Field Hearing on Voting Rights and Election Administration in Georgia
Carter Presidential Center
February 19, 2019

Written Testimony of

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To the Subcommittee on Elections of the Committee on House Administration

Good morning. My name is Sean Young, and I am the Legal Director of the ACLU of Georgia. Our organization is dedicated to the fight for voters' rights in the state of Georgia. Since the United States Supreme Court handed down its shameful 2013 decision in *Shelby County v Holder*, we have been in overdrive, fighting the continuous onslaught of racially discriminatory voting policies and practices throughout the state of Georgia. The *Shelby* decision eliminated the requirement for Georgia and other jurisdictions with a history of racial discrimination to obtain approval from a federal court or the U.S. Department of Justice before implementing changes to voting regulations.

Today I'm going to highlight three areas the *Shelby* decision has negatively impacted the ability of people of color in Georgia to exercise their sacred, constitutional right to vote: redistricting, polling place closures, and early voting cutbacks.

Discriminatory Redistricting

First, discriminatory redistricting. The ACLU of Georgia's litigation in Sumter County perfectly illustrates the damage that *Shelby County* has caused.

In 2011, 67% of Sumter County's Board of Education was African American (6 out of 9). Then the General Assembly proposed a redistricting plan that would reduce the percentage of African Americans on the Board to 28% (2 out of 7) and submitted the plan to the US Department of Justice for preclearance. DOJ did not preclear the plan, but when the Supreme Court decided *Shelby County* in 2013, the board was able to immediately implement its discriminatory plan to reduce the number of African Americans on the local board of education.

The ACLU along with co-counsel Bryan Sells, a former DOJ voting rights attorney, brought a Voting Rights lawsuit soon thereafter. And just last summer, a federal court ruled that the plan was discriminatory and violated the Voting Rights Act. *See* Exhibit 1 (copy of rulings). But that ruling was issued in 2018—*five years* after the discriminatory plan went into effect. That is *five years* of expensive, time-consuming litigation consisting of hundreds if not thousands of

attorney hours and thousands of dollars in expert fees; *five years* of Board of Education elections under a discriminatory and illegal electoral system; and *five years* during which African American schoolchildren and their parents were unable to have their interests adequately represented in the unrepresentative school board. If the preclearance requirement of the Voting Rights Act had remained in place, none of this would have happened to the kids of Sumter County, who deserve a non-discriminatory school board that is responsive to their needs.

Discriminatory Polling Place Closures

Second, discriminatory polling place closures. In the last two years alone, the ACLU of Georgia and coalition partners have expended significant time and resources to beat back discriminatory polling place closures in three counties: Randolph, Fulton, and Irwin.

Last August, in Randolph County, the Board of Elections tried to close 7 out of 9 polling places in a county whose population is 60% Black, affecting thousands of voters on the eve of the state's high-profile 2018 general election. *See* Exhibit 2 (ACLU of Georgia demand letter to Randolph County outlining discriminatory impact). Located in the southwest corner of the state, Randolph County is part of what is known as the Black Belt. Our client read the small notice that the county board placed in the legal section of a local weekly paper and reached out for our help. With less than two weeks to protect the voter rights of the Randolph county citizens, the ACLU of Georgia immediately implemented a three-pronged strategy that incorporated legal, media, and on-the-ground community organizing.

Our executive director, Andrea Young, and I testified at the two public meetings that the board held. The coalition work packed the public meetings with local residents who rose up in opposition to the proposed closures. Our media strategy ensured wall-to-wall local, state, and national media attention. We spent dozens of hours hastily putting together a lawsuit that would be ready to go in case the board voted to shutter 75% of the county's polling places. Again, all of this occurred in less than 2 weeks.

Only after the ACLU of Georgia threatened to sue coupled with the overwhelming local opposition and the immense negative media coverage did the two-member board of elections vote unanimously to keep open the polling places.

In the course of that advocacy, however, we learned that the board had hired a consultant handpicked by the Secretary of State who had been recommending polling place closures in counties that were almost all disproportionately Black.

In Fulton County, the Board of Elections violated state law that required proper public notice in its attempt to close polling places in neighborhoods that were over 80% African-American, affecting over 14,000 voters. *See* Exhibit 3 (proposed polling place changes and number of voters of each race affected). Just to put this into perspective, that was the same year that Atlanta had a high-profile mayoral election that was decided by less than 1,000 votes.

Even after the ACLU of Georgia testified about the discriminatory impact, the board voted to close the polls. The ACLU of Georgia then filed a successful lawsuit over the board's violation of the state's public notice law—which we had to put together within days, to nullify the decision. After the ACLU of Georgia nullified the decision through the courts, a coalition of community organizers had to quickly recruit dozens of neighborhood canvassers who worked tirelessly over several days to organize overwhelming opposition. It was only after this furious amount of activity compressed in less than a one-month timeframe that the local board of elections unanimously reversed its prior decision.

In Irwin County, the Board of Elections tried to close the only polling place that existed in the only Black neighborhood of the county, affecting thousands of voters, contrary to the recommendations of the non-partisan Association of County Commissioners of Georgia. *See* Exhibit 4 (ACLU of Georgia demand letter to Irwin County outlining discriminatory impact). The board alleged that it wanted to close this polling place to save costs, all while keeping open a polling place located at the Jefferson Davis Memorial Park in a neighborhood that was 99% white. After the ACLU of Georgia threatened litigation, the board rejected this discriminatory proposal. The ACLU of Georgia only learned about these proposed closures in this rural Georgia county because one of its members just happened to live in the area and alert us to it.

While these are stories in three counties, Georgia has 159 counties, and over 200 polling places have closed since *Shelby County*. No organization has eyes and ears everywhere in the state. Playing whack-a-mole is not a sustainable strategy to guarantee Georgians unfettered ability to exercise their sacred, constitutional right to vote.

Discriminatory Cutbacks to Early Voting

Third, discriminatory cutbacks to early voting. It seems like every year since *Shelby County*, officials are trying to eliminate early voting on Sundays, which everyone knows is when many African American churches organize Souls to the Polls initiatives.

Politicians haven't been shy about why they hate Sunday voting so much. In 2014, a state representative criticized his county elections officials for allowing Sunday voting at a convenient location, because, "this location is dominated by African American shoppers and it is near several large African American mega churches," and that he would "prefer more educated voters." *See* Exhibit 5 (news article reporting on statements). If there is no clearer evidence of racially discriminatory intent, I don't know what is.

Even after that embarrassing—but revealing—episode, state legislators have repeatedly introduced legislation preventing counties from having early voting on Sundays. It has taken an overwhelming amount of resources and advocacy from all our partners to defeat these bills year after year without preclearance.

Conclusion

People of color are becoming a greater percentage of the population in Georgia year by year. Since 2013, five counties have become majority people of color. Ever since African Americans won the right to vote in 1865, states have stopped at nothing to make it harder for them to vote, and the last five years since *Shelby County* have been no exception here in Georgia. As these examples illustrate, these changes have forced lawyers and community activists to expend scarce resources we do not have to scramble and stop every discriminatory change that pops up—even in high-profile heavily populated places like Fulton County. This exhausting expenditure of resources is exactly what preclearance was designed to prevent, not to mention the discriminatory voting measures themselves. The ACLU of Georgia urges the passage of a preclearance provision for the Voting Rights Act.

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

MATHIS KEARSE WRIGHT, JR.,	:	
	:	
Plaintiff,	:	
	:	CASE NO.: 1:14-CV-42 (WLS)
v.	:	
	:	
SUMTER COUNTY BOARD OF ELECTIONS AND REGISTRATION,	:	
	:	
Defendant.	:	
_____	:	

ORDER

On November 20, 2017, the Court issued an order memorializing the pretrial conference in this action. The order directed the parties to "submit their views on the procedure required for an order implementing a redistricting plan in this action were Plaintiff to prevail . . . ." (Doc. 134.) Plaintiff Mathis Kearse Wright, Jr. submitted his views first. (Doc. 140.) He argued the Court should give elected officials the first opportunity to remedy an unlawful plan, but that timing or other factors may make doing so impracticable. (*Id.* at 3.) Any new plan put in place, he noted, must not violate Section 2 of the Voting Rights Act. (*Id.* at 4.) Defendant Sumter County Board of Elections and Registration agreed that the legislature should have the first opportunity to remedy an unlawful plan. (Doc. 141 at 3.) If the legislature failed to do so, it noted, the Court would have to put a plan in place which would approximate the plan the legislature would have put in place. (*Id.* at 4.)

The Court then held a bench trial in this matter on December 11–14, 2017. (Docs. 144–146; 147.) Following the trial, the Court ordered the parties to submit a series of post-trial briefs, including proposed remedial plans. (Doc. 147.)

Wright filed his proposed remedial plans on January 22, 2018. (Doc. 174.) Sumter County filed a response on February 5, 2018, (Doc. 176), and Wright then filed a reply on February 14, 2018. (Doc. 180.) In the midst of that briefing, the Court filed an order

explaining that a series of motions filed and hearings requested by the parties would prevent it from determining liability and implementing a remedial plan prior to the scheduled May 2018 elections. (Doc. 179.) It ordered the parties to files brief no later than February 23, 2018, and no longer than five pages, addressing whether the Court should allow the upcoming election to proceed as planned with the current districts or enjoin the election. (Doc. 179.)

Wright responded that, in the event the Court found the current plan to violate Section 2, the election should be enjoined. (Doc. 181 at 1.) He suggested the election be moved to the general election on Tuesday, November 6, 2018. (*Id.* at 3.) Sumter County disagreed. (Doc. 182.) It suggested that, even if the Court ruled in Wright's favor on the merits, the elections should go forward as scheduled. (*Id.* at 1.) The Court held a status conference on February 28, 2018. Wright suggested the following timeline for a general election:

- July 23, 2018: Deadline for new district boundaries to be set.
- August 6–10, 2018: Candidate qualifying period.
- August 8, 2018: Approximate time ballots begin being created.
- September 21, 2018: Deadline for ballots to be made available.
- November 6, 2018: General election.

(Doc. 189.) The Court noted that those dates were reasonable in the event the election was enjoined. (*Id.*)

On March 17, 2018, the Court found that the current school board districts violate Section 2 of the Voting Rights Act. (Doc. 198.) The Court noted that the Georgia General Assembly would be in session through at least Thursday, March 29, 2018. S.R. 631, 154th Gen. Assemb., Reg. Sess. (Ga. 2018). It ordered Sumter County "to confer with Sumter County's legislative delegation and inform th[e] Court no later than Monday, March 26, 2018 whether the General Assembly is inclined to enact a remedial plan before adjourning sine die or, if not, a timeline for when it believes a remedial plan could be adopted." (Doc. 198 at 37.) Sumter County filed a status report on March, 26, 2018. (Doc. 201.) It spoke with Senator Freddie Powell Sims, the representative for Georgia Senate

District 12, who informed counsel that the Assembly would not be able to change the school board districts before it returned to session in January 2019. (*Id.*)

Also on March 26, 2018, the parties filed supplemental briefs regarding remedy proposals. Wright argued that, if the General Assembly failed to enact a remedial plan before adjourning, the Court should enact a remedial plan as an interim remedy and move the election date to November 6, 2018. (Doc. 199 at 1.) Again, Sumter County disagreed. (Doc. 200.) It suggested the Court leave the May 2018 election in place and permit the Assembly to enact a plan in 2019. (*Id.* at 29.) Further, it requested the Court issue a partial final judgment in accordance with Federal Rule of Civil Procedure 54(b) and reserve jurisdiction over remedial issues until after the Assembly has an opportunity to act. (*Id.* at 30.)

On March 30, 2018, Wright filed an Emergency Motion for a Temporary Restraining Order and Preliminary Injunction. (Doc. 202.) He informs the Court that, in the absence of an injunction, absentee ballots may begin being distributed on April 3, 2018. (*Id.* at 4.) The ballots for the election have already been printed and cannot be changed. (Doc. 202-1.) Wright requests that Sumter County: "(a) redact the names of school-board candidates by means of a sticker or permanent marker; (b) include a notice with the ballots that the school-board election has been cancelled; or (c) both. Alternatively, the Court could enjoin the defendant from distributing any ballots for a few days while the parties attempt to agree on a suitable procedure for cancelling the election." (Doc. 202 at 8 (citation omitted).)

Later the same day, Sumter County filed a Notice Regarding Briefing. (Doc. 203.) It notes that Wright's motion was filed the morning of Good Friday and seeks nearly-immediate Court action without response from the County. (*Id.*) It requests until Wednesday, April 4, 2018 to file a response. (*Id.*)

DISCUSSION

At the outset, the Court notes that under the totality of the circumstances, including its resolving of dispositive motions, a bench trial, post-trial hearings, and extensive and ongoing briefing by the parties, it has an adequate record before it to consider injunctive relief consistent with its duty to protect the right at issue. Further, Sumter County—as will

be further explained—will be provided an opportunity to respond to this order consistent with the local rules.

Before delving into the appropriate remedy, the Court reviews the different forms of injunctive relief available in federal court. "[T]here are basically three types of injunctions that can be issued by a federal court[:] . . . the temporary-restraining order, the preliminary injunction, and the permanent injunction." 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2941 (3d ed.).

- A temporary-restraining order typically is sought and issued on an ex parte basis and operates to prevent immediate irreparable injury until a hearing can be held to determine the need for a preliminary injunction.
- A preliminary injunction is effective until a decision has been reached at a trial on the merits.
- A permanent injunction will issue only after a right thereto has been established at a trial on the merits.

Id. (formatting altered). Because the Court has already decided the merits of this action in Wright's favor, neither a temporary restraining order nor a preliminary injunction are appropriate. Rather, the Court must decide whether to issue a permanent injunction, the standards for which vary slightly from those cited by Wright. "[T]o obtain a permanent injunction, a party must show: (1) that he has prevailed in establishing the violation of the right asserted in his complaint; (2) there is no adequate remedy at law for the violation of this right; and (3) irreparable harm will result if the court does not order injunctive relief." *Alabama v. U.S. Army Corps of Engineers*, 424 F.3d 1117, 1128 (11th Cir. 2005).

To begin with, the Court agrees with the parties "that redistricting and reapportioning legislative bodies is a legislative task which the federal courts should make every effort not to pre-empt." *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978). The Georgia General Assembly should have the first opportunity to craft a remedial plan when doing so is "practicable." *Id.* at 540. Here, it is clearly not practicable to defer to the Assembly for the 2018 election. Both the Georgia Senate and the Georgia House of Representatives have now adjourned sine die, and the senator representing Sumter County has informed the Court through Sumter County that the Assembly will not act on this issue until 2019.

"[O]nce a State's[—or here, school board's—]legislative apportionment scheme has been found to be unconstitutional, it would be the unusual case in which a court would be justified in not taking appropriate action to insure that no further elections are conducted under the invalid plan." *Reynolds v. Sims*, 377 U.S. 533, 585 (1964). Unsurprisingly, then, the Court finds that all three requirements for a permanent injunction have been met. First, Wright has prevailed in his claim. (Doc. 198). Second, there is no adequate remedy at law for a violation of Section 2 of the Voting Rights Act. *See Dillard v. Crenshaw Cty.*, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986) ("it is simply not possible to pay someone for having been denied a right of this importance"). Likewise, and third, the loss of a meaningful right to vote creates an irreparable harm. *Id.*

Once the Court decides the standards for a permanent injunction are met, it "must undertake an 'equitable weighing process' to select a fitting remedy for the legal violations it has identified . . . ." *North Carolina v. Covington*, 137 S. Ct. 1624, 1625 (2017) (citation omitted). The Court must consider "a special blend of what is necessary, what is fair, and what is workable." *New York v. Cathedral Acad.*, 434 U.S. 125, 129 (1977) (quoting *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973)); *see Covington*, 137 S. Ct. at 1625 (applying *New York* to the voting rights context). Relief is not automatic. A district court may permit an election to proceed even after a finding that the districts are unlawful when "an impending election is imminent and a State's election machinery is already in progress." *Id.* There is no shortage of courts that have done so. *See*, *e.g.*, Order at 162–163, *Covington v. North Carolina*, No. 1:15-cv-399 (M.D.N.C. August 11, 2016).

The Supreme Court recently noted, in the context of a district court setting a special election to remedy a racial gerrymander, a non-exhaustive list of factors district courts may consider in deciding a proper equitable remedy. They include "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." *North Carolina v. Covington*, 137 S. Ct. 1624, 1626 (2017).

Here, the infringement of black voters' right to vote in Sumter County is severe. Despite African Americans constituting 49.5% of the voting age population in Sumter County, they are only able to elect their candidates of choice to 29% of the school board seats. (Doc. 198 at 2.) Were the Court to allow the election to proceed, this vastly disproportionate representation would continue for another two years. Second, the Court finds that enjoining this election and moving it to November would cause minimal disruptions to the ordinary processes of governance. New school board members do not begin their term until the January following the election, so moving the election date from May to November will not interfere with the regular terms of board members. (Doc. 153-85); *cf. Covington*, 137 S. Ct. at 1625 (vacating injunction which would have shortened legislators' terms from two years to one). The Court acknowledges that voters may be confused by the changed election date. However, the school board held elections in November as recently as 2010. (Doc. 153-61.) A November school board election will not be an unusual sight for Sumter County voters. Moreover, Wright is not proposing to move the election to an unusual, specially set election date. *Cf Covington*, 137 S. Ct. at 1625 (setting special primary and general elections for the fall of 2017). Voters are used to elections taking place on the first Tuesday after the first Monday in November of even-numbered years. A number of races will already be on the ballot, and the addition of a school board election is unlikely to disrupt the election process.

Finally, the Court is acting with proper judicial restraint. It attempted to defer to the General Assembly to craft a remedy for the 2018 elections. (Docs. 198; 201.) It is only after learning that the Assembly would be unable to act that the Court considered an injunction. Any injunction and specially set election will be for the 2018 election only. The Court will again defer to the Assembly when it returns to session in 2019.

CONCLUSION

Accordingly, the Court finds that the balance of equities weighs toward enjoining the May 2018 election as to the Board of Education. The Court construes Wright's Emergency Motion for a Temporary Restraining Order and Preliminary Injunction (Doc. 202) as a motion for a permanent injunction. Pursuant to Middle District of Georgia Local Rule 7.7,

the Court finds that the extensive briefing on this issue, as outlined above, has allowed it to determine "the relative legal positions of the parties so as to obviate the need for the filing of opposition thereto." The Court will entertain any objections to this order filed **no later than Friday, April 6, 2018**. Wright's motion for a permanent injunction (Doc. 202) is **GRANTED**. The Sumter County Board of Education election scheduled for May 22, 2018 is **ENJOINED** and **RESET** for November 6, 2018. Defendant Sumter County Board of Elections and Registration is hereby **ORDERED** to redact the names of school-board candidates by means of a sticker or permanent marker on all ballots distributed for the May 22, 2018 election, include a notice with all ballots for the May 22, 2018 election that the school-board election has been cancelled, or petition the Court prior to distributing any ballots for the May 22, 2018 election of another method by which it intends to inform voters in the May 22, 2018 election that the races for the Sumter County Board of Education has been enjoined.[1] Defendant Sumter County Board of Elections and Registration is **ENJOINED** from tabulating the votes cast in the May 22, 2018 election for any position on the Sumter County Board of Education.

The Court will enter an order **no later than July 23, 2018** setting interim boundaries for the new Sumter County Board of Education districts. The election for all Sumter County Board of Education seats set for May 22, 2018 will instead take place on **November 6, 2018**. The candidate qualifying period for that election will begin **August 6, 2018** and end **August 10, 2018**. The parties should inform the Court as soon as practicable if any of these deadlines are unworkable or if additional deadlines need to be set by Court order.

SO ORDERED, this 30th day of March 2018.

/s/ W. Louis Sands
W. LOUIS SANDS, SR. JUDGE
UNITED STATES DISTRICT COURT

[1] The Court notes that Sumter County does not believe it has sufficient time to print and prepare notices for each absentee ballot or to redact all of the Board of Education candidates' names from the ballots. (Doc. 203 at 2.) The Court intends to be flexible with this requirement. In the event so many absentee ballots are to be distributed on April 3, 2018, that the County is unable to redact them all, the Court is not expecting Defendant's counsel to "cancel[] their plans to be with their families this holiday weekend." (*Id.*) Rather, Sumter County should formulate a reasonable plan to inform voters that the election has been enjoined and present it to the Court as soon as possible.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
ALBANY DIVISION

MATHIS KEARSE WRIGHT, JR.,	:	
	:	
Plaintiff,	:	
	:	CASE NO.: 1:14-CV-42 (WLS)
v.	:	
	:	
SUMTER COUNTY BOARD OF ELECTIONS AND REGISTRATION,	:	
	:	
Defendant.	:	
_____	:	

ORDER

The Court held a bench trial in the instant action on December 11–14, 2017, to determine whether the method of electing members to the Board of Education in Sumter County, Georgia violated Section 2 of the Voting Rights Act. (Docs. 144–146; 147.) Following the trial, the Court ordered the parties to submit a series of post-trial briefs, including proposed remedial plans. (Doc. 147.) Plaintiff Mathis Kearse Wright, Jr. filed his proposed remedial plans on January 22, 2018. (Doc. 174.) Defendant Sumter County Board of Elections and Registration filed a response on February 5, 2018, (Doc. 176), and Wright then filed a reply on February 14, 2018. (Doc. 180.) In the midst of that briefing, the Court filed an order explaining that a series of motions filed and hearings requested by the parties would prevent it from determining liability and implementing a remedial plan before the scheduled May 2018 elections. (Doc. 179.) It ordered the parties to files briefs no later than February 23, 2018, and no longer than five pages, addressing whether the Court should allow the upcoming election to proceed as planned with the current districts or enjoin the election. (Doc. 179.)

On March 17, 2018, the Court found that the method of elections did indeed violate the Voting Rights Act. (Doc. 198.) On March 26, 2018, the parties filed supplemental briefs regarding remedy proposals. Wright argued that, if the General Assembly failed to enact a

remedial plan before adjourning, the Court should enact a remedial plan as an interim remedy and move the election date to November 6, 2018. (Doc. 199 at 1.) Sumter County suggested the Court leave the May 2018 election in place and permit the Assembly to enact a plan in 2019. (*Id.* at 29.)

On March 30, 2018, Wright filed an Emergency Motion for a Temporary Restraining Order and Preliminary Injunction. (Doc. 202.) He informed the Court that, in the absence of an injunction, absentee ballots might begin being distributed on April 3, 2018. (*Id.* at 4.) The Court construed the filing as one for a permanent injunction. (Doc. 204 at 4.) It granted the motion as follows:

> The Sumter County Board of Education election scheduled for May 22, 2018 is **ENJOINED** and **RESET** for November 6, 2018. Defendant Sumter County Board of Elections and Registration is hereby **ORDERED** to redact the names of school-board candidates by means of a sticker or permanent marker on all ballots distributed for the May 22, 2018 election, include a notice with all ballots for the May 22, 2018 election that the school-board election has been cancelled, or petition the Court prior to distributing any ballots for the May 22, 2018 election of another method by which it intends to inform voters in the May 22, 2018 election that the races for the Sumter County Board of Education ha[ve] been enjoined. Defendant Sumter County Board of Elections and Registration is **ENJOINED** from tabulating the votes cast in the May 22, 2018 election for any position on the Sumter County Board of Education.

(*Id.* at 204 (footnote omitted).) The Court indicated that it would "enter an order no later than July 23, 2018 setting interim boundaries for the new Sumter County Board of Education districts." (*Id* (emphasis removed).) In accordance with the local rules, Sumter County then filed objections to the order. (Doc. 205.) The Court overruled the objections but did clarify that it only intended to enter an ordering concerning the parties' remedial proposals by July 23, 2018. (Doc. 206 at 6.) "The Court is not suggesting it has determined one of Wright's proposed remedial plans will, in fact, be implemented." (*Id.*)

On April 11, 2018, Sumter County filed a notice of appeal as to the Court's injunction, "and all orders forming the basis of or relating to that injunction, including without limitation the Court's order regarding liability." (Doc. 207 (citation omitted).) Two days later, Sumter County moved to expedite the appeal so that the United States Court of

Appeals for the Eleventh Circuit could issue an order before the end of July 2018. Motion to Expedite Appeal, *Wright v. Sumter Cty. Bd. of Elections & Registration*, No. 18-11510 (11th Cir. April 13, 2018). It expressed concern that, if the court did not do so, the November election would take place with whatever plan this Court decided to implement. *Id.* at 14–15. Wright responded to the motion, and in the same response, moved to dismiss the appeal. Wright implied that the County was using the injunction as an impermissible bootstrap to challenge the underlying finding of liability prior to the Court entering judgment, and that the challenge to the injunction was moot. Response in Opposition to the Defendant-Appellant's Motion to Expedite Appeal and Motion to Dismiss, *Wright v. Sumter Cty. Bd. of Elections & Registration*, No. 18-11510 (11th Cir. April 18, 2018). As to the request to expedite, Wright stated:

> The district court has indicated that it intends to issue at least one further remedial order before July 23. (ECF 204 at 7.) The district court has not asked for further briefing, and that order could come at any time. If that order comes down before this appeal is resolved, then additional briefing and perhaps re-argument could become necessary. That is just a waste of resources.

Id. at 13.

The Eleventh Circuit first denied the motion to expedite, "without prejudice to the right of either party to seek a stay and/or expedited review upon the district court issuing an order setting interim boundaries for the Sumter County Board of Election districts." (Doc. 212.) The court then summarily denied the motion to dismiss. (Doc. 213.) The appeal remains pending. Wright's brief is due on July 5, 2018.

DISCUSSION

The Court issues this order to inform the parties that it does not intend to adopt any remedial district boundaries while the instant appeal remains pending. Despite the parties' and the Eleventh Circuit's assumptions to the contrary, the Court finds that it lacks jurisdiction to enter any such order.

"The filing of a notice of appeal is an event of jurisdictional significance—it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56,

58 (1982). However, the divestment is not absolute. Federal Rule of Civil Procedure 62(c) permits the district court to "suspend, modify, restore, or grant an injunction on terms for bond or other terms that secure the opposing party's rights" while an appeal to the injunction is pending. There is little case law in the Eleventh Circuit interpreting Rule 62(c), but other circuits have been unanimous in narrowly construing it to "grant only such relief as may be necessary to preserve the status quo pending an appeal where the consent of the court of appeals has not been obtained." *Int'l Ass'n of Machinists & Aerospace Workers, AFL-CIO v. E. Air Lines, Inc.*, 847 F.2d 1014, 1018 (2d Cir. 1988); *see Coastal Corp. v. Texas E. Corp.*, 869 F.2d 817, 819 (5th Cir. 1989) ("Several circuits have held, or at least strongly implied, that the district court may not alter the injunction once an appeal has been filed except to maintain the status quo of the parties pending the appeal."); *Dillard v. City of Foley*, 926 F. Supp. 1053, 1075 (M.D. Ala. 1995) ("The purpose of Rule 62(c) is to allow district courts to retain jurisdiction over a case to maintain the status quo where equity requires it while the case is on appeal."). "The appellate court is entitled to review a fixed, rather than a mobile, record. Additional findings that move the target are disfavored." *Fed. Trade Comm'n v. Enforma Nat. Prod., Inc.*, 362 F.3d 1204, 1216 n.11 (9th Cir. 2004) (quotations and citations omitted).

Adhering to those principles, one district court recently refused to consider a request to enjoin one section of an executive order when another section of that same order had already been enjoined and was on appeal. *Int'l Refugee Assistance Project v. Trump*, No. CV TDC-17-0361, 2017 WL 1315538, at *2 (D. Md. Apr. 10, 2017). Likewise, over two decades earlier, a district court in our circuit addressed the same issue. *See Dillard*, 926 F. Supp. 1053.[1] The court had approved a consent decree directing a city to adopt a specified annexation procedure for surrounding areas because its previous practice had been steeped in racial animus. A notice of appeal was filed, and while pending, a motion was filed to exclude white-majority areas from the new annexation procedure. *Id.* at 1075. The court found that it

[1] For reasons not clear to the Court, Westlaw includes the order approving the consent decree, the consent decree itself, and the order denying modification in a single document. The Court refers only to the order denying modification, dated February 13, 1996. To assist the parties in finding the case, if they are so inclined, the Court cites the combined document rather than to the less readily accessible docket from a less technologically advanced time.

lacked the authority to issue any such order, in part because it "would not maintain the status quo; it would permit the implementation of annexation procedures only in majority African–American Areas and would delay the implementation in majority white Areas for an undetermined period." *Id.* Rule 62(c), the court found, did not permit any such modification. *Id.*

Here, the Court finds that imposing new district boundaries for Sumter County is clearly "involved" with the appeal in this case. The Eleventh Circuit is considering both the Court's underlying liability order and its decision to move the May election to November. A decision on whether to and how to establish the boundaries for the next election is "involved" with those underlying decisions. As Wright admits, the boundaries are so connected to the underlying orders that any subsequent order by the Court would require "additional briefing and perhaps re-argument" in front of the Court of Appeals.

Further, the Court finds that any modification of the injunction to include boundaries for the November election is not permitted by Rule 62(c). The status quo is the boundaries as they currently exist. Any subsequent order has the potential to disrupt that. The Eleventh Circuit has declined to move expeditiously on the appeal and has declined to return jurisdiction to this Court. It is thus owed "a fixed, rather than a mobile, record." *Enforma*, 362 F.3d at 1216 n.11. By Wright's admission, any further order by the Court while the appeal is pending risks wasting the Eleventh Circuit's judicial resources. The Court finds no justification for doing so.[2]

Accordingly, the Court's March 30, 2018 order is **MODIFIED** to remove its self-imposed July 23, 2018 deadline for considering interim boundaries. A series of reset deadlines will be ordered upon remand from the Court of Appeals, if appropriate. Compliance with the Court's March 30, 2018 injunction requires only that the Sumter

[2] Rule 62.1(a) permits the Court to defer, deny, or seek remand from the Court of Appeals to consider "a timely motion . . . made for relief that the court lacks authority to grant because of an appeal . . . ." The Court does not believe its own stated intention to consider further injunctive relief can be construed as a "timely motion." However, to the extent it can—and to preempt any unnecessary request from Wright—the Court chooses to defer any such motion. The Court of Appeals was aware that this Court intended to issue an order by July 23, 2018, and chose not to return jurisdiction to the Court by that date. The Court finds no reason to disrupt that decision.

County Board of Education elections previously scheduled for May 22, 2018 be held on November 6, 2018.

SO ORDERED, this 21st day of June 2018.

/s/ W. Louis Sands
W. LOUIS SANDS, SR. JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT 2

ACLU Georgia

P.O. Box 77208, Atlanta, GA 30357
770.303.8111|syoung@acluga.org

August 14, 2018

Randolph County Board of Elections and Registration
P.O. Box 532
Cuthbert, GA 39840
tblack.randolphcounty@gmail.com

CC: Randolph County Board of Commissioners
P.O. Box 221
Cuthbert, GA 39840
randolphclerkga@gmail.com

Via Certified Mail and E-mail

To the Members of the Randolph County Board of Elections and Registration,

The ACLU of Georgia writes to express grave concern about your discriminatory proposal to eliminate over 75% of polling places (7 out of 9) on the eve of the November elections. These polling place closures will virtually guarantee lower voter turnout in a Black Belt county that is predominantly African-American (60%),[1] and will completely prevent rural voters without transportation (again, disproportionately African-American) from voting in-person on Election Day.

The timing of your proposal is also suspicious and calls to question your true motives behind this proposal. These are the exact same polling places used in the primary and primary run-off earlier this year. It makes no sense to suddenly *reduce* the number of polling places for this November's election, which will see far higher voter turnout than in the primaries or the primary run-off. Your proposal has also been plagued by procedural irregularities that cast further doubt about the real motivation behind these proposals.

Making it disproportionately harder for African American voters to cast a ballot—especially when done so deliberately—is a violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, and the Fourteenth and Fifteenth Amendments to the United States Constitution. We demand that you reject this proposal or you will face potential legal liability.

[1] Attached as Exhibit A is the map showing the two precincts that would remain after the proposed consolidation. According to your public notice, all the polling places designated in all capital letters will be eliminated except "CUTHBERT/COURTHOUSE" and "SHELLMAN".

I. Suddenly eliminating 7 out of 9 polling places in a predominantly African-American county is discriminatory and unjustifiable

As you are aware, Randolph County is in the Black Belt and is predominantly African-American. According to the latest Census figures, its proportion of African Americans is over 61.4%, which is twice the proportion of African Americans in the entire state (32.2%). *See* Exhibit B. Making it harder for Randolph County voters to cast a ballot means making it disproportionately harder for African Americans in the State of Georgia to cast a ballot in this November's elections. Indeed, the eliminated polling place with the highest registered voter population, Cuthbert Middle School, serves a *96.7%* Black population (330 registered voters out of 341 registered voters assigned to the polling place).

Furthermore, your elimination of polling places surrounding Cuthbert and Shellman will completely prevent rural voters without transportation from voting in-person on Election Day. There is about a 10-mile distance from each of the eliminated polling places to one of the two polling places that would remain. *See* Exhibit A. For a voter with a car, that adds about 10 to 20 minutes of driving to reach the new polling place; for a voter without a car, that is a *3.5 hour walk.* And there is no public transportation from these outlying areas into Cuthbert and Shellman.

These transportation burdens will also fall disproportionately on African Americans. Randolph County, which is disproportionately African-American, has over *three times* as many people without vehicles as compared to the state of Georgia—22.3% of Randolph County households lack vehicles, as compared to 6.9% of all Georgia households. *See* Exhibit C; *see also* https://bit.ly/2MiUQ2n (racially disparate vehicle ownership statistics nationwide). The poverty rate of Randolph County is also nearly twice that of the state (30.5% compared to 16.0%), and its median income is 40% lower than the rest of the state ($30,358 compared to $51,037). *See* Exhibit B.

When polling place configurations or closures have such a starkly disproportionate impact on racial minorities or lower-income rural voters without transportation, such closures almost certainly constitute a violation of the Voting Rights Act or the United States Constitution. Several federal courts have struck down these kinds of plans on this basis. *See, e.g., Common Cause Indiana v. Marion Cnty. Election Bd.*, 311 F. Supp. 3d 949 (S.D. Ind. 2018) (shutdown of early voting locations likely unconstitutional because of "its disparate impact on voters who lack the financial means or flexible schedules (i.e., those with little power over their own conditions of work, study, or travel) to surmount the obstacles of time and expense imposed [by the closures]"); *Sanchez v. Cegavske*, 214 F. Supp.3d 961, 974 (D. Nevada Oct. 7, 2016) (likely violation of Voting Rights Act where "the distance [one] must travel [to polling location] are a material limitation that bears more heavily on members of [the Native American tribe]" compared to white voters, "especially given their relative difficulty in accessing transportation [and] affording travel"); *Spirit Lake Tribe v. Benson Cnty.*, No. 2:10-cv-095, 2010 WL 4226614, at *3-*4 (D.N.D. Oct. 21, 2010) (closure of polling place on Native American reservation likely violated Voting Rights Act, where Natives have "markedly lower socioeconomic status compared to the white population"); *Operation Push v. Allain*, 674 F. Supp. 1245, 1262-68 (N.D. Miss. 1987) (prohibition on satellite registration offices in disproportionately minority areas

violated Voting Rights Act where there were "vast socio-economic disparities between blacks and whites in Mississippi"); *Brown v. Dean*, 555 F. Supp. 502, 504-05 (D.R.I. 1982) ("the use of polling places at locations remote from black communities, or at places calculated to intimidate blacks from entering (when alternatives were available)" violates Voting Rights Act).

II. There is evidence that your proposal is motivated by discriminatory intent

There is also evidence that your proposal is motivated by discriminatory intent. Restrictions on voting motivated by discriminatory intent violate the Voting Rights Act and are unconstitutional. "Subjects of proper inquiry in determining whether racially discriminatory intent exist[s] include: the racial impact of the official action; the historical background of the decision; the specific sequence of events leading up to the challenged law; departures from substantive and procedural norms; and legislative or administrative history." *Lewis v. Governor of Alabama*, --- F.3d ----, 2018 WL 3552408 (11th Cir. July 25, 2018) (quoting *Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252, 266-68 (1977) (quotation marks omitted)).

As noted above, the racial impact of eliminating over 75% of polling places in a Black Belt county on the eve of an election is obvious. The timing of your decision is also suspicious. These are the exact same polling places used in the primaries and primary run-off earlier this year. It makes no sense to suddenly *reduce* the number of polling places for this November's high-turnout general election, which will see far higher voter turnout than in the primaries or the primary run-off.

As experienced elections officials, you are further aware that suddenly changing polling locations midstream is likely to cause voter confusion, especially for those who voted earlier this year. This, combined with the fact that this race involves a first-time African-American nominee for governor, further casts doubts about your motives.

Odd procedural irregularities also plague this decision-making process. On August 9, 2018, you simultaneously took out two separate notices in the local paper with conflicting and confusing information about these polling place closures. *See* Exhibits D, E. In the first notice, you say that the Randolph County Board of Elections & Registration will be holding two public meetings on the subject: one on August 16 and one on August 17, at the two polling locations that would remain under the plan. *See* Exhibit D. This notice suggests that a final decision will be made on August 17. This, of course, would be illegal, because state law requires you to provide notice for two consecutive weeks before any polling place changes. *See* O.C.G.A. § 21-2-265(a). In the second notice, you say that the Randolph County Board of Elections & Registration will be holding a meeting on this proposal on August 24, without specifying a time or location for this meeting. *See* Exhibit E.

In addition to these procedural irregularities, we submitted an Open Records Request to your office on Thursday, August 9, 2018, *see* Exhibit F, requesting information related to these proposed closures, which would include the "full investigation of the facts" that you are required to perform before any precinct changes occur. O.C.G.A. § 21-2-262(a). However, you did not

respond within three business days (Tuesday, August 14, 2018) as required by state law. *See* O.C.G.A. § 50-18-71(b)(1)(A). It is now the end of the business day and we have yet to receive a response. We can only assume that you have not performed the full investigation or analysis you are statutorily required to perform, that you have no factual basis for this proposal, that you are reluctant to reveal the bases or non-bases for this proposal, or some other explanation. Regardless, your violation of state law is further evidence of discriminatory motive.

In combination with the clear impact on African American voters, these circumstances leave a reasonable observer to wonder whether the real motive behind these closures is indeed to make it harder for African Americans to cast a ballot.

* * *

The mere availability of absentee voting-by-mail and advance voting does not justify the closure of polling locations on Election Day under your proposal. Several federal courts have found that voting by mail is not an adequate substitute for in-person voting:

> [Though mail-in voting] represents an important bridge for many who would otherwise have difficulty appearing in person, . . . it is not the equivalent of in-person voting for those who are able and want to vote in person. Mail-in voting involves a complex procedure that cannot be done at the last minute. It also deprives voters of the help they would normally receive in filling out ballots at the polls . . . . Elderly [voters] may also face difficulties getting to their mailboxes . . . , the increased risk of fraud because of people who harvest mail-in ballots from the elderly, [and] with mail-in voting, voters lose the ability to account for last-minute developments, like candidates dropping out of a primary race, or targeted mailers and other information disseminated right before an election.

Veasey v. Abbott, 830 F.3d 216, 255-56 (5th Cir. 2016) (en banc); *see also Ohio NAACP v. Husted*, 768 F.3d 524, 542 (6th Cir. 2014) ("associated costs and more complex mechanics of voting by mail" do not make voting by mail a "suitable alternative for many voters," especially "African Americans, lower income individuals, and the homeless"); *League of Women Voters of N.C. v. N.C.*, 769 F.3d 224, 243 (4th Cir. 2014) (rejecting argument that restrictions on voting mitigated by the option of voting by mail).

Nor does advance voting provide an adequate alternative for the many voters who do not vote before Election Day, because late-breaking events or new information may cause them to change their mind. Media attention and campaign activity also increases in the days leading up to Election Day, galvanizing voters just before that date.

Furthermore, as discussed above, many lower-income voters from the rural parts of Randolph County may not be able to get to Cuthbert or Spellman to take advantage of advance voting without unreasonable effort. The advance voting period is also almost entirely limited to weekday business hours, O.C.G.A. § 21-2-385(d), but "[l]ower-income individuals face

difficulties in voting during the day because they are more likely to work in hourly-wage jobs with little flexibility." *Ohio NAACP*, 768 F.3d at 556. Thus, Election Day hours, which extend from 7 a.m. to 7 p.m. beyond regular business hours, O.C.G.A. § 21-2-403, may be the only time such voters can cast a ballot, so it is especially important that polling sites be reasonably accessible that day.

To avoid continuing legal exposure, you must reject the proposal to shut down over 75% of the polling locations in Randolph County.

Sincerely,

Sean J. Young
Legal Director
ACLU of Georgia

EXHIBIT A

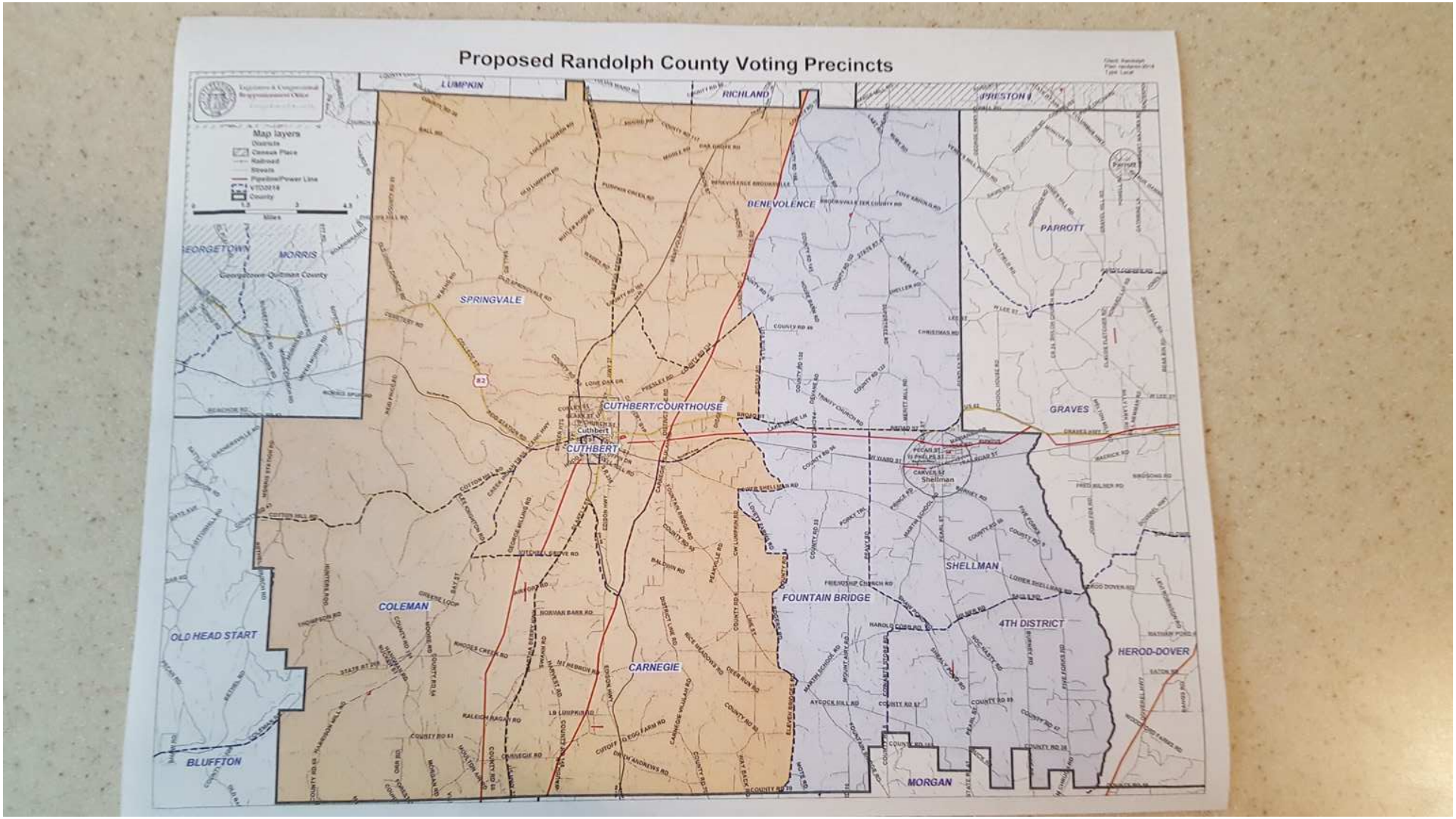

Proposed Randolph County Voting Precincts
Map layers
Districts
Census Place
Railroad
Streets
Pipeline/Power Line
VTD2016
County
Miles
LUMPKIN
RICHLAND
PRESTON
BENEVOLENCE
PARROTT
GEORGETOWN
MORRIS
Georgetown-Quitman County
SPRINGVALE
CUTHBERT/COURTHOUSE
CUTHBERT
GRAVES
Shellman
SHELLMAN
FOUNTAIN BRIDGE
4TH DISTRICT
HEROD-DOVER
COLEMAN
OLD HEAD START
CARNEGIE
BLUFFTON
MORGAN

EXHIBIT B

QuickFacts

Georgia; Randolph County, Georgia

QuickFacts provides statistics for all states and counties, and for cities and towns with a ***population of 5,000 or more***.

Table

All Topics	Georgia	Randolph County, Georgia
Population estimates, July 1, 2017, (V2017)	**10,429,379**	**7,075**
PEOPLE		
Population		
Population estimates, July 1, 2017, (V2017)	**10,429,379**	**7,075**
Population estimates base, April 1, 2010, (V2017)	9,688,690	7,719
Population, percent change - April 1, 2010 (estimates base) to July 1, 2017, (V2017)	7.6%	-8.3%
Population, Census, April 1, 2010	9,687,653	7,719
Age and Sex		
Persons under 5 years, percent	△ 6.3%	△ 5.6%
Persons under 18 years, percent	△ 24.1%	△ 19.8%
Persons 65 years and over, percent	△ 13.5%	△ 23.2%
Female persons, percent	△ 51.3%	△ 54.0%
Race and Hispanic Origin		
White alone, percent (a)	△ 60.8%	△ 37.1%
Black or African American alone, percent (a)	△ 32.2%	△ 61.4%
American Indian and Alaska Native alone, percent (a)	△ 0.5%	△ 0.1%
Asian alone, percent (a)	△ 4.2%	△ 0.6%
Native Hawaiian and Other Pacific Islander alone, percent (a)	△ 0.1%	△ 0.1%
Two or More Races, percent	△ 2.1%	△ 0.7%
Hispanic or Latino, percent (b)	△ 9.6%	△ 2.5%
White alone, not Hispanic or Latino, percent	△ 52.8%	△ 35.4%
Population Characteristics		
Veterans, 2012-2016	662,333	403
Foreign born persons, percent, 2012-2016	9.8%	2.4%
Housing		
Housing units, July 1, 2017, (V2017)	4,282,106	4,105
Owner-occupied housing unit rate, 2012-2016	62.8%	57.6%
	$152,400	$71,600

Median value of owner-occupied housing units, 2012-2016		
Median selected monthly owner costs -with a mortgage, 2012-2016	$1,339	$931
Median selected monthly owner costs -without a mortgage, 2012-2016	$395	$326
Median gross rent, 2012-2016	$897	$588
Building permits, 2017	51,240	4
Families & Living Arrangements		
Households, 2012-2016	3,611,706	2,819
Persons per household, 2012-2016	2.72	2.50
Living in same house 1 year ago, percent of persons age 1 year+, 2012-2016	84.0%	84.4%
Language other than English spoken at home, percent of persons age 5 years+, 2012-2016	13.7%	3.1%
Education		
High school graduate or higher, percent of persons age 25 years+, 2012-2016	85.8%	70.7%
Bachelor's degree or higher, percent of persons age 25 years+, 2012-2016	29.4%	13.4%
Health		
With a disability, under age 65 years, percent, 2012-2016	8.8%	11.2%
Persons without health insurance, under age 65 years, percent	⚠ 14.8%	⚠ 14.6%
Economy		
In civilian labor force, total, percent of population age 16 years+, 2012-2016	62.3%	51.2%
In civilian labor force, female, percent of population age 16 years+, 2012-2016	57.9%	46.7%
Total accommodation and food services sales, 2012 ($1,000) (c)	18,976,611	2,652
Total health care and social assistance receipts/revenue, 2012 ($1,000) (c)	51,800,643	D
Total manufacturers shipments, 2012 ($1,000) (c)	155,836,792	D
Total merchant wholesaler sales, 2012 ($1,000) (c)	143,645,290	70,790
Total retail sales, 2012 ($1,000) (c)	119,801,495	47,645
Total retail sales per capita, 2012 (c)	$12,077	$6,503
Transportation		
Mean travel time to work (minutes), workers age 16 years+, 2012-2016	27.7	18.7
Income & Poverty		
Median household income (in 2016 dollars), 2012-2016	$51,037	$30,358
Per capita income in past 12 months (in 2016 dollars), 2012-2016	$26,678	$26,198
Persons in poverty, percent	⚠ 16.0%	⚠ 30.5%

BUSINESSES

Businesses		
Total employer establishments, 2016	228,330[1]	130
Total employment, 2016	3,804,433[1]	1,393
Total annual payroll, 2016 ($1,000)	182,911,144[1]	45,113
Total employment, percent change, 2015-2016	3.0%[1]	3.0%
Total nonemployer establishments, 2016	877,908	408

All firms, 2012	929,864	497
Men-owned firms, 2012	480,578	262
Women-owned firms, 2012	376,506	183
Minority-owned firms, 2012	371,588	204
Nonminority-owned firms, 2012	538,893	270
Veteran-owned firms, 2012	96,787	57
Nonveteran-owned firms, 2012	800,585	415

GEOGRAPHY

Geography		
Population per square mile, 2010	168.4	18.0
Land area in square miles, 2010	57,513.49	428.24
FIPS Code	13	13243

Value Notes

1. Includes data not distributed by county.

Estimates are not comparable to other geographic levels due to methodology differences that may exist between different data sources.

Some estimates presented here come from sample data, and thus have sampling errors that may render some apparent differences between geographies statistically indistinguishable. Click the Quick Info icon to the left of each row in TABLE view to learn about sampling error.

The vintage year (e.g., V2017) refers to the final year of the series (2010 thru 2017). *Different vintage years of estimates are not comparable.*

Fact Notes

- **(a)** Includes persons reporting only one race
- **(b)** Hispanics may be of any race, so also are included in applicable race categories
- **(c)** Economic Census - Puerto Rico data are not comparable to U.S. Economic Census data

Value Flags

- **D** Suppressed to avoid disclosure of confidential information
- **F** Fewer than 25 firms
- **FN** Footnote on this item in place of data
- **NA** Not available
- **S** Suppressed; does not meet publication standards
- **X** Not applicable
- **Z** Value greater than zero but less than half unit of measure shown
- **-** Either no or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest or upper interval of an open ended distribution.

QuickFacts data are derived from: Population Estimates, American Community Survey, Census of Population and Housing, Current Population Survey, Small Area Health Insurance Estimates, Small Area Income and Poverty Estimates, State and County Housing Unit Estimates, County Business Patterns, Nonemployer Statistics, Economic Census, Survey of Business Owners, Building Permits.

EXHIBIT C

B08201

HOUSEHOLD SIZE BY VEHICLES AVAILABLE
Universe: Households
2011-2015 American Community Survey 5-Year Estimates

Tell us what you think. Provide feedback to help make American Community Survey data more useful for you.

Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that produces and disseminates the official estimates of the population for the nation, states, counties, cities and towns and estimates of housing units for states and counties.

Supporting documentation on code lists, subject definitions, data accuracy, and statistical testing can be found on the American Community Survey website in the Data and Documentation section.

Sample size and data quality measures (including coverage rates, allocation rates, and response rates) can be found on the American Community Survey website in the Methodology section.

Versions of this table are available for the following years:

2016
2015
2014
2013
2012
2011
2010

1 - 30 of 30

	Georgia		Randolph County, Georgia	
	Estimate	Margin of Error	Estimate	Margin of Error
Total:	3,574,362	+/-9,977	2,794	+/-217
No vehicle available	246,172	+/-4,178	623	+/-196
1 vehicle available	1,218,616	+/-6,994	854	+/-181
2 vehicles available	1,373,011	+/-8,305	803	+/-200
3 vehicles available	520,340	+/-5,537	290	+/-117
4 or more vehicles available	216,223	+/-3,512	224	+/-96
1-person household:	956,577	+/-6,570	762	+/-203
No vehicle available	133,835	+/-2,739	334	+/-138
1 vehicle available	649,406	+/-5,523	310	+/-126
2 vehicles available	140,013	+/-2,787	93	+/-61
3 vehicles available	24,076	+/-1,218	25	+/-33
4 or more vehicles available	9,247	+/-756	0	+/-18
2-person household:	1,170,992	+/-6,331	1,274	+/-265
No vehicle available	52,793	+/-1,891	162	+/-85
1 vehicle available	278,735	+/-3,979	292	+/-137
2 vehicles available	621,947	+/-5,639	487	+/-160
3 vehicles available	168,895	+/-2,741	207	+/-99
4 or more vehicles available	48,622	+/-1,533	126	+/-85
3-person household:	598,492	+/-6,351	257	+/-123
No vehicle available	27,089	+/-1,200	0	+/-18
1 vehicle available	139,385	+/-3,430	103	+/-79
2 vehicles available	241,731	+/-3,594	123	+/-97
3 vehicles available	144,880	+/-3,093	12	+/-20
4 or more vehicles available	45,407	+/-1,558	19	+/-20
4-or-more-person household:	848,301	+/-5,463	501	+/-121
No vehicle available	32,455	+/-1,588	127	+/-94
1 vehicle available	151,090	+/-3,203	149	+/-93
2 vehicles available	369,320	+/-4,294	100	+/-59

	Georgia		Randolph County, Georgia	
	Estimate	Margin of Error	Estimate	Margin of Error
3 vehicles available	182,489	+/-3,806	46	+/-39
4 or more vehicles available	112,947	+/-2,331	79	+/-55

Source: U.S. Census Bureau, 2011-2015 American Community Survey 5-Year Estimates

Explanation of Symbols:
An '**' entry in the margin of error column indicates that either no sample observations or too few sample observations were available to compute a standard error and thus the margin of error. A statistical test is not appropriate.
An '-' entry in the estimate column indicates that either no sample observations or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest interval or upper interval of an open-ended distribution.
An '-' following a median estimate means the median falls in the lowest interval of an open-ended distribution.
An '+' following a median estimate means the median falls in the upper interval of an open-ended distribution.
An '***' entry in the margin of error column indicates that the median falls in the lowest interval or upper interval of an open-ended distribution. A statistical test is not appropriate.
An '*****' entry in the margin of error column indicates that the estimate is controlled. A statistical test for sampling variability is not appropriate.
An 'N' entry in the estimate and margin of error columns indicates that data for this geographic area cannot be displayed because the number of sample cases is too small.
An '(X)' means that the estimate is not applicable or not available.

Data are based on a sample and are subject to sampling variability. The degree of uncertainty for an estimate arising from sampling variability is represented through the use of a margin of error. The value shown here is the 90 percent margin of error. The margin of error can be interpreted roughly as providing a 90 percent probability that the interval defined by the estimate minus the margin of error and the estimate plus the margin of error (the lower and upper confidence bounds) contains the true value. In addition to sampling variability, the ACS estimates are subject to nonsampling error (for a discussion of nonsampling variability, see Accuracy of the Data). The effect of nonsampling error is not represented in these tables.

Workers include members of the Armed Forces and civilians who were at work last week.

While the 2011-2015 American Community Survey (ACS) data generally reflect the February 2013 Office of Management and Budget (OMB) definitions of metropolitan and micropolitan statistical areas; in certain instances the names, codes, and boundaries of the principal cities shown in ACS tables may differ from the OMB definitions due to differences in the effective dates of the geographic entities.

Estimates of urban and rural population, housing units, and characteristics reflect boundaries of urban areas defined based on Census 2010 data. As a result, data for urban and rural areas from the ACS do not necessarily reflect the results of ongoing urbanization.

EXHIBIT D

Election Notices

State of Georgia
County of Randolph

PUBLIC MEETING

The Randolph County Board of Elections & Registration will be holding 2 public meetings to discuss Precinct Consolidation. The first meeting will be held on Thursday, August 16, 2018 at 6:00PM in the courtroom at the Randolph County Government Building at 93 Front Street, Cuthbert Ga. The second meeting will be Friday, August 17, 2018 at 6:00PM at the Train Depot at 58 Park Ave, Shellman Ga.

J. Scott Peavy
Superintendent of Elections
Randolph County, Georgia

Randolph County B
hiring for the fo

EXHIBIT E

Deadline to submit application:
September 5, 2018

NOTICE OF CONSOLIDATION OF VOTING PRECINTS

Notice is given that the Randolph County Board of Elections and Registration, acting as Election Superintendent for Randolph County, proposes to consolidate the following precincts into a single precinct with a polling place located at the Cuthbert Courthouse, 93 Front St, Cuthbert, GA 39840: Springvale, Coleman, Carnegie, Cuthbert Middle School and current Cuthbert Courthouse. Additionally, all voters who currently reside in the Benevolence precinct and reside west of the gas line that is marked with a red line on the map on file in the Elections Office shall also be included in the consolidated precinct.

The Randolph County Board of Elections and Registration further proposes to consolidate the following precincts into a single precinct with the current Shellman precinct: Fountain Bridge, Shellman and Fourth District. Additionally, all voters who currently reside in the Benevolence precinct and reside east of the gas line that is marked with a redline on the map on file in the Elections Office shall also be included in the consolidated precinct. The polling place for these precincts shall be located at the Shellman Train Depot, 58 Park Avenue, Shellman, Georgia 39886

The Randolph County Board of Elections will hold a meeting on August 24, 2018 to consider this proposal. Any objection to this proposal must be filed with the Board of Elections prior to that time. A copy of a map of the proposed consolidated precincts is available for inspection at the Randolph County Board of Elections. This change shall become effective for all elections held on or after the 24th day of August 2018.

RANDOLPH COUNTY BOARD OF
ELECTIONS AND REGISTRATION,
ACTING AS ELECTION SUPERINTENDENT FOR RANDOLPH COUNTY, GEORGIA.

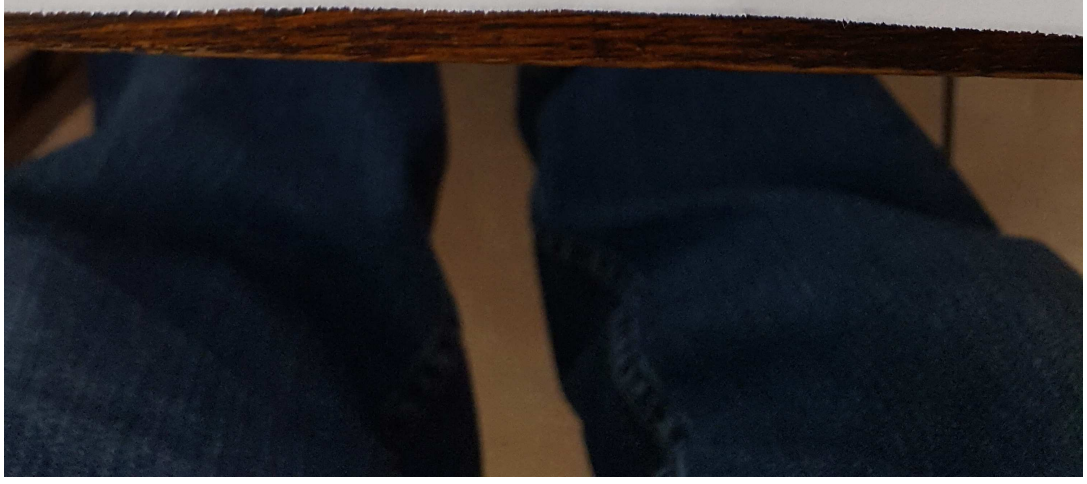


EXHIBIT F

Sean J Young

From: Sean J Young
Sent: Friday, August 10, 2018 11:24 AM
To: 'tblack.randolphcounty@gmail.com'
Subject: RE: Open Records Request: August 9, 2018

Thank you confirming yesterday over the phone that you received this request. We will expect a response by Tuesday, August 14, which is three business days from our request. Please let me know if you have any questions.

Sean

Sean J. Young
Legal Director
American Civil Liberties Union of Georgia
PO Box 77208, Atlanta, GA 30357
SYoung@acluga.org | Phone 678-981-5295 | Fax 770-303-0060
WE THE PEOPLE | acluga.org
Pronouns: he/him/his

From: Sean J Young
Sent: Thursday, August 9, 2018 2:18 PM
To: 'tblack.randolphcounty@gmail.com' <tblack.randolphcounty@gmail.com>
Subject: Open Records Request: August 9, 2018

Dear Randolph County Board of Elections & Registration,

Pursuant to the Open Records Act, I am requesting copies of the following documents:

- All e-mails, documents, and communications, whether exchanged through personal email addresses or work email addresses, concerning the proposed precinct consolidations to be discussed in upcoming meetings on August 16, August 17, and/or August 24, 2018.

I expect a response within three business days pursuant to the Open Records Act. Please give me a call if you have any questions.

Sean

Sean J. Young
Legal Director
American Civil Liberties Union of Georgia
PO Box 77208, Atlanta, GA 30357
SYoung@acluga.org | Phone 678-981-5295 | Fax 770-303-0060
WE THE PEOPLE | acluga.org
Pronouns: he/him/his

"What makes an American is not the name or the blood or even the place of birth, but the belief in the principles of freedom and equality that this country stands for." - Antonin Scalia

EXHIBIT 3

Proposal NO. 39/17 10E. 10P. SC14.

FULTON COUNTY

Precinct Boundary Line and Name Change

	CD	SS	SH	CC	ED	MU	COMBO
10E	5	38	53	4	5	10	866
10P	5	38	53	4	6	10	866
SC14	5	38	61	6	4		784

EXISTING POLLING PLACE — REGISTERED VOTERS as of 7/3/2017

Precinct	Polling Place	White	Black	Other	Total
10E	Harper Archer Middle School 3399 Collier Drive	13	735	122	870
10P	Towns Elementary School 760 Bolton Road	12	1087	143	1242
SC14	Aviation Community Culture Center 3900 Aviation Circle, NW	28	235	112	375

PROBLEM: With the advent of in-person early voting, the number of citizens electing to cast ballots at their polling facility on Election Day has steadily declined. Precincts 10E and 10P also share the same political district values.

PROPOSAL: It is proposed the precinct boundary lines for precincts 10E and 10P be combined and designated as precinct 10E and precinct designator 10P be deleted. It is also proposed poll 10E be moved to the Aviation Cultural Center and co-located with poll SC14 to create split polls 10E and SC14. The proposed polling facility is handicap accessible and is located approximately 1.3 and 1.5 miles respectively from the former poll facilities (see exhibits 39A and 39B). All voters impacted by this proposed action will be notified no later than 30 days prior to the next scheduled election.

	CD	SS	SH	CC	ED	MU	COMBO
10E	5	38	53	4	5	10	866
SC14	5	38	61	6	4		784
10P							

PROPOSED POLLING PLACE — REGISTERED VOTERS as of 7/3/2017

Precinct	Polling Place	White	Black	Other	Total
10E	Aviation Community Cultural Center 3900 Aviation Circle, NW	25	1822	265	2112
SC14	Aviation Community Cultural Center 3900 Aviation Circle, NW	28	235	112	375
10P	Deleted	0	0	0	0

APPROVED BY BOARD OF R&E July 13, 2017

FIGURE 39A
EXISTING PRECINCTS
10E, 10P & SC14

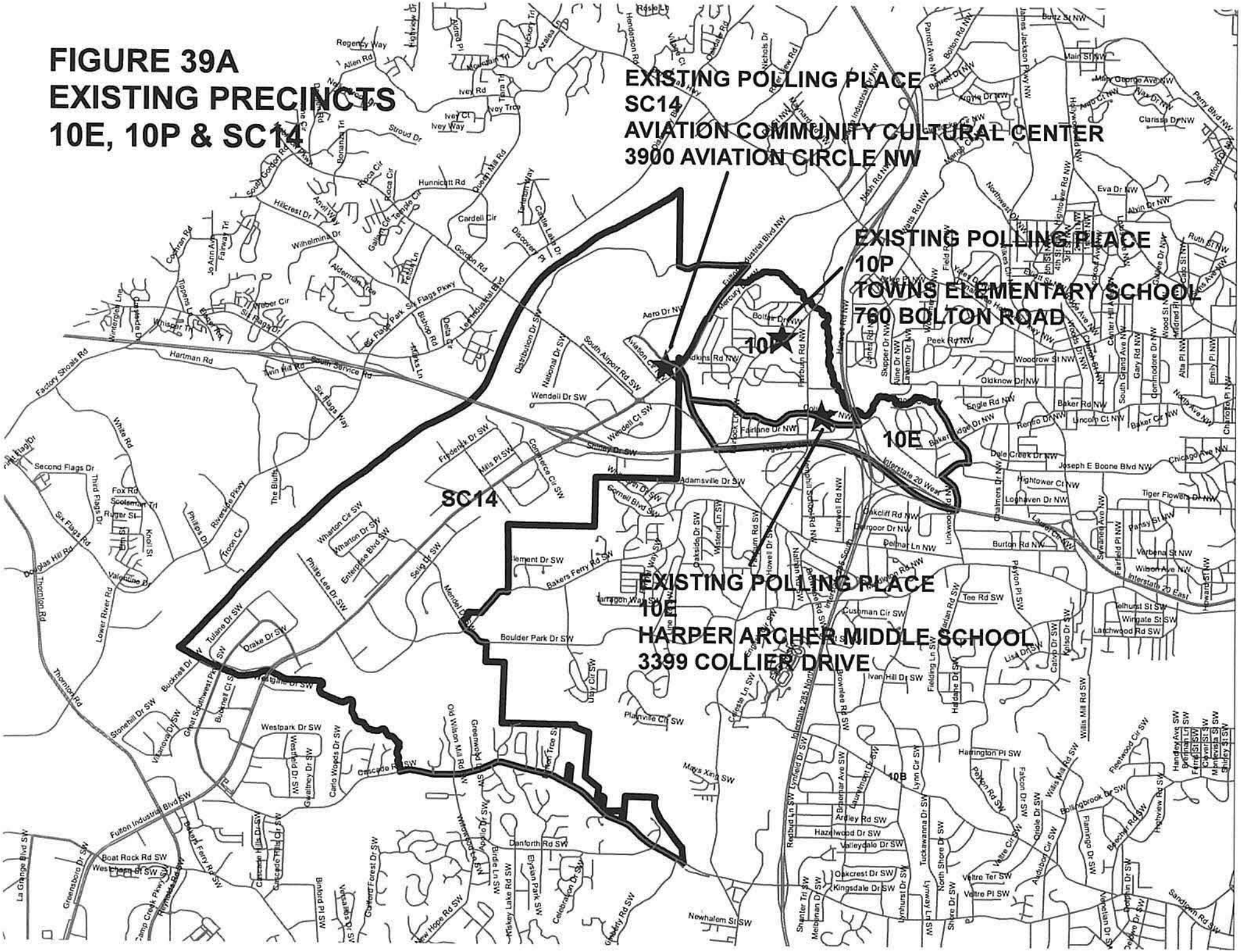
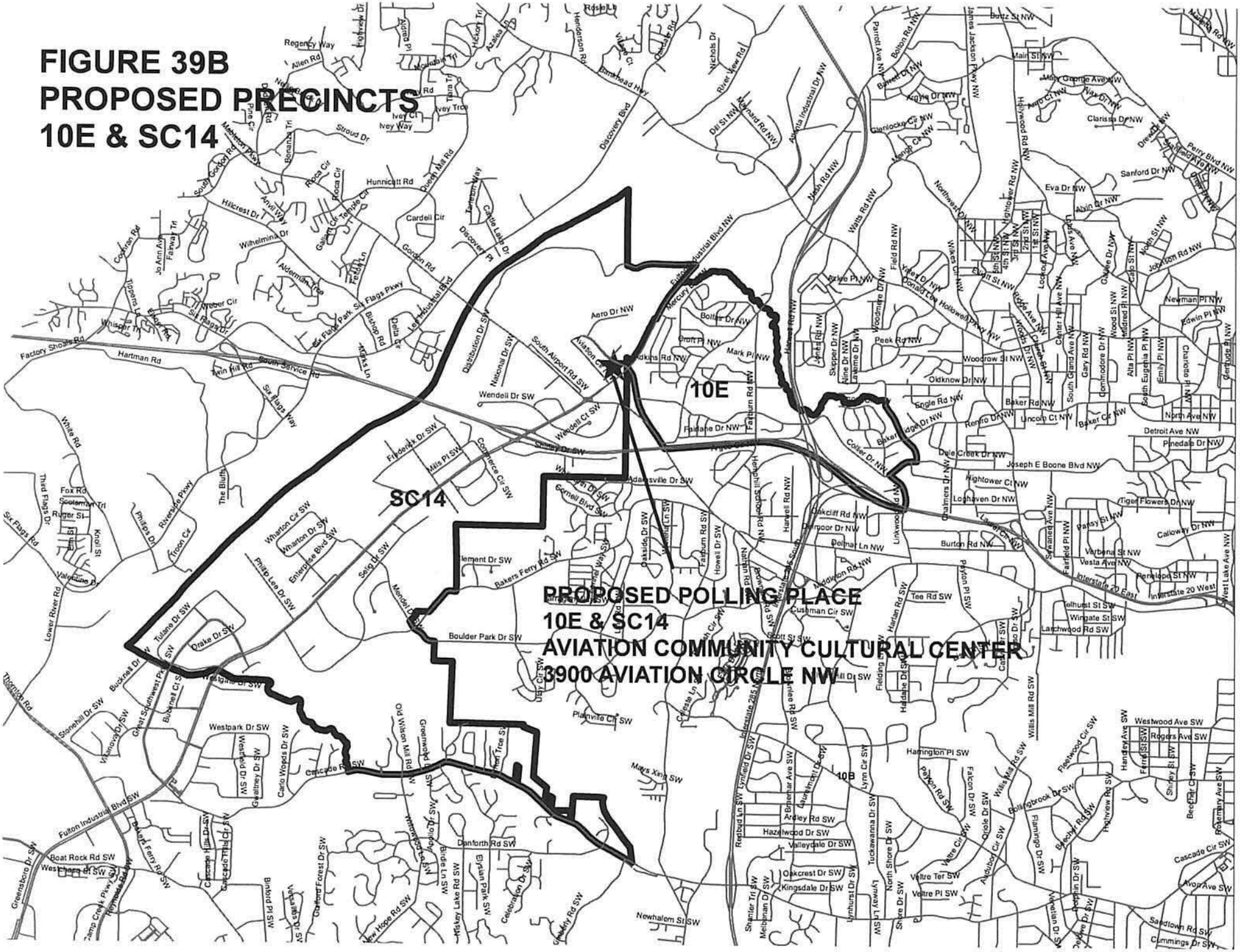


FIGURE 39B
PROPOSED PRECINCTS
10E & SC14



Proposal NO. 41/17 12F. 12S.

FULTON COUNTY

Permanent Polling Place Location Change

	CD	SS	SH	CC	ED	MU	COMBO
12F	5	36	59	5	6	12	882
12S	5	36	58	5	6	12	531

EXISTING POLLING PLACE REGISTERED VOTERS as of 7/3/2017

Precinct	Polling Place	White	Black	Other	Total
12F	John Birdine Neighborhood Facility 215 Lakewood Way, SW	44	668	140	852
12S	Southeast Library 1463 Pryor Road, SW	42	1314	204	1560

PROBLEM: With the advent of in-person early voting, the number of citizens electing to cast ballots in their polling facility on Election Day has steadily declined.

PROPOSAL: It is proposed the polling facilities for precinct 12F be moved and consolidated with polling facility 12S to create split polls 12F and 12S at Fulton County's Southeast Library. The polling facility remains handicap accessible and is located approximately 1.8 miles from the proposed polling location (see exhibits 41A and 41B). All voters impacted by this proposed action will be notified no later than 30 days prior to the next scheduled election.

	CD	SS	SH	CC	ED	MU	COMBO
12F	5	36	59	5	6	12	882
12S	5	36	58	5	6	12	531

PROPOSED POLLING PLACE REGISTERED VOTERS as of 7/3/2017

Precinct	Polling Place	White	Black	Other	Total
12F	Southeast Library 1463 Pryor Road, SW	44	668	140	852
12S	Southeast Library 1463 Pryor Road, SW	42	1314	204	1560

APPROVED BY BOARD OF R&E July 13, 2017

FIGURE 41A
EXISTING PRECINCTS
12F & 12S

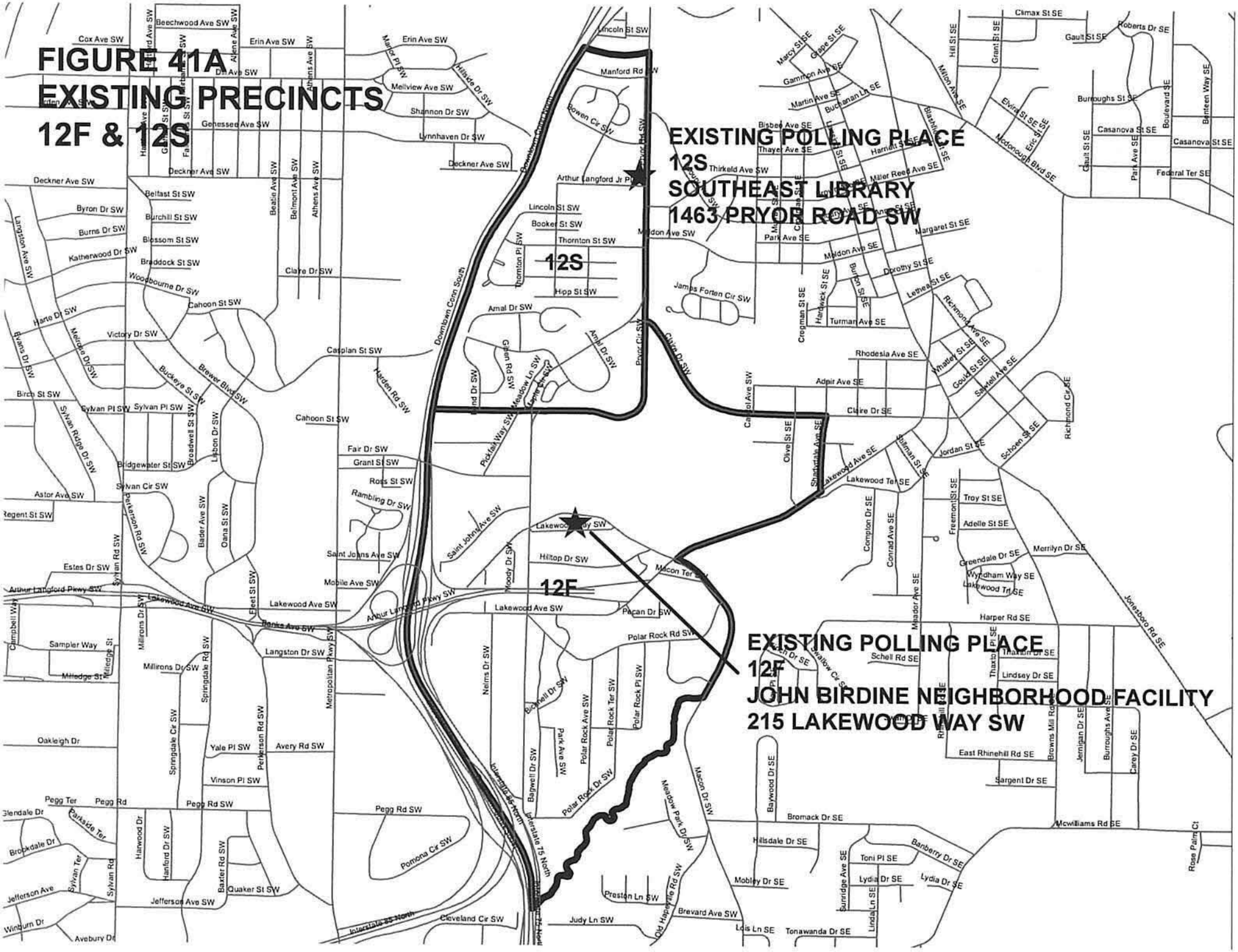
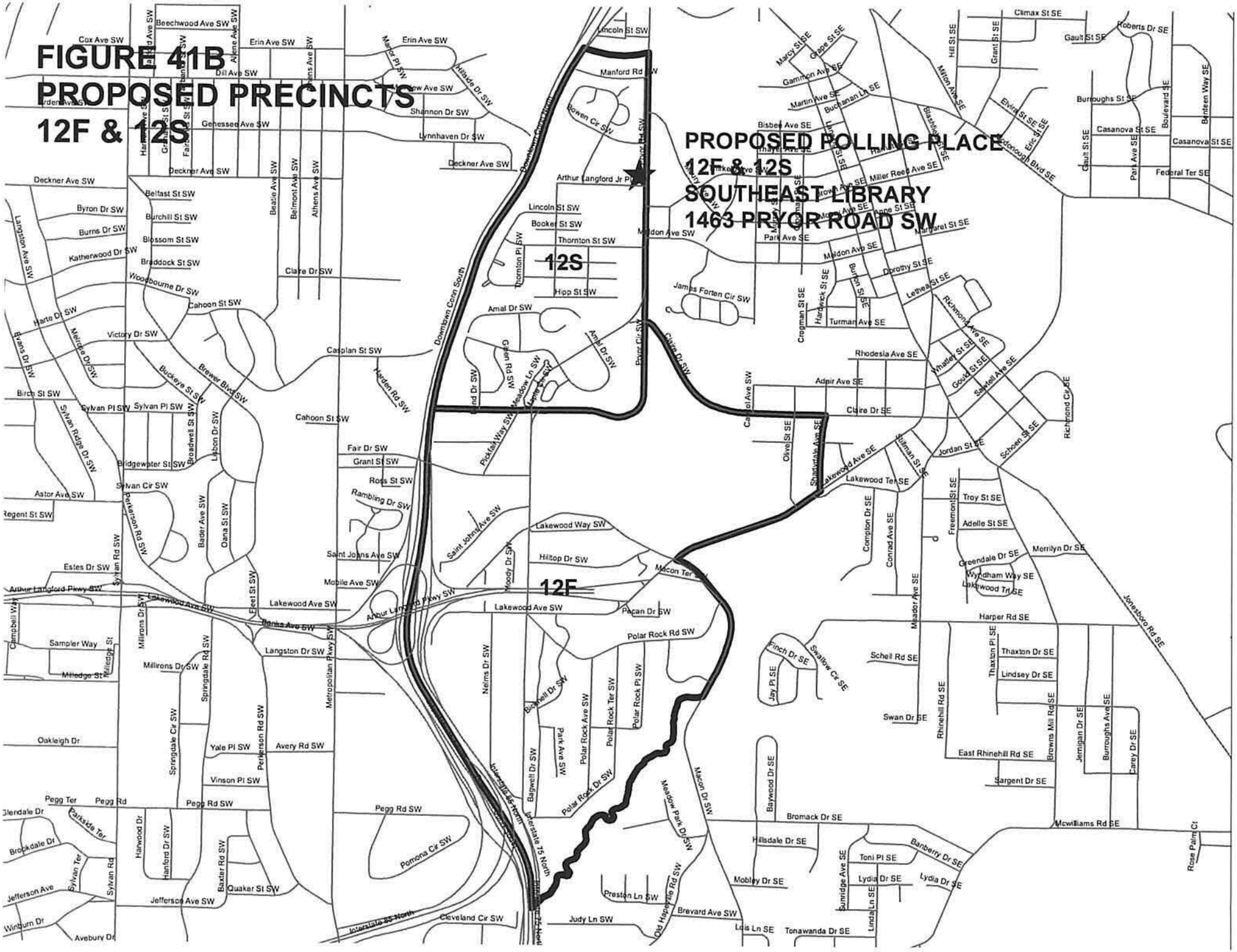


FIGURE 41B
PROPOSED PRECINCTS
12F & 12S



Proposal NO. 42/17 11C. SC02.

FULTON COUNTY

Permanent Polling Place Location Change

	CD	SS	SH	CC	ED	MU	COMBO
11C	5	38	55	6	6	11	874
SC02	5	38	55	6	4	1	1004

EXISTING POLLING PLACE — REGISTERED VOTERS as of 7/3/2017

Precinct	Polling Place	White	Black	Other	Total
11C	Fickett Elementary School 3935 Rux Road	32	2270	315	2617
SC02	Southwest Art Center 915 New Hope Road	7	742	94	843

PROBLEM: The existing poll facility (Fickett Elementary School) for precinct 11C is co-located within the precinct boundaries for precinct 11B (Bunche Middle School). There is no suitable facility within the officially designated 11C precinct boundary. This situation creates mass confusion among a significant number of voters as they past poll 11C to travel to their assigned polling facility for precinct 11B.

PROPOSAL: It is proposed that the polling facility for precinct 11C (Fickett Elementary School) be moved and co-located with polling facility SC02 to create split polls 11C and SC02. The proposed location is approximately 4.2 miles from the existing facility (see exhibits 42A and 42B). The facility is handicap accessible and all voters impacted will be notified of this change in location not less than 30 days prior to the next scheduled election.

	CD	SS	SH	CC	ED	MU	COMBO
11C	5	38	55	6	6	11	874
SC02	5	38	55	6	4	1	1004

PROPOSED POLLING PLACE — REGISTERED VOTERS as of 7/3/2017

Precinct	Polling Place	White	Black	Other	Total
11C	Southwest Art Center 915 New Hope Road, SW	32	2270	315	2617
SC02	Southwest Art Center 915 New Hope Road, SW	7	742	94	843

APPROVED BY BOARD OF R&E July 13, 2017

FIGURE 42A
EXISTING PRECINCTS
11C & SC02

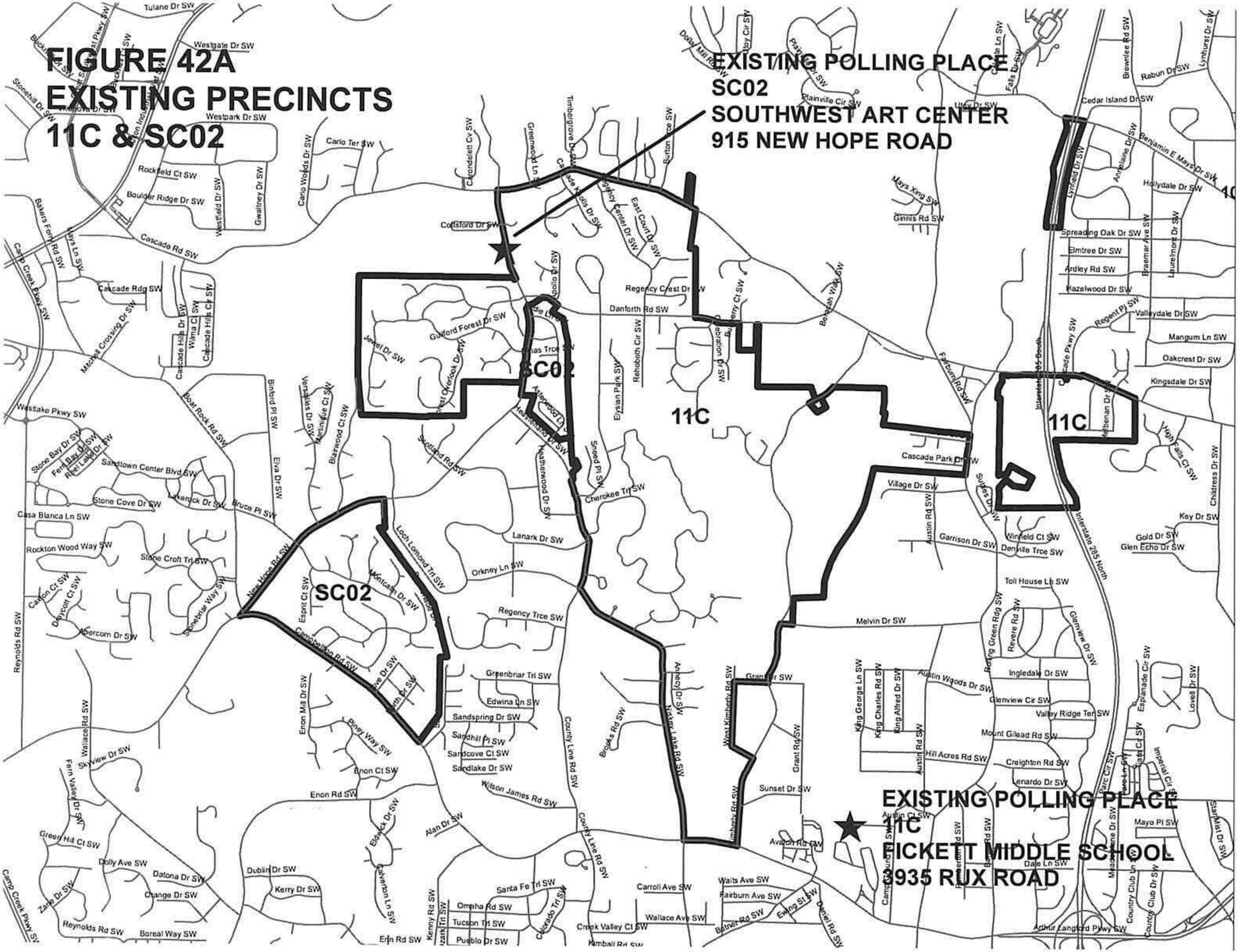
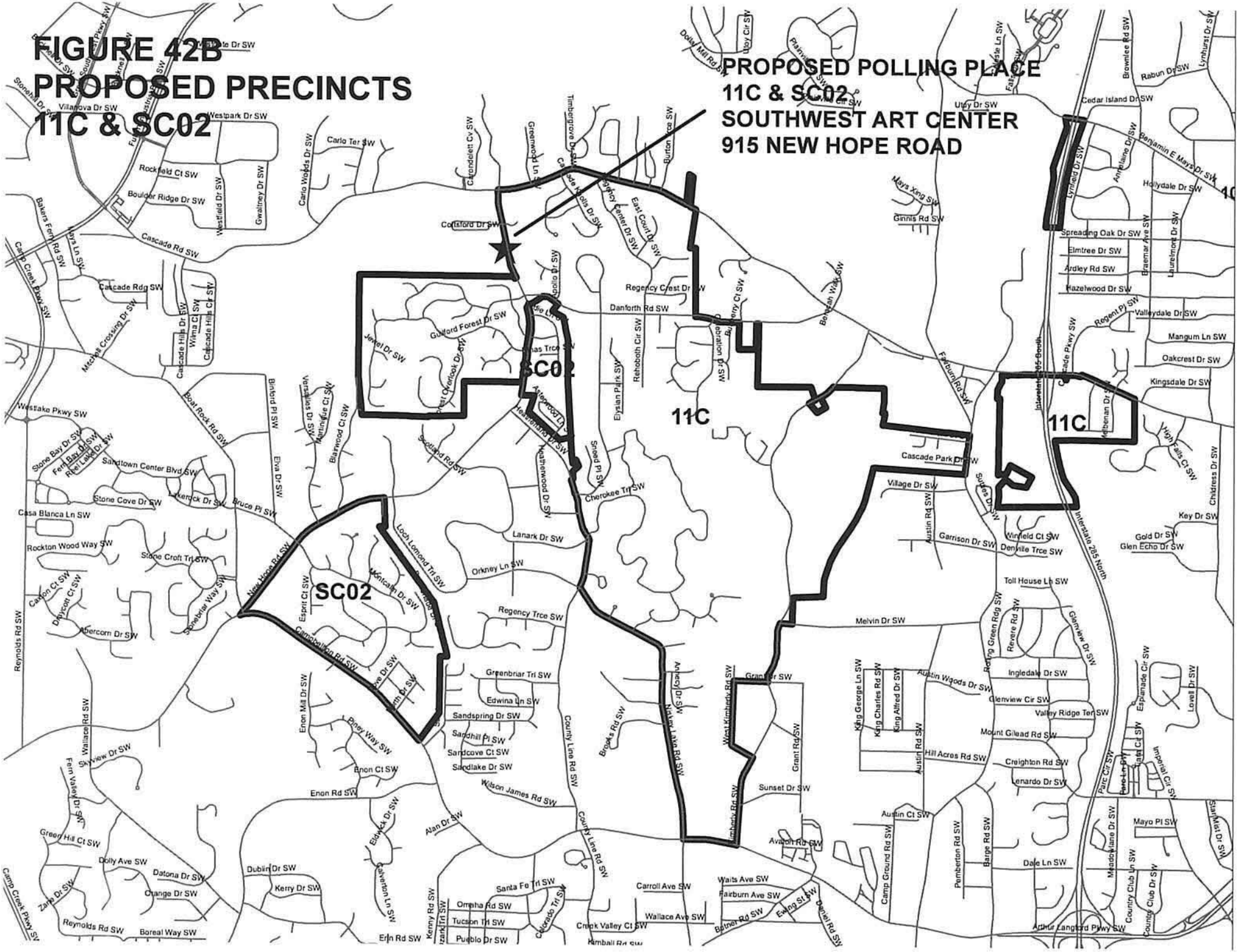


FIGURE 42B
PROPOSED PRECINCTS
11C & SC02



Proposal NO. 45/17 10H1. 10H2. 10G.

FULTON COUNTY

Permanent Polling Place Location Change

	CD	SS	SH	CC	ED	MU	COMBO
10H1	5	38	53	6	5	10	873
10H2	5	38	55	6	5	10	865
10G	5	38	56	6	5	10	867

EXISTING POLLING PLACE REGISTERED VOTERS as of 7/3/2017

Precinct	Polling Place	White	Black	Other	Total
10H1	Peyton Forest School 301 Peyton Road	6	305	50	361
10H2	Peyton Forest School 301 Peyton Road	23	1729	246	1998
10G	St. Paul's Episcopal Church 306 Peyton Road	9	1026	118	1153

PROBLEM: With the advent of in-person early voting, the number of citizens electing to cast ballots in their Election Day polling facility has steadily declined.

PROPOSAL: It is proposed the polling facilities for split precincts 10H1 AND 10H2 be moved and consolidated with polling facility 10G to create split polls 10G, 10H1 and 10H2 at St. Paul Episcopal Church. The polling remains handicap accessible and is located less than one mile from the proposed polling location (see figures 45A and 45B). All voters impacted by this proposed action will be notified no later than 30 days prior to the next scheduled election.

	CD	SS	SH	CC	ED	MU	COMBO
10H1	5	38	53	6	5	10	873
10H2	5	38	55	6	5	10	865
10G	5	38	56	6	5	10	867

PROPOSED POLLING PLACE REGISTERED VOTERS as of 7/3/2017

Precinct	Polling Place	White	Black	Other	Total
10H1	St. Paul's Espicopal Church 306 Peyton Road	6	305	50	361
10H2	St. Paul's Episcopal Church 306 Peyton Road	23	1729	246	1998
10G	St. Paul's Episcopal Church 306 Peyton Road	9	1026	118	1153

APPROVED BY BOARD OF R&E July 13, 2017

FIGURE 44A
EXISTING PRECINCTS
SC30A/B

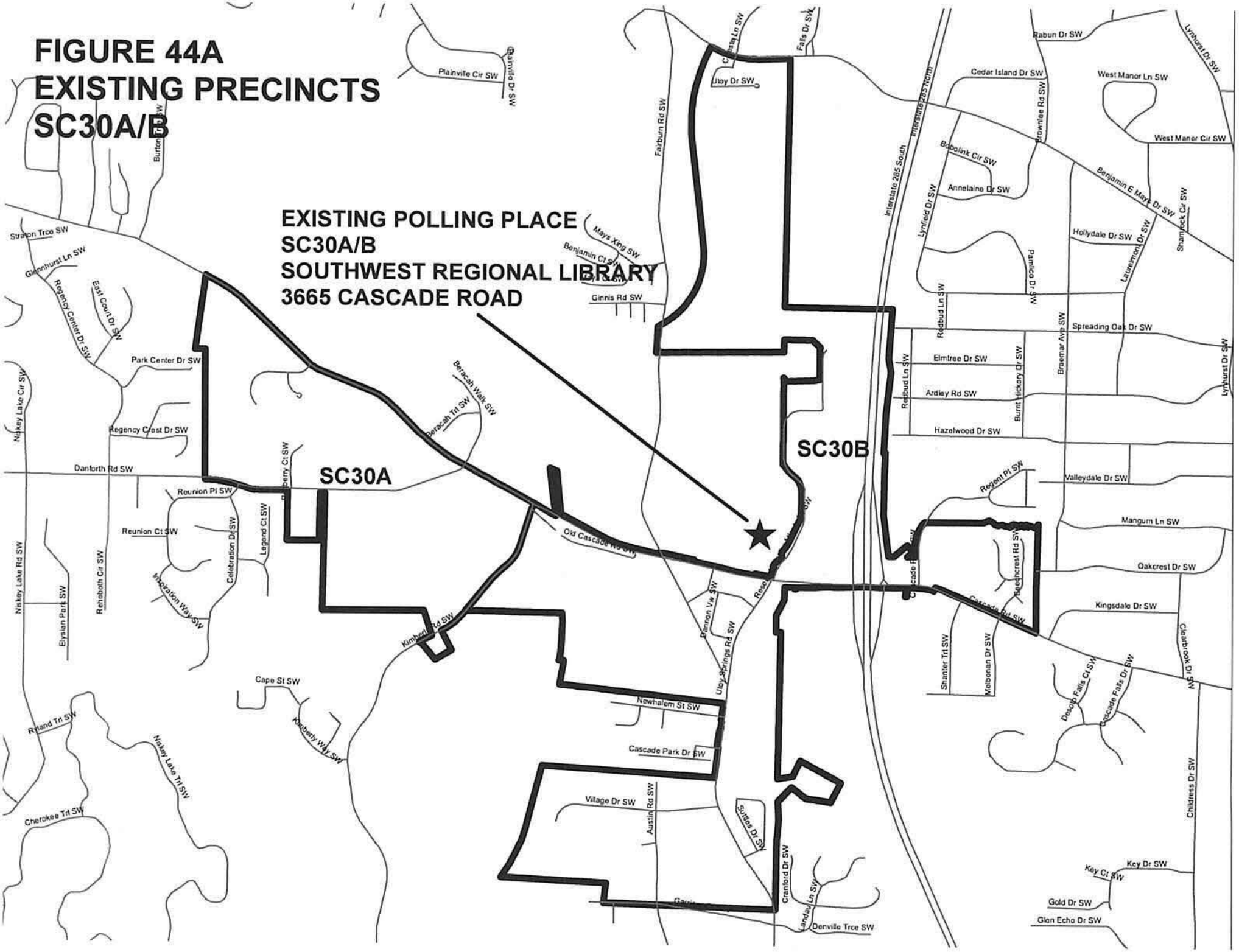


FIGURE 44B
PROPOSED PRECINCTS
SC30A/B

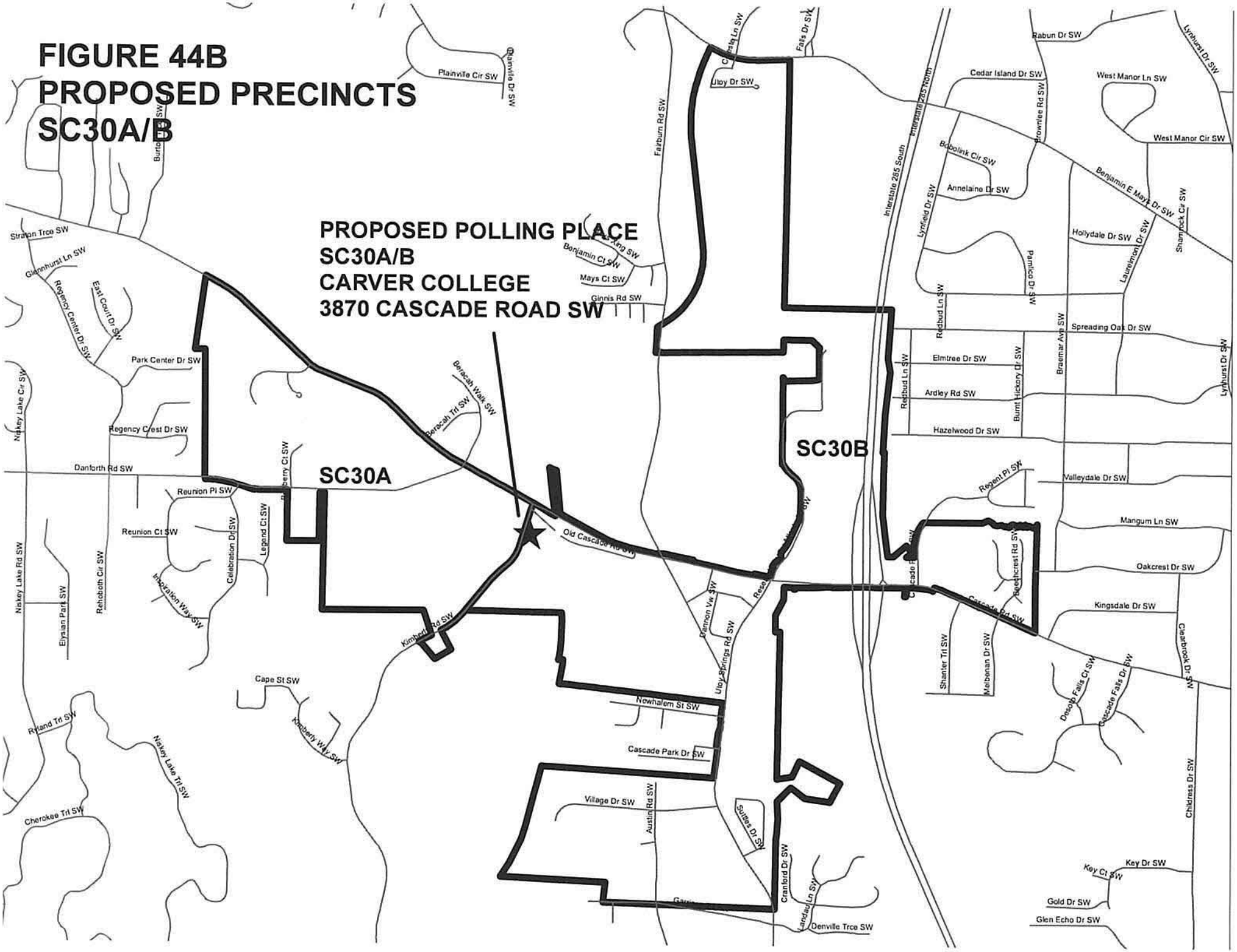


EXHIBIT 4

AMERICAN CIVIL LIBERTIES UNION of GEORGIA

P.O. Box 77208 Atlanta, Georgia 30557 | 770-303-8111 | info@acluga.org

April 21, 2017

Irwin County Board of Elections & Registration
207 South Irwin Ave.
Ocilla, GA 31774

Via Fed Ex

Dear Irwin County Board of Elections & Registration,

The American Civil Liberties Union of Georgia ("ACLU") writes to express grave concern with two recent proposals by the Irwin County Board of Elections & Registration (the "Elections Board"), or certain of its members or staff, to close polling places across Irwin County, potentially eliminating polling places located where African American voters are most concentrated. *See Citizens fight to keep voting precincts*, The Ocilla Star, Feb. 15, 2017, at 1; *Elections Board talks possible lawsuits, precincts*, The Ocilla Star, Mar. 8, 2017, at 3 (copies of the articles are attached as Exhibit A).

These measures—which deviate from the recommendations of a December 7, 2016 report issued by the nonpartisan Association of County Commissioners of Georgia, *A Financial and Management Analysis for Irwin County* ("ACCG Report")—appear to directly target African American voters and would make it significantly more difficult for African American or lower-income voters to cast a ballot, without adequate justification. As such, these proposals potentially violate Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, and the Fourteenth and Fifteenth Amendments to the United States Constitution as well. They must be rejected.

I. The proposal to eliminate polling places in Ocilla, which is predominantly African-American, is discriminatory and unjustifiable

As we understand it, the first proposal seeks to reduce the number of polling places by 75% (from 8 to 2), which includes the elimination of the polling place in the heart of Ocilla. Ocilla, however, has the highest concentration of African Americans in the county, as illustrated in the map attached as Exhibit B. Moreover:

- 83% of the ballots cast by African Americans on Election Day in the November 2016 elections were cast in Ocilla, while only 22% of the ballots cast by white voters on Election Day were cast in Ocilla, according to public voting records;
- Ocilla's population is 57% African-American;[1] and
- African Americans disproportionately make up 44% of the registered voters in Ocilla.

[1] *See* CensusViewer, http://censusviewer.com/city/GA/Ocilla.

The only 2 remaining polling places left open would be in or near Irwinville and in a location in or near Holt, located on the east side of Irwin County. Both these areas are disproportionately white. Irwinville, which is the site of the Jefferson Davis Memorial Historic Site, is 96% white,[2] and white voters make up 95% of its registered voters. The east side of Irwin County is also largely white. *See* Exhibit B.

Thus, under this plan, racial minorities in Irwin County would potentially have to travel *twice* the distance of white voters just to cast a ballot on Election Day. These transportation burdens are further exacerbated by the fact that African Americans and other voters in Ocilla have lower incomes and are far less likely to own vehicles. According to survey estimates from the Census:

- The median income of African Americans in Irwin County ($22,332) hovers at the poverty line and is *half* the median income of white residents ($42,619);
- Geographically, the median income of residents living in the Ocilla area ($19,000 to $21,000) are *less than half* of those in the outer areas ($37,000 to $47,000), *see* Exhibit C; and
- The percentage of Ocilla voters without a vehicle (12-22%) is *ten to twenty times higher* than the percentage of vehicle non-ownership around Irwinville (0-1%), and also significantly higher than the percentage of vehicle non-ownership in east Irwin County (6%), *see* Exhibit D.

And Ocilla voters without vehicles *are completely prevented* from voting on Election Day, since there is no public transportation out of Ocilla at all.

When polling place configurations or closures have such a starkly disproportionate impact on racial minorities, such closures almost certainly constitute a violation of the Voting Rights Act. Several federal courts have struck down these kinds of plans on this basis. *See, e.g.*, *Sanchez v. Cegavske*, --- F. Supp.3d ----, 2016 WL 5936918, at *7-*11 (D. Nevada Oct. 7, 2016) (likely violation of Voting Rights Act where "the distance [one] must travel [to polling location] are a material limitation that bears more heavily on members of [the Native American tribe]" compared to white voters, "especially given their relative difficulty in accessing transportation [and] affording travel"); *Spirit Lake Tribe v. Benson Cnty.*, No. 2:10-cv-095, 2010 WL 4226614, at *3-*4 (D.N.D. Oct. 21, 2010) (closure of polling place on Native American reservation likely violated Voting Rights Act, where Natives have "markedly lower socioeconomic status compared to the white population"); *Operation Push v. Allain*, 674 F. Supp. 1245, 1262-68 (N.D. Miss. 1987) (prohibition on satellite registration offices in disproportionately minority areas violated Voting Rights Act where there were "vast socio-economic disparities between blacks and whites in Mississippi"); *Brown v. Dean*, 555 F. Supp. 502, 504-05 (D.R.I. 1982) ("the use of polling places at locations remote from black communities, or at places calculated to intimidate blacks from entering (when alternatives were available)" violates Voting Rights Act).

To the extent that this proposal was purposely designed, even in part, to target African American voters, it would obviously violate the Fourteenth and Fifteenth Amendments as well.

[2] *See* City-Data.com, http://www.city-data.com/city/Irwinville-Georgia.html.

This proposal certainly cannot be defended on the basis of voting demand, since about one-third (33%) of the ballots cast on Election Day were cast in Ocilla (575 ballots out of approx. 1725), according to public voting records. *See Vill. of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267 (1977) ("Substantive departures . . . may be relevant [to a finding of discriminatory intent], particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.").

Nor can this proposal be meaningfully defended as a necessary cost-saving measure. It is both telling and troubling that this proposal directly conflicts with the ACCG Report. The ACCG Report, published by a nonpartisan entity for the express purpose of making cost savings recommendations for the county, simply does not recommend closing as many polling places—and definitely does not recommend closing all polling places in Ocilla.[3] Rather, the ACCG Report recommends reducing the number of polling places from 8 to 3, leaving one "*in or near Ocilla*, Irwinville, and one somewhere in the eastern portion of the county," placing "every, or nearly every, voter not more than 7-8 miles distant from a polling station." ACCG Report at 48 (emphasis added). More importantly, the ACCG Report (page 49) correctly warns that

> county officials still have an obligation under the . . . Voting Rights Act of 1965, and under the 14th and 15th Amendments to the U.S. Constitution, to ensure that election practices are non-discriminatory, not denying or limiting a citizen's right to vote based upon their race or color. Thus, if the county decides to reduce the number of polling stations, it should ensure that voting rights are not abridged by the action.

We are unaware of any analysis that the Elections Board has done to ensure that its proposals do not violate the Voting Rights Act or the Constitution. It is also our understanding that the Irwin County Board of Commissioners, the entity ultimately responsible for the county's budget, has also endorsed the ACCG Report's recommendation to leave 3 polling places open. Contrary to the recommendations of both the ACCG and the Irwin County Board of Commissioners—the entities presumably most familiar with the county's financial situation—the Elections Board proposal ignores these recommendations and strikes Ocilla out of the picture with "almost surgical precision," raising serious questions about the actual purpose of this measure. *North Carolina State Conf. of NAACP v. McCrory*, 831 F.3d 204, 214 (4th Cir. 2016) (targeted nature of voting restrictions "bears the mark of intentional discrimination" based on race).

By targeting Ocilla—which has the highest concentration of African Americans anywhere in Irwin County—out of the 3 polling places that the ACCG Report suggests should be left open, the first proposal has the effect, if not the intent, of making it disproportionately harder for African Americans to exercise their fundamental right to vote. Thus, this measure likely violates Section 2 of the Voting Rights Act and potentially the Fourteenth and Fifteenth Amendments to the U.S. Constitution as well. It must be rejected.

[3] The ACLU of Georgia does not endorse the recommendations in the ACCG Report, or suggest that it is in anyway immune from judicial scrutiny, especially since it is not even purposed to provide legal advice.

II. The proposal to have only a single polling location in all of Irwin County located in Ocilla will unreasonably burden rural voters on the outskirts of Irwin County

The second proposal, as we understand it, takes the recommendation of the ACCG Report to an extreme, and eliminates *all* but one polling place, to be located in Ocilla. *See* Exhibit A. This proposal has the potential to impose a serious, undue burden on lower-income voters of all races who reside in the rural edges of Irwin County, because, as we understand it, no public transportation exists in or out of Ocilla. Many lower-income voters may not have vehicles or may otherwise face significant economic barriers in travelling to Ocilla to cast a ballot on Election Day.

According to Census survey estimates, the poverty rate of Irwin County (26.0%) is one-and-a-half times higher than that of Georgia as a whole (18.4%), and the median income ($34,156) is in Irwin County is significantly lower than those of Georgia as a whole ($49,620). It is a violation of the Fourteenth Amendment to impose such burdens—even if those burdens fall solely on a disadvantaged subset of the population—without a sufficiently compelling justification. *See Anderson v. Celebrezze*, 460 U.S. 780 (1983); *Burdick v. Takushi*, 504 U.S. 428 (1992); *see, e.g.*, *Ohio State Conf. of NAACP v. Husted*, 768 F.3d 524, 544-45 (6th Cir. 2014), *vacated on other grounds*, 2014 WL 10384647 (Oct. 1, 2014) (unconstitutional to eliminate early voting opportunities which primarily affect lower-income voters). And even if there is a sufficiently adequate justification for a voting restriction generally, individual voters who face unreasonable burdens to voting are *still* entitled to relief under the Fourteenth Amendment. *See Frank v. Walker*, 835 F.3d 649, 651 (7th Cir. 2016) (en banc). That is because "[t]he right to vote is personal and is not defeated by the fact that 99% of other people [may be able to vote] easily." *Id.* (quoting *Frank v. Walker*, 819 F.3d 384, 386 (7th Cir. 2016)).

Even if all the voters on the outskirts of Irwin County can travel to Ocilla without unreasonable difficulty, the elimination of all but one polling place may also dramatically increase the amount of voting congestion on Election Day. This can outright disenfranchise lower-income voters who cannot afford to take time off of work to stand in long lines as easily as their wealthier counterparts, especially if they are from rural areas. Voting congestion increases the frustration of hardworking poll workers and voters alike, leading to more chaos and, ultimately, a *greater* administrative burden on elections officials than having multiple polling places.

If this proposal were to be implemented, it will encourage greater scrutiny from poll watchers, and evidence that voters are disenfranchised or unreasonably burdened as a result of congestion will significantly increase the likelihood of litigation.

* * *

The mere availability of absentee voting-by-mail and advance voting does not justify the closure of polling locations on Election Day under either proposal. Even if these alternatives are equally available to voters of all races, they do not eliminate the *discriminatory* treatment towards African Americans with respect to in-person voting on Election Day. *See* 52 U.S.C. § 10301(b) (violation of section 2 if the political processes are not "equally open to participation

by members of a [protected] class"). Furthermore, several federal courts have found that voting by mail is not an adequate substitute for in-person voting:

> [Though mail-in voting] represents an important bridge for many who would otherwise have difficulty appearing in person, . . . it is not the equivalent of in-person voting for those who are able and want to vote in person. Mail-in voting involves a complex procedure that cannot be done at the last minute. It also deprives voters of the help they would normally receive in filling out ballots at the polls . . . . Elderly [voters] may also face difficulties getting to their mailboxes . . . , the increased risk of fraud because of people who harvest mail-in ballots from the elderly, [and] with mail-in voting, voters lose the ability to account for last-minute developments, like candidates dropping out of a primary race, or targeted mailers and other information disseminated right before an election.

Veasey v. Abbott, 830 F.3d 216, 255-56 (5th Cir. 2016) (en banc); *see also Ohio NAACP*, 768 F.3d at 542 ("associated costs and more complex mechanics of voting by mail" do not make voting by mail a "suitable alternative for many voters," especially "African Americans, lower-income individuals, and the homeless"); *League of Women Voters of N.C. v. N.C.*, 769 F.3d 224, 243 (4th Cir. 2014) (rejecting argument that restrictions on voting mitigated by the option of voting by mail).

Nor does advance voting provide an adequate alternative for the many voters who do not vote before Election Day, because late-breaking events or new information may cause them to change their mind. Media attention and campaign activity also increases in the days leading up to Election Day, galvanizing voters just before that date. Forcing African American voters in Ocilla to rely on advance voting, a separate but potentially unequal procedure, while allowing white voters the luxury of voting on Election Day in a nearby precinct, is both discriminatory and unjustifiable. It will also cause confusion, leading many voters in Ocilla to believe that a polling place in Ocilla will be open on Election Day since it was also available during the advance voting period.

Furthermore, as discussed above, many lower-income voters from the rural parts of Irwin County may not be able to get to Ocilla to take advantage of advance voting without unreasonable effort. The advance voting period is almost entirely limited to weekday business hours, Ga. Code § 21-2-385(d), but "[l]ower-income individuals face difficulties in voting during the day because they are more likely to work in hourly-wage jobs with little flexibility." *See, e.g.*, *Ohio NAACP*, 768 F.3d at 556. The only other available time for advance voting is on the second Saturday prior to the election, Ga. Code § 21-2-385(d), which for general elections always falls on the annual Ocilla Sweet Potato Festival, when traffic is especially congested and the only advance voting site in Ocilla may be virtually inaccessible. Thus, Election Day hours, which extend from 7 a.m. to 7 p.m. beyond regular business hours, Ga. Code § 21-2-403, may be the only time such voters can cast a ballot, so it is especially important that polling sites be reasonably accessible that day.

The ACLU is happy to speak with you further to discuss these concerns, as well as other

ways in which we can work together to ensure that voters in Irwin County can have equal and reasonable access to the franchise.

Sincerely yours,

Sean J. Young
Legal Director
ACLU of Georgia

EXHIBIT A

BOE hires new Irwin principal

Irwin County High School will have a new principal next school year.

Current Principal Kerry Billingsley has planned for months to be promoted to assistant superintendent to take the place of the retiring Dr. Emethel Mizell. The Irwin County Board of Education officially offered to hire Scott Haskins as the new principal at its regular meeting Monday night.

Haskins is the principal of the Northeast Campus of Tift County High School, which is the separate campus housing Tift's ninth grade.

The BOE held a called meeting Feb. 6, almost all of which was spent in a closed-door executive session interviewing the final three candidates for the principal's job. The three candidates were Haskins, Jodie Knight, and Dr. Eric Holland. Knight works in Lee County after several years as a coach and assistant principal in Irwin. Holland is the assistant principal and head basketball coach at Tift County High School.

After the interviews, Knight was the first choice of the BOE. Superintendent Dr. Thad Clayton said Knight was very popular in Irwin County and had a good reputation, but he refused the job. Clayton said that after prayer and consideration Knight decided accepting the job was not in the best interest of his family.

Haskins verbally accepted the job offer Feb. 8. Clayton said he is in talks with the superintendent of Tift County schools to allow Haskins to come to Irwin early to get him comfortable in the new system.

Clayton said there was a strong pool of candidates for principal. No local candidates applied for the principal's job.

Billingsley, who is also the former Irwin County Middle School principal,

(Continued on Page 8)

Citizens fight to keep voting precincts

Many residents of Ocilla and Irwinville do not want to see their voting precincts closed, and they expressed their feelings at a meeting last week.

The Irwin County Board of Elections and Registration held a meeting Thursday at the Irwin County Courthouse to hear from the public on options to consolidate voting precincts. Last month, the Board announced a plan to close all the eight precincts except Mystic and Holt. The idea behind the plan was to close Ocilla, since Ocilla voters have 16 days of early voting within the city limits, and leaving Mystic and Holt open would minimize the length of travel as no one would need to drive more than 15 miles.

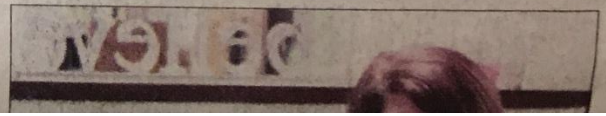
About 50 people attended the meeting Thursday, and most of them represented Ocilla and Irwinville, the two largest population centers in the county. None of those who spoke seemed pleased with the prospect of their precinct closing.

A complication arose with Mystic since the announcement, however, as Mystic Baptist Church, the home of the Mystic voting precinct, said it did not want to be part of the plan due to the heavy traffic the plan might cause at the church. Registrar Cindi Dunlap said the county is looking at an alternative site in Mystic, but she did not name it.

Speakers such as former poll worker Tuffy Hudson and Ocilla City Councilwoman Patrice Williams wanted the Board to reconsider closing Ocilla. Ruth Burch said the majority of voters are in the city, so the voting precinct should remain there.

The distance of travel was often cited as a difficulty caused by closing precincts, especially for the elderly. The Board pointed out that voters have 45

(Continued on Page 8)



* Voting precincts

(Continued from Page 1)

days of early voting, including mailing in ballots. A man said he would not depend on the mail service to deliver a ballot to him or to deliver his completed ballot to the county. Dunlap admitted there are some problems with the mail delivery, but she noted that last year, elections officials sent multiple ballots or hand delivered them when someone had trouble receiving one through the mail.

Kay Braziel of Irwinville spoke about the recent improvements at the Irwinville Community Building, which is the site of the voting precinct. She said the area was spacious and could handle a big crowd and would soon be handicap accessible. She said people who do not like to drive would not vote if the current plan is passed.

Elections Board Chairman Steve Hamby said, "We have not made any decisions."

The Elections Board is autonomous, so the decision on the voting precincts rests with the Board, not the Irwin County commissioners. The commissioners appoint the members of the Board, however.

Dunlap explained that the elections staff looked at closing all but three voting precincts, but then looked at a plan to close all but Mystic and Holt. She said Irwinville is not handicap accessible, which is a requirement, and *requires the county to rent porta-potties if Irwinville is used as a precinct. She said if Mystic, Ocilla and Holt were left open, the county would have three precincts within 1 mile of each other. She said there are no perfect solutions or answers.*

The Board hopes to save the county money by consolidating precincts. Dunlap said the state will probably switch to new voting machines soon, too, which would likely increase the cost of maintaining eight precincts. She said keeping eight precincts is not viable. She said the people needed to come together to find a solution for the whole county, not individual community solutions.

People, including County Chairman Joey Whitley, await the beginning of a meeting of the Irwin County Board of Elections and Registration last week.

"We all like convenience," she said. "We all like the old way. We can't afford that."

Board member James Curtis broke away from the rest of the three-member Board and said he was not in support of closing Irwin's largest precinct, Ocilla. He said he favored keeping three precincts open.

"Ocilla needs to stay," he said, and his statement was echoed by a chorus of "Amen" from the crowd.

Samuel Cobb said the people pay for the county, so the people should decide.

Ocilla City Councilman Reginald Miller said that he would not support closing the precinct in Ocilla, even if he had to go to federal court.

Although Ocilla voters would have 16 days of early voting in the city, Arlinda Murrell said most people want to vote on the day of the election. She said a lot of voters do not feel comfortable early voting. Dunlap said the early voting process is improved with a new system in place, and she said many people said it was fast and they would never go back.

Jerry Wiggins asked if anyone had figured how much consolidation would save. Dunlap said that with two precincts, the county should save at least $4,310 per election. On a presidential election year, the county will hold at least three elections and more will be held if there are run-offs or special elections.

Susan Paulk was the only person from the crowd to directly speak in support of the Elections Board. She said that none of the board members wanted to hurt anyone. She said the public should trust them to make a decision for the best of the county.

She said there were no perfect decisions, but Hudson then said there was a perfect decision, if the Board let the public vote on the issue.

Paulk said she did not believe the voters had all the information. For instance, she said early voting is awesome, and she said she had elderly family members who mail in ballots.

Maurice Lake said that if Ocilla is closed, the government will close more aspects of the city.

Walter Hudson said people drive to Ocilla to buy tags and pay taxes. He said there should be one voting precinct, Ocilla. He said consolidating to one would be better financially than consolidating to three.

Hamby said that counties with far more registered voters have consolidated to one precinct. He said Irwin keeps too many polls open.

"I love being in a small town," Hamby said. "But folks, we've got small money."

Dr. Neal McIntyre said he was adamantly against the idea of two precincts, and he said one precinct was an "absurd idea." He said that a recent report by the Association County Commissioners of Georgia specified that the county should maintain a minimum of three precincts, and listed Ocilla, Irwinville and somewhere on the east side as locations. McIntyre said the county officials were doing everything in their power not to follow the ACCG's suggestions. The ACCG report did not actually specify what the county should do or make recommendations, but it did give the three precinct plan as an option for the county leaders to consider.

McIntyre said that research has consistently shown that consolidation causes vote counts to suffer and voter turnout to reduce. He said the problems disproportionately affect minority populations.

He said that a county-owned facility would be ideal, and he suggested the Jefferson Davis Memorial Historic Site museum near Irwinville as a handicap accessible, county-maintained option for voting.

"They're going to raise our taxes but take our vote away from us," McIntyre said.

He said that county officials "don't know what a budget is and can't follow a budget." He noted a large increase in the elections budget from 2015 to 2016.

"We're questioning pennies but throwing away $100 bills," he said.

He said the county was setting itself up for federal lawsuits by closing Ocilla or Irwinville. Walter Hudson later commented that Bacon County closed all but one precinct without any lawsuits.

Dunlap disputed some of McIntyre's assertions, and she gave reasons for the increases, including that 2016 was an election year. 2016 was also her first full year, and she purchased new equipment and started doing some things that were legally required that were previously not done. She said the county was looking at some very serious infractions, and she said she is very diligent to go through the elections budget with a "fine-toothed comb."

Hamby also defended the job Dunlap does as registrar, and Curtis later spoke about the good job the elections staff does.

Marty Busbin, a poll worker at the Fletcher voting precinct, talked about the unusually high voter turnout at her precinct. In November, seven precincts had less than 50 percent of their voters show up on election day, including a county-low 24.6 percent in Ocilla. More than 69 percent of Fletcher voters voted on election day. Busbin said many Fletcher voters pass by the precinct on their way to work on election day and are reminded to vote. She later talked about trying to somehow split the west side between the Fletcher, Irwinville and Mystic precincts.

Jackie Smith said keeping Ocilla open was critical for the community and critical for people without transportation.

Curtis said that he thought three precincts could cost only about $800 more per election. He said that the west side of the county needs to get together and decide what the people there want to do about the west side.

Board member Jeff Blease said none of the Board members have made a decision, but the two-precinct plan was a place to start.

Hamby said that whatever decision the Board makes, it will not be made in secret. The Board meets at 4:45 p.m. on the second Thursday of each month at the Irwin County Courthouse Annex. Before voting to change the precincts, the Board must advertise the fact that it will vote on *the subject at least 10 days in advance in The Ocilla Star*. During those 10 days, citizens can make objections in writing to the county. They can also ask to be on the agenda of the next meeting.

* Principal

(Continued from Page 1)

will move to the board office in June or July. He will concentrate on student achievement and instructional practices, areas in which Clayton said he has m excellent progress. Clayton he thinks Billingsley will do well for the whole system i new role.

Elections Board talks possible lawsuits, precincts

After the threat of lawsuits, the Irwin County Board of Elections and Registration is waiting on legal advice before making a decision on closing voting precincts.

State officials recommended the Board get the recommendation of the county attorney after several threats of lawsuits were made in calls to the office of State Rep. Clay Pirkle, the office of State Sen. Tyler Harper and other state offices. At a meeting of the Board Thursday, the three members decided to seek legal advice either from County Attorney Warren Mixon or another attorney if he does not have time.

Registrar Cindi Dunlap said she talked to state officials and she cannot find anything that would legally stand in the way of the consolidation plans.

The Board also discussed where the members are leaning in regard to consolidation. Each favors a different plan.

Jeff Blease favors one precinct, which would be Ocilla. Steve Hamby favors two precincts, which would be Mystic and Holt, although he said he would be OK with one precinct. James Curtis favors three precincts, Irwinville, Ocilla and Holt, but he also said he would be OK with one, too.

Hamby said the Minnie and Osierfield precincts cannot stay where they are due to new rules about the distance of voting machines from entrances, because the sites are too small.

Curtis said he favored three precincts because he thought Irwinville would best serve the west side of the county. He also said he thought it would withstand any legal challenge.

Mystic Baptist Church, the current Mystic precinct, does not want to host a precinct if the traffic increases because of the two-precinct plan. The Board members talked about other Mystic locations, such as Grace Christian Academy's former site, but it would require work by the county. Curtis said that although Irwinville's site is not yet compliant with disability requirements, the people in Irwinville are willing to put in the work to make it compliant themselves.

Blease asked how many people lived close enough to their precinct that they would not need to travel. He said the only reason they want to consolidate is to save money, and one precinct is the most savings.

Dunlap said that with two precincts, people in Ocilla would only drive 5 miles while with one precinct, people on the outer edge of the county will travel more than 14 miles.

Curtis said that on election day, Ocilla has the largest group of voters. Dunlap said the people in Ocilla are in Ocilla during advance voting, which is held in the city limits, while people on the county line are not in Ocilla during that time. She said one precinct would make her job easy, but she was looking out for everyone.

"If you're passionate about your vote, it won't matter," said Blease.

Curtis said some like to vote on election day. Hamby said that in November, 2/3 of Ocilla voted early. Curtis again said Ocilla was the largest group of voters on election day.

Curtis and Blease said disenfranchising someone somewhere was unavoidable. Hamby said they were talking sentiment.

"We can't do this based on sentiment and emotion," he said.

Dunlap asked Curtis where he would draw the line at with three precincts. The two-precinct plan she favors divides the county in half along Highway 129. She said with three precincts, some people will have to vote in either Ocilla or Irwinville based on what side of the road they live on.

Curtis said he thought Dunlap could work that out. He said he did not believe it would be a difficult problem.

"It's called compromise and we all have to do it," said Blease.

Dunlap determined that each additional precinct over one would cost the county about $800 per election.

Hamby asked Dunlap to find out how Wilcox County handles its voting precincts.

The Board also met in executive session to discuss personnel.

Gun fired, elderly man charged

An 80-year-old Ocilla man was charged with aggravated assault last week after a woman al-

time, Rogers moved to the porch area. She stood in the doorway holding the knife and demanding

EXHIBIT B

Irwin County, Georgia
White and Non-White Voting-Age Population

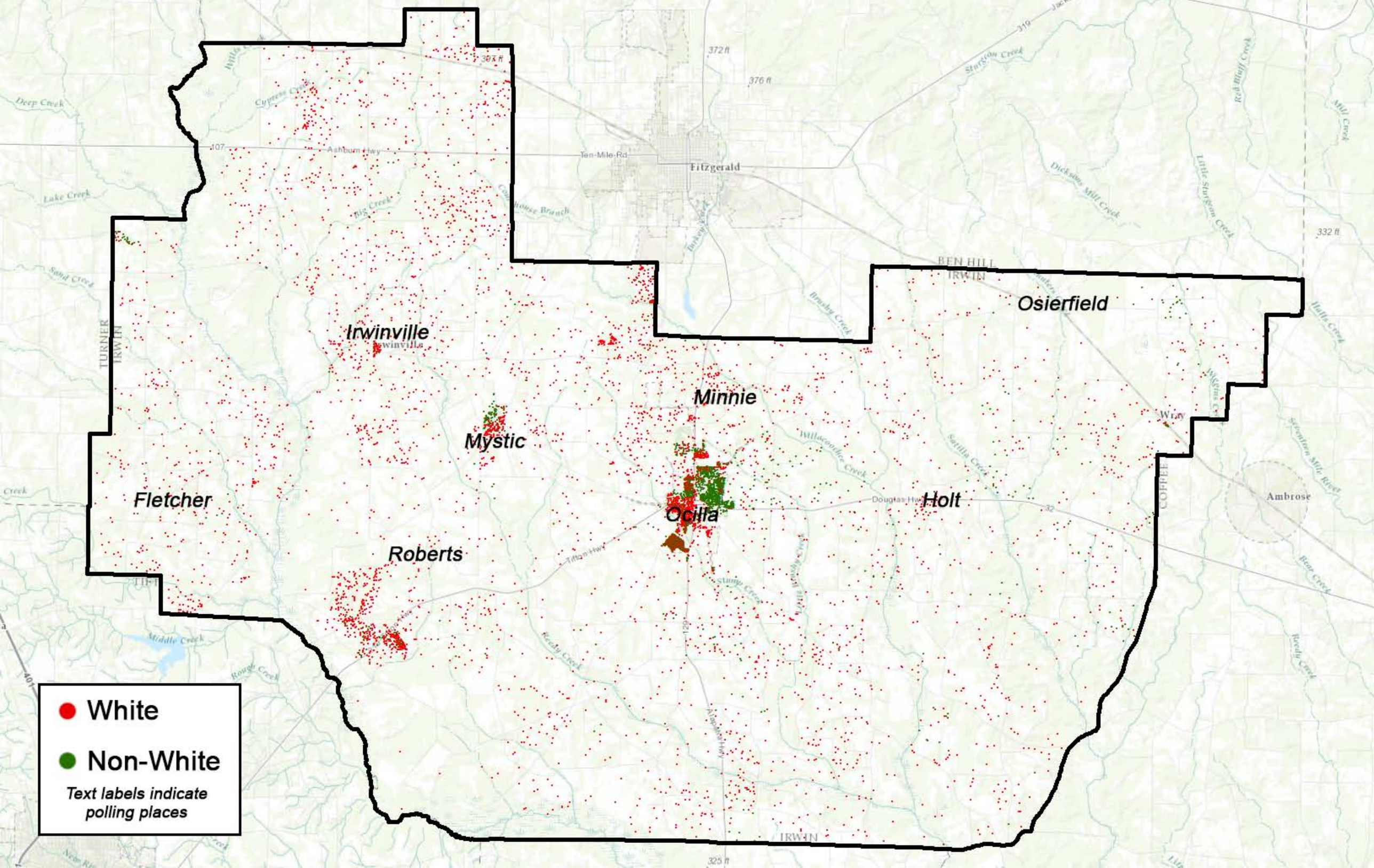


EXHIBIT C

Irwin County, Georgia
Median Household Income

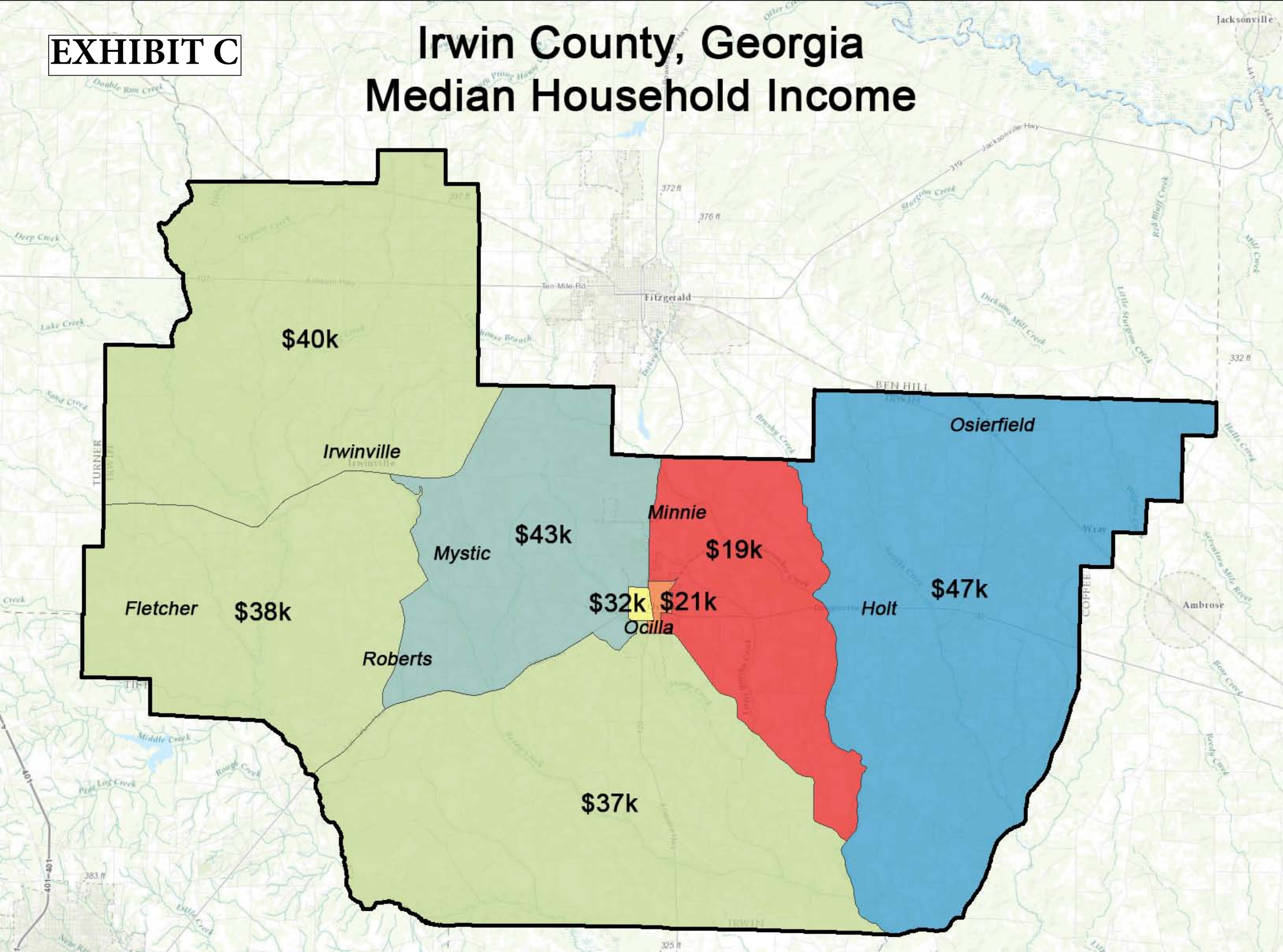


EXHIBIT D

Irwin County, Georgia
Percentage of Households without a Vehicle

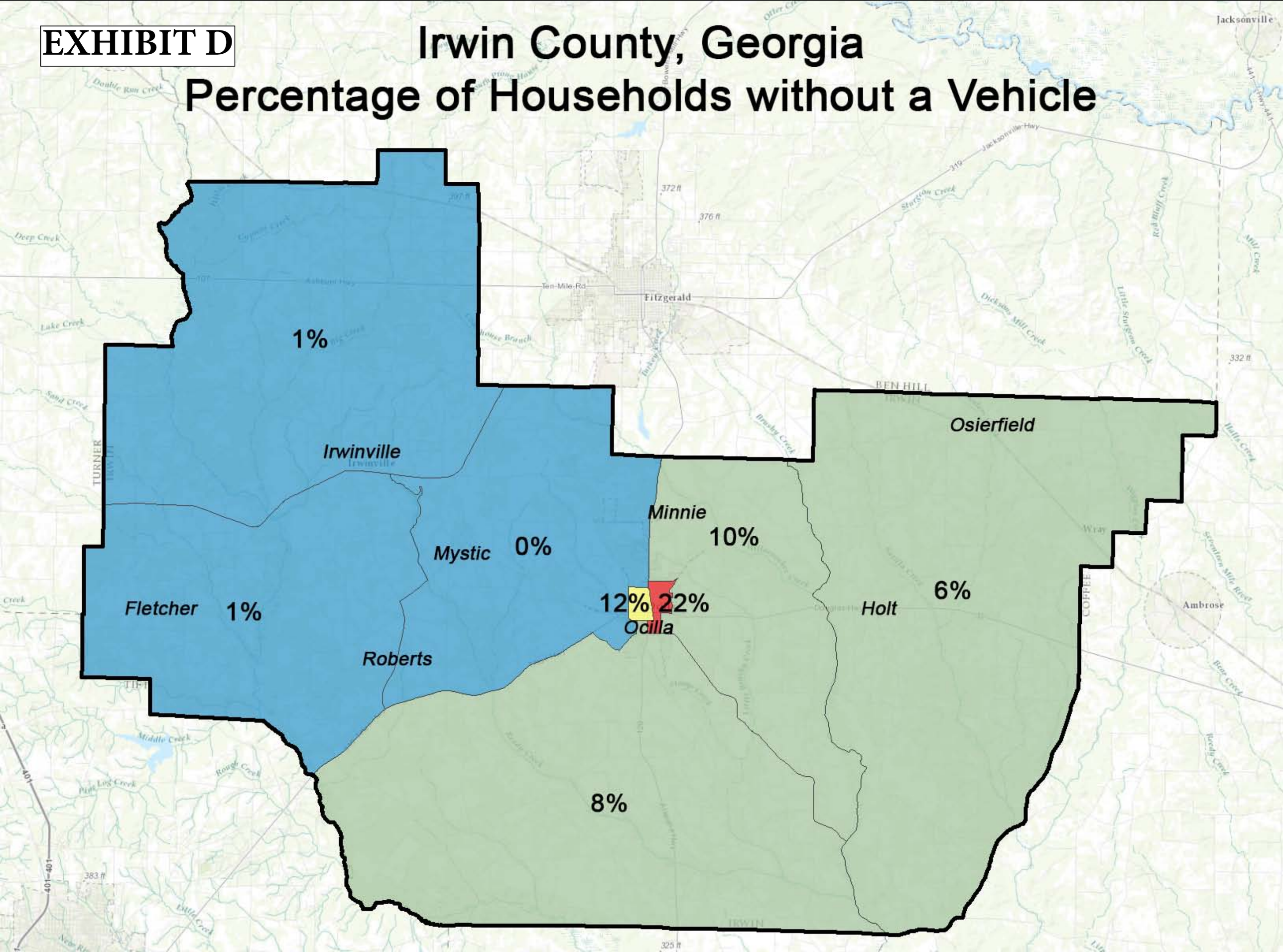


EXHIBIT 5

MSNBC

Elections / Republicans

Sen. Fran Millar, R-Atlanta is seen on the Senate floor during the legislative session, March 10, 2014, in Atlanta. **Photo by Dave Tulis/AP**

GOPer opposes early voting because it will boost black turnout

09/10/14 12:15 PM – UPDATED 09/10/14 02:21 PM

By Zachary Roth

A Republican lawmaker in Georgia has sparked outrage by suggesting he opposes new Sunday voting hours because they'll primarily benefit African-Americans – then explaining that he simply "would prefer more educated voters."

But take away the overt racism, and state Rep. Fran Millar was only giving the official Republican position on the issue.

After a visit to Atlanta by Michelle Obama to register black voters in advance of Georgia's closely-fought U.S. Senate race, Millar took to Facebook to criticize a county official for green-lighting Sunday voting at a local mall.

"Michelle Obama comes to town and Chicago politics comes to DeKalb," Millar wrote. "Per Jim Galloway of the [*Atlanta Journal Constitution*], this location is dominated by African American shoppers and it is near several large African American mega churches such as New Birth Missionary Baptist."

He added: "Is it possible church buses will be used to transport people directly to the mall since the poll will open when the mall opens? If this happens, so much for the accepted principle of separation of church and state."

After some angry responses, Millar tried to explain himself. "I never claimed to be non-partisan," he wrote. "I would prefer more educated voters than a greater increase in the number of voters."

"Trying to place the race card on me is ludicrous."

REP. FRAN MILLAR

In a phone interview, Millar told msnbc that his problem is with putting selective early voting sites in Democratic areas. "They're trying to gin up the vote, get it out there for the Dem candidate," he said. "It's a political ploy."

And he said he was "irritated" by comments on Facebook calling him a racist.

"I'm sitting here as a Republican who actually has an award from the NAACP, the Thurgood Marshall Award," Millar said. "Trying to place the race card on me is ludicrous."

As for the idea that it's more important to have more educated voters rather than simply more voters, Millar said: "That's just my opinion – that's all that is. That doesn't make it racist."

In fact, it's also something close to the official Republican line on early voting – which, as Millar and his party understand, is used disproportionately by minority voters.

Earlier this year, a bipartisan panel of experts appointed by President Obama in response to the massive lines on Election Day 2012 released a report on how to make the voting process more efficient. Among its recommendations: expanded early voting.

POLITICSNATION WITH AL SHARPTON, 9/9/14, 6:28 PM ET

Gotcha: GA GOP Voting Gaffe

The idea was a non-starter for the Republican National Lawyers Association (RNLA), the leading organization of GOP election lawyers – for reasons that Millar would agree with. "Part of the voting process requires a voter to educate himself or herself on the issues facing the community, state or country," the group wrote in a report. "When a voter in an early voting state casts his or her ballot weeks before Election Day, they're putting convenience over thoughtful deliberation."

It's not just the RNLA.

"Early voting means stubborn voters will make uninformed decisions prematurely," Christian Adams, a former Bush Justice Department lawyer and a supporter of restrictive voting laws, wrote in response to the Obama panel's report. "Voting even one week early produces less-informed voters and dumbs down the electorate."

The *Washington Post* columnist George Will, a key shaper of conservative opinion, has called early voting "deplorable."

"Instead of a community deliberation culminating in a shared day of decision, an election like the one here is diffuse and inferior," Will wrote last year in reference to a Florida special election that allowed early voting.

As the election law scholar Rick Hasen has argued, this isn't only about raw partisanship.

"Conservatives see voting as about choosing the 'best' candidate or 'best' policies (meaning limits on who can vote, when, and how might make the most sense), and liberals see it as about the allocation of power among political equals," Hasen wrote on *Slate* earlier this year, in a story headlined "The New Conservative Assault on Early Voting." "Cutting back on early voting fits with the conservative idea of choosing the 'best' candidate by restraining voters from making supposed rash decisions, rather than relying on them to make choices consistent with their interests."

But that shouldn't obscure the basic reality: When Millar says having more educated voters is preferable to having more numerous voters, he's only toeing the party line.

Explore: Early Voting, Elections, Georgia, Republicans and Voting Rights

Benghazi creeps back into spotlight

Christie works to move past problems

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