

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

GEORGIA STATE CONFERENCE OF THE )  
NAACP; GEORGIA COALITION FOR THE )  
PEOPLE’S AGENDA, INC.; GALEO )  
LATINO COMMUNITY DEVELOPMENT )  
FUND, INC., )

*Plaintiffs,*

v.

STATE OF GEORGIA; BRIAN KEMP, in his )  
official capacity as the Governor of the State of )  
Georgia; BRAD RAFFENSPERGER, in his )  
official capacity as the Secretary of State of )  
Georgia, )

*Defendants.*

Civil Case No. 21-c5338-  
ELB-SCJ-SDG

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**PLAINTIFFS’ BRIEF IN OPPOSITION TO  
DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT**

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## INTRODUCTION

Plaintiffs’ experts—whose opinions are virtually un rebutted—and the corroborative evidence from depositions have, at a minimum, raised genuine issues of material fact as to whether Georgia’s congressional and state legislative redistricting was fueled by racial gerrymanders, diluted the votes of Black and Hispanic citizens in violation of Section 2 of the Voting Rights Act, and did so intentionally. The caselaw in this Circuit and elsewhere consistently echoes the proposition that the fact-intensive nature of redistricting claims renders summary judgment a poor vehicle to decide such claims. This case is no exception.

In apparent acknowledgement of their heavy burden to obtain summary judgment in a case such as this, Defendants simply ignore facts supporting Plaintiffs’ claims, mischaracterize others, improperly shift the burden of summary judgment onto Plaintiffs, and ask this Court to create new and unsupported law in order to make this case go away. Summary judgment is starkly inappropriate.

In challenging the standing of Plaintiffs, the Georgia State Conference of the NAACP (“GA NAACP”); GALEO Latino Community Development Fund, Inc. (“GALEO”); and Georgia Coalition for the People’s Agenda (“GCPA”) (collectively “Plaintiffs”), Defendants first assert without support and contrary to precedent that organizational standing is not permitted in vote dilution cases. Then,

as to associational standing, Defendants fail to advise the Court of their agreement limiting discovery to the disclosure of one member per organizational Plaintiff, an agreement that limits their right to argue that Plaintiffs have failed to identify injured members in each district. In any event, Plaintiffs offer abundant proofs of at least a dozen, and in some cases hundreds, of members residing in each challenged district.

Next, despite considerable evidence in the record that race predominated over traditional redistricting principles during the redistricting process, Defendants contend that this evidence is not “conclusive” to support Plaintiffs’ racial gerrymander claims. But it is Defendants, not Plaintiffs, who bear the burden of proving “conclusiveness” on this motion. The abundant circumstantial evidence as to the motivations of the legislature is enough to defeat summary judgment. Indeed, Plaintiffs’ expert goes beyond that and demonstrates that if, as Defendants claim, their aim was partisanship, the lawmakers could have achieved that goal without moving anywhere near as many voters of color as they did.

Defendants’ challenge to Plaintiffs’ Section 2 Voting Rights Act claims is also easily dispatched. Virtually every court that has considered the issue of whether sovereign immunity applies to Section 2 cases has rejected Defendants’ argument of no waiver. As to the first *Gingles* precondition, Defendants argue that districts comprised of a coalition of two or more racial groups are barred as a matter of law,



when this Circuit's precedent is decidedly to the contrary. Failing that, they are left with a purely factual argument, inappropriate for decision on this motion, as to whether Plaintiffs' demonstrative maps sufficiently balanced traditional districting principles. Turning to the second and third *Gingles* preconditions, Defendants do not rebut Plaintiffs' expert's finding of minority group cohesion and white bloc voting, but rather improperly seek to insert into the discussion the question of what causes the racially polarized voting, an issue relevant, if at all, in adjudicating the totality of the circumstances.

Finally, as court after court has held, summary judgment is an inappropriate vehicle to decide issues of discriminatory intent. Plaintiffs will easily demonstrate the existence of a genuine factual dispute on their intentional discrimination claim.

### **BACKGROUND**

The full set of relevant facts is set forth in Plaintiffs' Response to Defendants' Statement of Material Facts in Support of Motion for Summary Judgment ("PSOF") and Plaintiffs' Statement of Material Facts Which Present a Dispute of Facts in Opposition to Defendants' Motion for Summary Judgment. ("PODSOF").

### **LEGAL STANDARD**

Summary judgment is appropriate only if "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED.

R. Civ. P. 56(a). A fact is “material” if it can affect the outcome of the lawsuit under the governing legal principles. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party seeking summary judgment has the burden of informing the district court of the basis for its motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

## ARGUMENT

### I. Defendants Are Not Entitled to Summary Judgment on Standing.

#### A. Plaintiffs have associational standing.

In *Hunt v. Washington State Apple Advert. Comm’n*, the Supreme Court held:

an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

432 U.S. 333, 343 (1977); *Greater Birmingham Ministries v. Sec’y of State for State of Ala.*, 992 F.3d 1299, 1316 (11th Cir. 2021). Defendants do not contest that the interests at stake in this litigation are germane to the purposes of each of the Plaintiff organizations. Defendants’ sole argument on associational standing is that “each organization has failed in discovery to provide evidence that they have members in

every challenged district.” Def. Mot. at 11. But Defendants neglect to inform the Court of their agreement with Plaintiffs in which they agreed to limit their discovery on associational standing as to each Plaintiff so long as each Plaintiff identified a single injured member. *See* Declaration of Crinesha Berry (“Berry Decl.”); Declaration of Julie Houk (“Houk Decl.”). This agreement was expressly intended to limit the number of members Plaintiffs had to disclose in discovery. Berry Decl. 4-14; Houk Decl. 7-14. In any event, Plaintiff organizations have numerous members that reside in each challenged district, as explained below, easily meeting the controlling standing standard.

1. *Defendants agreed to limit their discovery on associational standing to a single member for each Plaintiff organization.*

Defendants’ Interrogatory Number 6 asked Plaintiffs to: “Identify all ‘members’ of the Organizational Plaintiffs that Organizational Plaintiffs plan to rely on for purposes of establishing associational standing.” Berry Decl. ¶ 2 (Ex. 1); Houk Decl. ¶ 3. Although Plaintiffs objected to this request on the grounds of associational privilege, among other reasons, with respect to naming individual members, each plaintiff noted that it “expect[ed] to offer evidence that it has members residing in certain of the challenged districts at issue in this litigation.” Berry Decl. ¶ 3 (Exs. 2-4); Houk Decl. ¶¶ 4-6 (Exs. 2-4). In an attempt to move the case along and resolve any dispute over Plaintiffs’ associational standing, counsel

conferred and agreed that Plaintiffs would supplement their interrogatory response by naming a single member for each Plaintiff organization and that Defendants would limit their discovery on associational standing to those three individuals. Berry Decl. ¶¶ 4-14; Houk Decl. ¶¶ 7-14. Plaintiffs confirmed this oral agreement with Defendants in writing:

I'm writing to confirm the outcome of our meet and confer on Friday. The conclusion was that for any Plaintiff that identifies one member, the State's challenge to *that Plaintiff's associational standing* will be limited to the identified member's individual standing. If circumstances arise such that a Plaintiff identifies a different member for associational standing purposes, the State may take additional discovery regarding that member's individual standing notwithstanding the expiration of discovery-related deadlines. (emphasis added)

Berry Decl. ¶ 12. Counsel for Defendants agreed. Berry Decl. ¶ 13 (“Thanks for this email – yes, this confirms our agreement and the meet and confer.”). Pursuant to this agreement, Plaintiffs supplemented their interrogatory responses, and each organizational plaintiff named one individual member. Berry Decl. ¶ 14; Houk Decl. ¶ 14.

Without advising this Court of their agreement to limit discovery, Defendants now seek to penalize Plaintiffs for complying with that very deal. Def Mot. at 11. However, the Supreme Court has made clear that a defendants' right to seek discovery on associational standing in redistricting cases is limited to the information defendants specifically request. *Ala. Legislative Black Caucus v.*

*Alabama*, 575 U.S. 254, 270 (2015) (“At the very least, the common-sense inference is strong enough to lead the Conference reasonably to believe that, in the absence of a state challenge or a court request for more detailed information, it need not provide additional information such as a specific membership list. . . .”).<sup>1</sup>

2. *Plaintiff organizations collectively have at least one—and sometimes hundreds—of members in each challenged district, sufficient to raise at least a genuine dispute of fact as to standing.*

Not surprisingly—and as indicated in their response to Interrogatory No. 6—given the thousands of members Plaintiffs have throughout the State of Georgia, Plaintiffs have sufficient membership in the challenged districts to support

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<sup>1</sup> Plaintiffs recognize that Defendants may assert an understanding of the agreement – however unjustified – different than that had by Plaintiffs. If more is needed, in these circumstances, as the Court further explained in *Ala. Legislative Black Caucus*, “elementary principles of procedural fairness” require that this Court give Plaintiffs “an opportunity to provide evidence of member residence.” *Id.* at 271. Plaintiffs provide that evidence in the next point. Further, the agreement limiting Defendants’ discovery also provided that Plaintiffs may identify different members for the purposes of satisfying associational standing as long as “the State may take additional discovery. . . notwithstanding the expiration of discovery-related deadlines.” In accordance with that provision, Plaintiffs advised Defendants on April 26, 2023 that they are identifying a substitute for one of the members previously identified, because that member no longer would support associational standing. This provision could be used as a basis for allowing Plaintiffs to identify additional members if required. However, for the reasons set forth in the next point, that need not be required. Further, if there was not a meeting of the minds as to the meaning of the agreement to limit discovery as to associational standing, then there is ample time for discovery to be reopened on that limited issue.

associational standing easily. In *Ala. Legislative Black Caucus*, the Court found that testimony from a “representative of the Conference” that it had “members in almost every county in Alabama” and is a “statewide political caucus” with the “‘purpose’ of ‘endors[ing] candidates for political office who will be responsible to the needs of the blacks and other minorities and poor people’” was “sufficient to meet the Conference's burden of establishing standing” in a redistricting case. *Id.* at 269-70, 84 (alteration in original); see also *Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1163 (11th Cir. 2008).

In *Ala. Legislative Black Caucus*, the information deemed sufficient was nothing more than a sworn statement that the organization had many members. Similarly, in *Browning*, the information deemed sufficient by the Eleventh Circuit was nothing more than that the organization had thousands of members. *Browning*, 522 F.3d at 1163. Here, Plaintiffs have submitted much more: declarations from the GA NAACP, GALEO, and the GCPA providing evidence that across all three groups, the Plaintiff organizations have numerous—often hundreds—of members in each district challenged as a racial gerrymander. See PSOF at ¶¶ 1-7 (GA NAACP); 8-11 (GALEO); 12-16 (GCPA). These declarations also provide evidence that—in every district cluster Plaintiffs challenge under the Voting Rights Act—numerous (often hundreds) of members of the Plaintiff organizations reside in majority-white

districts under the enacted plan but in majority-minority districts under one of the Plaintiffs' mapping expert's illustrative plans. *Id.* This evidence is more than enough to create a fact issue as to whether the Plaintiffs have associational standing. *See Ala. Legislative Black Caucus*, 575 U.S. at 269-70.<sup>2</sup>

**B. Plaintiffs have organizational standing.**

Each of the Plaintiffs also has organizational standing. "To establish standing, an organization, like an individual, must prove that it either suffers actual present harm or faces a threat of imminent harm." *City of S. Miami v. Governor*, No. 21-13657, 2023 WL 2925180, at \*4 (11th Cir. Apr. 13, 2023). An organization suffers actual harm "if the defendant's illegal acts impair [the organization's] ability to engage in its projects by forcing the organization to divert resources to counteract those illegal acts." *Id.* (alteration in original) (quoting *Browning*, 522 F.3d at 1165). The Eleventh Circuit has found organizational standing in voting cases where civil rights groups provide evidence that the challenged laws "divert[ed] personnel and time" from other core projects. *Browning*, 522 F.3d at 1166; *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009).

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<sup>2</sup> If the Court requires more, notwithstanding Defendants' agreement, Plaintiffs ask that they be given an opportunity to contact the individual members and request permission to identify them, and further ask that such identification be made *in camera* to protect the associational rights of Plaintiffs and their members.

Here, Defendants do not dispute the ample evidence in the record that Plaintiff organizations have diverted personnel and time from other projects.<sup>3</sup> See PSOF at ¶¶ 17-38. Instead, Defendants argue only that resource diversion-based organizational standing is inapplicable to redistricting cases as a matter of law. Def. Mot. at 8-9. But their only support for that proposition are cases dealing with *associational* standing. See Def. Mot. at 9 (citing *Gill v. Whitford*, 138 S. Ct. 1916, 1930 (2018)). At least one court has recognized the applicability of organizational standing in redistricting cases, in language fully aligned with the prevailing Eleventh Circuit law. See *Perez v. Abbott*, 267 F. Supp. 3d 750, 772 (W.D. Tex. 2017), *aff'd in part, rev'd on other grounds in part and remanded*, 138 S. Ct. 2305 (2018) (“courts have consistently found standing under *Havens* for organizations to challenge alleged violations of § 2 of the VRA and the Fourteenth Amendment”).

## **II. Defendants Are Not Entitled to Summary Judgment on Plaintiffs’ Racial Gerrymandering Claims (Count I).**

To prevail on a racial gerrymandering claim, Plaintiffs must ultimately prove that “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Miller v. Johnson*, 515 U.S. 900, 916 (1995). To do so, Plaintiffs need not rely on direct

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<sup>3</sup> Plaintiffs have agreed to waive any argument that they can support standing on the basis of diversion of financial resources.



evidence of motivation, but instead can show predominance through “circumstantial evidence of a district’s shape and demographics[.]” *Id.* “The task of assessing a jurisdiction’s motivation . . . is not a simple matter; on the contrary, it is an inherently complex endeavor [that] require[s] the trial court to perform a ‘sensitive inquiry into such circumstantial and direct evidence of intent as may be available.’” *Hunt v. Cromartie*, 526 U.S. 541, 546 (1999). Thus, summary judgment on racial gerrymandering claims is improper if reasonable inferences can be drawn such that the motivations of the legislature are in dispute. *Id.* at 552. A single expert affidavit that contains circumstantial evidence about the motivations of the legislature is enough to defeat summary judgment on a racial gerrymander claim. *Id.* at 549-51.

Here, Defendants seemingly concede that the record is replete with circumstantial evidence of racial gerrymandering, but merely complain that such evidence is not “conclusive.” Def. Mot. at 14. It is Defendants’, not Plaintiffs’, burden on this motion to prove that its evidence is both undisputed and “conclusive.” For that reason alone, summary judgment should be denied on this claim.

If more is needed, the record contains ample evidence sufficient to create at a minimum a genuine dispute of material fact as to whether race predominated in the drawing of Congressional Districts 2, 3, 4, 6, 8, 10, 13, and 14; Senate Districts 1, 2, 4, 17, 26, 48, and 59; and House Districts 44, 48, 49, 52, and 104. Plaintiffs’ expert,

Dr. Moon Duchin provided detailed analyses to that effect, showing how traditional districting principles were subordinated to the cracking and packing of communities of color, as explained below. Dr. Duchin’s findings are unrebutted, as Defendants’ mapping expert did not offer any opinion as to racial gerrymandering. Declaration of Jacob Canter (“Canter Decl.”) ¶ 23 (Exhibit 22).

- **CD 2 and CD 8**: Dr. Duchin determined that political subdivision splits with racial disparities in Bibb County provide evidence that race predominated in the drawing of these districts, consistent with the packing of CD 2 and the cracking of CD 8. PSOF at ¶¶ 145-146.
- **CD 3**: Dr. Duchin determined that political subdivision splits in CD 3 consistent with cracking Black voters is evidence that race predominated over traditional redistricting principles in the drawing of CD 3. *Id.* at ¶¶ 147-148.
- **CD 4 and CD 10**: Dr. Duchin determined that political subdivisions splits with racial disparities in Newton County provide evidence that race predominated in the drawing of these districts such that Black voters in CD 4 were packed and Black voters in CD 10 were cracked. *Id.* at ¶¶ 149-150, 154.
- **CD 6**: Dr. Duchin determined that her core retention/population flow and political subdivision split analysis is evidence that race predominated over traditional redistricting principles in the cracking of CD 6, which previously performed for Black and Latino voters. *See e.g. id.* at ¶¶ 151-153 (district targeted to crack Black and Hispanic voters from CD 6); *id.* at ¶¶ 96-106 (core retention/population flows); *id.* at ¶¶ 143-144, 147-18 (county splits), *id.* at ¶¶ 151-153 (racially charged precinct splits). Dr. Duchin also reviewed community testimony and determined that the cracking of CD 6 split communities of interest by pairing disparate, white, rural and suburban voters from Forsyth, Dawson, and Cherokee counties with urban, Black voters in the metro-Atlanta region. *Id.* at ¶¶ 95, 98, 104, 258.

- **CD 13:** Dr. Duchin determined that political subdivision splits in CD 13 with racial disparities were evidence that race predominated over traditional redistricting principles in the drawing of CD 13. *Id.* at ¶¶ 143-144, 147-148.
- **CD 14:** Dr. Duchin determined that her core retention/population flow and political subdivision analysis is evidence that race predominated over traditional redistricting principles in the drawing of CD 14. *Id.* at ¶¶ 107-113 (core retention/population flows); *id.* at ¶¶ 143-144, 147-148 (county splits). Dr. Duchin determined that the movement of two majority-Black cities—Powder Springs and Austell—into CD 14, which resulted in the “submerg[ing]” of Black voters “among more numerous, dissimilar communities from CD 14 “can’t be justified in terms of compactness or respect for urban/rural communities’ of interest.” *Id.* at ¶¶ 108-113.
- **SD 56:** Dr. Duchin determined that her core retention/population flow analysis, which shows that Black and Latino voters were cracked—is evidence that race predominated over traditional redistricting principles in SD 56. *Id.* at ¶¶ 130-137 (racially imbalanced population shifts)]. Dr. Duchin also opined that SD 56 was cracked just as Black and Latino voters were on the verge of electing their candidates of choice. *Id.*
- **SD 1, SD 2, and SD 4:** Dr. Duchin determined that her political subdivision split analysis—showing that parts of Chatham County are “clearly racially sorted into Senate districts in a way that ensures that Black and Latino voters can only have effective influence in one of the constituent districts”—is evidence that race predominated over traditional redistricting principles in the drawing of SDs 1, 2, and 4. *Id.* at ¶¶ 158-160.
- **SD 17:** Dr. Duchin determined that her core retention/population flow analysis—showing that Black and Hispanic voters were cracked from the district—is evidence that race predominated over traditional redistricting principles in the drawing of SD 17. *Id.* at ¶¶ 122-129.
- **SD 26:** Dr. Duchin determined that her political subdivision split analysis—showing that Black and Hispanic voters were packed into SD 26—is evidence that race predominated over the drawing of SD 26. *Id.* at ¶¶ 155-157.
- **SD 48:** Dr. Duchin determined that her core retention/population flow analysis—showing the Black and Hispanic voters were cracked from the

district—is evidence that race predominated over traditional redistricting principles. *Id.* at ¶¶ 115-121. Notably, this occurred after Black and Hispanic voters were able to elect their candidate of choice, the Asian candidate Michelle Au. *Id.* ¶ 115.

- **HDs 44, 48, 49, 52, and 104:** Dr. Duchin determined that her core retention/population flow analysis indicates that Black and Latino voters were cracked from these districts just as they were on the verge of electing candidates of choice. *Id.* at ¶¶ 138-142. Dr. Duchin opined that this is evidence that race predominated over traditional redistricting principles in the drawing of these districts. *Id.*

Contrary to Defendants’ argument, Def. Mot. At 14, there is no requirement that Plaintiffs provide *direct* evidence of improper legislative intent. Circumstantial evidence that race predominated is sufficient. *See Miller*, 515 U.S. at 916. Nor, as Defendants would have it, does the existence of a partisan motive in and of itself immunize a racial gerrymander. Plaintiffs meet their burden of proof by showing “race-based districting for ultimately political reasons, leveraging the strong correlation between race and voting behavior to advance [the lawmakers’] partisan interest[.]” *Cooper v. Harris*, 581 U.S. 285, 319 n.15 (2017). Here, Plaintiffs have produced undisputed evidence voting in Georgia is heavily racially polarized, and that the lawmakers knew it. PSOF at ¶ 372. They have shown that map-drawers had only racial data (and not political data) available at the census block level, belying Defendants’ argument that political motivations were the cause of precinct splits with disparate racial impact. PSOF at ¶¶ 76-77. That alone is sufficient to raise a

dispute of fact as to whether the districting was unconstitutionally “race-based . . . for ultimately political reasons[.]” *Cooper*, 581 U.S. at 319 n.15.

But there is much more. “One, often highly persuasive way to disprove a State’s contention that politics drove a district’s lines is to show that the legislature had the capacity to accomplish all its partisan goals without moving so many members of a minority group into the district.” *Id.* at 317. Dr. Duchin has done just that. She ran a series of algorithmic experiments that altered district lines in accordance with traditional districting principle—but not considering race—with the goal of creating 100,000 additional Trump-favoring districts, and then plotted the enacted plan’s Black Voting Age Population (“BVAP”) in comparison to these partisan-advantaged plans. PSOR ¶¶ 161-177. In the middle-ranges of these plans, i.e., the most competitive districts, she found that the enacted plans were extreme outliers as to the cracking of Black voters. She concluded that the legislature could have achieved their partisan goals without moving so many voters of color, precisely the standard accepted by the Court in *Cooper*.

### **III. Sovereign Immunity Does Not Immunize the State of Georgia From Section 2 Claims.**

Defendants’ argument that sovereign immunity immunizes one Defendant—the State of Georgia—from Section 2 claims, (Def. Mot. at 18-19), is decidedly against the weight of authority. *See Mixon v. State of Ohio*, 193 F.3d 389, 398 (6th

Cir. 1999) (holding that Congress intended to abrogate the States’ sovereign immunity under the VRA because it “specifically prohibits ‘any State . . .’ from discriminating against voters on the basis of race”); *OCA-Greater Hous. v. Texas*, 867 F.3d 604, 614 (5th Cir. 2017) (same); *see also Ga. State Conf. of NAACP v. State of Georgia*, 269 F. Supp. 3d 1266, 1274-75 (N.D. Ga. 2017) (same); *Terrebonne Par. NAACP v. Jindal*, 154 F. Supp. 3d 354, 359 (M.D. La. 2015) (same).

The Eleventh Circuit has ruled to the same effect. *Ala. State Conf. of NAACP v. Alabama*, 949 F.3d 647 (11th Cir. 2020), *cert. granted, judgment vacated sub nom. Alabama v. Ala. State Conf. of NAACP*, 141 S. Ct. 2618 (2021) (“*Ala. NAACP*”). Although the vacating of that decision may deprive it of precedential authority, it retains persuasive weight. *See DHX, Inc. v. Allianz AGF\_MAT, Ltd.*, 425 F. 3d 1169, 1176 (9th Cir. 2005) (Beezer, J., concurring) (discussing persuasive effect of vacated decisions).<sup>4</sup> This authority far outweighs Defendants’ reliance on a lone, unreported and therefore nonprecedential, decision, *Christian Ministerial All.*

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<sup>4</sup> Defendants appear to recognize this, and plead that this Court not consider it bound by Eleventh Circuit decisions. Def. Mot. at 17. But three-judge panels within this district have consistently found that they are so bound. *See, e.g., Ga. State Conf. of NAACP*, 269 F. Supp. 3d at 1278 (“[w]e do not write on a clean slate, and we are bound by Eleventh Circuit precedent”); *Ala. Legislative Black Caucus v. Alabama*, 988 F. Supp. 2d 1285, 1305 (M.D. Ala. 2013) (“[i]t is well settled that [the Court is] bound by Eleventh Circuit precedent when [it] sit[s] as a three-judge district court”).

*v. Arkansas*, No. 4:19-cv-402, 2020 U.S. Dist. LEXIS 262252, at \*17 (E.D. Ark. Feb. 21, 2020), and on Judge Branch’s dissent in *Ala. NAACP*, 949 F.3d at 656.

#### **IV. Defendants Are Not Entitled to Summary Judgment on the *Gingles* Preconditions (Counts II and III).**

##### **A. General legal standards**

In *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986), the Court articulated three preconditions that plaintiffs must satisfy to bring a Section 2 vote dilution claim. *First*, “the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.” *Id.* at 50. *Second*, “the minority group must be able to show that it is politically cohesive.” *Id.* at 51. *Third*, “the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority’s preferred candidate.” *Id.* If these preconditions are met, then courts must consider the “totality of circumstances” to determine whether there is a Section 2 violation. *League of United Latin Am. Citizens v. Perry* (“*LULAC*”), 548 U.S. 399, 425 (2006).<sup>5</sup> The Eleventh Circuit has noted that Section 2 vote dilution cases,

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<sup>5</sup> When analyzing the totality-of-circumstances, “the Court has referred to the Senate Report on the 1982 amendments,” which “identifies factors typically relevant to a § 2 claim.” *Id.* at 426. These “Senate Factors” include: (1) a history of voting-related official discrimination; (2) the extent to which voting in the state or political subdivisions at issue is racially polarized; (3) the use of voting practices that enhance the opportunity for discrimination; (4) exclusion from candidate slating; (5) ongoing

“are [normally] resolved pursuant to a bench trial,” not by way of summary judgment. *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm’rs*, 775 F.3d 1336, 1343 (11th Cir. 2015) (acknowledging critical role trial court plays in “[s]ifting through the conflicting evidence and legal arguments”).

**B. There are issues of fact as to whether Plaintiffs’ satisfy the first *Gingles* precondition.**

The first part of the *Gingles* One inquiry—the “numerosity” requirement—is a straightforward mathematical question: “Do minorities make up more than 50 percent of the voting-age population in the relevant geographic area?” *Bartlett v. Strickland*, 556 U.S. 1, 18 (2009). The second part of the inquiry—the “compactness” requirement—requires a showing that it is “possible to design an electoral district[ ] consistent with traditional [re]districting principles[.]” *Davis v. Chiles*, 139 F.3d 1414, 1424-25 (11th Cir. 1998); *see also LULAC*, 548 U.S. at 433.

*1. There are issues of fact as to whether Plaintiffs satisfy the numerosity requirement.*

Defendants cannot dispute that Black and Hispanic Georgians drove the population growth in Georgia over the last ten years. PSOF ¶¶ at 72-74. Nor do

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effects of discrimination in socioeconomic areas that hinder participation in the political process; (6) racial appeals in campaigns; (7) minority representation in public office; (8) lack of responsiveness to minority needs from elected officials; and (9) tenuousness of the policy underlying the challenged practice. *Id.*



Defendants dispute Dr. Duchin’s analysis that each of the illustrative districts she identifies as containing minorities making up more than 50 percent of the voting age population does just that. Rather, Defendants’ argument on numerosity is limited to the purported legal proposition that the numerosity requirement cannot be satisfied by the creation of coalition Black and Hispanic districts, which a few of Dr. Duchin’s districts are. Def. Mot. at 21-22.

However, in *Concerned Citizens of Hardee Cnty. v. Hardee Cnty. Bd. of Comm’rs*—a decision that Defendants inexplicably omit from their brief—the Eleventh Circuit squarely held that “[t]wo minority groups . . . may be a single section 2 minority if they can establish that they behave in a politically cohesive manner.” 906 F.2d 524, 526 (11<sup>th</sup> Cir. 1990). *Strickland*, the only case Defendants cite in support of their proposition, Def. Mot. at 21-22, does not say otherwise. There, the Court’s observation that “no federal court of appeals has held that § 2 requires creation of coalition districts” refers to coalition districts between minority groups *and white voters*—also known as “crossover districts”—where the minority groups did not make up the majority in a given geographic area. *Strickland*, 556 U.S. at 1242-46.

Defendants also argue that “to the extent that Plaintiffs are relying on a coalition theory, they have not offered evidence from primary elections, which

would be required to consider the degree of cohesion among minority groups.” Def. Mot. at 22. But cohesion is not germane to the first *Gingles* precondition, only to the second. In any event, Plaintiffs are aware of no case that requires consideration of primary elections for coalition districts.<sup>6</sup>

2. *Plaintiffs’ illustrative maps were drawn consistent with traditional redistricting principles.*

The record is replete with evidence that the “minority group” is “‘sufficiently large and geographically compact to constitute a majority’ in some reasonably configured legislative district.” *Cooper*, 581 U.S. at 301. Defendants’ arguments to the contrary are unavailing.

*First*, contrary to Defendants’ argument, there is no daylight between Dr. Duchin’s calling her maps “demonstratives” and the proposition that *Gingles* preconditions are intended to give the trial court confidence that “it can fashion a permissible remedy in the particular context of the challenged system.” *Nipper v. Smith*, 39 F.3d 1494, 1531 (11th Cir. 1994). Indeed, although “[p]laintiffs typically

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<sup>6</sup> Nowhere in the only case Defendants cite in support of this argument, *Perez*, 267 F. Supp. 3d at 760, does the court indicate that it was referring to the first *Gingles* precondition in discussing primaries. Moreover, the court merely noted that there was evidence of *non*-cohesion between Black and Hispanic voters in the primaries, *not* that Plaintiffs were required to prove the existence of cohesion in the primaries. Here, Defendants have offered no proofs of lack of cohesion between Black and Hispanic voters in the primaries or otherwise.

attempt to satisfy [the first *Gingles* precondition] by drawing hypothetical majority-minority districts,” “such illustrative plans are ‘not cast in stone’ and are offered only ‘to demonstrate that a majority-[B]lack district is feasible[.]’” *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 587 F. Supp. 3d 1222, 1250 (N.D. Ga. 2022) (first and second alterations in original) (citing *Clark v. Calhoun Cnty.*, 21 F.3d 92, 95 (5th Cir. 1994)); *Bone Shirt v. Hazeltine*, 461 F.3d 1011, 1019 (8th Cir. 2006).

Here, Dr. Duchin testified that, during the hand-drawing process of her map-drawing, she balanced many of the traditional redistricting principles announced by the legislature’s redistricting guidelines. PSOR at ¶¶ 180-1864. While Defendants may argue as to whether Dr. Duchin struck the right balance, that is a trial issue, not an issue to be resolved on summary judgment.

In this context, Georgia itself allows for a balancing of factors—some of which are principles that must be satisfied, and others of lesser rank. *Id.* at ¶ 182. The top of the hierarchy consisted of principles that *must* be satisfied, including that the congressional plan *must* be “drawn with a total population of plus or minus one person from the ideal district size;” that all districts “*shall be*” composed of contiguous geography;” and that “all plans *will comply*” with Section 2 of the Voting Rights Act and the U.S. and Georgia Constitutions. *Id.* The guidelines also state that “each legislative district of the General Assembly *should be drawn* to achieve a

total population that is substantially equal as practicable,” while considering other redistricting principles. *Id.* As Dr. Duchin stated in her report, she kept these principles in mind and worked to ensure that her maps reflected or addressed these requirements. *See id.* at ¶¶ 178-188. *See also id.* ¶¶ at 247-248 (indicating that each district in all of Dr. Duchin’s illustrative maps are contiguous, and that the populations of each district were “tightly balanced”); *id.* at ¶ 182 (the guidelines).

Lower in the hierarchy were principles that the legislature should “consider” when drawing the maps: the boundaries of counties and precincts; compactness; and communities of interest.” *Id.* at ¶ 182. Dr. Duchin balanced and considered each of these factors when hand-drawing her illustrative plans and determined that her plans were comparable or better for each metric. *See id.* at ¶¶ 243-258.

Fittingly lowest on the scale, the guidelines note that “efforts should be made to avoid the *unnecessary* pairing of incumbents.” *Id.* at ¶¶ 182 (emphasis added). At the time of her report, Dr. Duchin did not have accurate incumbent addresses available to her, so a number of her districts did have incumbents paired—as did some in the enacted plan. *Id.* at ¶¶ 255-256. However, incumbent protection is “subordinate” to remedying violations of the VRA or Constitution. *See LULAC*, 548 U.S. at 441 (incumbent protection “cannot justify the [dilutive] effect [of a redistricting plan] on [minority] voters”). This is particularly true when, as here,

state guidelines themselves subordinate incumbency protection to other traditional redistricting principles. *Caster v. Merrill*, No. 2:21-CV-1536-AMM, 2022 WL 264819, at \*68 (N.D. Ala. Jan. 24, 2022) (“we note that under the Legislature’s redistricting guidelines, the protection of incumbents is a decidedly lower-level criterion . . . and that this is consistent with the lower-level importance that criterion has been afforded in other redistricting cases”), *cert. granted before judgment sub nom. Merrill v. Milligan*, 142 S. Ct. 879 (2022) . Additionally, Defendants have not demonstrated, as a matter of undisputed fact, that the pairing of incumbents in any of Dr. Duchin’s districts rendered the district an impermissible remedial district, let alone an inadequate *Gingles* 1 plan. *See Abrams v. Johnson*, 521 U.S. 74, 84-85, 99 (1997) (approving remedial plan that “subordinated” unpairing incumbents to “other factors”).

Thus, Plaintiffs’ have set forth evidence sufficient to establish that whether Dr. Duchin’s illustrative plans are “reasonably configured,” *Raffensperger*, 587 F. Supp. 3d at 1250 (citing *Cooper*, 581 U.S. at 301), is a triable issue of fact. To the extent that Defendants’ nitpick about how reasonably configured the illustrative plans are, those objections are to be resolved at trial, not at summary judgment.

*Second*, Defendants argue that Dr. Duchin’s plans deal only with numerically quantifiable districting principles, and that Dr. Duchin did not have knowledge of

communities in Georgia. Def. Mot. at 20. To the contrary, Dr. Duchin testified that she reviewed quantitative *and* non-quantitative metrics apart from race, including a voluminous record of community testimony (which is the only “non-numeric” principle identified by the legislature in its redistricting guidelines) that informed her map-drawing throughout the hand-drawing process. *See* PSOF at ¶¶ 178-188.

*Third*, Defendants seem to argue that there is no evidence in the record that the minority “community” is geographically compact. Def. Mot. at 20. Defendants again are wrong.

*First*, Dr. Duchin opined that all of her illustrative maps (both at the statewide and cluster level) are comparable or better than the enacted plans in terms of compactness. PSOF at ¶¶ 243, 249-251. *See also* PSOF at ¶ 252.

*Second*, the Supreme Court has explained that district shape is relevant to determining whether a district satisfies the compactness inquiry. *Bush v. Vera*, 517 U.S. 952, 980 (1996); *see also Sensley v. Albritton*, 385 F. 3d 591, 596 (5th Cir. 2004) (geographical shape of proposed district “necessarily directly relates to the geographical compactness and population dispersal of the minority community in question”).

*Third*, Dr. Duchin created heat-maps demonstrating the compactness and density of minority population throughout the state of Georgia. PSOF at ¶ 250.

There are issues of fact as to whether Dr. Duchin drew “reasonably configured” illustrative districts that considered traditional redistricting principles.

**C. There are issues of fact as to whether Plaintiffs establish *Gingles* 2 and 3.**

There is overwhelming, indeed undisputed, evidence in the record that Black voters—and sometimes Black and Hispanic voters—overwhelmingly support the same candidates of choice in Georgia, so as to meet the second *Gingles* precondition. PSOF at ¶¶ 262-302. This is true for statewide elections, for each geographic cluster that Dr. Duchin analyzed for her *Gingles* 1 analysis, and for each challenged district. *See e.g. id.* at ¶¶ 262-264 (demonstrating racially polarized voting statewide); *id.* at ¶¶ 265-271 (RPV at cluster levels); *id.* at ¶¶ 272-280 (RPV at Congressional district level); *id.* at ¶¶ 281-289 (RPV at Senate district level); *id.* at ¶¶ 290-302 (RPV at House district level). This is also true for every illustrative majority-minority district that Dr. Duchin created for her *Gingles* 1 analysis. *Id.* at ¶¶ 280 (RPV at Alt CDs 3, 4, 5, 13); *id.* at ¶¶ 289 (RPV at Alt 1 SD 1 16, 17, 25, and 28 and Alt 2 SD 16 and 24); *id.* at ¶¶ 298 (HDs Alt 1 64, 74, 117, 144, 151, and 171). Further, there is similarly overwhelming evidence in the record that in every challenged district, the White majority votes as a bloc to usually defeat the candidate of choice of voters of color, so as to meet the third *Gingles* precondition. PSOF at ¶¶ 303-371.

Notably, neither Defendants nor Defendants' RPV expert dispute any of these voting patterns. PSOF ¶¶ 368-371. Instead, Defendants' proffer a single, *legal* argument for why summary judgment is appropriate on *Gingles* 2 and *Gingles* 3. Defendants—in a section littered with citations to concurring or dissenting opinions—argue that Plaintiffs have the burden of ruling out non-racial explanations for minority political cohesion or White majority bloc voting. *See* Def. Mot. § III(C).

To satisfy the second and third *Gingles* preconditions, however, Plaintiffs need not proffer evidence about the *underlying cause* of minority group cohesion or White majority bloc voting. That is because “proof of the second and third *Gingles* factors will ordinarily create a sufficient inference that racial bias is at work.” *Nipper*, 39 F.3d at 1525. To the extent such causation evidence is relevant, it is only relevant to the totality-of-circumstances analysis. *Id.* at 1513-14, 1524-26; *see also United States v. Charleston Cnty., S.C.*, 365 F.3d 341, 347-48 (4th Cir.), *cert. denied*, 543 U.S. 999 (2004); *Goosby v. Town Bd. of Town of Hempstead, N.Y.*, 180 F.3d 476, 493 (2d Cir. 1999), *cert. denied*, 528 U.S. 1138 (2000); *Milwaukee Branch of the NAACP v. Thompson*, 116 F.3d 1194, 1199 (7th Cir. 1997), *cert. denied*, 522 U.S. 1076 (1998); *Uno v. City of Holyoke*, 72 F.3d 973, 983 (1st Cir. 1995); *Raffensperger*, 587 F. Supp. 3d at 1303 (“The Court concludes as a matter of law that, to satisfy the second *Gingles* precondition, Plaintiffs need not prove the causes



of racial polarization, just its existence. . . applying the standard advocated by Defendants would undermine the congressional intent behind the 1982 amendments to the VRA—namely, to focus on the results of the challenged practices.”). And even at the totality stage, the burden is on the “defendant to rebut proof of vote dilution by showing that losses by minority-preferred candidates are attributable to non-racial causes.” *Nipper*, 39 F.3d at 1526.

Defendants expressly acknowledge this law, but ask this Court to deviate from it, relying on a misreading of the separate opinions in *Gingles*. But, even were this Court to engage in piecing together the various opinions, the fact is that eight justices agreed in *Gingles* that causation is *not* relevant to the second and third *Gingles* preconditions. Justice Brennan, joined by three other justices, unequivocally stated “the reasons black and white voters vote differently have no relevance to the central inquiry of § 2.” *Gingles*, 478 U.S. at 63. Justice Stevens joined in that part of the opinion that included this language. *See id.* Justice O’Connor, joined by two Justices and the Chief Justice agreed with Justice Brennan’s plurality that “defendants cannot rebut this showing [of the second and third *Gingles* preconditions] by offering evidence that the divergent racial voting patterns may be explained in part by causes other than race[.]” *Id.* at 100. Justice O’Connor

explained that such evidence could be considered only as part of the “overall vote dilution inquiry”—that is, during the totality-of-circumstances analysis. *Id.*

Defendants also argue that some “circuits have rejected a view of Section 2 that showing polarization is enough.” Def. Mot at 29. But the three decisions that Defendants rely on do not say that. Although *League of United Latin Am. Citizens, Council No. 4434 v. Clements*, 999 F.2d 831, 860 (5th Cir. 1993), views causation evidence as potentially relevant to *Gingles* 2 and *Gingles* 3, it does not place the burden on *plaintiffs* to proffer causation evidence in support of *Gingles* 2 or 3, as Defendants argue. *Clements* held only that the district court erred when it “excluded evidence” at trial of the non-racial causes of majority political cohesion or majority white bloc voting *proffered by Defendants in rebuttal* to a showing of cohesive voting patterns. *Clements*, 999 F.2d at 850. Here, Defendants’ racially polarized voting expert conducted no analysis of his own on this issue and offers no opinion as to whether non-racial causes can explain minority cohesion or white majority bloc voting. PSOF at ¶¶ 263-264, 368-371. In fact, Defendants’ expert expressly disclaimed that he had reached that conclusion. *Id.* at ¶ 368-371.

Defendants’ reliance on *City of Holyoke* and *Nipper* falls even further from the mark. These decisions merely hold that Defendants can themselves offer evidence of non-racial causes of racially cohesive voting patterns in rebuttal to

Plaintiffs' satisfaction of *Gingles* 2 and *Gingles* 3 as part of the *totality-of-circumstances* analysis. *Nipper*, 39 F.3d at 1526 (“The standard we articulate today simply allows a defendant to rebut proof of vote dilution by showing that losses by minority-preferred candidates are attributable to non-racial causes.”); *City of Holyoke*, 72 F.3d at 983 (the second and third *Gingles* preconditions “give rise to an inference that racial bias is operating through the medium of the targeted electoral structure to impair minority political opportunities . . . [which] will endure unless and until the defendant adduces credible evidence tending to prove that detected voting patterns can most logically be explained by factors unconnected to the intersection of race with the electoral system.”). Because Defendants have not raised the issue of whether Plaintiffs’ proofs as to the totality of the circumstances provide them with a basis for summary judgment, this Court may not reach the issue. In any event, Defendants have offered no evidence that the voting preferences of Georgian Black and/or Hispanic voters are attributable to non-racial causes.

Defendants also argue that “a view that racial bloc voting requires only that majority and minority voters vote differently would also make Section 2 unconstitutional” because Section 2 would no longer be a “congruen[t] and proportional[] . . . means” to remedying racial discrimination. Def. Mot. at 30-32. This argument is the epitome of hyperbole. The *Gingles* preconditions are just that

– preconditions. They are not, in and of themselves, ultimate proof of a Section 2 case. Rather, the ultimate proof is by way of the “totality of the circumstances.” “[T]o ask not merely whether, but also why, voters are racially polarized . . . would convert the threshold test into precisely the wide-ranging, fact-intensive examination it is meant to precede.” *Charleston Cnty., S.C.*, 365 F.3d at 348.

**D. Proportionality Does Not Bar Plaintiffs Section 2 Challenge to the Congressional Map.**

Defendants seek summary judgment on Plaintiffs’ Section 2 challenge to the enacted Congressional Map, because “the percentage of Black-preferred candidates being elected is more than roughly proportional to the percentage of Black individuals in Georgia.” Def. Mot. at 36. But as Defendants concede, “proportionality is not a safe harbor for a jurisdiction.” Def. Mot. at 36 (citing *LULAC*, 548 U.S. at 436). Indeed, as *LULAC* explains, proportionality is merely a “relevant consideration” to be weighed during the totality-of-circumstances analysis. *LULAC*, 548 U.S. at 426; accord *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 979 F.3d 1282, 1289 (11th Cir. 2020).

Faced with adverse precedent, Defendants stretch it beyond recognition, quoting *Johnson v. De Grandy*, 512 U.S. 997 (1994), for the proposition that if “minority voters form effective voting majorities in a number of districts roughly proportional to the minority voters’ respective shares in the voting age population,”

no violation of Section 2 can be found. *Id.* at 1000. Defendants conveniently separate this quote from the very next sentence, which makes clear that such proportionality “is not dispositive in a challenge to single-member districting, it is a relevant fact in the totality of circumstances to be analyzed[.]” *Id.*

Defendants are also wrong on the facts. Proportionality as part of the totality analysis does not refer to “success of [the] minority candidates,” but instead “links the number of majority-minority voting districts to minority members’ share of the relevant population.” *Id.* at 1014 n.11. Thus, the relevant comparison is a comparison of the percentage of majority-Black districts over the percentage of Any-Part Black VAP. Since there are at most four majority BVAP districts (Dr. Duchin calculates just two over 50.0% BVAP) in the enacted congressional plan—less than 29% of the total number of districts—and Black Georgians comprise approximately 31.73% of the population in Georgia, PSOF ¶ 73, 195, rough proportionality would not bar Plaintiffs claims even if it were dispositive (which it is not).

**E. Defendants Are Not Entitled to Summary Judgment on Intentional Discrimination.**

Defendants assert that that the Court should evaluate Plaintiffs’ discriminatory purpose claim under the Fourteenth Amendment and Section 2 of the Voting Rights Act under the Supreme Court’s standard in *Miller*, 515 U.S. at 915. Def Mot. at 37. Further, Defendants contend that “in cases regarding the types of evidence that could

be used in such a claim, it has never relied on *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266 (1977) for the proper standard for evaluating intent claims in redistricting cases.” *Id.*

Defendants are wrong. Indeed, the Court in *Arlington Heights* itself cited to a districting case, *Wright v. Rockefeller*, 376 U.S. 52 (1964), in its explanation of the need to prove intent to show a violation of the Equal Protection Clause. *Arlington Heights*, 429 U.S. at 265. This point was expressly recognized by the Court in *Rodgers v. Lodge*, 458 U.S. 613, 617 (1982) (referring to the *Arlington Heights* Court’s reference to *Wright v. Rockefeller* in explaining that the *Arlington Heights* factors apply to claims of racially discriminatory purpose in voting cases).

Even were Defendants’ legal argument correct and the *Miller* standard applicable to Plaintiffs’ intentional discrimination claim, Plaintiffs have already demonstrated that there are material facts in dispute as to whether race predominated in the drawing of the lines. *See supra* Argument § II. Contrary to Defendants’ fallback argument, their motion fares no better if *Arlington Heights* does apply. Def. Mot. at 37-38.

The *Arlington Heights* analysis “demands a sensitive inquiry into such circumstantial and direct evidence as may be available.” 429 U.S. at 266. This inquiry involves a review of several non-exhaustive factors set out by the court. *See*

*id.* at 268. Specifically, the Court in *Arlington Heights* noted that the court evaluate: (1) the impact of the challenged law; (2) the historical background; (3) the specific sequence of events leading up to its passage; (4) procedural and substantive departures; (5) the contemporary statements and actions of key legislators. *See id.* at 266-268. The inferences to be drawn from evidence on these factors typically create a genuine dispute about the motivations of the legislature sufficient to defeat summary judgment. *See, e.g., Hunt*, 526 U.S. at 549-51. That is the case here.

***Impact of the challenged law.*** Perhaps most important, Dr. Duchin’s racial gerrymander analysis, shows, district by district, how certain districts were becoming competitive, how specific blocks of Black and Hispanic voters were moved, and demonstrates that more voters of color were moved than necessary to achieve partisan ends. PSOF at ¶¶ 88-177. And Dr. Duchin’s Section 2 *Gingles* 1 analysis shows, district by district, how the legislature could have created additional majority-minority districts that could remedy the dilution of Black and Hispanic voters. PSOF at ¶¶ 189-258.

***Historical background.*** Federal courts recognize the history of discrimination is relevant to the historical background factor. *See NAACP, Inc. by & through Myrtle Beach Branch v. City of Myrtle Beach*, 476 F. Supp. 3d 308, 323 (D.S.C. 2020) (recognizing that historical race segregation is relevant to this factor). Also, “[t]he

Eleventh Circuit has considered prior litigation as evidence when examining the historical background factor.” *Banks v. McIntosh Cnty., Georgia*, 530 F. Supp. 3d 1335, 1374 (S.D. Ga. 2021), *on reconsideration on other grounds in part*, No. 2:16-CV-53, 2021 WL 3173597 (S.D. Ga. July 26, 2021).

There is a long history of discrimination in Georgia affecting voting. PSOF at ¶¶ 39-42. Since 1945, numerous redistricting plans in Georgia have been struck down as racially discriminatory. *Id.* at ¶ 40. Between 1965 and 2013, the Department of Justice blocked 177 proposed changes to election law by Georgia and its counties and municipalities Under Section 5 of the Voting Rights Act. *Id.* at ¶ 41. Of these Section 5 objections, 48 blocked redistricting plans. *Id.* Further, in 2018, a three-judge panel sitting in the Northern District of Georgia concluded that plaintiffs in a racial gerrymandering action had introduced “compelling evidence” that “race predominated the redistricting process,” through testimonial and documentary evidence related to the conduct of Dir. Wright and others that work at the LCRO. *Id.* at ¶ 42.

***Procedural and Substantive Departures.*** Contrary to Defendants’ slant on the evidence, Def. Mot. at 37-38, Plaintiffs’ expert, Dr. Joseph Bagley, found procedural and substantive departures in the 2021 redistricting process. Dr. Bagley opined that he found numerous public complaints in the town hall process held by



the legislature’s joint Reapportionment Committee in the summer of 2021, and during the Committee Hearings held during the special session, sufficient to support a finding of procedural and substantive departures under *Arlington Heights*. See PSOF at ¶¶ 43-71. In light of these complaints, Dr. Bagley opined that the Committee’s refusal to change the town hall process—and the special session process—in the face of these public complaints constitutes evidence of procedural and substantive departures. See *Id.* at ¶¶ 54, 66.

Additionally, “substantive departure[s] from redistricting criteria” satisfies this *Arlington Heights* factor. *LULAC v. Abbott*, 617 F. Supp. 3d 622, 632 (W.D. Tex. 2022). As explained *supra*, each district identified in the racial gerrymandering section subordinates traditional districting principles to sort citizens based on race. See PSOF at ¶¶ 88-177.

***Contemporary statements and actions of key legislators.*** During the legislative process, Rep. Rich bemoaned that her committee had to oversee maps that comply with the Voting Rights Act. See PSOF at ¶ 66.

***Sequence of events.*** Drawing maps “largely in secret such that minorities, and certain representatives, [are] shut out of the process . . . can support a case for discriminatory intent.” See *Abbott*, 617 F. Supp. 3d at 632. In this case, Gina Wright, the director of the Legislative and Congressional Reapportionment Office,

was primarily responsible for the technical aspects of drawing the legislative maps and took direction from Republican leadership behind closed-doors working sessions for which racial data was projected on a monitor. *See* SOF in Opposition to Defendants’ MSJ ¶¶ 95-103. Dir. Wright kept drafts for all three of her maps private in her office until the drafting process was completed. *See* PSOF at ¶ 79. Moreover, during the drafting process, Director Wright took steps to ensure that communications related to drawing the maps would be hard to disclose because she intentionally did not put them in writing. *See* PSOF at ¶ 78. Specifically, Director Wright testified during her deposition that she did not use email to communicate about redistricting maps because she did not want to “create... a record.” *Id.*

***Additional Circumstantial Evidence.*** There is additional circumstantial evidence of intentional discrimination in the record. Contrary to Defendants’ assertion that politics and not race predominated the map drawing process is the fact that the legislature possessed racial data at the block level but not political data—which the legislature only possessed at the precinct level. *See* PSOF at ¶¶ at 79-87. In order to split precincts in such a way to achieve alleged partisan goal, Defendants necessarily had to consider racial data.

Further, Dan O’Connor, a data analyst with the LCRO, testified during his deposition that a district in Georgia that was roughly 30% black would tend to elect

Democrats and that the figure was consistent from 2014 to the present. *Id.* at ¶¶ 85-87. He also testified that if a legislator wanted to redraw such a district so that it was more likely to elect a Republican instead of a Democrat it would be necessary to lower the amount of BVAP in that district. *Id.* at ¶ 86. He further testified that in order to lessen the BVAP in such a district, one would need to either move BVAP out of the district and put it in another district or move WVAP into the district to dilute the amount of BVAP in the district. *Id.* at ¶ 87.

Summary judgment is not the appropriate vehicle for this Court to sift through these facts, determine the appropriate inferences to draw from them, and weigh them against each other, and against Defendants' proof.

### CONCLUSION

For all the foregoing reasons, the Court should deny Defendants' motion for summary judgment.

Dated: April 26, 2023

Respectfully submitted,

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**LOCAL RULE 7.1(D) CERTIFICATION OF COMPLIANCE**

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

/s/ Kurt Kastorf  
Kurt Kastorf (Georgia Bar No. 315315)  
Attorney for Plaintiffs  
Lawyers' Committee for Civil Rights Under Law

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

GEORGIA STATE CONFERENCE OF THE )  
NAACP; GEORGIA COALITION FOR THE )  
PEOPLE’S AGENDA, INC.; GALEO )  
LATINO COMMUNITY DEVELOPMENT )  
FUND, INC., )

*Plaintiffs,*

v.

STATE OF GEORGIA; BRIAN KEMP, in his )  
official capacity as the Governor of the State of )  
Georgia; BRAD RAFFENSPERGER, in his )  
official capacity as the Secretary of State of )  
Georgia, )

*Defendants.*

Civil Case No. 21-c5338-  
ELB-SCJ-SDG

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’ STATEMENT OF  
UNDISPUTED MATERIAL FACTS**

Plaintiffs pursuant to Rule 56 of the Federal Rules of Civil Procedure, Local Rule 56.1, and this Court’s Individual Rule III.I submit this Response to Defendant’s Statement of Material Facts as to Which There is No Genuine Issue to be Tried.

1. The Georgia General Assembly held town hall meetings before redistricting maps were published in 2001, 2011, and 2021. Deposition of Joseph Bagley, Ph.D. [Doc. 128] (Bagley Dep.) 68:15-23, 73:25-74:9.

**Plaintiffs Response:**

Undisputed only to the extent that town hall meetings were conducted in the referenced years. Plaintiffs dispute any inference that the town halls provide members of the public with any reasonable or adequate means of providing informed input on the redistricting plans or the 2020 Census data to legislators because neither the proposed maps nor the 2020 Census data were available to the public prior to or at the town halls. Declaration of Jacob Canter (“Canter Decl.”) ¶ 11 (Expert Report of Prof. Joseph Bagley, (“Bagley Rep.”), 41 & 43; *id.*, 44-45 (comments from Karuna Ramachandran); *id.*, 45-46 (comments from Rep. Jackson); *id.*, 46 (comments from Rep. Alexander); *id.*, 47 (five people at the June 28, 2021, public hearing spoke about the need for ample time after the maps were proposed for the public to analyze them and provide feedback for alternatives); *id.*, 49 (three people at the June 29, 2021, public hearing spoke about the need for time and feedback between when Census data comes out and when the maps are proposed, and between when the maps are proposed and the vote on the maps); *id.*, 51 (four people at the July 27, 2021, public hearing spoke about how the public testimony would be more

valuable after the maps were proposed); *id.*, 51 (comments from Kimberly Fountain); *id.*, 55 (comments from Alex Ohanian); *id.*, 56 (comments from Marika Keelstra)).

2. The town hall meetings in 2001, 2011, and 2021 were all “listening sessions” that took community comment without legislators responding to questions. Bagley Dep. 69:25-70:8, 73:25-74:9.

**Plaintiffs’ Response:**

Undisputed as to the fact town hall “listening sessions” took place in these years. However, Plaintiffs dispute any inference that the “listening sessions” provided members of the public with any or adequate transparent process for providing informed input to legislators on the redistricting process or redistricting maps because they were conducted prior to the publication of the 2020 Census data and the release of any of the proposed redistricting maps. Bagley Rep., 42-43; *see also id.*, 54 (comments from Hannah Gebreselassie inquiring how the legislators planned to incorporate feedback to ensure the town hall was not just for show).

3. Redistricting has historically been conducted in special legislative sessions. Bagley Dep. Exs. 8-10.

**Plaintiffs’ Response:**



Undisputed that Georgia has historically conducted redistricting proceedings in special legislative session. Disputed because it is not a material fact and because the process can still be impugned with procedural and substantive departures from the normal legislative process even if redistricting has historically been conducted during special legislative sessions. *See* Bagley Rep., 41 (“[t]he public was widely critical of holding these meetings before the release of the Census data and the publication of maps. They called for ample time for analysis and feedback and map-submission after the fact.”); *id.* (“[t]he public was relentless in its call for a more transparent process, in general.”); *id.*, 42 (“[t]he public and members of the committee wanted more of a dialogue than a one-way-street of taking community comment at hearings.”); *id.* (“[h]earings were not held, according to members of the public and the committees, in the most populous areas of the state where they should have been.”); *id.* (“[m]aps ought to reflect the growth of Georgia’s minority po[p]u[la]tion.”); *id.* (members of the public asked the Committee not to “engage in packing and cracking [of minority populations] . . .”).

4. The timeline for consideration of redistricting plans in 2001, 2011, and 2021 was similar. Bagley Dep. 101:7-101:12, 105:11-15, 138:18-24.

**Plaintiffs’ Response:**

Undisputed that Professor Bagley agreed that the timeline was similar; but disputed as to whether this is a material fact or that any inference can be drawn that the redistricting timeline here supports entry of summary judgment against Plaintiffs. In fact, while the timeline in the three redistricting cycles may have been similar, Professor Bagley opined that the timeline “indicate[s] to me it was also rushed in those cycles,” and observed that members of the public and members of the General Assembly criticized the decision to hold the process in this rushed manner. Bagley Rep., 58-64, 69-71 (Senate map); *id.*, 64-69, 72-73 (House map); *id.*, 73-84 (Congressional map); Canter Decl. ¶ 30 (Deposition of Dr. Joseph Bagley (“Bagley Dep.”) 138:22-23).

5. The 2021 redistricting process was “generally analogous” to the 2001 and 2011 cycle. Bagley Dep. 140:13-140:17.

**Plaintiffs’ Response:**

Disputed. Defendants’ citation reflects only that Professor Bagley stated that the “procedural and substantive departures in the legislative process when the comparison point is the 2001 and 2011 redistricting cycles” is “generally analogous.” However, Defendants ignore other aspects of the 2021 cycle, such as the use of race when drawing the maps in ways that violate the U.S. Constitution, as reflected in the Dr. Duchin’s rebuttal report, or the decision to subordinate traditional

districting principles to racial considerations, as reflected in Dr. Duchin’s opening report. Canter Decl. ¶ 21 (Rebuttal and Suppl. Report of Dr. Moon Duchin (“Duchin Suppl. Rep.”), 1-10); Canter Decl. ¶ 3 (Expert Report of Dr. Moon Duchin (“Duchin Rep.”) § 10 at 67-79).

6. The 2001, 2011, and 2021 redistricting processes were procedurally and substantively similar to each other. Bagley Dep. 86:25-87:19.

**Plaintiffs’ Response:**

Undisputed only to the fact that Professor Bagley testified that the redistricting processes were procedurally and substantively similar. Disputed as to whether any inference can be drawn from this fact that the processes support entry of summary judgment against Plaintiffs. Professor Bagley’s testimony substantiates that the legislative process was not transparent and that it failed to provide the public with a meaningful opportunity to provide informed input on the maps or Census data. Further, unlike the prior cycles, the town hall meetings were conducted before the release of Census data. *See* Bagley Rep., 41 (“[t]he public was widely critical of holding these meetings before the release of the Census data and the publication of maps. They called for ample time for analysis and feedback and map-submission after the fact.”); *id.* (“[t]he public was relentless in its call for a more transparent process, in general.”); *id.*, 42 (“[t]he public and members of the committee wanted

more of a dialogue than a one-way-street of taking community comment at hearings.”); *id.* (“[h]earings were not held, according to members of the public and the committees, in the most populous areas of the state where they should have been.”); *id.* (“[m]aps ought to reflect the growth of Georgia’s minority po[p]u[la]tion.”); *id.* (members of the public asked the Committee not to “engage in packing and cracking [of minority populations] . . .”).

7. The 2020 Census data showed that the increase in the percentage of Black voters in Georgia from 2010 to 2020 was slightly more than two percentage points statewide. Deposition of Moon Duchin, Ph.D. [Doc. 134] (Duchin Dep.) 48:5-12.

**Plaintiffs’ Response:**

Undisputed that Dr. Duchin so testified; but disputed to the extent that Defendants mischaracterize the findings of Dr. Duchin’s report. In her report, Dr. Duchin states:

“Georgia’s fast growth is entirely due to the expansion in the population of people of color. In fact, the (non-Hispanic) White population of Georgia actually dropped from 2010 to 2020— from 5,413,920 to 5,362,156—while the state overall grew by over a million people. As a result, the population share of Black and Latino residents expanded from 39.75% to 42.75% in the time between the 2010 and the 2020 Census data release, while the White population share dropped markedly from 55.88% to 50.06%. Thus, to within a tenth of a percent, current redistricting data finds Georgia evenly split between White residents and people of color.”

Duchin Rep., § 3.3 at 8.

Further, Dr. Duchin's deposition testimony cited by Defendants is about the two-percentage point Black CVAP increase, which does not represent the overall growth of Black population in Georgia, but instead describes the relative growth of Black population vis-a-vis the decrease in White population in Georgia between 2010 and 2020. *Id.*

8. Following the delayed release of Census data in 2021, the Georgia General Assembly began working on redistricting maps ahead of the November 2021 special session. Bagley Dep. Ex. 5.

**Plaintiffs' Response:**

Undisputed.

9. Both chairs of the House and Senate committees with jurisdiction over redistricting sought to meet with all of their colleagues, both Republican and Democratic, to gain input on their areas of the state. Deposition of Gina Wright [Doc. 132] (Wright Dep.) 68:17-69:7.

**Plaintiffs' Response:**

Disputed. Plaintiff objects to Ms. Wright's testimony on the grounds that it fails to establish Director Wright has personal knowledge of whether and to what extent Senator Kennedy and/or Chair Rich sought such meetings with other

members of the General Assembly. As such, Ms. Wright's testimony constitutes inadmissible speculation and hearsay under F.R.E. 602 and 801. Plaintiffs also object that this is not a material fact because whether the Chairs of the Senate and House redistricting committees sought or attempted to meet with colleagues does not establish that the Chairs actually met with those colleagues or relied on information from them.

10. For the first time in 2021, the General Assembly created a public comment portal to gather comments. Wright Dep. 252:20-253:4.

**Plaintiffs' Response:**

Undisputed that the General Assembly created a public comment portal. However, Plaintiffs object that this is not a material fact because the mere fact that a public portal was created does not establish that the comments posted to the portal were taken into consideration in the drawing of the maps by legislators or Ms. Wright. In fact, Ms. Wright stated that she did not "have time to spend a lot of time reading" the public portal comments. Canter Decl. ¶ 16 (Deposition of Director Gina Wright ("Wright Dep.") 61:9-23); *see also* Duchin Rep., § 10.3 at 79-80 (describing community input).

11. After holding a committee education day with stakeholder presentations, the committees adopted guidelines to govern the map-drawing

process. Deposition of John F. Kennedy [Doc. 129] (Kennedy Dep.) 161:1-4; Deposition of Bonnie Rich [Doc. 131] (Rich Dep.) 214:19-215:7; Bagley Dep. 89:9-18.

**Plaintiffs' Response:**

Undisputed. However, Plaintiffs object that this is not a material fact because Dr. Duchin provides evidence that traditional redistricting principles were subordinated throughout the map-drawing process. Duchin Rep., § 10 at 67-80.

12. To draw the congressional map, Ms. Wright worked with a group to finalize a plan based on an earlier draft plan from Sen. Kennedy. Wright Dep. 28:19-30:23.

**Plaintiffs' Response:**

Disputed. Ms. Wright does not state in the cited deposition excerpt that the plan she worked on during the working session was based on a draft plan from Sen. Kennedy. Wright Dep. 28:19-23. Moreover, Ms. Wright testified that Sen. Kennedy did not draw the earlier version of the Congressional map which was published on the LCRO website. Wright Dep. 21:5-10.

13. Political considerations were key to drawing the congressional map, including placing portions of Cobb County into District 14 to increase political performance. Wright Dep. 111:16-112:10, 115:8-11, 115:17-24, 158:4- 21.

**Plaintiffs' Response:**

Disputed. None of the facts cited establish that political considerations were key to drawing the Congressional map. Wright Dep. 111:16-112:10, 115:8-11, and 115:17-24 only indicate that Sen. Kennedy, Speaker Ralston and other legislators had a political goal in mind for CD 6, but not that political considerations were key to the map-drawing or that political considerations overrode other considerations such as racial sorting. Wright Dep. 158:4-21 also only indicates there was a political justification in how CD 14 was drawn, but not that it was the key or sole consideration in how the district was drawn.

Moreover, the record is replete with evidence that race was used to achieve Defendants' purported partisan goals. *See* Canter Decl. ¶ 17 (Deposition of Robert Strangia ("Strangia Dep.") 97:17-103:13 (describing creating a formula to estimate political data at the block level, but this data is not accurate at the block level); *id.* 103:17-23 (explaining that racial data available to the legislature is accurate at the block level)); Duchin Rep. §§ 2 & 10.2 at 4-5, 72-79 (finding precinct splits reflect racial focus); Wright Dep. 10:25-11:21; 14:11-20; 27:17-32:4; 36:14-24; 63:18-21; 115:25-116:16; 145:11-22; 149:25-150:9 (Ms. Wright drew draft maps with legislators with racial data projected onto a screen).



14. Georgia's prior 2011 districts were precleared on the first attempt by the U.S. Department of Justice and were never found by any court to be unlawful or unconstitutional. Bagley Dep. 56:20-57:8, 58:4-11.

**Plaintiffs' Response:**

Undisputed. However, Plaintiffs object that this is not a material fact because the 2011 maps are not at issue in this case.

15. For the legislative maps, Ms. Wright first drafted "blind" maps for the House and Senate, drawing based on her own knowledge of Georgia and the historic districts. Wright Dep. 45:15-25 (Senate map); 62:17-62:24 (House map).

**Plaintiffs' Response:**

Undisputed that Wright testified she first drew "blind" maps. However, Plaintiffs object as vague, because Defendants fail to identify what "knowledge of Georgia and the historic districts" Ms. Wright used to draw the "blind" maps. Also disputed as to any inference that the "blind" drawing of maps does not use racial data, since Ms. Wright does not rule out in the cited testimony that her knowledge of Georgia includes knowledge of the racial composition of certain areas of the state.

16. The chairs of the House and Senate committees then met with Ms. Wright to adjust district boundaries based on the input they received. Wright Dep. 54:3-20, 77:2-7 (Senate map); 197:2-6 (House map).

**Plaintiffs' Response:**

Disputed. Defendants' alleged undisputed fact is incomplete. Ms. Wright explains that she also met with other legislators about the district boundaries for the maps and that counsel was also involved in drawing the boundaries for the maps. Wright Dep. 57:16-21; 177:10-13; 197:10-13. Additionally, Dan O'Connor, Ms. Wright's colleague in the Legislative and Congressional Redistricting Office of the Georgia General Assembly, testified during his deposition that he attended at least one map drawing session with legislators and potentially Ms. Wright to draw maps. Canter Decl. ¶ 18 (Deposition of Daniel J. O'Connor ("O'Connor Dep.") 68:12-21, 70:3-8.

17. Some changes requested by Democrats were included. Wright Dep. 59:5-60:7 (Sen. Rhett); Bagley Dep. 107:3-11.

**Plaintiffs' Response:**

Undisputed. However, Plaintiffs object that "some changes" is vague because Defendants do not specify what changes were included or to whom the Democrats requested changes. Plaintiffs also object under FRE 801 as hearsay. Plaintiffs also object this is not a material fact because incorporating one change requested by a Senator does not overcome evidence that racial considerations predominated in the drawing of the map; that it was drawn with the intent to racially sort voters; or that

it was drawn with a discriminatory purpose. *See* Bagley Rep. at 86; Duchin Rep. at 5.

18. Information about draft maps was also shared with members of the Democratic caucus, and Democratic members were able to work with the joint Reapportionment Office. Wright Dep. 223:14-224:4, 226:11-17; Bagley Dep. 116:1-7.

**Plaintiffs' Response:**

Disputed. Plaintiffs object as vague because Defendants do not explain the context in which Democratic members were able to work with the joint Reapportionment Office. Ms. Wright testified that her office “do[esn’t] show any map that a legislator draws without explicit permission from them or them being present to show that to whoever they choose.” Wright Dep. 41:13-41:19. Ms. Wright also testified only that Shalamar Parham requested and received block equivalency files when the maps were “being made available,” but not during the process when Ms. Wright kept the maps secret. Wright Dep. 223:14-224:4, 226:11-17; Bagley Dep. 116:1-7. Ms. Wright also testified that Leader Beverly helped introduce the plans as a “technical[.]” matter, but not that the maps were shared with Ms. Wright or others in the Democratic caucus. *See* Wright Dep. 39:17-40:6.

19. The chairs and Ms. Wright also consulted with counsel about compliance with the Voting Rights Act. Wright Dep. 92:8-20.

**Plaintiffs' Response:**

Disputed. Although Dir. Wright testified that she consulted with counsel about compliance with the Voting Rights Act, the cited testimony makes no mention of the Chairs. This is also not a material fact, because Defendants' assertion of attorney-client privilege over conversations during the Redistricting Process, including any advisement on the enacted maps or the Voting Rights Act, means that Plaintiffs are unable to meaningfully assess the validity or extent of any alleged consultation with counsel with respect to the enacted maps' adherence, or lack thereof, to the Voting Rights Act. Wright Dep. 50:1-50:03.

20. Although racial data was available, the chairs of each committee focused on past election data to evaluate the partisan impact of the new plans while drawing with awareness of Republican political performance. Wright Dep. 55:25-56:7; 140:3-11; 140:17-19; 257:21-258:1; 258:2-14.

**Plaintiffs' Response:**

Disputed. In the cited deposition testimony, Ms. Wright does not state that the Chairs of the committees focused on past election data, but rather that both racial and election data were available. Wright Dep. 55:25-56:7. Wright Dep. 258:2-14

only states that political data was “an important consideration” for the three maps, not that the Chairs of the committees focused on political data.

The record is replete with evidence that race was used to achieve Defendants’ purported partisan goals. *See* Strangia Dep. 97:17-103:13 (describing the creation of a formula to estimate political data at the block level, but this data is not accurate at the block level); *id.* 103:17-23 (explaining that racial data available to the legislature is accurate at the block level); Duchin Opening Rep. §§ 2 & 10.2 at 4-5, 72-79 (finding precinct splits reflect racial focus); Wright Dep. 10:25-11:21; 14:11-20; 27:17-32:4; 36:14-24; 63:18-21; 115:25-116:16; 145:11-22; 149:25-150:9 (Ms. Wright drew draft maps with legislators with racial data projected onto a screen).

21. When drawing redistricting plans, Ms. Wright never used tools that would color the draft maps by racial themes. Wright Dep. 259:24-260:8.

**Plaintiffs’ Response:**

Disputed. This statement is misleading because Ms. Wright relied on information to allow her and legislators to understand the racial sorting effects of her line drawing decisions, such as the ability to see the changes to racial composition as line changes were being made. Wright Dep. 116:23-118:25; 126:3-127:4; Wright Dep. 10:25-11:21; 14:11-20; 27:17-32:4; 36:14-24; 63:18-21; 115:25-116:16;

145:11-22; 149:25-150:9 (Ms. Wright drew draft maps with legislators with racial data projected onto a screen).

22. The office included estimated election returns at the Census block level, so political data was available across all layers of geography. Wright Dep. 140:3-11.

**Plaintiffs' Response:**

Disputed. Rob Strangia, a Geographic Information Systems (“GIS”) specialist at the LCRO who participated in the map drawing process, testified that when drawing the maps, the legislature had access to racial data—but not political data—at the block level. *See* Strangia Dep. 103:17:103:23. Strangia testified that he created a formula to estimate political data at the block level, but that this data is not accurate at the block level. *Id.* 97:17-103:23.

23. The past election data was displayed on the screen with other data. Wright Dep. 140:17-19.

**Plaintiffs' Response:**

Undisputed. However, the “other data” referred to in Fact No 23, above, included racial data. Wright Dep. 55:25-56:7.

24. The chairs evaluated the political performance of draft districts with political goals. Wright Dep. 178:5-22, 191:25-193:3, 206:13-207:16.

**Plaintiffs Response:**

Disputed. There is evidence that maps were drawn to achieve political results through impermissible racial sorting and the subordination of traditional redistricting principles. Duchin Rep. at 4-5, 10-15; Duchin Suppl. Rep. at 10.

25. After releasing draft maps, legislators received public comment at multiple committee meetings. Bagley Dep. 91:8-15, 93:8-10, 94:21-23, 95:14- 96:6, 100:8-11, 111:24-112:1, 113:6-10, 115:4-11.

**Plaintiffs' Response:**

Undisputed. However, the failure to take into consideration the public comments provided at these hearings is evidence which suggests that the map-drawing process was motivated by discriminatory intent. *See* Bagley Rep., § VI, 56-84.

26. Democratic leadership presented alternative plans for Congress, state Senate, and state House that were considered in committee meetings. Bagley Dep. 109:15-110:1 (Congress), 112:18-22 (Congress), 93:2-13 (Senate), 93:21-94:5 (House).

**Plaintiffs' Response:**

Disputed to the extent Defendants suggest the minority party's maps were seriously considered in the legislature, which passed the majority party one week after introduction. *See* Bagley Rep., § VI, 56-84.

27. After the plans were considered, they were passed by party-line votes in each committee before passing almost completely along party lines on the floor of the Senate and House. Bagley Dep. 93:14-20, 105:16-106:1, 113:22- 114:4, 115:12-17, 117:2-4.

**Plaintiffs' Response:**

Undisputed. However, Plaintiffs object that this is not a material fact because there was other evidence reflective of procedural departures from the normal process, including that the maps presented by Sen. Kennedy and Rep. Rich were passed only one week after introduction. *See* Bagley Rep., § VI, 56-84.

28. Dr. Bagley agreed that he couldn't say the 2021 redistricting maps were an abuse of power by Republicans. Bagley Dep. 63:25-64:3.

**Plaintiffs' Response:**

29. Undisputed that this was Professor Bagley's testimony. However, disputed to the extent that Defendants fail to address the fact that although Dr. Bagley testified he was not opining that there was an "outright abuse of power", he also testifies that there were public complaints of an abuse of power by Republicans. Bagley Dep. 63:11-24; Bagley Rep. at 41-42, 56-57. Further, Plaintiffs object to Fact No. 28 because proving that redistricting maps were an "abuse of power," is not material to whether the maps were drawn with racially discriminatory intent.



Additionally, there is other evidence supporting Plaintiffs' claim that the redistricting maps were drawn with racially discriminatory intent. Bagley Rep. at 41-42, 57-62, 66-68. Dr. Duchin said that she was not "criticizing Georgia for not doing enough" in her report. Duchin Dep. 81:25-82:16.

**Plaintiffs' Response:**

Disputed. Plaintiffs object that this is not a material fact, it is instead a mischaracterization of witness testimony and Defendants' citation is misleading. Dr. Duchin's answer to the very next question—not cited by Defendants—clarifies that she was focusing on the word "criticizing," as the purpose of her report is to demonstrate that it is possible to "get more [minority group] opportunity while still being very respectful to [traditional redistricting principles,] and that her "goal is. . . to give a framework and offer alternatives not to criticize per se." Canter Decl. ¶ 19 (Deposition of Dr. Moon Duchin ("Duchin Dep.") 81:25-83:03).

30. The enacted congressional map resulted in five districts that elected Black- and Latino- preferred candidates. Duchin Rep. ¶¶ 4.1, 6.3.

**Plaintiffs' Response:**

Disputed. Dr. Duchin's report does not state that the enacted congressional districts "elected" Black and Latino-preferred candidates. Dr. Duchin explains that the enacted congressional map created five "performing" districts for Black and

Latino-preferred candidates, one less than the benchmark plan. Duchin Rep., § 4.1, at 10. Further, Defendants’ citation to Duchin Report ¶ 6.3 does not support this assertion. The cited section says nothing about how many districts “elect” candidates of choice of Black or Latino voters; instead, it is a comparison of political subdivision splits across plans. *See id.*; *see also id.* § 6.3.

31. The enacted congressional map reduced the number of split counties from the 2011 plan. Duchin Report, ¶¶ 4.1, 6.3.

**Plaintiffs’ Response:**

Disputed to the extent that only Defendants’ citation to Duchin Report § 6.3 supports the assertion. Duchin Opening Rep. § 4.1 does not contain any information about the number of split counties in any plan.

32. The enacted state Senate map reduced the number of split counties from the prior plan. Duchin Report, ¶¶ 6.3, 6.4; Kennedy Dep. 106:4-11.

**Plaintiffs’ Response:**

Disputed to the extent that only Duchin Opening Rep. § 6.3 supports the assertion. Duchin Opening Rep. § 6.4 does not contain any information about the number of county splits in any of the Senate plans. Senator Kennedy’s cited testimony also does not provide any information about the number of county splits in any of the Senate plans.

33. The enacted state Senate map did not pair incumbents of either party running for re-election. Duchin Report, ¶¶ 6.3, 6.4; Kennedy Dep. 106:4- 11.

**Plaintiffs' Response:**

Disputed. Defendants' citations do not support this assertion. Sections 6.3 and 6.4 of Dr. Duchin's report do not provide any information about incumbent splits. Section 6.3 relates solely to the splitting of political subdivisions. Section 6.4 relates solely to the racial demographics of different plans. Similarly, the citation to Senator Kennedy's deposition testimony does not support this assertion. In the cited testimony, Senator Kennedy merely states that he "[didn't] think anyone got drawn out of their [congressional] district." Canter Decl. ¶ 20 (Deposition of John Kennedy ("Kennedy Dep.") 106:9-10). The testimony does not relate to Senate incumbency. Further, Defendants' expert Mr. Morgan stated that four incumbents were paired in the enacted senate map and did not opine about whether those incumbents were running for office. *See* Canter Decl. ¶ 31 (Rebuttal Report of John Morgan ("Morgan Rebuttal Rep.") at 13, Chart 9; Canter Decl. ¶ 22 (Deposition of John B. Morgan ("Morgan Dep.") 49:22-50:9).

34. The enacted state Senate map maintained the same number of majority-Black districts as the prior plan. Duchin Report, ¶¶ 6.3, 6.4; Kennedy Dep. 106:4-11.

**Plaintiffs' Response:**

Disputed to the extent that only Defendants' citation to Duchin Opening Rep. § 6.4 supports this assertion. Duchin Opening Rep. § 6.3 does not contain any information about the racial demographics of any plans. Further, the cited testimony of Senator Kennedy also does not contain any information about the racial demographics of any plans. *See* Kennedy Dep. 106:4-11.

35. The enacted state House map also reduced the number of split counties from the 2011 plan. Duchin Report, ¶¶ 6.3, 6.4.

**Plaintiffs' Response:**

Disputed to the extent that only Defendants' citation to Duchin Opening Rep. § 6.3 supports this assertion. Duchin Opening Rep. § 6.4 contains no information related to the number of split counties in any plan.

36. The enacted state House map increased the number of majority-Black districts from the prior plan. Duchin Report, ¶¶ 6.3, 6.4.

**Plaintiffs' Response:**

37. Disputed to the extent that only Defendants' citation to Duchin Opening Rep. § 6.4 supports the assertion. Section 6.3 of Dr. Duchin's report does not contain any information about the racial demographics of the plans. One of Plaintiffs' proposed Senate plans increases the number of majority-Black voting age population

(VAP) districts by three and another decreases the number of majority-Black VAP districts by six when compared with the enacted plan. Duchin Report, ¶¶ 6.4.

**Plaintiffs Response:**

Undisputed only as to the following facts: SD Alt Eff 1 increases the number of majority-Black VAP districts by 3. SD Alt Eff 3 reduces the number of majority-Black VAP districts by 6 but increases the number of effective districts for Black and Hispanic voters by 9. Duchin Rep. § 6.4 at 23; Duchin Rep. § 7.2; Duchin Dep. 21:01-21:20, 60:05-61:23, 63:17-77:13, 77:20-78:10.

38. Plaintiffs' proposed House plans either increase the number of majority-Black VAP districts by one or decrease them by 12 when compared with the enacted plan. Duchin Report, § 6.4; Duchin Dep. 29:15-22; 113:9- 114:8.

**Plaintiffs Response:**

Undisputed only as to the following facts: Plaintiffs' HD Alt Eff 1 increased the number of majority-Black VAP district by 1, the number of majority-Black or Hispanic VAP districts by 15, and the number of majority Black and Hispanic CVAP by 14. Plaintiffs' HD Alt Eff 2 map reduced the majority Black VAP districts by 5, increased the number of Black and Hispanic VAP districts by 13, and increased the number of Black and Hispanic CVAP districts by 11. HD Alt Eff 3 reduced the number of majority-Black VAP districts by 12, contains the same number of

majority-Black and Hispanic VAP districts, and reduces the number of majority-Black and Hispanic CVAP districts by 6. Duchin Rep. § 6.4 at 23; Duchin Dep. 21:01-21:20, 60:05-61:23, 63:17-77:13, 77:20-78:10.

39. Dr. Duchin's goal in creating the proposed plans was to create districts that "meet a 50 percent plus one threshold" for minority voters. Duchin Dep. 47:10-48:4; 76:2-15.

**Plaintiffs Response:**

Disputed. Defendants' mischaracterize Dr. Duchin's work. Defendants incorrectly imply this was Dr. Duchin's primary or only goal. Moreover, Defendants' citations do not support this assertion. Dr. Duchin's testimony in Duchin Dep. 47:10-48:4 was only in response to the question "what is the *Gingles* 1 standard for coalition districts as you understand it?" Dr. Duchin explained that she believes *Gingles* 1 demonstrative plans must contain additional "50 percent plus 1" minority group districts. Further, Dr. Duchin's testimony in Duchin Dep. 76:02-76:15 is that "in the first instance, my goal was to create *Gingles* demonstrative maps... to create *Gingles* districts, which require 50 percent plus 1, you need to have some minority population in order to achieve that." However, Dr. Duchin's testified that purpose of her *Gingles* 1 demonstrative plans was to demonstrate that it was possible to draw plans with additional majority-minority districts while also

respecting traditional redistricting principles. Duchin Dep 63:17-77:13, 122:08-123:15; Duchin Rep. § 1.1 at 3.

40. Dr. Duchin’s proposed congressional plan does not convert District 6 into a majority-Black district but instead converts District 3 to be majority Black. Duchin Dep. 119:25-120:11.

**Plaintiffs Response:**

Undisputed.

41. When describing the process of drawing the congressional plan, Dr. Duchin was unable to identify a reason why she connected various rural and urban areas. Duchin Dep. 58:18-59:13; 71:14-19

**Plaintiffs Response:**

Disputed. Defendants’ citations do not support this assertion. Dr. Duchin’s testimony in Duchin Dep. 58:18 was that her “Congress Alt” plan “connects parts of south Fulton and Clayton Counties with Troup and Meriwether Counties and Harris County in rural Georgia.” Dr. Duchin was never asked to identify a reason for why these counties were connected—she was only asked to confirm that they were, which she did. Likewise, Dr. Duchin’s testimony in 71:14-71:19 was *only* that she drew her demonstrative congressional plan the same way she drew her demonstrative house and senate plans. Dr. Duchin was not asked to “identify a reason why she

connected various rural and urban areas,” nor did the cited testimony contain any discussion of that topic. Further, Dr. Duchin testified that throughout her map-drawing process she “had certain aspects of community testimony in mind.” She also explained that her “knowledge that [she] gained” through review of community testimony “inform[ed all the map drawing . . . .” Duchin Dep. 122:08-123:08; 163:15-164:03 (“the knowledge that I gained throughout this process about areas where people are talking about shared community concerns, that probably informs all the map drawing in the back of my mind.”).

42. Dr. Duchin also could not explain the reasoning behind the various alternative configurations of her Senate and House plans, instead relying on various computer-drawn drafts. Duchin Dep. 64:24-66:20, 71:7-13, 121:13- 123:8, 139:10-20, 158:5-14, 163:15-164:3.

**Plaintiffs Response:**

Disputed. Defendant’s citations do not support this assertion. Dr. Duchin testifies at Duchin Dep. 64:24-66:20 that she “hand draw[s]” maps after the “algorithmic exploration” process in order to respect traditional redistricting principles (“TDP”). Dr. Duchin’s testimony at Duchin Dep. 71:07-71:13 only confirms that she drew demonstrative senate, house, and congressional maps using that same methodology. Dr. Duchin was not asked to “explain the reasoning behind



various alternative configurations” during that portion of her testimony. In her testimony at Duchin Depo. 121:13-123:08, Dr. Duchin noted that when drawing the demonstrative plan, she “balanced the principles [TDPs] that we've discussed.” When asked about why she connected certain rural and urban areas, she noted that she had “certain aspects of community testimony” in mind.” Dr. Duchin’s testimony at Duchin Dep. 158:05-158:14, in response to why she connected parts of Albany with counties on the Florida border in one of her demonstrative house plans for the HD Southwest cluster, was that she “would just repeat the explanation from earlier that says that these are intended to be demonstrations of what's possible”—in other words, that it is possible to create demonstrative plans that create additional majority-minority districts that respect TDPs. Dr. Duchin’s testimony at Duchin Dep. 158:05-14 and 163:15-164:03 pertain to her effectiveness maps, which are not *Gingles* 1 demonstratives, but instead are meant to provide insights into racial gerrymandering.

Further, Dr. Duchin explains throughout her deposition that to draw her *Gingles* 1 demonstratives, she began by using an algorithmic approach to determine whether it is possible draw additional majority-minority districts. She then used those algorithmic maps as a base and hand-drew demonstrative plans to comport with traditional redistricting principles such as compactness, political subdivision

splits, and communities of interest. *See* Duchin Dep. 18:15-19:14, 65:09 – 71:06, 122:08-123:08; 145:21-146:16 (describing effectiveness maps); 163:15-164:03.

43. Some of Dr. Duchin’s legislative plans included Senate districts with Black VAP percentages as high as 86.5% and multiple House districts with more than 80% Black VAP, including one over 90%. Duchin Dep. 123:24- 127:8, 137:22-139:2, 162:8-22.

**Plaintiffs Response:**

Undisputed. The citation to Moon Dep. 162:08-162:22 only refers to Dr. Duchin’s effectiveness maps, which are not material to any *Gingles* 1 analysis.

44. Dr. Duchin did not consider those districts “packed.” Duchin Dep. 123:24-127:8, 137:22-139:2, 162:8-22.

**Plaintiffs Response:**

Disputed to the extent this refers to any districts beyond those identified in Fact No. 43 and 44.

45. All of Dr. Duchin’s legislative plans have population deviations higher than the enacted plans. Duchin Dep. 101:18-23 (Senate), 101:24-102:2 (House).

**Plaintiffs Response:**

Undisputed, to the extent that “legislative plans” refers only to the house and senate plans.

46. Two of the three Senate plans have the same or more county splits than the enacted plan. Duchin Dep. 107:10-15.

**Plaintiffs Response:**

Undisputed to the extent that this is solely referring to the “county split” metric in Duchin Report at 22, Table 9, and not county pieces, i.e., the number of pieces counties are split into. Two of Dr. Duchin’s alternative senate plans split counties into fewer pieces than the enacted plan. Duchin Rep. at 22, Table 9.

47. All of the House plans split the same or more counties than the enacted plan. Duchin Dep. 107:16-21.

**Plaintiffs Response:**

Undisputed to the extent that this is solely referring to the “county split” metric in Duchin Report at 22, Table 9. All of Dr. Duchin’s alternative house plans split counties into fewer pieces than the enacted plan. Duchin Rep. at 22 (Table 9).

48. While all of the compactness scores are generally similar, Dr. Duchin also reviewed compactness reports while drawing her plans and modified them to improve the scores. Duchin Dep. 103:17-105:20, 69:11-16.

**Plaintiffs Response:**

Undisputed.

49. Dr. Duchin was not able to categorize whether the differences in the various compactness scores were significant. Duchin Dep. 103:17-105:14.

**Plaintiffs Response:**

Disputed. Dr. Duchin testified at 103:17-105:14 that she could not make generalized statements about whether average compactness scores are “significant.” However, Dr. Duchin clarifies that “it’s possible that words like ‘significant’ have crept in in individual places. But I would say generally if one plan is more compact than another on all three of these measures, Polsby Popper, Reock, and cut edges, then I’m comfortable saying that it’s generally more compact.”

50. The only consistent metric across all of Dr. Duchin’s plans is that each one increases Democratic political performance over the comparable enacted plan. Expert Report of John Morgan, attached as Ex. B (Morgan Report), ¶ 12.

**Plaintiffs Response:**

Disputed. This is not a statement of material fact, it is a characterization of Mr. Morgan’s evidence, for which he used only two individual elections in 2020. Further, each of Dr. Duchin’s illustrative plans create additional majority-minority districts. Duchin Rep. at 23 (Table 10); Duchin Rep. at 25.

51. Those differences run from two additional Democratic-leaning seats on the congressional plan, Morgan Report, Chart 7, to ten additional Democratic-

leaning seats on the Senate plan, Morgan Report, Chart 4, to 12 additional Democratic-leaning seats on the House plan, Morgan Report, Chart 1.

**Plaintiffs Response:**

Undisputed only as the fact that Mr. Morgan's report supports these assertions, based upon two elections in 2020 that he analyzed.

52. The Ga. NAACP plaintiffs put forth only one member's name in discovery and could not identify how many members were affected by redistricting. Deposition of Gerald Griggs [Doc. 136] (Griggs Dep.) 79:1-13.

**Plaintiffs Response:**

Disputed. This mischaracterizes Plaintiffs obligations pursuant to an agreement with Defendants. On November 21, 2022, following a meet and confer Defendants agreed that each Plaintiff would need to identify only one member for the purpose of establishing associational standing. Declaration of Crinesha Berry ("Berry Decl.") ¶¶ 12-14; Declaration of Julie Houk ("Houk Decl.") ¶¶ 8-9. Plaintiff, GA NAACP, subsequently updated its discovery responses and named one member. Berry Decl. ¶¶ 12-14, Houk Decl. ¶¶ 8-9. During his deposition, President Griggs also testified that he was able to determine that the GA NAACP had members impacted by the 2021 redistricting process and that while he could not "give a single number [of affected members] because [he hadn't] seen that, that research, [he knew]

it was a lot.” Canter Decl. ¶ 8 (Deposition of Gerald Griggs (“Griggs Dep.”) 78: 4-79:5). *See also* Berry Decl.; Houk Decl.

53. The Ga. NAACP never identified any legislative districts in which that member lived and only that testified that the member had previously been in congressional District 6 and now was in District 7. Griggs Dep. 79:1-13.

**Plaintiffs Response:**

Disputed. This is disputed to the extent it mischaracterizes Plaintiffs obligations pursuant to an agreement with Defendants. Further, President Griggs was never asked to identify which legislative districts the member he identified lived in. *See generally*, Griggs Dep.

54. The Georgia Coalition for the Peoples’ Agenda plaintiffs designated just one member to establish standing, and provided no information as to that member’s residence, their voter-registration status, or a process by which they determine they had members in all districts named in the Complaint. Deposition of Helen Butler [Doc. 138] (Butler Dep.) 74:7-76:13.

**Plaintiffs Response:**

Disputed. This is disputed to the extent it mischaracterizes Plaintiffs obligations pursuant to an agreement with Defendants described in response to SOF 52.

Defendant's citation mischaracterizes the Georgia Coalition for the Peoples' Agenda Plaintiff deposition testimony. The Georgia Coalition for the Peoples' Agenda Plaintiff was never asked to identify that member's residence or their voter-registration status. Despite this, Helen Butler on behalf of the Georgia Coalition for the Peoples' Agenda did testify that she did know "what district for House, Senate, and Congress the identified member lives in," and that she believed "he lives in Cobb County, in the Cobb County districts." Canter Decl. ¶ 6 (Deposition of Helen Butler ("Butler Dep.") 75:7-18). Helen Butler, also testified when asked "...does the Peoples' Agenda have a way to determine which House, Senate, and Congressional districts its individual members reside in," that they do have way to determine this including going "by [its] members, where they live, and by the voter files." *Id.* at 74:16-22. Ms. Butler further testified that working with counsel further analysis related to this was performed. *Id.* at 74:23-6.

55. The GALEO plaintiffs designated just one member to establish standing, and provided no information as to that member's residence, their voter-registration status, or a process by which they determine they had members in all districts named in the Complaint. Deposition of Geraldo Gonzalez [Doc. 139] (Gonzalez Dep.) 81:6-82:25.

**Plaintiffs Response:**

Disputed. This is disputed to the extent it mischaracterizes Plaintiffs obligations pursuant to an agreement with Defendants. *See* Berry Decl., Houk Decl.

Defendant's citation mischaracterizes the GALEO Plaintiff deposition testimony. The GALEO Plaintiff was never asked to identify that member's residence or their voter-registration status. Despite this, Geraldo Gonzalez on behalf of the GALEO did testify that to identify the member GALEO "looked at [their] membership list and made sure that [they] had addresses for the folks that [they] were looking at and made sure that they were in concert with what [they] were particularly looking for." Mr. Gonzalez further testified that the member resided in "DeKalb County." Canter Decl. ¶ 9 (Deposition of Gerardo Gonzalez ("Gonzalez Dep.") at 81:6-83:5); *see also* Canter Decl. ¶ 4 (Declaration of Gerardo Gonzalez (Gonzalez Decl.) ¶ 6).

56. The evidence from legislative depositions demonstrates that legislators were concerned about political performance, not race. Wright Dep. 55:25-56:7, 111:16-112:10, 115:8-11, 115:17-24, 140:3-11, 140:17-19, 158:4-21, 257:21-258:1, 258:2-14.

**Plaintiffs Response:**

Disputed. Defendants' citations do not reflect that legislators were not concerned about race. None of Dir. Wright's cited testimony states that race was not



a consideration. Moreover, Dir. Wright's testimony regarding other legislature's concerns is inadmissible under FRE 602 as speculation or FRE 801 as hearsay. *See* Wright Dep. 111:16-112:10; 115:8-11; 158:4-21; 258:2-14.

Furthermore, at Wright Dep. 55:25-56:7, Dir. Wright admits that both race and political data were projected onto the screen where maps were drawn. At Wright Dep. 140:3-11, 140:17-19, and 257:21-258:1, Dir. Wright admits that the political data she possesses to draw map lines at the block level and that is reflected on the screen when drafting maps is only an "estimate" that is "based on demographics." Robert Strangia explained that the demographic data at the block levels includes race information, and that the estimates are built out of the demographic data that includes race information. He also testified that the political data available to legislatures through the block-level estimate formula he created is inaccurate. Strangia Dep. At 103:3-23; 117:13-119:25.

57. Legislators had political data at all levels of geography and regularly evaluated the political performance of districts as they were drawn. Wright Dep. 140:3-11, 178:5-22, 191:25-193:3, 206:13-207:16.

**Plaintiffs Response:**

This statement improperly includes two facts; both are disputed. The first fact, that legislators had political data at all levels of geography, is not a material fact

because it is possible for the legislators to be concerned with both race and political performance and it is possible for the legislators to improperly rely on race to achieve political performance goals. Also, Defendants do not cite evidence to support that legislatures had political data at all levels of geography. Wright Dep. 140:3-11 refers to block-level data, and Dir Wright states that the block-level data is only an “estimate.” Robert Strangia explained that this estimate is based on demographic data at the block level that includes race information, and that the estimates are built out of the demographic data that includes race information. He also testified that the political data available to legislatures through the block-level estimate formula he created is inaccurate.

The second fact is that legislators regularly evaluated the political performance of districts as they were drawn. This is not a material fact for the same reason stated above in this response. Also, Defendants only cite three examples where Dir. Wright acknowledges that legislators evaluated the political performance of districts as they were drawn (Wright Dep. At 178:5-22, 191:25-193:3, 206:13-207:16), which is insufficient to establish that this practice “regularly” occurred, only that it occurred on those three occasions.

58. For the Congress plan, Plaintiffs only asked about Congressional District 6 (Wright Dep. 111:16-125:25, 130:22-133:17; Kennedy Dep. 176:3-

179:13), the boundary between Congressional Districts 4 and 10 (Wright Dep. 133:18-138:1, 143:5-15), Congressional District 13 (Wright Dep. 168:22-171:7, 175:5-11; Kennedy Dep. 180:1-181:21), and Congressional District 14 (Wright Dep. 152:9-158:21; Kennedy Dep. 182:2-188:1; Rich Dep. 135:13-141:9, 142:3- 16).

**Plaintiffs Response:**

Disputed and a mischaracterization of the evidence. To the extent this statement narrowly seeks to state that Dir. Wright, Sen. Kennedy, and Rep. Rich were asked only about CD 4, CD 6, CD 10, CD 13, and CD 14 at their respective depositions, then the statement is false and is also not material because Plaintiffs have other evidence which shows that other Congressional districts are racial gerrymanders.

Dr. Duchin's opening report provides evidence that is relevant to determining whether CD 2, CD 3, CD 4, CD 6, CD 8, CD 10, CD 13, and CD 14 are racial gerrymanders. Also, Dr. Duchin's rebuttal report provides evidence that is relevant to determining whether any of the Congressional districts are racial gerrymanders. Also, at the deposition of Dir. Wright, Plaintiffs asked questions that relate to whether any of the Congressional districts are racial gerrymanders, including questions about how all of the districts in the Congressional map were drawn, what data was relied on and considered to draw all of the districts in the Congressional

map, what were the priorities when drawing all of the districts in the Congressional map, who provided directions for drawing districts in the Congressional map, and why those directions were provided. Also, at the deposition of Sen. Kennedy, Plaintiffs asked questions that relate to whether any of the Congressional districts are racial gerrymanders, including questions about his responsibilities as Chair of the Senate committee as they relate to drawing all of the Congressional districts and “shepherding” the maps through legislation. Also, at the deposition of Rep. Rich, Plaintiffs asked questions that relate to whether any of the Congressional districts are racial gerrymanders, including questions about her responsibilities as Chair of the House committee as they relate to drawing all of the Congressional districts, including holding meetings with members of the House to receive requests regarding changes to the lines of the map, holding meetings with members of the LCRO about changes to the map lines, and receiving comments from constituents and Georgians about changes to the map lines. Duchin Rep., at 67-69, 72-76, 79-80; Duchin Suppl. Rep. ¶¶ 2.1-2.2; Wright Dep. at 8:24-9:2; 10:16-33:2, 36:6-24; 86:22-101:23; Kennedy Dep. at 32:24-33:23; Rich Dep. at 50:19-55:1.

59. In each case, Ms. Wright or the Chairs testified either unequivocally about race-neutral or political goals for the creation of each district or did not testify as to any racial motivations. *Id.*

**Plaintiffs Response:**

Disputed and mischaracterization of the evidence. At Wright Tr. 111:16-125:25, Dir. Wright testified that “racial data” “[was] reflected on the screen” that showed CD 6 and that the legislators who were providing her directions on how to draw CD 6 could see the screen and see changes in the racial data as changes to the lines were being made. At Wright Tr. 130:22-133:17, Dir. Wright agreed that the changes made to the lines of CD 6 reflect that CD 6 was made “more white” in the enacted Congressional map. At Kennedy Dep. 176:3-179:13, Sen. Kennedy acknowledged that he could not “name any similar policy interests that the residents of Dawson County and the residents of East Cobb” hold even though they were put together into CD 6. At Wright Dep. 133:18-138:1, and also immediately after this portion, Dir. Wright acknowledged that she has to look at the block level to make changes to lines which split precincts, and that the data at this geographic level includes “racial data.” At Wright Dep. 143:5-15, Dir. Wright only states that she does not remember what the motivations were for drawing the line that cuts through Oxford. At Wright Dep. 168:22-171:7, and also immediately after this portion, Dir. Wright acknowledged that 76% of CD 13 is Black and Latino individuals, which she considers a “high number” in some circumstances and at least “could be” a “red flag” when determining if the district is packed. At Wright Dep. 175:5-11, Dir. Wright

only states that she has no memory of drawing the lines for CD 13 or the motivations behind those lines. At Kennedy Dep. 180:1-181:21, Sen. Kennedy states nothing about the motivations or goals related to drafting CD 13. At Wright Dep. 152:9-158:21, Dir. Wright acknowledged that Austell and Powder Springs are majority people of color, that portions of both of these cities were added to CD 14, and that neither compactness principles nor preserving communities of interest can justify these changes. At Kennedy Dep. 182:2-188:1, Sen. Kennedy acknowledged that CD 14 is “predominantly white” and that Cobb County was split into four pieces to add portions of Austell and Powder Springs into CD 14. At Rich Dep. 135:13-141:9, Rep. Rich stated that CD 14 is “very rural” and that “suburban” portions of Cobb County were added into CD 14. At Rich Dep. 142:3-16, Rep. Rich did not state anything related to the motivations or goals of drawing CD 14. To the extent there is a distinction between the goals or motivations of the district line decisions and what factors predominated when making those line-drawing decisions—a distinction which Plaintiffs reject—then this fact is not material, as the question is about predominance, not goals or motivations.

60. For the Senate, Plaintiffs only asked about Senate District 17 (Wright Dep. 185:12-187:3; Kennedy Dep. 250:16-253:3) and Senate District 48 (Wright Dep. 188:8-14, 190:21-193:3; Kennedy Dep. 244:7-245:2).

**Plaintiffs Response:**

Disputed and a mischaracterization of the evidence. To the extent this statement narrowly seeks to state that Dir. Wright and Sen. Kennedy were only asked about SD 17 and SD 48 at their respective depositions, then the statement is false and is also not material because Plaintiffs have other evidence which shows that other Senate districts are racial gerrymanders.

Dr. Duchin's opening report provides evidence that is relevant to determining whether SD 1, SD 2, SD 4, SD 17, SD 26, SD 48, and SD 56 are racial gerrymanders. Also, Dr. Duchin's rebuttal report provides evidence that is relevant to determining whether any of the Senate districts are racial gerrymanders. Also, at the deposition of Dir. Wright, Plaintiffs asked questions that relate to whether any of the Senate districts are racial gerrymanders, including questions about how all of the districts in the Senate map were drawn, what data was relied on and considered to draw all of the districts in the Senate map, what were the priorities when drawing all of the districts in the Senate map, who provided directions for drawing districts in the Senate map, and why those directions were provided. Also, at the deposition of Sen. Kennedy, Plaintiffs asked questions that relate to whether any of the Senate districts are racial gerrymanders, including questions about his responsibilities as Chair of the Senate committee as they relate to drawing all of the Senate districts and

“shepherding” the maps through legislation. Duchin Rep. at 67-69, 72-76, 79-80; Duchin Suppl. Rep. ¶¶ 2.1-2.2; Wright Dep. at 33:4-52:5; 54:3-62:16; 86:22-101:23. Kennedy Dep. at 32:24-33:23.

61. In both cases, Ms. Wright or Chairman Kennedy testified either unequivocally about race-neutral or political goals for the creation of each district or did not testify as to any racial motivations. *Id.*

**Plaintiffs Response:**

Disputed and mischaracterization of the evidence. At Wright Dep. 185:12-187:3, Dir. Wright acknowledged that SD 17 “got whiter” based on the changes to the lines. At Kennedy Dep. 250:16-253:3, Sen. Kennedy acknowledged that SD 17’s Black voting age population reduced and could not provide a specific explanation for that change. At Wright Dep. 188:8-14, and immediately following this portion, Dir. Wright admits that Senator Au represented SD 48 before its lines were changed and that Sen. Kennedy was aware at that time that Senator Au is Asian. At Wright Dep. 190:21-193:3 Ms. Wright admitted that “a lot of white voters were added to SD 48” and “a lot of Latino voters were taken out of SD 48.” At Kennedy Dep. 244:7-245:2, Sen. Kennedy acknowledged that Sen. Au is Asian. To the extent there is a distinction between the goals or motivations of the district line decisions and what factors predominated when making those line-drawing decisions—a



distinction which Plaintiffs reject—then this fact is not material, as the question is about predominance, not goals or motivations.

Wright Dep. at 188:9-189:17.

62. For the House, Plaintiffs asked about House District 44 (Wright Dep. 215:16-218:17; Rich Dep. 145:21-148:4), House District 48 (Wright Dep. 213:19-215:15; Rich Dep. 148:5-149:11), House District 49 (Wright Dep. 199:14-205:8; Rich Dep. 149:15-150:6), House District 52 (Rich Dep. 150:7-21), and House District 104 (Wright Dep. 205:19-207:16, 210:7-22; Rich Dep. 150:22-152:12).

**Plaintiffs Response:**

Disputed and a mischaracterization of the evidence. To the extent this statement narrowly seeks to state that Dir. Wright and Rep. Rich were only asked about HD 44, HD 48, HD 49, HD 52, and HD 104 at their respective depositions, then the statement is false and is also not material (assuming that “HD 4” was a typo and that Defendants’ meant “HD 48”), because Plaintiffs have other evidence that other House districts are racial gerrymanders.

Dr. Duchin’s rebuttal report provides evidence that is relevant to determining whether any of the House districts are racial gerrymanders. Also, at the deposition of Dir. Wright, Plaintiffs asked questions that relate to whether any of the House districts are racial gerrymanders, including questions about how all of the districts

in the House map were drawn, what data was relied on and considered to draw all of the districts in the House map, what were the priorities when drawing all of the districts in the House map, who provided directions for drawing districts in the House map, and why those directions were provided. Also, at the deposition of Rep. Rich, Plaintiffs asked questions that relate to whether any of the House districts are racial gerrymanders, including questions about her responsibilities as Chair of the House committee as they relate to drawing all of the House districts, including holding meetings with members of the House to receive requests regarding changes to the lines of the map, holding meetings with members of the LCRO about changes to the map lines, and receiving comments from constituents and Georgians about changes to the map lines. Duchin Suppl. Rep. ¶¶ 2.1-2.2; Wright Dep. at 36:6-24; 62:17-69:19; 86:22-101:23; Rich Dep. at 50:19-55:1.

63. In each case, Ms. Wright and Chairman Rich testified either unequivocally about race-neutral or political goals for the creation of each district or did not testify as to any racial motivations. Id.

**Plaintiffs Response:**

Disputed and a mischaracterization of the evidence. At Wright Dep. 215:16-218:17, and in the portions immediately following this, Dir. Wright acknowledged that HD 44 retains only “some” of its core and that Latino populations were impacted

by the core disruption. At Rich Dep. 145:21-148:4, Rep. Rich testified that she has no recollection about drawing HD 44, though she acknowledges that HD 44 fails to keep counties whole despite this being a goal of the guidelines. At Wright Dep. 213:19-215:15, Dir. Wright recalls no goal or motivation for the composition of HD 48. At Rep. Dep. 148:5-149:11, Rep. Rich acknowledges that when she looked at draft maps racial data was reflected and “consider[ed]” though she had no specific recollection of drawing HD 48. At Wright Dep. 199:14-205:8, Dir. Wright admits that “a lot of white people were added into HD 49” and that HD 49 retained only “some” of its core. At Rich Dep. 149:15-150:6, Rep. Rich stated that she could not recall anything related to drawing HD 49. At Rich Dep. 150:7-21, Rep. Rich stated that she could not recall anything related to drawing HD 52. At Wright Dep. 205:19-207:16, Dir. Wright stated that Barrow County was split apart to draw HD 104. At Wright Dep. 210:7-22, Dir. Wright stated that she does not recall whether moving white populations into and Latino populations out of HD 104 was a goal but acknowledges that this occurred. At Rich Dep. 150:22-152:12, Rep. Rich states that she does not recall looking at HD 104. *See also* Wright Dep. at 218:18-21.

64. None of Plaintiffs’ experts besides Dr. Duchin provided opinions about district boundaries. Deposition of Peyton McCrary [Doc. 130] (McCrary Dep.)

48:19-21; Bagley Dep. 28:19-29:6; Report of Benjamin Schneer, attached as Ex. C (Schneer Report), ¶¶ 5-8.

**Plaintiffs Response:**

Disputed. Dr. McCrary opined on the totality of the circumstances that can be considered when deciding whether district lines have violated federal law. Dr. Bagley opined on factors that can be considered when deciding whether district lines have violated federal law. Dr. Schneer opined on whether there is racially polarized voting in the districts that were created based on those line-drawing decisions. Undisputed if Defendants are referring to the fact that only Dr. Duchin provided alternative maps in her expert report. *See generally*, Canter Decl. ¶ 10 (Expert Report of Dr. Peyton McCrary (“McCrary Rep.”)); Bagley Rep.; Canter Decl. ¶ 24 (Expert Report of Dr. Benjamin Schneer (“Schneer Rep.”)).

65. Dr. Duchin’s report evaluates core retention and “racial swaps” only for Congressional Districts 6 and 14; Senate Districts 14, 17, and 48 (with a brief reference to Senate District 7); and House Districts 44, 48, 49, 52, and 104. Duchin Report, ¶ 10.1.

**Plaintiffs Response:**

Disputed. This statement improperly includes three facts.

The first fact is that Dr. Duchin evaluated core retention only for CD 6 and CD 14 for the Congressional map. This is disputed. Dr. Duchin's opening report primarily focuses on CD 6 and CD 14, but the report also makes findings that are relevant to core retention and racial swaps for CD 7 (noting that CD 7 has "more than one-in-three new voters" and that it gained voters from benchmark CD 6) and CD 4, CD 5, and CD 11 (finding that these districts gained voters from benchmark CD 6). Duchin Rep. at 67-69.

The second fact is that Dr. Duchin evaluated core retention only for SD 14, SD 17, SD 48, and SD 7 for the Senate map. This is disputed. Dr. Duchin's opening report primarily focuses on SD 14, SD 17, SD 48, and SD 7, but the report also makes findings that are relevant to core retention and racial swaps for SD 6, SD 32, and SD 56 (stating that these districts "have less than half of their population retained"). Duchin Rep. at 67-69.

The third fact is that Dr. Duchin's opening report evaluated core retention only for HD 44, HD 48, HD 49, HD 52, and HD 104. This is disputed. Dr. Duchin's opening report states that "[f]ully 57 districts out of 180 were moved to positions completely disjoint from their benchmark locations" and that "a startling 32 districts were not only moved or relabeled but effectively *dismantled*, with fewer than 30,000 prior residents assigned to any single district." Dr. Duchin also specifically stated

that the dismantling of HD 35, HD 104, and HD 109 (in addition to HD 44, HD 48, HD 49, and HD 52) caused these districts to be noncompetitive. Duchin Rep. at 67-71.

66. Dr. Duchin acknowledges that there were “many other considerations” in play besides core retention. Duchin Dep. 171:22-172:7.

**Plaintiffs Response:**

Undisputed.

67. Dr. Duchin acknowledged that racial population shifts are not conclusive evidence of racial predominance and that she could not say that the various metrics she reviewed showed racial predominance. Duchin Dep. 180:18-23, 198:6-21 (Congress), 200:11-20 (Congress), 201:8-21 (Senate), 202:24-203:12 (House).

**Plaintiffs Response:**

This statement includes two facts. The first is that Dr. Duchin acknowledged that racial population shifts are not conclusive evidence of racial predominance. This is undisputed. However, this is not a material fact because the issue whether suggestive evidence is “conclusive” evidence of racial gerrymandering is a matter for the Court. Further, States can violate the U.S. Constitution’s prohibition against racial gerrymandering through multiple pieces of evidence that race predominated

in the map drawing process where each of the pieces of evidence, standing alone, would not be conclusive evidence of racial predominance. The second fact is that Dr. Duchin could not say that the various metrics she reviewed showed racial predominance. This is disputed and a mischaracterization of the evidence. At Duchin Dep. 180:18-23, Dr. Duchin states that “racially imbalanced population transfer” are “suggestive evidence” of racial predominance in the drawing process. At Duchin Dep. 198:6-21, Dr. Duchin states that the evidence in her opening report is “patterns consistent with a packing and cracking strategy.” At Duchin Dep. 200:11-20, Dr. Duchin agrees that her evidence of split precincts in the Congressional map represents a “significant racial disparity” that is “consistent with an effort to diminish the electoral effectiveness of CD 6 for black voters.” At Duchin Dep. 201:8-21, Dr. Duchin agrees that her evidence of county splits leading to racial disparities across the Senate map is “consistent with a racial goal.” At Duchin Dep. 202:24-203:12, Dr. Duchin agrees that racial sorting splits for the House map are “consistent with a racial goal.”

68. Dr. Duchin provides information about what she says are racial splits of counties in Congressional Districts 2, 3, 4, 6, 8, 10, 13, and 14 and what she says are racial splits of precincts in Congressional Districts 4, 6, 10, and 11. Duchin Report, ¶ 10.2.1; Duchin Dep. 167:5-15, 174:9-14, 186:17-23.

**Plaintiffs Response:**

Undisputed. However, to the extent this statement implies that these are the only districts where Dr. Duchin provides information about county and precinct splits for the Congressional map, this is disputed. Appendix C, Table 55 to Dr. Duchin's opening report provides a complete list of county splits for the Congressional Map, which includes information about county splits to CD 1, CD 5, CD 7, CD 9, CD 11, and CD 12. Also, Figure 40 reflects precinct splits in CD 2, CD 3, CD 5, and CD 8, as well as CD 4. Duchin Rep. at Appendix C (Table 55); Appendix C (Figure 40).

69. Dr. Duchin did not look at the political data behind those county splits on the congressional plan. Duchin Report, ¶ 10.2.1; Duchin Dep. 167:5- 15, 174:9-14, 186:17-23.

**Plaintiffs Response:**

Disputed. Appendix C, Table 55 to Dr. Duchin's opening report reflects political data behind all of the county splits on the Congressional map, including county splits in CD 2, CD 3, CD 4, CD 6, CD 8, CD 10, CD 13, and CD 14. At section 10.2.1 of Dr. Duchin's opening report, Dr. Duchin references Appendix C. Dr. Duchin also refers to Appendix C at Duchin Dep. 167:5-15. Duchin Rep. Appendix C (Table 55).



70. The only state Senate districts Dr. Duchin discusses regarding racial splits are Senate Districts 1, 2, 4, and 26. Duchin Report, ¶ 10.2.2.

**Plaintiffs Response:**

Disputed. Appendix C, Table 56 to Dr. Duchin's opening report reflects county splits in Senate districts, and the racial effect of those county districts, for SD 5, SD 6, SD 7, SD 9, SD 10, SD 14, SD 15, SD 16, SD 17, SD 18, SD 20, SD 21, SD 22, SD 23, SD 25, SD 26, SD 28, SD 29, SD 30, SD 32, SD 33, SD 34, SD 35, SD 36, SD 37, SD 38, SD 39, SD 40, SD 41, SD 42, SD 43, SD 44, SD 45, SD 46, SD 47, SD 48, SD 49, SD 50, SD 55, SD 56. Dr. Duchin also identifies Senate plan county splits that impact the racial composition of the districts in her Figure 41. Dr. Duchin also identifies in Figure 42 precinct splits between SD 7 and SD 5 that impact the racial composition of the districts. Duchin Rep. at Appendix C (Table 56); Appendix C (Figure 41); Appendix C (Figure 42).

71. Dr. Duchin does not identify any state House districts with racial splits. Duchin Report, ¶ 10.2.3; Duchin Dep. 189:2-19.

**Plaintiffs Response:**

Disputed. Appendix C, Table 57 to Dr. Duchin's opening report reflects county splits to over 100 House districts, and the racial effect of those county splits. Dr. Duchin also identifies county splits that impact the racial composition of the

districts for the House plan in Figure 43, and precinct splits in HD 10, HD 28, HD 29, HD 32, HD 51, HD 53, HD 81, HD 88, HD 94, HD 96, HD 97, HD 108 that impact the racial composition of the districts. Duchin Rep. at Appendix C (Table 57); Appendix C (Figure 43); Appendix C (Figure 44).

72. Dr. Duchin did not describe any House districts as drawn “primarily” based on race. Duchin Report, ¶ 10.2.3; Duchin Dep. 189:2-19.

**Plaintiffs Response:**

Disputed. *First*, whether the house districts “were drawn ‘primarily’ based on race” is ultimately a legal conclusion, it is not a fact. Section 10.2.3 of the Duchin opening report reflects evidence that Dr. Duchin identifies that is consistent with racial sorting being a goal in drawing the House map, which is consistent with her treatment of evidence regarding the House map throughout, such as at Duchin Dep. 202:24-203:12, where Dr. Duchin states that her evidence of racial splits is “consistent with a racial goal.” At Duchin Dep. 189:2-19, Dr. Duchin states that Table 40 of her opening report reflects that certain House districts “were drawn in a quite racially-distinctive way.” Duchin Dep. at 202:24-203:12.

73. Dr. Duchin created her draft plans with the goal of drawing majority-minority districts. Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2- 15, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

**Plaintiffs Response:**

Disputed to the extent Defendants are asserting that this is Dr. Duchin's primary or only goal. Defendants' citations do not support that assertion.

At Duchin Dep. 47:10-48:04, Dr. Duchin testifies that her understanding is that for "Gingles 1 coalition districts" one requirement is that the coalition population be "50 percent plus 1." Dr. Duchin does not specify what her goals were for drawing her illustrative plans.

At Duchin Dep. 64:24-66:20, Dr. Duchin testifies that after the algorithmic exploration phase of her work, she hand-draws maps to ensure that the maps have "50 percent plus 1" minority populations, while balancing TDPs in "a way that seems favorable." She does not testify that the primary or sole goal of her *Gingles 1* demonstrative plans was to create "50 percent plus 1 districts."

At Duchin Dep. 71:07-71:13, Dr. Duchin testifies that she drew *Gingles 1* demonstrative plans for the house and senate using the same methodology with which she drew *Gingles 1* alternative congressional plans. She does not opine upon the primary or sole goal of her *Gingles 1* map-drawing exercise.

At Duchin Dep. 76:02-76:15, Dr. Duchin merely testifies that she was "trying... to create *Gingles 1* demonstrative maps" part of which "require[s] 50 percent plus

1” minority-group population districts. Dr. Duchin does not testify that this is the primary or sole goal.

At Duchin Dep. 121:13-123:08, Dr. Duchin is asked about why she connected certain counties in her SD Atlanta module, and she replied that she was creating majority-minority districts while also keeping in mind “certain aspects of community testimony.” She does not opine that her primary or sole goal was to create majority-minority districts.

At Duchin Dep. 139:10-139:20, Dr. Duchin is only asked why she connected Albany with certain counties on the Florida border in her HD Southwest module. She does not opine upon the primary or sole goal of her *Gingles* 1 map-drawing exercise.

Duchin Dep. 158:05-158:14 refer to her effectiveness plans, which explicitly are designed *not* to prioritize creating majority-minority districts, and instead are meant solely to demonstrate effectiveness opportunities for minority voters while respecting TDPs.

74. Dr. Duchin was unable to identify why particular counties were connected on her various plans. Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

**Plaintiffs Response:**

Disputed. Defendant's citations do not support this assertion.

Dr. Duchin testifies at Duchin Dep. 64:24-66:20 that she "hand draw[s]" maps after the "algorithmic exploration" process in order to respect TDPs.

Dr. Duchin's testimony at Duchin Dep. 71:07-71:13 only confirms that she drew demonstrative senate, house, and congressional maps using that same methodology. Dr. Duchin was not asked to explain "why particular counties were connected."

At Duchin Dep. 76:02-76:15, Dr. Duchin merely testifies that she was "trying. . . to create *Gingles* 1 demonstrative maps" part of which "require[s] 50 percent plus 1" minority-group population districts. Dr. Duchin was not asked to "identify why particular counties were connected."

At Duchin Dep. 121:13-123:08, Dr. Duchin noted that when drawing the demonstrative plan, she "balanced the principles [TDPs] that we've discussed." When asked about why she connected certain rural and urban areas, she noted that she had "certain aspects of community testimony" in mind.

Dr. Duchin's testimony at Duchin Dep. 158:05-158:14, in response to why she connected parts of Albany with counties on the Florida border in one of her demonstrative house plans for the HD Southwest cluster, was that she "would just repeat the explanation from earlier that says that these are intended to be

demonstrations of what's possible”—in other words, that it is possible to create demonstrative plans that create additional majority-minority districts that respect TDPs.

Dr. Duchin's testimony at Duchin Dep. 158:05-14 and 163:15-164:03 pertain to her effectiveness maps, which are not *Gingles* 1 demonstratives, but instead are meant to provide insights into racial gerrymandering.

Further, Dr. Duchin explains throughout her deposition that to draw her *Gingles* 1 demonstratives, she began by using an algorithmic approach to determine whether it is possible draw additional majority-minority districts. She then used those algorithmic maps as a base and hand-drew demonstrative plans to comport with traditional redistricting principles such as compactness, political subdivision splits, and communities of interest. *See* Duchin Dep. 122:08-123:08; 163:15-164:03.

75. When asked about particular district decisions, Dr. Duchin fell back to her maps being “demonstrations.” Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

**Plaintiffs Response:**

Disputed. This is not a material fact, it is instead of characterization of Dr. Duchin's testimony or a legal argument. Further, Dr. Duchin's maps are demonstration maps, and that “the role of *Gingles* 1 demonstrative plans is to show

that there's a problem and to show that the problem is remediable.” Duchin Dep. at 123:09-123:15.

76. Dr. Duchin’s plans do not attempt to evaluate traditional redistricting principles beyond the ones she can represent numerically. Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13-123:8, 139:10-20, 158:5- 14, 163:15-164:3.

**Plaintiffs Response:**

Disputed. Defendants’ citations do not support this assertion.

At Duchin Dep. 47:10-48:04, Dr. Duchin is not asked about what traditional redistricting principles she evaluated, she is asked to describe the numerosity requirement for coalition districts under *Gingles* 1.

At Duchin Dep. 64:24-66:20, Dr. Duchin testifies that after the algorithmic exploration phase of her work, she hand-draws maps to balance ensure that the maps have “50 percent plus 1” minority populations, while balancing TDPs in “a way that seems favorable.” She is specifically asked about “what data she has displayed” when hand-drawing the maps, and she responds “the data that you see in the report.” Dr. Duchin shortly afterwards testifies—in testimony not cited by Defendants—that in addition to this hard data, “community testimony informed my map drawing,” and that “communities of interest is a kind of a holistic consider[ation].”

At Duchin Dep. 71:07-71:13, Dr. Duchin testifies that she drew *Gingles* 1 demonstrative plans for the house and senate using the same methodology with which she drew *Gingles* 1 alternative congressional plans. She does not testify that she limited her analysis of TDPs to ones that could be “represent[ed] numerically.”

At Duchin Dep. 76:02-76:15, Dr. Duchin merely testifies that she was “trying. . . to create *Gingles* 1 demonstrative maps” part of which “require[s] 50 percent plus 1” minority-group population districts. Dr. Duchin is not asked about traditional redistricting principles at all.

At Duchin Dep. 121:13-123:08, Dr. Duchin is asked about why she connected certain counties in her SD Atlanta module, and she replied that she was creating majority-minority districts while also keeping in mind “certain aspects of community testimony.”

At Duchin Dep. 139:10-139:20, Dr. Duchin is only asked why she connected Albany with certain counties on the Florida border in her HD Southwest module. She is not specifically asked about what traditional redistricting principles she considered and does not testify that she limited her discussion of TDPs to ones that could be “represent[ed] numerically.”

Duchin Dep. 158:05-158:14 and 163:15-164:3 refer to her effectiveness plans, which are not *Gingles* 1 demonstrative plans. Further, in testimony not cited by



Defendants, Dr. Duchin notes that the point of these effectiveness plans “[are] to show that if you turn off all use of race, you can still get to lots of effective districts in ways that are very TDP respecting.” Dr. Duchin does not limit this analysis to TDPs that can be “represent[ed] numerically.” Duchin Dep. at 71:07-71:13; 154-08-154:12.

77. Dr. Duchin does not profess to have a knowledge of communities in Georgia. Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13- 123:8, 139:10-20, 158:5-14, 163:15-164:3.

**Plaintiffs Response:**

Disputed. Defendant’s citations do not support this assertion.

At Duchin Dep. 47:10-48:04, Dr. Duchin is not asked about her “knowledge of communities in Georgia,” she is asked to describe the numerosity requirement for coalition districts under *Gingles* 1.

At Duchin Dep. 64:24-66:20, Dr. Duchin testifies that after the algorithmic exploration phase of her work, she hand-draws maps to balance ensure that the maps have “50 percent plus 1” minority populations, while balancing TDPs in “a way that seems favorable.” She is specifically asked about “what data she has displayed” when hand-drawing the maps, and she responds, “the data that you see in the report.” Dr. Duchin shortly afterwards testifies—in testimony not cited by Defendants—that

in addition to this hard data, “community testimony informed my map drawing,” and that “communities of interest is a kind of a holistic consider[ation].”

Dr. Duchin’s testimony at Duchin Dep. 71:07-71:13 *only* confirms that she drew demonstrative senate, house, and congressional maps using the same methodology. Dr. Duchin does not testify that she does not have a “knowledge of communities in Georgia.”

At Duchin Dep. 76:02-76:15, Dr. Duchin merely testifies that she was “trying. . . to create *Gingles* 1 demonstrative maps” part of which “require[s] 50 percent plus 1” minority-group population districts. Dr. Duchin was not asked about her “knowledge of communities in Georgia.”

At Duchin Dep. 121:13-123:08, Dr. Duchin noted that when drawing the demonstrative plan, she “balanced the principles [TDPs] that we’ve discussed.” When asked about why she connected certain rural and urban areas, she noted specifically that she had “certain aspects of community testimony” in mind.”

At Duchin Dep. 139:10-139:20, Dr. Duchin is only asked why she connected Albany with certain counties on the Florida border in her HD Southwest module. She is not asked about her “knowledge of communities in Georgia.”

78. Plaintiffs also offer a variety of plans that decrease the number of majority-Black districts while increasing the number of majority-minority districts,

primarily by combining Black and Latino individuals as a “minority” category.

Duchin Report, ¶¶ 6.4; Duchin Dep. 29:15-22; 113:9-114:8.

**Plaintiffs Response:**

Undisputed.

79. Plaintiffs have not offered evidence on polarization from primary elections in Georgia. Schneer Rep. at 12, 13.

**Plaintiffs Response:**

Disputed. Plaintiffs’ expert Dr. Schneer did offer evidence on polarization from primary elections in Georgia, by explaining that while “primary elections can be of use in an RPV analysis, but [in his view] studying them is not necessary or sufficient for drawing conclusions about racially polarized voting in Georgia general elections[;]” by explaining that “if racially polarized voting occurs in a Georgia primary election it does not necessarily imply that racially polarized voting will occur in the general election, and vice versa[;]” and by opining that “it is sufficient in this case to examine behavior in general elections in order to determine the extent of racially polarized voting in Georgia general elections.” Schneer Rep. at 12, 13.

Plaintiffs’ expert Dr. Moon Duchin further determined how likely Black and/or Hispanic voters were to be able to elect their candidate of choice in certain districts in Georgia by reviewing if the Black and/or Hispanic candidate of choice

would win in at least three out four primary elections, reflecting racially polarized voting in Georgia. Duchin Rep. at 4, 5; 18 (Table 4); 48-66 (Tables 27-39); *see also* Canter Decl. ¶ 28 (Moon Duchin Notice of Errata (“Duchin Errata”) at 4-10, Tables 52-54 (April 26, 2023)).

80. Black voters in Georgia overwhelmingly vote for Democrats. Deposition of Benjamin Schneer [Doc. 135] (Schneer Dep.) 48:14-20.

**Plaintiffs Response:**

Undisputed.

81. Dr. Schneer’s decision not to review any primary election results in his report undermines the usefulness of the data and analysis he presents as purported evidence of racial polarization in Georgia’s elections. Schneer Report, ¶ 20; Schneer Dep. 60:11-61:20.

**Plaintiffs Response:**

Disputed. This conclusory position by Defendants is not a statement of material fact. Additionally, the references to Dr. Schneer’s deposition and report cited in support of Defendant’s Fact No. 81 do not support the conclusion that his decision to not review primary elections undermines his finding of racially polarized voting in Georgia. In fact, in the references cited by Defendant, Dr. Schneer states that looking at primaries was neither necessary nor sufficient for his determination

of whether there is racially polarized voting in Georgia. Schneer Rep. at 12, 13; Canter Decl. ¶ 27 (Deposition of Dr. Benjamin Schneer (“Schneer Dep.”) 60:11-61:20).

82. Dr. Schneer’s data demonstrates two things: The race of the candidate does not change voting behavior of Georgia voters; and the party of the candidate does. Report of John Alford, attached as Ex. D (Alford Report), p. 3; Schneer Report, ¶ 21 n.18.

**Plaintiffs Response:**

Disputed. This is not a material fact because what is at issue is the cohesion around a candidate of choice and not the race of the candidate. Moreover, this does not accurately or completely describe Dr. Schneer’s findings in his report. In fact, during his deposition Dr. Schneer made clear that his analysis was descriptive, highlighting how Black and/or Hispanic voters vote as opposed to White voters in Georgia, as opposed to an attempt to determine the cause. Schneer Dep. 45:13-46:18; 50:19-51:9.

83. The 2021 congressional plan has five districts where Black-preferred candidates succeed. Duchin Report, ¶¶ 4.1.

**Plaintiffs Response:**

Undisputed to the extent that Dr. Duchin states that “the newly enacted Congressional plan makes major changes to the benchmark and does so in a way that reduces the number of performing districts for Black- and Latino-preferred candidates from 6 out of 14 (42.9%) to just 5 out of 14 (35.7%).” Duchin Rep. at 10. Disputed to the extent that Defendants rely on a different definition of Black-preferred than the definition relied on by Dr. Duchin. *See* Duchin Rep. at 17.

84. The Any-Part Black VAP for Georgia as a whole is 31.73%. Duchin Report, ¶ 3.3.

**Plaintiffs Response:**

Undisputed.

85. Both of Georgia’s U.S. senators are Black-preferred candidates because they are Democrats (Sen. Ossoff was elected in 2021 and Sen. Warnock was re-elected in 2022). Schmeer Report, p. 78, Table 10.

**Plaintiffs Response:**

Disputed. This does not accurately or completely describe Dr. Schmeer’s findings in his report. In fact, during his deposition Dr. Schmeer made clear that his analysis was descriptive, highlighting how Black and/or Hispanic voters vote as opposed to White voters in Georgia, as opposed to an attempt to determine the cause. Schmeer Dep. at 45:13-46:18; 50:19-51:9.

86. Dr. Bagley found no “obvious discriminatory intent.” Bagley Dep. 27:22-28:1.

**Plaintiffs Response:**

Disputed and mischaracterization of the evidence. Dr. Bagley was asked whether “in [his] view, the first Arlington Heights factor of obvious discriminatory intent wasn’t present and that’s what led [him] to look at other factors,” and he responded, “that is correct.” He thus testified that there was insufficient evidence to determine that the first Arlington Heights factor was met, which is not the same as finding some evidence that can be consistent with obvious discriminatory intent. For example, Dr. Bagley’s report states that “[t]he [General Assembly’s committee on redistricting’s] failure to respond to public calls for more transparency, more time, a reflection of the state growing minority population, and to avoid packing and cracking [during the Town Halls], constitute substantive departures” from the legislative process. Bagley Rep. at 42.

87. While Dr. Bagley analyzed the second, third, fourth, and fifth Arlington Heights factors, he did not opine that discriminatory intent was the driving factor of the legislature or that there was discriminatory intent in the legislative process of redistricting. Bagley Report, p. 7; Bagley Dep. 27:22-28:1; 123:3-14.

**Plaintiffs Response:**

Disputed and mischaracterization of the evidence. Dr. Bagley's report states that "[b]ased upon my review of the evidence – the historical background of invidious voter discrimination in Georgia, particularly in redistricting; the legislative history of the bills in question; procedural and substantive irregularities in the drafting and passing of those bills; the statements made by legislators during this process; and the information made available to the public – it is my opinion that the Court has strong support for reaching a finding of discriminatory intent." Bagley Rep. at 8. At page 7 of the Bagley report, Dr. Bagley states that he opines on the second, third, fourth, and fifth Arlington Heights factors, but not that he does not opine on the discriminatory intent in the drafting of the map or the legislative process to pass the map. Bagley Rep. at 7. At Bagley Tr. 27:22-28:1, Dr. Bagley only states that he did not find evidence of the first Arlington Heights factor. At Bagley Tr. 123:3-14, Dr. Bagley only states that he, as a historian, is not drawing the legal conclusion that there was discriminatory intent in the process, but instead is opining that the evidence shows that one can conclude that there was discriminatory intent.

88. Dr. Bagley did not opine that the specific sequence of events leading to the adoption of the plans was discriminatory, but only that it would "lend credence" to a finding of discriminatory intent. Bagley Dep. 122:14-123:1.

**Plaintiffs Response:**



Undisputed that Dr. Bagley so testified. Disputed to the extent that this is not a material fact because, as explained here and at Bagley Dep. 123:3-14, Dr. Bagley is offering an opinion that the evidence he has reviewed is sufficient for a court to conclude that there was discriminatory intent. Bagley Dep. at 123:3-14. Further, whether the adoption of the plans is determined to be discriminatory is a legal conclusion to be made by the court after trial.

89. Dr. Bagley did not opine that the Georgia district lines were drawn to deny voters of color their equitable right to participate in the political process, although he believed a court could make that finding. Bagley Dep. 133:11-20.

**Plaintiffs Response:**

Undisputed that Dr. Bagley so testified. However, this is not a material fact because Dr. Bagley is opining that the evidence which he reviewed is sufficient for a court to conclude that the district lines were drawn to deny voters of color their equitable right to participate in the political process. Bagley Dep. 133:11-20. Further, whether there is discriminatory intent based on the drawing of the district lines is a legal conclusion to be made by the court after trial.

90. Dr. Bagley found no procedural or substantive departures in the 2021 redistricting process when compared to the 2001 and 2011 processes and agreed that

the process was not rushed when compared to those prior cycles. Bagley Dep. 86:25-87:19, 138:18-24.

**Plaintiffs Response:**

Undisputed that Dr. Bagley so testified. However, this is not a material fact because, as Dr. Bagley explains, his notion of procedural and substantive departures is not necessarily tied to how the 2001 and 2011 processes occurred. Bagley Dep. at 86:25-87:19; 138:18-24. Further, whether the procedural and substantive departures identified by Dr. Bagley are determined to be discriminatory is a legal conclusion to be made by the court after trial.

91. Dr. Bagley found one contemporary comment that concerned him, when Chair Rich stated in committee that there was not a “magic formula” for compliance with the Voting Rights Act. Bagley Dep. 110:2-111:23, 121:11- 122:13.

**Plaintiffs Response:**

Undisputed that Dr. Bagley so testified. However, this is not a material fact because Dr. Bagley found other evidence which a court could rely on to find that the maps were drawn with discriminatory intent. Bagley Dep. at 110:2-111:23; 121:11-122:13. Further, whether there is discriminatory intent is a legal conclusion to be made by the court after trial.

92. Dr. McCrary did not offer any opinion about discriminatory intent or about the design of the districts. McCrary Dep. 48:9-21.

**Plaintiffs Response:**

Undisputed. However, this is not a material fact because other experts provide opinions about discriminatory intent, such as Dr. Duchin in her opening and rebuttal and supplemental reports, and other experts provide opinions about the design of the districts, such as Dr. Duchin in her opening report. *See* Duchin Rep. at 10-24; Duchin Suppl. Rep. at 1-6. Additionally, whether or not Dr. McCrary offered an opinion about discriminatory intent does not preclude the court from considering the evidence he did offer - such as the description of racial discrimination in redistricting in its consideration of whether there is discriminatory intent. McCrary Rep. at 8-9, 13-15, 16-21; McCrary Rep. at 24. Further, whether the design of the districts is determined to be discriminatory is a legal conclusion to be made by the court after trial.

93. Dr. Duchin did not offer any opinion about discriminatory intent, but rather offered that she could provide “evidence that might be persuasive in terms of discerning intent” but that she could not “make hard and fast conclusions about what was in the hearts and minds of the legislators or . . . staff.” Duchin Dep. 34:11-22; see also Duchin Dep. 34:23-35:6.

**Plaintiffs Response:**

Disputed. Providing “evidence that might be persuasive in terms of discerning intent” is the same as providing an opinion about discriminatory intent, even if it does not include making conclusions about what is in the mind of the legislator or the staff-member. Additionally, whether or not Dr. Duchin offered an opinion about discriminatory intent does not preclude the court from considering the evidence she did offer - such as the description of racial discrimination in redistricting in its consideration of whether there is discriminatory intent. *See e.g.* Duchin Dep. at 173:1-173:25; 182:15-182:19; 180:18-182:14; 189:02-189:24. Further, this is not a material fact, because whether there is discriminatory intent is a legal conclusion to be made by the court after trial.

Dated: April 26, 2023

Respectfully submitted,

By: /s/ Kurt Kastorf

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**Georgia Bar No. 315315**

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**LOCAL RULE 7.1(D) CERTIFICATION OF COMPLIANCE**

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

*/s/ Kurt Kastorf*

\_\_\_\_\_  
Kurt Kastorf

Attorney for Plaintiffs

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

GEORGIA STATE CONFERENCE OF THE )  
NAACP; GEORGIA COALITION FOR THE )  
PEOPLE’S AGENDA, INC.; GALEO )  
LATINO COMMUNITY DEVELOPMENT )  
FUND, INC., )

*Plaintiffs,*

v.

STATE OF GEORGIA; BRIAN KEMP, in his )  
official capacity as the Governor of the State of )  
Georgia; BRAD RAFFENSPERGER, in his )  
official capacity as the Secretary of State of )  
Georgia, )

*Defendants.*

Civil Case No. 21-c5338-  
ELB-SCJ-SDG

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**STATEMENT OF MATERIAL FACTS WHICH PRESENT A DISPUTE OF  
FACTS IN OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY  
JUDGMENT**

Plaintiffs respectfully submit this statement of material facts that present a dispute of facts in opposition to Defendants’ motion for summary judgment.

**I. Standing**

**A. Associational Standing**

1. The NAACP was founded on February 12, 1909, and is the oldest, largest and most widely recognized grassroots-based civil rights organization. *See* Declaration of Jacob Canter (“Canter Decl.”) ¶ 2 (Gerald Griggs (“Griggs Decl.”) at ¶ 3).

2. The Georgia State Conference of the NAACP (“GA NAACP”), a unit of the National NAACP, is the oldest and one of the largest, most significant organizations promoting and protecting the civil rights of African Americans and other racial and ethnic minorities in Georgia. *Id.* at ¶ 4.

3. The GA NAACP is a non-partisan, interracial, nonprofit membership organization with a mission to “eliminate racial discrimination through democratic processes and ensure the equal political, educational, social, and economic rights of all persons, in particular African Americans.” Protecting and promoting the voting



rights of Black voters, other voters of color, and underserved communities is essential to this mission. *Id.* at ¶ 5.

4. The GA NAACP is dedicated to protecting voting rights through legislative advocacy, communication, and outreach, including work to promote voter registration, voter education, GOTV efforts, and election protection. The GA NAACP advocates for census participation and fair redistricting maps. *Id.* at ¶ 6.

5. The, the GA NAACP has approximately 10,000 members across approximately 180 local units, residing in at least 120 counties in Georgia. *Id.* at ¶¶ 7-9; *see also* Griggs Dep. 34: 4-6.

6. The GA NAACP has numerous—often hundreds—of members in each district challenged as a racial gerrymander. Griggs Decl. at ¶¶ 10-11.

7. In each voting rights cluster analyzed by Plaintiffs’ mapping expert, Dr. Moon Duchin, the GA NAACP has numerous—often hundreds—of members who reside in majority-white districts in the enacted cluster, but in majority-minority illustrative districts in the same cluster in one of Dr. Duchin’s illustrative maps. *Id.* at 12. *See also* Canter Decl. ¶ 3 (Expert Report of Moon Duchin (“Duchin Rep.”) at 25-39).

8. GALEO Latino Community Development Fund, Inc. (“GALEO”) was founded in 2004 and works to “increase civic engagement and leadership

development of the Latinx community across Georgia.” *See* Canter Decl. ¶ 4 (Declaration of Gerardo Gonzalez (“Gonzalez Decl.”) at ¶ 3); *see also* Declaration of Crinesha Berry (“Berry Decl.”) at ¶ 14 (Ex. 8).

9. Protecting and promoting the voting rights of Georgia’s Latinx U.S. citizens is essential to this mission. The organization devotes significant time and resources to conducting voter registration drives, voter outreach, assistance with voter ID and “Get Out The Vote” efforts to increase turnout of Latinx voters, and advocacy for census participation and fair redistricting maps. *See* Gonzalez Decl. at ¶ 4; Berry Decl. at ¶ 14 (Ex. 8).

10. GALEO has over 230 members in Georgia, in over 35 counties and 70 cities. *See* Gonzalez Decl. at ¶ 5-7.

11. GALEO has at least one member in certain districts challenged as a racial gerrymander, including enacted Congressional Districts 2, 3, 4, 6, 8, 10, 13, 14; enacted Senate Districts 2, 4, 14, 48; and enacted House Districts 44, 48, 52, 104. *Id.* at ¶ 8.

12. The Georgia Coalition for the People’s Agenda (“GCPA”), is a Georgia not-for-profit corporation with its principal place of business located in Atlanta, Georgia. *See* Canter Decl. ¶ 5 (Declaration of Helen Butler (“Butler Decl.”) at ¶ 3).

13. The GCPA encourages voter registration and participation, particularly among Black and other underrepresented communities. The GCPA's support of voting rights is central to its mission. The organization has committed and continues to commit, time, and resources to conducting voter registration drives, voter education, voter ID assistance, election protection, census participation, fair redistricting maps, other get out the vote ("GOTV") efforts in Georgia, such as "Souls to the Polls," "Pews to the Polls" and other initiatives designed to encourage voter turnout, and impact litigation involving voting rights issues. *Id.* at ¶ 4; Berry Decl. at ¶ 14 (Ex. 7).

14. The GCPA is a coalition of more than 30 organizations, which collectively have more than 5,000 individual members across the state of Georgia in various cities and counties. *See* Butler Decl. at ¶ 5.

15. The GCPA has at least one member in certain districts challenged as racial gerrymanders, including: Congressional Districts 2, 3, 4, 8, 13 and Senate Districts 2 and 26. *Id.* at ¶ 8.

16. The GCPA has at least one member who resides in majority-white Congressional district 3 in the enacted plan but would reside in majority-minority CD 3 in one of Plaintiffs' mapping expert's illustrative plans. *Id.* at ¶ 9.

## **B. Organizational Standing**

17. On November 14, 2022, counsel for Plaintiffs informed counsel for Defendants via email that “Plaintiffs agree to waive any argument that they can support organizational standing by showing financial diversion, on the condition that the State withdraws Interrogatory No. 3 and RFPs 10-12 and agrees not to seek similar evidence, i.e. via deposition questions on financial diversion.” *See* Berry Decl. at ¶ 10 (Exhibit 6).

18. Counsel for Plaintiffs further noted that “Plaintiffs still intend to support organizational standing by showing diversion of non-financial resources, such as activities specifically for the redistricting plans that divert time, personnel, and other non-financial resources from Plaintiffs’ usual activities.” *See id.* (Exhibit 6).

19. On November 9, 2022, counsel for Defendants agreed to this. *See id.*

20. Each Plaintiff organization had to divert resources from core projects and activities as a result of the enactment of the redistricting plans. *See* Canter Decl. ¶ 6 (Deposition of Helen Butler (“Butler Dep.”) 23:22-36:14; 50:04-54:09 (describing resources diverted from the GCPA’s core activities and projects)); *see also* Canter Decl. ¶ 7 (Deposition of Cynthia Battles (“Battles Dep.”) 16:08-24:11 (same)); Canter Decl. ¶ 8 (Deposition of Gerald Griggs (“Griggs Dep.”) 26:03-33:14; 47:24-48:24 (describing resources diverted from the NAACP’s core activities

and projects)); Canter Decl. ¶ 9 (Deposition of Gerardo Gonzalez (“Gonzalez Dep.”) 41:05-59:24 (describing resources diverted from GALEO’s core activities and projects)).

21. President Gerald Griggs of the GA NAACP testified during his deposition that “[t]o the best of [his] knowledge, prior to [his] time as the president and up till now, [GA NAACP has] had to shift [its] organizational philosophy and resources to [make] sure that the impact of the new maps [did] not substantially reduce the voting power of black people in communities of color throughout the State.” Griggs Dep. 26: 8-13.

22. He also testified that the GA NAACP had to “shift [its] resources from [its] main pillars to focus directly on combating the significant impact of [redistricting].” *See* Griggs Dep. 26: 22-24.

23. He further testified that the GA NAACP “... had to shift resources from [its] focus, which was racial discrimination, civil rights violations, to focusing on making sure there was no dilution through the [redistricting] plan and implementation.” *See* Griggs Dep. 28: 17-21.

24. With respect to voter education programs, President Griggs testified that GA NAACP had to “... shift [its] messaging strategy and our overall strategy to get people to understand that[...] many of the congressional districts that they now

live in will be drastically changed, so polling precincts will be changed, their representatives will be changed, and that they need to understand what the impact that would have on them. Voter registration drives, if you were registered to vote, especially with the voting purges, you would have to make sure your registration is still up to date and good, and that you have to make sure that you are still in whatever district you were in or you may have be moved to another district. So [GA NAACP] had to educate people, and [...] had to make sure people were aware, and [...] had to make sure people understood that they still had the opportunity, through the Town Halls and through the hearings, to be present to give voice to what was about to happen, but also be prepared for the outcome of what would happen. None of that [GA NAACP] would be doing but for the issue of re-districting...” *See* Griggs Dep. 29:23-30:20; *see also* 30:20-31:1 (describing activities GA NAACP would have done instead of focusing on redistricting).

25. President Griggs testified that a “substantial” number of volunteers were diverted from GA NAACP’s normal efforts to combating effects of redistricting. *See* Griggs Dep. 31:9-17.

26. President Griggs further testified that GA NAACP had employees that “primarily focused on getting the message out and planning the programming around pushing back on [redistricting,] [s]o [...] they were working on that more than they

were working on anything else that [was] a part of the pillars of [the GA NAACP] strategy to make sure we advance the lives of colored people in the State.” *See* Griggs Dep. 32: 8-14.

27. Finally, President Griggs testified that without having to engage with redistricting the GA NAACP “... would have dedicated more resources to the actual voter mobilization and get out to vote earlier than [it] did, because [it was] focused on [redistricting] while in the middle of the municipal races. So [the GA NAACP] had to shift significant resources away from GOTV for municipal races to deal with special session as well as voter education of what was happening during that period in 2021.” *See* Griggs Dep. 34: 13-21.

28. Gerardo Gonzalez, Chief Executive Officer (CEO) of the GALEO, testified during his deposition that after the enactment of the maps GALEO engaged in the effort to “educate and inform [its] community about the Georgia legislative efforts to diminish the voting strength of minority communities across the state of Georgia by unfairly cracking and packing [its] communities to dilute the growth of communities power in the legislative process through the redistricting process.” Gonzales Dep. 43: 18-25; *see also* 44: 19-23 (testifying that GALEO had to educate its members “...about the impact that [the redistricting had] on [its] community with the cracking and packing and why [GALEO] believed that happened.” He also

testified that GALEO had to “inform and educate [its] community about the new districts in which they were going to be voting”).

29. He further testified that in response to the enactment of the maps GALEO’s messaging had to change “adding another topic to what [they] were talking to voters about [was] a diversion of resources that [they were] doing associated with the work that [they were] doing” because “had the districts not changed, that’s not something [GALEO] would have talked about because [its members] would be able to exercise their right to vote without having to understand that there was a new district that they were voting in.” Gonzales Dep. 48:3-12.

30. He also testified that following the enactment of the maps, among other hostile legislative actions, GALEO “increase[d] [its] outreach efforts” which was a change or expansion in the number of volunteers GALEO utilizes in outreach efforts. Specifically noting that GALEO “had to increase [its] number of volunteers in [its] targeted outreach to [its] community to ensure that [it was] adequately educating and informing [its] community about the changes in districts, as well as changes in law.” Gonzales Dep. 56:1-12; 56:17-21.

31. Finally, he testified that since the 2020 census, GALEO staff has increased from four people to fifteen, and that as a result of efforts by the Georgia legislature to dilute the ability of the minority community to exercise its right to vote



GALEO had to “increase ... staff resource allocation to ensure [it] can continue to engage and educate [its] community about exercising the right to vote, given the changes in the law...” including, but not limited to, the redistricting process. Gonzales Dep. 58: 13-24.

32. Helen Butler, Executive Director of GCPA, testified during her deposition that GCPA “...[has] a very limited staff...[and] had to assign and prioritize the activities of [its] staff and volunteers that work with [them] to be able to accomplish a lot of things that were impacted by the redistricting[, which...] took [GCPA’s] time and energies away from doing ... other activities [like...] trying to get our citizen review boards adopted throughout the state.” Butler Dep. 24:15-22.

33. She further testified that GCPA had to “try to prioritize [its] efforts that [it] normally [did] in a normal election cycle with voter registration, education, mobilization, and election protection [while ...] trying to accomplish educating the public about the redistricting process, how it was happening, how it would impact the communities [such that GCPA] had to really reorganize and reprioritize [its] limited staff and volunteers that could do the work.” Butler Dep. 24:24-25; 25:1-7.

34. While not able to list a specific percentage, Ms. Butler testified that “a large portion of [GCPA] activities had to be diverted to holding different town hall hearings” and that at least one employee had to “spend most of her time at hearings,

trying to get people educated about the process, how they could have an impact, trying to help people know -- get tools to really draw their own maps to be engaged in the redistricting process because [it was] critical.” Butler Dep. 25:13-21; *see also* Battles Dep. 16:08-17:22 (describing changes in responsibilities in light of redistricting).

35. She also testified that a “...large portion of that, our time and resources, were diverted to ... [d]oing the meetings, developing materials, all of those things that we [GCPA] had to do, that could have been spent on the other issues that [GCPA does], like criminal justice, like education equity, like improving our economic equity in the [ ] the state [such that GCPA ] could not do those effectively [because GCPA] had to devote more time to the redistricting process.” Butler Dep. 26:6-13.

36. She added that while GCPA sometimes host townhalls, since redistricting “[GCPA has] been doing, more frequently, town halls with regards to redistricting to make sure [GCPA] reach[es] the people so that they know who is representing them and how it impacts their communities.” Butler Dep. 35:13-17.

37. She further explained that while GCPA generally engages in phone banking and texting “... the messaging has [had] to be diverted to other things, not issues like education equity, not like criminal justice... [g]etting those citizen review boards that [GCPA has] been trying to do or economic justice equity issues, [instead

GCPA was] spending more time doing [phone banking and texting with] regards to polling changes and [...] how redistricting has impacted the communities.” Butler Dep. 35:23-36:7.

38. Ms. Butler testified that programs that the GCPA would not be able to commit to due to its work combating the effects of the redistricting maps included “education initiatives, working with parents with regards to schools and involvement in schools getting community schools[,]” “economic empowerment [initiatives]” and “getting Medicaid expansion for health care.” Butler Dep. 52:13-53:17.

## **II. The Sequence of Events Leading to the Passage of the Redistricting Plans and Procedural and Substantives Departures.**

### **A. Historical Background**

39. There is a long history of discrimination in Georgia affecting voting. *See* Canter Decl. ¶ 10 (Expert Report of Dr. Peyton McCrary (“McCrary Rep.”) ¶ 11).

40. Since 1945, numerous redistricting plans in Georgia have been struck down as racially discriminatory. *See* McCrary Rep. ¶¶ 11, 17-18, 21-26. Canter Decl. ¶ 11 (Expert Report of Dr. Joseph Bagley (“Bagley Rep.”) at 13-31, 33-34).

41. Between 1965 and 2013, the Department of Justice blocked 177 proposed changes to election law by Georgia and its counties and municipalities

Under Section 5 of the Voting Rights Act. McCrary Rep. ¶ 31. Of these Section 5 objections, 48 blocked redistricting plans. *Id.*

42. In 2018, a three-judge panel sitting in the Northern District of Georgia concluded that plaintiffs in a racial gerrymandering action had introduced “compelling evidence” that “race predominated the redistricting process,” through testimonial and documentary evidence related to the conduct of Dir. Wright and others that work at the LCRO. Bagley Rep. 39-40; *see also Georgia State Conf. of NAACP v. Georgia*, 312 F. Supp. 3d 1357, 1364-65 (N.D. Ga. 2018).

#### **B. The “Town Halls”**

43. Dr. Joseph Bagley is an Assistant Professor of History at Georgia State University, Perimeter College. Bagley Rep. at 3.

44. Dr. Bagley’s specific areas of study are United States constitutional and legal history, politics, and race relations, with a focus on the Deep South. *Id.*

45. Dr. Bagley analyzed, among other things, the sequence of events and legislative history leading to the passage of the redistricting plans. *Id.* at 6.

46. During the summer of 2021, the Senate Committee on Reapportionment and Redistricting and the House Committee on Reapportionment and Redistricting formed a joint Reapportionment Committee for the purpose of holding a series of redistricting “Town Halls.” *Id.* at 43-56.

47. Dr. Bagley reviewed the public testimony given at each of the town halls. *Id.* at 41-56.

48. Dr. Bagley opined that throughout the town hall process: “The public was widely critical of holding these meetings before the release of the Census data and the publication of maps. They called for ample time for analysis and feedback and map-submission after the fact.” *Id.* at 41.

49. Dr. Bagley opined that throughout the town hall process: “The public was relentless in its call for a more transparent process, in general.” *Id.*

50. Dr. Bagley opined that throughout the town hall process: “The public and members of the committee wanted more of a dialogue than a one-way-street of taking community comment at hearings.” *Id.* at 42.

51. Dr. Bagley opined that throughout the town hall process: “Hearings were not held, according to members of the public and the committees, in the most populous areas of the state where they should have been.” *Id.*

52. Dr. Bagley opined that, throughout the process, members of the public testified that “[m]aps ought to reflect the growth of Georgia’s minority po[p]u[la]tion.” *Id.*

53. Dr. Bagley opined that members of the public asked the Committee not to “engage in packing and cracking [of minority populations] . . . .” *Id.*

54. Dr. Bagley opined that the Committee’s refusal to change the town hall process in the face of these public complaints constitutes evidence of procedural and substantive departures. *See Id. See also* Bagley Dep. 118:04-118:11.

### **C. Legislative History**

55. On September 23, 2021, Governor Brian Kemp ordered a special session of the General Assembly to commence on November 3, 2021. Bagley Rep. at 57.

56. Five days later, the Legislative Congressional and Reapportionment Office (“LCRO”) publicly posted the first draft congressional map—sponsored by Senator Kennedy and Lieutenant Governor Duncan. *Id.*

57. On November 2nd, 2021, just one day before the start of the special session, the LCRO published draft House and Senate plans sponsored by Chair Rich and Chair Kennedy, respectively. *Id.* at 58.

58. Between September 23 and November 3, 2021, the legislature did not hold any town halls to solicit public feedback. *See generally*, Bagley Rep. at 43-58.

59. The Senate Legislative and Congressional Reapportionment Committee held a hearing and solicited public comment just two days after the draft senate plan was released to the public. *Id.* at 58-62.

60. The House Legislative and Congressional Reapportionment Committee held a hearing and solicited public comment on the same day it released a revised house map to the public. *Id.* 66-68.

61. The Senate Legislative and Congressional Reapportionment Committee held a hearing and solicited public comment on a congressional map that had been released to the public just hours before the meeting. *Id.* at 73.

62. SB 2EX—the congressional map—was sent to the Governor for his signature on November 30, 2021, just three weeks after the start of the special session. *See* Canter Decl. ¶ 12 <https://www.legis.ga.gov/legislation/60894>, related to the Congressional map, was passed by the Senate on November 9, 2021.

63. SB 1EX—the senate map—was sent to the Governor's Office on November 30, 2021, just three weeks after the start of the special session. *See* Canter Decl. ¶ 13 <https://www.legis.ga.gov/legislation/60894/>.

64. HB 1EX—the state house map—was sent to the Governor for his signature on November 29, 2021, just three weeks after the start of the special session. *See* Canter Decl. ¶ 14 <https://www.legis.ga.gov/legislation/60897>.

65. The Governor delayed signing the redistricting plans for almost a month, until December 30, 2021. *See* Canter Decl. ¶ 15 (Def. Suppl. Resp. to Plaintiffs Second Set of Interrogatories at 4-5).

66. Based on his analysis of the legislative history, *id.* at 58-88, Dr. Bagley opined that “The public made consistent demands for more transparency, but the process was still carried out behind closed doors with staff and counsel,” which were ignored. Bagley Rep. at 56. He also opined that Chair Rich’s statement that the VRA was “unfair” is contemporaneous evidence relevant to intentional discrimination. *Id.* at 57.

67. The legislature used the 2001 redistricting process as an excuse for ignoring the public’s calls for transparency, which Dr. Bagley opined “is both a procedural and substantive departure – substantively, there is nothing in the committee guidelines that instructs committees or the General Assembly as a whole to fashion its behavior and actions, procedurally, based on previous cycles.” *Id.*

68. Dr. Bagley opined that his analysis revealed the public was concerned with the packing and cracking of populations of color. *Id.*

69. Dr. Bagley opined that the public was “concern[ed] that women of color, specifically... congresswoman Lucy McBath, were being targeted.” *Id.*

70. Dr. Bagley opined that members of the public were concerned that “Voters of color were being manipulated again for partisan advantage in places like Henry, Cobb, and Gwinnett counties.” *Id.* at 56.



71. Based on his analysis, Dr. Bagley opined that “Staff in the LCRO and leadership on the respective committees were not as responsive to legislators of color as they were to the majority, which was all-white save for a handful of Latino and East Asian members, and none were Black.” *Id.* at 57.

#### **D. Demographic Trends in Georgia**

72. Between 2010 and 2020 Georgia's population grew, driven almost entirely by an increase in the population of people of color. Duchin Rep. at 8

73. The share of Black and Hispanic residents in Georgia expanded from 39.75% to 42.75%; the white population decreased from 5,413,920 to 5,362,156 between the 2010 and 2020 census data releases; and the Georgia population is 31.73% Black. *Id.*

74. Despite the population growth of persons of color in Georgia, the newly enacted Congressional plan reduces the number of performing districts for Black and Latino-preferred candidates from 6/14 to 5/14, and the Senate plan has the same number of performing districts for Black and Latino-preferred candidates. Duchin Rep. at 10, 19.

#### **E. The Map Drawing Process**

75. Gina Wright, the director of the Legislative and Congressional Reapportionment Office (“LCRO”), was primarily responsible for the technical

aspects of drawing the legislative maps. Canter Decl. ¶ 16 (Deposition of Gina Wright (“Wright Dep.”) 8:24-9:02).

76. Rob Strangia is the Geographic Information Systems (“GIS”) specialist at the LCRO, who participated in the mapdrawing process. Canter Decl. ¶ 17 (Deposition of Robert Strangia (“Strangia Dep.” 19:14-20:24).

77. Mr. Strangia created a formula to estimate political data at the block level, but this data is not accurate at the block level. However, the legislature had access to racial data at the block level that is accurate. *Id.* at 97:17-103:23.

78. Director Wright testified that she did not use email to communicate about redistricting maps because she did not want to “create... a record.” Wright Dep. 19:16-20:03.

79. Dir. Wright kept drafts for all three of her maps private in her office until the drafting process was completed, and when Director Wright drew draft Congressional districts at the direction of legislators, racial data was projected onto the computer screens where the map lines were being drawn. Wright Dep. 39:17-40:1 (private in office); Wright Dep. 10:25-11:21; Wright Dep. 14:11-20 (Rep. Rich); Wright Dep. 27:17-32:4; Wright Dep. 115:25-116:16; Wright Dep. 36:14-24, Wright Dep. 63:18-21; Wright Dep. 145:11-22; Wright Dep. 149:25-150:9.

80. When Director Wright drew draft Congressional districts with legislators, she and the legislators could immediately see how line changes impacted the racial balance of districts. Wright Dep. 115:25-118:25 (data changed on screen when making changes to maps); 126:03-127:04 (same).

81. When Director Wright drew draft Senate districts at the direction of legislators, racial data was projected onto the computer screens where the map lines were being drawn. Wright Dep. 37:22-38:20; 40:3-41:19; 42:16-43:1; Wright Dep. 54:3-56:13; Wright Dep. 57:16-21; Wright Dep. 36:14-24, Wright Dep. 63:18-21; Wright Dep. 145:11-22; Wright Dep. 149:25-150:13.

82. When Director Wright drew draft Senate districts with legislators, she and the legislators could immediately see how line changes impacted the racial balance of districts. Wright Dep. 116:23-118:25; 126:03-127:04.

83. When Director Wright drew draft House districts at the direction of legislators, racial data was projected onto the computer screens where the map lines were being drawn. Wright Dep. 64:14-66; Wright Dep. 36:14-24, Wright Dep. 63:18-21; Wright Dep. 145:11-22; Wright Dep. 149:25-150:13.

84. When Director Wright drew draft House districts with legislators, she and the legislators could immediately see how line changes impacted the racial balance of districts. Wright Dep. 116:23-118:25; 126:03-127:04.

85. Dan O'Connor, a data analyst with the LCRO, testified during his deposition that a district in Georgia that was roughly 30% black would tend to elect Democrats and that the figure was consistent from 2014 to the present. Canter Decl. ¶ 18 (Deposition of Daniel O'Connor ("O'Connor Dep.") 30:9-33:18).

86. He also testified that if a legislator wanted to redraw such a district so that it was more likely to elect a Republican instead of a Democrat it would be necessary to lower the amount of BVAP in that district. *Id.* at 40:23-41:11.

87. He further testified that in order to lessen the BVAP in such a district one would need to either move BVAP out of the district and put it in another district or move WVAP into the district to dilute the amount of BVAP in the district. *Id.* at 41:12-24.

### **III. Material Facts in Support of Racial Gerrymandering Claims**

#### **A. Dr. Duchin's Methodology**

88. Dr. Moon Duchin is a Professor of Mathematics and a Senior Fellow in the Jonathan M. Tisch College of Civic Life at Tufts University, where she is the Director of the MGGG Redistricting Lab, focused on geometric and computational aspects of redistricting. Duchin Rep. at 3.

89. Dr. Duchin has been accepted as an expert in vote dilution cases on the issue of *Gingles* preconditions by a three judge panels in Alabama, and on racial

gerrymandering issues by a three-judge panel in South Carolina. *See* Canter Decl. ¶ 19 (Deposition of Moon Duchin (“Duchin Dep.” Ex. 4 at 8)).

90. Dr. Duchin analyzed the Congressional, Senate, and House maps to determine whether there is evidence that race predominated over traditional redistricting principles in the drawing of certain districts. Duchin Rep. at 3-4. *See also* Duchin. Dep. 166:02-166:17.

91. To do so, Dr. Duchin primarily used two methods: First, Dr. Duchin examined core retention and population displacement from the benchmark plan to the enacted plan in order to detect evidence of “racially imbalanced transfer[s] of population in rebalancing the districts,” and whether those transfers “impact[ed] the districts’ effectiveness for electing Black and Latino candidates of choice.” Duchin Rep. at 67-71; Duchin. Dep. 166:02-166:08.

92. Dr. Duchin opined that racially imbalanced population transfers in and out of a district are evidence that race predominates over traditional redistricting principles. Duchin Dep. 180:18-180:23.

93. Second, Dr. Duchin looked at political subdivision splits—including precinct splits and county splits—to determine whether those splits provide evidence of “cracking” and “packing” that suggests race predominated over traditional

redistricting principles in the drawing of certain districts. Duchin Rep. § 10.2; Deposition of Moon Duchin (“Duchin Dep.”) 166:09-12.

94. Dr. Duchin opined that “[i]t is extremely frequent for precinct splits to show major racial disparity,” as well as that “racially distinctive precinct splits provide particularly strong evidence that race has predominated over other principles in the creation of the map.” Duchin Rep. at 5, 79.

95. Dr. Duchin also analyzed community testimony to review whether there were community of interest justifications for certain decisions that she determined were evidence of race-conscious decision-making. Duchin Rep. at 79-80; Duchin Dep. 166:13-166:17.

### **B. Core Retention and Population Displacement in the Congressional Plan**

96. CD 6 “was nearly at ideal size before the redistricting, having 771,431 residents enumerated in the census —less than seven thousand off from the target size.” Duchin Rep. at 67.

97. CD 6 was nevertheless “subjected to major reconfiguration, with at least 40,000 people from the benchmark district reassigned to each of districts 4, 5, 7, and 11, while at least 40,000 different people were drawn in from each of districts 7, 9, and 11.” *Id.*

98. Larger proportions of Black and Hispanic population and neighborhoods were moved out of CD 6, and population from whiter suburban areas were moved into CD 6. *Id.* at 68.

99. The largest reassignment of population out of CD 6 went to CD 4, approximately 200,000 Georgians. *Id.*

100. The transfer of population from CD 6 to CD 4 was 37.5% Black or Latino. *Id.*

101. The largest transfer of population into CD 6 was from CD 7, approximately 200,000 Georgians. *Id.*

102. The population transferred into CD 6 from CD 7 was 16.1% Black or Latino. *Id.*

103. Under the benchmark plan, CD 6 performed for Black and Latino voters. *Id.*

104. The changes to CD 6 added whiter suburban/exurban/rural areas to the district. *Id.* at 68, Figure 31.

105. Dr. Duchin opined that CD 6 was cracked through “racially distinctive swaps of population” that diluted the voting power of Black and Latino voters. Duchin Dep. 173:1-173:25.

106. Dr. Duchin opined that the racially distinctive population swaps in CD 6 are evidence that race predominated over traditional redistricting principles in the drawing of CD 6. Duchin Dep. 182:15-182:19.

107. Dr. Duchin determined that core retention and population displacement in CD 14 were “distinctive in terms of density and racial composition.” *Id.*

108. CD 14 expanded into Cobb County to include two majority-Black cities: Powder Springs and Austell. *Id.* at 68, Figure 31 (included below).

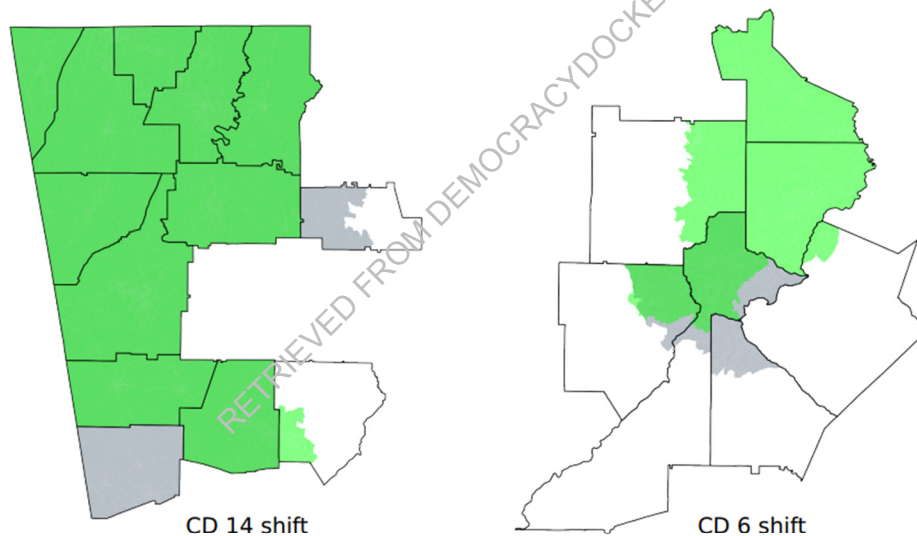


Figure 30: These before-and-after plots show benchmark configurations in gray, while new district placement is in light green. We can see that CD 14 made a new incursion into Cobb County while shedding rural Haralson and part of Pickens County. Meanwhile, CD 6 went sharply the other way, withdrawing from its metro Atlanta coverage and picking up rural counties to the north. Compare to Figure [31](#).

109. Dr. Duchin opined that “incursion of CD 14 into Cobb is emphatically not required by adherence to traditional redistricting principles.” *Id.* at 69.



110. The Duncan-Kennedy map—the first Congressional map released by the Senate Redistricting Committee—did not include Powder Springs and Austell in CD 14. *Id.* See also Duchin Dep. 177:14-178:15; Canter Decl. ¶ 20 (Deposition of Senator Kennedy (“Kennedy Dep.”) 117:25-118:01).

111. Dr. Duchin determined that “dense African-American neighborhoods” in Powder Springs and Austell were “submerged among more numerous, dissimilar communities [in] CD 14,” which could not be justified by compactness concerns. Duchin Rep. at 68; Duchin Dep. 175:11-20.

112. Dr. Duchin reviewed community testimony and determined that community of interest justifications could not account for including Powder Springs and Austell in CD 14. Duchin Rep. at 79-80.

113. Dr. Duchin determined that her core retention and population displacement analysis of CD 14 provided evidence that race predominated over traditional redistricting principles in the drawing of CD 14. Duchin Dep. 182:15-19.

### **C. Core Retention and Population Displacement in the Enacted Senate Plan.**

114. Dr. Duchin analyzed core retention and population displacement in the enacted Senate Plan. Duchin Rep. at 69-70.

#### **i. SD 48**

115. Benchmark SD 48 was represented by Michelle Au, who was the candidate of choice of voters of color. *Id.*

116. Roughly two-thirds—over 130,000 people—of benchmark SD 48 was moved into enacted SD 7, of whom 37.8% were Black and Latino. *Id.*

117. The retained population of SD 48 has only a 17.8% BHVAP share. *Id.*

118. No territory moved into SD 48 has a BHVAP share over 23.5%. *Id.*

119. Dr. Duchin opined that the new SD 48 is highly ineffective for Black and Latino voters. *Id.*

120. Dr. Duchin opined that SD 48's racially imbalanced population displacement could not be explained by a desire to improve SD 48's compactness as compared to the benchmark SD 48. *Id.* at 70, Figure 32.

121. Dr. Duchin opined that her core retention and population displacement analysis of SD 48 is evidence that race predominated over traditional redistricting principles in the drawing of SD 48. Duchin Depo. 180:18-182:14; 189:02-189:24.

## **1. SD 17**

122. Dr. Duchin analyzed the core retention and population displacement of the enacted SD 17, which had previously been an effective district for Black and Latino voters. Duchin Rep. at 70.

123. SD 17 retained only about half of its residents even though it was only mildly overpopulated. *Id.*

124. Approximately half of the outgoing population from SD 17 was Black and Latino. *Id.*

125. The incoming Black and Latino population to SD 17 was much lower than 50% of the incoming population. *Id.*

126. The new SD 17 is now ineffective for Black and Latino voters. *Id.*

127. Dr. Duchin determined that no district that received population from SD 17 thereby became effective for Black and Latino voters. *Id.*

128. Dr. Duchin opined that a desire to create a more compact SD 17 as compared to the benchmark SD 17 cannot explain the racially imbalanced population flows to and from SD 17. *Id.*, Figure 32. *See also* Wright Dep. 181:21-183:1 (describing Ex. 9); Wright Dep. Ex. 9.

129. Dr. Duchin determined that her core retention and population displacement analysis of SD 48 is evidence that race predominated over traditional redistricting principles in the drawing of SD 48. Duchin Dep. 180:18-182:14; 189:02-189:24.

## **2. SD 56**

130. Dr. Duchin analyzed the core retention and population displacement of enacted SD 56, which had recently become competitive for Black and Latino voters. Duchin Rep. at 69.

131. Benchmark SD 56 was almost entirely placed into enacted SD 14. *Id.*

132. However, incumbent Republican John Albers was able to remain in the district. *Id.*

133. Dr. Duchin opined that the population flow from benchmark SD 56 to enacted SD 14 was racially imbalanced. *Id.*

134. Approximately 35.5% of the population moved from benchmark SD 56 to enacted SD 14 was BHVAP. *Id.*

135. Each territory moved into SD 56 contained under 19% BHVAP. *Id.*

136. The new SD 56 is not competitive for Black and Latino voters. *Id.*

137. Dr. Duchin determined that her core retention and population displacement analysis of SD 56 is evidence that race predominated over traditional redistricting principles in the drawing of SD 56. Duchin Dep. 180:18-182:14; 189:02-189:24.

#### **D. Core Retention and Population Displacement in the Enacted House Plan.**

##### **1. HDs 35, 44, 48, 49, 52, 104, and 109**

138. Dr. Duchin analyzed core retention and population displacement in the enacted House Plan. Duchin Rep. at 70-71.

139. Dr. Duchin identified seven house districts that had become competitive for Black and Latino voters because of demographic shifts over the last ten-years: HDs 35, 44, 48, 49, 52, 104, and 109. *Id.* at 70.

140. Dr. Duchin determined that five of these districts—HDs 44, 48, 49, 52, and 104—were “rebuilt to be ineffective for Black and Latino voters” because of “racially imbalanced population transfers.” *Id.* at 70.

141. Dr. Duchin produced a table that demonstrates the largest district-to-district reassignments for BHVAP for HDs 44, 48, 49, 52, and 104:

<b>Benchmark HD</b>	<b>Outward</b>	<b>Inward</b>
44	.425 (to HD 35)	.226 (from HD 20)
48	.464 (to HD 51)	.201 (from HD 49)
49	.227 (to HD 47)	.127 (from HD 48)
52	.436 (to HD 54)	.245 (from HD 79)
104	.715 (to HD 102)	.363 (from HD 103)

Table 40: This table records the BHVAP share of the largest district-to-district reassignment for the five "dismantled" House districts that were formerly swingy, now made ineffective.

*Id.* at 71, Table 40.

142. Dr. Duchin opined that racially imbalanced population flows from and into HDs 44, 48, 49, 52, and 104 could neither be “explained by traditional districting principles like compactness or respect for county lines” nor by “respect for municipal boundaries.” *Id.* at 71, Figure 33.

**E. Political Subdivision Splits in the Congressional Plan.**

143. Cobb County is split across four districts, with CD 13 and CD 14 receiving portions of Cobb that are over 60% Black and Latino by VAP, while CD 6 contains a part of Cobb that is about 18.5% BHVAP. *Id.* at 71.

144. Dr. Duchin determined this evidence is consistent with a “packing and cracking strategy.” *Id.*

145. CD 2 and CD 8 split Bibb County. *Id.* at 72.

146. Dr. Duchin determined that minutely race conscious decisions were “evident along the boundary of CD 2 and CD 8 in Bibb County,” as demonstrated by the figure below:

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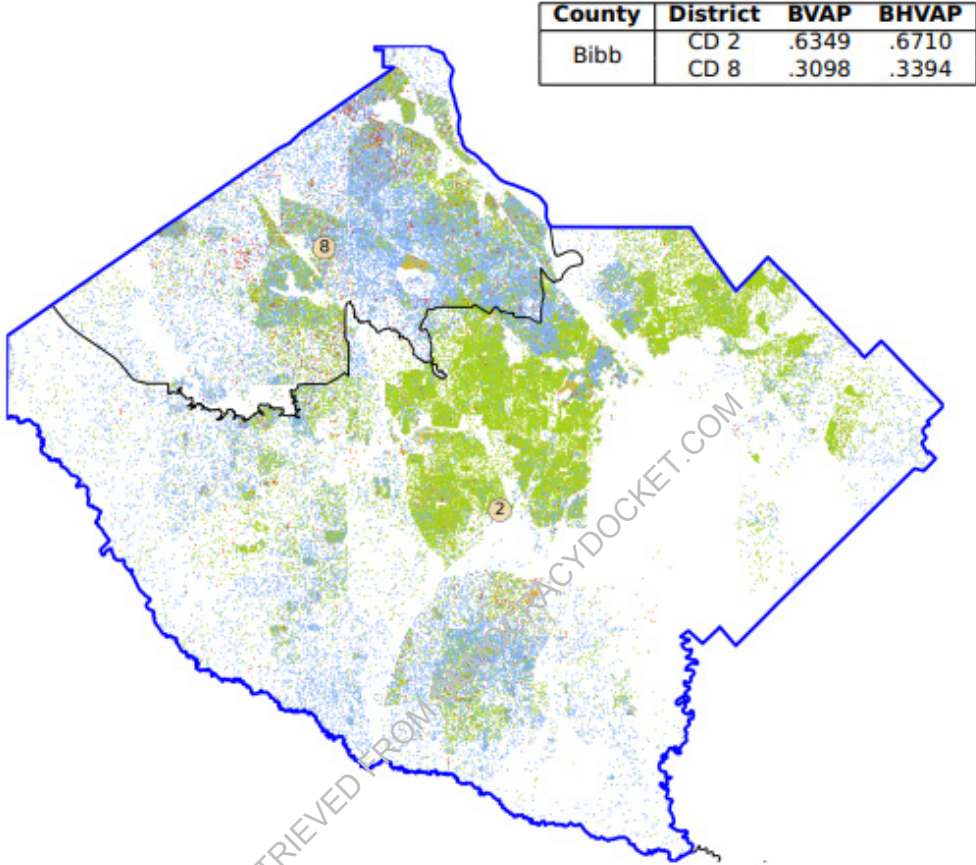


Figure 34: Minutely race-conscious decisions are evident along the boundary of CD 2 and CD 8 in Bibb County.

● Asian ● White ● Black ● Latino ● = 1 person

*Id.* at 72, Figure 34; *see also* Figure 2 at 9 (containing key to dot figure.)

147. Dr. Duchin analyzed all county splits involving CD 3, 6, 13, and 14.

*Id.* at 73; Table 41.

148. Dr. Duchin determined that all of the splits—with the exception of the Clayton County split-- are “consistent with an overall pattern of cracking in CD 3

and CD 6, packing in CD 13, and submerging a small and diverse urban community in CD 14,” as demonstrated below:

County	District	BVAP	BHVAP
Cherokee	CD 6	.0304	.0814
	CD 11	.0817	.1902
Clayton	CD 5	.7280	.8649
	CD 13	.7190	.8266
Cobb	CD 6	.1092	.1848
	CD 11	.2654	.3850
	CD 13	.4458	.6271
	CD 14	.4646	.5644
Douglas	CD 3	.2970	.3719
	CD 13	.5762	.6647
Fayette	CD 3	.2094	.2720
	CD 13	.5762	.6647
Fulton	CD 5	.4769	.5379
	CD 6	.1574	.2568
	CD 7	.1175	.1777
	CD 13	.8829	.9171
Gwinnett	CD 6	.3336	.2645
	CD 7	.3234	.5450
	CD 9	.2061	.3433
Henry	CD 3	.4678	.5259
	CD 10	.4414	.4948
	CD 13	.5710	.6324
Muscogee	CD 2	.5262	.5851
	CD 3	.1909	.2578

Table 41: All county splits involving CD 3, 6, 13, and 14. With the exception of the Clayton split, which is unremarkable in demographic terms, each of these is consistent with an overall pattern of cracking in CD 3 and CD 6, packing in CD 13, and submerging a small and diverse urban community in CD 14. See Appendix C for a complete list of county splits.

*Id.*

149. Dr. Duchin analyzed the Newton County split involving CD 4 and CD 10. *Id.* at 74.

150. Dr. Duchin determined that in “Newton County, CD 4 and CD 10 are divided by a line that is consistent with packing the former district and cracking the latter,” as demonstrated by the figure below:



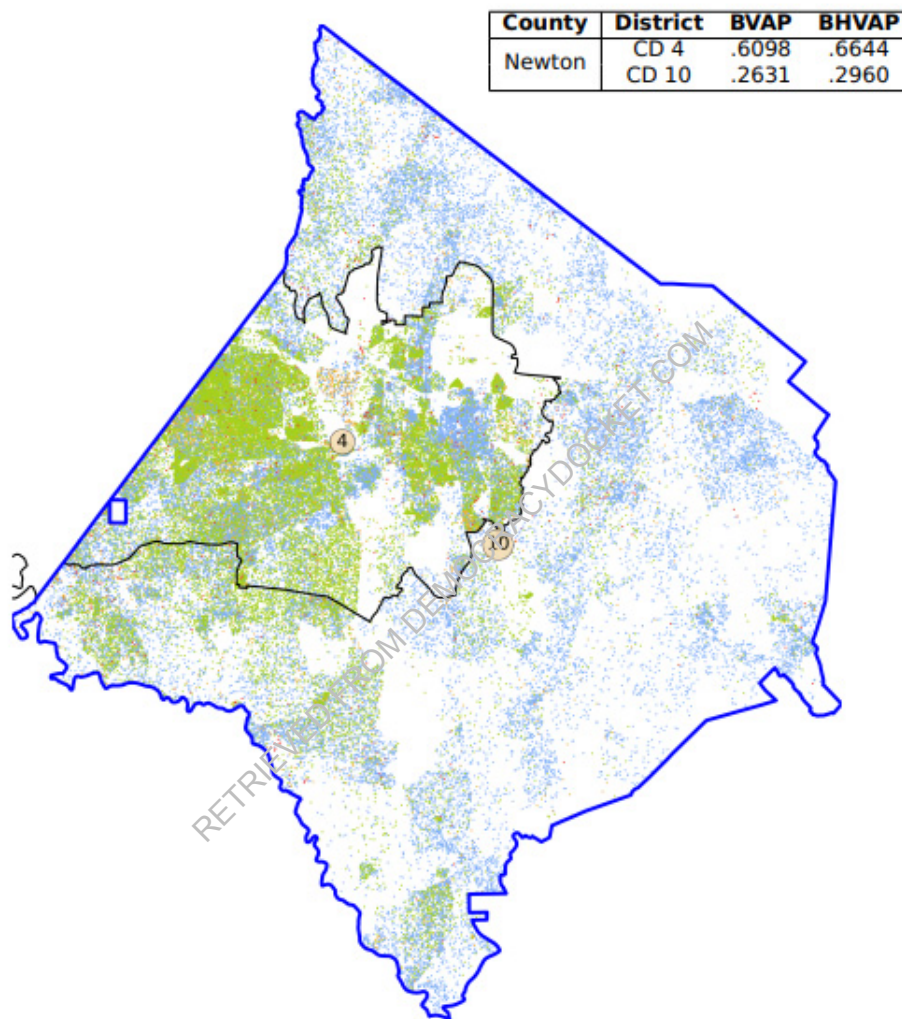


Figure 35: In Newton County, CD 4 and CD 10 are divided by a line that is consistent with packing the former district and cracking the latter.

*Id.* at 74, Figure 35.

151. Dr. Duchin also analyzed precinct splits in the Congressional map. *Id.* at 75.

152. Dr. Duchin opined that “for the purposes of investigating racial gerrymandering, the splits to state precincts can be especially revealing: these are the units at which cast votes are reported, so finer divisions are usually made in view of demographics but not voting behavior—that is, these highlight the predominance of race over even partisan concerns.” *Id*; see also Duchin Dep. 186: 17-23.

153. Dr. Duchin opined that specific precinct splits on the border of CD 6 and CD 11 “show significant racial disparity consistent with an effort to diminish the electoral effectiveness of CD 6,” as demonstrated by the table below:

State precinct	District	BVAP	BHVAP
MARIETTA 5A	CD 6	.1975	.4938
	CD 11	.4232	.5803
MARIETTA 6A	CD 6	.1391	.6607
	CD 11	.4738	.5464
SEWELL MILL 03	CD 6	.2225	.3042
	CD 11	.4064	.5548

Table 42: Three examples of split precincts on the CD 6 / CD 11 border that show significant racial disparity, consistent with an effort to diminish the electoral effectiveness of CD 6 for Black voters. (Note that CD 6 receives a higher share of BHVAP in Marietta 6A, but a far lower share of BVAP.)

Duchin Rep. at 75, Table 42.

154. Dr. Duchin opined that several precinct splits on the CD 4 and CD 10 border “stand out both in demographic and geographic terms,” which provide evidence of the “packing of CD 4 and cracking of CD 10,” as demonstrated by the table below:

State precinct	District	BVAP	BHVAP
ALCOVY	CD 4	.4010	.4499
	CD 10	.0512	.0620
CITY POND	CD 4	.5912	.6554
	CD 10	.3923	.4192
OXFORD	CD 4	.6444	.6932
	CD 10	.0929	.1213
DOWNS	CD 4	.6429	.7024
	CD 10	.4429	.4930

Table 43: Four examples of split precincts on the CD 4 / CD 10 border, all consistent with packing of CD 4 and cracking of CD 10.

*Id.* at 75, Table 43.

#### F. Political Subdivision Splits in the Senate Plan.

155. In the enacted Senate Plan, fourteen counties have at least a 20-point BHVAP disparity in BHVAP across county splits. *Id.* at 77.

156. Dr. Duchin analyzed the split of Bibb County involving SD 18, SD 25, and SD 26. *Id.*, Figure 37.

157. Dr. Duchin determined that the racial disparities in the split of Bibb County involving SD 18, SD 25, and SD 26 are evidence that SD 26 was packed, as demonstrated by the table below:

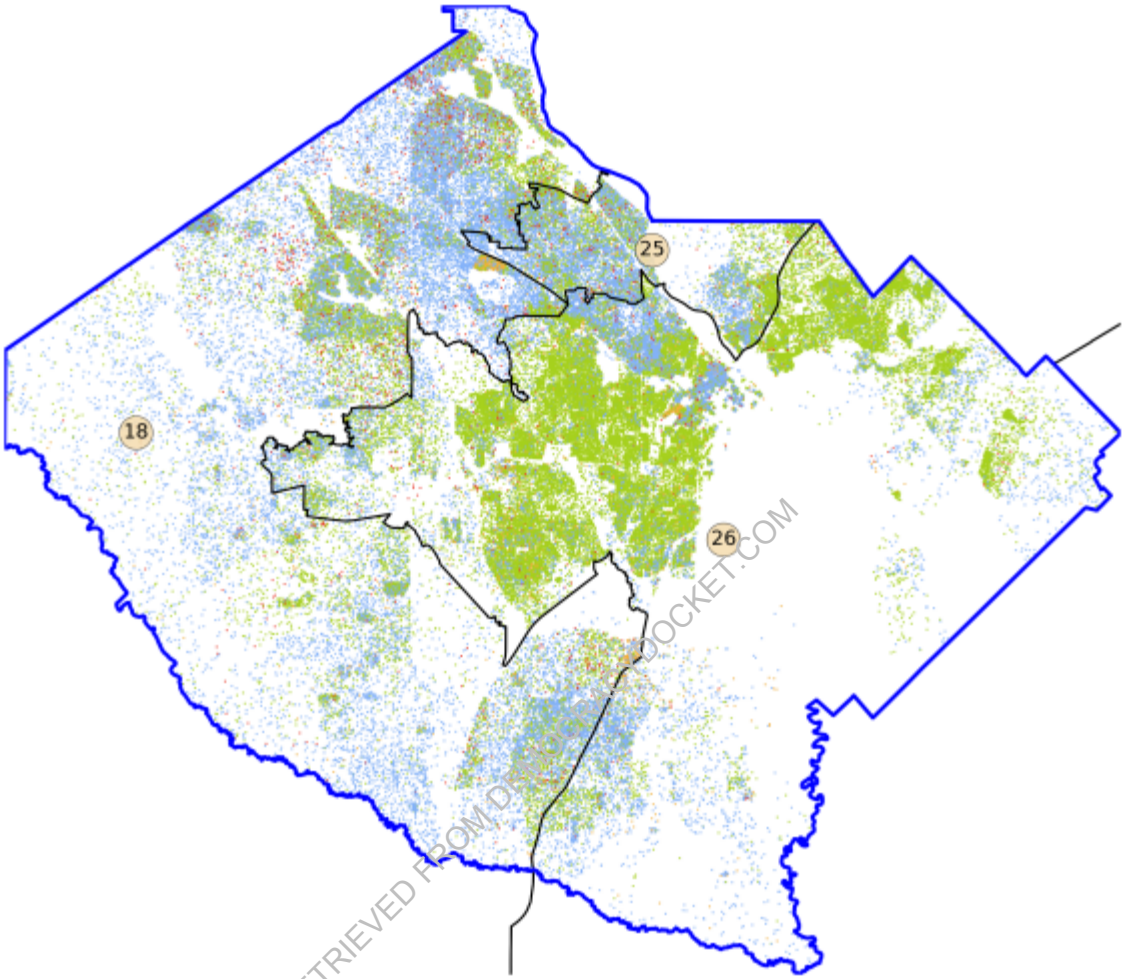


Figure 37: This figure shows the separation of Bibb County in a way that packs SD 26.

*Id.*

158. Dr. Duchin analyzed the split of Chatham County involving SDs 1, 2, and 4. *Id.* at 78, Figure 38

159. SD 2 is an effective district for Black and Latino Voters, and SDs 1 and 4 are not. *Id.*

160. Dr. Duchin determined that the “pieces of Chatham County look to be clearly racially sorted into Senate districts in a way that ensures that Black and Latino voters can only have effective influence in one of the constituent district,” as demonstrated below:

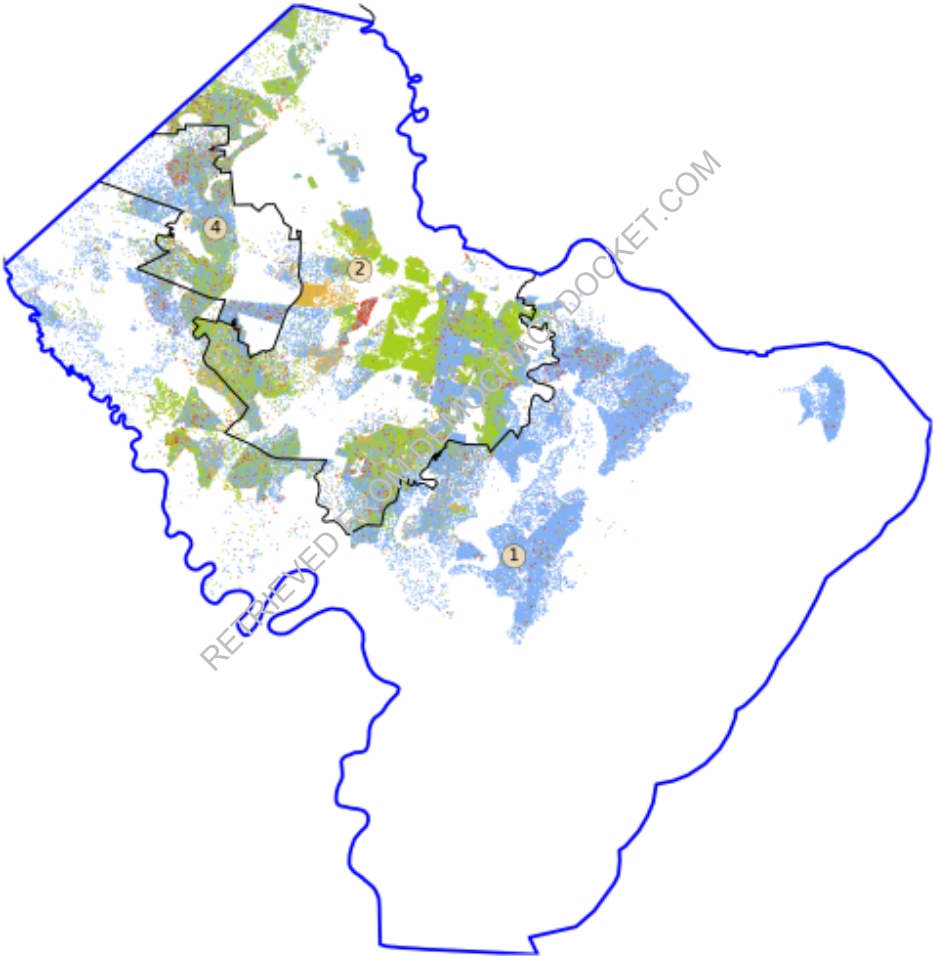


Figure 38: The pieces of Chatham County look to be clearly racially sorted into Senate districts in a way that ensures that Black and Latino voters can only have effective influence in one of the constituent districts. Indeed, SD 2 is an effective district, while SD 1 and SD 4 are not.

*Id.*

**G. Dr. Duchin Concluded Race Was Used to Achieve Partisan Outcomes in the State’s Enacted Plans.**

161. Dr. Duchin examined, among other things, the claims from certain Defendant witnesses that partisan politics, and not race, motivated the legislature in drawing certain congressional, senate, and house districts. Canter Decl. ¶ 21 (Duchin Rebuttal & Supplemental Report (“Duchin Rebuttal Rep.”) at 6-10).

162. Dr. Duchin ran algorithmic experiments to test the hypothesis that the legislature drew the congressional, senate, and house maps based not upon race but upon pursuing partisan advantage. *Id.* at 7-9.

163. To examine the effects of partisanship, Dr. Duchin “generated 100,000 statewide plans at each level of redistricting with an exploratory algorithm seeking larger numbers of Trump-favoring districts from the 2020 Presidential election.” *Id.* at 7.

164. These alternative partisan-advantage plans were drawn respectful of traditional districting principles, including compactness, population balance and county preservation, but did not include race data. *Id.*

165. Because Dr. Duchin did not input race data into her algorithm, she was able to explore “whether plans selected for partisanship—but with no race data—tend to have the same hallmarks of racial sorting that [she] found in the enacted plans.” *Id.*

166. Dr. Duchin then plotted the Black Voting Age Population in each of the districts in the enacted plans against the sets of partisan advantage districts created by her algorithms. *Id.* at 8.

167. Dr. Duchin opined that “if a plan were drawn by using minority racial population to secure partisan advantage in a state with roughly 50-50 partisan support,” we would expect to see “cracking” of the minority group in those districts in the middle range of partisan advantage. *Id.*

168. Dr. Duchin’s experiment did show that, in the middle range of partisan advantage districts in congressional, state Senate, and state House, the enacted plan’s Black VAP showed clear signs of “cracking,” i.e., “reduced Black population relative to the comparison plans. *Id.*

169. Dr. Duchin opined that her algorithmic experiment suggests that the legislature did not pursue a “race neutral advantage [in the congressional map], but rather a highly race-conscious pursuit of partisan advantage.” *Id.* at 8, Figure 5.

170. Dr. Duchin reached the same conclusion as to the Senate and House maps, finding that “The same signature of cracking is visible here as in the Congressional boxplot.” *Id.* at 9.

171. Dr. Duchin then drew random congressional, Senate, and House plans from the middle-range districts of her Trump-favoring collections and compared the BVAP in those districts to the middle-range districts of the enacted plan. *Id.* at 10.

172. Dr. Duchin concluded that the enacted plan had lower BVAP than all of the randomly selected congressional plans and virtually all of the randomly selected Senate and House plans. *Id.*

173. Dr. Duchin concluded that, based on her experiments, there were many thousands of examples with even greater partisan tilt than in the enacted plan that could have been drawn, but which did “not show the marked signs of racial sorting that are found in the enacted plan.” *Id.*

174. Dr. Duchin calculated that the probability of the enacted plan being as low in BVAP compared to the randomly-selected congressional plans was less than .00007. *Id.*

175. Dr. Duchin calculated that the probability of the enacted plan being as low in BVAP compared to the randomly-selected Senate plans was less than .00000004. *Id.*

176. Dr. Duchin calculated that the probability of the enacted plan being as low in BVAP compared to the randomly-selected House plans was less than .00000000006. *Id.*



177. Dr. Duchin also found indications corroborating the hypothesis that race was used to achieve partisan outcomes in the state’s enacted plans in the high numbers of split precincts, because vote history is not available at a sub-precinct level. *Id.*

#### **IV. The First *Gingles* Precondition**

##### **A. Dr. Duchin’s Methodology**

178. Dr. Duchin examined whether Plaintiffs could meet the first *Gingles* precondition. Duchin Dep. 28:07-30:02; Duchin Rep. at 3-4. To do so, Dr. Duchin analyzed whether it was possible to draw additional majority minority districts in Georgia’s congressional, senate, and house maps while respecting traditional redistricting principles. Duchin Rep. at 3-4.

179. In drawing her maps, Dr. Duchin first used a method called “computational redistricting,” which uses computer programs to generate various maps. Duchin Dep. 18:15-19:02. Dr. Duchin runs this “algorithmic exploration” to serve as a base for latter mapping in order to “get a sense of what’s possible in different parts of” Georgia. *Id.* 19:03-19:14.

180. After the “algorithmic exploration” generated base maps, Dr. Duchin hand drew maps in order to balance traditional redistricting principles and create

maps that are “remediable.” Duchin Dep. 65:06-77:12; 121:01-121:12; 123:13-123:15.

181. Dr. Duchin examined quantifiable and unquantifiable traditional redistricting principles. Duchin Dep. 28:12-28:20; 65:10-71:06; 79:13-79:17; 155:12-155:21; Duchin Rep. at 20-24, 79-80.

182. Dr. Duchin used the redistricting guidelines published by both chambers of the Georgia legislature to select which quantifiable and unquantifiable redistricting principles to analyze, as reflected by the figure below:

- A. GENERAL PRINCIPLES FOR DRAFTING PLANS
1. Each congressional district should be drawn with a total population of plus or minus one person from the ideal district size.
  2. Each legislative district of the General Assembly should be drawn to achieve a total population that is substantially equal as practicable, considering the principles listed below.
  3. All plans adopted by the Committee will comply with Section 2 of the Voting Rights Act of 1965, as amended.
  4. All plans adopted by the Committee will comply with the United States and Georgia Constitutions.
  5. Districts shall be composed of contiguous geography. Districts that connect on a single point are not contiguous.
  6. No multi-member districts shall be drawn on any legislative redistricting plan.
  7. The Committee should consider:
    - a. The boundaries of counties and precincts;
    - b. Compactness; and
    - c. Communities of interest.
  8. Efforts should be made to avoid the unnecessary pairing of incumbents.
  9. The identifying of these criteria is not intended to limit the consideration of any other principles or factors that the Committee deems appropriate.

Duchin Rep. at 20.

183. Some of these principles are mandatory, such as compliance with the population balance for congressional and legislative districts, compliance with the Voting Rights Act, compliance with the U.S. and Georgia Constitutions, contiguity,

and ensuring that there are no multi-member districts. *Id.* Others are not mandatory, such as consideration of the boundaries of counties, compactness, communities of interest; the last is to make “efforts” to avoid the “unnecessary” pairing of incumbents. *Id.*

184. To determine communities of interest, Dr. Duchin analyzed a voluminous record of public testimony. Duchin Dep. 68:18-69:10. This community of interest testimony informed Dr. Duchin’s hand-drawing process. *Id.* 70:08-70:71:06; 79:09-79:16; 163:15-163:25.

185. This testimony included public input reflecting concerns that the ultimately-enacted CD 6 would be blending communities that have interests more common in rural communities—such as the Army Corp. of Engineers—with communities that have interests more common in suburban areas—such as public transportation. Duchin Rep. 79-80.

186. This testimony also included public input reflected concerns that the ultimately-enacted CD 14 would be blending communities that have interests more common in rural communities—such as manufacturing and agriculture—with communities that have interests more common in urban areas—such as housing. *Id.*

187. For her demonstrative Congressional plan, Dr. Duchin drew an alternative map covering the entire state. Duchin Dep. 21:01-21:13.

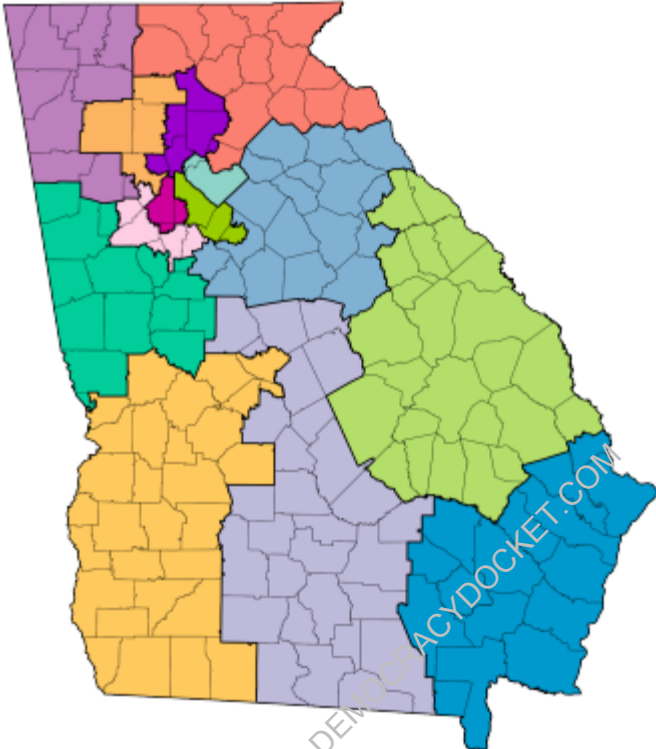
188. For her demonstrative senate and house plans, Dr. Duchin divided the Enacted Plan into modules. Under this modular approach, Dr. Duchin drew alternative maps in geographic areas covered by certain clusters of districts within certain modules in the enacted plan. Duchin Dep. 60:05-60:22; Duchin Rep. at 13, 14-15.

## **B. Numerosity**

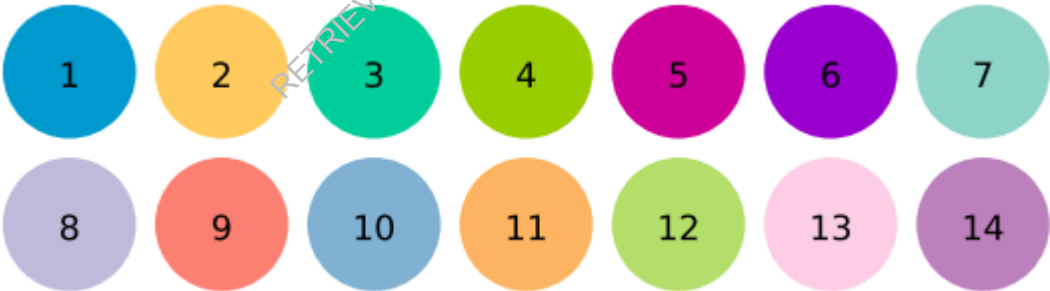
### **1. Dr. Duchin Drew Additional Majority Minority Congressional Districts.**

189. The enacted congressional plan contained two majority BVAP districts (CD 4 and CD 13). Duchin Rep. at 25 (Table 11).

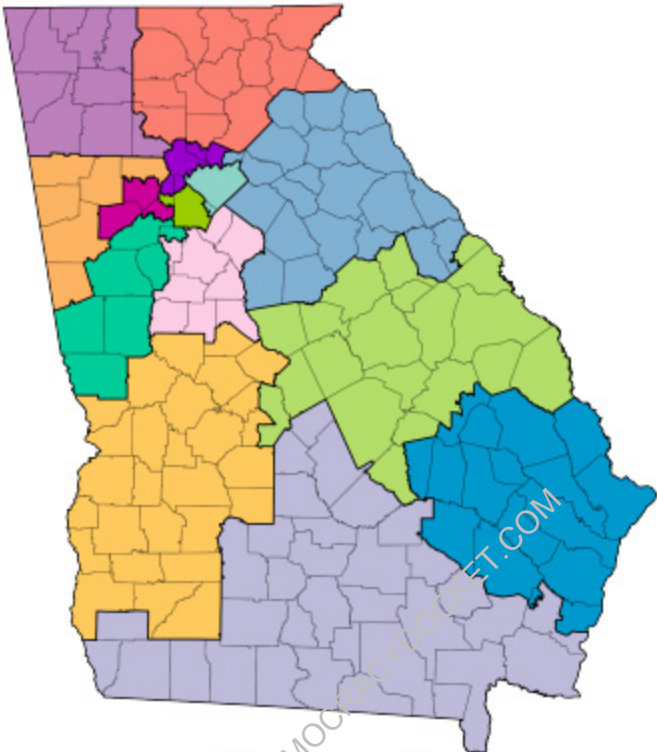
190. Three additional districts in the enacted congressional plan are majority Black and Hispanic voting age population (“BHVAP”) (CD 2, CD 5, and CD 7). *Id.* CD 7 is not majority Black and Hispanic Citizen Voting Age Population (“BHCVAP”). *Id. See also id.* at 11, Figure 3.



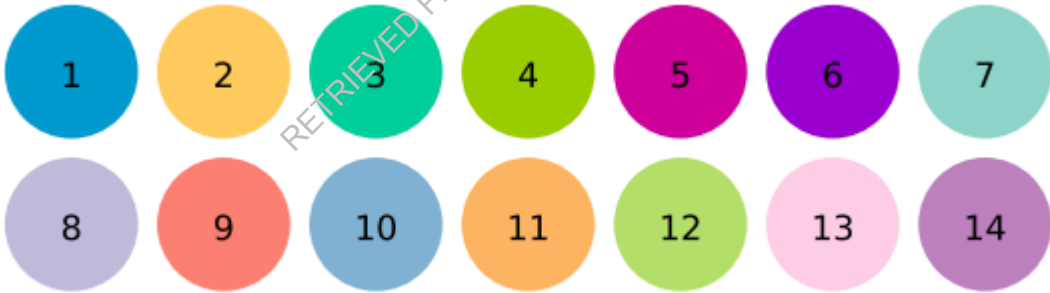
Enacted



191. Dr. Duchin provided one alternative congressional plan (“Alt 1 CD”) that created additional majority-minority districts when compared to the enacted plan. *Id. See also id.* at 11, Figure 3.



Congress Alt



192. Alt 1 CD creates four majority BVAP districts (Alt 1 CDs 3, 4, 5, 13).

Duchin Rep.at 25 (Table 11).

193. Alt 1 CD also creates two majority BHVAP districts, (Alt 1 CDs 2 and 7). *Id.*

194. Each of the majority BHVAP districts in Alt 1 CD are also majority BHCVAP districts. *Id.*

195. Alt 1 CD thus creates an additional majority-minority district: Alt 1CD 3, as demonstrated by the chart and figure below. *Id.*

CD	CD Enacted (Statewide)						CD Alt 1					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
1	28.2%	6.8%	35.0%	60.4%	0.285	0.456	30.3%	6.9%	37.2%	58.5%	0.312	0.633
2	49.3%	5.1%	54.4%	42.7%	0.267	0.458	47.7%	4.7%	52.4%	44.5%	0.315	0.494
3	23.3%	5.3%	28.6%	66.8%	0.275	0.461	51.2%	7.2%	58.4%	37.4%	0.278	0.411
4	54.5%	10.1%	64.6%	28.3%	0.246	0.307	50.6%	8.2%	58.8%	33.8%	0.295	0.481
5	49.6%	6.7%	56.3%	37.9%	0.322	0.512	50.1%	11.4%	51.5%	33.4%	0.216	0.424
6	9.9%	9.1%	19.0%	66.6%	0.198	0.424	13.7%	10.9%	24.6%	57.1%	0.232	0.346
7	29.8%	21.3%	51.1%	32.8%	0.386	0.496	34.3%	22.4%	56.7%	29.4%	0.351	0.518
8	30.0%	6.1%	36.1%	60.5%	0.210	0.338	27.3%	6.9%	34.2%	63.0%	0.227	0.377
9	10.4%	12.9%	23.3%	68.3%	0.253	0.380	4.6%	11.5%	16.1%	77.9%	0.403	0.512
10	22.6%	6.5%	29.1%	66.2%	0.284	0.558	17.6%	6.9%	24.5%	69.8%	0.335	0.576
11	17.9%	11.2%	29.1%	64.0%	0.207	0.480	17.6%	7.6%	25.2%	68.1%	0.283	0.364
12	36.7%	4.9%	41.6%	54.6%	0.278	0.502	39.2%	4.6%	43.8%	51.9%	0.181	0.489
13	66.7%	10.5%	77.2%	18.8%	0.157	0.380	52.0%	6.8%	58.8%	37.8%	0.276	0.510
14	14.3%	10.6%	24.9%	71.3%	0.373	0.426	7.6%	11.0%	18.6%	77.0%	0.514	0.484
Avg					0.267	0.441					0.301	0.473

196. Defendants' mapping expert, Dr. Morgan, testified he had no basis to dispute that it was possible to draw additional majority-minority districts in the Congressional plan. Canter Decl. ¶ 22 (Deposition of John Morgan ("Morgan Dep.") 20:22-23:25).

197. This chart, and others like it, reflect voting age population ("VAP") comparisons by district in the enacted plans and Dr. Duchin's created illustrative plans. Duchin Rep. at 25; *see also Id.* at 81.

198. This chart, and others like it, compare the enacted and illustrative plans on a variety of metrics including Black voting age population ("BVAP"), Hispanic

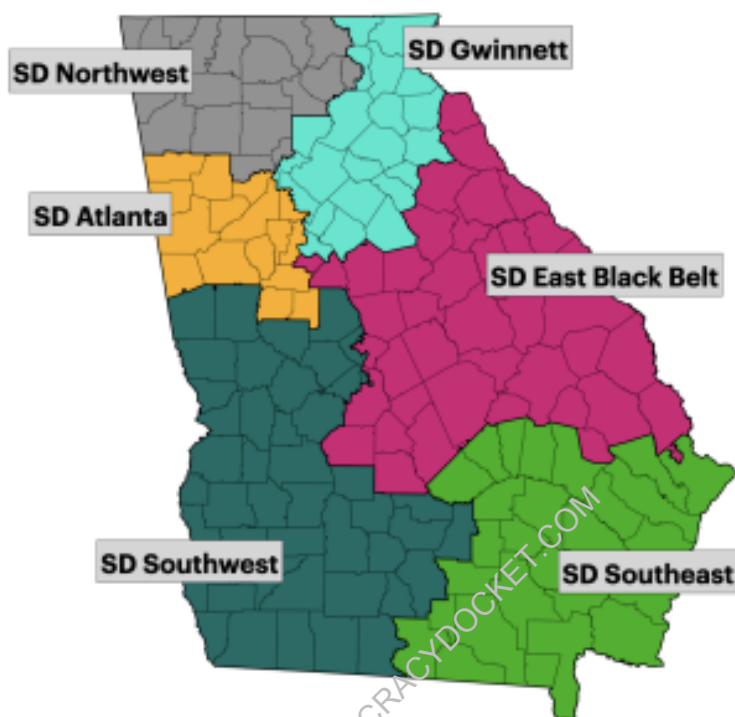
voting age population (“HVAP”), White voting age population (“WVAP”), citizen voting age population (“CVAP”). Duchin Dep. 22:7-16; 46:6-7; Duchin Rep. at 7, 25, 81.

199. This chart, and others like it, compare the enacted and illustrative plans, using the two most common compactness metrics are the Polsby-Popper score and the Reock score. These are both contour-based scores that rely on the outline of the district on a map. Polsby-Popper is a ratio formed by comparing the district’s area to its perimeter via the formula  $4 \pi A/P^2$ . Reock considers how much of the smallest bounding circle is filled out by the district’s area. Duchin Rep. at 21.

## **2. Dr. Duchin Drew Additional Majority Minority Senate Districts.**

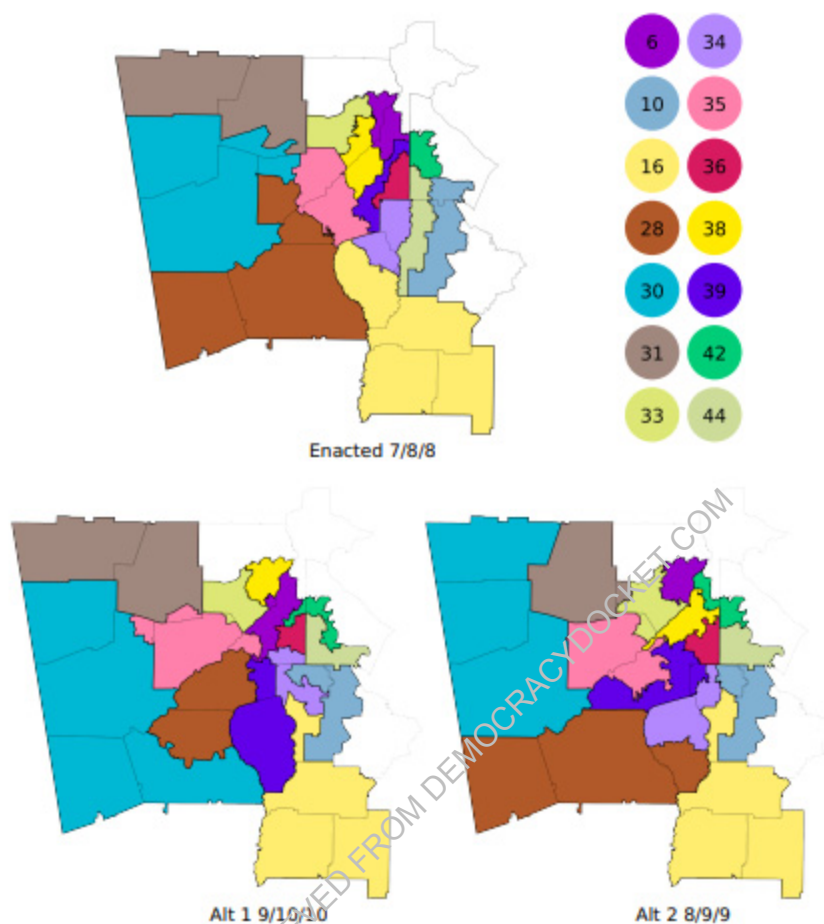
200. Dr. Duchin analyzed six clusters of senate districts: SD Northwest, SD Gwinnett, SD Atlanta, SD East Black Belt, SD Southwest, and SD Southeast.





*Id.* at 13 (Figure 5).

201. In the SD Atlanta region, Dr. Duchin provides two alternative maps (“SD Alt 1 Atlanta” and “SD Alt 2 Atlanta”) that create additional majority-minority districts. *Id.* at 26-27.



*Id.* at 26 (Figure 8).

202. Defendants’ expert, Dr. Morgan, testified he has no basis to dispute that Dr. Duchin was able to draw additional majority-minority senate districts. Morgan Dep. 24:02-24; *see also* Canter Decl. ¶ 23 (Expert Report of John Morgan (“Morgan Rep.” at 24, 27 (Charts 5 and 6)); Morgan Dep. 29:10-30:04; Morgan Dep. 79:08-12; Morgan Dep. 82:15-18.

203. The enacted SD Atlanta cluster contains 7 majority BVAP districts (SDs 10, 34, 35, 36, 38, 39, and 44). Duchin Rep. at 27 (Table 12 and Table 13).

204. The enacted SD Atlanta cluster contains an additional majority BHVAP district (SD 33). *Id.*

205. SD Alt 1 Atlanta contains 10 majority BVAP districts (SDs Alt 1 Atlanta 6, 10, 16, 28, 33, 34, 35, 36, 39, and 44). *Id.* (Table 12).

206. SD Alt 2 Atlanta contains 8 majority BVAP districts (SDs Alt 2 Atlanta 10, 33, 34, 35, 36, 38, 39, 44) and 1 majority BHVAP district (SD Alt 2 Atlanta 16). *Id.* (Table 13).

207. The tables below provide a comparison between the enacted senate plan and SD Alt 1 Atlanta and SD Alt 2 Atlanta:

SD	SD Atlanta Enacted						SD Alt 1					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
6	23.9%	8.2%	32.1%	57.8%	0.236	0.405	50.1%	6.1%	56.2%	39.8%	0.169	0.246
10	71.5%	5.2%	76.7%	19.6%	0.231	0.281	59.5%	11.0%	70.5%	23.4%	0.238	0.420
16	22.7%	5.0%	27.7%	66.9%	0.314	0.368	50.2%	6.2%	56.4%	40.9%	0.254	0.354
28	19.5%	6.4%	25.9%	69.4%	0.246	0.445	50.6%	6.8%	57.4%	39.3%	0.335	0.489
30	20.9%	6.1%	27.0%	69.4%	0.407	0.597	14.3%	5.1%	19.4%	76.9%	0.286	0.361
31	20.7%	7.4%	28.1%	68.3%	0.379	0.366	19.7%	7.2%	26.9%	69.4%	0.470	0.395
33	43.0%	22.9%	65.9%	30.2%	0.215	0.401	50.4%	18.1%	68.5%	27.9%	0.381	0.528
34	69.5%	12.7%	82.2%	13.4%	0.335	0.451	72.2%	11.6%	83.8%	11.5%	0.163	0.326
35	71.9%	7.5%	79.4%	18.8%	0.263	0.472	50.9%	8.0%	58.9%	38.2%	0.347	0.400
36	51.3%	7.1%	58.4%	36.2%	0.305	0.321	50.0%	5.7%	55.7%	38.8%	0.339	0.452
38	65.3%	8.4%	73.7%	21.9%	0.208	0.361	27.9%	15.4%	43.3%	46.1%	0.271	0.487
39	60.7%	5.6%	66.3%	27.9%	0.128	0.166	51.2%	5.4%	56.6%	38.6%	0.277	0.357
42	30.8%	8.6%	39.4%	51.4%	0.321	0.479	35.8%	9.6%	45.4%	43.5%	0.112	0.289
44	71.3%	8.6%	79.9%	15.3%	0.185	0.180	61.6%	3.6%	65.2%	31.0%	0.237	0.356
Avg					0.270	0.378					0.277	0.390

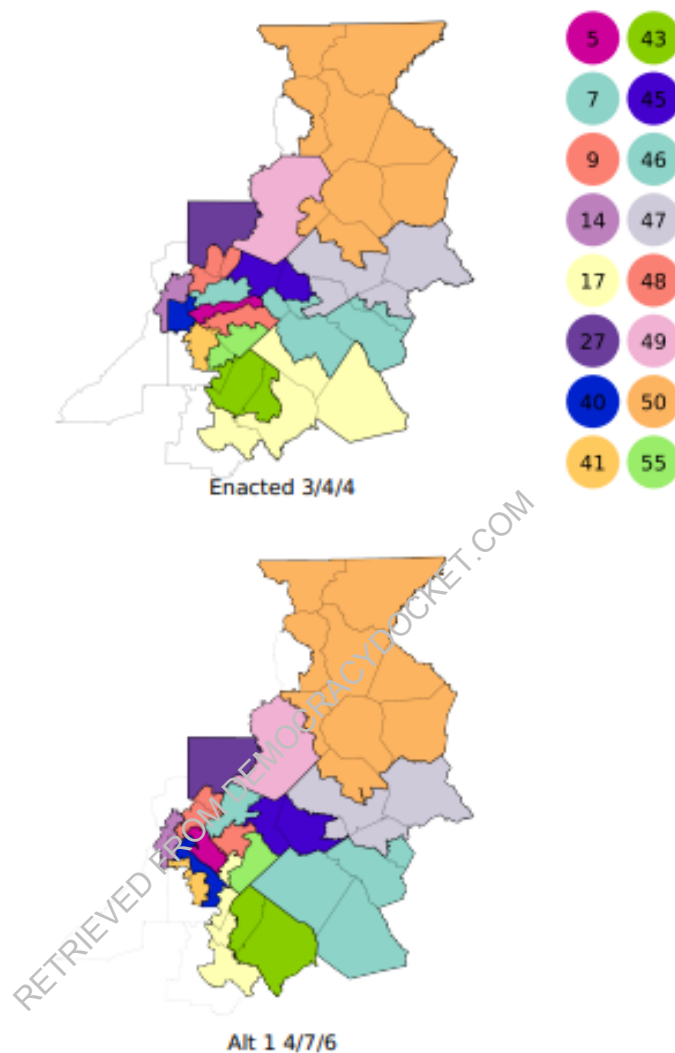
Table 12: SD Atlanta Alt 1 splits 8 counties within the cluster compared to 7 in the enacted plan and has a better discrete compactness score, with 2017 cut edges rather than 2197, to go with comparable Polsby-Popper and superior Reock compactness.

SD	SD Atlanta Enacted						SD Alt 2					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
6	23.9%	8.2%	32.1%	57.8%	0.236	0.405	28.0%	14.9%	42.9%	46.7%	0.256	0.477
10	71.5%	5.2%	76.7%	19.6%	0.231	0.281	59.7%	9.8%	69.5%	23.3%	0.307	0.416
16	22.7%	5.0%	27.7%	66.9%	0.314	0.368	48.4%	6.1%	54.5%	42.4%	0.258	0.366
28	19.5%	6.4%	25.9%	69.4%	0.246	0.445	15.8%	6.1%	21.9%	72.8%	0.347	0.371
30	20.9%	6.1%	27.0%	69.4%	0.407	0.597	15.7%	6.6%	22.3%	74.2%	0.473	0.508
31	20.7%	7.4%	28.1%	68.3%	0.379	0.366	25.9%	6.7%	32.6%	63.6%	0.591	0.636
33	43.0%	22.9%	65.9%	30.2%	0.215	0.401	50.6%	18.2%	68.8%	27.4%	0.224	0.463
34	69.5%	12.7%	82.2%	13.4%	0.335	0.451	54.4%	11.9%	66.3%	27.9%	0.246	0.381
35	71.9%	7.5%	79.4%	18.8%	0.263	0.472	60.9%	7.5%	68.4%	29.3%	0.206	0.490
36	51.3%	7.1%	58.4%	36.2%	0.305	0.321	54.0%	6.8%	60.8%	33.6%	0.263	0.466
38	65.3%	8.4%	73.7%	21.9%	0.208	0.361	51.0%	5.6%	56.6%	37.6%	0.154	0.260
39	60.7%	5.6%	66.3%	27.9%	0.128	0.166	86.5%	5.5%	92.0%	7.0%	0.118	0.271
42	30.8%	8.6%	39.4%	51.4%	0.321	0.479	17.0%	10.7%	27.7%	61.4%	0.144	0.282
44	71.3%	8.6%	79.9%	15.3%	0.185	0.180	76.3%	3.2%	79.5%	18.7%	0.374	0.456
Avg					0.270	0.378					0.283	0.417

Table 13: SD Atlanta Alt 2 splits 6 counties within the cluster and has just 1985 cut edges, better than the enacted plan's 7 and 2197, while also improving on both contour-based compactness scores.

*Id.* (Table 12 and Table 13).

208. Dr. Duchin provided an alternative map in Gwinnett (“SD Alt 1 Gwinnett”) that created additional majority-minority districts:



*Id.* at 28 (Figure 9).

209. Defendants’ expert, Dr. Morgan, testified he has no basis to dispute that Dr. Duchin was able to draw additional majority-minority senate districts. Morgan Dep. 24:02-20; *see also* Morgan Rep. at 24, 27 (Charts 5 and 6); Morgan Dep. 29:10-30:4; Morgan Dep. 79:08-12; Morgan Dep. 82:15-18.

210. The enacted SD Gwinnett cluster contains 3 majority BVAP districts (SDs 41, 43, and 55) and 1 additional majority BHVAP district (SD 5). Morgan Rep. at 29 (Table 14).

211. SD Alt 1 Gwinnett creates 5 majority BVAP districts (SDs Alt 1 Gwinnett 17, 40, 41, 43, and 55), and 2 majority BHVAP districts (SDs Alt 1 Gwinnett 5 and 9). *Id.*

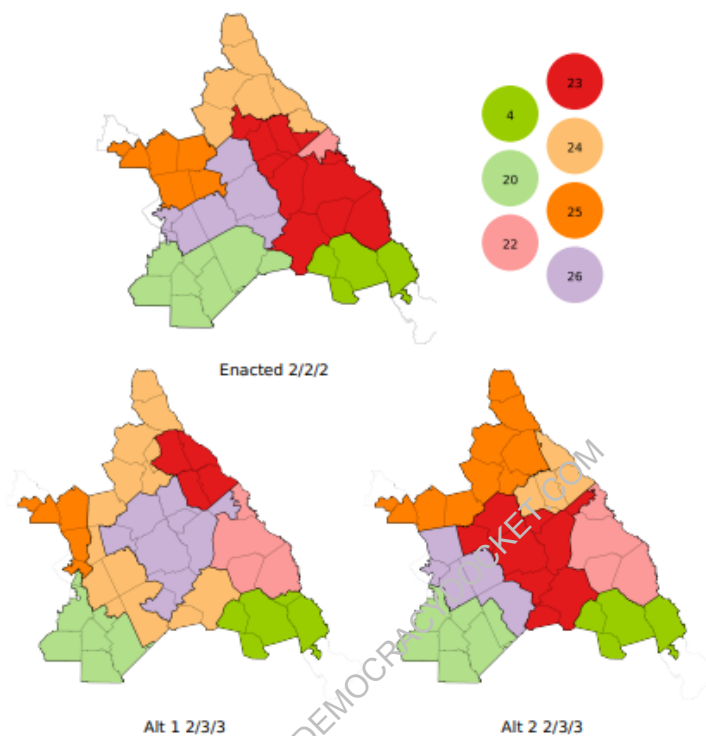
212. The table below compares the enacted SD Gwinnett cluster to SD Alt 1 Gwinnett:

SD	SD Gwinnett Enacted						SD Alt 1					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
5	29.9%	41.7%	71.6%	15.7%	0.207	0.386	20.3%	34.6%	54.9%	28.0%	0.285	0.384
7	21.4%	16.6%	38.0%	37.8%	0.339	0.344	17.1%	14.3%	31.4%	45.5%	0.278	0.401
9	29.5%	18.8%	48.3%	35.8%	0.213	0.233	29.3%	27.0%	56.3%	26.2%	0.234	0.498
14	19.0%	12.1%	31.1%	57.1%	0.202	0.273	18.1%	11.4%	29.5%	57.6%	0.208	0.296
17	32.0%	5.1%	37.1%	59.4%	0.168	0.342	51.1%	6.6%	57.7%	35.9%	0.113	0.188
27	5.0%	10.2%	15.2%	71.5%	0.456	0.499	4.7%	10.2%	14.9%	70.8%	0.500	0.497
40	19.2%	21.6%	40.8%	46.3%	0.345	0.508	50.1%	17.7%	67.8%	25.1%	0.130	0.208
41	62.6%	6.7%	69.3%	21.4%	0.302	0.509	57.3%	10.0%	67.3%	23.3%	0.149	0.279
43	64.3%	6.9%	71.2%	26.5%	0.346	0.635	52.0%	7.0%	59.0%	38.3%	0.420	0.537
45	18.6%	13.1%	31.7%	55.5%	0.305	0.350	19.8%	12.1%	31.9%	58.8%	0.226	0.380
46	16.9%	7.0%	23.9%	69.9%	0.207	0.365	16.5%	5.0%	21.5%	73.4%	0.416	0.514
47	17.4%	9.6%	27.0%	67.5%	0.187	0.353	16.7%	8.7%	25.4%	68.5%	0.176	0.326
48	9.5%	7.0%	16.5%	52.2%	0.342	0.348	10.1%	6.4%	16.5%	54.8%	0.266	0.387
49	8.0%	21.9%	29.9%	65.6%	0.341	0.461	8.1%	24.6%	32.7%	62.8%	0.382	0.573
50	5.6%	8.8%	14.4%	81.5%	0.228	0.450	5.4%	6.1%	11.5%	84.3%	0.232	0.462
55	66.0%	8.7%	74.7%	20.6%	0.271	0.333	50.0%	13.9%	63.9%	30.0%	0.419	0.451
Avg					0.281	0.386					0.277	0.399

*Id.*

213. Dr. Duchin provided two alternative maps for the SD East Black Belt cluster (“SD Alt 1 East Black Belt” and “SD Alt 2 East Black Belt”) that create additional majority-minority districts.

## 7.2.3 SD East Black Belt



*Id.* at 30 (Figure 10).

214. Defendants' expert, Dr. Morgan, testified he has no basis to dispute that Dr. Duchin was able to draw additional majority-minority senate districts. Morgan Dep. 24:02-20; *see also* Morgan Rep. at 24, 27 (Charts 5 and 6); Morgan Dep. 29:10-30:04; Morgan Dep. 79:08-12; Morgan Dep. 82:15-18.

215. The enacted SD East Black Belt region contains two majority BVAP districts (SDs 22 and 26). *See* Duchin Rep. at 31 (Table 15 and Table 6).

216. SD Alt 1 East Black Belt contains three majority BVAP districts (SDs Alt 1 East Black Belt 22, 25, and 26). *Id.* (Table 15).

217. SD Alt 2 East Black Belt contains two majority BVAP districts (SDs Alt 2 East Black Belt 22 and 26) and one majority BHVAP district (SD Alt 2 East Black Belt 23). *Id.* (Table 16).

218. The table below provides a comparison between the enacted SD East Black Belt cluster and SD Alt 1 East Black Belt and SD Alt 2 East Black Belt:

SD	SD East Black Belt Enacted						SD Alt 1					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
4	23.4%	5.5%	28.9%	66.8%	0.265	0.471	23.5%	5.5%	29.0%	66.7%	0.284	0.495
20	31.3%	3.5%	34.8%	61.7%	0.358	0.404	34.4%	5.1%	39.5%	56.5%	0.231	0.498
22	56.5%	5.3%	61.8%	34.4%	0.288	0.404	50.5%	3.8%	54.3%	42.6%	0.241	0.455
23	35.5%	4.5%	40.0%	56.9%	0.164	0.365	23.0%	5.6%	28.6%	64.6%	0.466	0.497
24	19.9%	4.4%	24.3%	69.8%	0.213	0.366	25.0%	3.5%	28.5%	69.1%	0.083	0.229
25	33.5%	3.7%	37.2%	59.9%	0.241	0.386	50.0%	4.0%	54.0%	43.4%	0.174	0.344
26	57.0%	4.2%	61.2%	36.6%	0.203	0.469	50.1%	3.7%	53.8%	43.4%	0.209	0.472
Avg					0.247	0.409					0.241	0.427

Table 15: SD East Black Belt Alt 1 has more cut edges than the state (1301 vs. 1021 from the enacted plan), paired with a comparable Polsby-Popper and a superior Reock score. This alternative plan splits seven counties while the state splits four within the cluster.

SD	SD East Black Belt Enacted						SD Alt 2					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
4	23.4%	5.5%	28.9%	66.8%	0.265	0.471	23.4%	5.5%	28.9%	66.8%	0.265	0.471
20	31.3%	3.5%	34.8%	61.7%	0.358	0.404	32.5%	4.9%	37.4%	58.7%	0.304	0.586
22	56.5%	5.3%	61.8%	34.4%	0.288	0.404	50.4%	3.5%	53.9%	42.9%	0.264	0.432
23	35.5%	4.5%	40.0%	56.9%	0.164	0.365	47.4%	4.1%	51.5%	45.8%	0.231	0.441
24	19.9%	4.4%	24.3%	69.8%	0.213	0.366	23.1%	5.6%	28.7%	64.5%	0.327	0.458
25	33.5%	3.7%	37.2%	59.9%	0.241	0.386	28.2%	4.5%	32.7%	64.3%	0.176	0.311
26	57.0%	4.2%	61.2%	36.6%	0.203	0.469	51.2%	3.1%	54.3%	43.5%	0.205	0.331
Avg					0.247	0.409					0.253	0.433

Table 16: SD East Black Belt Alt 2 has just two county splits, compared to four in the state's plan. With just 1008 cut edges, it also executes a clean sweep of compactness scores relative to the enacted plan.

*Id.*



### 3. Dr. Duchin Drew Additional Majority Minority House Districts.

219. Dr. Duchin analyzed seven House clusters: HD Atlanta, HD Cobb, HD DeKalb, HD Gwinnett, HD Southwest, HD East Black Belt, HD Southeast. *Id.* at 14-15.

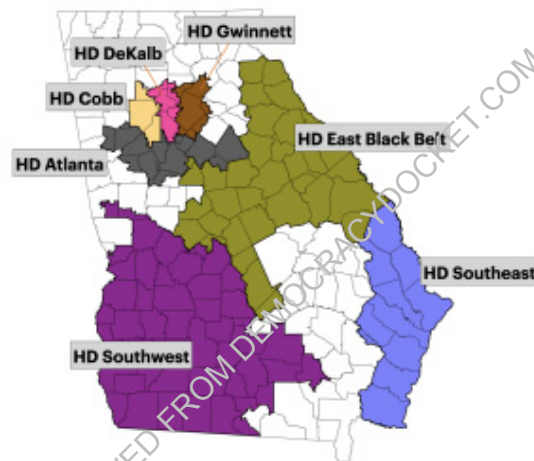
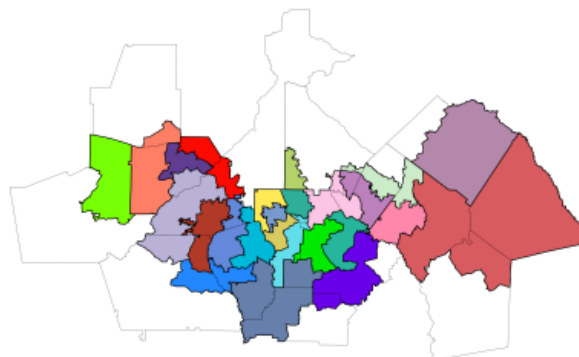


Figure 7: Seven "modular" House clusters made up of groups of enacted districts.

*Id.* at 15 (Figure 7).

220. Dr. Duchin provided two alternative maps (“HD Alt 1 Atlanta” and “HD Alt 2 Atlanta”) for the HD Atlanta cluster that created additional majority-minority districts:

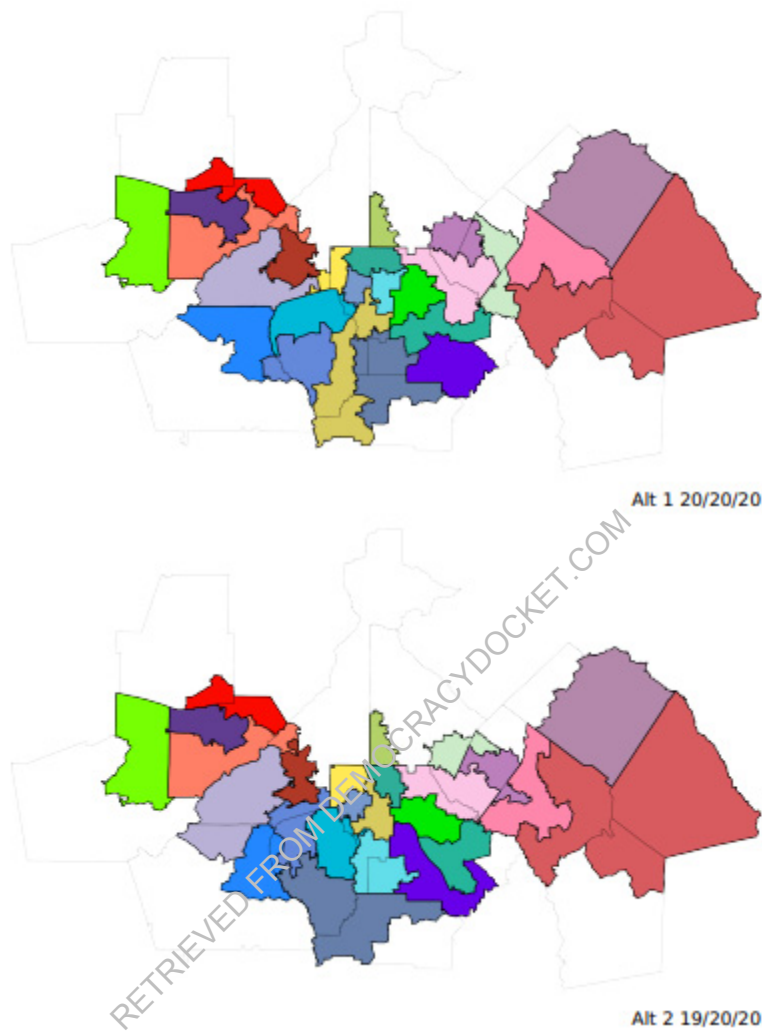
7.3.1 HD Atlanta



Enacted 18/18/18



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*Id.* at 32-33 (Figures 11 and 12).

221. Defendants' expert Dr. Morgan testified he has no basis to dispute that it is possible to draw additional majority-minority house districts. Morgan Dep. 24:22-24:09; *see also* Morgan Rep., 18, 21 (Charts 2 and 3); Morgan Dep. 29:10-30:04; Morgan Dep. 79:4-12; Morgan Dep. 82:15-18.

222. The enacted HD Atlanta cluster contains 18 majority BVAP districts (HDs 61, 65, 66, 67, 68, 69, 75, 76, 77, 78, 79, 90, 91, 92, 93, 113, 115, and 116). *See* Duchin Rep. at 34 (Table 17 and Table 18).

223. HD Alt 1 Atlanta contains 20 majority BVAP districts (HDs Alt 1 Atlanta 61, 64, 65, 66, 67, 69, 74, 75, 76, 77, 78, 79, 90, 91, 92, 93, 113, 115, 116, 117). *Id.* (Table 17).

224. HD Alt 2 Atlanta contains 19 majority BVAP districts (HDs Alt 2 Atlanta 64, 65, 66, 67, 68, 69, 75, 76, 77, 78, 79, 90, 91, 92, 93, 113, 115, 116, 117), and one majority BHVAP district (HD Alt 2 Atlanta 61). *Id.* (Table 18).

225. The tables below provide comparisons between HD Atlanta enacted and HD Atlanta Alt 1 and HD Atlanta Alt 2.

HD	HD Atlanta Enacted						HD Alt 1					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
61	74.3%	7.6%	81.9%	16.8%	0.198	0.247	50.1%	10.0%	60.1%	37.1%	0.229	0.265
64	30.7%	7.4%	38.1%	57.8%	0.361	0.365	50.9%	6.5%	57.4%	40.0%	0.132	0.263
65	62.0%	4.5%	66.5%	31.5%	0.172	0.454	81.7%	4.7%	86.4%	12.5%	0.222	0.350
66	53.4%	9.5%	62.9%	33.9%	0.246	0.356	51.0%	9.0%	60.0%	36.2%	0.256	0.386
67	58.9%	7.8%	66.7%	30.9%	0.122	0.357	89.9%	5.4%	95.3%	4.4%	0.195	0.515
68	55.7%	6.3%	62.0%	33.9%	0.172	0.318	13.7%	6.6%	20.3%	71.5%	0.310	0.518
69	63.6%	5.4%	69.0%	26.9%	0.247	0.403	51.9%	8.8%	60.7%	34.0%	0.339	0.409
71	19.9%	6.2%	26.1%	69.8%	0.352	0.441	19.9%	6.2%	26.1%	69.8%	0.350	0.441
73	12.1%	7.0%	19.1%	72.6%	0.198	0.278	11.8%	6.4%	18.2%	75.9%	0.335	0.417
74	25.5%	5.6%	31.1%	64.4%	0.247	0.496	50.8%	6.9%	57.7%	39.7%	0.205	0.461
75	74.4%	11.3%	85.7%	11.3%	0.285	0.420	54.2%	7.7%	61.9%	34.1%	0.133	0.230
76	67.2%	13.2%	80.4%	10.5%	0.509	0.524	61.6%	20.0%	81.6%	11.2%	0.460	0.409
77	76.1%	12.2%	88.3%	7.6%	0.211	0.396	89.6%	5.0%	94.6%	3.5%	0.211	0.292
78	71.6%	8.9%	80.5%	15.0%	0.194	0.210	64.2%	11.3%	75.5%	15.4%	0.256	0.414
79	71.6%	16.0%	87.6%	7.1%	0.209	0.498	73.3%	14.6%	87.9%	8.0%	0.370	0.444
90	58.5%	4.3%	62.8%	34.0%	0.286	0.359	58.5%	4.3%	62.8%	34.0%	0.286	0.359
91	70.0%	5.9%	75.9%	22.0%	0.202	0.447	50.3%	5.2%	55.5%	40.7%	0.245	0.384
92	68.8%	4.7%	73.5%	24.1%	0.198	0.361	87.6%	3.5%	91.1%	8.3%	0.260	0.543
93	65.4%	9.6%	75.0%	22.9%	0.112	0.260	62.1%	10.4%	72.5%	25.4%	0.160	0.232
112	19.2%	3.3%	22.5%	73.7%	0.522	0.619	19.2%	3.3%	22.5%	73.7%	0.522	0.619
113	59.5%	6.7%	66.2%	31.8%	0.318	0.501	51.0%	5.1%	56.1%	41.2%	0.338	0.425
114	24.7%	3.7%	28.4%	68.8%	0.283	0.502	32.8%	4.4%	37.2%	60.3%	0.267	0.438
115	52.1%	7.0%	59.1%	36.9%	0.226	0.436	50.2%	6.0%	56.2%	38.6%	0.193	0.282
116	58.1%	7.3%	65.4%	27.2%	0.280	0.407	54.8%	8.0%	62.8%	29.6%	0.333	0.478
117	36.6%	5.4%	42.0%	54.5%	0.275	0.408	51.0%	7.2%	58.2%	39.0%	0.409	0.511
Avg					0.257	0.402					0.281	0.403

Table 17: In HD Atlanta, the enacted plan has 10 county splits and 2221 cut edges. Alt 1 maintains 10 county splits and improves to 1988 cut edges.

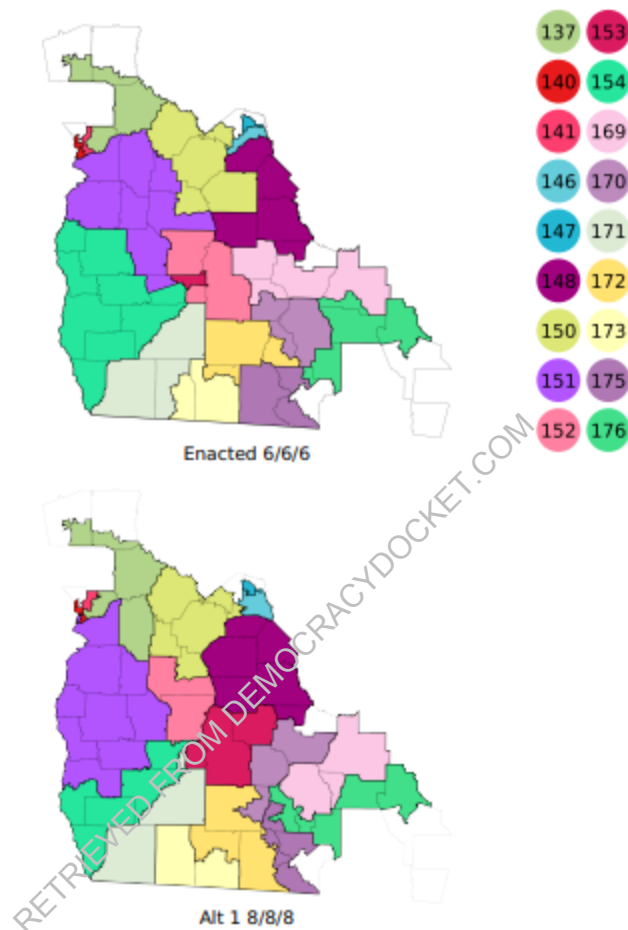
HD	HD Atlanta Enacted						HD Alt 2					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
61	74.3%	7.6%	81.9%	16.8%	0.198	0.247	47.4%	10.1%	57.5%	39.6%	0.290	0.276
64	30.7%	7.4%	38.1%	57.8%	0.361	0.365	50.5%	6.8%	57.3%	40.0%	0.201	0.271
65	62.0%	4.5%	66.5%	31.5%	0.172	0.454	67.5%	4.1%	71.7%	26.6%	0.302	0.458
66	53.4%	9.5%	62.9%	33.9%	0.246	0.356	51.2%	9.1%	60.3%	36.0%	0.336	0.407
67	58.9%	7.8%	66.7%	30.9%	0.122	0.357	90.4%	5.3%	95.7%	4.0%	0.131	0.428
68	55.7%	6.3%	62.0%	33.9%	0.172	0.318	58.2%	6.8%	65.0%	31.0%	0.168	0.329
69	63.6%	5.4%	69.0%	26.9%	0.247	0.403	54.6%	6.3%	60.9%	34.4%	0.310	0.538
71	19.9%	6.2%	26.1%	69.8%	0.352	0.441	19.9%	6.2%	26.1%	69.8%	0.352	0.441
73	12.1%	7.0%	19.1%	72.6%	0.198	0.278	11.9%	7.0%	18.9%	73.6%	0.373	0.498
74	25.5%	5.6%	31.1%	64.4%	0.247	0.496	12.8%	5.7%	18.5%	75.5%	0.192	0.320
75	74.4%	11.3%	85.7%	11.3%	0.285	0.420	61.4%	12.0%	73.4%	17.6%	0.225	0.404
76	67.2%	13.2%	80.4%	10.5%	0.509	0.524	70.4%	13.2%	83.6%	9.6%	0.352	0.416
77	76.1%	12.2%	88.3%	7.6%	0.211	0.396	77.0%	12.6%	89.6%	7.0%	0.491	0.510
78	71.6%	8.9%	80.5%	15.0%	0.194	0.210	68.6%	8.4%	77.0%	21.0%	0.325	0.540
79	71.6%	16.0%	87.6%	7.1%	0.209	0.498	73.1%	15.5%	88.6%	7.5%	0.357	0.549
90	58.5%	4.3%	62.8%	34.0%	0.286	0.359	58.5%	4.3%	62.8%	34.0%	0.286	0.359
91	70.0%	5.9%	75.9%	22.0%	0.202	0.447	53.0%	5.2%	58.2%	38.4%	0.231	0.369
92	68.8%	4.7%	73.5%	24.1%	0.198	0.361	69.6%	6.9%	76.5%	21.3%	0.174	0.330
93	65.4%	9.6%	75.0%	22.9%	0.112	0.260	85.5%	7.2%	92.7%	7.0%	0.201	0.329
112	19.2%	3.3%	22.5%	73.7%	0.522	0.619	19.2%	3.3%	22.5%	73.7%	0.522	0.619
113	59.5%	6.7%	66.2%	31.8%	0.318	0.501	53.9%	5.6%	59.5%	37.9%	0.153	0.355
114	24.7%	3.7%	28.4%	68.8%	0.283	0.502	24.9%	3.8%	28.7%	68.6%	0.235	0.487
115	52.1%	7.0%	59.1%	36.9%	0.226	0.436	50.3%	6.9%	57.2%	39.8%	0.304	0.475
116	58.1%	7.3%	65.4%	27.2%	0.280	0.407	53.2%	7.9%	61.1%	31.0%	0.382	0.452
117	36.6%	5.4%	42.0%	54.5%	0.275	0.408	50.1%	6.5%	56.6%	38.4%	0.155	0.323
Avg					0.257	0.402					0.282	0.419

Table 18: With 9 county splits and 1995 cut edges, Alt 2 dominates the enacted plan.

*Id.*

226. Dr. Duchin drew an alternative map for HD Southwest (HD Alt 1 Southwest) that created additional majority-minority districts:

7.3.2 HD Southwest



*Id.* at 35 (Figure 13).

227. Defendants’ expert Dr. Morgan testified he has no basis to dispute that it is possible to draw additional majority-minority house districts. Morgan Dep. 24:22-24:09; *see also* Morgan Rep. 18, 21 (Charts 2 and 3); Morgan Dep. 29:10-30:04; Morgan Dep. 79:08-12; Morgan Dep. 82:15-18.

228. The enacted HD Southwest contains six majority BVAP districts (HDs 137, 140, 141, 150, 153, and 154). Duchin Rep. at 36 (Table 19).

229. HD Alt 1 Southwest contains eight majority BVAP districts (HDs Alt 1 Southwest 137, 140, 141, 150, 151, 153, 154, 171). *Id.* (Table 19).

230. The table below provides a comparison between the enacted HD Southwest cluster and HD Alt 1 Southwest:

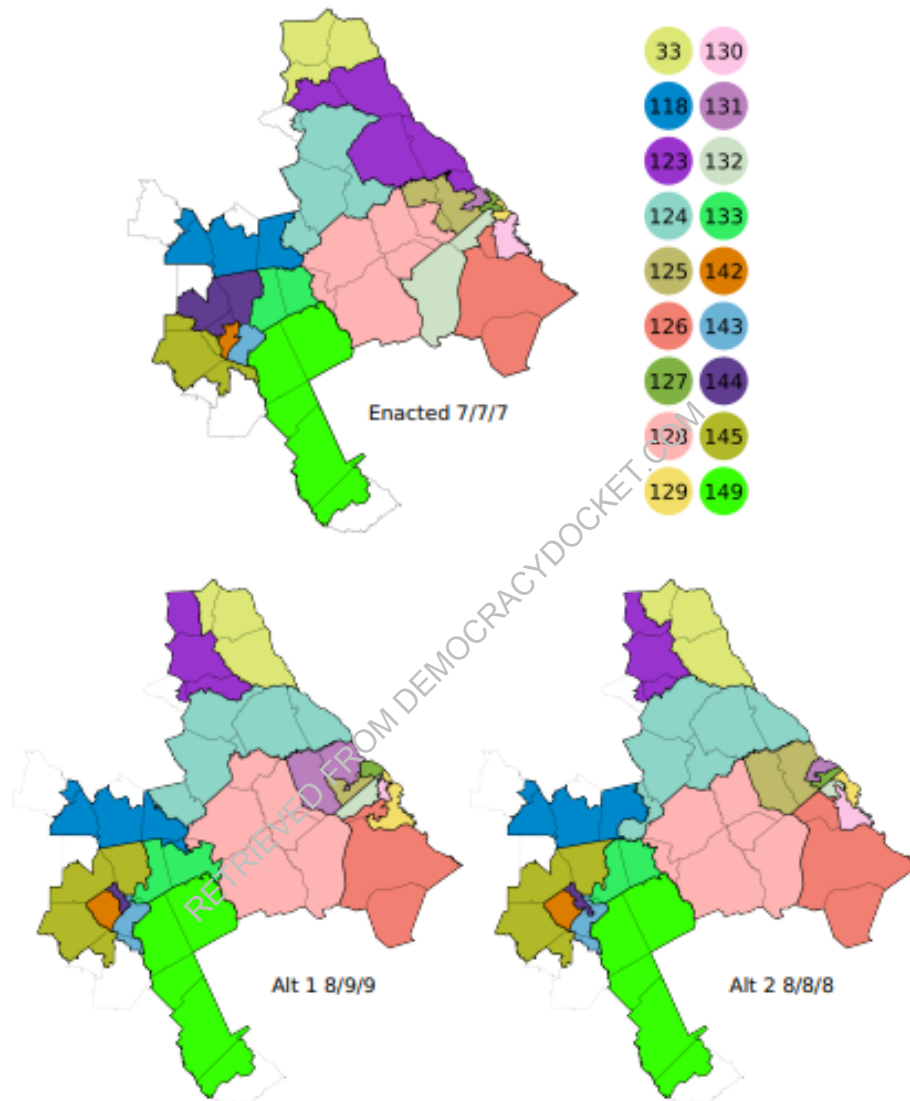
HD	HD Southwest Enacted						HD Alt 1					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
137	52.1%	4.5%	56.6%	40.8%	0.165	0.328	51.7%	3.7%	55.4%	42.0%	0.143	0.259
140	57.6%	8.0%	65.6%	31.7%	0.192	0.289	57.1%	7.9%	65.0%	32.4%	0.197	0.257
141	57.5%	6.6%	64.1%	31.8%	0.200	0.261	52.6%	6.7%	60.3%	35.5%	0.299	0.423
146	27.6%	4.7%	32.3%	61.8%	0.195	0.257	23.3%	4.9%	28.2%	64.4%	0.208	0.468
147	30.1%	7.2%	37.3%	55.3%	0.261	0.331	31.8%	7.2%	39.0%	55.1%	0.220	0.341
148	34.0%	3.1%	37.1%	60.4%	0.235	0.438	38.6%	3.4%	42.0%	56.1%	0.388	0.590
150	53.6%	6.1%	59.7%	38.3%	0.275	0.439	51.2%	5.3%	56.5%	41.5%	0.250	0.544
151	42.4%	7.3%	49.7%	47.2%	0.222	0.528	51.0%	7.5%	58.5%	38.6%	0.275	0.424
152	26.1%	2.3%	28.4%	67.9%	0.297	0.394	34.2%	3.2%	37.4%	58.7%	0.314	0.473
153	67.9%	2.5%	70.4%	27.7%	0.297	0.298	52.9%	2.7%	55.6%	43.0%	0.400	0.536
154	54.8%	1.7%	56.5%	42.2%	0.332	0.410	50.1%	2.1%	52.2%	45.7%	0.175	0.261
169	29.0%	7.7%	36.7%	61.0%	0.226	0.283	24.0%	9.0%	33.0%	64.6%	0.296	0.456
170	24.2%	8.7%	32.9%	64.2%	0.342	0.531	26.8%	12.5%	39.3%	57.9%	0.223	0.285
171	39.6%	4.6%	44.2%	53.9%	0.368	0.347	51.0%	4.0%	55.0%	43.4%	0.249	0.275
172	23.3%	13.4%	36.7%	63.0%	0.316	0.437	25.1%	9.4%	34.5%	63.1%	0.217	0.375
173	36.3%	5.4%	41.7%	55.7%	0.378	0.564	35.4%	5.6%	41.0%	56.4%	0.412	0.424
175	24.2%	5.0%	29.2%	66.5%	0.374	0.472	21.0%	5.7%	26.7%	68.7%	0.143	0.273
176	22.7%	8.2%	30.9%	66.2%	0.160	0.335	23.8%	6.2%	30.0%	67.1%	0.116	0.227
Avg					0.269	0.386					0.252	0.383

Table 19: HD Southwest Alt 1 splits 12 counties within the cluster, to the state's 10 split counties. Its 2290 cut edges are more than the state's 2094, though the Reock scores are nearly identical.

*Id.*

231. Dr. Duchin provided two alternative HD East Black Belt maps (“HD Alt 1 East Black Belt” and “HD Alt 2 East Black Belt”) that created additional majority-minority districts:

7.3.3 HD East Black Belt



*Id.* at 37 (Figure 14).

232. Defendants' expert Dr. Morgan testified he has no basis to dispute that it is possible to draw additional majority-minority house districts. Morgan Dep.



24:22-24:09; *see also* Morgan Rep. 18, 21 (Charts 2 and 3); Morgan Dep. 29:10-30:04; Morgan Dep. 79:08-12; Morgan Dep. 82:15-18.

233. The enacted HD East Black Belt contains seven majority BVAP districts (HDs 126, 128, 129, 130, 132, 142, and 143). Duchin Rep. at 38 (Table 20 and Table 21).

234. HD Alt 1 East Black Belt contains eight majority BVAP districts (HDs Alt 1 East Black Belt 126, 128, 129, 130, 132, 142, 142, and 144). HD Alt 1 East Black also contains a majority BHVAP district (HD Alt 1 East Black Belt 133). *Id.* (Table 20)

235. HD Alt 2 East Black Belt also contains eight majority BVAP districts (HD Alt 2 East Black Belt 126, 128, 129, 130, 132, 142, 142, 144). *Id.* (Table 21).

236. The tables below compare the enacted East Black Belt clusters with HD Alt 1 East Black Belt and HD Alt 2 East Black Belt:

HD	HD East Black Belt Enacted						HD Alt 1					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
33	11.2%	3.1%	14.3%	82.3%	0.371	0.487	18.7%	3.8%	22.5%	74.6%	0.405	0.343
118	23.6%	3.7%	27.3%	69.7%	0.223	0.350	23.2%	3.1%	26.3%	70.6%	0.218	0.329
123	24.3%	4.3%	28.6%	68.1%	0.178	0.295	13.3%	5.8%	19.1%	76.3%	0.281	0.357
124	25.6%	6.2%	31.8%	65.0%	0.233	0.442	28.4%	4.7%	33.1%	64.4%	0.224	0.362
125	23.7%	7.7%	31.4%	63.0%	0.173	0.409	24.1%	8.0%	32.1%	61.5%	0.255	0.328
126	54.5%	3.2%	57.7%	40.0%	0.414	0.516	52.5%	3.5%	56.0%	41.6%	0.322	0.534
127	18.5%	4.8%	23.3%	68.1%	0.201	0.351	14.6%	4.9%	19.5%	70.1%	0.585	0.546
128	50.4%	1.7%	52.1%	46.5%	0.319	0.601	50.1%	1.6%	51.7%	46.7%	0.357	0.628
129	54.9%	4.3%	59.2%	37.2%	0.254	0.482	51.9%	3.5%	55.4%	40.7%	0.108	0.314
130	59.9%	3.9%	63.8%	33.7%	0.255	0.508	54.4%	4.3%	58.7%	38.7%	0.253	0.451
131	17.6%	5.9%	23.5%	68.2%	0.283	0.377	27.1%	5.1%	32.2%	63.3%	0.285	0.604
132	52.3%	7.8%	60.1%	35.6%	0.296	0.270	53.6%	8.2%	61.8%	33.1%	0.293	0.243
133	36.8%	2.1%	38.9%	58.4%	0.415	0.543	48.7%	2.0%	50.7%	47.2%	0.178	0.385
142	59.5%	3.7%	63.2%	34.8%	0.229	0.353	50.8%	3.7%	54.5%	42.3%	0.539	0.605
143	60.8%	4.7%	65.5%	32.3%	0.299	0.502	52.4%	6.3%	58.7%	38.4%	0.176	0.332
144	29.3%	2.6%	31.9%	63.0%	0.325	0.510	50.4%	4.3%	54.7%	41.3%	0.299	0.298
145	35.7%	5.9%	41.6%	55.1%	0.194	0.376	23.1%	2.8%	25.9%	71.1%	0.204	0.422
149	32.1%	5.7%	37.8%	61.0%	0.223	0.325	32.1%	5.7%	37.8%	61.0%	0.223	0.325
Avg					0.271	0.428					0.289	0.411

Table 20: The Alt 1 map has 10 split counties within the HD East Black Belt cluster, while the enacted plan has 9. Its 1775 cut edges improves on the state's 1887, while also being more compact by Polsby-Popper.

HD	HD East Black Belt Enacted						HD Alt 2					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
33	11.2%	3.1%	14.3%	82.3%	0.371	0.487	18.3%	3.5%	21.8%	75.2%	0.370	0.323
118	23.6%	3.7%	27.3%	69.7%	0.223	0.350	27.0%	4.1%	31.1%	65.9%	0.229	0.342
123	24.3%	4.3%	28.6%	68.1%	0.178	0.295	13.7%	6.0%	19.7%	75.8%	0.293	0.395
124	25.6%	6.2%	31.8%	65.0%	0.233	0.442	25.5%	3.8%	29.3%	68.1%	0.234	0.381
125	23.7%	7.7%	31.4%	63.0%	0.173	0.409	30.2%	6.1%	36.3%	60.1%	0.396	0.670
126	54.5%	3.2%	57.7%	40.0%	0.414	0.516	50.7%	4.2%	54.9%	42.3%	0.394	0.494
127	18.5%	4.8%	23.3%	68.1%	0.201	0.351	17.6%	6.2%	23.8%	67.2%	0.267	0.264
128	50.4%	1.7%	52.1%	46.5%	0.319	0.601	50.2%	1.5%	51.7%	46.8%	0.409	0.672
129	54.9%	4.3%	59.2%	37.2%	0.254	0.482	50.4%	3.6%	54.0%	41.8%	0.248	0.323
130	59.9%	3.9%	63.8%	33.7%	0.255	0.508	57.1%	4.7%	61.8%	35.4%	0.231	0.325
131	17.6%	5.9%	23.5%	68.2%	0.283	0.377	17.6%	5.7%	23.3%	67.8%	0.318	0.373
132	52.3%	7.8%	60.1%	35.6%	0.296	0.270	54.4%	7.1%	61.5%	34.1%	0.219	0.278
133	36.8%	2.1%	38.9%	58.4%	0.415	0.543	46.6%	2.1%	48.7%	49.0%	0.296	0.438
142	59.5%	3.7%	63.2%	34.8%	0.229	0.353	50.1%	3.8%	53.9%	42.9%	0.436	0.605
143	60.8%	4.7%	65.5%	32.3%	0.299	0.502	52.9%	6.3%	59.2%	38.0%	0.143	0.316
144	29.3%	2.6%	31.9%	63.0%	0.325	0.510	51.0%	4.2%	55.2%	40.8%	0.226	0.243
145	35.7%	5.9%	41.6%	55.1%	0.194	0.376	23.1%	2.8%	25.9%	71.1%	0.190	0.359
149	32.1%	5.7%	37.8%	61.0%	0.223	0.325	32.1%	5.7%	37.8%	61.0%	0.223	0.325
Avg					0.271	0.428					0.285	0.396

Table 21: Alt 2 eliminates one county split relative to the enacted plan and has a sharply improved 1604 cut edges.

*Id.* (Table 20 and Table 21).

237. Dr. Duchin also provided alternative maps for the HD Southeast cluster (“HD Alt 1 Southeast”) that contains additional majority-minority districts:

7.3.4 HD Southeast

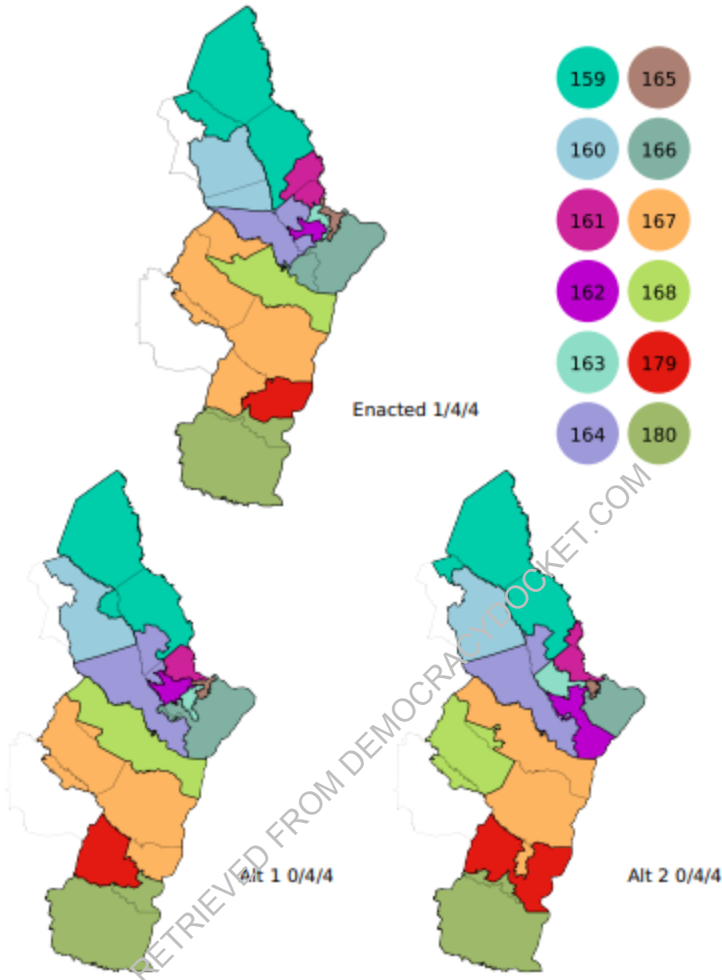


Figure 15: HD Southeast (12 districts).

*Id.* at 39 (Figure 15).

238. Defendants’ expert Dr. Morgan testified he has no basis to dispute that it is possible to draw additional majority-minority house districts. Morgan Dep. 24:22-24:09; *see also* Morgan Rep. at 24, 27 (Charts 2 and 3); Morgan Dep. 29:10-30:04; Morgan Dep. 79:08-12; Morgan Dep. 82:15-18.

239. Enacted HD Southeast contains one majority BVAP district (HD 165) and three majority BHVAP districts (HDs 162, 163, 168). Duchin Rep. at 40 (Table 22 and Table 23).

240. HD Alt 1 Southeast contains five majority BHVAP districts (HDs Alt 1 Southeast 161, 162, 163, 165 and 168). *Id.* (Table 22).

241. HD Alt 2 Southeast also contains five majority BHVAP districts (HDs Alt 2 Southeast 161, 162, 163, 165 and 168). *Id.* (Table 23).

242. The table below provides a comparison of the enacted HD Southeast cluster and HD Alt 1 Southeast and HD Alt 2 Southeast:

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HD	HD Southeast Enacted						HD Alt 1					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
159	24.5%	2.9%	27.4%	69.4%	0.219	0.345	22.2%	3.7%	25.9%	70.5%	0.204	0.358
160	22.6%	5.0%	27.6%	68.5%	0.369	0.483	26.6%	5.1%	31.7%	64.7%	0.242	0.373
161	27.1%	6.8%	33.9%	60.2%	0.306	0.511	42.1%	8.8%	50.9%	42.7%	0.359	0.475
162	43.7%	9.6%	53.3%	40.6%	0.211	0.366	39.9%	10.5%	50.4%	42.6%	0.147	0.372
163	45.5%	7.4%	52.9%	41.9%	0.175	0.271	44.0%	6.9%	50.9%	43.7%	0.244	0.335
164	23.5%	8.5%	32.0%	60.6%	0.167	0.299	12.9%	5.1%	18.0%	76.5%	0.143	0.309
165	50.3%	5.3%	55.6%	39.2%	0.162	0.230	47.3%	4.7%	52.0%	42.9%	0.189	0.380
166	5.7%	4.1%	9.8%	84.7%	0.364	0.429	7.2%	4.7%	11.9%	82.4%	0.245	0.459
167	22.3%	7.4%	29.7%	66.0%	0.192	0.417	20.0%	6.2%	26.2%	70.1%	0.266	0.327
168	46.3%	10.3%	56.6%	39.3%	0.258	0.243	45.9%	10.7%	56.6%	39.2%	0.236	0.246
179	27.0%	6.4%	33.4%	63.7%	0.417	0.451	32.0%	7.5%	39.5%	56.9%	0.433	0.539
180	18.2%	5.6%	23.8%	71.2%	0.396	0.606	17.0%	5.4%	22.4%	72.8%	0.348	0.594
Avg					0.270	0.388					0.255	0.397

Table 22: HD Southeast Alt 1 has fewer county splits (5 vs. 6) and a better cut edges score (1122 vs. 1245) than the enacted plan.

HD	HD Southeast Enacted						HD Alt 2					
	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock	Black VAP	Hisp VAP	BH VAP	White VAP	Polsby Popper	Reock
159	24.5%	2.9%	27.4%	69.4%	0.219	0.345	22.0%	3.6%	25.6%	70.7%	0.192	0.356
160	22.6%	5.0%	27.6%	68.5%	0.369	0.483	26.3%	5.1%	31.4%	64.9%	0.333	0.515
161	27.1%	6.8%	33.9%	60.2%	0.306	0.511	41.8%	10.0%	51.6%	42.2%	0.180	0.332
162	43.7%	9.6%	53.3%	40.6%	0.211	0.366	43.0%	8.5%	51.5%	42.5%	0.191	0.341
163	45.5%	7.4%	52.9%	41.9%	0.175	0.271	42.7%	7.7%	50.4%	43.1%	0.282	0.411
164	23.5%	8.5%	32.0%	60.6%	0.167	0.299	13.4%	5.5%	18.9%	75.6%	0.168	0.290
165	50.3%	5.3%	55.6%	39.2%	0.162	0.230	45.5%	5.0%	50.5%	44.4%	0.229	0.501
166	5.7%	4.1%	9.8%	84.7%	0.364	0.429	7.2%	4.1%	11.3%	83.0%	0.391	0.653
167	22.3%	7.4%	29.7%	66.0%	0.192	0.417	36.5%	7.4%	43.9%	52.5%	0.204	0.331
168	46.3%	10.3%	56.6%	39.3%	0.258	0.243	40.9%	10.8%	51.7%	44.3%	0.327	0.555
179	27.0%	6.4%	33.4%	63.7%	0.417	0.451	18.7%	6.0%	24.7%	71.6%	0.196	0.454
180	18.2%	5.6%	23.8%	71.2%	0.396	0.606	18.6%	5.7%	24.3%	70.7%	0.346	0.577
Avg					0.270	0.388					0.253	0.443

Table 23: Alt 2 also has just 5 county splits, to go with 1263 cut edges.

*Id.* (Table 22 and Table 23).

### C. Compactness and Traditional Redistricting Principles

243. Dr. Duchin concluded that it is possible to draw these additional majority-minority districts in the congressional, senate, and house plans while comporting with traditional redistricting principles. Duchin Rep. at 5; Duchin Dep. 65:06-66:09.

244. Defendants’ expert Dr. Morgan testified that he has no basis to dispute that Dr. Duchin’s illustrative majority-minority districts are “reasonably configured.” Morgan Dep. at 21:12-28:08; *see also* Morgan Rep. at 18, 21-22, 24, 27-28 (Charts 2, 3, 5, 6, and 7).

245. Dr. Duchin testified that throughout the map-drawing process, she balanced these redistricting principles. Duchin Dep. 122:08-18.

246. Dr. Duchin examined several of the qualitative and quantitative redistricting principles codified by the Georgia legislature. Duchin Rep. at 20-24.

247. All of the districts in all of Dr. Duchin’s illustrative congressional, senate, and house district are contiguous. Duchin Rep. at 20.

248. As demonstrated by the chart below, Dr. Duchin tightly balanced the populations of each of her illustrative congressional, senate, and house maps:

	Maximum positive deviation	Maximum negative deviation	Top-to-bottom deviation
<b>EnactedCD</b>	+1	-1	2
<b>DuncanKennedy</b>	+2	-1	3
<b>CD Alt</b>	+1	-1	2
<b>EnactedSD</b>	+1879	-1964	3843 (2.01%)
<b>SD Alt Eff 1</b>	+2457	-2598	5055 (2.64%)
<b>SD Alt Eff 2</b>	+2547	-2490	5037 (2.63%)
<b>SD Alt Eff 3</b>	+3200	-3305	6505 (3.40%)
<b>EnactedHD</b>	+797	-833	1630 (2.74%)
<b>HD Alt Eff 1</b>	+1194	-1176	2370 (3.98%)
<b>HD Alt Eff 2</b>	+1222	-1097	2319 (3.90%)
<b>HD Alt Eff 3</b>	+1173	-1026	2199 (3.70%)

*Id.* at 20 (Table 7).

249. Dr. Duchin compared the overall average district compactness scores of the enacted plans and each of her illustrative plans under the Polsby-Popper, Reock, and “cut edges” approach, as demonstrated by the chart below:

	<b>avg Polsby-Popper</b> (higher is better)	<b>avg Reock</b> (higher is better)	<b>Block cut edges</b> (lower is better)
<b>BenchmarkCD</b>	0.238	0.452	5775
<b>EnactedCD</b>	0.267	0.441	5075
<b>DuncanKennedy</b>	0.295	0.471	4665
<b>CD Alt</b>	0.301	0.473	4665
<b>BenchmarkSD</b>	0.250	0.421	12,549
<b>EnactedSD</b>	0.287	0.418	11,005
<b>SD Alt Eff 1</b>	0.287	0.427	10,897
<b>SD Alt Eff 2</b>	0.296	0.440	10,349
<b>SD Alt Eff 3</b>	0.295	0.431	10,479
<b>BenchmarkHD</b>	0.244	0.382	24,001
<b>EnactedHD</b>	0.278	0.391	22,014
<b>HD Alt Eff 1</b>	0.261	0.391	21,843
<b>HD Alt Eff 2</b>	0.263	0.399	21,907
<b>HD Alt Eff 3</b>	0.279	0.403	20,917

Table 8: Compactness scores for each plan submitted with January 13 Report.

Canter Decl ¶ 28 (Moon Duchin Notice of Errata (“Duchin Errata”) at 2 (April 26, 2023)).

250. Dr. Duchin opined that overall compactness scores of her illustrative districts are comparable or better than the enacted plan, as demonstrated by the tables above. Duchin Rep. at 6 (Figure 1) and 21 (Table 8); Duchin Dep. 103:09-106:05; Duchin Rep. at 25 (Table 11); Duchin Rep. at 27 (Table 12); *Id.* (Table 13); *Id.* at 29 (Table 14); *Id.* at 31 (Table 15); *Id.* (Table 16); *Id.* (Table 17); *Id.* (Table 18); *Id.* at

36 (Table 19); *Id.* at 38 (Table 20); *Id.* (Table 21); *Id.* at 40 (Table 22); *Id.* (Table 23).

251. Dr. Duchin also compared the compactness scores of each of the individual districts in the district clusters she examined as part of her *Gingles* 1 analysis and determined that each of the clusters were as compact or comparable, and that each of the districts in those clusters were as compact or comparable. Duchin Rep. at 25- 40 (Tables 11-23).

252. Dr. Morgan testified that Dr. Duchin's illustrative plans were as compact or comparable. *See* Morgan Dep. 79:13-82:18.

253. Dr. Duchin also opined that her alternative plans respect the integrity of political subdivisions such as counties, cities, and voting precincts. Duchin Rep. 5, 22.

254. The chart below compares the number of political subdivisions splits in the enacted plans with Dr. Duchin's illustrative plans:



	<b>County Splits</b> (out of 159)	<b>County Pieces</b>	<b>Muni Splits</b> (out of 538)	<b>Muni Pieces</b>	<b>Precinct Splits</b> (out of 2685)	<b>Precinct Pieces</b>
<b>BenchmarkCD</b>	16	38	67	141	67	134
<b>EnactedCD</b>	15	36	64	136	86	172
<b>DuncanKennedy</b>	15	36	53	114	66	132
<b>CD Alt</b>	13	30	58	127	47	95
<b>BenchmarkSD</b>	37	100	114	269	154	309
<b>EnactedSD</b>	29	89	109	266	144	289
<b>SD Alt Eff 1</b>	33	95	112	275	110	221
<b>SD Alt Eff 2</b>	26	78	108	264	97	196
<b>SD Alt Eff 3</b>	29	84	108	264	106	213
<b>BenchmarkHD</b>	72	284	169	506	303	630
<b>EnactedHD</b>	69	278	166	494	352	724
<b>HD Alt Eff 1</b>	73	276	164	492	279	570
<b>HD Alt Eff 2</b>	69	266	168	494	276	567
<b>HD Alt Eff 3</b>	69	265	165	478	277	567

*Id.* at 22 (Table 9). *See also* Duchin Errata at 3.

255. Although Dr. Duchin did not have access to incumbent addresses, she did examine incumbency through analyzing core retention. *Id.* at 24.

256. Defendants' mapping expert explained that "protecting incumbents, including preserving cores of districts, is a traditional redistricting principle. Continuity of district representation is a traditional districting factor. Voters and residents establish relationships with their elected representatives." Morgan Rep. at 8-9.

257. Dr. Duchin determined that the legislature "placed a low priority on core retention, i.e., on maintaining voters in the same districts as they belonged to in the benchmark "congressional, senate, and house plans. Duchin Rep. at 24; Duchin

Dep. 115:06-119:10. Dr. Duchin determined that core retention was particularly poor in the enacted house plan. Duchin Rep. at 24.

258. Dr. Duchin reviewed a voluminous record of public testimony. Duchin Dep. 68:18-69:10. This community of interest testimony informed Dr. Duchin's hand-drawing process. *Id.* 70:08-70:71:06; 79:09-79:16; 163:15-163:25. *See also* Duchin Rep. at 79-80. *See also* Bagley Rep. at 48, 50, 52, 53.

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**V. Gingles 2: Minority Group Political Cohesion in Georgia.**

**A. Contemporary Evidence of Minority Group Cohesive Voting**

259. Plaintiffs' expert Dr. Benjamin Schneer completed a racially polarized voting ("RPV") analysis. *See generally* Canter Decl. ¶ 24 (Expert Report of Benjamin Schneer ("Schneer Rep.")).

260. "To identify instances of RPV in Georgia," Dr. Schneer "examine[d] (1) whether members of a minority group of interest appear to be *cohesive* in their electoral support for a candidate of choice (Specifically, does more than half of a given minority group support the same candidate?); and, (2) whether White voters oppose this candidate (Specifically, do more than half of White voters oppose the minority candidate of choice?)." Schneer Rep. at 6.

261. Dr. Schneer's analysis relied on historical voting data in Georgia going back to 2012. *Id.* at 6-7.

**1. Statewide Evidence of Minority Group Cohesive Voting**

262. Dr. Schneer opined that "Black and Hispanic voters' past behavior in statewide elections reveals that these groups had a clear candidate of choice in each election, with large majorities of these voters supporting the same candidate in each election and voting cohesively." *Id.* at 17; *id.* at 18 (Figure 1).

263. Defendants’ expert Dr. Alford does not dispute any of these individual findings. In Dr. Alford’s report he noted that Dr. Schmeer “... provide[d] analysis that demonstrates that Black voters provide uniformly high levels of support for Democratic candidates and white voters provide uniformly high levels of support for Republican candidates.” Canter Decl. ¶ 25 (Expert Report of John Alford (“Alford Rep.”) at 4).

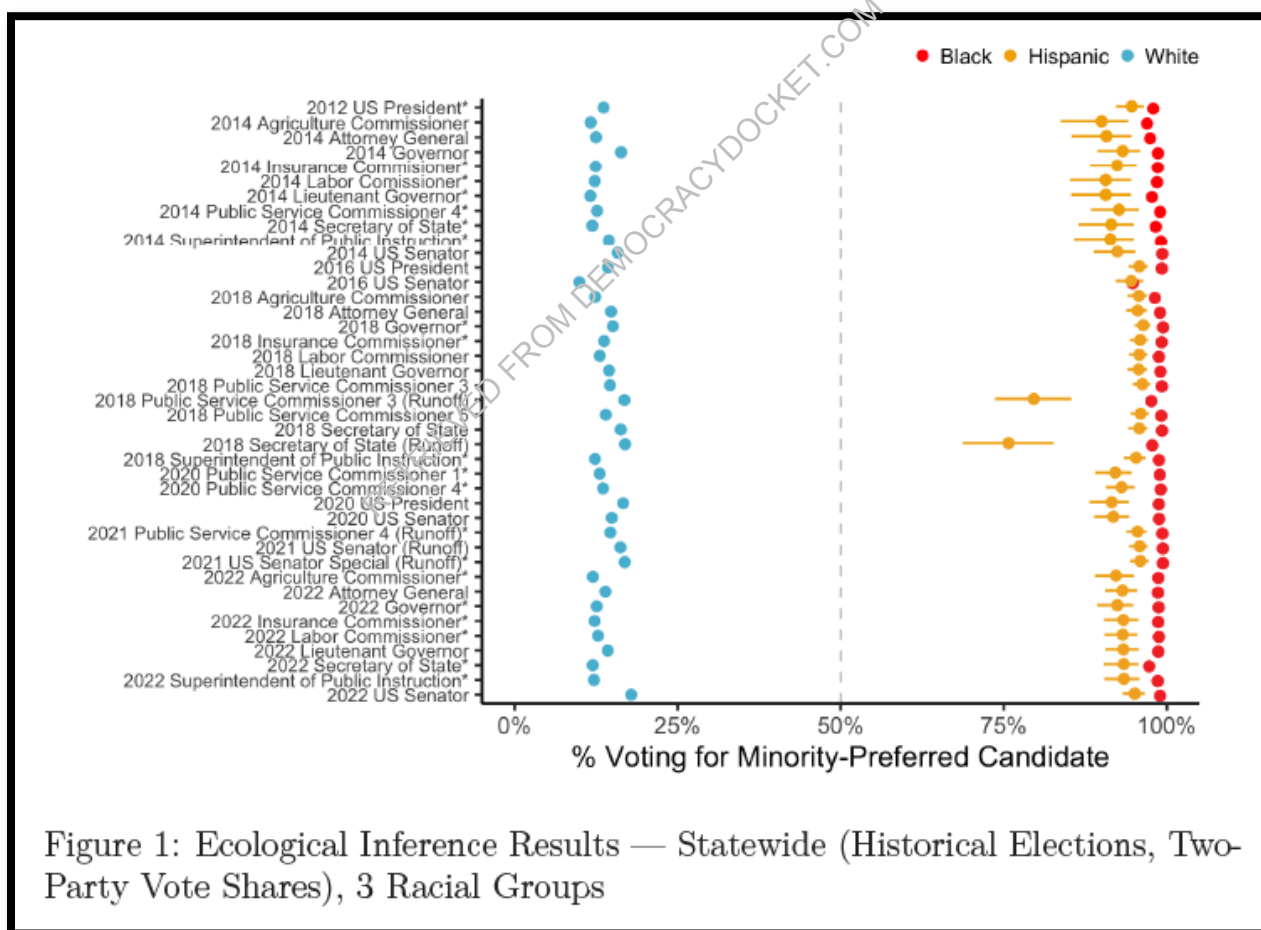


Figure 1: Ecological Inference Results — Statewide (Historical Elections, Two-Party Vote Shares), 3 Racial Groups

264. During his deposition, Dr. Alford, further testified, “I reach the same conclusion [as Dr. Schneer and Dr. Brunell] with regard to if the standard is simply that two racial groups are voting in opposite directions then it abundantly clear from everything that's in evidence in this case.” See Canter Decl. ¶ 26 (Deposition of John Alford (“Alford Dep.”) 126:22-127:21).

## **2. Cluster-Level Evidence of Minority Group Cohesive Voting**

265. Dr. Schneer concluded that “[a]cross [SD Atlanta, SD Gwinnet, and SD East Black Belt, there is] RPV between White and Black voters. For each cluster, Black voters cohesively support a candidate of choice.” *Id.*

266. Dr. Schneer also concluded that “in the Atlanta and Gwinnett clusters, Hispanic voters cohesively support the same candidate of choice as Black voters and the lower confidence interval on the vote share estimate does not overlap with[] the 50% threshold in all elections where a minority candidate runs against a non-minority candidate.” *Id.*

267. Dr. Schneer also concluded that in the East Black Belt cluster, Hispanic voters... systematically support the same candidates of choice as Black voters,” although the “estimates for elections before 2016 tend to be more uncertain, with the confidence including the 50% threshold.” *Id.*

268. The figure below reflects the results of Dr. Schneer's racially polarized voting analysis for each of these clusters.

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Figure 19: Ecological Inference Results — State Senate Clusters (Historical Elections, Two-Party Vote Shares)

*Id.* at 47 (Figure 19).

269. Dr. Schneer concluded that there is “evidence of RPV between White and Black voters across all state House clusters I examine[d]. Black voters cohesively support a candidate of choice[.]” *Id.*

270. Dr. Schneer also concluded that “Hispanic voters join black voters in supporting the same candidate of choice in each [house district] cluster.” *Id.*

271. The figure below reflects the results of Dr. Schneer’s racially polarized voting analysis for HD Atlanta, HD Southwest, HD East Black Belt, and HD Southeast. *Id.* at 48 (Figure 20).

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Figure 20: Ecological Inference Results — State House Clusters (Historical Elections, Two-Party Vote Shares)

*Id.* at 48 (Figure 20)

### 3. Congressional District-Level Evidence of Minority Group Cohesive Voting

272. Dr. Schneer concluded that there is “RPV between Black voters on the one hand and White voters on the other hand when pooling across all [of the districts in the Enacted Congressional Map] (e.g., statewide) as well as specifically for all [districts in the Enacted Congressional Map] other than CD 5.” *Id.* at 21.

273. Dr. Schneer stated that “[i]n [enacted Congressional districts] 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13 and 14, Black voters supported, by an overwhelming margin, the minority candidate in all historical elections in which they ran.” *Id.* at 19.

274. Dr. Schneer stated that “CD 3 demonstrates clear evidence of RPV between White and Black voters for all elections that I examine[d]. For Black voters, I never estimate[d] a minority-preferred candidate vote share below 92.8%.” *Id.* at 20.

275. Dr. Schneer stated that “CD 7 presents [a] strong example among the congressional districts of RPV, with Black voters cohering around minority candidates (and other minority-preferred candidates) . . . In every election with a minority candidate running against a non-minority candidate, minority voters supported the minority candidate, often overwhelmingly.” *Id.*

276. Dr. Schneer also produced five figures that reflect the results of his racially polarized voting analysis for all of the districts in the Enacted Congressional Map. *Id.* at 24 (Figure 3); 25 (Figure 4); 26 (Figure 5); 27 (Figure 6); 28 (Figure 7).

277. The figures reflect that Black voters in each district in the Enacted Congressional Map vote cohesively for the same candidate of choice. *Id.* at 24 (Figure 3); 25 (Figure 4); 26 (Figure 5); 27 (Figure 6); 28 (Figure 7).

278. The five figures from Dr. Schneer's report reflecting this information are presented on the following five pages.

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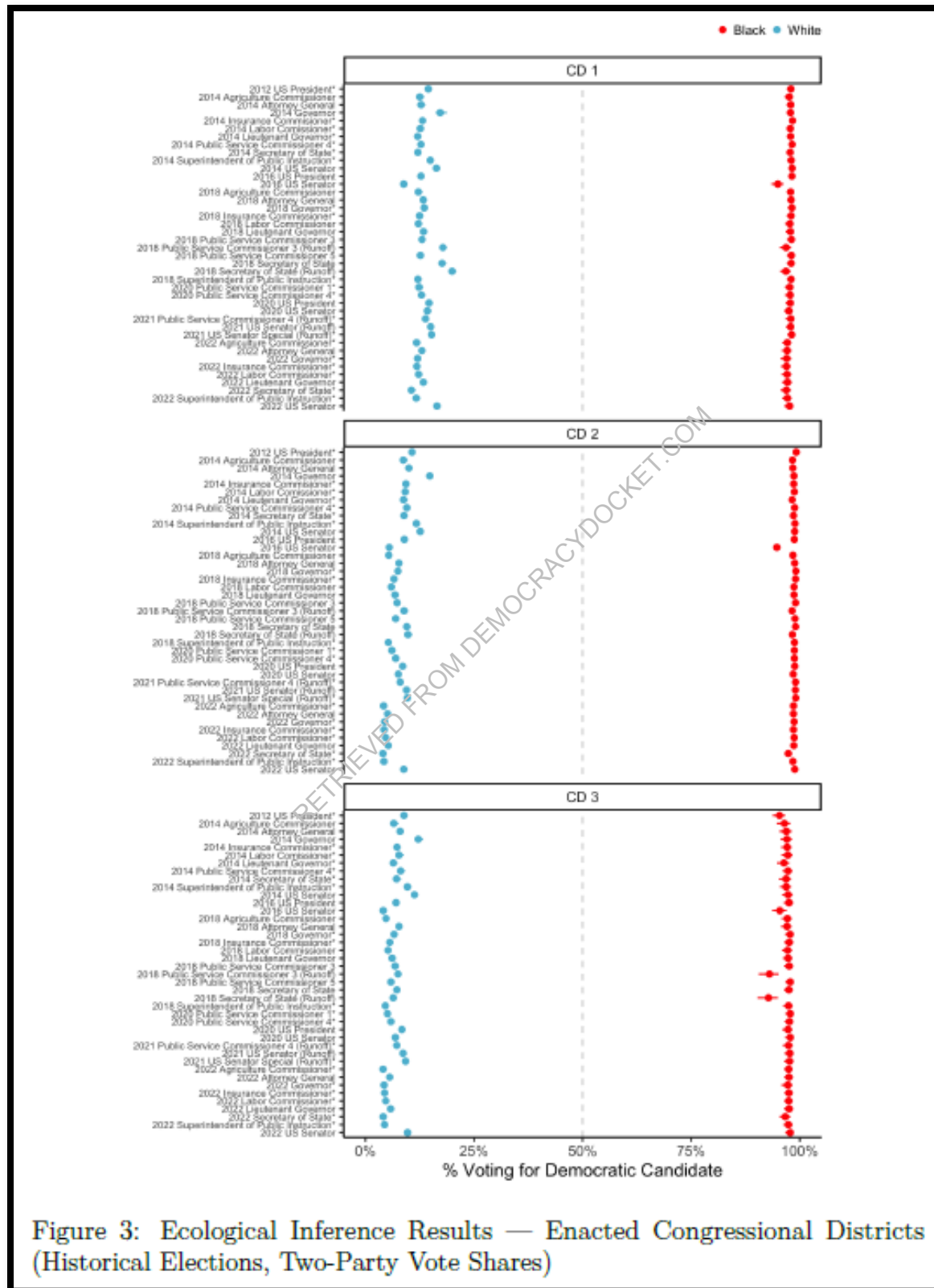


Figure 3: Ecological Inference Results — Enacted Congressional Districts (Historical Elections, Two-Party Vote Shares)

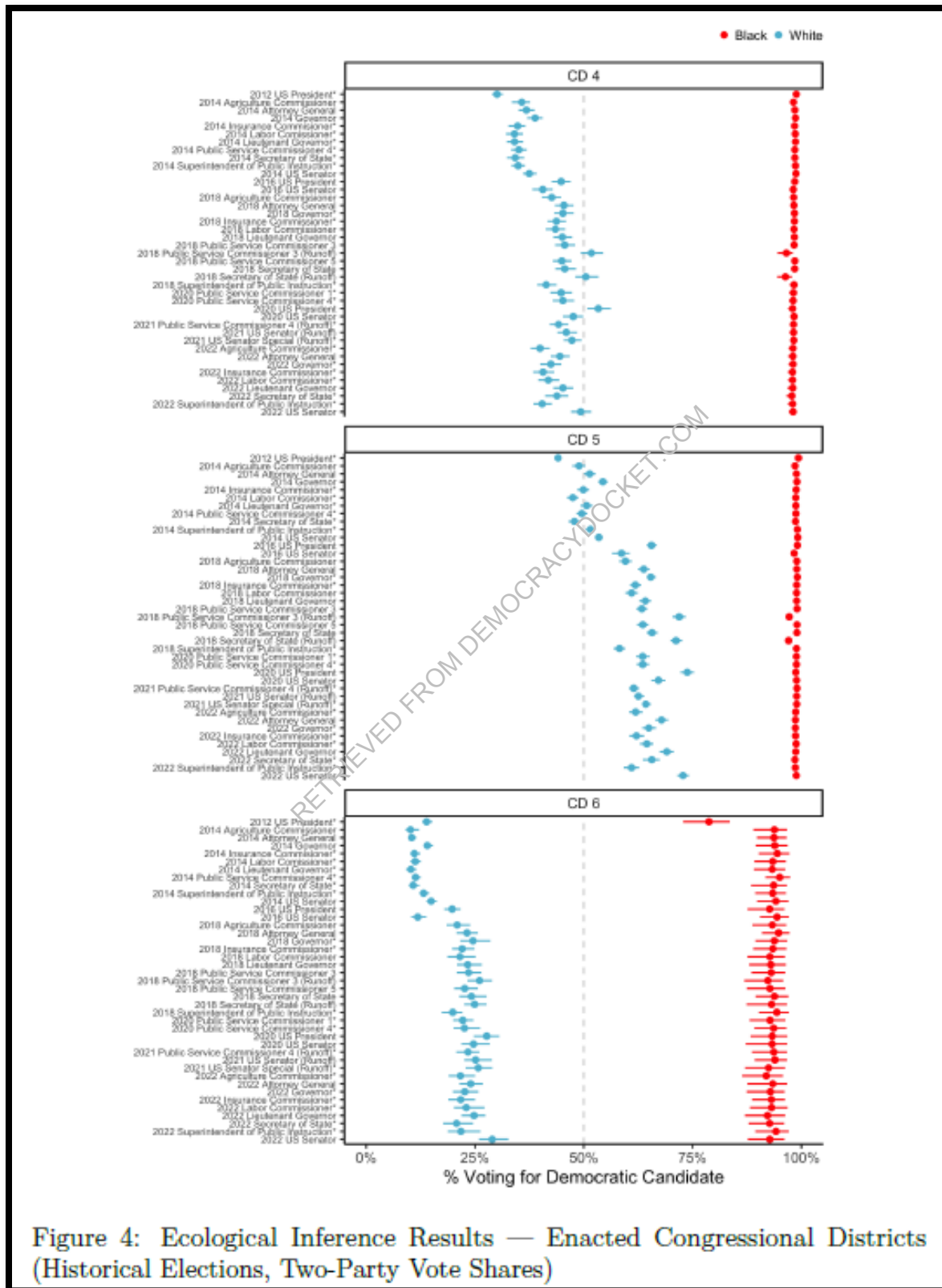


Figure 4: Ecological Inference Results — Enacted Congressional Districts (Historical Elections, Two-Party Vote Shares)

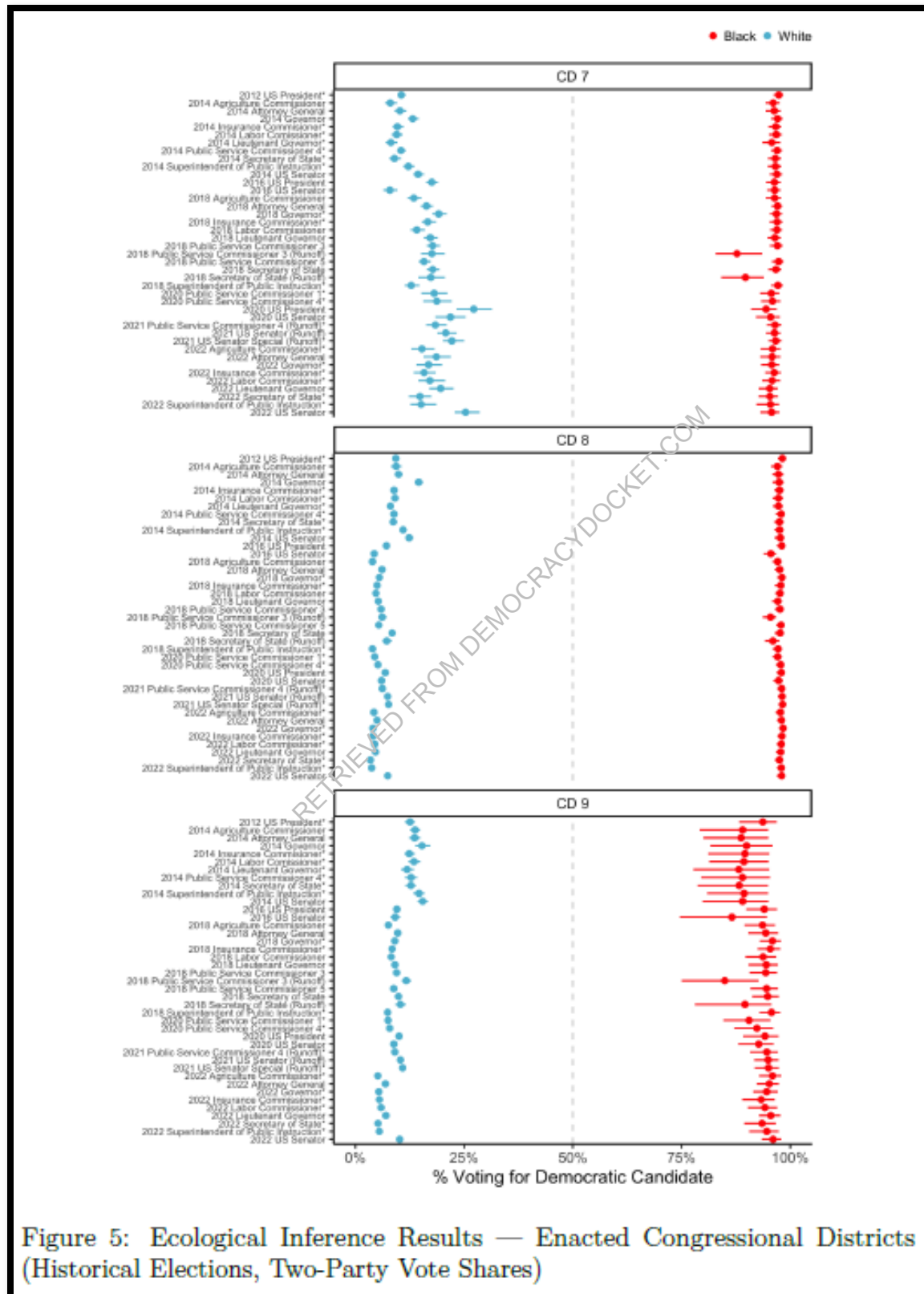


Figure 5: Ecological Inference Results — Enacted Congressional Districts (Historical Elections, Two-Party Vote Shares)

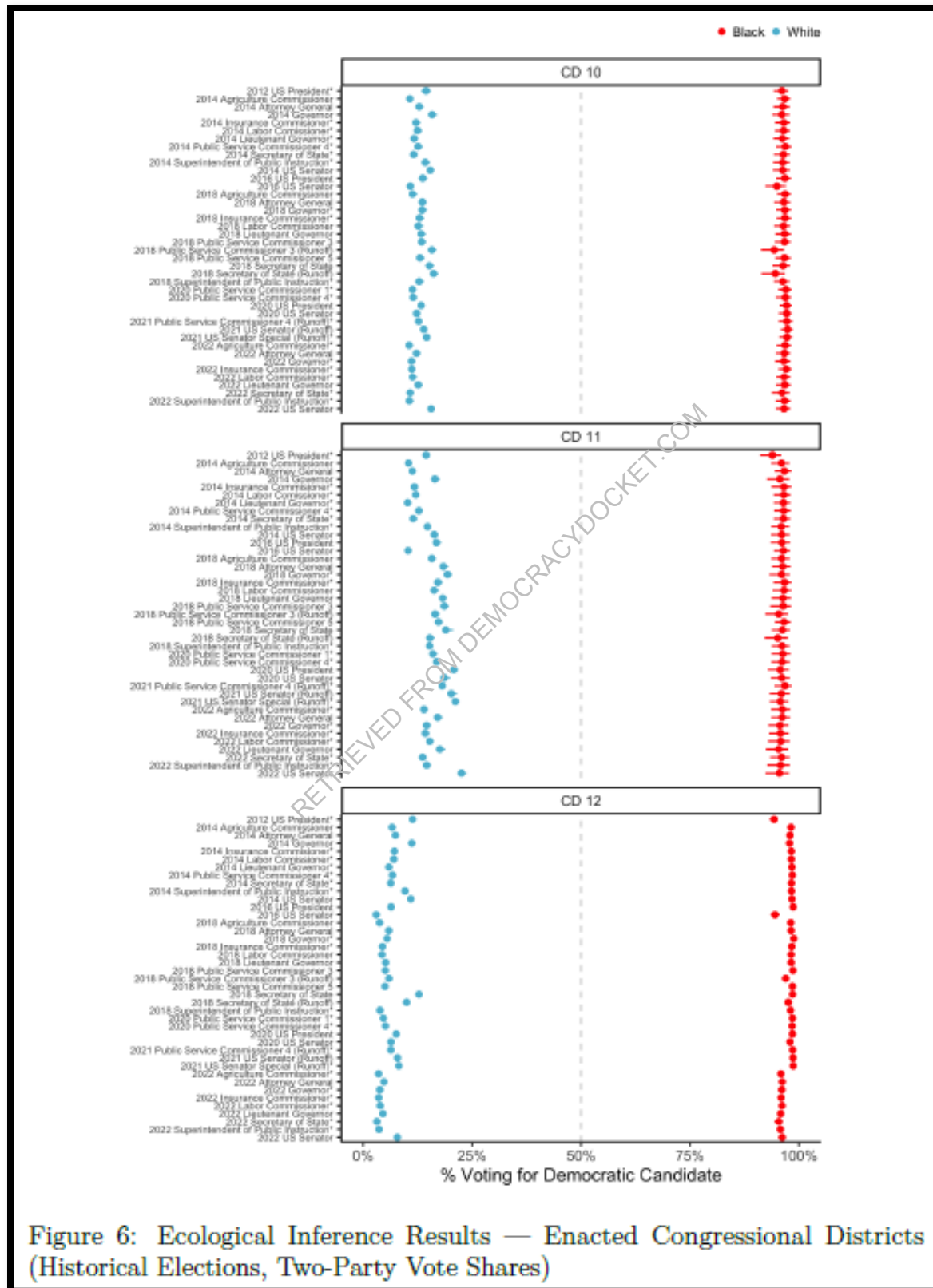
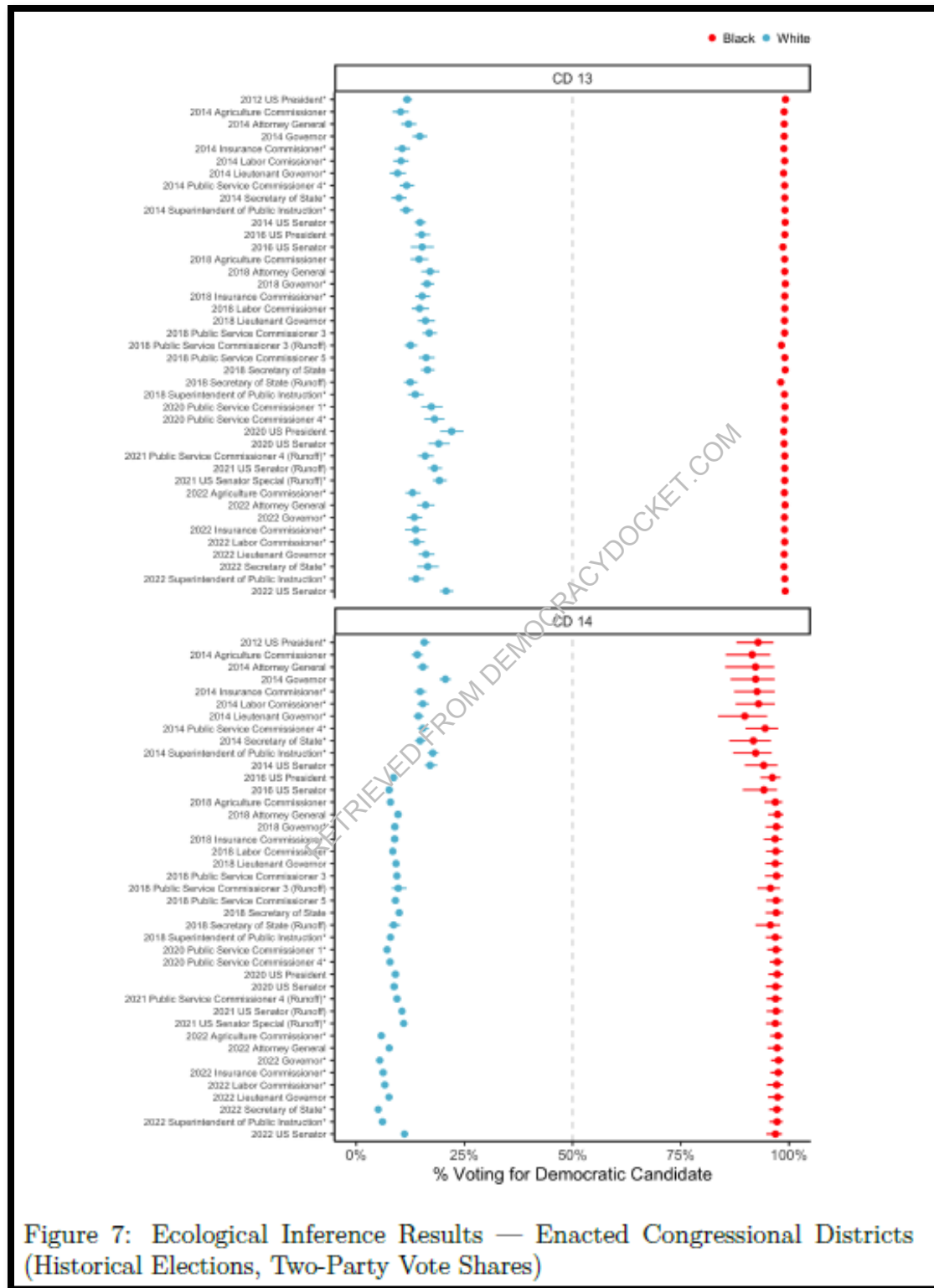


Figure 6: Ecological Inference Results — Enacted Congressional Districts (Historical Elections, Two-Party Vote Shares)

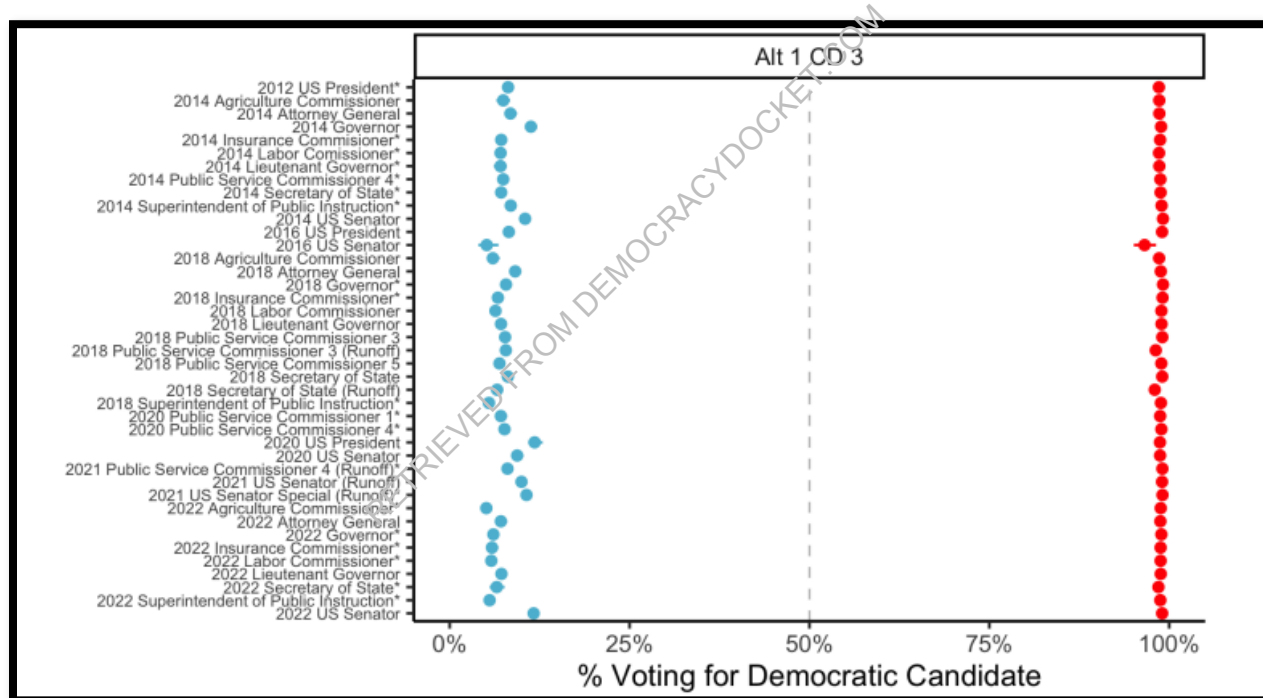


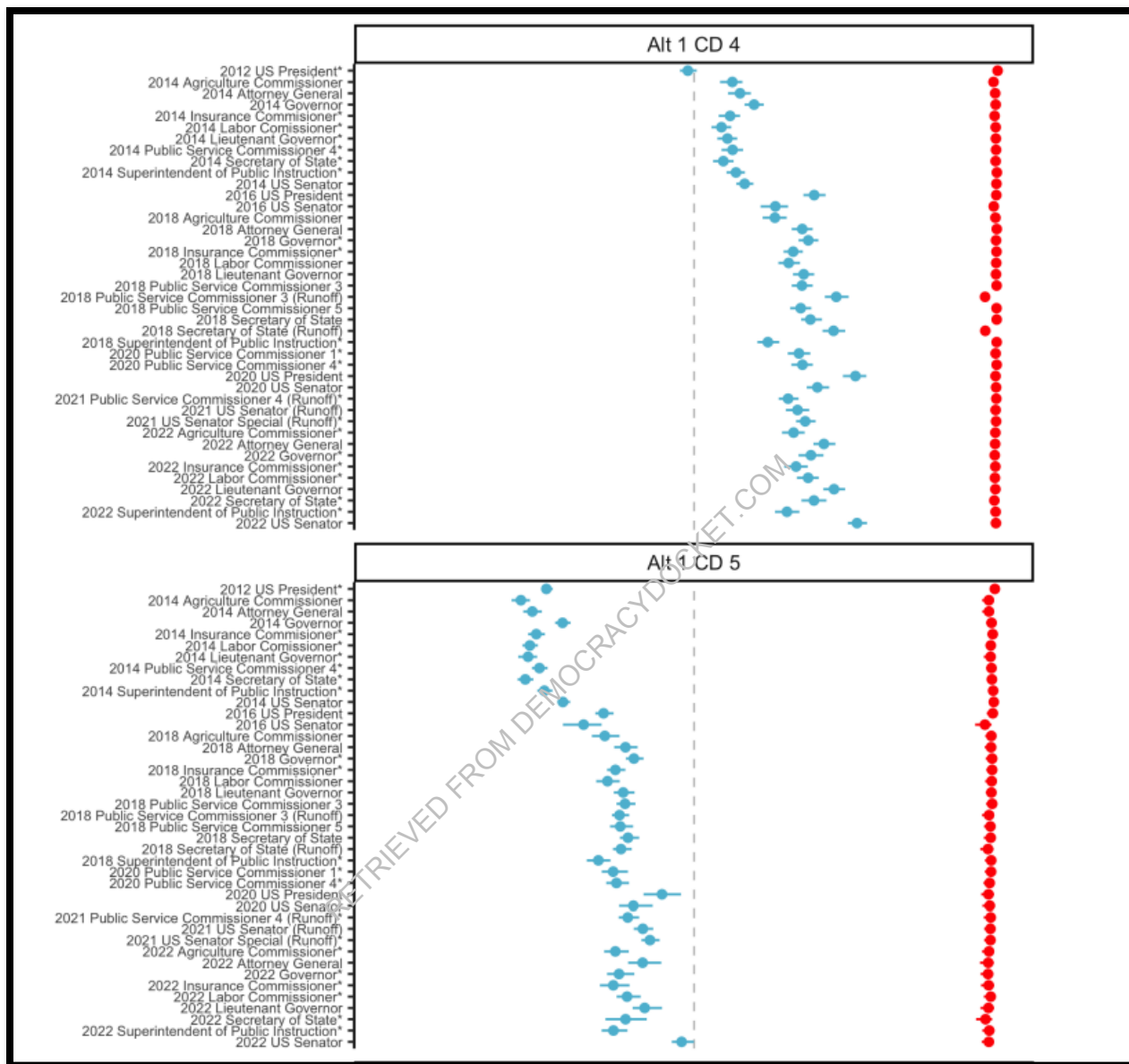
*Id.* at 24 (Figure 3); 25 (Figure 4); 26 (Figure 5); 27 (Figure 6); 28 (Figure 7).

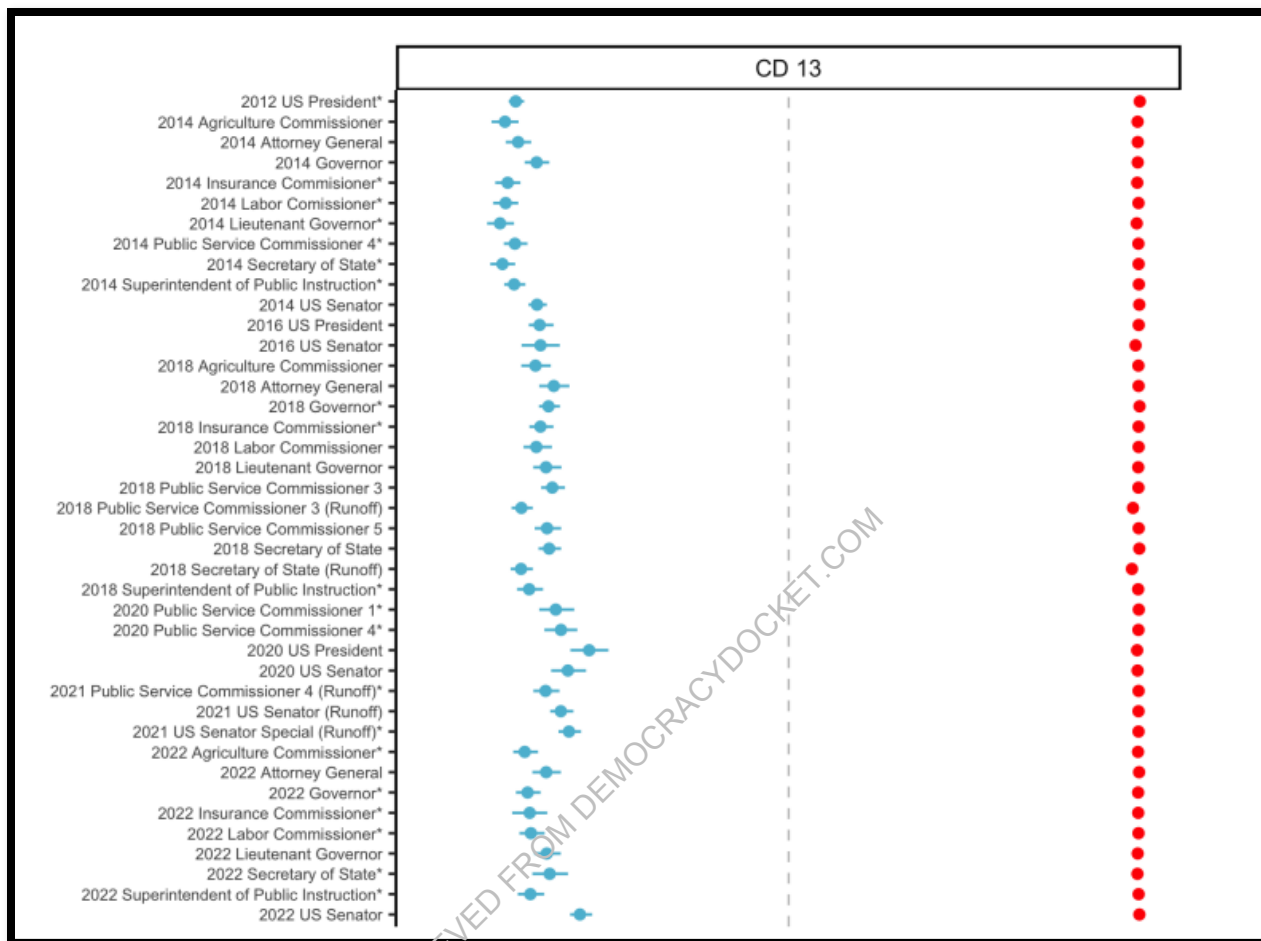


279. Dr. Schneer analyzed whether there is Black cohesive voting in each district that Dr. Duchin drew in her Congressional Alt 1 Map. *Id.* at 57.

280. Dr. Schneer’s analysis demonstrates extremely strong cohesion—over 75%—among Black voters for every majority-Black district in the Demonstrative Congressional Map (Demonstrative CDs 3, 5, and 13), as reflected in the table below: *Id.*







*Id.* at 58 (Figure 21).

#### 4. State Senate District-Level Evidence of Minority Group Cohesive Voting

281. Dr. Schneer analyzed whether this is Black cohesive voting in the following districts in the Enacted State Senate Map: SD 9, SD 16, SD 17, SD 22, SD 23, SD 25, SD 26, SD 28, SD 34, SD 35, SD 40, SD 41, SD 43, SD 44, and SD 55.

*Id.* 29-30.

282. Dr. Schneer concluded that apart from SD 41 and potentially also from SD 40, “there is evidence of racially polarized voting behavior between Black and White voters in every other State Senate district I analyzed. Black voters clearly supported the minority-preferred candidate in every election under study, including those elections with a minority candidate running.” *Id.* at 30.

283. Dr. Schneer also concluded that [Enacted State Senate Map districts] 16, 22, 23, 25, 26, and 44 exhibit clear evidence of RPV with Black and Hispanic voters cohering around minority candidates[.]” *Id.* at 29-30.

284. Dr. Schneer produced four figures that reflect the results of his racially polarized voting analysis for all of the Enacted State Senate Map districts which he analyzed (i.e., SD 9, SD 16, SD 17, SD 22, SD 23, SD 25, SD 26, SD 28, SD 34, SD 35, SD 40, SD 41, SD 43, SD 44, and SD 55). *Id.* at 32 (Figure 9); 33 (Figure 10); 34 (Figure 11); 35 (Figure 12).

285. The four figures from Dr. Schneer’s report reflecting this information are presented on the following four pages.



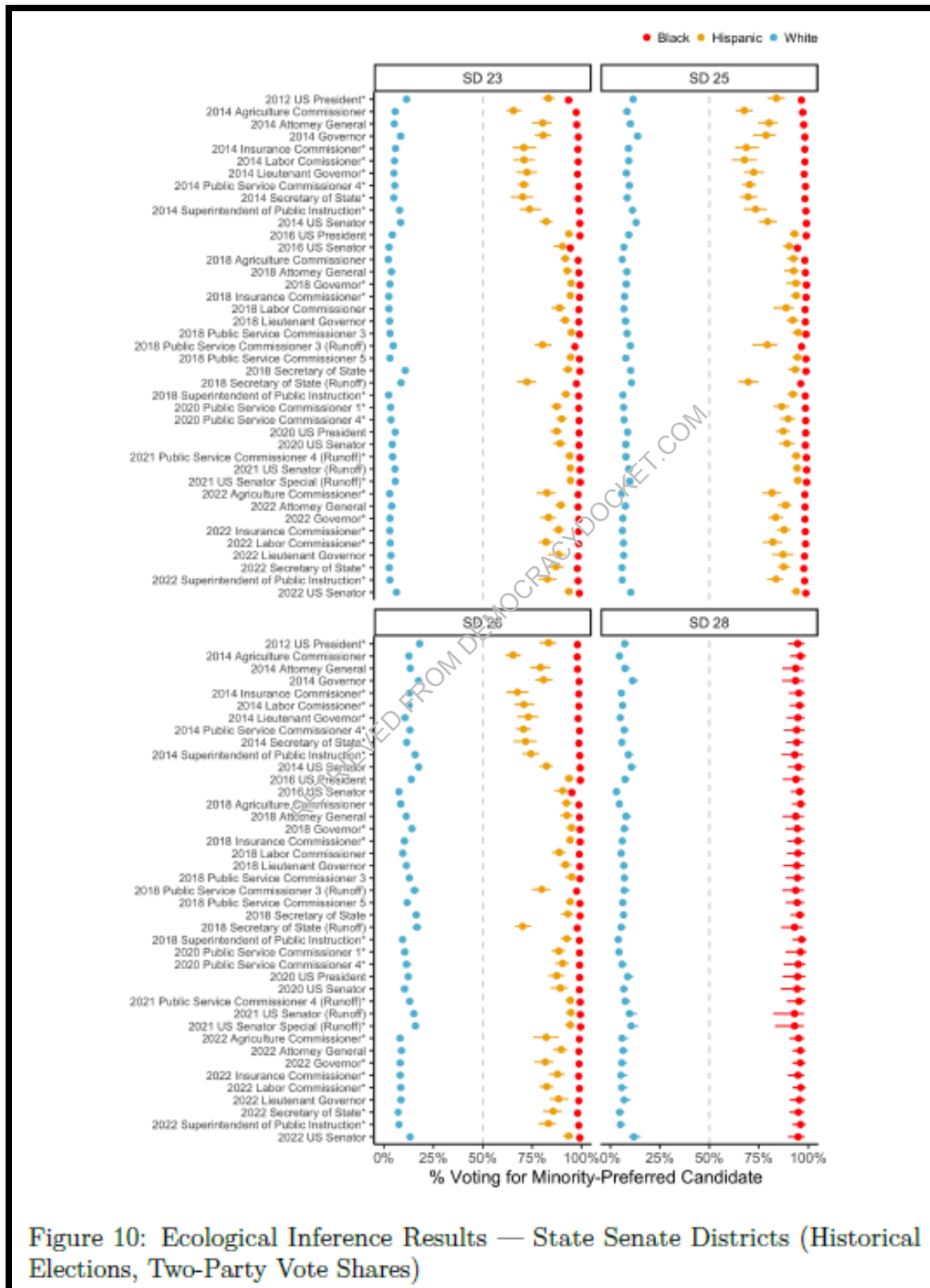


Figure 10: Ecological Inference Results — State Senate Districts (Historical Elections, Two-Party Vote Shares)

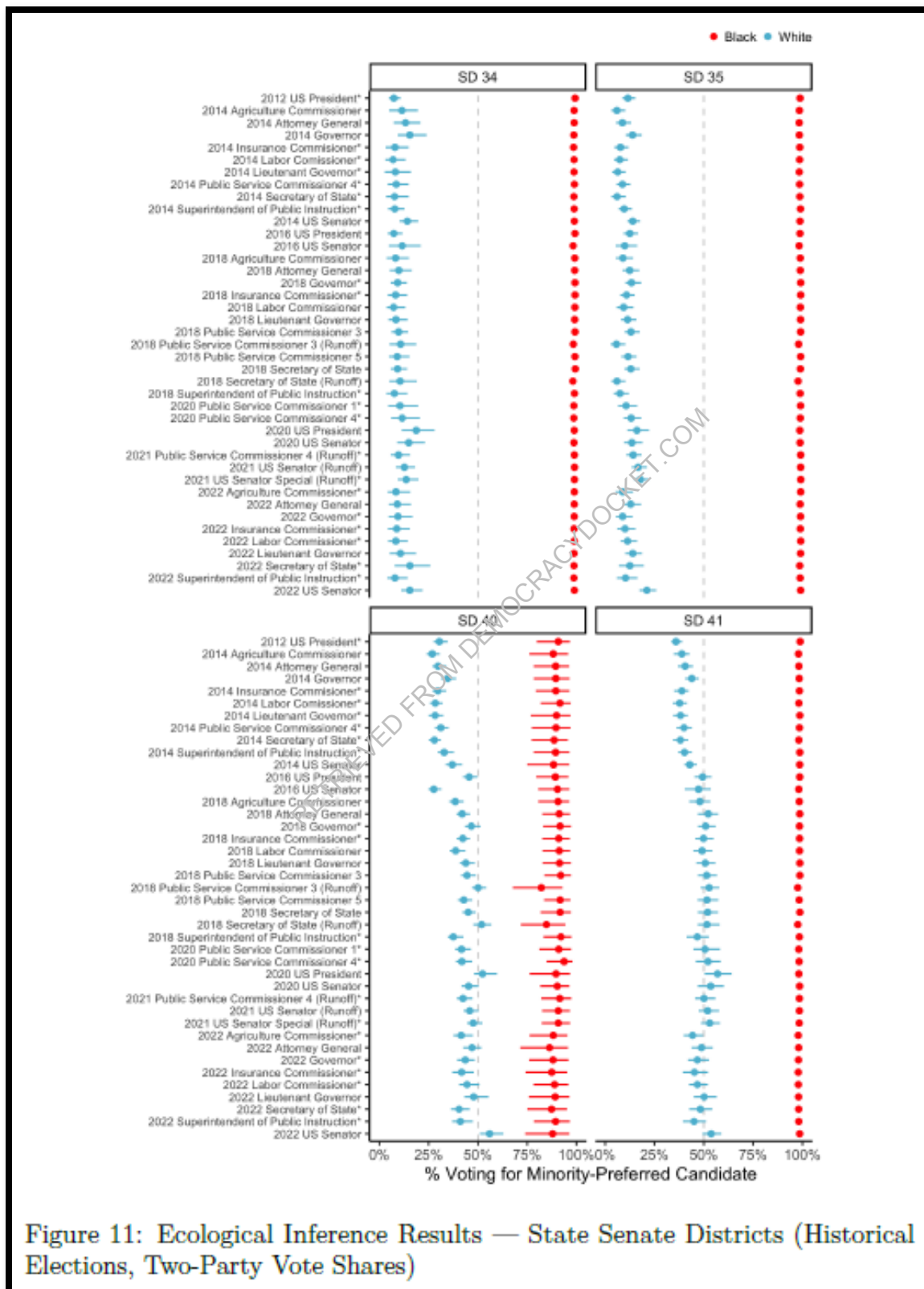


Figure 11: Ecological Inference Results — State Senate Districts (Historical Elections, Two-Party Vote Shares)

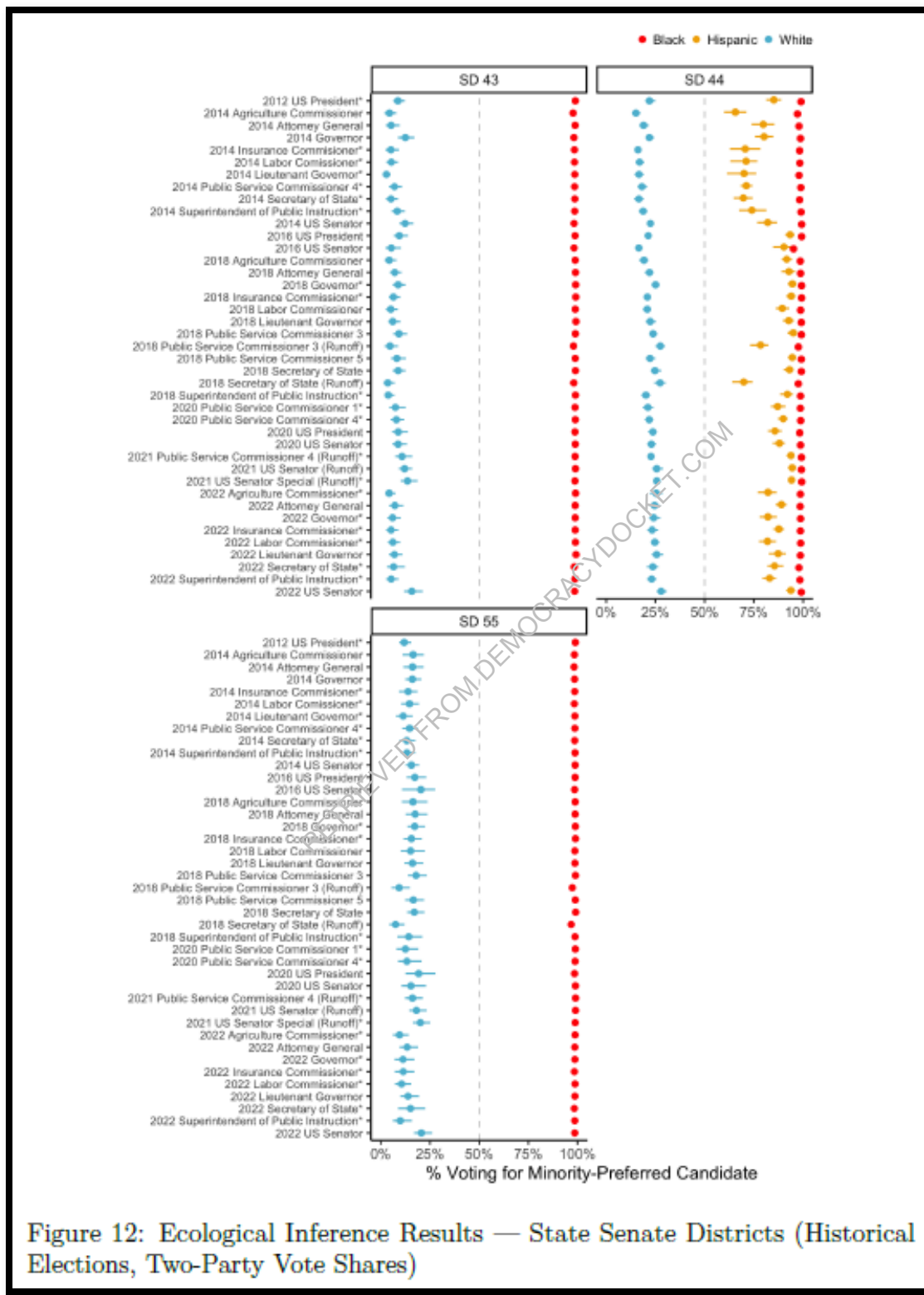


Figure 12: Ecological Inference Results — State Senate Districts (Historical Elections, Two-Party Vote Shares)

*Id.* at 32 (Figure 9); 33 (Figure 10); 34 (Figure 11); 35 (Figure 12).



286. Dr. Schneer also analyzed whether there is Black cohesive voting in certain illustrative districts: SDs Alt 1 16, 17, 25, 28, and 40, and whether there was Black and Hispanic cohesive voting in SDs Alt 2, 16, and 23. *Id.* at 63.

287. Dr. Schneer concluded that there is “evidence of RPV between Black and White voters across all past statewide elections with a minority candidate running for” SDs Alt 1 16, 17, 25, and 28.” *Id.*

288. Dr. Schneer concluded that he “observe[s] evidence of RPV with Black and Hispanic voters supporting minority-[preferred] candidates” in SDs Alt 2 16 and 23. *Id.*

289. Dr. Schneer analyzed the results of his racially polarized voting analysis for SDs Alt 1 16, 17, 25, and 28 and for SDs Alt 2 16 and 23 in the figures below.

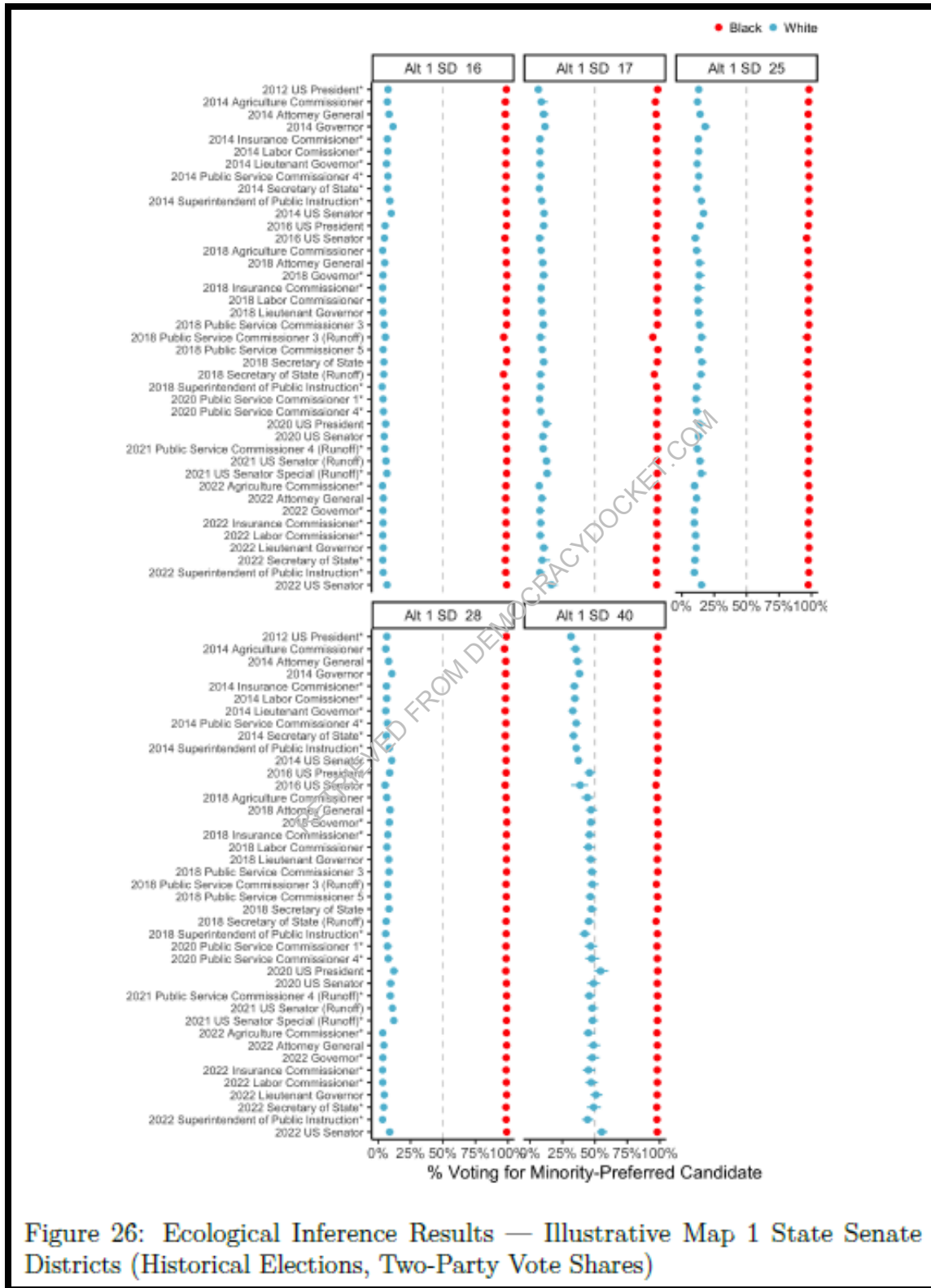


Figure 26: Ecological Inference Results — Illustrative Map 1 State Senate Districts (Historical Elections, Two-Party Vote Shares)

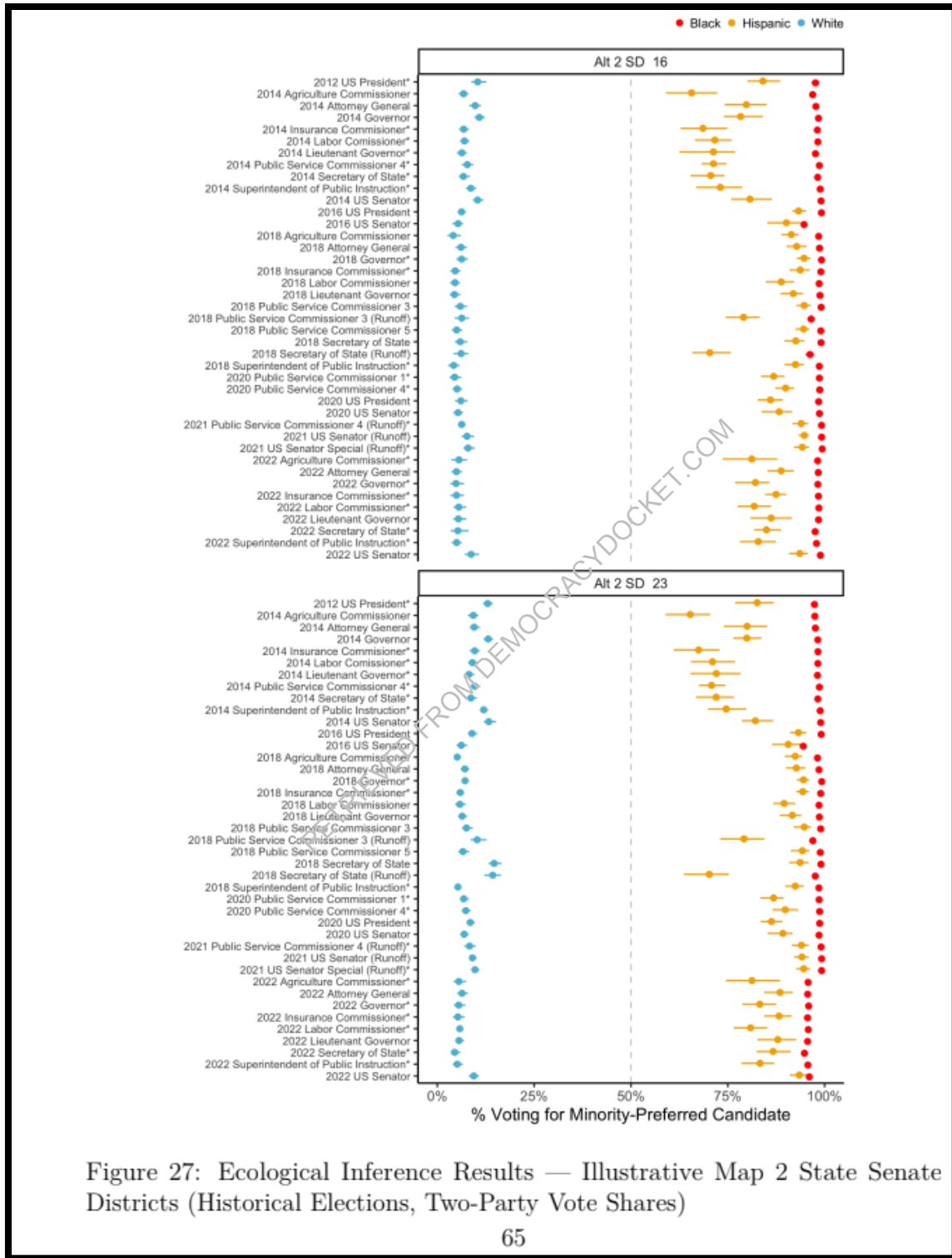


Figure 27: Ecological Inference Results — Illustrative Map 2 State Senate Districts (Historical Elections, Two-Party Vote Shares)

*Id.* at 64-65 (Figures 26-27).

## 5. State House District-Level Evidence of Black And Hispanic Cohesive Voting

290. Dr. Schneer analyzed whether there is Black cohesive voting in the following districts in the Enacted State House Map: HD 61, HD 64, HD 65, HD 66, HD 74, HD 78, HD 115, HD 116, HD 117, HD 140, HD 142, HD 143, HD 151, HD 154, HD 161, HD 163, HD 165, and HD 171. *Id.* at 36-37.

291. Dr. Schneer concluded that there is “RPV between Black and White voters in [Enacted State House Map districts] 61, 65, 74, 78, 115, 116, 117, 142, 143, 151, 154 and 171[.]” *Id.* at 37.

292. Dr. Schneer stated that “[Enacted State House Map districts] 61, 65, 74, 115, 142, 143, 151, 154 and 171 present clear evidence of RPV with Black voters selecting the minority candidates as their candidate of choice[.]” *Id.* at 36.

293. Dr. Schneer stated that “on balance the estimates show that Black voters supported minority candidates” in HD 78 and HD 117. *Id.* at 37.

294. Dr. Schneer also examined whether there was cohesion between Black and Hispanic voters in enacted HDs 161, 163, and 165. *Id.* at 36.

295. Dr. Schneer determined that HDs 161, 163, and 165 present “clear of evidence of RPV with Black and Hispanic voters cohering to select the minority candidates as their candidate of choice.” *Id.* at 37.

296. Dr. Schneer produced five figures that reflects the results of his racially polarized voting analysis for all of the Enacted State House Map districts which he analyzed (i.e., HD 61, HD 64, HD 65, HD 66, HD 74, HD 78, HD 115, HD 116, HD 117, HD 140, HD 142, HD 143, HD 151, HD 154, HD 161, HD 163, HD 165, and HD 171). *Id.* at 39 (Figure 14); 40 (Figure 15); 41 (Figure 16); 42 (Figure 17); 43 (Figure 18).

297. The five figures from Dr. Schneer's report reflecting this information are presented on the following five pages.

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Figure 14: Ecological Inference Results — State House Districts (Historical Elections, Two-Party Vote Shares)

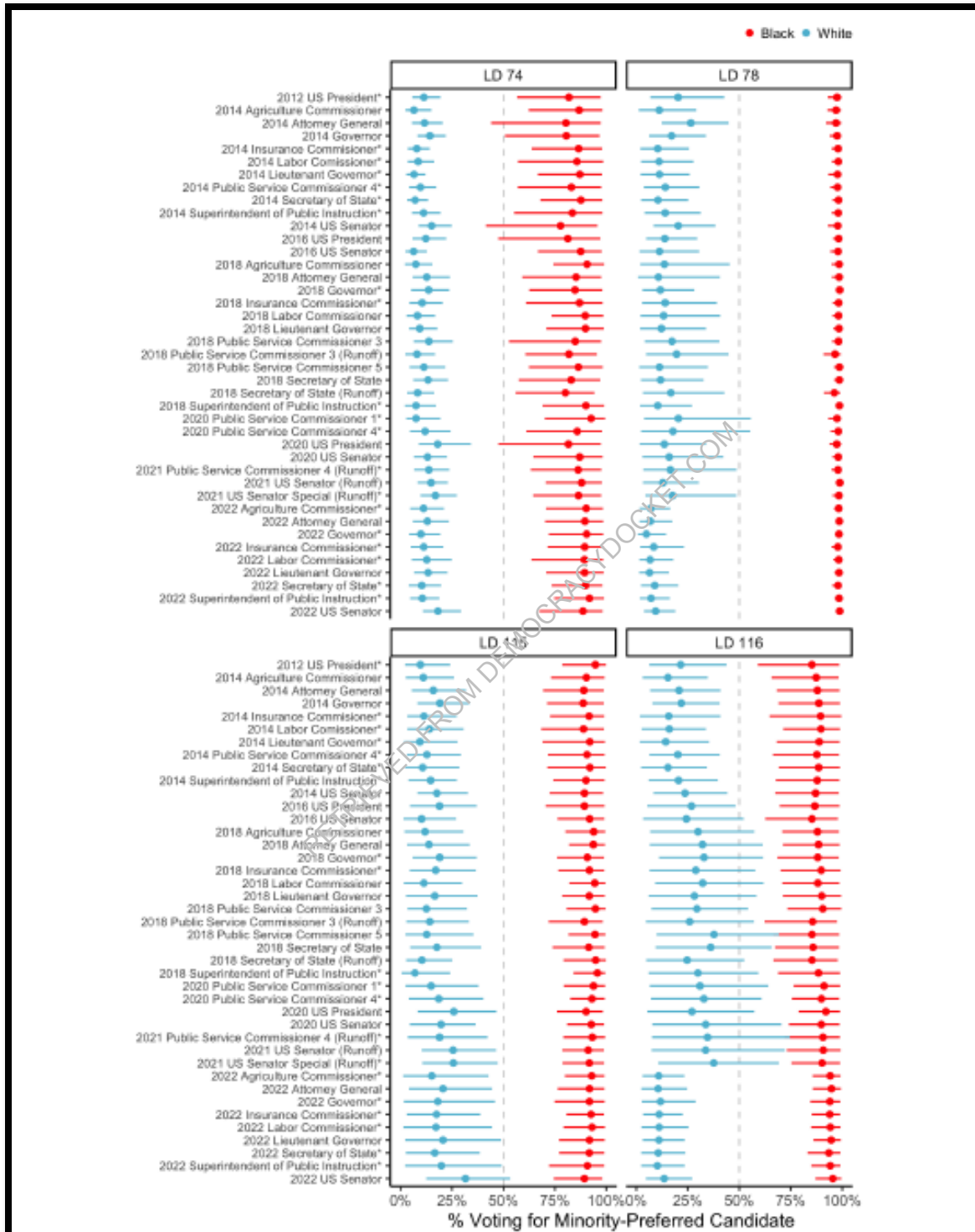


Figure 15: Ecological Inference Results — State House Districts (Historical Elections, Two-Party Vote Shares)

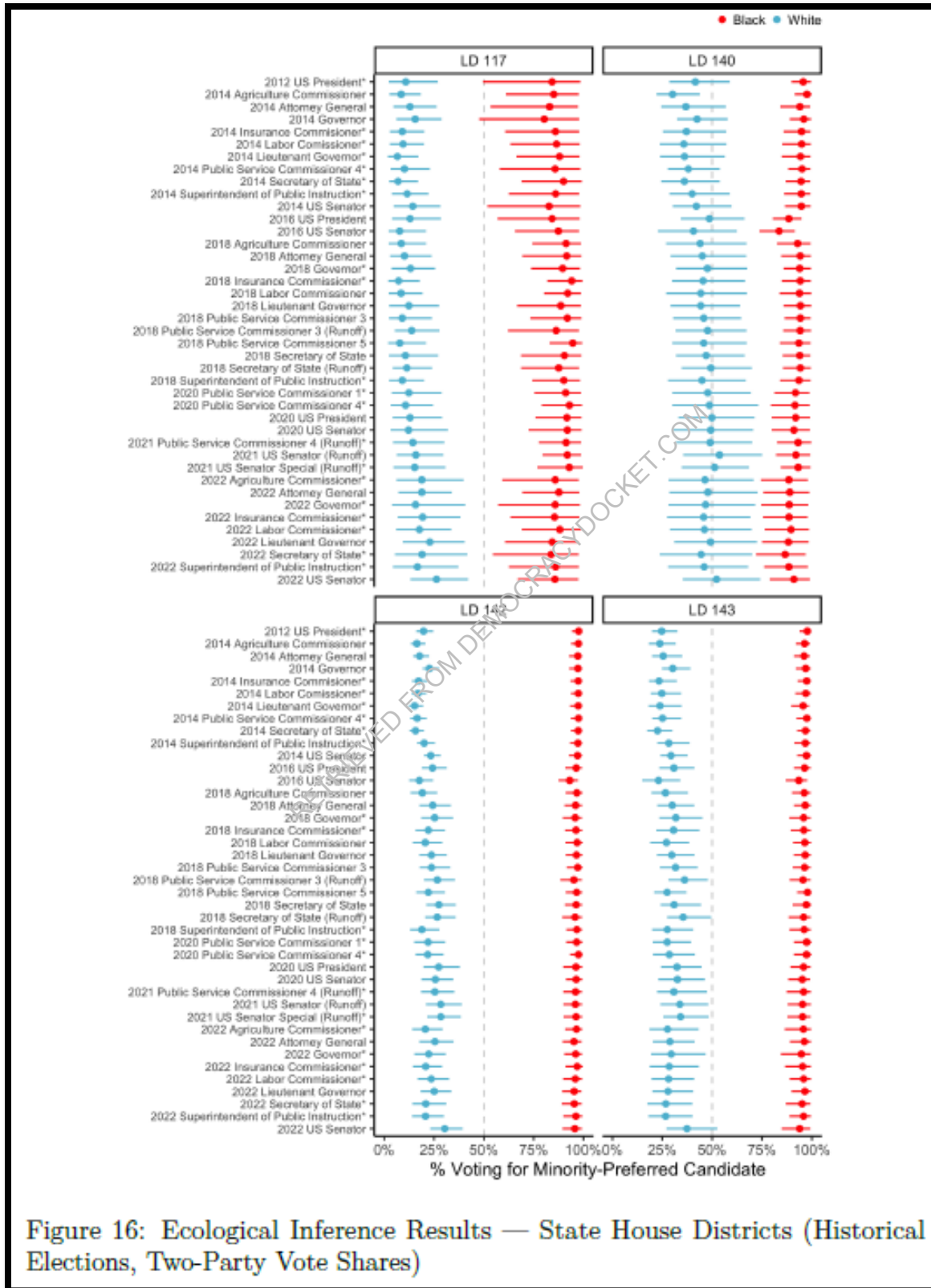


Figure 16: Ecological Inference Results — State House Districts (Historical Elections, Two-Party Vote Shares)



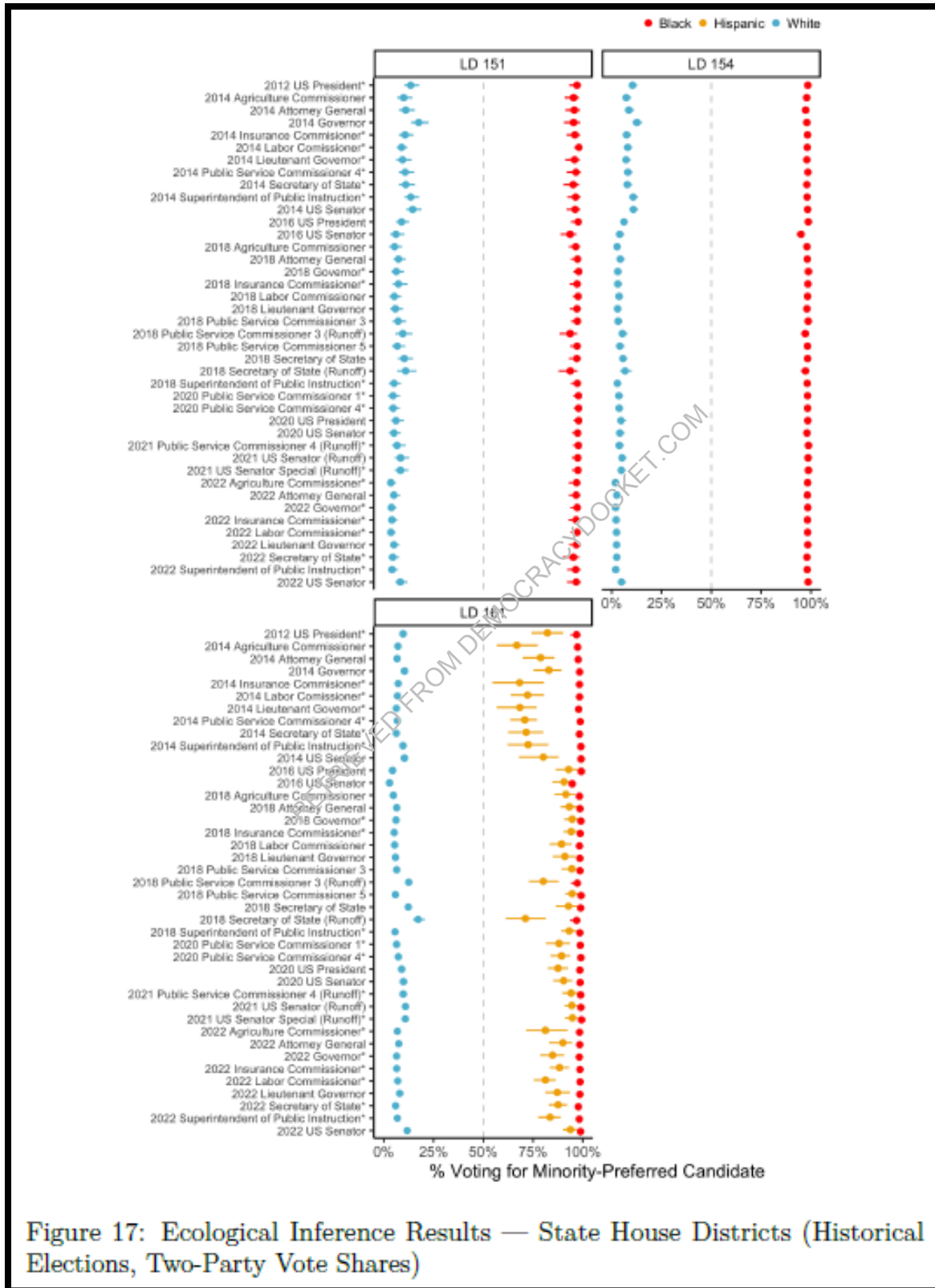


Figure 17: Ecological Inference Results — State House Districts (Historical Elections, Two-Party Vote Shares)

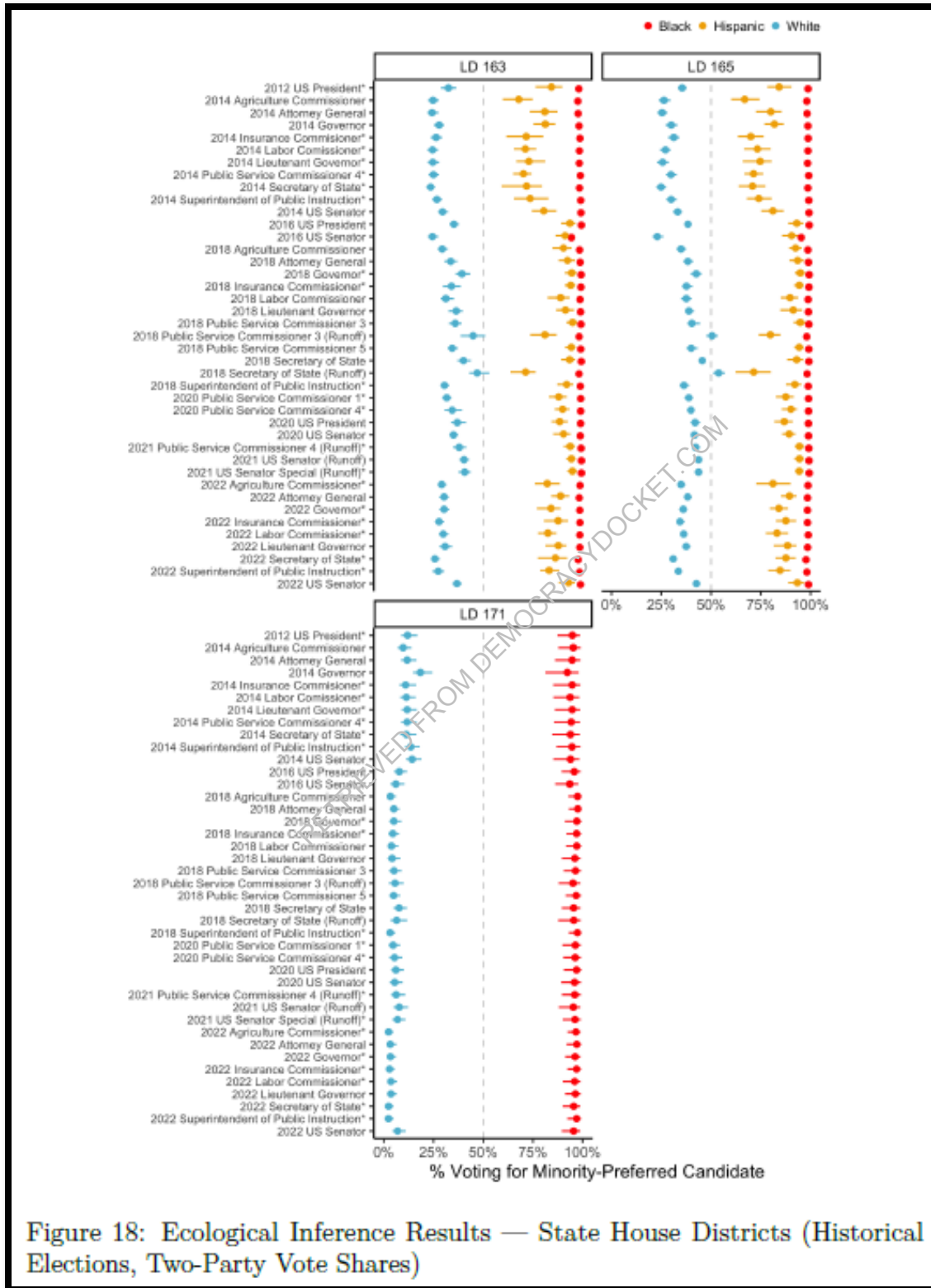


Figure 18: Ecological Inference Results — State House Districts (Historical Elections, Two-Party Vote Shares)

*Id.* at 39 (Figure 14); 40 (Figure 15); 41 (Figure 16); 42 (Figure 17); 43 (Figure 18).

298. Dr. Schneer also analyzed whether there is Black cohesive voting in HDs Alt 1 64, 74, 117, 144, 151, and 171. *Id.* at 66-67.

299. Dr. Schneer stated that there is “evidence of RPV between Black and White voters in all districts I examine[d].” *Id.* at 66.

300. Dr. Schneer also analyzed whether there is Black and Hispanic cohesive voting in HD Alt 1 161. *Id.* at 66-67.

301. Dr. Schneer stated that in HD Alt 1 161, there is “RPV with Black and Hispanic voters supporting minority candidates[.]” *Id.* at 66.

302. Dr. Schneer produced a figure that reflects the results of his RPV analysis.

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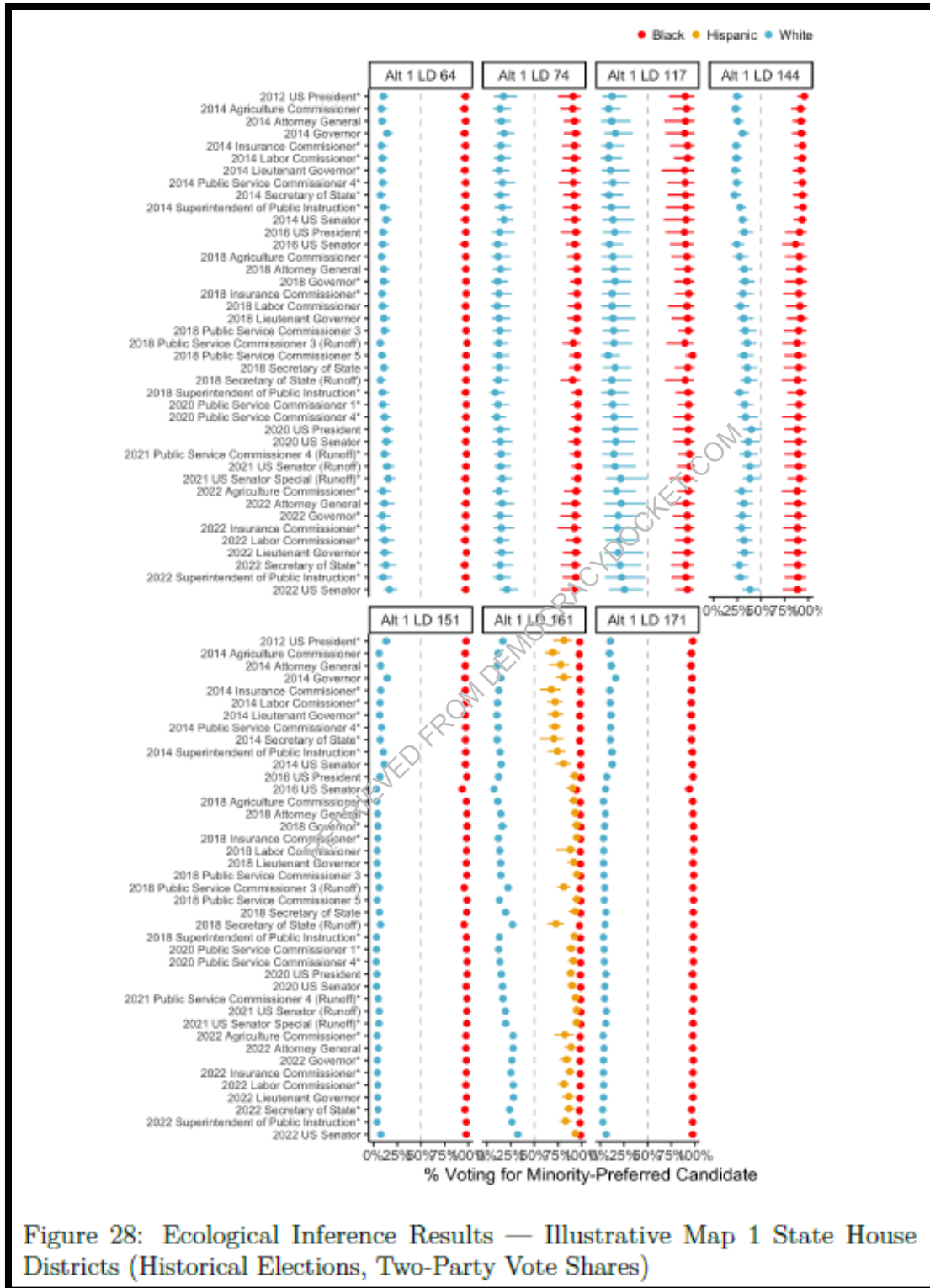


Figure 28: Ecological Inference Results — Illustrative Map 1 State House Districts (Historical Elections, Two-Party Vote Shares)

*Id.* at 68 (Figure 28).

**B. *Gingles* 3: Majority White Voters Vote as a Bloc so as to Usually Defeat the Candidates of Choice of the Minority Group or Groups.**

**1. Statewide Evidence of White Cohesive Voting & that the White Voting Bloc Opposes the Minority Group-Preferred Candidate.**

303. Dr. Schneer concluded that there is “clear evidence of racially polarized voting at the statewide level” and that “Hispanic and Black voters cohere around the same candidates of choice, and White voters oppose them, consistent with RPV.” *Id.* at 17.

304. Dr. Schneer opined that “primary elections can be of use in an RPV analysis, but in my view studying them is not necessary or sufficient for drawing conclusions about racially polarized voting in Georgia general elections.” *Id.* at 12.

305. Dr. Schneer opined that “if racially polarized voting occurs in a Georgia primary election it does not necessarily imply that racially polarized voting will occur in the general election, and vice versa.” *Id.*

306. Dr. Schneer opined that “it is sufficient in this case to examine behavior in general elections in order to determine the extent of racially polarized voting in Georgia general elections.” *Id.* at 12-13.

307. Dr. Schneer also produced a figure which reflects the results of his racially polarized analysis across statewide elections. *Id.* at 18 (Figure 1).

308. The figure reflects that White voters across all of the statewide elections vote cohesively for the same candidate of choice in opposition to the preferred candidate of choice for both Black and/or Black and Hispanic voters. *Id.*

309. The figure from Dr. Schneer's report reflecting this information is presented at paragraph 263 of this Statement of Facts.

**2. Cluster-Level Evidence of White Cohesive Voting and that the White Voting Bloc Opposes the Black and the Hispanic Voting Bloc**

310. Dr. Schneer analyzed whether there is White cohesive voting in SD Atlanta, SD Gwinnett, and SD East Black Belt in opposition to Black and/or Black and Hispanic voters' preferred candidates of choice in these clusters. *Id.* at 44.

311. Dr. Schneer concluded that "[a]cross [SD Atlanta, SD Gwinnet, and SD East Black Belt, there is] RPV between White and Black voters. For each cluster, Black voters cohesively support a candidate of choice and White voters oppose these candidates systematically. Furthermore, Hispanic voters tend to support the same candidates of choice as Black voters." *Id.*

312. Dr. Schneer also produced a figure that reflects the results of his racially polarized voting analysis for SD Atlanta, SD Gwinnet, and SD East Black Belt. *Id.* at 47 (Figure 19).

313. The figure reflects that White voters in SD Atlanta, SD Gwinnett, and SD East Black Belt vote cohesively for the same candidate of choice in opposition to the preferred candidate of choice for Black voters, and for both Black and Hispanic voters in SD Gwinnet. *Id.*

314. The figure from Dr. Schneer's report reflecting this information is presented at paragraph 268 of this Statement of Facts.

315. Dr. Schneer also analyzed whether there is White cohesive voting in HD Atlanta, HD Southwest, HD East Black Belt, and HD Southeast in opposition to the Black and Hispanic voters' preferred candidates of choice in these clusters. *Id.* at 45.

316. Dr. Schneer concluded that there is "evidence of RPV between White and Black voters across all state House clusters I examine[d]. Black voters cohesively support a candidate of choice and White voters oppose this candidate. Based on my estimates, this is true in every cluster and for every statewide election that I examine." *Id.*

317. Dr. Schneer also produced a figure that reflects the results of his racially polarized voting analysis for HD Atlanta, HD Southwest, HD East Black Belt, and HD Southeast. *Id.* at 48 (Figure 20).

318. The figure reflects that White voters in HD Atlanta, HD Southwest, HD East Black Belt, and HD Southeast vote cohesively for the same candidate of choice in opposition to the preferred candidate for Black voters. *Id.*

319. The figure from Dr. Schneer's report reflecting this information is presented at paragraph 271 of this Statement of Facts.

**3. Congressional District-Level Evidence of White Cohesive Voting, that the White Voting Bloc Opposes the Black Voting Bloc, & that the White Voting Bloc Usually Defeats the Black Voting Bloc**

320. Dr. Schneer concluded that there is "RPV between Black voters on the one hand and White voters on the other hand when pooling across all [of the districts in the Enacted Congressional Map] (e.g., statewide) as well as specifically for all [districts in the Enacted Congressional Map] other than CD 5." *Id.* at 21.

321. Dr. Schneer stated that in all of the districts in the Enacted Congressional Map except for CD 5 "White voters opposed the candidate of choice of Black voters in every historical election" and "the confidence intervals on the estimates for White voters never overlap[ped] with the threshold for majority support." *Id.* at 19-20.

322. Dr. Schneer stated that in CD 3 "[f]or Black voters, I never estimate[d] a minority-preferred candidate vote share below 92.8%" and "[f]or White voters, I never estimate[d] a minority-preferred candidate vote share above 12.2%." *Id.* at 20.



323. Dr. Schneer stated that in CD 7 “Black voters coher[ed] around minority candidates (and other minority-preferred candidates) and . . . White voters oppos[ed] these candidates of choice.” *Id.*

324. Dr. Schneer stated that “[o]verall, CD 4 suggests to me cohesive behavior across Black voters in support of minority candidates (and other minority-preferred candidates) [while] White voters have reliably opposed the minority candidates of choice.” *Id.* at 21.

325. Dr. Schneer also produced five figures that reflect the results of his racially polarized voting analysis for all of the districts in the Enacted Congressional Map. *Id.* at 24 (Figure 3); 25 (Figure 4); 26 (Figure 5); 27 (Figure 6); 28 (Figure 7).

326. The figures reflect that White voters in each district in the Enacted Congressional Map except for CD 5 vote cohesively for the same candidate of choice in opposition to the preferred candidate of choice for Black voters. *Id.*

327. The five figures from Dr. Schneer’s report reflecting this information are presented at paragraph 278 of this Statement of Facts.

328. Dr. Schneer also “examine[d] the electoral performance of the enacted congressional districts.” *Id.* at 49-51.

329. Dr. Schneer “use[d] historical election data” to complete this analysis. *Id.* at 49.

330. Dr. Schneer concluded that “based on historical elections, minority voters have close to no chance of electing preferred candidates in [ ] nine congressional districts.” *Id.* at 51.

331. Dr. Schneer stated that in Enacted Congressional Districts “1, 3, 6, 8, 9, 10, 11, 12 and 14, White voters comprise a strong majority of the electorate. If conditions remain similar to historical elections, minority voters who preferred a minority candidate would not be able to elect that candidate” because “the minority-preferred candidate did not win in any of the historical elections I examine for these districts.” *Id.* at 50.

332. Dr. Schneer also prepared a table reflecting the result that in nine districts in the Enacted Congressional Map, historical evidence indicates that the Black preferred candidate would not receive at least 55% of the vote share, which Dr. Schneer opined is “a conventional cutoff used in voting rights litigation to indicate a safer district.” *Id.* at 52 (Table 2); *id.* at 49.

333. Dr. Duchin also completed a performance analysis of each of the districts in the Enacted Congressional Map. Duchin Rep. at 18 (Table 4).

334. To perform her performance analysis, Dr. Duchin analyzed historical primary and general election results and determined that a district is performing if

the relevant population's preferred candidate of choice wins at least three out of four primary elections and at least five out of eight general elections Duchin Rep. at 17.

335. Dr. Duchin, consistent with Dr. Schneer, determined that in nine of the districts in the Enacted Congressional Map—CD 1, CD 3, CD 6, CD 8, CD 9, CD 10, CD 11, CD 12, and CD 14—the Black VAP does not have an opportunity to defeat the White VAP. *Id.* at 18 (Table 4).

336. Dr. Schneer analyzed whether there is White cohesive voting in each district that Dr. Duchin drew in the Demonstrative Congressional Map in opposition to the preferred candidate of choice for Black voters. Schneer Rep. at 57.

337. Dr. Schneer concluded that except for Demonstrative CD 4 “there is essentially universal evidence of RPV between Black and White voters. In these districts, when a minority candidate runs Black voters support them and White voters oppose this candidate. In elections between no minority candidates or two minority candidates, Black voters support the minority-preferred candidate and White voters oppose them.” *Id.*

338. Dr. Schneer also produced a figure that reflects the results of his racially polarized voting analysis for Demonstrative CD 3. *Id.* at 58 (Figure 21).

339. The figure reflects that White voters in Demonstrative CD 3 vote cohesively for the same candidate of choice in opposition to the preferred candidate of choice for Black voters. *Id.*

340. The figure from Dr. Schneer's report reflecting this information is presented at paragraph 280 of this Statement of Facts.

**4. State Senate District-Level Evidence of White Cohesive Voting, that the White Voting Bloc Opposes the Black Voting Bloc, & that the White Voting Bloc Usually Defeats the Black Voting Bloc**

341. Dr. Schneer analyzed whether this is White cohesive voting in opposition to the preferred candidate of choice for Black voters in the following districts in the Enacted State Senate Map: SD 9, SD 16, SD 17, SD 22, SD 23, SD 25, SD 26, SD 28, SD 34, SD 35, SD 40, SD 41, SD 43, SD 44, and SD 55. *Id.* at 29-30.

342. Dr. Schneer concluded that apart from SD 41 and potentially also from SD 40, "there is evidence of racially polarized voting behavior between Black and White voters in every other State Senate district I analyzed. Black voters clearly supported the minority-preferred candidate in every election under study, including those elections with a minority candidate running. White voters opposed their candidate of choice." *Id.* at 30.

343. Dr. Schneer stated that “[Enacted State Senate Map districts] 16, 22, 23, 25, 26, and 44 exhibit clear evidence of RPV with Black and Hispanic voters cohering around minority candidates and White voters opposing them in ever historical election with a minority candidate that I examine[d].” *Id.* at 29-30.

344. Dr. Schneer stated that “[Enacted State Senate Map districts] 9, 17, 28, 34, 43 and 55 exhibit evidence of RPV between Black and White voters, again with Black voters cohering around the minority candidate and White voters opposing this candidate.” *Id.* at 30.

345. Dr. Schneer also produced four figures that reflect the results of his racially polarized voting analysis for all of the Enacted State Senate Map districts which he analyzed (i.e., SD 9, SD 16, SD 17, SD 22, SD 23, SD 25, SD 26, SD 28, SD 34, SD 35, SD 40, SD 41, SD 43, SD 44, and SD 55). *Id.* at 32 (Figure 9); 33 (Figure 10); 34 (Figure 11); 35 (Figure 12).

346. The figures reflect that White voters in each district analyzed except for SD 41 and potentially also SD 40 vote cohesively for the same candidate of choice and in opposition to the preferred candidate of choice for Black voters. *Id.* at 32 (Figure 9); 33 (Figure 10); 34 (Figure 11); 35 (Figure 12).

347. The four figures from Dr. Schneer’s report reflecting this information are presented at paragraph 285 of this Statement of Facts.

348. Dr. Schneer also examined the electoral performance of the focus enacted state Senate districts. *Id.* at 49.

349. Dr. Schneer “use[d] historical election data” to complete this analysis. *Id.*

350. Dr. Schneer concluded that “[b]ased on historical elections, the candidate preferred by minority voters would not have won in any election I examine between 2012 and 2022 in SDs 16, 17, 23, 25 and 28.” *Id.* at 53.

351. Dr. Schneer also prepared a table reflecting the result that in SD 16, SD 17, SD 23, SD 25, and SD 28, which shows that in each of these districts historical evidence indicates that the Black preferred candidate would not receive at least 55% of the vote share, which is a conventional cutoff used in voting rights litigation to indicate a safer district. *Id.* at 56; (Table 3).

352. Dr. Duchin also completed a performance analysis of SD 16, SD 17, SD 23, SD 25, and SD 28. Duchin Rep. at 48-49, 51.

353. Dr. Duchin, consistent with Dr. Schneer, determined that SD 16, SD 17, SD 23, SD 25, and SD 28 do not provide the Black-preferred candidate an opportunity to defeat the White majority bloc-preferred candidate. *Id.*

**5. State House District-Level Evidence of White Cohesive Voting and that the White Voters Vote as a Bloc So as to Usually Defeat Voting Bloc Opposes the Black Voting Bloc**

354. Dr. Schneer analyzed whether this is White cohesive voting in opposition to the preferred candidate of choice for Black voters in the following districts in the Enacted State House Map: HD 61, HD 64, HD 65, HD 66, HD 74, HD 78, HD 115, HD 116, HD 117, HD 140, HD 142, HD 143, HD 144, HD 151, HD 154, HD 161, HD 163, HD 165, and HD 171. Schneer Rep. at 36-37; Canter Decl. ¶ 27 (Deposition of Benjamin Schneer (“Schneer Dep.”) 91:01-91:22 (HD 144)).

355. Dr. Schneer concluded that there is “RPV between Black and White voters in [Enacted State House Map districts] 61, 65, 74, 78, 115, 116, 117, 142, 143, 151, 154 and 171[.]” *Id.* at 37.

356. Dr. Schneer stated that “[Enacted State House Map districts] 61, 65, 74, 115, 142, 143, 151, 154 and 171 present clear evidence of RPV with Black voters selecting the minority candidates as their candidate of choice, and White voters opposing these candidates in every historical election” *Id.* at 36-37.

357. Dr. Schneer stated that “on balance the estimates show that Black voters supported minority candidates” in HD 78 and HD 117 and these same minority

candidates “were opposed by White voters in a vast majority of historical elections.”

*Id.* at 37.

358. Dr. Schmeer also produced five figures that reflect the results of his racially polarized voting analysis for all of the Enacted State House Map districts which he analyzed (i.e., HD 61, HD 64, HD 65, HD 66, HD 74, HD 78, HD 115, HD 116, HD 117, HD 140, HD 142, HD 143, HD 151, HD 154, HD 161, HD 163, HD 165, and HD 171). *Id.* at 39 (Figure 14); 40 (Figure 15); 41 (Figure 16); 42 (Figure 17); 43 (Figure 18).

359. The figures reflect that White voters in HD 61, HD 65, HD 74, HD 78, HD 115, HD 116, HD 117, HD 142, HD 143, HD 151, HD 154, and HD 171 vote cohesively for the same candidate of choice in opposition to the preferred candidate of choice for Black voters. *Id.* at 39 (Figure 14); 40 (Figure 15); 41 (Figure 16); 42 (Figure 17); 43 (Figure 18).

360. The five figures from Dr. Schmeer’s report reflecting this information are presented at paragraph 297 of this Statement of Facts

361. Dr. Schmeer also examined the electoral performance of the focus enacted state House districts. *Id.* at 49.

362. Dr. Schmeer “use[d] historical election data” to complete this analysis.  
*Id.*



363. Dr. Schneer concluded that “[b]ased on historical elections, the candidate preferred by minority voters would not have won in any election I examine between 2012 and 2022 in [Enacted State House Map districts] 64, 74, 161 and 171.” *See* Canter Decl. ¶ 29 (Benjamin Schneer Notice of Errata at 1-2 (March 31, 2023)).

364. Dr. Schneer also “looked at. . . the performance of Legislative District 144,” and determined that by “essentially running the exact same type of performance analysis that I did for all other districts, this was a district where in no past elections that I examined were minority voters able to elect their candidates of choice.” Schneer Dep. 91:11-91:18.

365. Dr. Schneer prepared a table reflecting the result that in HD 64, HD 74, HD 117, HD 161, and HD 171, which shows that in each of these districts historical evidence indicates that the Black preferred candidate would not receive at least 55% of the vote share, which is a conventional cutoff used in voting rights litigation to indicate a safer district. Schneer Rep. at 56 (Table 4).

366. Dr. Duchin also completed a performance analysis of HD 64, HD 74, HD 117, HD 161, and HD 171. Duchin Rep. at 55, 63, 66.

367. Dr. Duchin, consistent with Dr. Schneer, determined that SD 16, SD 17, SD 23, SD 25, and SD 28 do not provide the Black-preferred candidate with an opportunity to defeat the White majority-bloc preferred candidate. *Id.*

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**C. The RPV Expert Retained By Defendants Does Not Dispute That Black—and Sometimes Black and Hispanic—Voters Support the Same Candidates of Choice With Extremely High Levels of Cohesion.**

368. Defendants' RPV expert in this case, Dr. John Alford, testified that Dr. Scheer's "evidentiary basis" and "empirical analysis" with regards to his racially polarized voting report is "perfectly adequate." Alford Dep. at 74:15-74:17.

369. He stated that he is "fine with reaching conclusions" based on Dr. Schneer's analysis. *Id.* at 74:17-74:18.

370. Dr. Alford does not dispute any of Dr. Schneer's findings about the levels of voting cohesion that Black voters demonstrate in Georgia: His only opinion in this case is Dr. Schneer did not rule out that partisanship, not race, is the cause of that cohesion. *Id.* at 68:15-68:24.

371. Dr. Alford testified that in Georgia "black voters vote [in a] highly cohesion fashion for democratic candidates . . . ." *Id.* at 110:18-111:08.

**D. The Legislature Recognized the Existence of RPV in Georgia During the Redistricting Process.**

372. Chair Kennedy recognized that that "process" the Senate Redistricting Committee undertook "recognized" the "principle" of RPV in Georgia. Kennedy Dep. 126:22-127:21.

Dated: April 26, 2023

Respectfully submitted,

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**LOCAL RULE 7.1(D) CERTIFICATION OF COMPLIANCE**

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

*/s/ Kurt Kastorf*

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