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

PAMELIA DWIGHT, an individual; BENJAMIN DOTSON, an individual; MARION WARREN, an individual; AMANDA HOLLOWELL, an individual; DESTINEE HATCHER, an individual; and WILBERT MAYNOR, an individual, Plaintiffs, v. BRAD RAFFENSPERGER, in his official capacity as Secretary of State of the State of Georgia, Defendant.	Civil Action No. 1:18-cv-2869-RWS

PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

Plaintiffs PAMELA DWIGHT, BENJAMIN DOTSON, MARION WARREN, AMANDA HOLLOWELL, DESTINEE HATCHER, and WILBERT MAYNOR, by and through undersigned counsel and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Rules 7.1 and 56.1 of the Local rules for the United States District Court, Northern District of Georgia, hereby move for an order granting partial summary judgment in Plaintiffs' favor.

The basis for this motion is fully set forth in the Memorandum accompanying this motion. Plaintiffs further rely upon the pleadings, discovery materials, and other documents filed to date, as well as the May 1, 2019, Declaration of Abha Khanna and supporting exhibits, filed concurrently herewith.

Dated: May 1, 2019

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2019, I filed a copy of the foregoing Motion for Partial Summary Judgment with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT

I. INTRODUCTION

This lawsuit challenges the Georgia General Assembly's failure to draw a congressional district in central and southeast Georgia—where the 12th Congressional District (CD 12) is currently located—that would provide African Americans in that region an equal opportunity to participate in the political process

and elect their preferred candidates.[1] Unrefuted expert analysis has confirmed that African Americans were (and still are) sufficiently numerous and geographically compact to form a majority in a congressional district located in central and southeast Georgia, yet the General Assembly's 2011 congressional districting plan ("2011 plan" or "current plan") divided and submerged the African American population into several districts in which they comprise a small minority and are unable to elect candidates of their choice. SUMF ¶¶ 9-11, 31-55 (Declaration of William S. Cooper ¶ 26, Khanna Decl., Ex. 1, (hereinafter "Cooper Report")).

To give one example, the 2011 plan excised several heavily African-American populated counties from CD 12, including Hancock (74.4% black voting age population ("BVAP")), Warren (62.1% BVAP), Taliaferro (60.8% BVAP), Jefferson (55% BVAP), Washington (53.4% BVAP), and Chatham (51% BVAP), and in exchange imported majority-white counties like Jeff Davis (15.2% BVAP), Columbia (16% BVAP), Appling (19.1% BVAP), and Coffee (27.4% BVAP).

[1] Plaintiffs' use of the phrase "central and southeast Georgia" is a shorthand reference to the geographic region defined in the expert report of William Cooper as the "focus area." This region includes the counties in CD 12 and the immediately surrounding districts (CDs 1, 8, and 10), with the exception of counties within the Atlanta and Athens metropolitan statistical areas. The 71 counties that comprise this geographic region (the focus area) are listed in Mr. Cooper's report. SUMF ¶ 25 (Cooper Report 7 n.4). For the purpose of this Memorandum, the use of the phrase "central and southeast Georgia," or reference to regions "in and around CD 12," shall refer to the "focus area."

Indeed, none of the seven counties that were added to CD 12 had an African-American voting age population above 42 percent—a feat that required almost surgical precision in a region replete with majority-African-American communities. SUMF ¶¶ 9-11 (Cooper Report ¶¶ 60-61, fig. 13).

Given the highly polarized voting patterns among African-American and white voters in the region, the political consequences of CD 12's transformation were predictable: for instance, the 2018 general election for the CD 12 congressional seat saw African-American-preferred candidate Francys Johnson defeated by nearly 20 percentage points. And it appears unlikely that any African-American-preferred candidate will be elected in CD 12 (or in any of the surrounding districts) under the current configuration, which has effectively silenced a sizeable minority voting bloc.

Section 2 of the Voting Rights Act protects minority groups from such practices or procedures (including redistricting plans) that dilute the group's voting strength and leave them with less opportunity to elect their preferred candidates. In reviewing a Section 2 claim, courts generally engage in a multi-step inquiry into the context in which the challenged practice operates to determine whether the minority group has indeed been denied an equal opportunity to participate in the political process. Plaintiffs' Motion for Summary Judgment ("Motion") focuses on the first phase of this analysis, which examines three threshold elements: (1) whether the

minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district," (2) whether the minority group is "politically cohesive;" and (3) whether the majority votes "as a bloc to enable it . . . usually to defeat the minority's preferred candidate." These requirements are known as the "*Gingles* preconditions." *Thornburg v. Gingles*, 478 U.S. 30, 50-51 (1986).

Here, there is no genuine dispute Plaintiffs have satisfied the *Gingles* preconditions. First, Plaintiffs' expert demographer, William Cooper, has drawn three illustrative plans that include a district (proposed CD 12) within the central and southeast regions of Georgia in which the geographically-compact African American population comprises a majority of the voting age population. SUMF ¶¶ 21-55 (Cooper Report ¶¶ 63-79; Second Declaration of William S. Cooper ¶¶ 34-47, Khanna Decl., Ex. 3 (hereinafter "Second Cooper Report")). Second, as Plaintiffs' expert Dr. Maxwell Palmer has shown, and Defendant's expert Dr. John Alford agrees, African Americans in and around CD 12 vote cohesively in favor of their preferred candidates. SUMF ¶ 63 (Expert Report of Maxwell Palmer at 6-8, figs. 2-6, tbls. 1-5, Khanna Decl., Ex. 5 ("Palmer Report"); Deposition of John Alford at 86:5-19, Khanna Decl., Ex. 8 ("Alford Dep.")). And, third, as both experts also agree, the white majority votes as a bloc usually to defeat the African-American-preferred candidate. SUMF ¶ 64 (Palmer Report at 6-8; Alford Dep. at 206:17-22).

Plaintiffs therefore respectfully ask the Court to grant summary judgment in their favor and find that Plaintiffs have established the three *Gingles* preconditions.

II. ARGUMENT

A. Standard of Review

"The principal function of the motion for summary judgment is to show that one or more of the essential elements of a claim or defense is not in doubt and that, as a result, judgment can be rendered as a matter of law." *Tippens v. Celotex Corp.*, 805 F.2d 949, 952 (11th Cir. 1986). When there is no genuine dispute as to any material fact, the moving party is entitled to judgment as a matter of law on all or any part of a claim. Fed. R. Civ. P. 56(a). Once the moving party has met its initial burden of proving that no genuine issue of material fact exists, the burden shifts to the opposing party to establish otherwise. *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 585-586 (1986). To avoid summary judgment, the opposing party must go beyond the pleadings to designate specific facts establishing a genuine issue for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). In so doing, the opposing party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita*, 475 U.S. at 586. Rather, it "must come forward with significant, probative evidence demonstrating the

existence of a triable issue of fact." *Irby v. Bittick*, 44 F.3d 949, 953 (11th Cir. 1995).

B. Legal Standard for Establishing a Violation of Section 2 of the Voting Rights Act

1. *Section 2 Vote Dilution*

The Voting Rights Act of 1965 is one of this nation's seminal pieces of civil rights legislation. As the Supreme Court has recognized: "Passage of the Voting Rights Act of 1965 was an important step in the struggle to end discriminatory treatment of minorities who seek to exercise one of the most fundamental rights of our citizens: the right to vote." *Bartlett v. Strickland*, 556 U.S. 1, 10 (2009). Pursuant to this goal, Section 2 of the Voting Rights Act prohibits minority vote dilution, providing that no "standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color." 52 U.S.C. § 10301(a). The question posed by a Section 2 claim is "whether, as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice." *Gingles*, 478 U.S. at 44 (internal quotation marks and citation omitted).

In the context of a vote dilution claim under Section 2 regarding single-member districts, the Supreme Court has explained:

> [T]he usual device for diluting minority voting power is the manipulation of district lines. A politically cohesive minority group that is large enough to constitute the majority in a single-member district has a good chance of electing its candidate of choice, if the group is placed in a district where it constitutes a majority. **Dividing the minority group among various districts so that it is a majority in none may prevent the group from electing its candidate of choice**: If the majority in each district votes as a bloc against the minority candidate, the fragmented minority group will be unable to muster sufficient votes in any district to carry its candidate to victory.

Voinovich v. Quilter, 507 U.S. 146, 153 (1993) (emphasis added). In other words, "'[d]ilution of racial minority group voting strength may be caused' either 'by the dispersal of blacks into districts in which they constitute an ineffective minority of voters or from the concentration of blacks into districts where they constitute an excessive majority.'" *Id.* (quoting *Gingles*, 478 U.S. at 46, n.11)

Finally, it is important to note that Section 2 plaintiffs do *not* need to prove that a jurisdiction specifically designed its election system to discriminate against the minority population—only that the voting system challenged has a discriminatory effect. *Gingles*, 478 U.S. at 35. "*Gingles* made clear that the 1982 amendment to section 2 obviated the need for plaintiffs to prove that the contested

electoral mechanism was adopted or maintained with the intent to discriminate against minority voters." *Solomon v. Liberty Cty., Fla.*, 899 F.2d 1012, 1016 (11th Cir. 1990). Instead, "[t]he only question [] is whether as a result of the challenged practice or structure plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice." *Id.* (internal quotations omitted).

2. *The Gingles Preconditions*

In *Gingles*, the Supreme Court set forth the well-settled framework governing Section 2 vote dilution claims, which requires a plaintiff to establish three "necessary preconditions" to make a *prima facie* case for a Section 2 violation: (1) the minority group is "sufficiently large and geographically compact to constitute a majority in a single-member district," (2) the minority group is "politically cohesive," and (3) the majority votes "sufficiently as a bloc to enable it . . . usually to defeat the minority's preferred candidate." 478 U.S. at 50-51. If and once a plaintiff establishes the *Gingles* preconditions, the Court proceeds to examine the totality of the circumstances in order to determine whether African Americans have been denied equal participation in the political process and the ability to elect their preferred

candidates. *Abrams v. Johnson*, 521 U.S. 74, 91 (1997).[2] "[I]t will be only the very unusual case in which the plaintiffs can establish the existence of the three *Gingles* factors but still have failed to establish a violation of [Section] 2." *Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1323 (M.D. Ga. 2018) (quoting *NAACP v. City of Niagara Falls, N.Y.*, 65 F.3d 1002, 1020 n.21 (2d Cir. 1995)).

The focus of Plaintiffs' Motion is the *Gingles* preconditions, which pose three straightforward questions to the court. First, is it possible to draw a compact majority-minority district in central and southeast Georgia? Second, do African Americans in central and southeast Georgia vote cohesively such that they generally support the same candidates? And, finally, does the white-majority in central and southeast Georgia vote as a bloc usually to defeat the African-American-preferred candidate? As demonstrated below, Plaintiffs have presented unrefuted evidence that answers all three questions in the affirmative.

[2] In particular, the Court will consider, inter alia, the factors set forth in the Senate Judiciary Committee Report accompanying the 1982 amendments to Section 2, the so-called "Senate Factors." *Gingles*, 478 U.S. at 44-45.

C. The African-American Population in Central and Southeast Georgia is Sufficiently Large and Geographically Compact to Constitute a Majority in a Congressional District (*Gingles* 1)

Plaintiffs' expert demographer, William Cooper, has submitted three illustrative plans, each of which includes a proposed majority-African-American district in central and southeast Georgia that complies with traditional redistricting principles. SUMF ¶¶ 21-55 (Cooper Report ¶¶ 63-79; Second Cooper Report ¶¶ 34-47); *see also United States v. Vill. of Port Chester*, 704 F. Supp. 2d 411, 420 (S.D.N.Y. 2010) ("To demonstrate the existence of the first *Gingles* precondition . . . Plaintiffs must be able to draw illustrative . . . districts following traditional districting principles to show that the [African American] population is sufficiently large and compact so as to constitute a majority . . . ."). These illustrative plans, therefore, establish that Plaintiffs have satisfied the requirements of the first *Gingles* precondition.

1. *African Americans in Central and Southeast Georgia are Sufficiently Numerous to Constitute a Majority in a Congressional District*

The first part of this inquiry presents a straightforward mathematical question which elicits a simple "yes" or "no" response: whether African Americans "make up more than 50 percent of the voting-age population" in Plaintiffs' proposed CD 12. *Bartlett*, 556 U.S. at 18. This "objective, numerical test" provides "straightforward guidance to courts and to those officials charged with drawing

district lines to comply with Section 2." *Id.*; *see Solomon*, 899 F.2d at 1018 (a 51% BVAP was sufficient to satisfy *Gingles* precondition 1); *Ga. State Conf. of NAACP v. Fayette Cnty. Bd. of Comm'rs*, 950 F. Supp. 2d 1294, 1303 (N.D. Ga. 2013) (finding 50.22 percent BVAP district, exceeding the 50 percent threshold by approximately 35 voters, sufficient to satisfy numerosity requirement), *aff'd in part, vacated in part, rev'd in part on other grounds*, 775 F.3d 1336 (11th Cir. 2015).

Cooper's illustrative plans easily satisfy this requirement. Using data from the 2010 Census, Cooper calculated the black voting age population in the proposed CD 12 in all three of his illustrative plans and reported the results:

PLAN	BVAP
District 12, Current Plan	33.30%
District 12, Illustrative Plan 1	50.32%
District 12, Illustrative Plan 2	50.26%
District 12, Illustrative Plan 3	50.20%

SUMF ¶¶ 31, 40, 49 (Cooper Report ¶¶ 67, 72; Second Cooper Report ¶ 35). Plaintiffs' expert, Gina Wright's report does not dispute Cooper's calculation of the black voting age population in the proposed districts. SUMF ¶ 22 (Deposition of Gina Wright at 119:9-14, Khanna Decl., Ex. 4 ("Wright Dep.")). Nor is there any question that this metric is the appropriate one. *See Johnson v. Hamrick*, 155 F. Supp. 2d 1355, 1367 (N.D. Ga. 2001), *aff'd*, 296 F.3d 1065 (11th Cir. 2002) (noting that BVAP is "the population generally accepted as legally relevant"). Therefore, there

is no genuine dispute of material fact that under each of the illustrative plans, the BVAP of proposed CD 12 exceeds the simple majority required under the first *Gingles* precondition.

2. *Plaintiffs' Illustrative Plans are Compact and Follow Traditional Redistricting Principles*

The second part of this inquiry requires the Court to determine whether a majority-minority district can be drawn while complying with traditional redistricting principles. *See Georgia State Conference of NAACP v. Fayette Cty. Bd. of Comm'rs*, 952 F. Supp. 2d 1360, 1364 (N.D. Ga. 2013) ("[A] plan is compact where it is designed 'consistent with traditional districting principles.'") (quoting *Davis v. Chiles*, 139 F.3d 1414, 1425 (11th Cir. 1998)). Although the compactness requirement under this precondition refers to "the compactness of the minority population, not . . . the contested district," courts have acknowledged that "no precise rule has emerged governing § 2 compactness." *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 433 (2006) ("*LULAC*"). As such, the court may consider traditional redistricting principles. *See id*. And as part of this inquiry, courts in this circuit have found that a proposed district's compliance with the numerosity requirement and with traditional redistricting principles—like compactness of the district boundaries, contiguity, achieving equally populated districts, maintaining communities of interest and traditional boundaries, and avoiding the pairing of

incumbents—is sufficient to establish the first *Gingles* precondition. *See Askew v. City of Rome*, 127 F.3d 1355, 1375-76 (11th Cir. 1997); *Ga. State Conf. of NAACP*, 952 F. Supp. 2d at 1365.

a) Compactness

In each of Cooper's illustrative plans, the African American population in the proposed CD 12 is demonstrably geographically compact. The African-American communities within the proposed CD 12 are located generally in central and southeast Georgia—the same region where the current CD 12 sits. SUMF ¶ 28 (Wright Dep. at 244:8-14 ("[Cooper's proposed CD] 12 is in the same east central Georgia [location] that the current 12 is.")). To convert CD 12 into a majority-African-American district, Cooper's illustrative plans reunite African American counties that were originally in CD 12 (under the 2005 plan)—but had since been disbanded and submerged into neighboring majority-white districts under the current plan:

COUNTY	2005 PLAN	CURRENT PLAN	ILLUSTRATIVE PLANS	BVAP
Hancock	CD 12	CD 10	CD 12	74.43%
Warren	CD 12	CD 10	CD 12	62.12%
Taliaferro	CD 12	CD 10	CD 12	60.75%
Jefferson	CD 12	CD 10	CD 12	54.95%
Washington	CD 12	CD 10	CD 12	53.44%
Chatham (partial)	CD 12	CD 1	CD 12	51.04%

SUMF ¶¶ 21-55 (Cooper Report ¶¶ 63-79; Second Cooper Report ¶¶ 34-47). Cooper's illustrative plans also include portions of Bibb County that are currently assigned to CD 8 and CD 2 but are located nonetheless in central Georgia as well. SUMF ¶ 26 (Cooper Report ¶ 4, figs. 14, 16; Second Cooper Report ¶ 35, fig. 2). In fact, portions of Bibb County, and all of Hancock and Washington counties, are located in the same State Senate district. SUMF ¶ 27 (Cooper Report ¶ 14, Ex. E; Second Cooper Report, fig. 2).

Objective measurements of the proposed districts' compactness using the Reock and Polsby-Popper tests confirm that proposed CD 12 is reasonably compact under each of Plaintiffs' illustrative plans. A Reock test "computes the ratio of the area of the district to the area of the minimum enclosing circle for the district." SUMF ¶ 12 (Cooper Report ¶ 75, n.16). A Polsby-Popper test "computes the ratio of the district area to the area of a circle with the same perimeter." *Id*. The scores for

both tests range from 0 to 1, with 1 being the most compact. SUMF ¶ 14 (Cooper Report ¶ 75, n.16).

Both Cooper and Defendant's expert, Gina Wright, calculated proposed CD 12's Reock and Polsby-Popper scores for Illustrative Plans 1 and 2, and reached the same result:[3]

	Illustrative Plan 1	**Illustrative Plan 2**	**Illustrative Plan 3**	**Current Plan**
Reock (CD 12)	0.35	0.34	0.34	0.41
Polsby-Popper (CD 12)	0.16	0.17	0.17	0.18
Mean Reock (All Districts)	0.42	0.44	0.44	0.45
Mean Polsby (All Districts)	0.24	0.25	0.25	0.25

SUMF ¶¶ 32-33, 41-42, 50-51) (Cooper Report fig.18; Second Cooper Report ¶¶ 39-40; Expert Report of Gina H. Wright at 17-18, 22-23, Khanna Decl. Ex. 2 ("Wright Report")). Overall, the differences in compactness scores between the current plan and Cooper's illustrative plans are negligible. *See id*. The proposed CD 12 in each plan has Reock scores of .35 (Illustrative Plan 1) and .34 (Illustrative Plans 2 and 3), which, while slightly lower than the current CD 12 (0.41), are still higher than the

[3] Wright did not submit Reock or Polsby-Popper scores for Cooper's Illustrative Plan 3, which were included in Cooper's rebuttal report.

current CD 8, and are nearly on par with CD 9. *See id*. Cooper's plans have mean Reock scores of .42 (Plan 1) and .44 (Plans 2 and 3), which is nearly identical to the current plan's mean Reock score of .45. *See id*.

The similarities in compactness hold true under the Polsby-Popper test as well. Cooper's proposed CD 12 has a Polsby-Popper scores of .16 (Plan 1) and .17 (Plans 2 and 3) respectively, which are nearly identical to the current plan's CD 12 Polsby-Popper score of .18. *See id*. Likewise, the mean Polsby-Proper scores of all districts in Cooper's illustrative plans are .24 (Plan 1) and .25 (Plans 2 and 3), which, again, is essentially identical to the current plan's mean score of .25. *See id*. In short, the compactness scores for each illustrative plan, including specifically for proposed CD 12, are well within the norm for Georgia congressional districts. *See id*.

Defendant's expert demographer, Gina Wright, does not contend that the African American population in proposed CD 12 is not compact. SUMF ¶ 30 (Wright Dep. at 134:9-136:12). She suggests only that the proposed districts may be less compact than others. *Id*. But even if true, this does not refute the fact that the African American population in the illustrative plans' proposed CD 12 is sufficiently compact to satisfy the first *Gingles* precondition. Plaintiffs are not required to demonstrate that their proposed majority-minority district is the most compact alternative, or that it is even as compact as the district it seeks to replace. *See Goosby*

v. Town Bd. of Town of Hempstead, N.Y., 180 F.3d 476, 489 (2d Cir. 1999) (finding a district sufficiently geographical compact, despite that, "[u]sing a standard measure of compactness, [the district] is somewhat less compact than the average of the other five districts in the proposed plan"); *cf. Bush v. Vera*, 517 U.S. 952, 978 (1996) ("A § 2 district that is reasonably compact . . . may pass strict scrutiny without having to defeat rival compact districts designed by plaintiffs' experts in endless 'beauty contests.'").

Put another way, there is no viable argument under Section 2 that a majority-minority district fails if it is any less compact than the offending district. Instead, the appropriate inquiry is whether the proposed district, per standard measures of compactness, is reasonably compact. Here, all three illustrative plans clearly meet that standard. *See, e.g.*, *Fayette Cnty.*, 950 F. Supp. 2d at 1308, n.14 (finding proposed single-member district with Reock score of .31 and Polsby-Popper score of .16 reasonably compact); *see also Goosby*, 180 F.3d at 48 (finding district reasonably compact although it was less than the average of other districts in the plan).

b) Other traditional redistricting principles

The illustrative plans further comply with other traditional redistricting principles, such as contiguity, population equality, maintaining communities of

interest, respecting traditional boundaries, and avoiding the pairing of incumbents. *See Ga. State Conf. of NAACP*, 952 F. Supp. 2d. at 1364. In drawing the plans, Cooper focused solely on counties within CD 12 and its surrounding districts, while excluding all counties within the Atlanta and Athens metropolitan statistical areas.[4] SUMF ¶ 25 (Cooper Report ¶ 7 n.4). He explains that he confined his proposed majority-minority CD 12 to this area in an effort to respect traditional boundaries and maintain communities of interest. *Id*. (Cooper Report ¶ 7 n.4).

The illustrative plans also follow existing political boundaries. *See Wright*, 301 F. Supp. 3d at 1326 (noting absence of dispute that illustrative plan "respect[s] . . . political boundaries" in finding illustrative districts meet *Gingles* 1 compactness requirement). For instance, Illustrative Plans 1 and 3 split 17 counties and Illustrative Plan 2 splits 18 counties—which is less than the 20 counties split under the 2005 Plan and comparable to the 16 splits under the 2011 Plan. SUMF ¶¶ 35 44 (Cooper Report fig.19).

Cooper also demonstrated that his Illustrative Plan 3 displaces fewer CD 12 residents than the current plan. SUMF ¶ 54 (Second Cooper Report ¶¶ 44-45). Under the current plan, only 53% of the CD 12 population from the pre-existing 2005 plan

[4] Cooper's declaration lists the 71 counties that fall within this region, which he refers to collectively as the "Focus Area." SUMF ¶¶ 3, 25 (Cooper Report ¶ 7 n.4).

were retained within the same district. *Id*. Illustrative Plan 3, however, retains approximately 64% of the CD 12 population from the 2005 plan within the district. *Id*. By keeping a larger share of the districts' original residents within CD 12, Cooper's Illustrative Plan further maintains communities of interest and traditional boundaries. Finally, there is no dispute that all of Cooper's illustrative plans are contiguous, achieve population equality, and avoid pairing incumbents in the same district. SUMF ¶¶ 39, 48, 55 (Cooper Report ¶ 63; Second Cooper Rep. ¶ 47).

In sum, Plaintiffs have provided multiple reasonably compact illustrative districts in the focus area which comply with traditional redistricting principles and in which African Americans would comprise a majority of the voting age population. Accordingly, Plaintiffs have satisfied the first *Gingles* precondition.

D. African Americans in Central and Southeast Georgia are Politically Cohesive, and the White Majority Votes as a Bloc Usually to Defeat their Candidates of Choice (*Gingles* 2 and 3)

The second and third *Gingles* preconditions work together to establish whether racial bloc voting in the region results in the defeat of minority-preferred candidate. Plaintiffs can establish minority cohesiveness under the second *Gingles* precondition by showing that "a significant number of minority group members usually vote for the same candidates." *Solomon*, 899 F.2d at 1019; *see also Gingles*, 478 U.S. at 56 ("A showing that a significant number of minority group members

usually vote for the same candidates is one way of proving the political cohesiveness necessary to a vote dilution claim, and, consequently, establishes minority bloc voting within the context of § 2") (internal citations omitted). As to the third *Gingles* precondition, "a white bloc vote that normally will defeat the combined strength of minority support plus white 'crossover' votes rises to the level of legally significant white bloc voting." *Gingles*, 478 U.S. at 56.

No specific threshold percentage is required to demonstrate bloc voting, as "[t]he amount of white bloc voting that can generally 'minimize or cancel' black voters' ability to elect representatives of their choice . . . will vary from district to district." *Id.* (citation omitted). Courts consistently conduct election-specific analyses and examine what percentage of minority voters and what percentage of white voters supported a particular candidate. *See, e.g.*, *id*. at 59 (finding second and third *Gingles* preconditions satisfied where 71% to 92% of African Americans voted for African-American-preferred candidates and 81.7% of white voters voted against those candidates); *LULAC*, 548 U.S. at 427 (finding "cohesion among the minority group and bloc voting among the majority population" where 92% of minority group voted together for one candidate, while 88% of the non-minority group voted for a different candidate); *Solomon*, 899 F.2d at 1019, 1021 (finding first and second *Gingles* preconditions met where African Americans voted together between 75%

and 100% of the time and nearly 80% of whites voted against minority-preferred candidates).

Both Plaintiffs' expert, Dr. Maxwell Palmer, and Defendant's expert, Dr. John Alford, agree that African Americans in and around CD 12 vote cohesively in support of the same candidates, and that the white majority votes as a bloc usually to defeat their candidates of choice. SUMF ¶¶ 63-64 (Palmer Report at 6-8; Alford Dep. at 86:2 – 87:18; 206:17-22). Dr. Palmer examined precinct level election results for congressional (endogenous) and statewide (exogenous) races in general elections occurring between 2012 and 2018,[5] along with voter registration and voter history files, and applied a statistical procedure, known as ecological inference, to develop estimates of the percentage of each group that voted for each candidate in every election contest. SUMF ¶ 56 (Palmer Report at 5). Dr. Alford has no dispute with Dr. Palmer's methods, nor does he dispute the results of Dr. Palmer's analysis. SUMF ¶ 58 (Alford Dep. at 77:8-22; 86:2 – 87:18).

The results of Dr. Palmer's analysis indisputably demonstrate that African Americans in the focus area vote cohesively in support of the same candidates.

[5] The analyses examined votes in all counties either partially or entirely within CD 1, CD 8, and CD 12, and several counties within CD 10. This is the same region identified in Plaintiffs' expert William Cooper's report as the "focus area." SUMF ¶ 59 (Palmer Report, tbls. 1-5).

Between 2012 and 2018 African-American voters supported the same candidates in every single election examined at rates ranging from 88 to 98 percent. SUMF ¶ 59 (Palmer Report, tbls. 1-5; Second Palmer Report, tbls. 1-5). It is thus evident that a "significant number of minority group members usually vote for the same candidates," *Gingles*, 478 U.S. at 56, satisfying the second *Gingles* precondition.

The undisputed record also establishes a pattern of white bloc voting. Across those same elections, white voters supported the African-American-preferred candidate in percentages ranging from only 3.6 percent to 27.5 percent. SUMF ¶ 60. (Palmer Report, tbls. 1-5; Second Palmer Report). From 2012 to 2016, the average difference in support for the African American-preferred candidate in the focus area was 87.7 percentage points, with comparable disparities in each of the examined districts. SUMF ¶ 61 (Palmer Report at 7). Dr. Alford conducted a similar analysis using the 2018 general election returns and arrived at essentially the same result. SUMF ¶ 57 (Alford at tbls. 1-6).

Finally, in all but one instance out of the elections examined, the white majority voted "sufficiently as a bloc to enable it . . . to defeat the minority's preferred candidate." SUMF ¶ 64 (Palmer Report at 6-8, tbls. 1-5).[6]

[6] In 2012, four-time incumbent John J. Barrow, the candidate of choice among African Americans, won reelection in CD 12, with 94.3 percent of the African American vote and 27.5 percent of the white vote. Barrow was defeated in 2014;

None of this is in dispute. Rather, the only material dispute among the parties' experts is the extent to which the divergent voting patterns among African-American and white voters are attributable to race, as opposed to partisanship. SUMF ¶ 67 (Alford Report at 10). But federal courts in this circuit have made clear that this distinction is not relevant in determining whether Plaintiffs have established the *Gingles* preconditions.[7] The Eleventh Circuit's ruling in *Nipper v. Smith*, even while permitting evidence regarding "the absence of racial bias in the voting community" under the totality of the circumstances analysis, reaffirmed that, in so doing, "a defendant is not rebutting the plaintiff's evidence of racial bloc voting." 39 F.3d 1494, 1525, n.60 (11th Cir. 1994). And other courts have followed suit by considering evidence of non-racial explanations for bloc voting, if at all, in the second phase of the Section 2 analysis, after determining whether the *Gingles* preconditions had been met. *See e.g.*, *Ga. State Conf. of the NAACP v. Fayette Cnty. Bd. of Comm'rs*, 118 F. Supp. 3d 1338, 1345-46 (N.D. Ga. 2015).

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although he received a whopping 97.5 percent of the African American vote, he received only 17.4 percent of the white vote. SUMF ¶ 64 (Palmer Report at 6-8, tbls. 1-5).

[7] Notably, the Supreme Court's plurality opinion in *Gingles* held that "the reasons black and white voters vote differently have no relevance to the central inquiry of § 2." *Gingles*, 478 U.S. at 63.

Nonetheless, even if the Court were to consider the role of partisanship in explaining racial bloc voting as part of its analysis of the *Gingles* preconditions, Plaintiffs have also provided unrefuted expert analysis and testimony demonstrating that partisanship in Georgia is inextricably intertwined with race. SUMF ¶¶ 71-75 (Expert Report of Vincent Hutchings ¶¶ 1, 9-10, Khanna Decl. Ex. 9 ("Hutchings Report")). Plaintiffs' expert Dr. Vincent Hutchings's declaration explains that race is "the single greatest demographic factor shaping the current partisan divide in the South," and the relationship between race and partisan preference is sustained even after holding relevant socio-demographic characteristics constant. SUMF ¶¶ 71-75 (Hutchings Report ¶ 15). Dr. Hutchings also found, consistent with a broad range of political science scholarship, that racial attitudes are strong predicters of partisan preference. SUMF ¶ 73 (Hutchings Rep. ¶¶ 6, 19-24). Defendant has offered no expert testimony to refute Dr. Hutchings' conclusions.[8] SUMF ¶¶ 70, 77 (Alford Dep. 124:9-125:21).

[8] Consistent with Dr. Hutchings's findings, Plaintiffs' testimony further illustrates that race is the driving factor in their voting patterns. For instance, Plaintiff Destinee Hatcher testified that she votes for Democratic candidates "because they were the party that reached out to my community, African-Americans." SUMF ¶ 78 (Deposition of Destinee Hatcher at 37:9-14, Khanna Decl. Ex. 10). Plaintiff Amanda Hollowell testified that she "vote[s] for candidates who are actually looking to represent the platform in progressive issues that affect African-Americans, myself." SUMF ¶ 79 (Deposition of Amanda Hollowell at 21:8-17, Khanna Decl. Ex. 11).

In sum, the voting patterns in central and southeast Georgia demonstrate that African-American and white voters "consistently prefer different candidates," and the white majority has "regularly defeat[ed] the choices of minority voters." *Gingles*, 478 U.S. at 48. Based on the undisputed evidence, Plaintiffs have satisfied the second and third *Gingles* preconditions. Any attempt by Defendant's expert to inject a causation inquiry into this analysis is incorrect as a matter of law, and in any event fails in the face of Plaintiffs' unrefuted expert testimony that the racially polarized voting observed in the region is a reflection of the significant role that race plays in Georgia politics.

III. CONCLUSION

Plaintiffs have satisfied the *Gingles* preconditions as a matter of law. Accordingly, for all of the foregoing reasons, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Partial Summary Judgment.

Dated: May 1, 2019

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 14 point, as approved by the Court in L.R. 5.1(C), NDGa.

Respectfully submitted, this 1st day of May, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2019, I filed a copy of the foregoing Memorandum in Support of Plaintiffs' Motion for Partial Summary Judgment with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

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