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.

CIVIL ACTION

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

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

The Georgia General Assembly spent from June 15, 2021 through November 22, 2021 creating redistricting plans for the state House and state Senate. Plaintiffs ask this Court—on an emergency basis—to declare those efforts a violation of the Voting Rights Act and enjoin the use of the entirety of those plans. Further, their proposed remedial plans make extensive changes to the adopted plans—almost 40% of the adopted Senate districts are changed and 26 of the 180 House districts are redrawn. Plaintiffs propose to make these changes months after candidates have been announcing for office, raising funds for their campaigns, and engaging with voters. And they seek to do so in a matter of days without input from the public, elected officials, or anyone else except their expert's view—and they seek to do so too late to afford any relief for the 2022 elections.

This Court should deny Plaintiffs' motion because voters are not well served by a "chaotic, last-minute reordering of . . . districts. It is best for candidates and voters to know significantly in advance of the petition period who may run where." *Favors v. Cuomo*, 881 F. Supp. 2d 356, 371 (E.D.N.Y. 2012) (three-judge court) (citing *Diaz v. Silver*, 932 F. Supp. 462, 466-68 (E.D.N.Y. 1996) (three-judge court)).

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But this Court should also deny the motion because (1) Plaintiffs have not shown they can prevail on the merits of the claim since they have not submitted evidence of the compactness of the relevant minority community, they only offer unconstitutional remedies, and significant reason for doubt exists about the legal effect of the polarized voting they identify; (2) Section 2 cases are not well-designed for preliminary injunctions given the fact-intensive nature of the claims, preventing a searching analysis of the totality of the circumstances; (3) significant questions exist about this Court's ability to act without a three-judge panel and when there is no private right of action in the statute; and (4) the remaining injunctive factors do not favor Plaintiffs at this late stage. This case can proceed on a non-emergency track to hear Plaintiffs' claims in time for the 2024 elections, but this Court should not disrupt the 2022 election process.

FACTUAL BACKGROUND

I.   The 2021 redistricting plans.

The Georgia General Assembly began the process of developing redistricting maps on June 15, 2021, holding a series of joint committee meetings through the summer to take input from voters.[1] The committees

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[1] Committee Meeting Archives, https://www.house.ga.gov/Committees/en-US/CommitteeArchives114.aspx

released an educational video about the process during its first meeting.[2] They

created an online portal for voters to offer comments and made all of those

comments public.[3] They undertook a day of committee education from a variety

of groups interested in the redistricting process.[4] They adopted committee

guidelines to govern the creation of redistricting plans.[5] Both House and

Senate committee chairs sought to meet with every member of their respective

bodies to gain input.

The Democratic caucuses of the House and Senate released proposed

plans.[6] The chairs likewise released draft plans for each body. Both chairs then

made further modifications based on input from individual legislators and

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[2] Joint Redistricting Informational Video, https://www.youtube.com/watch?v=RXbgkTxXOkQ

[3] Joint Reapportionment Public Comments, https://www.legis.ga.gov/joint-office/reapportionment/public-comments

[4] August 30, 2021 Joint Meeting, https://www.youtube.com/watch?v=kUed1Ku6zBQ

[5] House Guidelines: https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/2021-2022-house-reapportionment-committee-guidelines.pdf?sfvrsn=f1b4cc44_2; Senate Guidelines: https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/2021-senate-redistricting-committee-guidelines.pdf?sfvrsn=a9bbb991_2

[6] Notably, each of these Democratic plans included far fewer majority-Black districts than those proposed by Plaintiffs here and fewer on the House plan than the as-passed plan. Dec. of John Morgan, attached as Ex. A ("Morgan Dec.") at ¶¶ 9-11. The Democratic Senate plan included 15 majority-Black districts and the Democratic House plan included 45 majority-Black districts using any-part-Black voting age population. *Id.*

voters, with the final maps passing by the final day of the special session on November 22, 2021—completing a 160-day long process to arrive at redistricting maps, even accounting for the delays in the Census data release due to COVID-19.[7]

The final plans complied with the guidelines adopted by the committees. The adopted state Senate plan split only 29 counties, which was a reduction in the total number of splits from the prior plan. Morgan Dec. at ¶¶ 21-22. Likewise, the adopted state House plan split 69 counties. *Id.*

The final plans also protected incumbents of both parties, pairing no incumbents who are running for reelection on the state Senate plan and only four incumbent pairings on the state House plan. Morgan Dec. at ¶¶ 14-18. The Senate plan includes districts that were also included in the maps drafted by the Democratic caucus. Morgan Dec. at ¶ 19.

II.   The 2022 election timeline.

Georgia statutes contain specific provisions related to the timeline for elections. A copy of the 2022 election calendar for the state as generated by the

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[7] Maps that were publicly released are included in the "Proposed Plans" tab on the Legislative and Congressional Reapportionment Office website, https://www.legis.ga.gov/joint-office/reapportionment

Secretary of State's office is attached as Ex. 1 to the Declaration of Michael Barnes, which is itself attached as Ex. B to this brief ("Barnes Dec.").

The 2022 election cycle effectively began on January 13, 2022, when candidates and their supporters could begin circulating nomination petitions. O.C.G.A. § 21-2-170(e). Only individuals who are "entitled to vote in the next election for the filling of the office sought by the candidate," O.C.G.A. § 21-2-170(c), may sign nomination petitions, so for district-based elections, final district maps are required.

On March 7, 2022, candidates begin qualifying for office and voters may begin applying for absentee ballots for the primary elections. O.C.G.A. §§ 21-2-153(c)(1)(A) (qualifying), 21-2-381(a)(1)(A) (absentee applications). Leading up to the March 7 start of qualifying, county registrars are updating street segments in the voter-registration database, which is known as eNet. Barnes Dec. at ¶ 6. This process requires registrars to update voter districts and to conduct error checks to be sure voters are allocated to the right districts. Barnes Dec. at ¶ 7.

Once registrars have completed updating voter districts, the Secretary's office begins the process of creating "ballot combinations." Barnes Dec. at ¶ 8. Within one county, there can be a number of different combinations of Congressional, state Senate, state House, and local election districts and there

are currently more than 2,000 such combinations using the existing districts.

Barnes Dec. at ¶ 9. Each of these combinations must be built into the election

management database before qualifying so candidate names can be added and

ballots can be generated for voters. Barnes Dec. at ¶ 9. This election cycle is

the first time the Secretary's office has built ballot combinations for elections

in the Dominion election management system following a decennial

redistricting process. Barnes Dec. at ¶ 10.

Ballot combinations must be ready in time for candidate qualifying so

that there is no delay in preparing primary ballot proofs. Barnes Dec. at ¶ 11.

When qualifying is completed on March 11, the Secretary's office adds each

candidate name to the relevant contests in each district, so they appear on the

correct ballot combinations. Barnes Dec. at ¶ 12. The Secretary's office then

generates proofs of every ballot combination for each county and sends those

proofs to county election officials for review and editing. Barnes Dec. at ¶ 13.

County officials must complete their review and all edits must be made in time

for absentee ballots to go out by the UOCAVA deadline of April 5, 2022. Barnes

Dec. at ¶14; O.C.G.A. § 21-2-384(a)(2).

In order to ensure that all of these deadlines are met, the Secretary's

office has instructed county election officials to complete the reallocation

process for voters no later than February 18, 2022. Barnes Dec. ¶ 15, Ex. 2.

County registrars generally need several weeks to complete the reallocation process for voters in their particular counties. Barnes Dec. at ¶ 16.

III.   Plaintiffs' illustrative plans.

Plaintiffs claim that the General Assembly should have drawn more majority-Black districts than the adopted plans and the Democratic plans, and pick different numbers of required districts than those advanced by the *Alpha Phi Alpha* plaintiffs. [Doc. 19-1, p. 4]. While their illustrative plans at least begin with the adopted plans, they still require significant changes from the policy decisions of the General Assembly.

Plaintiffs' expert admits that making the changes he proposes on the Senate map requires changes 22 of the 56 districts, or nearly 40% of the districts adopted by the General Assembly. [Doc. 20-1 at ¶ 23] ("Esselstyn Report"). He also admits that he made changes to 26 districts of the 180 districts. Esselstyn Report at ¶ 38; Morgan Dec. at ¶ 19.

The illustrative plans also split more political subdivisions than the adopted plans, which is contrary to the legislative guidelines that prioritized leaving political subdivisions intact. The illustrative Senate plan splits five more counties than the adopted Senate plan. Morgan Dec. at ¶¶ 20-21. The illustrative House plan likewise splits one more county and several more precincts than the adopted House plan. *Id*. at ¶¶ 22.

Using the incumbent databases provided by the General Assembly, the illustrative House plan pairs 16 incumbents, as opposed to the adopted plan, which pairs eight incumbents. Morgan Dec. at ¶¶ 17-18. The adopted Senate plan did not pair any incumbents running for reelection, but the illustrative Senate plan includes one such pairing. *Id*. at ¶¶ 14-16.

The illustrative plan districts also bear the hallmarks of a plan drawn primarily based on race. Eleven of the majority-Black districts on the illustrative House plan are barely over 50% any-part-Black voting age population, including one that is only two-hundredths of a percent above that threshold (District 149 is 50.02% AP Black VAP). Morgan Dec. at ¶¶ 12-13; Esselstyn Report, Table 4. District 149 also snakes up through Baldwin County to find Black voters, apparently drawn to exclude white voters from those areas. Esselstyn Report, Figure 13.

Similarly, to add a majority-Black district near Augusta, the illustrative Senate plan makes both Districts 22 and 23 slightly over 50% AP Black VAP. Esselstyn Report, Table 1. Senate Districts 23 and 28 divide counties that are apparently targeted to pick up Black population while excluding white voters. Esselstyn Report, Figures 5, 7.

On a district-by-district basis, the illustrative Senate plan is less compact overall than the adopted Senate plan. Morgan Dec. at ¶¶ 23-24. While

the overall compactness scores on the House plan are similar, several districts on the illustrative plan are far less compact than the adopted House plan. *Id*. Higher numbers are more compact districts on both scores and in most cases, the adopted districts score better than the illustrative plan districts. *Id*.

ARGUMENT AND CITATION OF AUTHORITY

I.   Applicable legal standards.

A.   Plaintiffs' burden to obtain a preliminary injunction.

Because preliminary injunctions are such extraordinary and drastic remedies, courts may not grant this type of relief "unless the movant clearly established the burden of persuasion as to the four requisites." *McDonald's Corp. v. Robertson*, 147 F. 3d 1301, 1306 (11th Cir. 1998) (cleaned up). Plaintiffs must show that: (1) they have a substantial likelihood of success on the merits of their claims; (2) they will likely suffer irreparable harm in the absence of an injunction; (3) the balance of equities tips in Plaintiffs' favor; and (4) an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

A preliminary injunction is never granted as a matter of right, even if a plaintiff can show a likelihood of success on the merits. *Benisek v. Lamone*, 138 S. Ct. 1942, 1943–44 (2018). While it is already a form of extraordinary relief, that relief is even more drastic in the context of elections, because of the public

interest in orderly elections and election integrity. *Purcell v. Gonzalez*, 549 U.S. 1, 4–5 (2006).

Further, when "an impending election is imminent and a State's election machinery is already in progress," equitable considerations justify a court denying an attempt to gain immediate relief. *Reynolds v. Sims*, 377 U.S. 533, 585 (1964); *see also Repub. Nat'l Comm. v. Dem. Nat'l Comm.*, 140 S. Ct. 1205, 1207 (2020). This is because parties must show they exercised reasonable diligence in filing their request for relief, especially in the context of elections. *Benisek*, 138 S. Ct. at 1944.

B.   Standard for Section 2 redistricting cases.

Section 2 of the Voting Rights Act prohibits jurisdictions from diluting the strength of minority voters through a "standard, practice, or procedure" "which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). Proof of illegal vote dilution is established through a "totality of the circumstances" analysis. 52 U.S.C. § 10301(b).

To prove a violation of Section 2 in a vote-dilution case, a plaintiff bears the burden of first proving each of the three *Gingles* preconditions: "(1) that the minority group is 'sufficiently large and geographically compact to constitute a majority in a single-member district'; (2) that the minority group

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is 'politically cohesive'; and (3) that sufficient racial bloc voting exists such that the white majority usually defeats the minority's preferred candidate." *Nipper v. Smith*, 39 F. 3d 1494, 1510 (11th Cir. 1994). After a plaintiff establishes the three preconditions, a court then reviews the so-called "Senate Factors" to assess the totality of the circumstances. *Id.* at 1512; *Thornburg v. Gingles*, 478 U.S. 30, 79, 106 S. Ct. 2752 (1986); *Johnson v. De Grandy*, 512 U.S. 997, 1011 (1994). Failure to establish one of the *Gingles* preconditions is fatal to a Section 2 claim because each of the three prongs must be met. *See Johnson v. DeSoto Cnty. Bd. of Comm'rs*, 204 F. 3d 1335, 1343 (11th Cir. 2000); *Burton v. City of Belle Glade*, 178 F. 3d 1175, 1199 (11th Cir. 1999); *Brooks v. Miller*, 158 F. 3d 1230, 1240 (11th Cir. 1998); *Negron v. City of Miami Beach, Fla.*, 113 F. 3d 1563, 1567 (11th Cir. 1997).

II.   **Plaintiffs cannot succeed on the merits because their illustrative plans are not appropriate remedies (*Gingles* prong 1).**

A.   **Plaintiffs have submitted no evidence on the compactness of the minority communities at issue.**

Plaintiffs fail to provide critical evidence on the first prong of *Gingles*, which requires a plaintiff to prove that the minority community is "sufficiently large and geographically compact to constitute a majority in a single district." 478 U.S. at 50-51. The various scores and calculations about Plaintiffs' illustrative plans do not provide any useful information to the Court. Plaintiffs

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must do more than just draw a district—they must demonstrate connections between the disparate geographic communities they unite that go beyond race. *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433, 126 S. Ct. 2594, 2618 (2006) (*LULAC*); *Bush v. Vera*, 517 U.S. 952, 997, 116 S. Ct. 1941 (1996). By relying solely on compactness scores of the *districts*, they miss the requirement of compactness of the underlying *community*.

Compactness of minority communities does not eliminate the need to consider the geographic boundaries in which those minority communities are situated. The Section 2 analysis of compactness is not centered on "the relative smoothness [and contours] of the district lines," but rather the compactness of the minority population itself. *LULAC*, 548 U.S. at 432-433. The inquiry, therefore, is whether "*the minority group* is geographically compact." *Id*. at 433 (quoting *Shaw v. Hunt*, 517 U.S. 899, 916 (1996) ("*Shaw II*")) (emphasis added). The lack of evidence on this point dooms Plaintiffs' claim to emergency relief.

B.   The illustrative plans are not appropriate remedies.

But even if Plaintiffs had shown some evidence of the compactness of the minority community, their claims still fail to pass the first prong of *Gingles*. The Eleventh Circuit prohibits the separation of the first prong of liability under *Gingles* and the potential remedy. *Nipper*, 39 F. 3d at 1530-31; *see also Burton*, 178 F. 3d at 1199 ("We have repeatedly construed the first *Gingles*

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factor as requiring a plaintiff to demonstrate the existence of a proper remedy."); *accord Wright v. Sumter Cty. Bd. of Elections & Registration*, 979 F. 3d 1282, 1302 (11th Cir. 2020). Whatever plan is used to demonstrate a violation of the first prong of *Gingles* must also be a remedy that can be imposed by the Court. *Nipper*, 39 F. 3d at 1530-31. In short, if a plaintiff cannot show that the plan used to demonstrate the first prong can also be a proper remedy, then the plaintiff has not shown compliance with the first prong of *Gingles*. *Wright*, 979 F. 3d at 1302.

Plaintiffs cannot succeed because their illustrative plans are not proper remedies. First, the plans cannot be ordered as remedies by the Court because they do not defer to the legislature's policy choices for a significant number of districts. Morgan Dec. at ¶¶ 19, 25. In pursuit of three new majority-Black Senate districts, Plaintiffs reconfigured 19 other districts and in pursuit of five new majority-Black House districts, they reconfigured 21 other districts. *Id*.

"The Court has repeatedly held that redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt." *Wise v. Lipscomb*, 437 U.S. 535, 539, 98 S. Ct. 2493, 2497 (1978). Instead of merely correcting the districts they claim are illegal, Plaintiffs' expert made significant changes to the adopted plans. Morgan Dec. at ¶ 25. This is not appropriate deference to the legislature's

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policy decisions in districts that are not challenged by Plaintiffs and thus cannot be ordered as a remedy. *Id*. Without a proper remedy, Plaintiffs are not likely to succeed as to the first prong of *Gingles*.

But that is not the only problem with Plaintiffs' proposed remedies. The second problem is that the boundaries of the districts on the illustrative plans are "unexplainable other than on the basis of race," which is unconstitutional. *Miller v. Johnson*, 515 U.S. 900, 910 (1995). In creating the illustrative plans on which Plaintiffs rely, their expert admits that his goal was "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." Esselstyn Report, ¶ 8. But "[Section] 2 does not require a State to create, on predominantly racial lines, a district that is not 'reasonably compact.'" *Bush v. Vera*, 517 U.S. 952, 979 (1996). Plaintiffs' expert never even identifies a single factor he used to draw the illustrative plans besides race—not even "traditional districting principles such as maintaining communities of interest and traditional boundaries." *LULAC*, 548 U.S. at 433 (quoting *Abrams v. Johnson*, 521 U.S. 74, 92 (1997)). Instead, Plaintiffs' expert admits that his remedial plans split more counties and have higher population deviations than the adopted plans. Esselstyn Report, ¶¶ 30, 32, 45, 47. The Voting Rights Act does not ask merely whether

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more majority-Black districts can be drawn—it asks whether *reasonably compact* majority-Black districts can be drawn if all other factors are also met. *Shaw II*, 517 U.S. at 913.

The decision to split counties in the illustrative plans suggests that they were drawn primarily based on race in pursuit of apparent racial goals, while still barely reaching majority status. Esselstyn Report, Figures 5, 7, 13. Plaintiffs' expert apparently focused on drawing as many majority-Black districts as possible, which is an impermissible racial goal. *See Abrams v. Johnson*, 521 U.S. 74, 91 (1997). In addition, the increases in majority-Black districts came primarily in the 50% to 52% range on both plans. Morgan Dec. at ¶¶ 10, 12. The unusual shapes in districts that barely achieve majority status also raise questions about the racial goals of Plaintiffs' expert. Esselstyn Report, Figures 5, 7, 13. An impermissible racial goal in map-drawing makes the illustrative plans unconstitutional. *Abrams*, 521 U.S. at 91.

The illustrative plans also do exactly what the Supreme Court says plaintiffs cannot—uniting disparate geographic communities solely based on race. *LULAC*, 548 U.S. at 433. For example, illustrative Senate District 23 unites Black residents of Augusta with Black residents in Milledgeville and Black residents near Lake Oconee, with no indication of how Plaintiffs concluded that those individuals share anything in common besides their skin

color. Esselstyn Report, ¶ 25, Figure 5; *LULAC*, 548 U.S. at 433. The district

also barely crosses the threshold as a majority-Black district. *Id.*

Thus, the illustrative plans are not appropriate remedies and Plaintiffs

have not shown they are likely to succeed on the first prong of *Gingles. Burton*,

178 F. 3d at 1199. This alone is fatal to their preliminary-injunction motion.

III.   Plaintiffs are not likely to succeed on the merits because of the nature of significant questions about the cause of polarized voting (*Gingles* prongs 2 and 3).

Plaintiffs offer the declaration of Dr. Maxwell Palmer in their effort to

demonstrate voting is racially polarized in Georgia. But while Dr. Palmer

studiously avoids the mention of political parties, a review of his report shows

that partisanship explains the polarization better than race. The support of

Black voters for candidates in every race he analyzes are virtually identical.

[Doc. 20-2] ("Palmer Report"), pp. 17-24, Tables 2-9. That holds true for every

Republican versus Democratic matchup Dr. Palmer analyzed, regardless of the

race of the candidate. *Id.*

In order to succeed, Section 2 plaintiffs do not just have to show that

voting is racially polarized—they have to prove that electoral losses are the

result of racial bias and not partisan voting patterns. *Solomon v. Liberty*

County, 221 F. 3d 1218, 1225 (11th Cir. 2000) (en banc); *League of United Latin*

Am. Citizens v. Clements, 999 F. 2d 831, 854 (5th Cir. 1993) (en banc) ("failures

of a minority group to elect representatives of its choice that are attributable

to 'partisan politics' provide no grounds for relief").

This matters because "what appears to be bloc voting on account of race

may, instead, be the result of political or personal affiliation of different racial

groups with different candidates." *Solomon*, 221 F. 3d at 1225. This is why

Section 2 claims present an "often-unstated danger": "Unless courts 'exercise

extraordinary caution' in distinguishing race-based redistricting from politics-

based redistricting, they will invite the losers in the redistricting process to

seek to obtain in court what they could not achieve in the political arena."

Cooper v. Harris, 137 S. Ct. 1455, 1490 (2017) (Alito, J., concurring in part)

(quoting *Miller*, 515 U.S. 916) (cleaned up).

Several judges on the Eleventh Circuit believed that, where partisanship

causes the defeat of minority-preferred candidates, it is reversible error to find

a Section 2 violation. *Nipper*, 39 F. 3d at 1525. This interpretation of Section 2

was based on the purpose and legislative history of the VRA itself:

> [S]ection 2 . . . prohibits voting practices that deny minority voters equal access to the political process *on account of race.* Indeed, "[w]ithout an inquiry into the circumstances underlying unfavorable election returns, courts lack the tools to discern results that are in any sense 'discriminatory,' and any distinction between deprivation and mere losses at the polls becomes untenable."

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> Unless the tendency among minorities and white voters to support different candidates, and the accompanying losses by minority groups at the polls, are somehow tied to race, voting rights plaintiffs simply cannot make out a case of vote dilution.

Id. at 1523-24 (citations omitted) (emphasis in original). This requirement of this type of proof is also why the Court should allow time to fully investigate whether racial bias exists or whether the polarization Dr. Palmer found is better explained by partisan behaviors.[8] Whether the Court considers partisanship as part of the *Gingles* prongs 2 and 3 analysis or under the totality of the circumstances, it should not grant emergency relief to Plaintiffs because of the questions of fact that remain—Plaintiffs have not "clearly established" their likelihood of success.[9] *McDonald's Corp.*, 147 F. 3d at 1306.

IV.   Plaintiffs are not likely to succeed on the totality-of-the-circumstances analysis on an emergency basis.

Plaintiffs are also not likely to succeed on the totality-of-the-circumstances analysis. This Court's duty when considering the "Senate factors" is to determine whether "the totality of the circumstances results in an unequal opportunity for minority voters to participate in the political

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[8] Given the short timeline for a response, Defendants reserve the right to present additional evidence on this point at any hearing on Plaintiffs' motion.
[9] Indeed, if Section 2 of the Voting Rights Act requires partisan districting schemes that benefit only Democratic candidates, its constitutionality would be suspect. *See City of Boerne v. Flores*, 521 U.S. 507, 530 (1997).

process and to elect representatives of their choosing as compared to other members of the electorate." *Ga. State Conference of the NAACP v. Fayette Cty. Bd. of Comm'rs*, 775 F. 3d 1336, 1342 (11th Cir. 2015) ("*Fayette*").

This type of analysis is particularly ill-suited to emergency relief because the totality is generally weighed after significant discovery and a bench trial. Even grants of summary judgment to plaintiffs in Section 2 cases after discovery are "unusual." *Fayette*, 775 F. 3d at 1345. This is because "[n]ormally," Section 2 claims "are resolved pursuant to a bench trial." *Id.* at 1343. Ordering relief earlier in the case is problematic "due to the fact-driven nature of the legal tests required by the Supreme Court and [Eleventh Circuit] precedent." *Id.* at 1348. This remains true even when the parties agree on many basic facts at stages before a bench trial. *See Burton*, 178 F. 3d at 1187 (quoting *Clemons v. Dougherty Cty., Ga.*, 684 F. 2d 1365, 1369 (11th Cir. 1982)).

Courts considering Section 2 claims must conduct an "intensely local appraisal" of the facts in the local jurisdiction, which is not generally amenable to resolution as a matter of law or on an emergency basis. *De Grandy*, 512 U.S. at 1020-21 (no statistical shortcuts to determining vote dilution); *Gingles*, 478 U.S. at 45, 78 (stating that courts must conduct a "searching practical evaluation of the 'past and present reality'" of the challenged electoral system and whether vote dilution is present is "a question of fact"); *White v. Regester*,

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412 U.S. 755, 769-70 (1983) (assessing the impact "in light of past and present reality, political and otherwise").

This is especially true when the Court faces difficulty weighing the totality of the circumstances as applied to Georgia in 2022. For example, the Senate factors include "majority vote requirements" as a discriminatory election practice. *Solomon*, 221 F. 3d at 1225-1226 (factor three). But a majority-vote requirement is the only way that Sen. Warnock and Sen. Ossoff—candidates Plaintiffs agree were preferred by Black voters in Georgia—succeeded in their recent elections.

Plaintiffs also offer scant evidence for many of the factors, especially considering the amount of relief they are seeking. For racial appeals, Plaintiffs cite primarily local officials and family members of candidates, which hardly indicates racism permeates Georgia political campaigns. [Doc. 19-1, pp. 26-29]. Indeed, Herschel Walker's widely reported frontrunner status[10] as the Republican nominee for U.S. Senate would tend to indicate a lack of racism in Georgia politics. Other Senate factors make little sense. For example, Plaintiffs claim that Black candidates "rarely succeed outside of majority-minority districts" while acknowledging the election of Sen. Warnock statewide. [Doc.

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[10] *See, e.g.*, https://www.politico.com/news/2021/11/01/herschel-walker-georgia-senate-republican-primary-poll-518140

19-1, p. 31]. Strangely, Plaintiffs claim that Georgia is not responsive to the

needs of Black residents while attaching a report from the Republican

legislature studying the very issue about which Plaintiffs raise concerns. [Doc.

19-1, p. 32]; Ex. 44.

All of these factors demonstrate how difficult it is for the Court to assess

the totality of the circumstances on an emergency basis and provide a separate

basis for denying Plaintiffs' motion.[11]

V.   Plaintiffs will not suffer any irreparable harm.

Because Plaintiffs are not likely to succeed on the merits, they are also

not likely to suffer any irreparable harm. The lack of any certainty of vote

dilution means that Plaintiffs will not certainly be harmed. The individual

voter plaintiffs will be entitled to vote in the upcoming elections, even if the

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[11] Defendants were only able to identify a handful of cases where courts granted injunctions in Section 2 cases involving redistricting and those did not involve statewide redistricting plans. *See, e.g., Citizens for Good Gov't v. City of Quitman*, 148 F. 3d 472, 474 (5th Cir. 1998) (noting injunction issued to stop use of at-large method of election for county); *Bridgeport Coal. for Fair Representation v. City of Bridgeport*, 26 F. 3d 271, 273 (2d Cir. 1994) (appeal of injunction for city council elections); *Johnson v. Halifax Cty.*, 594 F. Supp. 161, 163 (E.D.N.C. 1984) (injunction granted to enjoin at-large method of electing county commissioners); *see also* Christopher Elmendorf and Douglas Spencer, *Administering Section 2 of the Voting Rights Act after Shelby County*, 115 Colum. L. Rev. 2143, 2158 (2015) ("Together, the fact-intensive nature of section 2 claims and the uncertain standard for liability make preliminary relief hard to obtain. Veteran litigators estimate that plaintiffs have secured preliminary injunctions in only about 5% of section 2 cases.").

candidates they support are not as favored in the current district

configurations.

VI.   The equities and the public interest counsel heavily against any injunctive relief.

Plaintiffs' proposed injunction is not in the public interest because the

granting of such injunction and the confusion that will follow would likely

harm candidates who have announced for office, the voting rights of the public,

result in voter frustration, and even disenfranchisement.

Litigation involving elections is unique because of the interest in the

orderly administration and integrity of the election process. *Purcell*, 549 U.S.

at 4. The risks of voter confusion and conflicting orders counsel against

changing election rules, especially when there is little time to resolve factual

disputes. *Id.* at 5-6. That is even more true when facing a "chaotic, last-minute

reordering of . . . districts. It is best for candidates and voters to know

significantly in advance of the petition period who may run where." *Favors*,

881 F. Supp. 2d at 371.

Since the completion of the map-drawing process on November 22, 2021,

the Secretary's office has been advising local election officials to prepare to

update the voter-registration database with new district information for each

voter. Barnes Dec. at ¶ 5, Ex. 2. The time-consuming process of updating the

voter-registration database must be completed by February 18, giving registrars only a few weeks from now to complete the entirety of the process so that ballot combinations can be built. Barnes Dec. at ¶¶ 7-17. Absentee ballots must be created, proofed, and printed prior to April 5, 2022 so they can be sent to overseas and military voters by the deadline set by federal law. Barnes Dec. at ¶ 14. Any delay past February 18, 2022 in having final district information included for each voter places a substantial likelihood that the Secretary's office will not be able to complete the relevant tasks in time to hold the 2022 primary elections as scheduled. Barnes Dec. at ¶¶ 15-17. Candidate qualifying begins on March 7, 2022, O.C.G.A. § 21-2-153(c)(1)(A), and candidates must have final districts in which to qualify for the 2022 elections.

Further, nominating petitions became available for distribution to voters on January 13, 2022 for candidates who wish to obtain ballot access through the signature process. O.C.G.A. § 21-2-170(e). Changing district boundaries after that date could mean that individuals who signed a nominating petition may have been "entitled to vote in the next election for the filling of the office sought by the candidate," O.C.G.A. § 21-2-170(c), when they signed, but may no longer be eligible if district boundaries are later changed.

Finally, if this Court were to enjoin the use of any or all of the challenged redistricting plans, new districts should have been in place by January 13.

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And, because of the primacy of legislatures in creating districting plans, the Supreme Court requires that, where practicable, federal courts should give a "reasonable opportunity for the legislature to meet constitutional requirements by adopting a substitute measure rather than for the federal court to devise and order into effect its own plan." *Wise*, 437 U.S. at 540. Even using an extremely accelerated timeline, it is impossible to finish briefing a complex case, hold a hearing, rule, allow the legislature to create a remedial plan, and either consider the legislature's remedial plan or create a court-drawn plan in time for the applicable deadlines in 2022.

Moreover, in this instance, it is not just candidates who may now be confused because of Plaintiffs' sought injunction, but also poll workers, election officials, and supervisors who have been preparing to carry out their duties with the assumption that redistricting maps adopted by the General Assembly would be in effect. If this Court in the eleventh hour enjoins the redistricting plans, it will likely hamper the smooth administration of the upcoming election and potentially result in voter confusion or outright disenfranchisement. The public interest and the equities clearly favor denying the motion for preliminary injunction and instead allowing Plaintiffs to litigate this case on a non-emergency basis and seek relief for the 2024 elections.

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VII. This Court lacks jurisdiction to grant any relief.

This Court also lacks jurisdiction for all of the reasons outlined in Defendants' motion to dismiss based on the lack of jurisdiction for a single-judge court to consider this case and on the lack of a private right of action under Section 2. [Doc. 23]. Defendants incorporate those arguments by reference as a separate basis to deny Plaintiffs' motion.

CONCLUSION

The General Assembly spent almost six months creating the district plans that Plaintiffs challenge here. Given the lack of evidence of success on the merits, the significant jurisdictional questions, and the timeline for elections, this Court should deny Plaintiffs' motion.

This 18th day of January, 2022.

Respectfully submitted,

Christopher M. Carr
Attorney General
Georgia Bar No. 112505
Bryan K. Webb
Deputy Attorney General
Georgia Bar No. 743580
Russell D. Willard
Senior Assistant Attorney General
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Counsel for Defendant

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<u>CERTIFICATE OF COMPLIANCE</u>

Pursuant to L.R. 7.1(D), the undersigned certifies that the foregoing

Response Brief has been prepared in Century Schoolbook 13, a font and type

selection approved by the Court in L.R. 5.1(B).

<div align="center">

/s/ Bryan P. Tyson
Bryan P. Tyson

</div>

EXHIBIT A

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

ANNIE LOIS GRANT, *et al.*,	
Plaintiffs,	CIVIL ACTION
v.	FILE NO. 1:22-CV-00122-SCJ
BRAD RAFFENSPERGER, *et al.*,	
Defendants.	

DECLARATION OF JOHN B. MORGAN

Pursuant to 28 U.S.C. § 1746, I, JOHN B. MORGAN, make the following declaration:

1.

My name is John B. Morgan. I am over the age of 21 years, and I am under no legal disability which would prevent me from giving this declaration. If called to testify, I would testify under oath to these facts.

2.

I hold a B.A. in History from the University of Chicago. As detailed in my CV, attached as Exhibit 1, I have extensive experience over many years in the field of redistricting. I have worked on redistricting plans in the redistricting efforts following the 1990 Census, the 2000 Census, the 2010

Census and the 2020 Census. I have testified as an expert witness in demographics and redistricting.

3.

I am being compensated at a rate of $325 per hour for my services in this case.

4.

The redistricting geographic information system (GIS) software package used for this analysis is Maptitude for Redistricting 2021 from Caliper Corporation. The redistricting software was loaded with the census PL94-171 data from the Census Bureau and the census geography for Georgia. I was also provided with election data files available to the Georgia General Assembly during the redistricting process. The full suite of census geography was available, including counties, places, voting districts, water bodies, and roads, as well as census blocks, which are the lowest level of geography for which the Census Bureau reports population counts. Census blocks are generally bounded by visible features, such as roads, streams, and railroads and they can range in size from a city block in urban and suburban areas to many square miles in rural areas.

5.

I have been asked to review the House of Representatives and State Senate plans considered and adopted by the Georgia General Assembly and compare them to the proposed remedial plans drawn by Blakeman Esselstyn.

6.

In preparing this analysis, I was given the block-equivalency files of the Esselstyn remedial plans as well as the block-equivalency files of the 2021 adopted plans and incumbent databases used by the Georgia General Assembly during the redistricting process.   I was also given the block-equivalency files of a Senate and House plan offered by the Democratic caucus during the redistricting process.   The incumbent databases list the address locations and districts of the Representatives and Senators currently serving under the existing House (2015-enacted) and Senate (2014-enacted) plans.   I was also given information on incumbents who are not intending to run for re-election to their current offices in 2022.

7.

I loaded the 2021 House and 2021 Senate plans enacted by the Georgia General Assembly into the Maptitude for Redistricting software using the block-equivalency files provided.   I loaded the Esselstyn House remedial plan and the Esselstyn Senate remedial plan into the Maptitude for Redistricting

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software using the block-equivalency files provided. I loaded the current existing House (2015-enacted) and Senate (2014-enacted) plans into the Maptitude for Redistricting software using files provided with software. I also uploaded a House plan and a Senate plan offered by the Democratic caucus during the redistricting process using the block-equivalency files provided. I loaded the current incumbent databases provided.

8.

Using the Maptitude for Redistricting software, I created district summary files in the for the 2021 adopted plans, the Democratic proposed plans, and the Esselstyn remedial plans. These summary files listed information for each district such as: the deviation from ideal district size, total population, voting-age population, any-part Black voting age population as well as percentage values for the latter.

9.

Using the district summary files, I tallied the number of majority-Black districts using any-part Black voting age population for each plan. For the Democratic proposed plans, each plan has fewer majority-Black districts than those proposed by the Esselstyn remedial plans. In addition, the House Democratic proposed plan has fewer majority-Black districts than both the Esselstyn remedial House plan and the 2021 adopted House plan.

4

10.

The chart below shows the total number of majority-Black districts in the 2021 adopted Senate plan, the Democratic proposed Senate plan, and the Esselstyn remedial Senate plan as well as the number of districts in the percentage ranges using the any-part Black voting age population.

Chart 1. Number of Majority-Black Senate Districts.

Majority-Black Senate Districts			
% AP Black VAP	2021 Adopted Plan	Proposed Democratic Plan	Esselstyn Remedial Plan
Over 75%	0	1	0
70% to 75%	3	2	1
65% to 70%	3	3	2
60% to 65%	3	1	4
55% to 60%	3	3	4
52% to 55%	1	3	3
50% to 52%	1	2	3
Total # Districts	14	15	17

11.

The 2021 adopted Senate plan includes 14 majority-Black districts, the proposed Democratic Senate plan includes 15 majority-Black districts, and the Esselstyn remedial Senate plan has 17 majority-Black districts.

5

12.

The chart below shows the total number of majority-Black districts in the 2021 adopted House plan, the Democratic proposed House plan, and the Esselstyn remedial House plan as well as the number of districts in the percentage ranges using the any-part-Black voting age population.

Chart 2. Number of Majority-Black House Districts

Majority-Black House Districts			
% AP Black VAP	2021 Adopted Plan	Proposed Democratic Plan	Esselstyn Remedial Plan
Over 75%	2	6	2
70% to 75%	9	7	5
65% to 70%	7	7	8
60% to 65%	8	3	8
55% to 60%	11	9	10
52% to 55%	10	10	10
50% to 52%	2	3	11
Total # Districts	49	45	54

13.

The 2021 adopted House plan includes 49 majority-Black districts using any-part-Black voting age population, the proposed Democratic House plan includes 45 majority-Black districts, and the Esselstyn remedial House plan has 54 majority-Black districts.

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14.

Using the incumbent databases provided, I ran incumbent reports in the Maptitude for Redistricting software for the 2021 adopted plans and the Esselstyn remedial plans. The incumbent report shows which district the current elected incumbents would be placed in under a new plan. During the redistricting process, several House members announced their intention not to run for re-election to the state house in 2022: Micah Gravely, Wes Cantrell, Thomas Benson, Matthew Dollar, William Boddie, and Susan Holmes. In the Senate, Senators Bruce Thompson, Tyler Harper, Burt Jones and Jen Jordan are running for statewide offices in 2022 instead of running for re-election to the state senate. As these incumbent intentions were known during the redistricting process, their pairings would not cause members to run against each other in 2022.

15.

The 2021 adopted Senate plan pairs no incumbents who are running for re-election in the state Senate; and the 2021 adopted state House plan makes only four incumbent pairings. The Esselstyn remedial Senate plan pairs more incumbents than the 2021 adopted Senate plan – Senators Marty Harbin (R) and Valencia Seay (D) are in one district. The chart below shows the pairings

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of incumbents who have not declared their intentions to retire from the State

Senate or run for another office in 2022.

Chart 3. Senate incumbent pairings

Incumbent Pairings	Adopted Senate Plan	Esselstyn Senate Plan
Pairing #1	NONE	Marty Harbin -R Valencia Seay -D
Pairing #2		
Total incumbents Paired	0	2

16.

The 2021 adopted Senate plan pairs no incumbents that are running for

re-election and the Esselstyn remedial Senate plan pairs two incumbents.

17.

Using the incumbent databases provided, the incumbent reports from

Maptitude for Redistricting show that Esselstyn remedial House plan pairs

many more incumbents than the 2021 adopted House plan. The chart below

shows the pairings of incumbents who have not declared their intentions to

retire from the State House or run for another office in 2022.

Chart 4. House incumbent pairings

Incumbent Pairings	Adopted House Plan	Esselstyn House Plan
Pairing #1	Rebecca Mitchell -D Shelly Hutchison -D	Mike Glanton -D Demetrius Douglas -D
Pairing #2	Gerald Green -R Winifred Dukes -D	Rebecca Mitchell -D Shelly Hutchison -D
Pairing #3	James Burchett -R Dominic LaRiccia -R	El-Mahdi Holly -D Regina Lewis-Ward -D
Pairing #4	Danny Mathis – R Robert Pruitt - R	Miriam Paris -D Dale Washburn -R
Pairing #5		Robert Dickey -R Shaw Blackmon -R
Pairing #6		Noel Williams – R Robert Pruitt - R
Pairing #7		Gerald Green -R Winifred Dukes -D
Pairing #8		James Burchett -R Dominic LaRiccia -R
Total incumbents Paired	8	16

18.

The Esselstyn remedial House plan pairs 16 incumbents, while the 2021 adopted House plan pairs only eight incumbents out of the 180 House members.

19.

I ran core constituency reports in the Maptitude for Redistricting software to compare the 2021 adopted plans and the Esselstyn remedial plans. The core constituency reports compare one plan to another; showing how much

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population in a district from the first plan is the same in a district (or districts) in the second plan.   (As an example, the 2021 adopted Senate plan includes some districts that were also included in the Senate map drafted by the Democratic caucus. When comparing those plans, the core constituency report shows that 100% of the population in those districts from the 2021 adopted plan are the same in the proposed Democratic plan.)   The Esselstyn remedial plans differ substantially from the 2021 adopted plans. An analysis of the Esselstyn remedial Senate plan shows that 22 districts were changed from the 2021 adopted Senate plan.   An analysis of the Esselstyn remedial House plan compared to the 2021 adopted plans found that 26 districts were changed from the 2021 adopted House plan.

20.

I ran the split geography reports in the Maptitude for Redistricting software for the 2021 adopted plans and the Esselstyn remedial plans. The split geography report shows how many political subdivisions - counties and census voting districts (often referred to as voting precincts) are split.

21.

The Esselstyn remedial plans split more political subdivisions (counties and precincts / voting districts) than the adopted plans. The 2021 adopted

10

Senate plan splits 29 counties and 47 voting precincts. The Esselstyn remedial

Senate plan splits 34 counties and 49 precincts.

22.

The 2021 adopted House plan splits 69 counties and 184 voting precincts.

The Esselstyn remedial House plan splits 70 counties and 191 voting precincts.

23.

I ran compactness reports in the Maptitude for Redistricting software for

the 2021 adopted plans and the Esselstyn remedial plans. The Polsby-Popper

and Reock compactness measures were shown in the reports for each district.

The Polsby-Popper and Reock compactness measures are standard

measurements comparing the district to the area of a circle.[1]

---

[1] The Maptitude for Redistricting Users Guide describes the Polsby-Popper
test in this way: "The Polsby-Popper test computes the ratio of the district
area to the area of a circle with the same perimeter: $4\pi Area/(Perimeter2)$.
The measure is always between 0 and 1, with 1 being the most compact. The
Polsby-Popper test computes one number for each district and the minimum,
maximum, mean and standard deviation for the plan." And the same guide
describes the Reock test in this way: "The Reock test is an area-based
measure that compares each district to a circle, which is considered to be the
most compact shape possible. For each district, the Reock test computes the
ratio of the area of the district to the area of the minimum enclosing circle for
the district. The measure is always between 0 and 1, with 1 being the most
compact. The Reock test computes one number for each district and the
minimum, maximum, mean and standard deviation for the plan."

11

24.

While the overall compactness scores on the Esselstyn remedial Senate plan and the 2021 adopted Senate plan are similar, several districts on the Esselstyn remedial Senate plan are far less compact than the 2021 adopted Senate plan. The overall compactness scores on the Esselstyn remedial House plan and the 2021 adopted House plan are similar; however, of the 26 districts changed in the Esselstyn remedial House plan, 16 districts are less compact on the Reock measurement and 15 districts are less compact on the Polsby-Popper measurement. The chart below shows the compactness scores of the newly created majority-Black districts which Esselstyn identified in his report and the compactness scores of the corresponding district number in the 2021 adopted plans.

Chart 5. Compactness score summary

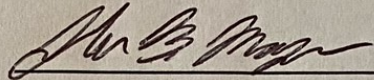| New Black-Majority District	Adopted Plan Reock	Esselstyn Remedial Plan Reock	Adopted Plan Polsby-Popper	Esselstyn Remedial Plan Polsby-Popper
Senate 23	**0.37**	0.34	0.16	**0.17**
Senate 25	0.39	**0.57**	0.24	**0.34**
Senate 28	**0.45**	0.38	**0.25**	0.19
House 64	**0.37**	0.22	**0.36**	0.22
House 74	**0.50**	0.30	**0.25**	0.19
House 117	**0.41**	0.40	0.28	**0.33**
House 145	**0.38**	0.34	0.19	**0.21**
House 149	0.32	**0.42**	0.22	**0.23**

25.

In summary, the Esselstyn remedial plans differ substantially from those adopted by the General assembly. The Esselstyn remedial plans split more counties and precincts and they pair more incumbents. While some geography in the Esselstyn remedial plans aligns with the 2021 adopted plans, the Esselstyn remedial Senate plan changes 22 districts to create three new Black-majority Senate districts and the Esselstyn remedial House plan changes 26 districts to create five new Black-majority House districts. In conclusion, this is my preliminary analysis of these plans. I reserve the right to continue adding to this analysis as the case proceeds.

[Signature on next page]

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

Executed this 18th day of January, 2022.

_____
JOHN B. MORGAN

EXHIBIT 1

JOHN B. MORGAN
Curriculum Vitae

Redistricting Background and Experience

- Performed redistricting work in 20 states, in the areas of map drawing, problem-solving and redistricting software operation.
- Performed demographic and election analysis work in 40 states, for both statewide and legislative candidates

2021-2022   Redistricting Cycle
- Mapping expert for Michigan Independent Citizens Redistricting Commission
- Mapping expert for Virginia Redistricting Commission
- Mapping expert for New Jersey Congressional Redistricting Commission
- Mapping expert for New Jersey Legislative Redistricting Commission
- Staff analyst for New Mexico Senate Republican caucus – Dec. 2021 special session
- Mapping consultant to Indiana State Senate Republican caucus
- Mapping consultant to redistricting commissioners in Atlantic County, New Jersey
- Drafted county commission districts for Sampson County, North Carolina

2011-2012   Redistricting Cycle
- Served as a consultant for:
  o Connecticut Redistricting Commission
  o Ohio Reapportionment Board
  o New Jersey Legislative Redistricting Commission
  o New Jersey Congressional Redistricting Commission
  o Pennsylvania Legislative Reapportionment Commission
- Drafted Wake County, North Carolina school board districts
- Drafted county commission districts in Sampson and Craven counties in North Carolina and Atlantic County in New Jersey
- Worked with redistricting commissions in Atlantic and Essex counties, New Jersey.
- Worked on statewide congressional, legislative, and local plans in the following states: Connecticut, Indiana, Kansas, Missouri, New Jersey, New Mexico, North Carolina, Ohio, Pennsylvania, South Carolina, and Virginia
- Plans drafted by Morgan adopted in whole or part by the following states: Connecticut, Indiana, New Jersey, New Mexico, North Carolina, South Carolina, Virginia.

2001-2002   Redistricting Cycle
- Worked on statewide congressional and legislative redistricting plans in the following states: Florida, Georgia, Indiana, Iowa, New Jersey, North Carolina, Pennsylvania, Rhode Island, and Virginia.
- Dealt with redistricting issues as a member of the Majority Leader's legislative staff in Virginia House of Delegates. Drafted alternate plans for use by the minority parties in Rhode Island. Drafted alternate plans for use by legislative leadership in considering plans drawn by redistricting commission staff in Iowa.

1

1991-1992   Redistricting Cycle
- Worked on statewide congressional and legislative redistricting plans in the following states: Florida, Illinois, Indiana, Michigan, New Jersey, New York, Pennsylvania, Wisconsin.
- Focused primarily on Voting Rights Act issues with Black, Hispanic and Asian communities.
- Federal court incorporated portion of legislative plan drafted in part by Morgan for Wisconsin into final decree, finding the configuration superior to other plans in its treatment of minority voters.

Expert Experience and Trial Testimony
- Recognized as an expert in demographics and redistricting in *Egolf v. Duran*, New Mexico First Judicial District Court, Case No. D-101-CV-2011-02942, which dealt with New Mexico's legislative plans.
- In *Egolf v. Duran*, the Court adopted a House redistricting plan principally drafted by Morgan.
- Filed expert reports in *Georgia State Conference of NAACP v. Fayette County Board of Commissioners.*
- Filed expert reports and expert testimony in *Page v. Board of Elections,* Eastern District of Virginia; provided expert testimony at trial.
- Testified at trial in *Bethune Hill v. Virginia Board of Elections* and *Vesilind v. Virginia Board of Elections.*
- Filed expert report in *Georgia NAACP v. Gwinnett County.*

Education

- Bachelor of Arts degree in History from the University of Chicago
- Graduated with honors.
- Bachelor's Honors thesis on "The Net Effects of Gerrymandering 1896-1932."
- Demographic study on LaSalle, Illinois was published in *The History of the Illinois and Michigan Canal, Volume Five.*

Employment

- President of Applied Research Coordinates, a consulting firm specializing in political and demographic analysis and its application to elections and redistricting, 2007 to present
- Redistricting consultant for many legislatures and commissions: 1991, 2001, 2011, 2021
- Executive Director, GOPAC (Hon. J.C. Watts, Chairman), 2004-2007
- Vice-President of Applied Research Coordinates, 1999-2004
- National Field Director, GOPAC (Rep. John Shadegg, Chairman) 1995-1999
- Research Analyst, Applied Research Coordinates 1991-1995
- Research Analyst, Republican National Committee 1988-1989, summers

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EXHIBIT B

**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,
 	
     Defendant.
	CIVIL ACTION
	
	FILE NO. 1:21-CV-05337-SCJ

COAKLEY PENDERGRASS, *et al.*,
 	
     Plaintiffs,
 	
v.
 	
BRAD RAFFENSPERGER, *et al.*,
 	
     Defendants.
	CIVIL ACTION
	
	FILE NO. 1:21-CV-05339-SCJ

ANNIE LOIS GRANT, *et al.*,
 	
     Plaintiffs,
 	
v.
 	
BRAD RAFFENSPERGER, *et al.*,
 	
     Defendants.
	CIVIL ACTION
	
	FILE NO. 1:22-CV-00122-SCJ

<u>DECLARATION OF MICHAEL BARNES</u>

Pursuant to 28 U.S.C. § 1746, I, MICHAEL BARNES, make the following declaration:

1.

My name is Michael Barnes. I am over the age of 21 years, and I am under no legal disability which would prevent me from giving this declaration. If called to testify, I would testify under oath to these facts.

2.

I currently am the Director of the Center for Election Systems, Office of Secretary of State–Brad Raffensperger ("CES"). I was formerly Director of the Center for Election Systems at Kennesaw State University ("KSU"), which was an outside contractor with the Office of the Secretary of State, from 2002 until December 31, 2017. Beginning on January 1, 2018, all elections functions that were previously performed at KSU were moved to an internal department in the Office of the Secretary of State. I first began working at CES KSU in 2005. Prior to that time, I was the Assistant Director of Elections for the Georgia Secretary of State, and I held that position during the State of Georgia's transfer to a uniform system of voting in 2002. I held my current position during the most recent transition to a new statewide voting system, i.e., the Dominion Democracy Suite ballot-marking devices (BMDs).

1

3.

I train county election officials on the use of the Dominion system, including the election management system and the BMDs. I also oversee the employees responsible for creating ballot combinations and Election Project Packages, which are the primary databases on which the Dominion system runs elections for both absentee-by-mail and in-person voting.

4.

In my role, I have great familiarity with the timelines for elections because my office is responsible for many of the technology components of the election process in Georgia. I also regularly communicate with county election officials and am very familiar with the processes they use for administering elections.

5.

A copy of the 2022 election calendar for the state as generated by the Secretary of State's office is attached as Ex. 1 to this declaration. My office uses this summary because it contains the relevant deadlines for the 2022 election cycle.

6.

Leading up to the March 7, 2022 start of qualifying, county registrars are updating street segments in the voter-registration database, which is known as eNet.

7.

This process requires registrars to update voter districts and to conduct error checks to be sure voters are allocated to the right districts.

8.

Only after registrars have completed updating voter districts, can my office and staff begin the process of creating "ballot combinations."

9.

Within one county, there can be a number of different combinations of Congressional, state Senate, state House, and local election districts. Each of these combinations must be built into the election management database before qualifying so candidate names can be added and ballots can be generated for voters. Currently, there are more than 2,000 ballot combinations that exist using the prior districts.

3

10.

This election cycle is the first time the Secretary's office has constructed election projects using the Dominion system following redistricting (where almost all ballot combinations have to be adjusted).

11.

Prior to my team constructing elections projects (which are necessary to produce ballots), ballot combinations in each precinct must be defined within the state voter registration system. My team then places those ballot combinations into a county's elections project to generate an accurate ballot proof for county election officials to sign off on prior to ordering and receiving ballots.

12.

When qualifying is completed on March 11, our office adds each candidate name to the relevant contests in each district so they appear on the correct ballot combinations.

13.

Our office then generates proofs of every ballot combination for each county and sends those proofs to county election officials for review and editing.

4

14.

County officials must complete their review and all edits must be made in time for absentee ballots to go out by the overseas and military voters deadline of April 5, 2022.

15.

In order to ensure that all of these deadlines are met, the Secretary's office instructed county election officials late last year that they must complete the reallocation process for voters no later than February 18, 2022. That letter is attached to this declaration as Exhibit 2.

16.

County registrars generally need several weeks to complete the reallocation process for voters in their particular counties.

17.

Any delay in the process of allocating voter risks the ability of our office to create ballot combinations and impedes having ballots ready for the May 24th primary election.

[Signature on next page]

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

Executed this 18th day of January, 2022.

MICHAEL BARNES

EXHIBIT 1

2022 State Elections & Voter Registration Calendar

Elections	Voter Registration Deadline	Election Date
Special Election Date	February 14, 2022	March 15, 2022
Special Election Runoff Date	February 14, 2022	April 12, 2022
General Primary Election, Nonpartisan General Election and Special Election Date	April 25, 2022	May 24, 2022
General Primary Election, Nonpartisan General Election and Special Election Runoff Date	April 25, 2022	June 21, 2022
General Primary Election Runoff Date for Federal Races	May 23, 2022	June 21, 2022
General Election/Special Election Date	October 11, 2022*	November 8, 2022
General Election/Special Election Runoff Date	October 11, 2022*	December 6, 2022
General Election Runoff Date for Federal Races	November 7, 2022	December 6, 2022

Key Dates

January 1, 2022	Earliest day to file and publish a notice of intention to be a write-in candidate in the General Election. O.C.G.A. § 21-2-133(a)
January 13, 2022	Earliest day to circulate nomination petition for General Election for Independent/Political Body Candidates O.C.G.A. § 21-2-170(e)
February 1, 2022	Last day to fix and publish qualifying fees for offices to be filled during the 2022 Election Cycle. O.C.G.A. § 21-2-131(a)(1)(A)
February 14, 2022	Last day for a person to register and be eligible to vote in the March Special Election and Runoff Election. O.C.G.A. § 21-2-224
February 21, 2022	Earliest day for a registrar to mail an absentee ballot for the March Special Election O.C.G.A. § 21-2-384(a)(2)
February 21, 2022	Advanced (Absentee In-Person) Voting begins for the March Special Election. O.C.G.A. § 21-2-385(d)(1)(A)
February 26, 2022	Mandatory Saturday Voting for the March Special Election O.C.G.A. § 21-2-385(d)
February 27, 2022	Optional Sunday Voting for the March Special Election O.C.G.A. § 21-2-385(d)
March 4, 2022	Last day to submit absentee ballot application for the March Special Election O.C.G.A. 21-2-381(a)(1)(A)
March 5, 2022	Mandatory Saturday Voting for the March Special Election O.C.G.A. § 21-2-385(d)
March 6, 2022	Optional Sunday Voting for the March Special Election O.C.G.A. § 21-2-385(d)

March 7, 2022	Earliest day to apply for an absentee ballot for the May General Primary Election O.C.G.A. 21-2-381(a)(1)(A)
March 7, 2022 9:00 A.M.	Earliest day to qualify for Primary/Nonpartisan and Independent/Political Body Candidates for November General Election. O.C.G.A. § 21-2-153(c)(1)(A)
March 11, 2022 12:00 Noon	Last day to qualify for Primary/Nonpartisan and Independent/Political Body Candidates for November General Election. O.C.G.A. § 21-2-153(c)(1)(A)
March 18, 2022	Last day to file and publish a notice of intention to be a Non-Partisan Write-In Candidate. O.C.G.A. § 21-2-133(a)
March 23, 2022	Last day to file affidavit stating the notice of intention to be a Non-Partisan Write-In Candidate has been published in accordance with O.C.G.A. § 21-2-133(b)
April 1, 2022	Last day to submit absentee ballot application for the April Special Election Runoff O.C.G.A. 21-2-381(a)(1)(A)
April 5, 2022	Earliest day for a registrar to mail an absentee ballot for the General Primary/Non-Partisan/Special Election O.C.G.A. § 21-2-384(a)(2)
April 25, 2022	Last day for a person to register and be eligible to vote in the General Primary/Non-Partisan/Special Election and Runoff Election. O.C.G.A. § 21-2-224
May 2, 2022	Advanced (Absentee In-Person) Voting begins for the General Primary/Non-Partisan/Special Election. O.C.G.A. § 21-2-385(d)(1)(A)
May 7, 2022	Mandatory Saturday Voting for the General Primary/Non-Partisan/Special Election O.C.G.A. § 21-2-385(d)
May 8, 2022	Optional Sunday Voting for the General Primary/Non-Partisan/Special Election O.C.G.A. § 21-2-385(d)
May 13, 2022	Last day to submit absentee ballot application for the May General Primary Election O.C.G.A. 21-2-381(a)(1)(A)
May 14, 2022	Mandatory Saturday Voting for the General Primary/Non-Partisan/Special Election O.C.G.A. § 21-2-385(d)
May 15, 2022	Optional Sunday Voting for the General Primary/Non-Partisan/Special Election O.C.G.A. § 21-2-385(d)
May 23, 2022	Last day for a person to register and be eligible to vote in the General Primary Runoff for Federal Races.
June 10, 2022	Last day to submit absentee ballot application for the June General Primary Runoff O.C.G.A. 21-2-381(a)(1)(A)
June 13, 2022	Advanced (Absentee In-Person) Voting for the General Primary/Non-Partisan/Special Runoff Election must begin no later than this date. O.C.G.A. § 21-2-385(d)(1)(B)
June 27, 2022 9:00 AM	Earliest day for an Independent or a Political Body Candidate to file their Nomination Petition to have his/her name placed on the General Election Ballot. O.C.G.A. § 21-2-132(e)
July 12, 2022 12:00 Noon	Last day for an Independent or a Political Body Candidate to file their Nomination Petition to have his/her name placed on the General Election Ballot. O.C.G.A. § 21-2-132(e)
August 22, 2022	Earliest day to apply for an absentee ballot for November General Election O.C.G.A. § 21-2-381(a)(1)(A)
September 6, 2022	Last day to file the notice of intention to be a write-in candidate and have notice published in accordance with O.C.G.A. § 21-2-133(a)
September 11, 2022	Last day to file affidavit stating the notice of intention to be a Write-In Candidate has been published in accordance with O.C.G.A. § 21-2-133(b)
September 20, 2022	Earliest day for a registrar to mail an absentee ballot for the November General/Special Election O.C.G.A. § 21-2-384(a)(2)
October 11, 2022	Last day for a person to register and be eligible to vote in the November General Election and Runoff Election. O.C.G.A. § 21-2-224(a) **October 10th is a State Holiday**

October 17, 2022	Advanced (Absentee In-Person) Voting begins for the November General Election. O.C.G.A. § 21-2-385(d)(1)
October 22, 2022	Mandatory Saturday Voting for the November General Election O.C.G.A. § 21-2-385(d)(1)
October 23, 2022	Optional Sunday Voting for the November General Election O.C.G.A. § 21-2-385(d)(1)
October 28, 2022	Last day to submit absentee ballot application for the November General Election O.C.G.A. 21-2-381(a)(1)(A)
October 29, 2022	Mandatory Saturday Voting for the November General Election O.C.G.A. § 21-2-385(d)(1)
October 30, 2022	Optional Sunday Voting for the November General Election O.C.G.A. § 21-2-385(d)(1)
November 7, 2022	Last day for a person to register and be eligible to vote in the General Election Runoff for Federal Races.
As soon as possible	Absentee ballots shall be mailed out as soon as possible prior to the General Election Runoff for Local and State Offices. O.C.G.A. § 21-2-384 (a) - Advanced (In-Person) Voting begins for the General Election Runoff for Local and State Offices. O.C.G.A. § 21-2-385 (d)(1)

O.C.G.A. § 21-2-14. When the last day for the exercise of any privilege or discharge of any duty prescribed or required by this chapter shall fall on a Saturday, Sunday, or legal holiday, the next succeeding business day shall be the last day for the exercise of such privilege or the discharge of such duty.

EXHIBIT 2

The Office of Secretary of State

Brad Raffensperger
SECRETARY OF STATE

December 29, 2021

Blake Evans
Elections Director
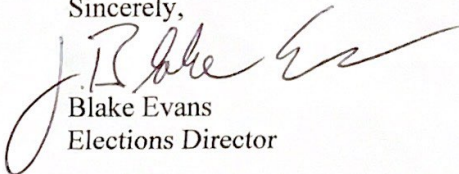
Dear County Election Directors and Registrars,

This letter is to inform you that all redistricting changes should be made in the voter registration system (ElectioNet) no later than February 18, 2022. This includes updating voter records in ElectionNet to reflect new redistricted maps and ensuring all voters are in correct districts. All changes need to be made by this deadline for qualifying to occur the week of March 7, 2022.

To ensure you can meet the February 18th deadline, we recommend that you do the following if you have not already:

- Coordinate with your local county commissioners, school board members, and other appropriate local board members to encourage those entities to have any proposed district changes to the General Assembly by January 10, 2022, which is the first day of session.
  - o If you have trouble gathering county district information from your county boards, then please contact the Legislative and Congressional Reapportionment Office at 404-656-5063.
- Coordinate with your attorney about any local laws or charters that could affect your redistricting timeline.
- Coordinate with our Elections Division if you have questions about how to use the Redistricting Module in the voter registration system.

Again, it is very important that you have all changes made in the voter registration system no later than February 18, 2022. Failure to do so will cause difficulty with qualifying and other election preparation for the May 24, 2022 Primary.

Sincerely,

Blake Evans
Elections Director