

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

COMMON CAUSE, *et al.*,

Plaintiffs,

v.

BRAD RAFFENSPERGER,

Defendant.

Case No. 1:22-CV-00090-ELB-SCJ-SDG

THREE JUDGE COURT

**PLAINTIFFS’ STATEMENT OF MATERIAL FACTS IN OPPOSITION TO
DEFENDANT’S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Fed. R. Civ. P. 56(c) and the Northern District of Georgia Local Rule 56.1(B), Plaintiffs Common Cause, the League of Women Voters of Georgia (the “League” and collectively with Common Cause, “Organizational Plaintiffs”), Dr. Cheryl Graves, Dr. Ursula Thomas, Dr. H. Benjamin Williams, Jasmine Bowles, and Brianne Perkins (collectively, “Plaintiffs”) submit their Statement of Material Facts in Opposition to Defendant’s Motion for Summary Judgment (“SMF”) as follows:

1. The enacted congressional district plan, SB 2EX, was publicly introduced on 11/17/2021. *See* Ex. 1,¹ posting from the Legislative and

¹ Unless otherwise noted herein, all references to “Ex.” indicate Exhibits attached to the Declaration of Cassandra N. Love-Olivo submitted in Opposition to Defendant’s Motion for Summary Judgment (“Love Decl.”), filed concurrently herewith. Terms

Congressional Reapportionment Office (“LCRO”), Proposed Plans, at 2.² The Senate Committee on Reapportionment and Redistricting (“Senate Committee”) and House Legislative and Congressional Reapportionment Committee (“House Committee”) (collectively, “Redistricting Committees”) held meetings on November 17, 18, and 19, 2021, to receive public feedback on these maps. *See* Ex. 2, Nov. 17, 2021 Meeting Notes labeled Bates Nos. LEGIS00002253-2333; Ex. 3, Nov. 18, 2021 Meeting Notes labeled Bates Nos. LEGIS00002334-2373, Ex. 4, Nov. 20, 2021 Meeting Minutes labeled Bates Nos. LEGIS00002374-2571.

2. The Senate Committee voted in favor of SB 2EX on 11/18/2021; the Senate voted in favor of SB 2EX on 11/19/2021; the House Committee voted in favor of SB 2EX on 11/20/2021; and the House voted in favor of SB 2EX on 11/22/2021. *See* Ex. 5, Georgia General Assembly, SB 2EX, Status History & Votes.³

3. Both Black Senate and House Committee members as well as Black Senators and Black Representatives unanimously opposed SB 2EX. *See* Ex. 5, Georgia General Assembly, SB 2EX Status History & Votes;⁴ Ex. 6, Georgia General Assembly, Passage, SB 2EX;⁵ Ex. 7, Minutes of the Senate Committee on Reapportionment and Redistricting, at 15-16;⁶ Ex. 8, Bagley Rpt., at 76-78, 81-82.

not herein defined have the meanings ascribed to them in the Love Decl.

² Available at <https://www.legis.ga.gov/joint-office/reapportionment>.

³ Available at <https://www.legis.ga.gov/legislation/60895>.

⁴ Available at <https://www.legis.ga.gov/legislation/60895>.

⁵ Available at <https://www.legis.ga.gov/legislation/60895>.

⁶

4. Town halls were held between 6/15/2021 and 8/11/2021, prior to the release of any proposed maps or census data. *See* Ex. 9, Press Release, Reapportionment Committees to Hold Statewide Town Hall Hearings;⁷ Ex. 10, 6/7/2021 Press Release, Reapportionment Committees to Hold Joint Virtual Town Hall Hearing labeled Bates No. LEGIS00000174; Ex. 11, Rich Dep. 175:10-18.

5. Many Georgians attended Redistricting Committee meetings and provided public comments stating that Congressional District (“CD”) 6, CD 13, and CD 14 (collectively, the “Challenged Districts”) failed to respect communities of interest. Ex. 8, Bagley Rpt. 86. *See* Ex. 2, 11/17/2021 Meeting Notes, Bates Nos. LEGIS00002253-2333 (comments stating that certain precincts were removed from districts while others that had nothing in common with the district were added)); Ex. 3, 11/18/2021 Meeting Notes, Bates Nos. LEGIS00002334-2373; Ex. 4, 11/20/2021 Meeting Minutes, Bates Nos. LEGIS00002374-2571.

6. Members of the majority party did not request any changes to the district boundaries following the public meetings held on Nov. 17, 18, and 20, 2021. *See* Ex. 13, Wright Dep. 163:21-165:3.

7. Prior to introducing SB 2EX, the Redistricting Committees adopted guidelines, which included “constitutional requirements of equal protection, compliance with the Voting Rights Act, including a recognition of racially polarized voting, [] the importance of jurisdictional boundaries, prioritizing communities of

<http://www.senate.ga.gov/committees/Documents/2021EXMinutes140.pdf>.

⁷ Available at <https://house-press.com/house-and-senate-reapportionment-committees-to-hold-statewide-town-hall-hearings/>.

interest, compactness, and continuity.” *See* Ex. 8, Bagley Rpt. 59; Ex. 14, Georgia House District Map Information labeled Bates Nos. LEGIS00003532-LEGIS00003537 at 3532; Ex. 15, 2021-2022 Guidelines for the House Committee labeled Bates Nos. LEGIS00000071-75.

8. These guidelines did not include the pursuit of partisan advantage. *See* Ex. 15, 2021-2022 Guidelines for the House Committee, Bates Nos. LEGIS00000071-75; Ex. 8, Bagley Rpt. 59.

9. The only Republican sponsored draft congressional map that was produced in this litigation was the Kennedy-Duncan Plan. *See* Ex. 16, Dave Williams, *Georgia Senate Releases First Proposed Congressional Redistricting Map*, CAPITOL BEAT (Sept. 27, 2021)⁸; Love Decl. ¶¶ 25, 39, 43; Ex. 17, Email from P. Jaugstetter at 2.

10. Outside of the Kennedy-Duncan Plan, no other Republican sponsored draft congressional maps were saved, recoverable, or produced in this litigation. *See* Ex. 17, Email from P. Jaugstetter; Love Decl. ¶ 43.

11. The only other draft map produced in this litigation is a plan made public on October 21, 2021 from the Democratic Party. *See* Ex. 39, October 21, 2021 Democratic Caucus proposed Congressional Map;⁹ Ex. 17, Email from P. Jaugstetter; Love Decl. ¶ 43.

⁸ Available at <https://capitol-beat.org/2021/09/georgia-senate-releases-first-proposed-congressional-redistricting-map/>.

⁹ Available online at https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/congress/ghdc-gsdc-cong-plan1-packet.pdf?sfvrsn=bb619b12_2

12. Dir. Wright intentionally refrained from writing correspondence or notes redistricting to avoid “create[ing] a record” for litigation; instead, she preferred to “have th[ose] conversation[s] in person.” *See* Ex. 13; Wright Dep. 19:16-20:4. In 2019, Republican State Senators were instructed to do the same and avoid “mak[ing] any public comments.” Ex. 40, LEGIS00011157-57.0003 at 57.

13. The Kennedy-Duncan Plan was the “initial Congressional District map draft.” *See* Ex. 13, Wright Dep. 19:12-19.

14. Dir. Wright held meetings with members of the majority party to discuss changes to the Kennedy-Duncan Plan, which were input into the LCRO’s redistricting software. At these meetings, racial data was projected onto the computer screens. *See* Ex. 13, Wright Dep. 16:7-18:23, 20:5-23:15, 25:15-28:4, 28:19-30:23, 55:1-56:13, 115:25-116:19.

15. As an organization, one of Common Cause’s purposes is to protect and safeguard voting. *See* Ex. 18, Common Cause Georgia, Voting & Elections;¹⁰ Ex. 19, Dennis Dep. 83:9-16.

16. As an organization, one of the League’s purposes is to protect and safeguard voting. *See* Ex. 21, The League of Women Voters of Georgia, Our Principles¹¹; Ex. 22, Bolen Dep. 47:1-4; Ex. 23, Bolen Decl. at ¶27.

17. Common Cause has approximately 26,000 members in Georgia, more than 767 members in CD 6, more than 143 members in CD 13, and more than 848

¹⁰ Available at <https://www.commoncause.org/georgia/our-work/voting-elections/>.

¹¹ Available at https://lwvga.clubexpress.com/content.aspx?page_id=22&club_id=996555&module_id=506655#principles.

members in CD 14. *See* Ex. 19, Dennis Dep. 93:15-16; Ex. 20, Dennis Decl. at ¶¶ 2-5.

18. Common Cause's members provide their addresses when they join the organization. *See* Ex. 19, Dennis Dep. 101:22-102:11; Ex. 20, Dennis Decl. ¶¶ 6-7.

19. Common Cause used the member provided zip codes to determine if Common Cause has members in each of the Challenged Districts. In doing so, Common Cause counted only the members who reside in zip codes that lie wholly within the Challenged District. Common Cause has additional members in zip codes that split the Challenged Districts, but those members were not counted. *See* Ex. 19, Dennis Dep. 102:5-7; Ex. 20, Dennis Decl. ¶ 8.

20. Common Cause historically keeps its membership list and member information confidential because the specific identification of members would place their safety and privacy in jeopardy, which results in a chilling effect on the members' desire and capacity to publicly affiliate themselves with Common Cause. This type of intimidation is happening across communities. For instance, local poll workers during the 2020 election experienced intimidation, which dissuaded some of them from continuing as poll workers. *See* Ex. 20, Dennis Decl. ¶¶ 9-15.

21. Common Cause has identified a member that currently resides in the Congressional District 6, who is of voting age. Common Cause provided that member's name and address. *See* Ex. 20, Dennis Decl. ¶¶ 15-17.

22. Common Cause has identified a member that currently resides in the Congressional District 14, who is of voting age. Common Cause provided that member's name and address. *See* Ex. 20, Dennis Decl. ¶¶ 15, 19.

23. The League's membership chair keeps a roster of members' addresses. The League used its membership roster to look at ZIP codes that were part of the three disputed districts. The League's member address information was subject to geocoding to determine how many members are within each congressional district. *See* Ex. 22, Bolen Dep. 39:3-6, 59:2-6; Ex. 23, Bolen Decl. ¶¶ 8-11.

24. The League has members in every Challenged District. The League has 23 members in CD 6; 22 members in CD 13, and 56 members in CD 14. *See* Ex. 22, Bolen Dep. 59:9-12; Ex. 23, Bolen Decl. ¶¶ 4-7.

25. The League historically keeps its membership list and member information confidential and represents to its members that it will protect their personal privacy. Harassment of private individuals for their affiliations with politics-related organizations and/or activities has become prominent in the community. As a result, the specific identification of members would place their safety and privacy in jeopardy, which produces a chilling effect on the members' desire and capacity to publicly affiliate themselves with the League. *See* Ex. 23, Bolen Decl. ¶¶ 12-18.

26. The League has identified a member that currently resides in the Congressional District 6, who is of voting age. The League provided that member's name and address. *See* Ex. 23, Bolen Decl. ¶¶ 3, 18-20, 23.

27. The League has identified a member that currently resides in the Congressional District 13, who is of voting age. The League provided that member's name and address. *See* Ex. 23, Bolen Decl. ¶¶ 18-19, 21.

28. The League has identified a member that currently resides in the Congressional District 14, who is of voting age. The League provided that member's name and address. *See* Ex. 23, Bolen Decl. ¶¶ 18-19, 22.

29. Common Cause diverted personnel, time, and resources to educate its membership and community about the maps. *See* Ex. 19, Dennis Dep. 47:22-48:2; 49:1-51:10; 52:6-19; Ex. 20, Dennis Decl. ¶¶ 20-26.

30. Common Cause took part in direct communications with community members and its own members and created channels to build resources for coalition partners. *See* Ex. 19, Dennis Dep. 49:24-50:3, 47:24-48:2; Ex. 20, Dennis Decl. ¶¶ 20-22.

31. Common Cause needed more people in order to do its programmatic work, and needed to hire more staff members to focus on redistricting. *See* Ex. 19, Dennis Dep. at 49:1-6, 48:7, 9-13, 18-21; Ex. 20, Dennis Decl. ¶¶ 21-22.

32. The League diverted personnel, time, and resources to educate its membership and community about the maps. *See* Ex. 22, Bolen Dep. 32:1-10; 36:20-24; Ex. 23, Bolen Decl. ¶¶ 24-28.

33. The League knocked on doors, talked to people, and left information about redistricting. *See* Ex. 22, Bolen Dep. 24:22-25:25; Ex. 23, Bolen Decl. ¶¶ 24-28.

34. The League focused on engaging the public, working with partner organizations to get information out, and encouraging people to express their opinions to their legislators and committees. *See* Ex. 22, Bolen Dep. 40:19-41:5; Ex. 23, Bolen Decl. ¶¶ 24-28.

35. The League provided additional education due to a gap of knowledge among its membership, including handling many calls from members confused about their district, where to vote, and other related issues. *See* Ex. 22, Bolen Dep. 35:35-36:4; Ex. 23, Bolen Decl. ¶¶ 24-28.

36. Had Common Cause not had to divert its resources, it typically would have completed other activities central to its purpose. *See* Ex. 19, Dennis Dep. 52:21-25 (*e.g.*, Common Cause would have had more conversations with election boards and officers, built out more resources to educate voters, worked with local law enforcement, and worked on voting security); Ex. 20, Dennis Decl. ¶¶ 21-26.

37. Common Cause was unable to complete other activities it had hoped to achieve. *See* Ex. 19, Dennis Dep. 54:3-13, 55:24-56:7, 57:8-17, 58:2-18, 59:11-25 (*e.g.*, it hoped to educate and engage with the community on a broadband accessibility initiative, and eminent domain procedures, as well as go beyond its legislative preview, and hire additional staff); Ex. 20, Dennis Decl. ¶¶ 21-26.

38. The League was unable to continue and complete other activities it had hoped to work on and achieve because of the redistricting. *See* Ex. 22, Bolen Dep. 33:6-24 (*e.g.*, the League hoped to register its members and the community to vote and educated them about voting); Ex. 23, Bolen Decl. ¶¶ 24-28.

39. Had the League not had to divert its resources as a result of the redistricting, it typically would have completed other activities central to its purpose. *See* Ex. 22, Bolen Dep. 73:8-20 (*e.g.*, the League would have pushed forward with working with high schools and college to register eligible students and educate them about the voting process, and aiding in voting); Ex. 23, Bolen Decl. ¶ 28.

40. Dr. Duchin analyzed whether CD 6, CD 13, CD 14 adhered (or not) to traditional redistricting principles. *See* Ex. 24, Duchin Rpt. 67-80.¹²

41. Traditional redistricting principles were often undermined in the Challenged Districts in a manner that resulted in “packing” and “cracking.” *See* Ex. 24, Duchin Rpt. 4.

42. “Packing” and “cracking” is “the related practices of overconcentrating Black and Latino voters on one hand, or splitting communities and dispersing their voters over multiple districts on the other.” *See* Ex. 24, Duchin Rpt. 4. “BVAP” means “to denote the share of voting age population that is Black alone” and “BHVAP” refers to “the share . . . that is Black and/or Latino.” *See* Ex. 24, Duchin Rpt. 81.

43. Dr. Duchin further found that the Challenged Districts’ boundaries were infected with “acutely race-conscious moves,” *See* Ex. 24, Duchin Rpt. 4.

¹² Since filing her Rebuttal Report, Dr. Duchin has identified a few errata in her initial report – none of which changes any of her analysis, opinions, “ultimate findings [or] conclusions.” She has since served a notice of errata, attached to the Love Decl. for full completeness. None of the changes described in the errata alter Plaintiffs’ positions or claims herein. Ex. 37, Notice of Errata to Dr. Moon Duchin January 13, 2023 Expert Report, at 2.

44. Dr. Duchin found that CD 6 was “targeted to eliminate electoral opportunity,” “specifically by removing Black and Hispanic voters from CD 6 and replacing them with White suburban, exurban, and rural voters in Forsyth and Dawson counties.” *See* Ex. 24, Duchin Rpt. 4, 10.

45. Dr. Duchin found that “this [targeting] is corroborated by the core retention numbers that show that CD 6 was singled out for major reconfiguration.” *See* Ex. 24, Duchin Rpt. 10.

46. Dr. Duchin found that CD 6 county splits are consistent with cracking in CD 6. *See* Ex. 24, Duchin Rpt. 73.

47. In particular, Dr. Duchin found that the pattern of cracking includes: a lower BVAP and BHVAP in the portions of Cherokee, Cobb, Fulton, and Gwinnett Counties assigned to CD 6 than those assigned to CDs 5, 7, 9, 11, 13, or 14. *See* Ex. 24, Duchin Rpt. 73.

48. Dr. Duchin found that “race-conscious county splitting” caused CD 13 to remain “highly packed.” *See* Ex. 24, Duchin Rpt. 5.

49. Dr. Duchin found that with one unremarkable exception, each of the county splits is consistent with a pattern of packing in CD 13. *See* Ex. 24, Duchin Rpt. 73.

50. Dr. Duchin found that the pattern in CD 13 includes: a higher BVAP and BHVAP in the portion of Cobb, Douglas, Fayette, Fulton, and Henry Counties assigned to CD 13 than those assigned to CDs 3, 5, 6, 7, 10, or 11. *See* Ex. 24, Duchin Rpt. 73.

51. Dr. Duchin found that Cobb County's population is within 0.1% of the ideal congressional district size of 765,136 people, but the county is nevertheless split into four congressional districts. *See* Ex. 24, Duchin Rpt. 22, 72.

52. Dir. Wright testified splitting counties "poses problems with elections." *See* Ex. 13, Wright Dep. 119:6-9.

53. Dr. Duchin found that the changes to CD 14 are "distinctive in terms of density and racial composition." *See* Ex. 24, Duchin Rpt. 68.

54. Dr. Duchin further found that CD 14's incursion into Cobb...can't be justified in terms of compactness or respect for urban/rural communities of interest." *See* Ex. 24, Duchin Rpt. 69.

55. Dr. Duchin found that the community of interest testimonies provided to the Redistricting Committees "make it clear that the changes to . . . CD 14 lack justification by community-of-interest reasoning." Whereas residents of the core CD 14 in Northwest Georgia counties frequently used words identifying rural interests, residents of the newly-added Western Cobb County area frequently used words identifying urban ones. *See* Ex. 24, Duchin Rpt. 79-80.

56. The "record of strong pushback" demonstrates CD 14's boundaries are dissonant in terms of shared community interests. *See* Ex. 24, Duchin Rpt. 5.

57. Dr. Duchin found that the splitting of Cobb County is "consistent with . . . submerging a small and diverse urban community in CD 14," including a higher BVAP and BHVAP in the portion of Cobb County assigned to CD 14 than to CD 6 or CD 11. *See* Ex. 24, Duchin Rpt. 73.

58. Dr. Duchin drew an alternative congressional plan that more closely adheres to the traditional redistricting principles. *See* Ex. 24, Duchin Rpt. 5, 25.

59. Dr. Duchin’s alternative congressional plan is more compact than the enacted plan and splits fewer counties, municipalities, and state precincts into fewer pieces. *See* Ex. 24, Duchin Rpt. 5, 25.

60. Dr. Duchin’s alternative congressional plan changes BVAP from 66.7% to 52.0% and BHVAP from 77.2% to 58.8% in CD 13. *See* Ex. 24, Duchin Rpt. 25.

61. Dr. Duchin’s alternative congressional plan removes Black communities in Cobb County from CD 14, reducing BVAP from 14.3% to 7.6%. *See* Ex. 24, Duchin Rpt. 25.

62. Dr. Duchin’s alternative congressional plan raises the District 6 BVAP and BHVAP closer to the prior map and creates another minority opportunity district. *See* Ex. 24, Duchin Rpt. 25.

63. The Duncan-Kennedy plan is more compact than the enacted plan and splits fewer counties, municipalities, and state precincts into fewer pieces. *See* Ex. 24, Duchin Rpt. 22; Ex. 25, Kennedy-Duncan Plan.¹³

64. Senator Kennedy’s plan does not feature some of the “acutely race-conscious moves” present in the enacted congressional plan, including moving CD 6 further north into Dawson County and submerging a heavily Black portion of Cobb

¹³ Available at https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/congress/cong-s18-p1-packet.pdf?sfvrsn=dd7b16e7_2.

County into CD 14. *See* Ex. 24, Duchin Rpt. 4, 69; Ex. 25, Kennedy-Duncan Plan;¹⁴ Ex. 26, SB 2EX.¹⁵

65. Dr. Duchin found evidence of “racially imbalanced transfers of population” that were “emphatically not required by adherence to traditional districting principles.” *See* Ex. 24, Duchin Rpt. 67-69.

66. To test Defendant’s purported partisanship justification, Dr. Duchin generated 100,000 redistricting plans with an explanatory algorithm seeking electoral success for the Republican Party, using 2020 presidential election data. *See* Ex. 27, Duchin Supp. Rpt., at 7-8.

67. Dr. Duchin found that the middle range of congressional districts in BVAP percentage “show clear signs of ‘cracking’” in the enacted plan, relative to the comparison plans.” *See* Ex. 27, Duchin Supp. Rpt. 8.

68. Dr. Duchin found that SB 2EX is consistent with “a plan [] drawn by using minority racial population to secure partisan advantage in a state with roughly 50-50 partisan support.” *See* Ex. 27, Duchin Supp. Rpt. 8.

69. Dr. Duchin concluded that SB 2EX “does not suggest a race-neutral pursuit of partisan advantage, but rather a highly race-conscious pursuit of partisan advantage.” *See* Ex. 27, Duchin Supp. Rpt. 8.

¹⁴ Available at https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/congress/cong-s18-p1-packet.pdf?sfvrsn=dd7b16e7_2.

¹⁵ Available at https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/congress/congress-prop1-2021-packet.pdf?sfvrsn=104b7388_2.

70. Racial demographic data is available at the census-block level. *See* Ex. 28, Strangia Dep. 103:17-23.

71. Race is highly correlated with political affiliation in Georgia. *See* Ex. 29, Thomas L. Brunell, Ph.D, “Report on Racial Bloc Voting in Georgia,” LEGIS00019244-19244.23 at LEGIS00019244.23.

72. Dr. Duchin concluded that district boundaries that split state precincts and sort voters at the census-block level can be “especially revealing.” *See* Ex. 24, Duchin Rpt. 75.

73. Dr. Duchin found that splits to state precincts “highlight the predominance of race over even partisan concerns.” *See* Ex. 24, Duchin Rpt. 75.

74. Dr. Duchin found that split precincts at the border of CD 6 “show significant racial disparity, consistent with an effort to diminish the electoral effectiveness of CD 6 for Black voters.” *See* Ex. 24, Duchin Rpt. 75.

75. There is no prediction of voters’ political behavior at finer distinctions than the precinct level. *See* Ex. 28, Strangia Dep. 96:20-98:18.

Dated this 26th day of April 2023.

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Northern District of Georgia Local Rule 7.1 Certification

Pursuant to N.D. Ga. L.R. 7.1(D), I, Jack Genberg, certify that this brief was prepared using Times New Roman 14 pt. font, which is one of the fonts and point selections approved by the Court in L.R. 5.1(B).

Dated this 26th day of April, 2023

Respectfully submitted,

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