

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

NAACP, *et al.*,

Plaintiffs,

V.

BRIAN KEMP, in his official capacity  
as Secretary of State for the State of  
Georgia,

Defendant.

AUSTIN THOMPSON, *et al.*,

Plaintiffs,

V.

BRIAN KEMP, in his official capacity  
as Secretary of State of the State of  
Georgia,

Defendant.

**DEFENDANT BRIAN KEMP’S BRIEF IN OPPOSITION  
TO PLAINTIFFS’ MOTION FOR A PRELIMINARY INUNCTION**

COMES NOW BRIAN KEMP, Georgia Secretary of State (“Kemp”), by and through his attorney of record, the Attorney General of the State of Georgia, and files this Brief in Opposition to the NAACP Plaintiffs’ Motion for a Preliminary

Injunction and Permanent Injunction, in which the Thompson Plaintiffs have joined. ECF 103, 120.

## **INTRODUCTION**

Plaintiffs challenge House Districts (“HDs”) 105 and 111 as racial gerrymanders under the Fourteenth Amendment. ECF 1 at 24; ECF 84 at 39. Plaintiffs premise their racial gerrymandering claims entirely on the correlation between the race of voters and their partisanship. Despite direct evidence from the State’s demographer that she used only partisan data to make the 2015 changes to HD 105 and HD 111, Plaintiffs argue that because state officials were aware of the correlation, and because the partisan changes have a racial effect, the plan is predominantly based on race. Under Plaintiffs’ rationale, the existence of a correlation between race and party means that any time a district’s boundaries are altered for a partisan reason, using partisan data, there will necessarily be a negative racial impact and therefore racial intent. For the reasons that follow, Plaintiffs’ theory is inconsistent with Supreme Court precedent and the evidence in this case.

Further, Kemp notes at the outset that any urgency is the product of Plaintiffs’ choices. H.B. 566 became effective in 2015 and was used in the 2016 elections, but Plaintiffs did not file suit until April 24, 2017 and October 3, 2017. ECF 1 and ECF 84. Their Motion for Preliminary Injunction was filed shortly before candidates

began qualifying to run for State House districts, including HDs 105 and 111, and other offices. Candidate qualifying has now closed, and, as set out in greater detail below, the ballot creation process is underway. In short, the entry of a preliminary injunction as sought by Plaintiffs threatens to disrupt an election process that is already underway and will confuse voters.

## I. STATEMENT OF FACTS

### A. **H.B. 566 was an Effort to Consolidate Minor District Changes that Representatives Started Requesting in 2014.**

Representative Randy Nix, chair of the House Reapportionment Committee from 2013 to 2016, testified that, during the 2014 legislative session, approximately eight to ten members came forward requesting minor changes to their districts. Nix Dep. 62:6-9, 66:9.<sup>1</sup> These changes included moving district lines to accommodate incumbents who had moved or bought new property. *Id.* at 68:19-24. In response to these requests, House Republican leadership then decided that “[i]f we do anything, we’ll do it all at one time rather than trying to do things piecemeal.” *Id.* at 66:24 to 65:7. Mr. Nix insisted, however, that “any changes that were made had to be relatively minor so that we didn’t jeopardize the good work that we had done when the maps were drawn before [in 2011 and 2012].” *Id.* at 73:17-20.

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<sup>1</sup> The Nix Deposition appears at ECF 124.

At the beginning of the 2015 legislative session, Rep. Nix announced that redistricting would be considered “before the entire chamber . . . during the session.” Nix Dep. 79:8-11. He made the same announcement before both the majority and minority caucuses in the House and talked to the minority leader, Representative Stacey Abrams, as well. *Id.* at 79:11-18. People on both sides of the aisle wanted to make changes. *Id.* at 79:25 to 80:1.

**B. Chairman Nix Established Clear Guidelines for Changes that would be Made in 2015, and Gina Wright was Tasked with Keeping all Changes Within These Guidelines.**

Rep. Nix outlined clear parameters for any redistricting that would take place in 2015. First, “it had to be done fairly, we wanted to offer it to everyone, not that everyone could do it because of some of the changes some people wanted wouldn’t work.” Nix Dep. 84:7-10. Second, Rep. Nix insisted that any changes to district lines could not jeopardize the integrity of the map drawn in 2011 and modified in 2012. *See id.* at 73:14-20, 74:14-16, 108:23-25 to 109:1. Rep. Nix was proud of the fact the Obama Administration did not challenge the 2012 map and was insistent that any changes in 2015 would not undermine the integrity of the map that led to federal approval. *Id.* at 57:3-11, 94:24-25 to 95:1-7, 75:11-13. Third, Nix required that all members who would be affected by a proposed change must consent to the change. *Id.* at 72:19-25 to 73:1-7. Finally, Nix required all members who were requesting changes



to do so through the Legislative and Congressional Reapportionment Office (the “LCRO”). *Id.* at 79:13-18, 83:3-7. Rep. Nix tasked the LCRO with ensuring that any changes fell into the broad requirements that he had established for the 2015 redistricting process—that all changes must (1) be fair and bipartisan, (2) maintain the integrity of the 2012 map, and (3) be made with the consent of all affected members. *See id.* at 80:15-20, 82:3-9, 141:23-25 to 142:1-3, 136:15-19 (describing how the LCRO must inform Nix whether a proposed changes fits within the parameters he established).

**C. The Process that the LCRO Used to Draw the Changes that Became H.B. 566.**

Gina Wright is the Executive Director of the LCRO. She was the primary map drawer for H.B. 566. Wright Dep., 15:25-16:20.<sup>2</sup> Ms. Wright is the person in the LCRO who is typically approached about a modification to a district. Deposition of Strangia Dep., 30:24-31:1.<sup>3</sup> Ms. Wright oversaw the redistricting of all seventeen districts included in H.B. 566, although certain of her staff did provide technical assistance on two areas that are not at issue in this litigation. Declaration of Gina Wright at ¶ 5, attached hereto as Exhibit A. Ms. Wright was the only person in the LCRO who worked

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<sup>2</sup> The Deposition of Gina Wright appears at ECF 112.

<sup>3</sup> The Deposition of Rob Strangia appears at ECF 110.

on that portion of the H.B. 566 that touched any part of Gwinnett and Henry County, including HD 105 and HD 111. *Id.*

During the 2015 redistricting process, Ms. Wright had access to political data down to the census block level. The LCRO “allocate[s]” the political data that comes in from the Secretary of State’s Office “to the block level . . . based on the percentage and proportions of the population.” Wright Dep., 106:7-13. If “for example, you have a block where, or several blocks, in a precinct where you have a lot of population right here in these blocks and then nobody, you have zeroes out here, it’s going to obviously allocate that proportion there of the voter data, not here because nobody lives here. So it spreads out through the blocks.” Wright Dep., 106:17-23. The political data is election results that come from statewide contested races. Exhibit A at ¶ 7.

Rob Strangia, a geographical information specialist in the LCRO, likewise testified that political data the office uses goes all the way “down to the block level of geography based on voting age population.” Strangia Dep., 25:7-9. The allocation is done by Geographic Information System (GIS) software every two years. Exhibit A at ¶ 7. Strangia explained:

If you have a hundred registered voters in precincts ... and there’s two blocks in the precinct, one block has 60 percent of the voting age population, the other block has 40 percent of the voting age population, it’s going to allocate the election data based on those percentages to the block level geography. It’s only an estimate.

Strangia Dep., 25:20 to 26:3. For the same precinct in which the voting-age population is split 60-40, and the vote is split on a 50-50 basis, Strangia testified that the software would “put 60 percent of the votes for both candidates in the block with the larger population and 40 percent in the one with the lower population.” *Id.* at 26:10-17.

The software presents a “typical and customary way of translating political data down to the block level.” *Id.* at 26:19-22. It has been used not only by Georgia, but also by Texas, Florida, and California. *Id.* at 26:23 to 27:23. The allocation is “a pretty decent estimate, but it’s an estimate.”<sup>4</sup> Wright Dep., 111:23-24.

In his Expert Report and his Reply Report, Plaintiffs’ expert, Dr. Jowei Chen said that he “found that the Legislature’s primary map-drawer had access only to racial data, but not partisan data, at the sub-precinct level.” ECF 63-1 at 3; ECF 63-1 at 33; ECF 94-1 at 16. Chen testified that he based that “finding” on his reading of the depositions of Gina Wright and Rob Strangia. Chen Dep., 15:19 to 16:12.

Chen’s “finding” fails to account for the process that the LCRO actually uses and the data that Ms. Wright actually had access to when drawing the maps for H.B. 566. This information was provided in both Ms. Wright’s and Mr. Strangia’s

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<sup>4</sup> While Plaintiffs’ expert, Dr. Peyton McCrary, believes such allocation to be less predictable political data than racial population data, ECF 65-1 ¶ 47, it is nonetheless what Wright used. Exhibit A at ¶¶ 7-10.

depositions, both of whom testified that political data at the block level was available. More to the point, Wright testified that she relied on political data, and not racial data, in making the changes to HDs 105 and 111. Wright Dep., 30:1-31:10, 219:9-220:21; Exhibit A at ¶¶ 7-10.

**D. After Mr. Nix Announced that Representatives Could Request Small District Changes, Representatives Chandler and Strickland Decided to Investigate Whether Small Changes Could Increase their Political Chances.**

HDs 105 and 111 were created in the redistricting that followed the 2010 Census. Chandler Dep., 60:20-22;<sup>5</sup> Strickland Dep., 45:21 to 46:2.<sup>6</sup> To make changes to the Districts in 2015, the Reapportionment Office focused on political data from statewide races to draw to 2015 changes to HD 105 and HD 111. As stated above, Ms. Wright performed the entire map drawing process for the 2015 changes to HD 105 and HD 111. Exhibit A ¶ 5. In redistricting HD 105 and HD 111, she understood the goal to be improving the political performance of the two districts for the Republican incumbents. *Id.* at ¶ 6. To draw the districts, she used a 2014 voting precinct data layer, which included 2014 general election results, to measure the political effectiveness of the districts. *Id.* at ¶ 8. The precinct layer included a total of support to the Republican (“%TRepVots14”) and Democratic (“%TDemVots14”) candidates that represents the

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<sup>5</sup> The Deposition of Joyce Chandler appears at ECF 126.

<sup>6</sup> The Deposition of Brian Strickland appears at ECF 127.

average performance among all contested statewide general elections for 2014. *Id.* This political data was available at the voting precinct level and was allocated to the precinct boundaries on the map layer. *Id.* at ¶ 9. When a precinct is split, the redistricting software allocates the votes from that election to the individual blocks. *Id.* When Ms. Wright worked on the 2015 redistricting of HD 105 and HD 111, including all surrounding affected districts, she did not keep data regarding the racial make-up of the census blocks and precincts visible on the pending changes portion of the Maptitude screen. *Id.* at ¶ 10. She was not working with that data because her goal was to improve the Republican political performance of the districts, so she worked with the relevant data for that goal, i.e., the total population and the political data (the %TRepVots14 and %TDemVots14 data). *Id.* at ¶ 10.

### **1. The Election History of HD 105 Prior to 2015.**

In 2012, Joyce Chandler defeated Renita Hamilton by a margin of 51.35% to 48.65%, a difference of 554 votes. Chandler Dep., Pls.’ Ex. 124. She outperformed Republican Presidential candidate Mitt Romney, who lost in HD 105. Chandler Dep., Pls.’ Ex. 130 at 1.

In 2014, Rep. Chandler again defeated Renita Hamilton, this time by 789 votes. Chandler Dep., Pls.’ Ex. 36 at 7. She won the Baycreek K, Baycreek C, Baycreek D,

Baycreek F, Baycreek H, and Baycreek I precincts, while losing the Lawrenceville D, Lawrenceville F, and Lawrenceville M precincts. *Id.*

Rep. Chandler does not look at racial information as part of her campaign strategy. Chandler Dep. 60:2-4. She canvases all parts of her district. Chandler Dep. 66:20-22. In campaigning, she believes she just has “to work hard, period.” Chandler Dep., 75:23-76:1.

**2. Plaintiffs Suggest that Chandler was Interested in Racial Data by Use of Misleading Exhibit.**

Rep. Chandler believed the demographics of HD 105 changed between 2012 and 2014 by becoming more Democratic than Republican, in that “the percentage of Republican voters were less . . . than the percentage of Democrat voters.” Chandler Dep. 126:16-127:3. After the 2014 election she wanted to redraw the lines of her district because she “would like for [her] district to have been more Republican than it was in the previous year.” *Id.* at 131:15-23. She hoped to improve her chances of reelection in 2016 by tweaking her district. *Id.* at 178:5-7. Moving African-Americans out of her district was never mentioned to her. *Id.* at 178:16-19. She did not want to change the racial demographics of her district, remove African-American voters from her district, dilute the voting strength of minorities in her district, nor add white voters to her district. *Id.* at 187:17-188:3.

Rep. Chandler was also not interested in the percentage of African-Americans that would live in HD 104 and 105 after making a proposed change. *Id.* at 207:22-208:1. She does not recall any discussions about increasing or decreasing the number of black people in a district or getting below a certain percentage of black people as a reason to change a district. *Id.* at 236:5-16. In fact, she does not remember any racial considerations ever being discussed. *Id.* at 238:18-21.

Plaintiffs insinuate that Representative Chandler was interested in the racial make-up of her district because of an email chain between Chandler and Dan O'Connor where O'Connor appears to have sent Chandler both election data and voter registration data by race. ECF 103-34. At her deposition, Representative Chandler testified that she does not recall asking for any racial data for her district, just a map, so she can campaign. Plaintiffs' counsel then showed her the two pages of voter registration data that are part of ECF 103-34, and represented that these pages are part of the email from Dan O'Connor. Chandler Dep. 97-98. The data attached to this exhibit was *not* an attachment to the Dan O'Connor email. *See* Declaration of Howe Taing, attached hereto as Exhibit B. As is clear by looking at the Bates stamp on the bottom right hand corner of documents,<sup>7</sup> the email is GA2-

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<sup>7</sup> Exhibit 128 to the Deposition is Exhibit 33 to Plaintiffs' Motion for Preliminary Injunction. Doc. 103-34.

001195, the attachments are GA2-001197 and GA2-001198, which are attachments to the email in GA2-001196. *See* Exhibit B at ¶¶ 5-6. Despite Representative Chandler’s testimony that she did not recall requesting such data, the following exchange occurs:

Q: Does Mr. O’Connor send you things that you don’t ask for?

A: I don’t know. I doubt it, but I don’t know.

Q: Why did you thank him for sending the voter registration data?

A: I don’t know. I would just courteous - - I would just usually respond thank you to anybody.

Q: Let’s look at the spreadsheet on the second page.

Chandler Dep., 99:9-19. Counsel then repeatedly asks Representative Chandler if she could find any election data or partisan data on the two pages. *Id.* at 99:21 – 101:2. When Representative Chandler answered that she could only find “total voters,” she is asked:

Q: So is that a no?

A: That’s a no, unless I’m just missing it.

*Id.* at 101:4-6. Chandler is then asked if it’s a “fair summary” that the two pages (GA2-001197 and GA2-001198) provide voter registration by race but not by party.



*Id.* at 101:7-22. Chandler is then, again, asked to explain why O'Connor would send her this information, and not the election returns, if she had not asked for them.

Q: Do you have any reason to believe you did not request this information from Mr. O'Connor?

A: I do not recall requesting anything like this.

Q: But that's not my question. My question is: Do you have any reason to believe that you did not request this information from Mr. O'Connor?

*Id.* at 101:23 – 102:6. The email from Dan O'Connor, 103-34 p. 1, clearly indicates on its face that two excel files had been included. The email was a reply email from Chandler, so the attachments were not included. From the face of this email, it appears that O'Connor sent Representative Chandler both some registration data by precinct and general election (GE) returns for HD 105. Plaintiffs however, insinuate that only registration data, by race, was provided to Chandler, and because she thanked O'Connor for the data, registration data must be all she wanted. ECF 103-1 at 16 ("O'Connor gave [Chandler] precinct-level racial data and Chandler thanked him.") (citing Ex. 33).

### **3. The New District 105 Map**

Once Chairman Nix opened up the redistricting process in 2015, HD 105 was examined to determine whether any changes could make it a little more Republican.

Chandler Dep. 138:5-9. To improve the Republican political performance of HD 105, Representative Efstration's HD 104 was a target district from which Ms. Wright could move GOP voters because his district is "very Republican," *Id.* at 112:13-113:3. Using the political data layer in Maptitude, Ms. Wright began the redistricting of HD 105 with the district at 50.98% (%TRepVots14) and 48.13% (%TDemVots14). HD 104, which is adjacent to HD 105, was 69.68% (%TRepVots14) and 28.87% (%TDemVots14). Exhibit A ¶ 12. A detailed explanation of Wright's process for redrawing these districts is included below in Section II.A.1.a. *See also* Exhibit A ¶¶ 11-25.

#### **4. The Election History of HD 111 Prior to 2015.**

In 2012, Brian Strickland defeated Bill Blackmon by a margin of 53% to 47%, a difference of 1,477 votes. Strickland Dep., Pls.' Ex. 288 at 2. He ran ahead of Republican Presidential candidate Mitt Romney, who garnered only 50% of the vote in HD 111. Strickland Dep. Pls.' Ex. 290 at 1. Strickland carried the Lowes, North Hampton, Stagecoach, Unity Grove, Pate's Creek, Oakland, Dutchtown, and McDonough Central precincts, losing in Mount Carmel, Wesley Lakes, and Stockbridge West. Strickland Dep. Pls.' Ex. 288 at 3.

Strickland explained that he did not look at "past voting information" in 2012 because, with a newly created district, "there was no past data to look at." Strickland Dep. 45:21 to 46:2. He did not look at racial information either. *Id.* at 46:8-11. Instead,

Strickland “ma[de] sure to focus on everyone, and . . . campaigned in all communities.” *Id.* at 46:21-23; *see also id.* at 48:4-5 (“[W]e worked the entire district.”). In his view, he “outworked” Blackman, noting, “I knocked on doors. I was an unknown candidate at that time. I had no record to run on. I was a young guy, too.” *Id.* at 119:16-20; *see also id.* at 62:13-14 (“[I]f I work hard, then I can win any election.”).

Strickland explained his strategy: “Someone that has met me is more likely to vote for me. In my experience, if I’m able to reach a voter, then I have a good chance that they’ll vote for me.” *Id.* at 49:14-17. He testified, “In my experience, when I knock on a door, whether they’re white, black, purple, green, orange, I get a very similar response.” *Id.* at 50:9-11. Strickland does not know how individual people vote, but he does believe that whether someone has “met [him] or been reached by [his] campaign” was the key to electoral success. *Id.* at 50:23-24. He stated, “In my experience, no matter who the person is, if I get a chance to reach them, I’m able to get votes whether white or black.” *Id.* at 56:23-25.

Representative Andrew Welch observed that Strickland “has a very high likability” in the polls. Welch Dep., 197:16-17.<sup>8</sup> People who Welch “know[s] are typically Democratic leaning, they vote presidential Democratic, but they like him.” *Id.* at 197:18-23. As a result, Strickland “gets crossover votes.” *Id.* at 197:3.

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<sup>8</sup> The Deposition of Andrew Welch appears at ECF 129.

Strickland characterized the partisanship of HD 111 as “evenly split.” *Id.* at 58:6; *see also* Jones Dep., 175:8-16 (“[p]retty even[ly]” split; “probably less Trump type” Republicans); Welch Dep., 97:23 (HD 111 has “always been tight.”). Strickland explained that, by looking at precinct-level results in benchmark races, one could see “Republicans, Democrats switching around. I’d win places where a Democrat would win state wide or the Democrat would win a presidential election too, so it was a good mix.” Strickland Dep., at 58:16-20. He did not “consider racial information in determining whether [he] thought [he] would win or lose.” *Id.* 46:8-11.

In 2014, Strickland defeated Jim Nichols by a margin of 53.1% to 46.9%, a difference of some 1,124 votes. Strickland Dep. Ex 290 at 5. Again, Strickland carried the Lowes, North Hampton, Stagecoach Unity Grove, Pate’s Creek, Oakland, Dutchtown, and McDonough Central precincts, while losing Mount Carmel, Wesley Lakes, and Stockbridge West. *Id.* And he ran ahead of Governor Deal, who garnered only 48% of the vote in HD 111. *Id.* at 1.

## **5. The New District 111 Map**

Rep. Strickland heard that there would be a bill in 2015 dealing with changes to the House districts. Strickland Dep., 123:23 to 124:10; *id.* at 148:25 to 149:8. He believed that it was “traditional to have another look at revisiting or revising maps in small ways in a midterm, if you will, in a ’15 year.” *Id.* at 124:11-14; *see also* Nix Dep.,

70:12-13 (“[I]t was general knowledge that it had happened prior.”). Strickland understood that the changes could not be “drastic or . . . really change the intent from 2010.” *Id.* at 150:4-6.

Rep. Welch testified that the 2015 changes to HD 111 came about because Representative Dale Rutledge “was telling [Welch] he wanted to move somewhere around Lawrenceville Street in McDonough.” Welch Dep., 77:18-20; *see also* Strickland Dep., 128:19-22 (“I remember in particular Representative Rutledge wanting to have a particular part of McDonough for personal reasons.”); Rutledge Dep., 94:9-13. That move would put Rutledge into Welch’s district, “so we had to redraw those lines.” Welch Dep., 77: 22-23. It would affect portions of the McDonough Central and McDonough precincts, where Welch’s parents live. *Id.* at 80:24 to 81:2, 81:25. Welch told them that he “wasn’t happy because they were talking about cutting my parents out. But I said, if that’s what you’re planning on doing, we’ll work around it.” *Id.* at 84:10-15.

The possible changes were discussed at a meeting in early 2015 that may have been attended by Strickland, Rutledge, Welch, Representative Yates, and Gina Wright. Welch Dep., 77:6-9; Strickland Dep., 126:7-11. No data regarding the racial or partisan effect of the change to accommodate Rutledge was presented at the meeting. Welch Dep., 83:17 to 84:4. Strickland recalled a meeting at which the

attendees looked at “benchmark political race[s].” Strickland Dep., at 155:17-24, 159:9-25.

Strickland “wasn’t interested in changing the lines at all” (*id.* at 162:22-23), but when he “was told that changes were going to happen and that we were making changes to maps,” he chose to participate. *Id.* at 163:4-6.

Welch knew that Strickland “was concerned about having to keep running in such a tight district.” Welch Dep. 98:12-14. At the meeting, Welch told Strickland “that they needed to do what they needed to do to adjust for Dale [Rutledge], and if that swung any . . . of my district over to Brian’s, they could do that.” *Id.* at 98:19-23. He told Gina Wright to “make it work within the parameters that they have. But if they have to move my stuff around, then just don’t hurt Brian.” *Id.* at 101:6-9. None of them wanted to make HD 111 “less safe.” *Id.* at 101:5.

In contrast to Strickland, Rutledge attributed the changes to Strickland’s desire to “increase the Republican base in his district.” Rutledge Dep., 71:25 to 72:1. The “plan” was to move Democrats from Strickland’s district into Rutledge’s and Republicans into Strickland’s district. *Id.* at 103:9-21. There was no discussion of moving people because of their race. *Id.* at 104:14-25. The changes to HD 111 “targeted Democrats and Republicans,” not African-Americans. *Id.* at 143:11 to 144:3.

Rutledge knew that any change to Strickland's district would mean changes to his own. *Id.* at 74:19-20. And he knew that "if the districts are going to change, the parties involved have to agree to the change." *Id.* at 84:9-10.

Based on these concerns, Ms. Wright used the same process for redrawing HD 111 as she had for HD 105 "because the objective was to try and politically help the incumbent for purposes of reelection." Wright Dep., 224:2-5. She stated that the legislators in the area of HD 111 did not suggest any particular changes to her, but left it to her to suggest specific changes. *Id.* at 178:3-12.

Ms. Wright's objective in making changes to the districts surrounding HD 111 was to increase the political performance of Strickland in HD 111 while not significantly lowering the political performance numbers for the surrounding Republican incumbents. Exhibit A ¶ 27. Additionally, she was aware of the fact that Representative Rutledge, the incumbent in HD 109, was considering purchasing a house in an area that, under the 2012 plan, was in HD 111. *Id.*

Using the political data layer in Maptitude, she began the redistricting of HD 111 with the district at 50.14% (%TRepVots14) and 48.65% (%TDemVots14). *Id.* at ¶ 28. HD 109 was 60.43% (%TRepVots14) and 38.44% (%TDemVots14). *Id.* HD 110 was 61.98% (%TRepvots14) and 36.97% (%TDemVots14). *Id.* A detailed explanation of

Wright's process for redrawing these districts is included below Section II.A.1.a. *See also* Exhibit A ¶¶ 26-40.

### **E. The Passage of HB 566**

The Reapportionment Office's work for the seventeen representatives who had requested changes was bipartisan; "both parties, Republicans, Democrats, got together and did tweaks to a map." Strickland Dep., 124:17-19. The key to HB 566 was that "both parties consented to it. It was completely bipartisan, and both parties got to make tweaks." *Id.* at 135:18-21. Strickland testified that "[i]t was communicated to me that [Stacey Abrams, minority leader in the House] was in consent with the changes that were being proposed by the Republicans, which is part of the reason it was bipartisan." *Id.* at 177:24 to 178:3, 178:11-13 ("But it was my understanding that she was also involved and consented to the changes to 111.").

Representative Jones testified that the changes made by H.B. 566 "certainly were not controversial." Jones Dep., 112:11.<sup>9</sup> She explained, "[W]e put it through the sieve of our judgment of 180 people, the entire body. There were no dissents and ... if anyone had objected at the time, it would have merited further scrutiny, and there was no objection." *Id.* at 112:17-22.

Representative Chuck Efstration concurred. He testified:

The purpose of House Bill 566, as I understood it to be, was to ...

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<sup>9</sup> The Deposition of Jan Jones appears at ECF 128.



make district changes that were by the consent of or agreement of all members affected, Republican and Democrat, as I recall.

And that was the reason that it passed unanimously in committee and unanimously on the House floor.

Efstration Dep., 181:5-17. Efstration explained that he sits in the same row in the House Chamber as the minority leader, Stacey Abrams, and that “there had been no partisan objection whatsoever to the legislation at the time.” *Id.* at 184:14-18.

Rep. Efstration, a member of the House Reapportionment Committee, does not recall any discussion of racial makeup at the committee meeting at which H.B. 566 was considered. *Id.* at 124:16-125:11.

The vote in the House on H.B. 566 was 168-0.

Plaintiffs suggest that the summary of HB 566 which Dan O’Connor drafted is misleading and “conveniently omitted” the true purpose of the legislation. ECF 103-1 at 28-29. The omission is with Plaintiffs’ summary of the document. The O’Connor summary, recites at the bottom of the second page:

District line changes can be made for a variety of reasons - - as some *examples*, eliminating a split precinct (a precinct divided into multiple districts), reuniting a neighborhood or community of interest, or addressing technical concerns.

ECF 103-64 at 2 (emphasis added). By eliminating the beginning language, which makes clear that the examples are not exclusive, or even necessarily related to the purposes of the changes made in HB 566, Plaintiffs suggest that O’Connor’s memo is

intentionally misleading. O'Connor testified he did not know anything about the specific changes to HD 105 and HD 111 because he was not involved. O'Connor Dep., 140:4 – 5 (“I wasn’t involved in the, you know, the map drawing of 111.”); 135:15 -16 (“And, again, I wasn’t involved in 111.”); 135:19 -20 (“I wasn’t involved in [HD 105]”). Having not been involved in the redistricting, it is not surprising he could not give specifics about the changes.

## **II. ARGUMENT AND CITATION OF AUTHORITY**

### **A. Plaintiffs Have Not Met Their Burden of Showing That They are Entitled to a Preliminary Injunction.**

A preliminary injunction in advance of trial is an extraordinary measure. *United States v. Jefferson County*, 720 F.2d 1511, 1519 (11th Cir. 1983); *Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981). In order to prevail on a motion for preliminary injunction, the movant must show: 1) a substantial likelihood of prevailing on the merits; 2) that the plaintiff will suffer irreparable injury unless the injunction issues; 3) that the threatened injury to the movant outweighs whatever damages the proposed injunction may cause the opposing party; and 4) that if issued, the injunction would not be adverse to the public interest.” *Baker v. Buckeye Cellulose Corp.*, 856 F.2d 167, 169 (11th Cir. 1988); *Levi Strauss and Co. v. Sunrise Int’l Trading Inc.*, 51 F.3d 982 (11th Cir. 1995). A preliminary injunction is a drastic

remedy “which should not be granted unless the movant clearly carries the burden of persuasion.” *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 573 (11th Cir. 1974).

Plaintiffs have the burden of establishing their entitlement to a preliminary injunction. *Citizens for Police Accountability Political Comm. v. Browning*, 572 F.3d 1213, 1217 (11th Cir. 2009). Plaintiffs’ motion for a preliminary injunction should be denied because they have not shown any of the elements necessary to support their request for this extraordinary remedy.

**1. Plaintiffs Have Not Shown a Substantial Likelihood of Success on the Merits.**

The most important factor in deciding whether to grant or withhold a preliminary injunction is the consideration of a plaintiff’s likelihood of succeeding on the merits, and a failure to meet this initial hurdle relieves a court from considering the remaining factors. *Church v. City of Huntsville*, 30 F.3d 1332, 1341-45 (11th Cir. 1994) (citing *Northeastern Fl. Chapter of the Ass’n of Gen. Contractors of Am. v. City of Jacksonville*, 896 F.2d 1283, 1285 (11th Cir. 1990) (“We need not address every element because we conclude that no showing of irreparable injury was made.”)). Here, Plaintiffs are neither likely to succeed on the merits of their claims nor are they likely to satisfy the other requisites for relief.

**a. The Redistricting of HD 105 and HD 111 Was Not Predominantly Based on Race.**

Plaintiffs completely ignore both the direct testimony of the individual who drafted the districts at issue in this litigation and the testimony of the legislators representing HD 105 and HD 111, and ask this Court to infer discriminatory intent because there is a correlation between a voter's race and partisanship. The Supreme Court has repeatedly condemned such an approach.

If district lines merely correlate with race because they are drawn on the basis of political affiliation, which correlates with race, there is no racial classification to justify.

*Bush v. Vera*, 517 U.S. 952, 967-968 (1996) (plurality). Three years later, the Court again stressed that awareness of a relationship between race and partisanship does *not* transform use of partisan data into racial intent.

Our prior decisions have made clear that a jurisdiction may engage in constitutional political gerrymandering, even if it so happens that the most loyal Democrats happen to be black Democrats and even if the State were *conscious* of that fact.

*Hunt v. Cromartie*, 526 U.S. 541, 551 (1999) (emphasis in original).

Redistricting plans are subject to strict scrutiny only where “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Cooper v. Harris*, 137 S. Ct. 1455, 1463 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). It is the Plaintiffs’ burden to show that race was the predominant factor in drawing these districts. *Id.*

The Plaintiffs cannot meet this burden because the evidence in this case is that partisanship considerations and data, not race, drove the redistricting of HD 105 and HD 111.

Moreover, Gina Wright, Executive Director of the Legislative and Congressional Reapportionment Office, who actually drafted the plans, testified that she did *not* look at race as she was moving precincts and blocks in and out of these districts. *See* Exhibit A at ¶¶ 8-10; Wright Dep., 219:9 to 220: 21.<sup>10</sup> Wright testified that she looked at the racial demographics for the districts only at the end, *after* she had finished making changes, and only, then, to see that she had not made a significant change in the racial demographics of the districts. *Id.* Plaintiffs ignore this testimony, and instead quote her testimony regarding the data available to her when redistricting and, in the context of a discussion about the 2011 redistricting, her practice of what data she would generally include in a pending changes box.<sup>11</sup> ECF 103-1 at 26 and 47. Prior to *Shelby Co. v. Holder*, 570 U.S. 529 (2013), it would have been a practical necessity to consider race in order to comply with the non-

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<sup>10</sup> As Ms. Wright noted, neither district was majority minority. Wright Dep., 30:12 to 30:19.

<sup>11</sup> Plaintiffs' expert, Peyton McCrary, makes the same false assumption, taking Wright's deposition testimony from 2011 and attributing it to her work on the 2015 maps. ECF 65-1 ¶ 51. McCrary does this despite Wright's clear testimony to the contrary. Wright Dep.. 219:9 to 220:21.

retrogression standard of Sec. 5 of the Voting Rights Act. Plaintiffs then misinterpret this testimony as a concession that Ms. Wright used racial data while moving blocks and precincts in and out of HD 105 and HD 111 in 2015.<sup>12</sup>

In another instance, Plaintiffs again state that “Wright testified that in finding [] balance, she looked at racial data,” referring the Court to page 29 of her deposition. ECF 103-1 at 24. However, Wright’s testimony continues to the following page where she explains that she looked at the racial make-up of the district “eventually . . . to make sure that [she] did not do significant harm in that respect.” Wright Dep. 30:6-30:8. That is not a concession that she used race in making changes to the districts.

Ms. Wright testified that she first made the changes to the districts and only *after* completing those changes looked at resulting racial demographics.

[M]y objective was to see if I could find political improvement in the Republican number for her district. So I’m going about this in a way of knowing that, let’s see if we - - Republican area here, try and see if that boosts the district.

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<sup>12</sup> Plaintiffs also recite in their brief that Wright ran reports providing detailed racial breakdowns of the precincts, appearing to interpret this to mean that Wright was interested in these demographics. ECF 103-1 at 31. Plaintiffs fail to include that these reports were only run *after* the litigation was filed and at the request of counsel from the Attorney General’s Office. Wright Dep. 295:19 – 296:19; 331:1-15; Strangia Dep. 96:1-14 (testifying that report is not typical report prepared by the LCRO). The same demographic report appears at Pls.’ Exhibits. 77, 146 and 167 in the depositions. ECF 103-72.

If that boosted the district, what my next objective would be is to find a way to balance that population out, . . .

And, obviously, the places where I had split precincts would be my first choice to go . . .

And then I added some . . . [population] to complete a balancing of population. And it was at that point that I would then go back and see, if I did these changes, what impact did that then have on the overall percent total black, Hispanic, and whatnot.

. . .

I'm looking at what was my overall objective? Can I achieve that? Then can I balance [the population]? And then what is the numerical result of that after that is done?

Wright Dep. 219:9 – 220:21. *See also* Exhibit A at ¶¶ 8-10.

Plaintiffs contend that “[t]he high number and character of the split precincts in Districts 105 and 111 indicate that Wright used racial data in creating them.” ECF 103-1 at 33. Again, Wright’s deposition testimony clearly refutes the suggestion. Asked at her deposition about the precinct splits in HD 105, Wright testified that she started by adding heavily Republican areas to the district and then balancing out the population to get the district’s total population back to near the ideal district size. Wright Dep. 213:14 – 214:2. Wright began by adding an area she knew to be “very, very, Republican” to the district, Harbins C. *See* Exhibit A ¶¶ 13-15 and Exhibit 2 attached thereto; Wright Dep. 214:9 - 214:11. She then tried to take all of Harbins A, but due to its size, settled on a road that cut through the entire precinct. *Id.*; Wright

Dep., 214-216. Asked about the demographics of precinct Harbins A, and told that the portion of Harbins A that was put in HD 105 has a lower African-American percentage than that part of the precinct that was left in HD 104, Wright stated “I would not know that. I didn’t look at that that way.” Wright Dep. 217:8-9.

Review of Exhibit 2 of Gina Wright’s declaration, Exhibit A attached hereto, further supports Wright’s decision to split Harbins A using the boundary she chose. The shape of the Harbins C precinct makes taking the area in Harbins A that is adjacent to it a natural choice. Plaintiffs, and Plaintiffs’ expert Chen, criticize Wright for choosing that part of Harbins A in grey on Exhibit 2 rather than the part just above it in blue. ECF 103-1 at 47 and 63-1 at 24-25 and 34-35.<sup>13</sup> But the resulting district shape between those two choices supports Wright’s decision. It is Plaintiffs, not Wright, that want to make choices based on the racial composition of the blocks. Wright chose *not* to look at race.

Wright testified further that she tried to balance the population total in HD 111 by putting precinct Lawrenceville M back together and settling on a boundary in

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<sup>13</sup> Chen further criticizes Wright’s split of the Baycreek H precinct, but fails to mention that Wright made *no change* to the Baycreek H precinct that is split between HD 105 and HD 114, a district that was *not* part of the 2015 redistricting. ECF 63-1 at 34.



Harbins A.<sup>14</sup> Exhibit A ¶¶ 17-19 and Exhibit 3 attached thereto; Wright Dep., 219-220. Needing additional population in HD 105 to balance the total population, she naturally looked to a precinct that was already split. Exhibit A ¶ 30 and Exhibit 4 attached thereto; Wright Dep., 219:21 to 220:5. In fact, the two blocks in Lawrenceville D that Wright added to HD 105 are majority African American. Exhibit A ¶ 24.

Plaintiffs nonetheless report the Lawrenceville D precinct split as yet another indication that Wright used race to *lower* the African American percentage in HD 105. Rather than focus on the boundary change to the Lawrenceville D precinct split in 2015, i.e., the population of the two blocks that were moved, Plaintiffs instead submerge the population of the two blocks that were moved with the population in Lawrenceville D that was untouched and remained in HD 105, then they argue that the Lawrenceville D precinct was split in a manner that disadvantaged minority voters. Doc. 63-1 at 34. Plaintiffs' characterization of this precinct split choice is even more suspect when looking at a map. Review of Exhibits 2 and 4 of Wright's declaration show that had she chosen to swap the two parts of the Lawrenceville D precinct between HD 104 and HD 105, HD 105 would not be contiguous.

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<sup>14</sup> Precinct Lawrenceville M is oddly shaped and a little difficult to see with the 2012 district boundaries overlay. The precinct extends to highway 316, just below the grey area on the map with the district label 102. *See* Exhibit 3 to Wright Declaration.

Chen's criticism of the precinct splits in HD 111 is equally uninformative. Again, Chen infers racial intent because in four (4) of the five (5) precinct splits in HD 111 that portion of the precinct included in HD 111 has a lower African-American concentration than the part of the precinct outside of HD 111. ECF 63-1 at 36-38. The first such precinct identified by Chen is Tussahaw, a precinct that "performs pretty strongly Republican [and] was beneficial to [Strickland's] T-rep number" according to Wright. Wright Dep., 230:9-12. According to Chen, the portion of the precinct that Wright included in HD 111 is 4.8% African-American voting age population, and the part outside of HD 111 was 6.9% African-American voting age population, numbers that are both nominal. ECF 63-1 at 36. More importantly, Chen does not consider 1) that Wright took only roughly 25% of the precinct's population (Exhibit 10); 2) that Representative Welch (HD 110) lives in Tussahaw and wanted to stay in his own district; or 3) that swapping those two parts of Tussahaw would make HD 110 non-contiguous. *See* Exhibits 6 and 10 to Exhibit A.

The next precinct split that Chen criticizes is Mount Carmel. According to Chen, the African American voting age population included in HD 111 is 43.7% while the part excluded from HD 111 is 45.2%, a minimal difference. ECF 63-1 at 36. Of course, since HD 111 began with a total African-American voting age

population of 33.9%, ECF 63-1 at 25, adding either part of the Mount Carmel split precinct necessarily increased the overall African-American voting age population in this district. However, like the problems with the Tussahaw precinct, swapping the split precinct parts of Mount Carmel between HD 73 and HD 111 would cause contiguity problems. *See* Exhibits 6 and 14 to Exhibit A. Chen does not mention these.

With respect to the Flippen precinct, Chen notes that the portion of the precinct in HD 111 is 38.8% African-American voting age population while the part of the precinct outside of HD 111 is 41.1% African-American voting age population. ECF 63-1 at 38. Like the Mount Carmel precinct, this precinct is over 33.9% African-American voting age population, so addition of either part of the precinct increases slightly the majority African-American percentage. However, with respect to the choice of which part of the precinct to take, again, looking at the maps makes the choice rather obvious. *See* Exhibits 6 and 8 to Exhibit A. Taking that part of the Flippen precinct that is in HD 109 (orange) and swapping it with the part of Flippen in HD 111 (purple) would make the Stagecoach and Stockbridge West precincts non-contiguous with the rest of HD 109.

Chen's analysis is not probative of any racial *intent*, rather, it merely reports the racial demographic change in the districts and within precinct splits.<sup>15</sup> Plaintiffs themselves contend that there is a high correlation between race and partisanship in Gwinnett and Henry counties. Yet when Wright's deliberate attempts to increase Republican political performance through the use of political data (election returns) is successful, Plaintiffs argue that the resulting correlation to race must mean Wright *used* race as a proxy for partisanship. The argument is circular.

Evidence that blacks constitute even a supermajority in one congressional district while amounting to less than a plurality in a neighboring district will not, by itself, suffice to prove that a jurisdiction was *motivated by race* in drawing its district lines when the evidence also shows a high correlation between race and party preference.

*Hunt*, 526 U.S. at 551-552 (emphasis added). The fact that the African-American and/or Hispanic population percentage in HD 105 and HD 111 decreased slightly with the 2015 redistricting is insufficient to establish that the districts were predominantly based on race. The offense to the Equal Protection Clause is the use of race to draw the districts, not a resulting minority percentage drop in the overall district population.

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<sup>15</sup> Similarly, Francys Johnson, former President of the GA NAACP, does not point to any evidence other than the fact that the percentage African-American in HD 105 and 111 decreased to support Plaintiffs' contention that race predominated in the redrawing of the districts. Johnson Dep. 15:21-25.

[The Equal Protection Clause] prevents a State, in the absence of “sufficient justification,” from “separating its citizens into different voting districts on the basis of race.” *Bethune-Hill v. Virginia State Bd. of Elections*, 580 U. S. \_\_\_, \_\_\_, 137 S. Ct. 788, 197 L. Ed. 2d 85 (2017) (internal quotation marks and alteration omitted).

*Cooper v. Harris*, 137 S. Ct. 1455, 1463 (2017). Wright testified, both in her deposition and by declaration, that she did not look at the racial demographics until *after* making all of the changes to these districts. Exhibit A ¶¶ 8-10; Wright Dep., 29:19 to 30:9, 219:9 to 220:21.

It is hard to imagine a scenario where *any* change to district boundaries will result in no change, up or down, to the racial demographics of a district. Therefore, the only way Wright would have been able to redistrict HD 105 and HD 111 and *not* change the racial demographics of the district, or if possible increase the racial minority of the district, would have been *by using race* while drawing the districts. Because the districts at issue are not majority African-American or majority Hispanic, Wright had no reason to believe she was free to use race to ensure that the minority percentage in the districts stayed unchanged.

It is only “[i]f a State has a good reason to think that all the ‘*Gingles* preconditions’ are met, then so too it has good reason to believe that §2 requires drawing a majority-minority district. But if not, then not.” *Cooper*, 137 S. Ct. 1455, 1470 (internal citation omitted). Here, there was no reason for Wright to pay

attention to the racial demographics because the districts were not majority minority. Furthermore, Wright had political data from contested statewide general elections to measure the partisan advantage of each precinct *and* precinct split. Exhibit A ¶¶ 9-10; Strangia Dep. 24:21 to 26:22 (explaining how precinct election data is allocated down to the block level for use in redistricting). Nor did Wright get specific direction from the incumbent legislators about which particular areas to move in and out of their districts. Exhibit A ¶ 42; Wright Dep. 178:3-12. Wright also did *not* discuss the redistricting plan with Dan O'Connor. Exhibit A ¶ 43; Wright Dep., 193:2-5.

Finally, Dan O'Connor himself, while being questioned about a summary of the redistricting plan that he drafted *after* the plan had been completed, repeatedly testified that he had no role in the redistricting of HD 105 and HD 111. O'Connor Dep. 140:4 – 5 (“I wasn’t involved in the, you know, the map drawing of 111.”); 135:15 -16 (“And, again, I wasn’t involved in 111.”); 135:19 -20 (“I wasn’t involved in [HD 105]”). Plaintiffs try to paint O'Connor as the principal architect of the redistricting plan, but both he and Wright testified unequivocally that O'Connor was *not* involved in the creation of the redistricting plan. O'Connor, like Plaintiffs, does believe that there is a correlation between race and partisanship. But that awareness, particularly from someone that did not participate in drawing the district lines, is not

evidence that race was a predominant factor in the redistricting. *Hunt*, 536 U.S. at 551; *Vera*, 517 U.S. at 967-68.

Plaintiffs' expert, Peyton McCrary, also misinterprets Wright's testimony about the data she relied on in making changes to HD 105 and HD 111. McCrary quotes Wright's testimony in her deposition regarding the data she has available in her redistricting software, but characterizes that testimony as pertaining to her redistricting in 2015. ECF 65-1 ¶ 51. Wright makes it clear in her deposition that she did *not* use the block level race data available to her in drawing HD 105 and HD 111. Wright Dep. 219:9 to 220:21; Exhibit A ¶¶ 8-10. McCrary also concludes that because, in his opinion, the disaggregation of election data below the precinct level is not a particularly reliable indicator of how a precinct voted at the block level, Wright must have used race instead. ECF 65-1 ¶¶ 47-48.

It is these fundamental flaws in McCrary's report that then lead him to the conclusion that HB 566 was the product of intentional racial discrimination. Plaintiffs are simply using the correlation between race and partisanship to argue that because legislators were intending a political result, and after the changes were made African-Americans are a slightly smaller percentage of the population in these districts, the map drawer must have used race to achieve the political end. The Supreme Court has been very clear that:

If district lines merely correlate with race because they are drawn on the basis of political affiliation, which correlates with race, there is no racial classification to justify.

*Vera*, 517 U.S. at 967-968. “The racial predominance inquiry concerns the actual considerations that provided the essential basis for the lines drawn.” *Bethune-Hill*, 137 S. Ct. at 799. Plaintiffs ignore the direct testimony of Gina Wright that she relied on the political data (election returns) to draw the districts, and instead infer intent from the racial impact of the districts (i.e., a 2% decrease in African-American voting age population), even as they acknowledge a correlation between race and partisanship. The overwhelming evidence is that race was *not* the predominant factor in drawing HD 105 and HD 111.

**b. Plaintiffs’ Request for a Preliminary Injunction is Barred by the Doctrine of Laches.**

Laches applies to a request for equitable relief when (1) there was a delay in asserting the claim; (2) the delay was not excusable; and (3) the delay caused the non-moving party undue prejudice. *United States v. Barfield*, 396 F.3d 1144, 1150 (11th Cir. 2005); *Kason Indus. v. Component Hardware Group*, 120 F.3d 1199, 1203 (11th Cir. 1997); *see also Costello v. United States*, 365 U.S. 265, 282 (1961).

Here, the legislation adopting the challenged redistricting plan was adopted in 2015. The NAACP Plaintiffs first waited until April 24, 2017 to file the complaint challenging the plan, and then waited until February 20, 2018 to file their motion for



preliminary injunction. The *Thompson* Plaintiffs did not file their Complaint until October 3, 2017.

As outlined in the Declaration of Michael Barnes, Director of the Center for Election Systems at the Office of the Secretary of State (“CES”), the Secretary of State is responsible for creating each type of ballot that will be used in 158 of 159 Georgia counties. Exhibit C at ¶ 4. To ensure that each ballot is accurate and complete, CES had to begin this process for the May 22, 2018 primary, which includes elections HDs 105 and 111, on March 10, 2018. *Id.* at 7. Absentee ballots must be mailed to voters by April 6, 2018, and counties could start receiving completed absentee ballots as early as April 9, 2018. *Id.* at ¶ 5. Because of this timeline, the counties that encompass HDs 105 and 111 have to begin administering the May 22, 2018 election as early as April 7, 2018. *See* Exhibit E at ¶ 2; Exhibit F at ¶ 2.

Finally, candidates have already qualified for both the Republican Primary and Democratic Primary in HDs 105 and 111. Exhibit D at ¶ 6. Five other districts were redrawn in H.B. 566 to make the changes to HDs 105 and 111 (*see* Exhibit A at ¶ 5), and candidates have qualified for the Republican and Democratic Primaries, as applicable, in these districts as well. Exhibit D at ¶ 6. In HD 105, one of the four candidates running for office lives in an area of HD 105 that was in HD 104 under the 2012 plan. Exhibit A at ¶ 50. This candidate has already paid a qualifying fee to run in

HD 105 and is presumably already campaigning for office. The same is true for HD 111; two of the four candidates running for office live in an area of HD 111 that was in HD 109 under the 2012 plan. *Id.* at ¶ 51. In addition, the voters in HD 105 and 111 will already be expecting to have the opportunity to vote for these candidates as their representatives.

It is clear, then, that a preliminary injunction at this late stage in the election process not only unduly prejudice the Secretary of State and cause harm to the counties administering the election, but such an injunction would also harm the candidates and voters who are already participating in the elections for the next representatives from HDs 105 and 111.

## **2. Plaintiffs Cannot Show That They Will Suffer Irreparable Harm Absent the Granting of a Preliminary Injunction**

Plaintiffs have not shown that they will suffer irreparable harm if a preliminary injunction is not granted. “A showing of irreparable harm is the ‘*sine qua non*’ of injunctive relief.” *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (citations omitted). When a plaintiff has not shown a likelihood of success on the merits, claims for irreparable injury based on an alleged constitutional injury have no merit. *Overstreet v. Lexington-Fayette Urban County Gov’t*, 305 F.3d 566, 578 (6th Cir. 2002). Here, Plaintiffs have failed to show irreparable harm.

**3. The Damage to the Defendants Outweighs Any Alleged Injury to Plaintiff.**

On a motion for preliminary injunction, the plaintiff bears the burden of showing that the perceived injury outweighs the damages that the preliminary injunction might cause to the defendants. *Baker v. Buckeye Cellulose Corp.*, 856 F.2d 167, 169 (11th Cir. 1988). “Only in rare instances is the issuance of a mandatory preliminary injunction proper.” *Harris v. Wilters*, 596 F.2d 678, 680 (5th Cir. 1979). Additionally, in election cases courts should give consideration to the proximity of the election and the potential for any voter confusion that a last minute change to the State’s processes may lead to. *Purcell v. Gonzalez*, 549 U.S. 1, 4-5 (2006).

As explained above, here, candidates have already qualified for office. And some of the candidates that qualified for HD 105 and HD 111 will not live in those districts if they revert to the 2012 boundaries. Exhibit A ¶¶ 49-51 and exhibits attached thereto.

If this Court ordered that the election for the seven affected House Districts must be conducted using the 2012 boundaries, county registrars for *all* of the affected counties would have to reassign all of the affected voters to new House Districts. *See Harvey Decl.* ¶ 6. The process is manual, and requiring that county registrars engage in this process, while in the midst of conducting an election has never been attempted.

*Id.* at ¶ 7. Nor was mid-election redistricting contemplated when Georgia's voter registration system was designed. *Id.* In addition, mid-election redistricting combined with a new special election would lead to voter confusion and likely lower turnout. *Id.* at ¶ 5; Exhibit F at ¶ 10.

#### **4. The Preliminary Injunction Will Not Serve the Public Interest**

A plaintiff also bears the burden of showing that the preliminary injunction would serve the public interest. *Baker*, 856 F.2d at 169. Contrary to the Plaintiffs' contention, reversing the changes made to HDs 105 and 111 for the purpose of conducting a special election either parallel to the regularly scheduled General Primary / Nonpartisan General Election or on its own would not be in the public interest. Such an order would confuse candidates and voters, disrupt an ongoing process, and tax the public with costs.

In *North Carolina v. Covington*, 137 S. Ct. 1624 (2017), the United States Supreme Court reversed a district court's order directing the conduct of special elections for a truncated one-year term. Significantly, the district court ordered those special elections stating, "While special elections have costs, those costs pale in comparison to the injury caused by allowing citizens to continue to be represented by legislators elected pursuant to a racial gerrymander." *Id.* at 1625 (quoting App. to Juris.

Statement 200). Put simply, the Supreme Court’s *per curiam* reversal of that order shows that racial gerrymandering claims like those of Plaintiffs are not talismanic.

Rather, this Court must weigh the equities, not simply looking for a “fitting remedy” for any legal violations, but also “taking account of ‘what is necessary, what is fair, and what is workable.’” *Id.* (quoting *New York v. Cathedral Academy*, 434 U.S. 125, 129 (1977)). The Supreme Court identified several “obvious considerations” to be part of the balancing process: “the severity and nature of the particular constitutional violation, the extent of the likely disruption to the ordinary processes of governance if early elections are imposed, and the need to act with proper judicial restraint when intruding on state sovereignty.” *Id.* at 1626. Those factors are not exclusive, “but they are among the matters a court would generally be expected to consider in its ‘balancing of the individual and collective interests’ at stake.” *Id.* (quoting *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 16 (1971)).

The Seventh Circuit noted in *Fulani v. Hogsett*, 917 F. 2d 1028 (7th Cir. 1990), that claims “against a state electoral process must be expressed expeditiously.” *Id.* at 1031. It noted, “As time passes, the state’s interest in proceeding with the election increases as resources are committed and irrevocable decisions are made.” *Id.*

As of the filing of this Response, candidates have qualified, and the ballot preparation process is well underway. The Secretary of State is required by federal law

to transmit all absentee ballots to military and civilian overseas voters (“UOCAVA voters”) *at least 45 days prior* to the date of any election for federal office. *United States v. Georgia*, 778 F.3d 1202, 1203 (11th Cir. 2015); *United States v. Alabama*, 778 F.3d 926, 934-35 (11th Cir. 2015). *See also* 52 U.S.C. § 20302.<sup>16</sup> Thus, the Secretary of State is legally required to transmit all UOCAVA ballots to voters by no later than April 6, 2018.<sup>17</sup> Exhibit C ¶ 5. In addition, advance voting for the May 22, 2018 Primary Election begins on April 30, 2018. Exhibit D, Harvey Decl. Exhibit 1 at 2. As Michael Barnes explains, CES prepares all election ballots for every county in Georgia except Pike County. Exhibit C ¶ 4. For the May 22, 2018 General Primary Election, CES began preparing ballots on March 10, 2018, the day after the closing of candidate qualification and more than 80 days before the election. *Id.* ¶ 7. CES is transmitting ballot images, including images for printed absentee ballots, to the counties designated printer between March 24, 2018, and April 1, 2018. *Id.* ¶ 6. Barnes notes, “[T]hese ballots must be transmitted by no later than 50 days prior to the date of the election” so that they are in the hands of the local election officials in time for them

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<sup>16</sup> Formerly 42 U.S.C. § 1973ff(a)(8)(A).

<sup>17</sup> Georgia law provides that absentee ballots may be transmitted to UOCAVA voters up to 49 days prior to the date of the election. O.C.G.A. § 21-2-384(a)(2).

to be sent to the voters covered by the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”) and state law not less than 45 days before the election.<sup>18</sup> *Id.*

In addition, notices will have to be sent to voters telling them which precincts they will vote in and which offices they will vote for. As Tina Lunsford notes, those notices should go out no less than 60 days before the election so that voters covered by the Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. §§ 20301-20311, are reached in timely fashion. Exhibit E, Lunsford Decl. ¶ 8.

The declarations of Chris Harvey, Lynn Ledford, and Tina Lunsford show that in order to use the 2012 district boundaries in a special election conducted in conjunction with the regularly scheduled 2018 elections would result in the imposition of both monetary and nonmonetary costs. Those declarations also detail the magnitude of the tasks that public officials must perform in order to redistrict and put on a special election.

Lunsford and Ledford each outline the steps they must take and the monetary costs that are associated with each step. Lunsford states, “The estimated cost to hold a court-ordered Special Election with the General Primary/General Election would be \$66, 995.” Exhibit E ¶ 7. That estimated cost would triple if the elections were not all on the same ballot. *Id.* Ledford estimates her costs for HDs 104 and 105 as \$168,000,

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<sup>18</sup> O.C.G.A. § 21-2-384(a)(2) implements the requirements of UOCAVA.

exclusive of the cost of advance in-person satellite locations, runoffs, and other redistricting changes. Exhibit F ¶ 8.

As for nonmonetary costs, changing the district lines and ordering a special election will disqualify some candidates, cause others to change their strategy in midstream, and confuse voters. As Gina Wright notes, one of the four candidates who has qualified to run in HD 105 lives in a portion of HD 105 that was in HD 104 in 2012. Exhibit A ¶51. She also points out that two of the four candidates who have qualified to run in the 2015 version of HD 111 live in portions of that district that were in HD 109 under the 2012 plan. *Id.* Accordingly, absent some other changes to the ballots, the Plaintiffs contemplate disqualifying three candidates.

Putting the districts back as they were in 2012 would alter their political landscapes, given that it would undo Wright's effort to add Republican voters to HDs 105 and 111. The candidates who remain after the disqualifications will have to reach voters in precincts other than the ones they presently have in mind. Democrats in HD 111, for example, would likely target precincts like McDonough Central, and Republicans could no longer reach their partisans in Tussahaw.

The affected voters would be confused by the change in their representatives. Ledford explains that running elections in parallel causes voter confusion. Exhibit F ¶ 10. She notes further that, if there are stand-alone elections for HDs 104 and 105 in



Gwinnett County, voters may think that everyone is entitled to vote in those elections. Anyone who shows up to find his or her polling place closed is unlikely to appreciate the County's efforts.

As Ledford also notes, there is no guarantee that the polling places that are used for regularly scheduled elections will be available if a special election is ordered. Ledford also points out the effect of the Census Bureau's designation of Gwinnett County as a covered § 203 jurisdiction for Spanish: all sorts of election materials and the ballots will have to be translated. *See* 52 U.S.C. § 10503.

All of this effort to hold a special election must be balanced against the return. As Lynn Ledford observes, “[S]pecial elections historically do not garner the same level of attention and voter turnout as regularly scheduled elections do.” Exhibit F ¶ 10.

Ledford's experience is reflected in the two stand-alone special elections conducted most recently in Georgia. A special election for HD 175 was held on February 13, 2018, and voter turnout was only 9.93% of the registered voters in the district. *See* <http://results.enr.clarityelections.com/GA/72657/Web02-state.192841/#/>. In the special election for Senate District 17 and HD 111 held on January 16, 2018, turnout was only 6.99% of the registered voters involved. *See* <http://results.enr.clarityelections.com/GA/72405/Web02-state/#/>.

As noted above, Defendant believes that Plaintiffs are unlikely to prevail in this matter and therefore the motion for preliminary injunction should be denied. However, even if the Court believed that Plaintiffs were likely to prevail, the public interest is not served by scheduling a special election.

### **III. CONCLUSION**

As Plaintiffs cannot satisfy the standards for an injunction, their request for a preliminary injunction should be denied.

Respectfully submitted this 26th day of March, 2018.

s/ Frank B. Strickland  
Frank B. Strickland  
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### **CERTIFICATE OF COMPLIANCE**

Pursuant to L.R. 7.1(D), the undersigned hereby certifies that the foregoing  
DEFENDANT BRIAN KEMP'S BRIEF IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR A PRELIMINARY INUNCTION has been prepared in Times New  
Roman 14, a font and type selection approved by the Court in L.R. 5.1(C).

s/ Frank B. Strickland  
Frank B. Strickland  
Special Assistant Attorney General  
Georgia Bar No. 687600

**CERTIFICATE OF SERVICE**

I hereby certify that on March 26, 2018, I served the within and foregoing  
DEFENDANT BRIAN KEMP'S BRIEF IN OPPOSITION TO PLAINTIFFS'  
MOTION FOR A PRELIMINARY INUNCTION with the Clerk of Court using the  
CM/ECF system, which will send notification of such filing to all parties to this matter  
via electronic notification or otherwise:

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This 26th day of March, 2018.

s/ Frank B. Strickland  
Frank B. Strickland  
Georgia Bar No. 687600

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

NAACP, <i>et al.</i> ,	*	
	*	
Plaintiffs,	*	
	*	Case No. 1:17-cv-01427-
v.	*	TCB-WSD-BBM
	*	
BRIAN KEMP, in his official capacity	*	CONSOLIDATED
CASES		
as Secretary of State for the State of	*	
Georgia,	*	
	*	
Defendant.	*	
<hr/>		
AUSTIN THOMPSON, <i>et al.</i> ,	*	
	*	
Plaintiffs,	*	
	*	
v.	*	
	*	
BRIAN KEMP, in his official capacity	*	
as Secretary of State of the State of	*	
Georgia,	*	
	*	
Defendant.	*	

**DECLARATION OF GINA HARBIN WRIGHT**

1.

My name is Gina Harbin Wright. I am over the age of 21 and legally competent to testify. I give this declaration as evidence in the above-styled

action and for any other lawful purpose. I make this declaration based upon my personal knowledge of its contents.

2.

I am the Executive Director of the Legislative and Congressional Reapportionment Office (LCRO), a joint office of the Georgia General Assembly. The LCRO is responsible for providing redistricting services to legislators using data obtained from the United States Census Bureau. The LCRO assists the members of the General Assembly in drawing the districts of the State Senate and House of Representatives, as well as the fourteen (14) United States Congressional districts. Through sponsorship from a legislator, the LCRO also assists local County Commissions, Board of Education, and City Councils in adjusting their districts. Finally, the LCRO also provides an array of maps and data reports to both legislators and the public at large.

3.

As Executive Director I oversee and direct a staff of four (4) in providing redistricting and other mapping services to all members of the Georgia General Assembly. These services may include drawing maps for statewide legislative districts, local redistricting plans, city creation boundaries, annexations and de-annexations, as well as precinct boundary



changes. All local redistricting bills through the House Committee on Intragovernmental Coordination require my signature following a technical review of the bill. I am the official state liaison for the 2020 Census Redistricting Data Program. I oversee the creation of our statewide voting precinct mapping layer through my work with all county election officials throughout the state. I assist the Office of the Attorney General in candidate qualification challenges related to issues regarding a candidate's residency. I regularly assist federal courts as an expert or technical advisor in redistricting matters. Finally, I regularly participate as a presenter in statewide forums such as the Voter Registrars Association of Georgia and the Georgia Legislative CLE class.

I began work with the LCRO in December of 2000 as a Redistricting Services Specialist. I became Executive Director of the LCRO in June, 2012. I am a 2000 summa cum laude graduate from Georgia State University. I have Bachelor of Arts degree in Political Science and a minor in Spanish.

4.

I have been appointed as an expert or technical advisor for redistricting by federal courts in the following cases:

- *Ga. State Conf. of the NAACP v. Fayette County Bd. of Comm'rs*, 996 F. Supp. 2d 1353, 1359 (N.D. Ga. 2014) (appointed as the Court's "independent technical advisor."); *see also Ga. State Conf. of the NAACP v. Fayette County Bd. of Comm'rs*, 118 F. Supp. 3d 1338, 1340 (N.D. Ga. 2015) ( "Court-appointed expert or technical advisor.")
- *Crumly v. Cobb County Bd. of Elections & Voter Registration*, 892 F. Supp. 2d 1333, 1344 (N.D. Ga 2012) (appointed as the "Court's technical advisor and consultant.")
- *Martin v. Augusta-Richmond County*, 2012 U.S. Dist. LEXIS 85113, \*2-3 (S.D. Ga 2012) (appointed by Court as "advisor and consultant.")
- *Walker v. Cunningham*, 2012 U.S. Dist. LEXIS 178337, \*5 (S.D. Ga. 2012) (appointed by Court "as its independent technical advisor.") (3 judge panel).
- *Bird v. Sumter County Board of Educ.*, CA No. 1:12cv76-WLS (M.D. Ga. 2013), ECF 70 p. 5 (appointing Gina Wright as the Court's "independent technical advisor.")

- *Adamson v. Clayton County Elections and Reg. Bd.*, CA No.

1:12cv1665-CAP (N.D. Ga. 2012), ECF 23 p. 2 (appointing Gina Wright as the Court's "independent technical advisor.")

5.

I alone worked on that portion of the HB 566 (2015) redistricting plan that touched any part of Gwinnett and Henry County, including HD 105 and HD 111. I oversaw the redistricting of all seventeen (17) districts included in the legislation, although staff in my office, Brian Knight, did provide technical assistance on two areas that are not at issue in this litigation; Districts 27 and 30 in Hall County and Districts 165 and 166 in Chatham County.

HB 566 (2015) affects a total of seventeen (17) house districts. The boundary changes made to these seventeen (17) districts were limited to changes within eight (8) counties. All changes made were by agreement of the house members impacted by the change. The seventeen (17) districts include districts represented by both Republican and Democratic legislators. All deviations were drawn as close to zero as possible and all fall under a +/- 1% deviation.

The changes made affected the following districts and 2014 legislators:

- District 27 (Rep. Hawkins – R) and District 30 (Rep. Dunahoo -R);
- District 53 (Rep. S. Jones – D) and District 55 (Rep. Brooks – D);
- District 59 (Rep. Kaiser – D) and District 60 (Rep. Waites – D);
- District 104 (Rep. Efstration–R) and District 105  
(Rep. Chandler - R);
- District 73 (Rep. Yates – R), District 109 (Rep. Rutledge –R),  
District 110 (Rep. Welch –R), District 111 (Rep. Strickland – R)  
and District 130 (Rep. Knight –R);
- District 165 (Rep. Stephens –D) and District 166 (Rep. Petrea –R);
- District 176 (Rep. Shaw – R) and District 177 (Rep. Sharper –D).

6.

In redistricting HD 105 and HD 111, I understood the goal to be improving the political performance of the two districts for the Republican incumbents.

7.

The software I use for redistricting, Maptitude, allows the user to create new Geographic Information System (GIS) layers. Every two years staff in my office build a statewide voting precinct boundary layer. This layer corresponds to the voting precincts used in each General Election. The layer contains election data results from all statewide contested elections.

8.

When I drew the districts for HB 566 I used a 2014 voting precinct data layer, which included 2014 general election results, to measure the political effectiveness of the districts. My precinct layer included a total of support to the Republican “%TRepVots14” and Democratic “%TDemVots14” candidates that represents the average performance among all contested statewide elections for 2014.

9.

The political data referenced above is available at the voting precinct level and is allocated to the precinct boundaries on the map layer. When a precinct is split, the redistricting software allocates the votes from that election to the individual blocks.

10.

When I worked on the 2015 redistricting of HD 105 and HD 111, including all surrounding impacted districts, I did not keep data regarding the racial make-up of the census blocks and precincts open on my screen, or pending change window, because I was not working with that data, I was working with the total population and the political data, i.e., the %TRepVots14 and %TDemVots14 data. I intentionally did not look at the

racial breakdown of the population until *after* I had finished making changes to the districts.

11.

Attached hereto as Exhibit 1, is a color coded map of HD 104 and 105. The current boundaries of the districts are depicted in color. The former boundaries of the districts are depicted by the thick black line. The precinct boundaries are the dash blue lines. The residence address of each incumbent, as of 2015, is also plotted on the map and appears below their name.

12.

Using my political data layer, I began the redistricting of HD 105 with the district at 50.98 %TRepVots14 and 48.13 %TDemVots14. HD 104 was 69.68 %TRepVots14 and 28.87 %TDemVots14.

13.

I began the redistricting of HD 105 by adding precinct Harbins C to HD 105. The precinct is adjacent to Walton County which I know to be heavily Republican.

14.

Adding Harbins C to HD 105 brought the %TRepVots14 up to 52.7% and lowered the %TDemVots14 to 46.39%. Harbins C has a total of 2,711 persons.

15.

I then added all of Harbins A to HD 105. I added Harbins A because 1) I wanted to increase the %TRepVots14 a little more; and 2) Harbins C is U-shaped and would not have made a good boundary between the two districts. A map of the boundaries of HD 104 and HD 105, with the Harbins A precinct as ultimately split and Harbins C precincts depicted is attached as Exhibit 2. The map also includes the total population of the precincts just under the precinct name. Where the precinct is split, I have included the total population allocated to each district.

16.

Adding Harbins A to HD 105 brought the %TRepVots14 to 54.15 and the %TDemVots14 down to 44.87. However, Harbins A had a total population of 6,987, making HD 105 overpopulated by 17.83% and HD 104 underpopulated by 18.43%.

17.

I next looked for population to move from HD 105 to HD 104 to even out the population in the two districts. I looked to see if any precincts were split that could be made whole and also help balance the population. I put precinct Lawrenceville M back together by moving that part of Lawrenceville M that was in HD 105 to HD 104. This resulted in HD 105 still being overpopulated by 3.79% and 104 underpopulated by -4.39%. My %TRepVots14 was now 56.71% and %TDemVots14 was now 42.31%. A map of the boundaries of Lawrenceville M is attached as Exhibit 3. The map also includes the 2012 boundary line for HD's 104 and 105 dividing Lawrenceville M along U.S. highway 29.

18.

Next, I began to remove individual blocks from Harbins A to put back in HD 104. I began removing blocks from the western end of the precinct because I wanted to keep the blocks closest to Harbins C for compactness. *See Exhibit 2.*

19.

As I removed blocks I looked for a feature I could use as the boundary between HD 105 and HD 104 in Harbins A. I decided to use Brooks Road, a road that went clearly across, as the divider between HD 105 and HD 104.



Once I made Brooks Road the boundary between the districts, I was left with an underpopulated HD 105 (- 3.52%) and overpopulated HD 104 at (+2.92). I liked the Brooks Road boundary line so I looked elsewhere for more population to add to HD 105.

20.

I next looked for a precinct that was already split between HD 105 and HD 104, where I could shift more population from HD 104 to HD 105. Precinct Lawrenceville D was already split and was the only remaining split precinct other than Harbins A between HD 105 and HD 104. It was a natural place to look for population to move back to HD 105. I took two (2) blocks from the Lawrenceville D precinct to even out the population in HD 105 and HD 104. A map of the boundaries of Lawrenceville D is attached as Exhibit 4. The map also includes the 2012 boundary line showing how the Lawrenceville D precinct was split in the 2012 plan. Like the other maps, the current districts are color coded.

21.

After evening out the population between HD 105 and HD 104, I had increased the %TRepVots14 in HD 105 nearly 5%, from 50.98% to 55.79%.

22.

It was at this point that I checked the racial breakdown of the districts and discovered that the African-American percentage had decreased from 36.69% to 34.69%, a decrease of 2%. I did not view the 2% decrease in African-American population as a concern since that district was not a majority minority district.

23.

Attached hereto as Exhibit 5 are a series of tables showing the demographics for HD 105. Exhibit 5A is a table showing the African-American percentage and voting age percentage of the population in HD 105 before and after the redistricting. These figures include African-Americans of Hispanic origin and African-Americans that may have identified as multi-racial. Exhibit 5B is a table showing the Hispanic Origin percentage and voting age percentage of the population in HD 105 before and after the redistricting. Exhibit 5 C is a table showing the White, African-American and Hispanic population figures and political percentages for the steps described above in the redistricting of HD 105. I did *not* have the racial population figures visible on my screen or pending change box as I moved population between these two districts. However, I did have the political

(%TRepVots14) and (%TDemVots14) figures showing with each move of a block or precinct.

24.

Review of Exhibit 5C reflects that in moving that part of precinct Lawrenceville M that was in HD 105 to HD 104, I removed a significant Democratic voting population (%TDemVots14 at 71%) from HD 105. The racial make-up of that part of precinct Lawrenceville M however is fairly mixed, at 41.93% white and 41.01% African-American. Had my intent been to increase the overall white population, rather than the total Republican participation numbers, I would have chosen another area to move from HD 105 to HD 104.

Additionally, rather than settling on the Brooks Road boundary for the dividing line between HD 105 and HD 104, had my intent been to decrease the African-American percentage in HD 105, rather than simply to increase the Republican performance percentage, I could have left the two blocks from Lawrenceville D that I added to HD 105 in HD 104 and instead settled on a different boundary in Harbins A. The two blocks from Lawrenceville D that I moved from HD 104 to HD 105 have a total population of 1,617 of which 71.92% is African-American.

25.

While including the two blocks from Lawrenceville D in HD 105 did lower my %TRepVots14, from 56.05% to 55.79%, this was still an overall increase of nearly 5% from where the district started.

26.

Attached hereto as Exhibit 6, is a color coded map of HD 111 together with HD 73, HD 110, HD 109, and HD 130. The current boundaries of the districts are depicted in color. The former boundaries of the districts are depicted by the thick black line. The precinct boundaries are the dash blue lines. The residence address of each incumbent, as of 2015, is also plotted on the map and appears below their name.

27.

My objective in making changes to these districts was to increase the political performance for the Republican incumbent, Brian Strickland, in HD 111, while not significantly lowering the political performance numbers for the surrounding Republican incumbents. Additionally, I was aware that Representative Dale Rutledge, the incumbent in HD 109, was considering purchasing a house in an area that, under the 2012 plan, was in HD 111.

28.

Using my political data layer, I began the redistricting of HD 111 with the district at 50.14 %TRepVots14 and 48.65 %TDemVots14. HD 109 was 60.43 %TRepVots14 and 38.44 %TDemVots14. HD 110 was 61.98 %TRepVots14 and 36.97 %TDemVots14.

29.

I began the redistricting of HD 111 by removing the two precincts furthest from where Representative Strickland resides to HD 109. The two precincts are Stagecoach and Stockbridge West. A map showing the boundaries of these two precincts is attached as Exhibit 7. The precinct boundaries are the blue dash lines and the total population for the precinct is included under the precinct name. The current boundaries are depicted in color and the former boundaries by the thick black line.

30.

Moving the two precincts above to HD 109 resulted in a population shift of 10,654 persons from HD 111 to HD 110. It also resulted in an increased %TRepVots14 in HD 111 to 53.47%.

31.

I next took part of the Flippen precinct out of HD 109 and moved it into HD 111. A map showing the boundaries of the Flippen precincts is

attached as Exhibit 8. As is clear from the map, I could not take all of the Flippen precinct as that would leave the Stagecoach and Stockbridge West precincts that I had added to HD 109 not contiguous to the rest of HD 109.

32.

I moved a total of 3509 persons from the Flippen precinct to HD 111. After moving this population to HD 111 my %TRepVots14 was 52.68%.

33.

I do not recall the order in which I made the remaining changes to HD 111. However, I do recall the factors I considered in making the changes.

34.

The inclusion of part of the Hickory Flat precinct in HD 111 was both to offset some of the population I had moved from HD 111 to HD 109, and to create a better boundary line between HD 109 and HD 111 rather than just the Flippen precinct. I could not include all of the Hickory Flat precinct in HD 111 for the same reason that I could not include all of the Flippen precinct in HD 111, it would make HD 109 not contiguous. *See* Exhibit 8.

35.

I added all of Grove Park precinct to HD 111 because it is a strong Republican area. The %TRepVots14 for this precinct is 67.3%. I also added a small part of the Tussahaw precinct for the same reason. The

precinct has a %TRepVots14 of 86.57%. I only took a small part of this precinct because it is the home precinct of Representative Welch. Maps of the precinct boundaries of the Grove Park precinct and the Tussahaw precinct are attached as Exhibits 9 and 10 respectively.

36.

In order to add population to HD 111, I took all of McDonough precinct and part of the McDonough Central from HD 110 and added that to HD 111. A map of the boundaries of the McDonough and McDonough Central precincts are attached as Exhibits 11 and 12 respectively.

37.

The McDonough Central was split between HD's 110 and 111 under the 2012 redistricting plan. It continues to be split among two districts under the 2015 plan, although the two districts are now 109 and 111. I used the McDonough Central precinct to balance some of the population between HD 109 and HD 110. I also considered that Representative Rutledge was considering purchasing a house in that area of McDonough Central that had previously been in HD 110. The area is shown on Exhibit 12 in orange, above the McDonough Central precinct name. It is the area east of the 2012 dividing line between HD 110 and HD 111. McDonough was added for population purposes even though it leaned Democratic (51.88%).

38.

I took that part of the North Hampton precinct that was in HD 111 and moved it to HD 73 in order to make that precinct whole. The precinct had previously been split between HD 73 and HD 111. The part of the North Hampton precinct that was moved from HD 111 to HD 73 has a total population of 3,556 persons. A map of the North Hampton precinct boundaries is attached hereto as Exhibit 13.

39.

I moved part of the Mount Carmel precinct from HD 111 to HD 73 to balance out population among districts. A map of the Mount Carmel precinct boundaries is attached hereto as Exhibit 14.

40.

It was at this point that I checked the racial breakdown of the districts and discovered that the African-American percentage had decreased from 37.84% to 35.31%, a decrease of 2.53%. I did not view the 2.53% decrease in African-American population as significant given that the district was not a majority minority district.

41.

Attached hereto as Exhibit 15 are a series of tables showing the demographics for HD 111. Exhibit 15A is a table showing the African-



American percentage and voting age percentage of the population in HD 111 before and after the redistricting. These figures include African-Americans of Hispanic origin and African-Americans that may have identified as multi-racial. Exhibit 15B is a table showing the Hispanic origin percentage and voting age percentage of the population in HD 111 before and after the redistricting. Exhibit 15C is a table showing the White, African-American, and Hispanic population figures and political percentages for the steps described above in the redistricting of HD 111. I did *not* have the racial population figures visible on my screen or the pending change box as I moved population in and out of HD 111 and the surrounding districts. However, I did have the political (%TRepVots14 and %TDemVots14) figures showing with each move of a block or precinct.

42.

I met with all of the legislators affected by the redistricting of HD 105 and HD 111, including Representatives Chandler and Strickland. However, to the best of my recollection, neither Representative Chandler nor Representative Strickland asked that I move any particular block(s) or precinct(s) in or out of their districts. Neither Representative Chandler nor Strickland discussed with me any desired racial effect of the redistricting.

Both Representative Chandler and Strickland were interested in the political performance numbers (%TRepVots14) of their respective districts.

43.

I did not discuss the 2015 legislative redistricting, including the redistricting of House Districts 105 and 111, with Dan O'Connor, a member of my staff. Dan O'Connor's primary responsibilities are to fill map and data requests for legislators and the public. Dan prints maps as requested by members of the General Assembly or the public, and he compiles statistical information for anyone that requests the information from our office. Dan O'Connor had no responsibility for drawing any part of the redistricting plan included in HB 566 (2015).

44.

My office works with local election officials in Georgia to constantly update our precinct boundaries with any changes made at the local level. As a result, the precinct boundaries we use for redistricting are intended to match up with the precinct boundaries used by election officials in the administration of elections. I am aware that when precincts are split into two or more districts, election officials must then create multiple ballots for that precinct. Therefore, when possible, I try not to split precincts among districts.

45.

It has been my experience that municipal boundaries will often not coincide with precinct boundaries. Attached hereto as Exhibits 16 and 17 are maps showing the municipal boundaries of the City of Lawrenceville and the City of Stockbridge respectively.

46.

In Exhibit 16, the municipal boundaries of the City of Lawrenceville appear in dark orange. The areas surrounding the municipal boundaries with the orange dots represent precincts that have some part of the precinct inside the municipal boundaries. The precinct boundaries are the blue lines. There are 17 precincts located at least partially within the municipal boundaries of the City of Lawrenceville.

47.

In Exhibit 17, the municipal boundaries of the City of Stockbridge appear in green. The areas surrounding the municipal boundaries with the orange dots represent precincts that have some part of the precinct inside the municipal boundaries. The precinct boundaries are the blue lines. There are 11 precincts located at least partially within the municipal boundaries of the City of Stockbridge.

48.

As is clear from Exhibits 16 and 17, following municipal boundaries in redistricting will often result in unnecessarily splitting voting precincts.

49.

I was asked to review the qualifying papers of all candidates that qualified to run for office from HD's 73, 104, 105, 109, 110, 111 and 130. I plotted all of the candidate addresses, as reflected on their qualifying papers, on maps attached hereto as Exhibits 18 through 24. The names of incumbents include a designation of "Rep." before their names. As with other maps, the current boundaries are in color and the 2012 boundaries are reflected with the bold overlay in line in black.

50.


In HD 105, one (1) of the four (4) candidates running for office lives in an area of HD 105 that was in HD 104 under the 2012 plan.

51.

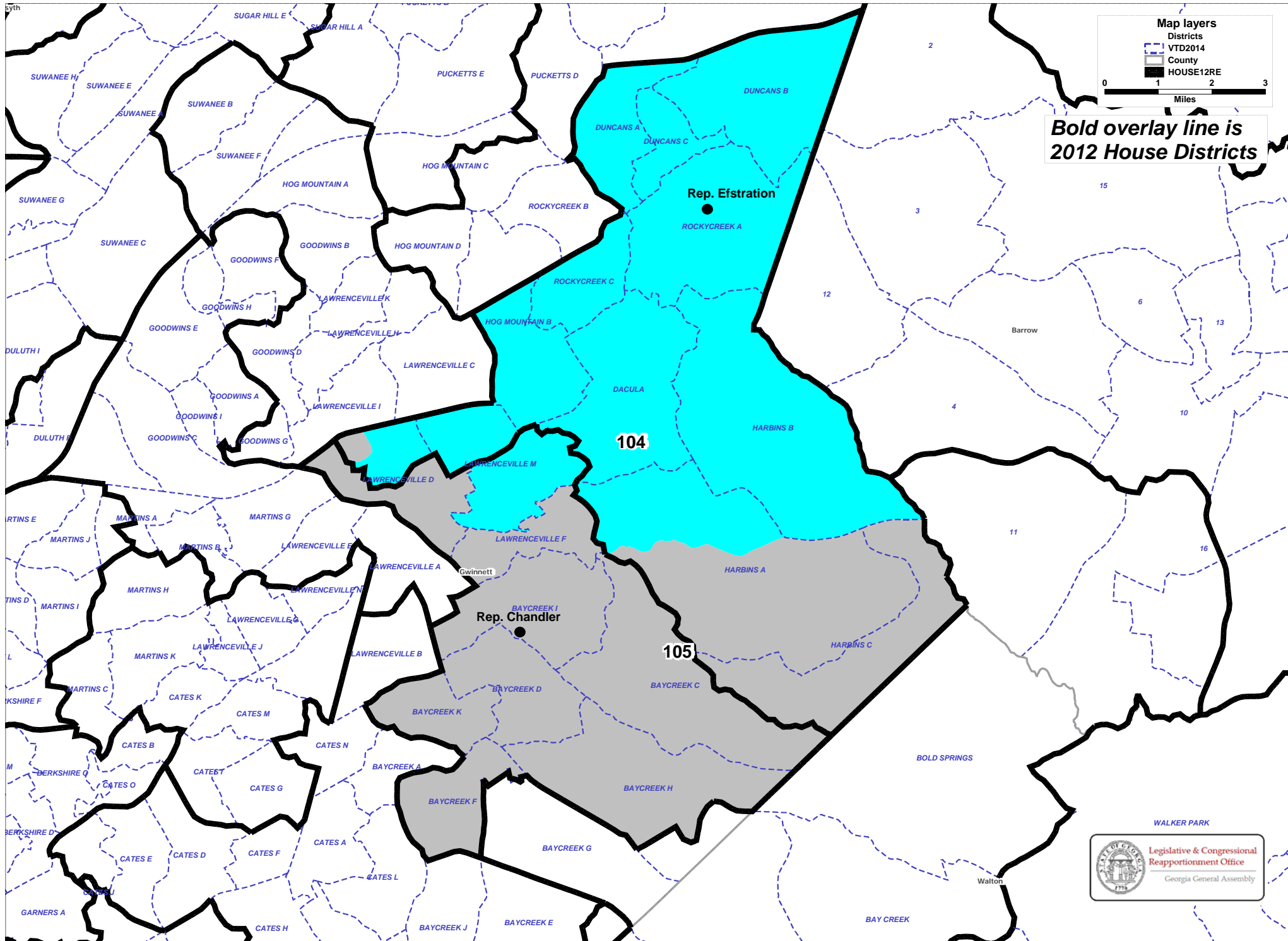
In HD 111 , two (2) of the four (4) candidates running for office live in an area of HD 111 that was in HD 109 under the 2012 plan.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that  
the foregoing is true and correct.

Executed this 26 day of March, 2018.

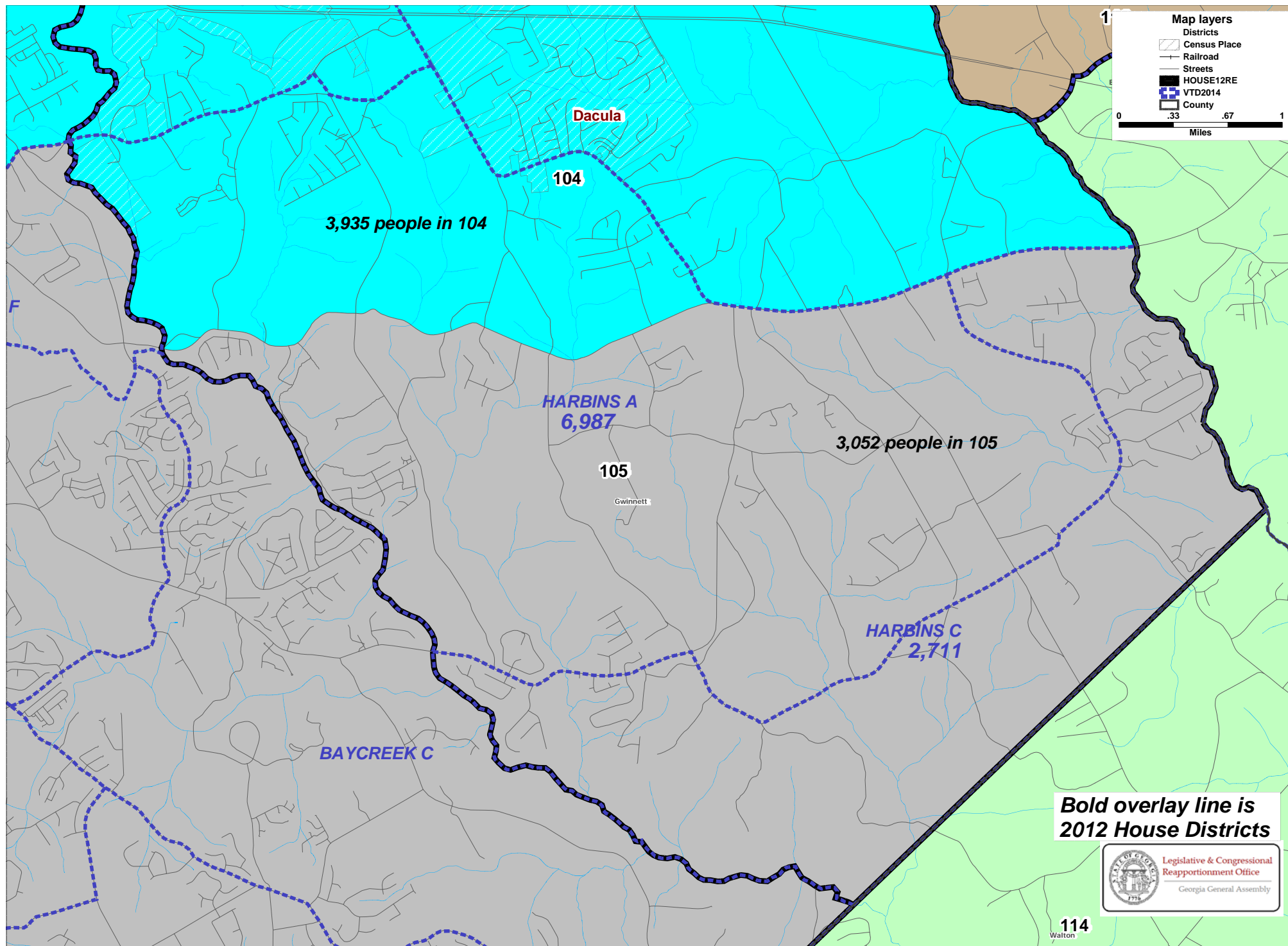
  
Gina Harbin Wright  
Executive Director  
Legislative and Congressional  
Reapportionment Office

# EXHIBIT 1



# EXHIBIT 2



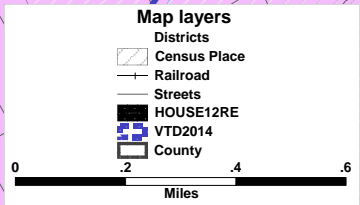


# EXHIBIT 3



# EXHIBIT 4





**Bold overlay line is  
2012 House Districts**



# EXHIBIT 5

**Exhibit 5A**

	<b>Total Pop.</b>	<b>Deviation</b>	<b>Total White %</b>	<b>Total AA %</b>	<b>Total Any Part AA Pop %</b>
<b>HD 105 (2012 Plan)</b>					
Total Population	53718	-0.19%	51.13%	35.18%	36.69%
Total Voting Age Population	36580		54.71%	32.95%	33.85%
<b>HD 105 (2015 Plan)</b>					
Total Population	53542	-0.52%	54.35%	33.16%	34.69%
Voting Age Population	36449		57.99%	30.91%	31.82%

Percentages for "Total Any Part AA Pop%" includes all persons reporting any part Black on the census form, including persons reporting more than one race.

**EXHIBIT 5B**

<b>HD 105 (2012 Plan)</b>	<b>Total Pop.</b>	<b>Deviation</b>	<b>Hispanic Origin</b>
Total Population	53718	-0.19%	14.13%
Total Voting Age Population	36580		12.61%
<b>HD 105 (2015 Plan)</b>	<b>Total Pop.</b>	<b>Deviation</b>	<b>Hispanic Origin</b>
Total Population	53542	-0.52%	12.19%
Voting Age Population	36449		10.82%

Hispanic Origin totals include persons of all races.



**EXHIBIT 5C**  
**DISTRICT 105**

Precinct	TPop	Deviation	White	African-American	Hispanic Origin	%TRepVots14	%TDemVots14
<b>Beginning Totals:</b>	53718	-.19%	51.13%	35.18%	14.13%	50.98%	48.13%
<b>Add:</b>							
Harbins C (all)	2711		81.37%	11.62%	5.87%	78.84%	19.89%
Harbins A - (part)	3052		76.97%	15.63%	8.62%	63.83%	33.3%
Lawrenceville D (part)	1617		15.21%	71.92%	18.24%	31.61%	67.1%
<b>Subtract:</b>							
Lawrenceville M (part)	-7556		41.93%	41.01%	23.54%	28.09%	71.01%
<b>Ending Totals:</b>	53542	-.52%	54.35%	33.16%	12.19%	55.79%	43.16%

Hispanic Origin totals include persons of all races.

# EXHIBIT 6

[illegible]

**Bold overlay line is  
2012 House Districts**



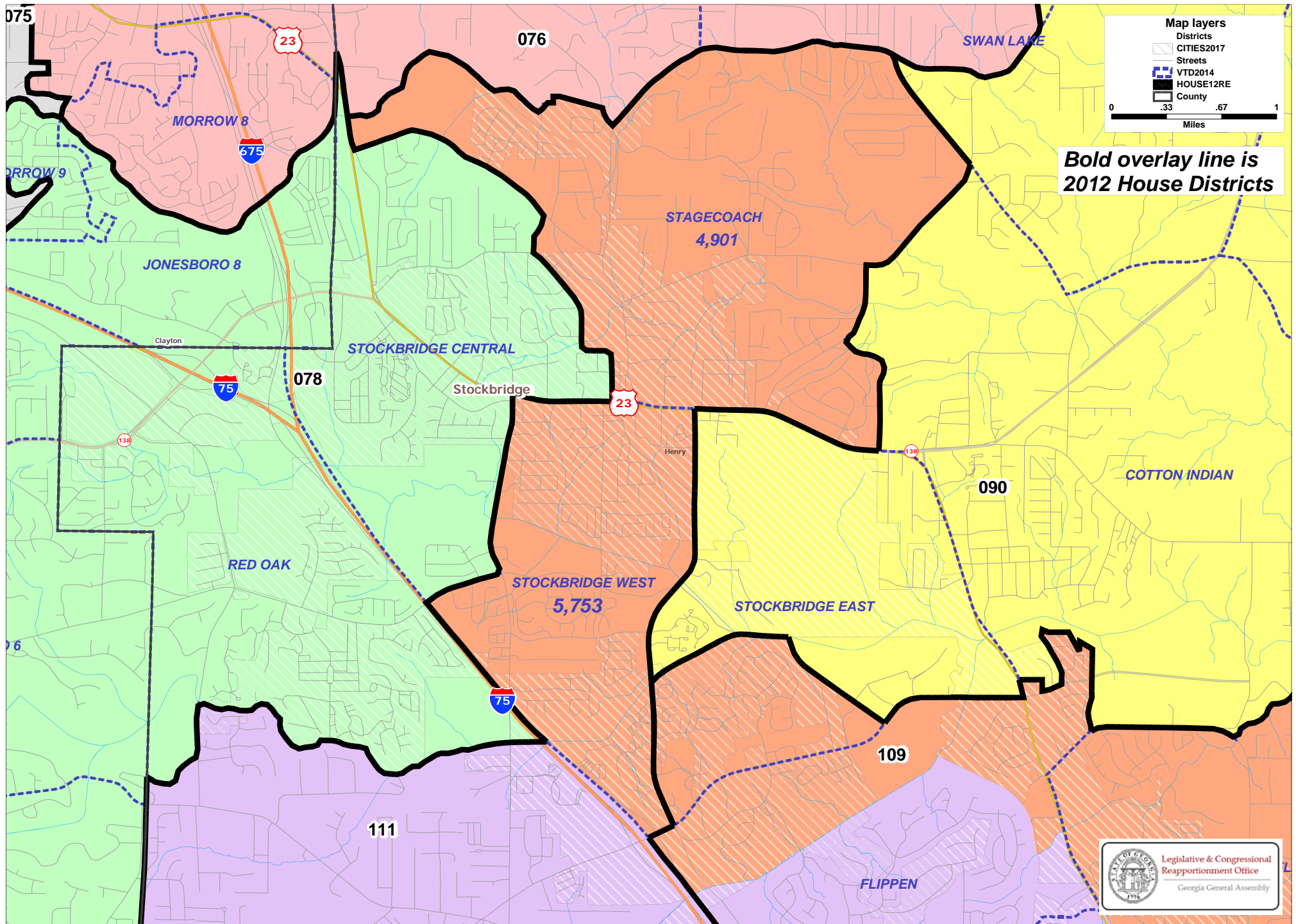
**Legislative & Congressional  
Reapportionment Office**  
*Georgia General Assembly*

# EXHIBIT 7



**Precincts added into House District 109**

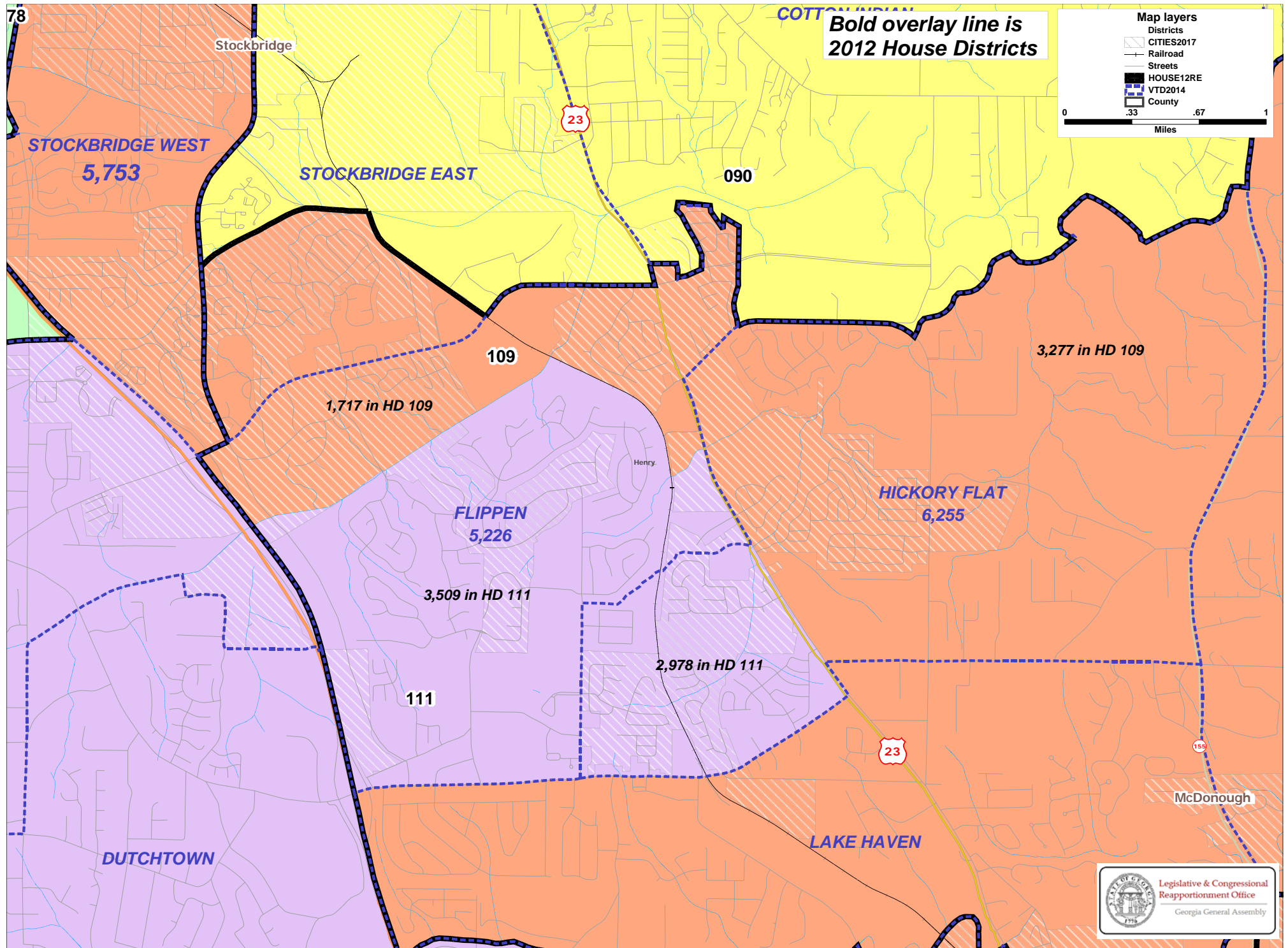
Client: State  
Plan: House15  
Type: House



# EXHIBIT 8

**Precincts in part added into House District 111**

Client: State  
Plan: House15  
Type: House

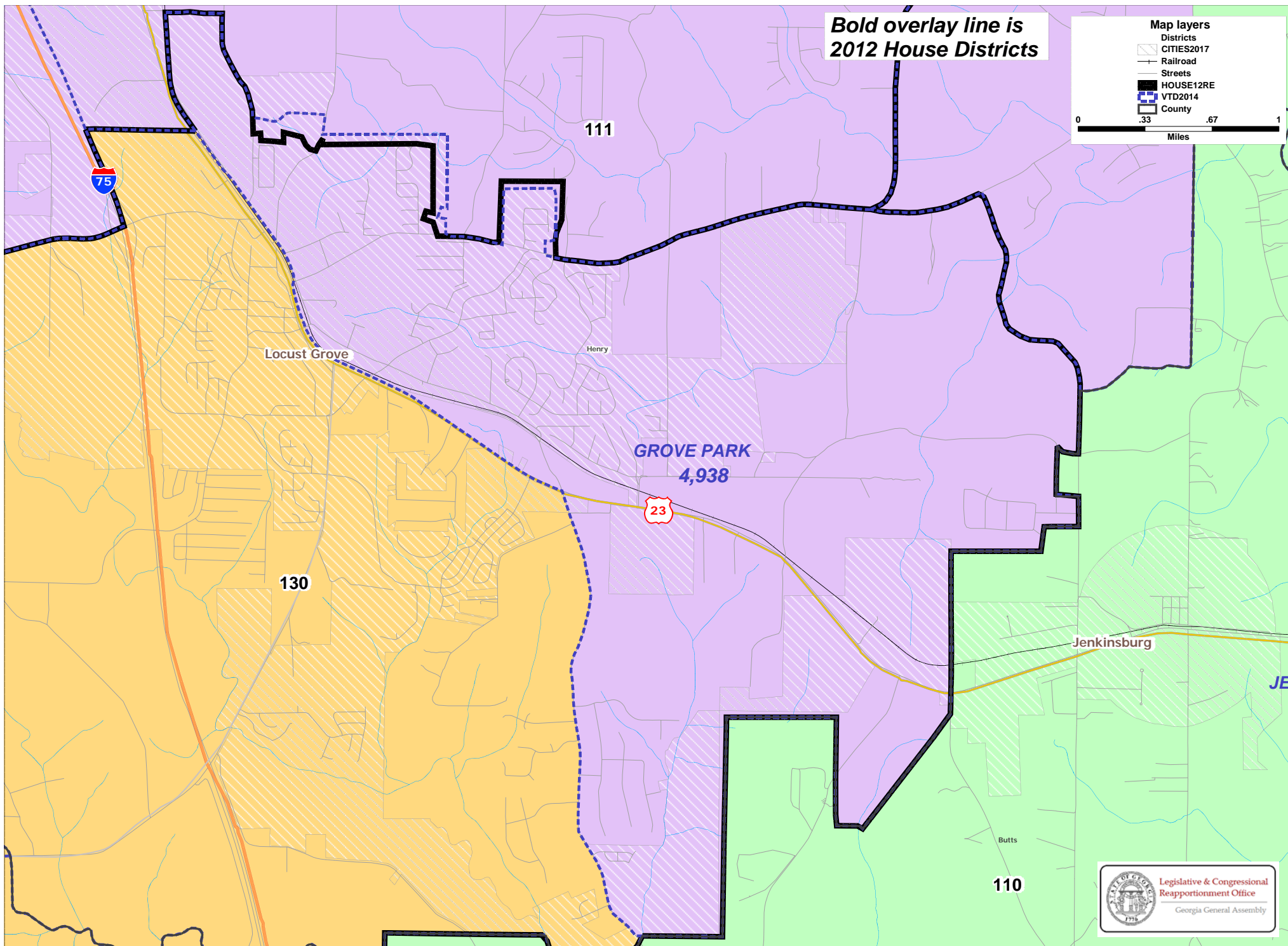


# EXHIBIT 9



**Precinct added to House District 111**

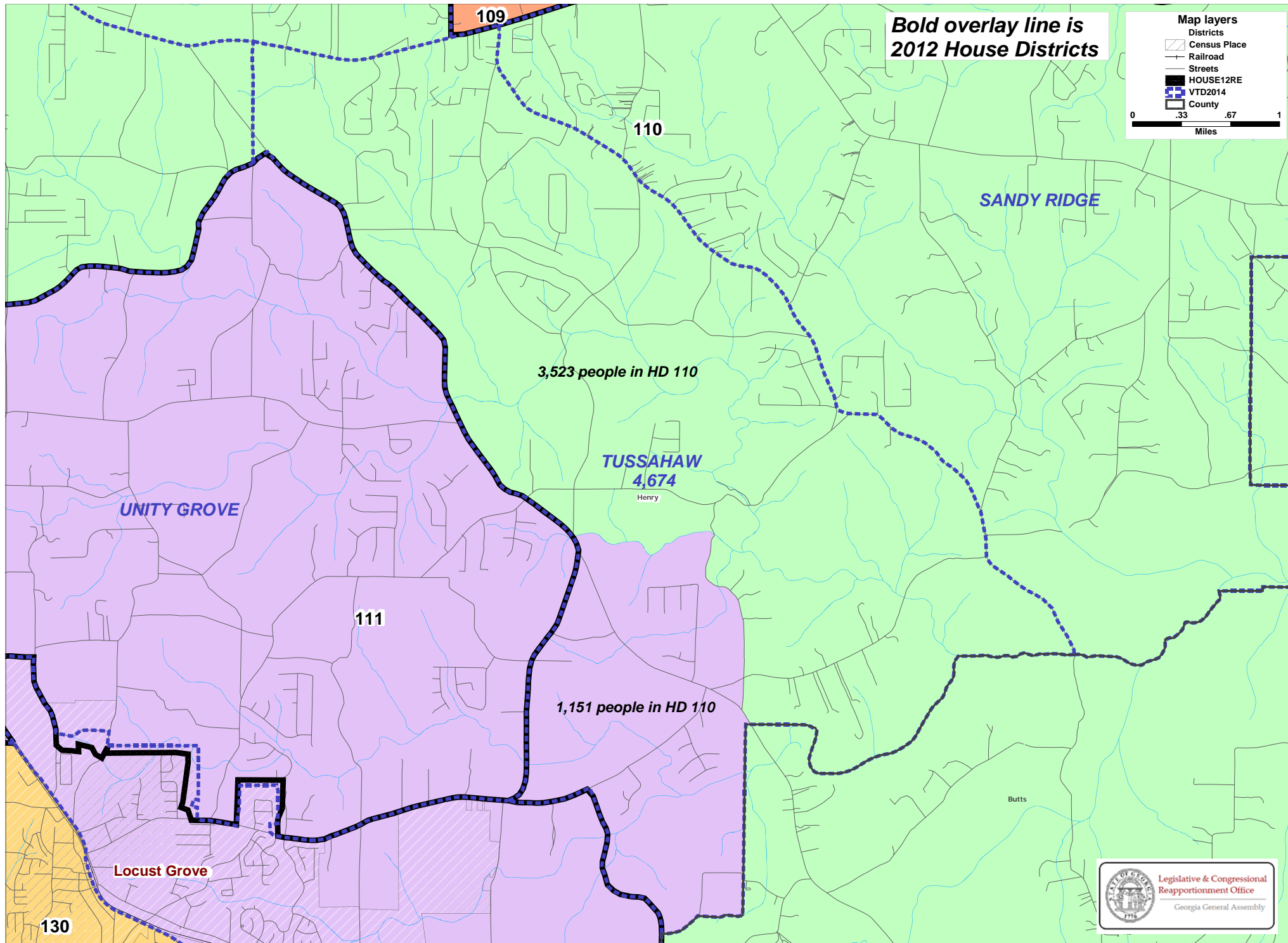
Client: State  
Plan: House15  
Type: House



# EXHIBIT 10

**Precinct in part added to House District 111**

Client: State  
Plan: House15  
Type: House

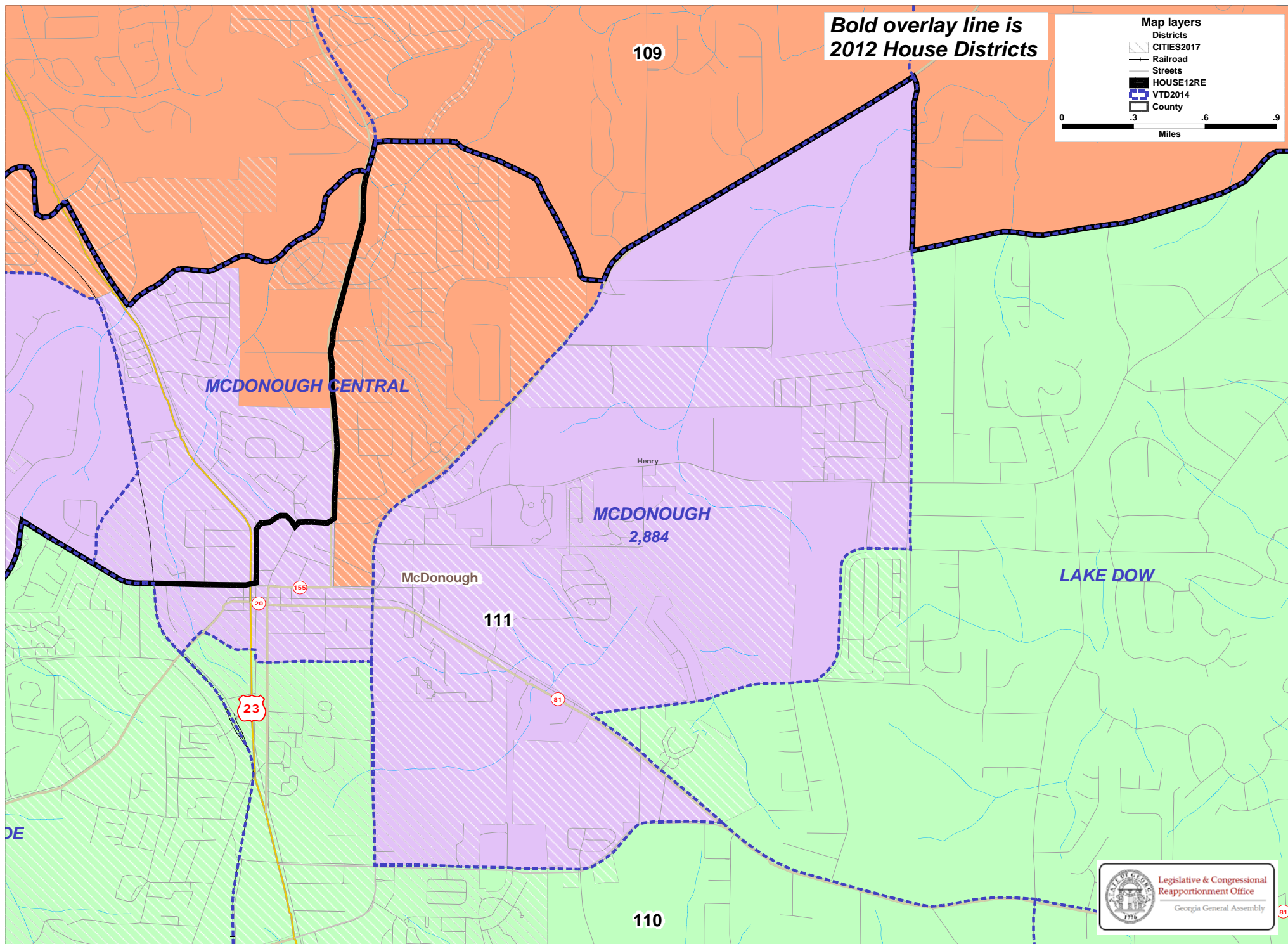


# EXHIBIT 11

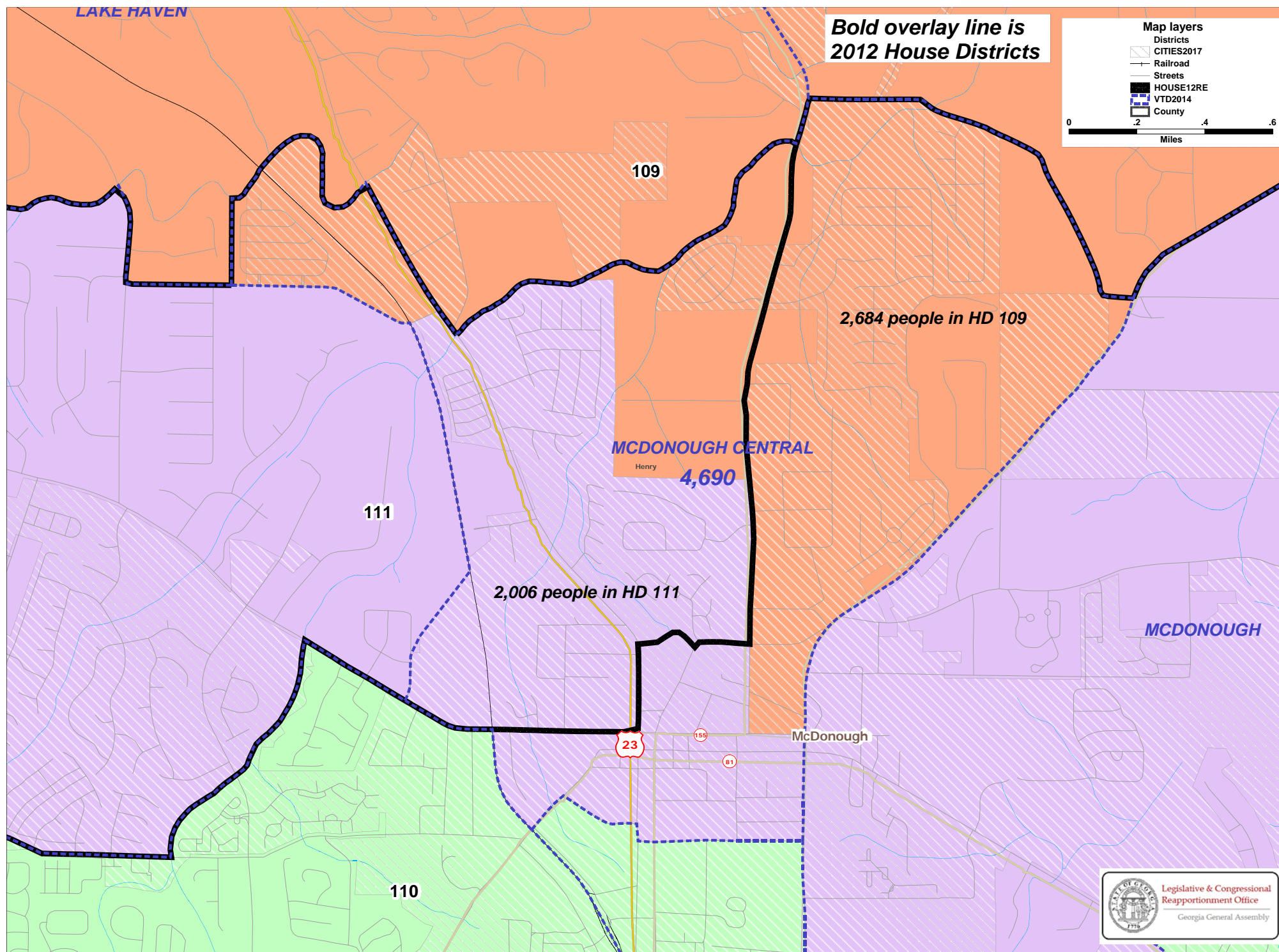


**Precinct added to House District 111**

Client: State  
Plan: House15  
Type: House

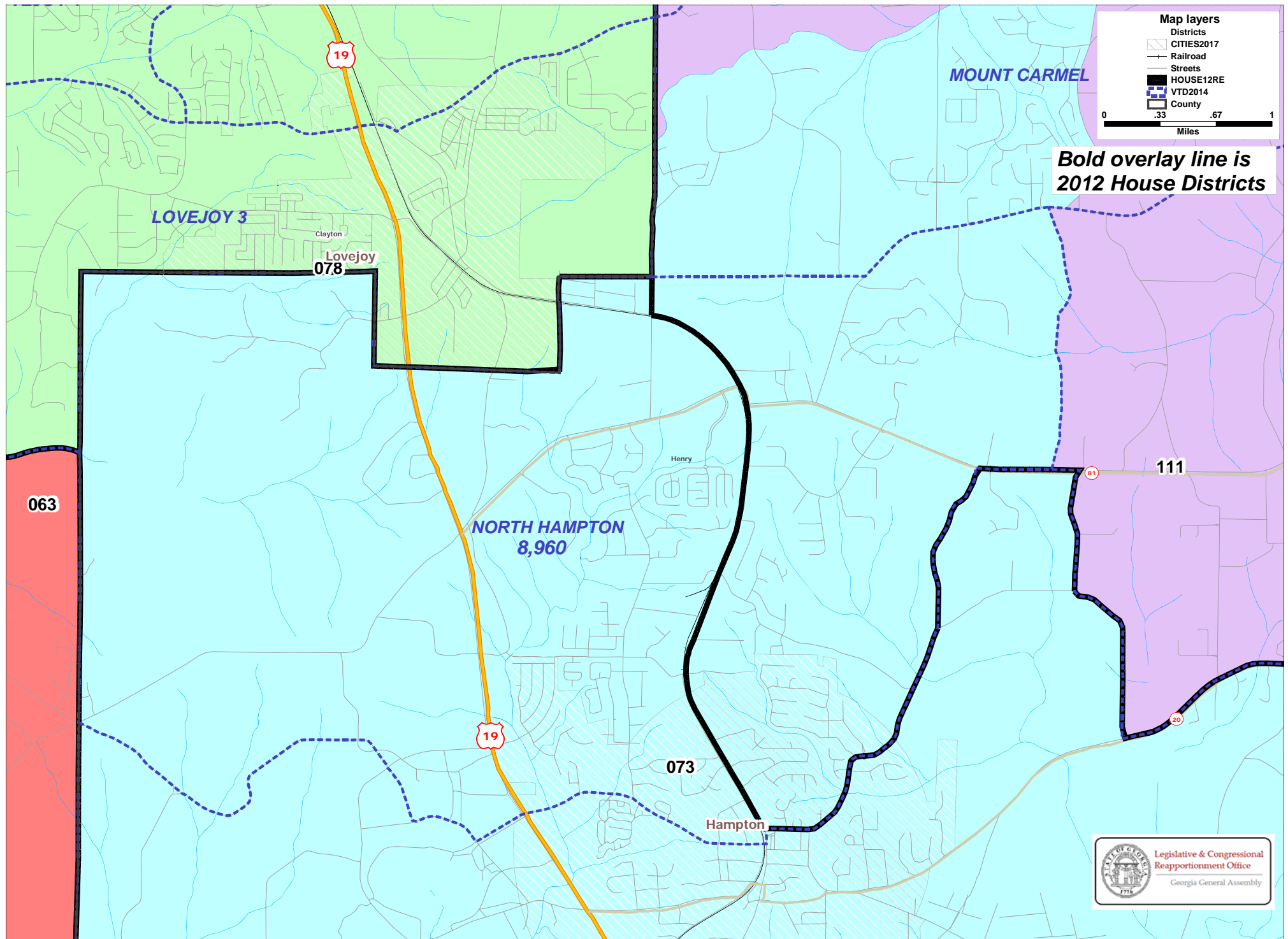


# EXHIBIT 12



# EXHIBIT 13

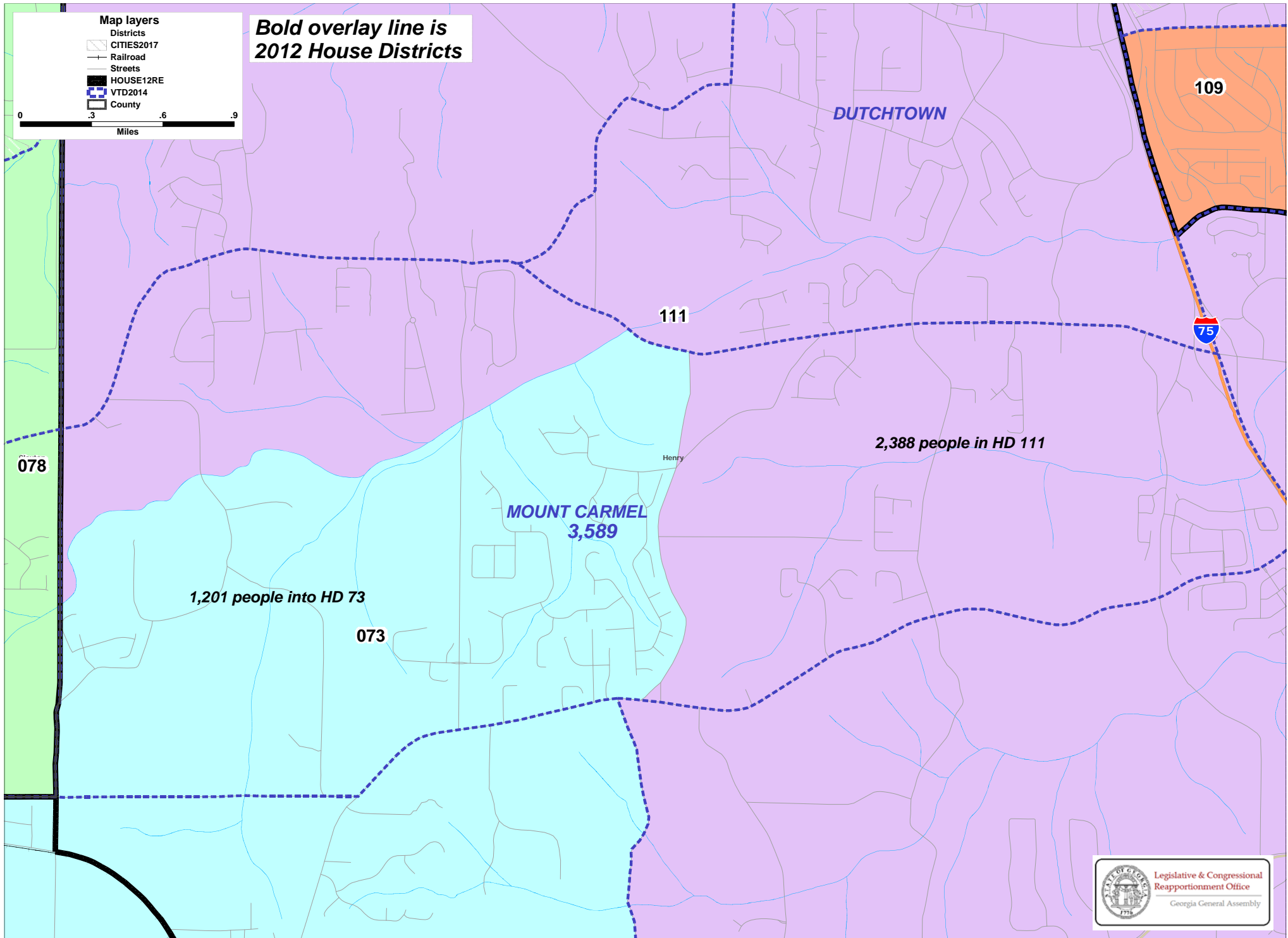




# EXHIBIT 14

**Precinct in part added to House District 73**

Client: State  
Plan: House15  
Type: House



# EXHIBIT 15

**Exhibit 15A**

<b>HD 111 (2012 Plan)</b>	<b>Total Pop.</b>	<b>Deviation</b>	<b>Total</b>	<b>Total</b>	<b>Total Any Part</b>
			<b>White</b>	<b>AA %</b>	<b>AA Pop %</b>
Total Population	54197	+0.7%	54.98%	36.37%	37.84%
Total Voting Age Population	38545		58.78%	33.78%	34.55%
<b>HD 111 (2015 Plan)</b>					
Total Population	54293	+0.88%	57.20%	33.92%	35.31%
Voting Age Population	38235		60.67%	31.54%	32.31%

Percentages for "Total Any Part AA Pop%" includes all persons reporting any part Black on the census form, including persons reporting more than one race.

**EXHIBIT 15B**

	<b>Total Pop.</b>	<b>Deviation</b>	<b>Hispanic Origin</b>
<b>HD 111 (2012 Plan)</b>			
Total Population	54197	+0.7%	6.45%
Total Voting Age Population	38545		5.60%
<b>HD 111 (2015 Plan)</b>			
Total Population	54293	+.88%	5.93%
Voting Age Population	38235		5.24%

Hispanic Origin totals include persons of all races.

**EXHIBIT 15C****HD 111**

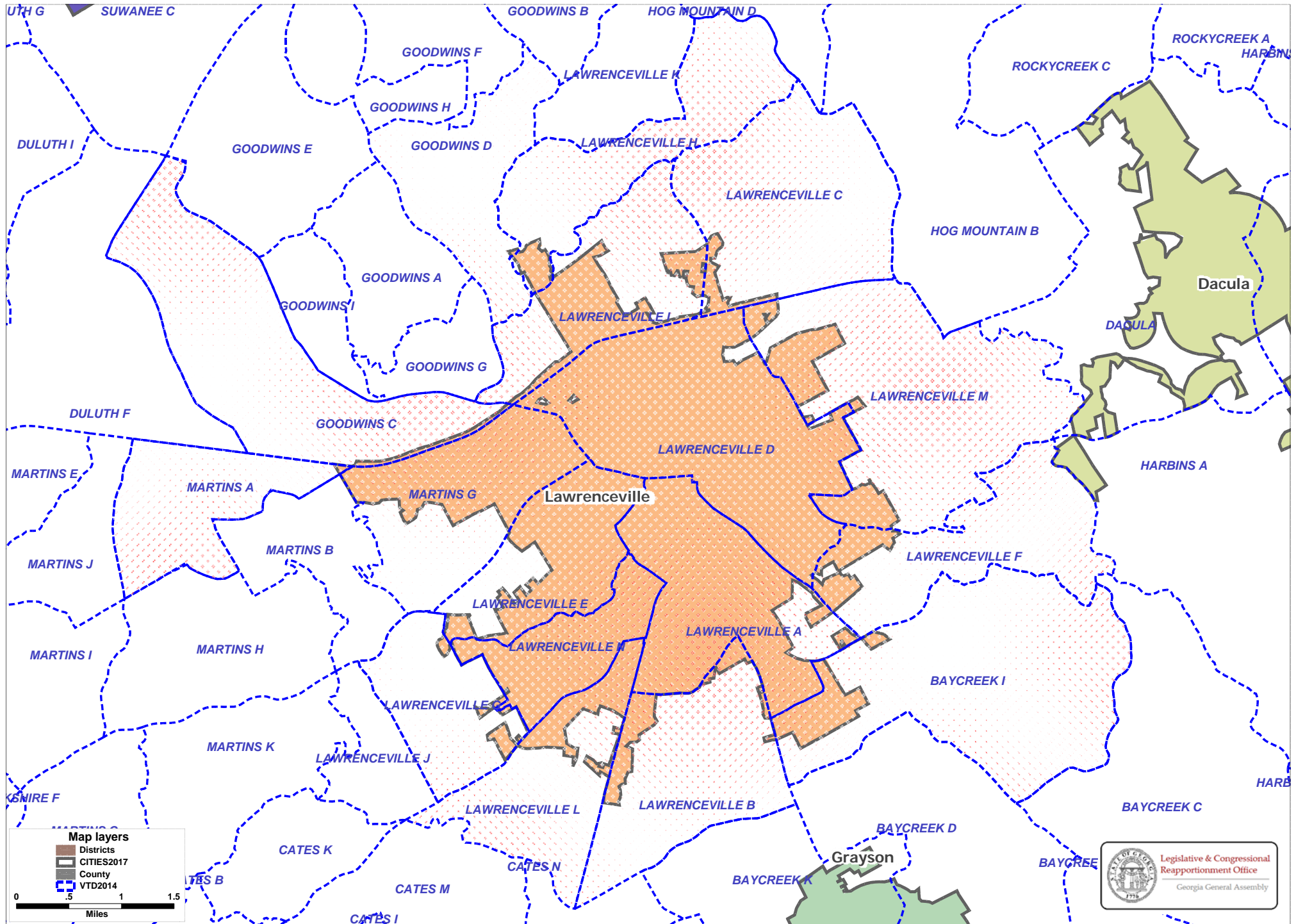
<b>Precinct</b>	<b>TPop</b>	<b>White</b>	<b>African-American</b>	<b>Hispanic</b>	<b>%TRepVots14</b>	<b>%TDemVots14</b>
<b>Beginning Totals:</b>	54293	54.98%	36.37%	6.45%	50.14%	48.65%
<b>Subtracted:</b>						
Stagecoach	-4901	60.64%	30.93%	7.37%	49.82%	48.78%
Stockbridge West	-5753	26.87%	62.05%	8.83%	17.14%	81.94%
McDonough Central	-334	55.39%	40.72%	2.10%	52.63%	42.86%
Mount Carmel	-1201	38.55%	48.13%	3.75%	34.46%	64.42%
North Hampton						
(part)	-3556	63.95%	29.92%	5.29%	48.17%	49.65%
<b>Added:</b>						
Flippen (part)	3509	41.81%	40.52%	4.90%	43.30%	56.23%
Hickory Flat (part)	2978	33.95%	51.75%	7.12%	44.90%	52.76%
Grove Park (all)	4936	71.98%	22.04%	4.32%	67.30%	31.22%
McDonough (All)	2884	45.98%	48.44%	4.99%	47.18%	51.88%
McDonough Central						
(part)	383	71.80%	20.89%	15.40%	53.73%	43.28%
Tussahaw	1151	92.70%	3.65%	2.78%	86.57%	10.15%
<b>Ending Totals:</b>	54293	57.20%	33.92%	5.93%	54.40%	44.38%

Hispanic Origin totals include persons of all races.

# EXHIBIT 16

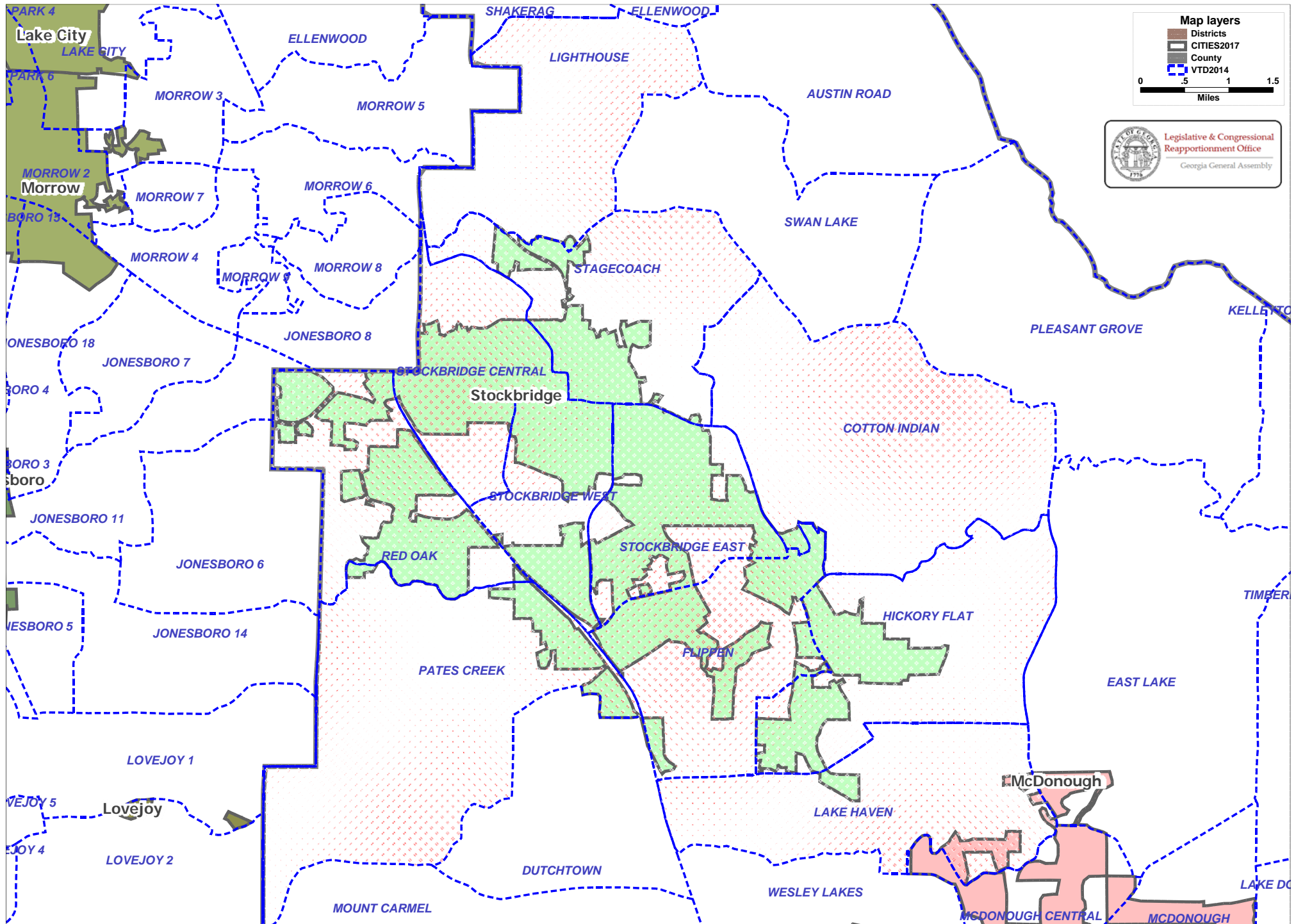


# **City of Lawrenceville- 17 voting precincts**



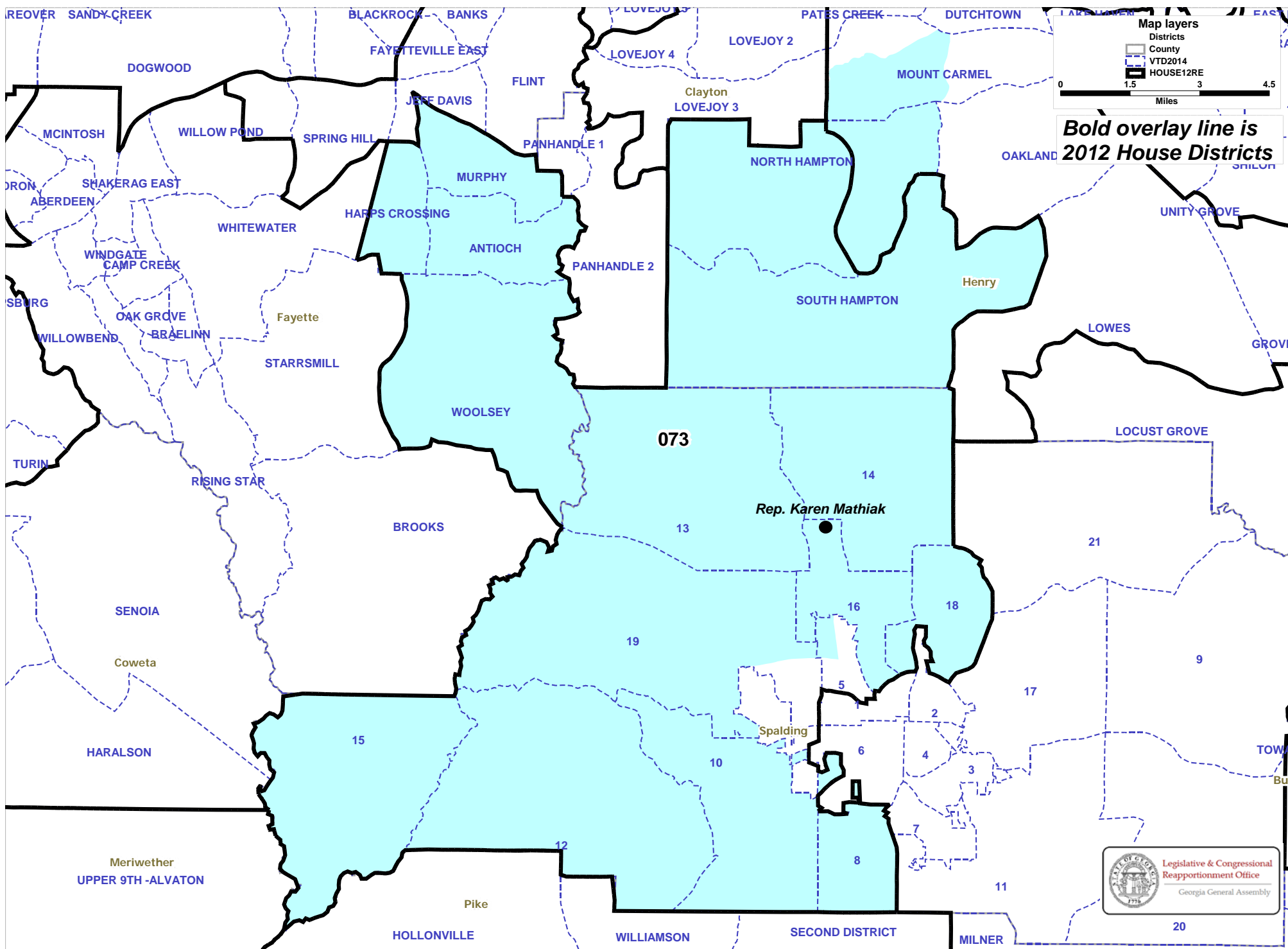
# EXHIBIT 17

# City of Stockbridge- 11 voting precincts



# EXHIBIT 18

2018 Qualified Candidates- House District 73

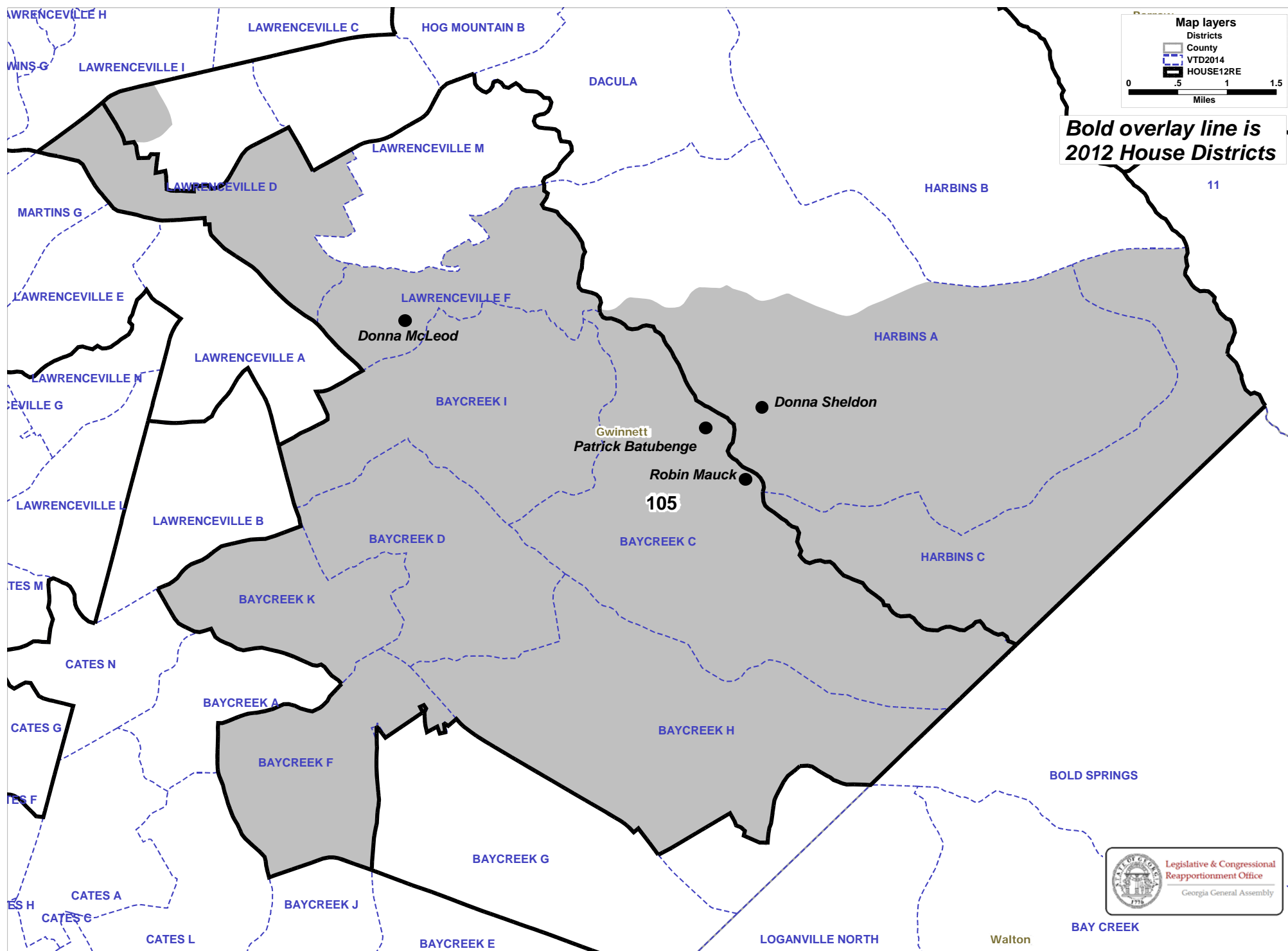


# EXHIBIT 19



# EXHIBIT 20

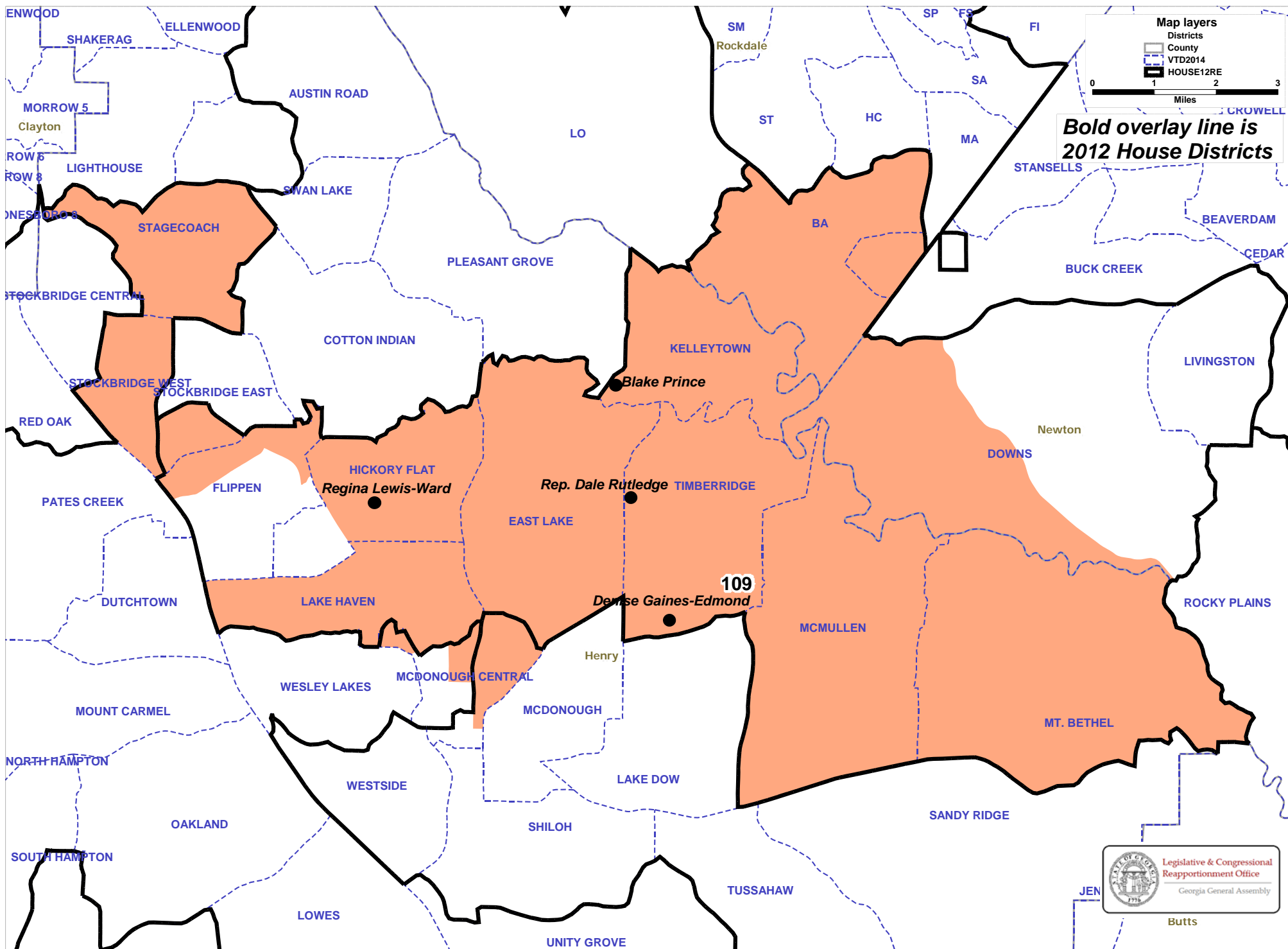




# EXHIBIT 21

# 2018 Qualified Candidates- House District 109

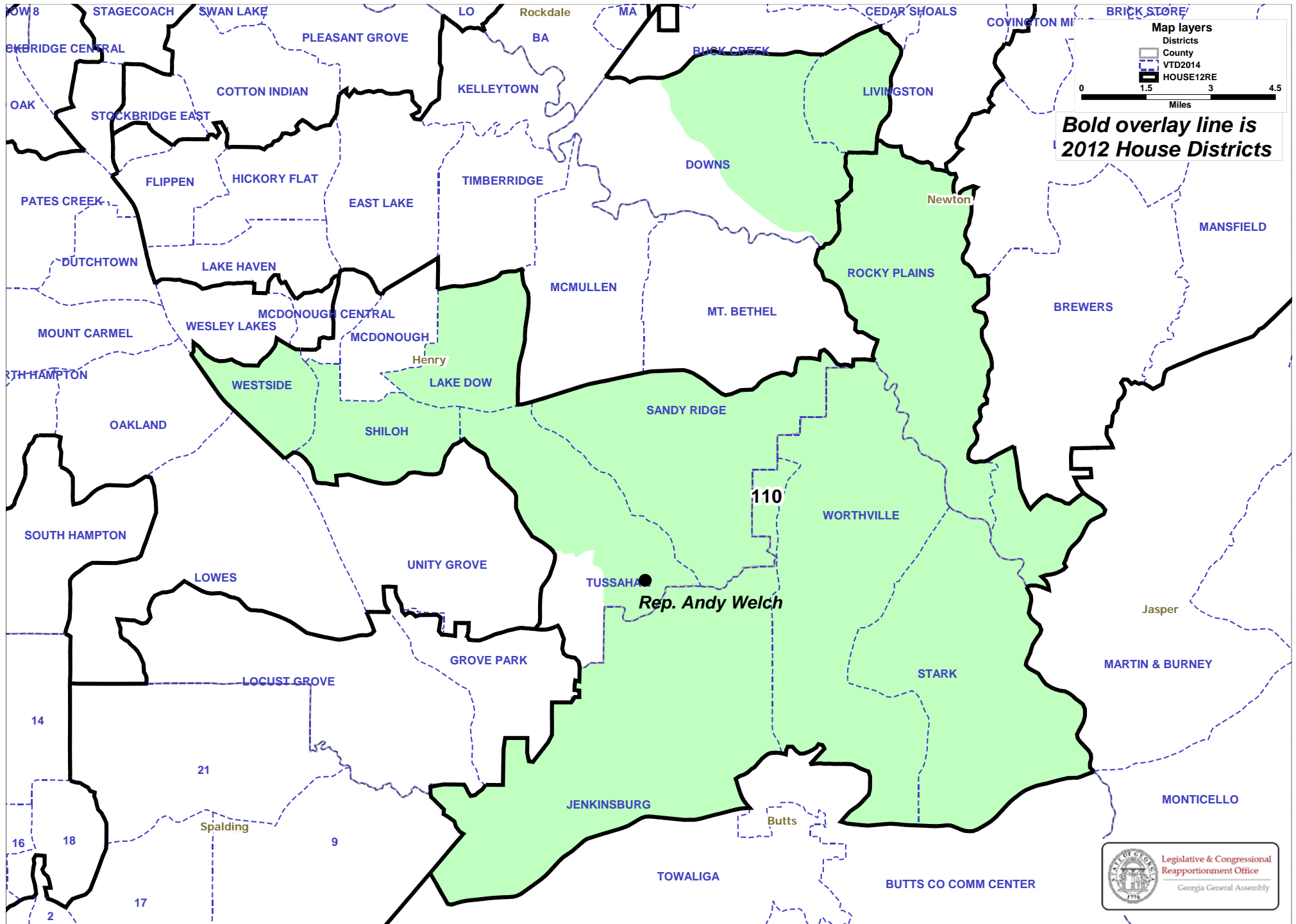
Client: State  
Plan: House15  
Type: House



# EXHIBIT 22

# 2018 Qualified Candidates- House District 110

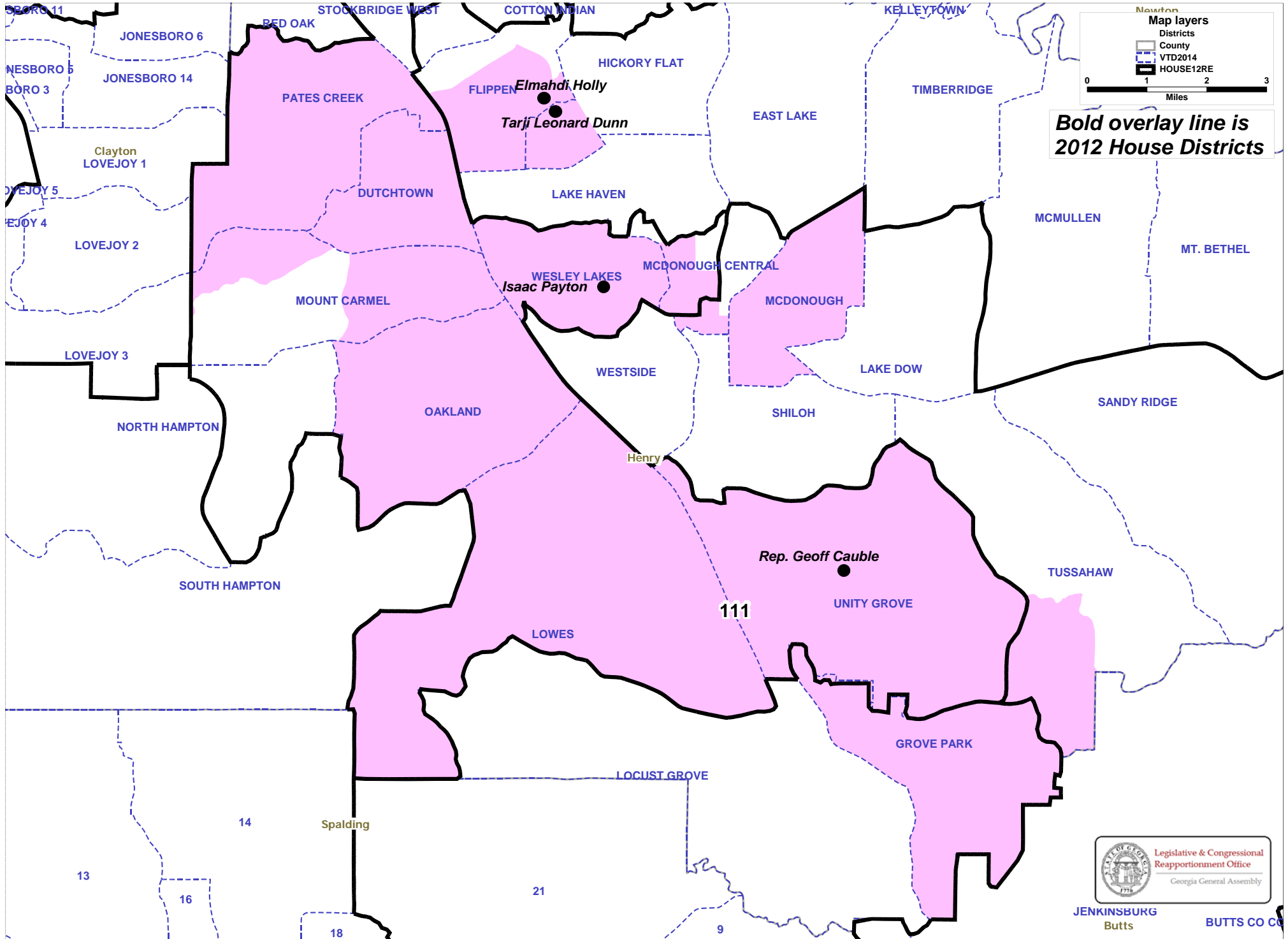
Client: State  
Plan: House15  
Type: House



# EXHIBIT 23

# 2018 Qualified Candidates- House District 111

Client: State  
Plan: House15  
Type: House



**Bold overlay line is  
2012 House Districts**



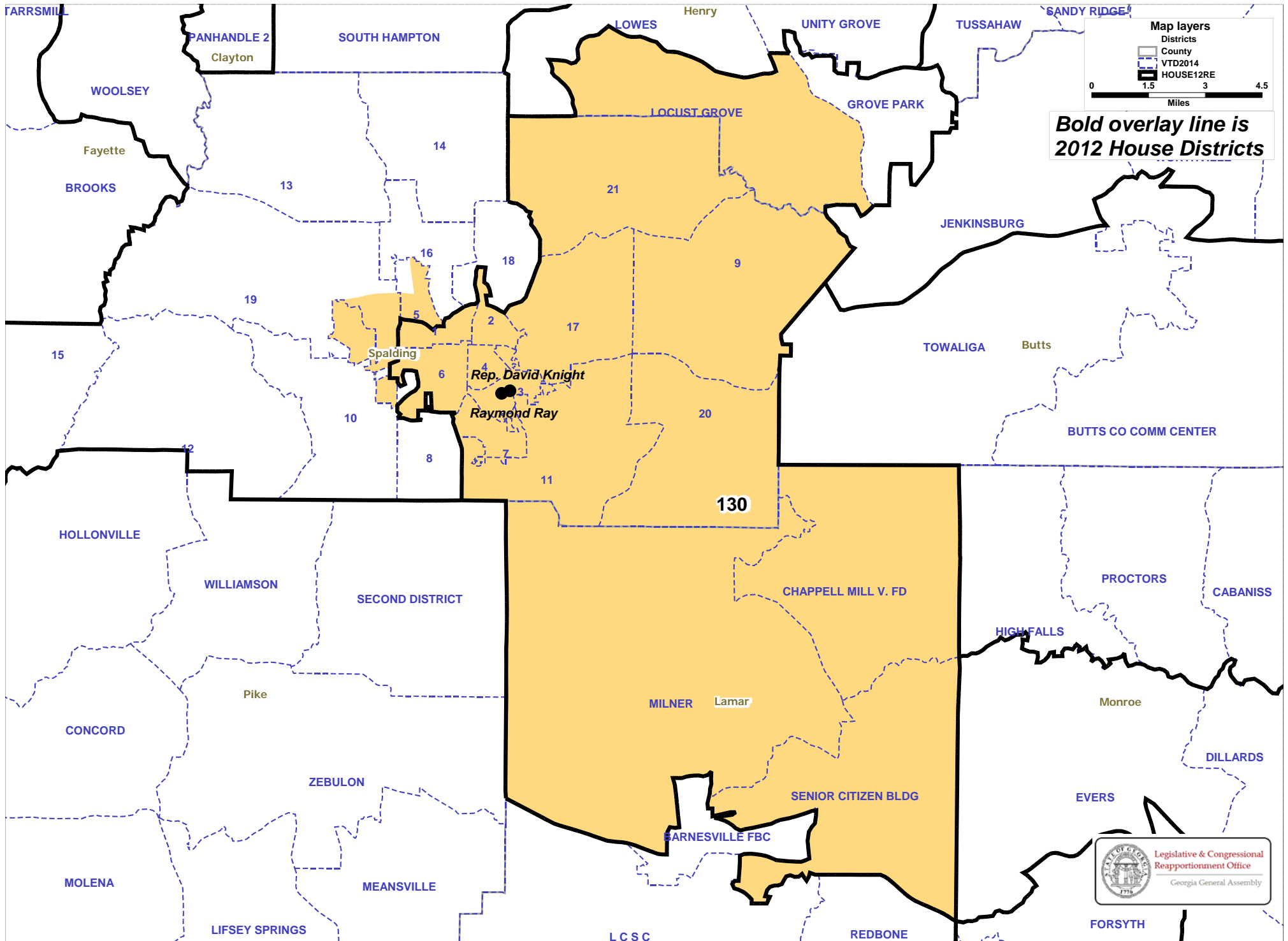
JENKINSBURG Butts BUTTS CO GA

# EXHIBIT 24



# 2018 Qualified Candidates- House District 130

Client: State  
Plan: House15  
Type: House





2.

I am a Certified Computer Examiner and am employed as a Litigation Support Specialist/ E-Discovery Project Manager at Balch & Bingham LLP. I have been employed by Balch & Bingham LLP since 2009.

3.

Balch & Bingham was retained by the Georgia General Assembly's Office of Legislative Counsel to assist the Reapportionment Office and current and former members of the General Assembly respond to subpoenas in these matters.

4.

In my role as E-Discovery Project Manager for the subpoena responses, I was asked to analyze Plaintiffs' Exhibit 33, which was introduced in the deposition of Representative Joyce Chandler as Plaintiffs' Exhibit 128.

5.

Plaintiffs' Exhibit 33 consists of three pages, bates labeled GA2-001195, GA2-001197, and GA2-001198. Page GA2-001196 was omitted from the exhibit. A true and correct copy of GA2-001196 is attached hereto as **Exhibit 1**.

6.

Having reviewed each of these pages and the associated metadata that was produced for each, I can confirm that Exhibit 33 is not an accurate representation of the documents produced. Specifically, pages GA2-001197 and GA2-001198 are attachments to the omitted page GA2-001196, which is an email from Peter Combs to Dan O'Connor. Those pages are not attachments to the email represented at page GA2-001195, which is an email exchange between Dan O'Connor and Representative Joyce Chandler.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21 day of March, 2018.



---

Howe Taing, CCE  
Litigation Support Specialist  
Balch & Bingham LLP

# EXHIBIT 1

**From:** Peter.Combs@gwinnettcountry.com  
**Sent:** Monday, August 4, 2014 1:31 PM  
**To:** O'Connor, Dan <dan.oconnor@legis.ga.gov>  
**Subject:** RE: More Precinct Data  
**Attach:** Active Voters by Race and Gender\_House District 105.pdf

---

Dan,

Please find attached the report you requested.

**Peter Combs**

Elections Coordinator  
Gwinnett County Department of Community Services  
Voter Registrations & Elections Division  
Office: 678.226.7210  
Direct: 678.226.7232  
Fax: 678.226.7208

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**From:** O'Connor, Dan [<mailto:Dan.OConnor@legis.ga.gov>]  
**Sent:** Monday, August 04, 2014 8:44 AM  
**To:** Ledford, Lynn  
**Subject:** More Precinct Data

Hi Lynn:

Rep. Joyce Chandler (House District 105 in Gwinnett) would like data concerning voter registration by precinct for her House district (she says that includes 9 precincts, 3 of which are "split" precincts shared with other districts). Appreciate if you could send me that info as you did last month for Rep. Tom Rice's HD 95 (same format).

Thanks,  
Dan O'Connor  
Reapportionment Office  
(404) 656-5063

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

NAACP, *et al.*,

Plaintiffs,

V.

BRIAN KEMP, in his official capacity  
as Secretary of State for the State of  
Georgia,

Defendant.

AUSTIN THOMPSON, *et al.*,

Plaintiffs,

V.

BRIAN KEMP, in his official capacity  
as Secretary of State of the State of  
Georgia,

Defendant.

## DECLARATION OF MICHAEL BARNES

I, Michael Barnes, do hereby declare and state that the following facts are true and correct to the best of my knowledge, information and belief.

1.

I am over the age of 21 years and am in all ways competent to give testimony, suffering no physical or mental disabilities.

2.

I am aware of the fact that this declaration is being submitted in support of Secretary of State Brian Kemp's Brief in Opposition to Plaintiffs' Motion for Preliminary Injunction.

3.

I am currently the Director of the Center for Election Systems, Office of Secretary of State – Brian P. Kemp ("CES"). I was formally Director of the Center for Election Systems at Kennesaw State University ("KSU") from 2010 until December 31, 2017, which was an outside contractor with the Office of the Secretary of State. Beginning on January 1, 2018, all elections functions that were previously performed at KSU were moved to an internal department in the Office of the Secretary of State. I first began working at CES KSU in 2005. Prior to that time, I was the Assistant Director of Elections for the Georgia Secretary of State, and in that position I directed the State of Georgia's transfer to a uniform system of voting; i.e., DRE (direct electronic voting) machines.



4.

As Director of CES, I am ultimately responsible for ensuring that all election ballots built by our office for elections in Georgia are accurate and complete. CES prepares all election ballots for 158 of Georgia's 159 counties. Pike County uses an outside contractor to prepare its election ballots. Nevertheless, by law, CES is required to review any Pike county election ballot before the ballot is finalized and distributed. For the May 22, 2018 General Primary, Nonpartisan General Election, and Special Election, CES requested that all counties submit all information necessary to prepare each county's ballot to the Center no later than 90 days prior to the General Primary. Because the May 22, 2018 Election includes candidates for federal, state, and local offices, the State must prepare thousands of different ballots. The ballots in each precinct within Georgia have slight distinctions that allow results to be calculated on a per precinct basis as required in Georgia.

5.

For any Georgia military and/or overseas civilian voter ("UOCAVA voter")<sup>1</sup> who has submitted an application to vote by absentee ballot, county election officials are required to transmit the absentee ballot for any election for federal office, including a primary election, by no later than 45 days prior to the date of the

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<sup>1</sup> The Uniformed and Overseas Citizens Absentee Voting Act, 52 U.S.C. § 20301 et seq.

election. O.C.G.A. § 21-2-384(a)(2). *See also* 52 U.S.C. § 20302; *United States v. Alabama*, 778 F.3d 926, 934–35 (11th Cir. 2015); *United States v. Georgia*, 778 F.3d 1202, 1203 (11th Cir. 2015). Forty-five days prior to May 22, 2018 is Saturday, April 7, 2018. Therefore, all requested absentee ballots will be transmitted to UOCAVA voters by no later than Friday, April 6, 2018, and completed absentee ballots could begin to be received by counties as early as Monday, April 9, 2018.

6.

In order to ensure that each county absentee ballot clerk has sufficient time to transmit absentee ballots to UOCAVA voters within the statutorily-mandated time frame, CES will be transmitting all ballot images, including images for printed absentee ballots, to the counties' designated ballot printer during the period of March 24, 2018 and April 1, 2018. The counties' designated ballot printer will then print the ballots and forward the same to the counties for use in the election. CES needs approximately one week to transmit all of the ballots needed in each of the 158 counties, and these ballots must be transmitted by no later than 50 days prior to the date of the election in order to ensure that the counties are able to comply with the transmittal requirements in O.C.G.A. § 21-2-384(a)(2).

7.

The process for preparing, proofing, printing, and transmitting ballots to each county takes approximately fifteen days. Therefore, CES began preparing ballots for the May 22, 2018 election on March 10, 2018, the day after the closing of candidate qualifying and more than 80 days prior to the date of the election. Once the ballot is finalized, CES will transmit one copy to the printer (each county contracts separately with a printer to provide its absentee ballots) and a second copy to the county election official.

8.

For a primary election, CES must prepare a separate election database containing all ballots needed within a county for each of the 158 counties.

9.

The ballot is transmitted to the counties at the same time that it is transmitted to the printer. This provides each county election office sufficient time to test the ballot on the DRE machines prior to the commencement of advanced voting.

10.

The timeline outlined above for the May 22, 2018 election is necessary for all federal elections to ensure compliance with the UOCAVA absentee ballot requirements. This includes any runoff elections that may be required after the May 22, 2018 primary, and the date for any such runoff elections has therefore

been set for July 24, 2018 to ensure that counties have an adequate period of time prior to the runoff to send out absentee ballots for that election.

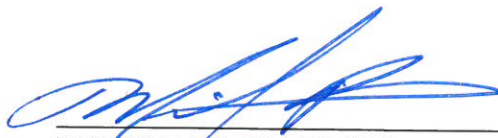
11.

The approximate timeline for ballot creation for the November 6, 2018 General Election is as follows:

- Friday, August 17, 2018 – Ballot preparation to begin (approximately 80 days prior to the election);
- Monday September 10, 2017 to Monday, September 17, 2018 – Transmittal of ballots to counties' designated printers (must be finalized no later than 50 days prior to the election);
- Friday, September 21, 2018 – Final day for counties to transmit absentee ballots to UOCAVA voters (45 days falls on Saturday, September 22, 2018, so the ballots must be transmitted by the previous business day).

I declare under penalty of perjury under the laws of the United States of America, and pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

This 20th day of March 2018.

  
\_\_\_\_\_  
**MICHAEL BARNES**

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

NAACP, *et al.*,

Plaintiffs,

v.

BRIAN KEMP, in his official capacity  
as Secretary of State for the State of  
Georgia,

Defendant.

AUSTIN THOMPSON, *et al.*,

Plaintiffs,

V.

BRIAN KEMP, in his official capacity  
as Secretary of State of the State of  
Georgia,

Defendant.

## DECLARATION OF CHRIS HARVEY

I, Chris Harvey, do hereby declare and state that the following facts are true and correct to the best of my knowledge, information and belief.



1.

I am over the age of 21 years and am in all ways competent to give testimony, suffering no physical or mental disabilities.

2.

I am aware of the fact that this declaration is being submitted in support of Secretary of State Brian Kemp's Brief in Opposition to Plaintiffs' Motion for a Preliminary Injunction.

3.

I am the Director of Elections for the State Elections Division of the Office of the Secretary of State. The Elections Division is responsible for carrying out the duties of the Secretary of State pertaining to election laws, including compiling and maintaining election results, as well as carrying out other responsibilities.

4.

The 2018 Elections and Voter Registration Calendar is attached to this declaration as Exhibit 1.

5.

Voter turnout in special elections is usually considerably lower in Special Elections than in General Primary and General Elections.

6.

The following candidates have qualified for the May 22, 2018 primary elections for House Districts 73, 104, 105, 109, 110, 111, and 130. Those districts with more than one challenger for a party's nomination will hold a primary.

<b>QUALIFYING CANDIDATES</b>	
<b>DISTRICT 73 – No Primary</b>	
KAREN MATHIAK	REPUBLICAN
<b>DISTRICT 104 – No Primary</b>	
ANDREA STEPHENSON	DEMOCRATIC
CHUCK EFSTRATION	REPUBLICAN
<b>DISTRICT 105 – No Democratic Primary</b>	
DONNA MCLEOD	DEMOCRATIC
DONNA SHELDON	REPUBLICAN
PATRICK BATUBENGE	REPUBLICAN
ROBIN MAUCK	REPUBLICAN
<b>DISTRICT 109</b>	
DALE RUTLEDGE	REPUBLICAN
J. BLAKE PRINCE	REPUBLICAN
DENISE GAINES-EDMOND	DEMOCRATIC
REGINA LEWIS-WARD	DEMOCRATIC
<b>DISTRICT 110 – No Primary</b>	
ANDY WELCH	REPUBLICAN
<b>DISTRICT 111 – No Republican Primary</b>	
GEOFF CAUBLE	REPUBLICAN
EL-MAHDI HOLLY	DEMOCRATIC
I. DARRYL PAYTON	DEMOCRATIC
TARJI LEONARD DUNN	DEMOCRATIC
<b>DISTRICT 130 – No Democratic Primary</b>	
DAVID KNIGHT	REPUBLICAN
RAYMOND RAY	REPUBLICAN

7.

In Georgia, the county boards of registrars or boards of elections and registrars serve as the registrar for that county. County officials determine whether applicants are eligible to register to vote and are responsible for updating any information concerning voters in their registration file, including moving individual voters from one state house district to another. The Secretary of State does not have a systematic way of moving voters from one district to another.

8.

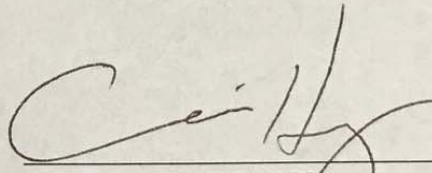
Elections are run like railroads. Their dates, deadlines, and time limits are generally fixed years in advance by statute, and systems used in elections, such as the statewide voter registration database and its many functions are designed to work in a predictable and sequential manner. The difficulties raised by attempting to redistrict voters in the voter registration system between an election and a runoff was not contemplated when Georgia's voter registration system was designed. The redistricting process in the voter registration system is a time-consuming and manual process done by each county. Redistricting has never been attempted between an election and a runoff election, and might have unforeseen consequences. A voter's eligibility to vote in a specific election is set by the registration calendar, and the voter registration system and previous practice do not



contemplate moving voters between voting districts in-between elections. Voters are programmed into the electronic poll books where their specific ballots are assigned, weeks before the election, and the same list that is used for the election is used for runoff elections. Assigning voters to Congressional, Senate, and House districts is done well in advance of each election, and voters are required to be notified changes to their district and polling place in advance of elections.

I declare under penalty of perjury, and pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

This 26th day of March, 2018.

  
**CHRIS HARVEY**  
Director, Division of Elections  
Office of the Secretary of State

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

NAACP, *et al.*,

Plaintiffs,

v.

BRIAN KEMP, in his official capacity  
as Secretary of State for the State of  
Georgia,

\_\_\_\_\_  
Defendant.

AUSTIN THOMPSON, *et al.*,

Plaintiffs,

v.

BRIAN KEMP, in his official capacity  
as Secretary of State of the State of  
Georgia,

\_\_\_\_\_  
Defendant.

Case No. 1:17-cv-01427-  
TCB-WSD-BBM

CONSOLIDATED CASES

**DECLARATION OF TINA LUNSFORD**

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

1.

My name is Tina Lunsford. I am more than 21 years old and I am under no legal disability which would prevent me from giving this affidavit. I am giving this affidavit based on my personal knowledge.

2.

I am the Director of Registration and Elections for Henry County, Georgia. I have held this position since January 9, 2015. As Director, I manage a professional staff of eight. My responsibilities include preparing draft ballots with proper ballot patterns for thirty seven (37) voting precincts; recruiting and hiring 37 poll managers and 600 poll workers; arranging for delivery of 425 DRE (direct recording electronic) voting machines to Henry County's 37 precincts; supervising all aspects of early voting and absentee ballots beginning as early as April 7, 2018; and supervising all aspects of the General Primary/Nonpartisan General Election and general elections (and runoffs, if any).

3.

To hold a court-ordered Special Election parallel with the General Primary/Nonpartisan General Election would have a ripple effect not just to State House District 111 but also to State House Districts 73, 109, 110 and 130.

Henry County had a Special Election for HD 111 on January 9, 2018. Potentially, voters who voted in the January 2018 Special Election would vote in a different State House district which would upset and confuse many voters.

4.

Furthermore, if a Special Election is held in conjunction with the General Election, affected voters could vote for one State House district in the May General Primary and a different State House district in November.

5.

It is also possible that some candidates who qualified between March 3 and 9 to run for state house seats in the General Primary on May 22, 2018 under the 2015 map might no longer reside in the districts for which they qualified to run were the 2012 map to be used.

6.

The estimated costs shown below are based on the fact that Henry County would have to revert to the 2012 state house lines or to court-ordered district lines. These estimated costs do not reflect any additional expenses for advanced voting or any run-off elections.

- Notices to be posted in legal organ
  - Notice of Special Election - \$785
  - Logic & Accuracy testing notice - \$30

- Advanced voting schedule - \$150
  - Intent to tabulate early - \$30
- Mail notice to voters
  - Precinct cards to voters – \$6,720
  - Mailing notification to affected households - \$ 10,000
- Polling location expenses
  - Transportation of equipment to and from - \$1400
  - 74 poll workers - \$10,500
- Procure election supplies
  - Supplies – \$1100
- Procure ballots
  - Ballot setup –\$ 250
  - Provisional ballots – \$9000
  - Absentee by mail ballots – \$5000
  - Test deck – \$250
- Office Labor
  - Proofing of ballot – 6 hours - \$500
  - Redistricting all the affected voters by the 2015 change– 15 days - \$15,000
  - L&A testing – 4-6 days - \$4000
  - Election night tabulation – 5 hours - \$1280
  - Certifying the election – 4 hours \$1000

The estimated total cost to hold a court-ordered Special Election with the General Primary/General Election would be \$66,995. This estimate is under the assumption that the Special Election would be on the same ballot as the General Primary or General Election. If held separately, the costs would triple.

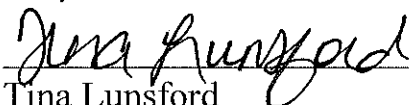
8.

With respect to the notices identified in paragraph 7, if the special election were to be held in conjunction with the General Primary or General Election, the notice of special election would have to be posted 90 days before the election. If held separately, with different facilities, equipment, and poll workers, the notice must be posted at least 29 days in advance.

Notices to affected voters should go out no less than 60 days before a special election so that voters covered by the Uniformed and Overseas Citizens Absentee Voting Act are reached in timely fashion.

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

Executed this 21 day of March, 2018.

  
Tina Lunsford

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

NAACP, *et al.*,

Plaintiffs,

V.

BRIAN KEMP, in his official capacity  
as Secretary of State for the State of  
Georgia,

Defendant.

AUSTIN THOMPSON, *et al.*,

Plaintiffs,

V.

BRIAN KEMP, in his official capacity  
as Secretary of State of the State of  
Georgia,

Defendant.

## DECLARATION OF LYNN LEDFORD

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



1.

My name is Lynn Ledford. I am over the age of 21 years and I am under no legal disability which would prevent me from giving this affidavit. I am giving this affidavit based on my personal knowledge.

2.

I am the Director of Registration and Elections/Directora de Elecciones for Gwinnett County, Georgia. I have held this position since 2001. As Director, I manage a professional staff of 14-20 fulltime. My responsibilities include preparing draft ballots with proper ballot patterns for 156 voting precincts; recruiting and hiring 312 poll managers and 600-2500 poll workers; arranging for delivery of 600-1800 DRE (direct recording electronic) voting machines to Gwinnett County's 156 precincts; supervising all aspects of early voting and absentee ballots beginning as early as April 7, 2018; and supervising all aspects of the General Primary/Nonpartisan General Election and general elections (and runoffs, if any).

3.

Gwinnett County is currently the only county in the State of Georgia that has been designated a Section 203 jurisdiction for Spanish under the Voting Rights Act. This designation requires both voter registration and election items to be



bilingual. In addition to personnel (poll officials), all materials and legal notifications related to an election, including voter registration items, must be translated. This is a three to four step process involving county staff, professional translators, and potentially political parties.

4.

To hold a court-ordered Special Election parallel with the General Primary/Nonpartisan General Election would have a ripple effect not just to State House District 105 but to State House District 104.

5.

In my experience, special elections are not very common. Gwinnett County is not the only user of the facilities that serve as polling places, and those facilities are not only free to be used by others, but the owners of those facilities are also very diligent with scheduling other activities that may preclude their use in a special election scheduled on short notice. As a result, it is often difficult for polling locations to reschedule an activity and having to do so could impact future use of the facility, especially for private facilities.

6.

If a Special Election is held in conjunction with the General Election, affected voters could vote in one State House district in the May General Primary and a different State House District in November.

7.

It is also possible that some candidates who qualified between March 3 and 9 to run for state house seats in the General Primary on May 22, 2018 under the 2015 map might no longer reside in the districts for which they qualified to run were the 2012 map or a new map to be used.

8.

Implementing redistricting changes in response to a court order, like the ordinary process of redistricting, would take several months and several employees, including employees from other county departments. It is a multilayer process that includes, but is not limited to:

- Identification of new political district lines
- Changes to all maps
- Creation of and/or changes to current district combos for ballot building
- Changes in internal, e.g., ballot recap sheets
- Changes to external, e.g., absentee by mail and in-person applications
- Changes to other programs (results reporting systems)
- Changes to databases for voter identification
- Accurate identification of and notification to voters
  - Approximately 500,000+ for county-wide election
  - Approximately 76,000+ for House Districts 104 and 105
- Voter outreach and education

9.

The Georgia General Assembly is considering legislation that would require a statewide change in voting equipment to take place in 2019. If enacted, the new law will have a significant effect on elections operations. Gwinnett County will also have to update all materials related to elections. This includes, but is not limited to, poll official training materials, manuals and online training, voter education and outreach, office staff education, among other things.

10.

Conducting multiple district elections is very confusing to voters. In my experience, special elections historically do not garner the same level of attention and voter turnout as regularly scheduled elections do, and having parallel elections creates a higher level of voter confusion. This situation is made even more confusing when the person elected will be representing the voter for only a short amount of time until the census in 2020 and follow-on redistricting in 2021. When there are stand-alone district elections (HDs 104 and 105), voters think that everyone is eligible to vote in those elections, and become frustrated when they show up at their polling location and learn that it is closed. I believe this type of scenario decreases the public's confidence in the electoral process because some view these types of issues as obstacles to the voting process.

11.

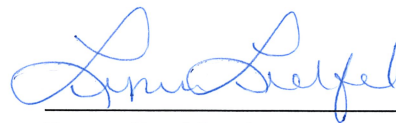
The budgeted impact from conducting multiple district elections is significant. Gwinnett County is conducting its first bilingual elections in 2018, so estimated costs provided here may not be in line with actual spending and, indeed, will not be known until the end of the election cycle which is January 2019. It will take several years to realize the full impact of providing bilingual services to voters.

12.

The estimated cost of conducting a Special Election for House Districts 104 and 105 is \$168,000. That estimate does not include advance in-person satellite locations, runoffs, or specific redistricting costs.

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

Executed this 23 day of March, 2018.



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Lynn Ledford