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

PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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INTRODUCTION

Pursuant to the Pretrial Order, see Doc. No. 243 at 9, Plaintiffs respectfully submit the following proposed findings of fact and conclusions of law.

Applying the familiar framework 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 in Allen v. Milligan, 599 U.S. 1 (2023), Plaintiffs have demonstrated that the Black populations in the Atlanta metropolitan area and Georgia's Black Belt are sufficiently large and compact to form three additional majority-Black Georgia State Senate districts and five additional majority-Black Georgia House of Representatives districts. They have further shown that Georgia's pronounced racially polarized voting deprives Black voters in majority-white legislative districts of opportunities to elect their candidates of choice. The totality of circumstances makes clear that the Georgia Senate Redistricting Act of 2021 ("SB 1EX") and the Georgia House of Representatives Redistricting Act of 2021 ("HB 1EX") deny Black voters equal opportunities to participate in the state's political processes and elect their preferred candidates to the Georgia General Assembly. To prevent the irreparable harm of vote dilution for Plaintiffs and all Black Georgians, this Court can and must remedy these violations of federal law and provide permanent injunctive relief in advance of the 2024 elections.

PROPOSED FINDINGS OF FACT

I. Plaintiffs

1. Plaintiff Annie Lois Grant is a Black resident of Union Point, Georgia, who is registered to vote and intends to vote in future legislative elections. Doc. No. 243 Attach. E ¶¶ 19–20; Doc No. 236, Grant Dep. 42:6–25.[1] Under the enacted legislative plans, Ms. Grant resides in Senate District 24 and House District 124. Doc. No. 243 Attach. E ¶ 20.

2. Plaintiff Quentin T. Howell is a Black resident of Milledgeville, Georgia, who is registered to vote and intends to vote in future legislative elections. Doc. No. 243 Attach. E ¶¶ 21–22; Doc No. 236, Howell Dep. 60:15–61:24, 62:5–25. Under the enacted legislative plans, Mr. Howell resides in Senate District 25 and House District 133. Doc. No. 243 Attach. E ¶ 23.

[1] Citations to Plaintiffs' trial exhibits are designated as "GX." 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. 254; Sept. 14, 2023, Morning Tr. 2308:2-9.

3. Plaintiff Elroy Tolbert is a Black resident of Macon, Georgia, who is registered to vote and intends to vote in future legislative elections. Doc. No. 243 Attach. E ¶¶ 24–25; Doc. No. 236, Tolbert Dep. 10:4–11:23. Under the enacted legislative plans, Mr. Tolbert resides in Senate District 18 and House District 144. Doc. No. 243 Attach. E ¶ 26.

4. Plaintiff Triana Arnold James is a Black resident of Villa Rica, Georgia, who is registered to vote and intends to vote in future legislative elections. Doc. No. 243 Attach. E ¶¶ 27–28; Doc. No. 236, James Dep. 46:2–47:16. Under the enacted legislative plans, Ms. James resides in Senate District 30 and House District 64. Doc. No. 243 Attach. E ¶ 29.

5. Plaintiff Eunice Sykes is a Black resident of Locust Grove, Georgia, who is registered to vote and intends to vote in future legislative elections. Doc. No. 243 Attach. E ¶¶ 30–31; Doc. No. 236, Sykes Dep. 30:15–32:4. Under the enacted legislative plans, Ms. Sykes resides in Senate District 25 and House District 117. Doc. No. 243 Attach. E ¶ 32.

6. Plaintiff Elbert Solomon is a Black resident of Griffin, Georgia, who is registered to vote and intends to vote in future legislative elections. Doc. No. 243 Attach. E ¶¶ 33–34; Doc. No. 236, Solomon Dep. 40:5–24. Under the enacted

legislative plans, Mr. Solomon resides in Senate District 16 and House District 117. Doc. No. 243 Attach. E ¶ 35.

7. Plaintiff Dexter Wimbish is a Black resident of Griffin, Georgia, who is registered to vote and intends to vote in future legislative elections. Doc. No. 243 Attach. E ¶¶ 36–37; Doc. No. 236, Wimbish Dep. 48:14–49:20. Under the enacted legislative plans, Mr. Wimbish resides in Senate District 16 and House District 74. Doc. No. 243 Attach. E ¶ 38.

II. Defendants

8. Defendant Brad Raffensperger is the Georgia Secretary of State and is named in his official capacity. Doc. No. 243 Attach. E ¶ 85.

9. Defendant Sara Tindall Ghazal is a member of the State Election Board and is named in her official capacity. Doc. No. 243 Attach. E ¶ 86.

10. Defendant Janice Johnston is a member of the State Election Board and is named in her official capacity. Doc. No. 243 Attach. E ¶ 87.

11. Defendant Edward Lindsey is a member of the State Election Board and is named in his official capacity. Doc. No. 243 Attach. E ¶ 88.

12. Defendant Matthew Mashburn is a member of the State Election Board and is named in his official capacity. Doc. No. 243 Attach. E ¶ 89.

13. Defendant William S. Duffey, Jr. is chair of the State Election Board and is named in his official capacity. Doc. No. 243 Attach. E ¶ 90.[2]

III. First Gingles Precondition: Numerosity and Compactness

14. Plaintiffs' mapping and demographics expert, Blakeman B. Esselstyn, demonstrated that the Black populations in the Atlanta metropolitan area and the Georgia Black Belt are sufficiently large and geographically compact to form a majority of the voting-age population in three additional Georgia State Senate districts and five additional Georgia House of Representatives districts.

15. The Court has accepted Mr. Esselstyn in this case as qualified to testify as an expert in redistricting, demography, and geographic information systems. Sept. 6, 2023, Afternoon Tr. 466:11–25. The Court finds Mr. Esselstyn credible, his analysis methodologically sound, and his conclusions reliable. The Court credits Mr. Esselstyn's testimony and conclusions.

16. Mr. Esselstyn's illustrative legislative plans contain two additional majority-Black State Senate districts in the southern Atlanta metropolitan area, one additional majority-Black State Senate district in the Black Belt, one additional

[2] 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.

majority-Black House district in the western Atlanta metropolitan area, two additional majority-Black House districts in the southern Atlanta metropolitan area, and two additional majority-Black House districts in the Black Belt anchored in Macon-Bibb County. The plans comply with the traditional districting principles adopted by the Georgia General Assembly to guide its redistricting efforts during 2021. See JX 1, JX 2.

17. In sum, the Court credits the analysis and conclusions of Mr. Esselstyn 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. Esselstyn has established that the Black populations in the Atlanta metropolitan area and central Georgia Black Belt are sufficiently numerous to comprise a majority of the voting-age population in three additional State Senate districts and five additional House districts. Doc. No. 231 Attach. E ¶ 228 ("Georgia's Black population is sufficiently numerous to allow for the creation of three additional majority-Black State Senate districts); Doc. No. 231 Attach. E ¶ 229 ("Georgia's Black population is sufficiently numerous to allow for the creation of five additional majority-Black State House districts."). Defendants' mapping expert, John Morgan, does not dispute that Georgia's Black population

is sufficiently numerous to allow for the creation of these additional majority-Black districts. Sept. 12, 2023, Afternoon Tr. 1839:14–18 (Mr. Morgan agreeing that the Black population in Georgia is large enough to create three additional majority-Black State Senate districts); Sept. 13, 2023, Morning Tr. 1900:23–1901:2 (Mr. Morgan agreeing that the Black population in Georgia is large enough to create five additional majority-Black State House districts).

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 initial redistricting data to Georgia on August 12, 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 10.6 percent from 2010. Doc. No. 231 Attach. E ¶ 93; GX 1 ¶ 14; Sept. 6, 2023, Afternoon Tr. 468:9–17.

22. 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; GX1 ¶ 15; Sept. 6, 2023, Afternoon Tr. 468:11–469:1.

23. 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.

24. 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; GX1 ¶ 15.

25. 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.

26. From 2010 to 2020, Georgia's white population decreased by 51,764, or approximately 1%. Doc. No. 231 Attach. E ¶ 99; GX1 ¶ 16.

27. 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.

28. Since 1990, the AP Black population has more than doubled: from 1.75 million to 3.54 million, an increase that is the equivalent of 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.

29. 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.

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

31. 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; GX1 ¶ 17.

32. 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.

33. 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.

34. 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.

35. 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—with about half of the gain coming from an increase in the Black population, which increased by 409,927 (or 23.07%). Doc. No. 231 Attach. E ¶ 107.

36. 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.

37. 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. Doc. No. 231 Attach. E ¶ 109.

38. Between 2010 and 2020, the non-Hispanic white population in the Atlanta MSA decreased by 22,736 persons. Doc. No. 231 Attach. E ¶ 112.

39. 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.

40. 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.

41. Just about half of Georgia's Black population lives in six counties in the Atlanta MSA. Those six counties are, in order of decreasing Black population, Fulton, DeKalb, Gwinnett, Cobb, Clayton, and Henry. GX1 ¶ 18; Sept. 6, 2023, Afternoon Tr. 469:23–470:5 (Mr. Esselstyn's testimony describing distribution of state's Black population).

42. In addition to the Atlanta metropolitan area, the state's Black population is particularly concentrated in the Georgia Black Belt, a belt of counties (many of which are rural) that constitutes a wide band from the southwest corner of the state to the central part of the South Carolina border near Augusta-Richmond County. Doc. No. 231 Attach. E ¶¶ 118–19; GX1 ¶ 19 & fig.1; Sept. 6, 2023, Afternoon Tr. 469:23–470:24 (Mr. Esselstyn's testimony describing distribution of state's Black population).

2. 2021 State Senate and House Plans

43. The Georgia State Senate map consists of 56 districts. Doc. No. 231 Attach. E ¶ 172; GX1 ¶ 21.

44. The enacted State Senate plan contains 14 majority-Black districts using the AP BVAP metric. GX1 ¶ 22; Sept. 6, 2023, Afternoon Tr. 481:2–12. Ten of those districts are in the Atlanta metropolitan area and four are in the Black Belt. GX1 ¶ 22 & fig.3.

45. The Georgia House of Representatives map consists of 180 districts. Doc. No. 231 Attach. E ¶ 179; GX1 ¶ 44. The enacted House plan contains 49 majority-Black districts using the AP BVAP metric. GX1 ¶ 45; Sept. 6, 2023, Afternoon Tr. 488:1–8. Thirty-four of those districts are in the Atlanta metropolitan area, 13 are in the Black Belt, and two small districts are within Chatham (anchored in Savannah) and Lowndes Counties (anchored in Valdosta) in the southeastern part of the state. GX1 ¶ 45 & fig.12.

3. Illustrative State Senate Plan

46. Analyzing these demographics and the enacted State Senate map, Mr. Esselstyn concluded that "[i]t is possible to create three additional majority-Black districts in the State Senate plan . . . in accordance with traditional redistricting principles." GX1 ¶ 13; Sept. 6, 2023, Afternoon Tr. 468:2–4.

47. Mr. Esselstyn drew an illustrative State Senate plan that includes 17 majority-Black districts using the AP BVAP metric. Doc. No. 231 Attach. E ¶ 231; GX1 ¶ 27. Those 17 illustrative districts are:

Table 1: Illustrative Senate plan majority-Black districts with BVAP percentages.

District	BVAP%	District	BVAP%	District	BVAP%
10	61.10%	26	52.84%	39	60.21%
12	57.97%	28	57.28%	41	62.61%
15	54.00%	34	58.97%	43	58.52%
22	50.84%	35	54.05%	44	71.52%
23	51.06%	36	51.34%	55	65.97%
25	58.93%	38	66.36%		

48. Because Mr. Esselstyn's illustrative State Senate plan used the enacted plan as a starting point, many of the districts are the same. Only 22 districts were modified, leaving the other 34 unchanged. Doc. No. 231 Attach. E ¶ 261; GX1 ¶ 26; Sept. 6, 2023, Afternoon Tr. 485:3–5.

49. Mr. Esselstyn's additional majority-Black State Senate district in the Black Belt region (illustrative Senate District 23) includes all of Burke, Glascock, Hancock, Jefferson, Screven, Taliaferro, Warren, and Washington Counties and parts of Baldwin, Greene, McDuffie, Richmond, and Wilkes Counties. Doc. No. 231 Attach. E ¶ 233; GX1 ¶ 29

50. Mr. Esselstyn's illustrative Senate District 23 has an AP BVAP over 50 percent. Doc. No. 231 Attach. E ¶ 234; GX1 ¶ 27 & tbl.1; Sept. 6, 2023, Afternoon Tr. 483:3–5.

51. Mr. Esselstyn's additional majority-Black State Senate district in the southeastern Atlanta metropolitan area (illustrative Senate District 25) is composed of portions of Clayton and Henry Counties. Doc. No. 231 Attach. E ¶ 235; GX1 ¶ 30.

52. Mr. Esselstyn's illustrative Senate District 25 has an AP BVAP over 50 percent. Doc. No. 231 Attach. E ¶ 236; GX1 ¶ 27 & tbl.1; Sept. 6, 2023, Afternoon Tr. 484:10–12.

53. Mr. Esselstyn's additional majority-Black State Senate district in the southwestern Atlanta metropolitan area (illustrative Senate District 28) is composed of portions of Clayton, Coweta, Fayette, and Fulton Counties. Doc. No. 231 Attach. E ¶ 237; GX1 ¶ 31.

54. Mr. Esselstyn's illustrative Senate District 28 has an AP BVAP over 50 percent. Doc. No. 231 Attach. E ¶ 238; GX1 ¶ 27 & tbl.1; Sept. 6, 2023, Afternoon Tr. 484:21–23.

55. Based on the expert reports and testimony provided in this case, the Court concludes that Mr. Esselstyn's illustrative State Senate plan contains three additional majority-Black districts.

4. Illustrative State House Plan

56. Analyzing the aforementioned demographics and the enacted House map, Mr. Esselstyn concluded that "[i]t is possible to create . . . five additional majority-Black districts in the State House plan while still adhering to other traditional redistricting principles." GX1 ¶ 13; Sept. 6, 2023, Afternoon Tr. 468:6–8. Mr. Esselstyn drew an illustrative House plan that includes 54 majority-Black districts using the AP BVAP metric. Doc. No. 231 Attach. E ¶ 239; GX1 ¶ 48 & tbl.5. Those 54 illustrative districts are:

Table 5: Illustrative House plan majority-Black districts with BVAP percentages.

District	BVAP%	District	BVAP%	District	BVAP%	District	BVAP%
38	54.23%	69	62.73%	91	60.01%	137	52.13%
39	55.29%	74	53.94%	92	68.79%	140	57.63%
55	55.38%	75	66.89%	93	65.36%	141	57.46%
58	63.04%	76	67.23%	94	69.04%	142	50.14%
59	70.09%	77	76.13%	95	67.15%	143	50.64%
60	63.88%	78	51.03%	113	59.53%	145	50.38%
61	53.49%	79	71.59%	115	53.77%	149	51.53%
62	72.26%	84	73.66%	116	51.95%	150	53.56%
63	69.33%	85	62.71%	117	51.56%	153	67.95%
64	50.24%	86	75.05%	126	54.47%	154	54.82%
65	63.34%	87	73.08%	128	50.41%	165	50.33%
66	53.88%	88	63.35%	129	54.87%	177	53.88%
67	58.92%	89	62.54%	130	59.91%		
68	55.75%	90	58.49%	132	52.34%		

57. Because Mr. Esselstyn's illustrative House plan used the enacted plan as a starting point, many of the districts are the same. Only 26 districts were modified, leaving the other 154 unchanged. Doc. No. 231 Attach. E ¶ 261; GX1 ¶ 48.

58. Mr. Esselstyn's additional majority-Black House district in the western Atlanta metropolitan area (illustrative House District 64) is composed of portions of Douglas, Fulton, and Paulding Counties. Doc. No. 231 Attach. E ¶ 241; GX1 ¶ 49.

59. Mr. Esselstyn's illustrative House District 64 has an AP BVAP over 50 percent. Doc. No. 231 Attach. E ¶ 242; GX1 ¶ 48 & tbl.5; Sept. 6, 2023, Afternoon Tr. 489:12–14.

60. Mr. Esselstyn's additional majority-Black House districts in the southern Atlanta metropolitan area (illustrative House Districts 74 and 117) are composed of portions of Clayton, Fayette, and Henry Counties. Doc. No. 231 Attach. E ¶ 243; GX1 ¶ 50.

61. Although House District 117 is only partially in Henry County in the enacted House map, Mr. Esselstyn's illustrative House District 117 is contained entirely within Henry County. Sept. 6, 2023, Afternoon Tr. 490:2–4.

62. Mr. Esselstyn's illustrative House Districts 74 and 117 have AP BVAPs over 50 percent. Doc. No. 231 Attach. E ¶¶ 244, 245; GX1 ¶ 48 & tbl.5; Sept. 6, 2023, Afternoon Tr. 490:7–9. Mr. Esselstyn's additional majority-Black House districts in the central Black Belt region (illustrative House Districts 145 and 149) are composed of portions of Baldwin, Macon-Bibb, and Houston Counties, as well as all of Twiggs and Wilkinson Counties. Doc. No. 231 Attach. E ¶ 246; GX1 ¶ 51.

63. Mr. Esselstyn's illustrative House plan includes two districts (illustrative House Districts 142 and 143) that are wholly contained in Bibb County and two (illustrative House Districts 145 and 149) that are only partially in Bibb County. GX1 ¶ 51.

64. Mr. Esselstyn's illustrative House Districts 145 and 149 have AP BVAPs over 50 percent. Doc. No. 231 Attach. E ¶¶ 247, 248; GX1 ¶ 48 & tbl.5; Sept. 6, 2023, Afternoon Tr. 490:20–23.

65. Based on the expert reports and testimony provided in this case, the Court concludes that Mr. Esselstyn's illustrative House plan contains five additional majority-Black districts.

B. Geographic Compactness

66. Plaintiffs' illustrative plans demonstrate that the Black populations in the Atlanta metropolitan area and central Georgia Black Belt are sufficiently

geographically compact to constitute a voting-age majority in three additional State Senate districts and five additional House districts.

67. The Court finds that the illustrative plans are reasonably configured and consistent with traditional redistricting principles.

68. 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, avoiding the unnecessary paring of incumbents, and compliance with Section 2 of the Voting Rights Act. JX1, JX2.

69. Mr. Esselstyn's illustrative legislative maps adhere to these and other neutral districting criteria. See Sept. 6, 2023, Afternoon Tr. 480:22–481:1 (Mr. Esselstyn's testimony describing the illustrative plan's adherence to traditional redistricting principles).

70. As Mr. Esselstyn testified, applying these traditional districting principles required balancing of all of them. See Sept. 6, 2023, Afternoon Tr. 474:18–475:17; id. at 522:2–14 (Mr. Esselstyn describing his approach to balancing traditional districting principles).

1. Population Equality

71. The Court finds that Mr. Esselstyn's illustrative legislative maps comply with the one-person, one-vote principle.

72. Mr. Esselstyn's expert report demonstrates that his illustrative State Senate plan contains minimal population deviation. In both the enacted and illustrative State Senate plans, most district populations are within ±1 percent of the ideal, and a small minority are between ±1 and 2 percent. None has a deviation of more than 2 percent. For the enacted plan, the relative average deviation is 0.53 percent, and for the illustrative plan, the relative average deviation is 0.67 percent. GX1 ¶ 34; Sept. 6, 2023, Afternoon Tr. 485:8–18 (Mr. Esselstyn's testimony describing compliance with population equality).

73. Mr. Esselstyn's expert report further demonstrates that his illustrative House plan contains minimal population deviation. In both the enacted and illustrative House plans, most district populations are within ±1 percent of the ideal, and a small minority are between ±1 and 2 percent. None has a deviation of more than 2 percent. For the enacted plan, the relative average deviation is 0.61 percent, and for the illustrative plan, the relative average deviation is 0.64 percent. GX1 ¶ 55; Sept. 6, 2023, Afternoon Tr. 492:5–16 (Mr. Esselstyn's testimony describing compliance with population equality).

2. Contiguity

74. The Court finds that Mr. Esselstyn's illustrative legislative maps contain contiguous districts.

75. There is no factual dispute on this issue. Doc. No. 231 Attach. E ¶ 258 ("The districts in Mr. Esselstyn's illustrative Senate and House plans are contiguous.").

3. Compactness

76. The Court finds that Mr. Esselstyn's illustrative legislative maps have comparable compactness scores to Georgia's enacted 2021 legislative plans.

77. As Defendants' mapping expert Mr. Morgan explained while testifying at the preliminary injunction hearing, "[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." Feb. 11, 2022, Afternoon Tr. 225:18–226:11.[3]

[3] 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).

78. Mr. Esselstyn reported the average compactness scores for both the enacted plans and his illustrative legislative plans using five measures—Reock, Schwartzberg, Polsby-Popper, Area/Convex Hull, and Number of Cut Edges. GX1 ¶¶ 36, 57 & tbls.2, 6; see also Sept. 6, 2023, Afternoon Tr. 475:18–476:18 (Mr. Esselstyn's testimony describing common measures of compactness).

79. 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. GX1 at 75.

80. The Schwartzberg test is a perimeter-based measure that compares a simplified version of each district to a circle, which is considered to be the most compact shape possible. For each district, the Schwartzberg test computes the ratio of the perimeter of the simplified version of the district to the perimeter of a circle with the same area as the original district. This measure is usually greater than or equal to 1, with 1 being the most compact. GX1 at 75.

81. The Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter: $4\pi Area/(Perimeter^2)$. The measure is always between 0 and 1, with 1 being the most compact. GX1 at 75.

82. The Area/Convex Hull test computes the ratio of the district area to the area of the convex hull of the district (minimum convex polygon which completely contains the district). The measure is always between 0 and 1, with 1 being the most compact. GX1 at 75.

83. The Cut Edges test counts the number of edges removed ("cut") from the adjacency (dual) graph of the base layer to define the districting plan. The adjacency graph is defined by creating a node for each base layer area. An edge is added between two nodes if the two corresponding base layer areas are adjacent—which is to say, they share a common linear boundary. If such a boundary forms part of the district boundary, then its corresponding edge is cut by the plan. The measure is a single number for the plan. A smaller number implies a more compact plan. GX1 at 75–76.

84. Mr. Esselstyn concluded that the average compactness measures for the enacted State Senate plan and his illustrative plan "are almost identical." GX1 ¶ 36 & tbl.2; see also id. at 79–91 (Mr. Esselstyn's expert report providing detailed compactness measures for enacted and illustrative State Senate maps); Sept. 6, 2023, Afternoon Tr. 485:19–21 (Mr. Esselstyn's testimony describing compliance with compactness principle). Mr. Morgan agreed that the mean compactness

scores were "very close." Sept. 12, 2023, Afternoon Tr. 1843:19–1844:2. Mr. Esselstyn reported those measures as follows:

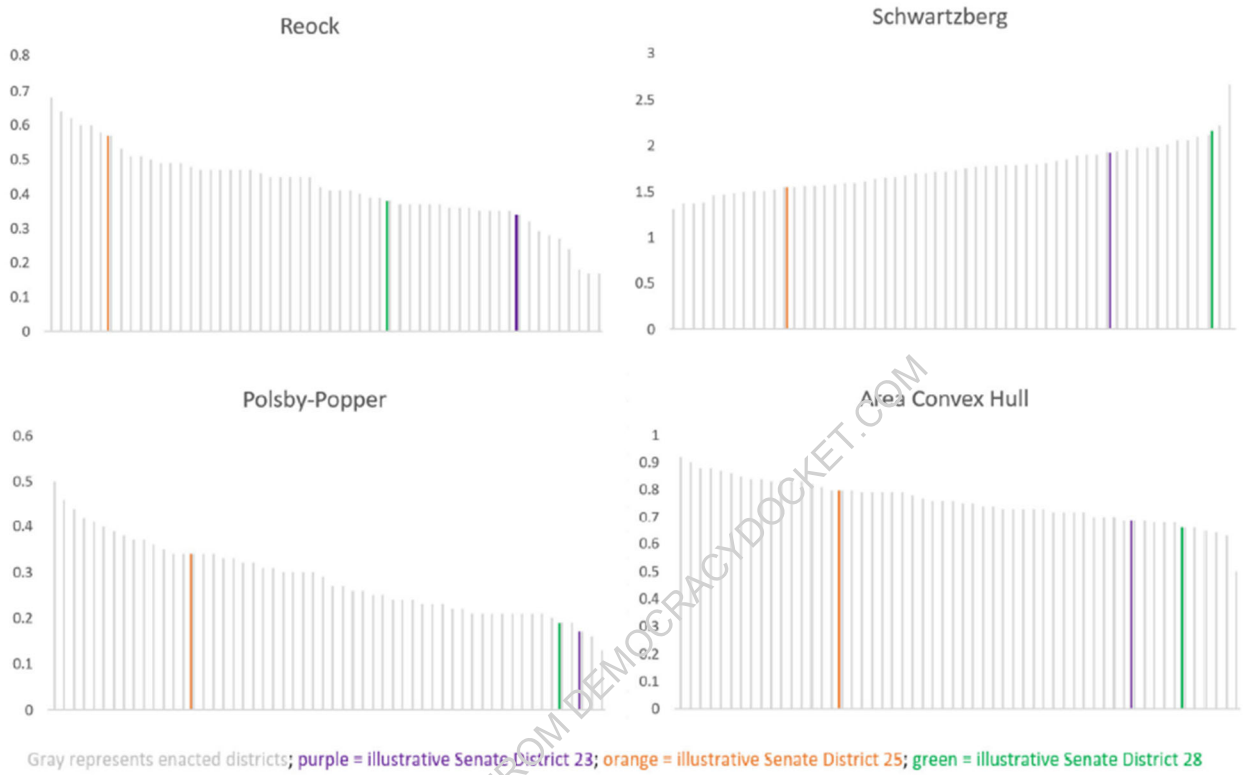
Table 2: Compactness measures for enacted and illustrative State Senate plans.

	Reock (average)	Schwartzberg (average)	Polsby-Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.42	1.75	0.29	0.76	11,005
Illustrative	0.41	1.76	0.28	0.75	11,003

85. Mr. Esselstyn's expert report and trial testimony confirm that the compactness scores for the additional majority-Black districts in his illustrative Senate plan all fall within the range of compactness scores of districts in the enacted plan. GX1 ¶ 37 & fig.8; Sept. 6, 2023, Afternoon Tr. 486:17–24.

86. Mr. Esselstyn's illustrative majority-Black Senate districts are comparable to or more compact than their counterparts in the enacted plan. GX1 ¶ 37 & fig.8.

Figure 8: Sorted compactness measures for all enacted plan districts and additional majority-Black districts in the illustrative State Senate plan.



87. Mr. Morgan agreed, for example, that Mr. Esselstyn's illustrative Senate District 25 is significantly more compact than enacted Senate District 25. Sept. 12, 2023, Afternoon Tr. 1850:8–11. Mr. Morgan also agreed that Mr. Esselstyn's illustrative Senate District 25 is more compact on the Reock scale than all of the enacted districts from which it draws and more compact on the Polsby-Popper scale than all of the enacted districts from which it draws, except one, which has an identical score. Sept. 13, 2023, Morning Tr. 1895:17–1896:1. Mr. Morgan conceded that Mr. Esselstyn's illustrative Senate District 23 is more

compact than enacted Senate District 23 according to its Polsby-Popper score. See Sept. 12, 2023, Afternoon Tr. 1853:20–1854:3.

88. Mr. Esselstyn further concluded that the average compactness measures for the enacted House plan and his illustrative plan "are almost identical, if not identical." GX1 ¶ 57 & tbl. 6; see also id. at 135–65 (Mr. Esselstyn's expert report providing detailed compactness measures for enacted and illustrative House maps); Sept. 6, 2023, Afternoon Tr. 492:17–22 (Mr. Esselstyn's testimony describing compliance with compactness principle). Mr. Esselstyn reported those measures as follows:

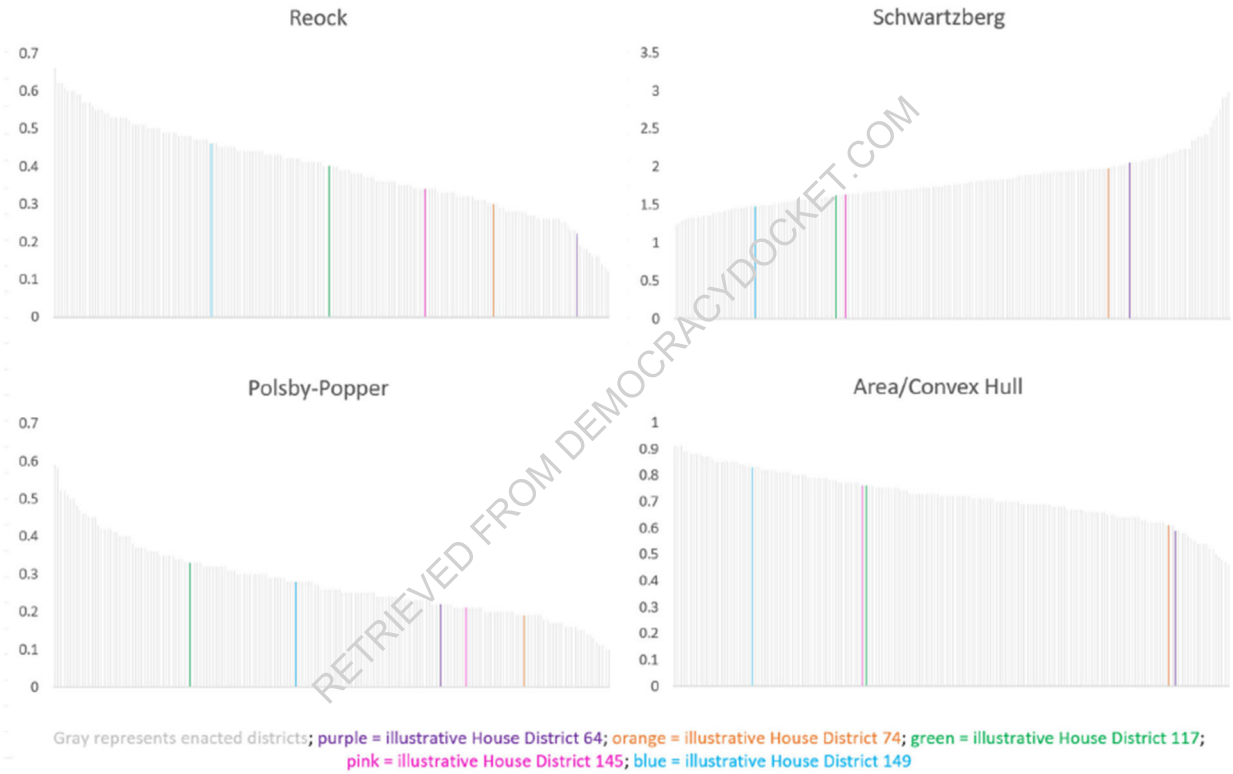
Table 6: Compactness measures for enacted and illustrative House plans.

	Reock (average)	Schwartzberg (average)	Polsby-Popper (average)	Area/Convex Hull (average)	Number of Cut Edges
Enacted	0.39	1.80	0.28	0.72	22,020
Illustrative	0.39	1.81	0.28	0.72	22,359

89. Mr. Esselstyn's expert report and trial testimony confirm that the compactness scores for the additional majority-Black districts in his illustrative House plan all fall within the range of compactness scores of districts in the enacted plan. GX1 ¶ 58 & fig.17; Sept. 6, 2023, Afternoon Tr. 493:15–20.

90. Mr. Esselstyn's illustrative majority-Black House districts are comparable to or more compact than their counterparts in the enacted plan. GX1 ¶ 58 & fig.17.

Figure 17: Sorted compactness measures for all enacted plan districts and additional majority-Black districts in the illustrative House plan.



91. Mr. Morgan's expert report confirmed that Mr. Esselstyn's illustrative plans and the enacted plans compare favorably on compactness measures. Mr. Morgan characterized the mean compactness scores of the illustrative Senate plan as "close to" the mean compactness scores of the enacted Senate plan. DX3 ¶ 22. Mr. Morgan characterized the overall compactness scores of the enacted and illustrative House plans as "similar." DX3 ¶ 50. At trial, Mr. Morgan conceded that

the overall compactness score of the illustrative map is identical to the enacted map to two decimal points. Sept. 13, 2023, Morning Tr. 1901:3–13.

92. After reviewing the compactness measures supplied by the expert reports received in this case and listening to the expert testimony provided at trial and at the preliminary injunction hearing, the Court concludes that the districts in Mr. Esselstyn's illustrative legislative plans are reasonably compact.

93. The Court finds that Mr. Esselstyn's illustrative legislative plans are consistent with the traditional districting principle of compactness.

4. Preservation of Political Subdivisions

94. Based on the record, the Court concludes that Mr. Esselstyn's illustrative legislative plans comply with the districting criterion of respecting political subdivision boundaries.

95. Mr. Esselstyn testified that it was not always possible to preserve political subdivisions because, for example, "you've got to create House districts that are in the neighborhood of 60,000 people . . . [a]nd there are many counties in Georgia that have a population of more than 60,000 people. And more than 190,000 [people], which is . . . roughly, the ideal population for a Senate district." Sept. 6, 2023, Afternoon Tr. 474:7–17.

96. Mr. Esselstyn concluded that "[w]hile the creation of three additional majority-Black State Senate districts involved the division of additional counties and VTDs, the differences are marginal." GX 1 ¶ 40 & tbl.4; see also id. at 92–103 (Mr. Esselstyn's expert report providing political subdivision splits for enacted and illustrative State Senate maps); Sept. 6, 2023, Afternoon Tr. 487:8–14 (Mr. Esselstyn's testimony that the number of political subdivision splits in the illustrative and enacted Senate plans are "very similar"). He reported the splits in the enacted and illustrative State Senate maps as follows:

Table 4: Political subdivision splits for enacted and illustrative State Senate plans.

	Intact Counties	Split Counties	Split VTDs
Enacted	130	29	47
Illustrative	125	34	49

97. Mr. Esselstyn further concluded that "the numbers of counties and VTDs (akin to precincts) split in the enacted and illustrative House plans are nearly equal." GX1 ¶ 59 & tbl.8; see also id. at 167–99 (Mr. Esselstyn's expert report providing political subdivision splits for enacted and illustrative House maps); Sept. 6, 2023, Afternoon Tr. 494:12–15 (Mr. Esselstyn's testimony that the number of political subdivision splits in the illustrative and enacted State House plans are

"very similar"). He reported the splits in the enacted and illustrative House maps as follows:

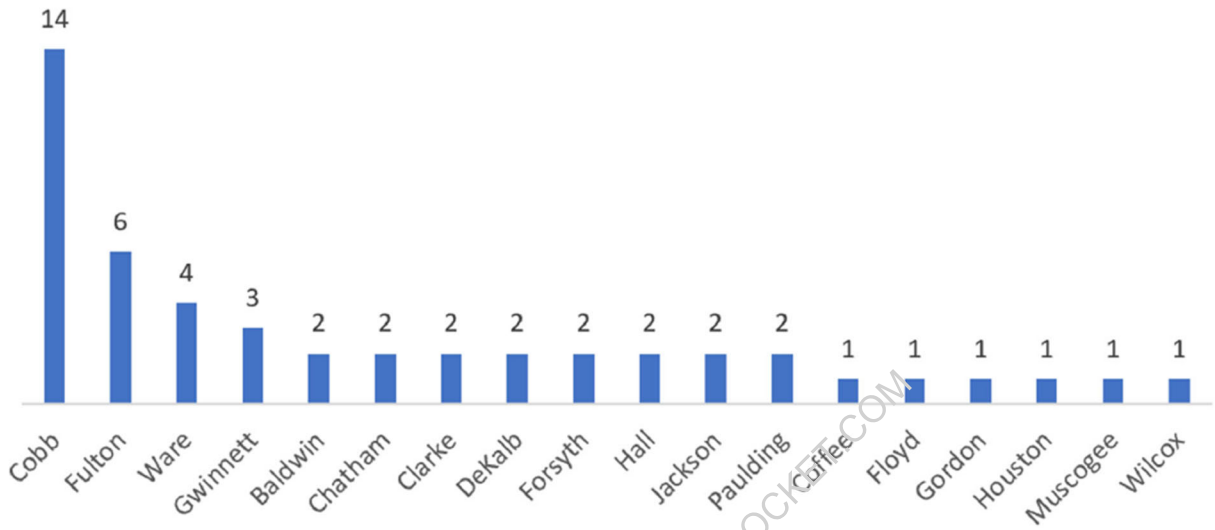
Table 8: Political subdivision splits for enacted and illustrative House plans.

	Intact Counties	Split Counties	Split VTDs
Enacted	90	69	185
Illustrative	89	70	186

98. Notably, the number of county splits in Mr. Esselstyn's illustrative State Senate plan is lower than the number of such splits in the legislative plans used in the most recent elections (which is to say, Georgia's 2014 State Senate plan). GX 1 at 19 n.10; Sept. 6, 2023, Afternoon Tr. 487:15–21.

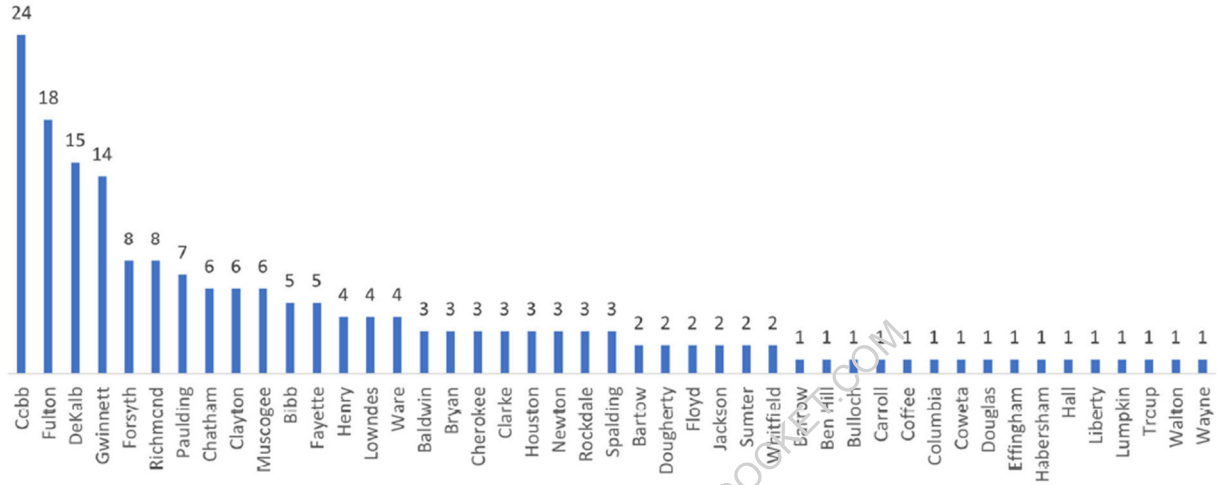
99. Out of 2,698 VTDs statewide, only 49 are split in Mr. Esselstyn's illustrative State Senate plan, and in only 18 of Georgia's 159 counties. Doc. No. GX1 ¶ 40 & tbl.4; Mr. Esselstyn's report included a histogram depicting the VTD splits in his illustrative State Senate plan by county:

Figure 10: VTD splits in illustrative State Senate plan by county.



100. Similarly, out of 2,698 VTDs statewide, only 186 are split in Mr. Esselstyn's illustrative House plan, and in only 45 of Georgia's 159 counties. GX1 ¶ 59 & tbl.8; Sept. 6, 2023, Afternoon Tr. 494:16–495:3. Mr. Esselstyn's report included a histogram depicting the VTD splits in his illustrative House plan by county:

Figure 18: VTD splits in illustrative State House plan by county.



101. Across both the illustrative State Senate and House maps, only 45 of Georgia's 159 counties have split VTDs. GX1 ¶ 59.

102. Mr. Morgan's report does not opine that Mr. Esselstyn's illustrative maps fail to comply with this districting principle. See DX3. Mr. Morgan's report confirms that Mr. Esselstyn's illustrative House and Senate plans split the same counties as their enacted counterparts. See DX3 ¶¶ 35, 59. Mr. Morgan also conceded that Mr. Esselstyn's county splits sometimes affect fewer people than the number of people who live in counties that Mr. Esselstyn's illustrative plans keep whole. See Sept. 12, 2023, Afternoon Tr. 1887:21–1891:1; Sept. 13, 2023, Morning Tr. 1921:11–1922:10.

103. The Court finds that Mr. Esselstyn's illustrative legislative plans respect the boundaries of political subdivisions.

5. Preservation of Communities of Interest

104. Based on the record, the Court concludes that Mr. Esselstyn's illustrative legislative plans comply with the districting criterion of respecting communities of interest.

105. Mr. Esselstyn testified at the preliminary injunction hearing regarding his definition of a community of interest: "[C]ommunity of interest could be something as large as the Black Belt. As large as Metro Atlanta. Can span multiple counties. And . . . it could also be as small as a neighborhood. So it can be an area that is large or larger geographically but the basic idea is you are looking at areas that have a shared characteristics or where the people have a shared interest." Feb. 9, 2022, Afternoon Tr. 167:1–11. Although sometimes such communities "can be delineated on [a] map"—such as municipalities, college campuses, or military bases—at other times "they don't have clearly defined boundaries." Id. at 167:18–168:9. He further elaborated on this concept at trial. There, Mr. Esselstyn testified that "[t]here's not a simple definition for communities of interest in my mind because they can vary a lot. They can be made up of a large number of counties. . . . But it can also be as small as an institutional

campus, like a college campus. So they can vary widely in size." Sept. 6, 2023, Afternoon Tr. 478:17–479:7. As Mr. Esselstyn explained, "generally," communities of interest "are areas that are [dee]med to share either common interests, common cultural history, or other common characteristics." Id. In drawing his illustrative maps, Mr. Esselstyn sought to "keep . . . communities of interest intact and not divide them if [he] could avoid doing so." Sept. 6, 2023, Afternoon Tr. 479:8–22. Notably, this does not necessarily mean that each illustrative district is homogenous; as Mr. Esselstyn explained at the preliminary injunction hearing, "I don't believe that the communities of interest principle[] requires every two communities in a given district to have commonalities. I don't think that's what the principle stands for. . . . [M]y focus on communities of interest is trying to keep them intact, when possible." Feb. 9, 2022, Afternoon Tr. 221:1–222:11. Mr. Esselstyn elaborated on this point at trial when he testified that he doesn't "subscribe to the view that a community of interest needs to span an entire district, and that . . . any . . . corners of any given district have to have some unifying characteristic or the districts somehow need to be homogenous." September 6, 2023, Afternoon Tr. 539:11–18. Accordingly, the absence of "some shared characteristic" between two communities of interest in a given district does not

necessarily indicate "a failure to meet the communities of interest criteria or any other [] traditional redistricting principle." Feb. 9, 2022, Afternoon Tr. 222:12–17.

106. Defendants' map drawer for SB 1EX and HB 1EX, Gina Wright, "heavily rel[ies] on [Georgia's] legislators to know their communities." Sept. 12, 2023, Morning Tr. 1618:15–18. Ms. Wright 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."). Although Ms. Wright testified that she would not consider Georgia's Black Belt to constitute a community of interest, she conceded that she lives in Henry County, in metro Atlanta. Id. at 1653:17–21.

107. Commenting on Mr. Esselstyn's illustrative Senate District 23, Dr. Diane Evans, a lifelong Georgia resident from Screven County, testified to the many commonalities that unite the Black residents of the illustrative district. Sept. 7, 2023, Morning Tr. 619:14–17. Dr. Evans mentioned that the Black communities in the illustrative districts are facing "gun violence," high poverty rates, and elevated high school dropout rates. Id. at 628:21–630:13. She also testified to the social ties that unite Black residents of the illustrative district. As a district

moderator in the Baptist church, she oversees a number of congregations within her region. Id. at 627:21–628:1. The congregations in her region "have what [they] call the usher['s union, and [they] have different revivals that go on. . . . They will have . . . pastors that come and they may preach to different churches within these communities. And so we have a shared commonality with that." Id. at 628:2–6. Ms. Wright agreed that a community of interest might be based around a shared place of worship. Sept. 12, 2023, Morning Tr. 1682:18–21.

108. Mr. Esselstyn made improvements to the version of illustrative Senate District 23 that he submitted during the preliminary injunction phase. Notably, he changed the district to unite two noncontiguous portions of the Georgia College campus into a single district and to keep the core of Milledgeville intact. Sept. 6, 2023, Afternoon Tr. 483:6–484:1.

109. Commenting on Mr. Esselstyn's illustrative Senate District 25, 28, and illustrative House Districts 74 and 117, Jason Carter, a former member of the State Senate and candidate for Governor of Georgia during the 2014 election, noted that these districts are all based in South Metro Atlanta. Sept. 8, 2023, Morning Tr. 951:3–5; id. at 957:3–9; id. at 963:6–16. Mr. Carter testified that the communities within these illustrative districts are "suburban and exurban," "clearly [] fast-growing, . . . Atlanta commuter communit[ies] that ha[ve] all of the traffic concerns

and the concerns of . . . expanding schools and massive population boom." Id. at 953:20–954:3. See also id. at 958:9–19 (similar); id. at 959:6–19 (similar); id. at 962:1–965:17 (similar). Addressing their shared interests, Mr. Carter explained that residents of these areas need their government officials to be responsive to their needs in "transportation, education, [and] healthcare." Id. at 955:7–21.

110. Mr. Esselstyn explained that he had good reason to group Clayton and Henry Counties together in Senate District 25 because "they're adjacent to each other." Sept. 6, 2023, Afternoon Tr. 544:1–7. Ms. Wright agreed that it makes sense to group together Coweta and Fayette counties in a single district because the counties "are commonly sharing resources and things like that." Sept. 12, 2023, Morning Tr. 1656:18–21. Mr. Esselstyn also explained that in Henry County illustrative District 25 keeps McDonough almost entirely intact, Locust Grove almost entirely intact, . . . Hampton . . . entirely intact[,] [a]nd in Clayton County[,] I think the communities of Bonanza and Lovejoy are kept intact." Sept. 6, 2023, Afternoon Tr. 544:1–12. Mr. Esselstyn also noted that his illustrative House District 74 keeps the communities of Irondale, Brooks, and Woolsey "if not entirely intact, almost entirely intact." Id. at 566:22–567:5.

111. Commenting on Mr. Esselstyn's illustrative House District 64, Erick Allen, a former member of the Georgia House of Representatives and candidate

for Georgia Lieutenant Governor during the 2022 election cycle, explained that the residents of this West Metro Atlanta district have shared interests in "healthcare" and "transit." Sept. 8, 2023, Morning Tr. 1004:1–10. They rely on the same roadways: Interstates "75, 85, 20, and 285." Id. at 1004:11–15. Thus, they face many of the same transportation-related challenges: "Access to transit, congestion, [and] infrastructure." Id. at 1004:19–22. They rely on the same healthcare systems and have a shared interest in preserving access to Grady Hospital, the only Level One Trauma Center in the metro area. Id. at 1005:1–24.

112. Commenting on Mr. Esselstyn's illustrative House Districts 145 and 149, Fenika Miller, a lifelong Houston County resident and organizer with the Black Voters Matter Fund, identified several needs and interests shared by the Black residents of the illustrative districts. Sept. 7, 2023, Morning Tr. 644:3–646:3. Ms. Miller observed that the Black Belt has lost rural hospitals at a "disproportionate rate," has "food deserts," suffers from "a lot of housing insufficiency," and has too many "low-wage jobs." Id. at 650:2–12. See also id. at 652:16–23 (same); id. at 653:18–25; id. at 654:15–655:9. Based on her lived experience, Ms. Miller explained that Black Belt residents need "economic stability and mobility, . . . access to healthcare and affordable healthcare, food []security,

clean air, clean water, [an improved] education system, . . . [and] [h]ousing." Id. at 648:16–24.

113. As described above, Mr. Esselstyn's 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.'" GX1 ¶ 52 (footnote omitted); see Sept. 6, 2023, Afternoon Tr. 583:17–584:12 (Mr. Esselstyn testifying to the unifying features of the Georgia Fall Line).

114. Mr. Esselstyn made improvements to the version of illustrative House District 149 that he submitted during the preliminary injunction phase. Notably, he changed the district to unite two noncontiguous portions of the Georgia College campus into a single district and to keep the core of Milledgeville intact. Sept. 6, 2023, Afternoon Tr. 490:24–491:13.

115. Regarding the House districts in Macon-Bibb County, Ms. Wright noted during the preliminary injunction hearing that "[w]e had testimony in Macon at that hearing specifically asking to keep their districts with an eastern district and a western district, which is how those two districts where those incumbents that live there are currently drawn. And they asked we maintain it the

same way." Feb. 11, 2022, Morning Tr, 50:3–51:5. Mr. Esselstyn's illustrative House plan maintains House Districts 142 and 143 within Bibb County as eastern and western districts. GX1 ¶ 51 & fig.16.

116. The Court finds that Mr. Esselstyn's illustrative legislative plans respect communities of interest.

6. Incumbent Pairings

117. Based on the record, the Court concludes that Mr. Esselstyn's illustrative legislative plans comply with the districting criterion of avoiding unnecessary pairings of incumbents. See JX1, JX2.

118. The illustrative legislative plans that Mr. Esselstyn submitted during the preliminary injunction phase of this litigation, created without knowledge of incumbent addresses, paired two incumbents in the State Senate and 16 incumbents in the State House. GX1 ¶¶ 42, 61; Sept. 6, 2023, Afternoon Tr. 479:23–480:21.

119. The illustrative legislative plans that Mr. Esselstyn submitted in his December 2022 expert report pair fewer incumbents than Mr. Esselstyn's initial plans. Mr. Esselstyn's illustrative State Senate plan would not pair any incumbent Senators in the same district. GX1 ¶ 42; Sept. 6, 2023, Afternoon Tr. 480:18–21. And Mr. Esselstyn's illustrative State House plan would pair a total of eight incumbents

in the same districts—the same number of incumbents that the enacted plan paired in the same districts. GX1 ¶ 61; Sept. 6, 2023, Afternoon Tr. 480:14–21.

120. Although Mr. Morgan reported that Mr. Esselstyn's illustrative plans paired higher numbers of incumbents, Mr. Morgan conceded that he did not analyze the number of incumbent pairings in Mr. Esselstyn's December 2022 illustrative plans using the addresses of the incumbents who were elected to or remained in office after the 2022 elections. Sept. 12, 2023, Afternoon Tr. 1840:6–8; Sept. 13, 2023, Morning Tr. 1901:14:1904:12. Despite the fact that Defendants' counsel provided this data to Plaintiffs for purposes of Mr. Esselstyn's analysis, Mr. Morgan claimed that he never received updated incumbent addresses. Id. at 1841:18–1842:5. Mr. Morgan conceded that analyzing incumbent pairings using the addresses of incumbents who are no longer in office reveals no information about the continuity of a district's representation. Id. at 1842:18–1842:24. The fact that Mr. Morgan never inquired after the addresses of actual incumbents as of 2022, even in responding to Mr. Esselstyn's expert report describing his attempts to minimize incumbent pairings, calls into serious question Mr. Morgan's thoroughness, candor in reporting relevant data, and overall credibility.

7. Core Retention

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

122. As Mr. Esselstyn explained in his expert report, "One of the guiding principles in the creation of both the State Senate and House illustrative plans was to minimize changes to the enacted plan while adhering to other neutral criteria. Modifying one district necessarily requires changes to districts adjacent to the original modification, and harmonizing those changes with traditional redistricting criteria (such as population equality and intactness of counties) often inescapably results in cascading changes to other surrounding districts. Notably, most of the enacted plans' districts remain intact in [the] illustrative plans." GX1 ¶ 26; see also Feb. 9, 2022, Afternoon Tr. 267:20–268:4 (Mr. Esselstyn's testimony: "One of the other considerations for me was not trying to make more changes tha[n] I have to.").

123. Indeed, the number of unchanged districts constitute significant majorities in Mr. Esselstyn's illustrative legislative maps. Mr. Esselstyn's illustrative State Senate plan leaves 34 of 56 districts unchanged. GX1 ¶ 26. Mr. Esselstyn's illustrative State House plan leaves 155 of 180 districts unchanged. GX1 ¶ 47.

124. In fact, as Mr. Morgan's report confirms, nearly 90% of Georgia's population would remain in their same numbered State Senate district under the illustrative plan, and nearly 94% of Georgia's population would remain in their same numbered State House district. See DX3 at 84–92, 204–28.

125. The Court concludes that Mr. Esselstyn's illustrative legislative plans comply with traditional districting principles, including those adopted by the General Assembly.

8. Racial Considerations

126. The Court further concludes that Mr. Esselstyn did not subordinate traditional districting principles in favor of race-conscious considerations.

127. Mr. Esselstyn was asked "to determine whether there are areas in the State of Georgia where the Black population is 'sufficiently large and geographically compact' to enable the creation of additional majority-Black legislative districts relative to the number of such districts provided in the enacted State Senate and State House of Representatives redistricting plans from 2021." GX1 ¶ 9 (footnote omitted); see also Sept. 6, 2023, Afternoon Tr. 467:8–15 (Mr. Esselstyn's testimony confirming what he was asked to do in this case). Mr. Esselstyn testified that he was not asked to maximize the number of majority-Black districts in the State Senate or House map. Feb. 9, 2022, Afternoon Tr. 150:23–25.

128. Mr. Esselstyn testified that it was necessary for him to consider race as part of his analysis because "the Gingles 1 precondition is looking at whether majority Black districts can be created. And in order to understand whether districts are majority Black, one has to be able to look at statistics for those districts." Sept. 6, 2023, Afternoon Tr. 471:9–17. See Feb. 9, 2022, Afternoon Tr. 155:15–156:2. (Mr. Esselstyn testifying that, under Section 2, "the key metric is whether a district has a majority of the Any Part Black population. So that means it has to be over 50 percent. And that means looking at a column of numbers in order to determine, to assess whether a district has that characteristic. You have to look at the numbers that measure the percentage of the population is Black.").

129. Mr. Esselstyn emphasized that he took other considerations into account as well when drawing his illustrative plans, including population equality, compliance with the federal and state constitutions, contiguity, and other traditional districting principles. Sept. 6, 2023, Afternoon Tr. 471:18–472:14.; id. at 522:5–14 ("I'm constantly looking at the shape of the district, what it does for population equality, . . . political subdivisions, communities of interest, incumbents, all that. So while yes, at times [race] would have been used to inform a decision, it was one of a number of factors."). Mr. Esselstyn's testimony that he took these traditional districting principles into account is consistent with his

illustrative plans, which comply with traditional districting principles. See supra ¶¶ 66–125.

130. Mr. Esselstyn confirmed that race did not predominate when he drew his illustrative plans. Sept. 6, 2023, Afternoon Tr. 472:15–20.

131. Although Mr. Morgan concluded that Mr. Esselstyn's changes from the enacted State Senate plan to the illustrative State Senate plan indicate that he prioritized race, the Court does not credit Mr. Morgan's analysis or conclusions on this score for several reasons.

132. First, Mr. Morgan conceded that he did not examine the extent to which Mr. Esselstyn's changes were designed to satisfy traditional districting criteria like avoiding the unnecessary pairing of incumbents and preserving communities of interest. Sept. 13, 2023, Morning Tr. 1897:11–1899:3, 1923:21–1924:16. Mr. Morgan's overarching conclusion about the prioritization of race over other factors is difficult to square with his failure to actually examine all of the relevant factors Mr. Esselstyn stated he considered in drawing his illustrative plans.

133. Second, Mr. Morgan's analysis is methodologically inconsistent. For instance, the text of his expert report, which purports to compare the enacted and illustrative State Senate districts, contains compactness scores for the enacted

districts but makes no mention of the compactness scores for the corresponding illustrative districts. Sept. 12, 2023, Afternoon Tr. 1854:5–12. As another example, Mr. Morgan at one point reports the compactness scores for a "cluster" of districts, but there is no consistent analysis of district "clusters" throughout his discussion of the enacted and illustrative plans, offering the Court little faith that his selection of districts to focus on is anything other than ends-oriented.

134. Third, Mr. Morgan's analysis of the new majority-Black illustrative districts is incomplete. Indeed, the text of Mr. Morgan's expert report provides no description or analysis whatsoever of Illustrative Senate Districts 25 and 28 and Illustrative House Districts 64, 117, 145, and 149. Sept. 12, 2023, Afternoon Tr. 1846:10–1847:6; Sept. 13, 2023, Morning Tr. 1896:21–23, 1922:22–25, 1923:1–15. Mr. Morgan's broad conclusion that the illustrative districts are the product of prioritizing race over other factors is deeply undermined by his failure to actually analyze most of the key districts that are the subject of this lawsuit.

135. Fourth, Mr. Morgan's conclusion regarding the role of race seems to fault the illustrative plan for taking the same approach as the enacted plan. Specifically, Mr. Morgan criticizes Mr. Esselstyn's illustrative plan for "elongating" various districts when creating new majority-Black districts, e.g., Sept. 12, 2023, Afternoon Tr. 1811:25–1812:18, but conceded that the enacted plan

does the same thing. Sept. 13, 2023, Morning Tr. 1927:4–1928:25. Ms. Wright also agreed that several districts in the enacted plan, including State Senate districts 10 and 44 and House districts 36 and 60, are "elongated." Sept. 12, 2023, Morning Tr. 1702:3–1704:1. The Court cannot find that the State's tradition and practice of "elongated" districts is perfectly acceptable in the enacted plans but indicative of racial predominance in the illustrative plans.

136. For these and other reasons discussed herein, the Court does not credit the expert testimony of Mr. Morgan or his conclusions on the role of race in the illustrative plans. See Doc. 91 at 46 ("[T]he Court finds that Mr. Morgan's testimony lacks credibility, and the Court assigns little weight to his testimony.").

137. The Court finds that race did not predominate in the drawing of Mr. Esselstyn's illustrative legislative plans.

IV. Second Gingles Precondition: Political Cohesion

138. 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. 243 Attach. E ¶¶ 253, 262, 268–70.

139. 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.

140. Dr. Palmer conducted a racially polarized voting analysis of five different legislative focus areas. Doc. No. 243 Attach. E ¶ 262; GX2 ¶ 10; Sept. 6, 2023, Morning Tr. 403:21–404:5.

141. Dr. Palmer analyzed two focus areas for the State Senate plan:

- Black Belt: Senate Districts 22, 23, 24, 25, and 26. These districts include Baldwin, Burke, Butts, Columbia, Elbert, Emanuel, Glascock, Greene, Hancock, Hart, Jasper, Jefferson, Jenkins, Johnson, Jones, Lincoln, Mcduffie, Oglethorpe, Putnam, Richmond, Screven, Taliaferro, Twiggs, Warren, Washington, Wilkes, and Wilkinson Counties and parts of Bibb, Henry, and Houston Counties. Sept. 6, 2023, Morning Tr. 403:21–404:5; GX2 ¶ 12; Doc. No. 243 Attach. E ¶ 265.
- Southern Atlanta: Senate Districts 10, 16, 17, 25, 28, 34, 35, 39, and 44. These districts include Baldwin, Butts, Clayton, Coweta, Fayette, Heard, Jasper, Jones, Lamar, Morgan, Pike, Putnam, and Spalding Counties and parts of Bibb, Dekalb, Douglas, Fulton, Henry, Newton,

and Walton Counties. Sept. 6, 2023, Morning Tr. 403:21–404:5; GX2 ¶ 12; Doc. No. 243 Attach. E ¶ 265.

142. Dr. Palmer analyzed three focus areas for the House plan:

- Black Belt: House Districts 133, 142, 143, 145, 147, and 149. These districts include Bleckley, Crawford, Dodge, Twiggs, and Wilkinson Counties and parts of Baldwin, Bibb, Houston, Jones, Monroe, Peach, and Telfair Counties. Sept. 6, 2023, Morning Tr. 403:21–404:5; GX2 ¶ 11; Doc. No. 243 Attach. E ¶ 264.
- Southern Atlanta: House Districts 69, 74, 75, 78, 115, and 117. These districts include parts of Clayton, Fayette, Fulton, Henry, and Spalding Counties. Sept. 6, 2023, Morning Tr. 403:21–404:5; GX2 ¶ 11; Doc. No. 243 Attach. E ¶ 264.
- Western Atlanta: House Districts 61 and 64. These districts include parts of Douglas, Fulton, and Paulding Counties. Sept. 6, 2023, Morning Tr. 403:21–404:5; GX2 ¶ 11; Doc. No. 243 Attach. E ¶ 264.

143. 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. 243 Attach. E ¶ 266; GX2 ¶¶ 15, 17.

144. Dr. Palmer's EI analysis relied on precinct-level election results and voter turnout by race, as compiled by the State of Georgia. GX2 ¶ 13; Sept. 6, 2023, Morning Tr. 403:2–13.

145. 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. GX2 ¶ 16. 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.

146. In every election examined, across the focus area and in each State Senate and House district, Black voters had clearly identifiable candidates of choice. Doc. No. 243 Attach. E ¶¶ 268, 270; GX2 ¶ 18, tbl.1 & figs.2–4; Sept. 6, 2023, Morning Tr. 404:20–405:18.

147. On average, Black voters supported their candidates of choice with 98.5% of the vote. Doc. No. 243 Attach. E ¶ 269; GX2 ¶ 18.

148. Defendant's 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. 2251:2–5.

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

V. Third Gingles Precondition: Bloc Voting

150. Dr. Palmer also demonstrated that white voters in the legislative focus area vote as a bloc usually to defeat Black-preferred candidates. This too has been stipulated by the parties. Doc. No. 243 Attach. E ¶¶ 271–74.

151. In each legislative district examined and in the focus area as a whole, white voters had clearly identifiable candidates of choice for every election examined. GX2 ¶ 18 & figs.2–4; Sept. 6, 2023, Morning Tr. 404:20–405:18.

152. In the elections Dr. Palmer examined, white voters were highly cohesive in voting in opposition to the Black candidate of choice. Doc. No. 243 Attach. E ¶ 271. On average, Dr. Palmer found that white voters supported Black-preferred candidates with only 8.3% of the vote. Id. ¶ 272; GX2 ¶ 18. In other words, white voters on average supported their preferred candidates with an estimated vote share of 91.7%.

153. Overall, Dr. Palmer found "strong evidence of racially polarized voting across the areas" as a whole and in each individual focus area he examined. GX2 ¶¶ 7, 18–19; Sept. 6, 2023, Morning Tr. 398:10–16, 407:17–21.

154. 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. 408:9–409:9; GX2 ¶¶ 20–21, & fig.4. Dr. Palmer concluded that "Black-preferred candidates win almost every election in the Black-majority districts, but lose almost every election in the non Black-majority districts." Id. ¶ 21.

155. 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.

156. 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.

157. Using the returns from the 31 statewide elections, Dr. Palmer also analyzed whether Black voters in Mr. Esselstyn's additional majority-Black State Senate and House districts could elect their candidates of choice. He concluded that "[i]n House Districts 64, 74, and 149, and Senate Districts 23, 25, and 28, the

Black preferred candidate won a larger share of the vote in all 31 statewide elections. In House District 117, the Black-preferred candidate won all 19 elections since 2018. In House District 145, the Black-preferred candidate won all 19 elections since 2018, and 27 of the 31 elections overall." Table 9 provides the full results. Doc. No. 243 Attach. E ¶¶ 255–257; GX2 ¶ 24; Sept. 6, 2023, Morning Tr. 411:25–413:5. Dr. Alford does not dispute Dr. Palmer's performance analysis of the illustrative districts. Sept. 14, 2023, Morning Tr. 2250:20–22.

158. Dr. Palmer also testified that the changes Mr. Esselstyn made to the preexisting majority-Black districts in the enacted map would not change the ability of Black-preferred candidates to win in these districts. Sept. 6, 2023, Morning Tr. 413:6–17. Dr. Alford again does not contest this conclusion.

159. Based on the stipulated facts, expert reports, and testimony provided in this case, the Court concludes that white voters in the legislative focus area vote as a bloc to usually defeat Black-preferred candidates, and that Black voters in Mr. Esselstyn's illustrative majority-Black State Senate and House districts would be able to elect their candidates of choice.

VI. Totality of Circumstances

160. 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

161. Plaintiffs presented the expert report of Dr. Orville Vernon Burton to address Georgia's history of voting-related discrimination. See GX4. 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.[4]

162. The Court finds that Georgia has an extensive and well-documented history of discrimination against its Black citizens that has touched upon their

[4] 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.

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." GX4 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.

163. As Dr. Burton's and Dr. Jones's unrebutted testimony and expert reports demonstrate, Georgia's history of discrimination spans from the Reconstruction Era to the present day.

1. Political violence against Black Georgians

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

165. 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." GX4 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.

166. 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." GX4 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.

167. Between 1875 and 1930, there were 462 lynchings in Georgia. GX4 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

168. "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." GX4 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 GX4 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.

169. 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." GX4 at 17; Sept. 11, 2023, Afternoon Tr. 1433:13–17. Relatedly, Georgia prohibited Black voters from participating in the Democratic Primary. GX4 at 19. Because Georgia was a one-party Democratic state, the "white primary" effectively eliminated Black participation in the state's politics. Id.

170. 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." GX4 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.

171. These laws "were devastatingly effective at eliminating both Black elected officials from seats of power and Black voters from the franchise." GX4 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.

172. 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. GX4 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

173. 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. GX4 at 36; Sept. 11, 2023, Afternoon Tr. 1436:11–1437:6.

174. The Voting Rights Act, however, "did not translate to instant success" for Black political participation. GX4 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.

175. 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. GX4 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. GX4 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.

176. 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.

177. 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." GX4 at 48–49; Sept. 11, 2023, Afternoon Tr. 1441:25–1442:12.

178. Dr. Burton discussed several of these restrictions in his report. See GX4 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.

179. 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 rules 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. GX4 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").

180. 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. GX4 at 53.

181. 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. GX4 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

182. 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.

183. Georgia's legislative and congressional districts were grievously malapportioned in the years preceding the enactment of the Voting Rights Act. See GX4 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. GX4 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.

184. 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.

GX4 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. GX4 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." GX4

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)).

185. In 2015, after Shelby County, the Georgia General Assembly engaged in mid-cycle redistricting. GX4 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.[5]

B. Senate Factor Two: Racially Polarized Voting

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

187. 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

[5] 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.

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.").

188. As discussed at length above, see supra ¶¶ 138–159, voting in Georgia is racially polarized because Black and white voters cohesively support opposing candidates. There is no factual dispute about the existence of racial polarization in the focus area, the relevant legislative districts, and Georgia more generally.

189. 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.

190. As discussed in the Conclusions of Law below, see infra ¶¶ 341–350, 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.

191. 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.

192. 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.

193. 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).

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

195. 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. GX4 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.

196. 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.[6]

197. 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; GX4 at 74–76.

198. 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 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.

199. 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

[6] The Court applies its exchange with the witnesses to all the cases before it in this coordinated trial.

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.

200. As does the testimony of Dr. Evans and Ms. Miller. Dr. Evans aligns herself with the Democratic Party because she believes it is more inclusive and "there are different segments of society under that tent," such that Black voters' needs and interests may be addressed by the party. Sept. 7, 2023, Morning Tr. 641:22–642:19. And Ms. Miller explained her own personal experience and belief that Black voters tend to vote Democratic because "areas of concern that are raised by Democratic elected officials tend to be more progressive . . . include a wide range of socioeconomic policies that tend to lift folks . . . address some of the distinct needs that Black, rural, brown, and marginalized communities often lift up" and believes the Democratic party "amplif[ies] the voices of [Black] community issues [and] community members." Id. at 660:18–661:18.

201. 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.'" GX4 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

202. 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 ¶¶ 173–181. The Court examines a subset of those procedures in detail here.

203. 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.

204. 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. GX4 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.

205. 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. GX4 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.

206. 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.'" GX4 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.

207. 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.

208. One form of voter disenfranchisement by Georgia in recent years which disproportionately affected minority voters was Georgia's "exact matching" procedures. GX4 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. GX4 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

209. There is no slating process involved in Georgia's state legislative elections.

E. Senate Factor Five: Contemporary Socioeconomic Disparities

210. 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.

211. 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. GX5 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.

212. The Court finds that Plaintiffs have offered unrebutted evidence that Black Georgians are disadvantaged socioeconomically relative to non-Hispanic white Georgians across multiple metrics. GX5 at 3; Sept. 7, 2023, Morning Tr. 674:12–25.

213. According to Census estimates, the unemployment rate among Black Georgians (8.7%) is nearly double that of white Georgians (4.4%). GX5 at 4, & tbl.1; Doc. No. 243 Attach. E ¶ 342.

214. According to Census estimates, White households are twice as likely as Black households to report an annual income above $100,000. GX5 at 4, & tbl.1; Doc. No. 243 Attach. E ¶ 343.

215. 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. GX5 at 4, & tbl.1; Doc. No. 243 Attach. E ¶ 344.

216. According to Census estimates, Black Georgians are nearly three times more likely than white Georgians to receive SNAP benefits. GX5 at 4, & tbl.1; Doc. No. 243 Attach. E ¶ 345.

217. 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%. GX5 at 4, & tbl.1; Doc. No. 243 Attach. E ¶ 346.

218. 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. GX5 at 4, & tbl.1; Doc. No. 243 Attach. E ¶ 347.

219. 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). GX5 at 4.

220. The Court further finds that Black Georgians participate in the political process at substantially lower rates than whites Georgians. GX5 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.

221. The Court is persuaded that the socioeconomic disparities discussed above are a cause of lower political participation rates by Black Georgians. GX5 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.

222. 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.

223. 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." GX5 at 7.

224. 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.").

225. 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.

226. 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

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

228. 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., GX4 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.

229. 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. GX4 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.

230. Dr. Burton further explained that Georgia is a "flash point of this modern strategy." GX4 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.

231. 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.

232. 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; GX4 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; GX4 at 67.

233. 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.

234. 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." GX4 at 70.

235. The Court finds that these examples, among others discussed in Dr. Burton's expert report, see GX4 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

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

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

238. 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. GX4 at 35.

239. 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. GX4 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.

240. 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. 243 Attach. E ¶ 348; Sept. 8, 2023, Afternoon Tr. 1201:21–25.

241. 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. 243 Attach. E ¶ 349.

242. 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.

243. 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. 243 Attach. E ¶ 350.

H. Senate Factor Eight: Official Nonresponsiveness

244. 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.

245. 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. GX5 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.

246. 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.

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

248. Dr. Evans testified to her own experience with her representative not getting back to her. She commented that the reconfiguration of Senate District 23 into a majority-Black district, such as Mr. Esselstyn's Illustrative Senate District 23, would allow Black voters to choose a candidate "that could represent me, and

would get back with me. . . and would at least take interest in my community." Sept. 7, 2023, Morning Tr. 639:13–23.

I. Senate Factor Nine: Absence of Justification for SB 1EX and HB 1EX

249. The Court further finds that Georgia's justifications for SB 1EX and HB 1EX are tenuous. Defendants offer no evidence justifying the General Assembly's failure to draw three additional majority-Black State Senate districts and five additional majority-Black House districts.

250. Ms. 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 when drawing the state Senate and House plans Id. at 1626:14–17; 1647:5–8. And she testified to other considerations during the map drawing process, such as avoiding county splits, common interests within the community, population equality, avoiding incumbent pairings, and accommodating elected officials. Id. at 1626:18–1664:16.

251. None of these justifications relieve Defendants of their obligation to comply with the VRA. And Mr. Esselstyn's illustrative maps demonstrate that it is possible to create such plans while respecting traditional redistricting principles.

PROPOSED CONCLUSIONS OF LAW

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

252. 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))).

253. Because Plaintiffs are Black registered voters who reside in the Atlanta metropolitan area or Black Belt—specifically, in the compact areas where Plaintiffs have demonstrated the possibility of additional majority-Black legislative districts—in districts where their votes have been either cracked or packed, see Thornburg v. Gingles, 478 U.S. 30, 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.

254. 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).

255. "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).

256. 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).

257. "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).

258. "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).

259. "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.

260. "[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.

261. 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.").

262. 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).

263. "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).

264. "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)).

265. "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).

266. "[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).

267. "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." Growe v. Emison, 507 U.S. 25, 40 (1993) (citations omitted); see also Allen, 599 U.S. at 18–19.

268. "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 additional, compact majority-Black State Senate and House districts can be drawn in the Atlanta metropolitan area and Black Belt.

269. 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. 1 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).

270. "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.

271. 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)).

272. "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].

273. The Court concludes that Plaintiffs have shown that Georgia's Black population is sufficiently numerous and geographically compact to support the creation of three additional majority-Black State Senate districts and five additional majority-Black House districts.

1. The Black populations in the Atlanta metropolitan area and Black Belt are sufficiently numerous to form additional majority-Black State Senate and House districts.

274. Plaintiffs have shown that Georgia's Black population is sufficiently large to constitute majorities in three additional State Senate districts and five additional House districts.

275. 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).

276. 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.

277. 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.").

278. Mr. Esselstyn drew illustrative plans that contain three additional majority-Black State Senate districts (two in the southern Atlanta metropolitan area and one in the Black Belt) and five additional majority-Black House districts (one in the western Atlanta metropolitan area, two in the southern Atlanta metropolitan area, and two in the Black Belt anchored in Bibb County). These additional districts were drawn while balancing traditional redistricting criteria.

279. Neither Defendants nor their experts dispute that Plaintiffs have satisfied the numerosity requirement. Sept. 12, 2023, Afternoon Tr. 1839:14–18 (Mr. Morgan agreeing that the Black population in Georgia is large enough to create three additional majority-Black State Senate districts); Sept. 13, 2023, Morning Tr.

1900:23–1901:2 (Mr. Morgan agreeing that the Black population in Georgia is large enough to create five additional majority-Black State House districts). To the contrary, the Parties have stipulated to it. Doc. No. 231 Attach. E ¶ 228 ("Georgia's Black population is sufficiently numerous to allow for the creation of three additional majority-Black State Senate districts); Doc. No. 231 Attach. E ¶ 229 ("Georgia's Black population is sufficiently numerous to allow for the creation of five additional majority-Black State House districts.").

280. For these reasons, the Court concludes that Plaintiffs have shown that Georgia's Black population is large enough to constitute majorities in three additional State Senate districts and five additional House districts.

2. The Black populations in the Atlanta metropolitan area and the Black Belt are sufficiently compact to form an additional majority-Black State Senate and House districts.

281. The Court further concludes that Plaintiffs have shown that Georgia's Black population in metropolitan Atlanta and the Black Belt is sufficiently geographically compact to comprise a majority of the voting age population in three additional majority-Black State Senate districts and five additional majority-Black State House districts.

282. 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).

283. 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).

284. "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).

285. "While no precise rule has emerged governing § 2 compactness," League of United Latin Am. Citizens v. Perry, 548 U.S. 399, 433 (2006) [hereinafter LULAC], 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)).

286. "[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).

287. 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 at 208, 223 ("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.").

288. The Court concludes that Mr. Esselstyn's illustrative state legislative plans are consistent with traditional redistricting principles, including those set forth in the redistricting guidelines adopted by the Georgia General Assembly.

a. Population Equality

289. The Equal Protection Clause of the Fourteenth Amendment requires each state to "make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable." Reynolds v. Sims, 377 U.S. 533, 577 (1964). "This Equal Protection guarantee, commonly known as the one person, one vote principle, commands that 'the seats in both houses of a bicameral state legislature must be apportioned on a population basis.'" Larios v. Cox, 300 F. Supp. 2d 1320, 1339 (N.D. Ga.) (quoting Reynolds, 377 U.S. at 568), aff'd, 542 U.S. 947 (2004). Recognizing that "mathematical precision is not a workable constitutional requirement[,]" "the Supreme Court has adopted a so-called 'ten percent rule' for allocating the burden of proof." Id. Generally, a state legislative plan "with a maximum population deviation under 10%" is "insufficient to make out a prima facie case of discrimination in violation of the Fourteenth Amendment" but "a plan with a higher maximum deviation creates a prima facie case." Id. at 1339–40 (emphasis in original) (internal quotation marks omitted) (quoting Brown v. Thomson, 462 U.S. 835, 842-43 (1983)).

290. Mr. Esselstyn's expert report demonstrates that his illustrative State Senate and House plans contain minimal population deviation. In both the enacted and illustrative State Senate and House plans, most district populations are within ±1 percent of the ideal, and a small minority are between ±1 and 2 percent. None has a deviation of more than 2 percent. Based on the factual findings above, the Court concludes that Mr. Esselstyn's illustrative state legislative plans achieve population equality.

b. Contiguity

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

292. Based on the factual findings above, the Court concludes that Mr. Esselstyn's illustrative state legislative plans contain contiguous districts.

c. Compactness

293. 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. v. Raffensperger, 587 F. Supp. 3d 1222, 1251 (N.D. Ga. 2022). 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)).

294. The Court concludes that Mr. Esselstyn's illustrative State Senate and State House plans satisfy the criterion of compactness, both plan-wide and on an individual district basis. More specifically, the Court concludes that Mr. Esselstyn's new additional, majority-Black districts are compact as both a quantitative matter (based on Reock and Polsby-Popper scores) and a qualitative matter (based on the eyeball test). The average compactness measures for the enacted State Senate and House plans and Mr. Esselstyn's illustrative plans are almost identical. Mr. Esselstyn's expert report and trial testimony confirm that the compactness scores for the additional majority-Black districts in his illustrative

State Senate and House plans all fall within the range of compactness scores of districts in the enacted plans. Although Mr. Morgan criticizes several districts as "elongated," his testimony and Ms. Wright's testimony confirms that Georgia's state legislative districts are commonly elongated from North to South.

d. Respect for Political Subdivision Boundaries

295. The Court further concludes that Mr. Esselstyn's illustrative state legislative maps preserve political subdivision boundaries. Although Mr. Esselstyn's State Senate plan splits more counties and VTDs than the enacted plan, the differences are marginal. The numbers of counties and VTDs split in Mr. Esselstyn's illustrative State House plan and the enacted State House plan are nearly identical.

e. Communities of Interest

296. 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 v. Johnson, 521 U.S. 74, 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.").

297. Based on the factual findings above, the Court concludes that Mr. Esselstyn's illustrative state legislative plans preserve communities of interest. Mr. Esselstyn's illustrative Senate District 23 preserves communities of interest in Georgia's Black Belt, including several counties that it keeps whole. Mr. Esselstyn's illustrative Senate Districts 25 and 28, as well as his illustrative House Districts 74 and 117, unite suburban areas of the southern Atlanta metropolitan area that share common concerns involving education, transportation, and healthcare.

298. Mr. Esselstyn's illustrative House District 64 unites communities of interest in the suburban, western Atlanta metropolitan area that share those same concerns. Mr. Esselstyn's illustrative House Districts 145 and 149 preserve communities of interest in Georgia's Black Belt region that share needs for

investment in housing, economic mobility, food security, and increased access to quality, affordable healthcare.

f. Incumbent Pairings

299. Based on the factual findings above, the Court concludes that Mr. Esselstyn's illustrative State Senate and State House plans avoid the unnecessary pairing of incumbents.

300. Mr. Esselstyn's illustrative State Senate plan would pair no incumbents, and his illustrative State House plan would pair a total of eight incumbents, the same number as in the enacted plan.

g. Core Retention

301. Although not an enumerated principle adopted by the General Assembly, the Court concludes that Mr. Esselstyn's illustrative state legislative maps satisfy the criterion of core retention. Although some alteration of the enacted map is inevitable in a Section 2 case, Mr. Esselstyn's illustrative State Senate plan modified only 22 districts, leaving the other 34 unchanged. Mr. Esselstyn's illustrative State House plan modified only 26 districts, leaving the other 154 unchanged. Nearly 90% of Georgia's population would remain in their same State Senate district under the illustrative plan, and nearly 94% of Georgia's

population would remain in their same State House district under the illustrative plan.

h. Racial Considerations

302. Finally, the Court concludes that race did not predominate in the drawing of Mr. Esselstyn's illustrative state legislative plans. 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 where, as here, 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. Esselstyn 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. 6, 2023, Afternoon Tr. 522:5–14 ("I'm constantly looking at the shape of the district, what it does for population equality, . . . political subdivisions, communities of interest, incumbents, all that. So while yes, at times [race] would have been used to inform a decision, it was one of a number of factors."), 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. Esselstyn's account that his line-drawing decisions were the result of his efforts to balance traditional districting criteria.

303. Moreover, it is hardly remarkable that Mr. Esselstyn 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.

304. 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)).

305. 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 conclusion, based on the Court's

finding that Mr. Esselstyn is credible, is based on its analysis of his testimony and demeanor, particularly during cross-examination; the Court's finding that Mr. Morgan's criticisms of Mr. Esselsytn's illustrative maps are not credible; and an objective analysis of the illustrative maps that makes clear that traditional districting principles were not subordinated to race or otherwise disregarded.

306. Mr. Esselstyn provided race-neutral reasons for his individual line-drawing decisions. Defendants offered no evidence to rebut Mr. Esselstyn's account.

307. Even if race did predominate in Plaintiffs' illustrative plans (it did not), Plaintiffs would still succeed on the merits of their claims because their illustrative plans are 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").

308. 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.

309. 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)).

310. Plaintiffs' compliance with Section 2 of the Voting Rights Act constitutes "good reason" to create race-based districts, and the remedy would be narrowly tailored even if it were not the only manner in which to draw the additional majority-Black legislative districts. Accordingly, even if strict scrutiny applied here (which it does not), Plaintiffs' illustrative plans satisfy it.

311. 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").

312. Applying controlling Section 2 caselaw, the Court concludes that Plaintiffs have demonstrated that the Black populations in the Atlanta metropolitan area and Black Belt are sufficiently large and geographically compact to support three additional majority-Black State Senate districts and five additional majority-Black House districts. As a result, Plaintiffs have satisfied the first Gingles precondition.

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

313. 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.

314. 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)).

315. 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).

316. 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).

317. 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 five focus areas 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 the areas Dr. Palmer examined, Black voter cohesion is even stronger, with an average of 98.5%.

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

319. 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.

320. 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.

321. 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).

322. 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 Growe, 507 U.S. at 40).

323. The Court concludes that Dr. Palmer's analysis demonstrates high levels of white bloc voting in the five focus areas 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, on average, white voters supported Black-preferred candidates with only 8.3% of the vote.

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

325. 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.

326. The Court also concludes that Dr. Palmer's analysis demonstrates that Black voters would be able to elect their candidates of choice in Mr. Esselstyn's

illustrative districts. Again, Dr. Alford does not contest this conclusion and the parties stipulate this conclusion.

D. The totality of circumstances demonstrates that SB 1EX and HB 1EX deny Black Georgians equal opportunity to elect their preferred candidates to the State Senate and House.

327. The Court concludes that the totality of circumstances confirms what Plaintiffs' satisfaction of the Gingles preconditions indicates: SB 1EX and HB 1EX deny Black voters in Georgia an equal opportunity to elect their legislative candidates of choice.

328. Because each of the relevant considerations discussed below weighs in favor of a finding of vote dilution, Plaintiffs have demonstrated that the enacted plans violate Section 2 of the Voting Rights Act.

329. 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.

330. "[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).

331. 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).

332. 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.

333. "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.

334. 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)).

335. "[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.

336. 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.

337. 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).

338. 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." GX4 at 10. Dr. Burton testified that this pattern seemingly continues to this day and pointed the Court to SB 202.

339. 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.

340. 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.

341. 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.

342. "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).

343. 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).

344. 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)).

345. 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").

346. 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 73 (describing "inordinately difficult burden" this theory would place on plaintiffs (quotations 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.

347. 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.

348. 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.

349. 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.

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

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

351. 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).

352. As discussed above, supra ¶¶ 202–208, 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 state legislative elections.

353. It is undisputed that Georgia uses no slating process for its state legislative 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.

354. 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.").

355. 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.

356. 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.

357. 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 ¶¶ 210–226, these recent successes do not eliminate the past and present barriers to voting still in existence.

358. 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.

359. 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).

360. 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.

361. 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).

362. The Court is also unpersuaded by Defendants' assertion that the evidence of racial appeals must occur in elections that Plaintiffs are challenging—here, the state legislative elections. 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.

363. 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 their vote and persuade them to vote for or against a given candidate based on race or their views on race.

364. 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.

365. 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.

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

367. 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.

368. This factor thus weighs in Plaintiffs' favor.

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

369. "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.

370. 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, Mr. Allen, Dr. Evans, and Ms. Miller about how the dilution of Black voting power in the challenged state legislative districts only exacerbates this nonresponsiveness. Defendants offer nothing to counter this evidence.

371. This factor thus weighs in Plaintiffs' favor.

9. Senate Factor Nine: The justifications for SB 1EX and HB 1EX are tenuous.

372. Defendants have offered no justification for the General Assembly's failure to draw additional majority-Black legislative districts in the Atlanta metropolitan area and Black Belt. The State's map drawer, Ms. Wright testified to certain decision-making processes during the drawing of the maps, often noting political considerations; but concerns for political success cannot trump compliance with the VRA. And Mr. Esselstyn's illustrative maps demonstrate that it is possible to create such plans while respecting traditional redistricting principles—just as the Voting Rights Act requires.

373. Indeed, even taking the State's assertion that the enacted maps were 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.

374. 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.

375. This factor thus weighs in Plaintiffs' favor.

10. Proportionality does not weigh against Plaintiffs' claim.

376. 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 state legislative 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).

377. 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.

378. Defendants further confuse the proportionality inquiry by relying upon the number of "Black and Black-preferred candidates." Doc. 277 ¶ 691. 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)).

379. 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").

380. 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 state legislative maps "deny minority voters equal political opportunity," De Grandy,

512 U.S. at 1014, and "render[] a minority vote unequal to a vote by a nonminority voter," Allen, 599 U.S. at 25.

381. 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, there is no dispute that the Senate Factors weigh in Plaintiffs' favor.

* * *

382. The Court holds that Plaintiffs have established that SB 1EX and HB 1EX violate Section 2 of the Voting Rights Act because they deny Black Georgians in the Atlanta metropolitan area and the Black Belt an equal opportunity to participate in the political process.

383. During the course of the coordinated preliminary injunction hearing held in this case over a year and a half ago, 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. Doc. 91 at 27, 231, 235–37.

384. 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.

385. Over the last year and a half, Plaintiffs only bolstered their case: improving their illustrative state legislative maps 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.

386. By contrast, Defendants raised the same arguments and presented much of the same evidence at trial that they presented at the preliminary injunction hearing. Neither has improved over time. Now, as then, the Court finds that Defendants' Gingles 1 expert, John Morgan, is not credible because his analysis suffers from methodological flaws and inconsistencies that he struggled

to explain. And while the legislature's map drawer, Ms. Gina Wright, testified to her understanding of various communities of interest across the state of Georgia, she conceded that communities of interest are defined by the people who live there. Accordingly, the Court cannot assign greater weight to her testimony than the litany of witnesses that Plaintiffs presented from residents of communities across the state of Georgia, both in metropolitan Atlanta and in the Black Belt. Defendants' expert Dr. Alford, meanwhile, only doubles down on his insistence on proof of causation for racially polarized voting, despite this Court's repeated admonition that this not the relevant inquiry under Section 2. Doc. 91 at 174; Doc. 229 at 53.

387. Plaintiffs have established that Georgia's enacted state legislative maps violate Section 2 of the Voting Rights Act. Plaintiffs have proven that it is possible to draw three additional majority-Black Senate districts and five additional majority-Black House districts consistent with traditional districting principles. In fact, Mr. Esselstyn's illustrative Senate and House plans only improve upon his preliminary injunction maps on principles such as compactness, communities of interest, and avoiding incumbent pairing. And Plaintiffs have bolstered their showing with extensive fact witness testimony in support of the

communities of interest preserved within each of Mr. Esselstyn's illustrative districts.

388. Measured against this weighty evidence, Defendants' argument that race predominated in each of Mr. Esselstyn's maps falls flat. None of Defendants' evidence rebuts Mr. Esselstyn's testimony that race did not predominate in his illustrative maps because he merely considered it along with the traditional districting criteria that he balanced in drawing his illustrative plans. Mr. Morgan's analysis attacking Mr. Esselstyn's maps is selective and uneven. Mr. Morgan's expert report includes no meaningful analysis of the vast majority of the illustrative plans' additional majority-Black districts. And Mr. Morgan conceded that he did not examine the extent to which Mr. Esselstyn's changes were designed to satisfy traditional districting criteria like avoiding the unnecessary pairing of incumbents and preserving communities of interest.

389. As to the second and third Gingles preconditions, Defendants stipulate to their satisfaction. Dr. Alford agrees with Dr. Palmer's analysis and conclusions but offers an unfounded opinion that party must be the cause of racial polarization. The overwhelming evidence proves the opposite: race and issues inextricably linked to race influence party preferences.

390. And, as described above, the totality of the circumstances weighs decidedly in Plaintiffs' favor. Defendants parade the recent electoral successes of Black and Black-preferred candidates as evidence that race and racism no longer play a role in Georgia politics, but completely ignore the changing demographics of the state and the fact that Georgia is now practically a majority-minority state. But the stark polarization along racial lines, alongside a detailed analysis of Georgia's history and present-day reality of racialized politics, illuminates that race and racism still pervade Georgia's political system today.

391. The Court is satisfied that Plaintiffs have met their burden on each element of a Section 2 violation for each challenged plan and thus rules that SB 1EX and HB 1EX violate Section 2 of the Voting Rights Act. The Court enjoins Defendants from using these maps in any future election.

PROPOSED ORDER GRANTING INJUNCTIVE RELIEF

392. The Court ENJOINS Defendants, as well as their agents and successors in office, from using SB 1EX and HB 1EX in any future election.

393. Having found that SB 1EX and HB 1EX violate Section 2 of the Voting Rights Act and that a permanent injunction is warranted, the Court now addresses the appropriate remedy.

394. 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 pre-empt." 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.

395. 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 new legislative maps be drawn forthwith to remedy the Section 2 violation.

396. In accordance with well-established precedent, the Court will provide the General Assembly the opportunity to adopt a remedial Senate plan and House 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).

397. This Court retains jurisdiction to determine whether the remedial plans adopted by the General Assembly remedy the Section 2 violations by incorporating additional legislative districts in which Black voters have a demonstrable opportunity to elect their candidates of choice.

398. 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.

399. A complete remedy to the Section 2 violation found in this case requires the creation of three additional Senate districts and five additional House districts 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 the Section 2 violations described herein by eliminating minority opportunity districts elsewhere in the plans.

400. In the event that the State is unable or unwilling to enact remedial plans within 14 days that satisfy the requirements set forth above, the Court will proceed to draw or adopt remedial plans.

Dated: September 25, 2023

Respectfully submitted,

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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
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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 ***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

Abha Khanna
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