IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

JACQUELINE ROZIER and HIRAM MORGAN,

Plaintiffs,

v.

HOUSTON COUNTY BOARD OF ELECTIONS and ANDREW BENNETT, in his official capacity as Chair of the Houston County Board of Elections.

Defendants.

Civil Action No. 5:25-cv-00478-MTT

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DEFENDANTS' BRIEF IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Houston County has elected its county commissioners on a countywide basis since voters were first able to choose commissioners in the 1920s. 1922 Ga. Laws Act No. 429 § 2. Black and Black-preferred candidates have succeeded on a countywide basis in past elections. But Plaintiffs ask this Court to force Houston County to switch from its countywide system to districted elections because they claim the current method of election results in "a denial or abridgement of the right . . . to vote on account of race or color," under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(a). Plaintiffs have failed to carry their burden on the required preconditions under *Thornburg v. Gingles*, 478 U.S. 30 (1986); *see also Louisiana v. Callais*, 146 S. Ct. 1131 (2026).

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Section 2 requires this Court to "conduct an intensely local appraisal of the design and impact of a voting system." *Johnson v. Hamrick*, 296 F.3d 1065, 1074 (11th Cir. 2002) (quoting *Negron v. City of Miami Beach*, 113 F.3d 1563, 1566 (11th Cir. 1997)). And this appraisal under Section 2 "imposes liability only when the circumstances give rise to a strong inference that intentional discrimination occurred." *Callais*, 146 S. Ct. at 1156.

This Court must conduct that appraisal carefully, because any alleged deprivation of the right to vote "must be on account of a classification, decision, or practice that depends on race or color, not on account of some other racially neutral

cause." *Solomon v. Liberty Cnty. Comm'rs*, 221 F.3d 1218, 1225 (11th Cir. 2000) (en banc) (quoting *Nipper v. Smith*, 39 F.3d 1494, 1515 (11th Cir. 1994) (en banc)); *accord Brnovich v. Democratic Nat'l Comm.*, 594 U.S. 647, 706 (2021) (Section 2 asks whether an election law interacts with conditions "to ***cause*** race-based inequality in voting opportunity") (Kagan, J, dissenting) (emphasis added). And the default position is this Court's non-involvement, because "the Constitution charges States, not federal courts, with designing election rules." *Curling v. Raffensperger*, 50 F.4th 1114, 1122 (11th Cir. 2022).

While there are many reasons why Plaintiffs' claims fail the required "intensely local appraisal," in this case, three are clear and do not require this Court to weigh evidence:

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First, Plaintiffs cannot identify admissible evidence that is required to meet their burden. Plaintiffs have failed to adduce any evidence of intentional racial discrimination by Houston County in at least the last 35 years. Plaintiffs' historical expert could identify none and neither could Plaintiffs themselves. And Plaintiffs have not presented a statistical analysis that controls for race and politics, as is required. The lack of evidence on both of these points compels judgment for Defendants.

Second, the map proposed by Plaintiffs does not meet the first precondition of *Gingles*, because the mapdrawer admitted to using race in its design. As a result,

it cannot be used to establish the first precondition.

Third, Plaintiffs cannot show the second precondition of *Gingles* is met because Plaintiffs' statistical expert failed to show that Black voters are cohesive. He only used the "separate electorates test," which is not sufficient before or after *Callais*. Without reliable evidence of voting patterns based on race, Plaintiffs cannot carry their burden on these prongs either.

As discussed below, the evidence presented by Plaintiffs on the three *Gingles* preconditions and on any evidence of current discrimination is insufficient to create a disputed material fact that could allow this case to continue. This Court should grant judgment as a matter of law to Defendants.

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FACTUAL BACKGROUND

I. Houston County government.

Houston County has five commissioners, but they do not all have the same role in the county's government. Deposition of Chairman Daniel Perdue (Perdue Dep.) at 17:2–19:24. For almost 30 years, the Commissioner elected to Post 1 has served as Chair and the full-time CEO of the County government. Perdue Dep. at 17:2–19:24, 32:17–20, 75:5–77:8.

II. Plaintiffs' illustrative plans.

Plaintiffs employed a single expert to create a district plan for purposes of showing the existence of the first *Gingles* precondition, Mr. Anthony Fairfax.

Fairfax Report, attached as Ex. A, at ¶ 1. Mr. Fairfax followed a process that specifically included the use of race in creating the plan. Deposition of Anthony Fairfax (Fairfax Dep.) at 64:3–65:11. He opined that "you can use race as a factor in drawing districts," *id*. at 58:16, and he displayed a racially themed map to "gather information about where black individuals were located," *id*. at 70:11–19, 101:12–19, as part of his drawing process for his illustrative plans.[1]

III. Plaintiffs' racial polarization analysis.

Plaintiffs relied on a single expert for the second and third *Gingles* preconditions.[2] But his analysis did not consider the impact of politics on racially polarized voting. Expert Report of Stephen Popick, attached as Ex. B, at 15–16; Corrected Expert Report of Stephen Popick, attached as Ex. C, at 15–16. Further, he only considered one primary election which he later testified he could not determine whether it was racially polarized. Deposition of Stephen Popick (March 13, 2026) (Popick 3-13 Dep.) at 107:14–108:5, 132:5–14; Deposition of Stephen Popick (April 2, 2026) (Popick 4-2 Dep.) at 15:18–16:15, 30:10–23.

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[1] As discussed further below, the only valid remedial districting plan for Houston County is a four-district plan, given the unique nature and government interests in the role of the Chairman of the County Commission as the county's full-time CEO.

[2] Defendants are also filing a motion to exclude Dr. Popick under the *Daubert* standard.

IV. Plaintiffs' evidence of intentional racial discrimination.

Plaintiffs did not identify any present-day discrimination in voting by Houston County. Plaintiffs' historical expert, Dr. Joseph Bagley, did not identify any evidence of discrimination by Houston County in the last 35 years. Deposition of Joseph Bagley (Bagley Dep.) at 86:18–25. Likewise, Plaintiff Rozier testified she was unaware of any intentional racial discrimination by Houston County government in recent history aside from political disagreements. Deposition of Jacqueline Rozier (Rozier Dep.) at 40:20–41:17, 52:7–17. Plaintiff Morgan was also unaware of any intentional racial discrimination by Houston County. Deposition of Hiram Morgan (Morgan Dep.) at 22:17–25.

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ARGUMENT AND CITATION OF AUTHORITIES

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56. The moving party bears the initial burden but is not required to negate the opposing party's claims. Instead, the moving party may point out the absence of evidence to support the non-moving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986); *Marion v. DeKalb County*, *Ga.*, 821 F. Supp. 685, 687 (N.D. Ga. 1993).

Section 2 of the Voting Rights Act (VRA) prohibits jurisdictions from diluting the strength of minority voters through a "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). Proof of vote dilution is established through a "totality of the circumstances" analysis, *id*. at (b), but a plaintiff must first satisfy the *Gingles* preconditions. 478 U.S. at 30.

In order to show a Section 2 violation, the Eleventh Circuit has explained:

> plaintiffs in vote dilution cases must establish as a threshold matter: (1) that the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district"; (2) that the minority group is "politically cohesive"; and (3) that sufficient racial bloc voting exists such that the white majority usually defeats the minority's preferred candidate.

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Nipper, 39 F.3d at 1510 (quoting *Gingles*, 478 U.S. at 50–51). Further, the first precondition requires that Plaintiffs "cannot use race as a districting criterion." *Callais*, 146 S. Ct. at 1159. And the second and third *Gingles* preconditions require Plaintiffs to "provide an analysis that controls for party affiliation." *Id*. Only after establishing the three preconditions does a court begin a review of the so-called "Senate Factors" to assess the totality of the circumstances. *Nipper*, 39 F.3d at 1512; *Gingles*, 478 U.S. at 79; *Johnson v. De Grandy*, 512 U.S. 997, 1011 (1994).

Failure to establish one of the *Gingles* preconditions is fatal to a Section 2 claim because each of the three prongs is required.[3] *See Johnson v. DeSoto Cnty. Bd.*

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[3] The required weighing of evidence regarding the totality of the circumstances is why Section 2 claims normally "are resolved pursuant to a bench trial." *Ga. State Conf. of the NAACP v. Fayette County Bd. of Comm'rs*, 775 F.3d 1336,

of Comm'rs, 204 F.3d 1335, 1343 (11th Cir. 2000); *Burton v. City of Belle Glade*, 178 F.3d 1175, 1199 (11th Cir. 1999); *Brooks v. Miller*, 158 F.3d 1230, 1240 (11th Cir. 1998); *Negron*, 113 F.3d at 1567. And while these preconditions are necessary to proving a Section 2 claim, they are not sufficient. *De Grandy*, 512 U.S. at 1011.

I. Plaintiffs have no evidence of required elements of their claim.

Plaintiffs' first problem is their failure to provide admissible evidence on required elements of their claims. Because Plaintiffs have no evidence of present-day discrimination and have no political-science analysis that controls for race and politics, their claims necessarily fail at the outset.

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A. Plaintiffs fail to present evidence of present-day discrimination.

To enforcement Fifteenth Amendment through Section 2, Plaintiffs must show "present-day intentional racial discrimination regarding voting." *Callais*, 146 S. Ct. at 1160. Despite months of discovery, they cannot point to any intentional, present-day racism against Black voters in Houston County.

Plaintiff Rozier testified she was unaware of any intentional racial

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1343 (11th Cir. 2015). The exception is when a plaintiff cannot carry their burden on the initial *Gingles* preconditions, when cases can be resolved at summary judgment in favor of defendants. *See, e.g.*, *Burton*, 178 F.3d at 1197 (affirming grant of summary judgment to defendants on vote-dilution claim); *Greater Birmingham Ministries v. Sec'y of State for State of Alabama*, 992 F.3d 1299, 1328 (11th Cir. 2021) (affirming grant of summary judgment to defendants on vote-denial claim).

discrimination by Houston County government in recent history aside from political disagreements. Rozier Dep. at 40:20–41:17, 52:7–17. Plaintiff Morgan was also unaware of any intentional racial discrimination by Houston County of any kind. Morgan Dep. at 22:17–25.

Plaintiffs offered only expert testimony to establish historical discrimination. Whether that type of analysis is even relevant after *Callais*, Plaintiffs' own expert could not and did not identify any evidence of official discrimination by Houston County in the last 35 years. Bagley Dep. at 86:18–25. He also did not offer any opinion about the intent of Georgia's legislature in adopting the countywide method of election.[4] *Id*. at 24:20–23.

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To avoid "exceed[ing] Congress's authority under § 2 of the Fifteenth Amendment," a remedy must be congruent and proportional to the injury it seeks to address. *Callais*, 146 S. Ct. at 1155. That is why "the focus of § 2 must be enforcement of the Fifteenth Amendment's prohibition on *intentional* racial discrimination." *Id*. (emphasis in original). Ultimately, Section 2 "liability only when the evidence supports a strong inference that the State intentionally drew its

[4] Dr. Bagley also agreed that Houston County had been electing its commissioners on a countywide basis since at least 1922, but did not include that fact in his report. Bagley Dep. 27:10–21.

districts to afford minority voters less opportunity because of their race." *Id*. at 1157.

Despite these requirements, Plaintiffs have not shown that the adoption of countywide voting in 1922 had anything to do with racial discrimination, nor have they shown that there is any "present-day intentional racial discrimination regarding voting." *Id*. at 1160. The complete lack of evidence on this point also entitles Defendants to judgment as a matter of law on Plaintiffs' sole claim. *Marion*, 821 F. Supp. at 687.

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B. Plaintiffs' statistical analysis does not control for racial bloc voting that cannot be explained by partisan affiliation.

Plaintiffs must also "provide an analysis that controls for party affiliation. In other words, they must show that voters engage in racial bloc voting that cannot be explained by partisan affiliation." *Callais*, 146 S. Ct. at 1159. This is part of their burden of showing "politically cohesive voting by the minority and racial-bloc voting by the majority." *Id*.

Plaintiffs' experts admitted that, in countywide nonpartisan elections, Black individuals have been elected recently. *See* Bagley Dep. at 74:9–15. But the expert report of Dr. Stephen Popick does not contain any analysis that addresses whether racial bloc voting is better explained by partisanship. Ex. B at 15–16, Ex. C at 15–16 (not considering partisanship in report). This failure of evidence on a point required by controlling precedent is also dispositive. *Marion*, 821 F. Supp. at 687.

II. Plaintiffs cannot establish the first *Gingles* precondition.

Moving to the *Gingles* preconditions, Plaintiffs' evidence on the first and second preconditions is insufficient to sustain their claims. Each of these failures also provides an independent basis for dismissal of this case.

A. Legal standard.

The Eleventh Circuit prohibits the separation of the first prong of liability under *Gingles* and the potential remedy. *Nipper*, 39 F.3d at 1530-31; *see also Burton*, 178 F.3d at 1199 ("We have repeatedly construed the first *Gingles* factor as requiring a plaintiff to demonstrate the existence of a proper remedy."); *Rose v. Sec'y of State of Georgia*, 87 F.4th 469, 482 (11th Cir. 2023). Whatever plan is used to demonstrate the violation of the first precondition of *Gingles* must also be a remedy that can be imposed by the Court. *Nipper*, 39 F.3d at 1530-31; *see also Rose*, 87 F.4th at 480 (remedy must be "viable"). And the plan used to demonstrate a violation of the first precondition must also be one that (1) does not consider race at all and (2) meets all of the state's legitimate districting objectives. *Callais*, 146 S. Ct. at 1159. The failure to submit a compliant plan means the plaintiff has failed to meet his or her evidentiary burden. *Nipper*, 39 F.3d at 1530-31; *Burton*, 178 F.3d at 1199.

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B. The only valid remedy for Houston County is a four-district plan.

When considering whether a proper remedy exists for alleged vote dilution, there must be a reasonable alternative benchmark, so a court cannot alter the size

of the governing body of a jurisdiction as part of a Section 2 remedy. *Holder v. Hall*, 512 U.S. 874, 885 (1994). And remedies have to exist within the confines of existing state models of government. *Rose*, 87 F.4th at 480–81 (citing *Nipper*, 39 F.3d at 1531). This interest should be assessed early in a case. *Id*. at 481–82.

In Houston County, the Georgia General Assembly determined that the Chair of the County Commission would be elected to Post 1 and be a full-time employee of the county as its CEO. 1990 Ga. Laws Act No. 712 (HB 1073). That role is unique compared to every other member of the County Commission, who are part-time commissioners. Perdue Dep. at 18:16–19:24.

Plaintiffs' proposed five-member district map would require altering the form of government for Houston County in ways that this Court cannot undertake—in other words, requiring five commission districts would "fundamentally change the [Commission's] structure." *Rose*, 87 F.4th at 482. As the Chairman explained, electing five members from districts could result in a situation where no elected member wishes to serve as the full-time chair. Perdue Dep. at 24:7–25. That necessarily means that Houston County would have to add a sixth at-large member, changing the size of government in violation of *Hall*, 512 U.S. at 885, or alter the legislature's chosen form of government of an elected full-time administrator with a hired county administrator, which would not address the unique interests in Houston County, Perdue Dep. at 117:19–119:5. In either

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event, a five-district plan is not available as a viable remedy because it would require fundamental changes to Houston's form of government.

Plaintiffs have also offered a four-district plan, which, if implemented with an at-large chair that still serves as the full-time CEO, could maintain the existing form of government. As a result, the only valid potential remedy this Court can consider is a four-district plan.

C. Mr. Fairfax's plans cannot be used as a remedy.

Mr. Fairfax created one four-district plan with a majority-Black VAP district, which he refers to as Plan A. Ex. A at ¶¶ 37–69. To comply with the first Gingles precondition, the majority-Black VAP district must be drawn without considering race in its design. *Callais*, 146 S. Ct. at 1159. Further, this Court must consider the geographic compactness of the Black population, *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433–34 (2006) (*LULAC*), and whether it can order the proposed plan as a remedy, *Rose*, 87 F.4th at 480–81.

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Mr. Fairfax testified that race played a role in his drawing process, which means that the plan cannot be used as part of a constitutional application of Section 2. *Callais*, 146 S. Ct. at 1159. He testified that he turned on racial shading information to learn where Black individuals were located, then used that information in combination with other factors to create the majority-Black district. Fairfax Dep. 70:11–19, 101:12–19. Thus, Plaintiffs have demonstrated that they

"can produce an additional majority-minority district only by using race," which is not permitted to show the first prong of *Gingles* is met. *Callais*, 146 S. Ct. at 1159; *see also Miller v. Johnson*, 515 U.S. 900, 925 (1995) (use of racial shading in district maps). This Court cannot order Mr. Fairfax's illustrative plan as a remedy because it violates the United States Constitution. *Alabama Legislative Black Caucus*, 575 U.S. at 272; *Callais*, 146 S. Ct. at 1159.

Because Plaintiffs' only proposed four-district plan fails to establish the existence of the first *Gingles* precondition, Plaintiffs have not presented a valid remedy in discovery, and Defendants are entitled to judgment as a matter of law on that basis alone. *S. Christian Leadership Conference of Alabama v. Sessions*, 56 F.3d 1281, 1297 (11th Cir. 1995).

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III. Plaintiffs cannot establish the second *Gingles* precondition.

A. Legal standard.

The second *Gingles* precondition covers "politically cohesive voting" by Black voters in Houston County. *Callais*, 146 S. Ct. at 1159. And plaintiffs "may not 'assum[e] from a group of voters' race that they think alike, share the same political interests, and will prefer the same candidates at the polls.'" *Alpha Phi Alpha Fraternity Inc. v. Raffensperger*, 700 F. Supp. 3d 1136, 1258 (N.D. Ga. 2023) (*APA*) (quoting *LULAC,* 548 U.S. at 433). Thus, under *Gingles,* "the results test does not assume the existence of racial bloc voting; plaintiffs must prove it." 478 U.S. at 46.

B. Demonstrating the second *Gingles* precondition requires more than meeting the "separate electorates test."

Plaintiffs' report fails to establish the existence of the second *Gingles* precondition in Houston County. Dr. Popick conducted statistical analyses attempting to predict the relative vote shares of white and Black voters for candidates. Ex. B at 3. While this is a technique courts routinely accept, Dr. Popick incorrectly relied on the "separate electorates test" in reaching his conclusions, while failing to consider the impact of the analysis specifically as it relates to the second *Gingles* precondition.

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The separate electorates test is straightforward. It asks only whether "black voters and white voters vote differently." *Gingles*, 478 U.S. at 53 n. 21. The Supreme Court adopted this standard for "racially polarized" or "racial bloc" voting. *Id.* But that alone is not enough, because the Court further clarified that "legally significant" racial bloc voting is what matters for the second and third preconditions. *Id.* at 55–61. And that means "the *degree* of bloc voting which constitutes the threshold of legal significance will vary from district to district." *Id.* at 55–56. This is critically important for two reasons.

First, the concept of "legally significant" racially polarized voting supports the proposition that the *degree* of cohesion matters for determining whether the second *Gingles* precondition is satisfied. And second, that the ultimate degree necessary is case-specific, and even district-specific. Thus, "[t]he purpose of

inquiring into the existence of racially polarized voting is twofold: to ascertain whether minority group members constitute a politically cohesive unit and to determine whether whites vote sufficiently as a bloc usually to defeat the minority's preferred candidates." *Gingles,* 478 U.S. at 56. As to the first question, 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." *Id.* (emphasis added). But in a two-person election contest—which were the only ones Dr. Popick analyzed in his principal reports—Black voters do not have an additional choice and a strict "separate electorates test" inquiry collapses a two-part question into the wrong question of whether Black and white voters vote differently.

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If courts and experts rely *exclusively* on the separate electorates test, the second and third *Gingles* preconditions are no longer distinct inquiries but are unified into a single question: Do Black and white voters prefer different candidates?

The Supreme Court expressly rejected that approach. *See id.* at 55. Dr. Popick has thus failed to produce adequate evidence demonstrating cohesive bloc voting by Black residents of Houston County.

Dr. Popick admitted in his first deposition that he steadfastly avoided opining on the degree of black cohesion in his analysis because he didn't think the

question mattered. Popick 3-13 Dep. at 117:17–119:14. Instead, he limited his conclusions to whether "either [white voters or black voters] bloc voted, you know, separately for a candidate of choice, right?" *Id.* at 119:7–9. And because his analysis in his first report revealed all but one election where point estimates and confidence intervals showed a majority of black voters selecting a candidate that the majority of white voters opposed, Dr. Popick concluded that the second and third *Gingles* preconditions were satisfied. In a later, "corrected" report, Dr. Popick doubled down on that conclusion because the point estimates of black voter cohesion moved higher. But both reports reveal that Dr. Popick overstated the results of his analysis and it cannot support the second *Gingles* precondition.

1. Dr. Popick's initial report and the corrected report conflict with one another rendering both analyses substantively unreliable.

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After his initial deposition, Dr. Popick "reflect[ed]" on his results and then unilaterally propagated a different statistical analysis. Popick 4-2 Dep. at 9:17–10:8. Although Dr. Popick referred to the corrected report as only containing a "minor statistical error," the resulting changes to his calculations dramatically change the substance of Dr. Popick's analysis.

Both reports included three different types of statistical models designed to show cohesion among Black and white voters: Ecological Regression; Iterative

Ecological Inference; and Ecological Inference RxC.[5] Dr. Popick repeatedly characterized Iterative Ecological Inference (Iterative EI) as the "most reliable" model given the data constraints presented by a smaller jurisdiction like Houston County. Popick 3-13 Dep. at 123:14–20.

Notwithstanding this characterization, the Iterative EI model results swung wildly both within each report and across the two reports. The confidence intervals for each report show the potential range for possible estimates, which were unusually wide in Dr. Popick's original report. Popick 4-2 Dep. at 76:2–6. For example, Dr. Popick originally indicated that the confidence intervals for the percentage of Black support in the 2016 and 2020 elections for Post 5 ranged from 76.7% to 90.4% in 2016 and 51.1% to 64.5% in 2020. Ex. B, Table A1 at 24. But in the later "corrected" analysis, these unusually wide confidence intervals got even larger in all eight elections where Dr. Popick used Iterative EI. Popick 4-2 Dep. at 76:12–17. For example, the ranges for the confidence intervals for the percentage of Black support in the 2016 and 2020 elections for Post 5 changed to as low as 60.3% and as high as 95.7% in 2016 and 58% to 96.7% in 2020. Ex. C, Table A1 at 24. Dr. Popick agreed that an increase in confidence interval breadth meant an

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[5] Because of ballot secrecy, courts cannot know exactly which voters prefer which candidate, so "[c]ourts generally rely on statistical analyses to estimate the proportion of each racial group that voted for each candidate." *APA*, 700 F. Supp. 3d at 1264; *see also id*. at 1242–43 (describing various methods).

increase in the uncertainty around the accuracy of his estimates. Popick 3-13 Dep. at 72:8–14. Not only that, in seven out of eight elections analyzed by Dr. Popick, the "corrected" report produced point estimates outside of the confidence interval range of the original report—further demonstrating a lack of evidence of cohesion. Popick 4-2 Dep. at 84:24–85:20.

2. *The corrected report cannot establish the degree of cohesion of black voters in Houston County.*

The increasing uncertainty around the figures presented by Dr. Popick in his "corrected" report undermines, rather than supports, Plaintiffs' claim that Houston County voting patterns satisfy the second *Gingles* precondition. Dr. Popick insists his "corrected" report only further reinforces his conclusion that voting is racially polarized in Houston County. He explained that although his new analysis contains "a larger set of possible values," the "most likely values we see increased for black voters. Those are the point estimates. So under the separate electorates test it's the same material finding, voting is racially polarized." Popick 4-2 Dep. at 80:12-81:2. That gets the test backwards.

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While Dr. Popick's point estimates increase the *appearance* of cohesion among black voters in the analysis he provides, he admits that widening confidence intervals increase *uncertainty* around the accuracy of those new point estimates. Popick 4-2 Dep. at 83:8–84:18. And his reliance solely on the purported accuracy of his point estimates in this environment is even more dubious

considering the new point estimates for Black voter behavior all exist *outside* the confidence intervals of his original analysis. This Court cannot determine from Dr. Popick's reports where the correct level of Black support for candidates is located within the realm of possibilities contemplated by the wide confidence intervals he includes.

Plaintiffs must demonstrate not only that voting in Houston County is racially polarized, but that Black voters form a *cohesive* voting bloc—not just that white and Black voters vote differently. Dr. Popick's analysis cannot demonstrate what is required. As a result, Defendants are entitled to judgment as a matter of law on the second *Gingles* precondition.

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CONCLUSION

Despite months of discovery, Plaintiffs have failed to carry their burden. In fact, Plaintiffs have built a factual record that precludes their case from moving forward.

Plaintiffs failed to identify any present-day intentional racial discrimination against Black voters by Houston County. In order for Section 2 to be constitutional, that is required and is nonexistent in the record of this case. Further, Plaintiffs have not even attempted to separate race and party when nonpartisan countywide elections have elected Black officials in recent years. That evidentiary failure entitles Defendants to judgment as a matter of law.

But even considering the *Gingles* preconditions, Plaintiffs' claims still fail. Plaintiffs' mapping expert only presented one potentially valid remedy of a four-district plan with a majority-Black district, but drew it by improperly considering race. This Court cannot order it as a remedy and Defendants are entitled to judgment as a matter of law on the first *Gingles* precondition.

Plaintiffs' statistical expert used the wrong test for the second *Gingles* precondition. The separate electorates test does not properly frame the question and does not answer the question of cohesion among Black voters. This is yet another evidentiary failing that entitles Defendants to judgment as a matter of law on the second *Gingles* precondition.

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"[I]nterpreting § 2 of the Voting Rights Act to outlaw a map solely because it fails to provide a sufficient number of majority-minority districts would create a right that the [Fifteenth] Amendment does not protect. And such an interpretation would run headlong into the Act's express disclaimer against racial proportionality." *Callais*, 146 S. Ct. at 1156. Plaintiffs do not and cannot present the evidence necessary to require any change to Houston County's longstanding form of government.

This Court should grant judgment as a matter of law to Defendants.

Respectfully submitted this 29th day of May, 2026.

/s/Bryan P. Tyson
Bryan P. Tyson
Georgia Bar No. 515411
btyson@tysonyounker.law
David J. Younker
Georgia Bar No. 940387
dyounker@tysonyounker.law
Tyson Younker LLC
1225 Johnson Ferry Road
Suite 600-A
Marietta, Georgia 30068
678.223.3160 (phone)

Counsel for Defendants

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