

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

COAKLEY PENDERGRASS; TRIANA  
ARNOLD JAMES; ELLIOTT  
HENNINGTON; ROBERT RICHARDS;  
JENS RUECKERT; and OJUAN GLAZE,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his official  
capacity as the Georgia Secretary of State;  
WILLIAM S. DUFFEY, JR., in his official  
capacity as chair of the State Election  
Board; MATTHEW MASHBURN, in his  
official capacity as a member of the State  
Election Board; SARA TINDALL  
GHAZAL, in her official capacity as a  
member of the State Election Board;  
EDWARD LINDSEY, in his official  
capacity as a member of the State Election  
Board; and JANICE W. JOHNSTON, in  
her official capacity as a member of the  
State Election Board,

Defendants.

CIVIL ACTION FILE  
NO. 1:21-CV-05339-SCJ

**PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF  
LAW**



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## INTRODUCTION

Pursuant to the Pretrial Order, see Doc. No. 231 at 9, Plaintiffs respectfully submit the following proposed findings of fact and conclusions of law and proposed order granting permanent injunctive relief.

This case presents a straightforward application of Section 2 of the Voting Rights Act of 1965, the standards for which were recently and soundly reaffirmed by the U.S. Supreme Court. See generally Allen v. Milligan, 599 U.S. 1 (2023). Plaintiffs have proved that the Black population in the western Atlanta metropolitan area is sufficiently large and geographically compact to form an additional majority-Black congressional district. They have further proved that Georgia's pronounced racially polarized voting prevents Black voters in majority-white congressional districts from electing their candidates of choice. The totality of circumstances makes clear that the Georgia Congressional Redistricting Act of 2021 ("SB 2EX") (hereinafter "enacted congressional plan" or "enacted plan") denies Black voters an equal opportunity to participate in the state's political processes and elect their preferred candidates to the U.S. House of Representatives. To prevent the further dilution of voting strength for Plaintiffs and all Black Georgians, this Court can and must remedy this violation of federal law and provide permanent injunctive relief in advance of the 2024 elections.



## PROPOSED FINDINGS OF FACT

### I. Plaintiffs

1. Plaintiff Coakley Pendergrass is a Black resident of Cobb County, Georgia, who is registered to vote and intends to vote in future congressional elections. Doc. No. 231 Attach. E ¶¶ 1-2; Doc. No. 222, Pendergrass Dep., at 38:3-13.<sup>1</sup> Under the enacted congressional plan, the Rev. Pendergrass resides in Congressional District 11. Doc. No. 231 Attach. E ¶ 3.

2. Plaintiff Triana Arnold James is a Black resident of Douglas County, Georgia, who is registered to vote and intends to vote in future congressional elections. Doc. No. 231 Attach. E ¶¶ 4-5; Doc. No. 222, James Dep., at 46:2-47:23. Under the enacted congressional plan, Ms. James resides in Congressional District 3. Doc. No. 231 Attach. E ¶ 6.

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<sup>1</sup> Citations to Plaintiffs' trial exhibits are designated as "PX." Citations to trial exhibits submitted jointly by Plaintiffs, the plaintiffs in Grant v. Raffensperger, No. 1:22-CV-00122-SCJ (N.D. Ga.), the plaintiffs in Alpha Phi Alpha Fraternity Inc. v. Raffensperger, No. 1:21-CV-05337-SCJ (N.D. Ga.), and the Defendants are designated as "JX." Citations to Defendants' trial exhibits are designated as "DX." Citations to trial exhibits filed by the plaintiffs in Alpha Phi Alpha Fraternity Inc. v. Raffensperger, No. 1:21-CV-05337-SCJ (N.D. Ga.), are designated as "AX." Deposition designations were admitted into evidence on the last day of trial and by this Court's August 30, 2023, order resolving the outstanding disputes. See Doc. No. 243; Sept. 14, 2023, Morning Tr. 2308:2-9.



3. Plaintiff Elliott Hennington is a Black resident of Cobb County, Georgia, who is registered to vote and intends to vote in future congressional elections. Doc. No. 231 Attach. E ¶¶ 7-8; Doc. No. 222, Hennington Dep., at 49:6-23. Under the enacted congressional plan, Mr. Hennington resides in Congressional District 14. Doc. No. 231 Attach. E ¶ 9.

4. Plaintiff Robert Richards is a Black resident of Cobb County, Georgia, who is registered to vote and intends to vote in future congressional elections. Doc. No. 231 Attach. E ¶¶ 10-11; Doc. No. 222, Richards Dep., at 21:13-25. Under the enacted congressional plan, Mr. Richards resides in Congressional District 14. Doc. No. 231 Attach. E ¶ 12.

5. Plaintiff Jens Rueckert is a Black resident of Cobb County, Georgia, who is registered to vote and intends to vote in future congressional elections. Doc. No. 231 Attach. E ¶¶ 13-14; Doc. No. 222, Rueckert Dep., at 38:3-39:24. Under the enacted congressional plan, Mr. Rueckert resides in Congressional District 14. Doc. No. 231 Attach. E ¶ 15.

6. Plaintiff Ojuan Glaze is a Black resident of Douglas County, Georgia, who is registered to vote and intends to vote in future congressional elections. Doc. No. 231 Attach. E ¶¶ 16-17; Doc. No. 222, Glaze Dep., at 39:14-40:9. Under the



enacted congressional plan, Mr. Glaze resides in Congressional District 13. Doc. No. 231 Attach. E ¶ 18.

## **II. Defendants**

7. Defendant Brad Raffensperger is the Georgia Secretary of State and is named in his official capacity. Doc. No. 231 Attach. E ¶ 85.

8. Defendant Sara Tindall Ghazal is a member of the State Election Board and is named in her official capacity. Doc. No. 231 Attach. E ¶ 86.

9. Defendant Janice Johnston is a member of the State Election Board and is named in her official capacity. Doc. No. 231 Attach. E ¶ 87.

10. Defendant Edward Lindsey is a member of the State Election Board and is named in his official capacity. Doc. No. 231 Attach. E ¶ 88.

11. Defendant Matthew Mashburn is a member of the State Election Board and is named in his official capacity. Doc. No. 231 Attach. E ¶ 89.

12. Defendant William S. Duffey, Jr. is chair of the State Election Board and is named in his official capacity. Doc. No. 231 Attach. E ¶ 90.<sup>2</sup>

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<sup>2</sup> Defendant Duffey resigned from his position effective September 1, 2023. While the Court is aware that no replacement has yet been identified, it notes that an officer's successor is automatically substituted as a party pursuant to Federal Rule of Civil Procedure 25(d). This opinion binds the chair of the State Election Board.



### III. First Gingles Precondition: Numerosity and Compactness

13. Plaintiffs' mapping and demographics expert, Mr. William S. Cooper, demonstrated that the Black population in the western Atlanta metropolitan area is sufficiently large and geographically compact to form a majority of the voting-age population in an additional congressional district.

14. The Court has accepted Mr. Cooper as qualified to testify as an expert in redistricting and census data. Sept. 7, 2023, Morning Tr. 717:3-4. The Court found Mr. Cooper's testimony at the coordinated preliminary injunction hearing to be "highly credible," found that "his methods and conclusions [we]re highly reliable, and ultimately that his work as an expert on the first Gingles precondition [wa]s helpful to the Court." Doc. 97 at 36, 38. The Court observed that "Mr. Cooper has spent the majority of his career drawing maps for redistricting and demographic purposes, and [that] he has accumulated extensive expertise (more so than any other expert in the first Gingles precondition in the case) in redistricting litigation, particularly in Georgia." Id. at 36. The Court once again finds Mr. Cooper highly credible, his analysis and methods highly sound, and his conclusions highly reliable. The Court credits Mr. Cooper's testimony and conclusions.



15. Mr. Cooper's illustrative congressional plan contains an additional majority-Black congressional district comprised of portions of Cobb, Douglas, Fulton, and Fayette counties in the western Atlanta metropolitan area. The plan complies with the traditional districting principles adopted by the Georgia General Assembly to guide its redistricting efforts in 2021. See JX 1, JX 2.

16. Mr. John B. Morgan, Defendants' mapping expert, does not meaningfully dispute that Mr. Cooper's illustrative plan adheres to traditional districting principles. See Sept. 13, 2023, Morning Tr. 1953:18–1954:12. Instead, he merely confirms the accuracy of Mr. Cooper's reported data and statistics as to preservation of political subdivisions and compactness without ever suggesting that Mr. Cooper's illustrative plan fails to comply with these (or any other) criteria. See DX4.

17. In sum, the Court credits the analysis and conclusions of Mr. Cooper and concludes that his findings demonstrate that Plaintiffs have satisfied the factual predicates of the first Gingles precondition.

**A. Numerosity**

18. The Court concludes that Mr. Cooper has established that the Black population in Georgia is sufficiently numerous to comprise a majority of the



voting-age population in an additional congressional district located in the western Atlanta metropolitan area.

### **1. Demographic Developments**

19. The U.S. Census Bureau releases data to the states after each census for use in redistricting. This data includes population and demographic information for each census block. Doc. No. 231 Attach. E ¶ 91.

20. The Census Bureau provided redistricting data to Georgia on August 21, 2021. Doc. No. 231 Attach. E ¶ 92.

21. From 2010 to 2020, Georgia's population grew by over 1 million people to 10.71 million, up 10.57% from 2010. Doc. No. 231 Attach. E ¶ 93; PX1 ¶ 13; Sept. 7, 2023, Morning Tr. 718:4-6.

22. As a result of this population growth, the state retained 14 seats in the U.S. House of Representatives. Doc. No. 231 Attach. E ¶ 94.

23. Georgia's population growth since 2010 can be attributed entirely to gains in the overall minority population. PX1 ¶ 14 & fig.1; Sept. 7, 2023, Morning Tr. 718:7-15.

24. Between 2010 and 2020, Georgia's any-part ("AP") Black population increased by 484,048 people, up almost 16% since 2010. Doc. No. 231 Attach. E ¶ 95; PX1 ¶ 15; Sept. 7, 2023, Morning Tr. 718:7-10.



25. Between 2010 and 2020, 47.26% of the state's population gain was attributable to AP Black population growth. Doc. No. 231 Attach. E ¶ 96; PX1 ¶ 14 & fig.1.

26. Georgia's AP Black population, as a share of the overall statewide population, increased between 2010 and 2020, from 31.53% in 2010 to 33.03% in 2020. Doc. No. 231 Attach. E ¶ 97; PX1 ¶ 16.

27. As a matter of total population, AP Black Georgians comprise the largest minority population in the state (at 33.03%). Doc. No. 231 Attach. E ¶ 98; PX1 ¶ 17; Sept. 7, 2023, Morning Tr. 719:2-8.

28. From 2010 to 2020, Georgia's white population decreased by 51,764, or approximately 1%. Doc. No. 231 Attach. E ¶ 99; PX1 ¶ 15; Sept. 7, 2023, Morning Tr. 718:13-15.

29. Based on the 2020 census, non-Hispanic white Georgians now comprise a razor-thin majority of the state's population (50.06%). PX1 ¶ 17; Sept. 7, 2023, Morning Tr. 719:2-8.

30. Georgia's Black population has increased in absolute and percentage terms since 1990, from about 27% in 1990 to 33.03% in 2020. Over the same time period, the percentage of the population identifying as non-Hispanic white has dropped from 70% to 50.06%. Doc. No. 231 Attach. E ¶ 102; PX1 ¶ 22 & fig.3.



31. Since 1990, the AP Black population has more than doubled: from 1.75 million to 3.54 million, an increase that is equivalent to the populations of more than two congressional districts. The non-Hispanic white population has also increased, but at a much slower rate: from 4.54 million to 5.36 million, amounting to an increase of only about 18% over the three-decade period. Doc. No. 231 Attach. E ¶ 103; PX1 ¶ 23.

32. Between 2000 to 2020, the AP Black population in Georgia increased by 1,144,721, from 2,393,425 to 3,538,146. Doc. No. 231 Attach. E ¶ 100.

33. Between 2000 to 2020, the white population in Georgia increased by 233,495. Doc. No. 231 Attach. E ¶ 101.

34. Georgia has a total voting-age population of 8,220,274, of whom 2,607,986 (31.73%) are AP Black. Doc. No. 231 Attach. E ¶ 104; PX1 ¶ 18 & fig.2.

35. The total estimated citizen voting-age population in Georgia in 2019 was 33.87% AP Black. The total estimated citizen voting-age population in 2021 was 33.3% AP Black. Doc. No. 231 Attach. E ¶ 105; PX1 ¶ 20.

36. The Black CVAP in Georgia is poised to go up this decade: According to the 1-Year 2021 American Community Survey, Black citizens of all ages represent 34.45% of all citizens. PX1 ¶ 21.



37. The Atlanta Metropolitan Statistical Area (“MSA”) consists of the following 29 counties: Barrow, Bartow, Butts, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Haralson, Heard, Henry, Jasper, Lamar, Meriwether, Morgan, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, and Walton. Doc. No. 231 Attach. E ¶ 106; PX1 ¶ 12 n.3.

38. The Atlanta MSA has been the key driver of population growth in Georgia during this century, led in no small measure by a large increase in the region’s Black population. PX1 ¶ 25 & fig.4; Sept. 7, 2023, Morning Tr. 720:7–10.

39. The population gain in the Atlanta MSA between 2010 and 2020 amounted to 803,087 persons—greater than the population of one of the state’s congressional districts and nearly 80% of the statewide population growth during that time frame.

40. More than half of the population gain in the Atlanta MSA came from an increase in the Black population, which increased by 409,927. Doc. No. 231 Attach. E ¶ 107; PX1 ¶ 30 & fig.5; Sept. 7, 2023, Morning Tr. 721:1–18.

41. According to the 2000 Census, the population in the 29-county Atlanta MSA was 29.29% AP Black, increasing to 33.61% in 2010, and increasing further to 35.91% in 2020. Doc. No. 231 Attach. E ¶ 108; PX1 ¶ 25 & fig.4.



42. The AP Black population in the Atlanta MSA has grown from 1,248,809 in 2000 to 2,186,815 in 2020 – an increase of 938,006 persons – accounting for 75.1% of the statewide Black population increase and 51.4% of the Atlanta MSA’s total population increase during that period. Doc. No. 231 Attach. E ¶ 109; PX1 ¶ 25 & fig.4.

43. Under the 2000 Census, the population in the 29-county Atlanta MSA was 60.42% non-Hispanic white, decreasing to 50.78% in 2010, and decreasing further to 43.71% in 2020. PX1 ¶ 25 & fig.4.

44. Between 2010 and 2020, the non-Hispanic white population in the Atlanta MSA decreased by 22,736 persons. Doc. No. 231 Attach. E ¶ 112; PX1 ¶ 25 & fig.4; Sept. 7, 2023, Morning Tr. 721:19–23.

45. According to the 2020 Census, the Atlanta MSA has a total voting-age population of 4,654,322 persons, of whom 1,622,469 (34.86%) are AP Black. The non-Hispanic white voting-age population is 4,342,333 (52.1%). Doc. No. 231 Attach. E ¶ 110; PX1 ¶ 31 & fig.6.

46. The 11 core counties of the Atlanta Regional Commission (“ARC”) service area are Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, and Rockdale. Doc. No. 231 Attach. E ¶ 111.



47. According to the 2020 Census, the 11 ARC counties account for more than half (54.7%) of the statewide Black population. After expanding the region to include the 29 counties in the Atlanta MSA (including the 11 ARC counties), the Atlanta metropolitan area encompasses 61.81% of the state's Black population. PX1 ¶ 28.

48. Based on the 2020 Census, the combined Black population in Cobb, Fulton, Douglas, and Fayette Counties is 807,076 persons, more than necessary to constitute an entire congressional district—or a majority in two congressional districts. PX1 ¶ 42 & fig.7.

49. More than half (53.27%) of the total population increase in these four counties since 2010 can be attributed to the increase in the Black population. PX1 ¶ 43.

## **2. Illustrative Congressional Plan**

50. Based on Georgia's demographics, Mr. Cooper concluded that "[t]he Black population in metropolitan Atlanta is sufficiently numerous and geographically compact to allow for the creation of an additional majority-Black congressional district anchored in Cobb, Douglas, and Fulton Counties (CD 6 in the illustrative plan) consistent with traditional redistricting principles." PX1 ¶ 10; see also id. ¶¶ 42, 86. Defendants' mapping expert Mr. Morgan agreed that his



report “offers no opinion to dispute” this conclusion. Sept. 13, 2023, Morning Tr. 1954:1–12.

51. Mr. Cooper drew an illustrative congressional plan that includes an additional majority-Black congressional district (illustrative Congressional District 6) anchored in the western Atlanta metropolitan area. Doc. No. 231 Attach. E ¶ 190; PX 1 ¶ 55 & fig.12; Sept. 7, 2023, Morning Tr. 717:14–23.

52. Mr. Cooper’s illustrative Congressional District 6 has an AP Black population of 396,891 people, or 51.87% of the district’s population. Doc. No. 231 Attach. E ¶ 191; PX1 ¶ 53 & fig.11.

53. Mr. Cooper’s illustrative Congressional District 6 has an AP BVAP of 50.23% and a non-Hispanic Black citizen voting-age population (“BCVAP”) of 50.18%. Doc. No. 231 Attach. E ¶ 192; PX1 ¶ 73 & fig.14.

54. Mr. Morgan does not dispute that Mr. Cooper’s illustrative Congressional District 6 is a majority-Black district under the AP BVAP metric. See DX4 ¶ 12 (Mr. Morgan’s expert report noting that Mr. Cooper’s illustrative Congressional District 6 has a “50.23% any-part Black voting age population”).

55. Mr. Cooper’s illustrative plan includes an additional majority-Black district without reducing the number of preexisting majority-Black districts or majority-minority districts in the enacted congressional plan. PX1 ¶¶ 68, 73, 75 &



fig.14; see also DX4 ¶ 12 (Morgan report) (“The 2021 adopted congressional plan has five districts that are majority non-white voting age population. The Cooper 1205 congressional plan has six districts that are majority non-white voting age population.”).

56. Based on the expert reports and testimony provided in this case, the Court concludes that the Black population in Georgia—and in the western metropolitan Atlanta area specifically—is sufficiently numerous to comprise a majority of the voting age population in an additional congressional district.

#### **B. Geographic Compactness**

57. Plaintiffs’ illustrative plan demonstrates that the Black population in the western Atlanta metropolitan area is sufficiently geographically compact to constitute a voting-age majority in an additional congressional district.

58. The Court also finds that the illustrative plan is reasonably configured and consistent with traditional redistricting principles.

59. Mr. Cooper testified that creating an additional majority-Black congressional district in the western Atlanta metropolitan area by uniting the Black communities in Cobb, Douglas, Fulton, and Fayette Counties was “very straightforward” and “easy to craft.” Sept. 7, 2023, Morning Tr. 717:14–23; see also id. at 725:11–12 (Mr. Cooper describing task of drawing majority-Black



congressional district including parts of Cobb, Douglas, and Fulton Counties as “easy-peasy”); id. at 745:22–746:4 (Mr. Cooper’s testimony: “It is very straightforward. It practically draws itself. It should have been obvious to anyone looking at changes in Georgia since 2010 that such a district could be drawn. And it wouldn’t have taken days and weeks to figure that out. This plan can be drawn in a matter of hours.”).

60. An objective analysis of the illustrative map confirms as much.

61. The redistricting guidelines adopted by the General Assembly to guide its redistricting efforts included population equality, compactness, contiguity, respect for political subdivision boundaries and communities of interest, and compliance with Section 2 of the Voting Rights Act. JX1, JX2.

62. Mr. Cooper’s illustrative map adheres to these and other traditional districting criteria. Sept. 7, 2023, Morning Tr. 745:11–15 (Mr. Cooper’s testimony describing illustrative plan’s adherence to traditional redistricting principles).

63. Mr. Cooper explained that no one factor predominated when drawing his illustrative congressional plan; instead, he was “constantly balancing” them all. Sept. 7, 2023, Morning Tr. 727:7–10.

64. Mr. Cooper also testified that he was aware of the creation of at least three majority-Black Georgia State Senate districts and a fourth racially diverse



Senate district in the western Atlanta metropolitan area under the newly enacted legislative maps. See PX1 ¶ 44; Sept. 7, 2023, Morning Tr. 723:3–725:12. He explained that the locations of these four State Senate districts in the western Atlanta metropolitan area showed him that “you could actually develop a plan that has a majority[-]Black district that would include parts of Cobb County, Douglas County, and Fulton Counties.” Id. at 725:7–10.

### **1. Population Equality**

65. The Court finds that Mr. Cooper’s illustrative congressional map complies with the one-person, one-vote principle.

66. There is no factual dispute on this front. Mr. Cooper’s expert report demonstrates that his illustrative plan contains minimal population deviation. Doc. No. 231 Attach. E ¶ 197; PX1 ¶ 53 & fig.11; Sept. 7, 2023, Morning Tr. 733:10–21 (Mr. Cooper’s testimony noting that population equality is reflected in his illustrative map because districts are plus or minus one person); Sept. 13, 2023, Morning Tr. 1951:10–17 (Mr. Morgan conceding that illustrative plan “achieves population equality”).

### **2. Contiguity**

67. The Court finds that Mr. Cooper’s illustrative congressional map contains contiguous districts.



68. Again, there is no factual dispute on this issue. Doc. No. 231 Attach. E ¶ 198; PX1 ¶ 52; Sept. 7, 2023, Morning Tr. 739:21–740:6 (Mr. Cooper’s testimony confirming that his illustrative districts are contiguous); Sept. 13, 2023, Morning Tr. 1951:18–22 (Mr. Morgan agreeing that the districts within the illustrative plan are contiguous).

### 3. Compactness

69. The Court finds that Mr. Cooper’s illustrative congressional map is consistent with Georgia’s tradition with respect to the compactness of congressional districts.

70. As Defendants’ mapping expert Mr. Morgan explained during his testimony at the coordinated preliminary-injunction hearing, “the compactness scores are generally comparative . . . in the case of a compactness test, it’s usually comparing the district that’s been drawn to an idealized shape, which would be like a circle or a square, but circles are usually used.” Sept. 12, 2023, Afternoon Tr. 1752:16–23; see also Feb. 11, 2022, Afternoon Tr. 225:18–226:11 (Mr. Morgan explaining that “[g]enerally speaking, . . . the compactness scores are usually useful in comparing one plan to another . . . I wouldn’t designate a single number that way but when you do a lot of comparisons, you can see some cases where



things are considerably less compact than others”).<sup>3</sup> Mr. Morgan reiterated this point during trial. Sept. 12, 2023, Afternoon Tr. 1752:14–1753:4 (“So the compactness scores are generally comparative. You’ll be looking at comparing one shape to another shape. So in the case of a compactness test, it’s usually comparing the district that’s been drawn to an idealized shape, which would be like a circle or a square . . . .”). He also testified that there is no minimum compactness threshold for districts under Georgia law. Id. at 1752:24–1753:4; Feb. 11, 2022, Afternoon Tr. 228:3–16.

71. Mr. Cooper testified similarly that there is no bright line standard for determining when a district is sufficiently compact. Sept. 7, 2023, Morning Tr. 737:3–5; see also Feb. 7, 2022, Morning Tr. 60:14–61:3 (Mr. Cooper explaining that “nor should there be” given that “so many factors [] enter into the equation” — including, in Georgia, the fact that “municipal boundaries in many [c]ounties [] are not exactly compact”).

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<sup>3</sup> Transcripts of the coordinated preliminary injunction hearing are properly considered in these findings of fact and conclusions of law, as all testimony and exhibits admitted during that hearing have been incorporated into the trial record. See Fed. R. Civ. P. 65(a)(2) (“[E]vidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.”); see also ECF No. 215 at 88 n.44 (citing Fed. R. Civ. P. 65(a)(2)); Sept. 12, 2023, Morning Tr. 1700:11–24 (parties acknowledging that the preliminary injunction hearing is part of the trial record).



72. The parties' experts evaluated the enacted congressional plan and Mr. Cooper's illustrative plan using the Reock and Polsby-Popper analyses, two commonly used measures of a district's compactness. PX1 ¶ 79 & fig.13; DX4 ¶ 21, 22 & chart 2.

73. The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact. Doc. No. 231 Attach. E ¶ 199; PX1 ¶ 79 n.13; Feb. 7, 2022, Morning Tr. 59:21–60:4 (Mr. Cooper's testimony describing compactness measures).

74. The Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter. The measure is always between 0 and 1, with 1 being the most compact. Doc. No. 231 Attach. E ¶ 200; PX1 ¶ 79 n.14; Feb. 7, 2022, Morning Tr. 60:5–13 (Mr. Cooper's testimony describing compactness measures).

75. The compactness statistics for Mr. Cooper's illustrative congressional plan as set forth in his expert report are not disputed. Doc. No. 231 Attach. E ¶ 207.



76. The mean Reock score for Mr. Cooper's illustrative plan is 0.43, which is comparable to the mean score of 0.44 for the enacted plan. Doc. No. 231 Attach. E ¶ 202; PX1 ¶ 79 & fig.13.

77. The mean Polsby-Popper score for Mr. Cooper's illustrative plan is 0.27, which is identical to the mean score of 0.27 for the enacted plan. Doc. No. 231 Attach. E ¶ 205; PX1 ¶ 79 & fig.13.

78. Mr. Cooper's illustrative Congressional District 6 is more compact than enacted Congressional District 6 on both metrics. The Reock score for Mr. Cooper's illustrative Congressional District 6 is 0.45, compared to a score of 0.42 for the enacted Congressional District 6. The Polsby-Popper score for Mr. Cooper's illustrative Congressional District 6 is 0.27, compared to a score of 0.20 for the enacted Congressional District 6. Doc. No. 231 Attach. E ¶¶ 201, 203, 204, 206; PX1 ¶¶ 159, 166.

79. Mr. Cooper's illustrative Congressional District 6 is also more compact than the illustrative Congressional District 6 that Mr. Cooper drew in the report he submitted during the preliminary injunction phase. In response to criticism that the illustrative district included Acworth and Kennesaw, Mr. Cooper "changed the district a bit to push the district in Cobb County further south," united all of Douglas County in the illustrative district, and kept all but



unpopulated, noncontiguous areas of Marietta in the illustrative district. Sept. 7, 2023, Morning Tr. 728:9–729:19. These changes improved the illustrative district’s compactness score and made it appear more compact visually. Id. at 729:20–25.

80. The following table included in Mr. Morgan’s report (DX4 ¶ 22 & chart 2) demonstrates that, on a district-by-district level, the compactness measures of Mr. Cooper’s illustrative districts are comparable to—and, in some cases, better than—the districts in the enacted map:

District	Enacted Reock	Cooper 1205 Reock	Enacted Polsby-Popper	Cooper 1205 Polsby-Popper
001	0.46	0.46	0.29	0.29
002	0.46	0.46	0.27	0.27
003	<b>0.46</b>	0.39	<b>0.28</b>	0.24
004	<b>0.31</b>	0.28	<b>0.25</b>	0.22
005	0.51	0.51	0.32	0.32
006	0.42	<b>0.45</b>	0.2	<b>0.27</b>
007	0.5	0.5	0.39	0.39
008	0.34	0.34	0.21	0.21
009	0.38	<b>0.4</b>	0.25	<b>0.32</b>
010	<b>0.56</b>	0.4	<b>0.28</b>	0.18
011	<b>0.48</b>	0.4	<b>0.21</b>	0.19
012	0.5	0.5	0.28	0.28
013	0.38	<b>0.44</b>	0.16	<b>0.29</b>
014	0.43	<b>0.48</b>	<b>0.37</b>	0.34
Mean Compactness score	0.44	0.43	0.27	0.27



81. Mr. Morgan does not dispute that the enacted and the illustrative plans have similar mean Reock scores and identical mean Polsby-Popper scores. Sept. 13, 2023, Morning Tr. 1948:22–1949:5

82. After reviewing the compactness measures supplied by the expert reports received in this case and listening to the expert testimony provided at trial, the Court concludes that the districts in Mr. Cooper’s illustrative plan are reasonably compact.

83. The Court finds that Mr. Cooper’s illustrative congressional plan is consistent with the traditional districting principle of compactness.

#### **4. Preservation of Political Subdivisions**

84. Based on the record, the Court concludes that Mr. Cooper’s illustrative congressional plan complies with the districting criterion of respecting political subdivision boundaries.

85. Mr. Cooper “drew the Illustrative Plan to follow, to the extent possible, county boundaries.” PX1 ¶ 49. “Where counties are split to comply with one-person, one-vote requirements, [he] . . . generally used whole 2020 Census VTDs as sub-county components.” *Id.* “Where VTDs are split, [he] followed census block boundaries that are aligned with roads, natural features, municipal



boundaries, census block groups, and post-2020 Census county commission districts.” Id.

86. The political subdivision split statistics for Mr. Cooper’s illustrative congressional plan as set forth in his expert report are not disputed. Doc. No. 231 Attach. E ¶ 210. See Sept. 13, 2023, Morning Tr. 1947:5–16 (Mr. Morgan testifying that the illustrative plan and the enacted plan split the same number of counties; that the illustrative plan contains fewer county splits than the enacted plan; and that the illustrative plan contains fewer VTD splits than the enacted plan).

87. Overall, county, VTD, and municipal splits are comparable between the enacted congressional plan and Mr. Cooper’s illustrative plan. Both Mr. Cooper’s illustrative congressional plan and the enacted plan split 15 counties. Doc. No. 231 Attach. E ¶ 211; PX 1 ¶ 82; Sept. 7, 2023, Morning Tr. 734:6–11.

88. Mr. Cooper’s illustrative congressional plan splits fewer municipalities than the enacted plan: 78 compared to 91. See PX1 ¶ 82; Sept. 7, 2023, Morning Tr. 735:17–24 (Mr. Cooper’s testimony describing municipality splits).

89. Mr. Cooper’s illustrative congressional plan splits three fewer VTDs than the enacted plan. See PX1 ¶ 82; Sept. 7, 2023, Morning Tr. 735:8–16 (Mr. Cooper’s testimony describing VTD splits).



90. As compared to the enacted congressional plan, in which Cobb County is divided among four congressional districts, Mr. Cooper's illustrative plan divides Cobb County among only three congressional districts. Sept. 7, 2023, Morning Tr. 735:3-7.

91. The Court finds that Mr. Cooper's illustrative congressional plan respects the boundaries of political subdivisions.

#### **5. Preservation of Communities of Interest**

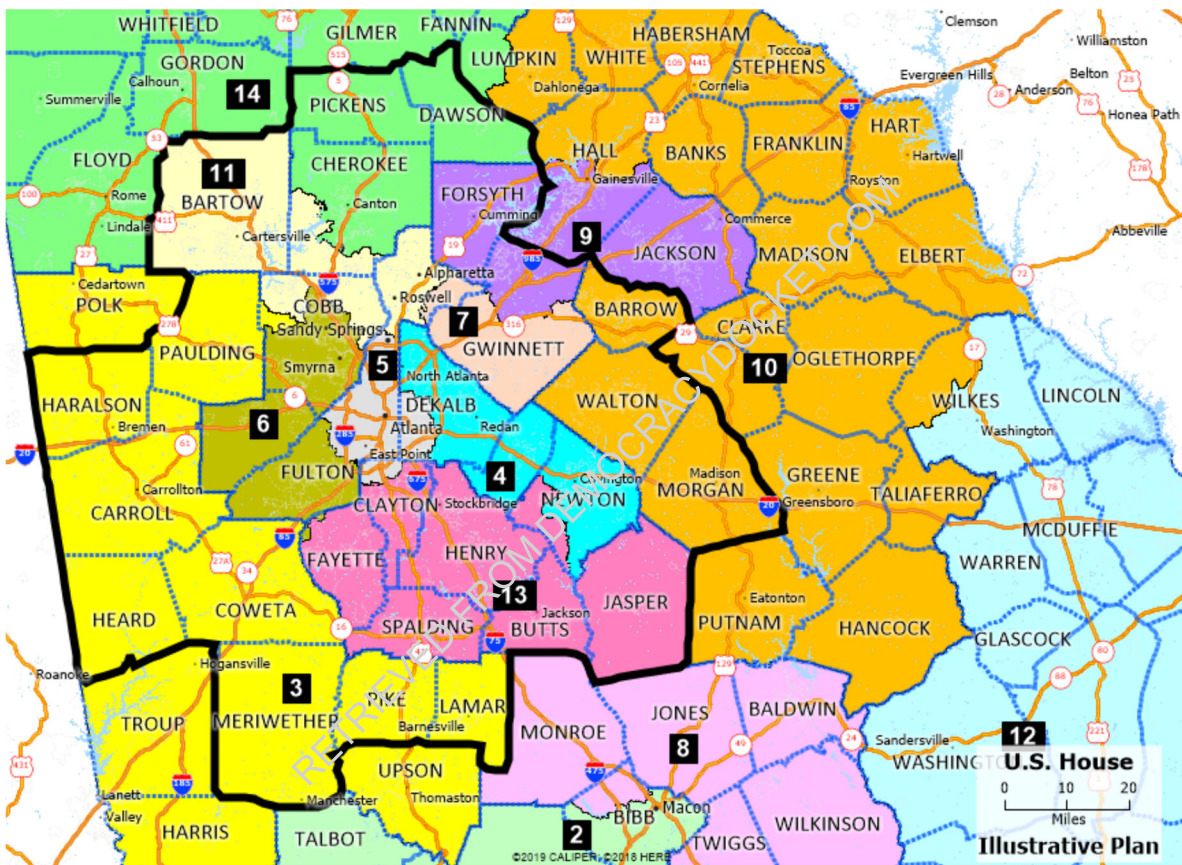
92. Based on the record, the Court concludes that Mr. Cooper's illustrative congressional plan complies with the districting criterion of respecting communities of interest.

93. Mr. Cooper and lay witnesses confirmed that Mr. Cooper's illustrative Congressional District 6 encompasses communities of interest in the western Atlanta metropolitan area.

94. Mr. Cooper explained that he looked at maps of Georgia's regional commissions and metropolitan statistical areas to guide his preservation of communities of interest. Sept. 7, 2023, Morning Tr. 741:7-742:15.



95. As depicted in his expert report (PX1 ¶ 55 & fig. 12), Mr. Cooper's illustrative Congressional District 6 is comprised of pieces of four counties – Cobb, Douglas, Fulton, and Fayette – that are among the 11 core ARC counties:



96. As Mr. Cooper testified, “the illustrative Congressional District 6 is entirely within the Atlanta MSA.” “In fact,” Mr. Cooper explained, “it’s in the more . . . densely populated concentrated area within the 11-county Atlanta [R]egional [C]ommission area.” Sept. 7, 2023, Morning Tr. 741:7-12.



97. Mr. Cooper testified that the communities across the district would identify as being “part of suburban Atlanta.” Sept. 7, 2023, Afternoon Tr. 799:2. “[I]f you . . . ask somebody where are you from and that person happens to be from Fairburn, they’re probably going to say I’m from the Atlanta area. And if you ask somebody from Marietta, they might just say Atlanta area because everybody knows where Atlanta is.” Id. at 799:2–7. Mr. Cooper also explained that the communities that comprise the district are not far-flung. Rather, the district is about 40 miles from top to bottom. Id. at 835:19–20. Mr. Cooper explained that “the distance between Fairburn and Marietta is pretty inconsequential really if you’re just driving along.” Id. at 799:8–9; see id. at 835:21–836:1 (Mr. Cooper testifying that it would take roughly half an hour to drive across the district with no traffic); see also id. at 836:2–4 (Mr. Cooper denying that any portion of illustrative district is far-flung from any other portion of district).

98. Mr. Cooper testified that he believed that municipalities are a useful metric of communities of interest because “everyone knows what town or city they live in . . . [s]o . . . that’s . . . probably the most important measure of all.” Sept. 7, 2023, Morning Tr. 740:23–741:6. Again, Mr. Cooper’s illustrative congressional plan splits thirteen fewer municipalities than the enacted plan, see PX1 ¶ 82; Sept. 7, 2023, Morning Tr. 735:17–24 (Mr. Cooper’s testimony describing municipality



splits), and “keep[s] all of Marietta in a single district . . . except for a few unpopulated spots that are not even contiguous to the city,” Sept. 7, 2023, Morning Tr. 728:15–19; see PX1 ¶ 69 (“[T]he Illustrative Plan assigns all but noncontiguous zero-population areas of Marietta to CD 6.”).

99. The State’s fact witness, Gina Wright, who drew the enacted map, testified that communities of interest are defined by the people who live there. Sept. 12, 2023, Morning Tr. 1681:23–1682:6 (“I think a community of interest is going to be something defined by the community itself. . . . It really needs to be something that is identifiable, I think, . . . by the people who live there in the community itself.”). As a map drawer, Ms. Wright “heavily rel[ies] on [Georgia’s] legislators to know their communities.” Sept. 12, 2023, Morning Tr. 1618:15–18.

100. Commenting on Mr. Cooper’s illustrative Congressional District 6, Jason Carter, a former state legislator, testified that it covers “the western suburbs of Atlanta and the southern suburbs of Atlanta.” Sept. 8, 2023, Morning Tr. 966:11–19. Mr. Carter characterized the area included within illustrative Congressional District 6 as “a growing and increasingly diversifying area” with “a lot of demographic change.” Id. at 967:13–17.

101. Mr. Carter testified that the Black residents of the illustrative Congressional District 6 need their elected officials to be “responsive[] to their



specific needs, [including in] education, transportation, [and] infrastructure. Id. at 970:14–22. Mr. Carter explained that all the residents of the illustrative district are served by “suburban school districts,” and that as suburban Atlanta communities, “the daily traffic reports in Atlanta affect all these people every day.” Id. at 968:10–25. “One of the things that” Mr. Carter “think[s] is important about this district is that [the] Chattahoochee River runs through the whole east side of Cobb County and through the middle of the rest of that district.” Id. at 970:14–22. Because of the “population growth around that area, . . . you want to make sure that as these places grow, their government is responsive to what they need and want.” Id. at 970:23–971:4.

102. Erick Allen, a former member of the Georgia House of Representatives and a Smyrna resident, agreed that his neighbors, the Black residents of illustrative Congressional District 6, face the same transportation-related challenges, specifically involving “access, congestion, [and] infrastructure.” Id. at 1009:9–13. Mr. Allen testified that “[a]s a resident of this area,” he knows that these communities rely on Interstates “285, 75, 85, and 20.” Id. at 1009:4–8. Residents of these areas attend some of the same places of worship. Id. at 1009:17–22. Mr. Allen also explained that the residents of the illustrative Congressional District 6 share an interest in receiving services from Grady



Hospital, the only Level One Trauma Center in Metro Atlanta. Id. at 1019:24–1020:3.

103. The Court credits the testimony of Mr. Cooper, Mr. Carter, and Mr. Allen generally and specifically with respect to communities of interest. The Court further finds, based on its “particular familiarity with the indigenous political reality” of the area, Thornburg v. Gingles, 478 U.S. 30, 79 (1986), that illustrative Congressional District 6 respects communities of interest and does not connect far-flung communities with disparate interests, as the communities contained within the district are neither far-flung nor disparate.

104. The Court finds that Mr. Cooper’s illustrative congressional plan respects communities of interest.

## **6. Core Retention**

105. Preservation of existing district cores was not an enumerated districting principle adopted by the General Assembly. See JX1; JX2.

106. Even still, Mr. Cooper’s illustrative plan leaves six of Georgia’s 14 congressional districts entirely untouched. See PX1 ¶¶ 11, 51 (Mr. Cooper’s report explaining that the “additional majority-Black congressional district can be merged into the enacted 2021 Plan without making changes to six of the 14 districts: CD 1, CD 2, CD 5, CD 7, CD 8, and CD 12 are unaffected.”); id. ¶ 51 (“The



result leaves intact six congressional districts in the enacted plan, modifying only eight districts in the 2021 Plan to create an additional majority-Black district (Illustrative CD 6) encompassing all of Douglas County and parts of Cobb, Fayette, and Fulton Counties.”); Sept. 7, 2023, Morning Tr. 730:13–732:5 (Mr. Cooper’s testimony describing unchanged districts).

107. In fact, as Mr. Morgan’s report and testimony confirmed, nearly three-quarters of Georgia’s population would remain in their same numbered district under the illustrative plan. DX4 at 48–50; Sept. 13, 2023, Morning Tr. 1945:10–13.

108. The Court concludes that Mr. Cooper’s illustrative congressional plan complies with traditional districting principles, including those adopted by the General Assembly.

## **7. Racial Considerations**

109. The Court further concludes that Mr. Cooper did not subordinate traditional districting principles in favor of racial considerations.

110. Mr. Cooper was asked “to determine whether the African American population in Georgia is ‘sufficiently large and geographically compact’ to allow for the creation of an additional majority-Black congressional district in the Atlanta metropolitan area.” PX1 ¶ 8 (footnotes omitted); Sept. 7, 2023, Morning Tr. 717:14–17. At the preliminary-injunction hearing, he testified that he was not asked to



either “draw as many majority black districts as possible” or “draw every conceivable way of drawing an additional majority black district.” Feb. 7, 2022, Morning Tr. 98:17–24. And if in his expert opinion an additional majority-Black district could not have been drawn, Mr. Cooper testified that he would have reported that to counsel, as he has “done [] in other cases.” Id. 98:25–99:24.

111. Mr. Cooper testified that he considers race when creating an illustrative plan that would satisfy the first Gingles precondition because “[t]hat’s part of the inquiry.” Sept. 7, 2023, Morning Tr. 725:16–25. Mr. Cooper explained that he “need[s] to show that the district would be over 50 percent Black voting age population, while adhering to traditional redistricting principles.” Id.; see also Feb. 7, 2022, Morning Tr. 48:4–15 (Mr. Cooper testifying at preliminary-injunction hearing that race “is something that one does consider as part of traditional redistricting principles” because “you have to be cognizant of race in order to develop a plan that respects communities of interest, as well as complying with the Voting Rights Act[,] because one of the key tenets of traditional redistricting principles is the importance of not diluting the minority vote”).

112. Mr. Cooper testified that race did not predominate in his drawing of the illustrative plan because he merely considered it along with the traditional redistricting principles that he was “constantly balancing.” Sept. 7, 2023, Morning



Tr. 726:11–727:16. Indeed, Mr. Cooper explained that “in drafting this plan, [he] . . . attempted to balance all of the traditional redistricting principles so that no one principle predominates.” Sept. 7, 2023, Afternoon Tr. 822:19–24.

113. Defendants’ expert does not even contend that race predominated in Mr. Cooper’s illustrative plan. Sept. 13, 2023, Morning Tr. 1952:23–1953:17; see generally DX4. And for good reason: there is no evidence or indication that the illustrative plan subordinates traditional redistricting principles to racial considerations.

114. The Court finds that race did not predominate in the drawing of Mr. Cooper’s illustrative congressional plan.

#### **IV. Second Gingles Precondition: Political Cohesion**

115. Plaintiffs’ racially polarized voting expert, Dr. Maxwell Palmer, demonstrated that Black voters in Georgia are politically cohesive. Notably, the parties stipulated to the satisfaction of this precondition. Doc. No. 231 Attach. E ¶¶ 218, 220–21.

116. The Court has accepted Dr. Palmer as qualified to testify as an expert regarding redistricting and data analysis. Sept. 6, 2023, Morning Tr. 396:11–14, 397:8–9. The Court finds Dr. Palmer credible, his analysis methodologically sound,



and his conclusions reliable. The Court credits Dr. Palmer's testimony and conclusions.

117. Dr. Palmer conducted a racially polarized voting analysis of Congressional Districts 3, 6, 11, 13, and 14, both as a region (the "focus area") and individually. Doc. No. 231 Attach. E ¶ 214; PX2 ¶ 7; Sept. 6, 2023, Morning Tr. 413:18–414:5.

118. Dr. Palmer employed a statistical method called Ecological Inference ("EI") to derive estimates of the percentages of Black and white voters in the focus area that voted for each candidate in 40 statewide elections between 2012 and 2022. Doc. No. 231 Attach. E ¶ 217; PX2 ¶¶ 13, 15.

119. Dr. Palmer's EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. PX2 ¶ 11; Sept. 6, 2023, Morning Tr. 403:2–13.

120. Dr. Palmer first examined each racial group's support for each candidate to determine if members of the group voted cohesively in support of a single candidate in each election. PX2 ¶ 14. If a significant majority of the group supported a single candidate, he then identified that candidate as the group's candidate of choice. Id. Dr. Palmer next compared the preferences of white voters



to the preferences of Black voters. Id. Evidence of racially polarized voting is found when Black voters and white voters support different candidates. Id.

121. In every election examined, across the focus area and in each congressional district, Black voters had clearly identifiable candidates of choice. Doc. No. 231 Attach. E ¶¶ 218, 220–21; PX2 ¶ 16, tbl.1 & figs.2–3, 5; Sept. 6, 2023, Morning Tr. 414:25–416:13, 417:16–418:4.

122. On average, Black voters supported their candidates of choice with 98.4% of the vote. Doc. No. 231 Attach. E ¶ 219; PX2 ¶¶ 7,16.

123. Defendants' racially polarized voting expert, Dr. John Alford, does not dispute Dr. Palmer's conclusions as to the second Gingles precondition. DX8 at 3; Sept. 14, 2023, Morning Tr. 225:1–5.

124. Based on the stipulated facts, expert reports, and testimony provided in this case, the Court concludes that Black voters in the congressional focus area are politically cohesive.

#### **V. Third Gingles Precondition: Bloc Voting**

125. Dr. Palmer also demonstrated that white voters in the congressional focus area vote as a bloc usually to defeat Black-preferred candidates. This too has been stipulated by the parties. Doc. No. 231 Attach. E ¶¶ 222–227.



126. In each congressional district examined and in the focus area as a whole, white voters had clearly identifiable candidates of choice for every election examined. Doc. No. 231 Attach. E ¶ 223; PX2 ¶ 17 & figs.2-4; Sept. 6, 2023, Morning Tr. 414:25-416:13, 417:16-418:4.

127. In the elections Dr. Palmer examined, white voters were highly cohesive in voting in opposition to the Black candidate of choice. Doc. No. 231 Attach. E ¶ 222. On average, Dr. Palmer found that white voters supported Black-preferred candidates with an average of just 12.4% of the vote. Id. ¶ 223; PX2 ¶ 17. In other words, white voters on average supported their preferred candidates with an estimated vote share of 87.6%.

128. Overall, Dr. Palmer found “strong evidence of racially polarized voting across the focus area” as a whole and in each individual congressional district he examined. PX2 ¶¶ 7, 19; Sept. 6, 2023, Morning Tr. 398:17-21, 418:5-8.

129. As a result of this racially polarized voting, candidates preferred by Black voters have generally been unable to win elections in the focus area outside of majority-Black districts. Sept. 6, 2023, Morning Tr. 419:11-420:2; PX2 ¶ 22. Excluding the majority-Black Congressional District 13, Black-preferred candidates were defeated by white bloc voting in all 40 elections in the focus area that Dr. Palmer examined. Doc. No. 231 Attach. E ¶¶ 225, 227; PX2 ¶ 22.



130. Black-preferred candidates never won in any individual congressional district outside of Congressional District 13—that is, Black-preferred candidates lost in every district except the existing majority-Black district. Doc. No. 231 Attach. E ¶¶ 225, 227; PX2 ¶ 22.

131. Defendants' expert Dr. Alford does not dispute Dr. Palmer's conclusions as to the third Gingles precondition. DX8 at 3; Sept. 14, 2023, Morning Tr. 2251:6–9.

132. While Dr. Alford speculates that Dr. Palmer's results are more attributable to partisanship than race, see DX8 at 3–4, Dr. Alford does not dispute Dr. Palmer's quantitative results or analysis. Sept. 14, 2023, Morning Tr. 2250:17–19. And Dr. Alford agrees that the pattern of polarization observed between Black and white voters “across time and across office and across geography in Georgia is pretty remarkable.” Id. at 2251:10–22.

133. Using the returns from the 31 statewide elections, Dr. Palmer also analyzed whether Black voters in Mr. Cooper's illustrative Congressional District 6 could elect their candidates of choice. He concluded that Black-preferred candidates would have been consistently elected in the new majority-Black district with an average of 66.1% of the vote. PX2 ¶¶ 23–25; Sept. 6, 2023, Morning Tr.



421:6–11. Dr. Alford does not dispute Dr. Palmer’s performance analysis of the illustrative district. Sept. 14, 2023, Morning Tr. 2250:20–22.

134. Based on the stipulated facts, expert reports, and testimony provided in this case, the Court concludes that white voters in the congressional focus area vote as a bloc to usually defeat Black-preferred candidates, and that Black voters in Mr. Cooper’s illustrative Congressional District 6 would be able to elect their candidates of choice.

## **VI. Totality of Circumstances**

135. The Court finds that each of the relevant Senate Factors—which inform Section 2’s totality-of-circumstances inquiry—points decisively in Plaintiffs’ favor.

### **A. Senate Factor One: History of Voting-Related Discrimination**

136. Plaintiffs presented the expert report of Dr. Orville Vernon Burton to address Georgia’s history of voting-related discrimination. See PX4. Plaintiffs tendered Dr. Burton as qualified to testify as an expert on the history of race discrimination and voting to address Senate Factors 1, 2, 3, 6, and 7, which the Court accepts. Sept. 11, 2023, Afternoon Tr. 1424:8–10. The Court finds Dr. Burton credible, his analysis methodologically sound, and his conclusions reliable. The Court credits Dr. Burton’s testimony and conclusions. The Court also credits the



testimony of Dr. Adrienne Jones, an expert in the history of voting discrimination, race and politics, and Black political development proffered by the Alpha Phi Alpha Plaintiffs. See Sept. 8, 2023, Afternoon Tr. 1149:8-11, 1158:7-12.<sup>4</sup>

137. The Court finds that Georgia has an extensive and well-documented history of discrimination against its Black citizens that has touched upon their right to register, vote, and otherwise participate in the political process. “Throughout the history of the state of Georgia, voting rights have followed a pattern where after periods of increased nonwhite voter registration and turnout, the state has passed legislation, and often used extralegal means, to disenfranchise minority voters.” PX4 at 10; Sept. 11, 2023, Afternoon Tr. 1428:3-24. As Dr. Jones testified, Georgia has “used basically every expedient . . . associated with Jim Crow to prevent Black voters from voting in the state of Georgia.” Sept. 8, 2023, Afternoon Tr. 1161:20-1162:11.

138. As Dr. Burton’s and Dr. Jones’s un rebutted testimony and expert reports demonstrate, Georgia’s history of discrimination spans from the Reconstruction Era to the present day.

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<sup>4</sup> Dr. Jones’s testimony and portions of her report which she testified to (AX2), along with AX31 and AX266, were admitted into this case without objection. See Sept. 8, 2023, Afternoon Tr. 1244:10-1245:8; Sept. 12, 2023, Morning Tr. 1589:3-1591:21.



# **1. Political violence against Black Georgians**

139. The Court finds that political violence suppressed the ability of Black Georgians to participate equally in the political process.

140. Dr. Burton reported that between 1867 and 1872, “at least a quarter of the state’s Black legislators were jailed, threatened, bribed, beaten or killed.” PX4 at 14. This violence, often perpetrated by the Ku Klux Klan, enabled white Georgians to regain control of the levers of power in the state. Id. at 14–18. After seizing control of the state legislature through a campaign of violence and intimidation, white Democrats called a new constitutional convention chaired by the former Confederate secretary of state. That convention resulted in the Constitution of 1877, which effectively barred Black Georgians from voting through the implementation of a cumulative poll tax. Id. at 17–18; Sept. 11, 2023, Afternoon Tr. 1431:4–1433:17.

141. Violence, and the threat of it, “was constant for many Black Georgians after white Democrats controlled the state in the late 19th and first part of the 20th century.” PX4 at 23. In addition to mob violence, Dr. Burton’s report explained that Black Georgians endured a form of state-sanctioned violence through debt peonage and the convict lease system, which effectively amounted to “slavery by another name.” Id. And violence against Black Georgians surged after the First



World War, with many white Georgians holding “a deep antipathy” toward Black veterans. Id. at 25.

142. Between 1875 and 1930, there were 462 lynchings in Georgia. PX4 at 26. Only Mississippi had more reported lynchings during that time. Id. These lynchings “served as a reminder for Black Georgians who challenged the status quo, and in practice lynchings did not need to be directly connected to the right to vote to act as a threat against all Black Georgians who dared participate in the franchise.” Id.

## 2. Pre-Voting Rights Act

143. “While Georgia was not an anomaly, no state was more systematic and thorough in its efforts to deny or limit voting and officeholding by African-Americans after the Civil War.” PX4 at 10 (quoting Laughlin McDonald, A Voting Rights Odyssey: Black Enfranchisement in Georgia 2–3 (2003)). Although Georgia’s 1865 Constitution abolished slavery, it limited the franchise to white citizens and barred Blacks from holding elected office. Id. at 11. To be sure, the federal government forced Georgia to extend the right to vote to Black males in 1867. See id. at 12. But Georgia responded with a series of facially neutral policies that had the intent and effect of “render[ing] black participation in politics improbable.” Id. at 18.



144. Georgia's 1877 Constitution, for example, did not explicitly disenfranchise Black citizens but made it practically impossible for Black Georgians to vote by implementing a "cumulative poll tax for elections, so that potential voters had to pay all previous unpaid poll taxes before casting a ballot." PX4 at 17; Sept. 11, 2023, Afternoon Tr. 1433:13–17. Relatedly, Georgia prohibited Black voters from participating in the Democratic Primary. PX4 at 19. Because Georgia was a one-party Democratic state, the "white primary" effectively eliminated Black participation in the state's politics. Id.

145. In 1908, Georgia enacted the Felder-Williams Bill, which broadly disenfranchised many Georgians but contained numerous exceptions that allowed most whites to vote, including "owning forty acres of land or five hundred dollars' worth of property," "being able to write or to understand and explain any paragraph of the U.S. or Georgia Constitution," or being "persons of good character who understand the duties and obligations of citizenship." PX4 at 19–20. In conjunction with the Felder-Williams Bill, Georgia enacted a voter registration law allowing any citizen to "contest the right of registration of any person whose name appears upon the voters' list." Id. at 21.

146. These laws "were devastatingly effective at eliminating both Black elected officials from seats of power and Black voters from the franchise." PX4 at



22. At the time of the Felder-Williams Bill, there were 33,816 Black Georgians registered to vote. Id. Two years later, only 7,847 Black voters were registered – a decrease of more than 75%. Id. From 1920 to 1930, the combined Black vote total in Georgia never exceeded 2,700. Id. And by 1940, “the total Black registration in Georgia was an estimated 20,000, around two or three percent of eligible Black voters.” Id. By contrast, “fewer than six percent of white voters were disenfranchised by Georgia’s new election laws.” Id.

147. After the U.S. Supreme Court outlawed Georgia’s county-unit system in 1963, Georgia proposed alternative voting laws “that could operate to the same effect” as the county-unit system. PX4 at 33. Among those, the majority-vote rule, still in place today, requires a runoff if any candidate received only a plurality of the vote. Id. The bill’s sponsor explained such a requirement “would reduce the influence of the ‘Negro bloc vote.’” Id. In addition, Georgia imposed a literacy requirement, prohibited voter assistance except in the cases of physical disability, implemented a specific method of at-large voting called the numbered-post provision, and prohibited voters from taking sample ballots or lists of candidates into the voting booth, “to prevent . . . ‘bloc voting’ by Black Georgians.” Id. at 34.



### 3. Post-Voting Rights Act

148. Congress enacted the Voting Rights Act of 1965 to address these discriminatory practices. Among the Voting Rights Act's provisions was the preclearance requirement that prohibited certain jurisdictions with well-documented practices of discrimination—including Georgia—from making changes to their voting laws without approval from the federal government. PX4 at 36; Sept. 11, 2023, Afternoon Tr. 1436:11–1437:6.

149. The Voting Rights Act, however, “did not translate to instant success” for Black political participation. PX4 at 36. Among states subject to preclearance in their entirety, Georgia ranked second only to Alabama in the disparity in voter registration between its Black and white citizens by 1976. *Id.*; Sept. 11, 2023, Afternoon Tr. 1437:10–1438:3.

150. And these disparities were directly attributable to Georgia's continued efforts to enact policies designed to circumvent the Voting Rights Act's protections and suppress the rights of Black voters. PX4 at 36–39. In fact, “Georgia resisted the Voting Rights Act . . . [and] for a period, it refused to comply.” Sept. 8, 2023, Afternoon Tr. 1163:9–1164:1. For example, a study found that local jurisdictions in Georgia and Mississippi went ahead with election changes despite a pending preclearance request. PX4 at 39. Even still, from 1965 to 1981, the



Department of Justice objected to more voting changes from the state of Georgia than any other state in the country. Id.

151. The Court finds that Georgia's efforts to discriminate against Black voters persisted well past 1981. During the process of reauthorization of the Voting Rights Act in 2006, Georgia legislators "took a leadership position in challenging the reauthorization of the act." Sept. 8, 2023, Afternoon Tr. 1164:2-17. As Dr. Jones reminds us, "Georgia's resistance to the VRA is consistent with its history of resisting the expansion of voting rights to Black citizens at every turn." AX2 at 9.

152. After the U.S. Supreme Court effectively ended the Voting Rights Act's preclearance requirement in Shelby County v. Holder, 570 U.S. 529 (2013), Georgia was the only former preclearance state that proceeded to adopt "all five of the most common restrictions that impose roadblocks to the franchise for minority voters, including (1) voter ID laws, (2) proof of citizenship requirements, (3) voter purges, (4) cuts in early voting, and (5) widespread polling place closures." PX4 at 48-49; Sept. 11, 2023, Afternoon Tr. 1441:25-1442:12.

153. Dr. Burton discussed several of these restrictions in his report. See PX4 at 49-55. For example, "[i]n a 2015 memo to local election officials, then-Secretary of State Kemp encouraged counties to reduce voting locations, noting that 'as a result of the Shelby vs. Holder [sic] Supreme Court decision, [counties



are] no longer required to submit polling place changes to the Department of Justice for preclearance.” Id. at 49. Later that year, Georgia began closing polling places in primarily black neighborhoods. Id. at 49–50. “By 2019, eighteen counties in Georgia closed more than half of their polling places, and several closed almost 90 percent.” Id. at 50 (internal quotations omitted). These closures depressed turnout in affected areas and led to substantially longer waiting times at the polls. According to one study in 2020, “about two-thirds of the polling places that had to stay open late for the June primary to accommodate waiting voters were in majority-Black neighborhoods, even though they made up only about one-third of the state’s polling places.” Id. at 50.

154. Like Dr. Burton, Dr. Jones testified to several voting restrictions present in Georgia today that disproportionately impact Black voters, noting that “Georgia has a habit of coming up with a new method [of voter restrictions] in the event that an older method is ruled unconstitutional . . . or a particular method comes to prove not to be effective.” Sept. 8, 2023, Afternoon Tr. 1164:23–1165:4; see also id. at 1165:5–15 (“Some of the methods that the State is using today are exactly the same as those that were used historically. And my point that the State updates its methods when it finds the old methods don’t work continues to be the case.”). One of those restrictions is voting purges. Georgia engaged in “systematic efforts



to purge the voting rolls in ways that particularly disadvantaged minority voters and candidates” in the aftermath of Shelby County. PX4 at 50. In the period from 2012 to 2018, Georgia removed 1.4 million voters from the eligible voter rolls – and these purges disproportionately impacted Black voters. Id. at 50–51; Sept. 8, 2023, Afternoon Tr. 1180:10–1181:19 (noting these purges “might be the largest mass disenfranchisement in U.S. history”).

155. Georgia also enacted Senate Bill (“SB”) 202 in the spring of 2021 following significant increases in Black voter turnout. SB 202 impacts methods of voting that Black voters used extensively in the 2020 general election. Among other things, SB 202 (1) reduced the time available to request an absentee ballot, (2) increased identification requirements for absentee voting, (3) banned state and local governments from sending unsolicited absentee ballot applications, (4) limited the use of absentee ballot drop boxes, (5) banned mobile polling places, and (6) prohibited anyone who is not a poll worker from giving food or drink to voters in line to vote. PX4 at 53.

156. Dr. Burton testified, and the Court agrees, that SB 202, while not yet found to be discriminatory by any court, resembles other race neutral laws from Georgia’s past that had a disparate effect on Black voters. Sept. 11, 2023, Afternoon Tr. 1442:16–1443:25. For example, SB 202 will reduce the number of drop boxes



available in the state. The number of drop boxes in the four core Metro Atlanta counties – Cobb, DeKalb, Fulton, and Gwinnett – will drop from the 111 available in the 2020 election to 23. PX4 at 53–54. In Fulton County alone, the number will drop from 38 to 8. Id. at 54. The growth of Georgia’s nonwhite population over the past 20 years and the corresponding increase in minority voting power has provided a “powerful incentive” for those in power at the state and local level to “place hurdles in the path of minority citizens seeking to register and vote.” Id. at 60. And the Court credits Dr. Burton’s analysis demonstrating that the passage of SB 202 parallels a recognized pattern: Following periods of increased Black voter registration and turnout, the state implements methods to disfranchise and reduce the influence of Black voters. Sept. 11, 2023, Afternoon Tr. 1428:3–24; 1442:16–1443:25.

#### **4. Redistricting-Related Discrimination**

157. The Court also finds that Georgia used redistricting as a means to suppress Black political influence, and that these efforts have continued into the 21st century.

158. Georgia’s legislative and congressional districts were grievously malapportioned in the years preceding the enactment of the Voting Rights Act. See PX4 at 31–32; Feb. 10, 2022, Morning Tr. 11:21–12:18. In 1957, the Atlanta-based



Congressional District Five was the second-most populous congressional district in the United States, with an estimated population of 782,800 – about twice the size of the average congressional district. PX4 at 32. By 1960, Fulton County was the most underrepresented county in a state legislature of any county in the United States. Id. DeKalb County was the third-most underrepresented county. Id.

159. Georgia's redistricting plans were subject to the Voting Rights Act's preclearance requirement. In the 40 years following its enactment, Georgia did not complete a redistricting cycle without objection from the Department of Justice. PX4 at 40–44. The Atlanta metropolitan area was often the focal point of Georgia's efforts to suppress Black political influence through redistricting. For example, the Department of Justice rejected Georgia's 1971 congressional plan, which cracked voters throughout Congressional Districts Four, Five, and Six to give the Atlanta-based Fifth District a substantial white majority. Id. at 40; see also Georgia v. United States, 411 U.S. 526, 541 (1973) (affirming that Georgia's 1972 reapportionment plan violated Section 5 of Voting Rights Act). It also rejected the congressional redistricting plan passed by Georgia following the 1980 Census, which contained white majorities in nine of the state's ten congressional districts, even though more than a quarter of Georgia's population was Black. PX4 at 40; see also Busbee v. Smith, 549 F. Supp. 494, 517 (D.D.C. 1982) (three-judge panel)



(denying preclearance based on evidence that Georgia's redistricting plan was product of purposeful discrimination in violation of Voting Rights Act), aff'd, 459 U.S. 1166 (1983). And following the 2000 redistricting cycle, a district court in the District of Columbia refused to preclear the General Assembly's Senate plan that decreased the BVAP in the districts surrounding Chatham, Albany, Dougherty, Calhoun, Macon and Bibb, finding "the presence of racially polarized voting" and that "the State ha[d] failed to demonstrate by a preponderance of the evidence that the reapportionment plan for the State will not have a retrogressive effect." PX4 at 43 (quoting Georgia v. Ashcroft, 195 F. Supp. 2d 25, 94 (D. D. C. 2002), aff'd, King v. Georgia, 537 U.S. 1100 (2003)).

160. In 2015, after Shelby County, the Georgia General Assembly engaged in mid-cycle redistricting. PX4 at 44. The Georgia General Assembly reduced the Black and Latino voting-age populations in House Districts 105 and 111, both of which had become increasingly diverse over the prior half-decade. Georgia State Conf. of NAACP v. Georgia, 312 F. Supp. 3d 1357, 1363 (N.D. Ga. 2018). The court found that this redistricting effort, drawn by Ms. Wright, "moved many black



voters from districts where their votes would have made an impact into districts where they did not.” Id. at 1369; see Feb. 11, 2022, Morning Tr. at 12:18–13:20.<sup>5</sup>

**B. Senate Factor Two: Racially Polarized Voting**

161. The Court also finds that Plaintiffs have established, and Defendants agree, that there is an extremely large degree of racial polarization in Georgia elections.

162. As Dr. Palmer testified, racially polarized voting is “when majorities of voters of different racial or ethnic groups vote cohesively, that is, majorities of each group vote for the same candidates. And then polarization is when . . . voters of different groups are supporting different candidates.” Feb. 10, 2022, Morning Tr. 48:22–49:4; see also Sept. 6, 2023, Morning Tr. 425:5–9 (“If you have Black voters cohesively supporting one candidate and white voters cohesively opposing that candidate, then I consider that racially polarized voting.”).

163. As discussed at length above, see supra ¶¶ 115–134, voting in Georgia is racially polarized because Black and white voters cohesively support opposing

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<sup>5</sup> While Defendants point out that the plaintiffs voluntarily dismissed the case, see Sept. 11, 2023, Afternoon Tr. 1526:11–14, the district court’s opinion was never vacated or reversed.



candidates. There is no factual dispute about the existence of racial polarization in the focus area, the relevant congressional districts, and Georgia more generally.

164. By his own definition, Dr. Alford does not dispute that voting is racially polarized in Georgia. He defines racially polarized voting as “clear cohesion on the minority group, typically in support of minority candidates, and a clear cohesion in the opposite direction, or bloc voting on behalf of the majority, that is, by white voters.” Sept. 14, 2023, Morning Tr. 2252:6–11.

165. As discussed in the Conclusions of Law below, see infra ¶¶ 317–326, to the extent that the reasons why Black and white voters overwhelmingly support opposing candidates in Georgia is relevant to the totality-of-the-circumstances inquiry, it is Defendants’ burden to prove that political ideology is the only reason this racially polarized voting exists. This they have failed to do.

166. The only evidence Defendants offered on this issue is Dr. Alford’s observation that Black voters overwhelmingly prefer Democratic candidates and white voters overwhelmingly support Republican candidates. DX8 at 4–5; Sept. 14, 2023, Morning Tr. 2252:6–2254:5 (Dr. Alford agreeing his opinion on partisan polarization is based solely on his observations regarding the candidate’s race and the candidate’s party). But the fact that Black and white voters overwhelmingly support different political parties in Georgia tells us nothing about the cause of



Georgia's racially polarized voting, and it certainly does not exclude the possibility that race, and issues related to race, contribute to that polarization.

167. Dr. Alford did not perform his own analysis of voter behavior. He did not examine the candidates' platforms on any issues or the political party's platforms on any issues. Sept. 14, 2023, Morning Tr. at 2252:22–2253:3. Nor did he examine the history of voting-related discrimination in Georgia or the extent to which racial appeals are used by political parties to persuade voters to affiliate with them. Id. at 2253:4–24. Dr. Alford's conclusion that political party causes the clearly identifiable racial polarization and not race is thus speculative and unsupported.

168. Other courts have discounted Dr. Alford's analyses on this ground. See, e.g., Robinson v. Ardoin, 605 F. Supp. 3d 759, 840 (M.D. La. 2022) (“[Dr. Alford] does not dispute that voting in Louisiana is polarized as between Black and White voters; rather, it is his opinion that polarized voting in Louisiana is attributable to partisanship, not race. The Court does not credit this opinion as helpful, as it appears to answer a question that Gingles II does not ask and in fact squarely rejects, namely, why Black voters in Louisiana are politically cohesive.” (emphasis in original) (footnote omitted)), appeal docketed, No. 22-30333 (5th Cir. June 7, 2022); Lopez v. Abbott, 339 F. Supp. 3d 589, 610 (S.D. Tex. 2018) (“At this



juncture, the Court is only concerned with whether there is a pattern of white bloc voting that consistently defeats minority-preferred candidates. That analysis requires a determination that the different groups prefer different candidates, as they do. It does not require a determination of why particular candidates are preferred by the two groups.”); Texas v. United States, 887 F. Supp. 2d 133, 181 (D.D.C. 2012) (“[T]he fact that a number of Anglo voters share the same political party as minority voters does not remove those minority voters from the protections of the VRA. The statute makes clear that this Court must focus on whether minorities are able to elect the candidate of their choice, no matter the political party that may benefit.”), vacated on other grounds, 570 U.S. 928 (2013).

169. Moreover, the Court finds that racial attitudes and racialized politics do influence the historical and ongoing polarization among Black and white Georgians.

170. As Dr. Jones noted, “the symmetry between [Georgia’s] historical situation and the current situation makes it clear that the parties are divided up along racial lines.” Sept. 8, 2023, Afternoon Tr. at 1204:15–1205:8. Georgia is, and has always had, conservative whites in power—first as part of the Democratic Party, then, as a result of the party’s embrace of civil rights policies, as part of the Republican Party. PX4 at 58–62. As Dr. Burton testified, the partisan alignment of



Black and white voters in Georgia is due in part to historical positions those two parties have taken on issues related to race, such as civil rights legislation. Feb. 10, 2022, Morning Tr. 20:13–21:10; Sept. 11, 2023, Afternoon Tr. 1456:1–1457:6.

171. Notably, Dr. Alford did not even review Dr. Burton's report on the extent to which race has informed partisan affiliation and voting patterns in Georgia, let alone offer any analysis to rebut it. Sept. 14, 2023, Morning Tr. 2253:25–2254:5. And in an exchange with the Court, Dr. Alford agreed that people in Georgia may be voting along racial lines because voters of each race opt for candidates who they believe will represent their interests, follow their philosophy, and respond to their needs. Id. at 2183:4–9; 2185:10–2186:4.<sup>6</sup>

172. That is still the case today: Members of the Democratic and Republican Parties diverge deeply on issues inextricably linked to race both on a national level and in Georgia in particular. Feb. 10, 2022, Morning Tr. at 21:11–22:8; Sept. 11, 2023, Afternoon Tr. 1458:15–1462:7; PX4 at 74–76.

173. Mr. Carter testified that in his experience in Georgia politics, Black voters tend to vote for Democrats. Sept. 8, 2023, Morning Tr. 972:9–19. He also testified that in order to get elected in a majority-Black district, the candidate must

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<sup>6</sup> The Court applies its exchange with the witnesses to all the cases before it in this coordinated trial.



understand the “needs and wants” of the Black residents in the district and be responsive to those needs. Id. at 990:2–24. The obvious conclusion, from history and the evidence presented, is that the Democratic Party today remains the party more responsive to Black voters’ needs and interests, hence the striking levels of Black voter cohesion for Democratic candidates.

174. Mr. Allen’s testimony supports this conclusion. He testified that in Georgia today, “there’s only two choices when you’re talking about parties and there’s one that’s obviously not as aligned to the needs and issues of the Black voters.” Sept. 8, 2023, Morning Tr. 1026:14–18.

175. Defendants argue that Herschel Walker’s nomination as the Republican candidate for the 2022 Senate race demonstrates that race no longer drives party choices or indicates a lack of racism in Georgia politics. Sept. 14, 2023, Morning Tr. 2190:21–2191:5 (Dr. Alford opining that some may see Republican voters supporting a Black candidate as evidence that “the Voting Rights Act has worked.”). The Court is unpersuaded. Dr. Burton explained that “Republican leaders in Georgia admittedly supported Walker because they wanted to ‘peel[ ] off a handful of Black voters’ and ‘reassure white swing voters that the party was not racist.’” PX4 at 61. The strategy ultimately failed. In that race, Senator Warnock undoubtedly remained the candidate of Black voters and Walker the candidate of



white voters – which reveals only the same pattern observed above: that “the two parties are intricately defined by race.” Id. at 62.

### **C. Senate Factor Three: Discriminatory Voting Procedures**

176. The Court further finds that Georgia—from the end of the Civil War to the present day—has enacted a wide variety of discriminatory voting procedures that have burdened Black Georgians’ right to vote, including unusually large election districts and majority-vote requirements. See Sept. 11, 2023, Afternoon Tr. 1429:11–21. The Court incorporates the voting procedures discussed in its section on Senate Factor 1, see supra ¶¶ 148–156. The Court examines a subset of those procedures in detail here.

177. The malapportionment of districts, the passage of the majority-vote rule and switch to at-large voting, the use of exact match procedures, and SB 202’s restrictions on absentee voting are all examples of Georgia’s attempts to use “voting practices or procedures that tend to enhance the opportunity for discrimination” against Black voters.

178. Dr. Burton testified at the preliminary injunction hearing that Georgia deliberately malapportioned its legislative and congressional districts to dilute the votes of Black Georgians throughout the twentieth century. Feb. 10, 2022, Morning Tr. 12:7–18. In 1957, Georgia’s Congressional District 5—consisting of Fulton,



DeKalb, and Rockdale Counties – was the second most populous congressional district in the United States. PX4 at 32. And by 1960, Fulton County was the most underrepresented county in its state legislature of any county in the United States; DeKalb County was in third place. Id.

179. Georgia further manipulated the structure of its elections to suppress the political power of Black Georgians. After enactment of the Voting Rights Act, numerous Georgia counties with sizeable Black populations shifted from voting by district to at-large voting, ensuring that the white population could elect all the representatives in the district at issue. PX4 at 37. As Dr. Burton’s report discusses in detail, Georgia also adopted a majority-vote requirement, numbered-post voting, and staggered voting in the 1960s and 70s to limit Black voting strength. Id. at 37–38.

180. The majority-vote rule was implemented shortly following the U.S. Supreme Court’s decision that outlawed Georgia’s county-unity system to “reduced the influence of the ‘Negro bloc vote.’” PX4 at 33. Dr. Jones’s observation that the State updates its methods once the old ones are outlawed rings true. See Sept. 8, 2023, Afternoon Tr. 1165:5–15.

181. The Court further finds that these efforts have persisted well into the 21st century. Following the 2020 elections after Black voters significantly used



absentee ballots, the state implemented SB 202, which added more stringent identification requirements to requesting an absentee ballot, limited who may help the voter with the process, and shortened the amount of time voters have to return their ballot, and significantly reduced the number of drop boxes available to voters. Sept. 8, 2023, Afternoon Tr. 1185:9–1186:16. These methods historically have disproportionately impacted Black voters and have the same effects today. Id. at 1187:13–22. As Dr. Jones testified, the disparity between Black and white voters has grown following SB 202’s passage. AX2 at 37. The May 2022 primary election saw the biggest turnout disparity in Georgia between Black and white voters in more than a decade. Id.; see also Sept. 8, 2023, Afternoon Tr. 1186:21–1187:22.

182. One form of voter disenfranchisement by Georgia in recent years which disproportionately affected minority voters was Georgia’s “exact matching” procedures. PX4 at 51–52. In 2018, for example, the Secretary conducted an internal review of voter files and concluded that approximately 70% of applicants in pending status for failed verification were Black. AX2 at 25–26; Sept. 11, 2023, Morning Tr. 1283:3–10. Georgia also shuttered polling places in predominantly Black communities beginning in 2015, perpetrated extensive purges from the State’s voter registration rolls that disproportionately affected



Black voters from 2012 to 2018, and enacted SB 202 in the spring of 2021, which restricted methods of voting used by Black Georgians to vote in record numbers during the 2020 election. PX4 at 49–54. SB 202 also authorized the State Election Board, and by extension the General Assembly, to replace county election board members. Id. at 54–55. By June 2021, Georgia county commissions had replaced ten county election officials, most Democrats and half of them Black. Id.

**D. Senate Factor Four: Candidate Slating**

183. There is no slating process involved in Georgia’s congressional elections.

**E. Senate Factor Five: Contemporary Socioeconomic Disparities**

184. The Court further finds that Black Georgians bear the effects of discrimination in areas like education, employment, and health, which hinder their ability to participate effectively in the political process.

185. Plaintiffs submitted the expert report of Dr. Loren Collingwood, who analyzed data from the American Community Survey (“ACS”) along with voter-turnout data from the Georgia Secretary of State’s office. PX5 at 3. Plaintiffs proffered Dr. Collingwood as qualified to testify as an expert on demographics, political science, and applied statistics, which the Court accepts. Sept. 7, 2023, Morning Tr. 671:18–21, 673:5–7. The Court finds Dr. Collingwood credible, his



analysis methodologically sound, and his conclusions reliable. The Court credits Dr. Collingwood's testimony and conclusions.

186. The Court finds that Plaintiffs have offered un rebutted evidence that Black Georgians are disadvantaged socioeconomically relative to non-Hispanic white Georgians across multiple metrics. PX5 at 3; Sept. 7, 2023, Morning Tr. 674:12-25.

187. According to Census estimates, the unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%). PX5 at 4, & tbl.1; Doc. No. 231 Attach. E ¶ 342.

188. According to Census estimates, White households are twice as likely as Black households to report an annual income above \$100,000. PX5 at 4, & tbl.1; Doc. No. 231 Attach. E ¶ 343.

189. According to Census estimates, Black Georgians are more than twice as likely – and Black children in particular more than three times as likely – to live below the poverty line. PX5 at 4, & tbl.1; Doc. No. 231 Attach. E ¶ 344.

190. According to Census estimates, Black Georgians are nearly three times more likely than white Georgians to receive SNAP benefits. PX5 at 4, & tbl.1; Doc. No. 231 Attach. E ¶ 345.



191. According to Census estimates, Black adults are more likely than white adults to lack a high school diploma – 13.3% as compared to 9.4%. PX5 at 4, & tbl.1; Doc. No. 231 Attach. E ¶ 346.

192. According to Census estimates, 35% of white Georgians over the age of 25 have obtained a bachelor's degree or higher, compared to only 24% of Black Georgians over the age of 25. PX5 at 4, & tbl.1; Doc. No. 231 Attach. E ¶ 347.

193. Black Georgians are more likely to report a disability than white Georgians (11.8% compared to 10.9%) and are more likely to lack health insurance (18.9% compared to 14.2%, among 19-to-64-year-olds). PX5 at 4.

194. The Court further finds that Black Georgians participate in the political process at substantially lower rates than whites Georgians. PX5 at 3. Black Georgians vote at significantly lower rates than White Georgians, and this is true at statewide, county, and precinct levels – including in the Atlanta MSA. Id. at 3, 7–19. Dr. Collingwood also found racial disparities in other forms of voter participation: Black Georgians are less likely to attend political meetings, display political signs like yard signs and bumper stickers, contact public officials, and donate money to political campaigns. Id. at 34–38.

195. The Court is persuaded that the socioeconomic disparities discussed above are a cause of lower political participation rates by Black Georgians. PX5 at



7, 24–33. As Dr. Collingwood explained in his expert report, there is extensive literature in political science demonstrating a strong and consistent link between socioeconomic status and voter turnout. Id. at 7. For example, studies have shown that wealth and education drive donation behavior, campaign volunteering, and voting. Id. Other research has shown that neighborhoods with higher shares of home foreclosures during the 2008 financial crisis subsequently experienced drops in voter turnout. Id.

196. In addition, Dr. Collingwood testified that there is a statistically significant relationship between education levels and voter turnout: as Black individuals' education goes up, so does their voter turnout. Sept. 7, 2023, Morning Tr. at 688:2–14. The same is true for income; in areas with more Black wealth, the voter turnout is much higher compared with poor Black neighborhoods. Id. at 688:15–689:3.

197. The Court agrees with Dr. Collingwood's conclusion that "[t]his overwhelming academic literature shows that the socioeconomic disadvantages suffered by Black Georgians affect their ability to participate in the political process." PX5 at 7.

198. Defendants do not dispute Dr. Collingwood's analysis or conclusions. Instead, they point to recent successes of Black candidates, such as Senator



Warnock, and record-breaking turnout of Black voters during the recent elections as evidence that Black Georgians are no longer hindered from participating in the political process. See, e.g., Sept. 11, 2023, Afternoon Tr. at 1259:7–19 (success of Warnock and Walker during primaries); 1261:17–23 (Black voter turnout “unprecedented” and success of Black and Black-preferred candidates in 2022 and 2022 general and runoff elections); 1512:7–1513:14 (defense counsel identifying success of Senator Warnock and Congresswoman McBath as evidence of equal openness). However, as Dr. Jones testified, new restrictions were put into place after Black and Black-preferred candidates won in 2020, demonstrating the state’s efforts to diminish Black opportunity; and this recent advancement in voter turnout does not indicate that there are no longer barriers to voting. Id. at 1285:13–20. And while Senator Warnock won his election, the Court cannot ignore the slim margins by which he won and the demographics of the voters who voted for him. See, e.g., Sept. 11, 2023, Afternoon Tr. 1467:5–16 (“[I]t was an extraordinary election, but he barely, barely won.”).

199. Defendants also proffer the argument that lower turnout and participation rates may be due to Black voters’ individual decisions. Sept. 7, 2023, Morning Tr. at 694:9–696:13 (counsel for Defendants arguing “candidate matters a lot when looking at voter turnout in any election”); Sept. 11, 2023, Afternoon Tr.



at 1526:24–1527:2 (“We have turnout numbers that can match or be very nearly at white voters['] levels when Black voters choose to do so in Georgia[.]”) (emphasis added). The Court rejects the suggestion that the observed racial disparities in voter turnout are due to Black voters choosing not to vote. Instead, the Court adopts Dr. Burton’s thoughtful words: “[I]t amazes me why Black people love democracy in the US . . . they never give up and keep fighting[.]” Sept. 11, 2023, Afternoon Tr. 1498:11–1499:3.

200. Based on the evidence and testimony presented, the Court finds that Black Georgians bear the effects of discrimination in multiple areas which hinder their ability to participate effectively in the political process, and the process remains not equally open to them.

#### **F. Senate Factor Six: Racial Appeals in Georgia Campaigns**

201. The Court further finds that Georgia’s political campaigns have been characterized by both overt and subtle racial appeals.

202. Georgia has a long and sordid history of such appeals in political campaigns that continues to this day. Dr. Burton’s expert report discusses some of the earliest racial appeals in Georgia politics in response to the expansion of Black rights after the Civil War. See, e.g., PX4 at 13–15. Dr. Burton further testified that modern racial appeals in Georgia are rooted in the political realignment that



followed from Democrats' support for civil rights legislation in the 1960s, after which white Georgians overwhelmingly switched to the Republican Party. Feb. 10, 2022, Morning Tr. 20:18–21:13; Sept. 11, 2023, Afternoon Tr. 1444:23–1447:21.

203. This realignment gave rise to the “Southern strategy,” which refers to efforts by Republican politicians to use racialized politics and race-based appeals to attract racially conservative white voters. PX4 at 58–60. Dr. Burton explained that “[t]he effectiveness of . . . the ‘Southern strategy’ had a profound impact on the development of the nearly all-white Republican Party in the South.” Id. at 59. Associating the Democratic Party with the Black community allowed the Republican Party to become the majority party in what had traditionally been the solid Democratic South—and Republican politicians continue to employ this strategy today. Id.

204. Dr. Burton further explained that Georgia is a “flash point of this modern strategy.” PX4 at 60. The rise of the Republican Party in Georgia “was grounded on fiscal conservatism, opposition to integration (particularly busing), and a growing demand among white suburbanites for ‘law and order.’” Id. at 64–65. And notwithstanding substantial increases in its nonwhite population over the past two decades, Georgia remains a majority-white state – such that Republicans



continue to benefit from a pattern of voting that is polarized along racial lines. Id. at 60–61.

205. Like Dr. Burton, Dr. Jones concluded that racial resentment and fear have often been incorporated into political campaign strategies in the State of Georgia and political campaigns continue to be characterized by racial appeals. Sept. 8, 2023, Afternoon Tr. 1161:11–13; AX2 at 37.

206. Dr. Jones and Dr. Burton provided numerous examples racial appeals in recent Georgia campaigns, demonstrating that racial appeals remain a feature of Georgia politics today. Many of these appeals attempted to galvanize white voters against gubernatorial candidate Stacey Abrams in 2018. For example, a robocall targeting Abrams imitated Oprah Winfrey and used references such as the “the magical Negro,” and “poor man’s Aunt Jemima.” Sept. 8, 2023, Afternoon Tr. 1195:7–1196:1; AX2 at 38; PX4 at 68. Later in that campaign, her opponent, now-Governor Kemp, circulated photos of members of the New Black Panther Party marching in support of Ms. Abrams—even though she had never associated with that group. Sept. 8, 2023, Afternoon Tr. 1196:2–19; AX2 at 28; PX4 at 67.

207. Other examples abound. During the 2021 runoff election for the U.S. Senate, now-Senator Raphael Warnock was the target of both overt and subtle racial appeals. Dr. Jones testified to an ad by Senator Warnock’s opponent, former



Senator Kelly Loeffler, that juxtaposed “safe America” – depictions of young, mostly white children with their hand over their heart pledging allegiance to the flag – against “a dangerous Raphael Warnock” by darkening his skin and associating him with communism, protesting, and unrest. Sept. 8, 2023, Afternoon Tr. 1193:19–1195:5; AX31. Warnock’s opponent also created two versions of a negative ad against him – one with Warnock’s skin artificially darkened and one with his skin retaining its actual complexion. AX2 at 39–40.

208. And these appeals continued in 2022. In his campaign against Senator Warnock, Herschel Walker, the Black Republican candidate, ran an advertisement that aimed to distinguish “between the Black candidate and himself, who is the candidate for the GOP, so that he can . . . associate himself with the white voter and make sure that the white voter understands that he’s the standard bearer for the GOP, while making the Black candidate look menacing and problematic and still tiredly complaining about racism in the modern day.” Sept. 8, 2023, Afternoon Tr. 1198:1–1199:10; AX2 at 43–44. Governor Kemp, moreover, darkened Abrams’s face in ads and repeatedly attacked Abrams in the general election as “upset and mad,” evoking the trope and dog whistle of the “angry Black Woman.” PX4 at 70.

209. The Court finds that these examples, among others discussed in Dr. Burton’s expert report, see PX4 at 67–74, and submitted as evidence by Plaintiffs,



see AX31; AX266, show that racial appeals continue to play an important role in Georgia's political campaigns. Sept. 8, 2023, Afternoon Tr. 1200:22–25.

**G. Senate Factor Seven: Underrepresentation of Black Georgians in Elected Office**

210. The Court finds that Black Georgians have been historically underrepresented in elected office – a trend that continues to this day.

211. In Georgia's history, only 12 Black people have been elected to Congress. Sept. 8, 2023, Afternoon Tr. 1201:1–5.

212. At the time of the Voting Rights Act's passage, Black Georgians constituted 34% of the voting-age population, and yet the state had only three elected Black officials. PX4 at 35.

213. By 1980, Black Georgians comprised only 3% of county officials in the state, the vast majority of whom were elected from majority-Black districts or counties. PX4 at 41. That particular trend has not changed: while more Black Georgians have been elected in recent years, those officials are almost always from majority-minority districts. In the 2020 General Assembly elections, for example, none of the House's Black members was elected from a district where white voters exceeded 55% of the voting-age population, and none of the State Senate's Black members was elected from a district where white voters exceeded 47% of the voting-age population. Id. at 55–56.



214. Although Black Georgians comprise more than 33% of the state's population, the Georgia Legislative Black Caucus has only 14 members in the Georgia State Senate—25% of that chamber—and 41 members in the Georgia House of Representatives—less than 23% of that chamber. Doc. No. 231 Attach. E ¶ 348; Sept. 8, 2023, Afternoon Tr. 1201:21–25.

215. Black officials have been underrepresented across Georgia's statewide offices as well. Georgia has had 77 governors, none of whom has been Black. Doc. No. 231 Attach. E ¶ 349.

216. And only three Black people have been elected to non-judicial statewide office in Georgia's history: Labor Commissioner Mike Thurmond, Public Service Commissioner David Burgess, and Attorney General Thurbert Baker. Sept. 8, 2023, Afternoon Tr. 1202:1–8.

217. Senator Raphael Warnock is the first Black Georgian to serve Georgia in the U.S. Senate—after more than 230 years of white senators. Doc. No. 231 Attach. E ¶ 350.

#### **H. Senate Factor Eight: Official Nonresponsiveness**

218. The Court further finds that there is a significant lack of responsiveness on the part of elected officials to the particularized needs of Black Georgians.



219. Dr. Collingwood's expert report demonstrated significant socioeconomic disparities between Black and white Georgians, which contribute to the lower rates at which Blacks engage their elected representatives. PX5 at 35, 37. As Dr. Collingwood explained, "such clear disadvantages in healthcare, economics, and education" demonstrates that "the political system is relatively unresponsive to Black Georgians." Id. at 4; see also id. at 7 ("If the [political] system did respond, we would expect to see fewer gaps in both health and economic indicators and a reduction in voter turnout gaps."); Sept. 7, 2023, Morning Tr. 675:14-24.

220. Dr. Collingwood testified that lower Black voter turnout "typically means that elected officials as a whole are going to be less responsive to you" and thus perpetuates "these same gaps [i]n [] economic, health, [and] educational outcomes." Sept. 7, 2023, Morning Tr. 690:2-20.

221. The Court further finds that the dilution of Black voting power in the challenged congressional plan only exacerbates this nonresponsiveness.

222. Mr. Carter explained that cracking Black voters into districts with a significant number of competing interests ensures that these voters will "not . . . have the amount of responsiveness that [they] would otherwise have." Feb. 10, 2022, Afternoon Tr. 132:11-15; see also Sept. 8, 2023, Morning Tr. 975:18-976:2 (Mr.



Carter recalling his preliminary injunction testimony “about what happens when a group of voters with different interests are sort of buried as an appendage in a district that’s very different from where they live”). As Mr. Carter aptly noted, “the only way in these legislative districts . . . given the super racially polarized voting, that you’re going to have people be able to ensure that there’s responsiveness to the Black community . . . is to make sure that that community . . . gets to pick the elected officials.” Sept. 8, 2023, Morning Tr. 992:24–993:10.

223. And Mr. Allen testified that the reconfiguration of District 6 in the enacted map “made it into a district. . . that is going to be less responsive to the needs of the Black residents in that community.” Id. at 1026:3–13. Mr. Allen noted that the reconfiguration resulted in “no electoral accountability” to Black voters and their needs. Id.

#### **I. Senate Factor Nine: Absence of Justification for SB 2EX**

224. The Court further finds that Georgia’s justifications for SB 2EX are tenuous. Defendants offer no evidence justifying the General Assembly’s failure to draw an additional majority-Black congressional district in the western Atlanta metropolitan area.

225. Defendants’ map drawer for SB 2EX, Gina Wright, agreed that decisions about how to balance competing interests on a redistricting plan may



“come down to a policy decision for what the legislator who is drawing it wants to do.” Sept. 12, 2023, Morning Tr. 1603:24–1604:13. Ms. Wright also testified that political performance was an important consideration of the chairs in the creation of the enacted congressional plan. *Id.* at 1668:20–23, 1671:5–9. And she testified to other considerations during the map drawing process, such as mountain ranges and population equality. *Id.* at 1671:9–1675:2.

226. None of these justifications relieve Defendants of their obligation to comply with the VRA. And Mr. Cooper’s illustrative plan demonstrates that it is possible to create a map with an additional majority-Black congressional district while respecting traditional redistricting principles.

#### **J. Proportionality**

227. The enacted congressional plan contains two majority-Black districts using the AP BVAP metric, three majority-Black districts using the NH BCVAP metric, and four majority-Black districts using the NH DOJ BCVAP metric. PX1 at 119.

228. Mr. Cooper’s illustrative congressional plan includes three majority-Black districts using the any part BVAP metric, three majority-Black districts using the non-Hispanic BCVAP metric, and five majority-Black districts using the non-Hispanic Department of Justice BCVAP metric. PX1 ¶ 73 & fig.14.



229. Even if the Court were to consider the NH DOJ BCVAP metric in determining proportionality, at most four congressional districts under the enacted map have BVAPs that exceed 50%—less than 29% of Georgia’s 14 congressional districts. The addition of another majority-Black congressional district would increase this proportion to 35.7% of Georgia’s 14 congressional districts—where Black Georgians comprise 33.03% of the state’s population, 31.73% of the voting age population, and 33.3% of the citizen voting age population. Doc. No. 231 Attach. E ¶ 104; PX1 ¶ 16, 18 & fig.2.

230. Nine out of Georgia’s 14 congressional districts (or 64.29%) are majority-white under any metric. Even if an additional majority-Black district were included in the state’s congressional map, eight out of 14 congressional districts, or 57.14%, would be majority-white districts—where non-Hispanic white Georgians comprise 50.06% of the state’s population, 52.82% of the voting age population, and 55.7% of the citizen voting age population. PX1 ¶¶ 17-18 & fig.2.

## PROPOSED CONCLUSIONS OF LAW

### **I. Plaintiffs have standing to bring their Section 2 claim.**

231. Standing in a Section 2 vote-dilution case requires that “each voter resides in a district where their vote has been cracked or packed.” Harding v. Cnty.



of Dallas, 948 F.3d 302, 307 (5th Cir. 2020); see also Robinson, 605 F. Supp. 3d at 817-18 (“[T]he relevant standing inquiry is . . . whether Plaintiffs have made ‘supported allegations that [they] reside in a reasonably compact area that could support additional [majority-minority districts].’” (third and fourth alterations in original) (quoting Pope v. Cnty. of Albany, No. 1:11-cv-0736 LEK/CFH, 2014 WL 316703, at \*5 (N.D.N.Y. Jan. 28, 2014))).

232. Because Plaintiffs are Black registered voters who reside in the western Atlanta metropolitan area—the compact area where Plaintiffs have demonstrated the possibility of an additional majority-Black congressional district—either in districts where their votes have been cracked (Congressional Districts 3, 11, and 14) or packed (Congressional District 13), see Gingles, 478 U.S. at 46 n.11 (defining cracking and packing in Section 2 context), the Court concludes that they have standing to bring their Section 2 claim.

## **II. Plaintiffs have proved all elements of their Section 2 claim.**

233. Section 2 of the Voting Rights Act renders unlawful any state “standard, practice, or procedure” that “results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a).



234. A single-member congressional district plan that dilutes the voting strength of a minority community may violate Section 2. League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 423–42 (2006) [hereinafter LULAC].

235. “Dilution of racial minority group voting strength” in violation of Section 2 “may be caused by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.” Gingles, 478 U.S. at 46 n.11 (1986).

236. Dilution of a minority community’s voting strength violates Section 2 if, under the totality of the circumstances, the “political processes leading to nomination or election in the State . . . are not equally open to participation by members of [a racial minority group] . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b).

237. “The essence of a § 2 claim . . . is that a certain electoral law, practice, or structure interacts with social and historical conditions to cause an inequality in the opportunities enjoyed by black and white voters.” Allen, 599 U.S. at 17 (quoting Gingles, 478 U.S. at 47).



238. “That occurs where an ‘electoral structure operates to minimize or cancel out’ minority voters’ ‘ability to elect their preferred candidates.’” Allen, 599 U.S. at 17–18 (quoting Gingles, 478 U.S. at 48); see also City of Carrollton Branch of NAACP v. Stallings, 829 F.2d 1547, 1554–55 (11th Cir. 1987).

239. “A district is not equally open, in other words, when minority voters face—unlike their majority peers—bloc voting along racial lines, arising against the backdrop of substantial racial discrimination within the State, that renders a minority vote unequal to a vote by a nonminority voter.” Allen, 599 U.S. at 25.

240. “[P]roof that a contested electoral practice or mechanism was adopted or maintained with the intent to discriminate against minority voters[] is not required under Section 2 of the Voting Rights Act.” Carrollton Branch, 829 F.2d at 1553.

241. Rather, the question posed by a Section 2 claim is “whether as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice.” Gingles, 478 U.S. at 44 (cleaned up); see also Allen, 599 U.S. at 25 (“[W]e have reiterated that § 2 turns on the presence of discriminatory effects, not discriminatory intent.”); Georgia State Conf. of NAACP v. Fayette Cnty. Bd. of



Comm'rs, 775 F.3d 1336, 1342 (11th Cir. 2015) (“A discriminatory result is all that is required; discriminatory intent is not necessary.”).

242. While “federal courts are bound to respect the States’ apportionment choices,” they must intervene when “those choices contravene federal requirements,” such as Section 2’s prohibition of vote dilution. Voinovich v. Quilter, 507 U.S. 146, 156 (1993).

243. “To succeed in proving a § 2 violation under Gingles, plaintiffs must satisfy three ‘preconditions.’” Allen, 599 U.S. at 18 (quoting Gingles, 478 U.S. at 50).

244. “First, the ‘minority group must be sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district.’” Allen, 599 U.S. at 18 (alteration in original) (quoting Wis. Legislature v. Wis. Elections Comm’n, 142 S. Ct. 1245, 1248 (2022) (per curiam)).

245. “Second, the minority group must be able to show that it is politically cohesive.” Allen, 599 U.S. at 18 (quoting Gingles, 478 U.S. at 51).

246. “[T]hird, ‘the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it . . . to defeat the minority’s preferred candidate.’” Allen, 599 U.S. at 18 (second alteration in original) (quoting Gingles, 478 U.S. at 51).



247. “The ‘geographically compact majority’ and ‘minority political cohesion’ showings are needed to establish that the minority has the potential to elect a representative of its own choice in some single-member district. And the ‘minority political cohesion’ and ‘majority bloc voting’ showings are needed to establish that the challenged districting thwarts a distinctive minority vote by submerging it in a larger white voting population.” Grove v. Emison, 507 U.S. 25, 40 (1993) (citations omitted); see also Allen, 599 U.S. at 18–19.

248. “Finally, a plaintiff who demonstrates the three preconditions must also show, under the ‘totality of circumstances,’ that the political process is not ‘equally open’ to minority voters.” Allen, 599 U.S. at 18 (quoting Gingles, 478 U.S. at 45–46).

**A. Plaintiffs have satisfied the first Gingles precondition because an additional compact majority-Black congressional district can be drawn in the western Atlanta metropolitan area.**

249. To satisfy the first Gingles precondition, Plaintiffs must show that the Black population in Georgia is “‘sufficiently large and geographically compact to constitute a majority in a reasonably configured district.’” Allen, 599 U.S. at 18 (quoting Wis. Legislature v. Wis. Elections Comm'n, 595 U.S. 398, 402 (2022) (per curiam) (alteration adopted)); see Wright v. Sumter Cnty. Bd. of Elections & Registration, 979 F.3d 1282, 1303 (11th Cir. 2020).



250. “A district will be reasonably configured, [Supreme Court precedent] explain[s], if it comports with traditional districting criteria, such as being contiguous and reasonably compact.” Allen, 599 U.S. at 18.

251. Although “[p]laintiffs typically attempt to satisfy [the first Gingles precondition] by drawing hypothetical majority-minority districts,” Clark v. Calhoun County, 88 F.3d 1393, 1406 (5th Cir. 1996), such illustrative plans are “not cast in stone” and are offered only “to demonstrate that a majority-[B]lack district is feasible,” Clark v. Calhoun County, 21 F.3d 92, 95 (5th Cir. 1994); see also Bone Shirt v. Hazeltine, 461 F.3d 1011, 1019 (8th Cir. 2006) (same); Solomon v. Liberty Cnty., 899 F.2d 1012, 1018 n.7 (11th Cir. 1990) (en banc) (Kravitch, J., specially concurring) (noting that the plaintiffs need only show “the potential exists that a minority group could elect its own representative in spite of racially polarized voting” (emphasis added) (citing Gingles, 478 U.S. at 50 n.17)).

252. “When applied to a claim that single-member districts dilute minority votes, the first Gingles condition requires the possibility of creating more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice.” Johnson v. De Grandy, 512 U.S. 997, 1008 (1994) [hereinafter De Grandy].



253. The Court concludes that Plaintiffs have shown that Georgia's Black population is sufficiently numerous and geographically compact to support the creation of an additional majority-Black congressional district.

**1. The Black population in the western Atlanta metropolitan area is sufficiently numerous to form an additional majority-Black congressional district.**

254. Plaintiffs have shown that Georgia's Black population is sufficiently large to constitute a majority in an additional congressional district in the western Atlanta metropolitan area.

255. Under the first Gingles precondition, the Court must answer an objective numerical 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) (plurality opinion).

256. The burden of proof is "a preponderance of the evidence that the minority population in the potential election district is greater than 50 percent." Bartlett, 556 U.S. at 19-20.

257. When a voting rights "case involves an examination of only one minority group's effective exercise of the electoral franchise[,] . . . it is proper to look at all individuals who identify themselves as black" when determining a district's BVAP. Georgia v. Ashcroft, 539 U.S. 461, 474 n.1 (2003) (emphasis in



original); see also Georgia State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs, 118 F. Supp. 3d 1338, 1343 n.8 (N.D. Ga. 2015) (“[T]he Court is not willing to exclude Black voters who also identify with another race when there is no evidence that these voters do not form part of the politically cohesive group of Black voters in Fayette County.”).

258. Mr. Cooper drew an illustrative plan that contains an additional majority-Black congressional district in the western Atlanta metropolitan area. This additional district was drawn while balancing traditional redistricting criteria.

259. Neither Defendants nor their experts dispute that Plaintiffs have satisfied the numerosity requirement.

260. For these reasons, the Court concludes that Plaintiffs have shown that Georgia’s Black population is large enough to constitute a majority in an additional congressional district.

**2. The Black population in the western Atlanta metropolitan area is sufficiently compact to form an additional majority-Black congressional district.**

261. The Court further concludes that Plaintiffs have shown that Georgia’s Black population in the western Atlanta metropolitan area is sufficiently



geographically compact to comprise a majority of the voting age population in an additional congressional district.

262. Under the compactness requirement of the first Gingles precondition, Plaintiffs must show that it is “possible to design an electoral district[] consistent with traditional redistricting principles.” Davis v. Chiles, 139 F.3d 1414, 1425 (11th Cir. 1998).

263. It is important to emphasize that compliance with this criterion does not require that the illustrative plans be equally or more compact than the enacted plan; instead, this criterion requires only that the illustrative plans contain reasonably compact districts. An illustrative plan can be “far from perfect” in terms of compactness yet satisfy the first Gingles precondition. Wright v. Sumter Cnty. Bd. of Elections & Registration, 301 F. Supp. 3d 1297, 1326 (M.D. Ga. 2018), aff’d, 979 F.3d 1282 (11th Cir. 2020).

264. “The first Gingles precondition does not require some aesthetic ideal of compactness, but simply that the black population be sufficiently compact to constitute a majority in a single-member district.” Houston v. Lafayette Cnty, 56 F.3d 606, 611 (5th Cir. 1995) (quoting Clark, 21 F.3d at 95).

265. “While no precise rule has emerged governing § 2 compactness,” LULAC, 548 U.S. at 433, plaintiffs satisfy the first Gingles precondition when their



proposed majority-minority district is “consistent with traditional districting principles.” Davis, 139 F.3d at 1425; see also Allen, 599 U.S. at 19–20 (agreeing that Black population “could constitute a majority in a second, reasonably configured, district” where plaintiffs’ illustrative maps “produced districts roughly as compact as the existing plan,” did not “contain[] any tentacles, appendages, bizarre shapes, or any other obvious irregularities that would make it difficult to find them sufficiently compact,” “contained equal populations, were contiguous, and respected existing political subdivisions, such as counties, cities, and towns” (cleaned up)).

266. “[T]here is more than one way to draw a district so that it can reasonably be described as meaningfully adhering to traditional principles, even if not to the same extent or degree as some other hypothetical district.” Chen v. City of Houston, 206 F.3d 502, 519 (5th Cir. 2000).

267. The remedial plan that the Court eventually implements if it finds Section 2 liability need not be one of the maps proposed by Plaintiffs. See Robinson v. Ardoin, 37 F.4th 208, 223 (5th Cir. 2022) (“Illustrative maps are just that—illustrative. The Legislature need not enact any of them.”); Clark, 21 F.3d at 95–96 & n.2 (“[P]laintiffs’ proposed district is not cast in stone. It [is] simply presented to demonstrate that a majority-black district is feasible in [the jurisdiction] . . . . The



district court, of course, retains supervision over the final configuration of the districting plan.”).

268. The Court concludes that Mr. Cooper’s illustrative congressional map is consistent with traditional redistricting principles, including those set forth in the redistricting guidelines adopted by the Georgia General Assembly.

#### **a. Population Equality**

269. Article I § 2 of the Constitution “requires congressional districts to achieve population equality ‘as nearly as is practicable.’” Abrams v. Johnson, 521 U.S. 74, 98 (1997) (quoting Wesberry v. Sanders, 376 U.S. 1, 7–8 (1964)). This standard requires a mapmaker to “make a good-faith effort to achieve precise mathematical equality.” Karcher v. Daggett, 462 U.S. 725, 730–31 (1983) (internal quotation marks omitted) (quoting Kirkpatrick v. Preisler, 394 U.S. 526, 530–31 (1969)). A congressional plan achieves population equality when its districts are plus or minus one person. See Alpha Phi Alpha Fraternity Inc. v. Raffensperger, 587 F. Supp. 3d 1222, 1258 (N.D. Ga. 2022) (finding that “Mr. Cooper’s Illustrative Congressional Map complies with the one-person, one-vote principle” where he testified that “the districts are plus or minus one person” (internal quotation marks omitted)).



270. Based on the factual findings above, the Court concludes that Mr. Cooper's illustrative congressional map achieves population equality.

**b. Contiguity**

271. A district is contiguous when it consists of "a single connected piece." Lopez, 339 F. Supp. 3d at 607.

272. Based on the factual findings above, the Court concludes that Mr. Cooper's illustrative congressional map contains contiguous districts.

**c. Compactness**

273. The compactness inquiry under Section 2 "considers 'the compactness of the minority population, not . . . the compactness of the contested district.'" LULAC, 548 U.S. at 402 (omission in original) (quoting Bush v. Vera, 517 U.S. 952, 997 (1996) (Kennedy, J., concurring)). As this Court has recognized, "[c]ompliance with this criterion does not require that the illustrative plans be equally or more compact than the enacted plans; instead, this criterion requires only that the illustrative plans contain reasonably compact districts." Alpha Phi Alpha Fraternity Inc., 587 F. Supp. 3d at 1251. Courts assess the compactness of the districts in an illustrative plan by relying on "widely acceptable tests to determine compactness scores," including "the Polsby-Popper measure and the Reock indicator," Comm. For a Fair & Balanced Map v. Illinois State Bd. of



Elections, 835 F. Supp. 2d 563, 570 (N.D. Ill. 2011), as well as by examining the districts to determine whether they contain any “tentacles, appendages, bizarre shapes, or any other obvious irregularities,” Allen, 599 U.S. at 20 (internal quotation marks omitted) (quoting Singleton v. Merrill, 582 F. Supp. 3d 924, 1011 (N.D. Ala. 2022)).

274. The Court concludes that Mr. Cooper’s illustrative congressional map satisfies the criterion of compactness, both plan-wide and on an individual district basis. More specifically, the Court concludes that Mr. Cooper’s illustrative Congressional District 6 is compact as both a quantitative matter (based on Reock and Polsby-Popper scores) and a qualitative matter (based on the eyeball test).

#### **d. Respect for Political Subdivision Boundaries**

275. The Court further concludes that Mr. Cooper’s illustrative congressional map preserves political subdivision boundaries. Mr. Cooper’s illustrative congressional plan is comparable to—and in most instances more favorable than—the enacted plan in terms of political subdivision splits. Neither Defendants nor their experts have meaningfully suggested that Mr. Cooper’s illustrative map fails to comply with this principle.



### e. Communities of Interest

276. Although “[t]he term ‘communities of interest’ has no universally agreed-upon definition,” Robinson, 605 F. Supp. 3d at 828, it reflects the principle that a district that “provides the opportunity that § 2 requires [and] that the first Gingles condition contemplates,” should not “combine[] two farflung segments of a racial group with disparate interests.” LULAC, 548 U.S. at 433. A community of interest can consist of a political subdivision, like a city or a county. See Abrams, 521 U.S. at 100 (1997) (“Georgia has an unusually high number of counties” that “represent communities of interest to a much greater degree than is common”). A community of interest can also consist of a region with shared historical ties and present-day needs and interests, like the Black Belt. See Allen, 599 U.S. at 21 (“Even if the Gulf Coast did constitute a community of interest, moreover, the District Court found that plaintiffs’ maps would still be reasonably configured because they joined together a different community of interest called the Black Belt.”).

277. Based on the factual findings above, the Court concludes that Mr. Cooper’s illustrative congressional map preserves communities of interest. Mr. Cooper’s illustrative Congressional District 6 unites suburban areas of the core Atlanta area, which share common concerns involving education, transportation, and healthcare.



#### **f. Core Retention**

278. Although not an enumerated principle adopted by the General Assembly, the Court concludes that Mr. Cooper's illustrative congressional map satisfies the criterion of core retention. Although some alteration of the enacted map is inevitable in a Section 2 case, Mr. Cooper's map alters only eight of Georgia's 14 districts, and nearly three-quarters of the state's population would remain in their same district under the illustrative map.

#### **g. Racial Considerations**

279. Finally, the Court concludes that race did not predominate in the drawing of Mr. Cooper's illustrative congressional map. Allen recognized that "[t]he question whether additional majority-minority districts can be drawn . . . involves a 'quintessentially race-conscious calculus.'" Allen, 599 U.S. at 31 (plurality opinion) (emphasis in original) (quoting De Grandy, 512 U.S. at 1020). Consequently, "[t]he contention that mapmakers must be entirely 'blind' to race has no footing in our § 2 case law." Id. at 33 (plurality opinion). The Supreme Court has "long drawn" a line "between consciousness and predominance." Id. Race predominates when "'race-neutral considerations come into play only after the race-based decision had been made.'" Id. at 31 (plurality opinion) (alteration adopted) (quoting Bethune-Hill v. Virginia State Bd. of Elections, 580 U.S. 178, 189



(2017)). Race does not predominate when a mapmaker “adhere[s] . . . to traditional redistricting criteria,” testifies that “race was not the predominant factor motivating his design process,” and explains that he never sought to “maximize the number of majority-minority” districts. Davis, 139 F.3d at 1426. Mr. Cooper considered race alongside a host of traditional redistricting principles, balancing all of them without any of them predominating at the expense of or subordinating others. Compare Sept. 7, 2023, Morning Tr. 726:14–23 (Mr. Cooper testifying that, along with considering race, he was “constantly balancing the traditional redistricting principles, which would include population equality, . . . compactness[,] . . . contigu[ity], . . . [preserving] communities of interest[,] . . . [maintaining] political subdivisions[,] . . . [and] I ha[d] to be cognizant of avoiding the dilution of the minority voting source”), with Allen, 599 U.S. at 31 (“Cooper testified that while it was necessary for him to consider race, he also took several other factors into account, such as compactness, contiguity, and population equality. Cooper testified that he gave all these factors ‘equal weighting.’ And when asked squarely whether race predominated in his development of the illustrative plans, Cooper responded: ‘No. It was a consideration. This is a Section 2 lawsuit, after all. But it did not predominate or dominate.’” (citations omitted)). Defendants offered no evidence to rebut Mr. Cooper’s account.



280. Moreover, it is hardly remarkable that Mr. Cooper testified that the creation of an additional majority-Black district required some consideration of race. As Allen recognized, “Section 2 itself ‘demands consideration of race.’” Allen, 599 U.S. at 30 (plurality opinion) (quoting Abbott v. Perez, 138 S. Ct. 2305, 2315 (2018)). Both the U.S. Supreme Court’s and Eleventh Circuit’s “precedents require [Section 2] plaintiffs to show that it would be possible to design an electoral district, consistent with traditional districting principles, in which minority voters could successfully elect a minority candidate.” Davis, 139 F.3d at 1425 (emphasis in original). Because Section 2 requires Plaintiffs to come forward with a new majority-Black district, Bartlett, 556 U.S. at 19–20, it “necessarily requires considerations of race.” Fayette Cnty., 118 F. Supp. 3d at 1345. Therefore, “[t]o penalize [plaintiffs] . . . for attempting to make the very showing that Gingles, Nipper [v. Smith, 39 F.3d 1494 (11th Cir. 1994)], and [Southern Christian Leadership Conference v. Sessions, 56 F.3d 1281 (11th Cir. 1995),] demand would be to make it impossible, as a matter of law, for any plaintiff to bring a successful Section Two action.” Davis, 139 F.3d at 1425.

281. Moreover, the Supreme Court has “made clear” that, “[w]hen it comes to considering race in the context of districting, . . . there is a difference ‘between being aware of racial considerations and being motivated by them.’ The



former is permissible; the latter is usually not.” Allen, 599 U.S. at 30 (citations omitted) (quoting Miller v. Johnson, 515 U.S. 900, 916 (1995)).

282. The Court concludes “[w]hile the line between racial predominance and racial consciousness can be difficult to discern, it was not breached here.” Allen, 599 U.S. at 31 (citation omitted). This is not a close question. Defendants offer no evidence of racial predominance in the illustrative plan nor any basis to call into question Mr. Cooper’s testimony that race did not predominate; Defendants’ expert does not suggest that race predominated in the illustrative plan; and an objective analysis of the illustrative map makes clear that traditional districting principles were not subordinated to race or otherwise disregarded.

283. Even if race did predominate in Plaintiffs’ illustrative plan (it decidedly did not), Plaintiffs would still succeed on the merits of their claim because their illustrative plan is narrowly tailored to comply with the Voting Rights Act. See Miller, 515 U.S. at 920 (upon showing of racial predominance, state must “satisfy strict scrutiny” by demonstrating that the race-based plan “is narrowly tailored to achieve a compelling interest”).

284. The U.S. Supreme Court has “assume[d], without deciding, that . . . complying with the Voting Rights Act was compelling.” Bethune-Hill, 580 U.S. at 193. Indeed, the redistricting guidelines adopted by the General Assembly confirm



that Georgia itself understands compliance with the Voting Rights Act to be a compelling state interest. See JX1-2.

285. In this context, narrow tailoring does not “require an exact connection between the means and ends of redistricting,” but rather just “‘good reasons’ to draft a district in which race predominated over traditional districting criteria.” Alabama Legis. Black Caucus v. Alabama, 231 F. Supp. 3d 1026, 1064 (M.D. Ala. 2017) (quoting Alabama Legis. Black Caucus v. Alabama, 575 U.S. 254, 278 (2015)).

286. Plaintiffs’ compliance with Section 2 of the Voting Rights Act constitutes “good reason” to create a race-based district, and the remedy would be narrowly tailored even if it were not the only manner in which to draw the additional majority-Black congressional district. Accordingly, even if strict scrutiny applied here (which it does not), Plaintiffs’ illustrative plan satisfies it.

287. In light of this precedent, Defendants’ insistence that faithful application of Supreme Court caselaw produces an “unconstitutional” result would require the Court to find that Section 2 of the Voting Rights Act is itself unconstitutional. But this Court may not ignore precedent; nearly four decades ago, the Eleventh Circuit held that Section 2 “is a constitutional exercise of the congressional enforcement power under the Fourteenth and Fifteenth Amendments.” United States v. Marengo Cnty. Comm’n, 731 F.2d 1546, 1550 (11th



Cir. 1984). This Court holds the same. See In re Hubbard, 803 F.3d 1298, 1309 (11th Cir. 2015) (explaining “the fundamental rule that courts of this circuit are bound by the precedent of this circuit”).

288. Applying controlling Section 2 caselaw, the Court concludes that Plaintiffs have demonstrated that the Black population in the western Atlanta metropolitan area is sufficiently large and geographically compact to support an additional majority-Black congressional district. As a result, Plaintiffs have satisfied the first Gingles precondition.

**B. Plaintiffs have satisfied the second Gingles precondition because Black Georgians are politically cohesive.**

289. The second Gingles precondition requires that “the minority group must be able to show that it is politically cohesive.” 478 U.S. at 51. The purpose of this factor is to “show[] that a representative of [the minority group’s] choice would in fact be elected.” Allen, 599 U.S. at 19.

290. Plaintiffs can establish minority cohesiveness by showing that “a significant number of minority group members usually vote for the same candidates.” Solomon, 899 F.2d at 1019 (Kravitch, J., specially concurring); see also Gingles, 478 U.S. at 56 (“A showing that a significant number of minority group members usually vote for the same candidates is one way of proving the political



cohesiveness necessary to a vote dilution claim, and, consequently, establishes minority bloc voting within the context of § 2.” (internal citations omitted)).

291. Courts rely on statistical analyses to estimate the proportion of each racial group that voted for each candidate. See, e.g., Gingles, 478 U.S. at 52–54; Nipper v. Smith, 39 F.3d 1494, 1505 n.20 (11th Cir. 1994).

292. Courts have recognized EI as an appropriate analysis for determining whether a plaintiff has satisfied the second and third Gingles preconditions. See, e.g., Rose v. Raffensperger, 584 F. Supp. 3d 1278, 1294 (N.D. Ga. 2022) appeal docketed, No. 22-12593 (11th Cir. Aug. 8, 2022); Patino v. City of Pasadena, 230 F. Supp. 3d 667, 691 (S.D. Tex. 2017); Benavidez v. City of Irving, 638 F. Supp. 2d 709, 723–24 (N.D. Tex. 2009); Bone Shirt v. Hazeltine, 336 F. Supp. 2d 976, 1003 (D.S.D. 2004), aff’d 461 F.3d 1011 (8th Cir. 2006).

293. The Court finds that the second Gingles precondition is satisfied here because Black voters in Georgia are extremely politically cohesive. See 478 U.S. at 49. “Bloc voting by blacks tends to prove that the black community is politically cohesive, that is, it shows that blacks prefer certain candidates whom they could elect in a single-member, black majority district.” Id. at 68. Dr. Palmer’s analysis clearly demonstrates high levels of cohesiveness among Black Georgians in supporting their preferred candidates, both across the congressional focus area



and in the individual districts that comprise it. In Allen, the Court credited the lower court's finding of "very strong" Black voter cohesion in Alabama, with an average of 92.3%. 599 U.S. at 22. Here in Georgia, Black voter cohesion is even stronger, with an average of 98.4%.

294. Defendants' expert Dr. Alford does not contest this conclusion; he affirmatively supports it.

295. This conclusion is also consistent with previous findings of political cohesion among Black Georgians. See, e.g., Wright, 301 F. Supp. 3d at 1313 (noting that, in ten elections for Sumter County Board of Education with Black candidates, "the overwhelming majority of African Americans voted for the same candidate"); Lowery v. Deal, 850 F. Supp. 2d 1326, 1329 (N.D. Ga. 2012) ("Black voters in Fulton and DeKalb counties have demonstrated a cohesive political identity by consistently supporting black candidates."). Defendants have offered no evidence suggesting that this is no longer the case. To the contrary, the parties have stipulated to satisfaction of the second Gingles precondition.

**C. Plaintiffs have satisfied the third Gingles precondition because white Georgians engage in bloc voting to defeat Black-preferred candidates.**

296. The third Gingles precondition requires that "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." 478 U.S. at 51. "[A] white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." Id. at 56.

297. No specific threshold percentage is required to demonstrate bloc voting, as "[t]he amount of white bloc voting that can generally 'minimize or cancel' black voters' ability to elect representatives of their choice ... will vary from district to district." Gingles, 478 U.S. at 56 (citation omitted).

298. This precondition "establishes that the challenged districting thwarts a distinctive minority vote at least plausibly on account of race." Allen, 599 U.S. at 19 (cleaned up) (quoting Grove, 507 U.S. at 40).

299. The Court concludes that Dr. Palmer's analysis demonstrates high levels of white bloc voting in the congressional focus area and the individual districts that comprise it. The Court also finds that candidates preferred by Black voters are almost always defeated by white bloc voting except in those areas where they form a majority. Here, too, Georgia surpasses Allen's observation that white voter support of Black-preferred candidates with 15.4% of the vote is evidence of "very clear" racially polarized voting. 599 U.S. at 22. As Dr. Palmer found, white



voters in Georgia supported Black-preferred candidates with an average of only 12.4% of the vote.

300. Dr. Alford's testimony and report only affirm this conclusion.

301. And this conclusion is again consistent with the findings of previous courts. See, e.g., Fair Fight Action, Inc. v. Raffensperger, 634 F. Supp. 3d 1128, 1247 (N.D. Ga. 2022) (finding racial polarization in Georgia voting); Whitest v. Crisp Cnty. Bd. of Educ., No. 1:17-CV-109 LAG, 2021 WL 4483802, at \*3 (M.D. Ga. Aug. 20, 2021) ("African Americans in Crisp County are politically cohesive in elections for members of the Board of Education, but the white majority votes sufficiently as a bloc to enable it to defeat the candidates preferred by Black voters in elections for members of the Board of Education."), appeal dismissed, No. 21-13268-CC, 2022 WL 892534 (11th Cir. Feb. 3, 2022); Wright, 301 F. Supp. 3d at 1317 (finding that "[t]he third Gingles factor is satisfied" after concluding that "there can be no doubt black and white voters consistently prefer different candidates" and that "white voters are usually able to the defeat the candidate preferred by African Americans"). Defendants have offered no evidence suggesting that this is no longer the case. To the contrary, just as with Gingles 2, the parties have stipulated to satisfaction of the third Gingles precondition.



302. The Court also concludes that Dr. Palmer's analysis demonstrates that Black voters would be able to elect their candidates of choice in Mr. Cooper's illustrative Congressional District 6. Again, Dr. Alford does not contest this conclusion and the parties stipulate this conclusion.

**D. The totality of circumstances demonstrates that SB 2EX denies Black Georgians equal opportunity to elect their preferred candidates to Congress.**

303. The Court concludes that the totality of circumstances confirms what Plaintiffs' satisfaction of the Gingles preconditions indicates: SB 2EX denies Black voters in Georgia an equal opportunity to elect their congressional candidates of choice.

304. Because each of the relevant considerations discussed below weighs in favor of a finding of vote dilution, Plaintiffs have demonstrated that the enacted congressional plan violates Section 2 of the Voting Rights Act.

305. Once a Plaintiff satisfies the three Gingles preconditions, the court considers whether the "totality of the circumstances results in an unequal opportunity for minority voters to participate in the political process and to elect representatives of their choosing as compared to other members of the electorate." Fayette Cnty., 775 F.3d at 1342.



306. “[T]he totality of circumstances inquiry recognizes that application of the Gingles factors is peculiarly dependent upon the facts of each case. Before courts can find a violation of § 2, therefore, they must conduct an intensely local appraisal of the electoral mechanism at issue, as well as a searching practical evaluation of the past and present reality.” Allen, 599 U.S. at 19 (cleaned up) (quoting Gingles, 478 U.S. at 79).

307. To determine whether vote dilution is occurring, “a court must assess the impact of the contested structure or practice on minority electoral opportunities on the basis of objective factors. The Senate Report [from the 1982 Amendments to the Voting Rights Act] specifies factors which typically may be relevant to a § 2 claim[.]” Gingles, 478 U.S. at 44 (citation omitted).

308. The “Senate Factors” include: (1) “the history of voting-related discrimination in the State or political subdivision”; (2) “the extent to which voting in the elections of the State or political subdivision is racially polarized”; (3) “the extent to which the State or political subdivision has used voting practices or procedures that tend to enhance the opportunity for discrimination against the minority group, such as unusually large election districts, majority vote requirements, and prohibitions against bullet voting”; (4) “the exclusion of members of the minority group from the candidate slating processes”; (5) “the



extent to which minority group members bear the effects of past discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process”; (6) “the use of overt or subtle racial appeals in political campaigns”; and (7) “the extent to which members of the minority group have been elected to public office in the jurisdiction.” Gingles, 478 U.S. at 44–45.

309. “The [Senate] Report notes also that evidence demonstrating that elected officials are unresponsive to the particularized needs of the members of the minority group and that the policy underlying the State’s . . . use of the contested practice or structure is tenuous may have probative value.” Gingles, 478 U.S. at 45.

310. The Senate Report’s “list of typical factors is neither comprehensive nor exclusive.” Gingles, 478 U.S. at 45. “Ultimately, Gingles ‘calls for a flexible, fact-intensive inquiry into whether an electoral mechanism results in the dilution of minority votes.’” Rose, 584 F. Supp. 3d at 1285 (quoting Brooks v. Miller, 158 F.3d 1230, 1239 (11th Cir. 1998)).

311. “[T]here is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other.” Marengo Cnty. Comm’n, 731 F.2d at 1566 n.33 (quoting S. Rep. No. 97-417, pt. 1, at 29 (1982)).



**1. Senate Factor One: Georgia has an ongoing history of official, voting-related discrimination.**

312. It cannot be disputed that Black Georgians have experienced voting-related discrimination. “African-Americans have in the past been subject to legal and cultural segregation in Georgia[.]” Cofield v. City of LaGrange, 969 F. Supp. 749, 767 (N.D. Ga. 1997). “Black residents did not enjoy the right to vote until Reconstruction. Moreover, early in this century, Georgia passed a constitutional amendment establishing a literacy test, poll tax, property ownership requirement, and a good-character test for voting. This act was accurately called the ‘Disfranchisement Act.’ Such devices that limited black participation in elections continued into the 1950s.” Id.

313. This Court has recently taken judicial notice of the fact that “prior to the 1990s, Georgia had a long sad history of racist policies in a number of areas including voting.” Fair Fight Action, 634 F. Supp. 3d at 1246 (citing prior orders). As it previously described, “Georgia has a history chocked full of racial discrimination at all levels. This discrimination was ratified into state constitutions, enacted into state statutes, and promulgated in state policy. Racism and race discrimination were apparent and conspicuous realities, the norm rather than the exception.” Wright, 301 F. Supp. 3d at 1310 (citation omitted).



314. Dr. Burton opined that throughout the State's history, "voting rights have followed a pattern where after periods of increased nonwhite voter registration and turnout, the state has passed legislation, and often used extralegal means, to disenfranchise minority voters." PX4 at 10. Dr. Burton testified that this pattern seemingly continues to this day and pointed the Court to SB 202.

315. Dr. Jones also detailed Georgia's extensive and sad history of discrimination against Black voters and its continued use of methods and barriers to voting against Black voters.

316. The history described above and recounted by Dr. Burton and Dr. Jones demonstrates that voting-related discrimination is not a vestige of the past and persists to this day. The first Senate Factor thus weighs heavily in Plaintiffs' favor.

## **2. Senate Factor Two: Georgia voters are racially polarized.**

317. It is also indisputable that Black and white Georgians consistently support opposing candidates. Dr. Palmer provided clear evidence that this is the case, which Dr. Alford did not contest; in fact, he agreed with it.

318. "The second Senate Factor focuses on 'the extent to which voting in the elections of the State or political subdivision is racially polarized.'" Wright, 979 F.3d at 1305 (quoting LULAC, 548 U.S. at 426). "This 'factor will ordinarily be the



keystone of a dilution case.” Id. (quoting Marengo Cnty. Comm'n, 731 F.2d at 1566).

319. Eleventh Circuit case law makes clear that Plaintiffs are not required to prove that Georgia’s racially polarized voting results from any particular racial attitudes. Plaintiffs are not required “to prove racism determines the voting choices of the white electorate in order to succeed in a voting rights case.” Askew v. City of Rome, 127 F.3d 1355, 1382 (11th Cir. 1997); see also Fayette Cnty., 950 F. Supp. 2d at 1321 n.29 (explaining that plaintiffs “are not required to prove[] racial animus” within electorate).

320. Because “racially polarized voting, as it relates to claims of vote dilution, refers only to the existence of a correlation between the race of voters and the selection of certain candidates,” Plaintiffs “need not prove causation or intent in order to prove a prima facie case of racial bloc voting and defendants may not rebut that case with evidence of causation or intent.” Carrollton Branch, 829 F.2d at 1557–78 (quoting Gingles, 478 U.S. at 74). “It is the difference between the choices made by blacks and whites—not the reasons for that difference—that results in blacks having less opportunity than whites to elect their preferred representatives. Consequently, . . . under the ‘results test’ of § 2, only the correlation between race of voter and selection of certain candidates, not the causes



of the correlation, matters.” Gingles, 478 U.S. at 63 (plurality opinion) (emphasis in original). In other words, “[a]ll that matters under § 2 and under a functional theory of vote dilution is voter behavior, not its explanations.” Id. at 73; see also Carrollton Branch, 829 F.2d at 1557–58 (“[R]acially polarized voting, as it relates to claims of vote dilution, refers only to the existence of a correlation between the race of voters and the selection of certain candidates.” (quoting Gingles, 478 U.S. at 74)).

321. The dicta in the Eleventh Circuit’s Solomon opinion did not alter binding precedent on this issue. That opinion’s analysis focused on just two of the Senate Factors: the level of minority candidate success and the tenuous justifications of the challenged electoral scheme. See Solomon, 221 F.3d at 1028–34. In fact, the district court decision that the Solomon court affirmed had concluded that racially polarized voting is not dependent upon the subjective thoughts of voters. See Solomon v. Liberty Cnty., 957 F. Supp. 1522, 1543 (N.D. Fla. 1997) (concluding that “the presence or absence of racial bias within the voting community is not dispositive of whether liability has been established under Section 2”).

322. Putting case law aside, requiring courts to inquire into the reasons why Georgians vote in a racially polarized manner would directly contradict



Congress's explicit purpose in turning Section 2 into an entirely effects-based prohibition. That purpose was to avoid "unnecessarily divisive [litigation] involv[ing] charges of racism on the part of individual officials or entire communities." S. Rep. No. 97-417, pt. 1, at 36 (1982); see also Solomon, 899 F.2d at 1016 n.3 (Kravitch, J., specially concurring) (explaining that this theory "would involve litigating the issue of whether or not the community as a whole was motivated by racism, a divisive inquiry that Congress sought to avoid by instituting the results test"). It would also erect an evidentiary burden that "would be all but impossible" for Section 2 plaintiffs to satisfy. Gingles, 478 U.S. at 72-73 (describing "inordinately difficult burden" this theory would place on plaintiffs (internal quotation marks omitted)); Fayette Cnty., 950 F. Supp. 2d at 1321 n.29 (characterizing defendants' theory as "unpersuasive," as it would make it "nearly impossible for § 2 plaintiffs because defendants could always point to some innocent explanation for the losing candidates' loss"). "To accept this theory would frustrate the goals Congress sought to achieve by repudiating the intent test of Mobile v. Bolden, 446 U.S. 55[] (1980), and would prevent minority voters who have clearly been denied an opportunity to elect representatives of their choice from establishing a critical element of a vote dilution claim." Gingles, 478 U.S. at 71.



323. Even if the reasons why Black and white voters overwhelmingly support opposing candidates in Georgia were relevant to the totality-of-circumstances analysis, it would be Defendants' "obligation to introduce evidence" and "affirmatively prove, under the totality of the circumstances, that racial bias does not play a major role in the political community." Nipper, 39 F.3d at 1524–26 nn.60, 64. After all, "[t]he surest indication of race-conscious politics is a pattern of racially polarized voting." Marengo Cnty. Comm'n, 731 F.2d at 1567. Section 2 plaintiffs are therefore under "no obligation" to "search . . . out" such evidence "and disprove [non-racial explanations] preemptively." Nipper, 39 F.3d at 1525 n.64.

324. Here, Defendants have failed to prove "that racial bias does not play a major role in the political community." Nipper, 39 F.3d at 1524 n. 60. In support of their assertion that policy ideology and not race explains Georgia's racially polarized voting, Defendants and their expert offer the simple fact that Black voters prefer Democrats and white voters prefer Republicans. But as Plaintiffs have shown, that fact tells us nothing about whether race and issues inextricably linked to race impact the partisan preferences of Black and white voters. Indeed, while Dr. Alford failed to perform his own analysis of voter behavior and based



his conclusion on mere conjecture, Plaintiffs offered substantial evidence that race and issues inextricably linked to race do play a part in those preferences today.

325. In sum, the second Senate Factor pays no attention to the subjective motivations behind the racially polarized voting that occurs in Georgia. But even if it did, there has been no showing that partisan ideology, and not race, is causing that polarization. The only showing has proved just the opposite: race and issues inextricably linked to race impact voter behavior, resulting in the striking polarization we see in Georgia.

326. The second Senate Factor thus weighs heavily in Plaintiffs' favor.

**3. Senate Factor Three: Georgia's voting practices enhance the opportunity for discrimination.**

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

328. As discussed above, supra ¶¶ 176–182, and detailed by Dr. Burton's and Dr. Jones's unrebutted expert reports and testimony, Georgia's history is marked by electoral schemes, including majority-vote rule, at-large voting, strict voter ID laws, voter purges, and widespread polling place closures, that have



enhanced the opportunity for discrimination against Black voters — some of which persist to this day. This factor thus weighs in Plaintiffs’ favor.

**4. Senate Factor Four: Georgia has no history of candidate slating for congressional elections.**

329. It is undisputed that Georgia uses no slating process for its congressional elections. As a result, this factor is irrelevant to this case.

**5. Senate Factor Five: Georgia’s discrimination has produced severe socioeconomic disparities that impair Black Georgians’ participation in the political process.**

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



331. This Court recently credited evidence that “twice as many Black Georgians as white Georgians live below the poverty line; the unemployment rate for Black Georgians is double that of white Georgians; Black Georgians are less likely to attain a high school or college degree; and Black Georgians die of cancer, heart disease and diabetes at a higher rate than white Georgians.” Fair Fight Action, Inc. v. Raffensperger, No. 1:18-CV-5391-SCJ, slip op. at 44 (N.D. Ga. Nov. 15, 2021) (internal citations omitted). The Court further credits Dr. Collingwood’s unrebutted analysis on the disparities between Black and white Georgians across multiple metrics, including employment, income, and education.

332. Even if Plaintiffs were required to establish a causal nexus between these disparities and decreased Black political participation, they have done so here. Plaintiffs have offered unrebutted evidence that Black Georgians suffer socioeconomic hardships stemming from centuries-long racial discrimination, and that those hardships impede their ability to participate in the political process. Defendants do not dispute this evidence, nor do they otherwise contest Dr. Collingwood’s testimony, analysis, or conclusions.

333. Although Defendants point to recent successes of Black candidates, such as Senator Warnock, and record-breaking turnout of Black voters during the recent elections as evidence that Black Georgians are no longer hindered from



participating in the political process, for the reasons stated above see supra ¶¶ 184–200, these recent successes do not eliminate the past and present barriers to voting still in existence.

334. Thus, the Court finds that Plaintiffs have established that Black Georgias bear the effects of discrimination in areas such as education, employment, and health, which hinder their ability to participate effectively in the political process. Because Defendants do not rebut Plaintiffs’ evidence on this factor, it weighs heavily in their favor.

**6. Senate Factor Six: Both overt and subtle racial appeals are prevalent in Georgia’s political campaigns.**

335. This factor “asks whether political campaigns in the area are characterized by subtle or overt racial appeals.” Wright, 979 F.3d at 1296 (quoting Gingles, 478 U.S. at 45).

336. This Court recently credited evidence of racial appeals in recent Georgia elections. See Fair Fight, slip op. at 45–46; Fair Fight, 634 F. Supp. 3d at 1248–49. In addition, Plaintiffs have submitted substantial evidence—corroborated by Dr. Burton and Dr. Jones—that overt and subtle racial appeals remain common in Georgia politics.

337. The Court rejects Defendants’ contention that racial appeals by unsuccessful candidates are irrelevant to this Senate Factor or that this factor is



somehow neutralized because the Black candidate ultimately prevailed in the election. As this Court has previously explained, “this factor does not require that racially polarized statements be made by successful candidates. The factor simply asks whether campaigns include racial appeals.” Fair Fight, slip op. at 45–46 (citing Gingles, 478 U.S. at 37).

338. The Court is also unpersuaded by Defendants’ assertion that the evidence of racial appeals must occur in elections that Plaintiffs are challenging — here, elections for U.S. House of Representatives. Senate Factor 6 is not limited to the use of racial appeals in endogenous elections, and the use of racial appeals in elections generally is informative of the extent to which race informs politics in the state.

339. Racial appeals are still used today in Georgia politics. These appeals are intended to feed into and feed off of voters’ racial biases, providing both subtle and not-so-subtle racial cues so as to influence voters and persuade them to vote for or against a given candidate based on race or their views on race.

340. This factor thus weighs in Plaintiffs’ favor.



**7. Senate Factor Seven: Black candidates in Georgia are underrepresented in office and rarely succeed outside of majority-minority districts.**

341. This factor “focuses on ‘the extent to which members of the minority group have been elected to public office in the jurisdiction.’” Wright, 979 F.3d at 1295 (quoting LULAC, 548 U.S. at 426). “If members of the minority group have not been elected to public office, it is of course evidence of vote dilution.” Marengo Cnty. Comm’n, 731 F.2d at 1571.

342. Plaintiffs’ evidence demonstrates that Black Georgians are underrepresented in statewide elected offices and rarely succeed in local elections outside of majority-Black districts.

343. Defendants do not dispute Plaintiffs’ evidence. Instead, they highlight the recent successful elections of Black officials in statewide offices, such as Senator Warnock. But “some success at the polls does not . . . disprove the existence of vote dilution.” Sanchez v. Colorado, 97 F.3d 1303, 1324 (10th Cir. 1996). And notably, as Plaintiffs have explained, these recent successes do not reveal a lack of racially polarized voting in the State or otherwise shift in racial attitudes; instead, they reveal the changing demography of Georgia to a nearly majority-minority State.

344. This factor thus weighs in Plaintiffs’ favor.



**8. Senate Factor Eight: Georgia is not responsive to its Black residents.**

345. “The authors of the Senate Report apparently contemplated that unresponsiveness would be relevant only if the plaintiff chose to make it so, and that although a showing of unresponsiveness might have some probative value a showing of responsiveness would have very little.” Marengo Cnty. Comm’n, 731 F.2d at 1572.

346. Here, Plaintiffs have submitted evidence that elected officials are unresponsive to the needs of Black Georgians—including and especially the socioeconomic disparities identified in Dr. Collingwood’s report. The Court also heard from Mr. Carter and Mr. Allen about how the dilution of Black voting power in the challenged congressional plan only exacerbates this nonresponsiveness. Defendants offer nothing to counter this evidence.

347. This factor thus weighs in Plaintiffs’ favor.

**9. Senate Factor Nine: The justification for SB 2EX is tenuous.**

348. Defendants have offered no justification for the General Assembly’s failure to draw an additional majority-Black congressional district in the western Atlanta metropolitan area. The State’s map drawer, Ms. Wright testified to certain decision-making processes during the drawing of the congressional map, often noting political considerations; but concerns for political success cannot trump



compliance with the VRA. And Mr. Cooper's illustrative plan demonstrates that it is possible to create such a plan while respecting traditional redistricting principles—just as the Voting Rights Act requires.

349. Indeed, even taking the State's assertion that the enacted map was driven primarily by political rather than racial intent, the State's political motivations offer nothing to undermine or refute Plaintiffs' showing under the Section 2 results test. As Plaintiffs identified, no one "dispute[s] that it is politically expedient for the State of Georgia to dilute the Black vote" just as it was "in 1965." Sept. 14, 2023, Afternoon Tr. 2387:2–2388:5. And, as Dr. Burton testified, Georgia has a sordid history reflecting a pattern where, following periods of Black political success, the party in power finds ways to dilute or make less effective the franchise of Black citizens in order to maintain or gain power. Sept. 11, 2023, Afternoon Tr. 1428:9–21.

350. Defendants themselves point out that Black voter turnout was unprecedented in the 2020 election, which resulted in the successes of Black-preferred candidates. It should go without saying that the State's political motivations to maintain Republican political power after the 2020 election do not justify diluting Black voting power, particularly where all parties agree that the



State is starkly polarized along racial lines. In short, Defendants’ political goals do not immunize the State from Section 2 liability.

351. This factor thus weighs in Plaintiffs’ favor.

**10. Proportionality does not weigh against Plaintiffs’ claim.**

352. In addition to analyzing the Senate Factors, the Court may also consider the extent to which there is a mismatch between the proportion of Georgia’s population that is Black and the proportion of congressional districts in which Black Georgians “form effective voting majorities.” De Grandy, 512 U.S. at 1000. While the Voting Rights Act does not mandate proportionality, see 52 U.S.C. § 10301(b), this inquiry “provides some evidence of whether the political processes leading to nomination or election in the State or political subdivision are not equally open to participation” by a minority group, LULAC, 548 U.S. at 437 (internal quotation marks omitted).

353. At most, only four congressional districts under the enacted map have BVAPs that exceed 50% – less than 29% of Georgia’s 14 congressional districts.

354. Black Georgians comprise 33.03% of Georgia’s total population using the AP Black metric. Black Georgians comprise 31.73% of Georgia’s voting-age population using the AP BVAP metric and 33.3% using the AP BCVAP metric. The addition of a fifth majority-Black district would mean that, at most, five out of



Georgia's 14 congressional districts – or 35.71% – would be majority-Black. This is just 2.68 percentage points more than Black Georgians' share of the total population, 3.98 percentage points more than their share of the voting-age population, and 2.4 percentage points more than their share of the citizen voting-age population.

355. The Court concludes that these numbers do not weigh against a finding of liability under Section 2. Section 2 does not prohibit districting plans that allow minority voters a slightly higher proportion of districts relative to their share of the population. Indeed, in Allen, the Supreme Court affirmed a finding of Section 2 liability where 27.16% of Alabama's statewide population and 25.9% of Alabama's voting-age population is Black and an additional majority-Black district would result in two majority-Black districts out of Alabama's seven congressional districts – 28.57%. See Allen, 599 U.S. at 55 (Thomas, J., dissenting).

356. A broader examination of proportionality with respect to majority-white districts, moreover, gives a more complete picture. Mr. Morgan specifically enumerates the number of "majority-non-white districts," DX4 ¶ 12, but Defendants fail to mention the corollary number of majority-white districts.) Nine out of Georgia's 14 congressional districts (or 64.29%) are majority-white under any metric, despite the fact that white Georgians comprise a bare majority of the



statewide population. The addition of a majority-Black district would still yield a map that retains eight out of 14 (57.14%) majority-white districts, a proportion that is greater than white Georgians' share of the state's total population, voting-age population, and citizen voting-age population.

357. In fact, the disproportionality in favor of white voters and against Black voters under the enacted map weighs in favor of finding Section 2 liability given that the state's population growth over the last 10 years was driven by Black Georgians. While the Voting Rights Act does not provide minority voters any entitlement to proportionality, nor does it impose a ceiling on minority opportunity, particularly when that ceiling is out of step with the changing demographic realities of the state.

358. Defendants' attempt to muddy the proportionality inquiry by equating Democratic-leaning districts with Black-opportunity districts has no basis in caselaw or logic. The fact that race informs partisan affiliation does not mean that race and party are fungible when evaluating whether a plan provides equal opportunity under the Voting Rights Act.

359. Defendants further confuse the proportionality inquiry by relying upon the number of "Black and Black-preferred candidates." Doc. 268 ¶ 555. The Supreme Court has specifically cautioned against looking to "the success of



minority candidates” when evaluating proportionality. See De Grandy, 512 U.S. at 1014 n.11 (“‘Proportionality’ as the term is used here links the number of majority-minority voting districts to minority members’ share of the relevant population. The concept is distinct from the subject of the proportional representation clause of § 2, which provides that ‘nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.’ This proviso speaks to the success of minority candidates, as distinct from the political or electoral power of minority voters.” (citation omitted)).

360. In any event, even by Defendants’ standard, the numbers do not add up in their favor. To the extent Defendants point to all majority-non-white districts as the appropriate metric for determining Black opportunity, see Doc. 268 ¶ 555 (Defendants asserting “35.7% of Members of Congress from Georgia are Black and Black-preferred candidates”), the appropriate comparator is the non-white population of the state (49.4%) or the non-white voting-age population (47.18%), PX1 figs.1-2, neither of which indicates equal openness and opportunity.

361. Even if proportionality did weigh against a finding of Section 2 liability, the Court rejects Defendants’ invitation to cast aside the overwhelming evidence of Section 2 liability outlined above and reduce the Section 2 inquiry to a numbers game. “No single statistic provides courts with a shortcut to determine



whether a set of single-member districts unlawfully dilutes minority voting strength.” De Grandy, 512 U.S. at 1020-21. This is all the more true where, as here, Defendants rely solely upon the statewide bottom line to contend that proportionality weighs against finding a Section 2 violation. See id. at 1019 (rejecting “highly suspect” premise that “the rights of some minority voters under § 2 may be traded off against the rights of other members of the same minority class,” “so long as proportionality [is] the bottom line”).

362. Based on the Court’s holistic analysis under the Section 2 standard, the Court concludes that the totality of circumstances, including a consideration of those pertaining to proportionality, demonstrates that the enacted congressional map “den[ies] minority voters equal political opportunity,” De Grandy, 512 U.S. at 1014, and “renders a minority vote unequal to a vote by a nonminority voter,” Allen, 599 U.S. at 25.

363. Further, Plaintiffs have satisfied the Gingles preconditions, and the Court notes that “the Gingles framework itself imposes meaningful constraints on proportionality.” Allen, 599 U.S. at 26.

364. Accordingly, this factor weighs in Plaintiffs’ favor.

365. In sum, after an “intensely local appraisal,” the totality of the circumstances demonstrates a Section 2 violation. Where, as here, “elections in



[Georgia a]re racially polarized; [] Black [Georgians] enjoy virtually zero success in statewide elections; [] political campaigns in [Georgia] ha[ve] been characterized by overt or subtle racial appeals; and [] [Georgia's] extensive history of repugnant racial and voting-related discrimination is undeniable and well documented," Allen, 599 U.S. at 22 (internal quotation marks omitted) (quoting Gingles, 582 F. Supp. 3d at 1018-24), there is no dispute that the Senate Factors weigh in Plaintiffs' favor.

\* \* \*

366. Over a year and a half ago, the Court concluded that Plaintiffs "have shown that they are substantially likely to succeed on the merits of showing that it is possible to create an additional majority-minority congressional district in the western Atlanta metropolitan area that complies with the relevant considerations under Gingles." Doc. No. 97 at 55-56. During the course of the coordinated preliminary injunction hearing, the U.S. Supreme Court stayed the three-judge panel ruling in Allen pending the Court's decision on the merits. This Court, cognizant of Justice Kavanaugh's concurrence which argued that the Purcell principle foreclosed injunctive relief in the period close to an election, subsequently declined to enter a preliminary injunction in this case because it



found that insufficient time existed to enjoin the enacted plan for use in the 2022 elections. Id. at 27, 231, 235–37.

367. Since then, the Supreme Court affirmed the three-judge panel ruling in Allen; reaffirmed that “the three-part framework developed” in Thornburg v. Gingles, 478 U.S. 30 (1986), remains the proper test for evaluating claims under Section 2; and rejected Alabama’s “attempt to remake [] § 2 jurisprudence anew.” Allen, 599 U.S. at 17–18, 23. Over the last year and a half, Plaintiffs only bolstered their case: improving their illustrative congressional map across a variety of traditional districting principles, confirming that racially polarized voting occurred in the 2022 elections, and meticulously outlining the historical and present reality of Black Georgians and their ability to participate equally in the political process.

368. On the other hand, Defendants offer the same evidence and arguments they did at the preliminary injunction stage. As to the first Gingles precondition, Defendants’ expert, Mr. Morgan, agreed that Mr. Cooper’s illustrative map is reasonably configured and satisfies traditional redistricting principles. As to the second and third preconditions, not only does Dr. Alford expressly confirm Dr. Palmer’s conclusions and otherwise offer only irrelevant and unsupported analysis about the cause of the undisputed and striking



polarization between Black and white voters, but the parties stipulate to their satisfaction. And Defendants dispute none of the evidence that Plaintiffs have marshaled in support of their totality-of-the-circumstances arguments.

369. Instead, Defendants rely on a misunderstanding of the law and what it requires to argue that Plaintiffs' overwhelming evidence establishes no Section 2 violation because the success of Black-preferred candidates in a small number of recent statewide elections means that Georgia's election system is now equally open to Black voters. But the results of these recent elections only bolster Plaintiffs' case that SB 2EX dilutes the votes of Black voters by ensuring that White Georgians comprise the majority in nine of the state's fourteen congressional districts despite the state's changing demographics.

370. Defendants caution that Section 2 is about more than checking boxes. On this point, all agree: the law requires a holistic, probing appraisal of history, politics, demographics, and the lived experiences of Black Georgians. But it is Defendants who request that the Court evaluate this case under a narrow lens: To ignore the continued effects of voting-related discrimination today would be a disservice to Georgians, and especially Black Georgians and their lived experiences.



371. Plaintiffs' evidence tells a more holistic story. Over the past decade, Georgia has become more diverse, more metropolitan, and more stratified. The state's growth has been driven by minority growth—and, in the Atlanta metropolitan area, Black growth. A map-drawer trying to reflect these trends over the past decade would naturally draw a majority-Black district in the western Atlanta suburbs, since that is where growth has occurred. There, the Black communities depend on the same healthcare systems, rely on the same transportation networks for their daily commutes, attend the same schools, worship at the same churches, and share the same needs and interests. Giving the growing population of Black Georgians in the western Atlanta metropolitan area the chance to band together and elect their candidates of choice not only grants them equal access to the political process, as the Voting Rights Act requires, it is the logical and fair result of Georgia's recent population trends.

372. But Georgia did not draw an additional majority-Black congressional district. Instead, Georgia drew congressional districts that, according to Defendants, would maintain Republican political power in a state so racially polarized that doing so inevitably meant diluting Black voting power. While the State's intentions are not at issue, Defendants' assertions are consistent with the



entrenchment of political power at the expense of Black voting opportunity and despite Georgia's rapidly changing demographic shift.

373. Congress long ago made the decision to open the political process to Black voters, giving them an equal opportunity to translate their numbers into votes and make their voices heard. As of today, Plaintiffs and their communities have been denied that guarantee in Georgia.

374. The Court understands that this is a very important case which will have an impact on many Georgia voters. Sept. 14, 2023, Afternoon Tr. at 2430:7-8. Plaintiffs, and indeed Black Georgians, have waited long enough. Because Plaintiffs have satisfied the three Gingles preconditions, and because each of the considerations relevant to the totality-of-circumstances inquiry in this case indicates that SB 2EX denies Black Georgians in the western Atlanta metropolitan area an equal opportunity to elect their candidates of choice to the U.S. House of Representatives, the Court rules that SB 2EX violates Section 2 of the Voting Rights Act and enjoins its use in any future election.

#### **PROPOSED ORDER GRANTING INJUNCTIVE RELIEF**

375. The Court ENJOINS Defendants, as well as their agents and successors in office, from using SB 2EX in any future election.



376. Having found that SB 2EX violates Section 2 of the Voting Rights Act and that a permanent injunction is warranted, the Court now addresses the appropriate remedy.

377. The Court is conscious of the powerful concerns for comity involved in interfering with the State's legislative responsibilities. As the Supreme Court has repeatedly recognized, "redistricting and reapportioning legislative bodies is a legislative task with the federal courts should make every effort not to preempt." Wise v. Lipscomb, 437 U.S. 535, 539 (1978). As such, it is "appropriate, whenever practicable, to afford a reasonable opportunity for the legislature to meet" the requirements of Voting Rights Act "by adopting a substitute measure rather than for the federal court to devise . . . its own plan." Id. at 540.

378. The Court also recognizes that Plaintiffs and other Black voters in Georgia whose voting rights have been injured by the violation of Section 2 of the Voting Rights Act have suffered significant harm. Those citizens are entitled to vote as soon as possible for their representatives under a lawful apportionment plan. Therefore, the Court will require that a new congressional plan be drawn forthwith to remedy the Section 2 violation.

379. In accordance with well-established precedent, the Court will provide the General Assembly the opportunity to adopt a remedial congressional plan



within 14 days from, and consistent with, this Order. See, e.g., Harris v. McCrory, 159 F. Supp. 3d 600, 627 (M.D.N.C. 2016) (providing 14-day deadline from entry of opinion for the legislature to enact remedial plan); Singleton v. Merrill, 582 F. Supp. 3d 924, 937 (N.D. Ala. 2022), prob. juris. noted and stay granted on other grounds sub nom. Merrill v. Milligan, 142 S. Ct. 879 (2022) (same).

380. This Court retains jurisdiction to determine whether any remedial congressional plan adopted by the General Assembly remedies the Section 2 violation by incorporating an additional district in which Black voters have a demonstrable opportunity to elect their candidates of choice.

381. An acceptable remedy must “completely remed[y] the prior dilution of minority voting strength and fully provide[] equal opportunity for minority citizens to participate and to elect candidates of their choice.” United States v. Dallas Cnty. Comm’n, 850 F.2d 1433, 1437-38 (11th Cir. 1988) (quoting S.REP. No. 97-417, at 31 (1982)); see also Dillard v. Crenshaw Cnty., 831 F.2d 246, 252-53 (11th Cir. 1987) (“This Court cannot authorize an element of an election proposal that will not with certitude completely remedy the Section 2 violation.”). This will require the Court to evaluate a remedial proposal under the Gingles standard to determine whether it provides Black voters with an additional opportunity district. Id.



382. A complete remedy to the Section 2 violation found in this case requires the creation of an additional congressional district in which Black voters have the opportunity to elect their preferred candidates. See Allen, 599 U.S. at 25 (a redistricting plan “is not equally open” where it “renders a minority vote unequal to a vote by a nonminority voter”). For instance, the State cannot remedy its Section 2 violation in the western Atlanta metropolitan area by eliminating minority opportunities elsewhere in the congressional plan.

383. In the event that the State is unable or unwilling to enact a remedial plan within 14 days of this Order that satisfies the requirements set forth above, the Court will proceed toward judicial adoption of a remedial plan.



Dated: September 25, 2023

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that the foregoing *Plaintiffs' Proposed Findings of Fact and Conclusions of Law* has been prepared in accordance with the font type and margin requirements of LR 5.1, NDGa, using font type of Book Antiqua and a point size of 13.

Dated: September 25, 2023

**Abha Khanna**

*Counsel for Plaintiffs*

**CERTIFICATE OF SERVICE**

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing *Plaintiffs' Proposed Findings of Fact and Conclusion of Law* with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to counsel of record.

Dated: September 25, 2023

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