IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

IN RE REDISTRICTING 2023 **SPECIAL MASTER**	Misc. No. 2:23-mc-1181-AMM

CASTER AND *MILLIGAN* PLAINTIFFS' BRIEF IN OPPOSITION TO MORIARTY REMEDIAL PROPOSALS

The Special Master received three remedial map proposals from Non-Party Michael Moriarty. The *Caster* and *Milligan* Plaintiffs received these maps for the first time earlier this afternoon and have not had sufficient time to conduct a comprehensive review of these three new proposals. As a result, they may have additional flaws, beyond those identified in this submission. But, even with the limited time that Plaintiffs have had to review the Moriarty Plans, Plaintiffs have identified serious concerns that strongly indicate that the Plans fail to remedy the State's likely violation of Section 2 of the Voting Rights Act.

At the outset, the Moriarty Plans have population deviations of hundreds of people in likely violation of the one-person-one-vote requirement, needlessly split the Black Belt into multiple districts, and appear to sharply deviate from Alabama's 2021 and 2023 plans in ways that are not required by the Voting Rights Act.

Additionally, Dr. Palmer and Dr. Liu analyzed the performance of the plans. Dr. Palmer has completed a performance analysis of each of the Moriarty Plans, using the same 17 elections that he used to analyze the Party and Non-Party submissions in Plaintiffs' September 13 filing. Ex. 1, Palmer Report at 1; *see also* ECF No. 23. Dr. Liu has also completed a performance analysis of the three Moriarty Plans, using the same eleven biracial elections analyzed in his prior reports. Ex. 2, Liu Report at 1. Based on these analyses, there is significant doubt that any of the three Moriarty Plans satisfies the District Court's order to provide Black Alabamians a second district in which they have an opportunity to elect their preferred candidate.

Most glaringly, Dr. Palmer's analysis shows that Moriarty Plan #3 does not contain a second opportunity district at all. Rather, as Mr. Moriarty's submission concedes, it includes one opportunity district (CD-7) plus two purportedly "competitive" districts where it is merely "possible" that a Black-preferred candidate could win (CD-1 and CD-3). ECF No. 26 at 2. In Moriarty Plan #3's CD-1, Black voters' candidate of choice would have won only *three* of the 17 elections analyzed by Dr. Palmer. Ex. 1, Palmer Report at 6-7. Put another way, Black-preferred candidates in CD-3 would have been defeated by white-preferred candidates more than 82% of the time. Focusing on biracial elections, Dr. Liu found that Black candidates would have won *zero* of the 11 analyzed biracial elections in Moriarty Plan #3's CD-1. Ex. 2, Liu Report at 2. No Black candidates would have won

election under the Plan's CD-1. *Id.*; *see also* Ex. 1, Palmer Report at 6-7. And in

Moriarty Plan #3's CD-3, Dr. Palmer found that Black voters' candidate of choice

would have won only *five* of the 17 elections analyzed. *Id.* at 6-7. As in, Black-

preferred candidates in CD-3 would have been defeated by white-preferred

candidates more than 70% of the time. Even in the handful of elections that the

Black-preferred candidate would have won in these two "competitive" districts, all

but one of those candidates were *white* and they won by very slim margins. *Id.*

Indeed, the single *Black* candidate that would have won election under Moriarty Plan

#3's CD-3 in Dr. Palmer's analysis would have won with exactly 50.0% of the vote.

Id. In fact, Dr. Liu found that Black candidates would have lost in all eleven biracial

elections in the Moriarty Plan #3's CD-3. Ex. 2, Liu Report at 2.

Moriarty Plans #1 and #2 also fail to perform reliably for Black-preferred

candidates. As Dr. Palmer's analysis shows, each contains a remedial district in

which Black voters' candidate of choice would have won only *two* of the five

statewide elections in 2022—all of which were biracial elections that featured a

Black-preferred Black candidate running against a white-preferred white candidate.

Ex. 1, Palmer Report at 2-5. And in each of the two races that the Black-preferred

candidate would have won, they would have done so by about half a percentage

point—an incredibly slim margin. *Id.* Moreover, in Moriarty Plan #1, the Black-

preferred candidate would not reliably win in the safer CD-7, either. *Id.* at 2-3. For

example, of the same five 2022 statewide elections, Black-preferred candidates in Moriarty Plan #1's CD-7 would have lost one and won the other four by just one percentage point or less. *Id.* Dr. Liu similarly found that Black-preferred Black candidates would have lost three of the eleven biracial elections in the CD-3 of Moriarty #1 and #2. Ex. 2, Liu Report at 2. Dr. Liu also found that Black candidates would have lost four elections in Moriarty #1's CD-7. *Id*.

Accordingly, the *Caster* and *Milligan* Plaintiffs respectfully urge the Special Master not to recommend any of the Moriarty Plans for adoption as a remedy to the State's likely Section 2 violation.

Respectfully submitted this 14th day of September 2023.

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EXPERT REPORT OF MAXWELL PALMER, PH.D. IN SUPPORT OF PLAINTIFFS' BRIEF IN OPPOSITION TO MORIARTY REMEDIAL PROPOSALS

1. My name is Maxwell Palmer. I am currently an Associate Professor of Political Science at Boston University. I previously submitted reports in the *Caster* case on December 12, 2021, and July 28, 2023. My first report in that case sets forth my qualifications in detail.

2. I testified in *Caster* in the January 2022 preliminary injunction proceedings. I was accepted by the Court as an expert in redistricting and data analysis. The Court found me to be a credible expert witness and credited my testimony on racially polarized voting and performance in its January 2022 and September 2023 opinions.

3. I also submitted a report evaluating the performance of the VRA Plaintiffs' Remedial Plan on September 11, 2023, and a report evaluating the performance of eight remedial proposals on September 13, 2023.

4. I was asked by the Caster Plaintiffs in this litigation to evaluate the performance of Moriarty Plan #1, Moriarty Plan #2, and Moriarty Plan #3.

5. For each plan, I analyzed the performance of districts by relying on precinct-level election results from the 2016, 2018, and 2020 general elections, and the 2017 special election for U.S. Senate. My original *Caster* report describes this dataset.

6. I supplemented this dataset with 2022 general election results from the data file disclosed by Dr. Baodong Liu with his July 28, 2023 report.

7. I then analyzed performance by calculating the share of the vote that the Black-preferred candidate would have won under the boundaries of each plan.

Performance of the 3rd and 7th Districts in Moriarty Plan #1

8. I analyzed the performance of the 3rd and 7th Districts in Moriarty Plan #1. Figure 1 and Table 1 present the results.

9. Across 17 elections from 2016 to 2022, the average vote share for Black-preferred candidates in the 3rd District is 55.0%. The Black-preferred candidate won 14 of the 17 elections analyzed.

10. Across 17 elections from 2016 to 2022, the average vote share for Black-preferred candidates in the 7th District is 54.9%. The Black-preferred candidate won 16 of the 17 elections analyzed.
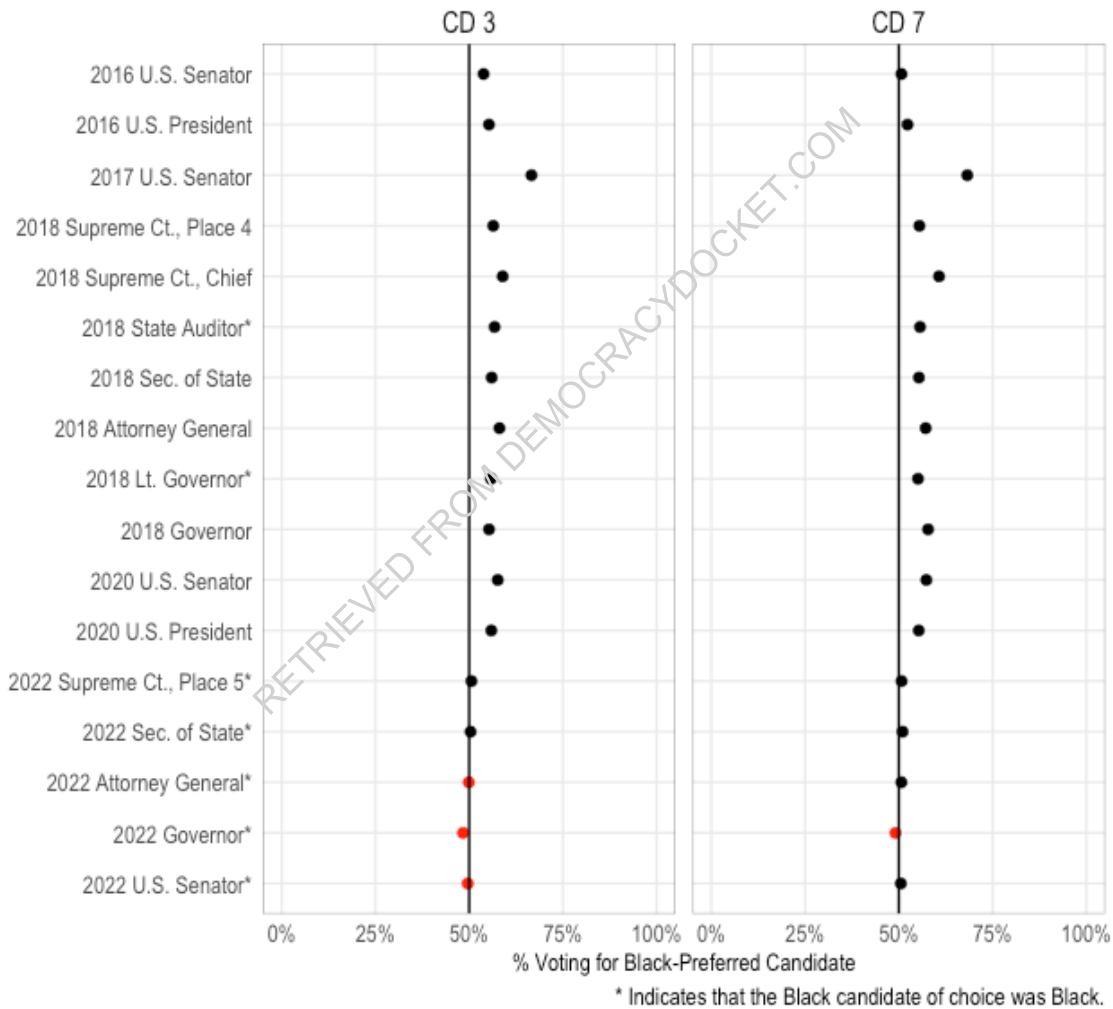

Figure 1: Vote Shares of Black-Preferred Candidates Under Moriarty Plan #1

Table 1: Vote Shares of Black-Preferred Candidates Under Moriarty Plan #1

Year	Office	CD 3	CD 7
2016	U.S. President	55.3%	52.3%
2016	U.S. Senator	53.8%	50.7%
2017	U.S. Senator	66.6%	68.3%
2018	Attorney General	58.1%	57.1%
2018	Governor	55.3%	57.8%
2018	Lt. Governor*	55.8%	55.1%
2018	Sec. of State	56.0%	55.4%
2018	State Auditor*	56.8%	55.6%
2018	Supreme Ct., Chief	58.9%	60.7%
2018	Supreme Ct., Place 4	56.4%	55.5%
2020	U.S. President	55.9%	55.3%
2020	U.S. Senator	57.6%	57.3%
2022	Attorney General*	49.9%	50.7%
2022	Governor*	48.4%	49.1%
2022	Sec. of State*	50.4%	51.0%
2022	Supreme Ct., Place 5*	50.6%	50.7%
2022	U.S. Senator*	49.6%	50.5%

* indicates that the Black candidate of choice was Black

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Performance of the 3rd and 7th Districts in Moriarty Plan #2

11. I analyzed the performance of the 3rd and 7th Districts in Moriarty Plan #2. Figure 2 and Table 2 present the results.

12. Across 17 elections from 2016 to 2022, the average vote share for Black-preferred candidates in the 3rd District is 55.0%. The Black-preferred candidate won 14 of the 17 elections analyzed.

13. Across 17 elections from 2016 to 2022, the average vote share for Black-preferred candidates in the 7th District is 56.8%. The Black-preferred candidate won all 17 of the elections analyzed.
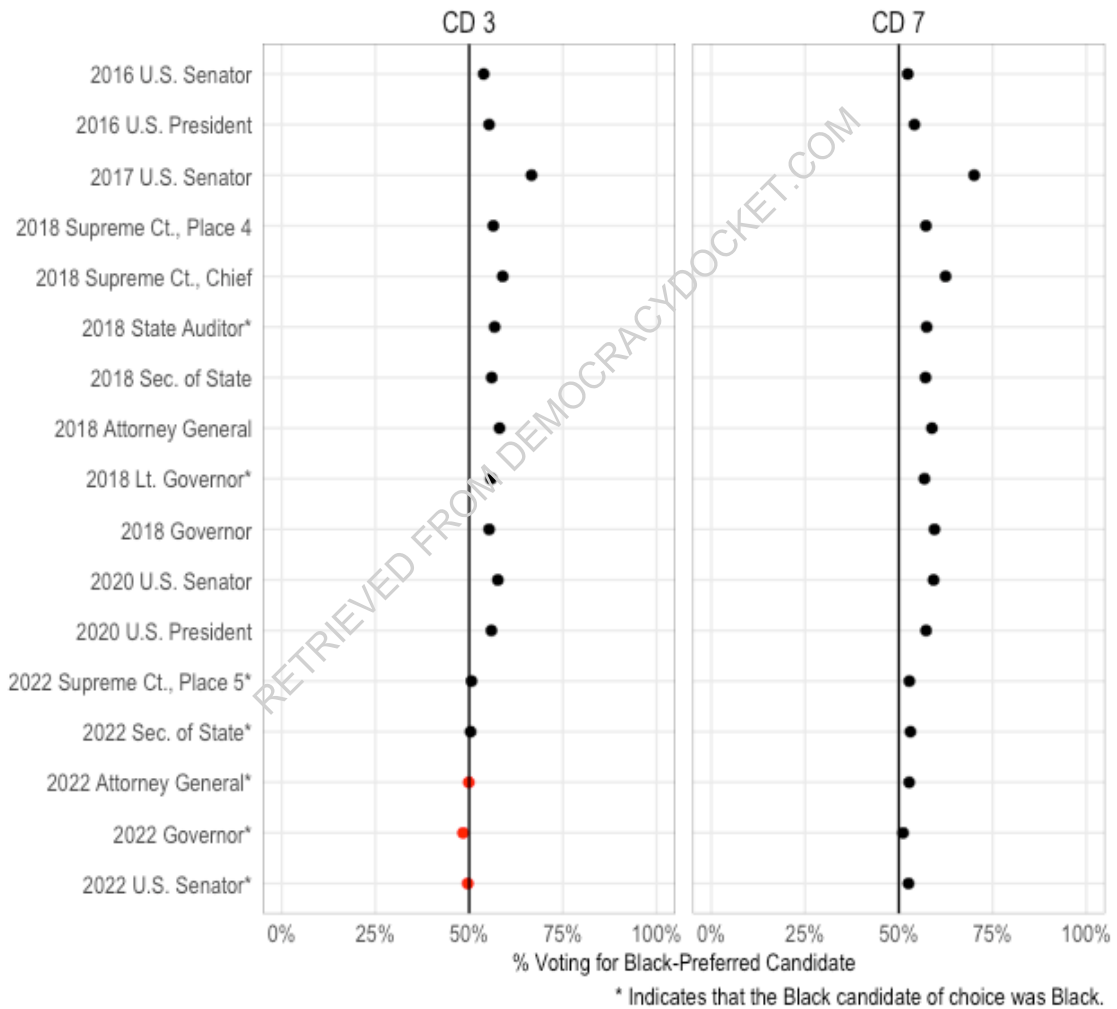

Figure 2: Vote Shares of Black-Preferred Candidates Under Moriarty Plan #2

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Table 2: Vote Shares of Black-Preferred Candidates Under Moriarty Plan #2

Year	Office	CD 3	CD 7
2016	U.S. President	55.3%	54.2%
2016	U.S. Senator	53.9%	52.4%
2017	U.S. Senator	66.6%	70.1%
2018	Attorney General	58.1%	58.8%
2018	Governor	55.3%	59.5%
2018	Lt. Governor*	55.8%	56.8%
2018	Sec. of State	56.0%	57.1%
2018	State Auditor*	56.8%	57.4%
2018	Supreme Ct., Chief	59.0%	62.5%
2018	Supreme Ct., Place 4	56.4%	57.2%
2020	U.S. President	55.9%	57.3%
2020	U.S. Senator	57.6%	59.3%
2022	Attorney General*	49.9%	52.7%
2022	Governor*	48.4%	51.1%
2022	Sec. of State*	50.4%	53.1%
2022	Supreme Ct., Place 5*	50.6%	52.8%
2022	U.S. Senator*	49.6%	52.6%

* indicates that the Black candidate of choice was Black

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Performance of the 1st, 3rd, and 7th Districts in Moriarty Plan #3

14. I analyzed the performance of the 1st, 3rd, and 7th Districts in Moriarty Plan #3. Figure 3 and Table 3 present the results.

15. Across 17 elections from 2016 to 2022, the average vote share for Black-preferred candidates in the 1st District is 47.5%. The Black-preferred candidate won only 3 of the 17 elections analyzed.

16. Across 17 elections from 2016 to 2022, the average vote share for Black-preferred candidates in the 3rd District is 48.0%. The Black-preferred candidate won only 5 of the 17 elections analyzed.

17. Across 17 elections from 2016 to 2022, the average vote share for Black-preferred candidates in the 7th District is 63.1%. The Black-preferred candidate won all 17 of the elections analyzed.
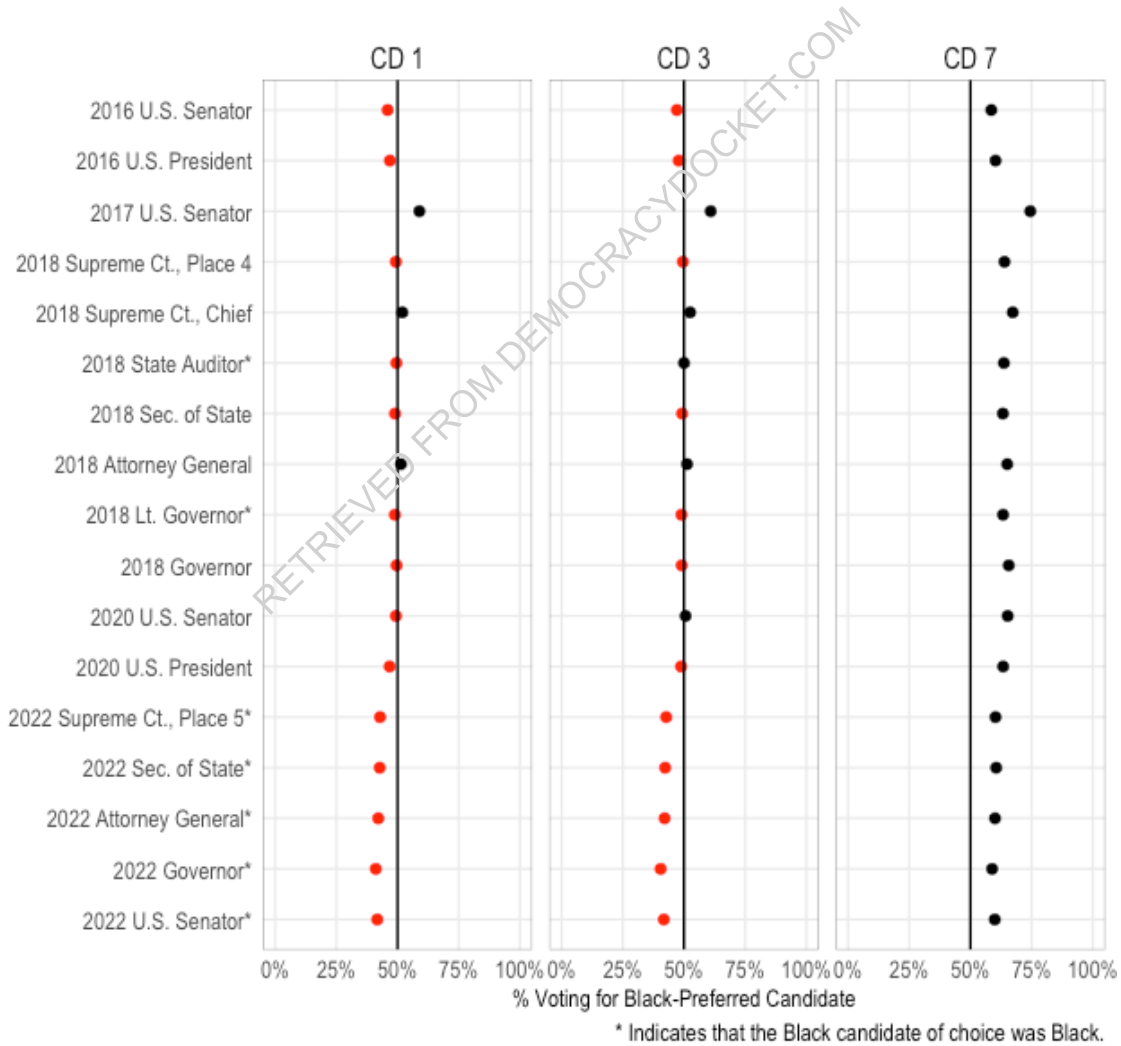

Figure 3: Vote Shares of Black-Preferred Candidates Under Moriarty Plan #3

Table 3: Vote Shares of Black-Preferred Candidates Under Moriarty Plan #3

Year	Office	CD 1	CD 3	CD 7
2016	U.S. President	46.9%	47.8%	60.2%
2016	U.S. Senator	46.0%	47.1%	58.5%
2017	U.S. Senator	58.9%	60.9%	74.4%
2018	Attorney General	51.4%	51.3%	65.0%
2018	Governor	49.6%	49.1%	65.7%
2018	Lt. Governor*	48.9%	49.0%	63.3%
2018	Sec. of State	49.0%	49.2%	63.3%
2018	State Auditor*	49.5%	50.0%	63.7%
2018	Supreme Ct., Chief	52.0%	52.5%	67.3%
2018	Supreme Ct., Place 4	49.3%	49.5%	63.9%
2020	U.S. President	46.8%	48.8%	63.4%
2020	U.S. Senator	49.4%	50.7%	65.2%
2022	Attorney General*	42.1%	42.1%	60.0%
2022	Governor*	41.1%	40.5%	58.9%
2022	Sec. of State*	42.7%	42.3%	60.5%
2022	Supreme Ct., Place 5*	42.9%	42.7%	60.2%
2022	U.S. Senator*	41.7%	41.8%	59.9%

* indicates that the Black candidate of choice was Black

I reserve the right to continue to supplement my reports in light of additional facts, testimony and/or materials that may come to light.

I declare under penalty of perjury that the foregoing is true and correct.

Maxwell Pal

Executed on: September 14, 2023

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

EVAN MILLIGAN, et al.,

    Plaintiffs,

    vs.

JOHN H. MERRILL, et al.,

    Defendants.

No. 2:21-cv-01530-AMM

Supplemental Remedial Report III of Baodong Liu, Ph.D.
September 14, 2023

I have been asked by Counsel for the Plaintiffs to express my opinion on the effectiveness of the three Moriarty Plans submitted to the special master on September 14, 2023. This report summarizes the results of my Effective Analysis (EA).

My EA is based on the eleven biracial elections between 2014 and 2022. These eleven elections are all state-wide and general elections: the 2014 Secretary of State, the 2014 Lt. Governor, the 2014 State Auditor, the 2018 Lt. Governor, the 2018 State Auditor, the 2018 Public Service Commission (Place 1), the 2022 Gubernatorial, the 2022 US Senate, the 2022 Secretary of State, the 2022 Attorney General, and the 2022 Alabama Supreme Court Associate Justice (Place 5) elections. This report examines how the Moriarty Plans perform in these eleven elections in Congressional Districts ("CD") 1, 3 and 7.

My conclusion is that voting is highly racially polarized in all Moriarty plans analyzed in this report with Black voters voting from 89% to 97% for Black candidates, and white candidates receiving approximately 79% to 92% of the white vote in the eleven elections analyzed.

I am being compensated at $300 per hour for my work in this report. My compensation is not contingent on or affected by the substance of my opinions or the outcomes of this litigation.

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Method and Data Used in this Report

As in my prior reports and the original remedy report for this case executed on July 28, 2023, the method I used for the estimates of racial group voting and turnout is called Ecological Inference (EI) developed by Harvard Professor Gary King. This report continues to use the same EI method and the EI R-software to calculate the racial groups' vote choice in the 11 elections with respect to the plan analyzed. Furthermore, this Supplemental EA report, just like my original EA report continues to report the findings concerning the exact percentage of votes cast for each candidate based on the tally of the votes in the 11 elections with respect to the three plans. The data acquisition, processing and aggregation of this report is also the same process used in writing my preliminary report (see Appendix of my preliminary report).

Effectiveness of the Moriarty Plans

I analyzed CD1, CD3 and CD7 of the Moriarty plans. Unfortunately, I did not have enough time to compile the RPV tables for each plan. However, in CD1 of all three Moriarty plans, Black preferred candidates (BPCs) lost all 11 elections. In CD3, BPCs lost all 11 elections in Moriarty #3, and lost three elections (2022 Governor, 2022 U.S. Senate, and 2022 Attorney General) in Moriarty #1 and #2. In CD7, BPCs lost four elections in Moriarty #1 (2022 Governor, 2014 Lt. Governor, 2014 Secretary of State, and 2014 State Auditor), lost one election in Moriarty #2 (2014 Secretary of State), and lost zero biracial elections in Moriarty #3. The details regarding the average vote cast for BPCs and white preferred candidates (WPCs) in all 11 elections have been computed and can be provided upon request.

* * *

To the best of my knowledge, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 14, 2023.

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BAODONG LIU, PH.D.

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