

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

ANNIE LOIS GRANT, *et al.*,

*Plaintiffs,*

v.

BRAD RAFFENSPERGER, *et al.*,

*Defendants.*

CASE NO. 1:22-CV-00122-SCJ

**DEFENDANTS' RESPONSES AND OBJECTIONS TO PLAINTIFFS'  
STATEMENT OF ADDITIONAL MATERIAL FACTS**

Defendants Brad Raffensperger, in his official capacity as Secretary of State; and State Election Board Members William S. Duffey, Sara Tindall Ghazal, Janice Johnston, Edward Lindsey, and Matthew Mashburn, also in their official capacities (collectively, "Defendants"), pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 56.1(B)(3), provide their Responses and Objections to Plaintiffs' Statement of Additional Material Facts [Doc. 205-2] ("SAMF"), showing the Court the following:

1. When asked in his deposition whether, "at any point," he "display[ed] racial information of the underlying geography on [his] screen" while he "dr[ew] the illustrative plans in this case," Plaintiffs' mapping expert, Blakeman B. Esselstyn, responded, "Yes," explaining, "For the

underlying geography, I would—it would be the black percentage of the population meaning the—any part black voting age percent.” Ex. 7 (“Esselstyn Dep.”) at 76:21–77:6.2

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

2. When asked if he used the software’s shading function when drawing his illustrative State Senate and House plans, Mr. Esselstyn responded that he was “not totally sure.” Esselstyn Dep. 77:7–19.

**RESPONSE:** Objection. The evidence does not support the fact in that Mr. Esselstyn testified that when he was creating his illustrative maps, he turned on features in the software to indicate where Black individuals were located. Deposition of Blakeman Esselstyn [Doc. 179] (“Esselstyn Dep.”) 76:21-77:12, 77:20-77:25.

3. When asked about his use of the software’s shading function later in the deposition, Mr. Esselstyn responded as follows:

Q Do you recall that Mr. Tyson asked you about the Maptitude software’s ability to shade racial demographic information while you’re undertaking map drawing?

A I do.

Q And you mentioned that you have used that shading, including in the development of your illustrative plans, correct?

A Correct.

Q My question is: Do you always have that shading function on when you're map drawing?

A No.

Q Did you always have that shading function toggled on when you were drawing your illustrative Senate and House maps in this case?

A No. . . .

Q When you . . . had that shading function toggled and you could see it, . . . did that information predominate in any given line drawing decision you made when you were preparing you illustrative maps?

A No, it did not.

Esselstyn Dep. 220:2–221:7.

**RESPONSE:** Objection. The evidence does not support the fact in that Mr. Esselstyn testified that when he was creating his illustrative maps, he turned on features in the software to indicate where Black individuals were located. Esselstyn Dep. 76:21-77:12, 77:20-77:25. Further, Mr. Esselstyn testified that racial data informed the decisions he made about which parts of

population went into particular districts while drawing. Esselstyn Dep. 77:20-25.

4. When asked if he was “instructed to maximize the number of majority black districts in either the State Senate or House map,” Mr. Esselstyn responded, “I was not.” Esselstyn Dep. 229:2–5.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

5. Mr. Esselstyn was “asked [] to determine whether there are areas in the State of Georgia where the Black population is ‘sufficiently large and geographically compact’ to enable the creation of additional majority-Black legislative districts relative to the number of such districts provided in the enacted State Senate and State House of Representatives redistricting plans from 2021.” Ex. 1 (“Esselstyn Report”) ¶ 9 (footnote omitted).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

6. Mr. Esselstyn concluded that “[i]t is possible to create three additional majority-Black districts in the State Senate plan and five additional majority-Black districts in the State House plan in accordance with traditional redistricting principles.” Esselstyn Report ¶ 13.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence cited does not support the fact stated in that Mr. Esselstyn’s testimony shows that he did not have a consistent approach to deciding which factor would control when drawing a plan. Esselstyn Dep. 113:25-115:3. Further, Mr. Esselstyn testified that racial data informed the decisions he made about which parts of population went into particular districts while drawing. Esselstyn Dep. 77:20-25.

7. Mr. Esselstyn reported that, “[d]uring both the earlier process of creating the PI illustrative plans and the process of revising those plans to create the plans described in this report, [he] was constantly balancing a number of considerations, and there was no one dominant factor or metric.” Esselstyn Report ¶ 25.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence cited does not support the fact stated in that Mr. Esselstyn’s testimony shows that he did not have a consistent approach to deciding which factor would control when drawing a plan. Esselstyn Dep. 113:25-115:3. Further, Mr. Esselstyn testified that racial data informed the decisions he made about which parts of

population went into particular districts while drawing. Esselstyn Dep. 77:20-25.

8. When asked if he “utilize[d] any of the racial information that you displayed on the screen while you were drawing the illustrative plans to inform the decisions you made about which parts of districts went in and out of [] particular districts,” Mr. Esselstyn responded, “Yes.” Esselstyn Dep. 77:20–25.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

9. In Mr. Esselstyn’s illustrative State Senate plan, most district populations are within plus-or-minus 1% of the ideal, and a small minority are within between plus-or-minus 1% and 2%. Esselstyn Report ¶ 34, attach. H.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

10. No district in Mr. Esselstyn’s illustrative State Senate plan has a population deviation of more than 2%. Esselstyn Report ¶ 34, attach. H.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

11. Under the enacted State Senate plan, the relative average population deviation is 0.53%; under Mr. Esselstyn's illustrative plan, the relative average deviation is 0.67%. Esselstyn Report ¶ 34, attach. H.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

12. In Mr. Esselstyn's illustrative House plan, most district populations are within plus-or-minus 1% of the ideal, and a small minority are within between plus- or-minus 1% and 2%. Esselstyn Report ¶ 55, attach. L.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

13. No district in Mr. Esselstyn's illustrative House plan has a population deviation of more than 2%. Esselstyn Report ¶ 55, attach. L.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

14. Under the enacted House plan, the relative average population deviation is 0.61%; under Mr. Esselstyn's illustrative plan, the relative average deviation is 0.64%. Esselstyn Report ¶ 55, attach. L.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

15. The districts in Mr. Esselstyn’s illustrative State Senate plan satisfy the contiguity requirement in the same manner as the enacted plan. Esselstyn Report ¶ 35.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

16. The districts in Mr. Esselstyn’s illustrative House plan satisfy the contiguity requirement in the same manner as the enacted plan. Esselstyn Report ¶ 56.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

17. The following table reports compactness measures for the enacted State Senate plan and Mr. Esselstyn’s illustrative plan:

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

Esselstyn Report ¶ 36, tbl.2; Ex. 9 (“Morgan Dep.”) at 90:6–17 (agreeing that Mr. Esselstyn’s illustrative plan has similar mean compactness to enacted plan using Reock and Polsby-Popper measures).



**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

18. The following table reports compactness measures for the enacted House plan and Mr. Esselstyn’s illustrative plan:

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

Esselstyn Report ¶ 57, tbl.6; Morgan Dep. 168:6–11 (acknowledging that Mr. Esselstyn’s illustrative House plan has Reock and Polsby-Popper scores identical to enacted plan to two decimal places).

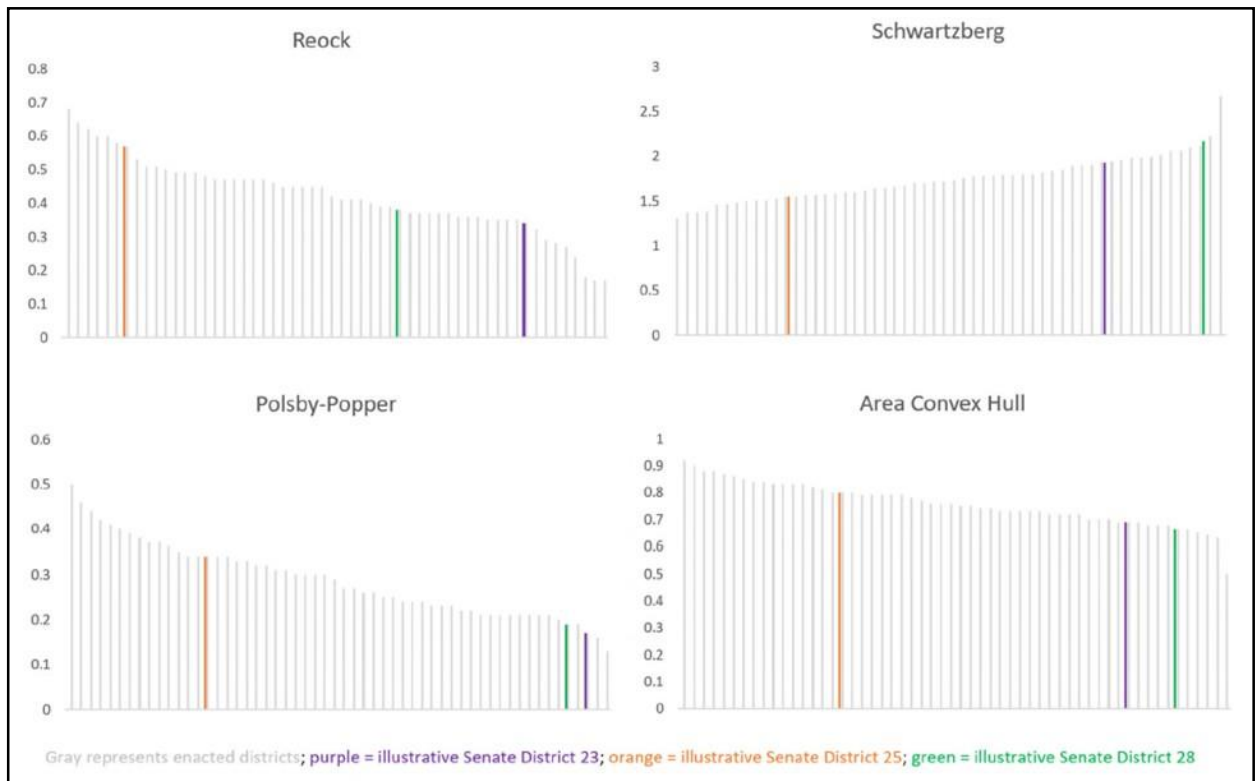
**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

19. The compactness scores of the three additional majority-Black districts in Mr. Esselstyn’s illustrative State Senate plan—Senate Districts 23, 25, and 28— all fall within the range of compactness scores of the districts in the enacted plan using the Reock, Schwartzberg, Polsby-Popper and Area/Convex Hull measures. Esselstyn Report ¶ 37, attach. H.

**RESPONSE:** Objection. The evidence does not support this statement in that Mr. Esselstyn testified that he agreed that he did not know whether

the districts changed on the illustrative plan from the enacted plan were more or less compact as a whole than the enacted plan. Esselstyn Dep. 158:23-159:20.

20. The following charts depict the compactness scores of the three additional majority-Black districts in Mr. Esselstyn’s illustrative State Senate plan and the compactness scores of the districts in the enacted plan; the gray lines represent the compactness scores of each of the enacted districts, in sorted order, and the purple, orange, and green lines represent the scores of illustrative Senate Districts 23, 25, and 28, respectively:



Esselstyn Report ¶ 37, fig.8.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

21. The following table reports the associated compactness scores:

	Measures of Compactness			
	Reock	Schwartzberg	Polsby-Popper	Area/Convex Hull
Enacted plan least compact score	0.17	2.67	0.13	0.50
Enacted plan median score	0.415	1.725	0.28	0.755
Illustrative District 23 score	0.34	1.93	0.17	0.69
Illustrative District 25 score	0.57	1.55	0.34	0.80
Illustrative District 28 score	0.38	2.17	0.19	0.66

Esselstyn Report ¶ 37, tbl.3.

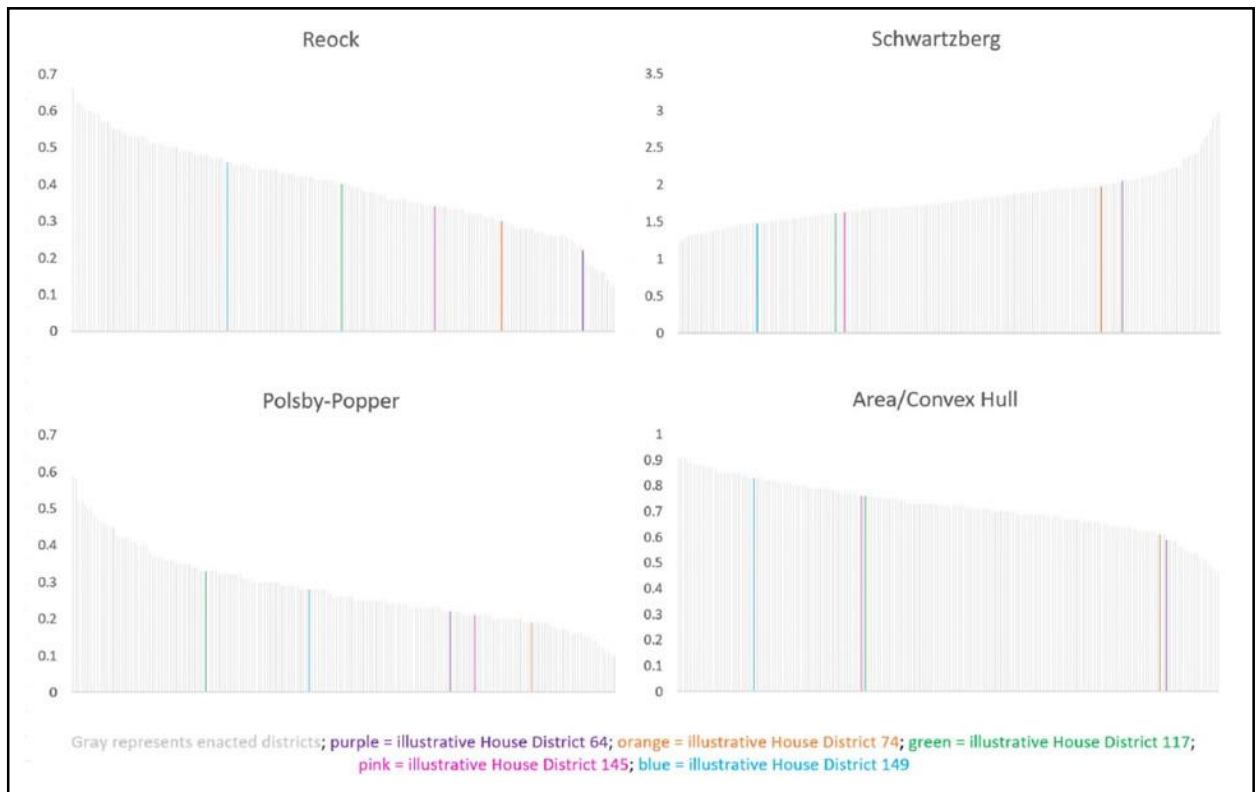
**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

22. The compactness scores of the five additional majority-Black districts in Mr. Esselstyn’s illustrative House plan—House Districts 64, 74, 117, 145, and 149—all fall within the range of compactness scores of the districts in the enacted plan using the Reock, Schwartzberg, Polsby-Popper and Area/Convex Hull measures. Esselstyn Report ¶ 58, attach. L.

**RESPONSE:** Objection. The evidence does not support this fact in that Mr. Esselstyn testified that he agreed that he did not know the compactness scores for the enacted plan districts corresponding to his new majority-Black

districts on the illustrative House plan and only reported the comparison of compactness for the new majority-Black districts and not all the districts he changed. Esselstyn Dep. 196:10-198:1.

23. The following charts depict the compactness scores of the five additional majority-Black districts in Mr. Esselstyn’s illustrative House plan and the compactness scores of the districts in the enacted plan; the gray lines represent the compactness scores of each of the enacted districts, in sorted order, and the purple, orange, green, pink, and blue lines represent the scores of illustrative House Districts 64, 74, 117, 145, and 149, respectively:



Esselstyn Report ¶ 58, fig.17.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

24. The following table reports the associated compactness scores:

	Measures of Compactness			
	Reock	Schwartzberg	Polsby-Popper	Area/Convex Hull
Enacted plan least compact score	0.12	2.98	0.10	0.46
Enacted plan median score	0.40	1.765	0.26	0.72
Illustrative District 64 score	0.22	2.05	0.22	0.59
Illustrative District 74 score	0.30	1.98	0.19	0.61
Illustrative District 117 score	0.40	1.62	0.33	0.76
Illustrative District 145 score	0.34	1.63	0.21	0.76
Illustrative District 149 score	0.46	1.48	0.28	0.83

Esselstyn Report ¶ 58, tbl.7.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

25. The following table compares political subdivision splits between the enacted State Senate plan and Mr. Esselstyn’s illustrative plan:

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

Esselstyn Report ¶ 39, tbl.4, attach. H.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

26. The following table compares political subdivision splits between the enacted House plan and Mr. Esselstyn's illustrative plan:

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

Esselstyn Report ¶ 59, tbl.8, attach. L.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

27. Mr. Esselstyn's illustrative State Senate plan would not pair any incumbent senators in the same district. Esselstyn Report ¶ 42.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

28. Mr. Esselstyn's illustrative House plan would pair a total of eight incumbents in the same districts—the same number of incumbent pairings reported for the enacted plan in the declaration submitted by Defendants' mapping expert, John Morgan, during the preliminary injunction proceedings in this matter. Esselstyn Report ¶ 61 & nn.17–18.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

29. While communities of interest can be larger than a county or smaller than a college campus, and individuals might have different opinions about their exact geographic extents, in drawing his illustrative State Senate and House plans, Mr. Esselstyn generally referred to recognizable entities visible in the Maptitude for Redistricting software interface (such as municipalities and landmark areas), as well as areas and communities described by Georgians (either in his personal conversations or in statements made in public hearings). Esselstyn Report ¶ 41.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence does not support this fact in that Mr. Esselstyn testified that he could not recall any communities of interest besides government entities, Fort Gordon, and two campuses of Georgia college, nor could he recall any personal conversations he relied on when assembling the illustrative plans. Esselstyn Dep. 165:14-167:2.

30. Mr. Esselstyn's illustrative State Senate plan includes all of Douglas County in one majority-Black State Senate district, rather than dividing it between two districts as it is in the enacted plan. Esselstyn Report ¶ 31 n.8.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

31. Mr. Esselstyn’s illustrative State Senate plan maintains Macon-Bibb County in a single majority-Black district, consistent with recommendations made during the public hearing in Macon on July 29, 2021, whereas Macon-Bibb County is divided in the enacted plan. Esselstyn Report ¶ 29 n.7.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

32. Mr. Esselstyn’s illustrative State Senate plan keeps the two campuses of Georgia College together in the same district. Esselstyn Report ¶ 41.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

33. Mr. Esselstyn’s illustrative House plan, like the enacted plan, divides Macon-Bibb County into four districts—two of which (illustrative



House Districts 142 and 143) are wholly contained in Macon-Bibb County. Esselstyn Report ¶ 51.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

34. The orientation of illustrative House Districts 142 and 143 ensures that the northern portions of Macon-Bibb County stay in a Macon-Bibb County district with portions of Macon, rather than being put in a district with a more rural neighboring county like Monroe; this type of arrangement was specifically recommended during public comment at a Joint Reapportionment Committee hearing. Esselstyn Report ¶ 51 & n.13.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

35. Twiggs and Wilkinson counties—described by Gina Wright, the Executive Director of the General Assembly’s Legislative and Congressional Reapportionment Office, as “constitut[ing] a single community of interest”—are included in their entirety in Mr. Esselstyn’s illustrative House District

149. Esselstyn Report ¶ 51 & n.12 (alteration in original) (quoting ECF No. 55 at 9).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

36. Illustrative House District 149 generally follows the orientation of the Georgia Fall Line geological feature, which brings with it shared economic, historic, and ecological similarities. Esselstyn Report ¶ 52 & n.14.

**RESPONSE:** Objection. The evidence does not support this fact in that Mr. Esselstyn testified that the Fall Line runs from Augusta to Columbus and that he did not read specifically about Georgia’s Fall Line until after drawing the illustrative plans. Esselstyn Dep. 192:14-195:1.

37. Macon and Milledgeville, parts of which are in illustrative House District 149, are both characterized as “Fall Line Cities” and were identified in public comment before the General Assembly’s Joint Reapportionment Committee as two cities that should be kept in the same district. Esselstyn Report ¶ 52 & nn.15– 16.

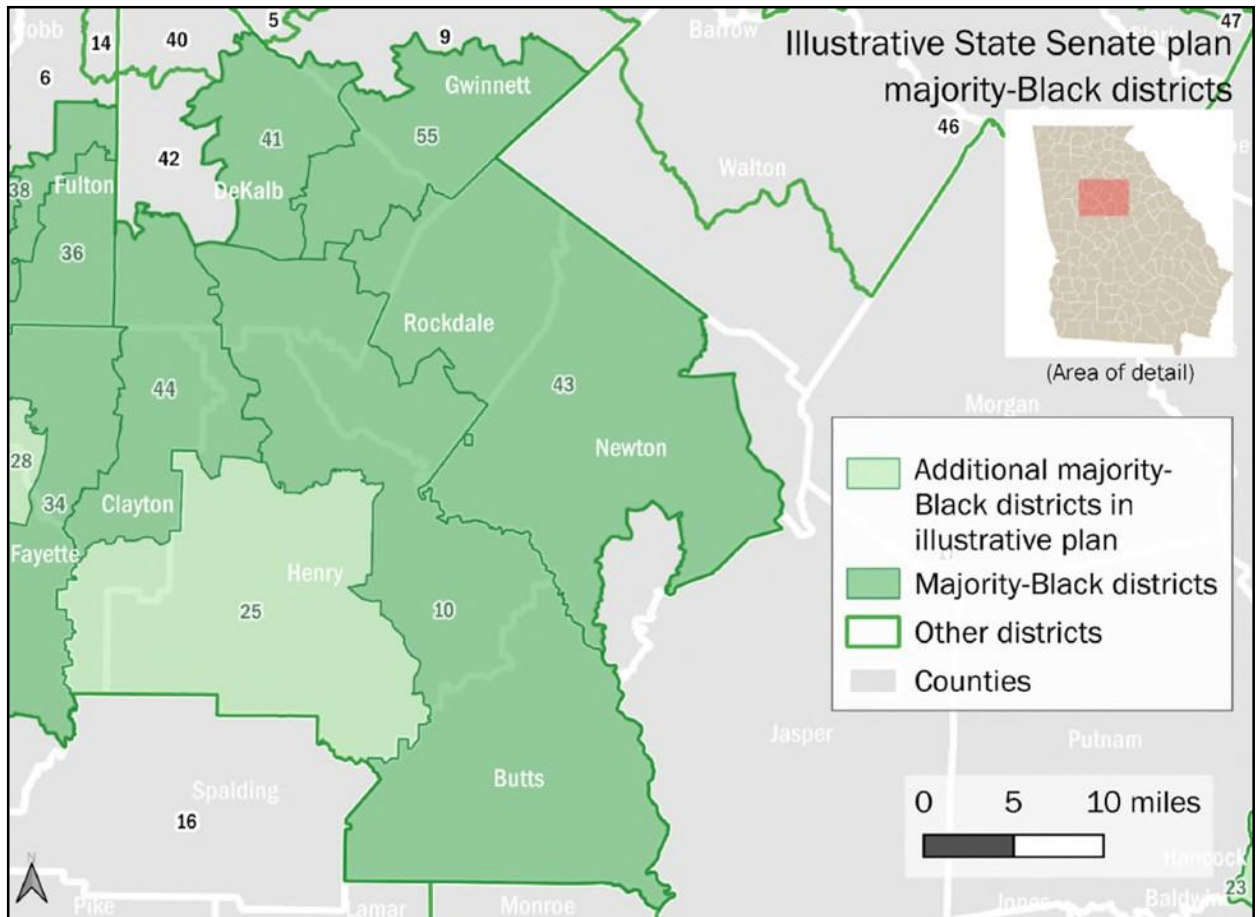
**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered. Further, the evidence on which the statement relies is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193

F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

38. Mr. Esselstyn's illustrative House plan keeps the two campuses of Georgia College together in the same district. Esselstyn Report ¶ 60.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

39. Mr. Esselstyn's illustrative Senate District 25, located in the southeastern Atlanta metropolitan area, is composed of portions of Clayton and Henry counties:



Esselstyn Report ¶ 30, fig.6.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

40. In Mr. Esselstyn’s illustrative State Senate plan, 22 of the enacted districts were modified, leaving the other 34 unchanged. Esselstyn Report ¶ 26.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

41. In Mr. Esselstyn’s illustrative House plan, 25 of the enacted districts were modified, leaving the other 155 unchanged. Esselstyn Report ¶ 47.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

42. Dr. Palmer found strong evidence of racially polarized voting across the focus areas he examined and within the State Senate and House districts comprising them. Ex. 2 (“Palmer Report”) ¶¶ 7, 18–19; Ex. 3 (“Suppl. Palmer Report”) ¶ 4; Ex. 6 (“Alford Report”) at 3 (“As evident in Dr. Palmer’s [reports], the pattern of polarization is quite striking.”); Ex. 10 (“Alford Dep.”) at 44:8–16, 45:10– 12 (“This is clearly polarized voting, and the stability of it across time and across office and across geography is really pretty remarkable.”).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) to the extent the term “racial polarization” is a legal conclusion as distinct from the mere observation using statistical analysis that two races are voting cohesively for different candidates in a given election.

43. Black voters in the focus areas are extremely cohesive, with a clear candidate of choice in all 40 elections Dr. Palmer examined. Palmer Report ¶ 18, fig.2, tbls.1, 2, 3, 4, 5, & 6; Suppl. Palmer Report ¶ 6, fig.1, tbl.1;

Alford Report 3 (“Black voter support for their preferred candidate is typically in the 90 percent range and scarcely varies at all across the ten years examined from 2012 to 2022. Nor does it vary in any meaningful degree from the top of the ballot elections for U.S. President to down-ballot contests like Public Service Commissioner.”); Alford Dep. 37:13–15 (agreeing with Dr. Palmer’s conclusion that Black Georgians are politically cohesive).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

44. The estimates for support for Black-preferred candidates by Black voters are all significantly above 50% across the five focus areas. Palmer Report ¶ 16, tbl.1.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

45. On average, across the five focus areas, Black voters supported their candidates of choice with 98.5% of the vote in the 40 elections Dr. Palmer examined. Palmer Report ¶ 18.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

46. Black voters are also cohesive in each of the districts that comprise the focus areas and contain 15 or more precincts, with an average

estimated level of support for Black-preferred candidates of at least 92.5%.

Palmer Report ¶ 19 & nn.14–15, fig.3, tbl.7.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

47. White voters across the five focus areas are highly cohesive in voting in opposition to the Black-preferred candidate in every election Dr. Palmer examined. Palmer Report ¶ 18, fig.2, tbl.1; Suppl. Palmer Report ¶ 6, fig.1, tbl.1; Alford Report 3 (noting that “estimated white voter opposition to the Black- preferred candidate is typically above 80 percent” and is “remarkably stable”); Alford Dep. 38:20–39:8 (agreeing that white voters generally vote in opposition to Black voters, which can operate to defeat minority-preferred candidates).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

48. On average, across the five focus areas, white voters supported Black- preferred candidates with only 8.3% of the vote, and in no election that Dr. Palmer examined did this estimate exceed 17.7%. Palmer Report ¶ 18.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

49. Of the districts in the focus areas that contain 15 or more precincts, white voters are cohesive in voting in opposition to Black-preferred candidates in each House district and in 12 of 14 State Senate districts. Palmer Report ¶ 19 & nn.14–15, fig.3, tbl.7.

**RESPONSE:** Objection. The evidence cited does not support the fact. Dr. Palmer characterizes the contests as “racially polarized” but makes no mention of whether he finds the white vote to be cohesive in any election.

50. Defendants’ quantitative expert, Dr. John Alford, explained that the data “doesn’t demonstrate that” partisan behavior is not “actually being driven by racial considerations.” Alford Dep. 109:15–111:1.

**RESPONSE:** Objection. The evidence cited does not support the fact stated because Dr. Alford went on to explain that the race of the candidate still matters when reviewing partisan behavior. Alford Dep. 111:3-113:4.

51. Dr. Alford acknowledged that the race of candidates is not the only role race might play in a voter’s decision and that race likely plays a role in shaping voters’ party preferences. Alford Dep. 99:14–100:7, 134:19–135:18 (“[T]here’s certainly room for race to be involved in decision-making in a wide variety of ways.”).

**RESPONSE:** Objection, the evidence cited does not support the fact. Dr. Alford acknowledged that race might play a role in a voter’s decision



process beyond the race of the candidate, but did not say that it was “likely.” Rather, he explained that it could be possible, but there was no evidence in Plaintiffs’ expert report on racial polarization that indicated it did in any way. Alford Dep. 99:18-100:7; 135:1-18.

52. Dr. Alford did not explore the role of race in shaping political behavior, either generally or in this case. Alford Dep. 12:15–18, 115:12–116:10, 132:8– 133:15.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

53. Dr. Alford acknowledged that he could not draw conclusions about the causes of voting behavior based only on the results of Dr. Palmer’s ecological inference analysis. Alford Dep. 82:17–84:14, 90:4–91:9 (“EI is never going to answer a causation question Establishing causation is a very difficult scientific issue[.]”).

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

54. Plaintiffs’ Senate Factors expert, Dr. Orville Vernon Burton, explored the relationship between race and partisanship in Georgia politics. Ex. 4 (“Burton Report”) at 57–62.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

55. Dr. Alford did not review Dr. Burton’s analysis. Alford Dep. 16:3–14.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

56. As Dr. Burton explained, “[s]ince Reconstruction, conservative whites in Georgia and other southern states have more or less successfully and continuously held onto power. While the second half of the twentieth century was generally marked by a slow transition from conservative white Democrats to conservative white Republicans holding political power, the reality of conservative white political dominance did not change.” Burton Report 57.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and because it is stated as argument rather than as a statement of fact.

57. Notably, the Democratic Party’s embrace of civil rights legislation— and the Republican Party’s opposition to it—was the catalyst of this political transformation, as the Democratic Party’s embrace of civil rights policies in the mid- 20th century caused Black voters to leave the

Republican Party (the “Party of Lincoln”) for the Democratic Party. Burton Report 57–58.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

58. In turn, the Democratic Party’s embrace of civil rights legislation sparked what Earl Black and Merle Black describe as the “Great White Switch,” in which white voters abandoned the Democratic Party for the Republican Party. Burton Report 58.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

59. The 1948 presidential election illustrated this phenomenon: South Carolina Governor J. Strom Thurmond mounted a third-party challenge to Democratic President Harry Truman in protest of Truman’s support for civil rights, including his integration of the armed forces. Thurmond ran on the ticket of the so- called Dixiecrat Party, which claimed the battle flag of the Confederacy as its symbol. Thurmond’s campaign ended Democratic dominance of Deep South states by winning South Carolina, Alabama, Mississippi, and Louisiana. Burton Report 58.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

60. This trend continued into the 1964 and 1968 elections. In 1964, the Republican nominee, Barry Goldwater, won only six states in a landslide defeat to President Lyndon B. Johnson: his home state of Arizona and all five states comprising the Deep South (South Carolina, Georgia, Alabama, Mississippi, and Louisiana). Goldwater was the first Republican presidential candidate to win Georgia's electoral votes. Burton Report 58.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

61. Goldwater told a group of Republicans from Southern states that it was better for the Republican Party to forgo the "Negro vote" and instead court white Southerners who opposed equal rights. Burton Report 59.

**RESPONSE:** Defendants admit that the Court may consider this evidence for purposes of the summary judgment motion.

62. Four years later, Georgia's electoral votes were won by George Wallace, another third-party presidential candidate who ran on a platform of vociferous opposition to civil rights legislation. Burton Report 58.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

63. The effectiveness of what was called the "Southern strategy" during Richard Nixon's presidency had a profound impact on the

development of the nearly all-white modern Republican Party in the South. Burton Report 59.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and it is based on hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

64. Matthew D. Lassiter, an historian of the Atlanta suburbs, observed that “the law-and-order platform at the center of Nixon’s suburban strategy tapped into Middle American resentment toward antiwar demonstrators and black militants but consciously employed a color-blind discourse that deflected charges of racial demagoguery.” Burton Report 60 (quoting Matthew D. Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* 234 (2006)).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193

F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

65. As Dr. Burton concluded, “[w]hite southerners abandoned the Democratic Party for the Republican Party because the Republican Party identified itself with racial conservatism. Consistent with this strategy, Republicans today continue to use racialized politics and race-based appeals to attract racially conservative white voters.” Burton Report 59.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered.

66. The significant impact of race on Georgia’s partisan divide can be further seen in the opposing positions taken by officeholders in the two major political parties on issues inextricably linked to race; for example, the Democratic and Republican members of Georgia’s congressional delegation consistently oppose one another on issues relating to civil rights, based on a report prepared by the NAACP. Burton Report 74–75.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

67. In a poll of 3,291 likely Georgia voters conducted just before the 2020 election, among voters who believed that racism was the most important issue facing the country, 78% voted for Joe Biden and 20% voted for Donald Trump; among voters who believed that racism was “not too or not at all serious,” 9% voted for Biden and 90% voted for Trump; and among voters who believed that racism is a serious problem in policing, 65% voted for Biden and 33% voted for Trump. Burton Report 76.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

68. The Pew Research Center found a similar divergence on racial issues between Democratic and Republican voters nationwide. Burton Dec. 75–76.

**RESPONSE:** Objection. The fact relied on is inadmissible because it is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Schafer v. Time, Inc.*, 142 F.3d 1361, 1374 (11th Cir. 1998).

69. Dr. Burton further noted that while “Republicans nominated a Black candidate—Herschel Walker, a former University of Georgia football legend—to challenge Senator Raphael Warnock in the 2022 general election for U.S. Senate[,] Walker’s nomination only underscores the extent to which race and partisanship remain intertwined. Republican leaders in Georgia admittedly supported Walker because they wanted to ‘peel[] off a handful of Black voters’ and ‘reassure white swing voters that the party was not racist.” Burton Report 61 (quoting Cleve R. Wootson Jr., *Herschel Walker’s Struggles Show GOP’s Deeper Challenge in Georgia*, Wash. Post, <https://www.washingtonpost.com/politics/2022/09/22/herschel-walker-georgia-black-voters> (Sept. 22, 2022)).

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and is hearsay, which cannot be considered at summary judgment. Fed. R. Evid. 802; *Macuba v. DeBoer*, 193 F.3d 1316, 1322 (11th Cir. 1999); *Dallas Cty. v. Commercial Union Assur. Co.*, 286 F.2d 388, 391-92 (5th Cir. 1961) (“Of course, a newspaper article is hearsay, and in almost all circumstances is inadmissible.”).

70. Dr. Burton explained that racial bloc voting “is so strong, and race and partisanship so deeply intertwined, that statisticians refer to it as



multicollinearity, meaning one cannot, as a scientific matter, separate partisanship from race in Georgia elections.” Burton Report 61.

**RESPONSE:** Objection. The fact does not comply with LR 56.1(B)(1) because it is not separately numbered and Defendants object to whether Dr. Burton is qualified to provide that opinion.

Respectfully submitted this 3rd day of May, 2023.

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**CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing Statement has been prepared in Century Schoolbook 13, a font and type selection approved by the Court in L.R. 5.1(B).

*/s/ Bryan P. Tyson*

Bryan P. Tyson

# EXHIBIT A

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

ANNIE LOIS-GRANT et al., )  
)  
Plaintiffs, )  
)  
vs. ) CIVIL ACTION FILE  
) NO. 1:22-CV-00122-SCJ  
BRAD RAFFENSPERGER, in his )  
)  
official capacity as the )  
Georgia Secretary of State, )  
et al., )  
)  
Defendants. )  
\_\_\_\_\_)

Deposition of Blakeman Esselstyn  
(Signature is reserved.)  
February 16, 2023  
9:00 a.m.

Remote via Zoom technology

Reported by: Carla J. Hopson, RPR, CCR-1816

1 drawing a plan, right?

2 A I would say at some level, yes.

3 Q When you're drawing redistricting plans  
4 for jurisdictions like the 16 North Carolina  
5 earlier, do you use the features of the software  
6 that you referenced to display racial information  
7 while you're drawing those maps.

8 A I'm literally thinking back to my  
9 process. Not certainly. Not always. I can think  
10 of some where I did not or at least -- yeah, at  
11 least one where I didn't. The -- and there's sort  
12 of a distinction that -- in the software I was  
13 using.

14 The columns you specify at the beginning  
15 of the process are going to be the columns that get  
16 exported when you provide a table -- a summary table  
17 of the demographics.

18 So -- but I -- I am quite certain that  
19 there are multiple cases where I was not looking at  
20 race when I was drawing the redistricting plans.

21 Q And when you were drawing the  
22 illustrative plans in this case, at any point did  
23 you display racial information of the underlying  
24 geography on your screen?

25 A Yes.

1 Q And what kind of racial information  
2 would you display while you were drawing the  
3 illustrative plans?

4 A For the underlying geography, I would --  
5 it would be the black percentage of the population  
6 meaning the -- any part black voting age percent.

7 Q And did you use a theme or a shading of  
8 precincts or counties to look at that any part black  
9 population while you were drawing?

10 A I think so. I think that I -- I think  
11 that I may have. I'm not a hundred percent sure,  
12 but I think that I may have, yes.

13 Q And did you utilize that display of  
14 racial information about the underlying geography  
15 while you were drawing the illustrative plans for  
16 House and Senate?

17 A The shading?

18 Q Yes.

19 A I'm not totally sure.

20 Q Did you utilize any of the racial  
21 information that you displayed on the screen while  
22 you were drawing the illustrative plans to inform  
23 the decisions you made about which parts of  
24 districts went in and out of a particular districts?

25 A Yes.

1           A        22? Arguably central. I think people  
2 have talked about Bibb County as central Georgia.  
3 So again, maybe it would depend on who you ask, and  
4 as far as whether -- as far as whether, you know,  
5 Richmond County is south Georgia.

6           Q        I once heard a definition of south  
7 Georgia as anything south of I-20, so it's the bulk  
8 of the state.

9                    All right. So let's talk a little bit  
10 about your illustrative plan. And first of all, you  
11 do note that this plan is modified from the version  
12 that you provided as part of the PI proceedings,  
13 right?

14          A        Yes.

15          Q        I want to ask. We talked about this a  
16 little bit. But you say in paragraph 25 that during  
17 both the earlier process of creating the PI  
18 illustrative plans and the process of revising those  
19 plans to create the plans described in this report,  
20 I was constantly balancing a number of  
21 considerations and there was no one dominant factor  
22 or metric.

23                    Did I read that right?

24          A        I think so, yes.

25          Q        And so when you balanced an area's



1 considerations, how did you decide in your drawing  
2 which factor would control or which consideration  
3 would control if two were in conflict with each  
4 other?

5 A I guess it comes down to kind of a  
6 question of art. There's not a -- there's not a  
7 science to it. Each situation is different. Maybe  
8 I feel that I -- you know, going one way gives a  
9 little bit more -- you know, let's say it's between  
10 compactness and keeping precincts intact and  
11 choosing between option A and option B. I feel that  
12 Option B kind of achieves a greater net result  
13 just --

14 And some of that's kind of just visual.  
15 Does it -- which one looks better or do I think --  
16 and in this case, you know, it's hard to justify  
17 splitting a precinct in the name of compactness, and  
18 that's just kind of a subjective judgment call.

19 So some of it is -- it's sort of the  
20 just a -- I don't know. It's hard for me to give a  
21 specific, you know, decision tree kind of thing.

22 Q And you've obviously drawn a lot of  
23 different maps over time. Is that what you just  
24 described in terms of the more art than science true  
25 of drawing maps in other jurisdictions as well?

1           A           Generally, yes. And I should clarify.  
2 I mean, when it comes to deciding between multiple  
3 factors that may be in tension with each other, yes.

4           Q           Okay. In Paragraph 26 you talk about  
5 trying to minimize changes to the enacted plan while  
6 adhering to other neutral criteria. Do you see  
7 that?

8           A           Yes.

9           Q           And does this map that's submitted with  
10 your 12/5 report modify the fewest existing plan  
11 districts of any plan that you've submitted in this  
12 case?

13                   MR. HAWLEY: Objection to the extent  
14 that that question touches on protected draft  
15 maps. But Mr. Esselstyn you can proceed if  
16 talking only about submitted maps, not just  
17 protected draft reports or maps.

18           A           Okay. And your -- could you repeat the  
19 question, please, Mr. Tyson.

20           Q           Well -- and maybe I can ask it this way  
21 to make a cleaner break of it. This -- the plan in  
22 your 12/5 report changes fewer existing districts  
23 than the plan in your PI report. Wait a minute.  
24 I'm sorry. This is for the State House.

25                   For State Senate, the plan submitted in

1 Q But you would agree it's 1.56 points  
2 higher on total deviation, right?

3 A Yes.

4 Q And even though it's a higher total  
5 deviation on the illustrative plan versus the  
6 enacted plan, you determined that it still complied  
7 with the traditional principles of population  
8 equality, it being the illustrative plan?

9 A Yes.

10 Q In Paragraph 36, to go back to where  
11 were on Page 15 --

12 A Just for the record, that was Page 77,  
13 if we're going back to look at something like that.

14 Q Okay.

15 A You said now Page 15?

16 Q Right. It's the downside of one of us  
17 using paper and one uses electronic, I suppose.

18 A Okay. I'm on page 15.

19 Q Okay. So this is the discussion of  
20 compactness and the reporting of compactness  
21 metrics, correct?

22 A Yes.

23 Q And you report the average compactness  
24 scores for the enacted and the illustrative plans,  
25 but this includes -- the average score includes all

1 56 districts, not just the ones that were changed,  
2 right?

3 A Right.

4 Q And you didn't run a compactness score  
5 report only for the districts that were changed to  
6 compare those with the enacted plan; correct?

7 A Correct.

8 Q Do you know if the districts that you  
9 changed on the illustrative plan from the enacted  
10 plan are more or less compact as a whole than the  
11 enacted plan?

12 A So compactness depends on which metric  
13 you just. You know, some -- some districts can be  
14 more compact based on one metric and less compact on  
15 another. So, again, repeating the question was  
16 whether I know whether the districts I changed were  
17 on the whole more compact or less compact?

18 Q Yes.

19 A I don't -- I don't know. I can guess,  
20 but I don't think I can say with certainty.

21 Q So let's look at Figure 8. Can you just  
22 explain to me what Figure 8 shows?

23 A Yes. So Figure 8 is a series of sorted  
24 bar charts basically, and for the four measures,  
25 compactness measures, that can be applied to

1 why you're referencing the population?

2 A Yes, and specifically in response to  
3 your question about the county splits, the  
4 additional number which were -- so it's a difference  
5 -- a net difference of five, and four of those were  
6 -- four of the ones that are not split in the  
7 enacted plan are related to that Black Belt area.  
8 And that's where the Bibb County decision sort of  
9 could be considered a balance or an offset and that  
10 Douglas and Coweta are quite close to having the  
11 same population.

12 And so Newton, one is -- one is split in  
13 one and whole in the other, vice versa.

14 Q So moving to Paragraph 41, you talked  
15 about the consideration of communities of interest.  
16 And I know we talked a lot about communities of  
17 interest. But the only I saw referenced here  
18 related to the two campuses of Georgia College.

19 Are there other communities of interest  
20 you can identify that you kept whole on the  
21 illustrative plan that were divided on the enacted  
22 plan?

23 A So we've just recently been talking  
24 about counties and consolidated municipal county  
25 governments. So Macon-Bibb would be an example,

1 Douglas County. Other than that, I -- I think maybe  
2 Fort Gordon. I'm remembering considering closely at  
3 least parts of Fort Gordon that I felt I was making  
4 improvements relative to the enacted plan and  
5 keeping the actual boundaries, the Fort -- I --

6 My memory is a little hazy on that, but  
7 I think that was another one that -- where at least  
8 portions of it one could consider an improvement.

9 Let me just look back at the figures  
10 here. There may have been census studies -- maybe  
11 places in Henry County. I'm -- honestly, I'm I  
12 can't think of any others that I can say  
13 definitively.

14 Q Okay. You reference in Paragraph 41  
15 communities that you've heard described by Georgians  
16 either in personal conversation or in statements  
17 made be public hearings. What personal  
18 conversations did you rely on when you were putting  
19 together the illustrative plan, if any?

20 A So I'm trying to remember -- I don't  
21 recall. There -- I know when I wrote in there were  
22 things I had in mind, and I -- I don't remember.

23 Q And this is your report from December  
24 5th, 2022?

25 A Yes. Yeah, the language is in that

1 report, yes. I don't know if it was in -- if I used  
2 that same language in the previous report.

3 Q Okay. In Paragraph 42 you talk about  
4 the pairing of incumbents and you used residential  
5 addresses of recently elected State Senators as  
6 provided by counsel. I didn't see that you included  
7 an incumbency report anywhere in your -- in your  
8 documents. Is there a reason why you didn't include  
9 that?

10 A There is. Maptitude gives you kind of  
11 two flavors of incumbency reports, and they both are  
12 designed to focus on -- or not focus on, but to have  
13 as part of their significant information included  
14 political affiliation.

15 And I deliberately did not want to be  
16 looking at the political affiliation. So when I got  
17 those spreadsheets or brought them or geocoded the  
18 spreadsheets so that I had latitude and longitude  
19 for all the addresses and brought those into  
20 Maptitude I no longer had party information.

21 So in generating the report you have to  
22 specify some field for the party information. The  
23 short answer is basically the -- the report was  
24 including party related information that was  
25 meaningless because I didn't have it in there. I

1 the -- I think that's District 128 to the northeast  
2 of 149 -- was not changed.

3 So -- well, when I say was not changed,  
4 it was changed from my PI plan to my December 2022  
5 plan in such a way that the district in the December  
6 2022 plan is identical to the way it is in the  
7 enacted plan.

8 I probably could have described that  
9 more succinctly. But -- and that would be very hard  
10 to see in Figure 13 or comparing Figure 13 in the  
11 older document versus the Figure 16.

12 Q And you identify the connection between  
13 Milledgeville and Macon as -- or, actually, I'm  
14 sorry. You identify District 149 as generally  
15 following the orientation of the Georgia fall line  
16 geological feature, is that right? In paragraph 52.

17 A So I'm going back. That sounds right.  
18 I just want to see it before agreeing.

19 Yes.

20 Q You'd agree that Augusta is also part of  
21 the Georgia fall line, right?

22 A Yes.

23 Q And the Columbus is also on the fall  
24 line?

25 A Yes.



1           Q        You reference shared economic  
2 similarities along the fall line. What are the  
3 shared economic histories of Milledgeville and  
4 Macon?

5           A        So my understanding is that the fall  
6 line essentially has an area of steeper terrain  
7 between the Piedmont and the Coastal Plain, and what  
8 that means is that the rivers are steeper and no  
9 longer navigable from the coast.

10                    So from what I remember reading, that  
11 meant that these fall line cities would sort of be  
12 the farthest point that river-based trade could go  
13 inland, and these would be a kind of a trading point  
14 or a transfer point for goods coming up the river  
15 and also goods coming from the Piedmont to then be  
16 shipped downstream and -- to other points.

17                    There's also this kind of being on the  
18 boundary, the scene if you will, between two  
19 different geologic areas that have different soil  
20 types, so different crops that might grow better  
21 in -- on one side than the other. And there's also  
22 the -- that steeper nature of the rivers allows for  
23 hydrologic power of things like mills.

24                    And so they would be places where  
25 historically there might have been locations of the

1 types of industries that would benefit from  
2 hydropower -- old fashioned hydropower to power  
3 those various kinds of -- whether it was  
4 manufacturing or processing, that kind of thing.

5 Q Did you read about the fall line before  
6 or after you drew the connection between Macon and  
7 Milledgeville in your PI plan in 2021?

8 A I think I was familiar with it in a  
9 general sense. I've looked a lot at North Carolina  
10 geography, and that fall line is not unique to  
11 Georgia. In North Carolina -- I think my daughter  
12 learned in kindergarten or something about the major  
13 regions of the state being the mountains and the  
14 Piedmont and the Coastal Plain.

15 So that -- that general kind of  
16 distinction or that characterization of cites that  
17 are along these -- these boundary areas, these edges  
18 is something I was generally familiar with.

19 And also the idea that the Black Belt,  
20 while often talked about that in terms of its  
21 demography as what defines it also has been defined  
22 in terms of its -- essentially it's geology. It's  
23 the soil types that are in that area.

24 So the actual article, I did not read  
25 until later, but I was generally aware of that

1 division, that -- those relationships, if you will.

2 Q Looking at District 145, did you make  
3 any changes aside from the change to -- between 145  
4 and 147 between the PI plan and the December 5th  
5 report?

6 A I did not.

7 Q So let's move to the comparative  
8 characteristics of the House plan. And you'd agree  
9 that the total deviation of the illustrative House  
10 plan is higher than the total deviation on the  
11 enacted House plan, is that right?

12 A So the total deviation I would need to  
13 look at the -- I'm pretty sure it's the case, but I  
14 don't want to reply with certainty.

15 Q Attachment L?

16 A Okay. Thank you.

17 Q I think it's Page 134.

18 A Yes. Okay. Total deviation, yes.

19 Q So you'd agree the illustrative plan  
20 total deviation is higher than the enacted plan?

21 A Yes.

22 Q And it's more than a point higher from  
23 2.74 to 3.85, right?

24 A That's right.

25 Q And you didn't include that total

1 deviation number in your written report, just in the  
2 exhibits, right?

3 A That's right.

4 Q Is the way that you determined that the  
5 illustrative plan complied with the traditional  
6 principle of population equality for the House the  
7 same as the methods you used for making that  
8 determination for the Senate illustrative plan?

9 A I think generally, yes.

10 Q In paragraph 57 you talk about  
11 compactness. And we, again, have the average scores  
12 for four of the five metrics and then a cut edge  
13 score. Would you expect average compaction scores  
14 to be the same if 155 of the 180 districts on a plan  
15 are the same?

16 A No. I mean, it could be. But --

17 Q Okay.

18 A -- that's saying that --

19 Q Okay. So you didn't break out the  
20 compactness scores for the 25 districts that you  
21 changed. You only reported here in Table 6 the  
22 average for all 180 districts for four of those five  
23 measures, and then over on Table 7 the scores for  
24 just the new majority black districts, right?

25 A That's right. In the text of the

1 report. But the -- the attachments include  
2 compactness scores for all the districts in both  
3 enacted and illustrative as well as other summary  
4 and metrics.

5 Q And was your method of determining that  
6 the plan complied with the traditional principle of  
7 compactness generally the same process for the House  
8 illustrative plan as for the Senate Illustrative  
9 plan?

10 A Yes.

11 Q And for Figure 17, like the Senate,  
12 these charts -- the only districts on these four  
13 charts that are from the illustrative plan are the  
14 colored lines. And the gray lines are districts on  
15 the enacted plan, right?

16 A That's right.

17 I'm sorry. If you -- if you wouldn't  
18 mind repeating that question again. I just tuned  
19 out for a moment.

20 Q Sure. In Figure 17, the --

21 A Yes.

22 Q -- in all four charts the only districts  
23 from the illustrative plan on those charts are the  
24 colored lines. The gray lines refer or are  
25 districts on the enacted plan, right?

1 A That's right.

2 Q And in Table 7 when you reported the  
3 various compactness scores for the new majority  
4 black districts, you didn't show the compactness  
5 scores for the enacted plan districts that  
6 correspond to those districts, right?

7 A That's right.

8 Q And in Paragraph 59, Table 8, you'd  
9 agree that the illustrative plan -- I'm sorry.

10 A Just a second. When you say the  
11 districts that correspond, meaning the districts  
12 that have the same number?

13 Q Either the districts that have the same  
14 number or that are in the same general geographic  
15 area. You didn't report either of those compactness  
16 scores, right?

17 A Yes. Right.

18 Q In Paragraph 59, Table 8, you'd agree  
19 that the illustrative plan splits one more county  
20 and one more VTD in the enacted plan, right?

21 A Yes.

22 Q Then in Paragraph 60 we get to  
23 communities of interest, and I see again a reference  
24 to the two campuses of Georgia College and the  
25 central community of Milledgeville. Are there are

# EXHIBIT B

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

\_\_\_\_\_)  
COAKLEY PENDERGRASS, et al., )  
) )  
Plaintiffs, )  
vs. )  
) Civil Action No.  
BRAD RAFFENSPERGER, in his ) 2:21-CV-05449-SCJ  
official capacity as the )  
Georgia Secretary of State, )  
et al., )  
) )  
Defendants. )

\_\_\_\_\_)  
ANNIE LOIS GRANT, et al., )  
) )  
Plaintiffs, )  
vs. ) Civil Action No.  
) 1:22-CV-00122-SCJ  
BRAD RAFFENSPERGER, in his )  
official capacity as the )  
Georgia Secretary of State, )  
et al., )  
) )  
Defendants. )

Videotaped deposition of DR. JOHN ALFORD, taken remotely in the above-captioned cause, before Rachel F. Gard, CSR, RPR, CRR, commencing at the hour of 11:00 a.m. Eastern on Thursday, February 23, 2023.

\_\_\_\_\_  
DIGITAL EVIDENCE GROUP  
1730 M Street, NW, Suite 812  
Washington, D.C. 20036  
(202) 232-0646



1           A -- is a cue, doesn't mean it's a cue,  
2           therefore that creates this causal tumble or  
3           whatever. But if the information is available to  
4           the voters, therefore it's one of the things they  
5           may be acting on because it is apparent to them  
6           and it's something they actually know about,  
7           people act on things that they don't -- that  
8           they're not cognizant of, but certainly the things  
9           they are cognizant of can be important.

10           Again, by "racial cue," I mean that  
11           information is available to the voters when  
12           they're making the decision, and I'm not really  
13           going beyond that with the evidence we have here.

14           Q Okay. Would you agree that the race of a  
15           candidate is not the only role race plays or race  
16           might play in a voter's political behavior?

17           A Yes.

18           Q And, in fact, race might play -- again, we  
19           don't -- kind of removing ourselves from the data  
20           here and speaking more just abstractly or  
21           theoretically, race might play a tremendously  
22           important role in a voters' decision or how they

1 vote or what their political beliefs are. Do you  
2 think that's a fair statement?

3 MR. JACOUTOT: Object to form.

4 A We're saying it might, yes. It might; it  
5 might not. I think yeah, there's certainly room  
6 for race to be involved in decision-making in a  
7 wide variety of ways.

8 Q And what -- and now looking at the data we  
9 have in front of us, we know how -- to put it  
10 plainly, we know how black voters vote in Georgia  
11 and we know how white voters vote in Georgia,  
12 correct?

13 A Right, in a limited sense of, you know,  
14 our prediction about which candidates they prefer  
15 in the general elections, yes.

16 Q But what that data does not necessarily  
17 tell us is the degree to which race is influencing  
18 those decisions?

19 A So yes, it does. It can answer questions  
20 about all or a variety of ways in which  
21 speculatively race might influence decision, but I  
22 guess the way I would answer that is to say, I

1 of other possibilities, right.

2 Q Right.

3 A So again, that's a different sort of scope  
4 question. The question -- the question is, does  
5 it in any way suggest that that might be true or  
6 does it give us any sense of how likely that is.  
7 And I think common sense, if you're saying  
8 something as important in U.S. politics as  
9 choosing a party, in choosing candidates based on  
10 issues is being driven by race, right, so I'm  
11 making my party choice entirely on the basis of  
12 race because that's how important race is with me,  
13 and then when confronted with a racially contested  
14 election, it makes no difference at all.

15 So I just find -- again, this is -- you  
16 think of it as sort of obvious. If Republicans  
17 choose to be Republicans and it's really all about  
18 being white and that being a white party that  
19 doesn't support -- that doesn't support blacks,  
20 then it's just really hard to get your head around  
21 how they nominated Herschel Walker. I mean, it's  
22 strategically hard to understand how they got

1 around to nominating Herschel Walker. But  
2 racially, how is it these same voters who  
3 structure their entire political universe around  
4 race become completely indifferent to the race of  
5 candidates, right. There may be some way for that  
6 to happen. Again, I think you have to accept that  
7 that becomes -- it's not just -- we can never  
8 exclude all of the strange possibilities out of  
9 the world, but we can certainly assign  
10 probabilities to them.

11 And if there was something going on like  
12 you're suggesting, it's really hard to see why it  
13 wouldn't leave any -- to continue to provide some  
14 evidence of it at the level of the idea that if I  
15 chose being a Democrat or a Republican on the  
16 basis of race, I then would treat black and white  
17 candidates with complete indifference as to race  
18 seems like an odd line to draw in your political  
19 universe.

20 Q So I guess --

21 A It's not impossible, but it's unlikely.

22 And if you think that's true, I'd suggest

1 providing some evidence that it's true because I  
2 just don't think the burden of proof strikes me  
3 here not as the burden of just demonstrating that  
4 something is not impossible.

5 Q But you have done -- your expert report  
6 doesn't include any opinions on these questions?  
7 To put it more specifically, you have not examined  
8 the reasons why voters make their decisions,  
9 correct?

10 A I think it's outside the scope of what  
11 experts do in these cases, just generally, to have  
12 a thing about how voters make decisions. So  
13 there's some evidence here. It's exactly the sort  
14 of evidence that's always in these cases, it's  
15 always relies on, it's always done in reliable  
16 fashion. It suggests the connections we talked  
17 about.

18 And then if your question is have I tried  
19 to show -- have I tried to demonstrate this  
20 possible but highly unlikely other thing, have I  
21 tried to find out if it is there or if I tried to  
22 prove that it isn't there, I am not. I don't -- I

1 preference or party identification, and if the  
2 pattern that you observe indicates that  
3 polarization in Georgia is attributable to party,  
4 then it's also true, then, that that polarization  
5 might be attributable to race through party. Is  
6 that fair?

7 MR. JACOUTOT: Object to form.

8 A So I'll say just to make sure that I'm not  
9 quoted out of context.

10 Q Sure.

11 A Not that you would do that but somebody  
12 else might. We're just restating what I think we  
13 said already, is this a possibility? Yes. Is  
14 this something you could do empirical work on and  
15 establish? Yes. And again, is there anything in  
16 Dr. Palmer's report that in any way establishes  
17 that that's true in Georgia empirically? The  
18 answer is no.

19 So there's not in evidence here. It's not  
20 in his report. And if he puts it in his report,  
21 I'd have a chance to respond to it and we can  
22 debate, is this real, is it the right evidence, is