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

ANNIE LOIS GRANT; QUENTIN T. HOWELL; ELROY TOLBERT; TRIANA ARNOLD JAMES; EUNICE SYKES; ELBERT SOLOMON; DEXTER WIMBISH; GARRETT REYNOLDS; JACQUELINE FAYE ARBUTHNOT; JACQUELYN BUSH; and MARY NELL CONNER,

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. 1:22-CV-00122-SCJ

BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

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INTRODUCTION

Last February, this Court concluded that Plaintiffs "have shown that they are likely to ultimately prove that certain aspects of the State's redistricting plans are unlawful." ECF No. 91 ("PI Order") at 10. What was true at the preliminary injunction stage is still true today. By failing to include additional districts where Black voters can elect their preferred candidates, the enacted maps for the Georgia State Senate and Georgia House of Representatives foreclose equal access to the political process in violation of the Voting Rights Act.

Plaintiffs' experts have reaffirmed and reinforced their opinions and reports since the Court's ruling last year. Blake Esselstyn, Plaintiffs' demographic and mapping expert, reestablished that compact, majority-Black legislative districts can be readily drawn in the Atlanta suburbs and Black Belt. Dr. Maxwell Palmer, who analyzed racially polarized voting, and Dr. Loren Collingwood, who examined socioeconomic and political disparities between Black and white Georgians, reconfirmed their findings using 2022 election data. And Dr. Orville Vernon Burton, who explored Georgia's history of discriminatory voting practices and racialized politics, expanded his discussion of the factors relevant to the Section 2 inquiry.

Defendants' experts, by striking contrast, have done *nothing* in the past 12 months to remedy the analytical and evidentiary shortcomings that the Court

highlighted in its preliminary injunction order. John Morgan submitted a rebuttal report that barely acknowledges *six* of Mr. Esselstyn's eight illustrative districts. Dr. John Alford *confirmed* Dr. Palmer's findings of racially polarized voting, offering only his (misguided) views on the legal significance of these undisputed facts. And Plaintiffs' expert evidence on the other components of the Section 2 inquiry has gone completely unaddressed and unrefuted. In short, Defendants have failed to raise genuine disputes of material fact as to almost every element of Plaintiffs' claims.

The denial of Plaintiffs' preliminary injunction motion was based not on the merits—indeed, the Court concluded that "the *Grant* Plaintiffs have shown a substantial likelihood of success as to" four of their illustrative legislative districts—but instead on the determination that there was "insufficient time to effectuate remedial relief for purposes of the 2022 election cycle." *Id.* at 220, 236–37. Freed from those equitable concerns and considering virtually the same body of evidence that informed the Court's earlier ruling, Plaintiffs respectfully submit that partial summary judgment—specifically, favorable judgment as to six of their eight illustrative legislative districts—is now warranted.

LEGAL STANDARD

"The principal function of the motion for summary judgment is to show that one or more of the essential elements of a claim or defense . . . is not in doubt and

that, as a result, judgment can be rendered as a matter of law." *Tomlin v. JCS Enters., Inc.*, 13 F. Supp. 3d 1330, 1335 (N.D. Ga. 2014) (alteration in original) (quoting *Tippens v. Celotex Corp.*, 805 F.2d 949, 952 (11th Cir. 1986)). When there is no genuine dispute as to any material fact, the moving party is entitled to judgment as a matter of law on all or any part of a claim. Fed. R. Civ. P. 56(a).

Once the moving party has met its initial burden of proving that no genuine issue of material fact exists, the burden shifts to the opposing party to establish otherwise. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 585–86 (1986). To avoid summary judgment, the opposing party must "go beyond the pleadings" and designate specific facts establishing a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). In so doing, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586. "Evidence that is 'merely colorable, or is not significantly probative' of a disputed fact cannot satisfy a party's burden, and a mere scintilla of evidence is likewise insufficient." *Kernel Recs. Oy v. Mosley*, 694 F.3d 1294, 1301 (11th Cir. 2012) (citations omitted) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)).

ARGUMENT

Section 2 of the Voting Rights Act prohibits any "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). This includes the

> manipulation of district lines [to] dilute the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door.

Johnson v. De Grandy, 512 U.S. 997, 1007 (1994); *see also Voinovich v. Quilter*, 507 U.S. 146, 153 (1993) ("Dividing the minority group among various districts so that it is a majority in none may prevent the group from electing its candidate of choice[.]"); PI Order 16–19, 27 (exploring history of Voting Rights Act).

To prevail on their Section 2 claim, Plaintiffs must show that (1) the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) the minority group "is politically cohesive"; and (3) "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." *Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986); *see also* PI Order 28–29 (describing *Gingles* preconditions). Once Plaintiffs have made this threshold showing, the Court must then examine "the totality of

circumstances"—including the Senate Factors, which are the nine factors identified in the U.S. Senate report that accompanied the 1982 amendments to the Voting Rights Act—to determine whether "the political processes leading to nomination or election in the State or political subdivision are not equally open to participation" by members of the minority group. 52 U.S.C. § 10301(b); *see also Gingles*, 478 U.S. at 43–44; PI Order 29–32 (describing Senate Factors).

I. *Gingles* One: Additional compact majority-Black legislative districts can be drawn in the Atlanta metropolitan area and Black Belt.

Plaintiffs readily satisfy the first *Gingles* precondition because it is possible to "create[e] more than the existing number of reasonably compact districts with a sufficiently large minority population to elect candidates of its choice." *LULAC v. Perry*, 548 U.S. 399, 430 (2006) (plurality opinion) (quoting *De Grandy*, 512 U.S. at 1008); *see also* PI Order 51–55 (summarizing applicable legal standards, including numerosity and compactness requirements).

Expert mapper Blake Esselstyn concluded that it is possible to create three additional majority-Black State Senate districts and five additional majority-Black House districts, all in accordance with traditional redistricting principles. Statement of Undisputed Material Facts in Supp. of Pls.' Mot. for Partial Summ. J. ("SUMF") ¶¶ 17, 30, 41; Ex. 1 ("Esselstyn Report") ¶¶ 13, 63; Ex. 8 ("Morgan Dep.") at 73:17–

75:4, 164:8–165:14, 197:15–19, 202:10–14;[1] *see also* PI Order 38–41 (reviewing Mr. Esselstyn's relevant experience and methodology and finding "his methods and conclusions [] highly reliable"); *id.* at 101 (finding that "Plaintiffs have shown that they have a substantial likelihood of satisfying the first *Gingles* precondition with respect to two additional State Senate Districts and two additional State House Districts in the Atlanta metropolitan area").[2]

Plaintiffs now move for summary judgment as to six of these eight illustrative districts:

- **Senate District 25**, which is in the southeastern Atlanta metropolitan area and has a Black voting-age population ("BVAP") of 58.93%, SUMF ¶¶ 19, 22; Esselstyn Report ¶¶ 27, 30, fig.6, tbl.1; Morgan Dep. 74:11–16;

[1] All exhibits are attached to the Declaration of Jonathan P. Hawley, filed concurrently with this motion.

[2] The Court's preliminary injunction ruling found that Plaintiffs were likely to satisfy the first *Gingles* precondition only as to three of the six illustrative districts on which they now move for summary judgment: Senate Districts 25 and 28 and House District 117. *See* PI Order 93–101 & n.23. Accordingly, the citations to the preliminary injunction order that follow that implicate district-specific (as opposed to plan-wide) conclusions relate only to those three districts—which, notably, have not been changed by Mr. Esselstyn, *see* Ex. 6 ¶¶ 16, 40, charts 2 & 7—and not to illustrative House Districts 64, 145, and 149.

- **Senate District 28**, which is in the southwestern Atlanta metropolitan area and has a BVAP of 57.28%, SUMF ¶¶ 19, 23; Esselstyn Report ¶¶ 27, 31, fig.7, tbl.1; Morgan Dep. 74:11–16;

- **House District 64**, which is in the western Atlanta metropolitan area and has a BVAP of 50.24%, SUMF ¶¶ 32–33; Esselstyn Report ¶¶ 48–49, fig.14, tbl.5; Morgan Dep. 74:11–16;

- **House District 117**, which is in the southern Atlanta metropolitan area and has a BVAP of 51.56%, SUMF ¶¶ 32, 34; Esselstyn Report ¶¶ 48, 50, fig.15, tbl.5; Morgan Dep. 74:11–16;

- **House District 145**, which is in the Black Belt (anchored in Macon-Bibb County) and has a BVAP of 50.38%, SUMF ¶¶ 32, 35; Esselstyn Report ¶¶ 48, 51, fig.16, tbl.5; Morgan Dep. 74:11–16; and

- **House District 149**, which is in the Black Belt (also anchored in Macon-Bibb County) and has a BVAP of 51.53%, SUMF ¶¶ 32, 35; Esselstyn Report ¶¶ 48, 51, fig.16, tbl.5; Morgan Dep. 74:11–16.[3]

[3] Mr. Esselstyn's maps also include two other illustrative majority-Black districts: Senate District 23, located in the eastern Black Belt, and House District 74, anchored in the southern Atlanta metropolitan area. SUMF ¶¶ 21, 34; Esselstyn Report ¶¶ 29, 50, figs.5 & 15. Unlike the other six districts described above, Defendants' mapping expert, John Morgan, at least *attempted* to meaningfully dispute the compactness of

In drafting his illustrative State Senate and House plans, Mr. Esselstyn balanced a number of considerations, and there was no one dominant factor or metric. SUMF ¶ 42; Esselstyn Report ¶ 25. The six illustrative districts described above indisputably comply with traditional redistricting principles, including the guidelines adopted by the General Assembly to inform its redistricting efforts. SUMF ¶¶ 45–46; Esselstyn Report ¶¶ 33, 54, attachs. F & K.

Population equality. In Mr. Esselstyn's illustrative State Senate and House plans, most district populations are within plus-or-minus 1% of the ideal, and a small minority are within between plus-or-minus 1% and 2%; no district in either plan has a population deviation of more than 2%. SUMF ¶¶ 47–49, 64–66; Esselstyn Report ¶¶ 34, 55, attachs. H & L; *see also* PI Order 108–110, 134–35.

Contiguity. The districts in Mr. Esselstyn's illustrative plans satisfy the contiguity requirement in the same manner as the enacted plans. SUMF ¶¶ 50, 67; Esselstyn Report ¶¶ 35, 56; *see also* PI Order 115, 139.

these districts in his rebuttal report. Plaintiffs are confident that, at trial, their satisfaction of the first *Gingles* precondition as to these additional districts will be indisputable—Mr. Esselstyn drew *all* of his districts in accordance with traditional redistricting principles, and Mr. Morgan's criticisms are misguided, conclusory, or both. But, recognizing the imperatives and limitations of Rule 56, Plaintiffs are not moving for summary judgment on these two illustrative districts at this time.

Compactness. The mean compactness measures for Mr. Esselstyn's illustrative plans are comparable—if not identical—to the mean measures for the enacted plans. SUMF ¶¶ 53, 68; Esselstyn Report ¶¶ 36, 57, tbls.2 & 6; Morgan Dep. 90:6–17, 168:6–11. And, notably, the individual compactness scores for Mr. Esselstyn's additional majority-Black districts fall within the range of compactness scores of the enacted districts using the Reock, Schwartzberg, Polsby-Popper and Area/Convex Hull measures; each of Mr. Esselstyn's additional majority-Black districts is more compact than the least-compact enacted districts. SUMF ¶¶ 54–56, 69–71; Esselstyn Report ¶¶ 37, 58, figs.8 & 17, tbls.3 & 7, attachs. H & L; *see also* PI Order 110–15, 135–39.

Political subdivisions. Mr. Esselstyn's illustrative plans split only marginally more counties and voting districts than the enacted plans. SUMF ¶¶ 57, 72; Esselstyn Report ¶¶ 39, 59, tbls.4 & 8, attachs. H & L; *see also* PI Order 115–18, 139–42.

Communities of interest. Mr. Esselstyn's illustrative plans preserve various communities with shared interests. SUMF ¶¶ 58–61, 73–78; Esselstyn Report ¶¶ 29 n.7, 31 n.8, 41, 51 & nn.12–13, 52 & nn.14–16, 60; *see also* PI Order 118–23, 143–45. For example, his illustrative House District 149 generally follows the orientation of the Georgia Fall Line geological feature, which brings with it shared economic, historic, and ecological similarities; Macon and Milledgeville, parts of which are in

illustrative House District 149, are both characterized as "Fall Line Cities" and were identified in public comment before the General Assembly's Joint Reapportionment Committee as two cities that should be kept in the same district. SUMF ¶¶ 76–77; Esselstyn Report ¶ 52 & nn.14–16. Illustrative House District 149 also includes the entirety of Twiggs and Wilkinson counties—which were described by Gina Wright, the Executive Director of the General Assembly's Legislative and Congressional Reapportionment Office, as "constitut[ing] a single community of interest." SUMF ¶ 75; Esselstyn Report ¶ 51 & n.12 (alteration in original) (quoting ECF No. 55 at 9).

Incumbent pairings. Mr. Esselstyn's illustrative State Senate plan does not pair any incumbent senators in the same district, while his illustrative House plan pairs a total of eight incumbents—the same number of pairings as in the enacted plan, as previously reported by Defendants' mapping expert, John Morgan. SUMF ¶¶ 62, 79; Esselstyn Report ¶¶ 42, 61 & nn.17–18; *see also* PI Order 123, 145–48.[4]

Moreover, Dr. Maxwell Palmer confirmed that Black voters would be able to elect their preferred candidates in Mr. Esselstyn's illustrative districts. SUMF ¶¶ 24,

[4] Additionally, while the Court noted that core retention "was not an enumerated districting principle adopted by the General Assembly," PI Order 123–24, Mr. Esselstyn's illustrative plans modify just 22 of the 56 enacted State Senate districts and 25 of the 180 enacted House districts, SUMF ¶¶ 63, 80; Esselstyn Report ¶¶ 26, 47; *see also* PI Order 123–25, 148–49.

36; Ex. 2 ("Palmer Report") ¶¶ 22–23. In the 31 statewide races from 2012 through 2021, the Black-preferred candidate won a larger share of the vote in illustrative Senate Districts 25 and 28 and illustrative House Districts 64 and 149. SUMF ¶¶ 25, 37; Palmer Report ¶ 24, fig.5, tbl.9. In illustrative House District 117, the Black-preferred candidate won all 19 of these elections since 2018, and in illustrative House District 145, the Black-preferred candidate won all 19 elections since 2018 and 27 of the 31 elections overall. SUMF ¶¶ 38–39; Palmer Report ¶ 24, fig.5, tbl.9.[5] Plaintiffs therefore satisfy the first *Gingles* precondition. *See LULAC*, 548 U.S. at 430 (first *Gingles* precondition requires "reasonably compact districts with a sufficiently large minority population to elect candidates of its choice" (quoting *De Grandy*, 512 U.S. at 1008)).

Mr. Morgan has provided no opinions to contest this conclusion or otherwise undermine Plaintiffs' satisfaction of the first *Gingles* precondition as to these six illustrative districts. *See* PI Order 42–46 (finding that Mr. Morgan's "testimony lacks credibility" and thus "assign[ing] little weight to his testimony"). He disputes neither the demographic statistics provided by Mr. Esselstyn nor that it is possible to draw

[5] Additionally, the preexisting majority-Black districts from which Mr. Esselstyn's illustrative districts were drawn would continue to perform for Black-preferred candidates with similar or higher vote shares. SUMF ¶¶ 26, 40; Palmer Report ¶ 25.

three additional majority-Black State Senate and five additional majority-Black House districts given the size of Georgia's Black population. *See* Morgan Dep. 73:17–75:4, 164:8–165:14, 197:15–19. And his rebuttal report is primarily a recitation of the metrics that Mr. Esselstyn already provided, without even a hint of analysis that would be helpful to the Court in assessing the compactness of the illustrative districts. For example, although Mr. Morgan reports the population-deviation ranges, political-subdivision splits, and compactness scores of Mr. Esselstyn's illustrative plans as compared to the enacted plans, he provides no *opinion* as to whether the illustrative plans comply with these traditional redistricting principles. *See* Ex. 6 ("Morgan Rebuttal Report") ¶¶ 21, 49–50, charts 3, 8 & 9. Instead, his only analytical contribution is identifying for the Court which figure in a pair of statistics is higher than the other—a computational exercise that does not require the sort of expertise contemplated by Federal Rule of Evidence 702.

Moreover, Mr. Morgan does not even *mention* illustrative Senate Districts 25 and 28 in his rebuttal report, and his consideration of illustrative House Districts 64, 117, 145, and 149 is mostly limited to reporting the exact same compactness scores

provided in Mr. Esselstyn's report, *see id.* ¶ 50, chart 9—again without any meaningful analysis or opinion.[6]

Ultimately, in responding to a motion for summary judgment, the nonmoving party "must come forward with *significant, probative evidence* demonstrating the existence of a triable issue of fact." *Irby v. Bittick*, 44 F.3d 949, 953 (11th Cir. 1995) (emphasis added) (quoting *Chanel, Inc. v. Italian Activewear of Fla., Inc.*, 931 F.2d 1472, 1479 (11th Cir. 1991)). Mr. Morgan's recitation of undisputed statistics is neither significant nor probative—and certainly does not materially contest Plaintiffs' satisfaction of the first *Gingles* precondition as to the six illustrative districts at issue in this motion.

II. *Gingles* Two: Black Georgians in the focus areas are politically cohesive.

Plaintiffs satisfy the second *Gingles* precondition because Black voters in the areas where Mr. Esselstyn has drawn additional majority-Black legislative districts are 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

[6] Mr. Morgan also describes changes Mr. Esselstyn made to illustrative House District 149 between his preliminary injunction report and final expert report, *see* Morgan Rebuttal Report ¶¶ 40, 46, 48, chart 7, but never explains why these tweaks are relevant to satisfaction of the first *Gingles* precondition.

certain candidates whom they could elect in a single-member, black majority district." *Id.* at 68; *see also* PI Order 172 (explaining second *Gingles* precondition).

Dr. Palmer analyzed political cohesion and racially polarized voting in five different focus areas comprising the enacted districts from which Mr. Esselstyn's additional majority-Black legislative districts were drawn. SUMF ¶¶ 81–83; Palmer Report ¶¶ 10–12, fig.1. To perform his analysis, Dr. Palmer examined precinct-level election results and voter turnout by race and employed a widely accepted methodology called ecological inference analysis. SUMF ¶¶ 84–86; Palmer Report ¶¶ 10, 15; Ex. 9 ("Alford Dep.") at 36:11–37:12; *see also, e.g.*, *Wright v. Sumter Cnty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1305 (M.D. Ga. 2018) (recognizing ecological inference as "the 'gold standard' for use in racial bloc voting analyses"), *aff'd*, 979 F.3d 1282 (11th Cir. 2020); PI Order 176–78 (finding that Dr. Palmer's "methods and conclusions are highly reliable").

Dr. Palmer found that Black voters in the focus areas are extremely cohesive, with a clear candidate of choice in all 40 elections he examined—a conclusion with which Defendants' expert, Dr. John Alford, readily agreed. SUMF ¶ 87; Palmer Report ¶ 18, fig.2, tbls. 1, 2, 3, 4, 5 & 6; Ex. 3 ("Suppl. Palmer Report") ¶ 6, fig.1, tbl.1; Ex. 7 ("Alford Report") at 3; Alford Dep. 37:13–15. Across the focus areas, Black voters supported their candidates of choice with an average of 98.5% of the

vote, a finding reflected in each constituent State Senate and House district. SUMF ¶¶ 88–90; Palmer Report ¶¶ 16, 18–19 & nn.14–15, fig.3, tbls.1 & 7. Plaintiffs therefore satisfy the second *Gingles* precondition. *See* 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 [] political cohesiveness[.]"); *see also* PI Order 186–87 (concluding that "Plaintiffs have met their burden to establish the second *Gingles* precondition").

III. *Gingles* Three: White Georgians engage in bloc voting to defeat Black-preferred candidates in the focus areas.

Plaintiffs satisfy the third *Gingles* precondition because, in the areas where they propose new majority-Black districts, "the white majority votes sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." 478 U.S. at 51; *see also* PI Order 197–98 (explaining third *Gingles* precondition).

Dr. Palmer found high levels of white bloc voting in opposition to the candidates whom Black voters cohesively supported—another finding endorsed by Dr. Alford. SUMF ¶ 91; Palmer Report ¶ 18, fig.2, tbl.1; Suppl. Palmer Report ¶ 6, fig.1, tbl.1; Alford Report 3; Alford Dep. 38:20–39:8. In the same 40 elections Dr. Palmer analyzed, white voters in the focus areas overwhelmingly opposed Black voters' candidates of choice: On average, only 8.3% of white voters supported Black-preferred candidates, and in no election did white support exceed 17.7%.

SUMF ¶ 92; Palmer Report ¶ 18. Consequently, in the districts that comprise the five focus areas, Black-preferred candidates win almost every election in majority-Black districts but lose almost every election in non-majority-Black districts. SUMF ¶¶ 95–96; Palmer Report ¶ 21, fig.4. These findings were confirmed by the endogenous results from the 2022 midterms, in which Black-preferred legislative candidates were defeated in every majority-white district and elected in every majority-Black district in the focus areas. SUMF ¶ 97; Suppl. Palmer Report ¶ 5, tbl.2.

In short, Black voters' candidates of choice are consistently defeated in the focus areas by white bloc voting, except where Black voters make up a majority of eligible voters—thus satisfying the third *Gingles* precondition. *See* 478 U.S. at 68 ("Bloc voting by a white majority tends to prove that blacks will generally be unable to elect representatives of their choice."); *see also* PI Order 200–01 (crediting "Dr. Palmer's analysis and testimony" and concluding that "Plaintiffs have satisfied their burden under the third *Gingles* precondition").

IV. Under the totality of circumstances, the enacted maps deny Black voters equal opportunity to elect their preferred legislative candidates.

Considering the "totality of circumstances," Georgia's enacted State Senate and House maps deny Black voters an equal opportunity to elect their preferred legislative representatives. 52 U.S.C. § 10301(b). Notably, "it will be only the very

unusual case in which the plaintiffs can establish the existence of the three *Gingles* [preconditions] but still have failed to establish a violation of § 2 under the totality of circumstances." *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 775 F.3d 1336, 1342 (11th Cir. 2015) (quoting *Jenkins v. Red Clay Consol. Sch. Dist. Bd. of Educ.*, 4 F.3d 1103, 1135 (3d Cir. 1993)). Again, this is not an unusual case.

The factors outlined in the Senate Judiciary Committee report accompanying the 1982 Voting Rights Act amendments—the Senate Factors—are "typically relevant to a § 2 claim" and guide this analysis. *LULAC*, 548 U.S. at 426; *see also Gingles*, 478 U.S. at 36–37 (listing Senate Factors). They are not exclusive, and "there is no requirement that any particular number of factors be proved, or that a majority of them point one way or the other." *Gingles*, 478 U.S. at 45 (quoting S. Rep. No. 97-417, pt. 1, at 29 (1982)).

Here, each of the relevant Senate Factors confirms that the enacted State Senate and House maps deny Black voters equal electoral opportunities.

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

"It cannot be disputed that Black Georgians have experienced franchise-related discrimination." PI Order 205. Indeed, "Georgia electoral history is marked by too many occasions where the State, through its elected officials, enacted discriminatory measures designed to minimize black voting strength." *Brooks v.*

State Bd. of Elections, 848 F. Supp. 1548, 1572 (S.D. Ga. 1994); *see also, e.g.*, *Fair Fight Action, Inc. v. Raffensperger*, 593 F. Supp. 3d 1320, 1342 (N.D. Ga. 2021) (taking judicial notice of fact that, "prior to the 1990s, Georgia had a long sad history of racist policies in a number of areas including voting"). As the Eleventh Circuit has similarly acknowledged, "[t]he voting strength of blacks has historically been diminished in Georgia in numerous ways, including property ownership requirements, literacy tests, and the use of the county unit system which undermined the voting power of counties with large black populations." *Brooks v. Miller*, 158 F.3d 1230, 1233 (11th Cir. 1998). Although these discriminatory actions have evolved over the years, they have persisted; as a result of this centuries-long effort to marginalize and disenfranchise Black Georgians, they still lack equal access to the state's political processes today.

Dr. Orville Vernon Burton prepared an extensive (and unrebutted) examination of the history of voting-related discrimination in Georgia, emphasizing a sordid and recurring pattern: After periods of increased nonwhite voter registration and turnout, the State finds methods to disfranchise and reduce the influence of minority voters. SUMF ¶ 98; Ex. 4 ("Burton Report") at 10; *see also* PI Order 207 (finding Dr. Burton "highly credible," his "historical analysis [] thorough and methodologically sound," and his "conclusions . . . reliable"). Indeed, "[w]hile

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." SUMF ¶ 107; Burton Report 10 (quoting Laughlin McDonald, *A Voting Rights Odyssey: Black Enfranchisement in Georgia* 2–3 (2003)). Following Reconstruction, these tactics included poll taxes, a white-only primary system, and use of majority-vote requirements and at-large districts. SUMF ¶¶ 108–16; Burton Report 11–12, 17–22. Efforts at de jure disenfranchisement were reinforced by rampant political terror and violence against Black legislators and voters; between 1875 and 1930, Georgia witnessed 462 lynchings—second only to Mississippi—which, as Dr. Burton explained, "served as a reminder for Black Georgians who challenged the status quo" and "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." SUMF ¶¶ 99–106; Burton Report 14–26.

While enactment of the Voting Rights Act altered Georgia's trajectory, it did not end efforts to prevent the exercise of Black political power. SUMF ¶¶ 117–18; Burton Report 36. By 1976, 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; 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. SUMF ¶ 119; Burton Report 36. Notably, between 1965 and 1980, nearly *30%* of the Department of Justice's objections to voting-related changes under Section 5 were attributable to Georgia—more than any other state in the country. SUMF ¶ 120; Burton Report 3, 39. When Congress reauthorized the Voting Rights Act in 1982, it specifically cited systemic abuses by Georgia officials intended to obstruct Black voting rights. SUMF ¶ 121; Burton Report 3, 42.

Georgia's voting-related discrimination extended to its redistricting efforts. SUMF ¶¶ 131–33; Burton Report 32. Prior to the effective termination of the Section 5 preclearance requirement following *Shelby County v. Holder*, 570 U.S. 529 (2013), federal challenges and litigation were common features of the state's decennial redistricting—indeed, the Department of Justice objected to reapportionment plans submitted by Georgia during each of the four redistricting cycles following enactment of the Voting Rights Act because the maps diluted Black voting strength. SUMF ¶¶ 134–38; Burton Report 40–44; Exs. 10–11; *see also, e.g.*, *Georgia v. United States*, 411 U.S. 526, 541 (1973) (affirming that Georgia's 1972 reapportionment plan violated Section 5 in part because it diluted Black vote in Atlanta-based congressional district); *Busbee v. Smith*, 549 F. Supp. 494, 517 (D.D.C. 1982) (three-judge court) (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).

Significantly, racial discrimination in voting is not consigned to history books; efforts to dilute the political power of Black Georgians persist today. Following *Shelby County*, 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." SUMF ¶ 123; Burton Report 48–49. Throughout the first two decades of the 21st century, the State investigated Black candidates and organizations dedicated to protecting the voting rights of Georgia's minority voters; investigations into alleged voter fraud in the predominantly Black City of Quitman and into the efforts of the New Georgia Project and the Asian American Legal Advocacy Center ended without convictions or evidence of wrongdoing. SUMF ¶ 122; Burton Report 45–46. In 2015, Georgia began closing polling places in primarily Black neighborhoods; by 2019, 18 counties closed more than half of their polling places and several closed nearly 90%, depressing turnout in affected areas and leading to substantially longer waiting times at the polls. SUMF ¶¶ 124–25; Burton Report 49–50. The State has also engaged in "systematic efforts to purge the

voting rolls in ways that particularly disadvantaged minority voters and candidates"—between 2012 to 2018, Georgia removed 1.4 million voters from the eligible voter rolls, purges that disproportionately impacted Black voters. SUMF ¶¶ 127–28; Burton Report 50–51.

Ultimately, the growth of Georgia's nonwhite population over the past 20 years—and the corresponding increase in minority voting power—has, in Dr. Burton's words, "provide[d] a powerful incentive for Republican officials at the state and local level to place hurdles in the path of minority citizens seeking to register and vote." SUMF ¶ 130; Burton Report 60. Georgia's efforts to discriminate against Black voters has simply not stopped. *See* PI Order 205–09 (finding that "Plaintiffs have demonstrated the history of voting-related discrimination in Georgia" and "[t]he first Senate Factor thus weighs decisively in Plaintiffs' favor").

B. Senate Factor Two: Georgia voters are racially polarized.

Courts have repeatedly found that voting throughout Georgia is racially polarized. *See, e.g.*, *Fayette Cnty.*, 775 F.3d at 1340 (Fayette County "[v]oters' candidate preferences in general elections were racially polarized"); *Ga. State Conf. of NAACP v. Georgia*, 312 F. Supp. 3d 1357, 1360 (N.D. Ga. 2018) (three-judge court) ("[V]oting in Georgia is highly racially polarized."); *Wright*, 301 F. Supp. 3d at 1319 ("Sumter County's voters [are] highly polarized."). These findings were

confirmed in the focus areas and their constituent legislative districts by Dr. Palmer's analysis discussed above: Black voters overwhelmingly support their candidates of choice, and white voters consistently and cohesively vote in opposition to Black-preferred candidates. SUMF ¶¶ 140–47; Palmer Report ¶¶ 7, 16, 18–19 & nn.14–15, figs.2 & 3, tbls.1, 2, 3, 4, 5, 6 & 7; Suppl. Palmer Report ¶¶ 4, 6, fig.1, tbl.1; Alford Report 3; Alford Dep. 37:13–15, 38:20–39:8, 44:8–16, 45:10–12; *see also supra* at 13–16.

Far from disputing this polarization, Defendants' expert Dr. Alford confirmed it, both in his expert report, *see* Alford Report 3 ("As evident in Dr. Palmer's [reports], the pattern of polarization is quite striking."), and in his deposition, *see* Alford Dep. 44:8–16, 45:10–12 ("This is clearly polarized voting, and the stability of it across time and across office and across geography is really pretty remarkable."). Voting in the focus area is undeniably polarized along racial lines, and the second Senate Factor thus tips strongly in Plaintiffs' favor.

Neither Dr. Alford's expert report nor Defendants' prior arguments change this conclusion. As at the preliminary injunction stage, Dr. Alford maintains that the polarization is better explained by partisanship than race. But his analysis is guided by the wrong question. The inquiry implicated by this Senate Factor is objective, not subjective: *how* Black and white Georgians vote, not *why* they vote that way. As this

Court previously explained, "to satisfy the second *Gingles* precondition, Plaintiffs need not prove the causes of racial polarization, just its existence." PI Order 174. This critical emphasis on correlation rather than causation finds its basis in the concerns that animated revisions to Section 2 decades ago; as this Court explained,

> applying the standard advocated by Defendants would undermine the congressional intent behind the 1982 amendments to the VRA—namely, to focus on the *results* of the challenged practices. Congress wanted to avoid "unnecessarily divisive [litigation] involv[ing] charges of racism on the part of individual officials or entire communities." As the Eleventh Circuit long ago made clear, "[t]he surest indication of race-conscious politics is a pattern of racially polarized voting."

Id. at 175–76 (alterations in original) (citations omitted) (first quoting S. Rep. No. 97-417, pt. 1, at 36; and then quoting *United States v. Marengo Cnty. Comm'n*, 731 F.2d 1546, 1567 (11th Cir. 1984)).

Dr. Alford conceded in his deposition that the relevance of his analysis hinges not on the *fact* of racial polarization, which is not in dispute, *see* Alford Report 3; Alford Dep. 44:8–16, 45:10–12, but on a threshold *legal* question, *see* Alford Dep. 114:13–21 ("[I]f the judge thinks the law doesn't require anything other than that the two groups vote differently without any connection to race . . . , then that's the law."). That legal question has already been addressed—and resolved—by this Court. *See* PI Order 209–10 (concluding that "the Court's analysis on the second and

third *Gingles* preconditions controls here" and "[t]he second Senate Factor thus weighs in Plaintiffs' favor").

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

As discussed above, Georgia has employed a variety of voting practices that have discriminated against Black voters. *See supra* at 17–22; *see also* SUMF ¶ 165; Burton Report 11–55. In addition to the malapportionment of legislative and congressional districts to dilute the votes of Black Georgians throughout the 20th century, SUMF ¶¶ 166–67; Burton Report 31, and the continuing use of polling place closures, voter purges, and other suppressive techniques, SUMF ¶ 170; Burton Report 49–55, numerous Georgia counties with sizeable Black populations shifted from voting by district to at-large voting following enactment of the Voting Rights Act, thus ensuring the electoral success of white-preferred candidates, SUMF ¶ 168; Burton Report 32–33.

Moreover, even though the *Gingles* Court specifically highlighted the use of majority-vote requirements as meaningful evidence of ongoing efforts to discriminate against minority voters, *see* 478 U.S. at 45, Georgia continues to impose a majority-vote requirement in general elections, including elections to the General Assembly, SUMF ¶ 169; Burton Report 34; O.C.G.A. § 21-2-501. The combination of a majority-vote requirement and racially polarized voting ensures that Black

voters cannot elect their candidates of choice when they are a minority of a jurisdiction's population, even when the white vote is split. *See City of Port Arthur v. United States*, 459 U.S. 159, 167 (1982) (describing how such circumstances "permanently foreclose a black candidate from being elected"); *see also* PI Order 210–11 (finding that "Plaintiffs have shown there has been a history of voting practices or procedures in Georgia that have enhanced the opportunity for discrimination against Black voters" and "this factor weighs in Plaintiffs' favor").

D. Senate Factor Four: Georgia has no history of candidate slating for legislative elections.

Because Georgia's legislative elections do not use a slating process, this factor has no relevance to Plaintiffs' claim. *See* PI Order 211.

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

Georgia's Black community continues to suffer because of the state's discriminatory past. Dr. Loren Collingwood's (also unrebutted) expert report concluded that, "[o]n every metric, Black Georgians are disadvantaged socioeconomically relative to non-Hispanic White Georgians," disparities that "have an adverse effect on the ability of Black Georgians to participate in the political process, as measured by voter turnout and other forms of political participation." SUMF ¶ 172; Ex. 5 ("Collingwood Report") at 3; *see also* PI Order 214 (finding

"Dr. Collingwood to be credible, his analysis methodologically sound, and his conclusions reliable"). While "the burden is not on the plaintiffs to prove" that the disparities are "causing reduced political participation," *Marengo Cnty.*, 731 F.2d at 1569, the data show a significant relationship between turnout and socioeconomic disparities; as health, education, and employment outcomes increase, so does voter turnout. SUMF ¶ 173; Collingwood Report 3.

The disparities and disadvantages experienced by Black Georgians impact nearly every aspect of daily life:

- The unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%). SUMF ¶ 174; Collingwood Report 4.
- White households are twice as likely as Black households to report an annual income above $100,000. SUMF ¶ 175; Collingwood Report 4.
- Black Georgians are more than twice as likely as white Georgians to live below the poverty line—and Black children more than *three times* as likely. SUMF ¶ 176; Collingwood Report 4.
- Black Georgians are nearly three times as likely as white Georgians to receive SNAP benefits. SUMF ¶ 177; Collingwood Report 4.
- Black adults are more likely than white adults to lack a high school diploma—13.3% as compared to 9.4%. SUMF ¶ 178; Collingwood Report 4.

- Thirty-five percent 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. SUMF ¶ 179; Collingwood Report 4.

Dr. Collingwood further concluded that these racial disparities hold across nearly every county in the state. SUMF ¶ 180; Collingwood Report 4–6.

The evidence strongly suggests that the socioeconomic disparities imposed on Black Georgians impact their levels of political participation. Dr. Collingwood explained that extensive literature in the field of political science demonstrates a strong and consistent link between socioeconomic status and voter turnout: In general, voters with higher income and education are disproportionately likely to vote and participate in American politics. SUMF ¶¶ 181–82; Collingwood Report 7. This pattern is evident in Georgia. Dr. Collingwood found that, in elections between 2010 and 2022, Black Georgians consistently turned out to vote at lower rates than white Georgians—a gap of at least 3.1 percentage points (during the 2012 general election) that reached its peak of 13.3 percentage points during the 2022 general election. SUMF ¶ 183; Collingwood Report 7–8. This trend can be seen at the local level as well, including in the Atlanta metropolitan area and Black Belt: During each general election, white voters exceeded the turnout rates of Black voters in all but a handful of Georgia's 159 counties, and white voters had higher rates of turnout in

79.2% of the 1,957 precincts analyzed. SUMF ¶¶ 184–85; Collingwood Report 8–23. White Georgians are also more likely than Black Georgians to participate in a range of political activities, including attending local meetings, demonstrating political participation through lawn signs and bumper stickers, working on campaigns, attending protests and demonstrations, contacting public officials, and donating money to campaigns and political causes. SUMF ¶ 188; Collingwood Report 34–38.

Comparing rates of Black voter turnout with educational attainment, Dr. Collingwood found that each 10-point increase in the percentage of the Black population without a high school degree decreases Black turnout by 3.5 percentage points, and that Black turnout rises 2.3 percentage points for each 10-point increase in the percentage of the Black population with a four-year degree. SUMF ¶ 186; Collingwood Report 24–26. The pattern holds between voter turnout and poverty: Black turnout falls 4.9 percentage points for each 10-point increase in the percentage of the Black population below the poverty line, SUMF ¶ 187; Collingwood Report 28, confirming the link between socioeconomic disadvantage and depressed political participation, *see* PI Order 211–15 (finding that "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

fully participate in the political process," and concluding that "Plaintiffs' evidence on this factor weighs in favor of a finding of vote dilution").

F. Senate Factor Six: Racial appeals are prevalent in Georgia's political campaigns.

As Dr. Burton concluded, "[r]acism, whether dog whistled or communicated directly, became a hallmark of" Georgia politics during the second half of the 20th century. SUMF ¶ 193; Burton Report 66. Although *explicit* racial appeals are no longer commonplace, *implicit* racial appeals—which, as political scientists have explained, use coded language, subtext, and visuals to activate racial thinking—are still a recurring feature of Georgia campaigns and contribute to the state's polarized voting. SUMF ¶¶ 189–92; Burton Report 62–64.

Georgia politicians have long employed implicit racial appeals to win elected office, from future U.S. House Speaker Newt Gingrich's invocation of "welfare cheaters" during his first run for Congress in 1978—one campaign aide later said, "[W]e went after every rural southern prejudice we could think of"—to Governor Brian Kemp's repeated use of coded language and insinuation during his (successful) campaigns against Stacey Abrams in 2018 and 2022. SUMF ¶¶ 194–200, 204; Burton Report 65–70 (quoting Dana Milbank, *The Destructionists: The Twenty-Five Year Crack-up of the Republican Party* 66 (2022)). During the 2022 gubernatorial election, Governor Kemp's campaign deliberately darkened Abrams's

face in campaign advertisements "to create a darker, more menacing image," while the 2020 U.S. Senate race saw implicit racial attacks on now-Senator Raphael Warnock and his church, the landmark Ebenezer Baptist Church. SUMF ¶¶ 201–03, Burton Report 68–70. These and other racial appeals have been amplified by local, state, and national news outlets since the 2016 election, SUMF ¶ 210; Exs. 12–23—thus ensuring that racialized campaigning remains an ingrained feature of Georgia's political environment.

Notably, some racial appeals from recent Georgia campaigns carry haunting echoes of the state's tragic history of discrimination and disenfranchisement. After Abrams planned a campaign rally in Forsyth County during the 2022 election, the local Republican Party issued a digital flyer attacking her and Senator Warnock and urging "conservatives and patriots" to "save and protect our neighborhoods"—a call reminiscent of the infamous Forsyth County pogrom in 1912, when Black residents were forcibly expelled. SUMF ¶ 205; Burton Report 70 (quoting Maya King, *In Georgia County With Racist History, Flier Paints Abrams as Invading Enemy*, N.Y. Times (Sept. 16, 2022), https://www.nytimes.com/2022/09/16/us/politics/stacey-abrams-forsyth-georgia-republicans.html).

Governor Kemp and other Georgia politicians have recently embraced another gambit with familiar undertones: the unsubstantiated specter of voter fraud in the

Atlanta metropolitan area and other areas with large Black populations, which mirrors the efforts of white Georgians during and after Reconstruction to restrict and eliminate Black suffrage. SUMF ¶¶ 206, 209; Burton Report 70–74. Plurality-Black Fulton County has been at the center of these baseless allegations of fraud, with former President Donald Trump spreading conspiracy theories about the county as part of his effort to overturn Georgia's 2020 election results. SUMF ¶ 207; Esselstyn Report attach. C; Burton Report 73–74. In one particularly pernicious incident, two Black poll workers in Fulton County, Ruby Freeman and Shaye Moss, were targeted by former President Trump and his campaign with allegations that they had engaged in "surreptitious illegal activity"; the two women received harassing phone calls and death threats, often laced with racial slurs, with suggestions that they should be "strung up from the nearest lamppost and set on fire"—in Dr. Burton's words, "horribly echoing the calls for lynchings of Black citizens from earlier years who were attempting to participate in the political process." SUMF ¶ 208; Burton Report 73–74 (quoting Jason Szep & Linda So, *Trump Campaign Demonized Two Georgia Election Workers—and Death Threats Followed*, Reuters (Dec. 1, 2021), https://www.reuters.com/investigates/special-report/usa-election-threats-georgia).

Ultimately, although racial appeals might have become more coded in recent campaigns, they are no less insidious—and no less a facet of Georgia's political

landscape. *See* PI Order 215–17 (finding that "Plaintiffs have presented sufficient evidence for this factor to weigh in their favor").

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

As a consequence of Georgia's history of voter suppression and racial discrimination, Black Georgians have struggled to win election to public office.

At the time of the Voting Rights Act's passage, Black Georgians constituted 34% of the state's voting-age population, and yet Georgia had only *three* elected Black officials. SUMF ¶ 211; Burton Report 35. By 1980, Black Georgians comprised just 3% of county officials in the state, the vast majority of whom were elected from majority-Black districts or counties. SUMF ¶ 212; Burton Report 41. That particular trend has not changed: While more Black Georgians have been elected to office in recent years, those officials are almost always from near-majority- or outright-majority-Black districts. SUMF ¶ 213; Burton Report 55–57. In the 2020 legislative elections, for example, no Black members of the House were elected from districts where white voters exceeded 55% of the voting-age population, and no Black members of the State Senate were elected from districts where white voters exceeded 47%. SUMF ¶ 214; Burton Report 56; *see also supra*

at 15–16 (noting that Black-preferred candidates generally prevail only in focus areas' majority-Black districts).

Although Black Georgians now comprise 33% of the state's population, SUMF ¶ 2; Esselstyn Report ¶ 15, the Georgia Legislative Black Caucus had only 16 members in the State Senate and 52 members in the House after the 2020 elections—less than 30% of each chamber. SUMF ¶ 215; Burton Report 56. Black officials have been underrepresented across Georgia's statewide offices as well: Although Georgia recently reelected a Black U.S. senator, Senator Raphael Warnock is the *first* Black Georgian to hold that office—after more than 230 years of white senators. SUMF ¶ 216; Burton Report 53, 68; *see also* PI Order 217–18 (finding that "[b]ased on the evidence presented, . . . this factor [] weighs in Plaintiffs' favor").

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

Although the Eleventh Circuit has noted that "[u]nresponsiveness is considerably less important under" a Section 2 results claim, *see Marengo Cnty.*, 731 F.2d at 1572, it is nonetheless true that Georgia has long neglected the needs of its Black residents. As discussed above, *see supra* at 26–30, Black Georgians face clear and significant disadvantages across a range of socioeconomic indicators, including education, employment, and health, SUMF ¶ 217; Collingwood Report 3. Dr. Collingwood articulated the inevitable conclusion; as he explained, "[i]t follows

that the political system is relatively unresponsive to Black Georgians; otherwise, we would not observe such clear disadvantages in healthcare, economics, and education." SUMF ¶ 218; Collingwood Report 4; *see also* PI Order 218–19 (finding that this factor "weighs in [Plaintiffs'] favor").

I. Senate Factor Nine: The justification for the new legislative maps is tenuous.

Finally, Defendants cannot justify the refusal to draw additional majority-Black districts—especially given that drawing districts to account for the numerosity and compactness of Georgia's Black community is required by the Voting Rights Act. *See* PI Order 219 (concluding that "[t]his factor [] weighs in Plaintiffs' favor" because "Mr. Esselstyn's . . . illustrative maps demonstrate that it is possible to create such maps while respecting traditional redistricting principles—just as the Voting Rights Act requires").

CONCLUSION

Despite having more than a year to prepare a defense of Georgia's enacted legislative plans, Defendants have left Plaintiffs' evidence almost entirely unrefuted. Given that Plaintiffs have submitted credible, unrebutted expert evidence proving the required elements of a Section 2 vote-dilution claim as to six of their eight illustrative districts, they respectfully request that the Court grant partial summary judgment in their favor.

Dated: March 20, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing ***Brief in Support of Plaintiffs' Motion for Partial Summary Judgment*** has been prepared in accordance with the font type and margin requirements of LR 5.1, NDGa, using font type of Times New Roman and a point size of 14.

Dated: March 20, 2023

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CERTIFICATE OF SERVICE

I hereby certify that I have on this date caused to be electronically filed a copy of the foregoing ***Brief in Support of Plaintiffs' Motion for Partial Summary Judgment*** 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: March 20, 2023

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