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

ALPHA PHI ALPHA FRATERNITY INC., *et al.*, *Plaintiffs*, v. BRAD RAFFENSPERGER, *Defendant*.	CIVIL ACTION FILE NO. 1:21-CV-05337-SCJ

DEFENDANT'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

For reference, the following citations are used for support for each of the findings below:

Citation	**Document Type**
APA Doc. No. [ ]	Docket entry from Alpha Phi Alpha
Grant Doc. No. [ ]	Docket entry from Grant
Pendergrass Doc. [ ]	Docket entry from Pendergrass
Tr.	Transcript of the trial record
DX	Defendant's Exhibits
APAX	Alpha Phi Alpha Plaintiffs' Exhibits
GPX	Grant Plaintiffs' Exhibits
PPX	Pendergrass Plaintiffs' Exhibits
JX	Parties' Joint Exhibits
Stip.	Joint stipulated facts filed with pretrial order, filed at APA Doc. No. [270-5]; Grant Doc. No. [231], pp. 33–88; Pendergrass Doc. No. [217], pp. 33–88.
Jud. Not.	Judicial notice order, filed at APA Doc. No. [284], Grant Doc. No. [246], Pendergrass Doc. No. [234].

I. FACTUAL BACKGROUND

1. Voting is "a fundamental political right, [] preservative of all rights." Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886). Indeed, "[i]t would be difficult to overstate the importance of the right to vote." Curling v. Raffensperger, 50 F.4th 1114, 1126 (11th Cir. 2022).

2. Recognizing how critically important this right is, and the seriousness of Plaintiffs' claims that their voting rights have been violated, this Court approaches this case "with caution, bearing in mind that these circumstances involve 'one of the most fundamental rights of . . . citizens: the right to vote.'" Ga. State Conf. of NAACP v. Fayette Cty. Bd. of Comm'rs, 775 F.3d 1336, 1345 (11th Cir. 2015) (citations omitted).

3. Part of that caution includes the recognition that the drawing of district maps is "primarily the duty and responsibility of the State[s], not the federal courts." Allen v. Milligan, 599 U.S. 1, 29 (2023) (quoting Abbott v. Perez, 138 S. Ct. 2305, 2324 (2018)).

4. Indeed, one of the key issues this Court must determine is how to address the close relationship between race and politics in Georgia. In other words, this case calls on the Court to determine whether the alleged vote dilution is "on account of race or color," 52 U.S.C. § 10301(a), or caused by some other factor.

5. This distinction must be addressed because "what appears to be bloc voting on account of race may, instead, be the result of political or personal affiliation of different racial groups with different candidates." Solomon v. Liberty County Comm'rs, 221 F.3d 1218, 1225 (11th Cir. 2000).

6. If dilution is **not** happening on account of race, then there can be no findings for Plaintiffs because "[u]nless courts 'exercise extraordinary caution' in distinguishing race–based redistricting from politics–based redistricting, they will invite the losers in the redistricting process to seek to obtain in court what they could not achieve in the political arena." Cooper v. Harris, 581 U.S. 285, 335 (2017) (Alito, J., concurring in the judgment in part and dissenting in part) (quoting Miller v. Johnson, 515 U.S. 900, 916 (1995)).

7. This issue is further heightened because Plaintiffs in this case seek not to vindicate a complete lack of political success, but rather they seek to have this Court use Section 2 of the Voting Rights Act (VRA) to order "more success in place of some." Johnson v. De Grandy, 512 U.S. 997, 1012-13 (1994). And this Court cannot "conflat[e] discrimination on the basis of party affiliation with discrimination on the basis of race." League of Women Voters of Fla. Inc. v. Fla. Sec'y of State, 66 F.4th 905, 924 (11th Cir. 2023) (citations omitted).

8. This is because "partisan motives are not the same as racial motives." Brnovich v. Democratic Nat'l Comm., 141 S. Ct. 2321, 2349 (2021). And federal

courts are "not responsible for vindicating generalized partisan preferences." Rucho v. Common Cause, 139 S. Ct. 2484, 2501 (2019).

9. One unique area involving the application of the VRA is that there is some tension with the Equal Protection Clause, because "the Equal Protection Clause restricts consideration of race and the VRA demands consideration of race." Abbott v. Perez, 138 S. Ct. 2305, 2315 (2018).

10. Gingles and its progeny avoid the constitutional problems with race-based admission policies in Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2165 (2023), because they are essentially self-regulating. In other words, a properly cabined application of Gingles avoids the constitutional problems of race-based redistricting extending "indefinitely into the future." Allen, 599 U.S. at 45 (Kavanaugh, J., concurring in part). That is because a finding of equal openness on the facts before the Court avoids the necessity of determining whether Section 2 improperly requires race-based redistricting after an election system has achieved what Section 2 set out as the goal—equal political opportunity.

11. Thus, the success of Black and Black-preferred candidates across the state of Georgia is a key part of this case as the Court treats "equal political opportunity as the focus of the enquiry." De Grandy, 512 U.S. at 1014. As discussed below, considering the totality of the circumstances after a searching local

appraisal of the facts, this Court concludes that the challenged district plans do not deny or abridge the right to vote on account of race or color and that Georgia's electoral system is equally open to participation by all voters.

A. What is redistricting?

12. The country's system of elections is based on the principle of "one person, one vote" espoused by the Supreme Court in Baker v. Carr, 369 U.S. 186 (1962).

13. As a result, and because our federal system of government is representative when people are drawn into electoral districts, those districts must have equal populations. Karcher v. Daggett, 462 U.S. 725, 730 (1983) ("Article I, § 2 establishes a 'high standard of justice and common sense' for the apportionment of congressional districts: 'equal representation for equal numbers of people.'" (quoting Wesberry v. Sanders, 376 U.S. 1, 18 (1964))).

14. Otherwise, the voting strength of people who live in districts with large populations will be diluted compared to those who live in districts with smaller populations. The Supreme Court has therefore held that in elections for members of the United States House of Representatives, "the command of Art. I, § 2 [of the Constitution], that Representatives be chosen 'by the People of the several States' means that as nearly as is practicable one [person's] vote in a

congressional election is to be worth as much as another's." Wesberry, 376 U.S. at 7–8 (footnotes omitted) (citations omitted).

15. This principle has also been extended to state legislative bodies: "[A]s a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." Reynolds v. Sims, 377 U.S. 533, 568 (1964); see also Larios v. Cox, 300 F. Supp. 2d 1320, 1331 (N.D. Ga. 2004) (three-judge panel) (delineating principles that can justify deviations from equal population for legislative plans).

16. The number of people who must be in a particular electoral district depends on which legislative office the district is designed to cover. For instance, the U.S. Constitution prescribes that for the House of Representatives, "[t]he Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative." U.S. Const. art. I, § 2, cl. 3.

17. When district populations are not equal, the districts are malapportioned. Because populations naturally shift and change over time, district boundaries must be adjusted periodically to correct any malapportionment. This "[r]ealignment of a legislative district's boundaries to reflect changes in population and ensure proportionate representation by elected officials" is known as reapportionment or redistricting. Reapportionment, Black's

Law Dictionary (11th ed. 2019) (citing U.S. Const. art. I, § 2, cl. 3); redistricting, Black's Law Dictionary (11th ed. 2019).

18. The U.S. Constitution requires that reapportionment for members of the U.S. House of Representatives occur every ten years, based on the Decennial Census. U.S. Const. art. I, § 2, cl. 3; id., amend XIV, § 2.

19. The Georgia Constitution requires that the Senate and House districts of the General Assembly be reapportioned after each Decennial Census. Ga. Const. art. III, § 2, ¶ II.

20. Redistricting is a very political process. Tr. 2125:12–20.

B. Past redistricting cycles in Georgia.

21. During the 2001 redistricting cycle, state Senate and state House plans drawn in 2001 and 2002 were used in the 2002 elections. Larios, 300 F. Supp. 2d at 1326–27.

22. The 2001 redistricting plans reduced Black percentages and majority-Black districts in service of political goals. Charles S. Bullock, III, The History of Redistricting in Georgia, 52 Ga. L. Rev. 1057, 1083–84 (Summer 2018).

23. After being used in the 2002 elections, the state Senate and state House plans drawn in 2001 and 2002 were found unconstitutional. Larios, 300 F. Supp. 2d at 1356.

24. A federal court drew new district plans for state Senate and state House that were subsequently used in the 2004 election cycle. Larios v. Cox, 314 F. Supp. 2d 1357, 1364 (N.D. Ga. 2004) (three-judge panel).

25. The 2011 cycle state Senate, state House, and Congressional plans as drawn by the majority Republican legislature were precleared by the U.S. Department of Justice on their initial submission. Jud. Not., p. 8.

26. The 2014 state Senate plan split 38 counties. Stip. ¶ 188; APAX 1, Ex. T-2.

27. The 2014 state Senate plan contained 13 majority-Black districts[1] using 2020 Census data, plus a 14th district with a Black VAP of 49.76%. Stip. ¶ 174.

28. The 2015 state House plan split 73 counties. Stip. ¶ 188, APAX 1, Ex. AH-2.

29. The 2015 state House plan contained 47 majority-Black districts using 2020 Census data. Stip. ¶ 181.

30. Congresswoman Lucy McBath was elected in 2018 and 2020 in 2012 Congressional District 6 when that district was 58.11% Non-Hispanic White VAP and 14.46% AP Black VAP using the 2020 Census results. Jud. Not., pp. 9–11; Stip. ¶ 167, PPX 1, Ex. F.

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[1] For purposes of these findings, the term "majority-Black district" refers to a district where the Any-Part Black voting-age population is greater than 50%.

C. Background of adoption Georgia 2021 plans.

31. To prepare for redistricting in 2021, the Georgia General Assembly undertook an extensive process even with delays due to the COVID-19 pandemic.

32. The General Assembly held nine in-person and two virtual joint committee meetings beginning on June 15, 2021, to gather input from voters. Stip. ¶ 136.

33. The joint redistricting committees released an educational video about the redistricting process at their June 15, 2021 meeting. Stip. ¶ 137.

34. The General Assembly created an online portal for voters to offer comments on redistricting plans and received more than 1,000 comments from voters in at least 86 counties. Stip. ¶ 138.

35. On August 21, 2021, the Census Bureau released the detailed population counts that Georgia used to redraw districts. Stip. ¶ 140.

36. The joint committees held a meeting to hear from interested groups on August 30, 2021. Stip. ¶ 141.

37. The National Conference of State Legislatures, American Civil Liberties Union of Georgia, Common Cause, Fair Districts GA, the Democratic Party of Georgia, and Asian-Americans Advancing Justice – Atlanta presented at the August 30, 2021 joint meeting. Stip. ¶ 142.

38. Prior to drawing redistricting plans, the House Legislative and Congressional Reapportionment Committee and the Senate Reapportionment and Redistricting Committee adopted guidelines for the redistricting process. Stip. ¶¶ 134–35.

39. The guidelines provide the following principles for drafting state legislative plans: (1) total population that is substantially equal as practicable, considering the other principles; (2) compliance with Section 2 of the Voting Rights Act; (3) compliance with the U.S. and Georgia constitutions; (4) contiguous geography; (5) no multi-member districts; (6) consider counties and precincts, compactness, and communities of interest; (7) make efforts to avoid the unnecessary pairing of incumbents; and (8) any other principles or factors the Committee deems appropriate. JX1, JX2.

40. Drafts of the 2021 Senate and House Plans were first released on November 2, 2021. Stip. ¶ 143.

41. The General Assembly's special session to consider the draft Senate and House Plans (and Congressional redistricting) began on November 3, 2021. Stip. ¶ 144.

42. After the special session convened, the House and Senate redistricting committees held multiple meetings prior to voting on proposed redistricting plans. Stip. ¶ 145.

43. The House and Senate redistricting committees received public comment on plans during committee meetings held in the special session. Stip. ¶ 146.

44. During the special session, the Georgia General Assembly passed the 2021 adopted state Senate and 2021 adopted state House plans. Stip. ¶ 147

45. No Democratic members of the General Assembly voted in favor of the 2021 Congressional, Senate, or House plans. Stip. ¶ 150.

46. Governor Kemp signed the 2021 Congressional, Senate, and House plans into law on December 30, 2021. Stip. ¶ 149.

47. The 2021 Congressional, Senate, and House plans were used in the 2022 elections. Stip. ¶ 152.

i. State Senate.

48. There are 56 districts on the 2021 enacted state Senate plan. Stip. ¶ 172.

49. The 2021 enacted state Senate plan splits 29 counties. Stip. ¶ 188, APAX 1, Ex. T-3.

50. The 2021 enacted state Senate plan did not pair any incumbents of any political party who were running for re-election in 2022. Stip. ¶ 175.

51. The 2021 enacted state Senate plan includes 14 majority-Black districts. DX 2, Chart 2; DX 3, Chart 3.

52. As of August 4, 2023, after elections held on the 2021 enacted state Senate plan, there are 33 Republicans and 23 Democrats in the state Senate. Jud. Not., p. 9.

ii. State House.

53. There are 180 districts on the 2021 enacted state House plan. Stip. ¶ 179.

54. The 2021 enacted state House plan splits 69 counties. Stip. ¶ 188, APAX 1, Ex. AH-3.

55. The 2021 enacted state House plan paired four sets of incumbents who were running for re-election in 2022. Stip. ¶ 182.

56. The 2021 enacted state House plan includes 49 majority-Black districts. DX 2, Chart 6; DX 3, Chart 8.

57. As of August 4, 2023, after elections held on the 2021 enacted state House plan, there are 102 Republicans and 78 Democrats in the state House. Jud. Not., p. 9.

D. Other Georgia election information.

58. Herschel Walker was opposed in the 2022 Republican Primary election for U.S. Senate by the then-incumbent Agriculture Commissioner, Gary Black, who is white and who had been successfully elected statewide in past statewide elections. Jud. Not., p. 11.

59. Herschel Walker received the highest number of votes in every county in Georgia in the 2022 Republican Primary election for U.S. Senate and won the Republican nomination for U.S. Senate. Jud. Not., p. 11.

60. Fitz Johnson is a Black Republican man who won the 2022 Republican nomination for Public Service Commission District 3 with 1,007,354 votes in an uncontested primary election. Jud. Not., p. 11.

61. United States Senator Raphael Warnock and Herschel Walker are both Black men. Jud. Not., p. 11.

62. Senator Raphael Warnock received the highest number of votes in the 2022 General Election and won the runoff election against Herschel Walker held in December 2022. Stip. ¶¶ 352, 355.

63. Senator Warnock received the highest number of votes in each election in which he ran in 2020, 2021, and 2022. Stip. ¶ 352.

64. Senator Warnock, Senator Jon Ossoff, and President Joe Biden were all candidates of choice of Black voters in Georgia and won statewide elections in 2020, 2021, and 2022. Stip. ¶¶ 352–354, 358.

65. The Insurance Commissioner for the State of Georgia, John King, is a Latino man and a Republican. Jud. Not., p. 11.

66. Commissioner John King received 2,107,388 votes in the 2022 general election, while his opponent received 1,788,136 votes. Jud. Not., p. 11.

67. Justice Carla McMillian is an Asian-American who has been elected to nonpartisan statewide office in Georgia multiple times. Jud. Not., p. 11.

E. Timeline of case and trial.

68. When they first filed this case, Alpha Phi Alpha Plaintiffs challenged a defined list of districts as "packed" and "cracked." Specifically, they challenged "Senate Districts 16, 17, and 23 in the Enacted State Senate Plan (SB 1EX), and House Districts 74, 114, 117, 118, 124, 133, 137, 140, 141, 149, 150, 153, 154, and 155, in the Enacted State House Plan (HB 1EX)." Alpha Phi Alpha Fraternity v. Raffensperger, 587 F. Supp. 3d 1222, 1235-36 (N.D. Ga. 2022). Alpha Phi Alpha Plaintiffs claim the General Assembly should have drawn three additional majority-Black state Senate districts and five additional majority-Black state House districts. Id.

i. Preliminary injunction proceedings.

69. The Court moved rapidly to hear motions to dismiss and motions for preliminary injunction in early January 2022, culminating in a six-day preliminary injunction hearing held February 7 through 14, 2022. Alpha Phi Alpha, 587 F. Supp. 3d at 1237.

70. Following the hearing, the Court found a likelihood of success on the merits of some claims brought by Plaintiffs but denied preliminary injunctive relief because "due to the mechanics of State election requirements, there is

insufficient time to effectuate remedial relief for purposes of the 2022 election cycle." Alpha Phi Alpha, 587 F. Supp. 3d at 1326–27.

71. While this Court provided an assessment of Plaintiffs' likelihood of success on the merits after the preliminary injunction, that is not dispositive of Plaintiffs' claims. "At the preliminary injunction stage, the court is called upon to assess the probability of the plaintiff's ultimate success on the merits." Sole v. Wyner, 551 U.S. 74, 84 (2007). It is "only the parties' opening engagement," and any "provisional relief granted" is "tentative" "in view of the continuation of the litigation to definitively resolve the controversy." Id. "[T]he findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits." Univ. of Texas v. Camenisch, 451 U.S. 390, 395 (1981).

ii. Discovery.

72. Following entry of this Court's denial of Plaintiffs' motion for preliminary injunction, Grant and Alpha Phi Alpha Plaintiffs amended their Complaint and the case proceeded to discovery. APA Doc. No. [141]; Grant Doc. No. [94].

73. Alpha Phi Alpha Plaintiffs amended their Complaint and continued to allege that the State packed Black voters into some districts and cracked Black

populations in other districts. APA Doc. No. [141], ¶¶ 5, 64, 65, 66, 70, 71, 72, 75, 78.

iii. Trial proceedings.

74. Following discovery, the Court heard the evidence on all three cases in a trial that began on September 5, 2023 and concluded on September 14, 2023. While the cases were tried together, they were not consolidated, and this Court required counsel to identify which case for which each evidentiary component was presented.[2]

II. LEGAL STANDARDS

A. Role of federal courts in redistricting.

i. Generally.

75. Reapportionment is "primarily the duty and responsibility of the State[s], not the federal courts." Allen v. Milligan, 599 U.S. 1, 29 (2023) (quoting Abbott v. Perez, 138 S. Ct. 2305, 2324 (2018).

[2] Three witnesses testified in one case but had their testimony incorporated into the other cases. Those witnesses are: (1) Dr. Diane Evans, who testified for Grant but whose testimony was incorporated into Alpha Phi Alpha at Tr. 634:2–10; (2) Dr. Adrienne Jones, who testified for Alpha Phi Alpha but whose testimony was incorporated into Grant and Pendergrass at Tr. 1244:10–1245:17; and (3) Dr. Orville Burton, who testified for Grant and Pendergrass but whose testimony was incorporated into Alpha Phi Alpha at Tr. 1464:11–24.

76. "The States do not derive their reapportionment authority from the Voting Rights Act, but rather from independent provisions of state and federal law." Voinovich v. Quilter, 507 U.S. 146, 156 (1993) (cleaned up). "Districting involves myriad considerations—compactness, contiguity, political subdivisions, natural geographic boundaries, county lines, pairing of incumbents, communities of interest, and population equality." Allen, 599 U.S. at 35. And "the federal courts are bound to respect the States' apportionment choices unless those choices contravene federal requirements." Voinovich, 507 U.S. at 156.

77. Section 2 places the "burden of proving an apportionment's invalidity squarely on the plaintiff's shoulders." Id. at 155. Conversely, a state is never required "to prove the invalidity of its own apportionment scheme." Id. at 156. "Of course, the federal courts may not order the creation of majority-minority districts unless necessary to remedy a violation of federal law." Id.

78. The Gingles analytical process must be "properly applied" in Section 2 cases to "help ensure this remains the case." Allen, 599 U.S. at 29 (citing Thornburg v. Gingles, 478 U.S. 30 (1986)). This is because Section 2 limits judicial action to "instances of intensive racial politics where the excessive role of race in the electoral process denies minority voters equal opportunity to participate." Id. (cleaned up).

79. Further, this Court recognizes that "the Constitution charges States, not federal courts, with designing election rules." Curling v. Raffensperger, 50 F.4th 1114, 1122 (11th Cir. 2022).

ii. Limitations on adjudicating partisan gerrymandering claims.

80. "Partisan gerrymandering is nothing new. Nor is frustration with it." Rucho v. Common Cause, 139 S. Ct. 2484, 2494 (2019).

81. While federal courts can hear constitutional challenges to redistricting involving population and race, the Supreme Court has determined federal courts lack jurisdiction to hear partisan gerrymandering claims because there are no judicially manageable standards to assess partisan gerrymandering. Id. at 2495–96 ("[u]nlike partisan gerrymandering claims, a racial gerrymandering claim does not ask for a fair share of political power and influence, with all the justiciability conundrums that entails. It asks instead for the elimination of a racial classification. A partisan gerrymandering claim cannot ask for the elimination of partisanship").

82. Thus, as Rucho explained, "[t]he 'central problem' is not determining whether a jurisdiction has engaged in partisan gerrymandering. It is 'determining when political gerrymandering has gone too far.'" Id. at 2497 (quoting Vieth v. Jubelirer, 541 U.S. 267, 296 (2004) (plurality opinion)).

83. This is because federal courts have no "commission to allocate political power and influence." Id. at 2508.

84. Partisan gerrymandering claims ultimately ask courts to "make their own political judgment about how much representation particular parties deserve—based on the votes of their supporters—and to rearrange the challenged districts to achieve that end." Id. at 2499 (emphasis in original).

85. Federal courts lack the power to apportion political power because they cannot "vindicate[e] generalized partisan preferences." Id. at 2499–2501.

86. Because there is no right to proportional representation, or even a guarantee that redistricting "come as near as possible" to proportional representation—that argument is "clearly foreclose[d]'" under Supreme Court cases—Plaintiffs' claims do not rise to the level of invoking this Court's power. See Rucho, 139 S. Ct. at 2499.

B. Jurisdictional limitations applicable to this case.

i. Section 2 challenges to statewide plans must be heard by three-judge panels.[3]

87. 28 U.S.C. § 2284(a) ("Section 2284") is mandatory: it contains "shall" language, depriving a single-judge federal district court of jurisdiction when an action falls within its coverage. Antonin Scalia & Bryan Garner, Reading Law: The Interpretation of Legal Texts 114 (2012); see also Shapiro v. McManus, 577 U.S. 39, 43 (2015) ("[28 U.S.C.] §2284(a) admits of no exception, and the mandatory shall . . . normally creates an obligation impervious to judicial discretion") (internal quotations omitted).

88. Historically, Section 2 challenges to districts have been brought in conjunction with constitutional challenges under the Fourteenth and/or Fifteenth Amendments to the U.S. Constitution. See, e.g., Thompson v. Kemp, 309 F. Supp. 3d 1360, 1361 (N.D. Ga. 2018) (three-judge panel). Further, in prior redistricting cycles, when these types of challenges were made under the VRA, it was almost universally through the preclearance provisions of the VRA, which are no longer applicable to Georgia. Shelby County v. Holder, 570 U.S. 529 (2013).

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[3] Defendant recognizes the Court has previously denied motions on this topic in this case. These findings and conclusions are included to ensure the appellate record is complete.

89. A court's reading of a statute "begins with the statutory text, and ends there as well if the text is unambiguous." Packard v. Comm'r, 746 F. 3d 1219, 1222 (11th Cir. 2014) (citing BedRoc Ltd., LLC v. United States, 541 U.S. 176, 183 (2004)).

90. The statutory language of Section 2284(a) makes clear that a three-judge panel is required for this case. It requires a three-judge panel to be convened "when an action is filed challenging the constitutionality of the apportionment of congressional districts **or the** apportionment of any statewide legislative body" 28 U.S.C. § 2284(a) (emphasis added).

91. "Questions regarding the legitimacy of the state legislative apportionment (and particularly its review by the federal courts) are highly sensitive matters, and are regularly recognized as appropriate for resolution by a three-judge district court." Page v. Bartels, 248 F. 3d 175, 190 (3d Cir. 2001).

92. Indeed, "in such redistricting challenges, the potential for federal disruption of a state's internal political structure is great, counseling in favor of the establishment of a specialized adjudicatory machinery." Id.

93. For this reason, it makes sense that Congress chose a broader standard for state legislative districting challenges. As the Supreme Court has explained, "Congress has determined that three-judge courts are desirable in a number of circumstances involving confrontations between state and federal power or in circumstances involving a potential for substantial interference with government

administration." Allen v. State Bd. of Elections, 393 U.S. 544, 562 (1969) (applying Section 5 of the VRA). And the congressional record supports reading Section 2284 to apply to any federal challenge statewide apportionment.

94. In enacting the 1976 amendments to Section 2284(a), which, in relevant part, brought the statute to its present text, "Congress was concerned less with the source of the law on which an apportionment challenge was based than on the unique importance of apportionment cases generally. The Senate Report, for example, consistently states that 'three-judge courts would be retained . . . in any case involving congressional reapportionment or the reapportionment of any statewide legislative body…'" Page, 248 F.3d at 190 (citing S. Rep. No. 94-204 (1976)) (alterations accepted).

95. The Senate Report goes on to explain that the amendment "preserves three-judge courts for cases involving . . . the reapportionment of a statewide legislative body because it is the judgment of the committee that these issues are of such importance that they ought to be heard by a three-judge court…" S. Rep. No. 94-204 (1976), reprinted in 1976 U.S.C.C.A.N. 1996.

96. Unlike many statutes, the underlying language of Section 2 of Voting Rights Act as initially enacted and the language of the Fifteenth Amendment are essentially identical. See City of Mobile v. Bolden, 446 U.S. 55, 61 (1980). As the

Supreme Court pointed out, "it is apparent that the language of § 2 no more than elaborates upon that of the Fifteenth Amendment." Id.

97. Though Section 2 of the VRA has since been amended, the thrust of the argument that the VRA remains a direct exercise of the enforcement power of Congress under the Fourteenth and Fifteenth Amendments remains unchanged. See City of Boerne v. Flores, 521 U.S. 507, 518 (1997) ("We have also concluded that . . . measures protecting voting rights are within Congress' power to enforce the Fourteenth and Fifteenth Amendments, despite the burdens those measures placed on the States."); Lewis v. Governor of Ala., 896 F.3d 1282, 1293 (11th Cir. 2018), vacated and rehearing en banc granted by 914 F.3d 1291 (11th Cir. Jan. 30, 2019) ("The Voting Rights Act . . . 'is designed to implement the Fifteenth Amendment and, in some respects, the Fourteenth Amendment.'") (Wilson, J.). Thus, more than most congressional actions, the VRA represents a direct effort by Congress to implement constitutional provisions in the Fifteenth and Fourteenth Amendments.

98. Thus, the text and the intent of Congress both demonstrate that this case must be heard by a three-judge panel, and this case must be dismissed unless heard by such a panel.

ii. There is no private right of action under Section 2.[4]

99. The Supreme Court has often "[a]ssum[ed], for present purposes, that there exists a private right of action to enforce" Section 2, but it has never directly confronted that question. See Bolden, 446 U.S. at 60 (1980) (plurality). As a result, the question of whether "the Voting Rights Act furnishes an implied cause of action under § 2" remains "open." Brnovich, 141 S. Ct. at 2350 (Gorsuch, J., concurring).

100. Congress has not clearly expressed its intent to provide a right of action under Section 2, and thus, "a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." Alexander v. Sandoval, 532 U.S. 275, 286-87 (2001).

101. "Moreover, a reviewing court may not plumb a statute's supposed purposes and policies in search of the requisite intent to create a cause of action; rather, the inquiry both begins and ends with a careful examination of the statute's language." In re Wild, 994 F.3d 1244, 1255 (11th Cir. 2021) (en banc).

102. The default view is that no private right of action exists—Congress must "intend[] to provide one" for such a right to exist. Id. at 1259 (emphasis in

[4] Defendant recognizes the Court has previously denied motions on this topic in this case. These findings and conclusions are included to ensure the appellate record is complete.

original); accord Bellitto v. Snipes, 935 F.3d 1192, 1202 (11th Cir. 2019) (applied to Help America Vote Act).

103. Nothing in the text of Section 2 "clearly and affirmatively manifest[s] its intent—as reflected in the Act's text and structure—to create a private right of action." In re Wild, 994 F.3d at 1256. In fact, there is no "'rights-creating' language" in Section 2. Sandoval, 532 U.S. at 288 (finding no private right of action to enforce disparate-impact regulations promulgated under Title VI of Civil Rights Act of 1964).

104. Merely referring to the right to vote generally is not a clear intent to create a private right of action, and thus cannot create that kind of right "in [the] clear and unambiguous terms" that precedent requires. Gonzaga Univ. v. Doe, 536 U.S. 273, 290 (2002).

105. Further, Congress specifically created private rights of action in other parts of the Voting Rights Act but failed to do so in Section 2. For example, Section 3 includes language authorizing proceedings to be "instituted by the Attorney General **or an aggrieved person** under any statute to enforce the voting guarantees of the fourteenth or fifteenth amendment." 52 U.S.C. § 10302 (emphasis added).

106. There is no reference in Section 2 to any "aggrieved person" being permitted to bring an action under its provisions—and the fact that the adjoining section contains such a clear statement of congressional intent "very nearly

forecloses" the idea that Section 2 could contain a private right of action. In re Wild, 994 F.3d at 1259 (applied to Crime Victims' Rights Act).

107. Because Section 2's text does not "clearly and affirmatively manifest" a private cause of action, none exists. Id. at 1256. Thus, in addition to the dismissal for failing to notice a three-judge court, Plaintiffs' cases should also be dismissed because they have no ability to bring this action as private citizens and entities.

C. The Voting Rights Act.

108. As amended in 1982, Section 2(a) of the VRA prohibits any state or political subdivision from imposing or applying any "qualification or prerequisite" to voting or any "standard, practice, or procedure" which "results in a denial or abridgement of the right of any citizen of the United States to vote on account or race or color." 52 U.S.C. § 10301(a).

109. Section 2 prohibits "voting qualification or prerequisite to voting or standard, practice, or procedure" that "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color" which "is established if" the members "of a class of citizens . . . have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(a) and (b). A "totality of circumstances" must show the challenged process is "not equally open" because a

minority group has "less opportunity . . . to participate in the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b).

110. The section prohibits all forms of voting discrimination that "result in the denial of equal access to any phase of the electoral process for minority group members." S. Rep. No. 97-417, at 30 (1982), reprinted in 1982 U.S.C.C.A.N. 177, 205. It also protects voters from election practices "which operate, designedly or otherwise" to deny them the same opportunity to participate in the political process as other citizens enjoy. Id. at 28.

111. "The purpose of the Voting Rights Act is to prevent discrimination in the exercise of the electoral franchise and to foster our transformation to a society that is no longer fixated on race." League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 433–34 (2006) ("LULAC").

112. Vote-dilution (effects) claims under Section 2 of the VRA are analyzed under the framework set forth in Thornburg v. Gingles, 478 U.S. 30 (1986).

113. The Gingles framework cannot be applied mechanically and without regard to the nature of the claim. Voinovich v. Quilter, 507 U.S. 146, 158 (1993).

114. Section 2 does not allow this Court to infer vote dilution "from mere failure to guarantee a political feast," De Grandy, 512 U.S. at 1017 (majority op.), because the "[f]ailure to maximize cannot be the measure of § 2." Id.

115. To prove a violation of Section 2 in a vote-dilution case, a plaintiff bears the burden of first proving each of the three Gingles preconditions: "(1) that the minority group is 'sufficiently large and geographically compact to constitute a majority in a single-member district'; (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).

116. The Gingles preconditions "limit judicial intervention to 'those instances of intensive racial politics' where the 'excessive role [of race] in the electoral process . . . den[ies] minority voters equal opportunity to participate.'" Allen, 599 U.S. at 30.

117. Failure to establish one of the Gingles preconditions is fatal to a Section 2 claim because each of the three prongs must be met. Johnson v. DeSoto Cnty. Bd. of Comm'rs, 204 F.3d 1335, 1343 (11th Cir. 2000); Burton v. City of Belle Glade, 178 F.3d 1175, 1199 (11th Cir. 1999); Brooks v. Miller, 158 F.3d 1230, 1240 (11th Cir. 1998); Negron v. City of Miami Beach, Fla., 113 F.3d 1563, 1567 (11th Cir. 1997).

118. After a plaintiff establishes the three preconditions, a court then conducts a searching review of the relevant facts and circumstances related to the jurisdiction, guided by the so–called "Senate Factors" to assess the totality of the

circumstances. Nipper, 39 F.3d at 1512; Gingles, 478 U.S. at 79; De Grandy, 512 U.S. at 1011.

119. "[I]n the words of the Supreme Court, the district court is required to determine, after reviewing the 'totality of the circumstances' and, 'based upon a searching practical evaluation of the past and present reality, whether the political process is equally open to minority voters. This determination is peculiarly dependent upon the facts of each case and requires an intensely local appraisal of the design and impact of the contested electoral mechanisms.'" Wright v. Sumter Cty. Bd. of Elections & Registration, 979 F.3d 1282, 1288 (11th Cir. 2020) (quoting Gingles, 478 U.S. at 79).

120. The Court is not limited to reviewing only the Senate factors because that list is "neither comprehensive nor exclusive." Ga. State Conf. of the NAACP, 775 F.3d at 1342.

121. Further, there is no requirement that any particular Senate factors be proved or a majority point one way or another. Id.

122. Ultimately, "the essential inquiry in a § 2 case is 'whether the political process is equally open to minority voters.'" Id.

123. Further, when considering a challenge under Section 2, this Court must determine whether the alleged vote dilution is "on account of race or color," 52 U.S.C. § 10301(a), or caused by some other factor. This is because "[u]nless

courts 'exercise extraordinary caution' in distinguishing race–based redistricting from politics–based redistricting, they will invite the losers in the redistricting process to seek to obtain in court what they could not achieve in the political arena." Cooper, 137 S. Ct. at 1490 (Alito, J., concurring in the judgment in part and dissenting in part) (quoting Miller, 515 U.S. at 916).

124. Section 2 is not simply a checklist—do we have a map with more districts, racially distinctive bloc voting patterns, and a history of discrimination? End of analysis!—instead, this Court is required to "conduct an intensely local appraisal of the design and impact of a voting system." Johnson v. Hamrick, 296 F.3d 1065, 1074 (11th Cir. 2002) (quoting Negron, 113 F.3d at 1566).

125. Any deprivation of the right to vote found by this Court "must be on account of a classification, decision, or practice that depends on race or color, not on account of some other racially neutral cause." Solomon, 221 F.3d at 1225 (en banc) (quoting Nipper, 39 F.3d at 1515 (en banc)); accord Brnovich, 141 S. Ct. at 2359 (Section 2 asks whether an election law interacts with conditions "to **cause race-based inequality** in voting opportunity") (Kagan, J., dissenting) (emphasis added).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Parties and standing.

126. Alleged harms of vote dilution are "district specific." Gill v. Whitford, 138 S. Ct. 1916, 1930 (2018). As a result, this Court first considers the claims of each Plaintiff.

i. Associational plaintiffs (APA).

127. Plaintiff Alpha Phi Alpha Fraternity, Inc. has thousands of members in Georgia, including Black Georgians who are registered to vote and live in Senate Districts 16, 17, and 23 under the 2021 State Senate Plan and House Districts 74, 114, 117, 128, 133, 134, 145, 171, and 173 under the 2021 State House Plan. Stip. ¶ 52.

128. Plaintiff Alpha Phi Alpha Fraternity, Inc. has identified member Harry Mays as a member who resides in a district that would be majority-Black under the illustrative plans. Stip. ¶¶ 54–56.

129. Plaintiff Sixth District of the African Methodist Episcopal Church has member-churches across Georgia. Stip. ¶¶ 57–59; Tr. 375:10–14.

130. Plaintiff Sixth District of the African Methodist Episcopal Church has identified individuals who are members of churches that are members of the Sixth District of the African Methodist Episcopal Church in various districts. Stip. ¶¶ 61, 63, 64; Tr. 375:10–14.

ii. Individual plaintiffs (APA).

131. Eric T. Woods is a Black registered voter from Tyrone, Georgia who lives in State Senate District 16 under the 2021 State Senate plan and would reside in majority-Black Senate District 28 district under Alpha Plaintiffs' illustrative plans. Stip. ¶¶ 65–69.

132. Katie Bailey Glenn is a Black registered voter from McDonough, Georgia who lives in State Senate District 17 under the 2021 State Senate plan. She would reside in a majority-Black Senate District 17 district under Alpha Plaintiffs' illustrative plans. Stip. ¶¶ 70–74.

133. Phil S. Brown is a Black registered voter from Wrens, Georgia who lives in State Senate District 23 under the 2021 State Senate plan and would reside in majority-Black Senate District 23 under Alpha Plaintiffs' illustrative plans. Stip. ¶¶ 75–79.

134. Janice Stewart is a Black registered voter from Thomasville, Georgia who lives in State House District 173 under the 2021 State House plan and would reside in majority-Black House District 171 under Alpha Plaintiffs' illustrative plans. Stip. ¶¶ 80–84.

iii. Defendant.

135. Brad Raffensperger is the Georgia Secretary of State and is named as a defendant in his official capacity. Stip. ¶ 85.

iv. Legal conclusions regarding standing.

136. A federal court is not "a forum for generalized grievances," and the requirement that plaintiffs have a personal stake in the claim they bring "ensures that courts exercise power that is judicial in nature." Lance v. Coffman, 549 U.S. 437, 439, 441 (2007).

137. Federal courts uphold these limitations by insisting that a plaintiff satisfy the familiar three-part test for Article III standing: (1) injury in fact, (2) traceability, and (3) redressability. Spokeo, Inc. v. Robins, 578 U. S. 330, 338 (2016).

138. "Foremost among these requirements is injury in fact—a plaintiff's pleading and proof that he has suffered the 'invasion of a legally protected interest' that is 'concrete and particularized,' i.e., 'which affect[s] the plaintiff in a personal and individual way.'" Gill v. Whitford, 138 S. Ct. 1916, 1929 (2018) (quoting Lujan v. Defenders of Wildlife, 504 U. S. 555, 560 & n.1 (1992)).

139. In redistricting cases alleging vote dilution, organizations can only have associational standing, because an organization does not "reside" in any particular district. "To the extent the plaintiffs' alleged harm is the dilution of their votes, that injury is district specific." Gill, 138 S. Ct. at 1930.

140. In other words, "a plaintiff who alleges that he is the object of a racial gerrymander—a drawing of district lines on the basis of race—has standing to assert only that his own district has been so gerrymandered." Id.

141. "A plaintiff who complains of gerrymandering, but who does not live in a gerrymandered district, 'assert[s] only a generalized grievance against governmental conduct of which he or she does not approve.'" Id. (quoting United States v. Hays, 515 U. S. 737, 745 (1995)).

142. In Gill, the Supreme Court noted that "[a]n individual voter in Wisconsin is placed in a single district. He votes for a single representative. The boundaries of the district, and the composition of its voters, determine whether and to what extent a particular voter is packed or cracked." Id. at 1930.

143. The Court further held that this apparent disadvantage to the voter "results from the boundaries of the particular district in which he resides. And a plaintiff's remedy must be "limited to the inadequacy that produced [his] injury in fact." Id. at 1931 (quoting Lewis v. Casey, 518 U. S. 343, 357 (1996)).

144. Finally, the Court concluded that "[i]n this case the remedy that is proper and sufficient lies in the revision of the boundaries of the individual's own district." Id. at 1930 (emphasis added).

145. Based on the information stipulated to by the parties, this Court finds that the individual plaintiffs have standing to proceed with this action for the districts in which they reside.

146. This Court further determines that Plaintiff Alpha Phi Alpha Fraternity, Inc., has associational standing because (1) it has individual members,

(2) it has identified the districts in which those members reside, and (3) those members can have their districts redrawn to address any injury this Court determines exists. Summers v. Earth Island Inst., 555 U.S. 488, 494 (2009); Gill, 138 S. Ct. at 1930.

147. This Court determines that Plaintiff Sixth District of the African Methodist Episcopal Church does not have associational standing because it has not established that it has individual members who are voters impacted by the enacted redistricting plans, but rather its membership consists of member-churches. Churches do not vote and thus cannot have an injury for the district in which the churches are located. Fla. State Conference of the NAACP v. Browning, 522 F.3d 1153, 1160 (11th Cir. 2008); Arcia v. Sec'y of Fla., 772 F.3d 1335, 1342 (11th Cir. 2014) ("at least at least one member" must face potential injury).

B. First Gingles precondition.

i. Legal standards.

148. In order to meet the first Gingles precondition, Plaintiffs must show that the "minority group must be sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district . . . ." Wisc. Legis. v. Wisc. Elections Comm'n, 142 S. Ct. 1245, 1248 (2022) (per curiam) (citing Gingles, 478 U.S. at 50–51).

149. The compactness review under this precondition refers to the population, not the district: "The first Gingles condition refers to the compactness of the minority **population**, not to the compactness of the contested district." LULAC, 548 U.S. at 433 (emphasis added) (quoting Bush v. Vera, 517 U.S. 952, 997 (1996)).

150. The first precondition also asks whether the proposed district is geographically compact, meaning whether it is reasonably configured. Allen, 599 U.S. at 18. A district is reasonably configured when it complies with traditional redistricting criteria, including contiguity, compactness, and communities of interest. Id. The purpose of the first Gingles precondition is to "establish that the minority has the potential to elect a representative of its own choice in some single-member district." Id.

151. The Eleventh Circuit prohibits the separation of the first prong of liability under Gingles and the potential remedy. Nipper, 39 F.3d at 1530-31; see also Burton, 178 F.3d at 1199 ("We have repeatedly construed the first Gingles factor as requiring a plaintiff to demonstrate the existence of a proper remedy.").

152. Whatever plan is used to demonstrate the violation of the first prong of Gingles must also be a remedy this Court can impose. Nipper, 39 F.3d at 1530-31.

153. If a plaintiff cannot show that the plan used to demonstrate the first prong can also be a proper remedy, then the plaintiff has not shown compliance with the first prong of Gingles. Id. at 1530-31.

154. Illustrative plans for this precondition cannot "subordinate traditional redistricting principles to racial considerations substantially more than is reasonably necessary to avoid liability under Section 2." Alpha Phi Alpha, 587 F. Supp. 3d at 1264 (citing Davis v. Chiles, 139 F.3d 1414, 1424 (11th Cir. 1998)).

155. Thus, Plaintiffs must show as part of the first Gingles precondition that "race did not predominate the drawing of the Illustrative Plans." APA Doc. No. [268], p. 20 n.16; Grant Doc. No. [229], p. 31 n.23; Pendergrass Doc. No. [215], p. 28 n.17.

156. And "[r]ace may predominate even when a reapportionment plan respects traditional principles, the Court explained, if '[r]ace was the criterion that, in the [mapdrawer's] view, could not be compromised,' and race-neutral considerations 'came into play only after the race-based decision had been made.'" Bethune-Hill v. Va. State Bd. of Elections, 580 U.S. 178, 189 (2017) (quoting Shaw v. Hunt, 517 U.S. 899, 907 (1996)).

157. Further, a mapdrawer "may not 'assum[e] from a group of voters' race that they "think alike, share the same political interests, and will prefer the

same candidates at the polls."'" LULAC, 548 U.S. at 433 (quoting Miller v. Johnson, 515 U.S. 900, 912 (1995) (quoting Shaw v. Reno, 509 U.S. 630, 647 (1993)).

ii. Credibility determinations.

b. APA – Cooper

158. William Cooper was qualified by Plaintiffs as an expert mapdrawer. Tr. 65:21–24, 67:10–11. Mr. Cooper has drawn hundreds of maps and served as an expert witness in more than 50 cases. Tr. 62:11–16, 63:16–64:22.

159. Despite Mr. Cooper's experience, the Court assigns very little weight to Mr. Cooper's testimony. During Mr. Cooper's live testimony, the Court carefully observed his demeanor, particularly as he was cross-examined about his work in this case. Mr. Cooper was openly combative and evasive in many of his responses.

160. For example, despite using the term "packing" extensively in his report, Mr. Cooper would not answer directly when asked whether he had packed or unpacked various districts he referenced in his report. APAX 1; Tr. 179:16–187:17.

161. On the stand at trial, Mr. Cooper changed his testimony from his deposition, where he unequivocally agreed that the districts he drew were not packed to say that some of the districts he drew might have been packed. Tr. 180:8–14, 182:13–185:3.

162. Mr. Cooper later changed his testimony to say that he was using the term "unpack" too broadly in his report. Tr. 186:24–187:8.

163. On the stand at trial, Mr. Cooper could not explain whether enacted state Senate District 22 was packed despite agreeing that it was during his deposition. Tr. 248:12–249:9, 250:14–253:13.

164. Mr. Cooper ultimately decided to abandon the use of the terms "packed" and "cracked" when attempting to answer questions. Tr. 251:5–10, 253:14–254:12, 368:6–369:12.

165. Mr. Cooper previously agreed that it was impossible to know if race predominated in the creation of a district plan if the mapdrawer's goal was to maximize the number of majority-Black districts, but then changed his testimony on the stand at trial. Tr. 198:4–199:19.

166. Further, Mr. Cooper made changes to districts on the illustrative plans that were unrelated to the new majority-Black districts to make his overall plan statistics appear better than they actually are.

167. Mr. Cooper made changes to the state House plan in areas where there was no "ripple effect" from creating majority-Black districts, such as unsplitting Gordon County, in order to mask the overall increase in county splits in areas where he crafted additional majority-Black districts. Tr. 224:15–226:7, 285:16–286:4.

168. Mr. Cooper insisted that the illustrative plans were not being offered as remedial plans and continually speculated about other configurations of districts that were not presented to the Court, which is not helpful to the Court in resolving Plaintiffs' claims. Tr. 235:21–25, 237:7–9.

169. Despite saying he relied on the Black Belt as part of his mapdrawing process, Mr. Cooper agreed there was no uniform definition of the Black Belt in Georgia. Tr. 263:8–10.

170. Mr. Cooper also relied on unreliable sources. For example, he relied on a paper by the Georgia Budget and Policy Institute (GBPI) as a general guide to the location of the contemporary Black Belt and the Black populations of counties. Tr. 264:3–22.

171. The paper relied on by Mr. Cooper includes Savannah, St. Simons Island, and Athens-Clarke Counties as being part of the "contemporary Black Belt," because it is reviewing school district information, not county information. Tr. 265:5–267:6.

172. After being confronted with the paper that he said he used in his report, Mr. Cooper insisted that the GBPI paper was "not the overriding map that I used to develop the illustrative plan." Tr. 265:21–25.

173. Finally, Mr. Cooper has been found to draw maps that were improperly focused on race in in other cases.

174. In Ala. State Conference of the NAACP v. Alabama, 612 F. Supp. 3d 1232, 1269 (M.D. Ala. 2020), that court found, "Mr. Cooper testified that he joined the substantial African-American population of Jefferson County for the sheer sake of satisfying a numerical threshold. His explanation reveals that maintaining communities of interest, if considered at all, was subordinated to the necessity of creating an African-American, voting-age population in District 1 of his AC plans with a 50% plus one voting-age population. This feature illustrates the warning of Shaw v. Reno." Id. (citation omitted).

175. As discussed below, Mr. Cooper engaged in the same pattern of behavior in this case.

176. This lack of credibility combined with his constantly shifting and, at times, confrontational testimony when faced with his prior work on this case demonstrates that Mr. Cooper's testimony lacks credibility, and the Court assigns little weight to his testimony.

c. Morgan Qualifications.

177. Defendant qualified Mr. Morgan as an expert in redistricting, the analysis of demographic data, and the analysis of redistricting plans. Tr. 1748:8–16. Mr. Morgan has a bachelor's in History from the University of Chicago and has earned his living for the last thirty years by drawing maps, both for electoral purposes and for demographic analysis. DX 1, 2.

178. Mr. Morgan previously provided limited testimony at the preliminary-injunction hearing, not addressing issues related to race in the redistricting process given the timing, but rather focusing on the overall statistics on plans. Alpha Phi Alpha, 587 F. Supp. 3d at 1247. While the Court previously assigned little weight to his testimony, Mr. Morgan's additional expert reports and testimony have significantly bolstered his credibility at trial.

179. Mr. Morgan undertook additional analysis in his reports after the preliminary-injunction hearing, directly addressing questions of the use of race in the redistricting process that were previously unaddressed.

180. Mr. Morgan has the most experience of any mapdrawer who testified, having drawn redistricting plans that were used in elections in many states following four Censuses: 1990, 2000, 2010, and 2020. Tr. 1745:12–16.

181. Mr. Morgan served as a mapdrawer for independent or bipartisan redistricting commissions in three states in the 2020 redistricting cycle, Michigan, Virginia, and New Jersey. Tr. 1746:5–14.

182. Mr. Morgan did redistricting work in Georgia in 2001 and 2021 and has worked on a number of Georgia political campaigns. Tr. 1746:20–1747:7.

183. Despite working largely in Republican politics, Mr. Morgan has worked extensively with Democratic officials to draw redistricting plans. Tr. 2121:2–2123:12.

184. Redistricting plans drawn by Mr. Morgan have been upheld by courts or have not been challenged in dozens of states. Tr. 2123:13–2125:10.

185. Those states include plans in Connecticut, Pennsylvania, Virginia, South Carolina, Indiana (both legislative and Congressional districts), and Missouri. Id.

186. Mr. Morgan has familiarity with the demographics and geography of Georgia, including visiting every county in the state of Georgia. Tr. 1747:8–13.

187. Mr. Morgan is primarily a mapdrawer as opposed to an expert witness but has evaluated redistricting plans drawn by others as part of his work in the field. Tr. 1747:14–1748:7.

188. The Court finds Mr. Morgan's testimony highly credible. Mr. Morgan has spent most of his career drawing maps for redistricting that have been utilized in elections across the country. While some district plans he drew have been overturned, Mr. Morgan primarily carries out the goals of policymakers so those court decisions cannot be the sole result of his mapdrawing processes.

189. Mr. Morgan's testimony was clear and consistent, and he was able to explain the basis for his opinions, including the various techniques of racial focus in redistricting that were particularly helpful to the Court in weighing Plaintiffs' plans.

190. During Mr. Morgan's live testimony at trial, the Court carefully observed his demeanor. He explained his reports with careful and deliberate explanations and the Court did not observe any inconsistencies or questions he refused to answer. The Court finds Mr. Morgan's methods and conclusions are highly reliable and ultimately, his work is extremely helpful to the Court.

iii. Facts related to the illustrative plans.

b. Mr. Cooper's drawing process (APA - Cooper).

191. Mr. Cooper relied on the shared experience of Black Americans "and the commonality that goes with that as a basis for a community of interest" when drawing his illustrative plans. Tr. 203:19–25.

192. Mr. Cooper also recognized that many Black individuals are moving to Georgia and that Georgia is a "magnet for in-migration" of Black voters. Tr. 298:13–16.

193. Mr. Cooper had no political performance data or election return data when drawing the illustrative plans. Tr. 176:11–18.

194. Mr. Cooper did not have any socioeconomic data from the American Community Survey displayed while drawing the illustrative plans. Tr. 176:19–177:24.

195. Mr. Cooper never reviewed any public testimony from the public hearings on redistricting prior to drawing his illustrative plans. Tr. 177:25–178:2.

196. Mr. Cooper never spoke with any plaintiffs about the design of the illustrative plans. Tr. 206:21–25.

197. Most of the communities of interest Mr. Cooper relied on for the creation of his illustrative plans were visible features displayed in his mapdrawing software. Tr. 189:1–23.

198. Mr. Cooper did not consistently follow any particular method of keeping communities of interest whole on his illustrative plans.

199. Mr. Cooper relied on comparisons between the illustrative plans and enacted plans on core-based statistical areas and regional commissions, but he did not know whether the General Assembly used those same geographic areas for evaluating plans. Tr. 189:24–190:13.

200. Districts on Mr. Cooper's illustrative plans cross Metropolitan Statistical Area (MSA) boundaries. Tr. 208:16–25.

201. Mr. Cooper was unable to identify "historical" connections he said he relied on besides his understanding of the Black Belt and regional commissions. Tr. 191:22–192:23.

202. Mr. Cooper's only methodology for determining areas of shared interest in the state for his illustrative plans was by relying on the boundaries of regional commissions. Tr. 194:3–18.

203. Mr. Cooper agreed he was "not an expert on Georgia" in the sense of knowing all the various connections between areas of the state. Tr. 194:6–18.

204. Despite creating regions for purposes of demographic analysis where he believed additional majority-Black districts could be drawn, Mr. Cooper's illustrative plans do not consistently utilize those regions when creating districts. Tr. 208:11–15.

205. Mr. Cooper did not consistently utilize geographic features like county commission lines and city lines when making splits of counties and precincts. Tr. 364:12–18.

206. Despite claiming repeatedly that changes were made on the illustrative plans due to the location of incumbents, Mr. Cooper could not remember specifically what those changes were. Tr. 284:14–19, 289:10–20.

207. Despite including socioeconomic data from the American Community Survey in his report, Mr. Cooper did not utilize the charts he created in the process of drawing the illustrative plans. Tr. 297:22–25.

208. Mr. Cooper has no way to determine if race predominated in a districting plan he drew. Tr. 197:15–18.

209. Mr. Cooper believes that the only way race could predominate in the design of a district was if there was a "glaring conflict" with traditional

redistricting principles and race, which is not the proper legal standard. Tr. 367:2–12; Bethune-Hill, 580 U.S. at 189.

210. Mr. Cooper uses features of his mapping software to display whether precincts contain more than 30% Black population. Tr. 200:11–19.

211. Mr. Cooper agreed that drawing additional majority-Black districts depends on the configuration of the remaining districts. Tr. 221:9–13, 369:18–370:2.

c. State Senate Plan (APA - Cooper).

212. In creating the illustrative state Senate plan, Mr. Cooper changed more than half of all state Senate districts from the enacted plan, for a total of 35 of the 56 districts changing. Tr. 209:1–7.

213. Despite drawing four more majority-Black districts than the enacted plan, Mr. Cooper's report only discusses three additional majority-Black districts. Tr. 210:2–22.

214. The fourth new majority-Black state Senate district currently elects a Black Democratic member and was not challenged by Plaintiffs. Tr. 210:23–211:2; Jud. Not., pp. 9–10.

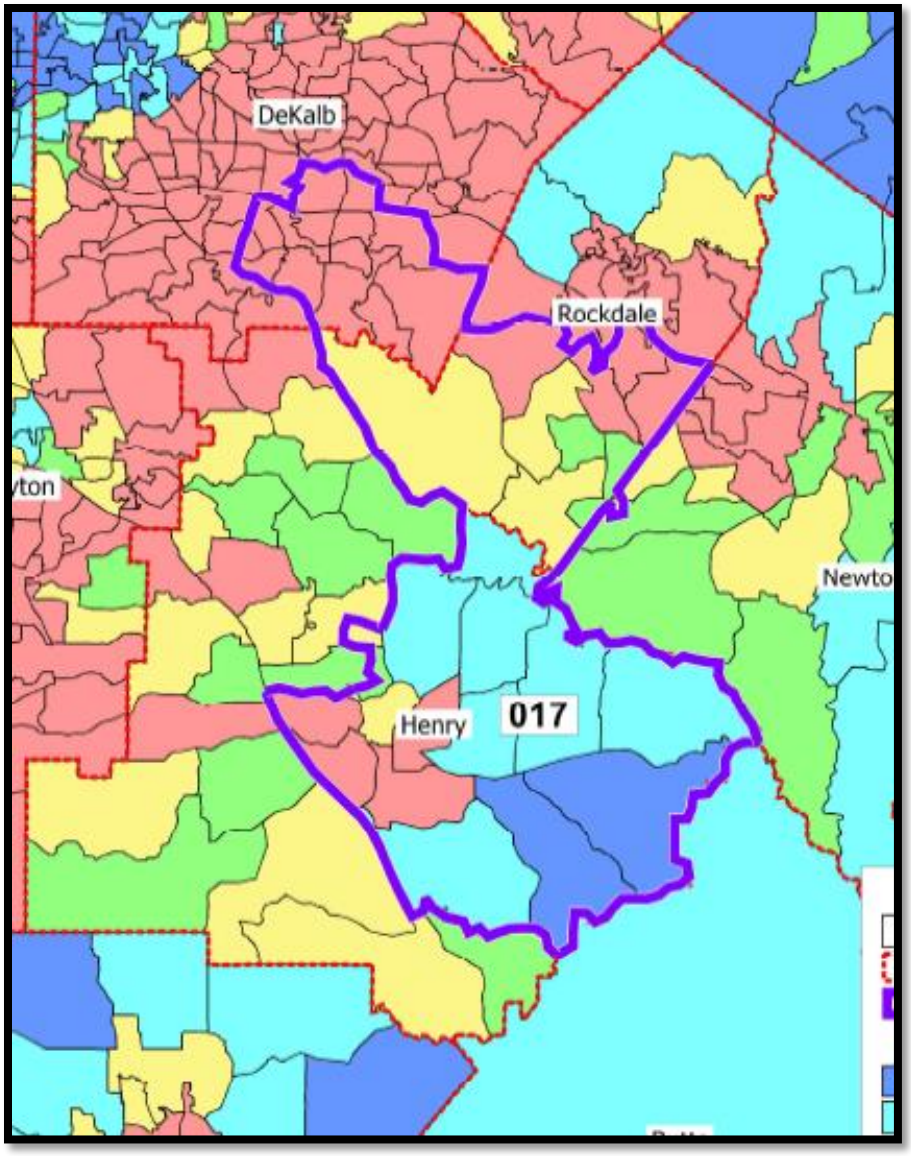
215. Mr. Cooper previously drew a state Senate plan with 19 majority-Black districts, which is an increase of five over the number in the enacted plan, and he agreed that he can draw more than three additional majority-Black districts for state Senate. Tr. 211:10–212:7.

216. Despite saying that he split fewer counties on the illustrative state Senate plan overall when compared to the enacted Senate plan, Mr. Cooper only achieved that goal by unsplitting counties in other parts of the state. Tr. 212:22–215:3 (Cooper), 1774:13–24 (Morgan).

217. Mr. Cooper was unable to identify any logical reason for unsplitting counties beyond a "ripple effect" and his overall desire to unsplit counties. Tr. 214:9–215:3.

218. Mr. Cooper drew a state Senate plan that made changes to fewer than 35 enacted state Senate districts while adding three majority-Black districts, but it split more counties. Tr. 215:9–217:21.

219. Illustrative Senate District 17 runs from heavily Black areas in south DeKalb and Rockdale Counties into more heavily white areas in Henry County.



Tr. 228:11–229:10; DX 2, Ex. 21.

220. Mr. Cooper split Rockdale County in order to connect the portion of Henry County he used to create illustrative Senate District 17 as a majority-Black district. Tr. 1775:20–1776:4; DX 2, ¶ 38.

221. The portion of illustrative Senate District 17 in DeKalb County is nearly 95% Black but the Henry County portion included in District 17, which is the largest portion of the district, is not majority-Black.

District 017		
County: DeKalb GA		
Total:	57,301	54,512
		95.13%
Voting Age	44,108	41,875
		94.94%
County: Henry GA		
Total:	84,580	36,400
		43.04%
Voting Age	62,224	25,557
		41.07%
County: Rockdale GA		
Total:	49,438	31,215
		63.14%
Voting Age	38,446	23,124
		60.15%
District 017 Total		
Total:	191,319	122,127
		63.83%
Voting Age	144,778	90,556
		62.55%

Tr. 229:11–21 (Cooper), 1777:7–16 (Morgan); DX 2, Ex. 6.

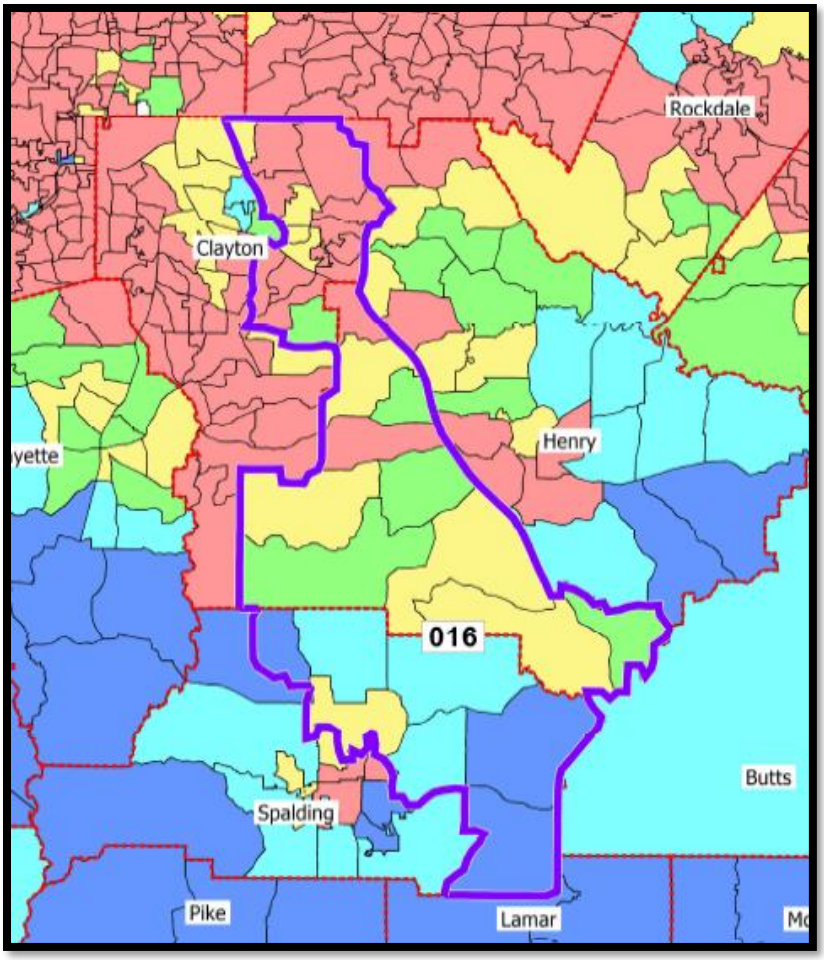
222. When asked where the geographically compact Black community was located in illustrative Senate District 17, Mr. Cooper could only point to the boundaries of the district resulting in greater than 50% Black population and could not identify a connection between parts of the district beyond both being included in Metro Atlanta. Tr. 230:14–231:20.

223. Mr. Cooper configured the boundaries of illustrative Senate District 17 to be a majority-Black district. Tr. 233:6–11.

224. Mr. Cooper also made changes to districts adjoining illustrative Senate District 17 that resulted in districts that run from heavily Black areas to more heavily white areas. Tr. 233:12–18 (Cooper); 1777:17–1778:5 (Morgan).

225. Illustrative Senate District 16[5] contains no whole counties, connects suburban and rural populations, and Mr. Cooper could only identify being in metro Atlanta as the community of interest.

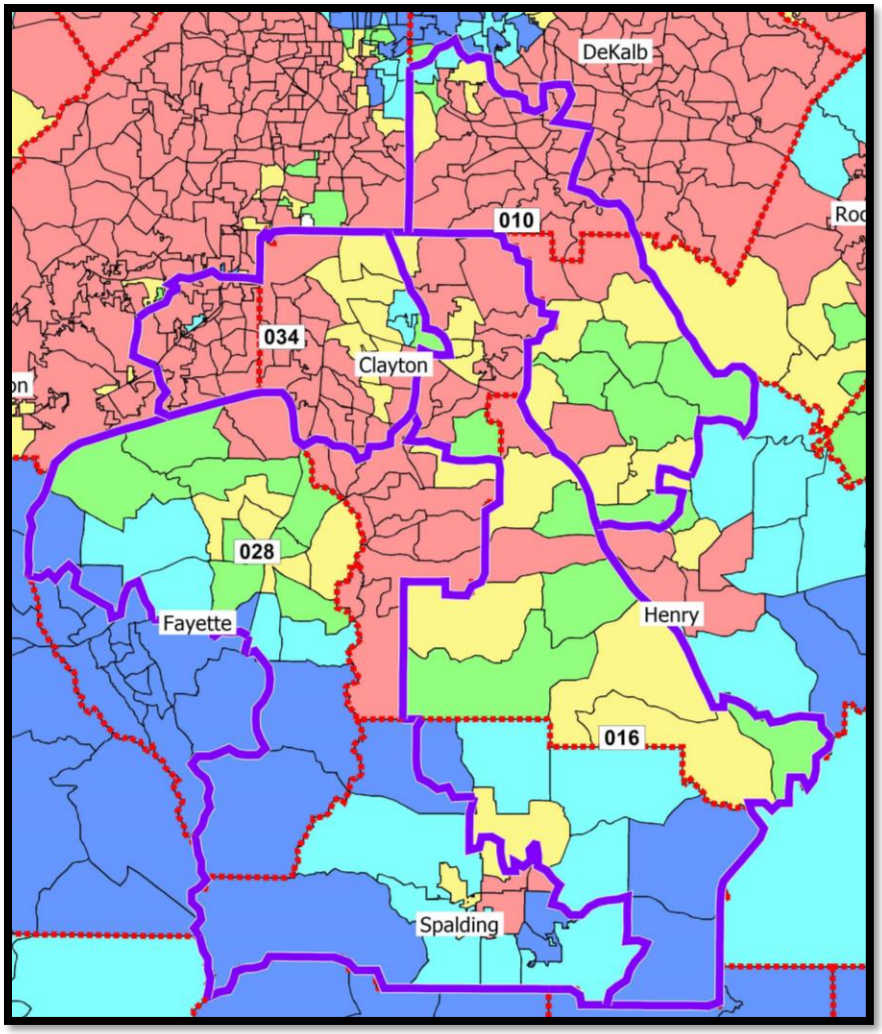
[5] Even if this Court does not consider adjoining districts for purposes of Gingles 1, APA Doc. No. [268], p. 1, the adjoining districts are relevant for the totality of the circumstances on how much change is required to implement the proposed plan.



Tr. 233:19–236:10; DX 2, Ex. 20.

226. Illustrative Senate District 16 was configured the way it was configured to enable the creation of Districts 17 and 28 as new majority-Black districts. Tr. 236:25–237:9.

227. Illustrative Senate District 28 connects more heavily Black populations with more heavily white populations.



Tr. 237:13–18; DX 2, ¶ 25, Ex. 19.

228. Illustrative Senate District 28 specifically does not include heavily white areas like Peachtree City while including the City of Griffin, which would imperil its status as a majority-Black district. Tr. 238:4–239:9, 1781:9–19.

229. There is intervening white population included in illustrative Senate District 28 that is located between Black populations in Clayton and Spalding Counties. Tr. 239:10–15.

230. Mr. Cooper could not identify a reason for connecting older Black population in Griffin beyond the geographic closeness of Spalding and Clayton Counties. Tr. 239:16–240:5.

231. Despite enacted state Senate Districts 16 and 28 including whole counties, the illustrative plan Senate Districts 16 and 28 do not contain any whole counties. Tr. 240:6–8, 241:16–242:14.

232. Illustrative Senate District 16 includes far-flung portions of Spalding County instead of including nearer portions of Clayton County. Tr. 1778:10–24, DX 2, ¶ 25.

233. Illustrative Senate District 28 likewise connects heavily Black portions of Clayton County through Fayette County and into Spalding County.

District 028		
County: Clayton GA		
Total:	73,570	56,865
		77.29%
Voting Age	54,974	41,590
		75.65%
County: Fayette GA		
Total:	74,742	27,910
		37.34%
Voting Age	58,345	20,819
		35.68%
County: Spalding GA		
Total:	41,580	16,988
		40.86%
Voting Age	31,757	12,045
		37.93%
District 028 Total		
Total:	189,892	101,763
		53.59%
Voting Age	145,076	74,454
		51.32%

Tr. 1778:25–1779:6; DX 2, ¶ 28, Ex. 6.

234. In creating illustrative Senate District 28, Mr. Cooper strategically bypassed Peachtree City because it avoided adding white population to the district, which could impact the Black VAP. Tr. 1780:20–1781:8; DX 2 ¶ 29.

235. Mr. Cooper relied on the "cultural history" of Black voters in Griffin to connect them with Black voters in Clayton County in illustrative state Senate District 28. Tr. 242:15–243:4.

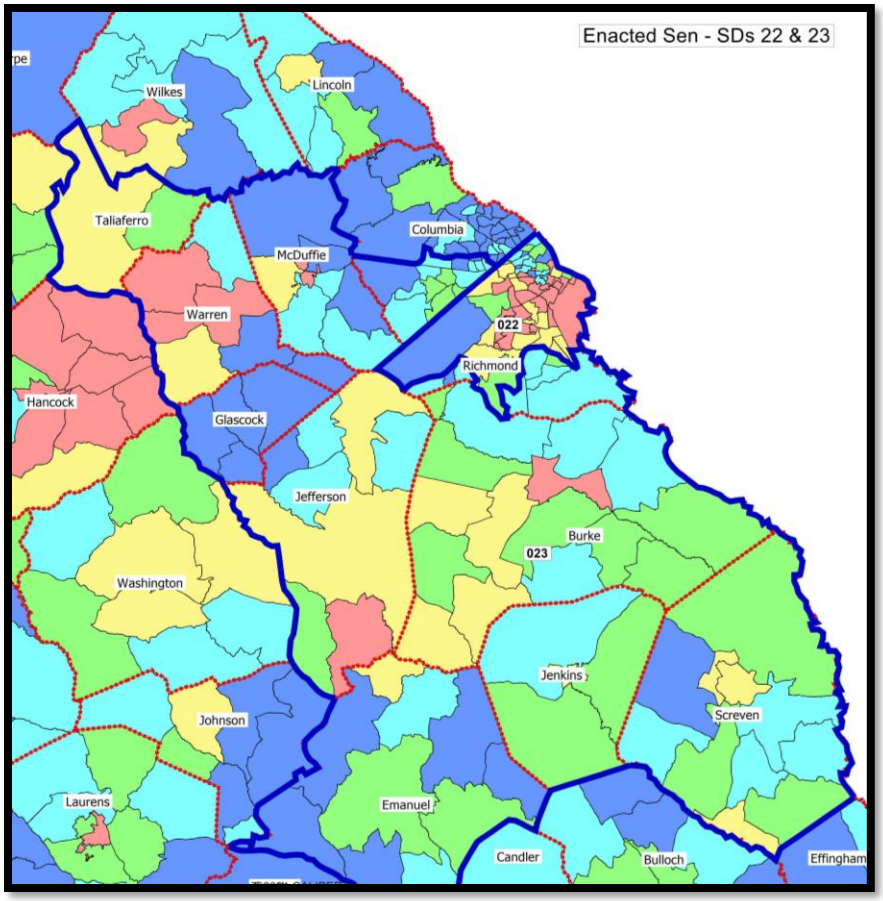
236. Mr. Cooper agreed that illustrative state Senate Districts 16 and 28 both connected more suburban with exurban populations. Tr. 243:17–24.

237. Unlike the illustrative plan, the enacted state Senate plan does not connect Clayton County to exurban areas of Spalding County. Tr. 245:12–16.

238. Clayton County is divided into two state Senate districts on the enacted plan, but it is divided into three state Senate districts on the illustrative plan. Tr. 244:19–245:11.

239. In this south metro area, Mr. Cooper elongated districts from the design of the enacted plan in service of freeing up Black population to be used in creating additional majority-Black districts. DX 2, ¶ 30.

240. Enacted state Senate District 22 was located wholly within Richmond County, but illustrative state Senate District 22 is no longer located wholly within Richmond County.



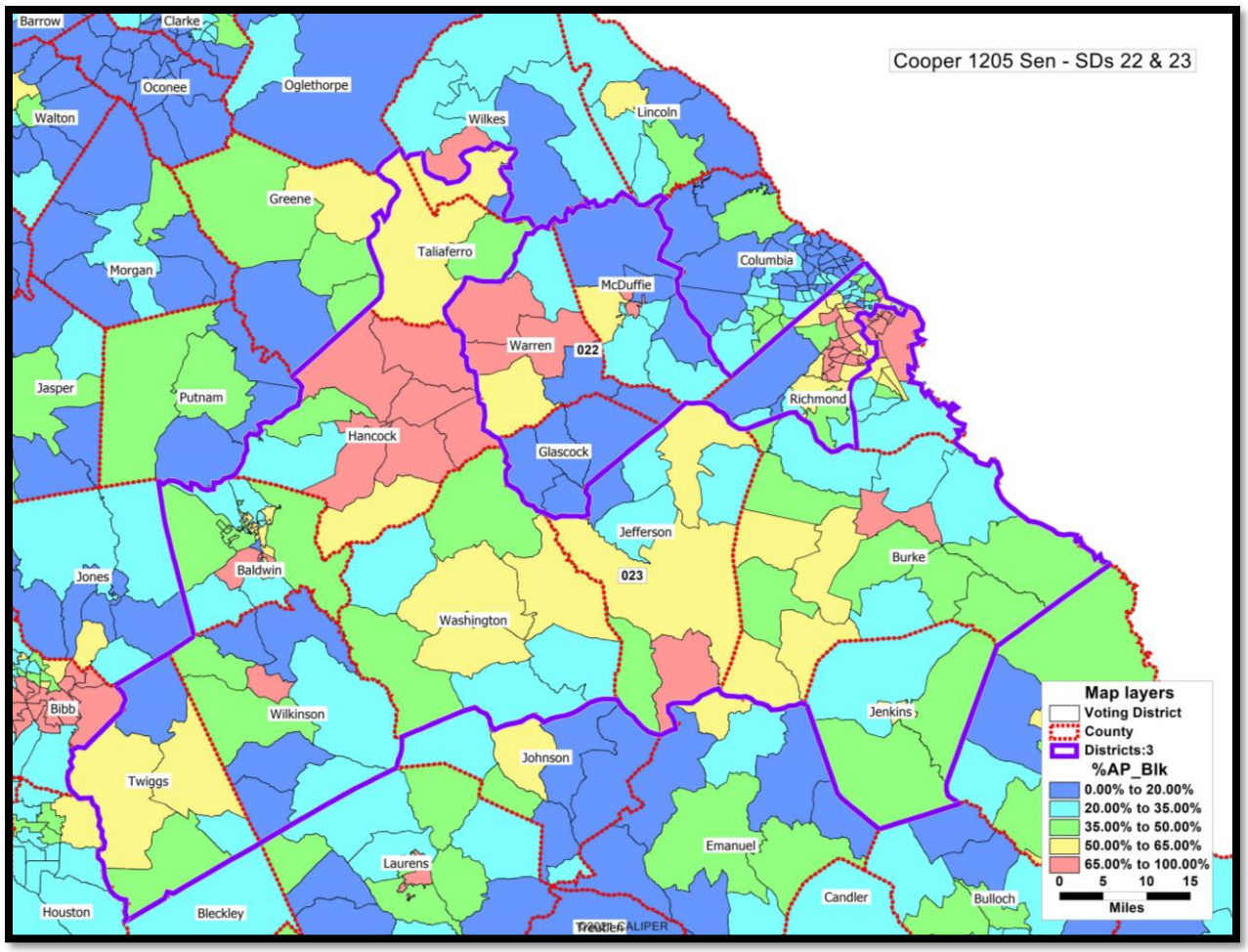
Tr. 246:2–4, 256:15:15–20; DX 2, Ex. 35.

241. By reconfiguring enacted state Senate District 22, Mr. Cooper "freed up" Black population that he believed was necessary to create illustrative state Senate District 23 as a Black-majority district. Tr. 256:21–257:4, 247:12–20, 1781:20–1783:9.

242. Mr. Cooper agreed that he reduced the Black percentage in enacted state Senate District 22 in order to draw illustrative state Senate District 23 as a majority-Black district. Tr. 254:9–12.

243. Mr. Cooper underpopulated illustrative state Senate District 22 to close to the lowest deviation on the illustrative plan. Tr. 254:15–255:3, 1783:10–14.

244. Mr. Cooper placed relatively high Black population counties of McDuffie, Warren, and Glascock counties into illustrative Senate District 22, strategically utilizing the higher concentrations of Black voters to keep illustrative Senate District 22 above majority-Black status.



DX 2, ¶ 34, Ex. 23.

245. Mr. Cooper configured illustrative state Senate District 22 in service of the goal of making illustrative state Senate District 23 a majority-Black district. Tr. 258:7–13.

246. Mr. Cooper configured illustrative state Senate District 22 to have a lower Black VAP than the configuration of Senate District 22 to which the Department of Justice objected in 2001. Tr. 249:19–250:9; Georgia v. Ashcroft, 195 F. Supp. 2d 25, 63 (D.D.C. 2002); see also Georgia v. Ashcroft, 204 F. Supp. 2d 4, 11-12 (D.D.C. 2002) (revised plan).

247. Illustrative state Senate District 23 is underpopulated. Tr. 257:10–13, 1783:10–14.

248. Mr. Cooper could not identify a consistent approach to communities of interest in the configuration of illustrative state Senate District 23, because he did not rely solely on regional commission boundaries. Tr. 257:14–258:6.

249. Mr. Cooper used the technique of connecting separate enclaves of Black population to assemble illustrative Senate District 23 as a majority-Black district. Tr. 1784:9–16; DX 2, ¶ 35.

250. Illustrative state Senate District 23 splits Wilkes County along racial lines, including higher Black percentages and excluding lower Black percentages.

County: Jenkins GA		
Total:	8,674	3,638
		41.94%
Voting Age	7,005	2,843
		40.59%
County: Richmond GA		
Total:	46,820	30,748
		65.67%
Voting Age	35,000	21,892
		62.55%
County: Taliaferro GA		
Total:	1,559	876
		56.19%
Voting Age	1,289	722
		56.01%
County: Twiggs GA		
Total:	8,022	3,226
		40.21%
Voting Age	6,589	2,627
		39.87%
County: Washington GA		
Total:	19,988	10,969
		54.88%
Voting Age	15,709	8,333
		53.05%
County: Wilkes GA		
Total:	3,302	2,356
		71.35%
Voting Age	2,538	1,773
		69.86%
County: Wilkinson GA		
Total:	8,877	3,330
		37.51%
Voting Age	7,026	2,549
		36.28%
District 023 Total		
Total:	190,081	99,897
		52.55%
Voting Age	149,454	75,048
		50.21%

Tr. 258:14–22, 1783:15–21; DX 2, ¶ 35, Ex. 6.

251. The split of Wilkes County in illustrative state Senate District 23 splits the City of Washington and splits precincts. Tr. 258:23–259:5, 260:10–22, 1783:22–1784:8.

252. When splitting Wilkes County in illustrative state Senate District 23, Mr. Cooper did not consistently follow county commission or city boundaries and did not follow those internal county boundaries in other county splits on the plan. Tr. 364:12–18.

253. Illustrative state Senate District 23 includes counties from different regions and splits regional commission boundaries. Tr. 260:23–261:13.

254. Despite referencing proposed Interstate 14 as a basis for connecting counties in illustrative state Senate District 23, Mr. Cooper was unaware of the route during the drawing process. Tr. 262:7–263:6.

255. Mr. Cooper only relied on transportation corridors and Twiggs and Richmond Counties both being in the Black Belt as communities of interest for the configuration of illustrative state Senate District 23. Tr. 263:2–6.

256. Mr. Cooper relied on the GBPI report to inform his decisions about which counties to include in illustrative state Senate District 23, despite the report only being about school districts and not counties. Tr. 266:24–267:22.

257. Mr. Cooper's only identification of a geographically compact Black community in illustrative state Senate District 23 again relied on the boundaries of the district as he configured it and referenced the "cultural" factors related to Black Georgians. Tr. 267:23–268:5.

258. Mr. Cooper's goal in drawing illustrative state Senate District 23 was to make it majority-Black district. Tr. 269:6–9.

259. Each of the new majority-Black districts on the illustrative state Senate plan elected white Republican members in the 2022 general election. Stip. ¶ 282.

260. By using the various techniques of splitting more counties, underpopulating districts, gathering geographically dispersed Black populations, elongating districts, and making racial splits of counties, Mr. Cooper's illustrative Senate plan prioritizes race to the detriment of other traditional redistricting factors. Tr. 1784:17–21; DX 2, ¶ 41. As discussed below, this means the illustrative plan is not merely race-conscious, but is drawn primarily based on race.

d. State House Plan (APA - Cooper).

261. In creating the illustrative state House plan, Mr. Cooper changed more than half of all state House districts from the enacted plan, for a total of 92 of the 180 districts changing. Tr. 219:3–11.

262. Mr. Cooper used a higher overall deviation on the illustrative state House plan than the enacted state House plan. Tr. 220:2–8.

263. While Mr. Cooper drew five additional majority-Black state House districts on the illustrative plan, they are in different locations than the five additional majority-Black districts he drew during the preliminary-injunction phase of this case, calling into question the design of the plan. Tr. 220:13–221:8.

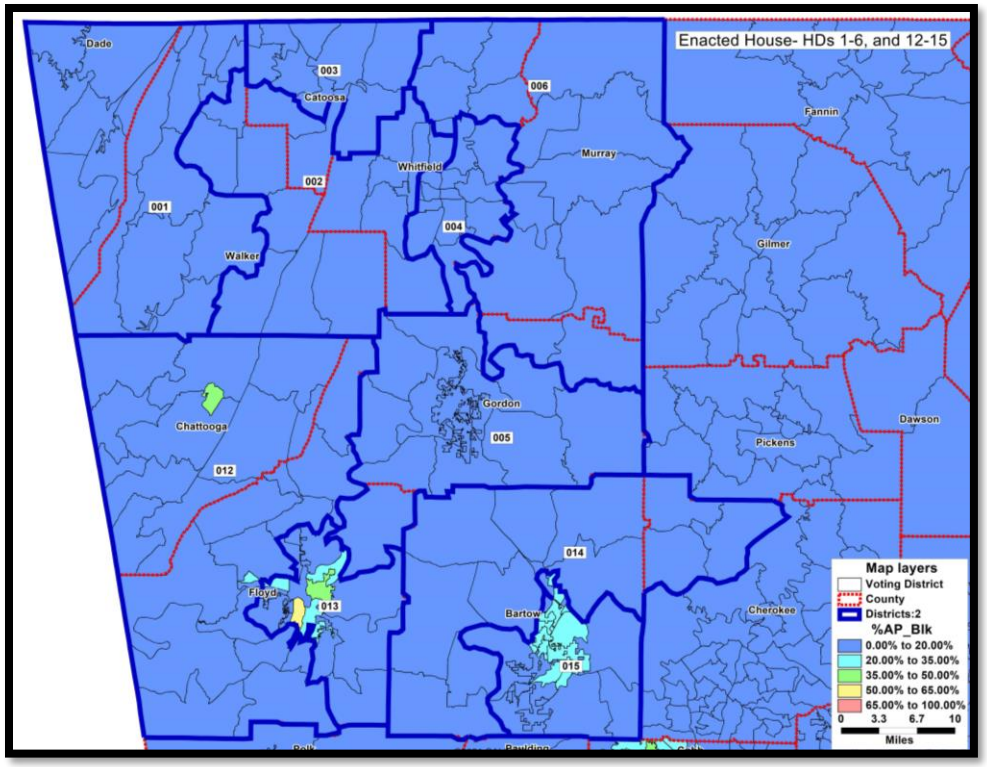
264. While compactness scores between the illustrative state House plan and the enacted state House plan are similar, this is not surprising when more than 80 districts are unchanged. Tr. 221:14–24.

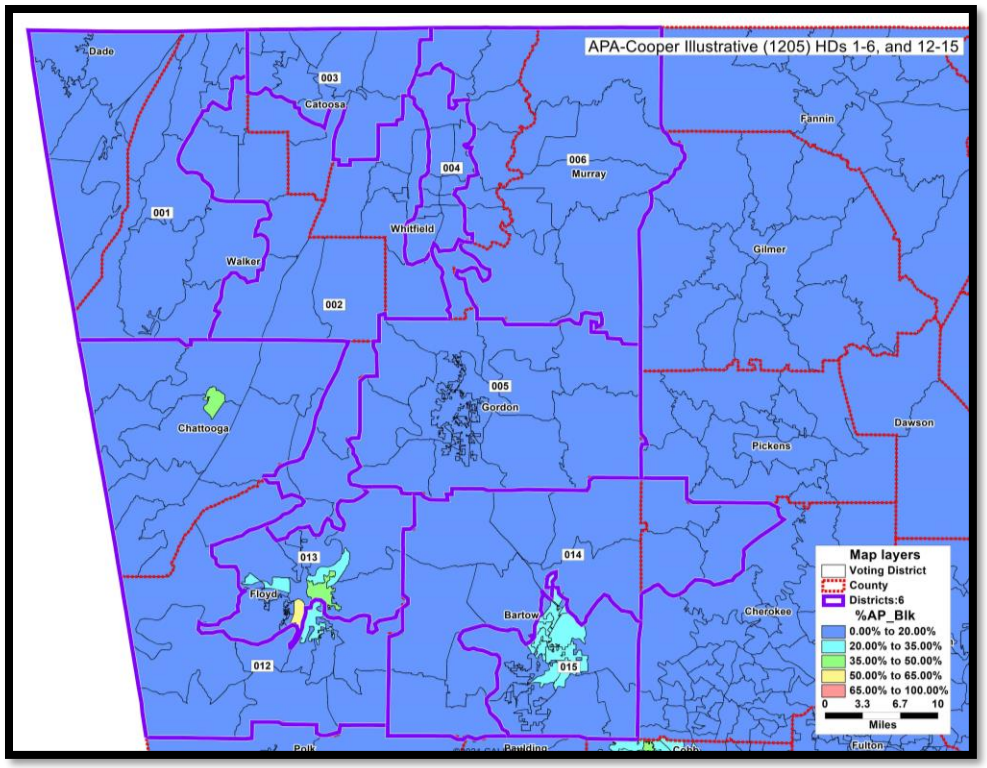
265. Despite saying that he split fewer counties on the illustrative state House plan overall when compared to the enacted state House plan, Mr. Cooper only achieved that goal by unsplitting counties in other parts of the state.

Name	Population	AP Blk	AP Blk %	18+ Pop	18+ AP Blk	18+ AP Blk %	Split in Enacted House	Split in Cooper House 1205
Tattnall	22,842	6,331	27.7%	17,654	4,886	27.7%	x	x
Telfair	12,477	4,754	38.1%	10,190	3,806	37.4%	x	x
Thomas	45,798	16,975	37.1%	35,037	12,332	35.2%	x	x
Tift	41,344	12,734	30.8%	31,224	8,963	28.7%	x	x
Troup	69,426	25,473	36.7%	52,581	18,202	34.6%	x	x
Walker	67,654	3,664	5.4%	52,794	2,454	4.6%	x	x
Walton	96,673	18,804	19.5%	73,098	13,165	18.0%	x	x
Ware	36,251	11,421	31.5%	27,788	8,226	29.6%	x	x
Wayne	30,144	6,390	21.2%	23,105	4,662	20.2%	x	x
Whitfield	102,864	4,919	4.8%	76,262	3,349	4.4%	x	x
Appling	18,444	3,647	19.8%	13,958	2,540	18.2%	x	
Ben Hill	17,194	6,537	38.0%	13,165	4,745	36.0%	x	
Cook	17,229	5,014	29.1%	12,938	3,595	27.8%	x	
Dawson	26,798	392	1.5%	21,441	249	1.2%	x	
Gordon	57,544	2,919	5.1%	43,500	1,939	4.5%	x	
Jones	28,347	7,114	25.1%	21,575	5,341	24.8%	x	
Lamar	18,500	5,220	28.2%	14,541	4,017	27.6%	x	
Lumpkin	33,488	685	2.0%	27,689	507	1.8%	x	
McDuffie	21,632	9,045	41.8%	16,615	6,425	38.7%	x	
Oconee	41,799	2,280	5.5%	30,221	1,660	5.5%	x	
White	28,003	721	2.6%	22,482	484	2.2%	x	
Burke	24,596	11,430	46.5%	18,778	8,362	44.5%		x
Colquitt	45,898	10,648	23.2%	34,193	7,461	21.8%		x
Jefferson	15,709	8,208	52.3%	12,301	6,324	51.4%		x
Johnson	9,189	3,124	34.0%	7,474	2,513	33.6%		x
Laurens	49,570	19,132	38.6%	37,734	13,695	36.3%		x
Lee	33,163	7,755	23.4%	24,676	5,503	22.3%		x
Oglethorpe	14,825	2,468	16.6%	11,639	1,853	15.9%		x
Screven	14,067	5,527	39.3%	10,893	4,144	38.0%		x
Upson	27,700	8,324	30.1%	21,711	6,202	28.6%		x
Wilkes	9,565	3,989	41.7%	7,651	3,071	40.1%		x
TOTAL							**69**	**68**

Tr. 221:25–226:7; DX 2, Chart 10.

266. Mr. Cooper unsplit counties and precincts in areas completely unrelated to the creation of additional majority-Black districts because the outer boundaries of the areas were identical to those of the enacted plans.





Tr. 1787:12–1789:20; DX 2, ¶¶ 68–74.

267. As a result, the illustrative state House plan splits more counties and precincts in areas in an effort to create more majority-Black districts. Tr. 1786:6–1787:11; DX 2, ¶ 76, Chart 10.

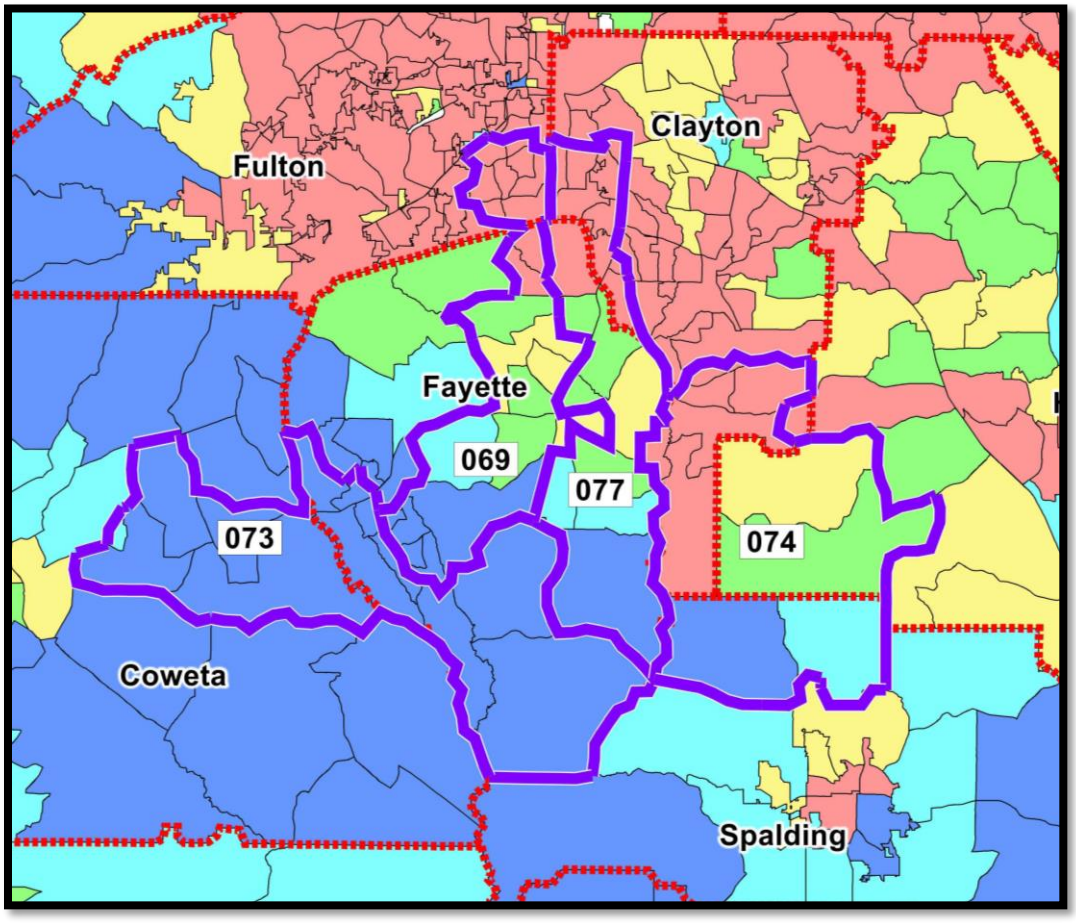
268. By unsplitting counties and precincts strategically, Mr. Cooper masks the effect of the creation of additional majority-Black districts by making the overall statistics for each plan appear more similar than they actually are. Tr. 1787:6–11.

269. Three of the five new majority-Black districts on the illustrative House plan are less compact than the enacted districts with the same number. Tr. 1789:21–1790:6; DX 2, ¶ 47, Chart 7.

270. Illustrative House Districts 69 and 77 are already majority-Black districts on the enacted plan, but they were reconfigured to run from heavily Black areas in Clayton and Fulton Counties and stripe down to more heavily white areas in Fayette County as part of the creation of illustrative state House District 74. Tr. 269:25–270:11, 271:23–25, 273:23–274:3, 1792:1–16.

271. Illustrative House Districts 69 and 77 are more elongated on the illustrative state House plan when compared to the enacted state House plan. Tr. 1790:20–1791:3, 1791:9–11.

272. The elongated configuration of illustrative House Districts 69 and 77 enables the creation of illustrative state House District 74 as a more compact district than Districts 69 and 77.



Tr. 1790:20–1791:8; DX 2, ¶¶ 53–54, Ex. 48.

273. The compactness scores in this region demonstrate the change, because the overall compactness is lowered in the four districts in the Clayton-Fayette area of the illustrative state House plan.

Chart 8: Compactness scores in four House districts

District	Enacted House				Cooper House 1205			
	% Devn.	Reock	Polsby-Popper	% 18+ AP Blk	% Devn.	Reock	Polsby-Popper	% 18+ AP Blk
069	-1.39	0.23	0.17	63.56%	1.49	0.4	0.25	54.97%
073	0.88	0.27	0.18	12.11%	1.14	0.28	0.2	11.29%
074	-0.93	0.63	0.36	25.52%	0.78	0.5	0.25	61.49%
077	-0.45	0.19	0.18	76.13%	-1.29	0.4	0.21	66.26%
Mean Compactness		0.40	0.23			0.33	0.22	

Tr. 1791:15–20; DX 2, ¶ 55, Chart 8.

274. In creating illustrative House District 74, the only county that is majority-Black VAP is Clayton County.

District 074		
County: Clayton GA		
Total:	34,646	27,920
		80.59%
Voting Age	25,346	20,094
		79.28%
County: Henry GA		
Total:	18,397	9,234
		50.19%
Voting Age	13,441	6,374
		47.42%
County: Spalding GA		
Total:	6,933	1,037
		14.96%
Voting Age	5,452	735
		13.48%
District 074 Total		
Total:	59,976	38,191
		63.68%
Voting Age	44,239	27,203
		61.49%

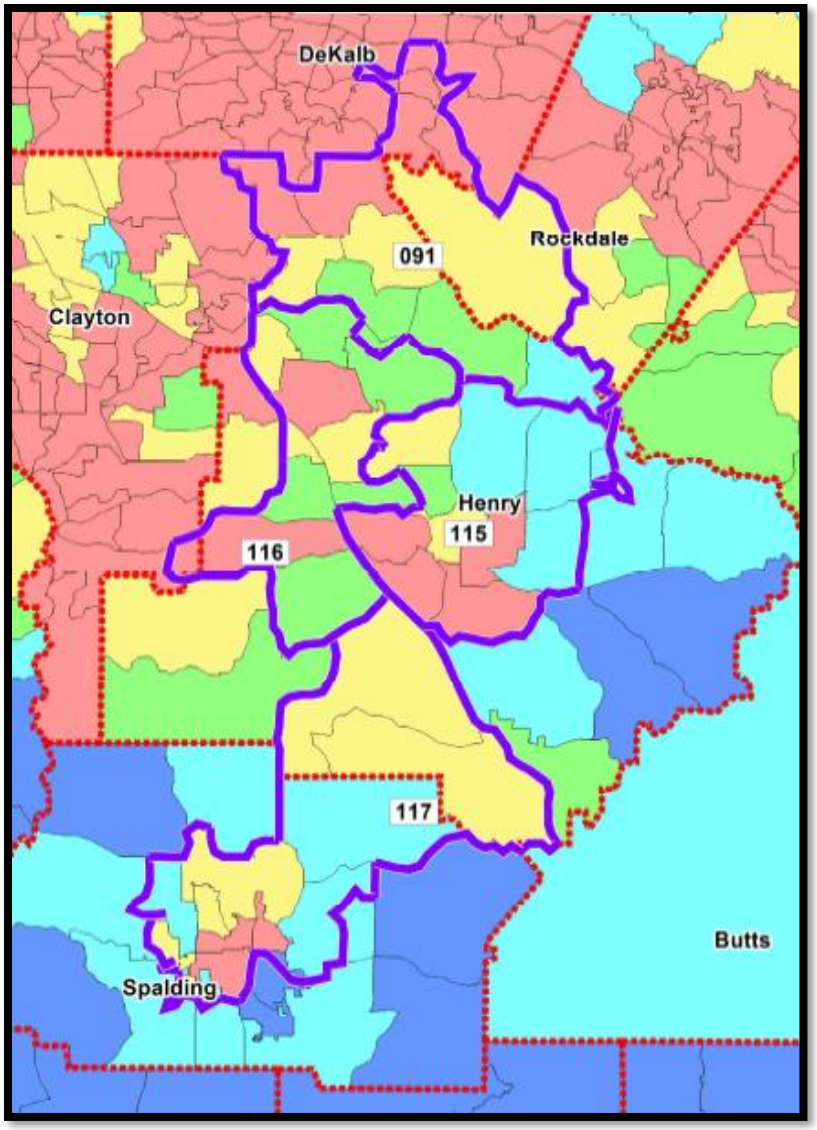
Tr. 272:1–5; DX 2, Ex. 13.

275. Without the majority-Black population in Clayton County, illustrative state House District 74 would not be a majority-Black district. Tr. 273:3–7.

276. When asked to identify the geographically compact Black community in illustrative House District 74, Mr. Cooper could only point to the boundaries of the district itself. Tr. 272:12–273:2.

277. Illustrative House District 117 includes portions of Henry and Spalding Counties and splits the Cities of Locust Grove and Griffin. Tr. 276:15–277:4.

278. Illustrative House District 117 splits Spalding County in a way to avoid higher concentrations of white population while including higher concentrations of Black population.



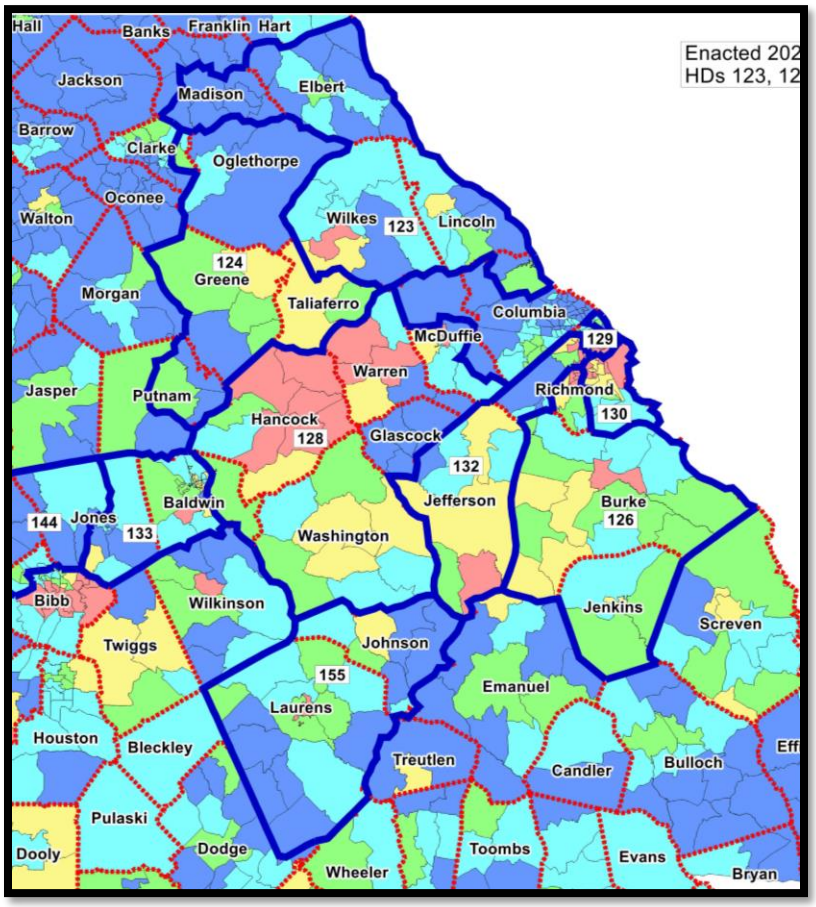
Tr. 1792:17–1794:25; DX 2, ¶ 56, Ex. 50.

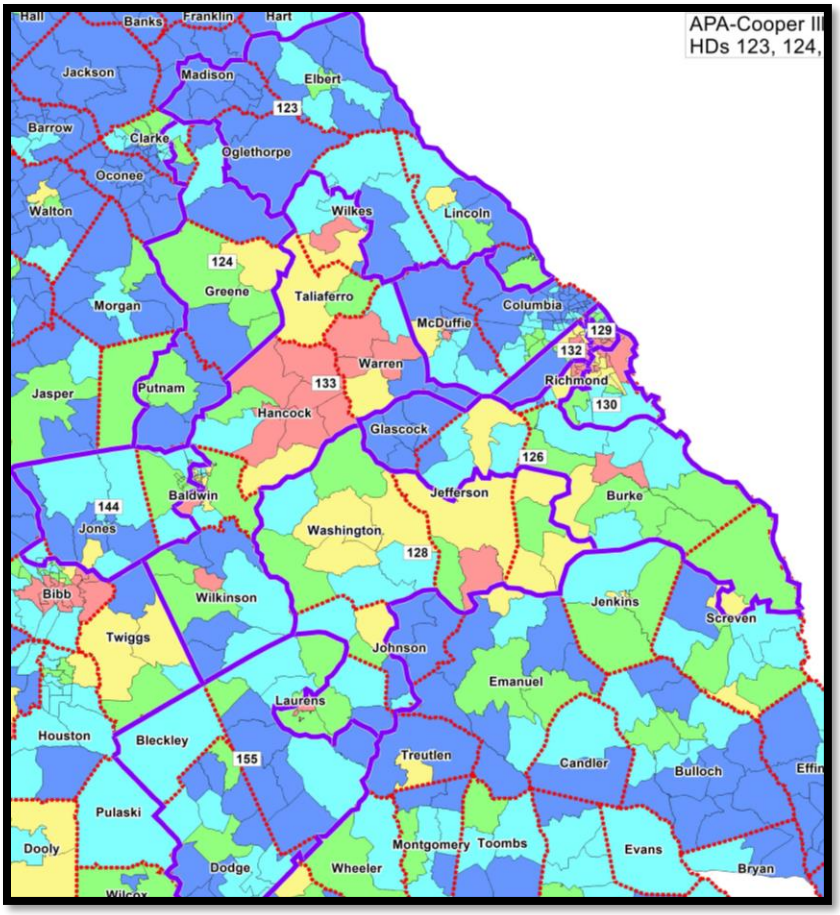
279. Mr. Cooper identified the reasons for connecting Locust Grove and Griffin on the illustrative plan as the two cities being geographically close and the opportunity to create a new majority-Black district. Tr. 277:2–9.

280. The only community of interest Mr. Cooper could identify in illustrative House District 117 was the areas included being in metro Atlanta and Locust Grove and Griffin being close to one another. Tr. 277:22–278:7.

281. Mr. Cooper was looking for an area that could be contained in a majority-Black district when he drew illustrative House District 117. Tr. 278:8–16.

282. In east Georgia, the illustrative state House plan adds seven additional county splits over the enacted state House plan in the same area.





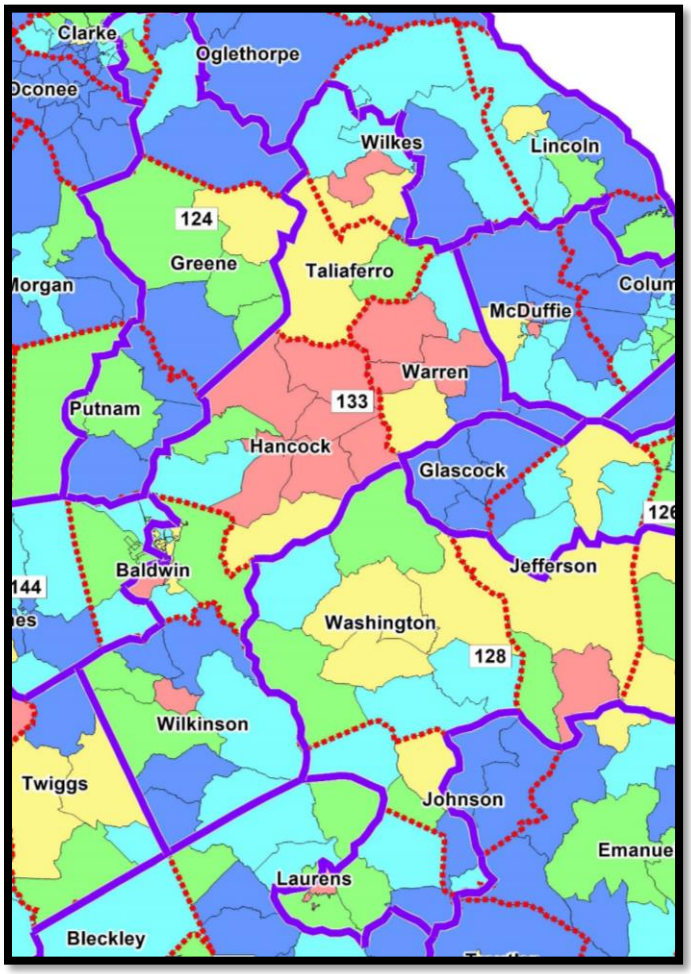
Tr. 279:3–19, 285:16–286:4, 1795:1–1796:5; DX 2, ¶ 59, Exs. 52, 60.

283. Mr. Cooper made racial splits of Baldwin and Wilkes Counties in the creation of illustrative House District 133, including portions of each county with higher Black populations in illustrative House District 133 and excluding portions with lower Black populations. Tr. 201:16–202:15, 202:25–203:8, 1796:20–1797:5, DX 2, ¶ 61.

284. In creating illustrative House District 133, in addition to the racial nature of the Baldwin County split, Mr. Cooper split the city of Milledgeville and split precincts in Baldwin County. Tr. 202:3–8.

285. Illustrative House District 133 has the most split precincts of any district on the plan. DX 2, ¶ 62.

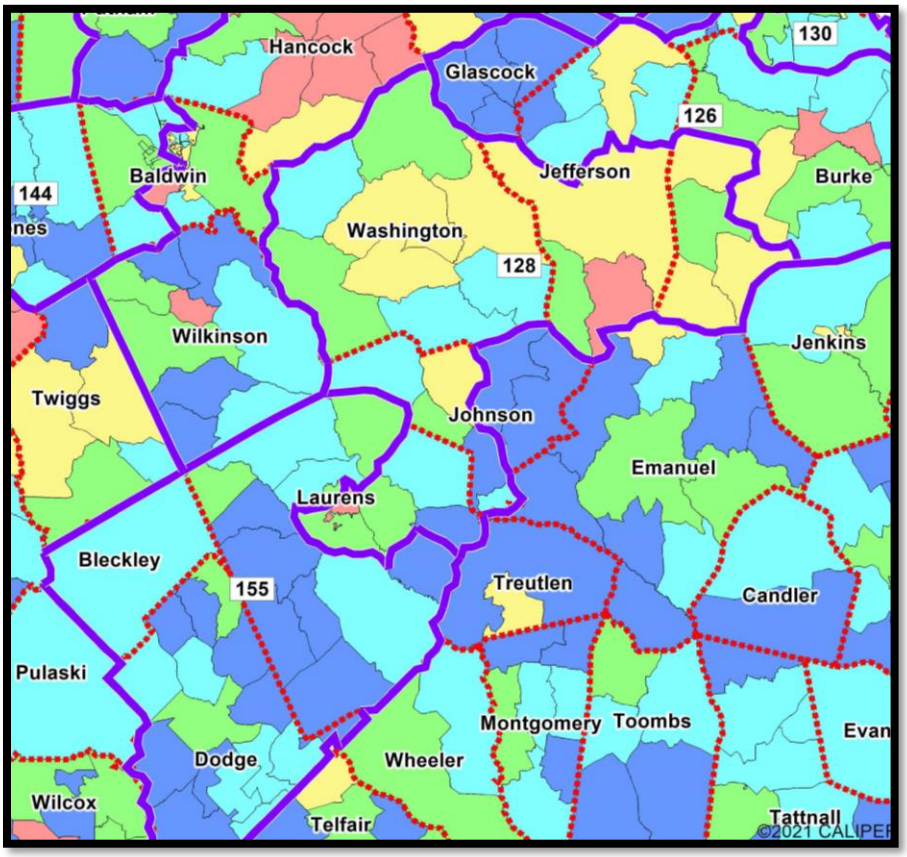
286. The areas along the border of illustrative state House District 133 are more heavily white areas that are not included in the boundaries of that district.



Tr. 280:15–22; DX 2, Ex. 52.

287. The only community of interest Mr. Cooper could identify for the creation of illustrative House District 133 was the Black Belt, even though he did not have a consistent definition of the Black Belt.[6] Tr. 280:23–281:8.

288. In creating illustrative House District 133, Mr. Cooper made changes from enacted state House District 128 that added split counties.

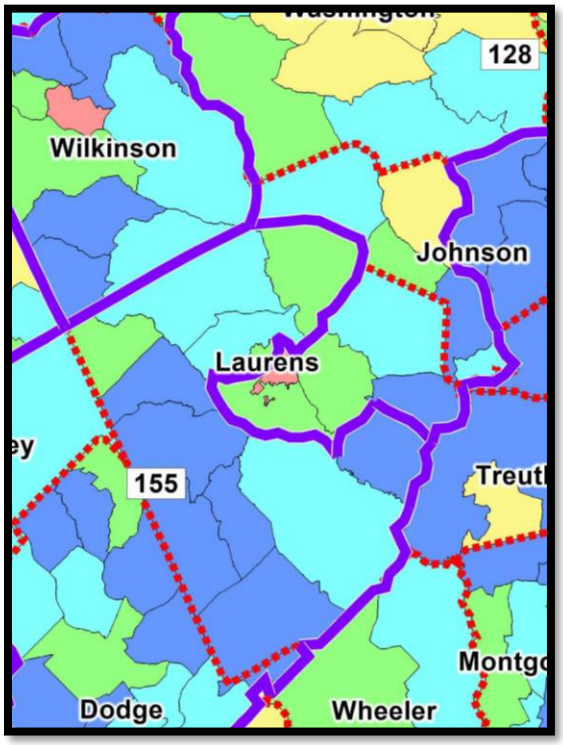


Tr. 281:9–282:4; DX 2, Ex. 60.

[6] Plaintiffs' expert Dr. Traci Burch later opined that her definition of the Black Belt did not include Baldwin, Burke, Twiggs, Wilkes, Wilkinson and Screven Counties. Tr. 1135:12–17, 20–22

289. The split counties in illustrative House District 128 are the most split counties in a single district on the illustrative plan. Tr. 282:13–16; DX 2, ¶ 60.

290. The split of Laurens County in illustrative House District 128 includes more heavily Black population and excludes more heavily white population.

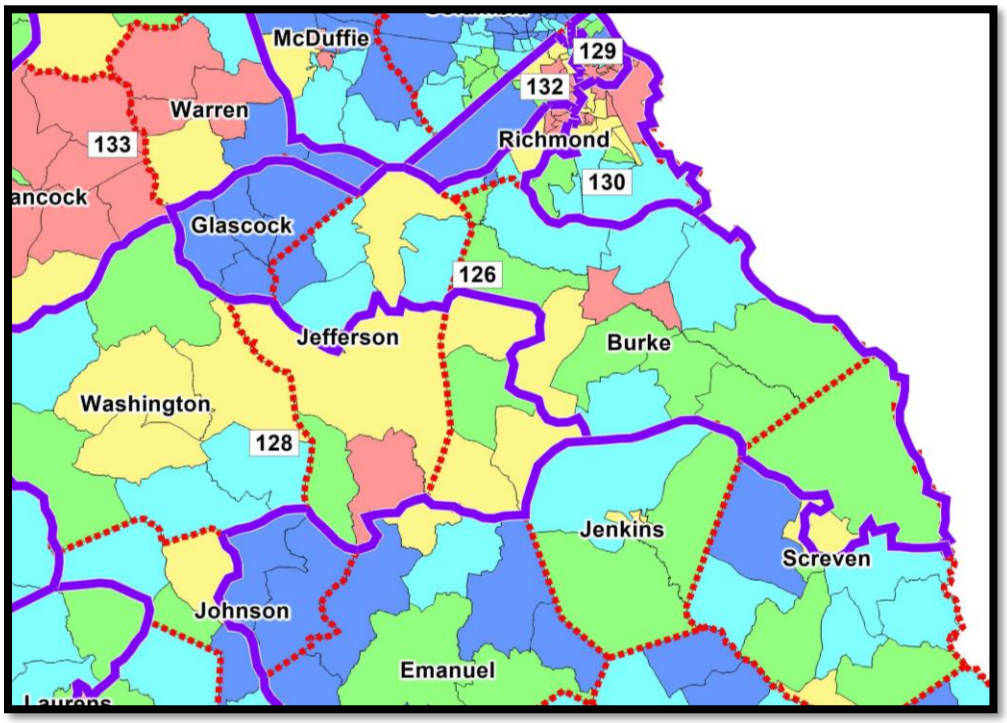


Tr. 283:2–9, 1797:17–23; DX 2, Ex. 60.

291. All of the changes to illustrative House District 128 were necessary to create illustrative House District 133 as a majority Black district. Tr. 282:17–19, 283:12–16.

292. In creating illustrative House District 133, Mr. Cooper made changes from enacted House District 155 that added split counties. Tr. 282:5–12.

293. In order to create illustrative House District 133, Mr. Cooper made changes to enacted District 126 that added split counties.



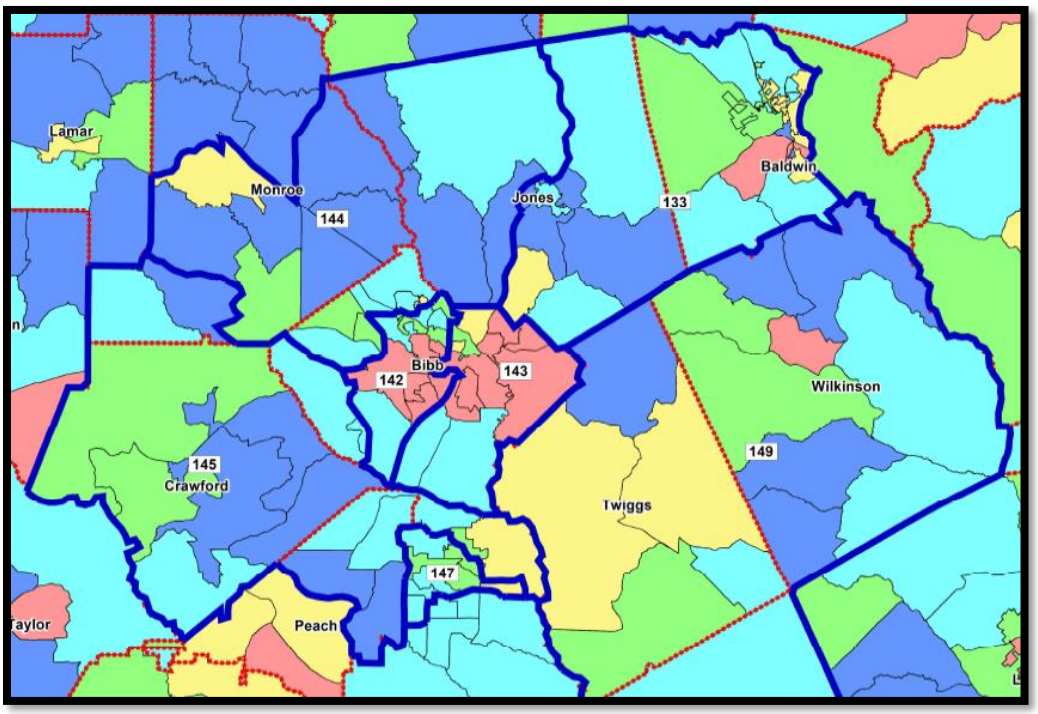
Tr. 283:13–284:13, 285:12–15, 1797:24–1798:9, DX 2, ¶ 59, Ex. 60.

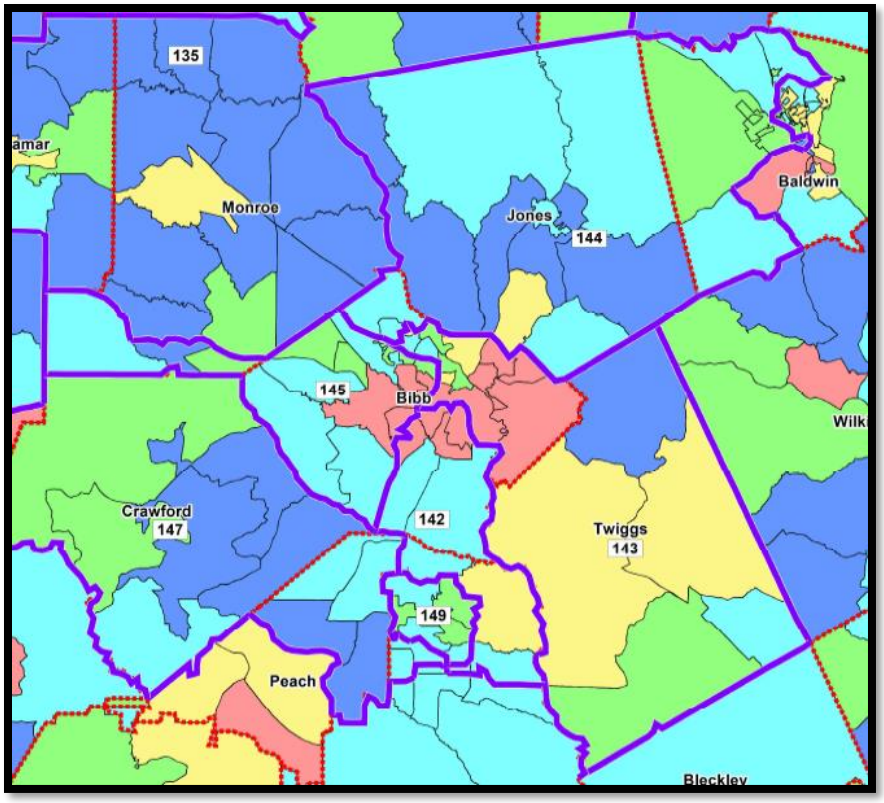
294. The split of Screven County in illustrative House District 126 includes more heavily Black population and excludes more heavily white population. Tr. 285:7–11, 1798:10–14; DX 2, ¶ 59.

295. In order to create a new majority-Black state House district in the Macon area, Mr. Cooper divided the Black population in Bibb County into three districts instead of two. Tr. 286:19–11, 1803:17–1804:8; DX 2, Exs. 53, 61.

296. Mr. Cooper testified that he needed to remove Black population from Districts 142 and 143 on the enacted plan to free up Black population to be used in illustrative House District 145. Tr. 287:12–17.

297. Under the enacted plan, two state House districts are wholly contained in Bibb County, but under the illustrative plan, no state House districts are wholly contained in Bibb County.





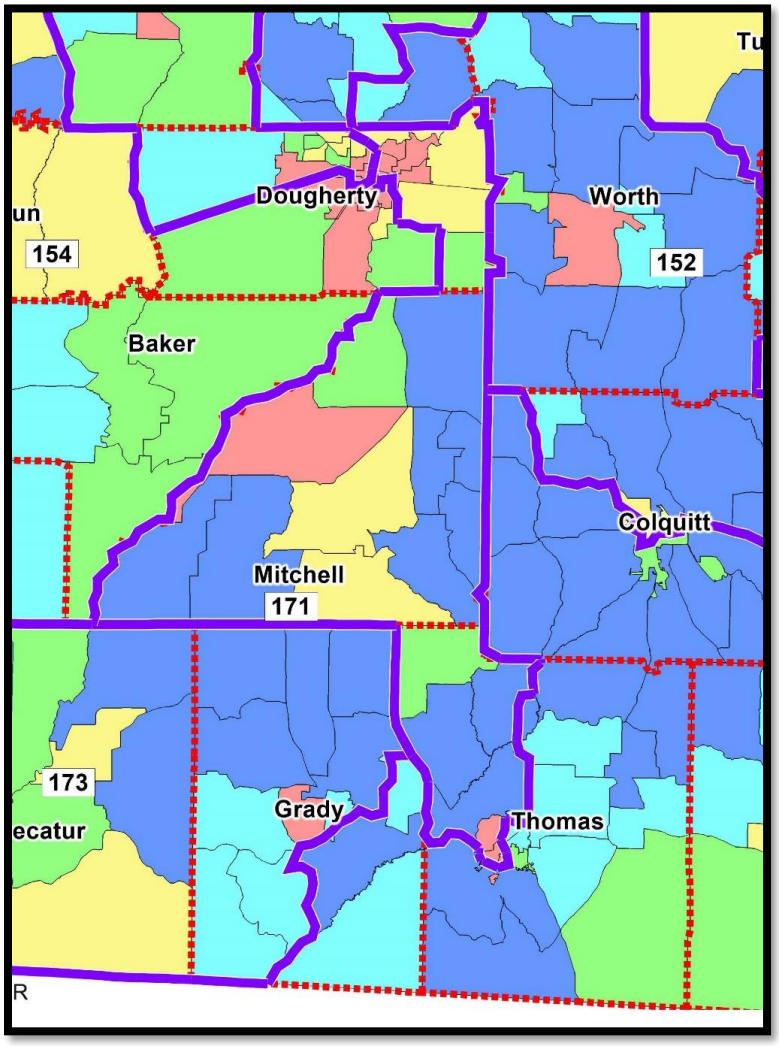
Tr. 286:23–25, 287:18–22; DX 2, Exs. 53, 61.

298. Illustrative House District 145 is only barely over majority-Black VAP and runs from downtown Macon to more rural areas of Monroe County. Tr. 288:4–12.

299. Mr. Cooper was unable to identify any community of interest between Bibb County and the portion of Monroe County he included in illustrative state House District 145. Tr. 288:13–23.

300. Under the illustrative state House plan, there is no majority-Black district wholly within Dougherty County in Southwest Georgia. Tr. 1804:10–1805:8.

301. In designing the districts in Southwest Georgia, Mr. Cooper used the techniques of separating the Black community in Thomasville from the rest of Thomas County, while connecting it with the distant Black community in Albany.



Tr. 1805:9–1806:1; DX 2, ¶ 65, Ex. 54.

302. Mr. Cooper added a split of Lee County in Southwest Georgia in the area where he drew illustrative House District 171. Tr. 290:23–291:12.

303. In creating illustrative House District 171, Mr. Cooper included higher concentrations of Black individuals in Thomas County while excluding lower concentrations of Black individuals.

District 171		
County: Dougherty GA		
Total:	20,906	16,409
		78.49%
Voting Age	15,841	12,112
		76.46%
County: Mitchell GA		
Total:	21,755	10,394
		47.78%
Voting Age	17,065	7,917
		46.39%
County: Thomas GA		
Total:	17,670	9,388
		53.13%
Voting Age	13,215	6,749
		51.07%
District 171 Total		
Total:	60,331	36,191
		59.99%
Voting Age	46,121	26,778
		58.06%

District 172		
County: Colquitt GA		
Total:	26,729	4,732
		17.70%
Voting Age	20,087	3,310
		16.48%
County: Grady GA		
Total:	4,715	1,006
		21.34%
Voting Age	3,591	750
		20.89%
County: Thomas GA		
Total:	28,128	7,587
		26.97%
Voting Age	21,822	5,583
		25.58%
District 172 Total		
Total:	59,572	13,325
		22.37%
Voting Age	45,500	9,643
		21.19%

Tr. 292:5–16; DX 2, ¶ 66, Ex. 13.

304. In creating illustrative House District 171, Mr. Cooper also split precincts in Thomas County. Tr. 1807:17–19.

305. Despite referencing a Corridor Management Plan for a highway between Albany and Thomasville, Mr. Cooper never reviewed whether illustrative House District 171 followed the route in that document. Tr. 294:16–22.

306. In order to make illustrative House District 171 a majority-Black district, Mr. Cooper connected Black populations in Albany and Thomasville. Tr. 295:13–18, 1805:9–17.

307. Each of the new majority Black districts on the illustrative House plan, Districts 74, 117, 133, 145, and 171, elected white Republican members in the 2022 general election. Stip. ¶ 288.

308. By using the various techniques of splitting more counties and precincts, gathering geographically dispersed Black populations, elongating districts, and making racial splits of counties, Mr. Cooper's illustrative House plan prioritizes race to the detriment of other traditional redistricting factors. Tr. 1807:20–1808:22; DX 2, ¶ 77. As discussed below, this means the illustrative plan is not merely race-conscious, but is drawn primarily based on race.

e. Wright mapdrawing information.

309. As part of Defendant's first Gingles precondition evidence (and the totality of the circumstances), Gina Wright, the Executive Director of the Georgia

General Assembly's Office of Legislative and Congressional Reapportionment, testified about the mapdrawing process in Georgia. As discussed below in the totality of the circumstances, the Court finds Ms. Wright's testimony highly credible, and it assisted the Court in evaluating the first precondition and Plaintiffs' illustrative plans.

310. Creating redistricting plans involves a number of competing interests. Tr. 1603:15–20.

311. Ms. Wright drew Georgia's redistricting plans for Congress, state Senate, and state House in 2021. Tr. 1604:14–16.

312. Ms. Wright provides equal access to her office for members of all political parties in the General Assembly. Tr. 1601:11–20.

313. Ms. Wright used political data in drawing those plans, including election-return data that was estimated at the Census block level. Tr. 1604:17–1607:2.

314. The estimated political data allows Ms. Wright to have access to political data even when splitting a precinct. Tr. 1607:4–7.

315. Population equality is the goal of redistricting, ensuring districts have equal population. Tr. 1607:8–1608:7.

316. Population equality is measured by deviations from the ideal districts size, which is located by taking the total population and dividing by the number of districts. Tr. 1608:14–1609:2.

317. Using more narrow deviation ranges is a change from the 2001 cycle of redistricting in Georgia, which used broader deviations. Tr. 1607:8–1608:13.

318. Ms. Wright never uses compactness score reports but instead relies on visual reviews of districts, which is a process she utilized in drawing the Congressional, state Senate, and state House plans in 2021. Tr. 1609:3–1610:12.

319. The creation of the Congressional, state Senate, and state House plans in 2021 took county splits into account by trying to avoid splits of counties. Tr. 1611:16–1612:1.

320. The creation of the Congressional, state Senate, and state House plans in 2021 took precinct splits into account by trying to avoid splits of precincts. Tr. 1612:2–1613:8.

321. Despite Mr. Cooper relying on city splits for comparisons, the splitting of city boundaries was not as high of a consideration in the creation of the Congressional, state Senate, and state House plans in 2021 because cities frequently change boundaries. Tr. 1613:21–1614:9.

322. Despite Mr. Cooper relying on splits of Metropolitan Statistical Areas for comparisons, Ms. Wright did not consider splits of Metropolitan Statistical

Areas in drawing the Congressional, state Senate, and state House plans in 2021. Tr. 1614:10–24.

323. Despite Mr. Cooper relying on splits of Core-Based Statistical Areas for comparisons, Ms. Wright did not consider splits of Core-Based Statistical Areas in drawing the Congressional, state Senate, and state House plans in 2021. Tr. 1614:25–1615:3.

324. Despite Mr. Cooper relying on splits of regional commissions for comparisons, Ms. Wright did not consider splits of regional commissions in drawing the Congressional, state Senate, and state House plans in 2021. Tr. 1615:5–9.

325. Regional commissions are quasi-governmental agencies that are a resource for local governments but have no bearing on statewide plans. Tr. 1615:10–20.

326. Ms. Wright took communities of interest into account based on testimony at public hearings, input from legislators, and Ms. Wright's extensive knowledge of Georgia from interactions with local officials. Tr. 1615:21–1618:18, 1638:1–1639:8.

327. Despite Mr. Cooper relying on transportation corridors for communities of interest in the creation of the illustrative plans, Ms. Wright does

not generally believe that roads or highways are communities of interest. Tr. 1681:21–1682:6.

328. Despite Mr. Cooper relying on socioeconomic data as the basis for a community of interest, Ms. Wright did not utilize socioeconomic data when drawing the Congressional, state Senate, and state House plans in 2021. Tr. 1618:20–23.

329. Ms. Wright is aware of the Black Belt, but she did not utilize it as a community of interest when drawing districts, in part because the boundaries are uncertain. Tr. 1618:24–1619:13.

330. The 2021 redistricting cycle followed a similar process to the 2011 redistricting cycle. Tr. 1619:24–1620:4.

331. Georgia's redistricting plans for Congress, state Senate, and state House were never enjoined by any court from 2011 to 2020. Tr. 1620:19–22.

332. The only challenge to the enacted state House plans in the 2011 cycle was dismissed after Democrats won the districts being challenged in the Section 2 lawsuit. Tr. 1709:4–14.

333. When drawing redistricting plans, Ms. Wright's mapping system does not allow the display of the 2010 and 2020 Census information simultaneously, but only the current Census information. Tr. 1708:15–1709:3. As a

result, many of Plaintiffs' claims about growth in Black population were not visible to Ms. Wright during the mapdrawing process. Id.

f. Morgan Race-Blind Plan.

334. To assist the Court in evaluating the impact of race and the illustrative plans, Mr. Morgan created a plan for state Senate and state House that did not consider race, but prioritized county boundaries and population equality.[7] DX 1, ¶ 5; Tr. 1753:5–7.

335. The purpose of the illustrative plans was to help explain the nature of populations in Georgia and review what could occur if race was not considered, not for use in an election. Tr. 1755:11–19, 1767:8–16.

336. When creating the illustrative House plan, Mr. Morgan followed a consistent process of reviewing population only and endeavoring to keep counties and precincts whole while not considering race. Tr. 1754:10–23, 1755:5–7.

337. The resulting illustrative House plan showed fewer split counties and fewer split precincts than the enacted plans.

[7] Alpha Phi Alpha Plaintiffs did not put forward any rebuttal case after the presentation of Mr. Morgan's illustrative plans or any responsive expert testimony or reports.

Chart 1- House Illustrative Plan and House Enacted Plan comparisons

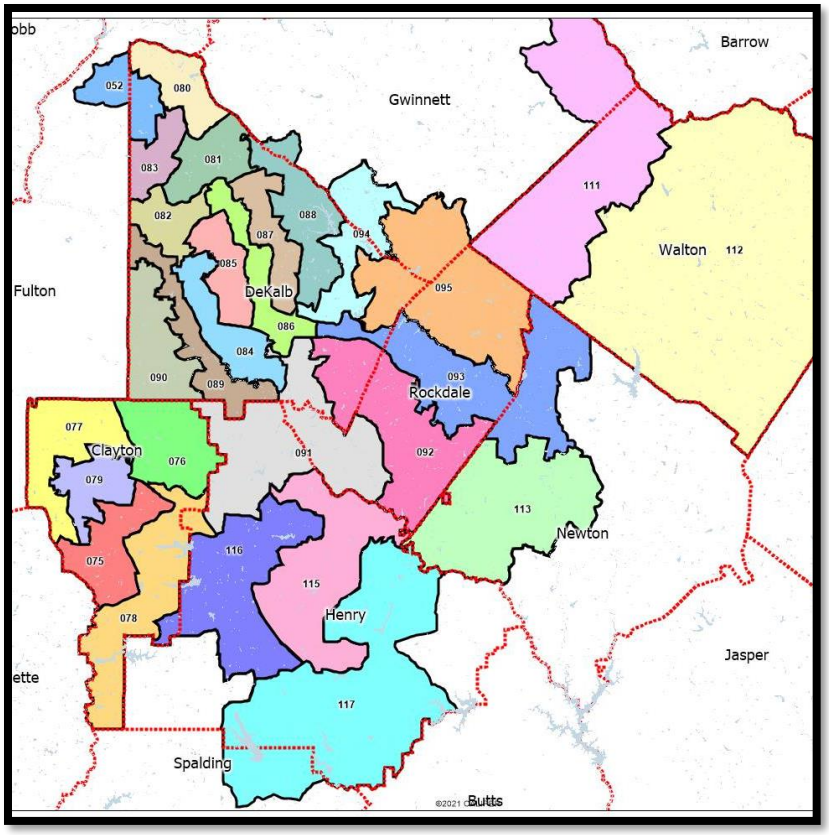
Plan metrics	House Ilustr.	House Enacted
County splits	54	69
Voting precinct splits	106	184
Mean compactness - Reock	0.45	0.39
Mean compactness - Polsby Popper	0.33	0.28
# Paired incumbents	74	20
# Seats majority 18+_AP_Blk%	35	49
# Seats 18+_AP_Blk% is: over 90%	6	0
# Seats 18+_AP_Blk% is: 80% to 90%	4	0
# Seats 18+_AP_Blk% is: 70% to 80%	5	11
# Seats 18+_AP_Blk% is: 60% to 70%	9	15
# Seats 18+_AP_Blk% is: 50% to 60%	11	23

Tr. 1756:13–20; DX 1, Chart 1.

338. The resulting illustrative House plan showed higher compactness scores than the enacted plan, meaning the illustrative plan as a whole is more compact than the enacted plan. Tr. 1756:21–1757:9; DX 1, Chart 1.

339. The resulting illustrative House plan has fewer majority-Black districts when compared to the enacted plan. Tr. 1758:15–1759:2; DX 1, Chart 1.

340. The regional analysis of the illustrative House plan when compared with the enacted House plan shows that enacted House plan has more elongated districts in areas with high Black VAP percentages on the illustrative House plan.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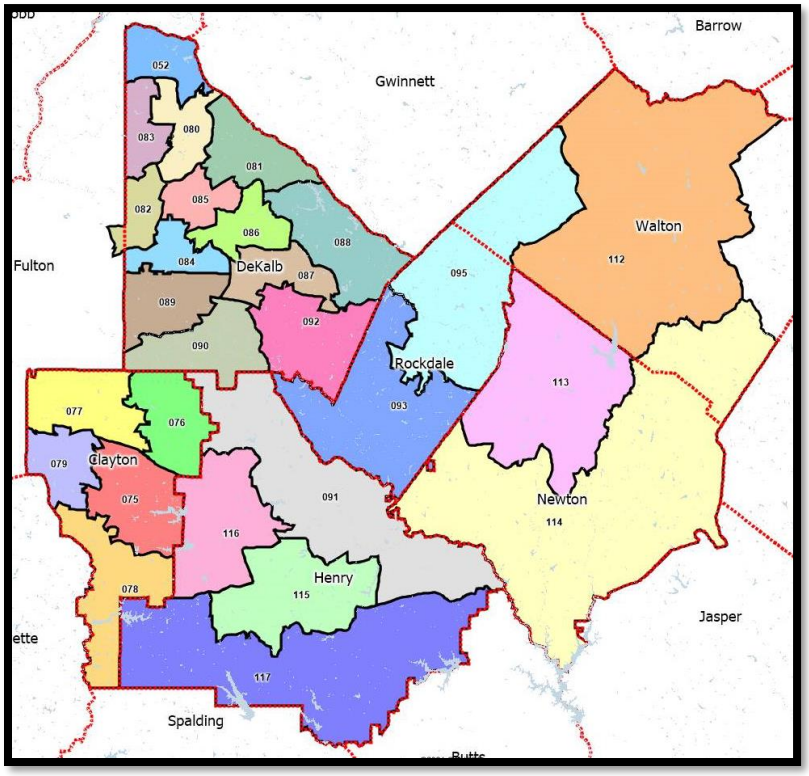
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Tr. 1761:2–16, 1762:4–1763:4; DX 1, Maps 3, 4.

341. The racial percentages of majority-Black districts on the illustrative House plan are extremely high when the districts are not elongated.

Chart 3 – Districts in House Illustrative Plan region 1

District	[% Black]	[% 18+ AP Blk]	Reock	Polsby-Popper
052	11.8%	13.9%	0.43	0.38
075	64.7%	66.2%	0.52	0.36
076	69.0%	71.3%	0.52	0.41
077	60.5%	62.6%	0.42	0.35
078	77.1%	78.9%	0.3	0.21
079	77.9%	80.7%	0.56	0.36
080	13.6%	16.1%	0.43	0.25
081	34.9%	36.6%	0.39	0.41
082	12.6%	14.7%	0.36	0.37
083	12.1%	14.6%	0.38	0.36
084	34.9%	37.6%	0.37	0.23
085	36.5%	36.3%	0.54	0.36
086	66.2%	67.9%	0.44	0.31
087	88.3%	91.3%	0.38	0.28
088	83.4%	86.0%	0.41	0.39
089	75.7%	76.6%	0.42	0.39
090	92.2%	94.9%	0.4	0.4
091	42.2%	43.1%	0.21	0.18
092	91.7%	94.3%	0.51	0.37
093	57.4%	58.2%	0.47	0.2
095	43.5%	43.5%	0.32	0.3
112	17.2%	17.4%	0.59	0.42
113	55.4%	55.9%	0.47	0.41
114	35.9%	36.9%	0.37	0.22
115	57.0%	57.4%	0.45	0.38
116	58.9%	59.8%	0.49	0.37
117	38.2%	38.8%	0.26	0.24

Tr. 1761:2–1762:3, 1762:4–1763:20; DX 1, Charts 3, 6.

342. The illustrative House plan demonstrates that the creation of additional majority-Black districts led to lower compactness scores in the enacted plan versus the illustrative House plan. Tr. 1764:10–21; DX 1, ¶¶ 34, 48.

343. When creating the illustrative Senate plan, Mr. Morgan followed a consistent process of reviewing population only and endeavoring to keep counties and precincts whole while not considering race. Tr. 1754:10–23, 1764:23–1765:7, 1765:22–1766:9.

344. The resulting illustrative Senate plan showed fewer split counties and fewer split precincts than the enacted plans.

Chart 8- Senate Illustrative Plan and Senate Enacted Plan comparisons

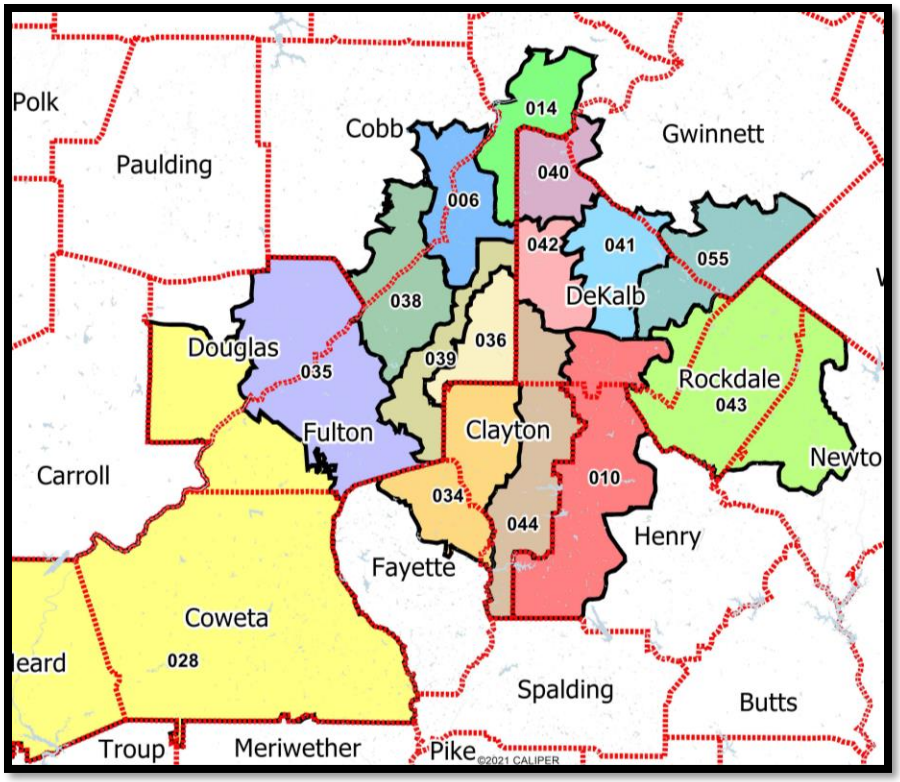
Plan metrics	Senate Ilustr.	Senate Enacted
County splits	21	29
Voting precinct splits	15	47
Mean compactness - Reock	0.46	0.42
Mean compactness - Polsby Popper	0.36	0.29
# Paired incumbents	17	4
# Seats majority 18+_AP_Blk%	11	14
# Seats 18+_AP_Blk% is over 90%	2	0
# Seats 18+_AP_Blk% is: 80% to 90%	0	0
# Seats 18+_AP_Blk% is: 70% to 80%	1	3
# Seats 18+_AP_Blk% is: 60% to 70%	3	6
# Seats 18+_AP_Blk% is: 50% to 60%	5	5

Tr. 1766:14–25; DX 1, Chart 8.

345. The resulting illustrative Senate plan showed higher compactness scores than the enacted plan, meaning the illustrative plan, as a whole, is more compact than the enacted plan. Tr. 1766:14–25; DX 1, Chart 8.

346. The resulting illustrative Senate plan has fewer majority-Black districts when compared to the enacted plan. Tr. 1767:1–7; DX 1, Chart 8.

347. The regional analysis of the illustrative Senate plan when compared with the enacted Senate plan shows that enacted Senate plan has more elongated districts in areas with high Black VAP percentages on the illustrative Senate plan.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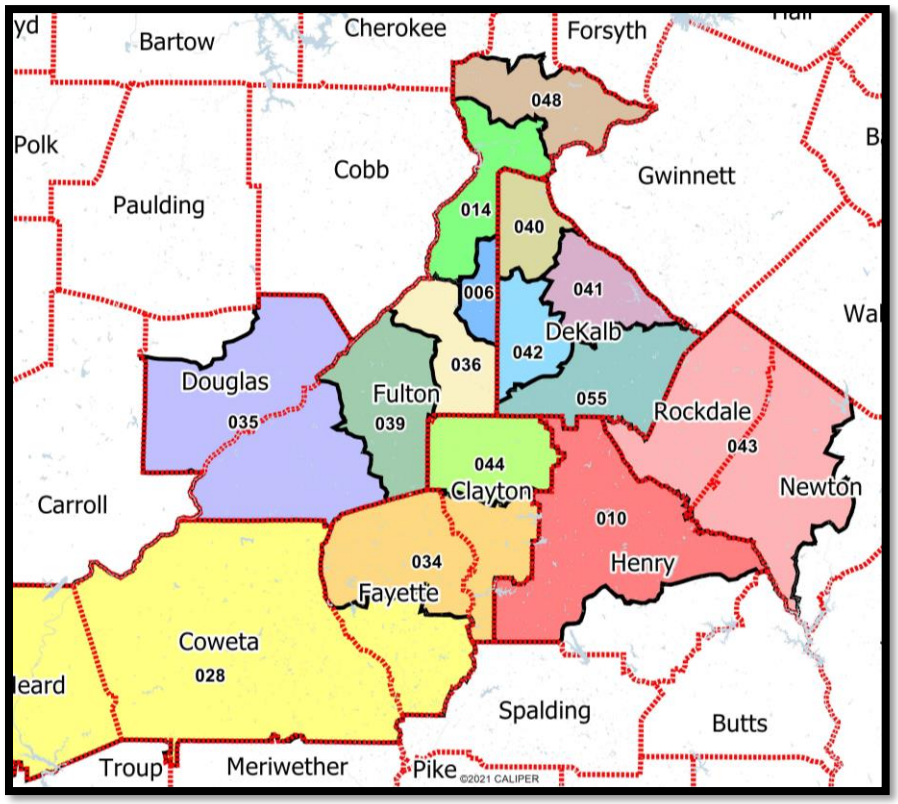
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Tr. 1767:24–1770:5; DX 1, Maps of Senate Regions.

348. The racial percentages of majority-Black districts on the illustrative Senate plan are extremely high when the districts are not elongated.

Chart 10 – Districts in the Senate Illustrative Plan senate metro region

District	[% Black]	[% 18+ AP Blk]	Reock	Polsby-Popper
006	19.9%	21.6%	0.33	0.45
010	51.6%	52.2%	0.38	0.27
014	15.6%	17.5%	0.32	0.23
028	15.2%	15.8%	0.37	0.34
034	55.0%	56.0%	0.49	0.36
035	59.3%	60.2%	0.58	0.41
036	68.4%	69.8%	0.42	0.37
039	89.7%	92.0%	0.47	0.45
040	13.9%	16.4%	0.54	0.46
041	59.3%	60.9%	0.39	0.35
042	39.1%	40.8%	0.45	0.42
043	55.0%	55.8%	0.47	0.33
044	68.1%	70.5%	0.59	0.52
048	10.2%	11.5%	0.31	0.28
055	90.9%	93.7%	0.32	0.34

Tr. 1767:24–1770:5; DX 1, Chart 10.

349. The illustrative Senate plan demonstrates that the creation of additional majority-Black districts led to lower compactness scores in the enacted plan versus the illustrative Senate plan. Tr. 1770:7–23; DX 1, ¶¶ 46, 48.

iv. Analysis of proposed plan(s).

b. Numerosity.

350. Plaintiffs have presented evidence of districts drawn with more than 50% Black VAP. Bartlett v. Strickland, 556 U.S. 1, 13 (2009) (plurality op.). The fact that such districts can be drawn is not dispositive of the first Gingles precondition, because Plaintiffs must present evidence of districts that comply with traditional redistricting principles in addition to being over 50% Black VAP. Allen, 599 U.S. at 30.

c. Population.

351. Plaintiffs' illustrative plans do not comply with the traditional redistricting principle of population equality because they have higher population deviations than the enacted plans.

d. Compactness.

352. There is no numerical threshold for when a district is completely non-compact because compactness scores only provide a point of comparison. Tr. 363:16–364:7 (APA).

353. While Plaintiffs' plans on an overall basis are similar on compactness scores to the enacted plans, the areas around the new majority-Black districts have consistently lower compactness scores, showing that a decrease in compactness is necessary to add majority-Black districts.

354. Further, the Court finds this factor to be of little weight because Mr. Cooper was able to design districts overall that matched or nearly matched the

compactness scores of the enacted plans, essentially "teaching to the test" in ways that limit the value of this metric.

e. Contiguity.

355. All of Plaintiffs' illustrative districts are contiguous.

f. Political subdivisions.

356. Each illustrative plan splits more counties and precincts than the enacted plans, especially in areas where majority-Black districts are added, meaning the illustrative plans do not comply with this traditional principle.

g. Communities of interest.

357. Mr. Cooper was largely unable to explain the communities of interest utilized in the mapdrawing process, which is significant in light of the importance of the illustrative plans being plans the legislature could have drawn.

358. Perhaps recognizing this shortcoming, Plaintiffs offered several lay witnesses to talk about various communities of interest on the illustrative plans. While the Court appreciates the testimony of each individual and believes they hold sincere beliefs about their communities, the Court finds that the testimony's value is of extremely limited weight in evaluating Plaintiffs' illustrative plans.

359. None of the mapdrawers ever utilized the information provided by the individual witnesses or any Plaintiffs because they never spoke to each other.

360. Thus, the information provided by the individual witnesses is, at best, Plaintiffs' attempt to provide "race-neutral" reasons for the creation of the districts that were only considered after the majority-Black districts were drawn. Bethune-Hill, 580 U.S. at 189.

361. Mr. Sherman Lofton testified regarding traveling to adjacent counties for commercial, social, health-related, and family reasons. Tr. 1326:3-11.

362. Mr. Lofton testified that the other members of the Black community where he resides in north Henry County also go shopping, to restaurants, and to the gym in adjacent counties. Tr. 1326:12-17.

363. Mr. Lofton testified that Black residents of north Henry County are no different from white, Asian, or Hispanic residents of north Henry County with regard to their travels to adjoining counties. Tr. 1326:18-24.

364. Bishop Reginald T. Jackson Bishop Jackson is a minister and a bishop in the African Methodist Episcopal Church, and he testified on behalf of the Sixth District of the African Methodist Episcopal Church. Tr. 372:3–8.

365. The Sixth District of the African Methodist Episcopal Church covers the entire State of Georgia. Tr. 374:10–13.

366. Bishop Jackson lived in Georgia from 1976 to 1979 while attending seminary, then from 2016 to the present. Tr. 385:13–24.

367. Bishop Jackson confirmed he was not an expert in, and has never testified regarding, Gingles maps. Tr. 386:3–387:1.

368. Bishop Jackson confirmed he never spoke with Mr. Cooper regarding maps or communities of interest. Tr. 387:2–4.

369. Bishop Jackson described the concerns of the Church not in terms of Black voters being able to elect candidates of their choice, but instead, that "the opportunity for Blacks to vote for other Blacks is not increasing. And that -- that is just problematic." Tr. 389:21–25.

370. Dr. Evans has lived in Georgia her whole life, originally from Screven County and in Jefferson County for the last forty years. Tr. 619:9–17.

371. Dr. Evans received her doctorate of ministry from Erskine College, and she has been a part-time pastor at St. Paul Missionary Baptist Church in Sylvania, Georgia for twenty-five years. Tr. 620:2–17.

372. St. Paul Missionary Baptist Church is the church Dr. Evans and her family attend, approximately 67 miles from where she lives. Tr. 620:10–14.

373. Dr. Evans has run for political office three times, the first time as a write-in candidate because "we did not have a Democrat on the ticket," and the other two times as a candidate for the Democratic Party. Tr. 623:5–18, 635:10–13.

374. Dr. Evans served as a chair of the Jefferson County Democratic Party, where her role included recruiting candidates to run for office as Democrats. Tr. 636:2–14.

375. Dr. Evans is not an expert in, and has never testified regarding, Gingles maps. Tr. 636:15–637:19.

376. Dr. Evans considers herself to reside in the Black Belt, described in her own terms to be an area where "there is a large population of Blacks," but she did not identify specific counties. Tr. 624:18–625:11.

377. Dr. Evans agreed that people in Washington, Georgia, in Wilkes County would not regularly attend church in Sylvania, Georgia, in Screven County. Tr. 638:11–16.

378. Dr. Evans testified "[her] community is just like every other community." Tr. 638:11–16.

379. Dr. Evans agrees that issues with healthcare access, education, property taxes, and gun safety applies equally to everybody, not just Black voters. Tr. 639:24–640:25.

380. Despite all of this testimony on various points, the Court finds the traditional principle of communities of interest is not met by the illustrative plans because Mr. Cooper could not consistently explain a process he followed and the

lay witnesses offered only limited support for some of the decisions made independently by the mapdrawer.

v. Legal conclusions regarding first Gingles precondition.

381. The Eleventh Circuit prohibits the separation of the first prong of liability under Gingles and the potential remedy. Nipper, 39 F.3d at 1530–31; see also Burton, 178 F.3d at 1199 ("We have repeatedly construed the first Gingles factor as requiring a plaintiff to demonstrate the existence of a proper remedy."); accord Wright, 979 F.3d at 1302. Whatever plan is used to demonstrate a violation of the first prong of Gingles must also be a remedy that can be imposed by the Court. Nipper, 39 F.3d at 1530–31. In short, if a plaintiff cannot show that the plan used to demonstrate the first prong can also be a proper remedy, then the plaintiff has not shown compliance with the first prong of Gingles. Wright, 979 F.3d at 1302.

382. Plaintiffs' illustrative plans fail to cross the threshold for remedies that can be imposed by the Court.

383. First, as discussed above, the Court finds that the illustrative plans are not designed consistent with traditional redistricting principles, meaning it is not reasonably compact. Allen, 143 S. Ct. 1503.

384. Second, the boundaries of the majority-Black districts on the illustrative plans are "unexplainable other than on the basis of race," which is unconstitutional. Miller, 515 U.S. at 910.

385. In creating the illustrative plans on which Plaintiffs rely, Mr. Cooper testified to his focus on race in creating the plans because his purpose was adding majority-Black districts. While that goal standing alone may not make a map improper for Section 2 purposes, Davis, 139 F.3d at 1425, the focus on race in every aspect was clear.

386. Plaintiffs have thus failed to carry the burden to show that "race did not predominate the drawing of the Illustrative Plans." APA Doc. No. [268], p. 20 n.16; Grant Doc. No. [229], p. 31 n.23; Pendergrass Doc. No. [215], p. 28 n.17.

387. Mr. Cooper elongated districts from heavily Black areas into heavily white areas to create new majority-Black districts, using displayed racial information on the screen to make decisions about district boundaries, while being unable to explain any reason for uniting those communities. Miller, 515 U.S. at 910. This technique was used in illustrative Senate Districts 16, 17, and 28 and illustrative House Districts 69, 77, 117, and 145.

388. Mr. Cooper collected disparate Black populations in a single district, assuming that all Black individuals would share a common interest. LULAC, 548 U.S. at 433. This technique was used in illustrative Senate District 23 and illustrative House Districts 74, 117, 126, 128, 133, 155, and 171.

389. Mr. Cooper drew districts that were so close to 50% Black VAP that every move in the creation of a district would have a racial impact. Miller, 515 U.S.

at 910. This technique was used in illustrative Senate Districts 22 and 23 and illustrative House Districts 143 and 145.

390. Mr. Cooper split counties in racial ways in service of a racial goal and had no political data or other data that could explain the splits other than a racial purpose. This technique was used in illustrative Senate District 23 and illustrative House Districts 126, 128, 133, 155, and 171.

391. Plaintiffs mapdrawing expert also relied on his view of the commonality of all Black voters in creating the plans, which is prohibited.

392. Ultimately, it is clear that race "was the criterion" that "could not be compromised" and any "race-neutral considerations" were only considered after the majority-Black district was created. Bethune-Hill, 580 U.S. at 189.

393. While Plaintiffs' expert indicated his race-consciousness in drawing redistricting plans, he was not able to adequately or consistently explain how he utilized "traditional districting principles such as maintaining communities of interest and traditional boundaries." LULAC, 548 U.S. at 433 (2006). The Voting Rights Act does not ask merely whether more majority–Black districts can be drawn—it asks whether reasonably compact majority–Black districts can be drawn if all other factors are also met. Shaw v. Hunt, 517 U.S. 899, 913 (1996).

394. Mr. Cooper only asked if he could draw more majority–Black districts if he focused primarily on race. But "[Section] 2 does not require a State to create,

on predominantly racial lines, a district that is not 'reasonably compact.'" Bush v. Vera, 517 U.S. 952, 979 (1996).

395. Under Plaintiffs' theory there is no limiting principle—the General Assembly would have to keep drawing as many majority-Black districts as it could locate, even beyond those proposed in this case. But "[f]ailure to maximize cannot be the measure of § 2." De Grandy, 512 U.S. at 1017.

396. Plaintiffs did not provide evidence that the legislature failed to consistently follow its own guidelines or even that the existing districts were packed, despite the claims in their Complaint. Plaintiffs cannot demonstrate a "strong basis in evidence" for why they have drawn their maps. Cooper, 581 U.S. at 292. As a result, they have failed to show there is any compelling interest that supports their racial focus in the illustrative plans.

397. Even in the most generous reading of Supreme Court precedent, Section 2 could allow race-conscious relief only after Plaintiffs have established that the redistricting plans "result[ed] in a denial or abridgement of the right . . . to vote on account of race or color." 52 U.S.C. § 10301(a).

398. Plaintiffs cannot racially gerrymander as a sword to show a Section 2 violation, then use that newly found Section 2 violation as a shield to protect their improper racial redistricting.

399. Further, Mr. Cooper did not undertake any analysis of the geographic compactness of the minority communities, instead relying on the districts they drew to support a finding of geographic compactness—indeed, when asked where the geographically compact minority community was located, the answer was consistently where the boundaries were of the district he had drawn.

400. Plaintiffs must do more than just draw a district—they must demonstrate connections between the disparate geographic communities they unite that go beyond race in such a configuration the legislature could have drawn. LULAC, 548 U.S. at 433; Vera, 517 U.S. at 997. By relying solely on compactness scores of the districts, they miss the requirement of compactness of the underlying community.

401. 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, 517 U.S. at 916).

402. After reviewing each proposed new majority-Black district, it is clear that the district as drawn does not support a conclusion that the minority community is sufficiently numerous and geographically compact for purposes of the first prong of Gingles.

403. Because Plaintiffs have not presented remedies this Court can order, but instead have presented maps that fail to comply with traditional redistricting principles and are drawn primarily based on race, this Court finds Plaintiffs have failed to meet the first Gingles precondition for their plans.

C. Second and Third Gingles preconditions.

404. The second Gingles precondition requires the Plaintiffs to show that "the minority group . . . is politically cohesive." Gingles, 478 U.S. at 51. The third Gingles precondition requires the Plaintiffs to show that "the white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances . . . usually to defeat the minority's preferred candidate." Id. Because these factors both relate to voting patterns, the Court considers them together.

i. Legal standard.

405. This Court has ruled on several occasions that "the second and third Gingles preconditions require only that Plaintiffs show that majority-voter political cohesion and racial bloc voting exists, not the reason for its existence." APA Doc. No. [268], pp. 38–39; Grant Doc. No. [229], pp. 49–50; Pendergrass Doc. No. [215], p. 48. And the Court has further emphasized that evaluating the reasons behind racial bloc voting and minority political cohesion is inappropriate at the Gingles preconditions phase. Id.

406. The Court, therefore, for purposes of this prong, looks only to determine whether the statistical analysis provided by Plaintiffs demonstrates the necessary bloc voting patterns and saves its inquiry into causation and explanation for totality of circumstances.

ii. Evidence from Dr. Lisa Handley.

407. Plaintiffs' expert, Dr. Lisa Handley, has offered statistical analysis of voting patterns for courts for decades. And while the court credits the statistical methodology used by Dr. Handley, her decision to focus almost entirely on racially contested elections undermines the credibility of her conclusion that there is racially polarized voting in Georgia elections.

408. As another District Court in this Circuit has recently found, "the parameters for the elections [Dr. Handley] chose… exclude other relevant elections, thereby diminishing the credibility of her conclusions." Ala. State Conf. of NAACP v. Alabama, 612 F. Supp. 3d 1232, 1274 (M.D. Ala. 2020).

409. Moreover, as discussed below, Dr. Handley's definition of racially polarized voting is methodologically flawed, resulting in her inability to properly analyze racially polarized voting in the Democratic primaries she looked at.

410. Dr. Handley considers an election racially polarized "if the election outcome would be different if Black voters and white voters voted separately." Tr. 862:15-1.

411. As Dr. Alford noted, "in every election there is a preferred candidate for minority voters. And if that suffices for cohesion, then Gingles 2 is [no longer] a threshold test, it's not a test at all. It is by definition always met," in the primaries Dr. Handley examines. "[I]t simply is not a useful approach. It casts far too broad a net to even come close to both the specific formulation of the Gingles tests and sort of the… the spirit of what the test is trying to establish." Tr. 2201:15–2204:8.

412. For purposes of her conclusion that Democratic primaries are racially polarized, Dr. Handley relied on Ecological Inference ("EI") confidence intervals that were far wider than those relied on by Dr. Alford in his EI analysis of the Herschel Walker Republican primary. Tr. 2259:2–2260:25.

413. The Court is persuaded by the testimony of Dr. Alford and assigns minimal weight to Dr. Handley's conclusion that there is racially polarized voting in both the general elections she examined and the Democratic primaries. The Court notes that Dr. Handley properly applied EI analysis and that in the general elections, white voters vote cohesively in opposition to the Black-preferred candidate. But the Court goes no further in crediting Dr. Handley's opinion.

414. Evidence submitted by Dr. Handley establishes that in general elections, Black voters cohesively support a preferred candidate and white voters vote as a bloc to usually defeat that candidate.

415. The primary analysis provided by Dr. Handley does not establish proof that Plaintiffs have carried their burden on Gingles 2 and 3 with respect to the primary contests.

416. This is because the evidence shows that Black voters often do not cohesively support the same candidate in the primaries and even when they do, the evidence does not demonstrate that white voters vote as a bloc to usually defeat that candidate. APAX 5, pp. 63–77.

417. Moreover, the evidence establishes that in the primaries analyzed by Dr. Handley, white voters and Black voters often support the same candidate. Id.

iii. Evidence from Dr. Alford.

418. Defendant offered Dr. John Alford as an expert on the second and third Gingles preconditions and Senate Factor Two. Tr. 2132:19–2133:1.

419. Dr. Alford has been accepted as an expert in cases involving the Voting Rights Act for more than 30 years and has always been accepted as an expert, including in six cases since 2022 alone. Tr. 2131:19–2132:18.

420. The Court had the opportunity to engage in an extended discussion with Dr. Alford and found his answers to be clear, concise, and thoughtful. The Court assigns great weight to his testimony and found it very assistive to the Court.

421. Dr. Alford agrees with the methodology employed by both experts for purposes of conducting their bloc voting analysis in the general election contests examined. Tr. 2145:23–2146:1, 2215:17–25.

422. However, the primary analysis provided by Dr. Alford shows that Black Republican voters and white Republican voters had the same preferred candidate in the Republican primary in 2022. Tr. 2208:14–2209:9, 2260:2–8.

iv. Legal conclusions regarding second and third Gingles preconditions.

423. This Court has determined, based on its prior rulings of what is required to be shown with respect to the second and third Gingles preconditions, that Plaintiffs have satisfied the evidentiary requirements to establish the second and third preconditions in the general elections examined.

424. The Court, however, does not find that the primary elections analyzed contain sufficient evidence to satisfy the second and third Gingles preconditions.

425. As discussed below, the issue of polarized voting must also be considered at the totality of the circumstances phase. So, while this Court determines that Plaintiffs have met the standard required by its prior rulings, that is not dispositive to their claims on this issue.

D. Totality of the circumstances.

i. Legal standard.

426. Only after Plaintiffs show the first three Gingles preconditions does the Court "consider[] whether, 'on the totality of circumstances,' minorities have been denied an 'equal opportunity' to 'participate in the political process and to elect representatives of their choice.'" Abrams v. Johnson, 521 U.S. 74, 91 (1997) (quoting Section 2); De Grandy, 512 U.S. at 1011 (Gingles preconditions are not "sufficient in combination" to prove a violation of Section 2).

427. Further, "[t]he inability to elect representatives of their choice is not sufficient to establish a violation unless, under the totality of circumstances, it can also be said that the members of the protected class have less opportunity to participate in the political process." Chisom v. Roemer, 501 U.S. 380, 397 (1991). Because "in a majoritarian system, numerical minorities lose elections." Holder v. Hall, 512 U.S. 874, 901 (1994) (Thomas, J., concurring).

428. "[I]n the words of the Supreme Court, the district court is required to determine, after reviewing the 'totality of the circumstances' and, 'based upon a searching practical evaluation of the past and present reality, whether the political process is equally open to minority voters. This determination is peculiarly dependent upon the facts of each case and requires an intensely local appraisal of

the design and impact of the contested electoral mechanisms.'" Wright, 979 F.3d at 1288 (quoting Gingles, 478 U.S. at 79).

429. The Senate factors are also limited in some ways because they "are more generalized indicators of the status of minority life in Georgia as opposed to the indicators of whether [the challenged maps] result[] in fewer opportunities for minority voters." Fair Fight Action, Inc. v. Raffensperger, 634 F. Supp. 3d 1128, 1250 (N.D. Ga. 2022).

430. The Court is not limited to reviewing only the Senate factors because that list is "neither comprehensive nor exclusive." Ga. State Conf. of the NAACP, 775 F.3d at 1342.

431. Further, there is no requirement that any particular Senate factors be proved or a majority point one way or another. Id.

432. Ultimately, "the essential inquiry in a § 2 case is 'whether the political process is equally open to minority voters.'" Id.

433. Even if Plaintiffs had established the first three Gingles preconditions, their claims would still fail on the present record if the Court were to continue to the weigh the totality of the circumstances because the record before the Court does not indicate that the 2021 enacted redistricting plans present "an unequal opportunity for minority voters to participate in the political process and to elect

representatives of their choosing as compared to other members of the electorate." Id.

ii. Credibility determinations.

b. Wright.

434. Defendant offered the testimony of Ms. Gina Wright regarding the redistricting process and the enacted plans.

435. Ms. Wright has worked for the Legislative and Congressional Reapportionment Office for almost 23 years creating maps for various levels of Georgia governments, including statewide plans for the General Assembly. Tr. 1600:11–21.

436. Ms. Wright has drawn hundreds of maps that have been used in elections in Georgia. Tr. 1600:22–24.

437. Ms. Wright has served as a technical expert for at least eight federal courts, drawing plans that were used as remedies. Tr. 1601:3–10; Alpha Phi Alpha, 587 F. Supp. 3d at 1248 (collecting cases).

438. This Court previously found Ms. Wright credible on redistricting and demographics in Georgia, including her knowledge of communities of interest and political subdivisions in Georgia. Id. at 1249.

439. The Court observed Ms. Wright's testimony on the stand and found her answers to be frank, honest, and extremely credible. She has extensive

knowledge of Georgia and its people from her work on local redistricting plans. Id. at 1249–50. The Court assigns great weight to her testimony and found it assistive to the Court.

c. Ward (APA).

440. Dr. Jason Morgan Ward was offered by Plaintiffs as an expert on the history of Georgia and the history of racial politics in Georgia. Tr. 1333:17–19, 1335:3–7.

441. While Dr. Ward's testimony on historical issues is useful for evaluating part of Senate Factor One on the history of discrimination, he did not provide helpful testimony on issues related to more recent alleged discrimination.

442. Dr. Ward's testimony about what he considers to be more recent discriminatory issues is clouded by his personal bias.

443. Dr. Ward authored an article in the New York Times in March 2021 where he said he believed that critics of Georgia's 2021 Senate Bill 202 ("SB 202") called it Jim Crow 2.0 for a reason. Tr. 1353:9–19.

444. As a result, the Court accepts Dr. Ward's testimony but assigns it little overall weight in consideration of the totality of the circumstances.

d. Jones (APA)

445. Dr. Adrienne Jones was offered by Plaintiffs as an expert in a variety of political science areas, but the Court only accepted her testimony as an expert in historical review. Tr. 1157:22–1158:5, 11–12.

446. Dr. Jones' testimony was infused with bias and incorrect information.

447. Dr. Jones incorrectly stated in her report that she had been qualified as an expert in voter suppression in the Fair Fight Action litigation in 2022, the only other case she has testified as an expert, when in fact she had been qualified as an expert in historical review only. Tr. 1151:6–1152:6.

448. In her first of two peer-reviewed articles entitled "When Yes Means No: GOP Congressional Strategy and Reauthorization of the Voting Rights Act in 2006," Dr. Jones concluded that Republican votes in favor of the VRA really means that they oppose the VRA. Tr. 1152:21–1153:6.

449. In her article, Dr. Jones also concluded that Republican no votes on the renewal of the VRA and Republican "yes" votes to amend the VRA both actually meant Republicans were opposed to the Act. Tr. 1153:7–13.

450. Dr. Jones' only other peer-reviewed article entitled "How to Win a Long Game: the Voting Rights Act, the Republican Party, and the Politics of Counter-Enforcement" reviews what she calls the Republican strategy to weaken the VRA. Tr. 1154:20–1155:11.

451. Dr. Jones plans and conducts meetings at Morehouse College and has never hosted a Republican state official. Tr. 1247:15–19.

452. Since 2018, Dr. Jones is a member of the Democratic National Committee Boiler Room, which answers questions on behalf of the Democratic Party from Democratic poll workers. Tr. 1247:20–1248:6.

453. Dr. Jones has written numerous opinion editorials criticizing Georgia's voting law, Georgia's 2021 Senate Bill 202 ("SB 202"), asserting that it is a discriminatory voting law. Tr. 1250: 2–4, 17–20.

454. Dr. Jones has opined in her editorial writings that the enacted 2021 redistricting plans are unfair. Tr. 1250:13–20.

455. Dr. Jones' report and testimony also included incorrect information.

456. Dr. Jones originally failed to name David Burgess as a statewide elected Black candidate in her report, which required correction. Tr. 1254:10–1255:4.

457. Dr. Jones testified that Republicans had not elected Black candidates, ignoring the primary successes in 2022 of Herschel Walker and Fitz Johnson. Tr. 1255:21–1258:1.

458. When Dr. Jones was considering statewide elected Black candidates, she excluded Sen. Raphael Warnock from that analysis. Tr. 1258:2–6.

459. Despite stating in her report that Black-preferred candidates for Public Service Commission have lost, Dr. Jones admitted that Commissioner Burgess was a Black-preferred candidate who won statewide election. Tr. 1258:10–21.

460. Despite making assertions about various government entities in her report, Dr. Jones did not investigate the makeup of the Gwinnett County Commission or the members of the Board of Elections in Lincoln County. Tr. 1260:10–13, 1261:6–16, 1263:5–9.

461. Dr. Jones relied on secondary sources regarding the fake robocall from an individual impersonating Oprah Winfrey in 2018 to criticize Georgia Democratic gubernatorial candidate Stacey Abrams and never evaluated the findings of the Federal Communications Commission regarding that call. Tr. 1270:17–25; DX 59.

462. Dr. Jones believes that, if Black voters had fair and equal access in Georgia, close to 50% of Georgia legislators would be Black individuals. Tr. 1276:11–15, 1278:15–20, 1279:10–12.

463. Ultimately, the Court assigns little weight to Dr. Jones' historical review. While her explanation of history is helpful in places, it does not shed light on the totality of the circumstances this Court must evaluate.

e. Burch (APA).

464. Plaintiffs offered Dr. Traci Burch to testify as an expert in political science, political participation and behavior and barriers to voting. Tr. 1041:25–1042:2.

465. Dr. Burch has not done any coursework or written any publications on the topic of redistricting. Tr 1042:20–25.

466. Dr. Burch did not speak to anyone in Georgia in preparation for her report—including voters or any elected members of the General Assembly. Tr. 1044:23–1045:2.

467. Dr. Burch has always testified for plaintiffs and has never been retained by Georgia or any state defendant to serve as an expert. Tr. 1045:3–10.

468. Dr. Burch has never testified on behalf of any Republicans. Tr. 1045:11–13.

469. Dr. Burch's report was not primarily the product of her expertise, but of Plaintiffs' attorneys at critical points.

470. Plaintiffs' attorneys chose the county clusters Dr. Burch analyzed in her report. Tr. 1102:1–5.

471. After Dr. Burch prepared her report, Plaintiffs' attorneys instructed her to change the names of the clusters. Tr. 1102:13–20.

472. Plaintiffs' attorneys also chose what Dr. Burch would call the clusters in her report and add a cluster. Tr. 1102:6–8.

473. As discussed below, the selection of counties affects the overall analysis.

474. The Court accepts Dr. Burch's statistical information, the Court assigns it little weight given the issues in her report and testimony.

f. Burton.

475. Plaintiffs offered the testimony of Dr. Orville Burton regarding historical issues.

476. Of the numerous times Dr. Burton has testified as an expert throughout his career, he has never testified on behalf any state defendant, state entity, or any Republican entity. Tr. 1420:6-17.

477. Dr. Burton is not opining in this case on the legal question of whether the enacted plans violate the Voting Rights Act. Tr. 1422:9-13; 1423:3-7.

478. Dr. Burton has been retained numerous times by the NAACP, the American Civil Liberties Union, and the Lawyers' Committee for Civil Rights since 1980. Tr. 1423:20-25.

479. Dr. Burton is serving as an expert for Plaintiffs in The New Georgia Project v. Raffensperger, Case No. 1:21-cv-01229, Consolidated Case No. 1:21-mi-55555 (In re SB 202) challenging SB 202. Tr. 1475:23-25.

480. While Dr. Burton's provided some helpful information about historical issues, his testimony about current day issues is of limited value to the Court. Also given Dr. Burton's advocacy against Georgia policies in a variety of cases, the Court assigns very little weight to his testimony in considering the totality of the circumstances.

g. Germany.

481. Defendant offered the testimony of Ryan Germany regarding the current state of Georgia election practices.

482. Mr. Germany is a lawyer who previously served as General Counsel to the Secretary of State of Georgia from January 2014 through January 2023. Tr. 2262:11–17.

483. As General Counsel during that time, Mr. Germany's job responsibilities were to provide legal support to the office along with other attorneys in the office and litigation services particularly in election-related matters. Tr. 2263:20–24.

484. In addition, Mr. Germany's role as General Counsel led him to participate in policy crafting in the Secretary's elections division as well as working with the General Assembly on election-related laws, including SB 202. Tr. 2262:25–2263:6, 2264:21–2265:2.

485. Mr. Germany offered testimony in this trial as the 30(b)(6) witness for the Secretary of State's office. Tr. 2263:7–11.

486. The Court finds Mr. Germany to be highly credible, based on both his knowledge and experience in elections, and gives substantial weight to his testimony.

iii. The Senate factors.

b. Senate Factor One: History of discrimination.

487. The first Senate factor considers evidence of historical discrimination in voting. Greater Birmingham Ministries v. Sec'y of Ala., 992 F.3d 1299, 1332 (11th Cir. 2021).

488. In considering this factor, the Court recognizes Georgia's history of discrimination, but also recognizes that it cannot allow "old, outdated intentions of previous generations to taint [Georgia's] ability to enact voting legislation." Id.

489. That is why the Court must consider the connection between historical discrimination and the challenged voting practices. See, e.g., League of Women Voters of Fla. Inc. v. Fla. Sec'y of State, 66 F.4th 905, 923 (11th Cir. 2023); accord League of Women Voters of Fla. Inc. v. Fla. Sec'y of State, No. 22-11143, 2023 U.S. App. LEXIS 25085, at *13 (11th Cir. Sep. 21, 2023) (Pryor, C.J., concurring in denial of rehearing en banc).

490. And this Court must give the presumption of good faith to the legislature's districting efforts. Abbott, 138 S. Ct. at 2324.

491. As discussed below, Plaintiffs have provided almost no evidence connecting the admitted history of Georgia's past voting practices with the current redistricting plans. Nor have Plaintiffs provided evidence of more recent discrimination—the vast majority of their expert reports focus on events prior to the adoption of the Voting Rights Act in 1965.

492. Georgia's redistricting plans in 1971, 1981, 1991 and 2001 were drawn by Democrats. Tr. 1471:6-9.

493. At least one redistricting plan during those years was objected to by the Department of Justice under preclearance. Tr. 1471:10-13.

494. All three of the Republican drawn maps in 2011 were precleared by the Department of Justice on the first attempt. Tr. 1471:14-20.

495. The 2001 State Senate and State House plans drawn by Democrats were found unconstitutional by a three-judge court. Tr. 1471:23-1472:2.

496. The 2004 election in which Republicans took control of the state legislature was run on maps drawn by the federal court. Tr. 1472:3-6.

497. The Republican maps drawn in 2011 were never found to be illegal. Tr. 1472:16-17, 21-22.

498. Dr. Burton does not opine that the Republican legislature in Georgia is racist. Tr. 1474:2-4.

499. Dr. Ward did not testify or include in his Report any instance of racial violence in Georgia after 1970. Tr. 1360:1–15.

500. As discussed below in the third Senate Factor, the only evidence of recent claimed discrimination Plaintiffs have provided regarding SB 202. But this Court does not find that SB 202 continues any past historical discrimination in a way that impacts the redistricting plans here.

501. Unlike the case in Singleton v. Merrill, 582 F. Supp. 3d 924, 1020 (N.D. Ala. 2022), there have not been recent court findings of discriminatory intent in Georgia. See also League of Women Voters of Fla., 2023 U.S. App. LEXIS 25085, at *15-16 (Pryor, J., concurring in denial of rehearing en banc and discussing Allen's reliance on past history).

502. Thus, the Court finds that, even though Georgia has a history of race discrimination, this factor does not weigh heavily in favor of Plaintiffs because of the lack of evidence of recent discrimination.

c. Senate Factor Two: The extent to which voting the state or political subdivision is racially polarized.

503. The second Senate Factor reviews "the extent to which voting in the elections of the State or political subdivision is racially polarized." Wright, 979 F.3d at 1305 (quoting LULAC, 548 U.S. at 426).

504. This is not merely a restatement of the proof of the second and third Gingles precondition, but is a broader evaluation of the issues of polarized voting in the state. Nipper, 39 F.3d at 1524; Solomon, 221 F.3d at 1225.

505. Plaintiffs have only presented evidence that Black and white voters prefer different candidates, and otherwise say that race and partisanship are inseparable.

506. For example, Dr. Burton opines that "[o]ne cannot as a scientific matter separate partisanship from race in Georgia" and states that has been true since Reconstruction. Tr. 1466:24–1467:3.

507. Likewise, Dr. Jones concluded that "it's just not race. It's partisanship." Tr. 1205:4–8.

508. These opinions amount to a concession that Senate Factor 2 is not met in this case because the Eleventh Circuit has instructed that courts cannot "conflat[e] discrimination on the basis of party affiliation with discrimination on the basis of race." League of Women Voters, 66 F.4th at 924. By admitting that they

are unable to separate partisanship from race, Drs. Burton and Jones conflate the two in precisely the way this Court cannot.

509. In the Alpha Phi Alpha case, Dr. Handley relied primarily on racially contested elections. Tr. 2198:15–20.

510. Dr. Alford opined that the evidence provided by Dr. Handley did not show evidence of racially polarized voting. Tr. 2199:11–13.

511. Dr. Alford concluded, among other things, that Dr. Handley's decision to focus on racially contested election "reduces the ability to assess" racially polarized voting because "non-racially contested elections" are needed to determine whether polarization observed is occurring because of race or because of some other factor, like partisanship. Tr. 2199:14–24.

512. Dr. Handley also provided analysis on Democratic primaries, but she drastically overstates the degree of polarization in those elections. Tr. 2207:6–17.

513. The operative definition used by Dr. Handley for purposes of her conclusion that 55% of Democratic primaries she examined were racially polarized "simply is not a useful approach" and "casts far too broad a net to even come close to both the specific formulation of the Gingles tests and sort of… the spirit of what the [Gingles racially polarized voting] test is trying to establish for the court." Tr. 2204:4–8.

514. A look at just one of the primary elections analyzed by Dr. Handley suffices to demonstrate the problems with utilizing her definition of racially polarized voting. In Exhibit C6 of Dr. Handley's report, Dr. Handley identified the 2018 Democratic Primary for Governor as "racially polarized voting" contest. Tr. 935:10–936:6.

515. While Black voters had a clear candidate of choice in Stacey Abrams in this region, white voters were "not cohesive at all," casting their ballots at "essentially a 50/50 split" according to the EI RxC figure provided by Dr. Handley. Tr. 2205:1–10.

516. And in this contest Dr. Handley's confidence intervals for white voters' overlap the 50% figure with respect to both possible candidates of choice, which means that "we can't estimate with enough precision, not even close to enough precision to say what the preferred candidate [of white voters] is here." Tr. 2205:15–16, 936:7–18.

517. Dr. Handley's data here "shows white voters at 50.7 percent for Stacey Abrams. So, this analysis can't answer the question of which way that vote went… because the vote is so noncohesive we can't even establish a preferred candidate [of white voters]." Tr. 2205:17–21.

518. This evidence notwithstanding, Dr. Handley determined this contest was racially polarized for purposes of her flawed conclusion that 55% of Democratic primaries she analyzed were racially polarized. Tr. 936:16–18.

519. Dr. Alford not only sought to determine, as Plaintiffs' experts did, where the evidence showed an existence of race-based bloc voting patterns, but also to determine whether Plaintiffs' evidence demonstrates racial polarization as distinct from partisan polarization. Dr. Alford found the evidence "does tell us… **party** of the candidate is really important." Tr. 2181:6–10 (emphasis added).

520. Noting the demographic and voter behavior changes that have occurred since the original passage of the Voting Rights Act in 1965, and its later amendment in 1982, Dr. Alford flatly declared that "[Georgia] is not Alabama. [Georgia] also is not Georgia. This is not Georgia in the 1960s; just, frankly, it's not." Tr. 2182:9–12.

521. In fact, voter preferences and behavior have changed radically since the 1960s, when "the majority of Black voters in Georgia, if they got to vote, voted Democratic. But a substantial proportion… about 35 to 40 percent" vote Republican. But "that sentiment has evaporated over time." Tr. 2182:23–2183:3.

522. In the 1960s, we observe that "the race of the candidate matters a lot. As the judges in Gingles note, the race of the candidate matters. It matters in the primary it matters in the general." Id.

523. But in the contemporary Georgia data presented by Plaintiffs' experts, we observe that "race has no influence." Tr. 2184:20–21.

524. "These tables [offered by Dr. Handley]… don't address the issue of what the role of race is ultimately in the entire process. But what they show in these tables, for both experts, is not just the party as a bigger factor than race – to the extent we can diagnose the influence of a racial cue here from the candidates, it has no effect. It simply isn't a part of what's generating this partisan polarization." Tr. 2187:1–7.

525. "[A]ny district that is a majority Democratic district will elect the preferred candidate of minorities. It's a performing district for minorities. Any Democratic district." Tr. 2187:22–25.

526. Explaining the distinction between on the one hand, race as an explanation for bloc voting patterns, and on the other, party as the explanatory factor, Dr. Alford remarked that under the current observed voting behaviors of the electorate, "anything Republicans do to diminish Democratic districts in any way, by definition, will reduce the likelihood of candidates of choice of minorities being elected. And if that's because of the behavior of voters in the face of the race of candidates, then I think you've got to say that – where that plays enough of a role that it decides elections, where white Democrats in Georgia are not similarly situated to Black Democrats in Georgia, and white Republicans not similarly

situated to Black Republicans, that's where the Voting Rights Act becomes operative and important and constitutional. [But] if those two groups are similarly situated, it's party politics." Tr. 2193:5–17.

527. Based on the data provided by Dr. Handley, this Court simply cannot conclude the polarization is caused by anything other than partisan politics: "[T]his is the endpoint. Georgia is the endpoint. This is where you can say… the Voting Rights Act has been successful enough," and that declining in this case to find legally significant racially polarized voting means that the Voting Rights Act "could be [constitutionally] preserved." Tr. 2192:1–5 (Alford).

528. The data presented by Dr. Handley also does not include any statistical evidence tending to show "white voters from the Democratic primary are declining to support the Black-preferred candidate in the general election" in those instances where the white-preferred candidate is different from the Black-preferred candidate at the primary level. Tr. 2208:1–13.

529. Similarly, based on the analysis Dr. Alford performed for the Republican primaries, there is nothing "in the data in Dr. Handley's report that indicates that white Republican voters would be unwilling to vote for a Black-preferred candidate if that candidate was Republican." Tr. 2209:16–22.

530. While all experts agree that generally, racially contested elections featuring a Black candidate and at least one white candidate are the most probative

elections to examine, that probative value cannot be understood in isolation. Tr. 2222:7–23.

531. In fact, the increase in probative value of racially contested elections over single-race elections lies in "the ability to contrast them with the situations in which the Democratic candidate is white. In isolation, there's no variation and there's no probative value." Tr. 2223:4–8.

532. Dr. Alford agrees that one does not need to establish proof of the cause of voter behavior in a scientific sense in order to establish racially polarized voting. Tr. 2225:23–2226:1.

533. The extent of racially polarized voting in a jurisdiction is a separate and distinct inquiry from what is addressed by the second and third Gingles preconditions, which involves determining whether different races are cohesively supporting different candidates and whether the white majority usually votes as a bloc to defeat the minority preferred candidate.

534. To determine the extent to which voting in the jurisdiction is racially polarized, this Court defines racially polarized voting in the context of a Section 2 claim. This is important because none of experts in this case shared precisely the same definition. See Tr. 863:14–17 (Handley); Tr. 424:9–425:22 (Palmer); 2255:9–2259:23 (Alford).

535. Moreover, while the definitions used by the experts at trial are informative, how to define racially polarized voting is, at bottom, a legal definition, which this Court now turns to address.

536. Around the time of consideration and passage of the 1982 amendments to the Voting Rights Act, the term "racially polarized voting" was fairly well understood and the subject of little debate.

537. Indeed, the 1976 District Court decision in Bolden v. Mobile, which would eventually make its way to the Supreme Court and spark the call for amending Section 2, defined the term in two parts. First, the court stated that racial polarization occurs with "white voting for white and black for black if a white is opposed to a black, or if the race is between two white candidates and one candidate is identified with a favorable vote in the black wards, or identified with sponsoring particularized black needs." 423 F. Supp. 384, 388 (S.D. Ala. 1976). When these patterns are observed, "a white backlash occurs which usually results in the defeat of the black candidate or the white candidate identified with the blacks." Id.

538. This definition would later be approved by the 5th Circuit when it affirmed the District Court opinion. See Bolden v. Mobile, 571 F.2d 238, 243 (5th Cir. 1978) (citing with approval the district court's finding that "[n]o black had

achieved election to the city commission due, in part, to racially polarized voting of an acute nature.")

539. The Supreme Court, in turn, did nothing to question the legitimacy of the trial court's definition of racially polarized voting. Mobile v. Bolden, 446 U.S. 55, 64 (1980).

540. The result of the Supreme Court's decision led to the 1982 amendments to the VRA and the modification of Section 2 that effectively overturned the Supreme Court. Gingles, 478 U.S. at 35 ("[T]he amendment was largely a response to this Court's plurality opinion in Mobile v. Bolden, 446 U.S. 55 (1980)… to make clear that a violation [under Section 2] could be proved by showing discriminatory effect alone and to establish as the relevant legal standard the "results test," applied by this Court in White v. Regester, 412 U.S. 755 (1973), and by other federal courts before Bolden…").

541. But despite targeting the Supreme Court's decision in Bolden, nothing in the amendments nor the Senate Report explaining them suggests Congress understood the definition of "racial polarization" or "racially polarized voting" as anything other than what had been firmly established by the courts up to that point (i.e., the definition employed by the Bolden district court).

542. And retaining the "white backlash" component of the trial court test for racial polarization makes sense in the context of the amendments because it

faithfully adheres to the Supreme Court's analysis in Whitcomb v. Chavis, 403 U.S. 124 (1971) which the Senate Report also relied on in its efforts to return to the pre-Bolden legal standard, S. Rep. at 21-24. Whitcomb required a finding of "invidious discrimination" that could be observed in voting patterns and the way they interact with electoral system such that "[minority] residents have less opportunity" to participate in the system than do their white counterparts. 403 U.S. at 149. If this pattern is **not** observed, then what appears to be the discriminatory "cancel[ing] out" of Black voting power is likely "a mere euphemism for political defeat at the polls." Id. at 153.

543. Defining racially polarized voting in this way does not revive the intent test Congress sought to stamp out with the 1982 amendments. Rather, it simply anchors the results test in precedent and accomplishes what Justice O'Connor accuses the Gingles plurality opinion of failing to do: respecting "the balance struck by Congress in amending § 2" and preserving "the results test as described by this Court in Whitcomb and White." Gingles, 478 U.S. at 85 (O'Connor, J. concurring).

544. Despite the continuing focus on racial polarization in Section 2 cases, the Report of the Committee from the Senate Report to the 1982 mentions racial polarization just two times. One time is when it approvingly cites the factors considered by the Bolden District Court. See Senate Report, p. 24 at n. 88. And the

second time is when it is detailing the substance of Senate Factor 2. Id., p. 29. Neither instance suggests any departure from the meaning articulated by the Bolden district court.

545. When Congress designed the amendment specifically to overturn the Supreme Court, it declined to alter or refine the definition of racial polarization utilized by the courts at the time. Thus, there is nothing to suggest a departure from the interpretive maxim that "[w]ords must be given the meaning they had when the text was adopted." Antonin Scalia & Bryan Garner, Reading Law: The Interpretation of Legal Texts 78 (2012).

546. Moreover, the District Court in Gingles v. Edminsten, 590 F. Supp. 345 (E.D.N.C. 1984) (three-judge court), which would later become the seminal Supreme Court case interpreting Section 2, Thornburg v. Gingles, agreed with the definition of racially polarized voting established by the Bolden district court.

547. In finding racial polarization, the Gingles trial court noted that in "none of the elections, **primary or general**, did a black candidate receive a majority of white votes cast." 590 F. Supp. at 368 (emphasis added).

548. Moreover, "[o]n the average, 81.7% of white voters did not vote for any black candidate in the primary elections." Id.

549. And, crucially, "approximately two-thirds of [Democratic] white voters did not vote for black candidates in general elections even after the

candidate had won the Democratic primary and the only choice was to vote for a Republican or no one." Id.

550. This observed behavior of white Democratic voters refusing to vote for the Black candidate (or the Black-preferred white candidate) even when the only other option was a "a Republican or no one," is precisely the "white backlash" that the Bolden district court identified as a critical component of **racial** polarization. If the polarization occurred as a result of something more benign, like partisanship, there would be no "white backlash" observed and you would see white Democratic voters would coalesce around the Black or Black-preferred Democrat in the general election.

551. Finally, the Court notes that viewing racial polarization in this way in the wake of the plurality opinions in Gingles provides Senate Factor 2 with substantive meaning distinct from what the second and third Gingles preconditions already cover, which is part of the totality of circumstances inquiry the statute directs courts to undertake. 52 U.S.C. § 10301(b).

552. For purposes of determining liability under Section 2, this Court adopts the definition utilized by the Bolden district court and well-known to Congress at the time of consideration and adoption of the 1982 amendments. Not only must the data indicate that white voters vote cohesively in opposition to the Black-preferred candidate. But there also must be an observable "white backlash"

where the statistical or anecdotal evidence indicates that white voters are casting aside partisan labels and motivations in order to oppose Black candidates or Black-preferred candidates.

553. Applying that definition to the evidence in the record, it is clear that Senate Factor 2 weighs heavily in favor of Defendant.

554. First, while Plaintiffs have demonstrated that in general elections Black voters cohesively support candidates that a majority of white voters usually oppose, they have presented no credible evidence that such patterns are occurring "on account of race or color," as Section 2 requires. Since Senate Factor 2 concerns itself with the causes and explanations of purportedly racially polarized voting, the Plaintiffs have not met their burden on this factor. See Alabama State Conf. of NAACP, 612 F. Supp. 3d at 1305-06 (finding in favor of defendants on Senate Factor 2 where, among other things, "Plaintiffs' statistical evidence accounted only for the fact of racially polarized voting, not its cause"); see also Greater Birmingham Min., 992 F.3d at 1330 ("the challenged law must have caused the denial or abridgement of the right to vote on account of race").

555. Dr. Handley disclaimed any look at the causes of voting patterns she analyzed in her report. Tr. 934:20–25.

556. When Dr. Handley responded to questions from the Court regarding the distinction between partisanship and race, her answers amounted essentially

to restatements of the testimony provided by Dr. Burton and other historical experts offered by Plaintiffs in claiming that the two concepts cannot be disentangled. As has already been established, this amounts to a concession that Senate Factor 2 has not been met under the law of this Circuit. Tr. 885:6–9.

557. Dr. Alford used the data provided by Dr. Handley to conclude that race could not be causing or explaining the voting patterns observed. Indeed, to the extent race was identifiable in the data presented at all, it routinely had no observable effect on voter behavior. Instead, voter behavior followed, with remarkable stability across elections and across time, the partisan cue of the candidate. Tr. 2186:5–2187:7.

558. Where white candidates ran as Democrats, white voters generally supported the Republican candidate. APAX 5, pp. 33–78.

559. And there is no evidence that white Democrats refused to support the Black-preferred white candidate when the general election was held. Tr. 2208:1–13.

560. Where Black candidates ran as Democrats, white voters generally supported the Republican candidate at precisely the same levels. Tr. APAX 5, pp. 33–78.

561. And there is no evidence that white Democrats refused to support the Black Democrat when the general election was held. Tr. 2208:1–13.

562. Thus, Dr. Handley's primary data revealed that there was no identifiable pattern of "white backlash" in voting when Black-preferred candidates were selected as the Democratic nominee. Id.

563. The white voters voted for the Republican candidate at remarkably stable rates, whether the Democrat candidate was the Black-preferred candidate from the Democratic primary or the white-preferred candidate. APAX 5, pp. 33–78.

564. Dr. Alford's data reveals similar voter behavior in the Republican primary analysis he conducted. DX 8.

565. Indeed, white Republican voters and Black Republican voters had the same preferred candidate in Herschel Walker in the Republican primary. Tr. 2208:14–2209:9.

566. Similarly, Fitz Johnson ran unopposed for the Public Service Commission and received more than one million votes in the Republican primary. Jud. Not., pp. 10–11.

567. Accordingly, all Plaintiffs have failed their evidentiary burden to establish racially polarized voting for purposes of the Senate Factor 2 inquiry. "The 'ultimate burden' to prove that, under the totality of circumstances, the political process is not equally open to the minority group remains with the plaintiff."

Alabama State Conf. of NAACP, 612 F. Supp. 3d at 1250 (citing Askew v. City of Rome, 127 F. 3d 1355, 1375 (11th Cir. 1997).

568. This Court concludes the data provided by Dr. Handley does not demonstrate racially polarized voting because "the evidence provided by plaintiffs shows that – importantly, show that the race of the candidates is no longer an issue driving the behavior, the polarized behavior of voters in Georgia." Tr. 2256:16–20.

569. This is critical because this Court cannot determine that the challenged districts have "caused the denial or abridgement of the right to vote on account of race," Greater Birmingham Min., 992 F.3d at 1330, on evidence of partisan polarization alone.

570. Because Plaintiffs have only presented evidence consistent with partisan voting patterns in Georgia and nothing further, the Court determines that this factor weighs heavily in favor of Defendant.

d. Senate Factor Three: Voting practices in Georgia.

571. Senate Factor Three reviews "the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting." Wright, 979 F.3d at 1295 (quoting Gingles, 478 U.S. at 44–45).

572. While Plaintiffs presented some evidence on this point, they did not explain how these particular voting practices affect Black voters today, and as discussed below, attempted to conduct a mini-trial of SB 202, which is currently the subject of lawsuits in another Court in this district and which has not resulted in any finding of racial discrimination despite years of litigation.

573. A Black Georgia voter in 2023 is not subject to a poll tax. Tr. 1355:8–10.

574. A Black Georgia voter in 2023 is able to vote in any primary, regardless of his/her race. Tr. 1355:11–13.

575. A Black Georgia voter in 2023 is not subject to a grandfather clause. Tr. 1355:14–16.

576. A Black Georgia voter in 2023 is not subject to a good character clause. Tr. 1355:17–19.

577. A Black Georgia voter in 2023 has the assurance of voting by secret ballot. Tr. 1355:20–22.

578. In the 1994 Congressional election, based on 1990 redistricting by a Democratic General Assembly, Republicans won 8 of Georgia's 11 House seats. Tr. 1357:5–12.

579. There was litigation in the 1990s and 2000s over Democratic-drawn redistricting maps, which the Courts overturned and substituted court-drawn maps in their place. Tr. 1357:13–17.

580. No Republican-enacted redistricting plans for the Georgia House or Senate were found illegal by any Court. Tr. 1357:18–21.

581. Under Georgia's current majority vote requirement, Democrats Jon Ossoff and Raphael Warnock were elected to the U.S. Senate in the January 2021 runoff election. Tr. 1357:22–1358:2.

582. Senator David Perdue received more votes than his challenger, Jon Ossoff, in the November 2020 general election, but then lost to Mr. Ossoff in the January 2021 runoff. Tr. 1358:3–7.

583. Changes to precinct locations have been upheld by federal courts in Georgia. Tr. 1358:11–13.

584. Georgia's voter ID requirements for in-person voters have been upheld by federal courts in Georgia. Tr. 1358:14–16.

585. Photo ID was adopted in Georgia in 2005 and precleared by the Department of Justice. Tr. 1358:17–19.

586. Georgia's voter list maintenance process has been upheld as constitutional by federal courts in Georgia. Tr. 1358:20–22.

587. Since Shelby County, 570 U.S. at 529, Georgia has implemented automatic voter registration for anyone applying for a driver's license. Tr. 1359:1–6.

588. Since Shelby County, 570 U.S. at 529, Georgia has expanded the number of required early voting days. Tr. 1359:11–14.

589. Georgia has made changes that made voter registration more widely available. Tr. 1267:17–19.

590. The U.S. Supreme Court has found preventing voter fraud to be a valid interest for state government to pursue. Tr. 1359:15–18.

591. Georgia's ex-felon right restoration is less strict than other states. Tr. 1264:10–12, 16–18.

592. SB 202 expands the number of early voting days in Georgia. Tr. 1476:7–9.

593. Georgia has no-excuse absentee voting. Tr. 1476:10–13.

594. Georgia experienced record turnout for the midterm election in 2022. Tr. 1480:3–6.

595. Despite testimony regarding the impact of Georgia laws on Mayor Nancy Dennard, Dr. Burton did not investigate and was not aware that a white candidate named Judge Carlton Vines was also prosecuted for the same conduct

at almost the same time. Tr. 1483:24–1484:7; Fair Fight Action, 634 F. Supp. 3d at 1247.

596. In his report, Dr. Burton discusses an investigation of the New Georgia Project in 2014 by then-Secretary of State Kemp but did not review the primary sources, namely, the State Election Board documentation concerning the hearing or the transcripts of those proceedings. Tr. 1485:2–21; Fair Fight Action, 634 F. Supp. 3d at 1175–76.

597. Dr. Burton relied only on secondary sources, such as newspaper articles, and was not aware that the New Georgia Project's contractors had violated election law and those claims were turned over to the Attorney General for prosecution. Tr. 1484:24–1485:12.

598. A performance review panel was convened of Fulton County's handling of its elections with the assistance of the Carter Center. Tr. 1491:5–11.

599. The review panel found that Fulton County had a longstanding history of election administration issues going back decades, undercutting Plaintiffs' claims that the focus on Fulton County was a result of race. Tr. 1491:14–18.

600. In considering the current election practices in Georgia, the Court determines reviews the entirety of the landscape involving voting access. Fair Fight Action, 634 F. Supp. 3d at 1251.

601. Voters in Georgia may register to vote in numerous ways, including by paper registration, online, and via automatic voter registration at the Department of Driver Services. Tr. 2263:12–20.

602. Georgians that lack access to a computer or car can still register to vote via the Department of Driver Services without getting a driver's license, so it is not necessary for a voter to print any sort of form in order to register. Tr. 2263:21–2264:9.

603. If a person lacks a photo ID and cannot afford one, the Department of Driver Services offers free, state-issued, identification cards for voting purposes. Tr. 2264:15–22.

604. The provisions of SB 202 were largely crafted in response to the problems encountered in the 2020 election, which involved the use of new election equipment, dealing with lessons learned from the initial onset of the COVID-19 pandemic, and the first time nine-week general-election runoffs were necessary since the runoff law changed in 2014. Tr. 2265:3–11.

605. The Office of the Secretary of State of Georgia received numerous complaints following the 2020 elections, which led to many provisions of SB 202. Tr. 2266:4–18.

606. SB 202 changed the deadline to receive absentee ballot applications from counties from four days before the election to eleven days. This was due in

part to the logistical challenges the four-day deadline proposed, particularly as ballot application requests spiked during the pandemic. Tr. 2271:9–2272:17.

607. SB 202 also represented the first time the Georgia legislature mandated counties provide drop boxes as a means for absentee voters to turn in their ballots, because the emergency rule provision enacted by the State Election Board during the pandemic was the first time any drop boxes were permitted in Georgia elections. Tr. 2273:4–8.

608. Many aspects of the emergency rules regarding drop boxes proved challenging or unworkable during the 2020 elections. Tr. 2273:16–19.

609. The Secretary's Office found the video surveillance to be problematic for a number of reasons, including some counties' general failure to have it functional all the time it needed to be. Also burdensome was the fact that individual Georgians took security of the drop boxes into their own hands at times, which created safety concerns for both election workers and voters who perceived their presence as a potential safety issue. Tr. 2275:2–19.

610. Following the passage of SB 202, the voter intimidation complaints around drop boxes no longer occurred because the drop boxes were placed inside secure early voting locations and county headquarters. Additionally, Georgia moved from video surveillance to human surveillance, which led to less concerns of election tampering. Tr. 2275:20–2276:11.

611. Georgia compares very favorably to other states in terms of voter registration rates. In 2016, Georgia became just the second state in the union to implement automatic voter registration and the results have been a resounding success, with voter registration rates improving from 78% of the eligible population registered in 2016 to 98% by 2020. Tr. 2277:25–2278:11.

612. The state of Georgia makes it very easy to register to vote, and very easy to vote. Tr. 2281:1–7.

613. In considering all of the foregoing issues, the Court determines that Georgia's voting practices do not enhance discrimination against Black voters. It is easy to register and to vote in Georgia, and SB 202 has not been the subject of any final finding of racial discrimination by any court. Further, this Court cannot determine on the evidence before it that SB 202 standing alone shows proof of continuing discrimination.

614. Furthermore, many of the past factors Gingles identified are not applicable in Georgia or have assisted Black voters, including the majority-vote requirement leading directly to the election of the Black-preferred candidate, Sen. Ossoff.

615. As a result, this Court determines that Senate Factor Three weighs heavily in favor of Defendant.

e. Senate Factor Five:[8] Socioeconomic disparities.

616. Senate Factor Five considers disparities between Black and white voters and the impact on Black voter participation.

617. As this Court previously found,

> The Eleventh Circuit has 'recognized in binding precedent that "disproportionate educational, employment, income level, and living conditions arising from past discrimination tend to depress minority political participation."' Wright, 979 F.3d at 1294 (quoting Marengo Cnty. Comm'n, 731 F.2d at 1568). 'Where these conditions are shown, and where the level of black participation is depressed, plaintiffs need not prove any further causal nexus between their disparate socio-economic status and the depressed level of political participation.' Id. (quoting Marengo Cnty., 731 F.2d at 1568-69); United States v. Dallas Cnty. Comm'n, 739 F.2d 1529, 1537 (11th Cir. 1984) ('Once lower socio-economic status of [B]lacks has been shown, there is no need to show the causal link of this lower status on political participation.')).

Alpha Phi Alpha, 587 F. Supp. 3d at 1317.

618. While Plaintiffs presented evidence of disparities primarily based on Census data, the Court determines that these disparities "are more generalized indicators of the status of minority life in Georgia." Fair Fight Action, 634 F. Supp. 3d at 1250.

619. This Court further recognizes that the Eleventh Circuit does not require a causal link after showing of a disparity, but this Court will consider the

[8] Senate Factor Four, access to a candidate slating process, is not utilized in Georgia and thus is not at issue in this case. Alpha Phi Alpha, 587 F. Supp. 3d at 1317.

amount of weight those disparities require given the lack of sufficient connection to the challenged plans. Id.

620. The success of Black and Black-preferred candidates, discussed below, is also relevant to the weight given to this factor. And voter turnout also weighs heavily on the Court's consideration of this factor.

621. Dr. Ward testified that the rate of voter registration and the existence of voter suppression are connected. Tr. 1361:17–20.

622. Dr. Ward cited a study by Bullock & Gaddie that Georgia voter registration for Black voters had caught up to voter registration for white voters by at least the early 2000s. Tr. 1362:10–15; Alpha Ex. 4, Ward Report (Dec. 5, 2022), at 19 & n.54.

623. Dr. Ward admits that, in addition to race, socioeconomic status and education level affect party preference in Georgia. Tr. 1363:19–22.

624. Dr. Burch did not include the Secretary of State categories of Asian, Native American, Unknown or Other in her turnout calculations, limiting their utility for the Court. Tr. 1102:21–25

625. Dr. Burch acknowledged that Georgia's voter registration rate was high based on her research and did not contest that the U.S. Election Assistance Commission's eligible voter registration rate for Georgia was 95%. Tr. 1107:24–1108:2; 1108:20–23.

626. Dr. Burch's use of voting age population in her calculations includes individuals who are not eligible to register such as felons and individuals who did not choose to vote. Tr. 1109:20–24.

627. Dr. Burch's analysis was based on the county clusters given to her by the plaintiffs' attorneys. Tr. 1109:25–1110:5.

628. Upon instruction of counsel, Clayton, Fayette, Henry, Lamar, Pike and Spalding Counties were counted twice for the 2020 and 2022 general elections. Tr. 1110:15–1111:2.

629. Dr. Burch does not know why counsel instructed her to place those counties in two county clusters. Tr. 1111:4–7

630. Plaintiffs' counsel instructed her to include Jasper County in both the Southeast Atlanta and East Central cluster categories. Tr. 1112:2–4.

631. Upon instruction of counsel, Dr. Burch included Putnam County in the Southeast Atlanta and East Central categories without knowing if Putnam County is in the Census' Metro Atlanta metropolitan statistical area. Tr. 1112:6–12.

632. Dr. Burch agreed that the percentage difference in voter turnout depends on what counties are included in each cluster. Tr. 1112:16–19.

633. Plaintiffs' counsel instructed Dr. Burch what counties to include in each cluster category. Tr. 1112:21–23.

634. As a result, Dr. Burch's analysis of various clusters is of limited utility.

635. Dr. Burch did not review the turnout rates of elections in 2012, 2014, 2016 and 2018. Tr. 1112:24–1113:6.

636. Dr. Burch analyzed only the general elections in 2020 and 2022 and did not analyze any runoffs. Tr. 1113:7–11.

637. The lack of overall historical analysis of past elections also limits the usefulness of Dr. Burch's data.

638. When looking at the turnout differentials, Dr. Burch was just reporting data and not making any causal analysis. Tr. 1113:15–25.

639. Dr. Burch admitted that what candidates are on the ballot can make a difference in a voter's motivation to vote. Tr. 1114:1–8.

640. Dr. Burch did not analyze whether candidate quality had an impact on turnout rates in 2020 and 2022. Tr. 1114:20–22.

641. Dr. Burch did not analyze whether Black-preferred candidates prevailed in the elections in November 2020 and 2022 or for the runoffs. Tr. 1114:23–1115:6.

642. Dr. Burch did not take into consideration Georgia's automatic voter registration, no-excuse absentee voting, and mandated weekend and early voting periods in account in her analysis—in fact, she did not consider Georgia's election procedures at all. Tr. 1115:21–1116:10.

643. Dr. Burch did not analyze turnout rates of Black voters in other states and compare their laws relating to voting access. Tr. 1120:24–1121:2.

644. Dr. Burch's analysis of the financial considerations that affect voting was the opportunity cost associated with voting. Tr. 1123:11–15.

645. Dr. Burch agreed that voters of low socioeconomic status have access to early voting or no-excuse absentee voting. Tr. 1124:16–22.

646. Dr. Burch did not opine on the extent to which socioeconomic factors affect voter turnout, just that a correlation exists. Tr. 1125:23–1126:2.

647. Black voters with bachelor's degrees, graduate degrees, and less than high school education vote at a higher rate than white voters in the same categories. Tr. 1126:11–18.

648. Dr. Burch's analysis of felony disenfranchisement compared black voting age population to Georgia's overall population which includes people of every race and not just Black individuals. Tr. 1129:19–1130:7.

649. Dr. Burch agrees that Georgia's re-registration rule after completion of felony sentences is less strict than other states. Tr. 1130:11–18.

650. Further, Plaintiffs' own testimony demonstrates the lack of inability to participate based on socioeconomic factors.

651. Plaintiff Phil Brown has never been prohibited from participating in the political process on account of his race, nor has he ever been prohibited from

participating in Georgia politics due to a lack of education, employment opportunities, or healthcare services. APA Doc. No. [219] at 60:15–61:5, 64:8–16.

652. Plaintiff Katie Bailey Glenn has never been prohibited from participating in the political process on account of her race, nor has she ever been prohibited from participating in Georgia politics due to a lack of education, employment opportunities, or healthcare services. APA Doc. No. [218] at 47:20–23, 52:10–21.

653. Plaintiff Eric Woods has never been prohibited from participating in the political process on account of his race, nor has he ever been prohibited from participating in Georgia politics due to a lack of education, employment opportunities, or healthcare services. APA Doc. No. [217] at 45:18–46:2, 52:1–12.

654. Plaintiff Janice Stewart has never been prohibited from participating in the political process on account of her race, nor has she ever been prohibited from participating in Georgia politics due to a lack of education, employment opportunities, or healthcare services. APA Doc. No. [220] at 38:6–69:4, 41:16–42:1.

655. As a result of the foregoing, while the Court does not require Plaintiffs to show a causal link under Eleventh Circuit precedent, it finds that this factor does not weigh heavily in favor of Plaintiffs. Black voters can and do participate in elections in Georgia and succeed in electing candidates of choice.

f. Senate Factor Six: Racial appeals.

656. Senate Factor Six considers "whether political campaigns in the area are characterized by subtle or overt racial appeals." Wright, 979 F.3d at 1296 (quoting Gingles, 478 U.S. at 45).

657. There are two important pieces of this analysis: (1) the racial appeals have to characterize political campaigns and (2) the racial appeals have to be from campaigns "in the area." Id.

658. Thus, Plaintiffs must do more than just present some evidence of racial appeals and they must do more than just present evidence of racial appeals for campaigns that are not related to the challenged districts. See, e.g., Rose v. Raffensperger, 619 F. Supp. 3d 1241, 1266 (N.D. Ga. 2022).

659. While Plaintiffs presented some evidence of racial appeals in statewide campaigns, they did not present any evidence of such appeals in legislative or Congressional elections.

660. Dr. Ward never conducted any sort of statistical analysis of what he says are racial appeals versus the relative success of candidates using them. Tr. 1364:17–20.

661. Dr. Jones describes a Herschel Walker ad as a racial appeal to white voters, when that same ad includes a statement from President Biden claiming that an individual is not Black if they do not support him. Tr. 1199:12–24; APAX 266.

662. Dr. Jones acknowledges that the Herschel Walker ad includes Democrats talking about racism. Tr. 1198:1–1199:10.

663. Dr. Jones believes the parties are racially polarized, which is why she believes racial appeals are used today. Tr. 1199:25–1200:7.

664. The 2018 fake robocall impersonating Oprah Winfrey to criticize Georgia Democratic gubernatorial candidate Stacey Abrams originated outside of Georgia and only resulted in 583 calls to individuals in Georgia. Tr. 1268:24–1271:18; DX 59.

665. Dr. Jones agreed that racial appeals did not prevent Sen. Warnock from being elected. Tr. 1271:20–23.

666. Thus, while Plaintiffs have presented some evidence of racial appeals, they have not presented evidence that those appeals characterize Georgia elections, especially in the elections to offices they are challenging in this case. As a result, this factor weighs in favor of Defendant.

g. Senate Factor Seven: Extent of election of Black officials.

667. Senate Factor Seven "focuses on 'the extent to which members of the minority group have been elected to public office in the jurisdiction.'" Wright, 979 F.3d at 1295 (quoting LULAC, 548 U.S. at 426).

668. This factor switches the Court's review from review of election of candidates preferred by Black voters to election of Black candidates. Id.

669. While Plaintiffs have presented some evidence of lack of success historically, the Court recognizes a number of recent successes of Black candidates in Georgia.

670. Dr. Jones only evaluated the success of Black candidates and not the success of Black-preferred candidates when analyzing access to the state's electoral system. Tr. 1275:4–11.

671. Dr. Jones believes that, if Black voters had fair and equal access in Georgia, close to 50% of Georgia legislators would be Black individuals. Tr. 1276:11–15, 1278:15–20, 1279:10–12.

672. Four Black individuals have been elected to statewide partisan office in Georgia: Michael Thurmond, Thurbert Baker, David Burgess, and Raphael Warnock. Stip. ¶ 361.

673. Nine Black individuals have been elected to statewide nonpartisan office in Georgia. Stip. ¶ 362.

674. Five Black individuals serve in Congress from Georgia's current Congressional districts. Stip. ¶ 359.

675. The dataset underlying the tables Dr. Burton used in his analysis of the success of black candidates for statewide office in the South from 1989 through

2018, six of the eleven successes by Black candidates were from Georgia. Tr. 1467:17-25, 1468:9-17.

676. Scholars that Dr. Burton relied on in his report concluded that Georgia is a growth state in which Black candidates are now competitive and that the electoral prospects of Black statewide candidates in Georgia are promising. Tr. 70:5-7, 12-13, 17-21.

677. Scholars Dr. Burton relies on conclude that Black statewide candidates are now competitive in Georgia. Tr. 1469:14-22.

678. Dr. Burton reservedly agrees that Black statewide candidates are now competitive in Georgia and that the electoral prospects of Black statewide candidates in Georgia are promising. Tr. 1468:18-1471:2.

679. Congresswoman Lucy McBath is a Black woman who was elected from a majority-white district, including in an election when she defeated a white incumbent. Jud. Not., pp. 9–11; Stip. ¶ 167, APA Cooper Report Ex. F.

680. Senator Raphael Warnock has won multiple statewide elections in Georgia, including in a race against another Black man in 2022. Jud. Not., p. 11.

681. The general election Public Service Commission race that was cancelled in 2022 was between a Black Republican and a Black Democrat. Tr. 1258:10–21.

682. Overall, the evidence presented on this factor weighs in favor of Defendant. In Georgia, Black officials have been elected to offices, which means this does not support a finding of vote dilution. Marengo Cnty. Comm'n, 731 F.2d at 1571. Instead of Black candidates facing barriers to participation, the evidence shows that Black candidates can and do succeed in Georgia elections.

h. Senate Factor Eight: Responsiveness to particularized needs.

683. Senate Factor Eight considers whether elected officials are responsive to the particularized needs of Black voters. A lack of responsiveness is "evidence that minorities have insufficient political influence to ensure that their desires are considered by those in power." Marengo Cnty. Comm'n, 731 F.2d at 1572.

684. Plaintiffs have relied on socioeconomic data in support of this factor, claiming that disparities between Black and white individuals demonstrates a lack of responsiveness because those needs would otherwise be met. But this is insufficient for this Senate factor. Greater Birmingham Min., 992 F.3d at 1333–34. Further, Plaintiffs have only presented what they say are needs of the Black community based on partisanship or socioeconomic issues, not on issues unique to Black voters. Rose, 619 F. Supp. 3d at 1267 ("something more than an outsized effect correlated with race" is required).

685. Dr. Burch stated that because the racial gap in socioeconomic status in incarceration and health persists, state officials are not responsive to the needs of minority communities if they do not alleviate the issue. Tr. 1131:6–12.

686. Dr. Burch's conclusion that official are not responsive to minority needs is based only on the fact that certain bills pertaining to education spending, Medicaid expansion and felony disenfranchisement were not passed. Tr. 1132:21–1133:2.

687. Dr. Burch does not identify any Georgia legislator who has been non-responsive to the needs of Blacks. Tr. 1133:18-20.

688. Plaintiffs relied on scores of members of Congress from Georgia on the NAACP's Civil Rights Federal Legislative Report card from 2017 to 2018 for lack of responsiveness to the needs of Black voters. Tr. 1491:23–1492:9; DX 107.

689. But a review of that scorecard demonstrates that it includes a number of partisan priorities, including confirmations of Supreme Court Justices and cabinet officials and votes on partisan legislative priorities as counting against that members' civil rights record. Tr. 1492:20–1493:12, 1493:18–22. As a result, this card does not demonstrate unique needs of Black voters unrelated to partisanship to which elected officials have been unresponsive.

690. Dr. Evans agrees that issues with healthcare access, education, property taxes, and gun safety applies equally to everybody, not just Black voters. Tr. 639:24-640:25.

691. The individual Plaintiffs' own testimony underscores the partisan nature of the claims in this case, with each individual plaintiff identifying and supporting Democratic candidates instead of Republican candidates.

692. Plaintiff Phil Brown has considered himself a Democrat since he began voting and generally supports Democratic candidates. APA Doc. No. [219] at 36:7–16, 37:10–21.

693. Plaintiff Katie Bailey Glenn considers herself a Democrat, has been involved in Democratic party politics, and generally supports Democratic candidates. APA Doc. No. [218] at 25:5–18, 27:11–13.

694. Plaintiff Eric Woods has considered himself a Democrat since he began voting and generally supports Democratic candidates. APA Doc. No. [217] at 27:13–19, 28:19–29:23.

695. Plaintiff Janice Stewart has considered herself a Democrat since she began voting and generally supports Democratic candidates. APA Doc. No. [220] at 25:11–16.

696. The Court finds the evidence on this factor weighs heavily in favor of Defendant because of Plaintiffs' complete lack of evidence of particularized needs

of Black voters to which legislators and members of Congress have been unresponsive. Plaintiffs' evidence underscores the partisan nature of this case, with the primary complaints about issues Democrats have been unsuccessful in passing as opposed to needs unique to Black voters.

i. Senate Factor Nine: Justifications for enacted plans.

697. The "final Senate Factor considers whether the policy underlying Georgia's use of the voting standard, practice, or procedure at issue is 'tenuous.'" Rose, 619 F. Supp. 3d at 1267 (quoting Senate Report at 29, 1982 USCCAN 207).

698. Defendant presented extensive evidence regarding the drawing process of the enacted plans that supports a finding that the process used and justifications for the creation of the districts was not tenuous.

699. A review of the enacted plans and Mr. Morgan's illustrative plans demonstrates an effort to comply with Section 2, a lack of any evidence of packing voters in districts, and a partisan focus on the mapdrawing process, which is permissible.

700. "Under our cases, the States retain a flexibility that federal courts enforcing § 2 lack, both insofar as they may avoid strict scrutiny altogether by respecting their own traditional districting principles, and insofar as deference is due to their reasonable fears of, and to their reasonable efforts to avoid, § 2 liability." Bush v. Vera, 517 U.S. 952, 978 (1996).

701. The Court now turns to a review of the unrebutted evidence regarding the creation of the enacted plans.

702. The 2021 enacted state Senate plan began with the creation of a blind map that balanced population that then could be modified based on input from the chair of the relevant committee. Tr. 1621:9–13.

703. When creating the 2021 enacted state Senate plan, one district had to move from South Georgia to North Georgia based on population growth, but a member had already announced a run for statewide office, allowing the collapse of that particular district without otherwise affecting incumbents. Tr. 1624:14–1625:9.

704. Senator John Kennedy, Chair of the Senate Reapportionment and Redistricting Committee, worked with Ms. Wright to finalize the state Senate plan in 2021 and asked questions about the political performance of districts. Tr. 1625:10–15.

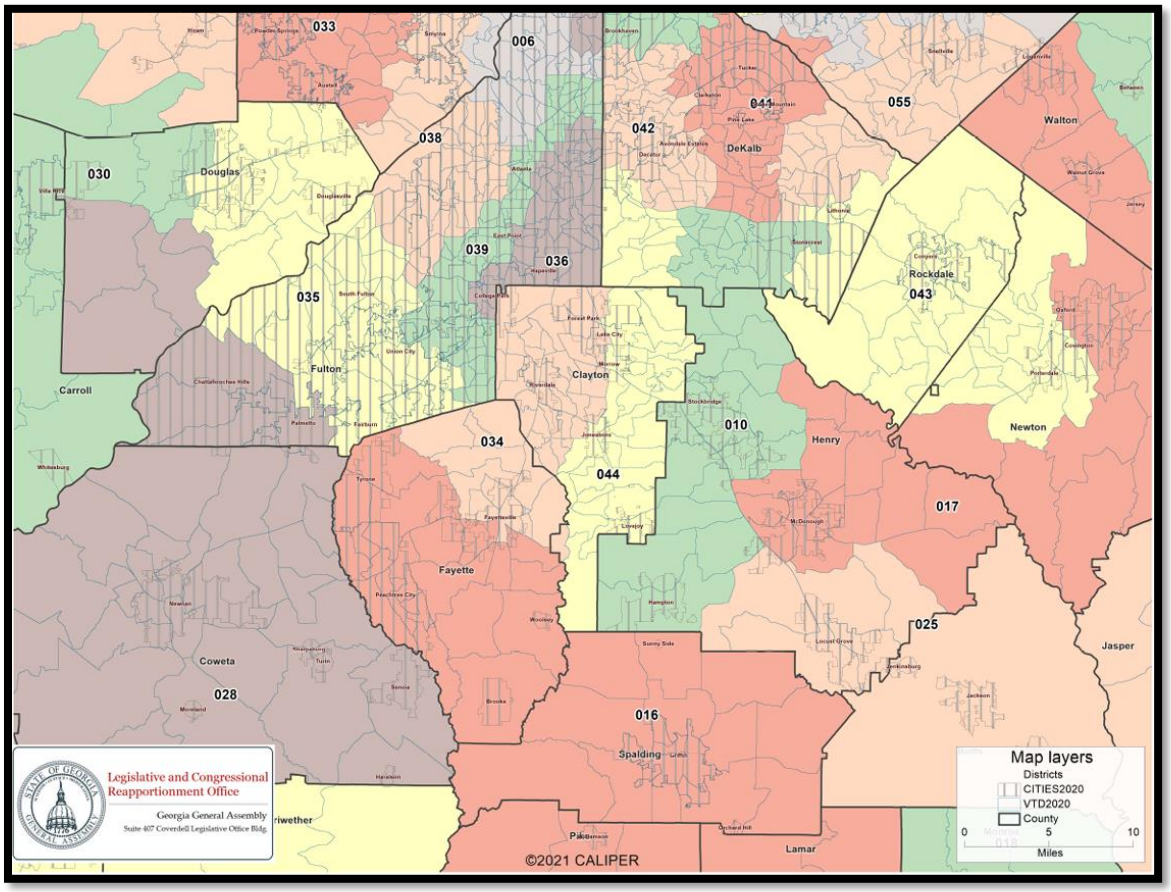
705. The partisan nature of the plans was a reason why at least some Democratic members opposed them. Grant Doc. No. [188] at 30:7–31:13.

706. The enacted 2021 state Senate plan included changes requested by Democratic members of the General Assembly. Tr. 1625:16–1626:1.

707. Ms. Wright relied on information she heard from all of the public hearings in the creation of the 2021 enacted state Senate plan. Tr. 1626:2–10.

708. Political performance was an important consideration in the design of the 2021 enacted state Senate plan. Tr. 1626:14–17.

709. Ms. Wright explained the creation of enacted Senate District 28 based on population and pressure from District 30, which the Senate majority leader represented.



Tr. 1627:14–1628:12; DX 186, p. 2.

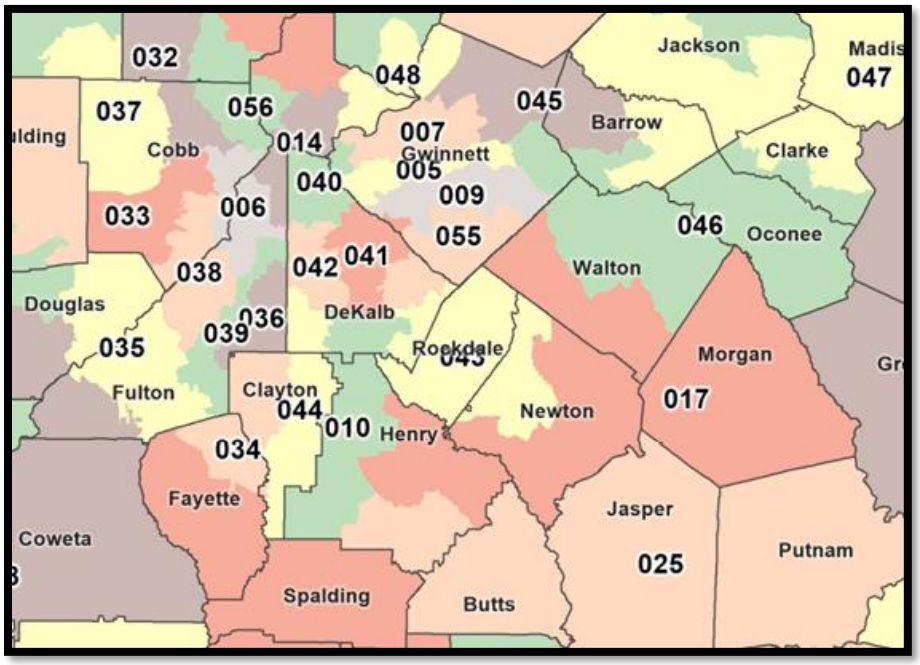
710. Ms. Wright explained that enacted Senate District 16 was configured by keeping Fayette County connected with Spalding, Pike, and Lamar, which was a longstanding connection of counties. Tr. 1629:5–18.

711. Ms. Wright explained that enacted Senate District 34 maintained the longtime division of Clayton County and largely maintained the cores of the prior districts. Tr. 1629:19–1630:7.

712. Ms. Wright explained that enacted Senate District 10 maintained the district core and the connections between north Henry and south DeKalb Counties. Tr. 1630:11–22.

713. Enacted Senate Districts 10, 34, and 44 all largely maintained prior district cores and incumbents' requests that could be accommodated. Tr. 1630:11–1632:3.

714. Ms. Wright explained that enacted Senate District 17's configuration was driven by political considerations and that it largely maintained the core of the prior District 17.



Tr. 1632:7–22; DX 186, p. 1.

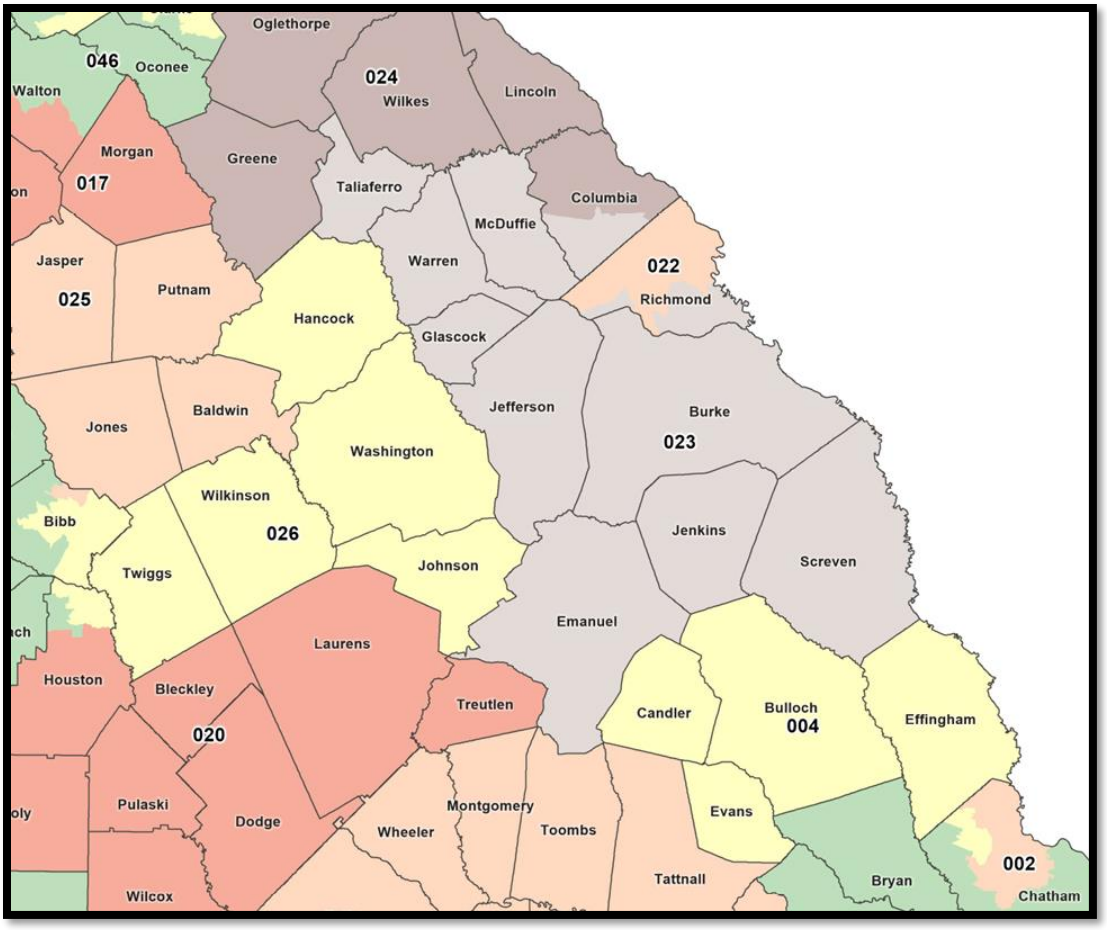
715. Ms. Wright explained that enacted Senate District 25 was part of the configuration of enacted Senate District 17, making Morgan County whole and creating a district the incumbent in Senate District 17 could win based on political performance data. Tr. 1632:7–1633:9, 1690:23–1691:9.

716. Ms. Wright explained there are connections between Butts and Jasper Counties centered on Lake Jackson, which is kept together in enacted Senate District 25, along with keeping a connection between individuals in the Locust Grove area with Butts County. Tr. 1633:10–1634:12.

717. Ms. Wright explained that Senate District 22 has long been located solely within Richmond County. Tr. 1634:19–1635:12.

718. Ms. Wright explained that enacted Senate District 22 is representative of the Augusta community and it was continued as being a majority-Black district in Richmond County. Tr. 1635:18–1636:4.

719. Ms. Wright explained that enacted Senate District 23 maintained its prior core and unsplit Emanuel County, even though many counties were lower in population.



Tr. 1636:5–17; DX 186, p. 1.

720. Ms. Wright explained that enacted Senate District 23 included counties that were largely connected to Augusta, with its western boundary as the Ogeechee River for most of the length of the district. Tr. 1639:9–1640:1.

721. Ms. Wright explained that enacted Senate District 26 included the past configuration of moving from Bibb County into Washington and Hancock Counties and was able to make Jones County whole, which helped given the shorter timeline to implement redistricting plans for the 2022 elections. Tr. 1640:2–1641:3.

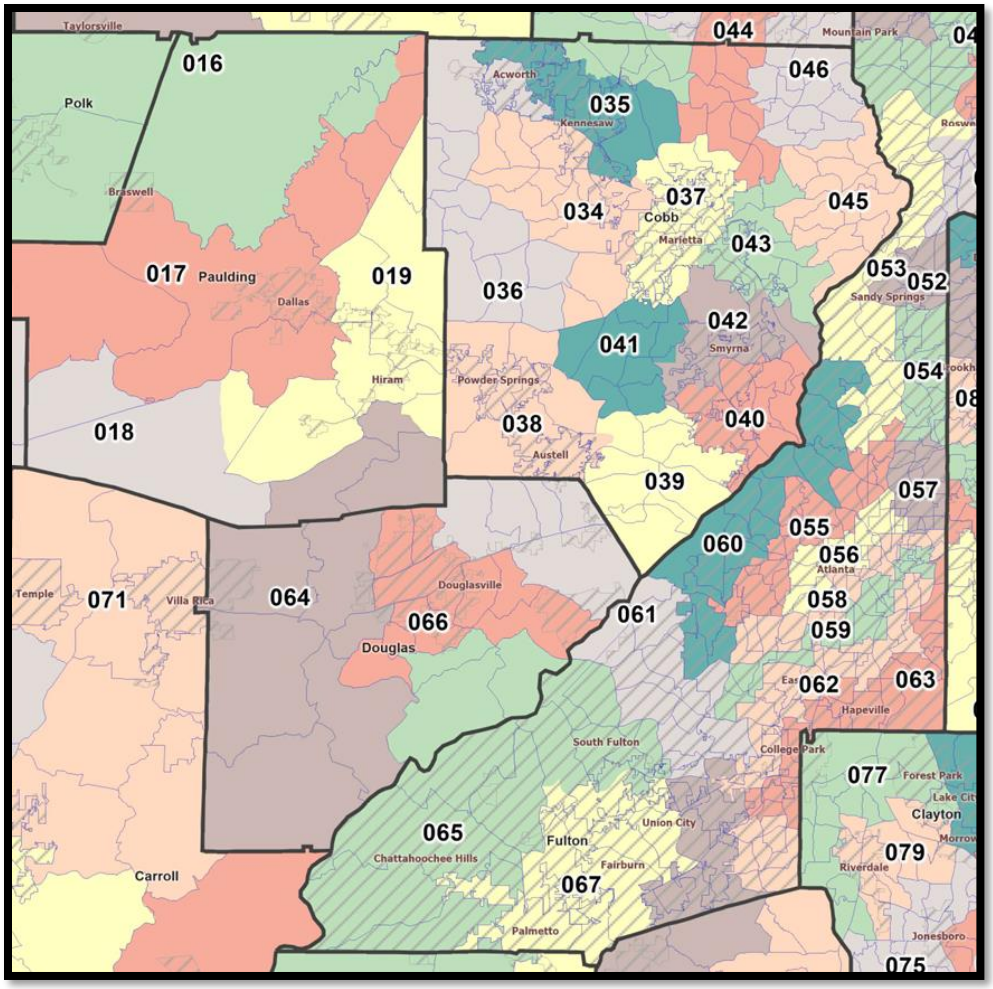
722. The 2021 enacted state House plan began with the creation of a blind map that balanced population that then could be modified based on input from the chair of the relevant committee. Tr. 1641:7–23.

723. Representative Bonnie Rich, Chair of the House Legislative and Congressional Reapportionment Committee, worked with Ms. Wright to finalize the state House plan in 2021 and asked questions about the political performance of districts. Tr. 1641:24–1642:1, 1642:23–1643:10.

724. Ms. Wright relied on information she heard from all of the public hearings in the creation of the 2021 enacted state House plan. Tr. 1643:11–1646:21.

725. Political performance was an important consideration in the design of the 2021 enacted state House plan. Tr. 1647:5–18.

726. Ms. Wright explained that the enacted state House districts in Cobb County were configured to maintain the county boundary line on all sides except for the north side of the County.



Tr. 1648:10–24; DX 187, p. 2.

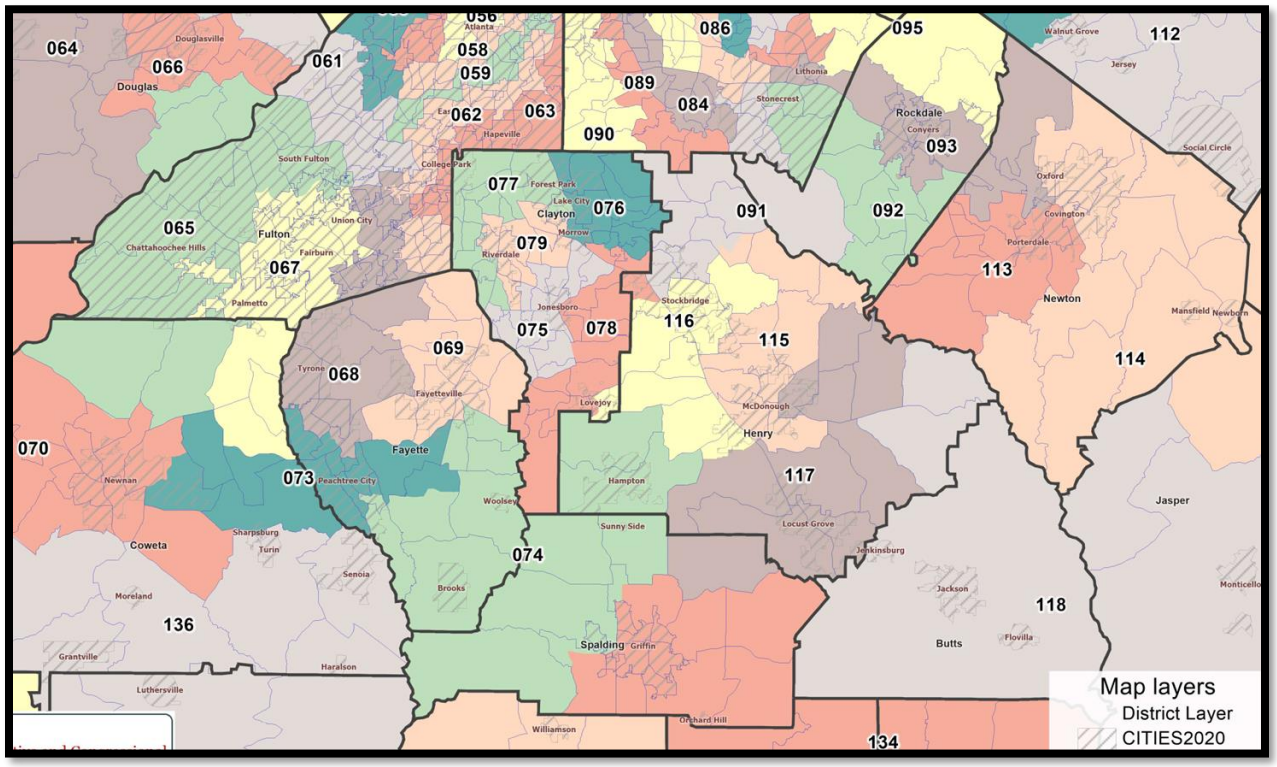
727. Ms. Wright explained that the configurations of enacted House Districts 61, 64, and 65 largely matched the prior configuration, with District 64 including the western side of Douglas and Paulding, while Districts 61 and 65 ran from Douglas into Fulton Counties. Tr. 1648:25–1649:20.

728. Enacted House District 67 was a new majority-Black district added on the 2021 enacted plan from the prior plan. Tr. 1649:21–1650:6.

729. Ms. Wright explained the political reasons and population growth that drove the creation of District 67 as a new majority-Black district, not just race alone. Tr. 1650:8–25.

730. The creation of enacted House District 67 as a new majority-Black district resulted in an elongated north-south shape. Tr. 1651:2–13.

731. Ms. Wright explained that enacted House District 73 includes Coweta and Fayette Counties, because they commonly share resources, and puts a large portion of Peachtree City in the district.



Tr. 1656:8–23; DX 187, p. 2.

732. Ms. Wright explained that enacted House District 74 included similar rural areas on Spalding, South Fayette, and Hampton, Georgia. Tr. 1651:19–1652:8.

733. Ms. Wright explained that the enacted House plan maintained five districts in Clayton County and the only reason the county boundary was crossed into Henry County was because an incumbent lived just across the county line. Tr. 1652:9–1653:15.

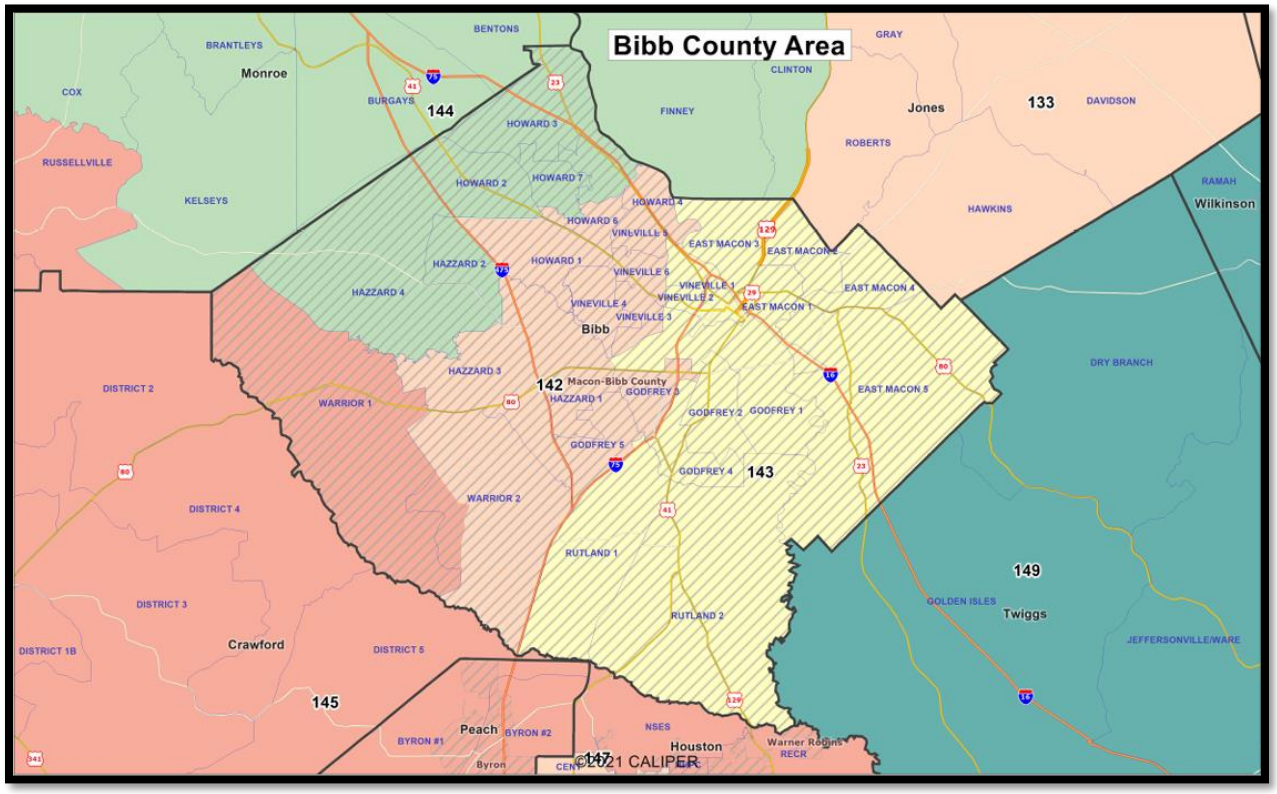
734. Ms. Wright explained the configuration of the enacted House districts in Henry County was based on connecting north Henry and south DeKalb and Rockdale, based on the Fairview and Ellenwood communities, along with incumbent considerations. Tr. 1653:22–1654:18.

735. Ms. Wright explained that enacted House District 117 was configured the way it was based on population shifting in other parts of the state and was one of the last districts drawn, but maintained Locust Grove in a single district while making a logical crossing into Spalding County to maintain a neighborhood that crosses the county lines. Tr. 1654:19–1655:10.

736. Ms. Wright explained that enacted House District 118 was configured because its population was available due to an incumbent not running for reelection, but still maintaining the prior core in Butts and Henry County. Tr. 1655:11–20.

737. Ms. Wright explained that the shape of enacted House District 117 as similar to the character of Woodstock from Snoopy is maintaining the Lake Dow community that would not otherwise be visible on a map. Tr. 1657:1–1658:1.

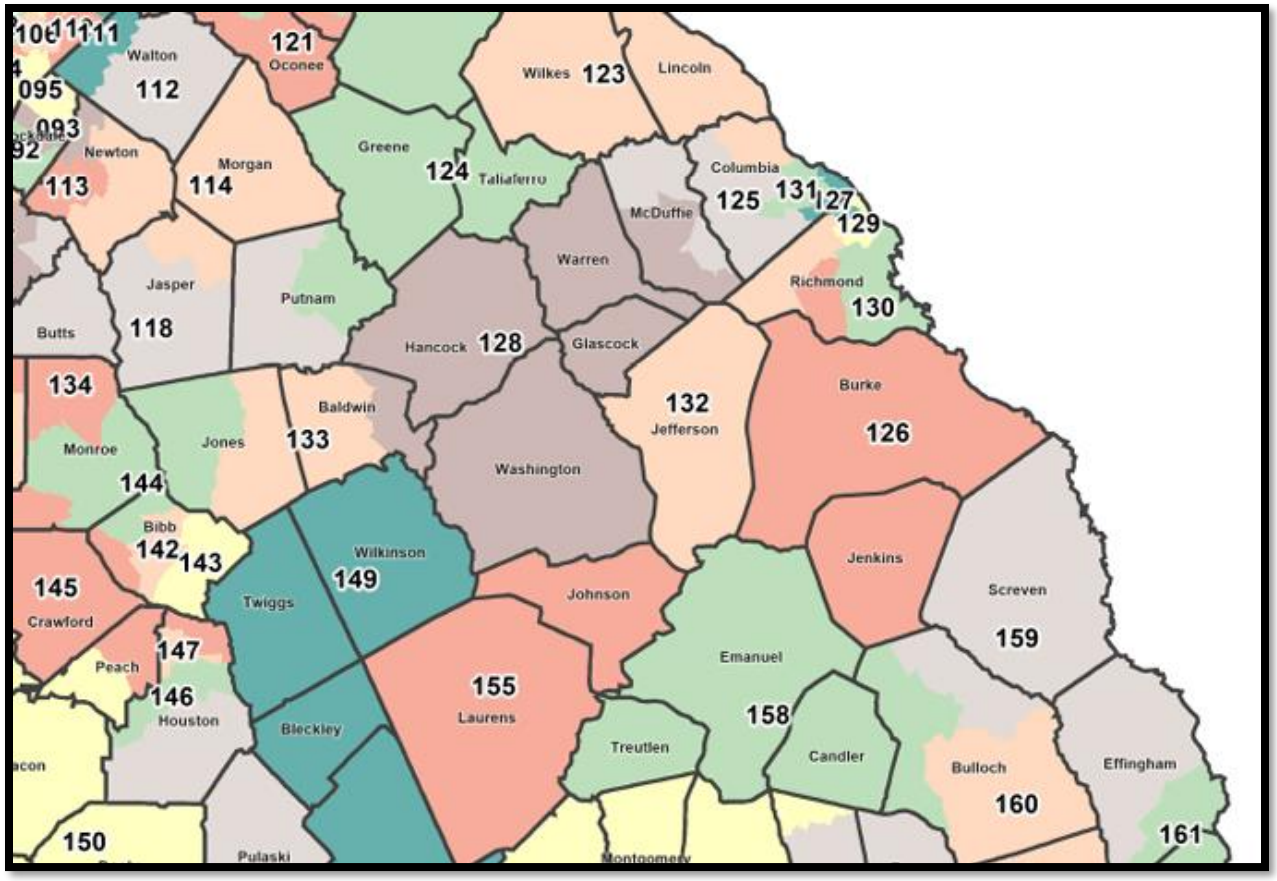
738. Ms. Wright explained that maintaining two majority-Black districts in Bibb County and protecting incumbents was a key part of the design of enacted House Districts 142 and 143.



Tr. 1658:3–15; DX 187, p. 3.

739. Ms. Wright explained that enacted House District 128 consists of four whole counties along with a portion of McDuffie and Baldwin Counties, with the Baldwin split running along the river related to Lake Sinclair. Tr. 1659:7–21.

740. Ms. Wright explained that enacted House District 132 was based on comments from members asking to keep Jefferson County whole instead of split.



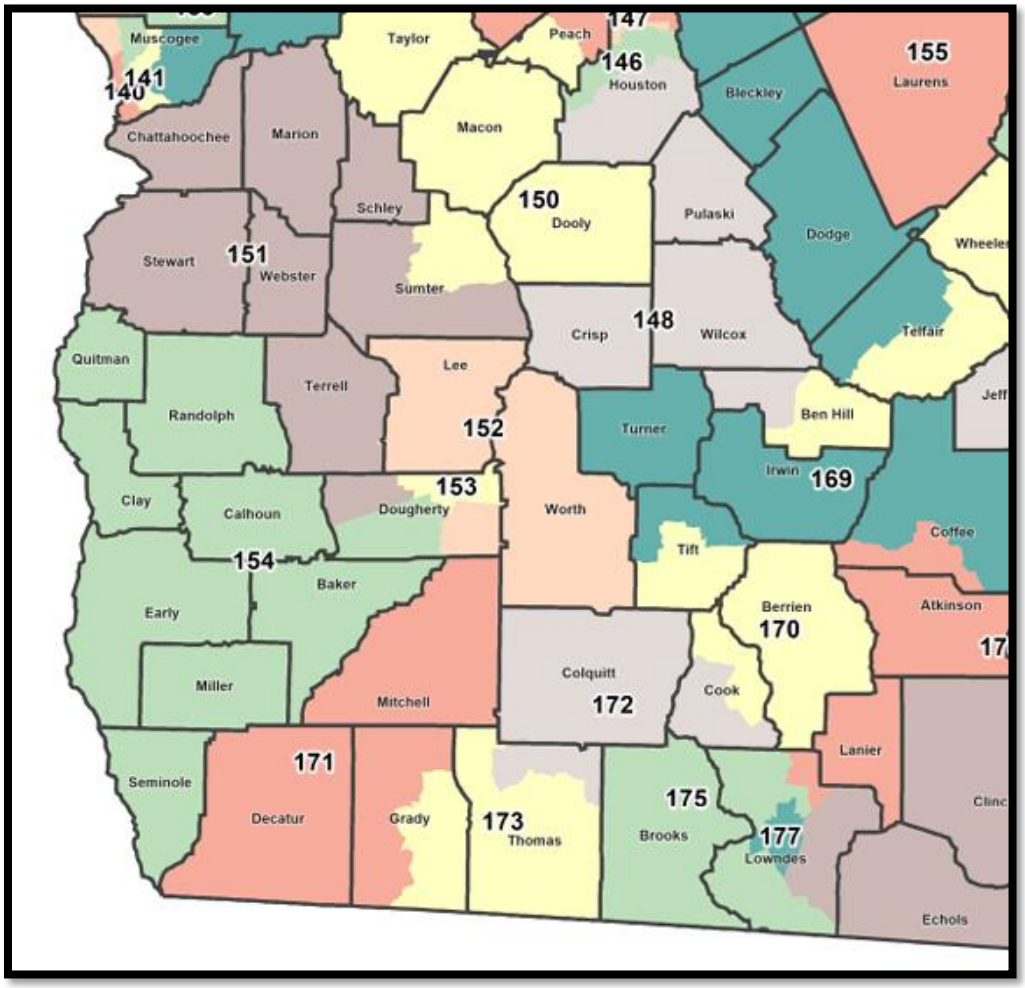
Tr. 1660:9–24; DX 187, p. 1.

741. Ms. Wright explained that enacted House District 133 was configured to run along the river and precinct boundary and that the connection to Jones County made sense given their proximity and the river dividing line in Baldwin County. Tr. 1659:22–1660:8.

742. Ms. Wright explained that enacted House District 155 consists of two whole counties with no county splits. Tr. 1658:21–1659:6.

743. Ms. Wright explained that the configuration of Southwest Georgia was difficult because there was not much population growth. Tr. 1661:7–16.

744. Historically, two majority-Black districts have been located wholly within Muscogee County and the configuration of District 150 was also a consideration that drove the design for much of the rest of Southwest Georgia.



Tr. 1661:17–1662:19; DX 187, p. 1.

745. Ms. Wright explained that Dougherty County historically has had one majority-Black district wholly within Albany, which is District 153 on the enacted plan. Tr. 1662:22–1663:13.

746. District 154 is a majority-Black district that is currently represented by a Republican, Rep. Gerald Greene. Tr. 1663:14–21.

747. Ms. Wright explained that Thomas County is divided the way it is in enacted House District 173, in part because of requests from members in the area. Tr. 1663:22–1664:8.

748. No district on the enacted House plan connects portions of Dougherty County with portions of Thomas County. Tr. 1664:14–16.

749. Thus, considering the entirety of the evidence regarding the justifications for the plan, the Court finds this factor weighs heavily in favor of Defendant because the justifications are not tenuous. The legislature engaged in an extensive process, with bipartisan input, worked to comply with Section 2 in an area where it has extensive authority to do so, and had partisan motives. In light of the requirement of presumption of legislative good faith, Abbott, 138 S. Ct. at 2324, and the evidence presented, the Court finds the justifications for the enacted plans are not tenuous.

j. Proportionality.

750. This Court next considers issues related to proportionality, recognizing that "nothing in [§ 2] establishes a right to have members of a protected class elected in numbers equal to their proportion in the population." Greater Birmingham Min., 992 F.3d at 1334 (quoting Gingles, 478 U.S. at 43).

751. But proportionality matters because it goes to the question of equal openness.

752. "Plaintiffs challenging single-member districts may claim, not total submergence, but partial submergence; not the chance for some electoral success in place of none, but the chance for more success in place of some." De Grandy, 512 U.S. at 1012–13. As a result, this Court must assess whether there is already an equally open system or not.

753. Consistent elective representation is also relevant as "facts beyond the ambit of the three Gingles factors" that can "loom correspondingly larger," requiring a detailed analysis. Id. at 1013.

754. In De Grandy, the Supreme Court found proportionality as a result of "apparent[]" political effectiveness, based solely on an analysis of district makeups. Id. at 1014.

755. But in this case, Defendant has presented evidence of actual political effectiveness across a number of elections.

756. As discussed above, 100% of U.S. Senators in Georgia are Black-preferred candidates, 100% of the nominees from major parties for US Senate in 2022 were Black, 100% of Presidential election winners in Georgia in 2020 are Black-preferred candidates.

757. Not only are Black-preferred candidates successful, but Black candidates are as well: 50% of U.S. Senators in Georgia are Black and 35.7% of Members of Congress from Georgia are Black and Black-preferred candidates.

758. And Plaintiffs' own evidence shows that Black voters consistently prefer Democratic candidates. If, as Plaintiffs say, race and party are inseparable, then each election of a Democratic candidate is success for Black-preferred candidates.

759. Using that metric, 43% of the state House of Representatives are Black-preferred candidates because they are Democrats, and 41% of the state Senate are Black-preferred candidates because they are Democrats.

760. This factor weighs heavily in favor of Defendant, because evidence of the success of Black and Black-preferred candidates in Georgia at all levels of government, is significant in determining whether Black voters in Georgia "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." Allen, 599 U.S. at 25 (quoting 52 U.S.C. § 10301(b)).

iv. Legal conclusions regarding totality of the circumstances.

761. "At bottom, the totality-of-circumstances inquiry asks whether a neutral election standard, practice, or procedure, when 'interacting with social and historical conditions,' works to deny a protected class the ability 'to elect their

candidate of choice on an equal basis with other voters.'" Alabama State Conf. of NAACP, 612 F. Supp. 3d at 1253 (quoting Voinovich v. Quilter, 507 U.S. 146, 153 (1993)).

762. The Court has weighed each Senate factor and determines that the factors overwhelmingly demonstrate that Georgia's voting system and the challenged redistricting plans do not demonstrate that any lack of success of Black voters is "on account of race or color"—ultimately the votes of Black voters in Georgia are not unequal to those of white voters. Allen, 599 U.S. at 25 (quoting 52 U.S.C. § 10301(b)).

b. Constitutional and temporal considerations regarding facts in Georgia.

763. Although the Court has determined that the challenged maps do not render Black votes unequal to those votes of white voters in Georgia, the Court addresses one other issue regarding why this finding is so important to uphold the purpose and effect of the VRA.

764. The Constitution "restricts consideration of race and the VRA demands consideration of race." Abbott v. Perez, 138 S. Ct. 2305, 2315 (2018).

765. This tension runs through VRA jurisprudence, with the Supreme Court regularly assuming without deciding that compliance with the VRA justifies race-based redistricting.

766. At least one Justice has discussed this tension: "the authority to conduct race-based redistricting cannot extend indefinitely into the future." Allen, 599 U.S. at 45 (Kavanaugh, J., concurring in part).

767. In other contexts, the Supreme Court determined that race-based programs had to have an end point. "To manage these concerns, Grutter imposed one final limit on race-based admissions programs. At some point, the Court held, they must end." Students for Fair Admissions, Inc. v. President & Fellows of Harvard Coll., 143 S. Ct. 2141, 2165 (2023).

768. The Court's finding in this case demonstrates that no such limitation need be applied to the VRA, because the properly applied Gingles test is self-regulating.

769. If the Court had found a violation of Section 2 on these facts, it would call into question the constitutionality of race-based redistricting because it would be unclear what additional factors Georgia would have to meet to have its election system considered equally open.

770. If the VRA requires Georgia to elect more Democratic candidates to be equally open or requires proportional representation (which it specifically denies in the text), then Section 2 may very well be unconstitutional.

771. But a finding of equal openness on these facts demonstrates that Gingles addresses these concerns because this Court need not reach the constitutional issues when Gingles is properly applied.

772. As the Supreme Court addressed in another VRA case,

> There is no denying, however, that the conditions that originally justified these measures no longer characterize voting in the covered jurisdictions. By 2009, 'the racial gap in voter registration and turnout [was] lower in the States originally covered by §5 than it [was] nationwide.' Northwest Austin Municipal Util. Dist. No. One v. Holder, 557 U.S. 193, 203-204, 129 S. Ct. 2504, 174 L. Ed. 2d 140 (2009). Since that time, Census Bureau data indicate that African-American voter turnout has come to exceed white voter turnout in five of the six States originally covered by §5, with a gap in the sixth State of less than one half of one percent. See Dept. of Commerce, Census Bureau, Reported Voting and Registration, by Sex, Race and Hispanic Origin, for States (Nov. 2012) (Table 4b).

Shelby County v. Holder, 570 U.S. 529, 535 (2013).

773. Because this Court's decision upholding Georgia's redistricting plans is based on current data and current issues, it does not suffer the constitutional concerns at issue in Shelby County.

CONCLUSION

774. Having considered the totality of the circumstances after a searching local appraisal of the facts, this Court finds Plaintiffs have failed to carry their burden of demonstrating a lack of equal openness in Georgia's election system as a result of the challenged redistricting plans. For all the foregoing reasons, this

Court finds **IN FAVOR** of Defendant and against Plaintiffs on all counts of Plaintiffs' Complaint.

775. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is **DIRECTED** to enter judgment and close this case.

This 25th day of September, 2023.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), the undersigned certifies that the foregoing Proposed Findings of Fact and Conclusions of Law have been prepared in Book Antiqua 13, a font and type selection approved by the Court in L.R. 5.1(B).

/s/ Bryan P. Tyson
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