

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

ALPHA PHI ALPHA FRATERNITY
INC., et al.,

Plaintiffs,

v.

BRAD RAFFENSPERGER, in his
official capacity as Secretary of State
of Georgia,

Defendant.

CASE NO. 1:21-CV-05337-SCJ

**PLAINTIFFS' RESPONSE TO DEFENDANT'S STATEMENT OF
UNDISPUTED MATERIAL FACTS**

Plaintiffs Alpha Phi Alpha Fraternity Inc., Sixth District of the African Methodist Episcopal Church (“AME Church”), Eric T. Woods, Katie Bailey Glenn, Phil Brown, and Janice Stewart (collectively, “Plaintiffs”) pursuant to Rule 56 of the Federal Rules of Civil Procedure, Local Rule 56.1, and this Court’s Individual Rule III.I submit this Response to Defendant’s Statement of Material Facts as to Which There is No Genuine Issue to be Tried.

1. The 2020 Census data showed that the increase in the percentage of Black voters in Georgia from 2010 to 2020 was slightly more than two percentage points. Report of William Cooper, attached as Ex. A (“Cooper Report”), ¶ 50.

Plaintiffs’ Response:

Disputed. 2020 Census data show that the Black population in Georgia increased by 484,048 from 2010 to 2020, from 3,054,098 to 3,538,146, which is an increase of more than 15%. Report of William Cooper Pt. 1 [Dkt. 237-1] (“Cooper Report Pt. 1”) ¶ 50, Fig. 5. The share of the statewide population that is Black increased from 31.53% to 33.03%. Cooper Report Pt. 1 ¶ 50, Fig. 5. 484,048 persons is the equivalent of 2.5 entire Senate districts or eight entire House districts. Cooper Report Pt. 1 ¶ 14 n.6.

2. Further Census data has shown decreases in the Black Citizen Voting Age Population between 2019 and 2021. Deposition of William Cooper [Doc. 221] (“Cooper Dep.”) 99:11-23, 100:10-16.

Plaintiffs’ Response:

Disputed. The purported decrease in the Black Citizen Voting Age Population between 2019 and 2021 comes from American Community Survey (ACS) estimates, not U.S. Census data. Cooper Dep. 98:23-102:7 (“One is a complete count based on the census and the other is a survey. And, in fact, the

2021 survey was taken during the pandemic, which also makes it—it may not have that much statistical significance apparently.”). ACS data, unlike Census data, is an estimate based on a survey. *Id.* Moreover, the referenced 1-year ACS estimates were potentially affected by the pandemic, the effects of which were so severe that the 1-year ACS for 2020 was not published. *See, e.g., id.* 99:2-102:7 (“Because of the pandemic the ACS was not imported for 2020 for the one-year survey.”).

Additionally, the 1-year ACS survey, which is what is referred to in the cited passage, is itself a less robust and less accurate estimate than the five-year ACS survey. *Understanding and Using American Community Survey Data: What All Data Users Need to Know*, U.S. Census Bureau, 15 (Sept. 2020), https://www.census.gov/content/dam/Census/library/publications/2020/acs/acs_general_handbook_2020.pdf (“The 1-year estimates . . . have larger margins of error than the 5-year estimates because they are based on a smaller sample.”).

3. Both chairs of the House and Senate committees with jurisdiction over redistricting sought to meet with all of their colleagues, both Republican and Democratic, to gain input on their areas of the state. Deposition of Gina Wright [Doc. 225] (“Wright Dep.”) 68:17-69:7.

Plaintiffs' Response:

Disputed. The identified deposition testimony states only that Ms. Wright understood that the chairs of the House and Senate redistricting committees met with other members of the legislature. Ms. Wright's excerpted testimony does not identify which parties the members were from, and Ms. Wright testified that neither she nor anyone from her office was involved in those meetings.

Representative Derrick Jackson testified that the majority Republican party was not willing to entertain input on the drawing of the maps from members of the minority Democratic party, and that he did not meet with the chair of the House redistricting committee because he felt that it would be "futile." Pls.' Statement of Additional Material Facts ("SOAF") ¶¶ 6-7, Dep. of Derrick Jackson [Dkt. 228] ("D. Jackson Dep.") 20:9-22:12.

4. Consistent with past redistricting cycles, the joint House and Senate committees also held a series of "listening sessions" across the state to hear from citizens about maps, including several Zoom meetings. Deposition of John Kennedy [Doc. 226] ("Kennedy Dep.") 171:13-20, 194:1-195:10.

Plaintiffs' Response:

Disputed. While the identified testimony describes allowing public feedback in the 2021 mapping process, the identified testimony does not support

that this was “[c]onsistent with past redistricting cycles” and does not describe any Zoom meetings with the public. Senator Kennedy further testified that the town hall meeting process occurred before any new districts were drawn. Kennedy Dep. 236:3-16. Senator Kennedy also testified that he could not recall any changes being made to the draft maps as a result of public input or at the request of legislators. *Id.* 236:17-237:14.

5. And for the first time in 2021, the General Assembly provided a public comment portal online, seeking comments from the public. Wright Dep. 252:20-253:4.

Plaintiffs’ Response:

Not disputed.

6. After holding a committee education day where a variety of stakeholder groups presented about map-drawing, the committees adopted guidelines to govern the map-drawing process. Kennedy Dep. 161:1-4; Deposition of Bonnie Rich [Doc. 227] (“Rich Dep.”) 214:19-215:7.

Plaintiffs’ Response:

Not disputed insofar as the cited passages indicate that the events mentioned therein happened in that temporal sequence. Disputed insofar as the statement implies that the redistricting committees adopted new guidelines to govern the

map-drawing process as a result of an education day. Senator Kennedy testified that the 2021 redistricting guidelines “are the same principles that were utilized in the last redistricting cycle.” Kennedy Dep. 161:5-13.

7. To prepare maps, Gina Wright, the director of the Joint Reapportionment Office, drafted “blind” maps for the House and Senate, drawing based on her own knowledge of Georgia and the historic districts. Wright Dep. 45:15-25 (Senate map); 62:17-62:24 (House map).

Plaintiffs’ Response:

Not disputed.

8. The chairs of the House and Senate committees then met with Ms. Wright to adjust district boundaries based on the input they received from members and from others. Wright Dep. 54:3-20, 77:2-7 (Senate map); 197:2-6 (House map).

Plaintiffs’ Response:

Not disputed.

9. When Democrats requested changes, some of those changes were included. Wright Dep. 59:5-60:7 (Sen. Rhett).

Plaintiffs' Response:

Disputed. The cited testimony concerns Ms. Wright's identification of "one" change to the draft Senate map that "stands out" in her recollection, and that change "may have been the only [change] that went into the last version" of the map. Wright Dep. 59:5-60:7. The cited testimony does not support this paragraph's assertion that more than one Democrat requested multiple changes and that the legislature's map drawing process accommodated those requests.

10. Information about draft maps was also shared with members of the Democratic caucus, which had its own counsel and map-drawers. Wright Dep. 223:14-224:4, 226:11-17; Deposition of Derrick Jackson [Doc. 228] ("Jackson Dep.") 12:9-21.

Plaintiffs' Response:

Disputed. The cited testimony from Ms. Wright says only that she shared block equivalency files with one person who worked for the House Democratic Caucus. Wright Dep. 223:14-224:4, 226:11-17. Ms. Wright did not know why that person wanted block equivalency files, and did not recall anyone else asking for block equivalency files nor providing block equivalency files to anyone else. *Id.* 223:24-224:4, 226:18-21. The cited testimony from Derrick Jackson provides only that the House Democratic Caucus had its own counsel and map drawers,

without any discussion of the Senate Democratic Caucus nor whether any maps were shared with members of the Democratic caucus. D. Jackson Dep. 12:9-21.

11. The chairs and Ms. Wright also consulted with counsel about compliance with the Voting Rights Act. Wright Dep. 92:8-20.

Plaintiffs' Response:

Disputed. The identified testimony states only that Ms. Wright “would also ask them [the chairs] to have those [maps] reviewed by counsel for ... compliance” with the Voting Rights Act, and does not indicate that she consulted with counsel.

12. While racial data was available, the chairs of each committee focused on past election data to evaluate the partisan impact of the new plans while drawing with awareness of Republican political performance. Wright Dep. 55:25-56:7; 140:3-11; 140:17-19; 257:21-258:1; 258:2-14.

Plaintiffs' Response:

Disputed. The cited testimony from Ms. Wright states only that political data was “an important consideration” in map drawing, not that it was the focus. *See* Wright Dep. 258:2-14. Ms. Wright also testified that “data related to the race of the population” was projected onto the screen when she was reviewing draft maps with interested legislators “[m]ost of the time,” and that she “assume[d]”

Chairman Kennedy considered that data when considering where to ask her to draw lines. *Id.* 55:22-56:12.

13. The resulting Senate map reduced the number of split counties from the prior plan, did not pair any incumbents of either party, and maintained the same number of majority-Black districts as prior plans. Cooper Report ¶ 116, Figure 21; Kennedy Dep. 106:4-11; Cooper Report ¶ 70, Figure 11.

Plaintiffs' Response:

Disputed. The 2021 Enacted Senate Plan paired four incumbents. Morgan Report ¶ 16, Chart 2; Cooper Report Pt. 1 ¶ 122. Not disputed that the Enacted Senate Plan reduced the number of split counties by nine and maintained the same number of majority-Black districts. Cooper Report Pt. 1 ¶ 116, Fig. 21; *id.* ¶ 70, Fig. 11.

14. Similarly, the state House maps also reduced the number of split counties, increased the number of majority-Black districts in metro Atlanta, and paired a small number of incumbents. Cooper Report ¶ 189, Figure 37; Rich Dep. 125:4-11, 196:17-22; Cooper Report, ¶ 132, Figure 23.

Plaintiffs' Response:

Not disputed except to the extent that the definition of a “small number” is unclear. The 2021 Enacted Plan reduced the number of split counties by four,

Cooper Report Pt. 1 ¶ 189, Fig. 37; increased the number of majority-Black districts in metro Atlanta by two, *id.* ¶ 132, Fig. 23; and paired 20 incumbents, Morgan Report ¶ 45, Chart 6.

15. The Governor signed the plans on December 30, 2021, and they were used in the 2022 elections. [Doc. 141, ¶ 60].

Plaintiffs' Response:

Not disputed.

16. Plaintiff Eric Woods (“Woods”) has resided at his current address in Fayette County, Georgia for approximately 15 years. Deposition of Plaintiff Eric Woods [Doc. 217] (“Woods Dep.”) at 13:4-12.

Plaintiffs' Response:

Not disputed.

17. Woods has considered himself to be a member of the Democratic Party since the age of 18. Woods Dep. at 27:13-19.

Plaintiffs' Response:

Not disputed.

18. Woods has been a member of the Fayette County Democratic Committee since 2017. Woods Dep. at 19:9-25.

Plaintiffs' Response:

Disputed. The cited testimony does not support this paragraph. Woods testified that he has never held any position or served on any committee for the Democratic Party. Woods Dep. 27:23-28:3.

19. During the time that he has been a member of the Democratic Party, Woods' activities for the Democratic Party have included assisting with voter registration efforts and volunteering on political campaigns for Democratic Party candidates. Woods Dep. at 28:9-18, 29:13-30:4.

Plaintiffs' Response:

Not disputed.

20. According to Woods, he has never considered himself a member of the Republican Party, and has never voted for a Republican Party candidate. Woods Dep. at 28:19-29:7.

Plaintiffs' Response:

Not disputed.

21. Katie Bailey Glenn lives in Henry County. Deposition of Katie Bailey Glenn [Doc. 218] ("Glenn Dep.") at 10:8-9, 14-16.

Plaintiffs' Response:

Not disputed.

22. Glenn is a Democrat. Glenn Dep. at 25:12-14.

Plaintiffs' Response:

Not disputed.

23. Glenn served as a poll watcher for the Democratic Party in Henry County. Glenn Dep. at 25:19-24.

Plaintiffs' Response:

Not disputed.

24. Glenn has never voted for a Republican candidate. Glenn Dep. at 28:13-15.

Plaintiffs' Response:

Disputed. The cited testimony does not support this paragraph. Glenn testified only that she did not recall voting for a Republican candidate for office. Glenn Dep. 28:13-15.

25. Plaintiff Phil Brown has resided at his current address in Jefferson County, Georgia since 1999. Deposition of Plaintiff Phil Brown [Doc. 219] ("Brown Dep.") at 18:6-19:7.

Plaintiffs' Response:

Not disputed.

26. Brown has considered himself to be a member of the Democratic Party since the time he started voting. *Id.* at 36:7-16.

Plaintiffs' Response:

Not disputed.

27. Brown is currently the Vice Chair of the Democratic Committee of Jefferson County and has been a member for 20-25 years. *Id.* at 24:4-32:3.

Plaintiffs' Response:

Not disputed.

28. Brown does not recall ever voting for a candidate of the Republican Party. *Id.* at 37:15-18.

Plaintiffs' Response:

Not disputed insofar as Brown stated this in his deposition. Disputed insofar as the cited testimony does not support this paragraph.

29. Janice Stewart resided in Thomasville, Georgia on December 30, 2021. Deposition of Janice Stewart [Doc. 220] ("Stewart Dep.") at 11:24-12:5.

Plaintiffs' Response:

Not disputed.

30. Stewart is registered to vote in Thomas County, Georgia. *Id.* at 23:18-19.

Plaintiffs' Response:

Not disputed.

31. Stewart considers herself to be a member of the Democratic party, but she has never served in any position, served on any committees, or participated in any activities of the Democratic party. *Id.* at 25:11-25.

Plaintiffs' Response:

Not disputed.

32. Plaintiffs began planning for this litigation before the Georgia maps were even complete—retaining experts to begin drawing alternative maps before the special session convened. Cooper Dep. 24:18-25:11.

Plaintiffs' Response:

Disputed. The cited passage refers only to Mr. Cooper's retention and does not support the statement that Plaintiffs were "preparing for litigation." Not

disputed that Plaintiffs retained Mr. Cooper before November 3, 2021, which is when the special legislative session convened. Cooper Dep. 24:18-25:11.

33. Plaintiffs’ goal in offering their illustrative plans was to determine whether they could draw additional majority-Black districts beyond those drawn by the state plans. Cooper Dep. 34:24-35:5.

Plaintiffs’ Response:

Disputed. Per the cited portion of the transcript, the “goal was to determine whether it would be possible [to create additional majority-Black districts] *within the constraints of traditional redistricting principles.*” Cooper Dep. 33:23-25 (emphasis added); *see also* Cooper Report Pt. 1 ¶¶ 7, 10.

34. Map-drawers distinguish “majority-minority” from “majority-Black.” Majority-minority districts have a majority of non-white and Latino voters, while majority-Black districts are districts where Black voters as a single racial category constitute a majority of a district. Cooper Dep. 37:23-38:1, 38:25-39:5

Plaintiffs’ Response:

Not disputed, except to clarify that for purposes of these terms, and as used by Plaintiffs in this case, “Black” refers to “any-part Black.” *See, e.g.*, Cooper Report Pt. 1 ¶ 7 n.1.

35. Plaintiffs' expert, Mr. Cooper, does not believe that a metric can identify whether race predominated in the drafting of a district plan. Cooper Dep. 40:21-41:7.

Plaintiffs' Response:

Disputed. Mr. Cooper said that he did not think there was "necessarily" a metric that would identify that, but he mentioned that "perhaps one could look at a legislative plan and make an assessment that a plan was disproportionately weighted towards one race or another, so perhaps in that sense." Cooper Dep. 40:21-41:7. Mr. Cooper also provided a specific historical example of an instance where he thought map drawers did not comport with traditional districting principles. *Id.* 42:10-23.

36. When Mr. Cooper was creating his illustrative maps, he turned on features in the software to indicate where Black individuals were located. Cooper 60:10-18, 61:16-22.

Plaintiffs' Response:

Disputed. Mr. Cooper testified that he sometimes used a feature that indicated whether a precinct *as a whole* had a Black voting age population higher than 30 percent, but that feature does not identify the concentration of Black population *within* that precinct—much less any indication of where any Black

“individuals” are located. Cooper Dep. 60:15-61:1. Mr. Cooper testified that he used that feature only “sometimes” and only to “identif[y] more or less where the Black . . . population lives.” *Id.* 60:15-63:21.

37. Unlike the legislature, Mr. Cooper did not have any political data available to him. Wright Dep. 55:25-56:7; 140:3-11; 140:17-19; 257:21-258:1; 258:2-14; Cooper Dep. 68:17-68:3.

Plaintiffs’ Response:

Not disputed that Mr. Cooper did not have—or use—partisan data or election results in his creation of the Illustrative Plans.

38. Mr. Cooper did not review any public comment. Cooper Dep. 128:20-25.

Plaintiffs’ Response:

Not disputed that Mr. Cooper did not review “any of the public testimony from individuals about the Georgia redistricting plans.” Cooper Dep. 128:20-25. Disputed to the extent the statement is meant to suggest anything else.

39. Mr. Cooper also views all Black Americans as sharing a community of interest for purposes of his map-drawing. Cooper Dep. 94:15-94:20, 95:1-6.

Plaintiffs' Response:

Disputed. The cited passage indicates that, when asked whether he believes that all Black Americans have a community of interest, Mr. Cooper replied, “[o]n a certain level, yes.” Cooper Dep. 94:15-94:20. The discussion immediately before and after that passage clarify that Mr. Cooper in particular believes that the shared historical experience of Black Americans can be the basis for a community of interest. *Id.* 94:9-14 (noting “the historical community of interest which all Black Americans share” and explaining that this shared history “relates to the historical Black Belt as well as the contemporary Black Belt” in Georgia); *id.* 94:25 (“I’m aware of U.S. history, yes.”); *id.* 95:1-6 (agreeing that it is “legitimate” to “rely in part on the history of the experience of Black Americans and the commonality that goes with that as the basis for a community of interest.”). At the same time, Mr. Cooper also acknowledged that, from a communities-of-interest perspective, sometimes it also might *not* make sense to group all Black voters together. *Id.* 209:2-6.

40. Mr. Cooper’s preliminary-injunction plans contained the maximum number of Black districts he drew for any legislative plan in Georgia. Cooper Dep. 34:24-35:5.

Plaintiffs' Response:

Not disputed. Mr. Cooper only drew two sets of plans: one for the preliminary injunction application (for which there were two versions to account for updated incumbent information) and one which was produced in advance of trial.

41. Although Mr. Cooper created five additional majority-Black Senate districts for the preliminary-injunction proceedings, his expert report only includes four additional majority-Black Senate districts. Cooper Dep. 66:25-67:11.

Plaintiffs' Response:

Not disputed. Cooper testified that the fifth district in the preliminary-injunction stage plan was a “situation where another district was organically majority Black just based on the end result of the plan.” Cooper Dep. 67:7-10.

42. In order to create the additional Senate districts, Mr. Cooper changed more than half of all districts from the enacted plan. Cooper Dep. 156:20-157:11.

Plaintiffs' Response:

Disputed. The cited portion of the record does not indicate that Mr. Cooper changed “more than half of all districts” “[i]n order to create the additional Senate districts.” In fact, Mr. Cooper testified that it was possible to draw the additional majority-Black Senate districts while modifying fewer districts from the Enacted

Plan, but that doing so would elevate core retention over other traditional districting principles such as avoiding splits. Cooper. Dep. 157:1-11 (“[Y]ou can still maintain these illustrative districts that I’ve drawn that are new majority Black districts with fewer modifications to the enacted plan districts. It would, however, result in more splits in some of the other counties involved. So there’s a trade-off there. I opted for looking at this in terms of pure traditional redistricting principles, and that would be not to worry so much about core retention and think more about county splits and MSA splits and regional commission splits which are more permanent.”). Plaintiffs do not dispute that Cooper’s Illustrative Senate Plan alters 35 districts from the Enacted Plan.

43. To create Senate District 23, Mr. Cooper crossed his own regions and the boundaries of various regional commissions to connect Black voters separated by intervening white populations. Cooper Dep. 142:15-143:7.

Plaintiffs’ Response:

Disputed. The cited passage does not support the assertion that Mr. Cooper crossed regional commission boundaries “to connect Black voters separated by intervening white populations” and indeed contains no mention or discussion of “intervening white populations.” For majority-Black Illustrative SD 23, Mr. Cooper specifically identified a number of principles other than race that informed

his configuration of the district, including: grouping counties in the historical Black Belt together, Cooper Dep. 144:20-24; uniting counties with shared socioeconomic characteristics, such as similar levels of poverty, Cooper Report Pt. 1 ¶ 129; staying within population deviation limits, Cooper Dep. 143:8-17; maintaining district compactness, *id.*; and following existing municipal and precinct lines within Wilkes County, Cooper Report Pt. 1 ¶ 109.

44. Mr. Cooper was unable to identify which counties are in the Black Belt. Cooper Dep. 80:19-21.

Plaintiffs' Response:

Disputed. In the cited passage, Mr. Cooper agreed only that it is a “reasonable statement” that there is “no uniform definition for the Black Belt.” Cooper Dep. 80:19-21. Mr. Cooper identified Black Belt counties in his report based on the analysis of the Georgia Budget and Policy Institute. Cooper Report Pt. 1 ¶¶ 18-19; *see also* Cooper Dep. 80:22-82:25.

45. Mr. Cooper relied on counties in illustrative Senate District 23 as being in the Black Belt for any possible connections. Cooper Dep. 144:20145:9, 145:20-146:4.

Plaintiffs' Response:

Disputed. For Illustrative SD 23, Mr. Cooper specifically identified a number of factors other than race or the Black Belt that informed his configuration of the district, including: uniting counties with shared socioeconomic characteristics, such as similar levels of poverty, Cooper Report Pt. 1 ¶ 129; staying within population deviation limits, Cooper Dep. 143:8-17; maintaining district compactness, *id.*; and following existing municipal and precinct lines within Wilkes County, Cooper Report Pt. 1 ¶ 109.

46. Mr. Cooper also made racial splits of counties in the creation of illustrative Senate District 23, including higher concentrations of Black voters in counties while excluding lower concentrations of Black voters when a county was split. Report of John Morgan, attached as Ex. B (“Morgan Report”), H 33-37.

Plaintiffs' Response:

Disputed. The cited portion of the Morgan Report does not support the characterization of Mr. Cooper’s map. With respect to county splits, Illustrative Senate District 23 and Enacted Senate District 23 both split Augusta-Richmond County and one other county. *E.g.*, Cooper Report Pt. 1 ¶ 107-109 & Figs. 18, 19A. Far from making a “racial split,” in dividing Wilkes County, Mr. Cooper followed established political boundaries, namely recently-enacted County

Commission lines, and the town boundaries for Washington, Georgia, as discussed and illustrated in Mr. Cooper's report. Cooper Report Pt. 1 ¶ 110 & Fig. 19B; Cooper Dep. 144:4-8 ("Let me back up. It does not divide -- the illustrative District 23 follows commission lines except that once it reaches the town of Washington on the southwest side it just follows the town boundaries."). When asked whether he knew "the racial impact of following the boundary line you followed in the split of the city of Washington," Mr. Cooper testified that he did not. Cooper Dep. 144:16-19. Meanwhile, Mr. Morgan acknowledged that, if Mr. Cooper had not gone into Wilkes County, Illustrative Senate District 23 would have been underpopulated. Dep. of John Morgan [Dkt. 236] ("Morgan Dep.") 331:9-332:6.

47. To create Senate Districts 17 and 28, Mr. Cooper strategically cut counties to ensure that areas with higher concentrations of Black voters were connected with more distant concentrations of white voters. Morgan Report, ¶¶ 25-30.

Plaintiffs' Response:

Disputed. Mr. Cooper's configurations for Illustrative Senate District 17 and Illustrative Senate District 28 balanced all of the traditional districting factors

while creating additional majority Black districts that are compact and that united geographically proximate suburban communities in the Atlanta Metro area:

Mr. Cooper's Illustrative SD 17, which is majority-Black, groups nearby, suburban areas that share socioeconomic commonalities in a smaller, more compact district, and also fixes the Enacted Plan's split of Newton County.

Cooper Report Pt. 1 ¶ 105, Figs. 17D & 17F; *id.* ¶ 127; Cooper Dep. 139:14-19.

By contrast, Enacted Senate District 17 reaches out from Henry County to rural Morgan and Walton Counties, connecting areas that are not alike, in a shape that the State's own mapper Gina Wright conceded was "jagged" and explained was strategically designed to produce a partisan result. Cooper Report Pt. 1 ¶¶ 105, 128; Wright Dep. 178:10-11, 195:8-12.

With Illustrative SD 28, Mr. Cooper identified at least five different districting principles other than race that featured in his configuration of the district, including uniting counties with shared socioeconomic characteristics, connecting geographically proximate communities, connecting suburban and exurban Atlanta Metro area communities, keeping precincts whole, and avoiding a split of Griffin, the county seat of Spalding County. *See* Cooper Report Pt. 1 ¶ 125; Cooper Dep. 126:25-127:9, 127:10-19, 130:14-23, 131:3-10, 132:6-133:14. Indeed, and contrary to the suggestion that Spalding County was "strategically

cut,” in splitting Spalding County in the Illustrative Senate Plan, Cooper used the City of Griffin’s municipal boundaries—a quintessential community of interest—as the district boundary. Cooper Report Pt. 1 ¶ 100; Cooper Dep. 132:6-10; *see also* Morgan Dep. 368:1-369:10 (acknowledging that, because Griffin is majority-Black and the largest municipality in Spalding County, adhering to municipal lines means that whichever half of Spalding has Griffin will necessarily have more Black voters).

48. This resulted in the largest counties by population in illustrative Senate Districts 17 and 28 not containing a majority of Black individuals. Cooper Dep. 118:12-17, 119:23-120:7.

Plaintiffs’ Response:

Disputed. The cited passage discusses the demographics of various county segments, Cooper Dep. 118:12-120:7, but does not support the causal assertion that the particular demographic breakdown “resulted” from the purported “strategic[.]” configuration of the lines that is propounded in the state of fact in the preceding ¶ 47, which Plaintiffs dispute.

Plaintiffs do not dispute that for Illustrative Senate District 17, the portion of Henry County that is in the district is 43.04% Black. Plaintiffs also do not dispute that for Illustrative Senate District 28, the portion of Fayette County that is in the

district is 37.34% Black. Report of William Cooper Pt. 3 [Dkt. 237-3] (“Cooper Report Pt. 3”) Ex. O-2. As Mr. Cooper testified, there is “nothing unusual about that,” and the Enacted Plans also include “some of the same breakouts that majority Black districts also have some majority white county portions.” Cooper Dep. 120:3-7

49. Mr. Cooper could not identify a community of interest between northern Clayton County and rural Spalding County in his configuration of this south metro area beyond the race of the individuals in both parts of the district. Cooper Dep. 130:14-131:2.

Plaintiffs’ Response:

Disputed. The cited passage, in which Mr. Cooper discusses the compatibility of the communities united in the district and describes it as an “in-between area” between urban and rural, Cooper Dep. 130:14-23, does not support Defendant’s assertion. In addition to connecting suburban and exurban Metro area communities, for Illustrative SD 28, Mr. Cooper also identified a number of other considerations he took into account other than race, including: uniting counties with shared socioeconomic characteristics, such as labor force participation in Fayette, Spaulding, and Clayton, Cooper Report Pt. 1 ¶ 125; connecting geographically proximate communities, Cooper Dep. 126:25-127:9; *see also id.*

127:10-19; trying to “keep voting district precincts whole,” *id.*; and avoiding a split of Griffin, the largest city and county seat of Spalding County, *id.* 132:6-133:1.

50. Although the illustrative plan has a similar number of county splits, that is only because Mr. Cooper unsplit counties in parts of the state unrelated to the creation of additional majority-Black districts to make the total split number appear more similar. Morgan Report, ¶¶ 36-39.

Plaintiffs’ Response:

Disputed. Mr. Cooper testified that the opportunity to fix splits may have been due to ripple effects from the creation of additional districts and that, even if he had not unsplit the aforementioned counties, the number of splits would still be “similar.” Cooper Dep. 203:15-204:8.

51. Mr. Cooper offered the same increase of five majority-Black House districts on his preliminary-injunction plan and expert report, but located those five districts in different places. Cooper Dep. 167:11-17.

Plaintiffs’ Response:

Disputed. Four of these districts are in the same areas. Cooper Dep. 167:11-17. There is one new additional majority-Black district in Macon-Bibb County in Mr. Cooper’s trial-stage Illustrative Plan. Cooper Dep. 167:15-17.

52. In order to create the additional House districts, Mr. Cooper changed more than half of all of the House districts from the enacted plan. Cooper Dep. 205:7-205:11.

Plaintiffs' Response:

Not disputed that Mr. Cooper changed 92 House districts from the Enacted House Plan to the Illustrative House Plan.

53. To create House District 133 as a new majority-Black district, Mr. Cooper had to add county splits in the area over the enacted plan, including splitting *seven* rural counties in several adjoining districts. Morgan Report, ¶¶ 59-62; Cooper Dep. 187:2-9; 187:20-188:6.

Plaintiffs' Response:

Disputed. Mr. Cooper's testimony does not state he "had to" add county splits in order to create Illustrative HD 133. Cooper Dep. 187:10-188:23. Mr. Cooper also did not attribute county splits in adjacent districts to creating Illustrative HD 133. *Id.* 187:10-188:23. Rather, he testified that "[i]t is entirely possible that had I not tried to avoid pairing incumbents, that I could have drawn a [House District] 128 that was different in shape." *Id.* 188:9-11.

Illustrative House District 133 splits two counties: Wilkes and Baldwin. *E.g.*, Cooper Dep. 188:21-23. Baldwin is also split in the Enacted House Plan. Cooper Report Pt. 1 ¶ 171.

Not disputed that the Illustrative House Plan also splits the following five counties: Screven, Burke, Johnson, Jefferson, and Laurens Counties. Cooper Dep. 187:24-188:2.

54. To create House District 145 as a new majority-Black district, Mr. Cooper had to adjust Macon districts so that no House district is wholly within Bibb County and each of the majority-Black districts in that area includes population from downtown Macon, including one district that crosses out of the Macon Census statistical area. Cooper Dep. 196:21-197:18, 198:7-198:11.

Plaintiffs' Response:

Disputed. The cited testimony does not state that Mr. Cooper “had to” adjust Macon districts so that no House district is wholly within Bibb County or that he “had to” include population from downtown Macon in each of the majority-Black districts in the area, only that this was how he configured the districts in the Illustrative House Plan. Cooper Dep. 196:21-198:11. The cited testimony also does not support the claim that one of the majority-Black districts crosses out of the Macon Census statistical area, inasmuch as the district being referenced,

Illustrative House District 142, is entirely within the Macon-Warner-Robbins Combined Statistical Area, which Mr. Cooper identified as Region D in his analysis. Cooper Dep. 198:14-17; Cooper Report Pt. 1 ¶ 183, Fig. 35. Not disputed that, in the Illustrative House Plan, no House district is wholly within Macon-Bibb County and each of the majority-Black districts in that area includes population from downtown Macon.

55. To create House Districts 74 and 117 in metro Atlanta, Mr. Cooper had to connect portions of counties with higher concentrations of Black voters with more-rural, white areas. Cooper Dep. 174:10-20, 175:20176:7.

Plaintiffs' Response:

Disputed. Mr. Cooper's testimony does not state he "had to" connect any areas with particular racial compositions in order to draw additional majority-Black House districts in the South Metro area. Rather, Mr. Cooper repeatedly rejected that assertion in discussing those districts, explaining that he was not focused on the racial makeup of communities at a granular level. *E.g.*, Cooper Dep. 178:9-13 ("[Y]ou seem to be very focused on the race of people at one point or another within a district, and I just am not that concerned about getting to that level of detail when I'm drawing a plan."); *see also id.* 177:1-8.

More generally, Mr. Cooper identified numerous reasons other than race for his configuration of the districts in that area. For Illustrative House District 74, Mr. Cooper specifically identified: uniting counties with shared socioeconomic characteristics, such as labor force participation, Cooper Report Pt. 1 ¶ 198; and connecting suburban communities, Cooper Dep. 178:14-179:12. For Illustrative House District 117, Mr. Cooper specifically identified: uniting counties with shared socioeconomic characteristics, such as labor force participation, Cooper Report Pt. 1 ¶ 198; connecting geographically proximate communities, Cooper Dep. 176:2-7, 217:9-20; adhering to population deviation requirements, *id.* 175:15-19; connecting exurban communities, *id.* 176:2-7, 217:9-20; and following transportation corridors and precinct lines, *id.* 177:17-22. Mr. Cooper testified that the new majority-Black House Districts that he drew in the South Metro area “are reasonably shaped, comply with one person, one vote requirements.... They’re lovely districts.” *Id.* 177:21-178:1.

56. Finally, in southwest Georgia, when he created House District 171, Mr. Cooper did not rely on the Corridor Management Plan he cited until after drawing the district and did not verify that all parts of the historic route were included. Cooper Dep. 191:14-21, 192:9-16, 192:23-193:12.

Plaintiffs' Response:

Disputed. Mr. Cooper testified that he was aware of historic U.S. Highway 19 (also known as the Dixie Highway) connecting the area in drawing the district. Cooper Dep. 191:17-192:5; Cooper Report Pt. 1 ¶ 178. Not disputed that Mr. Cooper found that particular Corridor Management Plan document after drawing Illustrative House District 171.

More generally, Mr. Cooper identified numerous connections that informed his configuration of Illustrative HD 171, including: reducing splits of Dougherty County, Cooper Dep. 193:18-25; connecting counties in the historical Black Belt, Cooper Dep. 217:25-218:8; Cooper Report Pt. 1 ¶ 179; connecting counties with shared socioeconomic characteristics, such as similar levels of poverty, Cooper Dep. 218:21-219:6; Cooper Report Pt. 1 ¶ 200; and maintaining consistency with prior district shapes, Cooper Dep. 190:1-15.

57. Illustrative House District 171 also connects disparate enclaves of Black population and splits additional counties to include Black population in the district. Morgan Report, ¶¶ 65-66.

Plaintiffs' Response:

Disputed. Mr. Morgan did not provide support for the assertion that Albany and Thomasville are “distant enclaves”; when asked for the basis for his opinion he

offered only that Thomasville “doesn’t really associate with Albany very much.” Morgan Dep. 374:21-377:7. Meanwhile, Mr. Cooper identified numerous connections that informed his configuration of Illustrative HD 171, including: reducing splits of Dougherty County, Cooper Dep. 193:18-25; connecting communities along the historic Dixie Highway corridor, *id.* 191:17-192:5; Cooper Report Pt. 1 ¶ 178; connecting counties in the historical Black Belt, Cooper Dep. 217:25-218:8; Cooper Report Pt. 1 ¶ 179; connecting counties with shared socioeconomic characteristics, such as similar levels of poverty, Cooper Dep. 218:21-219:6; Cooper Report Pt. 1 ¶ 200; and consistency with prior district shapes, Cooper Dep. 190:1-15. Indeed, a house district in the same area in one of the State’s own previous plans had stretched all the way from Albany all the way down to Seminole County on the Florida line. *Id.*

58. To create the additional majority-Black districts on his illustrative House plan, Mr. Cooper elongates other surrounding districts to create “room” for the new districts to connect racially disparate populations. Morgan Report, ¶¶ 50-54, 56.

Plaintiffs’ Response:

Disputed. Most of the cited portions of Mr. Morgan’s report (¶¶ 50-54) compares a set of four districts from the Enacted and Illustrative Plans that were

chosen by Mr. Morgan and are not necessarily a representative sample. Mr. Morgan did not explain any principle by which he selected those districts beyond their being in the “same geographic area,” and indicated that he selected these particular districts because they “nest[ed]” with districts in Mr. Esselstyn’s illustrative plan, not Mr. Cooper’s. Morgan Dep. 356:11-357:12. He stated that he did not know whether, if he chose a different set of districts to compare in the same area, the mean compactness scores would be better in one plan or the other. Morgan Dep. 357:25-358:10, 365:22-366:2. Mr. Morgan also acknowledged that, even for the districts that he hand-selected, the mean Polsby-Popper score was essentially identical as between the Enacted and Illustrative Plans. Morgan Dep. 365:5-21.

More generally, the Illustrative Plans meet or beat the Enacted Plans in terms of overall compactness while also adding additional majority-Black districts: the overall compactness of each of the Illustrative Plans (as measured by Reock and Polsby-Popper scores) is virtually identical to those of the Enacted Plans. Morgan Dep. 277:15-23, 278:16-279:3; Cooper Report Pt. 1 ¶ 114, Fig. 20 & ¶ 186 Fig. 36. And each Illustrative Plan has higher minimum compactness scores than the corresponding Enacted Plans (meaning the least compact district in each of the

Illustrative Plans is more compact than the least compact district in the Enacted Plans). Cooper Report Pt. 1 ¶ 114, Fig. 20 & ¶ 186, Fig. 36.

Meanwhile, none of the cited portions of Mr. Morgan’s report support the assertion that Mr. Cooper’s districts “connect racially disparate populations.” All of the cited paragraphs concern the Illustrative House Plan districts in the Atlanta Metro area. Mr. Cooper identified numerous principles other than race that informed his mapping decisions with respect to his districts, which connect geographically proximate suburban and exurban communities in the five-county South Metro area, including: uniting counties with shared socioeconomic characteristics, such as labor force participation, Cooper Report Pt. 1 ¶ 198, and connecting suburban communities, Cooper Dep. 178:14-179:12; connecting exurban communities, *id.* 176:2-7, 217:9-20; connecting geographically proximate communities, *id.* 175:23-176:7, 217:9-24; adhering to population deviation requirements, *id.* 175:15-19; and following transportation corridors and precinct lines, *id.* 176:17-22.

59. Creating additional majority-Black districts impacts the compactness of the districts, lowering the overall compactness of the districts created in the illustrative plan. Morgan Report ¶ 55, Chart 8.

Plaintiffs' Response:

Disputed. The cited portion of Mr. Morgan's report provides a chart comparing a set of four districts from the Enacted and Illustrative Plans that were chosen by Mr. Morgan and are not necessarily a representative sample. Mr. Morgan did not explain any principle by which he selected those districts beyond their being in the "same geographic area," and indicated that he selected these particular districts because they "nested" with districts in Mr. Esselstyn's illustrative plan, not Mr. Cooper's. Morgan Dep. 356:11-357:12. He stated that he did not know whether, if he chose a different set of districts to compare in the same area, the mean compactness scores would be better in one plan or the other. *Id.* 357:25-358:10, 365:22-366:2. Mr. Morgan also acknowledged that, even for the districts that he hand-selected, the mean Polsby-Popper score was essentially identical as between the Enacted and Illustrative Plans. *Id.* 365:5-21.

More generally, the Illustrative Plans meet or beat the Enacted Plans in terms of overall compactness while also adding additional majority-Black districts: the overall compactness of each of the Illustrative Plans (as measured by Reock and Polsby-Popper scores) is virtually identical to those of the Enacted Plans. Morgan Dep. 277:15-23, 278:16-279:3; Cooper Report Pt. 1 ¶ 114, Fig. 20 & ¶ 186 Fig. 36. And each Illustrative Plan has higher minimum compactness scores than

the corresponding Enacted Plans (meaning the least compact district in each of the Illustrative Plans is more compact than the least compact district in the Enacted Plans). Cooper Report Pt. 1 ¶ 114, Fig. 20 & ¶ 186, Fig. 36.

60. The illustrative House plan has higher total population deviations than the enacted plan. Cooper Dep. 200:7-11.

Plaintiffs' Response:

Not disputed that the Illustrative House Plan's deviation relative range is -1.49% to 1.49% and the Enacted House Plan's is -1.40% to 1.34%. Morgan Report ¶ 45, Chart 6. According to Defendant's expert Mr. Morgan, this is within the acceptable range to comport with traditional redistricting principles. Morgan Dep. 344:20-345:6.

61. Although the illustrative plan has a number of county splits similar to the enacted plan, that is only because Mr. Cooper unsplit counties in parts of the state unrelated to creating more majority-Black districts to make the total split number appear more similar. Morgan Report, ¶¶ 68-76; Cooper Dep. 202:22-203:14.

Plaintiffs' Response:

Disputed. Mr. Cooper's Illustrative Plan has fewer county splits than the Enacted Plan. Cooper Report Pt. 1 ¶ 116, Fig. 21; *id.* ¶ 189, Fig. 37. Mr. Cooper

would still have a “similar” number of splits if he had fixed fewer splits than he did. Nor were the splits “unrelated” to the creation of Black-majority districts. Cooper Dep. 187:1-16; 202:22-203:14; 210:7-8.

62. Unlike Mr. Cooper, Mr. Esselstyn did not draw any new majority-Black House districts in east Georgia or in southwest Georgia. Report of Blakeman Esselstyn in *Grant*, attached as Ex. C (“Esselstyn Report”), ¶ 48, Figure 13.

Plaintiffs’ Response:

Disputed. Mr. Esselstyn’s illustrative plan and Mr. Cooper’s Illustrative House Plan both include an additional Black-majority House District that encompasses Wilkinson and portions of Baldwin County. *See* Cooper Report Pt. 1 ¶¶ 169-171 & Fig. 31; Esselstyn Report ¶ 52 & Fig. 16. Not disputed that the precise shapes and boundaries of the additional majority-Black districts are different in the two different illustrative plans. Not disputed that Mr. Esselstyn’s plan does not include an additional majority-Black House District in southwest Georgia.

63. Unlike Mr. Esselstyn, Mr. Cooper only drew one additional majority-Black state House district in Macon and did not draw an additional majority-Black district in western metro Atlanta. Cooper Report, ¶ 153.

Plaintiffs' Response:

Disputed. Neither Mr. Esselstyn nor Mr. Cooper drew an additional majority-Black district that is entirely within Macon-Bibb County. Mr. Esselstyn's illustrative plan and Mr. Cooper's Illustrative House Plan both include one additional majority-Black House district that is "in Macon" inasmuch as the new district is entirely within the Macon-Warner-Robbins Combined Statistical Area. Cooper Dep. 198:14-17; Cooper Report Pt. 1 ¶ 183, Fig. 35; Esselstyn Report ¶ 52 & Fig. 16. Mr. Esselstyn's illustrative plan and Mr. Cooper's Illustrative House Plan also both include an additional Black-majority House District that encompasses Wilkinson and portions of Baldwin County, with Mr. Esselstyn's district also including Twiggs County to the west and portions of Macon, and Mr. Cooper's also including Black Belt counties to the east. *See* Cooper Report Pt. 1 ¶¶ 169-171 & Fig. 31; Esselstyn Report ¶ 52 & Fig. 16. Not disputed that the precise shapes and boundaries of the additional majority-Black districts are different in the two different illustrative plans. Not disputed that Mr. Cooper's

Illustrative House Plan does not include an additional majority-Black House District in and around Douglas County in the Western Atlanta Metro.

64. Mr. Cooper and Mr. Esselstyn also located their new majority-Black Senate districts in metro Atlanta in different places, with Mr. Cooper drawing his District 28 without Coweta County and his District 17 into DeKalb County as opposed to the placement on Mr. Esselstyn's plans. Cooper Report, ¶¶ 85-86; Esselstyn Report, ¶ 27, Figure 4.

Plaintiffs' Response:

Disputed.

Mr. Esselstyn's illustrative plan and Mr. Cooper's Illustrative Senate Plan both include one additional majority-Black Atlanta Metro Senate district anchored in Henry County and including the county seat of McDonough (District 25 in Mr. Esselstyn's plan, and Illustrative Senate District 17 in Mr. Cooper's plan). Cooper Report Pt. 1 ¶ 106, Fig. 17F; Esselstyn Report, ¶ 30, Fig. 6.

Mr. Esselstyn's illustrative plan and Mr. Cooper's Illustrative Senate Plan both include one additional majority-Black Atlanta Metro Senate district that combines portions of northern Fayette and southern Clayton Counties as well as adjacent areas (District 28 in Mr. Esselstyn's plan, and Illustrative Senate District

28 in Mr. Cooper's plan). Cooper Report Pt. 1 ¶ 106, Fig. 17F; Esselstyn Report, ¶ 31, Fig. 7.

Not disputed that the precise shapes and boundaries of the additional majority-Black districts are different in the two different illustrative plans.

65. Mr. Cooper could identify practically nothing beyond the race of the voters in a number of his districts that united them. Cooper Dep. 130:1-131:2.

Plaintiffs' Response:

Disputed. The cited paragraph does not support Defendant's assertion. The cited passage only discusses a single district, not "a number of them." Moreover, the cited passage specifically discusses connections beyond race (namely the generally suburban and exurban quality of the areas connected in Illustrative Senate District 28). Cooper Dep. 130:1-131:2.

More generally, Mr. Cooper's Report and deposition make clear he endeavored to balance all of the traditional districting principles, including "population equality, compactness, contiguity, respect for communities of interest, and the non-dilution of minority voting strength." Cooper Report Pt. 1 ¶ 10. He considered the Georgia House Legislative and Congressional Reapportionment Committee Guidelines, as well as the benchmark and prior historical plans. Cooper Dep. 37:2-6, 49:3-50:13. He considered compactness, testifying that he

sought to “put together districts that are reasonably shaped, easy to understand, and . . . compact[.]” *Id.* 53:17-19. He considered population deviation, testifying that he worked hard to stay within the “very tight” deviation limitations of the Enacted Plans (1% deviation for Senate districts, and 1.5% for House districts). *Id.* 61:8-15, 121:20-122:7. *See also* Morgan Dep. 345:17-20. He considered county and precinct lines, testifying that he “made every effort to avoid splitting” counties and precincts. Cooper Dep. 210:7-8. Mr. Cooper also considered municipal boundaries, regional commission and county commission boundaries, and Census-defined metropolitan and core-based statistical areas. Cooper Dep. 50:14-51:5, 207:9-208:17; *see also* Wright Dep. 247:7-249:12; Morgan Dep. 127:16-130:20. He considered geographic and economic features like transportation corridors. Cooper Dep. 176:17-22, 189:2-7; 193:7-12. He considered historical and socioeconomic connections. Cooper Report Pt. 1 ¶¶ 125-129, 198-199, 200-201; Cooper Dep. 218:21-219:6. He took incumbent protection into account. *Id.* 48:24-49:2.

When asked whether he prioritized race over other traditional districting considerations in drawing the Illustrative Plans, Mr. Cooper testified “[a]bsolutely not.” Cooper Dep. 221:4-7.

Moreover, Mr. Cooper identified numerous reasons other than race for his various mapping decisions in configuring each and every one of the new majority-Black districts in the areas of focus:

- For majority-Black Illustrative SD 17, Mr. Cooper specifically identified: grouping suburban areas together, Cooper Dep. 139:14-19; uniting counties with shared socioeconomic characteristics, such as similar levels of educational attainment, Cooper Report Pt. 1 ¶ 127; and drawing a less “sprawling” and more compact district, *id.* ¶ 105, Fig. 17D.
- For majority-Black Illustrative SD 23, Mr. Cooper specifically identified: grouping counties in the historical Black Belt together, Cooper Dep. 144:20-24; Cooper Report Pt. 1 ¶ 18, Fig. 1; uniting counties with shared socioeconomic characteristics, such as poverty levels, Cooper Report Pt. 1 ¶ 129; staying within population deviation limits, Cooper Dep. 143:8-17, 185:8-14; maintaining compactness, *id.* 143:8-17; and following municipal and precinct lines in Wilkes County, Cooper Report Pt. 1 ¶ 109; Cooper Dep. 143:18-23, 144:4-8.
- For majority-Black Illustrative SD 28, Mr. Cooper specifically identified: uniting counties with shared socioeconomic characteristics,

such as labor force participation, Cooper Report Pt. 1 ¶ 125, connecting geographically proximate communities, Cooper Dep. 126:25-127:9, 127:10-19, connecting suburban and exurban Metro communities, *id.* 130:14-23, 131:3-10, keeping precincts whole, *id.* 127:10-19, and avoiding a split of Griffin, the largest city and county seat of Spalding County, *id.* 132:6-133:14.

- For majority-Black Illustrative House District (“HD”) 74, Mr. Cooper specifically identified: uniting counties with shared socioeconomic characteristics, such as labor force participation, Cooper Report Pt. 1 ¶ 198, and connecting suburban communities, Cooper Dep. 178:14-179:12.
- For majority-Black Illustrative HD 117, Mr. Cooper specifically identified: uniting counties with shared socioeconomic characteristics, such as labor force participation, Cooper Report Pt. 1 ¶ 198; connecting geographically proximate communities, Cooper Dep. 175:23-176:7, 217:9-24; adhering to population deviation requirements, *id.* 175:15-19; connecting exurban communities, *id.* 176:2-7, 217:9-20; and following transportation corridors and precinct lines, *id.* 176:17-22.

- For majority-Black Illustrative HD 133, Mr. Cooper specifically identified: connecting counties in the historical Black Belt together, Cooper Report Pt. 1 ¶¶ 174, 199; connecting counties with shared socioeconomic characteristics, such as similar levels of education, *id.* ¶ 199; protecting incumbents, Cooper Dep. 183:8-12, 187:10-19, 188:12-18; following municipal boundaries, *id.* 186:1-16; and following local county commission lines, *id.*
- For majority-Black Illustrative HD 145, Mr. Cooper specifically identified: connecting geographically proximate communities, Cooper Report Pt. 1 ¶ 201; connecting counties with shared socioeconomic characteristics, such as poverty levels, *id.*; connecting communities within the Macon metropolitan statistical area, Cooper Dep. 197:22-198:6; adhering to population deviation requirements, *id.*; and following regional commission boundaries, *id.* 198:24-199:4.
- For majority-Black Illustrative HD 171, Mr. Cooper specifically identified: reducing splits of Dougherty County, Cooper Dep. 193:18-25; connecting communities along historic U.S. Highway 19, a historic transportation and cultural corridor, *id.* 189:2-7, 191:22-192:5, 193:7-12; connecting counties in the historical Black Belt, *id.* 217:25-218:8;

connecting counties with shared socioeconomic characteristics, such as similar levels of poverty, *id.* 218:21-219:6; Cooper Report Pt. 1 ¶ 200; and consistency with prior district shapes, Cooper Dep. 190:1-14.

66. Plaintiffs' expert explained, "It's irrelevant, the race of the candidate that voters are supporting. It's only relevant who they're supporting and whether they're supporting the same candidate or not." Deposition of Lisa Handley [Doc. 222] ("Handley Dep.") 95:24-96:02.

Plaintiffs' Response:

Not disputed that Dr. Handley's deposition transcript contains the quoted language. Disputed insofar as Paragraph 66 omits critical context and suggests that Dr. Handley agrees that race has no role in explaining the voting patterns that she evaluated in Georgia. Dr. Handley testified that race or party is not an "either/or proposition" in explaining voting patterns, and that "[o]f course race explains party." Handley Dep. 31:2-7. Dr. Handley also testified that party does not explain "why whites are voting Republican and why blacks are voting democratic by any means." *Id.* 110:12-23.

67. While Dr. Handley did examine some primary contests in the relevant areas she analyzed, she did not consider their impact when arriving at her

conclusion that the voting in Georgia is racially polarized. “A hundred percent of the general elections were polarized... That’s higher than 55 percent [of the primaries I analyzed].” Handley Dep. 97:04-11.

Plaintiffs’ Response:

Disputed. As Dr. Handley testified, her analysis of primary election results “takes race out of the equation and therefore provides some evidence that, at least in those contests, that party can’t be explaining the different voting patterns.” Handley Dep. 33:22-34:1. Defendant’s own expert agreed that primaries eliminate the variable of party when addressing voting behavior. Alford Dep. 186:4-7.

68. Dr. Handley’s conclusion “that voting is polarized in Georgia is based on the general elections.” Handley Dep. 98:07-13.

Plaintiffs’ Response:

Not disputed that Dr. Handley’s deposition transcript contains the quoted language. Disputed insofar as Paragraph 68 omits critical context. While Dr. Handley found racial polarization in the seven areas that she analyzed in Georgia based on the general elections, the fact that the majority of Democratic primaries that she analyzed were also racially polarized provided “some evidence” that party cannot explain the different voting patterns, at least in those contests. Handley Dep. 33:22-34:1.

69. Black voters in Georgia as a group overwhelmingly vote for Democrats and against Republicans. This is true regardless of the race of the candidate. *See* Deposition of John Alford [Doc. 229] (“Alford Dep.”) 112:13-117:13.

Plaintiffs’ Response:

Not disputed that the record demonstrates that Black voters in Georgia as a group vote for Democrats. Disputed insofar as Paragraph 69 suggests a pattern of voting behavior and omits critical context. Paragraph 69 does not take into account that there are no general elections involving a Black Republican and a White Democrat in the record, and there is only one statewide election involving a Black Republican and a Black Democrat. *See generally* Report of Lisa Handley [Dkt. 222] (“Handley Report”) App. A at 216-36.

70. Black voters in Georgia as a group overwhelmingly vote for Democrats and against Republicans when the Democratic candidate is white. *Id.*

Plaintiffs’ Response:

Not disputed that the record demonstrates that Black voters in Georgia as a group vote for Democrats. Disputed insofar as Paragraph 70 suggests a pattern of voting behavior and omits critical context. Paragraph 70 does not take into account the fact that the Republican candidate is almost always white. *See*

generally Handley Report Apps. A-B at 216-309. Furthermore, there are only two elections in the record in which a white Democrat ran – the 2020 general election and 2021 run-off election involving the same white Democratic candidate, John Ossoff.

71. Black voters in Georgia as a group overwhelmingly vote for Democrats and against Republicans when the Democratic candidate is Black. *Id.*

Plaintiffs' Response:

Not disputed that the record demonstrates that Black voters in Georgia as a group vote for Democrats. Disputed insofar as Paragraph 71 suggests a pattern of voting behavior and omits critical context. Paragraph 71 does not take into account the fact that the Republican candidate is almost always white. *See generally* Handley Report Apps. A-B at 216-309.

72. Black voters in Georgia as a group overwhelmingly vote for Democrats and against Republicans when the Republican candidate is white. *Id.*

Plaintiffs' Response:

Not disputed.

73. Black voters in Georgia as a group overwhelmingly vote for Democrats and against Republicans when the Republican candidate is black. *Id.*

Plaintiffs' Response:

Not disputed that the record demonstrates that Black voters in Georgia as a group vote for Democrats. Disputed insofar as Paragraph 73 suggests a pattern of voting behavior and omits critical context. Only one statewide election in the record included a Black Republican candidate, the 2022 U.S. Senate general election involving Herschel Walker. *See generally* Handley Report App. A at 216-36. That race also involved a Black Democrat, Raphael Warnock. Only one state legislative election in the record included a Black Republican candidate, the 2022 State Senate 43 election involving Melanie Williams. *See generally* Handley Report App. B at 237-244. That race also involved a Black Democrat, Tonya Anderson.

Respectfully submitted this 19th day of April, 2023.

By: /s/Rahul Garabadu
Rahul Garabadu (Bar 553777)
rgarabadu@acluga.org
Cory Isaacson (Bar 983797)
Caitlin F. May (Bar 602081)
ACLU FOUNDATION OF GEORGIA,
INC.
P.O. Box 570738
Atlanta, Georgia 30357
Telephone: (678) 981-5295
Facsimile: (770) 303-0060

/s/Sophia Lin Lakin
Sophia Lin Lakin*
slakin@aclu.org
Ari J. Savitzky*
Ming Cheung*
Kelsey A. Miller*
Jenessa Calvo-Friedman*
ACLU FOUNDATION
125 Broad Street, 18th Floor
New York, New York 10004
Telephone: (212) 519-7836

/s/Debo Adegbile

Debo Adegbile*
debo.adegbile@wilmerhale.com
Robert Boone*
Alex W. Miller*
Cassandra Mitchell*
Maura Douglas*
Juan M. Ruiz Toro*
Joseph D. Zabel*
WILMER CUTLER PICKERING
HALE AND DORR LLP
250 Greenwich Street
New York, New York 10007
Telephone: (212) 230-8800
Facsimile: (212) 230-8888

Charlotte Geaghan-Breiner*
WILMER CUTLER PICKERING
HALE AND DORR LLP
2600 El Camino Real
Suite 400
Palo Alto, CA 94306
Telephone: (650) 858-6000
Facsimile: (650) 858-6100

Facsimile: (212) 549-2539

George P. Varghese*
Denise Tsai*
Tae Kim*
WILMER CUTLER PICKERING HALE
AND DORR LLP
60 State Street
Boston, Massachusetts 02109
Telephone: (617) 526-6000
Facsimile: (617) 526-5000

Ed Williams*
De'Ericka Aiken*
Ayana Williams*
Sonika R. Data*
WILMER CUTLER PICKERING HALE
AND DORR LLP
2100 Pennsylvania Ave. NW
Washington, D.C. 20037
Telephone: (202) 663-6000
Facsimile: (202) 663-6363

Anuj Dixit*
Marisa A. DiGiuseppe*
WILMER CUTLER PICKERING HALE
AND DORR LLP
350 South Grand Avenue
Los Angeles, CA 90071
Telephone: (213) 443-5300
Facsimile: (213) 443-5400

Counsel for Plaintiffs

**Admitted pro hac vice*

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing document has been prepared in accordance with the font type and margin requirements of Local Rule 5.1 of the Northern District of Georgia, using a font type of Times New Roman and a point size of 14.

/s/ Rahul Garabadu _____