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

COMMON CAUSE, *et al*.,

Plaintiffs,

v.

BRAD RAFFENSPERGER,

Defendant.

Case No. 1:22-CV-00090-ELB-SCJ-SDG

THREE-JUDGE COURT

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INTRODUCTION

Defendant's motion for summary judgment ("Mot.")[1] ignores facts supporting Plaintiffs' claims, mischaracterizes others, and improperly seeks to elevate the nonmovants' burden at the summary judgment stage. The simple truth is that, following discovery, a myriad of facts supports Plaintiffs' racial gerrymandering claims. Thus, summary judgment is starkly inappropriate.

To obtain summary judgment dismissing Plaintiffs' claims, Defendant bears the heavy burden of showing that there is not a single "genuine dispute as to any material fact." *See* Fed. R. Civ. P. 56(c). On its face, however, Defendant's motion reveals a multitude of factual disputes, including the intent of the Georgia legislature. Each of those factual disputes independently mandates denial of summary judgment and a prompt trial on Plaintiffs' racial gerrymandering claims. *See cf. Harlow v. Fitzgerald*, 457 U.S. 800, 816 (1982).

Unable to attack Plaintiffs' claims on the merits, Defendant first challenges the standing of Plaintiffs Common Cause and the League of Women Voters of Georgia ("League" and collectively, "Organizational Plaintiffs") by asserting without support, that they do not have organizational standing. And contrary to binding precedent from the Supreme Court and the Eleventh Circuit, Defendant also argues that the Organizational Plaintiffs do not have associational standing derived

[1] All terms not herein defined have the meaning ascribed to them in the Declaration of Cassandra Nicole Love-Olivo in Opposition to Defendant's Motion for Summary Judgment ("Love Decl."), filed concurrently herewith.

from their membership.[2] Defendant's standing arguments fail.

Second, faced with the considerable evidence Plaintiffs have amassed showing race predominated over traditional redistricting principles, Defendant responds that Plaintiffs' evidence is not "conclusive." But that is not the standard. Defendant can obtain summary judgment ***only*** by showing that there is ***no*** evidence supporting a finding or inference that race predominated. To top it off, Defendant offers a patently false explanation for the race-based decisions that shape the boundaries of Congressional Districts ("CD") 6, 13, and 14—the districts Plaintiffs challenge ("Challenged Districts"): he asserts that the legislature was motivated by partisanship, not race. While the actual evidence disproves this theory, all the instant motion requires for denial is that there is *one* material factual dispute on that issue.

FACTUAL BACKGROUND

The enacted congressional district plan, SB 2EX, was publicly introduced on November 17, 2021, mere hours before the Senate Committee on Reapportionment and Redistricting ("Senate Committee") and House Legislative and Congressional Reapportionment Committee ("House Committee," collectively, "Redistricting Committees") held meetings, ostensibly to receive public feedback. SMF[3] ¶ 1. Over the next five days, the General Assembly rushed SB 2EX through the approval process. *Id.* ¶ 2. The Senate Committee voted favorably on it the next day, despite

[2] Defendant does not challenge the standing of plaintiffs Dr. Cheryl Graves, Dr. Ursula Thomas, Jasmine Bowles, Dr. H. Benjamin Williams, and Brianne Perkins. These plaintiffs collectively have standing to challenge CD 6, CD 13, and CD 14, the three districts at issue in this case.

[3] All references to "SMF" indicate the Plaintiffs' Separate Statement of Undisputed Material Facts, filed concurrently herewith.

unanimous opposition from Black committee members; and the Senate passed it the following day, despite unanimous opposition from Black senators. *Id.* ¶¶ 2, 3. The House Committee voted favorably on SB 2EX on November 20, 2021, despite unanimous opposition from Black committee members; and the House passed it the following business day. SMF ¶¶ 2, 3.

Despite "failing to make time for public comment after maps were published at the last minute," SMF ¶ 5 (Ex. 8, Bagley Rpt. 86), many Georgians attended Redistricting Committee meetings to denounce the changes to CD 6, CD 13, and CD 14 because they failed to respect communities of interest.[4] SMF ¶ 5. Georgians testified that SB 2EX split communities of interest by removing certain precincts and adding others that had "absolutely nothing" in common with the remainder of the district, and combining urban and rural areas with diverging interests. SMF ¶ 5. Despite this harsh public criticism, members of the majority party did not evaluate any changes to the district boundaries. SMF ¶ 6.

Prior to introducing SB 2EX, the Redistricting Committees adopted guidelines for their map drafting, including "constitutional requirements of equal protection, compliance with the Voting Rights Act, [] a recognition of racially polarized voting, [] the importance of jurisdictional boundaries, prioritizing communities of interest, compactness, and continuity," ("Guidelines"). SMF ¶ 7.

[4] Three meetings on November 17, 18, and 20 were the only opportunity to voice public opposition to SB 2EX. SMF ¶ 1. The only prior opportunities to speak to Redistricting Committee members were town halls held between June 15 and August 11, 2021, before the release of census data or any proposed maps. SMF ¶ 4. As a result, comments at these town halls were necessarily nonspecific, with citizens unable to provide input on any proposed maps or propose their own.

These guidelines did not include the pursuit of partisan advantage. SMF ¶ 8.

But the Redistricting Committee failed to adhere to its own guidelines, making overtly race conscious moves that diminish minority voting power in the state. Including public release and discovery in this case, the majority party produced only a single draft congressional map. SMF ¶ 9-10. That is because Director Wright drew all three maps, keeping them private, and overriding prior drafts each time she saved her progress.[5] SMF ¶¶ 10, 12. This choice was intentional—on the heels of a 2018 three-judge panel in this District concluding there was "compelling" evidence that "race predominated th[e] redistricting process," *see Ga. State Conference of NAACP v. Georgia*, 312 F. Supp. 3d 1357, 1365 (N.D. Ga. 2018), Director Wright expected litigation to ensue over the 2020 redistricting process, and thus kept communications unwritten, and intentionally saved over and thereby destroyed draft maps, in a misguided attempt to evade judicial scrutiny. SMF ¶¶ 10, 12 (Ex. 15, Wright Dep. 19:16-20:4).

Director Wright held meetings with members of the majority party to discuss changes to the map, which were input into the Reapportionment Office's redistricting software. SMF ¶ 14. During these meetings, racial data was projected onto the computer screens where the map lines were being drawn such that legislators could immediately see how boundary changes impacted the racial balance of districts. *Id.*

[5] Counsel for the subpoenaed Reapportionment Office and its director, the Redistricting Committees and their chairs, and other state legislators has represented none of these draft maps was saved or is recoverable. SMF ¶10.

There were better alternatives to the race conscious moves that the legislature made in its enacted SB 2EX. Both a congressional plan released by Senate Redistricting Committee Chair John Kennedy ("Kennedy-Duncan Plan"), as well as an alternative map set forth by Dr. Duchin, offer choices that adhere better to the Redistricting Committees' Guidelines. SMF ¶¶ 9, 56-64. Moreover, Dr. Duchin's analysis of 100,000 possible maps (that would be at least as effective in achieving the majority party's political success as SB 2EX) show that the enacted maps are still outliers in terms of their racial composition—a telltale sign that the boundaries were uniquely and intentionally drawn to reach this end. SMF ¶¶ 65-67. The legislature chose to enact the current congressional map, packing and cracking minority voters in the Challenged Districts.

ARGUMENT

I. ORGANIZATIONAL PLAINTIFFS HAVE STANDING TO BRING THEIR RACIAL GERRYMANDERING CLAIMS

An organization has standing to assert racial gerrymandering claims when it demonstrates either associational or organizational standing, either one of which is independently sufficient. *See, e.g., Arcia v. Fla. Sec'y of State*, 772 F.3d 1335, 1341 (11th Cir. 2014); *Petteway v. Galveston Cnty.*, 2023 WL 2782705, at *5 (S.D. Tex. Mar. 30, 2023). Common Cause and the League have both.

A. Organizational Plaintiffs Satisfy Associational Standing

Associational standing exists when the members of the organization "would have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested

requires individual[] members' participation in the lawsuit." *Ala. Legislative Black Caucus v. Alabama ("ALBC")*, 575 U.S. 254, 269 (2015) (cleaned up). For redistricting claims, the Supreme Court recognizes that "a member of an association would have standing to sue in his or her own right when that member resides in the district that he alleges was the product of racial gerrymander." *Id.* (quotations omitted); *see also United States v. Hays*, 515 U.S. 737, 744–45 (1995).

Defendant does not dispute the latter two prongs, nor could he. Both Organizational Plaintiffs' mission statements reflect that they intend to protect and safeguard voting. *See* SMF ¶¶ 15, 16 (Ex. 19, Dennis Dep. 83:9-16; Ex. 22, Bolen Dep. 47:1-4). And it is well-settled that redistricting cases, like this one, may "proceed[] without the participation of individual members." *Perez v. Abbott*, 267 F. Supp. 3d 750, 773 (W.D. Tex. 2017), *aff'd in part, rev'd in part and remanded on other grounds,* 138 S. Ct. 2305 (2018); *McConchie v. Scholz*, 567 F. Supp. 3d 861, 882 (N.D. Ill. 2021); *Ass'n of Am. Physicians & Surgeons, Inc. v. Tex. Med. Bd.*, 627 F. 3d 547, 551–53 (5th Cir. 2021). Instead, Defendant challenges only the first prong, contending that the Organizational Plaintiffs have not "put forth specific facts supported by evidence" establishing that each has members in each Challenged District. Mot. 8. In so doing, Defendant ignores the documentary record and misconstrues the evidence before this Court.

Here, both Common Cause and the League have numerous—in most cases, hundreds—of members in the Challenged Districts. Common Cause, for instance, has over 26,000 members in Georgia. *See* SMF ¶ 17 (Ex. 20, Dennis Decl. ¶ 2; Ex.

19, Dennis Dep. 93:15-16). This includes at least 760 members in CD 6; 140 members in CD 13; and 840 members in CD 14. *Id.* (Ex. 20, Dennis Decl. ¶¶ 3-5). Common Cause determined the residency of its members via the addresses members provided when they "elect[ed] to become members of" Common Cause. *Id.* ¶¶ 18-19 (Dennis Dep. 101:22-102:11). Common Cause used ZIP codes that were "wholly within a[n] impacted district" to determine the number of impacted members. *Id.* ¶ 19 (Dennis Dep. 102:5-7).

Likewise, the League keeps "a roster of all the places where [its over 549] members live." SMF ¶ 23 (Ex. 23, Bolen Decl. ¶¶ 4, 9; Ex. 22, Bolen Dep. 39:3-6). The League used its "membership roster to look at . . . ZIP codes that were part of the three disputed districts." *Id.* (Ex. 22, Bolen Dep. 59:2-4). Where congressional districts split ZIP codes, the League went "further to make sure the member's address was indeed in the district." *Id.* (Ex. 22, Bolen Dep. 59:4-6). Based on its analysis, the League confirmed that it "ha[s] members in every district." *Id.* ¶ 24 (Bolen Dep. 59:9). The League has 23 members in CD 6; 22 members in CD 13; and 56 members in CD 14. *Id.* ¶ (Ex. 23, Bolen Decl. ¶¶ 5-7).[6]

Contrary to Defendant's assertion that the Organizational Plaintiffs have "never identified any individual . . . that might provide the requisite evidence to show" associational standing, the deposition testimony of the Organizational

[6] In arguing that the League "could not state if it was sure if there were any current members in any of the challenged districts," Defendant grossly mischaracterizes the record. The League repeatedly affirmed in its deposition that "[they] have members in every district." SMF ¶ 24 (Ex. 22, Bolen Dep. 59:9-12). Despite Defendant's baseless assertions, see Mot. 9, nowhere did the League testify that it is unsure whether it has members in each Challenged District.

Plaintiffs, combined with declarations in support, demonstrate that both organizations have members in each Challenged District. Because residency is all that is required for an individual to have standing, and associational standing exists when the members "have standing to sue in their own right," the Organizational Plaintiffs have standing here. *See ALBC*, 575 U.S. at 269 (cleaned up).

To avoid this inescapable conclusion, Defendant argues that associational standing requires the identification of particular members' *names* and that Plaintiffs did not provide any specific names in discovery. Organizational Plaintiffs properly objected to Defendants' intrusive and overbroad discovery requests, including on grounds of associational privilege,[7] but following the Organizational Plaintiffs' testimony that each had numerous members in all three Challenged Districts, Defendants never pursued or sought to compel further discovery as to specific identities. Defendant's assertion that specific members must be *named* is contrary to both Supreme Court and Eleventh Circuit precedent. In any event, each Organizational Plaintiff has identified members in the Challenged Districts in their Declarations filed concurrently herewith.[8] SMF ¶¶ 17, 24 (Ex. 23, Bolen Decl. ¶¶

[7] The Organizational Plaintiffs objected to identification of their members based on the associational privilege because disclosure would chill associational rights for fear of retaliation. SMF ¶¶ 20, 25. Defendant did not challenge that objection.

[8] In an abundance of caution and to aid in judicial efficiency, each Organizational Plaintiff has submitted a declaration, which identifies members that continue to suffer harm because of Defendant's unconstitutional racial gerrymandering. Having failed to pursue the identity of individual members of the organizations, Defendant cannot object that a few specific individuals were identified out of the many members who live in the Challenged Districts in response to Defendant's Motion. Given the minimal threshold for associational standing—just one identified member—Defendant certainly is not prejudiced by the identification of specific

21-24; Ex. 20, Dennis Decl. ¶¶ 17, 19).[9]

The Supreme Court has recognized that an organization meets the burden of establishing standing to challenge particular voting districts when it produces evidence that it is "a statewide organization with members in almost every county." *ALBC*, 575 U.S. at 270 (quotations omitted); *see also Ohio A. Philip Randolph Inst. V. Householder*, 367 F. Supp. 3d 697, 731 (S.D. Ohio 2019). Both Organizational Plaintiffs easily clear that hurdle here.

In *ALBC,* a racial gerrymandering challenge, the Court overturned the district court's decision of no standing where it produced evidence much weaker than Plaintiffs here have provided. *ALBC*, 575 U.S. at 271.[10] Like the *ALBC* plaintiff, Organizational Plaintiffs testified about how redistricting and voting are a part of their core purpose. The *ALBC* plaintiff testified it had members in *almost* every Alabama county, but not necessarily every state legislative district because many counties were split into several districts, *id.* at 269-71. Here, by contrast,

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members by each organization six months before trial. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398. 411-12 (2013) (stating that a party invoking federal jurisdiction can, and should, establish standing "by affidavit or other evidence" at the summary judgment stage) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992)).

[9] Common Cause has identified members from CD 13, and is in the process of obtaining consent to provide one of those names and addresses to the Court. Common Cause will supplement the record if needed, once consent is obtained.

[10] Further, the *ALBC* court noted that before trial, defendants are only entitled to the associational standing discovery and evidence they specifically pursue. *ALBC*, 575 U.S. at 270-271 ("*[I]n the absence of a state challenge or a court request for more detailed information, it need not provide additional information such as a specific membership list.*" (emphasis added)). But Defendant here failed to seek the information he now argues he must be provided.

Organizational Plaintiffs provided much more specific testimony—the existence of members in each and every Challenged District, as well as the methodology for identifying those members. The *ALBC* court found the evidence there "support[ed] an inference that the organization has members in all of the State's majority-minority districts" and thus plaintiff had standing to sue. *Id.* at 270. *A fortiori*, Organizational Plaintiffs have associational standing here.

The Eleventh Circuit is in accord. *See Fla. State Conf. of N.A.A.C.P. v. Browning* ("*Browning*"), 522 F.3d 1153, 1161 (11th Cir. 2008) (recognizing that the Circuit does not "require[] that the organizational plaintiffs name names" where the harm is prospective); *see also Doe v. Stincer*, 175 F.3d 879, 882, 884 (11th Cir. 1999) (ruling that the Circuit "h[as] never held that a party suing as a representative must specifically name the individual on whose behalf the suit is brought"). In *Browning*, the NAACP sought a preliminary injunction barring enforcement of a Florida voter registration statute. The defendant argued that the failure to name specific members was fatal to establishing associational standing. *Browning*, 522 F.3d at 1163. The Eleventh Circuit disagreed, holding that "all that plaintiffs need to establish is that at least one member faces a realistic danger" of suffering the injury for which the organization seeks relief. *Id.*

Here, too, because Common Cause and the League "collectively claim around [27,000] members state-wide, it is highly unlikely . . . that not a single member" resides in each challenged district; the injury from which Common Cause and the League seek relief "does not depend on conjecture." *Id.* As a result, the Circuit does

"not require[] that the organizational plaintiffs *name names*" to establish associational standing. *Id.* at 1161 (emphasis added).[11]

Both Common Cause and the League have "put forth specific facts supported by evidence." In fact, both organizations have put forth evidence detailing that "specific member[s] will be injured" because each organization has at least one member that resides in each Challenged District, which is the very standard Defendant concedes satisfies associational standing. Mot. 8; *see also Hays*, 515 U.S. at 744–45 (affirming that an individual has standing to challenge racial gerrymandering when that individual "resides in a racially gerrymandered district"). Nothing more is required.

B. Organizational Plaintiffs Satisfy Direct Organizational Standing

To establish organizational standing, a plaintiff must demonstrate a "concrete and demonstrable injury to the organization's activities," such as a "drain on the organization's resources" or "perceptibl[e] impair[ment]" of the organization's ability to fulfill its mission. *Havens Realty Corp.*, 455 U.S. at 378-79. In the Eleventh Circuit, "an organization has standing to sue [] when a defendant's illegal acts impair the organization's ability to engage in its own projects by forcing the organization to divert resources in response," including personnel and time. *Arcia*, 772 F.3d at

[11] Defendant's sole supporting authority, *Georgia Republican Party v. Sec. & Exch. Comm'n*, which affirms *Browning*, is inapposite. There, the organization challenged a political contribution and solicitation rule, wholly different from the claims here. 888 F.3d 1198, 1200 (11th Cir. 2018). The Eleventh Circuit in that case rejected the organization's standing not because the organization failed to "name names," but because the plaintiff failed to include any evidence that any of its membership was injured by the challenged rule. *Id.* at 1204.

1341; *Common Cause/Georgia v. Billups*, 554 F.3d 1340, 1350 (11th Cir. 2009); *Browning*, 522 F.3d at 1165-66.

As a threshold matter, Defendant appears to argue that organizational standing is simply unavailable in redistricting cases. Defendant does not cite any authority for that sweeping proposition, because there is none.[12] Rather, "[a]n organization may show injury-in-fact in two ways," either through associational or organizational standing. *Petteway*, 2023 WL 2782705, *5. Both the United States Supreme Court and the Eleventh Circuit recognize that an organization may have standing via diversion of resources. *See, e.g., Havens Realty Corp. v. Coleman,* 455 U.S. 363, 379 (11th Cir. 1982); *Arcia*, 772 F.3d at 1341-42.

Despite the absence of any contrary authority, Defendant asks this Court to carve out an exception to the rule, even though no court has rejected the availability of organizational standing based on diversion of resources. *Perez*, 267 F. Supp. 3d at 772. Rather, "courts have consistently found standing under *Havens* for organizations to challenge alleged violations of § 2 of the VRA and the Fourteenth Amendment." *Id.* at 771-772; *see also Crawford v. Marion Cnty. Election Bd.*, 472

[12] The Eleventh Circuit's recent decision in *City of S. Miami v. Gov. of Fl.*, is distinguishable. 2023 WL 2925180 (11th Cir. Apr. 13, 2023). That case dealt with organizational standing in the context of a challenge to a Florida law mandating law enforcement agencies cooperate with federal authorities in the enforcement of immigration laws. The court held that the organizational plaintiffs' injury was no more than "highly speculative fear" and without an injury-in-fact, diversion of resources was insufficient to establish standing. *Id.* at *3. Here, the Organizational Plaintiffs' injuries, and that of their members, are far from speculative—they are certain, current, and ongoing, as the Supreme Court has previously found. *See, e.g., ALBC*, 575 U.S. at 269. Defendant does not contest this.

F.3d 949, 951 (7th Cir. 2007), *aff'd,* 553 U.S. 181 (2008). Accordingly, there is no basis to deny the Organizational Plaintiffs' organizational standing.

Beyond Defendant's unfounded assertion that organizational standing does not exist, he does not appear to dispute that the Organizational Plaintiffs have diverted resources. To be sure, Organizational Plaintiffs had to divert personnel, time, and resources from their usual activities and, as a result, were prevented from engaging in their own projects. SMF ¶¶ 29-39. Common Cause diverted resources to educate its membership and community about the maps both prior to and after enactment, "increas[ing its] efforts to do more direct communications with [its members and community], and . . . creating more channels to be able to build resources for [its] coalition partners." SMF ¶¶ 29-31. (Ex. 19, Dennis Dep. 49:24-50:3). As a result of its need for "more manpower…to do [its] programmatic work," the organization was forced "to hire more staff members" focused on redistricting after map enactment. *Id.* ¶ 31 (Ex. 19, Dennis Dep. 48:7, 9-13, 18-21, 49:1-6). Likewise, the League expended resources to combat Georgia's illegal redistricting. SMF ¶ 32. The League conducted "door knocking . . . talked to people and left information about redistricting." ¶ 33. (Ex. 22, Bolen Dep. 24:22-25:25). Recognizing an unprecedented "gap of knowledge" among its membership, they focused on "engag[ing] the public and work[ing] with partner organizations [to] get information out and encourage people to express their opinions to their legislators and committees," and continued to provide information to the many received "calls about people being confused about what district they were in, where they went to

vote, and [more]." ¶¶ 34-35. (Ex. 22, Bolen Dep. 40:19-41:5). Accordingly, "[t]his redirection of resources to counteract" the legislature's adoption of SB2EX "is a concrete and demonstrable injury." *Arcia*, 772 F.3d at 1342 (citation omitted).

As a result of their diversion, both were also prevented from engaging in their usual "projects" and "regular activities." *Common Cause/Georgia*, 554 F.3d at 1350. Had SB 2EX not forced Common Cause to divert its resources, Common Cause "typically [] would have more conversations with election boards [and] election officers" regarding the municipal election and would have "buil[t] out more resources to educate voters regarding the changes with SB202 . . .," "doing more work with understanding . . . the chain of command with [its] local law enforcement regarding Georgia elections . . . [and] voting security." SMF ¶¶ 36-37 (Ex. 19, Dennis Dep. 52:21-25). Common Cause also "wanted to work with community members . . . to do further education" regarding a broadband accessibility initiative, but "w[as] not able to do so because [it] had to divert attention to redistricting efforts." *Id.* (Ex. 19, Dennis Dep. 54:3-13). It was also unable to conduct "community engagement" regarding eminent domain procedures, and though it does "direct member engagement," including "boot camp[s]", it was only able to complete its legislative preview. *Id.* (Ex. 19, Dennis Dep. 55:24-56:7, 59:11-25). Lastly, Common Cause also needed additional employees, but lacked the time and personnel "to complete interviews." *Id.* (Ex. 19, Dennis Dep. 57:8-17, 58:2-18).

Similarly, the League was prevented from conducting its voting education and registration work—a core function for the League. The League also testified about

its inability to continue its "[n]ormal[]" work, including "trying to . . . register voters and educate them about voting." *Id.* ¶ 38 (Ex. 22, Bolen Dep. 33:10-24). Especially in light of the what the League normally would have done surrounding SB 202, which "dramatically changed Georgia's voting laws," it was unable to complete its education and other initiatives to aid the voting ability of its membership and community because of the redistricting process. *Id.* (Ex. 22, Bolen Dep. 33:6-24). And while the League usually spends time partnering with Georgia high schools and colleges to educate students on the importance of voting, it was unable to because of the new map. Typically, the League ensures that "as people become old enough to vote, th[e League] help[s] them register and[] get comfortable with the voting process." But because of SB 2EX, the League was unable to "push forward with [that initiative]." *Id.* ¶ 39 (Ex. 22, Bolen Dep. 73:8-20).

In sum, "an organization suffers an injury in fact when a statute 'compels' it to divert more resources" away from its goals. Here, Organizational Plaintiffs were unable to conduct the outreach, education, and hiring they had otherwise intended as a result of "divert[ing] resources to counteract" SB2EX. *Browning*, 522 F.3d at 1165. Common Cause and the League, therefore, have organizational standing based on a diversion of resources to assert their claims of racial gerrymandering.

II. MYRIAD MATERIAL FACTUAL DISPUTES PRECLUDE SUMMARY JUDGMENT

A. Defendant Misstates His Burden on Summary Judgment

For summary judgment, Defendant must show that "there is no genuine dispute as to any material fact" and he is "entitled to judgment as a matter of law."

Fed. R. Civ. P. 56(c). In order to "discharge[] its burden," Defendant must show "there is an absence of evidence to support the non-moving party's case." *Jeffery v. Sarasota White Sox, Inc.*, 64 F.3d 590, 593 (11th Cir. 1995) (citation omitted). "The evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Allen v. Tyson Foods, Inc.* 121 F.3d 642, 646 (11th Cir. 1997) (quotation omitted). "At the summary judgment stage, however, the non-moving party is not required to produce 'conclusive' evidence." *Cf. Cloverland-Green Spring Dairies, Inc. v. Penn. Milk Mktg. Bd.*, 298 F.3d 201, 217 (3d Cir. 2002); *see also Est. of Serrano v. New Prime, Inc.*, 2013 WL 2637023, *4 (N.D. Ga. June 12, 2013). Defendant's demand for Plaintiffs to provide evidence that is, in his opinion, "conclusive," flips the summary judgment standard on its head.

To secure summary judgment, it is the *Defendant*—not Plaintiffs—who must bring forth *conclusive* evidence. *See, e.g., Scott Paper Co. v. Adair Truck & Equip. Co.*, 542 F.2d 1257, 1260 (5th Cir. 1976) (denying summary judgment because movant's evidence of intent was not "conclusive"); *In re Fontainebleau Las Vegas Holdings, LLC*, 417 B.R. 651, 659 (S.D. Fla. 2009), *aff'd sub nom. Ave. CLO Fund Ltd. v. Bank of Am., NA*, 709 F.3d 1072 (11th Cir. 2013); *Flowers Bakeries Brands, Inc. v. Interstate Bakeries Corp.*, 2010 WL 2662720, *7 (N.D. Ga. June 30, 2010).

Instead, Defendant sets forth nothing conclusive—he simply asks this Court to weigh conflicting evidence and to make determinations on factual disputes at the summary judgment stage, a wholly inappropriate exercise. *See Wate v. Kubler*, 839 F.3d 1012, 1018 (11th Cir. 2016). But summary judgment is not a trial on the papers.

B. Plaintiffs Have Set Forth Evidence Showing The Challenged Districts Are Racial Gerrymanders

Plaintiffs have provided considerable evidence that the Challenged Districts are racially gerrymandered. Defendant does not really dispute this, instead arguing only that Plaintiffs' evidence is "no[t] conclusive." Mot. 14. But that is not the standard on summary judgment. "Defendants acknowledge that "circumstantial evidence of a district's shape and demographics" can establish that a district was racially gerrymandered." Mot. 10 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). To prove racial gerrymandering, Plaintiffs must show that "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district." *Bethune-Hill v. Va. State Bd. of Elections*, 580 U.S. 178, 187 (2017) (citation omitted). Such predomination is shown when "the legislature subordinate[s] traditional race-neutral districting principles to racial considerations." *Id.* Those principles include: compactness; respect for political boundaries, *e.g.*, not splitting counties; respecting communities of interest defined by shared interests; incumbency; and retaining the cores of the prior districts. SMF ¶ 7. And "race may predominate even when a reapportionment plan respects traditional principles." *Bethune-Hill*, 580 U.S. at 189.

As the Supreme Court has recognized, the assessment of motivation is a credibility determination that is particularly ill-suited for summary judgment. *See Hunt v. Cromartie*, 526 U.S. 541, 552-54 (1999) (reversing district court's grant of summary judgment to plaintiffs on their racial gerrymandering claim); *Harlow v. Fitzgerald*, 457 U.S. 800, 816 ("questions of subjective intent so rarely can be

decided by summary judgment"). That is because "[t]he task of assessing a jurisdiction's motivation . . . is an inherently complex endeavor, one requiring the trial court to perform a sensitive inquiry into such circumstantial and direct evidence of intent as may be available." *Hunt,* 526 U.S. at 546 (quotation omitted).[13]

C. Race Predominated Over Traditional Redistricting Principles in Drawing the Challenged Districts

As a factual matter, the evidence adduced through discovery overwhelmingly shows that race predominated over traditional redistricting principles here. Dr. Duchin analyzed the Challenged Districts' adherence (or lack thereof) to traditional redistricting principles. SMF ¶ 40 (Ex. 24, Duchin Rpt. 67-80). She concluded that these principles were undermined resulting in "packing" and "cracking,"[14] in the Challenged Districts. *Id.* ¶¶ 41-42 (Ex. 24, Duchin Rpt. 4). Dr. Duchin further found that the Challenged Districts' boundaries were infected with "acutely race-conscious moves," *Id.* ¶ 43 (Ex. 24, Duchin Rpt. 4), including:

Concerning CD 6

- This district was "targeted to eliminate electoral opportunity," "specifically by removing Black and Hispanic voters from CD 6 and replacing them with White suburban, exurban, and rural voters in Forsyth and Dawson counties." "This [targeting] is corroborated by the core retention numbers that show that CD 6 was singled out for major reconfiguration." *Id.* ¶¶ 44-45 (Ex. 24, Duchin Rpt. 4, 10).

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[13] In *Hunt,* a single expert affidavit, containing only circumstantial evidence of legislative motive was sufficient to create a factual dispute to overcome a summary judgment motion. *Id.*

[14] "Packing" and "cracking" are "the related practices of overconcentrating Black and Latino voters on one hand, or splitting communities and dispersing their voters over multiple districts on the other." SMF ¶ 42 (Ex. 24, Duchin Rpt. 4).

- All of the CD 6 county splits are "consistent with an overall pattern of cracking in . . . CD 6." *Id.* ¶ 46 (Ex. 24, Duchin Rpt. 73). These include: a lower BVAP and BHVAP[15] in the portions of Cherokee, Cobb, Fulton, and Gwinnett Counties assigned to CD 6 than to CD 5, CD 9, CD 11, CD 13, or CD 14. *Id.* ¶ 47.

Concerning CD 13

- "[R]ace-conscious county splitting" caused CD 13 to remain "highly packed." *Id.* ¶¶ 48-49 (Ex. 24, Duchin Rpt. 5). The county splits are "consistent with an overall pattern of . . . packing in CD 13." *Id.* (Ex. 24, Duchin Rpt. 73). These include: a higher BVAP and BHVAP in the portion of Cobb, Douglas, Fayette, Fulton, and Henry Counties assigned to CD 13 than to CD 3, CD 6, CD 7, CD 10, or CD 11. *Id.* ¶ 50.

- Cobb County's population is within 0.1% of the ideal district size of 765,136 people, but the county is split into four congressional districts. *Id.* ¶ 51 (Ex. 24, Duchin Rpt. 22). Director Wright testified splitting counties "poses problems with elections." *Id.* ¶ 52 (Ex. 15, Wright Dep. 119:6-9).

Concerning CD 14

- The changes to the district are "distinctive in terms of density and racial composition." *Id.* ¶ 53 (Ex. 24, Duchin Rpt. 68). The district's incursion into Cobb "can't be justified in terms of compactness or respect for urban/rural communities of interest." *Id.* ¶ 54.

- Community of interest narratives provided to the Redistricting Committees "make it clear that the changes to . . . CD 14 lack justification by community-of-interest reasoning." *Id.* ¶ 55 (Ex. 24, Duchin Rpt. 80). Whereas residents of the core CD 14 in Northwest Georgia counties frequently used words identifying rural interests, residents of the newly-added Western Cobb County area frequently used words identifying urban ones. *Id.* (Ex. 24, Duchin Rpt. 79-80). The "record of strong pushback" demonstrates CD 14's boundaries are dissonant in terms of shared community interests. *Id.* ¶ 56 (Ex. 24, Duchin Rpt. 5).

- The splitting of Cobb County is "consistent with . . . submerging a small

[15] Dr. Duchin uses the abbreviation "BVAP" "to denote the share of voting age population that is Black alone or in combination"; and uses "BHVAP" "for the share…that is Black and/or Latino." *Id.* (Ex. 24, Duchin Rpt. 81).

> and diverse urban community in CD 14," including a higher BVAP and BHVAP in the portion of Cobb County assigned to CD 14 than to CD 6 or CD 11. *Id.* ¶ 57 (Ex. 24, Duchin Rpt. 73).

Dr. Duchin also drew an alternative congressional plan that outperformed the adopted map on the traditional redistricting principles that the legislature claimed to follow, while not packing or cracking the Challenged Districts as the enacted plan does. Dr. Duchin's alternative plan is more compact than the enacted plan, splits fewer counties, municipalities, and state precincts—and where there are splits, into fewer pieces. *Id.* ¶¶ 58-62 (Ex. 24, Duchin Rpt. 21-22). While more closely adhering to these traditional redistricting principles, Dr. Duchin's alternative plan unpacks CD 13 (from 66.7% to 52.0% BVAP, 77.2% to 58.8% BHVAP); removes the cracked Black communities from CD 14 (reducing BVAP from 14.3% to 7.6%); raises the District 6 BVAP and BHVAP; and creates another minority opportunity district to replace the prior CD 6—which was the minority opportunity district that the State dismantled in the enacted plan. *Id.* (Ex. 24, Duchin Rpt. 25). Dr. Duchin's illustration that it was possible to avoid packing and cracking Black and Latino voters while adhering better to traditional redistricting principles constitutes strong evidence that the legislature *chose* to pack and crack minority voters.

The Kennedy-Duncan Plan, introduced by Senate Redistricting Committee Chair John Kennedy prior to SB 2EX is also more compact than the enacted plan, splits fewer counties, municipalities, and state precincts, and splits those that are into fewer pieces. *Id.* ¶ 63 (Ex. 24, Duchin Rpt. 21-22). Senator Kennedy's plan does not feature all of the "acutely race-conscious moves" present in the enacted SB 2EX,

including moving CD 6 up into Dawson County and submerging a heavily Black portion of Cobb County into CD 14. *Id.* ¶ 64. Senator Kennedy's proposed plan—which was rejected by the legislature—proves the legislature had knowledge of a plan with less packing and cracking and better fulfillment of the legislature's purported goals when they *chose* to enact the current one. This is further strong evidence of racial gerrymandering in the enacted plan.

Defendant criticizes Dr. Duchin's core retention analysis for allegedly "not demonstrat[ing]" that certain redistricting principles were subjected to racial considerations, alleging she "did not analyze those traditional principles." Mot., 15. Defendant simply misunderstands Dr. Duchin's analysis. She did analyze each of these traditional redistricting principles in her report, SMF ¶¶ 40-41, 58 (Ex. 24, Duchin Rpt. 4, 5, 25, 67-80),[16] and found evidence of "racially imbalanced transfers of population" that were "emphatically not required by adherence to traditional districting principles." *Id.* ¶ 65 (Ex. 24, Duchin Rpt. 67-69). These facts alone are more than sufficient to create a "genuine issue of material fact."[17]

Regardless, Plaintiffs are not required to contest the application of every single traditional redistricting principle to survive summary judgment. Defendant's criticisms are nothing more than an attempt to minimize the weight and credibility of Plaintiffs' evidence, which is impermissible at the summary judgment stage. *See*

[16] Dr. Duchin notes that all of the plans under consideration are contiguous.

[17] Defendant also incorrectly argues that summary judgment is appropriate because Dr. Duchin did not say "that the various metrics she reviewed showed racial predominance." *See* Mot., 14; Def.'s SMF, ¶ 47. But the ultimate question of legislative motivation is for the factfinder to determine. Dr. Duchin provides ample evidentiary support for the conclusion that the legislature was racially motivated.

Miller, 515 U.S. at 916 (race-neutral redistricting principles "inform the plaintiff's burden of proof *at trial*" (emphasis added)).

D. A Race-Neutral, Partisan Motivation Does Not Explain the Challenged Districts' Boundaries

Faced with extensive evidence that racial considerations predominated over the legislature's adherence to traditional redistricting principles, Defendant offers a competing explanation for the patent gerrymandering of the Challenged Districts: they are partisan gerrymanders, not racial gerrymanders. Mot. 11. This justification—which only highlights the parties' factual disputes—is too little too late. At best, it highlights a factual dispute to be determined at trial. *See Williams v. Obstfeld*, 314 F.3d 1270, 1277 (11th Cir. 2002) ("[T]he existence of knowledge or intent is a question of fact for the factfinder, to be determined after trial."); *Aronowitz v. Health-Chem Corp.*, 513 F.3d 1229, 1237 (11th Cir. 2008); *Rutherford v. Crosby*, 385 F.3d 1300, 1307 (11th Cir. 2004). Beyond that, the pursuit of partisan advantage is not one of the criteria the Redistricting Committees adopted to guide its work, and members of the majority party repeatedly insisted that they were motivated by adherence to traditional redistricting principles when drawing new maps. SMF ¶ 8.

Moreover, a race-neutral partisan explanation is belied by the boundaries of the Challenged Districts. Race predominated over partisanship, and partisan goals were achieved through the use of race. Such a use of racial data triggers strict scrutiny. *See Bush v. Vera*, 517 U.S. 952, 968 (1996) (affirming that where race is used as a proxy for politics, strict scrutiny applies). And once strict scrutiny is triggered, the burden lies with Defendant "to prove that its race-based sorting of

voters" satisfies that standard, serving a "compelling interest" that is "narrowly tailored." *Cooper v. Harris*, 581 U.S. 285, 292 (2017) (quoting *Bethune-Hill*, 137 S. Ct. at 800-01). Defendant has not offered any evidence that their use of race was narrowly tailored, let alone proven so, to the exclusion of any material factual dispute.[18] Summary judgment based on Defendant's alternative after-the-fact explanation of the gerrymander is wholly improper.

Indeed, Dr. Duchin found that the districts themselves do not support Defendant's story that the legislature pursued solely partisan advantage. To test Defendant's purported partisanship justification, Dr. Duchin generated 100,000 redistricting plans with an algorithm seeking electoral success for the Republican Party. *Id.* ¶ 66 (Ex. 27, Duchin Supp. Rpt. 7-8). The algorithm was designed to meet or exceed the partisan performance of the enacted congressional plan while respecting traditional redistricting principles. The resulting simulated plans showed that the districts enacted by the legislature are outliers in their racial composition.

Specifically, the middle range of districts in BVAP percentage—those most likely to be contested for political party control in an evenly split state—"show clear signs of 'cracking'" in the enacted plan, relative to the comparison plans." *Id.* ¶ 67 (Ex. 24, Duchin Rpt. 8). This is consistent with "a plan [] drawn by using minority racial population to secure partisan advantage in a state with roughly 50-50 partisan support." *Id.* ¶ 68 (Ex. 24, Duchin Rpt. 8). Thus, as Dr. Duchin concludes, "This

[18] *See* Mot., 11 ("…this Court need not reach the second question of whether the State had a compelling interest, such as compliance with the Voting Rights Act.") (cleaned up). Because Defendant does not so assert, he cannot then properly claim that VRA compliance affords the State any "leeway." *See* Mot., 14-15.

does not suggest a race-neutral pursuit of partisan advantage, but rather a highly race-conscious pursuit of partisan advantage." *Id.* ¶ 69 (Ex. 24, Duchin Rpt. 8).

Precinct splits further belie the Defendant's partisanship defense. Election results data is only available at the precinct level, not at smaller geographical units, such as census blocks. However, racial demographic data *is* available at the census-block level.[19] *See, e.g.,* SMF ¶ 70 (Ex. 28, Strangia Dep. 103:17-23). Race is highly correlated with political affiliation in Georgia. *See* SMF ¶ 71. Thus, mapmakers seeking partisan advantage may be tempted to use racial data as a proxy for partisanship, particularly where partisan data is unavailable.

For this reason, district boundaries that split state precincts and sort voters at the census-block level can be "especially revealing." *Id.* ¶ 72 (Ex. 24, Duchin Rpt. 75). Because precincts are the units at which votes are cast and finer divisions are usually made by using demographics, splits to state precincts "highlight the predominance of race over even partisan concerns." *Id.*[20] Dr. Duchin found that split precincts at the border of CD 6 "show significant racial disparity, consistent with an effort to diminish the electoral effectiveness of CD 6 for Black voters." *Id.*

The dispute over the legislature's intent in drawing the Challenged Districts is a factual one. Plaintiffs' considerable evidence that race predominated over traditional redistricting principles creates a triable issue of material fact. Defendant's

[19] Census blocks are the smallest geographic units. Generally, precincts are comprised of multiple census blocks.

[20] Defendant's contention that Dr. Duchin did not look at the political data behind precinct splits, Mot. 14, suggests that such data is available, when Defendant knows that it is not. SMF ¶ (Ex. 28, Strangia Dep. 95:8-22).

attempt to explain this evidence away in hindsight as partisan gerrymandering does nothing to negate that. In light of the complexity of the material factual and credibility determinations that must be made, summary judgment is inappropriate.

CONCLUSION

For the reasons stated above, Plaintiffs respectfully request that this Court deny Defendant's Motion for Summary Judgment.

Dated this 26th day of April 2023.

Respectfully submitted,

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NORTHERN DISTRICT OF GEORGIA LOCAL RULE 7.1 CERTIFICATION

Pursuant to N.D. Ga. L.R. 7.1(D), I, Jack Genberg, certify that this brief was prepared using Times New Roman 14 pt. font, which is one of the font and point selections approved by the Court in L.R. 5.1(B).

Dated this 26th day of April, 2023

Respectfully submitted,

/s/ Jack Genberg
Jack Genberg (Ga. Bar 144076)

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

COMMON CAUSE, et al.,	)	
	)	
Plaintiffs,	)	
v.	)	Case No. 1:22-CV-00090-ELB-SCJ-SDG
	)	
BRAD RAFFENSPERGER	)	
	)	
Defendant.	)	

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

Pursuant to L.R. 56.1(B)(2)(a)(2), Plaintiffs respond to Defendant Brad Raffensperger's Statement of Undisputed Material Facts in Support of Their Motion for Summary Judgment ("SMF") as follows:

1. The Georgia General Assembly held town hall meetings before redistricting maps were published in 2001, 2011, and 2021. Deposition of Joseph Bagley, Ph.D. [Doc. 82] (Bagley Dep.) 68:15-23, 73:25-74:9.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 1 on the basis that the 2001 and 2011 redistricting cycles are not relevant.

Undisputed that there were meetings held. Disputed to the extent the town halls held in 2001 and 2011 are irrelevant and thus not material to this Action. Disputed to the extent Defendant implies that any similarity between redistricting

town halls across cycles suggests that the town halls conducted in 2021 were reasonable or proper.

2. The town hall meetings in 2001, 2011, and 2021 were all "listening sessions" that took community comment without legislators responding to questions. Bagley Dep. 69:25-70:8, 73:25-74:9.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 2 on the basis that the 2001 and 2011 redistricting cycles are not relevant.

Undisputed that the "town hall meetings" took certain comments from the community, "without legislators responding to questions." Undisputed that the Georgia General Assembly held meetings in the months before the 2021 redistricting maps were published.

Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent that town halls held in 2001 and 2011 are irrelevant and thus not material to this Action. Disputed to the extent that Defendant implies that the public had an opportunity to provide meaningful comment. *See e.g.*, Ex.11,[1] Rich Dep. 183:16-185:12 (testifying that the Census data was released on September 16—over a month after the last town hall); Ex. 12, Bagley Dep.[2] 73:16-75:14 (the redistricting committee ignored public

[1] Unless otherwise stated herein, all references to "Ex.," refer to the Exhibits attached to the Declaration of Cassandra N. Love-Olivo ("Love Decl."), filed concurrently herewith. All terms not herein defined have the meanings ascribed to them in the Love Decl.

[2] Joseph Bagley, Ph.D. was retained by Plaintiffs Georgia State Conference of the NAACP, et al. in their case against the State of Georgia, et al., Case No. 1:21-cv-

concerns about the manner in which it conducted town halls, including the timing in relation to the availability of census data and draft maps); Ex. 32, Dugan Dep. 64:1-3 ("The chairs of both chambers both said we would much prefer to have all the data in everybody's hands before we have the town halls. . . .").

3. Redistricting has historically been conducted in special legislative sessions. Bagley Dep. Exs. 8-10.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 3 on the basis that former redistricting cycles are not relevant.

Undisputed that there were special sessions during the 2001 and 2011 election cycles related to redistricting. Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent Defendant implies that any similarity in timelines across multiple redistricting cycles suggests the timeline is reasonable or fair.

4. The timeline for consideration of redistricting plans in 2001, 2011, and 2021 was similar. Bagley Dep. 101:7-101:12, 105:11-15, 138:18-24.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the 2001 and 2011 redistricting cycles are not relevant. Plaintiffs further object to the terms "redistricting plans" and "similar" as vague and ambiguous.

Disputed. The Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent Defendant implies that any similarity in timelines across multiple redistricting cycles suggests the timeline

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5338-ELB-SCJ-SDG, pending in the United States District Court for the Northern District of Georgia.

is reasonable or fair. *See e.g.,* Ex. 12, Bagley Dep. 138:22-24 (testifying that the 2001 and 2011 cycles were also rushed insofar as "voters want more time with the publication of maps"). Disputed to the extent that 2001 and 2011 redistricting is irrelevant and thus not material to this action.

5. The 2021 Redistricting Process was "generally analogous" to the 2001 and 2011 cycle. Bagley Dep. 140:13-140:17.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 5 on the basis that the 2001 and 2011 redistricting cycles are not relevant. Plaintiff further objects to the term "generally analogous" as vague and ambiguous. Plaintiffs further object on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Among other changes, the 2021 Redistricting Process was the first post-Census redistricting to occur in Georgia following the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 59 (2013), and therefore differed in that Georgia was no longer subject to preclearance requirements. Disputed to the extent that Defendant implies that any similarity between the 2001, 2011, and/or 2021 Redistricting Processes indicate that the process or outcome of the 2021 Redistricting Process was reasonable, fair, or just. Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent that 2001 and 2011 redistricting is irrelevant and thus not material to this action.

6. The 2001, 2011, and 2021 Redistricting Processes were procedurally and substantively similar to each other. Bagley Dep. 86:25-87:19.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 6 on the basis that the 2001 and 2011 redistricting cycles are not relevant. Plaintiff further objects to the term "procedurally and substantively similar" as vague and ambiguous because Defendant does not explain these alleged "similarities". Plaintiffs further object on the basis that this Paragraph is misleading because it mischaracterizes the cited evidence.

Disputed. Among other changes, the 2021 Redistricting Process was the first post-Census redistricting to occur in Georgia following the Supreme Court's decision in *Shelby County v. Holder*, 570 U.S. 59 (2013), and therefore differed in that Georgia was no longer subject to preclearance requirements. Disputed to the extent that Defendant implies that any similarity between the 2001, 2011, and 2021 Redistricting Processes indicate that the process or outcome of the 2021 Redistricting Process was reasonable, fair, or just. Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent that 2001 and 2011 redistricting is irrelevant and thus not material to this action.

7. The 2020 Census data showed that the increase in the percentage of Black voters in Georgia from 2010 to 2020 was slightly more than two percentage points statewide. Deposition of Moon Duchin, Ph.D. [Doc. 88] (Duchin Dep.) 48:5-12.

PLAINTIFFS' RESPONSE: Plaintiffs object to the phrase "slightly more" as vague and ambiguous.

Disputed to the extent that Dr. Duchin testified as to Black Voting Age Population changes according to the American Community Survey (not the Census) between 2010 and 2019—not 2020. Ex. 38, Duchin Dep. 46:22-48:12. Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Disputed to the extent Defendant implies that there was only a slight demographic shift in Georgia's electorate. As Dr. Duchin identified in her expert report, while Black and Latino residents saw their populations grow in the time between the 2010 and 2020 Census, the non-Hispanic White population of Georgia decreased in the same time frame, meaning there was a larger increase of minority voters as a percent of all Georgia voters, such that the state was split within a tenth of a percent between white and nonwhite residents. Ex. 24, Duchin Rpt. ¶ 3.3.[3]

8. Following the delayed release of Census data in 2021, the Georgia General Assembly began working on redistricting maps ahead of the November 2021 special session. Bagley Dep. Ex. 5.

PLAINTIFFS' RESPONSE: Undisputed that certain members of the General Assembly began drafting maps in September 2021. Ex. 13, Wright Dep. 20:15-19. Disputed to the extent Defendant's characterization or contextualization

[3] Since filing her Rebuttal Report, Dr. Duchin has identified errata in her initial report—none of which changes any of her analysis, opinions, "ultimate findings [or] conclusions." She has since served a notice of errata, attached to the Love Decl. for full completeness. None of the changes described in the errata alter Plaintiffs' positions or claims herein. Ex. 37, Notice of Errata to Dr. Moon Duchin January 13, 2023 Expert Report, at 2.

differs from the exhibit cited, which speaks for itself. Disputed to the extent that Defendant implies that all members of the General Assembly began working on redistricting maps ahead of the November 2021 special session, that any of those draft maps became public, that any of those maps were the final enacted SB 2EX, or that the public had a meaningful opportunity to provide input or participate in the Redistricting Process.

9. Both chairs of the House and Senate committees with jurisdiction over redistricting sought to meet with all of their colleagues, both Republican and Democratic, to gain input on their areas of the state. Deposition of Gina Wright [Doc. 86] (Wright Dep.) 68:17-69:7.

PLAINTIFFS' RESPONSE: Plaintiffs object to the term "sought to" as vague and ambiguous. Plaintiffs further object Dir. Wright's testimony as it is inadmissible under FRE 602 and FRE 801, as the testimony is about conversations of which Dir. Wright lacks personal knowledge and is references multiple layers of hearsay.

Disputed. The record in this action is devoid of evidence that the chairs of the House and Senate committees with jurisdiction over redistricting sought to meet with *all* of their colleagues—either Republican and Democrat—and with respect to the minority party, the record supports that the Redistricting Process had a bias against them. Ex. 13, Wright Dep. 111:16-112:10, 115:8-11, 115:17-24, 158:4-21. Further disputed to the extent Defendant's characterization or contextualization differs from the exhibit cited, which speaks for itself. Defendant's citation states only that "both chairmen were meeting with members," Ex. 13, Wright Dep. 68:21-

24, but does not support the contention that both chairs sought to meet with "all of their colleagues, both Republican and Democratic, to gain input on their areas of the state," in addition to the testimony being inadmissible pursuant to the FRE.

10. For the first time in 2021, the General Assembly created a public comment portal to gather comments. Wright Dep. 252:20-253:4.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 10 on the basis that the term "public comment portal" as vague and ambiguous because it fails to clarify the parameters surrounding such a platform including when and where it was available, and what type of comments could be made.

Disputed to the extent Defendant's characterization or contextualization differs from the testimony cited, which speaks for itself. Disputed further to the extent that Defendant implies that this "public comment portal" allowed the public an opportunity to meaningfully provide input and/or engage in the Redistricting Process, as the online platform that the General Assembly made available at certain points during the 2021 Redistricting Process, included significant limitations, including the inability of the public to upload their own suggested maps and/or map boundaries. Ex. 8, Bagley Rpt. 78-79. Further disputed to the extent that Defendant implies that the comments made in this online platform were taken into account during the Redistricting Process, as the Redistricting Committees of the General Assembly ignored the vast majority of input from the public. Ex. 13, Wright Dep. 61:9-23 (stating that she did not "have time to spend a lot of time reading" the public portal comments; *see also* Ex. 24, Duchin Rpt., § 10.3 at 79-80 (describing community input).

11. After holding a committee education day with stakeholder presentations, the committees adopted guidelines to govern the map-drawing process. Deposition of John F. Kennedy [Doc. 83] (Kennedy Dep.) 161:1-4; Deposition of Bonnie Rich [Doc. 85] (Rich Dep.) 214:19-215:7; Bagley Dep. 89:9-18.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 11 on the basis that the terms "stakeholder" and "committee education day" are vague and ambiguous.

Undisputed that there was a meeting with presentations and that the Redistricting Committees adopted guidelines. Disputed to the extent Defendant implies that the committee integrated the information delivered by voting rights organizations into its redistricting guidelines. The committee testimony belies such an assertion. For example, then-speaker pro tempore Jan Jones testified that she did not remember receiving *any* training on redistricting and did not even attend the presentation held by the voting rights organizations. Ex. 33, Jones Dep. 29:3-10, 30:22-23, 31:1-3. Rep. Bonnie Rich also testified that she did not know if any of the recommendations made by the NAACP were incorporated and could not produce a single example of a suggestion that was enacted by the committee. Ex. 11, Rich Dep. 191:17-23.

12. To draw the congressional map, Ms. Wright worked with a group to finalize a plan based on an earlier draft plan from Sen. Kennedy. Wright Dep. 28:19-30:23.

PLAINTIFFS' RESPONSE: The Plaintiffs object to Paragraph 12 on the basis that the terms "worked with" and "group" as used by Defendant are vague and ambiguous.

Disputed. Defendant provides no evidence that the Kennedy map was the template for the final map, and the quote that cited does not say anything about the starting point for the enacted map. *See* Ex. 13, Wright Dep. 28:19-30:23. To the contrary, Dr. Duchin's report, for example, shows that there are significant changes between the Kennedy map and the enacted map. Ex. 24, Duchin Rpt. 10-12, 20, 21-24, 46, 69. Rep. Fleming could not recall anything about the Kennedy map, Rep. Rich stated that merely looking at the map was "the sum total" of her analysis, Sen. Dugan stated that he looked at the map and knew that "whatever product is going to look like at the end is not this one," *see e.g.,* Ex. 34, Fleming Dep. 81:9-15; Ex. 11, Rich Dep. 77:3-79:23; Ex. 32, Dugan Dep. 108:20-110:21. Because counsel for Dir. Wright and the legislators has represented in this action that no draft congressional maps or progress on the same were saved or preserved, and the bases for and evolution of the final congressional map remains an open issue of material fact. Further disputed to the extent Defendant's characterization or contextualization differs from the testimony cited, which speaks for itself.

13. Political considerations were key to drawing the congressional map, including placing portions of Cobb County into District 14 to increase political performance. Wright Dep. 111:16-112:10, 115:8-11, 115:17-24, 158:4-21.

PLAINTIFFS' RESPONSE: Disputed. The record supports that political considerations were not the basis for the map boundaries. *See e.g.*, Ex. 32, Dugan Dep. 29:20-22 ("We . . . interacted in a bipartisan manner as much as we possibly could."), 46:11-15 ("The senate committee was responsible for working together in a bipartisan manner to create and draft . . . and vote on and approve the congressional districts."), 101:15-17 (affirming that, to Sen. Dugan's knowledge, "partisan data" was not "relied on during the Redistricting Process."). The Senate Committee released a video on Nov. 4, 2021, in which the narrator refuted the idea that redistricting is "all political driven," suggesting instead that the Redistricting Process was designed to merely address population shifts. Ex. 35, Kennedy Dep. 199:13-17, 200:20-201:3.

It is disputed that such considerations were "key" for the map drawing process. Ex. 35, Kennedy Dep. 105:12-16 (affirming that, at best, "partisan consideration was *at times* a part of the process" (emphasis added)). Rather, the record supports that racial considerations were key to drawing the congressional map, including placing portions of Cobb County in CD 14. *See e.g.,* Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations were significant in the Redistricting Process); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence of intent to draw lines in a racially motivated way); Ex. 27, Duchin Supp. Rpt. ¶ 2.1 (finding that racial sorting was likely prioritized at the expense of political considerations). Further disputed to the extent Defendant's characterization or contextualization differs from the testimony cited, which speaks for itself.

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

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 14 on the basis that the term "past election data" as used by Defendant is vague and ambiguous. There are thousands of election outcomes that Defendant could be referencing, and Defendant does not clarify at what level (*i.e.*, congressional district, precinct, etc.) data was utilized.

Disputed. The chairs of each committee considered racial data when drafting the congressional map, and further used race as a proxy for partisanship where the legislature lacked partisan or past election result data (*i.e.,* at the block level). Ex. 13, Wright Dep. 140:5-11 ("when we build our precinct layer, we do allocate the election data to the block level, so we have that political data at that level. It's estimating, *based on the demographics in there*. . . ")(emphasis added); Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process; also explaining that block-level partisan data is unavailable to legislators while block-level racial data is available, heightening the likelihood that racial data is used to approximate partisanship); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion).

Further disputed to the extent Defendant's characterization or contextualization differs from the testimony cited, which speaks for itself. *See e.g.,* Ex. 13, Wright Dep. 55:25-56:13 ("Chairman Kennedy consider[ed]" race data "when making instructions about how to draw the lines…"). Nowhere in the evidence to which Defendant cites does Wright postulate that either committee chair "focused" on past election data nor that they were drawing with awareness of republican political performance.

15. When drawing redistricting plans, Ms. Wright never used tools that would color the draft maps by racial themes. Wright Dep. 259:24-260:8.

PLAINTIFFS' RESPONSE: Plaintiffs object to the terms "tools" and "color" in Paragraph 15 as vague and ambiguous. For purposes of Plaintiffs' response to this statement, Plaintiffs will construe "tools" to mean features of the Maptitude software program and "color" to mean using an algorithm to overlay certain colors related to certain racial ratios on a draft map.

Undisputed that Dir. Wright stated she did not use tools that would *color the draft maps* by racial themes. Disputed to the extent Defendant's characterization or contextualization differs from the testimony cited, which speaks for itself. Disputed to the extent Defendant implies that Dir. Wright did not use racial data tools. For example, Dir. Wright testified not only that "data related to the race of the populations" could be "projected onto the screen," but that such data was in fact projected "[m]ost of the time," allowing legislators to view in real time how boundary shifts affected the racial composition of congressional districts. Ex. 13,

Wright Dep. 55:25-56:7 ("We usually projected all the race data that we would use on the reports . . ."); *see also* Ex. 36, O'Connor Dep. 74:11-17 (stating that population, voting age, and racial demographic data is displayed on the screen).

16. The office included estimated election returns at the Census block level, so political data was available across all layers of geography. Wright Dep. 140:3-11.

PLAINTIFFS' RESPONSE: Disputed. Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Dir. Wright stated that, "*based on registered voter demographics*," data can be *estimated* at the block level, Ex. 13, Wright Dep. 140:3-11 (emphasis added), thus political data was *not* available across all layers of geography. Rather, estimates predicated on voter demographics were available at certain levels, suggesting racial data was used as a proxy to estimate partisanship at the block level. *See e.g.,* Ex. 13, Wright Dep. 140:5-11; Ex. 28, Strangia Dep. 94:23-95:5 103:3-23, 117:13-119:25 (testifying that racial data exists at the block level whereas the political makeup of a block is "not accurate").

17. The past election data was displayed on the screen with other data. Wright Dep. 140:17-19.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the phrases "past election data" and "other data" are vague and ambiguous.

Undisputed that certain past election data, where available, may have been displayed on the screen at certain times while maps were being drafted. Disputed to the extent Defendant's characterization and contextualization differs from the

testimony cited, which speaks for itself. Further disputed to the extent Defendant implies past election data was the only relevant data shown on the screen. To the contrary, Dir. Wright affirmatively stated that racial data was also available and displayed on the screen during the map drawing process. Ex. 13, Wright Dep. 116:10-21. She further testified that as congressional district boundary lines were changes, the racial data would update in real time for members to consider. Ex. 13, Wright Dep. 116:23-118:25.

18. The chairs evaluated the political performance of draft districts with political goals. Wright Dep. 178:5-22, 191:25-193:3, 206:13-207:16.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the phrase "political goals" is vague and ambiguous. For purposes of responding, Plaintiffs will construe "political goals" to mean objectives that favor partisan advantage with respect to the majority party.

Disputed. The chairs of each committee considered racial data when drafting the congressional map, and further used race as a proxy for partisanship where the legislature lacked partisan or past election result data (*i.e.*, at the block level). Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion); Ex. 24, Duchin Rpt. 75 (finding split precincts at the border of CD 6 "show significant racial disparity, consistent with an effort to diminish the electoral effectiveness of CD 6 for Black voters."). Further disputed to the extent Defendant's characterization or

contextualization differs from the testimony cited, which speaks for itself. *See e.g.*, Ex. 13, Wright Dep. 55:25-56:13 ("Chairman Kennedy consider[ed]" race data "when making instructions about how to draw the lines…"). Further disputed because the evidence to which Defendant cites does not demonstrate that the chairs of the committees focused on past election data to evaluate the partisan impact of the new plans while drawing with awareness of republican political performance.

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

PLAINTIFFS' RESPONSE: Undisputed that Dir. Wright testified that she consulted with counsel about compliance with the Voting Rights Act ("VRA"). Disputed to the extent Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Disputed to the extent that, Defendant's counsel in this action is the same counsel that allegedly advised Defendant and the Redistricting Committees on SB 2EX. *See e.g.,* Ex. 34, Fleming Dep. 15:18-16:2. Due to Defendant's assertion of attorney-client privilege over conversations during the Redistricting Process, including any advisement on the Congressional maps or the VRA, Plaintiffs are unable to meaningfully assess the validity or extent of any alleged consultation with counsel with respect to SB 2EX's adherence, or lack thereof, to the VRA.

20. After releasing draft maps, legislators received public comment at multiple committee meetings. Bagley Dep. 91:8-15, 93:8-10, 94:21-23, 95:14-96:6, 100:8-11, 111:24-112:1, 113:6-10, 115:4-11.

PLAINTIFFS' RESPONSE: Undisputed that legislators held public hearings.

Disputed to the extent Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Further disputed to the extent that Defendant uses these allegations as a basis to claim that the Redistricting Process was interactive and informed by public comment. *See e.g.,* Ex. 12, Bagley Dep. 96:1-6 (Noting that the timeline was far too rushed according to a great number of people."). SB 2EX was introduced on November 17, 2021, and passed through both the Senate and House within 5 days. Rep. Jones herself admitted "[w]e probably didn't have too many hearings." Ex. 33, Jones Dep. 94:3-95:19.

21. Democratic leadership presented alternative plans for Congress, state Senate, and state House that were considered in committee meetings. Bagley Dep. 109:15-110:1 (Congress), 112:18-22 (Congress), 93:2-13 (Senate), 93:21-94:5 (House).

PLAINTIFFS' RESPONSE: Plaintiffs object to the term "considered" as vague and ambiguous.

Disputed. Defendant wrongfully suggests that the Georgia Democratic Caucus map was meaningfully considered—it was not. Rep. Jones testified: (i) she could not recall a single conversation with *any* legislators about the draft map, "including the Democrat Caucus that released it"; (ii) she did not evaluate the maps designed by Democrats enough to "come to any conclusions" about their compliance with redistricting criteria; and (iii) she could not recall any communications from her constituents regarding the maps released by the Democratic Caucus. Ex. 33,

Jones Dep. 91:21-92:14. Though Rep. Fleming asserted for litigation purposes that the House Committee "considered" the Democratic Caucus congressional map proposal, the record is devoid of any contemporaneous evidence the committee actually did so, and Rep. Fleming himself could not recall its most basic features such as whether it contained more Black-majority districts, a key VRA consideration. Ex. 34, Fleming Dep. 90:23-91:10.

22. After the plans were considered, they were passed by party-line votes in each committee before passing almost completely along party lines on the floor of the Senate and House. Bagley Dep. 93:14-20, 105:16-106:1, 113:22-114:4, 115:12-17, 117:2-4.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the phrase "plans" is vague and ambiguous. For purposes of responding, Plaintiffs will construe "plans" to mean SB 2EX.

Undisputed that the SB 2EX passed out of committee and that all Republican committee members voted in favor of, and all Democrat committee members voted against the bill in committee. Disputed to the extent that Defendant implies the partisan split suggests that the alleged partisan motivations underlying the map caused the split. Because not one Black representative or senator voted in favor of the SB 2EX, the vote count at least equally implicates that racially discriminatory content in the bill was the basis for the members' votes. *See* Ex. 5, Georgia General

Assembly, SB 2EX Status History & Votes;[4] Ex. 6, Georgia General Assembly, Passage, SB 2EX;[5] Ex. 8, Bagley Rpt., at 76-78, 81-82.

23. Dr. Bagley agreed that he couldn't say the 2021 redistricting maps were an abuse of power by Republicans. Bagley Dep. 63:25-64:3.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 23 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Dr. Bagley testified that he found evidence supporting a finding of Republicans' abuse of power. Ex. 12, Bagley Dep. 63:18-24, 64:19-20.

24. Dr. Duchin said that she was not "criticizing Georgia for not doing enough" in her report. Duchin Dep. 81:25-82:16.

PLAINTIFFS' RESPONSE: Disputed. Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Dr. Duchin does not state whether she is criticizing Georgia for "not doing enough." Ex. 38, Duchin Dep. 82:12-24. The questioner asked Dr. Duchin whether a methodological section of her report criticizes "Georgia for not drawing enough majority minority districts," to which she replies, "I wouldn't say so…what I'm trying to do here is create a framework for measurement. And then, as I say, in the section we've already reviewed, providing maps that demonstrate that it's possible to get more opportunity while being very respectful to [redistricting principles]. But

[4] Available at https://www.legis.ga.gov/legislation/60895.
[5] Available at https://www.legis.ga.gov/legislation/60895.

I don't think it amounts to criticism per se…my goal is to…give a framework and offer alternatives not to criticize per se." Ex. 38, Duchin Dep. 82:12-83:3. Her answer is therefore a nuanced commentary on how she sees her role: evaluate ways in which the enacted map needlessly restricted minority opportunity and demonstrate that better alternatives were available without compromising other traditional redistricting factors.

Further disputed to the extent that Defendant implies that Dr. Duchin did not find evidence of racial gerrymandering by the General Assembly. She did. Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion); Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and thereby the dilution of Black and Latino votes, figured into the map drawing process and resulted in the final maps).

25. The enacted congressional map resulted in five districts that elected Black- and Latino- preferred candidates. Report of Moon Duchin, attached as Ex. A (Duchin Report), ¶¶ 4.1, 6.3.

PLAINTIFFS' RESPONSE: Undisputed that five Black Democratic congressional candidates were elected under the new map.

Disputed that such an outcome makes the map constitutional. To the contrary, Dr. Duchin found evidence that the legislature weaponized racial data to dilute Black and Latino voting power. Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion); Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and thereby the dilution of Black and Latino votes, figured into the map drawing process and

resulted in the final maps). Dr. Duchin generated thousands of alternatives with less racial packing and cracking that better complied with traditional redistricting principles and provided Republicans' an equal or better electoral outlook. Ex. 27, Duchin Supp. Rpt. ¶ 2.1. This is compelling evidence that the enacted map prioritized racial sorting at the expense of partisan considerations.

Further disputed insofar as Defendant implies the new map *created* minority-opportunity districts, when Moon shows that the number of minority-performing districts was *reduced* from six to five, despite the growth of Georgia's minority population and shrinkage of its white population. Ex. 24, Duchin Rpt. ¶ 4.1.

26. The enacted congressional map reduced the number of split counties from the 2011 plan. Duchin Rpt., ¶¶ 4.1, 6.3.

PLAINTIFFS' RESPONSE: Undisputed to the extent that the number of splits in the 2011 congressional map included 16 county splits and the newly enacted map had 15. Disputed that such an outcome makes the map constitutional. To the contrary, the maps were racially gerrymandered. Ex. 24, Duchin Rpt. ¶ 2 ("CD 13 has been kept highly packed, which is cemented in the enacted plan through race-conscious county splitting"). Alternative maps were available that would have resulted in fewer county splits than the enacted map with more majority-minority districts and superior compactness scores by all metrics. *See* Ex. 24, Duchin Rpt. ¶ 7.1.

27. The representative for Common Cause was asked directly by counsel for Defendant in her deposition whether the organization would be willing to produce a list of its members living in the challenged districts

and purportedly injured by the maps. Deposition of Audra [sic] Dennis [Doc. 90] (Dennis Dep.) 77:19-79:23.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 27 on the basis that the cited question was outside the scope of the noticed topics for the deposition and thus any testimony thereafter cannot bind the organization. *See cf. McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 241 F. Supp. 3d 737, 752 (N.D. Tex. 2017) ("[Q]uestions and answers exceeding the scope of the 30(b)(6) notice will not bind the [organization].").

Disputed. Defendant's characterization or contextualization differs from the deposition transcript cited, which speaks for itself. Further disputed to the extent that Defendant implies that the deponent refused to produce a membership list. In fact, when Defendant's counsel referenced a membership list (which was not ever sought by counsel prior to or after the cited deposition), Plaintiffs' counsel stated: "If we're going to discuss that, I think we should go off the record and we can confer. . ." Ex. 19, Dennis Dep. 79:18-21. Thereafter, counsel for the parties conferred off the record and Plaintiffs' counsel indicated that Defendant should formally seek such a list if he so desired, but he never did so.

28. Counsel for Common Cause instructed the witness not to answer on the basis of an associational privilege objection. Dennis Dep. 77:19-79:23.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 28 on the basis that the cited question was outside the scope of the noticed topics for the deposition and thus any testimony thereafter cannot bind the organization. *See cf. McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 241 F. Supp. 3d 737,

752 (N.D. Tex. 2017) ("[Q]uestions and answers exceeding the scope of the 30(b)(6) notice will not bind the [organization].").

Disputed. Defendant's characterization or contextualization differs from the deposition transcript cited, which speaks for itself. Further disputed to the extent that Defendant implies that the deponent refused to produce a membership list. In fact, when Defendant's counsel referenced a membership list (which was not ever sought by counsel prior to or after the cited deposition), Plaintiffs' counsel stated: "If we're going to discuss that, I think we should go off the record and we can confer . . ." Ex. 19, Dennis Dep. 79:18-21. Thereafter, counsel for the parties conferred off the record and Plaintiffs' counsel indicated that Defendant should formally seek such a list if he so desired, but Defendant's counsel never did so.

29. Common Cause never identified any individual in discovery or otherwise that might provide the requisite evidence to show the organization's associational standing. Dennis Dep. 77:19-79:23.

Plaintiffs' Response: Plaintiffs object to Paragraph 29 on the basis that the phrase "the requisite evidence" is vague and ambiguous.

Disputed. Plaintiffs have given sworn testimony from both the Organizational Plaintiffs—Common Cause and the League of Women Voters—that they each have members who reside within each Challenged District. Thus, Plaintiffs have provided the requisite evidence to establish the Organizational Plaintiffs have associational standing. Ex. 22, Bolen Dep. 59:2-6; Ex. 19, Dennis Dep. 77:16-25, 78:1-3, 93:15-16, 101:22-10; Ex. 20, Dennis Decl. ¶¶ 2-5, 17, 19; Ex. 23, Bolen Decl. ¶¶ 4-8, 20-23. Disputed to the extent Defendant's characterization or contextualization differs

from the deposition transcript cited, which speaks for itself. Disputed further to the extent Defendant implies that Plaintiffs are required to reveal their membership list in order to demonstrate associational standing. *See Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1161 (11th Cir. 2008) (recognizing that the Circuit does not "require[] that the organizational name names" where the harm is prospective); *see also Doe v. Stincer*, 175 F.3d 879, 882, 884 (11th Cir. 1999) (ruling that the Circuit "h[as] never held that a party suing as a representative must specifically name the individual on whose behalf the suit is brought").

30. The League of Women Voters (LWV) representative was directed by her counsel not to identify any members who were impacted by the 2021 redistricting plans and never identified any individuals in discovery. Deposition of Julie Bolen [Doc. 91] (Bolen Dep.) 59:13-60:25.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the cited question was outside the scope of the noticed topics for the deposition and thus any testimony thereafter cannot bind the organization. *See cf. McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 241 F. Supp. 3d 737, 752 (N.D. Tex. 2017) ("[Q]uestions and answers exceeding the scope of the 30(b)(6) notice will not bind the [organization].").

Disputed. Plaintiffs have given sworn testimony from both the Organizational Plaintiffs—Common Cause and the League of Women Voters—that they each have members who reside within each Challenged District. Thus, Plaintiffs have provided the requisite evidence to establish the Organizational Plaintiffs associational

standing. Ex. 22, Bolen Dep. 59:2-6; Ex. 19, Dennis Dep. 77:16-25, 78:1-3, 93:15-16, 101:22-10; Ex. 20, Dennis Decl. ¶¶ 2-5, 17, 19; Ex. 23, Bolen Decl. ¶¶ 4-8, 20-23. Disputed to the extent Defendant's characterization or contextualization differs from the deposition transcript cited, which speaks for itself. Disputed further to the extent that the League's 30(b)(6) representative, Julie Bolen, testified in her deposition that she is a member of the League, and she resides in Congressional District 6. Ex. 22, Bolen Dep. 42:13. Disputed further to the extent Defendant implies that Plaintiffs are required to reveal their membership list in order to demonstrate associational standing. *See Fla. State Conf. of N.A.A.C.P. v. Browning*, 522 F.3d 1153, 1161 (11th Cir. 2008) (recognizing that the Circuit does not "require[] that the organizational name names" where the harm is prospective); *see also Doe v. Stincer*, 175 F.3d 879, 882, 884 (11th Cir. 1999) (ruling that the Circuit "h[as] never held that a party suing as a representative must specifically name the individual on whose behalf the suit is brought").

31. While LWV looked at ZIP codes and some addresses of members, LWV could not state if it was sure if there were any current members in any of the challenged districts. Bolen Dep. 58:22-59:12.

PLAINTIFFS' RESPONSE: Plaintiffs object on the basis that the cited question was outside the scope of the noticed topics for the deposition and thus any testimony thereafter cannot bind the organization. *See cf. McKinney/Pearl Rest. Partners, L.P. v. Metro. Life Ins. Co.*, 241 F. Supp. 3d 737, 752 (N.D. Tex. 2017) ("[Q]uestions and answers exceeding the scope of the 30(b)(6) notice will not bind the [organization].").

Disputed. Defendant's characterization or contextualization differs from the deposition transcript cited, which speaks for itself. Ms. Bolen testified that the League has members in each of the Challenged Districts. In her deposition, Ms. Bolen stated that the League "ha[s] a membership chair who has a roster of all the places where our members live." Ex. 22, Bolen Dep. 39:3-6. As a result, the League can overlay those addresses "against the congressional maps to see if [the League] ha[s] members in all of those districts." *Id.* In particular, the League used its "membership roster to look at . . . ZIP codes that were part of the three disputed districts." Ex. 22, Bolen Dep. 59:2-4. Based on its analysis, the League confirmed that is "ha[s] members in every district." Ex. 22, Bolen Dep. 59:9. More specifically, the League confirmed in its deposition that "[they] have members in every district." Disputed further to the extent that the League's 30(b)(6) representative, Julie Bolen, testified in her deposition that she is a member of the League, and she resides in Challenged District 6. *See* Ex. 22, Bolen Dep. 6:5-13; 13:16-20; Ex. 23, Bolen Decl. ¶¶ 8-11.

32. The evidence from legislative depositions demonstrates that legislators were concerned about political performance, not race. Wright Dep. 55:25-56:7, 111:16-112:10, 115:8-11, 115:17-24, 140:3-11, 140:17-19, 158:4-21, 257:21-258:1, 258:2-14.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 32 on the basis that the term "concerned" is vague and ambiguous. For purposes of Plaintiffs' response to this statement, Plaintiffs will construe Defendant's use of "concerned" to mean that partisan sorting was utilized in the Redistricting Process and race was

not. Plaintiffs further object to Paragraph 32 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization or contextualization differs from the deposition transcript cited, which speaks for itself. Legislators considered racial data when drafting the congressional map, and further used race as a proxy for partisanship where the legislature lacked partisan or past election result data (*i.e.,* at the block level). *See e.g.,* Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process and that racial data at the most discrete unit is available where partisan data is not); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion); Ex. 13, Wright Dep. 55:25-56:13 ("Chairman Kennedy consider[ed]" race data "when making instructions about how to draw the lines…"), 140:5-11 (showing that use of political data implicates the use of racial data: "when we build our precinct layer, we do allocate the election data to the block level, so we have that political data at that level. It's estimating, based on the demographics in there. . ."). The Plaintiffs further object to Paragraph 32 on the basis that it is misleading as it mischaracterizes the cited evidence. Specifically, the evidence cited by Defendant does not demonstrate that legislators were "concerned about political performance, not race." The record supports that political considerations were not the basis for the map boundaries. *See* Ex. 32, Dugan Dep. 29:20-22 ("We . . . interacted in a bipartisan manner as much as we possibly could."), 46:11-15 ("The senate committee was responsible for working together in a bipartisan manner to

create and draft . . . and vote on and approve the congressional districts."), 101:15-17 (affirming that, to Sen. Dugan's knowledge, "partisan data" was not "relied on during the Redistricting Process."). For instance, the Senate Committee released a video on Nov. 4, 2021, in which the narrator denied that the process "is all political driven," instead arguing that the lines must be redrawn to account for population shifts. Ex. 35, Kennedy Dep. 199: 13-17, 200:20-201:3. Rather, the record supports that legislators were concerned with race, and race was key to drawing the congressional map. *See e.g.,* Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations were significant in the Redistricting Process); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence of intent to draw lines in a racially motivated way); Ex. 35, Kennedy Dep. 76:9-12 (affirming that communities of interest share an interest based on race); Ex. 32, Dugan Dep. 92:11-93:2 (admitting that the Senate Committee considered and discussed Georgia's "increased diversity," including, but not limited to, "various races and ethnicities").

33. Legislators had political data at all levels of geography and regularly evaluated the political performance of districts as they were drawn. Wright Dep. 140:3-11, 178:5-22, 191:25-193:3, 206:13-207:16.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 33 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. The Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Defendant mischaracterizes the testimony of their own witness, who is only discussing specific House and Senate Districts in the cited testimony—not congressional.

Plaintiffs further object to Paragraph 33 on the basis that it is misleading as it mischaracterizes the cited evidence. Dir. Wright testified that the precinct level was the smallest unit at which "political performance" data was available, and that block level demographic data was employed to try to approximate that missing electoral data. Ex. 13, Wright Dep. 140:5-11 ("when we build our precinct layer, we do allocate the election data to the block level, so we have that political data at that level. It's estimating, *based on the demographics in there*. . . ") (emphasis added); *See also* Ex. 28, Strangia Dep. 94:23-95:5 (explaining that a method is used to estimate block level electoral data because electoral data is only available down to the precinct level).

Additionally, the chairs of each committee considered racial data when drafting the congressional map, and further used race as a proxy for partisanship where the legislature lacked partisan or past election result data (*i.e.*, at the block level). Ex. 24, Duchin Rpt. ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process; also explaining that block-level partisan data is unavailable to legislators while block-level racial data is available, heightening the likelihood that racial data is used to approximate partisanship); Ex. 38, Duchin Dep. 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion).

34. Plaintiffs asked about Congressional District 6 (Wright Dep. 111:16-125:25, 130:22-133:17; Kennedy Dep. 176:3-179:13), Congressional District 13 (Wright Dep. 168:22-171:7, 175:5-11; Kennedy Dep. 180:1-

181:21), and Congressional District 14 (Wright Dep. 152:9-158:21; Kennedy Dep. 182:2-188:1; Rich Dep. 135:13-141:9, 142:3-16).

PLAINTIFFS' RESPONSE: Undisputed that throughout the discovery process, Plaintiffs have asked deponents questions relating to the Challenged Districts. Disputed to the extent that Defendant's characterization and contextualization differs from the testimony, which speaks for itself.

35. For Districts 6, 13, and 14, Ms. Wright or the chairs testified either unequivocally about race-neutral or political goals for the creation of each district or did not testify as to any racial motivations. *Id*.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 35 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself**.** Nowhere in her testimony did Ms. Wright state that she, or the chairs, had unequivocally race-neutral or political goals for the creation of each district. In fact, in her testimony, she said that her office would project race data on the screen during meetings with legislators, therefore race was at least one consideration used in the development of the redistricting plan. Ex. 13, Wright Dep. 56:4-7. She also suggested that political data on the block level is approximated using racial data. Ex. 13, Wright Dep. 140:5-11 (showing that use of political data implicates the use of racial data: "when we build our precinct layer, we do allocate the election data to the block level, so we have that political data at that level. It's estimating, based on the demographics in there. . ."). Senator Kennedy

also testified that race "*has to be*" considered in the Redistricting Process to comply with the VRA. Ex. 35, Kennedy Dep. 67:21-68:2.

36. Dr. Bagley found no "obvious discriminatory intent." Bagley Dep. 27:22-28:1.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 36 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony cited, which speaks for itself. Disputed to the extent that Defendant uses these allegations as a basis to claim that Dr. Bagley found no evidence of discriminatory intent. Dr. Bagley found the contrary, that there was evidence supporting a finding of discriminatory intent. *See e.g.,* Ex. 12, Bagley Dep. 26:4-21. Further, disputed to the extent Dr. Bagley testified that he found evidence supporting a finding of Republicans' abuse of power. *See* Ex. 12, Bagley Dep. 63:18-24, 64:19-20.

37. When While Dr. Bagley analyzed the second, third, fourth, and fifth *Arlington Heights* factors, he did not opine that discriminatory intent was the driving factor of the legislature or that there was discriminatory intent in the legislative process of redistricting. Bagley Report, p. 7; Bagley Dep. 27:22-28:1; 123:3-14.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 37 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony and Expert Report, which speak for themselves. Further disputed to the

extent that Defendant's cited evidence does not support the stated contention. Rather, Dr. Bagley explicitly testified that the redistricting plans were adopted with discriminatory intent. Ex. 12, Bagley Dep. 26:4-21. And Defendant's counsel admitted in questioning that Dr. Bagley's opinion was that discriminatory intent occurred in the Redistricting Process. *See e.g.,* Ex. 12, Bagley Dep. 123:3-8 ("[I]t's [Dr. Bagley's] opinion that someone could find that there was discriminatory intent in the process.").

38. Dr. Bagley did not opine that the specific sequence of events leading to the adoption of the plans was discriminatory, but only that it would "lend credence" to a finding of discriminatory intent. Bagley Dep. 122:14-123:1.

PLAINTIFFS' RESPONSE: Undisputed that Bagley found that the sequence of events lends credence to a finding of discriminatory intent.

Disputed to the extent that the Defendant's characterization and contextualization differs from the Dr. Bagley's testimony, which speaks for itself. Disputed to the extent Defendant implies Dr. Bagley was required to reach the ultimate conclusion that the legislature acted with discriminatory intent. Dr. Bagley provides evidence that the new maps "were drawn . . . to deny voters of color their equitable right to participate in the political process" upon which a factfinder could base such a conclusion on. Ex. 8, Bagley Rpt. 86.

39. Dr. Bagley did not opine that the Georgia district lines were drawn to deny voters of color their equitable right to participate in the political

process, although he believed a court could make that finding. Bagley Dep. 133:11-20.

Plaintiffs' Response: Plaintiffs further object to Paragraph 39 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. Dr. Bagley testified that in his opinion there is enough evidence for the Court to make the final determination that Georgia district lines were drawn in a discriminatory way to deny minority voters their equitable right to participate in the political process. *See* Ex. 8, Bagley Rpt. 86. Dr. Bagley found evidence that race was considered in making decisions and changing boundaries in the new Congressional map, such that the ultimate factfinder could support a determination that the Challenged Districts were racially gerrymandered.

40. Dr. Bagley found no procedural or substantive departures in the 2021 Redistricting Process when compared to the 2001 and 2011 processes and agreed that the process was not rushed when compared to those prior cycles. Bagley Dep. 86:25-87:19, 138:18-24.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 40 on the basis that the phrase "procedural and substantive departures" is vague and ambiguous. Plaintiffs further object on the grounds that the 2001 and 2011 redistricting cycles are not relevant. Plaintiffs further object to Paragraph 40 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. The 2001 and 2011 redistricting processes are irrelevant and thus not material to this Action. Any similarities between redistricting cycles do not

provide evidence that the 2021 redistricting process or newly enacted maps were fair or proper.

Further disputed to the extent that Defendant's characterization and contextualization differs from the testimony, which speaks for itself. Further disputed to the extent Defendant implies that Dr. Bagley concluded the process was "not rushed." To the contrary, Dr. Bagley testified that the comparison to the 2001 and 2011 processes "would indicate to [him] that [the process] was also rushed in those cycles," Ex. 12, Bagley Dep. 138:22-24. He also found that there was a departure from the committees' objectives and guidelines, *Id.* at 86:25-87:19, and that there were problems in "[f]ailing to account for public comment after the maps are published, [and] refusal to allow access to the map drawing process and rushing the process in general…" *Id.* at 138:2-5.

41. Dr. Bagley found one contemporary comment that concerned him, when Chair Rich stated in committee that there was not a "magic formula" for compliance with the Voting Rights Act. Bagley Dep. 110:2-111:23, 121:11-122:13.

PLAINTIFFS' RESPONSE: Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. Undisputed that Dr. Bagley affirmed his concern regarding Chair Rich's comment that there was not a "magic formula" for VRA compliance. Disputed to the extent Defendant implies that this comment was the only comment that concerned him. *See* Ex. 12, Bagley Dep. 122:6-10.

42. Dr. McCrary did not offer any opinion about discriminatory intent or about the design of the districts. Deposition of Peyton McCrary [Doc. 84] (McCrary Dep.) 48:19-21.

PLAINTIFFS' RESPONSE: Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. Disputed to the extent that Defendant implies that Dr. McCrary[6] did not find evidence of discriminatory intent, or any issues with the design of the districts. Ex. 30, McCrary Rpt. 92-93 ("Assuming that the plaintiffs meet the *Gingles* preconditions, it is my expert opinion that the Senate Factors I have examined weigh in favor of finding that Georgia has violated Section 2 of the Voting Rights Act.").

43. Dr. Duchin did not offer any opinion about discriminatory intent, but rather offered that she could provide "evidence that might be persuasive in terms of discerning intent" but that she could not "make hard and fast conclusions about what was in the hearts and minds of the legislators or . . . staff." Duchin Dep. 34:11-22; *see also* Duchin Dep. 34:23-35:6.

PLAINTIFFS' RESPONSE: Plaintiffs further object to Paragraph 43 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. Dr. Duchin offered several remarks explicitly stating that the legislature drew the enacted districts with racially discriminatory

[6] Peyton McCrary was retained by Plaintiffs Georgia State Conference of the NAACP, et al. in their case against the State of Georgia, et al., Case No. 1:21-cv-5338-ELB-SCJ-SDG, pending in the United States District Court for the Northern District of Georgia.

intent. *See e.g.,* Ex. 24, Duchin Rpt. ¶ 2 ("an examination of recent electoral history shows that the enacted plans at all three levels are conspicuously uncompetitive, which has been fueled by acutely race-conscious moves in the recent redistricting"…"CD 13 has been kept highly packed, which is cemented in the enacted plan through race-conscious county splitting"), ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process); Ex. 38, Duchin Dep. 34:3-7 ("what I observe in the plans is consistent with a pursuit of partisan ends but one in which race was clearly used to achieve those ends"), 35:4-12 ("offering evidence that the Court can use to make a determination of intent"), 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion).

44. None of Plaintiffs' experts besides Dr. Duchin provided opinions about district boundaries. McCrary Dep. 48:9-21; Bagley Dep. 28:19-29:6; Report of Benjamin Schneer, attached as Ex. B (Schneer Report), ¶¶ 5-8.

PLAINTIFFS' RESPONSE: Plaintiffs further object to Paragraph 44 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization or contextualization differs from the testimony cited. Dr. Bagley stated in his deposition that he did not evaluate district boundaries "the way that a political scientist would," which is a given, since Dr. Bagley is a historian, not a political scientist. Ex. 12, Bagley Dep. 28:19-29:6; Ex. 8, Bagley Rpt. 42 (summarizing town hall participants' concerns about packing and cracking). Second, Dr. McCrary also delivers his expert opinion on district

boundaries. For example, in his report, Dr. McCrary argues that Lucy McBath's district boundaries were "realigned beyond recognition," which has relevance to this action in the context of Georgia's history of obstructing minority political participation that McCrary details. Ex. 30, McCrary Rpt. ¶ 107. Last, Dr. Schneer[7] also opined about the enacted district boundaries. For example, he conducted an analysis of the enacted district boundaries in comparison to the illustrative maps that Dr. Duchin drew, finding that the Duchin map "offer[ed] an increased ability to elect the minority-referred candidates in the districts [he was] asked to examine." Ex. 31, Schneer Rpt. ¶ 7.

45. Dr. Duchin's report evaluates core retention and "racial swaps" only for Congressional Districts 6 and 14, not District 13. Duchin Report, ¶ 10.1.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 45 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differ from the expert report cited, which speaks for itself. Defendant misstates and mischaracterizes Dr. Duchin's Expert Report, in which Dr. Duchin states that she will "examine the core retention, or conversely, the population displacement, of *the districts in the enacted plan*…[and] will pay particular attention to the tendency to use racially imbalanced transfers of population in rebalancing *the districts*." Ex. 24, Duchin Rpt.,

[7] Benjamin Schneer was retained by Plaintiffs Georgia State Conference of the NAACP, et al. in their case against the State of Georgia, et al., Case No. 1:21-cv-5338-ELB-SCJ-SDG, pending in the United States District Court for the Northern District of Georgia.

¶ 10.1 (emphasis added). In discussing the districts in the enacted plan, she evaluated Congressional District 13, and nowhere in the report did Dr. Duchin state that she excluded Congressional District 13 in her evaluation of core retention and racial swaps. *See generally* Ex. 24, Duchin Rpt. Further, Dr. Duchin affirmatively states that the enacted map cemented the "packed" function of Congressional District 13 in the Defendant's redistricting scheme, which necessitates racial swapping. Ex. 24, Duchin Rpt. ¶ 2 ("CD 13 has been kept highly packed, which is cemented in the enacted plan through race-conscious county splitting").

46. Dr. Duchin acknowledges that there were "many other considerations" in play besides core retention. Duchin Dep. 171:22-172:7.

PLAINTIFFS' RESPONSE: Undisputed that core retention was not the only factor, and that the low level of core retention is consistent with a redistricting strategy that prioritized racial sorting: the legislature prioritized racial gerrymandering at the expense of core retention and other traditional redistricting criteria.

47. Dr. Duchin acknowledged that racial population shifts are not conclusive evidence of racial predominance and that she could not say that the various metrics she reviewed showed racial predominance. Duchin Dep. 180:18-23, 198:6-21 (Congress), 200:11-20 (Congress).

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 47 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. In her deposition, Dr. Duchin explains that it is

reasonable to conclude that "race-inflected decision making predominated over TDPs" and that she presented evidence in her Report that "shows that decisions with a marked racial character were made in ways that made traditional principles worse." Ex. 38, Duchin Dep. 182:5-14.

She provides several other claims in support of a finding of racial predominance in the Redistricting Process. *See e.g.,* Ex. 24, Duchin Rpt. ¶ 2 ("an examination of recent electoral history shows that the enacted plans at all three levels are conspicuously uncompetitive, which has been fueled by acutely race-conscious moves in the recent redistricting"… "CD 13 has been kept highly packed, which is cemented in the enacted plan through race-conscious county splitting"), ¶¶ 4.1, 10.1.1, 10.2.1 (finding evidence that racial considerations, and the dilution of Black and Latino votes, were a significant consideration in the Redistricting Process); Ex. 38, Duchin Dep. 34:3-7 ("what I observe in the plans is consistent with a pursuit of partisan ends but one in which race was clearly used to achieve those ends"), 35:4-12 ("offering evidence that the Court can use to make a determination of intent"), 150:20-151:10 (finding evidence "suggestive of intent" to draw lines in a racially motived fashion).

48. Dr. Duchin provides information about what she says are racial splits of counties in Congressional Districts 2, 3, 4, 6, 8, 10, 13, and 14 and what she says are racial splits of precincts in Congressional Districts 4, 6, 10, and 11. Duchin Rpt., ¶ 10.2.1; Duchin Dep. 167:5-15, 174:9-14, 186:17-23.

PLAINTIFFS' RESPONSE: Undisputed that Dr. Duchin provides information about racial splits in several counties and precincts. Disputed to the extent Defendant's characterization or contextualization differs from the testimony, which speaks for itself. Further disputed to the extent Defendant implies that the racial splits are limited to those listed here.

49. Dr. Duchin did not look at the political data behind those county splits on the congressional plan. Duchin Report, ¶ 10.2.1; Duchin Dep. 167:5-15, 174:9-14, 186:17-23.

PLAINTIFFS' RESPONSE: Plaintiffs object to Paragraph 49 on the basis that it is misleading as it mischaracterizes the cited evidence.

Disputed. Defendant's characterization and contextualization differs from the testimony, which speaks for itself. In Defendant's last citation, Dr. Duchin was asked whether her analysis of possible partisan explanations for racial sorting was housed in her rebuttal report. *See* Ex. 38, Duchin Dep. 184:15-186-23. She responded no—her original report analyzed precinct splits, which are especially probative of partisan intent, since precincts "are the level at which votes are reported. And so if you're splitting precincts… you cannot claim to be confidently doing so on the basis of election history." *Id*. The citation Defendant chose thus completely misstates the substance of the quote by focusing on county splits.

Furthermore, Dr. Duchin pointed to specific appendix tables she created in her original Expert Report, including Table 55: "All county splits in the enacted Congressional map," which contains the very political data that Defendant here tries

to claim Dr. Duchin did not look at. Ex. 38, Duchin Dep. 167:9-15; Ex. 24, Duchin Rpt. Table 55.

Dated this 26th day of April 2023.

Respectfully submitted,

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Northern District of Georgia Local Rule 7.1 Certification

Pursuant to N.D. Ga. L.R. 7.1(D), I, Jack Genberg, certify that this brief was prepared using Times New Roman 14 pt. font, which is one of the fonts and point selections approved by the Court in L.R. 5.1(B).

Dated this 26th day of April, 2023

Respectfully submitted,

/s/ Jack Genberg
Jack Genberg (Ga. Bar 144076)

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

COMMON CAUSE, *et al.*, *Plaintiffs*, v. BRAD RAFFENSPERGER, *Defendant*.	Case No. 1:22-CV-00090-ELB-SCJ-SDG **THREE-JUDGE COURT**

PLAINTIFFS' STATEMENT OF MATERIAL FACTS IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56(c) and the Northern District of Georgia Local Rule 56.1(B), Plaintiffs Common Cause, the League of Women Voters of Georgia (the "League" and collectively with Common Cause, "Organizational Plaintiffs"), Dr. Cheryl Graves, Dr. Ursula Thomas, Dr. H. Benjamin Williams, Jasmine Bowles, and Brianne Perkins (collectively, "Plaintiffs") submit their Statement of Material Facts in Opposition to Defendant's Motion for Summary Judgment ("SMF") as follows:

1. The enacted congressional district plan, SB 2EX, was publicly introduced on 11/17/2021. *See* Ex. 1,[1] posting from the Legislative and

[1] Unless otherwise noted herein, all references to "Ex." indicate Exhibits attached to the Declaration of Cassandra N. Love-Olivo submitted in Opposition to Defendant's Motion for Summary Judgment ("Love Decl."), filed concurrently herewith. Terms

Congressional Reapportionment Office ("LCRO"), Proposed Plans, at 2.[2] The Senate Committee on Reapportionment and Redistricting ("Senate Committee") and House Legislative and Congressional Reapportionment Committee ("House Committee") (collectively, "Redistricting Committees") held meetings on November 17, 18, and 19, 2021, to receive public feedback on these maps. *See* Ex. 2, Nov. 17, 2021 Meeting Notes labeled Bates Nos. LEGIS00002253-2333; Ex. 3, Nov. 18, 2021 Meeting Notes labeled Bates Nos. LEGIS00002334-2373, Ex. 4, Nov. 20, 2021 Meeting Minutes labeled Bates Nos. LEGIS00002374-2571.

2. The Senate Committee voted in favor of SB 2EX on 11/18/2021; the Senate voted in favor of SB 2EX on 11/19/2021; the House Committee voted in favor of SB 2EX on 11/20/2021; and the House voted in favor of SB 2EX on 11/22/2021. *See* Ex. 5, Georgia General Assembly, SB 2EX, Status History & Votes.[3]

3. Both Black Senate and House Committee members as well as Black Senators and Black Representatives unanimously opposed SB 2EX. *See* Ex. 5, Georgia General Assembly, SB 2EX Status History & Votes;[4] Ex. 6, Georgia General Assembly, Passage, SB 2EX;[5] Ex. 7, Minutes of the Senate Committee on Reapportionment and Redistricting, at 15-16;[6] Ex. 8, Bagley Rpt., at 76-78, 81-82.

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not herein defined have the meanings ascribed to them in the Love Decl.

[2] Available at https://www.legis.ga.gov/joint-office/reapportionment.

[3] Available at https://www.legis.ga.gov/legislation/60895.

[4] Available at https://www.legis.ga.gov/legislation/60895.

[5] Available at https://www.legis.ga.gov/legislation/60895.

[6] Available at

4. Town halls were held between 6/15/2021 and 8/11/2021, prior to the release of any proposed maps or census data. *See* Ex. 9, Press Release, Reapportionment Committees to Hold Statewide Town Hall Hearings;[7] Ex. 10, 6/7/2021 Press Release, Reapportionment Committees to Hold Joint Virtual Town Hall Hearing labeled Bates No. LEGIS00000174; Ex. 11, Rich Dep. 175:10-18.

5. Many Georgians attended Redistricting Committee meetings and provided public comments stating that Congressional District ("CD") 6, CD 13, and CD 14 (collectively, the "Challenged Districts") failed to respect communities of interest. Ex. 8, Bagley Rpt. 86. *See* Ex. 2, 11/17/2021 Meeting Notes, Bates Nos. LEGIS00002253-2333 (comments stating that certain precincts were removed from districts while others that had nothing in common with the district were added)); Ex. 3, 11/18/2021 Meeting Notes, Bates Nos. LEGIS00002334-2373; Ex. 4, 11/20/2021 Meeting Minutes, Bates Nos. LEGIS00002374-2571.

6. Members of the majority party did not request any changes to the district boundaries following the public meetings held on Nov. 17, 18, and 20, 2021. *See* Ex. 13, Wright Dep. 163:21-165:3.

7. Prior to introducing SB 2EX, the Redistricting Committees adopted guidelines, which included "constitutional requirements of equal protection, compliance with the Voting Rights Act, including a recognition of racially polarized voting, [] the importance of jurisdictional boundaries, prioritizing communities of

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http://www.senate.ga.gov/committees/Documents/2021EXMinutes140.pdf.

[7] Available at https://house-press.com/house-and-senate-reapportionment-committees-to-hold-statewide-town-hall-hearings/.

interest, compactness, and continuity." *See* Ex. 8, Bagley Rpt. 59; Ex. 14, Georgia House District Map Information labeled Bates Nos. LEGIS00003532-LEGIS00003537 at 3532; Ex. 15, 2021-2022 Guidelines for the House Committee labeled Bates Nos. LEGIS00000071-75.

8. These guidelines did not include the pursuit of partisan advantage. *See* Ex. 15, 2021-2022 Guidelines for the House Committee, Bates Nos. LEGIS00000071-75; Ex. 8, Bagley Rpt. 59.

9. The only Republican sponsored draft congressional map that was produced in this litigation was the Kennedy-Duncan Plan. *See* Ex. 16, Dave Williams, *Georgia Senate Releases First Proposed Congressional Redistricting Map*, CAPITOL BEAT (Sept. 27, 2021)[8]; Love Decl. ¶¶ 25, 39, 43; Ex. 17, Email from P. Jaugstetter at 2.

10. Outside of the Kennedy-Duncan Plan, no other Republican sponsored draft congressional maps were saved, recoverable, or produced in this litigation. *See* Ex. 17, Email from P. Jaugstetter; Love Decl. ¶ 43.

11. The only other draft map produced in this litigation is a plan made public on October 21, 2021 from the Democratic Party. *See* Ex. 39, October 21, 2021 Democratic Caucus proposed Congressional Map;[9] Ex. 17, Email from P. Jaugstetter; Love Decl. ¶ 43.

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[8] Available at https://capitol-beat.org/2021/09/georgia-senate-releases-first-proposed-congressional-redistricting-map/.

[9] Available online at https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/congress/ghdc-gsdc-cong-plan1-packet.pdf?sfvrsn=bb619b12_2

12. Dir. Wright intentionally refrained from writing correspondence or notes redistricting to avoid "create[ing] a record" for litigation; instead, she preferred to "have th[ose] conversation[s] in person." *See* Ex. 13; Wright Dep. 19:16-20:4. In 2019, Republican State Senators were instructed to do the same and avoid "mak[ing] any public comments." Ex. 40, LEGIS00011157-57.0003 at 57.

13. The Kennedy-Duncan Plan was the "initial Congressional District map draft." *See* Ex. 13, Wright Dep. 19:12-19.

14. Dir. Wright held meetings with members of the majority party to discuss changes to the Kennedy-Duncan Plan, which were input into the LCRO's redistricting software. At these meetings, racial data was projected onto the computer screens. *See* Ex. 13, Wright Dep. 16:7-18:23, 20:5-23:15, 25:15-28:4, 28:19-30:23, 55:1-56:13, 115:25-116:19.

15. As an organization, one of Common Cause's purposes is to protect and safeguard voting. *See* Ex. 18, Common Cause Georgia, Voting & Elections;[10] Ex. 19, Dennis Dep. 83:9-16.

16. As an organization, one of the League's purposes is to protect and safeguard voting. *See* Ex. 21, The League of Women Voters of Georgia, Our Principles[11]; Ex. 22, Bolen Dep. 47:1-4; Ex. 23, Bolen Decl. at ¶27.

17. Common Cause has approximately 26,000 members in Georgia, more than 767 members in CD 6, more than 143 members in CD 13, and more than 848

[10] Available at https://www.commoncause.org/georgia/our-work/voting-elections/.
[11] Available at https://lwvga.clubexpress.com/content.aspx?page_id=22&club_id=996555&module_id=506655#principles.

members in CD 14. *See* Ex. 19, Dennis Dep. 93:15-16; Ex. 20, Dennis Decl. at ¶¶ 2-5.

18. Common Cause's members provide their addresses when they join the organization. *See* Ex. 19, Dennis Dep. 101:22-102:11; Ex. 20, Dennis Decl. ¶¶ 6-7.

19. Common Cause used the member provided zip codes to determine if Common Cause has members in each of the Challenged Districts. In doing so, Common Cause counted only the members who reside in zip codes that lie wholly within the Challenged District. Common Cause has additional members in zip codes that split the Challenged Districts, but those members were not counted. *See* Ex. 19, Dennis Dep. 102:5-7; Ex. 20, Dennis Decl. ¶ 8.

20. Common Cause historically keeps it membership list and member information confidential because the specific identification of members would place their safety and privacy in jeopardy, which results in a chilling effect on the members' desire and capacity to publicly affiliate themselves with Common Cause. This type of intimidation is happening across communities. For instance, local poll workers during the 2020 election experienced intimidation, which dissuaded some of them from continuing as poll workers. *See* Ex. 20, Dennis Decl. ¶¶ 9-15.

21. Common Cause has identified a member that currently resides in the Congressional District 6, who is of voting age. Common Cause provided that member's name and address. *See* Ex. 20, Dennis Decl. ¶¶ 15-17.

22. Common Cause has identified a member that currently resides in the Congressional District 14, who is of voting age. Common Cause provided that member's name and address. *See* Ex. 20, Dennis Decl. ¶ 15, 19.

23. The League's membership chair keeps a roster of members' addresses. The League used its membership roster to look at ZIP codes that were part of the three disputed districts. The League's member address information was subject to geocoding to determine how many members are within each congressional district. *See* Ex. 22, Bolen Dep. 39:3-6, 59:2-6; Ex. 23, Bolen Decl. ¶¶ 8-11.

24. The League has members in every Challenged District. The League has 23 members in CD 6; 22 members in CD 13, and 56 members in CD 14. *See* Ex. 22, Bolen Dep. 59:9-12; Ex. 23, Bolen Decl. ¶¶ 4-7.

25. The League historically keeps its membership list and member information confidential and represents to its members that it will protect their personal privacy. Harassment of private individuals for their affiliations with politics-related organizations and/or activities has become prominent in the community. As a result, the specific identification of members would place their safety and privacy in jeopardy, which produces a chilling effect on the members' desire and capacity to publicly affiliate themselves with the League. *See* Ex. 23, Bolen Decl. ¶¶ 12-18.

26. The League has identified a member that currently resides in the Congressional District 6, who is of voting age. The League provided that member's name and address. *See* Ex. 23, Bolen Decl. ¶¶ 3, 18-20, 23.

27. The League has identified a member that currently resides in the Congressional District 13, who is of voting age. The League provided that member's name and address. *See* Ex. 23, Bolen Decl. ¶¶ 18-19, 21.

28. The League has identified a member that currently resides in the Congressional District 14, who is of voting age. The League provided that member's name and address. *See* Ex. 23, Bolen Decl. ¶¶ 18-19, 22.

29. Common Cause diverted personnel, time, and resources to educate its membership and community about the maps. *See* Ex. 19, Dennis Dep. 47:22-48:2; 49:1-51:10; 52:6-19; Ex. 20, Dennis Decl. ¶¶ 20-26.

30. Common Cause took part in direct communications with community members and its own members and created channels to build resources for coalition partners. *See* Ex. 19, Dennis Dep. 49:24-50:3, 47:24-48:2; Ex. 20, Dennis Decl. ¶¶ 20-22.

31. Common Cause needed more people in order to do its programmatic work, and needed to hire more staff members to focus on redistricting. *See* Ex. 19, Dennis Dep. at 49:1-6, 48:7, 9-13, 18-21; Ex. 20, Dennis Decl. ¶¶ 21-22.

32. The League diverted personnel, time, and resources to educate its membership and community about the maps. *See* Ex. 22, Bolen Dep. 32:1-10; 36:20-24; Ex. 23, Bolen Decl. ¶¶ 24-28.

33. The League knocked on doors, talked to people, and left information about redistricting. *See* Ex. 22, Bolen Dep. 24:22-25:25; Ex. 23, Bolen Decl. ¶¶ 24-28.

34. The League focused on engaging the public, working with partner organizations to get information out, and encouraging people to express their opinions to their legislators and committees. *See* Ex. 22, Bolen Dep. 40:19-41:5; Ex. 23, Bolen Decl. ¶¶ 24-28.

35. The League provided additional education due to a gap of knowledge among its membership, including handling many calls from members confused about their district, where to vote, and other related issues. *See* Ex. 22, Bolen Dep. 35:35-36:4; Ex. 23, Bolen Decl. ¶¶ 24-28.

36. Had Common Cause not had to divert its resources, it typically would have completed other activities central to its purpose. *See* Ex. 19, Dennis Dep. 52:21-25 (*e.g.,* Common Cause would have had more conversations with election boards and officers, built out more resources to educate voters, worked with local law enforcement, and worked on voting security); Ex. 20, Dennis Decl. ¶¶ 21-26.

37. Common Cause was unable to complete other activities it had hoped to achieve. *See* Ex. 19, Dennis Dep. 54:3-13, 55:24-56:7, 57:8-17, 58:2-18, 59:11-25 (*e.g.,* it hoped to educate and engage with the community on a broadband accessibility initiative, and eminent domain procedures, as well as go beyond its legislative preview, and hire additional staff); Ex. 20, Dennis Decl. ¶¶ 21-26.

38. The League was unable to continue and complete other activities it had hoped to work on and achieve because of the redistricting. *See* Ex. 22, Bolen Dep. 33:6-24 (*e.g.*, the League hoped to register its members and the community to vote and educated them about voting); Ex. 23, Bolen Decl. ¶¶ 24-28.

39. Had the League not had to divert its resources as a result of the redistricting, it typically would have completed other activities central to its purpose. *See* Ex. 22, Bolen Dep. 73:8-20 (*e.g.*, the League would have pushed forward with working with high schools and college to register eligible students and educate them about the voting process, and aiding in voting); Ex. 23, Bolen Decl. ¶ 28.

40. Dr. Duchin analyzed whether CD 6, CD 13, CD 14 adhered (or not) to traditional redistricting principles. *See* Ex. 24, Duchin Rpt. 67-80.[12]

41. Traditional redistricting principles were often undermined in the Challenged Districts in a manner that resulted in "packing" and "cracking." *See* Ex. 24, Duchin Rpt. 4.

42. "Packing" and "cracking" is "the related practices of overconcentrating Black and Latino voters on one hand, or splitting communities and dispersing their voters over multiple districts on the other." *See* Ex. 24, Duchin Rpt. 4. "BVAP" means "to denote the share of voting age population that is Black alone" and "BHVAP" refers to "the share . . . that is Black and/or Latino." *See* Ex. 24, Duchin Rpt. 81.

43. Dr. Duchin further found that the Challenged Districts' boundaries were infected with "acutely race-conscious moves," *See* Ex. 24, Duchin Rpt. 4.

[12] Since filing her Rebuttal Report, Dr. Duchin has identified a few errata in her initial report – none of which changes any of her analysis, opinions, "ultimate findings [or] conclusions." She has since served a notice of errata, attached to the Love Decl. for full completeness. None of the changes described in the errata alter Plaintiffs' positions or claims herein. Ex. 37, Notice of Errata to Dr. Moon Duchin January 13, 2023 Expert Report, at 2.

44. Dr. Duchin found that CD 6 was "targeted to eliminate electoral opportunity," "specifically by removing Black and Hispanic voters from CD 6 and replacing them with White suburban, exurban, and rural voters in Forsyth and Dawson counties." *See* Ex. 24, Duchin Rpt. 4, 10.

45. Dr. Duchin found that "this [targeting] is corroborated by the core retention numbers that show that CD 6 was singled out for major reconfiguration." *See* Ex. 24, Duchin Rpt. 10.

46. Dr. Duchin found that CD 6 county splits are consistent with cracking in CD 6. *See* Ex. 24, Duchin Rpt. 73.

47. In particular, Dr. Duchin found that the pattern of cracking includes: a lower BVAP and BHVAP in the portions of Cherokee, Cobb, Fulton, and Gwinnett Counties assigned to CD 6 than those assigned to CDs 5, 7, 9, 11, 13, or 14. *See* Ex. 24, Duchin Rpt. 73.

48. Dr. Duchin found that "race-conscious county splitting" caused CD 13 to remain "highly packed." *See* Ex. 24, Duchin Rpt. 5.

49. Dr. Duchin found that with one unremarkable exception, each of the county splits is consistent with a pattern of packing in CD 13. *See* Ex. 24, Duchin Rpt. 73.

50. Dr. Duchin found that the pattern in CD 13 includes: a higher BVAP and BHVAP in the portion of Cobb, Douglas, Fayette, Fulton, and Henry Counties assigned to CD 13 than those assigned to CDs 3, 5, 6, 7, 10, or 11. *See* Ex. 24, Duchin Rpt. 73.

51. Dr. Duchin found that Cobb County's population is within 0.1% of the ideal congressional district size of 765,136 people, but the county is nevertheless split into four congressional districts. *See* Ex. 24, Duchin Rpt. 22, 72.

52. Dir. Wright testified splitting counties "poses problems with elections." *See* Ex. 13, Wright Dep. 119:6-9.

53. Dr. Duchin found that the changes to CD 14 are "distinctive in terms of density and racial composition." *See* Ex. 24, Duchin Rpt. 68.

54. Dr. Duchin further found that CD 14's incursion into Cobb…can't be justified in terms of compactness or respect for urban/rural communities of interest." *See* Ex. 24, Duchin Rpt. 69.

55. Dr. Duchin found that the community of interest testimonies provided to the Redistricting Committees "make it clear that the changes to . . . CD 14 lack justification by community-of-interest reasoning." Whereas residents of the core CD 14 in Northwest Georgia counties frequently used words identifying rural interests, residents of the newly-added Western Cobb County area frequently used words identifying urban ones. *See* Ex. 24, Duchin Rpt. 79-80.

56. The "record of strong pushback" demonstrates CD 14's boundaries are dissonant in terms of shared community interests. *See* Ex. 24, Duchin Rpt. 5.

57. Dr. Duchin found that the splitting of Cobb County is "consistent with . . . submerging a small and diverse urban community in CD 14," including a higher BVAP and BHVAP in the portion of Cobb County assigned to CD 14 than to CD 6 or CD 11. *See* Ex. 24, Duchin Rpt. 73.

58. Dr. Duchin drew an alternative congressional plan that more closely adheres to the traditional redistricting principles. *See* Ex. 24, Duchin Rpt. 5, 25.

59. Dr. Duchin's alternative congressional plan is more compact than the enacted plan and splits fewer counties, municipalities, and state precincts into fewer pieces. *See* Ex. 24, Duchin Rpt. 5, 25.

60. Dr. Duchin's alternative congressional plan changes BVAP from 66.7% to 52.0% and BHVAP from 77.2% to 58.8% in CD 13. *See* Ex. 24, Duchin Rpt. 25.

61. Dr. Duchin's alternative congressional plan removes Black communities in Cobb County from CD 14, reducing BVAP from 14.3% to 7.6%. *See* Ex. 24, Duchin Rpt. 25.

62. Dr. Duchin's alternative congressional plan raises the District 6 BVAP and BHVAP closer to the prior map and creates another minority opportunity district. *See* Ex. 24, Duchin Rpt. 25.

63. The Duncan-Kennedy plan is more compact than the enacted plan and splits fewer counties, municipalities, and state precincts into fewer pieces. *See* Ex. 24, Duchin Rpt. 22; Ex. 25, Kennedy-Duncan Plan.[13]

64. Senator Kennedy's plan does not feature some of the "acutely race-conscious moves" present in the enacted congressional plan, including moving CD 6 further north into Dawson County and submerging a heavily Black portion of Cobb

[13] Available at https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/congress/cong-s18-p1-packet.pdf?sfvrsn=dd7b16e7_2.

County into CD 14. *See* Ex. 24, Duchin Rpt. 4, 69; Ex. 25, Kennedy-Duncan Plan;[14] Ex. 26, SB 2EX.[15]

65. Dr. Duchin found evidence of "racially imbalanced transfers of population" that were "emphatically not required by adherence to traditional districting principles." *See* Ex. 24, Duchin Rpt. 67-69.

66. To test Defendant's purported partisanship justification, Dr. Duchin generated 100,000 redistricting plans with an explanatory algorithm seeking electoral success for the Republican Party, using 2020 presidential election data. *See* Ex. 27, Duchin Supp. Rpt., at 7-8.

67. Dr. Duchin found that the middle range of congressional districts in BVAP percentage "show clear signs of 'cracking'" in the enacted plan, relative to the comparison plans." *See* Ex. 27, Duchin Supp. Rpt. 8.

68. Dr. Duchin found that SB 2EX is consistent with "a plan [] drawn by using minority racial population to secure partisan advantage in a state with roughly 50-50 partisan support." *See* Ex. 27, Duchin Supp. Rpt. 8.

69. Dr. Duchin concluded that SB 2EX "does not suggest a race-neutral pursuit of partisan advantage, but rather a highly race-conscious pursuit of partisan advantage." *See* Ex. 27, Duchin Supp. Rpt. 8.

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[14] Available at https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/congress/cong-s18-p1-packet.pdf?sfvrsn=dd7b16e7_2.

[15] Available at https://www.legis.ga.gov/api/document/docs/default-source/reapportionment-document-library/congress/congress-prop1-2021-packet.pdf?sfvrsn=104b7388_2.

70. Racial demographic data is available at the census-block level. *See* Ex. 28, Strangia Dep. 103:17-23.

71. Race is highly correlated with political affiliation in Georgia. *See* Ex. 29, Thomas L. Brunell, Ph.D, "Report on Racial Bloc Voting in Georgia," LEGIS00019244-19244.23 at LEGIS00019244.23.

72. Dr. Duchin concluded that district boundaries that split state precincts and sort voters at the census-block level can be "especially revealing." *See* Ex. 24, Duchin Rpt. 75.

73. Dr. Duchin found that splits to state precincts "highlight the predominance of race over even partisan concerns." *See* Ex. 24, Duchin Rpt. 75.

74. Dr. Duchin found that split precincts at the border of CD 6 "show significant racial disparity, consistent with an effort to diminish the electoral effectiveness of CD 6 for Black voters." *See* Ex. 24, Duchin Rpt. 75.

75. There is no prediction of voters' political behavior at finer distinctions than the precinct level. *See* Ex. 28, Strangia Dep. 96:20-98:18.

Dated this 26th day of April 2023.

Respectfully submitted,

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Northern District of Georgia Local Rule 7.1 Certification

Pursuant to N.D. Ga. L.R. 7.1(D), I, Jack Genberg, certify that this brief was prepared using Times New Roman 14 pt. font, which is one of the fonts and point selections approved by the Court in L.R. 5.1(B).

Dated this 26th day of April, 2023

Respectfully submitted,

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