

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

GEORGIA STATE CONFERENCE OF THE  
NAACP; GEORGIA COALITION FOR THE  
PEOPLE’S AGENDA, INC.; GALEO  
LATINO COMMUNITY DEVELOPMENT  
FUND, INC.,

*Plaintiffs,*

v.

STATE OF GEORGIA; BRIAN KEMP, in his  
official capacity as the Governor of the State of  
Georgia; BRAD RAFFENSPERGER, in his  
official capacity as the Secretary of State of  
Georgia,

*Defendants.*

Civil Case No. 21-c5338-  
ELB-SCJ-SDG

**PLAINTIFFS’ RESPONSE TO DEFENDANTS’ STATEMENT OF  
UNDISPUTED MATERIAL FACTS**

Plaintiffs pursuant to Rule 56 of the Federal Rules of Civil Procedure, Local Rule 56.1, and this Court’s Individual Rule III.I submit this Response to Defendant’s Statement of Material Facts as to Which There is No Genuine Issue to be Tried.

1. The Georgia General Assembly held town hall meetings before redistricting maps were published in 2001, 2011, and 2021. Deposition of Joseph Bagley, Ph.D. [Doc. 128] (Bagley Dep.) 68:15-23, 73:25-74:9.

**Plaintiffs Response:**

Undisputed only to the extent that town hall meetings were conducted in the referenced years. Plaintiffs dispute any inference that the town halls provide members of the public with any reasonable or adequate means of providing informed input on the redistricting plans or the 2020 Census data to legislators because neither the proposed maps nor the 2020 Census data were available to the public prior to or at the town halls. Declaration of Jacob Canter (“Canter Decl.”) ¶ 11 (Expert Report of Prof. Joseph Bagley, (“Bagley Rep.”), 41 & 43; *id.*, 44-45 (comments from Karuna Ramachandran); *id.*, 45-46 (comments from Rep. Jackson); *id.*, 46 (comments from Rep. Alexander); *id.*, 47 (five people at the June 28, 2021, public hearing spoke about the need for ample time after the maps were proposed for the public to analyze them and provide feedback for alternatives); *id.*, 49 (three people at the June 29, 2021, public hearing spoke about the need for time and feedback between when Census data comes out and when the maps are proposed, and between when the maps are proposed and the vote on the maps); *id.*, 51 (four people at the July 27, 2021, public hearing spoke about how the public testimony would be more

valuable after the maps were proposed); *id.*, 51 (comments from Kimberly Fountain); *id.*, 55 (comments from Alex Ohanian); *id.*, 56 (comments from Marika Keelstra)).

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:**

Undisputed as to the fact town hall “listening sessions” took place in these years. However, Plaintiffs dispute any inference that the “listening sessions” provided members of the public with any or adequate transparent process for providing informed input to legislators on the redistricting process or redistricting maps because they were conducted prior to the publication of the 2020 Census data and the release of any of the proposed redistricting maps. Bagley Rep., 42-43; *see also id.*, 54 (comments from Hannah Gebreselassie inquiring how the legislators planned to incorporate feedback to ensure the town hall was not just for show).

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

**Plaintiffs’ Response:**

Undisputed that Georgia has historically conducted redistricting proceedings in special legislative session. Disputed because it is not a material fact and because the process can still be impugned with procedural and substantive departures from the normal legislative process even if redistricting has historically been conducted during special legislative sessions. *See* Bagley Rep., 41 (“[t]he public was widely critical of holding these meetings before the release of the Census data and the publication of maps. They called for ample time for analysis and feedback and map-submission after the fact.”); *id.* (“[t]he public was relentless in its call for a more transparent process, in general.”); *id.*, 42 (“[t]he public and members of the committee wanted more of a dialogue than a one-way-street of taking community comment at hearings.”); *id.* (“[h]earings were not held, according to members of the public and the committees, in the most populous areas of the state where they should have been.”); *id.* (“[m]aps ought to reflect the growth of Georgia’s minority po[p]u[la]tion.”); *id.* (members of the public asked the Committee not to “engage in packing and cracking [of minority populations] . . .”).

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:**

Undisputed that Professor Bagley agreed that the timeline was similar; but disputed as to whether this is a material fact or that any inference can be drawn that the redistricting timeline here supports entry of summary judgment against Plaintiffs. In fact, while the timeline in the three redistricting cycles may have been similar, Professor Bagley opined that the timeline “indicate[s] to me it was also rushed in those cycles,” and observed that members of the public and members of the General Assembly criticized the decision to hold the process in this rushed manner. Bagley Rep., 58-64, 69-71 (Senate map); *id.*, 64-69, 72-73 (House map); *id.*, 73-84 (Congressional map); Canter Decl. ¶ 30 (Deposition of Dr. Joseph Bagley (“Bagley Dep.”) 138:22-23).

5. The 2021 redistricting process was “generally analogous” to the 2001 and 2011 cycle. Bagley Dep. 140:13-140:17.

**Plaintiffs’ Response:**

Disputed. Defendants’ citation reflects only that Professor Bagley stated that the “procedural and substantive departures in the legislative process when the comparison point is the 2001 and 2011 redistricting cycles” is “generally analogous.” However, Defendants ignore other aspects of the 2021 cycle, such as the use of race when drawing the maps in ways that violate the U.S. Constitution, as reflected in the Dr. Duchin’s rebuttal report, or the decision to subordinate traditional

districting principles to racial considerations, as reflected in Dr. Duchin’s opening report. Canter Decl. ¶ 21 (Rebuttal and Suppl. Report of Dr. Moon Duchin (“Duchin Suppl. Rep.”), 1-10); Canter Decl. ¶ 3 (Expert Report of Dr. Moon Duchin (“Duchin Rep.”) § 10 at 67-79).

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

**Plaintiffs’ Response:**

Undisputed only to the fact that Professor Bagley testified that the redistricting processes were procedurally and substantively similar. Disputed as to whether any inference can be drawn from this fact that the processes support entry of summary judgment against Plaintiffs. Professor Bagley’s testimony substantiates that the legislative process was not transparent and that it failed to provide the public with a meaningful opportunity to provide informed input on the maps or Census data. Further, unlike the prior cycles, the town hall meetings were conducted before the release of Census data. *See* Bagley Rep., 41 (“[t]he public was widely critical of holding these meetings before the release of the Census data and the publication of maps. They called for ample time for analysis and feedback and map-submission after the fact.”); *id.* (“[t]he public was relentless in its call for a more transparent process, in general.”); *id.*, 42 (“[t]he public and members of the committee wanted

more of a dialogue than a one-way-street of taking community comment at hearings.”); *id.* (“[h]earings were not held, according to members of the public and the committees, in the most populous areas of the state where they should have been.”); *id.* (“[m]aps ought to reflect the growth of Georgia’s minority po[p]u[la]tion.”); *id.* (members of the public asked the Committee not to “engage in packing and cracking [of minority populations] . . .”).

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. 134] (Duchin Dep.) 48:5-12.

### **Plaintiffs’ Response:**

Undisputed that Dr. Duchin so testified; but disputed to the extent that Defendants mischaracterize the findings of Dr. Duchin’s report. In her report, Dr. Duchin states:

“Georgia’s fast growth is entirely due to the expansion in the population of people of color. In fact, the (non-Hispanic) White population of Georgia actually dropped from 2010 to 2020— from 5,413,920 to 5,362,156—while the state overall grew by over a million people. As a result, the population share of Black and Latino residents expanded from 39.75% to 42.75% in the time between the 2010 and the 2020 Census data release, while the White population share dropped markedly from 55.88% to 50.06%. Thus, to within a tenth of a percent, current redistricting data finds Georgia evenly split between White residents and people of color.”

Duchin Rep., § 3.3 at 8.

Further, Dr. Duchin's deposition testimony cited by Defendants is about the two-percentage point Black CVAP increase, which does not represent the overall growth of Black population in Georgia, but instead describes the relative growth of Black population vis-a-vis the decrease in White population in Georgia between 2010 and 2020. *Id.*

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.

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. 132] (Wright Dep.) 68:17-69:7.

**Plaintiffs' Response:**

Disputed. Plaintiff objects to Ms. Wright's testimony on the grounds that it fails to establish Director Wright has personal knowledge of whether and to what extent Senator Kennedy and/or Chair Rich sought such meetings with other

members of the General Assembly. As such, Ms. Wright's testimony constitutes inadmissible speculation and hearsay under F.R.E. 602 and 801. Plaintiffs also object that this is not a material fact because whether the Chairs of the Senate and House redistricting committees sought or attempted to meet with colleagues does not establish that the Chairs actually met with those colleagues or relied on information from them.

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:**

Undisputed that the General Assembly created a public comment portal. However, Plaintiffs object that this is not a material fact because the mere fact that a public portal was created does not establish that the comments posted to the portal were taken into consideration in the drawing of the maps by legislators or Ms. Wright. In fact, Ms. Wright stated that she did not "have time to spend a lot of time reading" the public portal comments. Canter Decl. ¶ 16 (Deposition of Director Gina Wright ("Wright Dep.") 61:9-23); *see also* Duchin Rep., § 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. 129] (Kennedy Dep.) 161:1-4; Deposition of Bonnie Rich [Doc. 131] (Rich Dep.) 214:19-215:7; Bagley Dep. 89:9-18.

**Plaintiffs' Response:**

Undisputed. However, Plaintiffs object that this is not a material fact because Dr. Duchin provides evidence that traditional redistricting principles were subordinated throughout the map-drawing process. Duchin Rep., § 10 at 67-80.

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:**

Disputed. Ms. Wright does not state in the cited deposition excerpt that the plan she worked on during the working session was based on a draft plan from Sen. Kennedy. Wright Dep. 28:19-23. Moreover, Ms. Wright testified that Sen. Kennedy did not draw the earlier version of the Congressional map which was published on the LCRO website. Wright Dep. 21:5-10.

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. None of the facts cited establish that political considerations were key to drawing the Congressional map. Wright Dep. 111:16-112:10, 115:8-11, and 115:17-24 only indicate that Sen. Kennedy, Speaker Ralston and other legislators had a political goal in mind for CD 6, but not that political considerations were key to the map-drawing or that political considerations overrode other considerations such as racial sorting. Wright Dep. 158:4-21 also only indicates there was a political justification in how CD 14 was drawn, but not that it was the key or sole consideration in how the district was drawn.

Moreover, the record is replete with evidence that race was used to achieve Defendants' purported partisan goals. *See* Canter Decl. ¶ 17 (Deposition of Robert Strangia ("Strangia Dep.") 97:17-103:13 (describing creating a formula to estimate political data at the block level, but this data is not accurate at the block level); *id.* 103:17-23 (explaining that racial data available to the legislature is accurate at the block level)); Duchin Rep. §§ 2 & 10.2 at 4-5, 72-79 (finding precinct splits reflect racial focus); Wright Dep. 10:25-11:21; 14:11-20; 27:17-32:4; 36:14-24; 63:18-21; 115:25-116:16; 145:11-22; 149:25-150:9 (Ms. Wright drew draft maps with legislators with racial data projected onto a screen).

14. Georgia's prior 2011 districts were precleared on the first attempt by the U.S. Department of Justice and were never found by any court to be unlawful or unconstitutional. Bagley Dep. 56:20-57:8, 58:4-11.

**Plaintiffs' Response:**

Undisputed. However, Plaintiffs object that this is not a material fact because the 2011 maps are not at issue in this case.

15. For the legislative maps, Ms. Wright first drafted "blind" maps for the House and Senate, drawing based on her own knowledge of Georgia and the historic districts. Wright Dep. 45:15-25 (Senate map); 62:17-62:24 (House map).

**Plaintiffs' Response:**

Undisputed that Wright testified she first drew "blind" maps. However, Plaintiffs object as vague, because Defendants fail to identify what "knowledge of Georgia and the historic districts" Ms. Wright used to draw the "blind" maps. Also disputed as to any inference that the "blind" drawing of maps does not use racial data, since Ms. Wright does not rule out in the cited testimony that her knowledge of Georgia includes knowledge of the racial composition of certain areas of the state.

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

**Plaintiffs' Response:**

Disputed. Defendants' alleged undisputed fact is incomplete. Ms. Wright explains that she also met with other legislators about the district boundaries for the maps and that counsel was also involved in drawing the boundaries for the maps. Wright Dep. 57:16-21; 177:10-13; 197:10-13. Additionally, Dan O'Connor, Ms. Wright's colleague in the Legislative and Congressional Redistricting Office of the Georgia General Assembly, testified during his deposition that he attended at least one map drawing session with legislators and potentially Ms. Wright to draw maps. Canter Decl. ¶ 18 (Deposition of Daniel J. O'Connor ("O'Connor Dep.") 68:12-21, 70:3-8.

17. Some changes requested by Democrats were included. Wright Dep. 59:5-60:7 (Sen. Rhett); Bagley Dep. 107:3-11.

**Plaintiffs' Response:**

Undisputed. However, Plaintiffs object that "some changes" is vague because Defendants do not specify what changes were included or to whom the Democrats requested changes. Plaintiffs also object under FRE 801 as hearsay. Plaintiffs also object this is not a material fact because incorporating one change requested by a Senator does not overcome evidence that racial considerations predominated in the drawing of the map; that it was drawn with the intent to racially sort voters; or that

it was drawn with a discriminatory purpose. *See* Bagley Rep. at 86; Duchin Rep. at 5.

18. Information about draft maps was also shared with members of the Democratic caucus, and Democratic members were able to work with the joint Reapportionment Office. Wright Dep. 223:14-224:4, 226:11-17; Bagley Dep. 116:1-7.

**Plaintiffs' Response:**

Disputed. Plaintiffs object as vague because Defendants do not explain the context in which Democratic members were able to work with the joint Reapportionment Office. Ms. Wright testified that her office “do[esn’t] show any map that a legislator draws without explicit permission from them or them being present to show that to whoever they choose.” Wright Dep. 41:13-41:19. Ms. Wright also testified only that Shalamar Parham requested and received block equivalency files when the maps were “being made available,” but not during the process when Ms. Wright kept the maps secret. Wright Dep. 223:14-224:4, 226:11-17; Bagley Dep. 116:1-7. Ms. Wright also testified that Leader Beverly helped introduce the plans as a “technical[.]” matter, but not that the maps were shared with Ms. Wright or others in the Democratic caucus. *See* Wright Dep. 39:17-40:6.

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

**Plaintiffs' Response:**

Disputed. Although Dir. Wright testified that she consulted with counsel about compliance with the Voting Rights Act, the cited testimony makes no mention of the Chairs. This is also not a material fact, because Defendants' assertion of attorney-client privilege over conversations during the Redistricting Process, including any advisement on the enacted maps or the Voting Rights Act, means that Plaintiffs are unable to meaningfully assess the validity or extent of any alleged consultation with counsel with respect to the enacted maps' adherence, or lack thereof, to the Voting Rights Act. Wright Dep. 50:1-50:03.

20. 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:**

Disputed. In the cited deposition testimony, Ms. Wright does not state that the Chairs of the committees focused on past election data, but rather that both racial and election data were available. Wright Dep. 55:25-56:7. Wright Dep. 258:2-14

only states that political data was “an important consideration” for the three maps, not that the Chairs of the committees focused on political data.

The record is replete with evidence that race was used to achieve Defendants’ purported partisan goals. *See* Strangia Dep. 97:17-103:13 (describing the creation of a formula to estimate political data at the block level, but this data is not accurate at the block level); *id.* 103:17-23 (explaining that racial data available to the legislature is accurate at the block level); Duchin Opening Rep. §§ 2 & 10.2 at 4-5, 72-79 (finding precinct splits reflect racial focus); Wright Dep. 10:25-11:21; 14:11-20; 27:17-32:4; 36:14-24; 63:18-21; 115:25-116:16; 145:11-22; 149:25-150:9 (Ms. Wright drew draft maps with legislators with racial data projected onto a screen).

21. 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:**

Disputed. This statement is misleading because Ms. Wright relied on information to allow her and legislators to understand the racial sorting effects of her line drawing decisions, such as the ability to see the changes to racial composition as line changes were being made. Wright Dep. 116:23-118:25; 126:3-127:4; Wright Dep. 10:25-11:21; 14:11-20; 27:17-32:4; 36:14-24; 63:18-21; 115:25-116:16;

145:11-22; 149:25-150:9 (Ms. Wright drew draft maps with legislators with racial data projected onto a screen).

22. 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. Rob Strangia, a Geographic Information Systems (“GIS”) specialist at the LCRO who participated in the map drawing process, testified that when drawing the maps, the legislature had access to racial data—but not political data—at the block level. *See* Strangia Dep. 103:17-103:23. Strangia testified that he created a formula to estimate political data at the block level, but that this data is not accurate at the block level. *Id.* 97:17-103:23.

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

**Plaintiffs' Response:**

Undisputed. However, the “other data” referred to in Fact No 23, above, included racial data. Wright Dep. 55:25-56:7.

24. 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:**

Disputed. There is evidence that maps were drawn to achieve political results through impermissible racial sorting and the subordination of traditional redistricting principles. Duchin Rep. at 4-5, 10-15; Duchin Suppl. Rep. at 10.

25. 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. However, the failure to take into consideration the public comments provided at these hearings is evidence which suggests that the map-drawing process was motivated by discriminatory intent. *See* Bagley Rep., § VI, 56-84.

26. 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:**

Disputed to the extent Defendants suggest the minority party's maps were seriously considered in the legislature, which passed the majority party one week after introduction. *See* Bagley Rep., § VI, 56-84.

27. 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:**

Undisputed. However, Plaintiffs object that this is not a material fact because there was other evidence reflective of procedural departures from the normal process, including that the maps presented by Sen. Kennedy and Rep. Rich were passed only one week after introduction. *See* Bagley Rep., § VI, 56-84.

28. 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:**

29. Undisputed that this was Professor Bagley's testimony. However, disputed to the extent that Defendants fail to address the fact that although Dr. Bagley testified he was not opining that there was an "outright abuse of power", he also testifies that there were public complaints of an abuse of power by Republicans. Bagley Dep. 63:11-24; Bagley Rep. at 41-42, 56-57. Further, Plaintiffs object to Fact No. 28 because proving that redistricting maps were an "abuse of power," is not material to whether the maps were drawn with racially discriminatory intent.

Additionally, there is other evidence supporting Plaintiffs’ claim that the redistricting maps were drawn with racially discriminatory intent. Bagley Rep. at 41-42, 57-62, 66-68. 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. Plaintiffs object that this is not a material fact, it is instead a mischaracterization of witness testimony and Defendants’ citation is misleading. Dr. Duchin’s answer to the very next question—not cited by Defendants—clarifies that she was focusing on the word “criticizing,” as the purpose of her report is to demonstrate that it is possible to “get more [minority group] opportunity while still being very respectful to [traditional redistricting principles,] and that her “goal is. . . to give a framework and offer alternatives not to criticize per se.” Canter Decl. ¶ 19 (Deposition of Dr. Moon Duchin (“Duchin Dep.”) 81:25-83:03).

30. The enacted congressional map resulted in five districts that elected Black- and Latino- preferred candidates. Duchin Rep. ¶¶ 4.1, 6.3.

**Plaintiffs’ Response:**

Disputed. Dr. Duchin’s report does not state that the enacted congressional districts “elected” Black and Latino-preferred candidates. Dr. Duchin explains that the enacted congressional map created five “performing” districts for Black and

Latino-preferred candidates, one less than the benchmark plan. Duchin Rep., § 4.1, at 10. Further, Defendants’ citation to Duchin Report ¶ 6.3 does not support this assertion. The cited section says nothing about how many districts “elect” candidates of choice of Black or Latino voters; instead, it is a comparison of political subdivision splits across plans. *See id.*; *see also id.* § 6.3.

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

**Plaintiffs’ Response:**

Disputed to the extent that only Defendants’ citation to Duchin Report § 6.3 supports the assertion. Duchin Opening Rep. § 4.1 does not contain any information about the number of split counties in any plan.

32. The enacted state Senate map reduced the number of split counties from the prior plan. Duchin Report, ¶¶ 6.3, 6.4; Kennedy Dep. 106:4-11.

**Plaintiffs’ Response:**

Disputed to the extent that only Duchin Opening Rep. § 6.3 supports the assertion. Duchin Opening Rep. § 6.4 does not contain any information about the number of county splits in any of the Senate plans. Senator Kennedy’s cited testimony also does not provide any information about the number of county splits in any of the Senate plans.

33. The enacted state Senate map did not pair incumbents of either party running for re-election. Duchin Report, ¶¶ 6.3, 6.4; Kennedy Dep. 106:4- 11.

**Plaintiffs' Response:**

Disputed. Defendants' citations do not support this assertion. Sections 6.3 and 6.4 of Dr. Duchin's report do not provide any information about incumbent splits. Section 6.3 relates solely to the splitting of political subdivisions. Section 6.4 relates solely to the racial demographics of different plans. Similarly, the citation to Senator Kennedy's deposition testimony does not support this assertion. In the cited testimony, Senator Kennedy merely states that he "[didn't] think anyone got drawn out of their [congressional] district." Canter Decl. ¶ 20 (Deposition of John Kennedy ("Kennedy Dep.") 106:9-10). The testimony does not relate to Senate incumbency. Further, Defendants' expert Mr. Morgan stated that four incumbents were paired in the enacted senate map and did not opine about whether those incumbents were running for office. *See* Canter Decl. ¶ 31 (Rebuttal Report of John Morgan ("Morgan Rebuttal Rep.") at 13, Chart 9; Canter Decl. ¶ 22 (Deposition of John B. Morgan ("Morgan Dep.") 49:22-50:9).

34. The enacted state Senate map maintained the same number of majority-Black districts as the prior plan. Duchin Report, ¶¶ 6.3, 6.4; Kennedy Dep. 106:4-11.

**Plaintiffs' Response:**

Disputed to the extent that only Defendants' citation to Duchin Opening Rep. § 6.4 supports this assertion. Duchin Opening Rep. § 6.3 does not contain any information about the racial demographics of any plans. Further, the cited testimony of Senator Kennedy also does not contain any information about the racial demographics of any plans. *See* Kennedy Dep. 106:4-11.

35. The enacted state House map also reduced the number of split counties from the 2011 plan. Duchin Report, ¶¶ 6.3, 6.4.

**Plaintiffs' Response:**

Disputed to the extent that only Defendants' citation to Duchin Opening Rep. § 6.3 supports this assertion. Duchin Opening Rep. § 6.4 contains no information related to the number of split counties in any plan.

36. The enacted state House map increased the number of majority-Black districts from the prior plan. Duchin Report, ¶¶ 6.3, 6.4.

**Plaintiffs' Response:**

37. Disputed to the extent that only Defendants' citation to Duchin Opening Rep. § 6.4 supports the assertion. Section 6.3 of Dr. Duchin's report does not contain any information about the racial demographics of the plans. One of Plaintiffs' proposed Senate plans increases the number of majority-Black voting age population

(VAP) districts by three and another decreases the number of majority-Black VAP districts by six when compared with the enacted plan. Duchin Report, ¶¶ 6.4.

**Plaintiffs Response:**

Undisputed only as to the following facts: SD Alt Eff 1 increases the number of majority-Black VAP districts by 3. SD Alt Eff 3 reduces the number of majority-Black VAP districts by 6 but increases the number of effective districts for Black and Hispanic voters by 9. Duchin Rep. § 6.4 at 23; Duchin Rep. § 7.2; Duchin Dep. 21:01-21:20, 60:05-61:23, 63:17-77:13, 77:20-78:10.

38. Plaintiffs' proposed House plans either increase the number of majority-Black VAP districts by one or decrease them by 12 when compared with the enacted plan. Duchin Report, § 6.4; Duchin Dep. 29:15-22; 113:9- 114:8.

**Plaintiffs Response:**

Undisputed only as to the following facts: Plaintiffs' HD Alt Eff 1 increased the number of majority-Black VAP district by 1, the number of majority-Black or Hispanic VAP districts by 15, and the number of majority Black and Hispanic CVAP by 14. Plaintiffs' HD Alt Eff 2 map reduced the majority Black VAP districts by 5, increased the number of Black and Hispanic VAP districts by 13, and increased the number of Black and Hispanic CVAP districts by 11. HD Alt Eff 3 reduced the number of majority-Black VAP districts by 12, contains the same number of

majority-Black and Hispanic VAP districts, and reduces the number of majority-Black and Hispanic CVAP districts by 6. Duchin Rep. § 6.4 at 23; Duchin Dep. 21:01-21:20, 60:05-61:23, 63:17-77:13, 77:20-78:10.

39. Dr. Duchin’s goal in creating the proposed plans was to create districts that “meet a 50 percent plus one threshold” for minority voters. Duchin Dep. 47:10-48:4; 76:2-15.

**Plaintiffs Response:**

Disputed. Defendants’ mischaracterize Dr. Duchin’s work. Defendants incorrectly imply this was Dr. Duchin’s primary or only goal. Moreover, Defendants’ citations do not support this assertion. Dr. Duchin’s testimony in Duchin Dep. 47:10-48:4 was only in response to the question “what is the *Gingles* 1 standard for coalition districts as you understand it?” Dr. Duchin explained that she believes *Gingles* 1 demonstrative plans must contain additional “50 percent plus 1” minority group districts. Further, Dr. Duchin’s testimony in Duchin Dep. 76:02-76:15 is that “in the first instance, my goal was to create *Gingles* demonstrative maps... to create *Gingles* districts, which require 50 percent plus 1, you need to have some minority population in order to achieve that.” However, Dr. Duchin’s testified that purpose of her *Gingles* 1 demonstrative plans was to demonstrate that it was possible to draw plans with additional majority-minority districts while also

respecting traditional redistricting principles. Duchin Dep 63:17-77:13, 122:08-123:15; Duchin Rep. § 1.1 at 3.

40. Dr. Duchin’s proposed congressional plan does not convert District 6 into a majority-Black district but instead converts District 3 to be majority Black. Duchin Dep. 119:25-120:11.

**Plaintiffs Response:**

Undisputed.

41. When describing the process of drawing the congressional plan, Dr. Duchin was unable to identify a reason why she connected various rural and urban areas. Duchin Dep. 58:18-59:13; 71:14-19

**Plaintiffs Response:**

Disputed. Defendants’ citations do not support this assertion. Dr. Duchin’s testimony in Duchin Dep. 58:18 was that her “Congress Alt” plan “connects parts of south Fulton and Clayton Counties with Troup and Meriwether Counties and Harris County in rural Georgia.” Dr. Duchin was never asked to identify a reason for why these counties were connected—she was only asked to confirm that they were, which she did. Likewise, Dr. Duchin’s testimony in 71:14-71:19 was *only* that she drew her demonstrative congressional plan the same way she drew her demonstrative house and senate plans. Dr. Duchin was not asked to “identify a reason why she

connected various rural and urban areas,” nor did the cited testimony contain any discussion of that topic. Further, Dr. Duchin testified that throughout her map-drawing process she “had certain aspects of community testimony in mind.” She also explained that her “knowledge that [she] gained” through review of community testimony “inform[ed] all the map drawing . . . .” Duchin Dep. 122:08-123:08; 163:15-164:03 (“the knowledge that I gained throughout this process about areas where people are talking about shared community concerns, that probably informs all the map drawing in the back of my mind.”).

42. Dr. Duchin also could not explain the reasoning behind the various alternative configurations of her Senate and House plans, instead relying on various computer-drawn drafts. Duchin Dep. 64:24-66:20, 71:7-13, 121:13- 123:8, 139:10-20, 158:5-14, 163:15-164:3.

### **Plaintiffs Response:**

Disputed. Defendant’s citations do not support this assertion. Dr. Duchin testifies at Duchin Dep. 64:24-66:20 that she “hand draw[s]” maps after the “algorithmic exploration” process in order to respect traditional redistricting principles (“TDP”). Dr. Duchin’s testimony at Duchin Dep. 71:07-71:13 only confirms that she drew demonstrative senate, house, and congressional maps using that same methodology. Dr. Duchin was not asked to “explain the reasoning behind

various alternative configurations” during that portion of her testimony. In her testimony at Duchin Depo. 121:13-123:08, Dr. Duchin noted that when drawing the demonstrative plan, she “balanced the principles [TDPs] that we've discussed.” When asked about why she connected certain rural and urban areas, she noted that she had “certain aspects of community testimony” in mind.” Dr. Duchin’s testimony at Duchin Dep. 158:05-158:14, in response to why she connected parts of Albany with counties on the Florida border in one of her demonstrative house plans for the HD Southwest cluster, was that she “would just repeat the explanation from earlier that says that these are intended to be demonstrations of what's possible”—in other words, that it is possible to create demonstrative plans that create additional majority-minority districts that respect TDPs. Dr. Duchin’s testimony at Duchin Dep. 158:05-14 and 163:15-164:03 pertain to her effectiveness maps, which are not *Gingles* 1 demonstratives, but instead are meant to provide insights into racial gerrymandering.

Further, Dr. Duchin explains throughout her deposition that to draw her *Gingles* 1 demonstratives, she began by using an algorithmic approach to determine whether it is possible draw additional majority-minority districts. She then used those algorithmic maps as a base and hand-drew demonstrative plans to comport with traditional redistricting principles such as compactness, political subdivision

splits, and communities of interest. *See* Duchin Dep. 18:15-19:14, 65:09 – 71:06, 122:08-123:08; 145:21-146:16 (describing effectiveness maps); 163:15-164:03.

43. Some of Dr. Duchin’s legislative plans included Senate districts with Black VAP percentages as high as 86.5% and multiple House districts with more than 80% Black VAP, including one over 90%. Duchin Dep. 123:24- 127:8, 137:22-139:2, 162:8-22.

**Plaintiffs Response:**

Undisputed. The citation to Moon Dep. 162:08-162:22 only refers to Dr. Duchin’s effectiveness maps, which are not material to any *Gingles* 1 analysis.

44. Dr. Duchin did not consider those districts “packed.” Duchin Dep. 123:24-127:8, 137:22-139:2, 162:8-22.

**Plaintiffs Response:**

Disputed to the extent this refers to any districts beyond those identified in Fact No. 43 and 44.

45. All of Dr. Duchin’s legislative plans have population deviations higher than the enacted plans. Duchin Dep. 101:18-23 (Senate), 101:24-102:2 (House).

**Plaintiffs Response:**

Undisputed, to the extent that “legislative plans” refers only to the house and senate plans.

46. Two of the three Senate plans have the same or more county splits than the enacted plan. Duchin Dep. 107:10-15.

**Plaintiffs Response:**

Undisputed to the extent that this is solely referring to the “county split” metric in Duchin Report at 22, Table 9, and not county pieces, i.e., the number of pieces counties are split into. Two of Dr. Duchin’s alternative senate plans split counties into fewer pieces than the enacted plan. Duchin Rep. at 22, Table 9.

47. All of the House plans split the same or more counties than the enacted plan. Duchin Dep. 107:16-21.

**Plaintiffs Response:**

Undisputed to the extent that this is solely referring to the “county split” metric in Duchin Report at 22, Table 9. All of Dr. Duchin’s alternative house plans split counties into fewer pieces than the enacted plan. Duchin Rep. at 22 (Table 9).

48. While all of the compactness scores are generally similar, Dr. Duchin also reviewed compactness reports while drawing her plans and modified them to improve the scores. Duchin Dep. 103:17-105:20, 69:11-16.

**Plaintiffs Response:**

Undisputed.

49. Dr. Duchin was not able to categorize whether the differences in the various compactness scores were significant. Duchin Dep. 103:17-105:14.

**Plaintiffs Response:**

Disputed. Dr. Duchin testified at 103:17-105:14 that she could not make generalized statements about whether average compactness scores are “significant.” However, Dr. Duchin clarifies that “it’s possible that words like ‘significant’ have crept in in individual places. But I would say generally if one plan is more compact than another on all three of these measures, Polsby Popper, Reock, and cut edges, then I’m comfortable saying that it’s generally more compact.”

50. The only consistent metric across all of Dr. Duchin’s plans is that each one increases Democratic political performance over the comparable enacted plan. Expert Report of John Morgan, attached as Ex. B (Morgan Report), ¶ 12.

**Plaintiffs Response:**

Disputed. This is not a statement of material fact, it is a characterization of Mr. Morgan’s evidence, for which he used only two individual elections in 2020. Further, each of Dr. Duchin’s illustrative plans create additional majority-minority districts. Duchin Rep. at 23 (Table 10); Duchin Rep. at 25.

51. Those differences run from two additional Democratic-leaning seats on the congressional plan, Morgan Report, Chart 7, to ten additional Democratic-

leaning seats on the Senate plan, Morgan Report, Chart 4, to 12 additional Democratic-leaning seats on the House plan, Morgan Report, Chart 1.

**Plaintiffs Response:**

Undisputed only as the fact that Mr. Morgan's report supports these assertions, based upon two elections in 2020 that he analyzed.

52. The Ga. NAACP plaintiffs put forth only one member's name in discovery and could not identify how many members were affected by redistricting. Deposition of Gerald Griggs [Doc. 136] (Griggs Dep.) 79:1-13.

**Plaintiffs Response:**

Disputed. This mischaracterizes Plaintiffs obligations pursuant to an agreement with Defendants. On November 21, 2022, following a meet and confer Defendants agreed that each Plaintiff would need to identify only one member for the purpose of establishing associational standing. Declaration of Crinesha Berry ("Berry Decl.") ¶ 12-14; Declaration of Julie Houk ("Houk Decl.") ¶¶ 8-9. Plaintiff, GA NAACP, subsequently updated its discovery responses and named one member. Berry Decl. ¶¶ 12-14, Houk Decl. ¶¶ 8-9. During his deposition, President Griggs also testified that he was able to determine that the GA NAACP had members impacted by the 2021 redistricting process and that while he could not "give a single number [of affected members] because [he hadn't] seen that, that research, [he knew]

it was a lot.” Canter Decl. ¶ 8 (Deposition of Gerald Griggs (“Griggs Dep.”) 78: 4-79:5). *See also* Berry Decl.; Houk Decl.

53. The Ga. NAACP never identified any legislative districts in which that member lived and only that testified that the member had previously been in congressional District 6 and now was in District 7. Griggs Dep. 79:1-13.

**Plaintiffs Response:**

Disputed. This is disputed to the extent it mischaracterizes Plaintiffs obligations pursuant to an agreement with Defendants. Further, President Griggs was never asked to identify which legislative districts the member he identified lived in. *See generally*, Griggs Dep.

54. The Georgia Coalition for the Peoples’ Agenda plaintiffs designated just one member to establish standing, and provided no information as to that member’s residence, their voter-registration status, or a process by which they determine they had members in all districts named in the Complaint. Deposition of Helen Butler [Doc. 138] (Butler Dep.) 74:7-76:13.

**Plaintiffs Response:**

Disputed. This is disputed to the extent it mischaracterizes Plaintiffs obligations pursuant to an agreement with Defendants described in response to SOF 52.

Defendant's citation mischaracterizes the Georgia Coalition for the Peoples' Agenda Plaintiff deposition testimony. The Georgia Coalition for the Peoples' Agenda Plaintiff was never asked to identify that member's residence or their voter-registration status. Despite this, Helen Butler on behalf of the Georgia Coalition for the Peoples' Agenda did testify that she did know "what district for House, Senate, and Congress the identified member lives in," and that she believed "he lives in Cobb County, in the Cobb County districts." Canter Decl. ¶ 6 (Deposition of Helen Butler ("Butler Dep.") 75:7-18). Helen Butler, also testified when asked "...does the Peoples' Agenda have a way to determine which House, Senate, and Congressional districts its individual members reside in," that they do have way to determine this including going "by [its] members, where they live, and by the voter files." *Id.* at 74:16-22. Ms. Butler further testified that working with counsel further analysis related to this was performed. *Id.* at 74:23-6.

55. The GALEO plaintiffs designated just one member to establish standing, and provided no information as to that member's residence, their voter-registration status, or a process by which they determine they had members in all districts named in the Complaint. Deposition of Geraldo Gonzalez [Doc. 139] (Gonzalez Dep.) 81:6-82:25.

**Plaintiffs Response:**

Disputed. This is disputed to the extent it mischaracterizes Plaintiffs obligations pursuant to an agreement with Defendants. *See* Berry Decl., Houk Decl.

Defendant's citation mischaracterizes the GALEO Plaintiff deposition testimony. The GALEO Plaintiff was never asked to identify that member's residence or their voter-registration status. Despite this, Geraldo Gonzalez on behalf of the GALEO did testify that to identify the member GALEO "looked at [their] membership list and made sure that [they] had addresses for the folks that [they] were looking at and made sure that they were in concert with what [they] were particularly looking for." Mr. Gonzalez further testified that the member resided in "DeKalb County." Canter Decl. ¶ 9 (Deposition of Gerardo Gonzalez ("Gonzalez Dep.") at 81:6-83:5); *see also* Canter Decl. ¶ 4 (Declaration of Gerardo Gonzalez (Gonzalez Decl.) ¶ 6).

56. 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:**

Disputed. Defendants' citations do not reflect that legislators were not concerned about race. None of Dir. Wright's cited testimony states that race was not

a consideration. Moreover, Dir. Wright's testimony regarding other legislature's concerns is inadmissible under FRE 602 as speculation or FRE 801 as hearsay. *See* Wright Dep. 111:16-112:10; 115:8-11; 158:4-21; 258:2-14.

Furthermore, at Wright Dep. 55:25-56:7, Dir. Wright admits that both race and political data were projected onto the screen where maps were drawn. At Wright Dep. 140:3-11, 140:17-19, and 257:21-258:1, Dir. Wright admits that the political data she possesses to draw map lines at the block level and that is reflected on the screen when drafting maps is only an "estimate" that is "based on demographics." Robert Strangia explained that the demographic data at the block levels includes race information, and that the estimates are built out of the demographic data that includes race information. He also testified that the political data available to legislatures through the block-level estimate formula he created is inaccurate. Strangia Dep. At 103:3-23; 117:13-119:25.

57. 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:**

This statement improperly includes two facts; both are disputed. The first fact, that legislators had political data at all levels of geography, is not a material fact

because it is possible for the legislators to be concerned with both race and political performance and it is possible for the legislators to improperly rely on race to achieve political performance goals. Also, Defendants do not cite evidence to support that legislatures had political data at all levels of geography. Wright Dep. 140:3-11 refers to block-level data, and Dir Wright states that the block-level data is only an “estimate.” Robert Strangia explained that this estimate is based on demographic data at the block level that includes race information, and that the estimates are built out of the demographic data that includes race information. He also testified that the political data available to legislatures through the block-level estimate formula he created is inaccurate.

The second fact is that legislators regularly evaluated the political performance of districts as they were drawn. This is not a material fact for the same reason stated above in this response. Also, Defendants only cite three examples where Dir. Wright acknowledges that legislators evaluated the political performance of districts as they were drawn (Wright Dep. At 178:5-22, 191:25-193:3, 206:13-207:16), which is insufficient to establish that this practice “regularly” occurred, only that it occurred on those three occasions.

58. For the Congress plan, Plaintiffs only asked about Congressional District 6 (Wright Dep. 111:16-125:25, 130:22-133:17; Kennedy Dep. 176:3-

179:13), the boundary between Congressional Districts 4 and 10 (Wright Dep. 133:18-138:1, 143:5-15), 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:**

Disputed and a mischaracterization of the evidence. To the extent this statement narrowly seeks to state that Dir. Wright, Sen. Kennedy, and Rep. Rich were asked only about CD 4, CD 6, CD 10, CD 13, and CD 14 at their respective depositions, then the statement is false and is also not material because Plaintiffs have other evidence which shows that other Congressional districts are racial gerrymanders.

Dr. Duchin's opening report provides evidence that is relevant to determining whether CD 2, CD 3, CD 4, CD 6, CD 8, CD 10, CD 13, and CD 14 are racial gerrymanders. Also, Dr. Duchin's rebuttal report provides evidence that is relevant to determining whether any of the Congressional districts are racial gerrymanders. Also, at the deposition of Dir. Wright, Plaintiffs asked questions that relate to whether any of the Congressional districts are racial gerrymanders, including questions about how all of the districts in the Congressional map were drawn, what data was relied on and considered to draw all of the districts in the Congressional

map, what were the priorities when drawing all of the districts in the Congressional map, who provided directions for drawing districts in the Congressional map, and why those directions were provided. Also, at the deposition of Sen. Kennedy, Plaintiffs asked questions that relate to whether any of the Congressional districts are racial gerrymanders, including questions about his responsibilities as Chair of the Senate committee as they relate to drawing all of the Congressional districts and “shepherding” the maps through legislation. Also, at the deposition of Rep. Rich, Plaintiffs asked questions that relate to whether any of the Congressional districts are racial gerrymanders, including questions about her responsibilities as Chair of the House committee as they relate to drawing all of the Congressional districts, including holding meetings with members of the House to receive requests regarding changes to the lines of the map, holding meetings with members of the LCRO about changes to the map lines, and receiving comments from constituents and Georgians about changes to the map lines. Duchin Rep., at 67-69, 72-76, 79-80; Duchin Suppl. Rep. ¶¶ 2.1-2.2; Wright Dep. at 8:24-9:2; 10:16-33:2, 36:6-24; 86:22-101:23; Kennedy Dep. at 32:24-33:23; Rich Dep. at 50:19-55:1.

59. In each case, 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:**

Disputed and mischaracterization of the evidence. At Wright Tr. 111:16-125:25, Dir. Wright testified that “racial data” “[was] reflected on the screen” that showed CD 6 and that the legislators who were providing her directions on how to draw CD 6 could see the screen and see changes in the racial data as changes to the lines were being made. At Wright Tr. 130:22-133:17, Dir. Wright agreed that the changes made to the lines of CD 6 reflect that CD 6 was made “more white” in the enacted Congressional map. At Kennedy Dep. 176:3-179:13, Sen. Kennedy acknowledged that he could not “name any similar policy interests that the residents of Dawson County and the residents of East Cobb” hold even though they were put together into CD 6. At Wright Dep. 133:18-138:1, and also immediately after this portion, Dir. Wright acknowledged that she has to look at the block level to make changes to lines which split precincts, and that the data at this geographic level includes “racial data.” At Wright Dep. 143:5-15, Dir. Wright only states that she does not remember what the motivations were for drawing the line that cuts through Oxford. At Wright Dep. 168:22-171:7, and also immediately after this portion, Dir. Wright acknowledged that 76% of CD 13 is Black and Latino individuals, which she considers a “high number” in some circumstances and at least “could be” a “red flag” when determining if the district is packed. At Wright Dep. 175:5-11, Dir. Wright

only states that she has no memory of drawing the lines for CD 13 or the motivations behind those lines. At Kennedy Dep. 180:1-181:21, Sen. Kennedy states nothing about the motivations or goals related to drafting CD 13. At Wright Dep. 152:9-158:21, Dir. Wright acknowledged that Austell and Powder Springs are majority people of color, that portions of both of these cities were added to CD 14, and that neither compactness principles nor preserving communities of interest can justify these changes. At Kennedy Dep. 182:2-188:1, Sen. Kennedy acknowledged that CD 14 is “predominantly white” and that Cobb County was split into four pieces to add portions of Austell and Powder Springs into CD 14. At Rich Dep. 135:13-141:9, Rep. Rich stated that CD 14 is “very rural” and that “suburban” portions of Cobb County were added into CD 14. At Rich Dep. 142:3-16, Rep. Rich did not state anything related to the motivations or goals of drawing CD 14. To the extent there is a distinction between the goals or motivations of the district line decisions and what factors predominated when making those line-drawing decisions—a distinction which Plaintiffs reject—then this fact is not material, as the question is about predominance, not goals or motivations.

60. For the Senate, Plaintiffs only asked about Senate District 17 (Wright Dep. 185:12-187:3; Kennedy Dep. 250:16-253:3) and Senate District 48 (Wright Dep. 188:8-14, 190:21-193:3; Kennedy Dep. 244:7-245:2).

**Plaintiffs Response:**

Disputed and a mischaracterization of the evidence. To the extent this statement narrowly seeks to state that Dir. Wright and Sen. Kennedy were only asked about SD 17 and SD 48 at their respective depositions, then the statement is false and is also not material because Plaintiffs have other evidence which shows that other Senate districts are racial gerrymanders.

Dr. Duchin's opening report provides evidence that is relevant to determining whether SD 1, SD 2, SD 4, SD 17, SD 26, SD 48, and SD 56 are racial gerrymanders. Also, Dr. Duchin's rebuttal report provides evidence that is relevant to determining whether any of the Senate districts are racial gerrymanders. Also, at the deposition of Dir. Wright, Plaintiffs asked questions that relate to whether any of the Senate districts are racial gerrymanders, including questions about how all of the districts in the Senate map were drawn, what data was relied on and considered to draw all of the districts in the Senate map, what were the priorities when drawing all of the districts in the Senate map, who provided directions for drawing districts in the Senate map, and why those directions were provided. Also, at the deposition of Sen. Kennedy, Plaintiffs asked questions that relate to whether any of the Senate districts are racial gerrymanders, including questions about his responsibilities as Chair of the Senate committee as they relate to drawing all of the Senate districts and

“shepherding” the maps through legislation. Duchin Rep. at 67-69, 72-76, 79-80; Duchin Suppl. Rep. ¶¶ 2.1-2.2; Wright Dep. at 33:4-52:5; 54:3-62:16; 86:22-101:23. Kennedy Dep. at 32:24-33:23.

61. In both cases, Ms. Wright or Chairman Kennedy 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:**

Disputed and mischaracterization of the evidence. At Wright Dep. 185:12-187:3, Dir. Wright acknowledged that SD 17 “got whiter” based on the changes to the lines. At Kennedy Dep. 250:16-253:3, Sen. Kennedy acknowledged that SD 17’s Black voting age population reduced and could not provide a specific explanation for that change. At Wright Dep. 188:8-14, and immediately following this portion, Dir. Wright admits that Senator Au represented SD 48 before its lines were changed and that Sen. Kennedy was aware at that time that Senator Au is Asian. At Wright Dep. 190:21-193:3 Ms. Wright admitted that “a lot of white voters were added to SD 48” and “a lot of Latino voters were taken out of SD 48.” At Kennedy Dep. 244:7-245:2, Sen. Kennedy acknowledged that Sen. Au is Asian. To the extent there is a distinction between the goals or motivations of the district line decisions and what factors predominated when making those line-drawing decisions—a

distinction which Plaintiffs reject—then this fact is not material, as the question is about predominance, not goals or motivations.

Wright Dep. at 188:9-189:17.

62. For the House, Plaintiffs asked about House District 44 (Wright Dep. 215:16-218:17; Rich Dep. 145:21-148:4), House District 48 (Wright Dep. 213:19-215:15; Rich Dep. 148:5-149:11), House District 49 (Wright Dep. 199:14-205:8; Rich Dep. 149:15-150:6), House District 52 (Rich Dep. 150:7-21), and House District 104 (Wright Dep. 205:19-207:16, 210:7-22; Rich Dep. 150:22-152:12).

**Plaintiffs Response:**

Disputed and a mischaracterization of the evidence. To the extent this statement narrowly seeks to state that Dir. Wright and Rep. Rich were only asked about HD 44, HD 48, HD 49, HD 52, and HD 104 at their respective depositions, then the statement is false and is also not material (assuming that “HD 4” was a typo and that Defendants’ meant “HD 48”), because Plaintiffs have other evidence that other House districts are racial gerrymanders.

Dr. Duchin’s rebuttal report provides evidence that is relevant to determining whether any of the House districts are racial gerrymanders. Also, at the deposition of Dir. Wright, Plaintiffs asked questions that relate to whether any of the House districts are racial gerrymanders, including questions about how all of the districts

in the House map were drawn, what data was relied on and considered to draw all of the districts in the House map, what were the priorities when drawing all of the districts in the House map, who provided directions for drawing districts in the House map, and why those directions were provided. Also, at the deposition of Rep. Rich, Plaintiffs asked questions that relate to whether any of the House districts are racial gerrymanders, including questions about her responsibilities as Chair of the House committee as they relate to drawing all of the House districts, including holding meetings with members of the House to receive requests regarding changes to the lines of the map, holding meetings with members of the LCRO about changes to the map lines, and receiving comments from constituents and Georgians about changes to the map lines. Duchin Suppl. Rep. ¶¶ 2.1-2.2; Wright Dep. at 36:6-24; 62:17-69:19; 86:22-101:23; Rich Dep. at 50:19-55:1.

63. In each case, Ms. Wright and Chairman Rich 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:**

Disputed and a mischaracterization of the evidence. At Wright Dep. 215:16-218:17, and in the portions immediately following this, Dir. Wright acknowledged that HD 44 retains only “some” of its core and that Latino populations were impacted

by the core disruption. At Rich Dep. 145:21-148:4, Rep. Rich testified that she has no recollection about drawing HD 44, though she acknowledges that HD 44 fails to keep counties whole despite this being a goal of the guidelines. At Wright Dep. 213:19-215:15, Dir. Wright recalls no goal or motivation for the composition of HD 48. At Rep. Dep. 148:5-149:11, Rep. Rich acknowledges that when she looked at draft maps racial data was reflected and “consider[ed]” though she had no specific recollection of drawing HD 48. At Wright Dep. 199:14-205:8, Dir. Wright admits that “a lot of white people were added into HD 49” and that HD 49 retained only “some” of its core. At Rich Dep. 149:15-150:6, Rep. Rich stated that she could not recall anything related to drawing HD 49. At Rich Dep. 150:7-21, Rep. Rich stated that she could not recall anything related to drawing HD 52. At Wright Dep. 205:19-207:16, Dir. Wright stated that Barrow County was split apart to draw HD 104. At Wright Dep. 210:7-22, Dir. Wright stated that she does not recall whether moving white populations into and Latino populations out of HD 104 was a goal but acknowledges that this occurred. At Rich Dep. 150:22-152:12, Rep. Rich states that she does not recall looking at HD 104. *See also* Wright Dep. at 218:18-21.

64. None of Plaintiffs’ experts besides Dr. Duchin provided opinions about district boundaries. Deposition of Peyton McCrary [Doc. 130] (McCrary Dep.)

48:19-21; Bagley Dep. 28:19-29:6; Report of Benjamin Schneer, attached as Ex. C (Schneer Report), ¶¶ 5-8.

**Plaintiffs Response:**

Disputed. Dr. McCrary opined on the totality of the circumstances that can be considered when deciding whether district lines have violated federal law. Dr. Bagley opined on factors that can be considered when deciding whether district lines have violated federal law. Dr. Schneer opined on whether there is racially polarized voting in the districts that were created based on those line-drawing decisions. Undisputed if Defendants are referring to the fact that only Dr. Duchin provided alternative maps in her expert report. *See generally*, Canter Decl. ¶ 10 (Expert Report of Dr. Peyton McCrary (“McCrary Rep.”)); Bagley Rep.; Canter Decl. ¶ 24 (Expert Report of Dr. Benjamin Schneer (“Schneer Rep.”)).

65. Dr. Duchin’s report evaluates core retention and “racial swaps” only for Congressional Districts 6 and 14; Senate Districts 14, 17, and 48 (with a brief reference to Senate District 7); and House Districts 44, 48, 49, 52, and 104. Duchin Report, ¶ 10.1.

**Plaintiffs Response:**

Disputed. This statement improperly includes three facts.

The first fact is that Dr. Duchin evaluated core retention only for CD 6 and CD 14 for the Congressional map. This is disputed. Dr. Duchin's opening report primarily focuses on CD 6 and CD 14, but the report also makes findings that are relevant to core retention and racial swaps for CD 7 (noting that CD 7 has "more than one-in-three new voters" and that it gained voters from benchmark CD 6) and CD 4, CD 5, and CD 11 (finding that these districts gained voters from benchmark CD 6). Duchin Rep. at 67-69.

The second fact is that Dr. Duchin evaluated core retention only for SD 14, SD 17, SD 48, and SD 7 for the Senate map. This is disputed. Dr. Duchin's opening report primarily focuses on SD 14, SD 17, SD 48, and SD 7, but the report also makes findings that are relevant to core retention and racial swaps for SD 6, SD 32, and SD 56 (stating that these districts "have less than half of their population retained"). Duchin Rep. at 67-69.

The third fact is that Dr. Duchin's opening report evaluated core retention only for HD 44, HD 48, HD 49, HD 52, and HD 104. This is disputed. Dr. Duchin's opening report states that "[f]ully 57 districts out of 180 were moved to positions completely disjoint from their benchmark locations" and that "a startling 32 districts were not only moved or relabeled but effectively *dismantled*, with fewer than 30,000 prior residents assigned to any single district." Dr. Duchin also specifically stated

that the dismantling of HD 35, HD 104, and HD 109 (in addition to HD 44, HD 48, HD 49, and HD 52) caused these districts to be noncompetitive. Duchin Rep. at 67-71.

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

**Plaintiffs Response:**

Undisputed.

67. 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), 201:8-21 (Senate), 202:24-203:12 (House).

**Plaintiffs Response:**

This statement includes two facts. The first is that Dr. Duchin acknowledged that racial population shifts are not conclusive evidence of racial predominance. This is undisputed. However, this is not a material fact because the issue whether suggestive evidence is “conclusive” evidence of racial gerrymandering is a matter for the Court. Further, States can violate the U.S. Constitution’s prohibition against racial gerrymandering through multiple pieces of evidence that race predominated

in the map drawing process where each of the pieces of evidence, standing alone, would not be conclusive evidence of racial predominance. The second fact is that Dr. Duchin could not say that the various metrics she reviewed showed racial predominance. This is disputed and a mischaracterization of the evidence. At Duchin Dep. 180:18-23, Dr. Duchin states that “racially imbalanced population transfer” are “suggestive evidence” of racial predominance in the drawing process. At Duchin Dep. 198:6-21, Dr. Duchin states that the evidence in her opening report is “patterns consistent with a packing and cracking strategy.” At Duchin Dep. 200:11-20, Dr. Duchin agrees that her evidence of split precincts in the Congressional map represents a “significant racial disparity” that is “consistent with an effort to diminish the electoral effectiveness of CD 6 for black voters.” At Duchin Dep. 201:8-21, Dr. Duchin agrees that her evidence of county splits leading to racial disparities across the Senate map is “consistent with a racial goal.” At Duchin Dep. 202:24-203:12, Dr. Duchin agrees that racial sorting splits for the House map are “consistent with a racial goal.”

68. 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 Report, ¶ 10.2.1; Duchin Dep. 167:5-15, 174:9-14, 186:17-23.

**Plaintiffs Response:**

Undisputed. However, to the extent this statement implies that these are the only districts where Dr. Duchin provides information about county and precinct splits for the Congressional map, this is disputed. Appendix C, Table 55 to Dr. Duchin's opening report provides a complete list of county splits for the Congressional Map, which includes information about county splits to CD 1, CD 5, CD 7, CD 9, CD 11, and CD 12. Also, Figure 40 reflects precinct splits in CD 2, CD 3, CD 5, and CD 8, as well as CD 4. Duchin Rep. at Appendix C (Table 55); Appendix C (Figure 40).

69. 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:**

Disputed. Appendix C, Table 55 to Dr. Duchin's opening report reflects political data behind all of the county splits on the Congressional map, including county splits in CD 2, CD 3, CD 4, CD 6, CD 8, CD 10, CD 13, and CD 14. At section 10.2.1 of Dr. Duchin's opening report, Dr. Duchin references Appendix C. Dr. Duchin also refers to Appendix C at Duchin Dep. 167:5-15. Duchin Rep. Appendix C (Table 55).

70. The only state Senate districts Dr. Duchin discusses regarding racial splits are Senate Districts 1, 2, 4, and 26. Duchin Report, ¶ 10.2.2.

**Plaintiffs Response:**

Disputed. Appendix C, Table 56 to Dr. Duchin's opening report reflects county splits in Senate districts, and the racial effect of those county districts, for SD 5, SD 6, SD 7, SD 9, SD 10, SD 14, SD 15, SD 16, SD 17, SD 18, SD 20, SD 21, SD 22, SD 23, SD 25, SD 26, SD 28, SD 29, SD 30, SD 32, SD 33, SD 34, SD 35, SD 36, SD 37, SD 38, SD 39, SD 40, SD 41, SD 42, SD 43, SD 44, SD 45, SD 46, SD 47, SD 48, SD 49, SD 50, SD 55, SD 56. Dr. Duchin also identifies Senate plan county splits that impact the racial composition of the districts in her Figure 41. Dr. Duchin also identifies in Figure 42 precinct splits between SD 7 and SD 5 that impact the racial composition of the districts. Duchin Rep. at Appendix C (Table 56); Appendix C (Figure 41); Appendix C (Figure 42).

71. Dr. Duchin does not identify any state House districts with racial splits. Duchin Report, ¶ 10.2.3; Duchin Dep. 189:2-19.

**Plaintiffs Response:**

Disputed. Appendix C, Table 57 to Dr. Duchin's opening report reflects county splits to over 100 House districts, and the racial effect of those county splits. Dr. Duchin also identifies county splits that impact the racial composition of the

districts for the House plan in Figure 43, and precinct splits in HD 10, HD 28, HD 29, HD 32, HD 51, HD 53, HD 81, HD 88, HD 94, HD 96, HD 97, HD 108 that impact the racial composition of the districts. Duchin Rep. at Appendix C (Table 57); Appendix C (Figure 43); Appendix C (Figure 44).

72. Dr. Duchin did not describe any House districts as drawn “primarily” based on race. Duchin Report, ¶ 10.2.3; Duchin Dep. 189:2-19.

**Plaintiffs Response:**

Disputed. *First*, whether the house districts ‘were drawn ‘primarily’ based on race” is ultimately a legal conclusion, it is not a fact. Section 10.2.3 of the Duchin opening report reflects evidence that Dr. Duchin identifies that is consistent with racial sorting being a goal in drawing the House map, which is consistent with her treatment of evidence regarding the House map throughout, such as at Duchin Dep. 202:24-203:12, where Dr. Duchin states that her evidence of racial splits is “consistent with a racial goal.” At Duchin Dep. 189:2-19, Dr. Duchin states that Table 40 of her opening report reflects that certain House districts “were drawn in a quite racially-distinctive way.” Duchin Dep. at 202:24-203:12.

73. Dr. Duchin created her draft plans with the goal of drawing majority-minority districts. Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2- 15, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

**Plaintiffs Response:**

Disputed to the extent Defendants are asserting that this is Dr. Duchin's primary or only goal. Defendants' citations do not support that assertion.

At Duchin Dep. 47:10-48:04, Dr. Duchin testifies that her understanding is that for "Gingles 1 coalition districts" one requirement is that the coalition population be "50 percent plus 1." Dr. Duchin does not specify what her goals were for drawing her illustrative plans.

At Duchin Dep. 64:24-66:20, Dr. Duchin testifies that after the algorithmic exploration phase of her work, she hand-draws maps to ensure that the maps have "50 percent plus 1" minority populations, while balancing TDPs in "a way that seems favorable." She does not testify that the primary or sole goal of her *Gingles* 1 demonstrative plans was to create "50 percent plus 1 districts."

At Duchin Dep. 71:07-71:13, Dr. Duchin testifies that she drew *Gingles* 1 demonstrative plans for the house and senate using the same methodology with which she drew *Gingles* 1 alternative congressional plans. She does not opine upon the primary or sole goal of her *Gingles* 1 map-drawing exercise.

At Duchin Dep. 76:02-76:15, Dr. Duchin merely testifies that she was "trying. . . to create *Gingles* 1 demonstrative maps" part of which "require[s] 50 percent plus

1” minority-group population districts. Dr. Duchin does not testify that this is the primary or sole goal.

At Duchin Dep. 121:13-123:08, Dr. Duchin is asked about why she connected certain counties in her SD Atlanta module, and she replied that she was creating majority-minority districts while also keeping in mind “certain aspects of community testimony.” She does not opine that her primary or sole goal was to create majority-minority districts.

At Duchin Dep. 139:10-139:20, Dr. Duchin is only asked why she connected Albany with certain counties on the Florida border in her HD Southwest module. She does not opine upon the primary or sole goal of her *Gingles* 1 map-drawing exercise.

Duchin Dep. 158:05-158:14 refer to her effectiveness plans, which explicitly are designed *not* to prioritize creating majority-minority districts, and instead are meant solely to demonstrate effectiveness opportunities for minority voters while respecting TDPs.

74. Dr. Duchin was unable to identify why particular counties were connected on her various plans. Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

**Plaintiffs Response:**

Disputed. Defendant's citations do not support this assertion.

Dr. Duchin testifies at Duchin Dep. 64:24-66:20 that she "hand draw[s]" maps after the "algorithmic exploration" process in order to respect TDPs.

Dr. Duchin's testimony at Duchin Dep. 71:07-71:13 only confirms that she drew demonstrative senate, house, and congressional maps using that same methodology. Dr. Duchin was not asked to explain "why particular counties were connected."

At Duchin Dep. 76:02-76:15, Dr. Duchin merely testifies that she was "trying. . . to create *Gingles* 1 demonstrative maps" part of which "require[s] 50 percent plus 1" minority-group population districts. Dr. Duchin was not asked to "identify why particular counties were connected."

At Duchin Dep. 121:13-123:08, Dr. Duchin noted that when drawing the demonstrative plan, she "balanced the principles [TDPs] that we've discussed." When asked about why she connected certain rural and urban areas, she noted that she had "certain aspects of community testimony" in mind.

Dr. Duchin's testimony at Duchin Dep. 158:05-158:14, in response to why she connected parts of Albany with counties on the Florida border in one of her demonstrative house plans for the HD Southwest cluster, was that she "would just repeat the explanation from earlier that says that these are intended to be

demonstrations of what's possible”—in other words, that it is possible to create demonstrative plans that create additional majority-minority districts that respect TDPs.

Dr. Duchin’s testimony at Duchin Dep. 158:05-14 and 163:15-164:03 pertain to her effectiveness maps, which are not *Gingles* 1 demonstratives, but instead are meant to provide insights into racial gerrymandering.

Further, Dr. Duchin explains throughout her deposition that to draw her *Gingles* 1 demonstratives, she began by using an algorithmic approach to determine whether it is possible draw additional majority-minority districts. She then used those algorithmic maps as a base and hand-drew demonstrative plans to comport with traditional redistricting principles such as compactness, political subdivision splits, and communities of interest. *See* Duchin Dep. 122:08-123:08; 163:15-164:03.

75. When asked about particular district decisions, Dr. Duchin fell back to her maps being “demonstrations.” Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13-123:8, 139:10-20, 158:5-14, 163:15-164:3.

### **Plaintiffs Response:**

Disputed. This is not a material fact, it is instead of characterization of Dr. Duchin’s testimony or a legal argument. Further, Dr. Duchin’s maps are demonstration maps, and that “the role of *Gingles* 1 demonstrative plans is to show

that there's a problem and to show that the problem is remediable.” Duchin Dep. at 123:09-123:15.

76. Dr. Duchin’s plans do not attempt to evaluate traditional redistricting principles beyond the ones she can represent numerically. Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13-123:8, 139:10-20, 158:5- 14, 163:15-164:3.

**Plaintiffs Response:**

Disputed. Defendants’ citations do not support this assertion.

At Duchin Dep. 47:10-48:04, Dr. Duchin is not asked about what traditional redistricting principles she evaluated, she is asked to describe the numerosity requirement for coalition districts under *Gingles* 1.

At Duchin Dep. 64:24-66:20, Dr. Duchin testifies that after the algorithmic exploration phase of her work, she hand-draws maps to balance ensure that the maps have “50 percent plus 1” minority populations, while balancing TDPs in “a way that seems favorable.” She is specifically asked about “what data she has displayed” when hand-drawing the maps, and she responds “the data that you see in the report.” Dr. Duchin shortly afterwards testifies—in testimony not cited by Defendants—that in addition to this hard data, “community testimony informed my map drawing,” and that “communities of interest is a kind of a holistic consider[ation].”

At Duchin Dep. 71:07-71:13, Dr. Duchin testifies that she drew *Gingles* 1 demonstrative plans for the house and senate using the same methodology with which she drew *Gingles* 1 alternative congressional plans. She does not testify that she limited her analysis of TDPs to ones that could be “represent[ed] numerically.”

At Duchin Dep. 76:02-76:15, Dr. Duchin merely testifies that she was “trying. . . to create *Gingles* 1 demonstrative maps” part of which “require[s] 50 percent plus 1” minority-group population districts. Dr. Duchin is not asked about traditional redistricting principles at all.

At Duchin Dep. 121:13-123:08, Dr. Duchin is asked about why she connected certain counties in her SD Atlanta module, and she replied that she was creating majority-minority districts while also keeping in mind “certain aspects of community testimony.”

At Duchin Dep. 139:10-139:20, Dr. Duchin is only asked why she connected Albany with certain counties on the Florida border in her HD Southwest module. She is not specifically asked about what traditional redistricting principles she considered and does not testify that she limited her discussion of TDPs to ones that could be “represent[ed] numerically.”

Duchin Dep. 158:05-158:14 and 163:15-164:3 refer to her effectiveness plans, which are not *Gingles* 1 demonstrative plans. Further, in testimony not cited by

Defendants, Dr. Duchin notes that the point of these effectiveness plans “[are] to show that if you turn off all use of race, you can still get to lots of effective districts in ways that are very TDP respecting.” Dr. Duchin does not limit this analysis to TDPs that can be “represent[ed] numerically.” Duchin Dep. at 71:07-71:13; 154-08-154:12.

77. Dr. Duchin does not profess to have a knowledge of communities in Georgia. Duchin Dep. 47:10-48:4, 64:24-66:20, 71:7-13, 76:2-15, 121:13- 123:8, 139:10-20, 158:5-14, 163:15-164:3.

### **Plaintiffs Response:**

Disputed. Defendant’s citations do not support this assertion.

At Duchin Dep. 47:10-48:04, Dr. Duchin is not asked about her “knowledge of communities in Georgia,” she is asked to describe the numerosity requirement for coalition districts under *Gingles* 1.

At Duchin Dep. 64:24-66:20, Dr. Duchin testifies that after the algorithmic exploration phase of her work, she hand-draws maps to balance ensure that the maps have “50 percent plus 1” minority populations, while balancing TDPs in “a way that seems favorable.” She is specifically asked about “what data she has displayed” when hand-drawing the maps, and she responds, “the data that you see in the report.” Dr. Duchin shortly afterwards testifies—in testimony not cited by Defendants—that

in addition to this hard data, “community testimony informed my map drawing,” and that “communities of interest is a kind of a holistic consider[ation].”

Dr. Duchin’s testimony at Duchin Dep. 71:07-71:13 *only* confirms that she drew demonstrative senate, house, and congressional maps using the same methodology. Dr. Duchin does not testify that she does not have a “knowledge of communities in Georgia.”

At Duchin Dep. 76:02-76:15, Dr. Duchin merely testifies that she was “trying. . . to create *Gingles* 1 demonstrative maps” part of which “require[s] 50 percent plus 1” minority-group population districts. Dr. Duchin was not asked about her “knowledge of communities in Georgia.”

At Duchin Dep. 121:13-123:08, Dr. Duchin noted that when drawing the demonstrative plan, she “balanced the principles [TDPs] that we’ve discussed.” When asked about why she connected certain rural and urban areas, she noted specifically that she had “certain aspects of community testimony” in mind.”

At Duchin Dep. 139:10-139:20, Dr. Duchin is only asked why she connected Albany with certain counties on the Florida border in her HD Southwest module. She is not asked about her “knowledge of communities in Georgia.”

78. Plaintiffs also offer a variety of plans that decrease the number of majority-Black districts while increasing the number of majority-minority districts,

primarily by combining Black and Latino individuals as a “minority” category.

Duchin Report, ¶¶ 6.4; Duchin Dep. 29:15-22; 113:9-114:8.

**Plaintiffs Response:**

Undisputed.

79. Plaintiffs have not offered evidence on polarization from primary elections in Georgia. Schneer Rep. at 12, 13.

**Plaintiffs Response:**

Disputed. Plaintiffs’ expert Dr. Schneer did offer evidence on polarization from primary elections in Georgia, by explaining that while “primary elections can be of use in an RPV analysis, but [in his view] studying them is not necessary or sufficient for drawing conclusions about racially polarized voting in Georgia general elections[;]” by explaining that “if racially polarized voting occurs in a Georgia primary election it does not necessarily imply that racially polarized voting will occur in the general election, and vice versa[;]” and by opining that “it is sufficient in this case to examine behavior in general elections in order to determine the extent of racially polarized voting in Georgia general elections.” Schneer Rep. at 12, 13.

Plaintiffs’ expert Dr. Moon Duchin further determined how likely Black and/or Hispanic voters were to be able to elect their candidate of choice in certain districts in Georgia by reviewing if the Black and/or Hispanic candidate of choice

would win in at least three out four primary elections, reflecting racially polarized voting in Georgia. Duchin Rep. at 4, 5; 18 (Table 4); 48-66 (Tables 27-39); *see also* Canter Decl. ¶ 28 (Moon Duchin Notice of Errata (“Duchin Errata”) at 4-10, Tables 52-54 (April 26, 2023)).

80. Black voters in Georgia overwhelmingly vote for Democrats. Deposition of Benjamin Schneer [Doc. 135] (Schneer Dep.) 48:14-20.

**Plaintiffs Response:**

Undisputed.

81. Dr. Schneer’s decision not to review any primary election results in his report undermines the usefulness of the data and analysis he presents as purported evidence of racial polarization in Georgia’s elections. Schneer Report, ¶ 20; Schneer Dep. 60:11-61:20.

**Plaintiffs Response:**

Disputed. This conclusory position by Defendants is not a statement of material fact. Additionally, the references to Dr. Schneer’s deposition and report cited in support of Defendant’s Fact No. 81 do not support the conclusion that his decision to not review primary elections undermines his finding of racially polarized voting in Georgia. In fact, in the references cited by Defendant, Dr. Schneer states that looking at primaries was neither necessary nor sufficient for his determination

of whether there is racially polarized voting in Georgia. Schneer Rep. at 12, 13; Canter Decl. ¶ 27 (Deposition of Dr. Benjamin Schneer (“Schneer Dep.”) 60:11-61:20).

82. Dr. Schneer’s data demonstrates two things: The race of the candidate does not change voting behavior of Georgia voters; and the party of the candidate does. Report of John Alford, attached as Ex. D (Alford Report), p. 3; Schneer Report, ¶ 21 n.18.

**Plaintiffs Response:**

Disputed. This is not a material fact because what is at issue is the cohesion around a candidate of choice and not the race of the candidate. Moreover, this does not accurately or completely describe Dr. Schneer’s findings in his report. In fact, during his deposition Dr. Schneer made clear that his analysis was descriptive, highlighting how Black and/or Hispanic voters vote as opposed to White voters in Georgia, as opposed to an attempt to determine the cause. Schneer Dep. 45:13-46:18; 50:19-51:9.

83. The 2021 congressional plan has five districts where Black-preferred candidates succeed. Duchin Report, ¶¶ 4.1.

**Plaintiffs Response:**

Undisputed to the extent that Dr. Duchin states that “the newly enacted Congressional plan makes major changes to the benchmark and does so in a way that reduces the number of performing districts for Black- and Latino-preferred candidates from 6 out of 14 (42.9%) to just 5 out of 14 (35.7%).” Duchin Rep. at 10. Disputed to the extent that Defendants rely on a different definition of Black-preferred than the definition relied on by Dr. Duchin. *See* Duchin Rep. at 17.

84. The Any-Part Black VAP for Georgia as a whole is 31.73%. Duchin Report, ¶ 3.3.

**Plaintiffs Response:**

Undisputed.

85. Both of Georgia’s U.S. senators are Black-preferred candidates because they are Democrats (Sen. Ossoff was elected in 2021 and Sen. Warnock was re-elected in 2022). Schneer Report, p. 78, Table 10.

**Plaintiffs Response:**

Disputed. This does not accurately or completely describe Dr. Schneer’s findings in his report. In fact, during his deposition Dr. Schneer made clear that his analysis was descriptive, highlighting how Black and/or Hispanic voters vote as opposed to White voters in Georgia, as opposed to an attempt to determine the cause. Schneer Dep. at 45:13-46:18; 50:19-51:9.

86. Dr. Bagley found no “obvious discriminatory intent.” Bagley Dep. 27:22-28:1.

**Plaintiffs Response:**

Disputed and mischaracterization of the evidence. Dr. Bagley was asked whether “in [his] view, the first Arlington Heights factor of obvious discriminatory intent wasn’t present and that’s what led [him] to look at other factors,” and he responded, “that is correct.” He thus testified that there was insufficient evidence to determine that the first Arlington Heights factor was met, which is not the same as finding some evidence that can be consistent with obvious discriminatory intent. For example, Dr. Bagley’s report states that “[t]he [General Assembly’s committee on redistricting’s] failure to respond to public calls for more transparency, more time, a reflection of the state growing minority population, and to avoid packing and cracking [during the Town Halls], constitute substantive departures” from the legislative process. Bagley Rep. at 42.

87. 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:**

Disputed and mischaracterization of the evidence. Dr. Bagley's report states that "[b]ased upon my review of the evidence – the historical background of invidious voter discrimination in Georgia, particularly in redistricting; the legislative history of the bills in question; procedural and substantive irregularities in the drafting and passing of those bills; the statements made by legislators during this process; and the information made available to the public – it is my opinion that the Court has strong support for reaching a finding of discriminatory intent." Bagley Rep. at 8. At page 7 of the Bagley report, Dr. Bagley states that he opines on the second, third, fourth, and fifth Arlington Heights factors, but not that he does not opine on the discriminatory intent in the drafting of the map or the legislative process to pass the map. Bagley Rep. at 7. At Bagley Tr. 27:22-28:1, Dr. Bagley only states that he did not find evidence of the first Arlington Heights factor. At Bagley Tr. 123:3-14, Dr. Bagley only states that he, as a historian, is not drawing the legal conclusion that there was discriminatory intent in the process, but instead is opining that the evidence shows that one can conclude that there was discriminatory intent.

88. 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 Dr. Bagley so testified. Disputed to the extent that this is not a material fact because, as explained here and at Bagley Dep. 123:3-14, Dr. Bagley is offering an opinion that the evidence he has reviewed is sufficient for a court to conclude that there was discriminatory intent. Bagley Dep. at 123:3-14. Further, whether the adoption of the plans is determined to be discriminatory is a legal conclusion to be made by the court after trial.

89. 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:**

Undisputed that Dr. Bagley so testified. However, this is not a material fact because Dr. Bagley is opining that the evidence which he reviewed is sufficient for a court to conclude that the district lines were drawn to deny voters of color their equitable right to participate in the political process. Bagley Dep. 133:11-20. Further, whether there is discriminatory intent based on the drawing of the district lines is a legal conclusion to be made by the court after trial.

90. 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:**

Undisputed that Dr. Bagley so testified. However, this is not a material fact because, as Dr. Bagley explains, his notion of procedural and substantive departures is not necessarily tied to how the 2001 and 2011 processes occurred. Bagley Dep. at 86:25-87:19; 138:18-24. Further, whether the procedural and substantive departures identified by Dr. Bagley are determined to be discriminatory is a legal conclusion to be made by the court after trial.

91. 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:**

Undisputed that Dr. Bagley so testified. However, this is not a material fact because Dr. Bagley found other evidence which a court could rely on to find that the maps were drawn with discriminatory intent. Bagley Dep. at 110:2-111:23; 121:11-122:13. Further, whether there is discriminatory intent is a legal conclusion to be made by the court after trial.

92. Dr. McCrary did not offer any opinion about discriminatory intent or about the design of the districts. McCrary Dep. 48:9-21.

**Plaintiffs Response:**

Undisputed. However, this is not a material fact because other experts provide opinions about discriminatory intent, such as Dr. Duchin in her opening and rebuttal and supplemental reports, and other experts provide opinions about the design of the districts, such as Dr. Duchin in her opening report. *See* Duchin Rep. at 10-24; Duchin Suppl. Rep. at 1-6. Additionally, whether or not Dr. McCrary offered an opinion about discriminatory intent does not preclude the court from considering the evidence he did offer - such as the description of racial discrimination in redistricting in its consideration of whether there is discriminatory intent. McCrary Rep. at 8-9, 13-15, 16-21; McCrary Rep. at 24. Further, whether the design of the districts is determined to be discriminatory is a legal conclusion to be made by the court after trial.

93. 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:**

Disputed. Providing “evidence that might be persuasive in terms of discerning intent” is the same as providing an opinion about discriminatory intent, even if it does not include making conclusions about what is in the mind of the legislator or the staff-member. Additionally, whether or not Dr. Duchin offered an opinion about discriminatory intent does not preclude the court from considering the evidence she did offer - such as the description of racial discrimination in redistricting in its consideration of whether there is discriminatory intent. *See e.g.* Duchin Dep. at 173:1-173:25; 182:15-182:19; 180:18-182:14; 189:02-189:24. Further, this is not a material fact, because whether there is discriminatory intent is a legal conclusion to be made by the court after trial.

Dated: April 26, 2023

Respectfully submitted,

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**LOCAL RULE 7.1(D) CERTIFICATION OF COMPLIANCE**

I certify that this pleading has been prepared with Times New Roman font, 14 point, as approved by the Court in L.R. 5.1(C), N.D. Ga.

*/s/ Kurt Kastorf* \_\_\_\_\_

Kurt Kastorf

Attorney for Plaintiffs