
12 elections identified in Max Palmer's report or in
13 Georgia?

14 A It's my understanding, and I'm thankful for
15 it, that it's not my job to prove a negative, so I'm
16 not trying to prove a negative.

17 On the other hand, there is information in
18 Palmer's report that bears directly on the degree to
19 which, say, Dr. Hutchings' report might connect to
20 these elections. And that information is the
21 information that Dr. Palmer flagged here in every one
22 of these elections; it's just whether the candidate is

1 black or white.

2 And so we do have that information here, and
3 it's not responsible for this pattern. That's very
4 clear. I assume that Dr. -- I have no idea what
5 Dr. Palmer says beyond what's in his report, but his
6 report doesn't say that that is what these things
7 demonstrate.

8 And so there -- it is more than just that
9 this report doesn't demonstrate that there's racially
10 polarized voting. It includes a variable that could
11 show racially polarized voting in contrast to party
12 polarized voting, and it shows no evidence of it at
13 all.

14 Q Have you reviewed --

15 A So I'm not saying -- again, I'm not proving
16 there's no racially polarized voting. But I'm also not
17 saying that this analysis doesn't bear in any way on
18 the issue of whether there is racially polarized
19 voting. And specifically what this report tells you is
20 voting here is highly polarized; and at least for one
21 characteristic that, in terms of this area of analysis,
22 has always served as a strong indicator of racially

1 polarized voting, that indicator is not responsible for
2 this pattern.

3 Q Have you reviewed Dr. Hutchings' report?

4 A I briefly looked through Dr. Hutchings --
5 sorry, Dr. Hutchings' initial report at some point, and
6 I flipped through his rebuttal report simply because
7 it -- I looked and it said -- it started off, I think,
8 with "Dr. Alford," which seemed like I should take a
9 look at it, so I did.

10 Q I believe Dr. Hutchings only submitted one
11 report in this case. Are you potentially thinking of a
12 different case?

13 A If all he's presented was the -- I assumed
14 since there was a rebuttal report, that maybe there had
15 been an initial report. I don't know. So the report
16 that I saw recently, I think was his rebuttal report,
17 and so I'm just assuming there was -- maybe not. Maybe
18 he's just a rebuttal expert, so that would be my
19 misunderstanding.

20 Q Do you have any opinions or are you offering
21 any opinions in response to anything that Dr. Hutchings
22 has discussed in his report?

1 A I think I already -- I mean, in a general
2 extent, I mean, my understanding in the -- in the
3 context in which he offered that report is that he's
4 offering that as a -- his report as a -- I'm not sure
5 if it's a rebuttal of Dr. Palmer's report or mine, but
6 he seems to focus more on me than Dr. Palmer.

7 But it seems to me that his suggestions is
8 that, in fact, this analysis, in fact, demonstrates
9 racial polarization. He's not doing a racial
10 polarization analysis. And I don't think -- as we, I
11 think, have made clear here, I don't think he is -- his
12 report is not an input into Dr. Palmer's analysis, and
13 it doesn't change what Dr. Palmer's analysis shows.

14 Q Is there any specific part of his report that
15 you disagree with or any specific part of his research
16 that you disagree with?

17 A Well, I mean, I haven't looked at it very
18 closely, but my impression was that much of his -- much
19 of the work he cites to is dated. There's a
20 considerable amount of recent work that actually looks
21 directly at the difference in providing a racial cue
22 and a party cue and how they compete with each other,

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 schools.

2 So there are any number of things that might
3 result in a pattern of people voting differently. And
4 then the question is, you know, what's the -- you know,
5 what is it you're interested in. If you're interested
6 in the degree to which party drives voting, then you
7 look at party polarization in voting. If you're
8 interested in friends-and-neighbors voting or -- you
9 know, I'm interested in urban/rural patterns, for
10 example, so the difference in the way people vote in
11 cities and people vote in rural and ex-urban areas is
12 interesting to me, but that's a different -- that's a
13 geographic polarization.

14 Q But there is polarized voting between the
15 races such that one race prefers one candidate and
16 another race prefers another candidate in Georgia,
17 correct?

18 A The voting pattern is polarized. We just
19 don't know what it's polarized by. We have evidence of
20 at least one thing. Everybody agrees that there is
21 party polarization in Georgia.

22 Q So the voting patterns of the different races

1 are polarized?

2 A They're -- I mean, you have to be -- right,
3 so if you're saying -- so we have two things, right --
4 this is -- what we see here is polarization, and that
5 polarization involves the fact that black voters vote
6 overwhelming for Democratic candidates; and slightly
7 less, uniformly white voters, are voting for Republican
8 candidates. Right? So that means here, as in other
9 places, a substantial proportion of -- a not
10 insignificant proportion of white voters are voting
11 Democratic. That's why the state of Georgia is about
12 to become majority Democratic, because there -- because
13 Hispanics, blacks, and a significant portion of whites
14 in Georgia vote Democratic, and they're polarized.

15 Q So let me rephrase this question because I'm
16 not exactly sure if that was responsive to my question.
17 It may have been. I'm not sure.

18 Would you agree that voting patterns between
19 African-Americans and whites in Georgia are
20 polarized?

21 A Yes.

22 Q The phrase "racially polarized voting," where

1 demonstrating white cohesion, and Gingles 3 was the
2 issue of black bloc voting.

3 Q Okay, so let me ask this: You just said that
4 you -- that you believe that Dr. Palmer's report and
5 analysis demonstrates white bloc voting, correct?

6 A Correct.

7 Q Do you believe that Dr. Palmer's report and
8 analysis demonstrates white bloc voting that usually
9 defeats the candidate of choice of African-American
10 voters?

11 A Yes.

12 MR. NKWONTA: Can we go off the record
13 for --

14 THE WITNESS: I guess I think the
15 misunderstanding was that when you first
16 asked the question, you asked me if it
17 demonstrated racial bloc voting. I don't
18 think it demonstrates racial bloc voting, but
19 it does demonstrate -- but the logic that
20 this judge applies to the Gingles threshold
21 standards, I understand the logic of it. It
22 doesn't mean I agree with the logic of it,

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 D

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
VINCENT LAMONT HUTCHINGS

Monday, March 25, 2019

9:00 a.m.

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

Linda C. Ruggeri, CCR-A-261



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1 throughout the report as I read it. And at the end of
2 the process, I was able to, I guess, make a judgment
3 about what I regarded as the persuasiveness of the
4 argument.

5 Q. You say in the next sentence there that
6 race is the single greatest demographic factor shaping
7 the current partisan divide of the South and what
8 Dr. Alford refers to as party polarization is merely a
9 symptom and not an independent cause of racial
10 polarization. Can you talk to me a little bit about
11 that sentence and the difference in the symptom versus
12 the independent cause of racial polarization that
13 you're referring to there?

14 A. I think the point I'm trying to make
15 there -- probably not the most eloquent language in
16 retrospect -- is that race factors into decisions
17 about partisanship in a way that was glossed over in
18 Dr. Alford's report. So that is basically how I
19 arrived at this point.

20 The reason that the parties have such
21 polarized racial constituencies is because of their
22 reputations they've developed over time with respect
23 to matters of race. And reading Dr. Alford's report,
24 one would not get that impression even though I would
25 argue that that's the appropriate impression that one

1 should arrive at.

2 Q. And so when you say the reputation over
3 time, can you explain to me what that means for
4 Democratic Party first and then we'll do the
5 Republican Party?

6 A. Well, both parties, actually, the role
7 that parties play in any political system is that they
8 have long-term reputations. So candidates come and
9 candidates go, but parties endure for a longer time
10 period and have longer reputations. So I guess that's
11 what I mean. Maybe that's not -- I'm not sure if
12 that's responsive.

13 Q. No. That's helpful. Thank you. So then
14 what is the long-term reputation of the Democratic
15 Party in terms of race as you see it?

16 A. The Democratic Party -- and by long-term
17 here, I mean really in particular since the Lyndon
18 Johnson administration of the 1960s has been
19 associated with support for civil rights, aggressive
20 civil rights, advocacy. And that's been true pretty
21 much for every Democratic presidential candidate since
22 Lyndon Johnson.

23 The Republican Party, again, I guess,
24 mostly starting with Barry Goldwater in 1964 has taken
25 a position in opposition to strong civil rights

1 with is about general election outcomes.

2 Q. Okay. And so if there was racial appeals
3 and racial cues and these various other pieces we've
4 talked about within a Democratic primary, for example,
5 you wouldn't be aware of that because you focus more
6 on general elections?

7 A. Well, we walked through my CV and, as
8 you're seen, most of my work does focus on general
9 elections. I guess I know a little bit about some of
10 that history. There certainly -- the short answer is
11 no. Most of my work does not focus on primaries, so
12 that's not where I have expertise.

13 Q. Okay. Let's go to Page 3, the last part,
14 the sentence in the middle of the page that begins
15 with "Lastly I contest the view offered by
16 Dr. Alford." And part of your criticism of his party
17 polarization concept is that it assumes that partisan
18 and racial polarization are independent of one
19 another. Is that fair to say? I think I'm quoting
20 you.

21 A. Yes.

22 Q. Is that accurate?

23 A. Yes.

24 Q. And so when you say that perspective runs
25 counter to the conventional wisdom in political

1 science, you talk about social group memberships as
2 the key ingredient for forming partisan attachments.
3 Can you explain a little bit more -- and I think we
4 probably touched on this a little bit already, but how
5 race plays a role in social group memberships -- I'm
6 sorry, how social group memberships play a role in the
7 formation of partisan attachments?

8 A. Yes. So there is a sequence that the
9 literature is mostly in agreement about in terms of
10 how partisanship is formed. The argument is that as
11 children we develop our kind of social group, our
12 secondary social group affiliations or attachments, by
13 which I mean our attachments to our religious
14 identity, our class identity, our racial identity, our
15 gender, et cetera, and that this forms relatively
16 early in the kind of life cycle. Partisanship, on the
17 other hand, tends to come somewhat later, typically in
18 preadolescence.

19 And the literature suggests that partisan
20 groups, parties, are kind of a collection of
21 different -- they are designed to represent different
22 salient social groups in society. So we form
23 memberships in various groups defined by religious,
24 race, et cetera, and that based on the reputations of
25 the various parties in terms of their perceived

1 responsiveness to those groups, we then affiliate with
2 different parties. That is the conventional wisdom in
3 the literature.

4 Q. So would it be correct, then, to say that
5 if you outline a number of religious, class, racial,
6 gender, various identities that people have that you
7 could relatively accurately predict what political
8 party or what partisan affiliation they would have?

9 A. We've known in the literature really since
10 the 1940s and '50s and '60s that, yeah, the primary
11 kind of determinants of partisanship are, in fact,
12 those various groups you've just listed off there.
13 Now, some of those group affiliations are more
14 consequential than are others. But those are the
15 factors that typically play into partisanship.

16 Q. And so you say that the most politically
17 influential group memberships are defined by race and
18 ethnicity. Are you saying that race and ethnicity is
19 the most important identity question in determining
20 partisanship or am I reading that incorrectly?

21 A. What I'm saying is that social group
22 membership determined by race and to a lesser extent
23 ethnicity -- and when I say "ethnicity" here, I'm
24 referring to like Latino or Hispanic ethnicity. But
25 African American, knowing someone's race is probably

1 periods of American history.

2 I know that's a long answer, so I'm going
3 to conclude here in a moment.

4 At the level of the mass public, it's
5 harder to do that because, of course, we can't jump in
6 our time machine and run a survey in 1850. We don't
7 have survey data that goes back that far. So we can
8 only go back to the 1930s. And relative to that time
9 period, we probably have more -- I'm hesitating here
10 because there's a debate in the literature as to
11 whether or not there is more polarization at the mass
12 level as opposed to the -- there is no consensus among
13 scholars who study this question, and I'm not one of
14 those scholars. But at the elite level, there's more
15 polarization now than we had in the 1950s; but there's
16 not more polarization than we had in the 1850s.

17 Q. Let's turn to Page 22 of your report,
18 Paragraph 23. You say that discussing your work on
19 the Georgia state flag controversy shows that racial
20 attitudes often inform political affiliations, and you
21 talk about the Republican Party's embrace of racial
22 conservatism. So is that what we referred to or
23 discussed earlier about kind of the historical
24 reputation of the various political parties? Is that
25 what you're referring to there or is there some other

1 piece of that?

2 A. Well, the reputations of the parties are
3 relevant here. And we talked about this previously in
4 the context of the 1964 presidential contest between
5 Johnson and Goldwater. So that's in part what I'm
6 referring to, yes. I am at pains here to note that
7 racial conservatism is not some euphemism for racism.
8 It's a descriptive term that we use in this literature
9 that is designed to identify individuals who adopt
10 conservative positions on race-related matters, and
11 that is all that it means. It does not emphatically
12 mean racial intolerance or racial prejudice, at least
13 necessarily. We have other words to describe that,
14 some of which I've just used. But racial conservatism
15 is not one of those words.

16 MR. TYSON: Mark that 13.

17 (Defendant's Exhibit 13 was marked for
18 identification.)

19 Q. (By Mr. Tyson) I'm going to hand you what
20 we've marked as Exhibit 13. I want to ask you about
21 Herman Cain. This is a news story from October of
22 2011 when the Republican primary for president was
23 going on for the 2012 presidential election. And so
24 on the second page there, you'll see that on this WSB
25 TV poll, Herman Cain had 41 percent support in Georgia

1 among Republicans for president. So would that
2 surprise you in describing a party that's embracing
3 racial conservatism, that an African American
4 candidate is having that high of support in a
5 presidential poll?

6 A. I don't see this as inconsistent. Again,
7 as I tried to emphasize momentarily, racial
8 conservatism is not the same thing as racial
9 intolerance. So if we were discussing racial
10 intolerance, since Herman Cain is African American,
11 then a party -- if I had described a party composed of
12 racially intolerant people, it would be inconsistent
13 for racially intolerant people to embrace a candidate
14 who is clearly not a member -- who is clearly African
15 American. It is not, however, inconsistent for racial
16 conservatives to embrace such a candidate. So from my
17 vantage point, I see no inconsistencies here.

18 Q. And so I guess I just want to make sure
19 I've got a full grasp on the racial conservatism
20 concept. So for racial conservatism, is that
21 referring kind of in broad strokes to -- well, I guess
22 maybe I can tell you what my struggle is on this to
23 make sure I understand and make sure I've got this
24 down.

25 Your view is that African Americans

1 support the Democratic Party based on this kind of
2 historical support for issues that are important to
3 African American individuals.

4 A. Yes.

5 Q. And so is racial conservatism kind of the
6 inverse of that? It's a historical lack of support
7 for issues that were important to African Americans or
8 is it referring to something else? I just want to
9 make sure I've got a full picture of what that term
10 means.

11 A. Yes, that's correct. So we talked about
12 the support for the 1964 Civil Rights Act which, of
13 course, Lyndon Johnson championed -- and Johnson, of
14 course, was a Democrat -- and Barry Goldwater famously
15 opposed. However, relevant for your question, Barry
16 Goldwater did not oppose the '64 Civil Rights bill on
17 grounds that black people were inferior or that
18 segregation was desirable. He opposed it on the
19 grounds of principal conservatism, what we might today
20 call racial conservatism. He didn't think, you know,
21 it was the business of government, the federal
22 government, to step in in the context of that manner.

23 That is what I'm referring to when I talk
24 about racial conservatism. I'm aware of no one who
25 would say Barry Goldwater was a raging clansman or

1 that he was somehow racially intolerant. What he was
2 was racially conservative. And that's relevant, I
3 guess, for the poll you have here in front of me
4 because Herman Cain is also a racial conservative.

5 I have no information that would tell me
6 that Herman Cain is racially intolerant. I don't know
7 that he is. He may be. But if he is, it's news to
8 me. What I do know is that he's a racial
9 conservative. And so the fact that he led in this
10 particular poll in Georgia doesn't seem inconsistent
11 with my understanding of racial conservatism.

12 Q. And I guess maybe it's the word "racial"
13 that's throwing me a little bit because what I just
14 heard you describe for Senator Goldwater was kind of
15 philosophical conservatism. Is that really what we're
16 talking about here, a philosophically conservative
17 view of government when we're saying racial
18 conservatism?

19 A. It really is nothing more complicated,
20 this phrase, than the embrace of conservative
21 principles in the context of racial policies.

22 Q. Okay.

23 A. That's all. And nothing I've described
24 there requires, implies, infers, anything about the
25 embrace of racial intolerance.

1 southern states. So he was not -- the historical
2 biographical kind of description of Goldwater does not
3 typically describe him as someone who is, I don't
4 know, racially intolerant. He was conservative. He
5 ran a very principled conservative campaign that
6 conservatism expressed itself in part in opposition to
7 the '64 Civil Rights Act.

8 MR. TYSON: We'll leave that topic. So
9 just to clear this up, too, mark that as No. 14.

10 (Defendant's Exhibit 14 was marked for
11 identification.)

12 Q. (By Mr. Tyson) So I hand you what we've
13 marked as Exhibit 14, and this is the presidential
14 preference primary results for Georgia for the 2016
15 election. And I did a little bit of adding ahead of
16 time. But in terms of the support for Ben Carson, Ted
17 Cruz, and Marco Rubio, all of whom are Latino or
18 African American, I've totaled that up as greater than
19 50 percent support among Republican primary voters for
20 candidates who are racial minorities or, I guess,
21 ethnic minorities in the case of Latino individuals.
22 So that would also be consistent, then, with this
23 racial conservatism question. It's not a surprise
24 that a Republican Party voter would support an
25 individual of color for a particular nomination,

1 correct?

2 A. That's correct, because, again, this kind
3 of underscores the point I've been making throughout
4 about the importance of partisanship. All of these
5 minority candidates, they're all Republicans. They've
6 all indicated that they are Republican, that they
7 embrace the Republican philosophy, part of which is
8 racial conservatism. So, indeed, this a good example,
9 both these individuals and the Cain example
10 previously, about the distinction between racial
11 intolerance and racial conservatism.

12 If the motive of the voter was simple kind
13 of hard-age racism of an era that's not too far in our
14 past, then presumably they wouldn't want to support
15 Carson or Cain or Cruz or Rubio under any
16 circumstances. It wouldn't make any difference what
17 party they belonged to. But that's not how it's
18 playing out here, and that's not what I'm referring
19 to. I'm referring to racial conservatism, not racial
20 intolerance.

21 Q. On Page 22 you also made a statement that
22 racial appeals are still an effective way to influence
23 partisan preferences. You're speaking there again
24 about a racial appeal to make you identify as a
25 Republican or Democrat, not a racial appeal in a

EXHIBIT E

Maxwell Palmer

March 21, 2019

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 supported democratic candidates in higher numbers in
2 the 1960's than they do today?

3 A. I have no opinion on that.

4 Q. So your conclusion here is that this is
5 racially polarized voting but based on the data you
6 have, you couldn't tell if it was actually
7 politically polarized voting, is that right?

8 A. I'm not looking at politically polarized
9 voting. I'm looking at voting by racial group, and
10 I find strong evidence that members of different
11 groups prefer different candidates.

12 Q. I guess what I'm -- what I'm really kind
13 of trying to figure out here is if I ran an analysis
14 of do people who self-identify as democrats vote for
15 democratic candidates and if people who
16 self-identify as republicans vote for republican
17 candidates, I would expect to find pretty strong
18 correlations that democrats vote for democrats and
19 republicans vote for republicans.

20 So I'm having trouble seeing how we can
21 tease these two out in a way that is relevant to a
22 racial polarization inquiry. If we've got a group
23 of African American voters who overwhelmingly
24 self-identify as democrats, who all vote for
25 democratic candidates and a group of white voters

1 papers or read any reports relative to the
2 correlation between race and politics or is that not
3 something you've ever studied?

4 A. A large amount of political science work
5 looking at elections and all sorts of things
6 include, you know, race as an element, so
7 correlations in race and politics is a frequent area
8 of study.

9 Q. And does it concern you at all that there
10 is this high correlation now between race and
11 politics that may make it more difficult to discern
12 what's truly racial and what's truly political?

13 A. I don't agree that we can discern what's
14 truly racial from what's truly political.

15 Q. Okay. So talk with me a little bit about
16 that because you mentioned earlier you didn't think
17 you could split these two concepts.

18 What are we -- how are we supposed to
19 determine, if a voter is walking in with a
20 completely partisan mindset and they're making all
21 their decisions based on party but that turns out to
22 also be correlated to race, how can we determine
23 from a Voting Rights Act perspective enforcement or
24 any other laws, we don't want to protect partisan
25 activity, I'm assuming. We need to protect racial

EXHIBIT F

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 District 2.

2 So the effect on District 2 is what is
3 significant. You change to create a District 12,
4 then you're going to reduce that population in
5 District 2.

6 And it isn't really to me, and in my
7 opinion, the logical way to create a district in
8 District 12 to connect those three major cities
9 like that. To do that, the reason -- the only
10 reason I would see that you would do that is if you
11 were only drawing that district with the focus on
12 race.

13 Q. So you're not saying that the
14 African-American population within Bill Cooper's
15 C.D. 12 is not sufficiently compact, you're just
16 saying it's less compact than the African-American
17 population in C.D. 2?

18 A. I'm not denying that there are definitely
19 areas over there that are -- there are
20 concentrations of African-American population over
21 there.

22 But I'm saying that, yes, there is a --

1 there are a higher concentration and a more logical
2 concentration of African-American voters and
3 population, I guess you can say, in the southwest
4 Georgia region.

5 And when we drew the current map, it was
6 the logical place to maintain a district that was
7 in a majority black voter registration district
8 because that had been there previously.

9 And as I mention in my report, District 2
10 had been that high for years and years and years,
11 so it obviously has been an area where that
12 concentration of population has been and should be
13 protected and maintained.

14 Q. Fair enough.

15 And just to clarify your opinion, then,
16 with respect to the African-American population in
17 Bill Cooper's proposed C.D. 12, you're not saying
18 that the African-American population in Bill
19 Cooper's proposed C.D. 12 is not sufficiently
20 compact, you're just saying that the
21 African-American population in C.D. 2 in that
22 southwest area is more compact?

1 A. I would also say that I don't think that
2 compact is what I would define something that
3 connects Macon to Augusta to Savannah. I don't
4 think of that as a compact region.

5 So a district that's doing that, to me,
6 is not compact. That doesn't logically -- that
7 isn't a logical location of a district in my mind
8 naturally occurring that would make sense.

9 Q. So let me --

10 A. So is it compact or not, is this what
11 you're wanting me to say?

12 Q. No, no, no. I just --

13 A. Okay.

14 Q. I think we'll -- there are two responses
15 in there that I want to tease out a little bit.
16 All right?

17 So the first one we're -- in one instance
18 we're talking about, or you were talking about the
19 compactness of the African-American population.
20 And then later on in the answer you started talking
21 about geographic compactness. So I want to break
22 up those two and talk about them separately.

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 threshold.

2 So if your objective was solely to reach
3 that percentage threshold, then you can do that,
4 but I don't know that that's what I would consider
5 a compact way to go about doing that.

6 And in the same way with District 2,
7 he's -- comes across the bottom of the state and
8 then runs right through the heart of Lowndes
9 County, similar thing.

10 Q. So you're not suggesting that the
11 African-American population is not sufficiently
12 compact, but you're saying that it's not
13 geographically compact?

14 A. Right.

15 Q. And for -- to clarify in your report,
16 what exactly are you relying on to say that it's
17 not geographically compact? Because as you
18 mentioned earlier, you don't rely on the Reock and
19 Polsby-Popper scores.

20 A. Right. Anytime you identify -- well, for
21 me, when I see a county that has a strip running
22 into it or across it, that's a red flag to me

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 very hard thing to pinpoint. And a lot of times it
2 is just things such as, you know, how does it
3 visually hold up.

4 And I believe on Mr. Cooper's most recent
5 report that he added -- I mean, he even mentioned
6 that our current congressional map is ranked
7 significantly higher than a lot of other states for
8 its compactness. So that would lend me to believe
9 that it is very compact already. And this would be
10 less so.

11 Q. So I understand that you believe that
12 C.D. 12 is less geographically compact than some of
13 the other districts. Is it your opinion that it is
14 not geographically compact?

15 A. I mean, as I've said, it's less compact
16 than before. I mean, you have a core area that is
17 compact. But when you're running down out the
18 sides, that does sort of reduce the compactness in
19 my mind. It makes it less so.

20 So I don't know that I say, oh, yes,
21 compact; no, compact. There is a spectrum on which
22 you would say compactness is found.

1 Q. And so it's less compact than what
2 exactly?

3 A. Than the current District 12.

4 Q. And that is the opinion that you are
5 offering --

6 A. Yes.

7 Q. -- in your report?

8 So you're not offering an opinion that
9 the proposed C.D. 12 in Bill Cooper's report is not
10 compact, you're simply opining that it is less
11 compact than the current C.D. 12?

12 A. I'm pretty sure that's what I said in my
13 report. But yes, it is less.

14 Q. Right. But what I want you to confirm if
15 it's true is you're not opining that C.D. 12 in the
16 illustrative plans is not compact, your opinion is
17 solely that C.D. 12 is less compact, the
18 illustrative plan C.D. 12 is less compact than the
19 current C.D. 12?

20 A. Give me one second.

21 My report says:

22 "Scores on both the Reock and the

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 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 G

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
WILLIAM SEXTON COOPER

Wednesday, March 27, 2019

9:00 a.m.

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

Linda C. Ruggeri, CCR-A-261



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1 redistricting plans?

2 A. For this case I don't recall actually
3 seeing that spelled out in a document. If it is, do
4 you have it with you? I will review it.

5 Q. I don't have it with me. So it's correct
6 to say, then, that you are not aware and did not take
7 into account any principles that the Georgia
8 Legislature adopted governing the 2011 redistricting
9 cycle?

10 MR. NKWONTA: Objection, foundation.

11 THE WITNESS: I don't think so. It is
12 conceivable, but it is not noted in my report.
13 So if I did review them, they may have been so
14 general as to not warrant further mention. I
15 mean, I was using traditional redistricting
16 principles.

17 Q. (By Mr. Tyson) Do you know if the
18 legislature adopted principles of redistricting for
19 the 2011 cycle of redistricting?

20 A. I don't know that.

21 Q. Do you know whether Georgia uses its
22 congressional districts for purposes other than just
23 the election of members of Congress?

24 A. Yes, I do.

25 Q. And what are some of those other purposes?

1 A. For state Board of Education.

2 Q. Anything else?

3 A. I'm not aware of other uses, but that's
4 certainly a possibility. There aren't many other
5 states that would use a congressional district for
6 state Board of Education I don't think.

7 Q. So if Georgia used congressional districts
8 for Department of Transportation Board or Board of
9 Regents appointments, you wouldn't know anything about
10 that?

11 A. I may have been aware of Department of
12 Transportation a few months ago. I had forgotten
13 about that.

14 Q. Is it correct to say that you didn't take
15 into account any issues related to the state Board of
16 Education or the Department of Transportation or any
17 other purpose when drawing your congressional plans
18 for Georgia?

19 A. It's fair to say that I did not explicitly
20 take into account matters relating to the Department
21 of Transportation. I was aware of the state Board of
22 Education, and I think I did take into account at
23 least some factors that would come into play with
24 state Board of Education.

25 Q. And would those factors include the

1 residence addresses of members of the state Board of
2 Education?

3 A. They would not. You refused to give me
4 information on representatives of the congressional
5 districts, so it did not. I did not have that data.
6 But you can send it to me, and I'll take a second
7 look.

8 Q. Well, my question was specifically about
9 members of the state Board of Education. Did you take
10 any incumbents into account?

11 A. I didn't have that information.

12 Q. If you didn't have the information, you
13 didn't take it into account, correct?

14 A. That's true in terms of incumbents, but I
15 was aware of the state Board of Education. So I think
16 that in drafting this plan I've been consistent with
17 taking into account communities of interest as
18 reflects to the state Board of Education.

19 Q. What would some of those communities of
20 interest related to the state Board of Education be?

21 A. To enhance the opportunity that a minority
22 member of the State Board of -- a minority -- a member
23 of the state Board of Education could represent
24 Southeast Georgia, Central and Southeast Georgia.

25 Q. Is it your understanding that state Board

1 of Education members are elected or appointed?

2 A. Good question. I'm not sure.

3 Q. I want to give you a hypothetical. If I
4 asked you as a map drawer I want you to draw a map
5 that creates the absolute maximum number of
6 majority-minority districts in a jurisdiction, is that
7 a project you think you would be able to undertake?

8 A. I mean, I can try, sure. I can probably
9 do that. Nowadays with the sophisticated mathematical
10 algorithms that are flowing out of places like the
11 University of Chicago and Carnegie Mellon, maybe you
12 can just get a computer to draw it.

13 Q. If I was a lawyer in this scenario looking
14 to hire you to challenge a district and your
15 conclusion was that the jurisdiction had already drawn
16 the maximum number of majority-minority districts,
17 what would you tell me about a potential Section 2
18 case?

19 A. I would suggest that it could be
20 problematic.

21 Q. And why would that be?

22 A. Well, if the maximum has been drawn, then
23 you would have to be looking at other issues like
24 whether minority vote was diluted or something so
25 that, even though you have a 50 percent or more

1 A. Not really. It is true that both plans
2 split Effingham and Chatham counties; but I do it very
3 logically, following traditional redistricting
4 principles. I have no idea what went on at the block
5 level in Cynthia McKinney's district. But it appears
6 it's almost just following a block or two away from
7 the Savannah River, which was just a very narrow
8 corridor. Resembling that narrow corridor, I'm
9 talking about in Cuyahoga County, Cleveland, and
10 Summit County, Ohio.

11 Q. Is your decision to put Macon, Augusta,
12 and Savannah all in the same district driven by
13 anything other than the racial components that are
14 necessary to get to a majority district in
15 District 12?

16 A. Well, it goes beyond that, because
17 Congressional District 12 is historically represented,
18 been represented, by Chatham County as in the 2005
19 plan. And that includes Chatham County, didn't it?

20 Q. Well, my question was specifically about
21 your decision on the illustrative plans to put
22 Savannah, Macon, and Augusta all in the same district.

23 A. Right.

24 Q. Was the decision to unite those three
25 communities driven by anything other than the racial

1 makeup of those three counties?

2 A. Well, that was a factor. But I also took
3 into account the reality that there's an interstate
4 running between Macon and Savannah, so it makes sense
5 to combine those communities just from the standpoint
6 of modern day transportation linkages.

7 The Bibb County area is right along the
8 fall line of the Ocmulgee River, so I'm including a
9 region that goes from the Ocmulgee over to the
10 Savannah River and then down to Savannah. So, you
11 know, there are other ways to look at it beyond just
12 race.

13 Q. And you also say that the District 12
14 you've created in the illustrative plans stays within
15 the historical boundaries of Congressional Districts
16 1, 8, and 12 from the 2005 plan. Did you compare
17 those plans to any other historical plans in Georgia?

18 A. I looked at the 1996 plan.

19 Q. And did you find that there was connection
20 or staying within similar boundaries of the 1996 plan?

21 A. I think there may have been one fewer
22 congressional district at the time. Don't I have a
23 map of the 1996 plan in my report? I'm sorry to be
24 asking that.

25 Q. I don't recall seeing one.

1 going to have the overall statistics for Illustrative
2 Plan -- that's Illustrative Plan 2. I'm sorry. H-2
3 is going to have the summary of statistics for
4 Illustrative Plan 1.

5 A. Page 2? I'm sorry. Okay. I've now
6 located the Illustrative Plan 1 maps. So it must
7 be -- are you saying for voter registration or just
8 the summary statistics?

9 Q. I'm looking just at the population summary
10 report.

11 A. Okay. Hang on. I obviously am looking.
12 Yes, I have it now.

13 Q. And so under your configuration of
14 Congressional District 2 on Illustrative Plan 1, it's
15 now below 50 percent of any part black for total
16 population, correct?

17 A. Correct.

18 Q. And that is after being above 50 percent
19 any part black total population when the 2011 census
20 numbers were applied to the benchmark plan, right?

21 A. I don't think so.

22 Q. Okay. That's G-2. Wait a minute. I'm
23 sorry. I may have gotten that one wrong too.

24 A. It will be just under.

25 Q. It's just under.

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 H

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



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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 I

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

PAMELA 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,) CIVIL ACTION FILE
NO. 1:18-CV-2869-RWS
Plaintiffs,)
v.)
BRAD RAFFENSPERGER, in)
his capacity as Secretary)
of State of the State of)
Georgia,)
Defendants.)

DEPOSITION OF DESTINEE HATCHER

March 26, 2019

11:00 a.m.

1201 West Peachtree Street, NW
One Atlantic Center - Suite 3250
Atlanta, Georgia
Allison H. Wilcox, RPR, CCR-2569



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FURTHER EXAMINATION

BY MR. TYSON:

Q. Mr. Nkwonta asked you about whether you identify as a democratic. Is it correct to say you consider yourself an independent?

A. Yes.

Q. But it's your experience that the African-American individuals that you know support democratic candidates, correct?

A. Half and half.

Q. Half and half? So are you familiar with African-American individuals in your community who support republican candidates?

A. No.

Q. Nothing else.

(Deposition concluded at 11:51 a.m.)

(Signature reserved.)

EXHIBIT J

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

PAMELA 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,) CIVIL ACTION FILE
NO. 1:18-CV-2869-RWS
Plaintiffs,)
v.)
BRAD RAFFENSPERGER, in)
his capacity as Secretary)
of State of the State of)
Georgia,)
Defendants.)

DEPOSITION OF AMANDA HOLLOWELL
March 26, 2019
3:34 p.m.

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

Allison H. Wilcox, RPR, CCR-2569



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1 is a current discussion on everyone's mind.

2 Q. Okay. Do you consider yourself a
3 democratic? Do you identify as a democrat?

4 A. Yes.

5 Q. Are you a member of the Democratic Party?

6 A. I'm not a paid member, but I identify as a
7 democrat.

8 Q. Do you think, with respect to voting do
9 you think counties should be kept whole or should they
10 be split when it comes to voting precincts and
11 districts and things like that?

12 A. So describe -- I don't understand. So
13 describe whole county versus split. Are you saying a
14 county split between congressional districts?

15 Q. Let's say we're doing a congressional
16 district, we're forming one. Would you think it's
17 appropriate for a county like Chatham, for instance,
18 to be split to form that district or should the county
19 be left whole to maintain the community as it is in
20 that county form for that voting district?

21 A. I believe that the district should
22 represent whatever the consensus is of that
23 environment. So if you have to split a county, you
24 split a county; if you don't, you don't. But it
25 should be more about the constituents based in that

EXHIBIT K

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
MARION WARREN

Friday, March 29, 2019

1:00 p.m.

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

Linda C. Ruggeri, CCR-A-261



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1 somebody who votes in every presidential primary,
2 every general, every primary, every runoff. Would you
3 fall in that category, the super voter?

4 A. Yes, I would.

5 Q. Have you been involved in the political
6 process in any campaigns in Georgia?

7 A. Yes.

8 Q. Okay. What campaigns have you been able
9 to be involved in?

10 A. Stacey Abrams, Mayor William Evans, and
11 the Hancock County commissioner's campaign.

12 Q. And so what was your role with Ms. Abrams'
13 campaign?

14 A. I was participating in taking out flyers
15 and paraphernalia for her campaign, yes.

16 Q. And was that a volunteer position?

17 A. Yes.

18 Q. And that was her most recent campaign for
19 governor?

20 A. Yes.

21 Q. And then for Mayor Evans, was that a
22 volunteer or a paid position on his campaign?

23 A. Volunteer.

24 Q. And what was your role in that campaign?

25 A. Door to door, spreading different

1 paraphernalia of the campaign.

2 Q. And is that in a particular election or in
3 all the mayor's elections?

4 A. Just the mayoral election.

5 Q. And which year would that have been?

6 A. That would have been '15.

7 Q. 2015, okay. And then your role in Hancock
8 County commissioner races, do you have a sole
9 commission in Hancock County or is it a board of
10 commissioners?

11 A. We have a board of commissioners.

12 Q. And what commissioner campaigns have you
13 been involved in in Hancock County?

14 A. The individual that I was campaigning for
15 did not win. I was campaigning against Helen Hudson.

16 Q. Okay. Does she go by Sistie Hudson?

17 A. Yes.

18 Q. So you were trying to defeat
19 Commissioner Hudson. Who was the candidate you were
20 supporting?

21 A. Johnny Thornton.

22 Q. And you said Mr. Thornton did not win?

23 A. Huh-uh.

24 Q. What year, approximately, was that, do you
25 remember?

1 A. 2016.

2 Q. '16. So besides the Abrams campaign,
3 Mayor Evans' campaign, and Mr. Thornton's campaign,
4 have you worked on any other political campaigns?

5 A. Well, I've done small work for some other.
6 Like John Barrow ran in '16 for Secretary of State. I
7 worked with him.

8 Q. And was that also a volunteer?

9 A. Volunteer.

10 Q. Now, are the Hancock County commission
11 elections partisan elections?

12 A. Yes.

13 Q. Commissioner Hudson, is she a Democrat or
14 a Republican?

15 A. Democrat.

16 Q. And Mr. Thornton, I'm assuming, is a
17 Democrat as well?

18 A. A Democrat as well.

19 Q. So the work you did for Mr. Thornton's
20 campaign was in the Democratic Primary?

21 A. Yes.

22 Q. And then Ms. Abrams, obviously a
23 Democratic candidate?

24 A. Yes.

25 Q. And Mr. Barrow, when you worked on his

1 campaign, running as a Democrat?

2 A. Yes.

3 Q. Are your municipal elections for Mayor
4 Evans partisan or are those nonpartisan?

5 A. It's partisan.

6 Q. It's partisan. So is Mayor Evans also a
7 Democrat?

8 A. Yes.

9 Q. And in the Hancock County commission race
10 between Ms. Hudson and Mr. Thornton, Ms. Hudson is a
11 white candidate, correct?

12 A. Yes.

13 Q. And was Mr. Thornton African American?

14 A. Yes.

15 Q. And Ms. Hudson won the Democratic primary?

16 A. Yes.

17 Q. And did she ultimately win the general
18 election as well?

19 A. Yes.

20 Q. So I got a little sidetracked there.
21 Let's get back to your educational history if we could
22 real quick.

23 A. Okay.

24 Q. Could you tell me where you graduated from
25 high school and what year?

1 Q. And do you remember approximately when you
2 got your low-voltage license? Would that have been
3 when you had your Warren Services?

4 A. Yes.

5 Q. All right. Well, let's talk a little bit
6 more about this particular case. So what was it that
7 made you decide you wanted to file this lawsuit?

8 A. Well, it's a good idea. As a matter of
9 fact, it's a wonderful idea; and I think that it's a
10 long time coming. But I wanted to be a participant in
11 it because I hope to see it move forward.

12 Q. Is that because you'd like to see a
13 majority-minority congressional district drawn that
14 includes Hancock County?

15 A. Of course.

16 Q. And why is it that you want to have a
17 majority-minority district that includes Hancock
18 County?

19 A. Well, I feel in that particular case
20 Hancock County is the most Democratic county in the
21 State of Georgia. So I figure if it added onto the
22 rest of the counties that are majority-minority, such
23 as I, we'll get a chance to put out whatever
24 representative or senator that we want to put in, we
25 can put them in. We have a voice in Washington.

1 Right now we don't have one.

2 Q. And so when you say we can put that in,
3 that's you and fellow Democrats?

4 A. Yes.

5 Q. And your current congressman is
6 Congressman Hice, is that correct?

7 A. Uh-huh.

8 Q. Is that a yes?

9 A. That's a yes.

10 Q. Okay. I'm sorry. And so have you worked
11 on any campaigns against Congressman Hice? I don't
12 think we've mentioned those earlier.

13 A. No.

14 Q. And when you say you don't have a voice in
15 Washington with Congressman Hice, can you tell me a
16 little bit more about that? What are some things that
17 he's not doing that you think he should be?

18 A. Well, he should be paying more attention
19 to what is needed in the black community. He's paying
20 absolutely no attention. He come by to visit, and
21 that's all he do.

22 Q. Are there particular issues that you have
23 reached out to Congressman Hice about?

24 A. Yes.

25 Q. And what are some of those issues?

1 A. No.

2 Q. And I think you've already said this, but
3 in your opinion black voters in Georgia vote for
4 Democratic candidates?

5 A. As a rule.

6 Q. Have you ever voted for a Republican
7 candidate?

8 A. No.

9 Q. In thinking about the educational system
10 in Hancock County, do you believe there is racial
11 discrimination in that system?

12 A. Well, the system itself is completely --
13 it's a 100 percent African American system. I think
14 the racism comes from the supply of resources to that
15 school system.

16 Q. And are those resource decisions that are
17 made at the state level or the local level?

18 A. State level.

19 Q. I'm sorry, the state level?

20 A. State level.

21 Q. Is it your understanding that Hancock
22 County gets some lesser amount from the state than
23 other schools do or other school systems do?

24 A. Well, I read an article that states that
25 white communities, white school systems, automatically

1 Q. Are you a member of the State Conference
2 of the NAACP?

3 A. Yes.

4 Q. And how long have you been a member of the
5 Georgia State Conference of the NAACP?

6 A. Three years.

7 Q. And do you hold any positions within that
8 organization?

9 A. No.

10 Q. Okay. Do you consider yourself a
11 Democrat?

12 A. Yes.

13 Q. And how long have you considered yourself
14 a Democrat?

15 A. 1974.

16 Q. Since you first registered?

17 A. Yes.

18 Q. Are you involved in the local Democratic
19 Party or the state Democratic Party at all?

20 A. No.

21 MR. TYSON: I don't have any other
22 questions for you this afternoon.

23 THE WITNESS: Thank you.

24 MR. OSHER: Just a moment.

25 MR. NKWONTA: Can we go off the record for