

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

Richard Rose, an individual,
Brionté McCorkle, an
individual, **Wanda Mosley**, an
individual, and **James “Major”**
Woodall, an individual,

Plaintiffs,

vs.

Brad Raffensperger, in his
official capacity as Secretary of
State of the State of Georgia,

Defendant.

Case No.

Complaint

Nature of the Case

1. This is an action under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301, challenging the at-large method of electing members of Georgia’s Public Service Commission.

2. The Public Service Commission dates back to 1879.

Commissioners have been chosen by statewide election since 1906. Yet no African American has ever been elected to the Public Service Commission without having first been appointed by the governor. And even then, only one African American has ever served on the Commission.

3. The plaintiffs are African-American voters, and they seek declaratory and injunctive relief prohibiting further use of the at-large method of election on the ground that it dilutes black voting strength in violation of Section 2.

Jurisdiction and Venue

4. This Court has original jurisdiction of this action under 28 U.S.C. §§ 1331, 1343(a)(3)-(4), and 2201(a) and 52 U.S.C. § 10308(f).

5. Venue is proper in this Court under 28 U.S.C. §§ 90(a)(2) and 1391(b).

Parties

6. Richard Rose is an African-American resident and registered voter in Fulton County, Georgia.

7. Brionté McCorkle is an African-American resident and registered voter in Fulton County, Georgia.
8. Wanda Mosley is an African-American resident and registered voter in Fulton County, Georgia.
9. James “Major” Woodall is an African-American resident and registered voter in Fulton County, Georgia.
10. Defendant Brad Raffensperger is the Secretary of State of the State of Georgia (hereinafter, the “Secretary”). He is the chief election official of the State of Georgia and is responsible for administering elections for members of the Public Service Commission. *See, e.g.*, O.C.G.A. §§ 21-2-50(a)(4), 21-2-154(a), 21-2-132(d)(2), 21-2-499(a), 21-2-502(c). He is sued in his official capacity only.

Background

11. The Georgia Public Service Commission consists of five members elected at-large by all Georgia voters in partisan elections to serve staggered six-year terms. Ga. const. art. IV, § 1, para. I; O.C.G.A. § 46-2-1.

12. Although elected at large, members of the Public Service Commission are required to reside in one of five Public Service Commission Districts prescribed by statute. O.C.G.A. § 46-2-1.

13. The jurisdiction, powers, and duties of the Public Service Commission are prescribed by state law, and they include broad governmental authority to supervise and regulate common carriers, railroads, and public utilities. O.C.G.A. § 46-2-1 *et seq.* Among many other duties, the Commission regulates the rates that Georgians may be charged by electric, natural gas, and telephone companies.

14. According to the 2010 Census, the State of Georgia has a total population of 9,687,653 persons, of whom 5,787,440 (59.7%) are white, 3,054,098 (31.5%) are black, and 846,115 (8.7%) are members of other racial groups. U.S. Census Bureau, *QT-P5: Race Alone or in Combination (Georgia)*, 2010 Census Summary File 1. A true and correct copy of table QT-P5 is attached hereto as exhibit 1.

15. According to the 2010 Census, Georgia has a voting-age population of 7,196,101 persons, of whom 4,481,721 (62.3%) are white, 2,140,789 (29.7%) are black, and 573,591 (8.0%) are members of other racial groups. U.S. Census Bureau, *P10: Race for the Population 18*

Years and Over (Georgia), 2010 Census Summary File 1. A true and correct copy of table P10 is attached hereto as exhibit 2.

16. Georgia's African-American population has grown since the 2010 Census. The 2018 American Community Survey, which is the most recent survey available from the Census Bureau, estimated that black residents make up approximately 33.2 percent of Georgia's total population and 32.3 percent of Georgia's citizen voting-age population.

17. As of July 1, 2020, approximately 30.1 percent of Georgia's registered voters self-identified as African American.

18. African Americans in Georgia are sufficiently numerous and geographically compact to constitute a majority of the voting-age population in at least one single-member district in an illustrative five-district plan for electing members of the Public Service Commission.

19. For example, the illustrative plan attached hereto as exhibit 3 ("Illustrative Plan 1") contains one reasonably compact majority-black district.

20. African-American voters in Georgia are politically cohesive in elections for members of the Public Service Commission.

21. For example, in elections for members of the Public Service Commission between 2012 and 2018, African-American voters supported their preferred candidates with greater than 80 percent of their votes in every such election.

22. A white majority votes sufficiently as a bloc to enable it—in the absence of special circumstances—usually to defeat the candidates preferred by black voters in elections for members of the Public Service Commission.

23. For example, in elections for members of the Public Service Commission between 2012 and 2018, white voters supported their preferred candidates with greater than 80 percent of their votes and were able to defeat the candidates preferred by black voters in every such election.

24. The State of Georgia has a long and extensive history of voting discrimination against African Americans. *See, e.g., Wright v. Sumter Cty. Bd. of Elections & Registration*, 301 F. Supp. 3d 1297, 1310 (M.D. Ga. 2018) (“Georgia’s history of [racial] discrimination ‘has been rehashed so many times that the Court can all but take judicial notice thereof.’”).

25. That history coincides with the onset in 1906 of statewide elections for members of the Public Service Commission. In that year, Hoke Smith ran successfully for governor on a platform of reforming the railroad commission and disenfranchising African-American voters. “I favor a constitutional amendment,” Smith campaigned, “which will insure a continuation of white supremacy.” He accomplished that shortly after taking office when Georgia adopted a constitutional amendment establishing a literacy test to vote—a test designed specifically to disenfranchise black voters.

26. Voting in elections for members of the Public Service Commission is polarized along racial lines.

27. For example, in elections for members of the Public Service Commission between 2012 and 2018, black and white voters supported different candidates with greater than 80 percent of their votes in every such election.

28. Elections for members of the Public Service Commission feature at least three voting practices that enhance the opportunity for discrimination against African Americans. These include staggered terms, a majority-vote requirement, and unusually large voting districts.

29. There is an informal slating process for members of the Public Service Commission that operates by gubernatorial appointment. In 2018, for example, Commissioner Stan Wise resigned with less than a year left on his six-year term, and Governor Nathan Deal appointed Tricia Pridemore to Wise's seat. Pridemore then ran in the 2018 election as an incumbent and defeated the candidate preferred by black voters. African-American voters have been denied access to this informal slating process since 2002, and they never had access to it before 1999.

30. African Americans in Georgia bear the effects of discrimination in such areas as housing, employment, and health, which hinder their ability to participate effectively in the political process.

31. Representation on the Public Service Commission is no exception. Though the Commission dates back to the 19th century, only one African American, David L. Burgess, has ever served on it.

32. And Burgess did not become a member through statewide election. Rather, Governor Roy Barnes appointed him to fill a vacancy on the Commission in April 1999.

33. Burgess was then elected in 2000, but only with the advantage of incumbency. He would only serve one full term before being

defeated in his 2006 campaign for reelection. No African American has served on the Commission before or since.

34. The Public Service Commission has not been responsive to the particularized needs of African American residents of Georgia.

35. The at-large method of electing members of the Public Service Commission lacks proportionality in that the percentage of districts in which African-American voters constitute an effective majority is less than the African-American percentage of Georgia's voting-age population.

Claim One

36. The at-large method of electing members of Georgia's Public Service Commission dilutes black voting strength in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301.

Relief

37. A real and actual controversy exists between the parties.

38. The plaintiffs have no adequate remedy at law other than this action for declaratory and equitable relief.

39. The plaintiffs are suffering irreparable harm as a result of the violation complained of herein, and that harm will continue unless declared unlawful and enjoined by this Court.

WHEREFORE, the plaintiffs respectfully pray that this Court:

- (1) enter a declaratory judgment that the at-large method of electing members of Georgia's Public Service Commission dilutes black voting strength in violation of Section 2 of the Voting Rights Act, 52 U.S.C. § 10301;
- (2) enjoin the Secretary of State from administering any future elections for members of the Public Service Commission using the at-large method of election;
- (3) order the Secretary of State to administer future elections for members of the Public Service Commission using a method of election that complies with Section 2 of the Voting Rights Act;
- (4) award the plaintiffs the costs of this action together with their reasonable attorneys' fees and expenses under 52 U.S.C. § 10310(e) and 42 U.S.C. § 1988; and

(5) retain jurisdiction of this action and grant the plaintiffs any further relief which may in the discretion of the Court be necessary and proper.

Respectfully submitted this 14th day of July, 2020.

/s/ Bryan L. Sells

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AMERICAN Factfinder

QT-P5

Race Alone or in Combination: 2010

2010 Census Summary File 1

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/sf1.pdf>.

Geography: Georgia

Subject	Number	Percent
Total population (all races)	9,687,653 ^(H1102)	100.0
WHITE		
White alone or in combination [1]	5,951,521	61.4
White alone	5,787,440	59.7
White in combination	164,081	1.7
Not White alone or in combination	3,736,132	38.6
BLACK OR AFRICAN AMERICAN		
Black or African American alone or in combination [1]	3,054,098	31.5
Black or African American alone	2,950,435	30.5
Black or African American in combination	103,663	1.1
Not Black or African American alone or in combination	6,633,555	68.5
AMERICAN INDIAN AND ALASKA NATIVE		
American Indian and Alaska Native alone or in combination [1]	84,024	0.9
American Indian and Alaska Native alone	32,151	0.3
American Indian and Alaska Native in combination	51,873	0.5
Not American Indian and Alaska Native alone or in combination	9,603,629	99.1
ASIAN		
Asian alone or in combination [1]	365,497	3.8
Asian alone	314,467	3.2
Asian in combination	51,030	0.5
Not Asian alone or in combination	9,322,156	96.2
NATIVE HAWAIIAN AND OTHER PACIFIC ISLANDER		
Native Hawaiian and Other Pacific Islander alone or in combination [1]	15,577	0.2
Native Hawaiian and Other Pacific Islander alone	6,799	0.1
Native Hawaiian and Other Pacific Islander in combination	8,778	0.1
Not Native Hawaiian and Other Pacific Islander alone or in combination	9,672,076	99.8
SOME OTHER RACE		
Some Other Race alone or in combination [1]	442,198	4.6
Some Other Race alone	388,872	4.0
Some Other Race in combination	53,326	0.6
Not Some Other Race alone or in combination	9,245,455	95.4

PLAINTIFFS
COMPLAINT EXHIBIT

1

X Not applicable.

[1] The race concept "alone or in combination" includes people who reported a single race alone (e.g., Asian) and people who reported that race in combination with one or more of the other race groups (i.e., White, Black or African American, American Indian and Alaska Native, Native Hawaiian and Other Pacific Islander, and Some Other Race). The "alone or in combination" concept, therefore, represents the maximum number of people who reported as that race group, either alone, or in combination with another race(s). The sum of the six individual race "alone or in combination" categories may add to more than the total population because people who reported more than one race are tallied in each race category.

Source: U.S. Census Bureau, 2010 Census.

Summary File 1, Tables P3 and P6.

AMERICAN Factfinder

P10

RACE FOR THE POPULATION 18 YEARS AND OVER

Universe: Population 18 years and over
2010 Census Summary File 1

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://www.census.gov/prod/cen2010/doc/sf1.pdf>.

	Georgia
Total:	7,196,101
Population of one race:	7,089,529
White alone	4,481,721
Black or African American alone	2,097,470
American Indian and Alaska Native alone	23,053
Asian alone	236,031
Native Hawaiian and Other Pacific Islander alone	4,751
Some Other Race alone	246,503
Two or More Races:	106,572
Population of two races:	98,150
White; Black or African American	17,703
White; American Indian and Alaska Native	20,487
White; Asian	15,037
White; Native Hawaiian and Other Pacific Islander	1,177
White; Some Other Race	17,637
Black or African American; American Indian and Alaska Native	7,937
Black or African American; Asian	4,157
Black or African American; Native Hawaiian and Other Pacific Islander	1,259
Black or African American; Some Other Race	5,366
American Indian and Alaska Native; Asian	858
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	109
American Indian and Alaska Native; Some Other Race	1,211
Asian; Native Hawaiian and Other Pacific Islander	895
Asian; Some Other Race	3,572
Native Hawaiian and Other Pacific Islander; Some Other Race	745
Population of three races:	7,592
White; Black or African American; American Indian and Alaska Native	4,186
White; Black or African American; Asian	626
White; Black or African American; Native Hawaiian and Other Pacific Islander	85
White; Black or African American; Some Other Race	462
White; American Indian and Alaska Native; Asian	334
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	41
White; American Indian and Alaska Native; Some Other Race	266
White; Asian; Native Hawaiian and Other Pacific Islander	408
White; Asian; Some Other Race	201
White; Native Hawaiian and Other Pacific Islander; Some Other Race	91

PLAINTIFFS
COMPLAINT EXHIBIT

2

Black or African American; American Indian and Alaska Native; Asian	180
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	49
Black or African American; American Indian and Alaska Native; Some Other Race	171
Black or African American; Asian; Native Hawaiian and Other Pacific Islander	148
Black or African American; Asian; Some Other Race	145
Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	84
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	18
American Indian and Alaska Native; Asian; Some Other Race	37
American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	30
Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	30
Population of four races:	656
White; Black or African American; American Indian and Alaska Native; Asian	285
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander	23
White; Black or African American; American Indian and Alaska Native; Some Other Race	140
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander	16
White; Black or African American; Asian; Some Other Race	38
White; Black or African American; Native Hawaiian and Other Pacific Islander; Some Other Race	8
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	33
White; American Indian and Alaska Native; Asian; Some Other Race	4
White; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	4
White; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	21
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	30
Black or African American; American Indian and Alaska Native; Asian; Some Other Race	6
Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	6
Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	35
American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	7
Population of five races:	158
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander	138
White; Black or African American; American Indian and Alaska Native; Asian; Some Other Race	15
White; Black or African American; American Indian and Alaska Native; Native Hawaiian and Other Pacific Islander; Some Other Race	1
White; Black or African American; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	4
White; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0
Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	0
Population of six races:	16

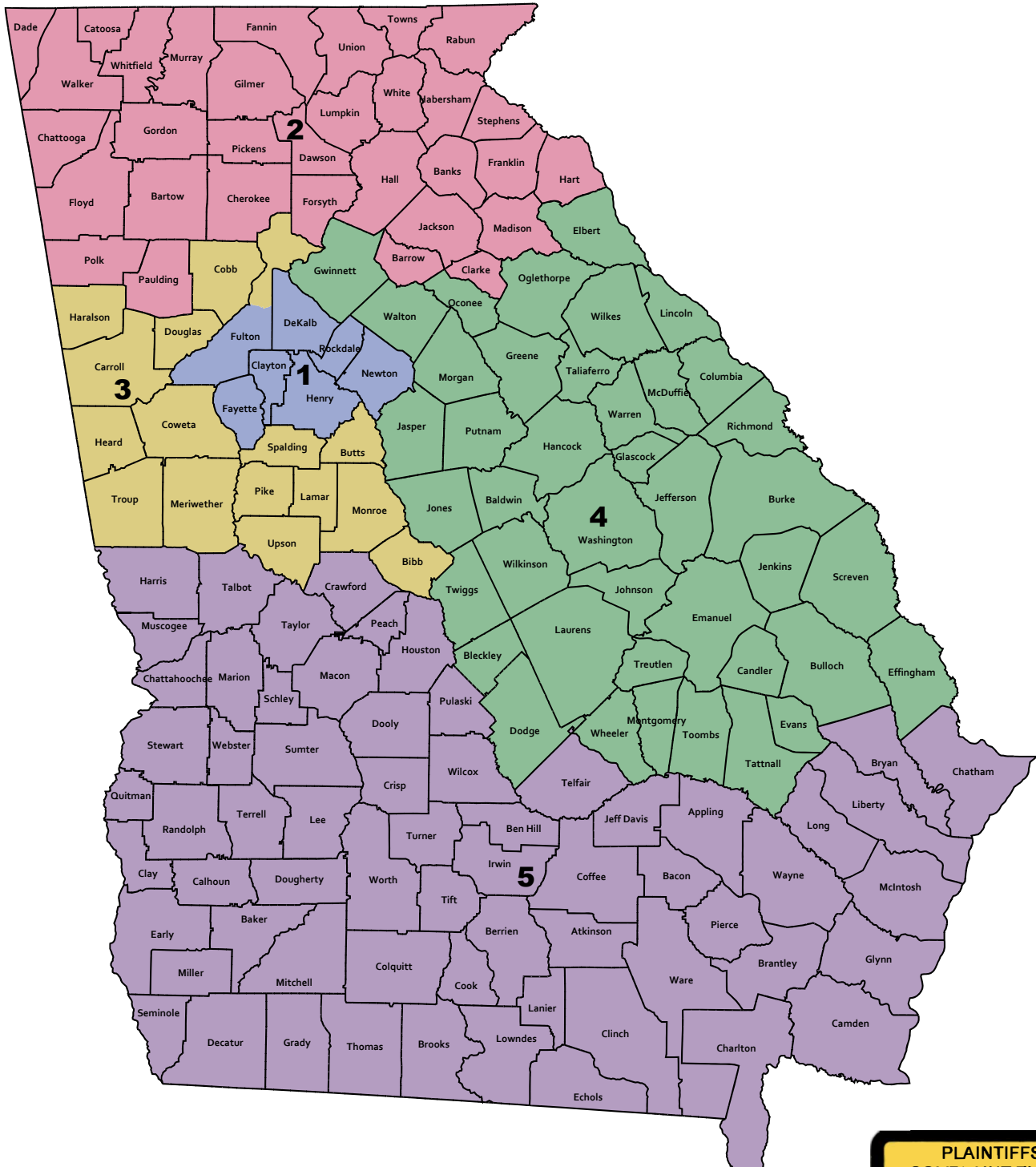
	Georgia
White; Black or African American; American Indian and Alaska Native; Asian; Native Hawaiian and Other Pacific Islander; Some Other Race	16

Source: U.S. Census Bureau, 2010 Census.

Illustrative Plan 1

Public Service Commission Districts

Rose v. Raffensperger



Illustrative Plan 1

Public Service Commission Districts

Rose v. Raffensperger

Population Summary

District	Population	Deviation	Percent	Voting-Age Population		Black Registration
			Deviation	NH White	AP Black	
1	1,951,301	13,770	0.71	34.46%	54.15%	53.97%
2	1,941,115	3,584	0.18	81.13%	7.9%	7.49%
3	1,937,272	-259	-0.01	63.64%	24.21%	24.64%
4	1,924,919	-12,612	-0.65	56.94%	28.07%	28.36%
5	1,933,046	-4,485	-0.23	58.86%	34.07%	32.82%

Total Population: 9,687,653

Ideal District Population: 1,937,531

Summary Statistics:

Absolute Range: -12,612 to 13,770

Absolute Overall Range 26382

Relative Range: 0.00% to 0.71%

Relative Overall Range: 1.36%