IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

ALABAMA LEGISLATIVE BLACK CAUCUS, et al., Plaintiffs, THE STATE OF ALABAMA, et al., Defendants.	Case No. 2:12-cv-691 WKW-MHT-WHP
DEMETRIUS NEWTON, et al., Plaintiffs, v. THE STATE OF ALABAMA, et al., Defendants.	Case No. 2:12-cv-1081 WKW-MHT-WHP

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO REMAINING CLAIMS OF THE ALBC PLAINTIFFS

In support of their Motion for Summary Judgment with respect to the ALBC Plaintiffs claim of race-based vote dilution and isolation, the State of Alabama and Beth Chapman, in her official capacity as Secretary of State of Alabama,

defendants in this action (the "ALBC State Defendants"), submit this Memorandum. For the reasons stated in the Motion and this Memorandum, this Court should enter summary judgment in favor of the ALBC State Defendants and against the ALBC Plaintiffs.

TABLE OF CONTENTS **Page:**

INTRODUCTION …… 4

PROPOSED UNDISPUTED FACTS …….. 5

Drafting the 2012 Plans …….. 5

ALBC Plaintiff Bobby Singleton …… 35

ALBC Plaintiff Albert Turner ……. 39

ALBC Plaintiff Rhondel Rhone …….. 40

ALBC Plaintiff Jiles Williams …… 45

ALBC Plaintiff George Bowman …… 50

ARGUMENT …… 52

1. The Applicable Standard ……. 52

2. The ALBC Associational Plaintiffs lack standing to pursue district-specific claims of race-based dilution and isolation ……. 52

3. The ALBC State Defendants are entitled to summary judgment in their favor on the ALBC Plaintiffs' claim of race-based dilution and isolation …….. 54

A. The District Demographics …….. 55

B. The black-majority districts are not packed as a matter of law …….. 59

C. The ALBC Plaintiffs have failed to make the requisite factual showing ……... 61

D. Senator Dial's and Representative McClendon's understandings of their obligations under the Voting Rights Act are not unreasonable …….. 64

4. The creation of influence or crossover districts is not a valid remedy ……. 67

CONCLUSION …….. 69

TABLE OF AUTHORITIES

Cases: **Page:**

Bartlett v. Strickland,

556 U.S. 1, 129 S. Ct. 1231 (2009) …….. 67

Georgia v. Ashcroft,

539 U. S. 461, 123 S. Ct. 2348 (2003) ……. 65

Johnson v. De Grandy,

512 U.S. 997, 1007 (1994) ……... 34, 60

Lance v. Coffman,

549 U.S. 437, 127 S. Ct. 1194 (2007) …….. 53

Texas v. United States

831 F. Supp. 2d 244 (D.D.C. 2011) …….. 59, 61, 62

Thornburg v. Gingles,

478 U.S. 30, 106 S. Ct. 2752 (1986) ……. 67

United States v. Beer,

425 U.S. 130, 96 S. Ct. 1357 (1976) ……. 65

United States v. Hays,

515 U.S. 737, 115 S. Ct. 2431 (1995) …….. 52

Voinovich v. Quilter,

507 U.S. 146, 154, 113 S. Ct. 1149, 1156 (1993) ……. 67

INTRODUCTION

This Motion is directed at the ALBC Plaintiffs' claim of racially-based dilution and isolation.[1] In Count II of their Amended Complaint (No. 60), the ALBC Plaintiffs assert that the 2012 Alabama legislative redistricting plans dilute and isolate black voting strength. They contend that the 8 black-majority Senate districts and the 27 black-majority House districts have been "pack[ed]." No. 60 at ¶¶ 52, 53. This claim, like the ALBC Plaintiffs' partisan gerrymandering claim, is

[1] The ALBC State Defendants have already filed a Motion for Partial Summary Judgment directed at the ALBC Plaintiffs' partisan gerrymandering claim. That motion and what is effectively a cross-motion, which were the subject of a hearing on May 16, 2013, remain pending. The ALBC State Defendants will not repeat what they have already said regarding the ALBC Plaintiffs' so-called partisan gerrymandering claim.

also inextricably linked to their federally non-justiciable complaints about the splitting of counties and to their disapproval of the use of an overall population deviation of ±1%, as their Amended Complaint shows:

> "The dilution of black voting strength was aided by the arbitrary and unnecessary restriction of permissible population deviations to ±1% and by systematic noncompliance with the whole-county provisions of the Alabama Constitution."

No. 60 at ¶ 54.

PROPOSED UNDISPUTED FACTS

In this portion of their Memorandum, the ALBC State Defendants will include proposed facts related to the drafting of the 2012 legislative plans and the claims of the ALBC Plaintiffs.

Drafting the 2012 Plans

1. Alabama Senator Gerald Dial, a member of the Alabama Legislature since 1974, was appointed to the Permanent Legislative Committee on Reapportionment for the 2011-2014 Quadrennium as the Senate representative for the Third Congressional District. No. 76-4 at 1-2, ¶ 2, line 38, ¶ 3, lines 3-6.

2. Alabama Representative Jim McClendon, a member of the Alabama Legislature since 2002, was appointed to the Permanent Legislative Committee on Reapportionment for the 2011-2014 Quadrennium as the House representative for the Sixth Congressional District. No. 76-5 at 1-2, ¶ 2, lines 38-40, ¶ 3, lines 1-4.

3. Senator Dial and Representative McClendon served as co-chairs of the Reapportionment Committee. No. 76-4 at 2, ¶ 3, lines 5-6; No. 76-5 at 2, ¶ 3, lines 3-4.

4. Before undertaking to redo the district lines for the State of Alabama's congressional, State Board of Education and State legislative bodies after the 2010 Census, the Reapportionment Committee adopted Guidelines to assist it in its work. No. 76-4 at 2, ¶ 6, lines 20-23; No. 76-5 at 2, ¶ 6, lines 15-18.

5. The 2011 version of the Guidelines is very much like the 2001 version. No. 76-4 at 2 ¶ 6, line 23 through 3, line 1; No. 76-5 at 2, ¶ 6, lines 18-19.

6. One change the Committee chose to make is the change from an overall population deviation of ±5%, which was used in the 1993 and 2001 plans, to an overall population deviation of ±1%. No. 76-4 at 3, ¶ 6, lines 1-3; No. 76-5 at 2, ¶ 6, lines 19-21; see also No. 30-4 at 2, ¶ 2b.

7. The State drew that change to the attention of the Attorney General of the United States during the process of obtaining preclearance for the State Board of Education redistricting plan. No. 30-5 at 2.

8. The State again drew that change to the attention of the Attorney General of the United States during the process of obtaining preclearance for the legislative

redistricting plans adopted in Acts Nos. 2012-602 and 2012-603. No. 30-6 at 2; No 30-7 at 7.

9. The Attorney General of the United States made no objection to any of those plans or to the use of the ±1% overall population deviation. Nos. 26-1, 26-2, 30-8.

10. Senator Dial and Representative McClendon served as the focal point of the redistricting effort in their respective houses of the Alabama Legislature. No. 76-4 at 3, ¶ 8, lines 14-15; No. 76-5 at 3, ¶ 8, lines 7-8.

11. In their judgment, changing the overall population deviation from ±5% to ±1% was a reasonable attempt to comply with the general constitutional mandate that districts be nearly equal to each other in population to each other, without the need for absolute equality. No. 76-4 at 3, ¶ 6, lines 3-6; No. 76-5 at 2, ¶ 6, lines 21-23.

12. Before starting work on the legislative redistricting plans, the Committee conducted public hearings at 21 locations throughout the State of Alabama. No. 76-4 at 3, ¶ 7, lines 7-13; No. 76-5 at 3, ¶ 7, lines 1-6. The purposes of those hearings were to hear proposals from interested persons for drawing new districts and to receive other public comments.

13. Senator Dial and Representative McClendon attended each of those public hearings. No. 76-4 at 3, ¶ 7, lines 7-13; No. 76-5 at 3, ¶ 7, lines 1-6.

14. Other Committee members attended one or more of them, and sometimes members of the Legislature spoke at them. No. 76-4 at 3, ¶ 7, lines 7-13; No. 76-5 at 3, ¶ 7, lines 1-6.

15. At each meeting, Senator Dial and Representative McClendon pointed out to the attendees that changes in the population and its distribution required that some districts add people and others lose them. No. 76-4 at 3, ¶ 7, lines 7-13; No. 76-5 at 3, ¶ 7, lines 1-6.

16. In the public meeting in Selma, held on October 18, 2011, Senator Hank Sanders, an ALBC member, stated:

> One of many concerns is we are not to have any less African-American --- the majority African-American districts than you have, and that those districts ought not be less than 62 percent. And I just want to say why 62 percent ought not to be less than 62 percent. Many times a population of a district is not reflective of the voters at all in that district. Sometimes a lot of people don't vote. Sometimes a lot of people can't vote. They might be in prison or other kinds of institutions. Sometimes a lot of folks are discouraged for one reason or another. So I would hope that 62 percent is a minim[um] for the majority African-American district.

No. 30-28 at 6.

17. In the public meeting in Selma, Representative Darrio Melton, another ALBC member, acknowledged that both HD 67, his district, and HD 69,

represented by Representative David Colston, an ALBC member, needed to add population. No. 30-28 at 7.

18. In the public meeting in Selma, Representative Melton stated, "I would not like to see me and Colston, my colleague now, have to run against each other in regard[] to heavy representation in this area. So I would encourage the Committee to consider that when we start talking about redrawing these lines." No. 30-28 at 7.

19. In the public meeting in Thomasville, Representative Thomas Jackson, an ALBC member, stated that, given that his district was a rural, Black Belt district, "having a minority district over there, it's got to be ninety-nine percent minority." No 30-23 at 8.

20. Representative Jackson suggested, "It could be sixty-two or sixty-five percent [minority]." No 30-23 at 8.

21. In preparing to draft the Senate plan, Senator Dial talked to each of the other 34 members in the Senate to find out from them what they thought should be done. No. 76-4 at 3, ¶ 8, lines 15-19.

22. In preparing to draft the House plan, Representative McClendon offered to talk with each of his fellow House members, and most, but not all, of them took him up on that offer. No. 76-5 at 3, ¶ 8, lines 8-10.

23. Each legislator knew or should have known that, because of the changes in the State's population and its distribution since the last Census, the lines of his or her district would have to change. No. 76-4 at 3, ¶ 8, lines 19-21.

24. In his discussions with his Senate colleagues, Senator Dial told them that he could not guarantee that they would win in their new districts. No. 76-4 at ¶ 8, page 3, line 22 through page 4, line 1.

25. In his discussions with his Senate colleagues, Senator Dial told them that he would try to make sure that none of them would have to run against one of their 34 colleagues. No. 76-4 at ¶ 8, page 3, line 22 through page 4, line 1.

26. In drawing the plans, Senator Dial and Representative McClendon started with the black-majority districts because the Voting Rights Act requires the State to, among other things, preserve those districts to the extent possible. No. 76-4 at 4, ¶ 9, lines 5-7; No. 76-5 at 3, ¶ 9, lines 11-13.

27. Senator Dial and Representative McClendon understood their obligation under the Voting Rights Act to include (a) preserving the black majority districts and (b) doing their best to make sure that the African-American community could elect the candidate of choice in each such district. No. 76-4 at 4, ¶ 9, lines 7-10; No. 76-5 at 3, ¶ 9, lines 13-16.

28. Each of the 8 black-majority Senate districts and the 27 black-majority House districts in the 2001 plans was underpopulated when the 2010 Census results were loaded into them. No. 76-4 at 4, at ¶ 9, lines 10-12; No. 76-5 at 3, ¶ 9, lines 16-18.

29. Because each of the 8 black-majority Senate districts and the 27 black-majority House districts was underpopulated coming into the redistricting that followed the 2010 Census, population needed to be added to them. No. 76-4 at 4, ¶ 9, lines 10-12; No. 76-5 at 3, ¶ 9, lines 16-18.

30. In order to essentially guarantee that the black community could elect the candidate of its choice in those pre-existing black-majority districts, the population to be added to the black-majority districts had to be contiguous to the prior district lines and had to have about the same percentage of black population in it. No. 76-4 at 4, ¶ 9, lines 12-15; No. 76-5 at 3, ¶ 9, lines 18-21.

31. Another priority for Senator Dial and Representative McClendon was compliance with the ±1% overall population deviation established in the Guidelines. No. 76-4 at 4, ¶ 10, lines 1-2; No. 76-5 at 4, ¶ 10, lines 1-3.

32. Any change made to accommodate the desires of a Senate or House member had to remain within the allowable ±1% overall population deviation. No. 76-4 at 4, ¶ 10, lines 18-19; No. 76-5 at 4, ¶ 10, lines 3-4.

33. Senator Dial also tried not to put two Senate incumbent members in the same district. No. 76-4 at 4, ¶ 10, lines 19-20.

34. Representative McClendon also tried not to put two incumbent House members in the same district. No 76-5 at 4, ¶ 11, line 7.

35. Even though Representative McClendon tried not to put two incumbent House members in the same district, HD 53 was moved from Birmingham to Huntsville and HD 73 was moved from Montgomery to Shelby County. No. 76-5 at 4, ¶ 11, lines 7-9.

36. Moving HD 53 from Birmingham to Huntsville and the related moves within the Birmingham area resulted in two Democratic incumbents being placed in the same district.

37. Moving HD 73 from Montgomery to Shelby County and the related moves in the Montgomery area resulted in two Democratic incumbents being placed in the same district.

38. In McClendon's view, the black-majority House districts in Birmingham were sufficiently underpopulated to allow for the creation of a new black-majority House district in Huntsville, where the black population was growing. No. 76-5 at 4, ¶ 12, lines 10-12.

39. The change moving HD 53 to Huntsville was made in accordance with the Voting Rights Act and with the overall population deviation of ±1%. No. 76-5 at 4, ¶ 12, lines 13-14.

40. Shelby County, where HD 73 landed after being moved from Montgomery, had experienced significant population growth in the preceding decade. No. 76-5 at 4, ¶13, lines 15-16.

41. Moving HD 73 from Montgomery to Shelby County was in accordance with the overall population deviation of ±1%.

42. Senator Dial and Representative McClendon also tried to preserve communities of interest in the new plans, but that consideration was subject to compliance with the Voting Rights Act and the overall population deviation of ±1%. No. 76-4 at ¶ 11, page 4, line 21 through page 5, line 1; No. 76-5 at ¶ 11, page 4, lines 5-7.

43. Senator Dial reminded some of his Senate colleagues that they were State Senators, not county or district Senators. No. 76-4 at ¶ 11, page 5, lines 1-2.

44. The Alabama Legislature took up legislative redistricting in a Special Session that began on May 17, 2012. Exhibit O-1.

45. Shortly before the special session began, the draft Senate and House plans were completed. No. 76-4 at 5, ¶ 12, line 3; No. 76-5 at 5, ¶ 15, line 1.

46. Those plans were the subject of another public hearing of the Reapportionment Committee that took place in Montgomery on the morning of Thursday, May 17, 2012. No. 76-4 at 5, ¶ 12, lines 3-5; No. 76-5 at 5, ¶ 15, lines 1-3.

47. Each member of the Senate received a summary of the Senate plan on Thursday, May 10, 2012, and they had the opportunity to review it and discuss it with their constituents over the weekend if they so chose. No. 76-4 at 5, ¶ 12, lines 5-7.

48. On May 10, 2012, each member of the House was offered a hard copy map of their district and had the opportunity to review and discuss it with their constituents over the weekend prior to discussion on the House floor if they so chose. No. 76-5 at 5, ¶ 15, lines 3-5.

49. The table below shows the total population and degree of over- or underpopulation for each of the black-majority Senate districts in the 2012, 2001, and 1993 plan.

Table S-1

Senate District Number	Act 2012–603 Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 Senate Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 1993 District Using 2000 Census Data (%)	1993 Senate Total Black Pop. (%)
18	59.10	–17.64	66.685	–21.674	65.89
19	65.31	–20.06	66.227	–17.947	63.00
20	63.15	–21.37	65.697	–25.275	64.28
23	64.84	–18.03	62.305	–14.716	63.46
24	63.22	–12.98	62.409	–17.553	65.36
26	75.13	–11.64	71.507	–16.942	70.34
28	59.83	– 3.80	56.458	– 3.233	61.09
33	71.64	–18.05	62.451	–18.153	65.34

The data shown in Table S-1 are drawn from Nos. 30-39, 30-41, 30-44 (pages 4-6), 30-47, and 30-48.

50. The table below shows the total population and over-or underpopulation of each black-majority House district in the 2012, 2001, and 1993 plans:

Table H-1

House District Number	Act 2012-602 Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 House Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 1993 District Using 2000 Census Data (%)	1993 House Total Black Pop. (%)
19	61.25	– 6.90	66.039	–22.256	66.27
32	60.05	–14.76	59.598	–15.567	63.93
52	60.13	– 5.19	65.848	–17.538	67.72
53	55.83	–22.28	64.445	–22.938	66.01
54	57.73	–23.32	63.276	–24.544	63.95
55	73.55	–21.86	67.772	–15.744	61.57
56	62.14	– 9.79	62.665	–19.706	63.52
57	68.47	–20.48	62.967	–18.282	63.90
58	75.68	–17.75	63.518	–22.688	62.75
59	72.96	–27.86	63.241	–27.091	63.86
60	67.68	–19.37	64.348	–26.038	66.22

67	69.15	–16.79	63.447	–22.357	63.50
68	64.31	–20.40	62.211	–13.524	63.58
69	64.21	–17.46	65.308	– 8.264	63.29
70	62.03	–13.77	62.827	–26.999	64.60
71	70.18	–16.32	64.191	–16.200	66.16
72	62.02	–13.42	60.748	– 9.338	65.36
76	73.79	– 1.38	73.309	– 8.505	66.69
77	67.04	–23.12	69.677	–24.289	71.93
78	70.00	–32.16	72.697	–18.029	72.37
82	62.14	– 4.68	62.663	– 8.663	79.73
83	57.52	– 9.85	61.214	+ 1.558	64.52
84	52.35	– 9.24	53.260	– 2.592	37.81
85	50.08	– 6.79	47.863	–25.002	51.13
98	60.02	–16.89	64.448	–21.972	65.72
99	65.61	–12.59	65.250	–18.214	65.09
103	65.06	–10.79	63.049	–19.000	65.58

The data shown in Table H-1 are drawn from Nos. 30-36, 30-37, 30-42 (pages 7-15), 30-45, and 30-46.

51. After she saw the proposed plan, Senator Tammy Irons (SD 1 - Democrat) told Senator Dial that her law office was not in her district and asked him to move it. No. 76-4, at 5, ¶ 13, lines 8-9.

52. In response to Senator Irons' request, Senator Dial prepared an amendment to offer on the Senate floor. No. 76-4 at 5, ¶ 13, lines 9-10.

53. Senator Dial was unable to offer that amendment on the Senate floor because Senator Keahey (SD 22 - Democrat) filibustered the bill and blocked Dial's opportunity. No. 76-4 at 5, ¶ 13, lines 10-13.

54. When Representative Joe Hubbard (HD 73 – Democrat) saw the proposed House plan, he asked Representative McClendon to make changes to accommodate his interests. No. 76-5 at 4, ¶ 14, lines 20-21.

55. Representative Joe Hubbard talked "extensively" with Representative McClendon. No. 76-5 at 5, ¶ 14, line 21.

56. None of the changes proposed by Representative Joe Hubbard would work with the neighboring districts. No. 76-5 at 5, ¶ 14, lines 21-22.

57. Representative McClendon insisted that, if changes were to be made, each member whose district would be affected concur in the proposed change. No. 76-5 at 6, ¶ 16, lines 7-8.

58. Representative McClendon also insisted that any proposed changes satisfy the overall population deviation of ±1%. No. 76-5 at 6, ¶ 16b, lines 14-15, ¶ 16c, lines 18-19.

59. Subject to those conditions, Representative McClendon was able to make changes to the House plan to accommodate both Democrats and Republicans. No. 76-5 at 6-7 ¶¶ 16a, 16b, 16d, and 16e.

60. Representative McClendon was able to make changes to the House plan that affected the white-majority districts in the Montgomery area to accommodate

Representatives Mask and Wren, both Republicans, and another House member. No. 76-5 at 6, ¶ 16a.

61. Representative McClendon was able to move some precincts in the Birmingham area to accommodate Representatives Robinson and Mary Moore, both African-American Democrats, and Representative Todd, another Democrat. No. 76-5 at 6, ¶ 16b; Exhibit O-4 at page 83, lin15 through page 84, line 1.

62. Representative McClendon was able to make changes to the House plan in the northwest part of Alabama to fix the common borders of their districts and accommodate Representative Burdine, a Republican, and Representatives Black and Morrow, both Democrats. No. 76-5 at 6 ¶ 16d; Exhibit O-4, at page 82, line 22 through page 83, line 14..

63. Representative McClendon was able to fix some problems on the shared border between the districts of Representatives Oden, Henry, Long, and Rich, all Republicans. No 76-5 at 7, ¶ 16e.

62. Representatives Coleman-Evans and Givan, both African-American Democrats from the Birmingham area, asked Representative McClendon about moving some 3,700 people from one district to the other. No. 76-5 at 6, ¶ 16c, lines 16-18.

64. Representative McClendon was unable to accommodate that request. No. 76-5 at 6, ¶ 16c, line 16.

65. Representative McClendon told Representatives Coleman-Evans and Givan to work things out in a population-neutral way, but they did not come back to him with such a proposal. No. 76-5 at 6, ¶ 16c, lines 18-19; Exhibit O-4 at page 84, line 21 through page 85, line 14.

66. Representative McClendon was also able to fix to fix a drafting error that put two members outside their new districts. No. 75-5 at 7, ¶ 17, lines 3-4.

67. One of those drafting errors resulted from the use of an incorrect home address. No. 76-5 at 7, ¶ 17, line 4.

69. Representative McClendon tried to treat all House members fairly, even as he sought to comply with the Voting Rights Act, the overall population deviation of ±1%, and other generally applicable redistricting considerations. No. 76-5 at 7, ¶ 18, lines 6-8.

70. Representative McClendon testified that none of the Alabama Republican Party, Bill Armstead, its chairman, or its executive committee, had any role in the redistricting process. Exhibit O-4 at page 54, lines 3-9.

71. Representative McClendon testified that, to his knowledge, the only involvement that the Speaker of the Alabama House of Representatives, Mike

Hubbard, had in the redistricting process was "when it was his turn to come sit down with me about his own personal district." Exhibit O-4 at page 52, lines 9-14.

73. Representative McClendon testified that the Speaker was "not looking over his shoulder all the time." Exhibit O-4 at page 52, lines 15-18.

74. Representative McClendon testified that Speaker Hubbard's instructions to him "were very simple: Draw fair districts." Exhibit O-4 at page 53, lines 4-6.

75. Senator Gerald Dial testified that, when he met with Senate members to discuss redrawing their districts,

> I either met with them in their office or my office. I asked them – I would say, look. Your district has to grow X number. It's got to reduce X number. What would be your personal – If you could draw your district, where would you like to draw it. I took that information and marked it on my maps and used that information and made it work as best I could. And I took that information when it was all completed to Mr. Hinaman.

Exhibit O-3 at 33, line 33 through 34, line 7.

76. Senator Dial testified:

> Q. All right. Why is DeKalb County split between three Senate districts?
>
> A. As you compressed into District 2, District 7 moved over into District 2 and 8 had to move up, and that's why it went into that county. It originally was DeKalb and Jackson. So it had to move over to take up part of that 42,000 that we're giving up all that we're compressing into Senate 2. Senate 7 moved in to take up part of those, and Senate 8 had to take in the others.
>
> Q. Now, when you were compressing to remove population from Senate District 2 -- That's what you're referring to –

A. Yes, sir.

Q. As compressing? – did you attempt to avoid splitting county boundaries?

A. As much as possible. But I had 42,000 people I couldn't leave hanging. I couldn't put them in Tennessee. And so, you see, 1, 7, and 3 all compressed into 2. And when you're doing that, you've got – there's no place – you can't do anything but move other people like a wheel into the other districts.

Exhibit O-3 at 43, line 16 through 44, line 17.

77. Senator Dial testified that he met with Senators Rodger Smitherman, Linda Coleman, and Patricia Dunn, three African-American Democrats and members of the ALBC, to discuss their new districts. Exhibit O-3 at page 13, line 12 through page 14, line 5.

78. Senator Dial testified: "[T]hey [i.e., Senators Smitherman, Coleman, and Dunn] informed me that they had a plan that met the requirements, and they wanted me to look at that. They brought it to me. I furnished that to Mr. Hinaman and asked him to incorporate it into our reapportionment plan, which he did." Exhibit O-3 at page 14, lines 6-11.

79. Randy Hinaman states:

Senator Dial gave me a map of the Birmingham-area Senate districts (SDs 18, 19, and 20) that I understood came from Senator Rodger Smitherman. That map did not include any demographic information with it, but when I looked at the neighborhoods included in the new

> district boundaries, I saw that the black population in the proposed new districts was about the same percentage as in the old districts. That map also split a number of precincts, which I input into the draft plan as they came to me. I estimate that I used 90-95% of that map in drawing the lines for the Senate plan, with the changes coming around some of the edges of the districts.

Exhibit O-10 at page 3, ¶ 5.

80. Senator Dial testified that he had to change SD 4 because of the need to take care of the extra 42,000 people in SD 2. His testimony continued:

> Q. You had to make changes in District 4 because of what you did in District 2? Is that what –
>
> A. Yes, sir.
>
> Q. Those aren't contiguous districts.
>
> A. No, sir. But if you look, I had to compress into District 2. Then – And 6 had to compress into District 1. It's just like – It's a domino effect. And that forced 4 over into part of 6 and to part of 1.

Exhibit O-3 at page 37, lines 2-10.

81. Senator Dial testified that the "major reason" he voted for the proposed overall deviation of ±1% "is the fact that I wanted something that would preclear justice and ensure one person one vote." Exhibit O-3 at page 38, lines 15-17.

82. Senator Dial testified that, in his judgment, SB 5, the ALBC Plaintiffs' preferred alternate, "would have deviated or reduced the number of minorities in the minority districts substantially where some of those districts would not have

met what we consider in my estimation the requirement not to deviate the minority districts." Exhibit O-3 at page 39, lines 15-20.

83. Senator Dial testified that, with respect to the lines for Senate districts 8, 9, and 10 in the northeast corner of Alabama:

> Q. The lines that are drawn for Senate Districts 8, 9, and 10, did you decide how to draw those lines, or did someone else decide?
>
> A. I decided as closely as I could consulting with the legislators in that district.
>
> * * * *
>
> Q. So you consulted with them about how to draw those lines?
>
> A. Right. Yes, sir. Because of the fact that communities within those districts were of essential interest to those individuals.
>
> Q. Would you say that those three Senators are the ones who primarily decided where those lines should be drawn?
>
> A. Primarily?
>
> Q. Yes.
>
> A. I would say that the final, yes. They had to understand that each had to give and take districts, and I would point that out to them with how we would have to move their districts into them. But in the final analysis, I would say that they basically okayed the district line that we provided for them.…

Exhibit O-3 at page 45, line 9 through page 46, line 11.

84. Senator Dial testified:

> Q. Why wouldn't it have been possible to keep Senate District 9 in Jackson, Marshall, and Blount counties?
>
> A. Well, if I would have kept all of Marshall and Jackson and Blount, then I would have aggravated a problem I had in Jefferson County. As I grew Jefferson County and the minority districts expanded into that area, it forced them out into the other districts and therefore affected Blount.
>
> Q. So now we're looking at Jefferson County as being part of the problem?
>
> A. Absolutely. When you had the three minority districts, all three that we talked about earlier, and the map they gave me, each of them had to grow an appreciable number of votes. And when you did that, it took that and expanded it out. And so it forced those legislat[ors] to move just as Senator Beason in 17, I believe, had to move out. It forced Senator Blackwell in 15 to move out because I had to grow those three districts within the geographical area that they were compounded in. And that created another difficulty that we had to work.

Exhibit O-3 at page 47, line 13 through page 48, line 14.

85. Senator Dial testified that he "couldn't move Senator Smitherman over the hill into Mountain Brook and Vestavia. It would have regressed his district." Exhibit O-3 at page 50, lines 6-8.

86. Senator Dial testified that he did not reduce the number of white-majority districts in Jefferson County because that would have resulted in putting some incumbents in the same district, thereby violating "the promise I made to all 34 of the senators." Exhibit O-3 at page 50, line 16 through page 51, line 1.

87. Senator Dial testified that changes to Senate District 1 resulted from that fact that it:

> Backed up on District 2, and somebody had to assume part of those 42,000 plus people.…Remember, that district is only joined on three sides because Tennessee joins on the north. So I compressed her into 2, compressed 7 into 2, and compressed 3 into 2, and brought all three of those people to assume part of that 42,000. In doing that, it shifted her to the right. Now, the other thing that played into this as well is Senate District 2[4], Senator Singleton's district. He had to grow. He had to grow up into Senate District 6.

Exhibit O-3 at page 51, lines 2-22.

88. Senator Dial testified that using an allowable population deviation of ±1% instead of a deviation of ±5% made it more difficult to avoid splitting counties. Exhibit O-3 at page 52, line 23 through page 53, line 3.

89. Senator Dial testified:

> Q. Would you agree that's a problem for the local delegation of Chilton County to have senators who represent so many other counties?
>
> A. No, sir.
>
> Q. It's not a problem to you, huh?
>
> A. No, sir.
>
> Q. Why not?
>
> A. If you have only one Senator representing one county, he becomes basically the most powerful person in the county.
>
> Q. But, it's true, isn't it, that every county commission you run into wants fewer members of his local delegation?

> A. Well, the same applies to county commissioners, you know. You've got – I've got five county commissioners. I'd like to have just one or two. But to reach the population requirement, I have to have five.

Exhibit O-3 at page 55, lines 6-23.

90. Senator Dial testified that, while minimizing the number of senators in a county's delegation was one of his objectives, it was "not the top priority." Exhibit O-3 at page 56, lines 9-10.

91. Senator Dial testified that Dial Senate Plan 1 was the first plan released and its release came on the Thursday before the Special Session began. Exhibit O-3 at page 70, line 21 though page 71, line 17.

92. Dial Senate Plan 1 erroneously put two sets of incumbents into the same districts, an error that was corrected in Dial Senate Plan 2. Exhibit O-3 at page 70, lines 2-20.

93. After Dial Senate Plan 2 was released, Senator Tammy Irons asked Senator Dial to make some changes to her district, SD 1, "to better meet some of her demands in her district," and Dial Senate Plan 3 was the result. Exhibit O-3 at page 72, lines 12-22.

94. When putting Dial Senate Plan 3 together in the Reapportionment Office, Senator Dial believed that Randy Hinaman was present. Senator Dial testified:

Q. Did he approve how you instructed Bonnie [Shanholtzer] to draw it?

A. It wasn't his job to approve it.

Exhibit O-3 at page 75, lines 12-14.

95. Senator Dial explained, "[I]t was not his decision. It was my choice. It was my decision." Exhibit O-3 at page 76, lines 15-16.

96. Senator Dial testified that he talked with Senator Marc Keahey about SD 22 and that Keahey

> presented me – drew me several – on my map several proposals that he would like to see encompassed into his district. Each time I tried to encompass those into what I was trying to draw. And each time it began to impede on Senator Sanders' district and would violate my proposal to regress Senator Sanders' district, so I couldn't satisfy them.

Exhibit O-3 at page 80, lines 10-19.

97. Senator Dial testified, "The other problem we had was that the Baldwin County area had grown so that somebody had to assume some of the voters in Baldwin County." Exhibit O-3 at page 82, lines 5-8.

98. Senator Dial testified that one of Senator Keahey's proposals, which involved his taking some more of Mobile County, "upset the Mobile delegation, and I told him I could not make that work." Exhibit O-3 at page 83, lines 8-16.

99. Senator Dial testified:

> Q. When you said that you would try to figure out how you could incorporate these proposals of Senator Keahey, what would you do to determine if those could be incorporated?
>
> A. Well, the Mobile thing was not rocket science. I went to the Mobile delegation, and they said no.

Exhibit O-3 at page 83, lines 17-23.

100. Senator Dial testified that he told Senator Keahey that "I would like to help him if there's any way I can, but I can't move people into Mississippi and into Florida, and I had to take care of what had come into Baldwin County." Exhibit O-3 at page 85, lines 13-17.

101. Senator Dial testified that, to the extent that minority population was moved from Senator Keahey's district, "it's very likely because Senator Sanders had to pick up minorities." Exhibit O-3 at page 86, lines 9-19.

102. Senator Dial testified that, while there may be a community of interest that includes Baldwin and Mobile counties, "the legislative delegation is not a community of interest." Exhibit O-3 at page 90, lines 13-16.

103. Senator Dial testified that, when he proposed bringing Senator Keahey deeper into Mobile County and taking Senator Grover over into Baldwin County, he "got less than a warm reception." Exhibit O-3 at page 90, line 18 through page 91, line 1.

104. Senator Dial testified that neither the Mobile County delegation nor the Baldwin County delegation "wanted the other delegation over into their county." Exhibit O-3 at page 103, line 9 though page 104, line 2.

105. Senator Dial testified that sometimes there were competing communities of interest:

> When you talk about splitting one community of interest away from the other, you always impact another community of interest. It's kind of like moving the county boundaries. You can't keep everybody intact. If you keep one community of interest, you probably take away the community of interest of another one next to it. So it's very difficult to – You know, I try – we're all Alabamians, and that ought to be a community of interest."

Exhibit O-3 at page 115, line 21 through page 116, line 10.

106. Senator Dial testified that "the numbers were just not there" to support a ninth black-majority Senate district in the 2010 round of redistricting. Exhibit O-3 at page 116, line 11-23.

107. Representative McClendon testified, "I would have legislators that would meet. And they might work out something between them, and I would ask him [i.e., Randy Hinaman] to honor their wishes if it didn't throw our numbers off." Exhibit O-4 at page 18, line 18 through page 19, line 2.

108. Representative McClendon testified that the House plan began to take shape as the regular 2012 legislative session came to a close. Exhibit O-4 at page 19, line10 through page 20, line 4.

109. Representative McClendon testified that the effort to redraw the House districts started with the "minority districts." Exhibit O-4 at page 20, lines 9-11.

110. Representative McClendon testified that "the first target was getting – bringing those districts up to the within the [population] guidelines that we had stated in the committee." Exhibit O-4 at page 20, line 23 through page 21, line 3.

111. Representative McClendon testified that he voted to adopt the overall deviation of ±1%: "I think it hinged on trying to stay in the one-man, one-vote concept. And when the congressional districts were zero deviation, that didn't seem like much of a hurdle." Exhibit O-4 at page 22, lines 18-22.

112. Representative McClendon testified:

> Q. What was your understanding of the requirement that the Supreme Court has put on legislative districts?
>
> A. My understanding was that there was nothing exactly in – there was not a hard number put forward. But it made sense to me the closer you could get to honoring one man one vote, the more appropriate it seemed as far as representation. So we ended up with plus or minus 1. And we talked – I talked with Mr. Walker about this, about what's good and what's bad. And, of course the really big goal was to try to make sure what we did was in compliance with the Voting Rights Act and the other requirements.

Exhibit O-4 at page 23, line 19 through page 24, line 9.

113. Representative McClendon testified that, while adopting an overall deviation of ±1% made it more difficult to preserve county boundaries, a "higher

priority" was "honoring the Constitution and the one man one vote." Exhibit O-4 at page 25, lines 9-17.

114. Representative McClendon testified that, while SB5 and HB16 preserved more county boundaries, "The redistricting committee adopted plus or minus 1 percent. And so that was inside our guidelines, and I was obligated to do my best to stay inside the guidelines adopted by the redistricting committee. These plans [i.e., SB5 and HB16] went outside of the guidelines." Exhibit O-4 at page 36, lines 14-19.

115. Representative McClendon testified that when he met with other legislators in his office to discuss their new districts, they used a map of the district that came from the Reapportionment Office. Exhibit O-4 at page 49, line 12 through page 50, line 13.

116. Representative McClendon testified that, when he met with other legislators,

> [W]e knew what the 2010 Census numbers were for a given district. So we knew if that district needed to be smaller or bigger to pick up more people. And in most cases, the Republican districts needed to be more compact and the Democratic districts needed to go up. And my question would be if their district needed more people, I would say, where would you like to get these folks? And they would indicate – had a marker – or vice versa, who would you like to give up.

Exhibit O-4 at page 50, line 18 through page 51, line 5.

117. Representative McClendon testified that the marked-up maps did not tell anyone how many people were involved, so they went to Randy Hinaman, the Reapportionment Office, or both for that information. Exhibit O-4 at page 51, lines 6-17.

118. Representative McClendon testified that, when legislators came to his office to talk about the new districts, "People were very self-centered on their district and what happened in the adjacent districts was not much of their concern." Exhibit O-4 at page 76, lines 20-23.

119. Representative McClendon testified that the representatives who came to talk with him about their new districts included African-American representatives. Exhibit O-4 at page 119, lines 10-12.

120. Representative McClendon testified that none of the African-American representatives who talked to him about their districts asked for fewer African-Americans. Exhibit O-4 at page 119, lines 13-16.

121. Representative McClendon testified that none of the Democratic representatives who talked with him asked for fewer Democrats in their new districts. Exhibit O-4 at page 199, lines 17-19.

122. Representative McClendon testified that, in McClendon 1, the first draft of the plan, Representatives A.J. McCampbell and Elaine Beech told him that they were not residents of the new districts. Exhibit O-4 at page 78, lines 3-12.

123. Representative McClendon testified that those problems were corrected in McClendon 2. Exhibit O-4 at page 80, lines 14-22.

124. Representative McClendon testified that he first heard the term packing on the House floor. Exhibit O-4 at page 105, lines 22-23.

125. Representative McClendon testified:

> [L]et me tell you how I thought about the process. If I could stay – If a district was 57 percent minority as is today or in 2010 and when we redistrict it, if I can stay close to that number, I'm not having an impact, which is – seems like what you're trying to do is not go in there yourself and monkey with a district. So, you know, if a district was 72 percent, and you made it 69, I don't think that's a big deal. But if you made it 51, that would be suspicious by anybody's –

Exhibit O-4 at page 106, line 23 through page 107, line 11.

126. Representative McClendon testified that he first saw HB 16 on the House floor, "probably … on day 2 of the session." Exhibit O-4 at page 117, lines 5-19.

127. Representative McClendon testified that Representative Knight, the House sponsor of HB16, did not talk to him about it or what was in it before he filed it. Exhibit O-4 at page 118, lines 3-5.

128. In their Interrogatory responses, the ALBC Plaintiffs define "packing" as:

> [M]anipulation of district lines [which] can dilute the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door. *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994) (citing *Voinovich v. Quilter*, 507 U.S. 153-54 (1993)).

Exhibit O-2 at 2, Response to Interrogatory 1.

129. In their Interrogatory Responses, the ALBC Plaintiffs state that all of the black-majority districts in the 2012 Alabama legislative redistricting plans are "potentially packed." Exhibit O-2 at 3, Response to Interrogatory 2.

130. In their Interrogatory Responses, the ALBC Plaintiffs state that, in order to remedy the allegedly unconstitutional "packing" of the black-majority districts, it would be necessary to increase the overall population deviation from ±1%. Exhibit O-2 at 4, Response to Interrogatory 5.

131. In their Interrogatory Responses, the ALBC Plaintiffs declined to state whether any of the black-majority districts in the 1993 and 2001 plans were "packed," stating that they made no contention that the districts in those plans were or were not packed. Exhibit O-2 at 4, 5, Response to Interrogatories 7 and 9.

ALBC Plaintiff Bobby Singleton

132. ALBC Plaintiff Bobby Singleton is in his third term representing SD 24 and was first elected "in the special election, 2004-2005. Exhibit O-5 at page 5, lines 7-17.

133. ALBC Plaintiff Bobby Singleton testified that he thought Senator Dial and Representative McClendon were 'correct" in their understanding that the Voting Rights Act required the State of Alabama to preserve the then-existing black-majority districts if possible when it redrew the lines for the legislative districts. Exhibit O-5 at page 7, line 21 through page 8, line 8.

134. If Senator Singleton were drawing a black-majority district, he would want the African-American community to be able to elect the candidate of its choice in that district. Exhibit O-5 at page 8, line 20 through page 9, line 1.

135. When asked if he had any evidence that the Reapportionment Committee chose to use an overall deviation of ±1% for racially discriminatory reasons, Senator Bobby Singleton testified:

> No, I don't know. I don't know because I wasn't in any of those meetings. I have no evidence to say that. I think – If you want my opinion about it, I think they did it for party reasons in terms of trying to maintain and make sure they got as many Republican districts as they possibly can."

Exhibit O-5 at page 13, lines 14-22.

136. ALBC Plaintiff Bobby Singleton testified:

> Q. If one were to draw districts so that the majority-black districts were systematically underpopulated, closer to the negative 5 percent, and the majority-Republican districts were systematically overpopulated, would you agree with me that that is a structure that would tend to favor Democratic voters or the Democratic party over the Republican party.
>
> A. It could. It could.

Exhibit O-5 at page 35, line 16 through page 36, line 1.

137. ALBC Plaintiff Bobby Singleton testified, "I have heard them all mention about party. Senator Del Marsh at the mic said that we have successfully drawn 24-24 majority-Republican districts." Exhibit O-5 at page 14, lies 1-7.

138. ALBC Plaintiff Bobby Singleton had never heard Senator Dial say that the 2012 Senate plan was drawn for party reasons. Exhibit O-5 at page 14, lines 19-22.

139. ALBC Plaintiff Bobby Singleton talked with Senator Dial about SD 24, and Senator Dial told him he needed to gain population. Exhibit O-5 at page 14, line 23 through page 15 line 3; page 16 lines 8-10.

140. ALBC Plaintiff Bobby Singleton testified:

> Q. Do you know why your district shifted to the south?
>
> A. Well, based on the census, there was some population loss. And why it shift[ed] to the south and not to the north, I just – that's the way they drew it.
>
> Q. Does it bother you to be representing portions of Choctaw County or Clarke County?

A. It doesn't bother me, but it's all new territory. It's all new territory.

Q. You're going to campaign there, right?

A. Of course, I am, if this sticks. But I'm hoping that it doesn't.

Q. Right. I understand.
In the 2012 plan Senate District 24 is -- I'll represent it to be 63.22 percent black.

A. Uh-huh (positive response).

Q. In your judgment is that about right in total population?

A. Based on what they drew?

Q. Yes, sir.

A. Yeah. I think that's right.

Q. Do you think it's packed – a packed district?

A. You know, if I'm the candidate, I think I can win with a lesser margin than that.

Q. Did you tell that to Senator Dial?

A. I did tell it to Dial. Dial never told me what my percentages was going to be. All he said was they had to be -- he was trying to get them to 62 to 65 percent, and I told him I could win with a lesser amount than that.

Q. Where would you get the white folks?

A. The whites are in Tuscaloosa. Whites are in Bibb.

Exhibit O-5 at page 17, line 8 through page 18, line 18.

141. When ALBC Plaintiff Bobby Singleton met with Senator Dial to discuss SD 24, Senator Dial "suggested" that the people needed to bring SD 24 within the allowable population deviation might be picked up in Pickens County. Exhibit O-5 at page 36, lines 16-21.

142. ALBC Plaintiff Bobby Singleton has blocked local legislation but did so:

> Very, very, very seldom, because usually what I like to do if – My county commission or city council, they would have to present me with a resolution saying this is what they want. And if that's what they want, then I'm going to give it to them. It's very seldom they have something – And if I'm not going to do it, I'll let them know up front before they even do it, that it's something that I don't think we can work with, and we can just try to redraft the bill or something. But just have to block it, no.

Exhibit O-5 at page 23, line 9 through page 24, line 3.

143. ALBC Plaintiff Bobby Singleton testified that, this year, when he blocked a bill that Representative Elaine Beech from Choctaw County wanted that would change the form of Choctaw County's government, he acted because 3 of the Choctaw County commissioners asked him to. Exhibit O-5 at page 24, line 4 through page 25, line 6.

144. Before that, ALBC Plaintiff Bobby Singleton blocked local legislation that Senator Gerald Allen from Tuscaloosa wanted for part of Bibb County when

the mayor and some of the county commissioners asked him to do so. Exhibit O-5 at page 25, lines 7-17.

145. ALBC Plaintiff Bobby Singleton testified that a Senate committee chairman "can kill a bill." Exhibit O-5 at page 30, lines 3-17.

ALBC Plaintiff Albert Turner

146. ALBC Plaintiff Albert Turner is a member of the Perry County Commission. Exhibit O-6 at page 12, lines 7-9.

147. ALBC Plaintiff Albert Turner testified that he did not think that Senator Dial and Representative McClendon were correct in their understanding that the Voting Rights Act required the State of Alabama to preserve the existing black-majority districts to the extent possible. Exhibit O-6 at page 7, line 16 through page 8, line 4.

> ALBC Plaintiff Albert Turner testified that, in his opinion, the right interpretation would be an equitable distribution of the voters where there would be one vote per person in the district and that blacks should not be discriminated against or packed or gerrymandered in or out of a particular district based on race or based on constitution.

Exhibit O-6 at page 8, lines 7-14.

148. ALBC Plaintiff Albert Turner testified that, when the voting-age white population of a black-majority district "is 30 percent or above," that district is not packed. Exhibit O-6 at page 50, lines 1-8.

149. ALBC Plaintiff Albert Turner testified that he saw the line for packing as going over 60 percent voting-age population in a district. Exhibit O-6 at page 64, lines 10-12.

150. ALBC Plaintiff Albert Turner testified that, in all of his remedies for the alleged packing, he would use an overall deviation of ±5% because "that's what's constitutionally required." Exhibit O-6 at page 51, lines 10-11.

151. ALBC Plaintiff Albert Turner testified that using an overall deviation of ±5% would let one "balance out the population of African – you can still have a majority-black district, but yet you would have influence from other races. Same thing with majority-white districts, that African-Americans would have some influence in the vote." Exhibit O-6 at page 51, lines 16-22.

152. ALBC Plaintiff Albert Turner testified that a community of interest might be linked by race or party affiliation. Exhibit O-6 at page 58, lines 11-20.

ALBC Plaintiff Rhondel Rhone

153. ALBC Plaintiff Rhondel Rhone is a county commissioner for Clarke County. Exhibit O-7 at page 10, lines 17-19.

154. ALBC Plaintiff Rhondel Rhone attended the public hearing held by the Reapportionment Committee in Thomasville. Exhibit O-7 at page 8, lines 21-23.

155. ALBC Plaintiff Rhondel Rhone testified that he knew that the public hearings in Thomasville and Montgomery were going to take place because they were publicized. Exhibit O-7 at page 9, lines 1-3.

156. ALBC Plaintiff Rhondel Rhone testified that there were no maps at the public hearings in Thomasville and Montgomery. Exhibit O-7 at page 9, lines 8-16.

157. In the 2001 Senate plan, Clarke County was split between SD 23 and SD 24, both of which were majority-black. Exhibit O-7 at page 11, lines 18-21, page 12, lines 8-12.

158. In the 2012 Senate plan, Clarke County is split between SDs 22, 23, and 24. Exhibit O-7 at page 12, line 23 through page 13, line 4.

159. In the 2001 House plan, Clarke County was split between HD 65 and HD 68. Exhibit O-7 at page 14, lines 14-23.

160. In the 2012 House plan, Clarke County will again be split between HD 65 and HD 68. Exhibit O-7 at page 15, line 14 through page 16, line 1.

161. Under the 2001 plans, Clarke County was represented by 2 Senators and 2 Representatives. Exhibit O-7 at page 16, lines 4-6.

162. Under the 2012 plans, Clarke County will be represented by 3 Senators and 2 Representatives, all of whom are Democrats. Exhibit O-7 at page 16, lines 8-20.

163. ALBC Plaintiff Rhondel Rhone testified that the group of 2 Senators and 2 Representatives that currently represents Clarke County "does not have a problem working on local legislation." Exhibit O-7 at page 16, line 21 through page 17, line 2.

164. ALBC Plaintiff Rhondel Rhone testified:

> Q. And the one you're adding is Senator Singleton, right?
>
> A. That's right. That's right.
>
> Q. Do you think he'll have a problem working with y'all?
>
> A. Senator Singleton, he has such a small portion of Clarke County. I don't know how effective – whether Senator Singleton or someone else, I don't know how effective they would be in Clarke County. Because, you know, people tend to get attention where the votes are at, you know, because they – you – there's not enough people in Clarke County to make a difference one way or the other unless it's a real close election.

Exhibit O-7 at page 17, lines 3-18.

165. ALBC Plaintiff Rhondel Rhone testified, "[T]he more people [i.e., legislators] you have to deal with, the more problems it poses for you." Exhibit O-7 at page 36, lines 21-23.

166. ALBC Plaintiff Rhondel Rhone testified, "[W]hen you bring in three senators to Clarke County where you have less than 30,000 people, you know, I just think that's going to be a little more difficult, you know, from an elective standpoint to deal with." Exhibit O-7 at page 73, lines 10-16.

167. When asked whether his prior dealings with Senator Singleton had been "congenial," ALBC Plaintiff Rhondel Rhone testified that they had been "to a certain degree." Exhibit O-7 at page 18, lines 5-8.

168. ALBC Plaintiff Rhondel Rhone testified that when the black population "get[s] above 60 [percent], you know, anywhere above 60, I think you start packing." Exhibit O-7 at page 18, lines 15-17.

169. ALBC Plaintiff Rhondel Rhone testified:

> [R]egardless as to what ethnic group it is, black or white, whether it's a majority-white district, I think that, you know, you should have enough blacks in there to influence the election one way or the other and vice versa. If it's a majority-black district, then I think you should have enough whites in there to have some kind of influence.When we draw districts for county commission, we try to keep that percentage, you know, at least, …30, 35, somewhere like that. You an't always do it, but we try.

Exhibit O-7 at page 18, line 18 through page 19, line 8.

170. ALBC Plaintiff Rhondel Rhone testified:

> Q. And if you had an ideal percentage of the population – of the African-American total population that would not reflect packing, what percentage would that be?

A. I would say to make it a district that would be electable to a black or a white. I think you need to keep it, you know, 60, 65 percent.…I think you could elect a black or white, you know, whether it's majority-black district or majority-white district. I think if you keep it around 60, 65 percent, I think it's doable.

Q. And if the black-majority district has about 65 percent, the African-American community could elect a candidate of its choice, right?

A. I think so, yeah. I think so.

Q. And if, you know, in another district the white population is 65 percent, that part of the community could elect a candidate of their choice?

A. Yeah, yeah. But then it gives that other ethnic group – it gives them some say-so in the election. They won't be ignored during that process because you – when you have a district like that, in my opinion, then you have to focus on everyone that's in the district.You just can't – you just can't go in and focus on one group.

Exhibit O-7 at page 23, line 15 through page 24, line 21.

171. ALBC Plaintiff Rhondel Rhone testified:

Q. Do you think you understand the wants and motivations of the voters that you represent?

A. Yes. Yes, I do.

Q. Do you think that in general … African-Americans would rather be with other African-Americans in a majority-black district or would they rather be less than majority in a white-majority district?

A. I think that depends on the degree of service. If – I think people just want to be treated fairly. They want their needs addressed regardless as to whether they're in a majority-black district or majority-white district, as long

as those needs are addressed. And I think – I think for the most part people are fine.

* * *

Q. In your opinion, is it fair to say that African-Americans generally think they will get more fair treatment from an African-American- elected official than a white-elected official?

A. I think that in some instances their concerns will be listened to, you know. You know, people – you know, they tend – people tend to think, well, you know, if I have a concern, then my concern is going to be listened to. And I think the same thing from the white community. You know, in most instances, well, I think my concern will be listened to.

Q. Do you think it's easier for some African-American voters to approach an African-American-elected official as opposed to a white-elected official with their concerns?

A. It is. Because I can tell you from 21 years of serving in office, you know, I have to do more than my white counterparts. And when I say, you know, I have to attend all of the preacher appreciations and, you know, whatever is going on at church. You know, I mean, I have to attend that. Whatever is going on in the community, I have to attend that. And I tell my white colleagues, I say, well, you know, you don't have to do near as much as I have to do because it's really not expected of you. But I have to go above and beyond the call of duty. You know, I go to church on Sunday morning, and a lot of times I have to leave out of my church before church is over with to get to another church where my constituencies has asked me to be there. And if I don't show up, you know, then, you know, I'm going to catch the devil for it.

Exhibit O-7 at page 30, line 8 through page 32, line 21.

ALBC Plaintiff Jiles Williams

172. ALBC Plaintiff Jiles Williams lives in HD 78. Exhibit O-8 at 12, lines 5-8.

173. In the 2013 Alabama House plan, ALBC Plaintiff Jiles Williams will again live in HD 78. Exhibit O-8 at 12, lines 14-17.

174. ALBC Plaintiff Jiles Williams has served on the Montgomery County Commission since 2000. Exhibit O-8 at 22, lines 9-12.

175. ALBC Plaintiff Jiles Williams came into office on the Montgomery County Commission when the 2000 round of redistricting was underway. Exhibit O-8 at 22, lines 9-16.

176. ALBC Plaintiff Jiles Williams explained, "At that particular time [i.e., 2000], to be honest, I just wanted to make sure that District 4 was a safe electable district for a minority individual." Exhibit O-8 at 22, line 20 through 23, line 1.

177. ALBC Plaintiff Jiles Williams agreed that the drafters of a redistricting plan should make black-majority districts "safe, electable district[s] for minority voters." Exhibit O-8 at 23, lines 2-5.

178. ALBC Plaintiff Jiles Williams has experience working with the Montgomery County local delegation.

179. In the 2001 plans, Montgomery County's local delegation included two Senators and 6 representatives. Exhibit O-8 at 20, lines 10-12.

180. ALBC Plaintiff Jiles Williams testified that, to the extent that the Montgomery County local delegation has not cooperated in moving proposed local legislation forward, the problem was not "party lines," but "personalities." Exhibit O-8 at 13, lines 13-21.

181. Each of the members of the Montgomery County local delegation blocked proposed local legislation. Exhibit O-8 at 21, line 20 through 21, line 4.

182. ALBC Plaintiff Jiles Williams explained, "[I]t's not about race. It's about revenue." Exhibit O-8 at 22, lines 3-4.

183. The 2013 House plan will introduce HD 69 (represented by David Colston, an African-American Democrat) and HD 90 (represented by Charles Newton, a white Democrat) into Montgomery County and the Montgomery County local delegation. Exhibit O-8 at 30, line 7 through 31, line 10.

184. That "bothered" ALBC Plaintiff Jiles Williams "because those guys know nothing about Montgomery politics." Exhibit O-8 at 32, lines 7-11.

185. ALBC Plaintiff Jiles Williams expects that Charles Newton, whose district will include southern Montgomery County, will campaign there "[i]f he wants get reelected." Exhibit O-8 at 33, line 19 through 34, line 7.

186. In the 2001 House plan, African-American residents were more than 72% of the total population of HD 78. No. 30-42 at 13.

187. ALBC Plaintiff Jiles Williams did not think that "72 percent in House District 78 is too many black folks." Exhibit O-8 at 24, lines 16-18.

188. ALBC Plaintiff Jiles Williams explained, "[T]he area we're talking about is a totally black district." Exhibit O-8 at 25, lines 6-7.

189. In the 2013 House plan, African-American residents are 69.99% of the total population of HD 78. No. 30-36 at 6.

190. ALBC Plaintiff Jiles Williams testified:

Q. Do you think that's too many black folks in that district?

A. There I go again. Now, this is the district that Mr. Holmes ha[s], isn't it.

Q. Yes, sir.

A. There I go again. That's all he ha[s].

Q. Can't do anything but that, can you?

A. Can't do anything but that.

Exhibit O-8 at 27, lines 10-17.

191. ALBC Plaintiff Jiles Williams testified, "[W]hen you say packed, I understand what you mean. But I'm still saying you don't have a choice but to pack [HD 78] unless you – You want to keep it like it is. You don't want to reach

out to other areas just to make that district diverse." Exhibit O-8 at 28, line 19 through 29, line 1.

192. ALBC Plaintiff Jiles Williams agreed that the racial makeup of current HD 78, which was drawn to be more than 72% black in its total population is "fine" with him. Exhibit O-8 at 37, lines 9-15.

193. ALBC Plaintiff Jiles Williams testified, "[W]e have to accept" HD 78 in the new plan, with a total population that is 69.99% black "because the lines and the population and … where the black people are." Exhibit O-8 at 38, lines 7-11.

194. ALBC Plaintiff Jiles Williams did not think it was possible to get more white people into HD 78. Exhibit O-8 at 39, line 19 through 40, line 11.

195. ALBC Plaintiff Jiles Williams does not know whether Senator Quinton Ross talked to Senator Dial about the lines of new SD 26. Exhibit O-8 at 35, line 23 through 36, line 8.

196. ALBC Plaintiff Jiles Williams testified:

Q. Can a white person represent black constituents?

A. They can, but – They can. If he['s] fair."

Q. Well, do you think black folks would prefer to be represented by a black officeholder?

A. In my opinion, yes.

Exhibit O-8 at 35, lines 18-22.

197. When asked whether he contended that HD 78 as drawn in the 2013 House plan "reflects intent to discriminate against African-Americans," ALBC Plaintiff Jiles Williams responded: "[I]t is discriminatory to the one that is …drawing it. If you're drawing it and you're drawing it for your benefit, then I think you're going to draw it so you can be successful. And that's your advantage. And I think there's some disparity somewhere." Exhibit O-8 at 38, line 19 through 39, line 11.

198. ALBC Plaintiff Jiles Williams testified:

Q. So you like the proposal for House District 78 just the way it is?

A. Yes. Not saying it's fair.

Exhibit O-8 at 40, lines 9-11.

ALBC Plaintiff George Bowman

199. ALBC Plaintiff George Bowman does not know how the black-majority districts on the 2012 Senate plan were drawn. Exhibit O-9 at page 15, lines 19-23.

200. ALBC Plaintiff George Bowman does not know whether Senator Linda Coleman, who represents him, had a hand in drawing her district or talked to Senator Dial about how her new district should look. Exhibit O-9 at page 16, lines 1-8.

201. ALBC Plaintiff George Bowman does not know whether Representative Oliver Robinson, who represents him, talked to Representative McClendon about how his new district should look. Exhibit O-9 at page 16, lines 9-15.

202. ALBC Plaintiff George Bowman does not know either Senator Dial or Representative McClendon and has not spoken with either of them about redistricting. Exhibit O-9 at page 29, lines 11-17.

203. When asked if HD 54, which was 63.276% black in the 2001 House plan was packed, ALBC Plaintiff George Bowman testified, "that could make it a moderate district, that that 36 percent could have some influence on a vote. So that would not be as drastically stacked as a 70 percent district." Exhibit O-9 at page 18, lines 5-9.

204. ALBC Plaintiff George Bowman testified that neither Senator Coleman nor Representative Robinson took "extreme" positions on the issues. Exhibit O-9 at page 18, lines 10-22.

205. ALBC Plaintiff George Bowman testified that he did not "consider" HD 54 in the 2012 House plan, which is 56.83% black, to be packed. Exhibit O-9 at page 21, lines 3-11.

206. ALBC Plaintiff George Bowman testified that, with respect to SD 20 in the 2012 Senate plan, which is 63.15% black, is "on the slippery slope headed up." Exhibit O-9 at page 21, line 23 through page 22, line 8.

207. In ALBC Plaintiff George Bowman's judgment, SD 20, which is 63.15% black, "could go either way." Exhibit O-9 at page 23, lines 15-17.

208. ALBC Plaintiff George Bowman is a member of the Jefferson County Commission. Exhibit O-9 at page 5, lines 20-23.

209. Under the 2001 plan, as things presently stand, the local delegation for Jefferson County is "essentially deadlocked." Exhibit O-9 at page 26, lines 5-6.

ARGUMENT

1. The applicable standard

In pertinent part, Federal Rule of Civil Procedure 56(a) states, "The court shall enter summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law."

2. The ALBC Associational Plaintiffs lack standing to pursue district-specific claims of race-based dilution and isolation.

In *United States v. Hays*, 515 U.S. 737, 115 S. Ct. 2431 (1995), the United States Supreme Court held that, in order to pursue a racial gerrymandering claim, one must live in the district at issue or otherwise show that he or she, personally, has been the subject of an invidious racial classification. The Court reasoned that,

without such a showing, the claimant would be asserting only a generalized grievance that is insufficient to create standing. *Id*., 515 U.S. at 743-45, 115 S. Ct. at 2435-37; see also *Lance v. Coffman*, 549 U.S. 437, 439, 127 S. Ct. 1194, 1996 (2007) (The Court has "consistently held" that a generalized injury is insufficient to create standing.).

In the judgment of the ALBC State Defendants, the rationale of *Hays* applies to other district-specific claims like the race-based dilution and isolation claims of the ALBC Plaintiffs. In their Amended Complaint, the ALBC Plaintiffs complain about the "packing of black voters in the 27 House districts and the 8 Senate districts with black voting-age majorities." No. 60 at 22 ¶¶ 52-55. In their Interrogatory Responses, they assert that "potentially all" of those black majority districts are "packed." Exhibit O-2 at 3, Response to Interrogatory 2. Those claims are necessarily district-specific in that the persons injured are the ones who live in an allegedly packed district.

The Alabama Legislative Black Caucus, "an unincorporated political association of African Americans elected to the Alabama Legislature," No. 60 at ¶ 5, and the Alabama Association of Black County Officials, "an unincorporated organization of African Americans who have been elected to serve in county offices in Alabama," No. 60 at ¶ 7, lack the necessary connection to an allegedly

packed black-majority district. They "live" everywhere and nowhere, and they have failed to demonstrate that they personally have been subjected to a racial classification, so any injury they suffer from the alleged packing of a particular district is a generalized one.

For that reason, this Court should dismiss the race-based dilution and isolation claims of the Alabama Legislative Black Caucus and the Alabama Association of Black County Commissioners.

3. The ALBC State Defendants are entitled to summary judgment in their favor on the ALBC Plaintiffs' claim of race-based dilution and isolation.

In Count Two of their Amended Complaint, the ALBC Plaintiffs assert that they are the victims of race-based vote dilution and isolation. They also complain that the black-majority districts are packed and need to be cracked.

In their Interrogatory Responses, the ALBC Plaintiffs state that a remedy for the alleged vote dilution and isolation would require changing the overall population deviation from ±1%. Exhibit O-2, at 4, Response to Interrogatory 5. To the extent that the ALBC Plaintiffs rely on their complaints about the overall population deviation of ±1% and the number of split counties, as they do in their Amended Complaint (see No. 60 at 20, ¶¶ 52-54), this Court has already rejected

those arguments. See No 53. Those arguments cannot be revived by repackaging them.[2]

In the ALBC State Defendants' judgment, they are entitled to summary judgment on the ALBC Plaintiffs' claims of racial isolation and dilution for several reasons. First, the demographics of the 2012 black-majority districts are substantially the same as the demographics of the same districts in the 2001 and 1993 plans. Second, the districts are not packed as a matter of law. Third, the ALBC Plaintiffs have failed to make the requisite factual showing that they are packed as a matter of fact. Finally, Senator Dial's and Representative McClendon's understandings of their obligations under the Voting Rights Act are not unreasonable.

A. The District Demographics

The demographics of the black-majority districts in the 2012 legislative redistricting are not significantly different from the demographics of those districts in the 1993 and 2001 plans, which were drawn by Democrats.[3]

[2] This Court should be wary of any argument that the population deviation of ±1% should yield to district-specific packing claims, particularly under the results test in Section 2 of the Voting Rights Act. Such an argument implicitly pits the ALBC State Defendants' attempt to comply with constitutional one-person, one-vote standards by making the districts as nearly equal each to the others in population against the contention that the application of that standard has a statutorily prohibited discriminatory effect on minority voters.

[3] Significantly, the ALBC Plaintiffs decline to say whether the districts in the 1993 and 2001 legislative plans, in which the total minority population is much like that population in the 2012 districts, are "packed." See Exhibit O-2 at 4-5, Response to Interrogatories 7 and 9. This Court should bind the ALBC Plaintiffs with their silence on this issue.

For the Senate plans, the demographics are as follows:

Table S-1

Senate District Number	Act 2012–603 Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 Senate Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 1993 District Using 2000 Census Data (%)	1993 Senate Total Black Pop. (%)
18	59.10	–17.64	66.685	–21.674	65.89
19	65.31	–20.06	66.227	–17.947	63.00
20	63.15	–21.37	65.697	–25.275	64.28
23	64.84	–18.03	62.305	–14.716	63.46
24	63.22	–12.98	62.409	–17.553	65.36
26	75.13	–11.64	71.507	–16.942	70.34
28	59.83	– 3.80	56.458	– 3.233	61.09
33	71.64	–18.05	62.451	–18.153	65.34

This similarity suggests that the black-majority districts in the 2012 Senate plan are not packed, or, if they are, that the ALBC Plaintiffs expect this Court to tell the ALBC State Defendants to fix a problem that the Democrats did not just create, but also perpetuated.

The demographics of the House plans show a similar pattern:

Table H-1

House District Number	Act 2012-602 Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 House Total Black Pop. (%)	Overpop.(+) or Underpop.(–) of 1993 District Using 2000 Census Data (%)	1993 House Total Black Pop. (%)
19	61.25	– 6.90	66.039	–22.256	66.27
32	60.05	–14.76	59.598	–15.567	63.93
52	60.13	– 5.19	65.848	–17.538	67.72
53	55.83	–22.28	64.445	–22.938	66.01
54	57.73	–23.32	63.276	–24.544	63.95
55	73.55	–21.86	67.772	–15.744	61.57

56	62.14	– 9.79	62.665	–19.706	63.52
57	68.47	–20.48	62.967	–18.282	63.90
58	75.68	–17.75	63.518	–22.688	62.75
59	72.96	–27.86	63.241	–27.091	63.86
60	67.68	–19.37	64.348	–26.038	66.22
67	69.15	–16.79	63.447	–22.357	63.50
68	64.31	–20.40	62.211	–13.524	63.58
69	64.21	–17.46	65.308	– 8.264	63.29
70	62.03	–13.77	62.827	–26.999	64.60
71	70.18	–16.32	64.191	–16.200	66.16
72	62.02	–13.42	60.748	– 9.338	65.36
76	73.79	– 1.38	73.309	– 8.505	66.69
77	67.04	–23.12	69.677	–24.289	71.93
78	70.00	–32.16	72.697	–18.029	72.37
82	62.14	– 4.68	62.663	– 8.663	79.73
83	57.52	– 9.85	61.214	+ 1.558	64.52
84	52.35	– 9.24	53.260	– 2.592	37.81
85	50.08	– 6.79	47.863	–25.002	51.13
98	60.02	–16.89	64.448	–21.972	65.72
99	65.61	–12.59	65.250	–18.214	65.09
103	65.06	–10.79	63.049	–19.000	65.58

Again, the similarity suggests that the black-majority districts in the 2012 House plan are not packed, or if they are, that the ALBC Plaintiffs expect this Court to tell the ALBC State Defendants to fix a problem that the Democrats did not just create, but also perpetuated.

The result of loading the 2010 Census data into the 2001 Senate and House plans also demonstrates that the Legislature had to find substantial numbers of people to populate the black-majority districts in line with the applicable population deviation. In the ALBC State Defendants' judgment, the use of an

overall deviation of ±5% led to wide ranges in the population of districts when it came time to draw new plans.

For example, when the 2010 Census data were loaded into the 2001 plans, the total deviation between the most overpopulated and most underpopulated Senate and House districts was 71,683 people (52.49%) and 30,762 people (65.57%), respectively. See No. 30-41 at 2; No. 30-37 at 6 (HD 78) and 8 (HD 95), respectively. Moreover, SD 20 and HD 78, the most underpopulated districts, were not just majority-black, but also were underpopulated by well over -4% in the 2001 plans. See No. 30-44 at 2, 5; No. 30-42 at 4, 13.

This problem also showed up when the 2000 Census data were loaded into the 1993 plans; then, the total deviation between the most overpopulated and most underpopulated Senate and House districts was 63,678 (50.12%) and 32,278 (76.21%), respectively. See Nos. 30-48 at 2; 30-46 at 3, respectively. Again, the most underpopulated districts (SD 20 and HD 59) were not just black-majority, they were also underpopulated by well over -4% when they were drawn. See Nos. 30-44 at 2, 5; 30-42 at 4, 11.

The ALBC State Defendants expect that the change to an overall deviation of ±1% will reduce the magnitude of those deviations over the decade in which these plans are expected to be in use.

B. The black-majority districts are not packed as a matter of law.

In the judgment of the ALBC State Defendants, the black-majority districts in the 2012 Alabama legislative plans are not packed as a matter of law. As the U.S. District Court for the District of Columbia concluded, "A district with a minority voting majority of sixty-five percent (or more) essentially guarantees that, despite changes in voter turnout, registration, and other factors that affect participation at the polls, a cohesive minority group will be able to elect its candidate of choice." *Texas v. United States*, 831 F. Supp. 2d 244, 263 (D.D.C. 2011)(three-judge court); see also *id*., at 263 n.22 (citing cases). Measured against this standard, the black-majority districts in the 2012 plans cannot be seen as "packed" as a matter of law. Rather, they should be seen as districts in which the minority community can be expected to elect the candidate of its choice.

This conclusion finds additional support from Senator Hank Sanders and Representative Thomas Jackson, both of whom are ALBC members. At the public meeting in Selma, Senator Sanders recommended that the minority voting strength in the black-majority districts "ought not be less than 62%." See No. 30-28 at 6. Similarly, at the public meeting in Thomasville, Representative Jackson suggested that the minority voting strength in that area "could be sixty-two percent or sixty-five percent." No. 30-23 at 8.

The ALBC Plaintiffs' argument to the contrary, as set forth in their Interrogatory Responses, is without merit. They define "packing" only in a standardless, after-the-analysis-has-been-concluded fashion. See Exhibit O-2 at 2, Response to Interrogatory 1. When asked for their definition of "packing", they responded by advancing the following quote:

> [M]anipulation of district lines can dilute the voting strength of politically cohesive minority group members, whether by fragmenting the minority voters among several districts where a bloc-voting majority can routinely outvote them, or by packing them into one or a small number of districts to minimize their influence in the districts next door. *Johnson v. De Grandy*, 512 U.S. 997, 1007 (1994)(citing *Voinovich v. Quilter*, 507 U.S. 146, 153-54 (1993)).

Id. The ALBC Plaintiffs go on to assert that every one of the black-majority districts in the 2012 legislative plans is "potentially packed," thereby doing nothing to add specificity to their definition of that phenomenon.[4]

Viewing a specific figure, like a total minority population of "65% or more," as the legal threshold for evaluating packing claims provides specificity that the ALBC Plaintiffs do not. That specificity has additional benefits. First, it provides a justiciable benchmark that for a court to apply. Without such a clear and easily

[4] Measured against the ALBC Plaintiffs' standard, any district with a total population that is African-American that ranges between 50.08% and 75.68%, like the districts in the House plan do, is "potentially packed."

applied standard, courts will have to engage in a highly factual, district-by-district analysis, irrespective of the size of the minority population involved.

A district-by-district inquiry is required because what may be packing in one district is not necessarily packing in another. In the same way, the amount of unpacking that must be done will differ from district to district. Cf. *Texas v. United States*, 831 F. Supp. 2d at 263 ("[W]hen there is no supermajority in a district, a Section 5 analysis must go beyond mere population data to include factors such as minority voter registration, minority voter turnout, election history and minority/majority voting behavior.")

A specific benchmark also helps courts like this one stay out of the political weeds. The remedy for a packing claim is to carve some of the African-American population out of the district and put them somewhere else. Leaving aside the fact that the most that remedy would create is an influence district, something that Section 2 of the Voting Rights Act does not require, the work involved is messy political work for which courts are not well suited. Indeed, not even politicians like to do it; if the Democrats, like the ALBC members, thought the allegedly packed districts needed cracking, they would have done so in 1993 or 2001. They didn't, however, and now they want someone else, this Court, the ALBC State Defendants, or both, to help them out.

C. The ALBC Plaintiffs have failed to make the requisite factual showing.

To the extent that a district-specific showing is needed, the ALBC Plaintiffs have not made one. Rather, they responded to contention interrogatories with standardless generalities. The only expert they have identified, William S. Cooper, limits his opinion to a discussion of the effect of using an overall population deviation of ±1% on the preservation of the boundaries of counties and other political subdivisions. See generally Exhibit O-11. Accordingly, the ALBC Plaintiffs have not presented this Court with any evidence demonstrating that any or all of the challenged districts are packed as a factual matter.

That failure should not require the ALBC State Defendants to litigate in a mirror by advancing explanations for a non-specific case. Nonetheless, they note that, in *Texas v. United States*, the District Court for the District of Columbia stated that a black-majority district in which the minority population was "sixty-five percent (or more)" was a reliable black-majority district. In the ALBC State Defendants' judgment, that threshold does not just cast doubt on any assertion that a black-majority district with a minority population of less than 65% is packed, it also allows for latitude to exceed 65%.

As for the districts with a minority population greater that 70%, the ALBC State Defendants note that SD 26 and SD 33 are both isolated urban districts, in Montgomery and Mobile, respectively.

HDs 55, 58, and 59 are all in majority-black areas of Jefferson County. Randy Hinaman, who worked on the legislative redistricting plans, explains that the alternative of adding white voters to those and the other black-majority House districts in Jefferson County posed a serious potential retrogression problem. Exhibit O-10 at 5, ¶ 8.

HDs 76 and 78 largely came from the map that Representative McClammy gave to Representative McClendon. *Id*., at 4, ¶ 6. That suggests that the African-American legislators from Montgomery (HDs 76, 77, 78) believed that their interests were served by a minority population that was greater than 65%. Moreover, with respect to HD 78, ALBC Plaintiff Jiles Williams found it had to characterize that district as packed because, as he testified "[T]he area we're talking about is a totally black district." Exhibit O-8 at 25, lines 6-7.

Between the ALBC Plaintiffs' lack of specificity and the district demographics, this Court should conclude that the black-majority districts in the 2012 Senate and House plans are not packed as a matter of fact.

D. Senator Dial's and Representative McClendon's understandings of their obligations under the Voting Rights Act are not unreasonable.

The ALBC Plaintiffs' claim is also inconsistent with the way the redistricting process worked. In their Affidavits, Senator Dial and Representative McClendon explained their understanding of their obligations under Sections 2 and 5 of the Voting Rights Act. That understanding is not an unreasonable one.

Senator Dial and Representative McClendon stated that they understood their "obligation under the Voting Rights Act to include not just preserving the [black-majority] districts but also doing [their] best to make sure that the new district essentially guaranteed that the African-American community could elect the candidate of its choice in that district." No. 76-4, at 4, ¶ 9, lines 7-10; No. 76-5, at 3, ¶ 9, lines 13-16. They accomplished this by "add[ing] population that was contiguous to the old district line and had about the same percentage of black population in it." No. 76-4, at 3 ¶ 9, lines 14-15; No. 76-5, at 3, ¶ 9, lines 20-21.

The ALBC Plaintiffs say that the Legislators' understanding of what the Voting Rights Act requires is wrong, but they have offered no legal authority in support of their position. The ALBC Plaintiffs contend that nothing in § 5 requires the preservation of 65% districts, see No. 30 at 13, but maintaining the size of the

voting minority is certainly one way to obtain preclearance.[5] Furthermore, there are at least two indications that Senator Dial and Representative McClendon are correct in their understanding of their § 5 obligations.

The first is the concept of retrogression. In *United States v. Beer*, 425 U.S. 130, 96 S. Ct. 1357 (1976), the Court held that "the purpose of § 5 has always been to insure that no voting-procedure changes would be made that would lead to a retrogression in the position of racial minorities with respect to their effective exercise of the electoral franchise." 130 U.S. at 141, 96 S. Ct. at 1364. Reducing the effective majority of African-American voters in a black-majority district does not, on its face, look like an enhancement of their position. It would, at the very least, call for an explanation in the preclearance submission. In fact, Congress may have discouraged the use of "cracking" to create crossover or influence districts by repudiating *Georgia v. Ashcroft*, 539 U. S. 461, 123 S. Ct. 2348 (2003), in the 2006 amendments to the Voting Rights Act.

[5] The ALBC Plaintiffs also assert that nothing in Section 5 requires covered jurisdictions to maintain the "high percentages of black voting age populations that frequently appear when the new census data are applied to the old, usually under-populated majority-black districts." No. 32 at 13. This assertion is misleading because the loading of new census data into the old districting plan is used only to tell Legislators which districts are over- and underpopulated and by how much. In order to determine the baseline for retrogression, one must look at the number of black-majority districts and the percentage of the total (or voting-age population) that is African-American in the old districts, which were drawn with the old Census data. The new plans must then try to match that. Cf. No. 76-4 at 4, ¶ 9; No. 76-5 at 4, ¶ 9 (describing the views of Senator Dial and Representative McClendon). For their part, the ALBC State Defendants have consistently compared total population figures in the Tables above.

Moreover, on several occasions, USDOJ has objected to reductions in the size of the minority population in a black- or Hispanic-majority district. In 2002, USDOJ objected to a proposed redistricting plan for Cumberland County, Virginia, which lowered the total population of the black majority from 55.9% to 55.3% and the voting age population from 55.7% to 55.2%. Exhibit O-12 at 1. USDOJ also objected to the 2001 Arizona legislative redistricting plan because that plan split a Hispanic-majority district with a voting age population of 65.0% into two districts with a voting age population of 51.2% and 50.6%, respectively. Exhibit O-13 at 3. Finally, in 2001, USDOJ rejected a proposed redistricting plan for the City of Charleston, South Carolina, pointing to anticipated population growth which threatened to undo the proposed plan "in a matter of only a few years." Exhibit O-14 at 2.

These objections show that Senator Dial and Representative McClendon were not unreasonable in their desire to make the strength of the new black-majority districts approximately equal to the strength of the benchmark districts – that is, the districts that Democrats, including some of these Plaintiffs, drew. In the absence of anything in writing to the contrary, the ALBC Plaintiffs' suggestion that Senator Dial and Representative McClendon have an incorrect view of the Voting Rights Act should be disregarded.

The second stems from § 2 of the Voting Rights Act, which applies when, among other things, a State's political processes lead to "less opportunity [for protected citizens] than other members of the electorate … to elect representatives of their choice." 42 U.S.C. § 1973(b); see also *Thornburg v. Gingles*, 478 U.S. 30, 50, 106 S. Ct. 2752, 2766 (1986)(identifying factors to be considered in determining whether multimember districts "operate to impair minority voters' ability to elect representatives of the choice…."). And, consistently with the Affidavits of Senator Dial and Representative McClendon, the Supreme Court has observed, "Placing black voters in a district in which they constitute a sizable and therefore 'safe' majority ensures that they are able to elect their candidates of choice." *Voinovich v. Quilter*, 507 U.S. 146, 154, 113 S. Ct. 1149, 1156 (1993).

Accordingly, both in their goal and in their method of achieving it, Senator Dial and Representative McClendon are on sound footing.

4. The creation of influence or crossover districts is not a valid remedy.

In any event, the most that unpacking would do is create an influence or crossover district. In the absence of claims of intentional discrimination, *Bartlett v. Strickland*, 556 U.S. 1, 129 S. Ct. 1231 (2009), would clearly preclude the creation of such influence or crossover districts as a remedy for a claimed violation of Section 2 of the Voting Rights Act.

Without conceding that the creation of such districts is a valid remedy for intentional discrimination, the ALBC State Defendants note that *Bartlett* does not resolve the question. Rather, the plurality states only that there was no "need [to] consider whether intentional discrimination affects the *Gingles* analysis" because that case did not "involve allegations of intentional and wrongful conduct." *Id*., 556 U.S. at 15, 129 S. Ct. at 1246.

The ALBC Plaintiffs seek to take advantage of this potential opening to avoid the holding in *Bartlett* and obtain relief that decision does not entitle them to. That effort fails because there is no evidence that the 2012 legislative redistricting plans are the product of intentional discrimination.

The Affidavits and depositions of Senator Gerald Dial and Representative Jim McClendon demonstrate that the 2012 legislative plans are not the product of intentional discrimination on the basis of race. Those affidavits show that, in drafting the plans, priority was given to compliance with the Voting Rights Act and with the allowable population deviation. Senator Dial and Representative McClendon then state that they tried not to pair incumbents and that they tried to preserve communities of interest, with the latter of those considerations being subject to compliance with the Voting Rights Act and the overall population deviation. No. 76-4 at 4-5, ¶¶ 10, 11; No. 76-5 at 4, ¶ 11.

All of those considerations are race neutral, and none is suggestive of intentional discrimination. Likewise, nothing on the face of the plans is suggestive of intentional discrimination.

CONCLUSION

For the reasons stated above, this Court should enter summary judgment in favor of the ALBC State Defendants and against the ALBC Plaintiffs on the ALBC Plaintiffs' claim of vote dilution and isolation.

Date June 17, 2013

Respectfully submitted,
LUTHER STRANGE
Attorney General of Alabama
By:

/s/ John J. Park, Jr.
Deputy Attorney General
Alabama State Bar ID
ASB-xxxx-P62J
E-mail: jjp@sbllaw.net

Strickland Brockington Lewis LLP
Midtown Proscenium Suite 2200
1170 Peachtree Street NE
Atlanta, GA 30309
Telephone: 678.347.2200
Facsimile: 678.347.2210

James W. Davis
Assistant Attorney General
Alabama State Bar ID ASB-xxxx-I58J
E-mail: jimdavis@ago.state.al.us

Misty S. Fairbanks Messick
Assistant Attorney General
Alabama State Bar ID ASB-xxxx-T71F
E-mail: mmessick@ago.state.al.us

Office of the Attorney General
State of Alabama
501 Washington Avenue
P.O. Box 300152
Montgomery, Alabama 36130-0152
Telephone: 334-242-7300
Facsimile: 334-353-8440

Attorneys for the ALBC State Defendants

CERTIFICATE OF SERVICE

I hereby certify that, on June 17, 2013, I electronically filed the foregoing MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

James H. Anderson, Esq.
William F. Patty, Esq.
Jesse K. Anderson, Esq.
Brannan W. Reaves, Esq.
Jackson, Anderson & Patty, P.C.
Post Office Box 1988
Montgomery, AL 36102
bpatty@jaandp.com
janderson@jaandp.com
jkanderson@jaandp.com
breaves@jaandp.com

Walter S. Turner, Esq.
2222 Narrow Lane Road
Montgomery, AL 36106
wsthayer@juno.com

John K. Tanner, Esq.
3734 Military Road NW
Washington, DC 20015
john.k.tanner@gmail.com

Joe M. Reed, Esq.
Joe M. Reed & Associates, LLC
524 South Union Street
Montgomery, AL 36104-4626
joe@joereedlaw.com

James U. Blacksher, Esq.
Post Office Box 636
Birmingham, AL 35201
jblacksher@ns.sympatico.ca

Edward Still, Esq.
130 Wildwood Parkway, Suite 108
PMB 304
Birmingham, AL 35209
still@votelaw.com

U.W. Clemon, Esq.
White Arnold & Dowd, P.C.
2025 Third Avenue North, Suite 500
Birmingham, AL 35203
uwclemon@waadlaw.com

Dorman Walker, Esq.
Louis Calligas, Esq.
Balch & Bingham
Post Office Box 78
Montgomery, AL 36101
dwalker@balch.com
lcalligas@balch.com

/s/ John J. Park, Jr.
Of Counsel