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

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

MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT WITH RESPECT TO NEWTON PLAINTIFFS' CLAIMS

The State of Alabama, Robert J. Bentley, in his official capacity as Governor of Alabama, and Beth Chapman, in her official capacity as Secretary of State of Alabama, defendants in this action (the "Newton State Defendants"), submit this

Memorandum in support of their Motion for Summary Judgment with respect to the Newton Plaintiffs' claims. For the reasons stated in their Motion and this Memorandum, including the exhibits noted, this Court should grant the Newton State Defendants' Motion.

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INTRODUCTION

The Newton Plaintiffs claim that the 2012 legislative redistricting plans violate Section 2 of the Voting Rights Act, 42 U.S.C. § 1973, are the product of unconstitutional racial gerrymandering, and otherwise violate the Fourteenth Amendment to the United States Constitution. More particularly, they contend that the plans violate Section 2 in that:

> [E]ach was adopted with a racially discriminatory purpose of minimizing and diluting the opportunities for minority voters to participate effectively in the political process, and to elect candidates of their choice to the Alabama Legislature; and that each plan would have the result of discriminating against minority voters on account of their race and membership in a language minority group and deny them an equal opportunity to elect candidates of their choice to the Alabama Legislature.

Newton No. 1 at 17 ¶ 48. With respect to the racial gerrymandering claim, they assert that the purpose and effect of the plans is to "minimiz[e] the opportunity of minority voters to participate in the political process," and that their purpose is to "cap[] African-American and other minority representation and influence" in the Legislature. *Id*., at 17 ¶ 50.

According to the Complaint:

Plaintiff Demetrius Newton votes in and represented "former House district 53." Newton No. 1 at 2, ¶ 2.

Plaintiff Weaver states that he is a "Native American citizen," who votes "in former Senate district 22." Newton No. 1 at 2, ¶ 4.

Plaintiffs Stallworth and Pettway vote in "the former House District 73." Newton No. 1 at 2 ¶ 5, 3 ¶ 7, respectively. They assert, "The Legislature eliminated a nascent minority district in HD 73," characterizing the district as a crossover district in the process of becoming "an effective black-majority district." *Id*., at 14 ¶ 46a.

Plaintiff Toussaint states that she is a Hispanic resident of Madison County "who lives and votes in the area of a potential minority, coalition and/or crossover senate district which, for a racially discriminatory purpose, the Legislature failed to adopt." Newton No. 1 at 3, ¶ 6.

PROPOSED UNDISPUTED FACTS

In this portion of their Memorandum, the Newton State Defendants will include proposed facts related to the drafting of the 2012 legislative plans and the general and district-specific claims of the Newton 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.

The Montgomery House Districts

Overview

128. 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.

129. 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.

130. In their Interrogatory Responses, the Newton Plaintiffs state that, among others, HDs 76, 77, and 78, which are the black-majority House districts in Montgomery, are packed. Exhibit P-1 at 5, Response to Interrogatory 10.

131. Representative McClendon testified that Representative Thad McClammy presented him with a proposed map for the House districts in Montgomery County. Exhibit O-4 at 39, line 12.

132. Representative McClendon testified that he and Representative McClammy "went over what he was suggesting and then I turned [the map] over to Mr. Hinaman and said see what you can do to make Mr. McClammy happy." Exhibit O-4 at 39, lines 13-15.

133. Representative McClendon testified, "I'm not sure that Mr. McClammy's plan didn't have an impact on the rest of the state." Exhibit O-4 at 39, lines 20-21.

134. In his Declaration, Randy Hinaman states that he understood that the map of the black-majority House districts in Montgomery that he received from Representative McClendon came from Representative McClammy. Exhibit O-10 at 4, ¶ 6.

135. In his Declaration, Randy Hinaman notes that two of the black-majority House districts in Montgomery were significantly underpopulated when

the results of the 2010 Census were loaded into the 2001 district lines. Exhibit O-10 at 4, ¶ 6.

136. In his Declaration, Randy Hinaman notes that, when the 2010 Census data were loaded into the 2001 House district lines, HD 78 was the most underpopulated House district and HD 77 was the fourth most underpopulated House district of the 105 House districts in Alabama. Exhibit O-10 at 4, ¶ 6.

137. The demographics of the Montgomery-area House districts are:

	2012 Plan		2001 Plan (with 2010 Census)		2001 Plan	
	White	Black	White	Black	White	Black
73			44.07%	48.44%	69.342%	27.278%
74	70.17%	24.52%	62.43%	30.32%	80.514%	16.448%
75	66.84%	26.43%	66.30%	27.61%	76.627%	20.666%
76	19.47%	73.79%	26.43%	69.54%	25.641%	73.309%
77	29.29%	67.04%	23.17%	73.52%	29.232%	69.677%
78	24.07%	69.99%	22.17%	74.26%	25.769%	72.697%

The data in this table are drawn from Nos. 30- , 30-37, and 30-42 (page 13 of 42).

138. When the 2010 Census data were loaded into the 2001 district lines, the following results for the Montgomery-area House districts were obtained:

	Total	Over/Under	%age	% White	% Black
73	48,266	2,745	6.03	44.07	48.44
74	41,047	-4,474	-9.83	62.43	30.32
75	60,140	14,619	32.11	66.30	27.61
76	44,894	-627	-1.38	26.43	69.54
77	34,998	-10,523	-23.12	23.17	73.52
78	30.880	-14,641	-32.16	22.17	74.26

Exhibit 30-37 at 6.

139. The combination of facts 8 and 9 shows: (1) two black-majority districts (HD 77 and 78) were significantly underpopulated; (2) one white-majority district (HD 75) was significantly overpopulated; (3) the only source of additional population was HD 75, and it is majority-white.

140. Representative McClendon testified that it was "part of [Randy Hinaman's] job to make [the McClammy map] fit into the overall picture." Exhibit O-4 at page 41, lines 4-5.

141. Representative McClendon testified:

> Q. So it was not your choice to turn down Mr. McClammy?
>
> A. It was my responsibility to see that ultimately we had a plan that fell within our guidelines.

Exhibit O-4 at page 41, lines 6-9.

143. In his Declaration, Randy Hinaman states that the McClammy map used an overall deviation of ±1% and brought the population of HDs 76, 77, and 78 back within the allowable deviation without significantly changing the percentage of population in those districts that was African-American. Exhibit O-10 at 4, ¶ 6.

144. In his Declaration, Randy Hinaman states, "To get the black population needed for HDs 76, 77, and 78, the map I received from Representative McClendon drew African-American voters from HD 73," which was represented by Joe Hubbard, a white Democrat. Exhibit O-10 at 4, ¶ 6.

145. In his Declaration, Randy Hinaman states that he "used the concept" of the McClammy map in drawing the lines for the House plan. Exhibit O-10, at 4, ¶ 7.

146. In his Declaration, Randy Hinaman states that he "kept the African-American percentages for each black-majority district very close to the percentages in the McClammy map." Exhibit O-10 at 4, ¶ 6.

147. In his Declaration, Randy Hinaman states that one change that he proposed to the McClammy map was to "bring HD 69 into the western part of Montgomery County because it needed additional population to come within the allowable population deviation." Exhibit O-10 at 4, ¶ 7.

148. In his Declaration, Randy Hinaman states that bringing HD 69 into the western part of Montgomery County "pushed HD 78 deeper into the northern part of Montgomery County, a feature which was also in the McClammy map, and caused other ripple effects on the contiguous districts." Exhibit O-10 at 4, ¶ 7.

149. In his Declaration, Randy Hinaman states that, even after bringing HD into the western part of Montgomery County, he "estimate[s] that I used a great deal of the map that [he] received from Representative McClendon." Exhibit O-10 at 5, ¶ 7.

150. Representative McClendon testified that Randy Hinaman "told me that he worked as much of Mr. McClammy's plan into the overall state plan as he could without getting outside our guidelines." Exhibit O-4 at page 41, lines 19-22.

151. ALBC Plaintiff Jiles Williams does not know how the 2013 House plan was drafted. Exhibit O-8 at 35, lines 1-7.

152. Newton Plaintiff Stacey Stallworth did not know whether "folks like Mr. Knight and Mr. McClammy and Mr. Holmes had any input into the design of the new [House] districts." Exhibit P-7 at 15, lines 1-4.

153. Newton Plaintiff Stacey Stallworth did not know why the overall deviation in the legislative redistricting plans was reduced from ±5% to ±1%. Exhibit P-7 at 16, lines 15-23.

154. Newton Plaintiff Stacey Stallworth has never communicated in any way with either Senator Dial or Representative McClendon. Exhibit P-7 at 32, line 15 through page 33, line 1.

155. Newton Plaintiff Stacey Stallworth testified:

> Q. Do you have any reason to believe that either Senator Dial or Mr. McClendon intends or intended to discriminate against African- Americans in the exercise of their political rights?
>
> MR. PATTY: Object to the form.
>
> A. I don't know – I don't know what their intentions were."

Exhibit P-7 at 33, lines 9-17.

156. Newton Plaintiff Lynn Pettway has not had any communication with either Senator Dial or Representative McClendon that related in any way to the redistricting of the Alabama legislature in 2012. Exhibit P-8 at 31, line 12 through 32, line 1.

Dr. Joe Reed

157. Dr. Reed appeared as the representative of Newton Plaintiff Alabama Democratic Conference when that organization's deposition was taken. Exhibit P-6 at page 5, line 15 through page 6, line 7.

158. In Dr. Reed's judgment, the 2012 legislative plans violate the Fourteenth Amendment because they have "the effect of diluting, weakening,

undermining black representation in the legislature and, also, doing the same for black voters." Exhibit P-6 at page 7, lines 12-17.

159. In Dr. Reed's opinion, the "true purpose" of the adoption of the overall deviation of ±1% "was to discriminate against blacks." Exhibit P-6 at page 9, lines 7-13.

160. Dr. Reed testified that the basis for his opinion was the prior use of a deviation of ±5% and the sense that "there's a dead cat on the line. I can't see him, but I can smell him." Exhibit P-6 at page 9, line 14 through page 10, line 4.

161. Dr. Reed recognized that a deviation of ±1% was not unconstitutional, and said that a deviation of ±5% was not unconstitutional either. Exhibit P-6 at page 10, line 21 through page 11, line 18.

162. Dr. Reed acknowledged that, in order to comply with one-person, one-vote standards, counties would have to be split. Exhibit P-6 at page 13, lines 7-12.

163. Dr. Reed testified that in "our plan …we gave respect for incumbency because we wanted to have a plan that we thought could pass the legislature." Exhibit P-6 at page 15, lines 1-4.

164. With respect to the alleged packing of HD 78, Dr. Reed testified, "If you start on the Lowndes County line, west Montgomery coming east, there's no

way you're going to avoid having a higher proportion of blacks in the district that Alvin Holmes represent[s]." Exhibit P-6 at page 27, lines 15-20.

165. Dr. Reed was of the opinion that it was possible to draw an additional black-majority House district in Montgomery County, but he didn't do that in the Reed-Buskey plan. Exhibit P-6 at 37, line 12 through page 38, line 8.

166. Dr. Reed did not work on or see Representative McClammy's plan for the Montgomery black majority districts before Representative McClammy gave it to Representative McClendon. Exhibit P-6 at page 39, lines 4-10, 16-19.

167. Dr. Reed thought Representative Holmes would be on board with representative McClammy's plan because "Alvin will be on board with any plan that favored him, period." Exhibit P-6 at page 39, lines 11-15.

168. With respect to the map of the black-majority districts in the Birmingham area that Senator Smitherman gave to Senator Dial, Dr. Reed stated that the Republicans "can use it if they want to use it." Exhibit P-6 at page 50, lines 6-21.

169. Legislators like Representative McClammy and Senator Smitherman "can speak for themselves on what they want." Exhibit P-6 at page 54, lines 2-7.

ALBC Plaintiff Jiles Williams

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

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

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

173. 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.

174. 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.

175. 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.

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

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

178. 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.

179. 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.

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

181. 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.

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

183. 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.

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

185. 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.

186. 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.

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

188. 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.

189. 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.

190. 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.

191. 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.

192. 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.

193. 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.

194. 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.

195. 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.

196. 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.

Newton Plaintiff Stacey Stallworth

197. Newton Plaintiff Stacey Stallworth lives in HD 73 in the 2001 House plan, which was represented by Joe Hubbard, a white Democrat. Exhibit P-7 at 7, lines 16-20.

198. In the 2012 House plan, Newton Plaintiff Stacey Stallworth will live in HD 77, which is represented by John Knight, an African-American Democrat. Exhibit P-7 at 11, line 20 through 12, line 2.

199. Newton Plaintiff Stacey Stallworth testified that, given the fact that when the results of the 2010 Census were loaded into the 2001 district lines the population of HD 73 was some 48% black and some 42 % white, those demographics "gave me, as a minority, influence in the election. I had a voice because 42, 48, you know, the candidate has to work for the overall win." Exhibit P-7 at 11, lines 13-17.

200. Newton Plaintiff Stacey Stallworth testified that she would not have an influence in a majority-black district like HD 77. Exhibit P-7 at 12, lines 3-23.

201. Newton Plaintiff Stacey Stallworth explained, "Blacks will tend to vote for black candidates, and whites will tend to vote for the opposition of who the blacks are voting for. I just would like to be a part of a district where my vote counts. I don't want to vote for someone because they are black." Exhibit P-7 at 12, lines 14-20.

202. Newton Plaintiff Stacey Stallworth testified:

Q. How would you identify a district that you think is packed?

A. I would identify with that district being a majority – well, a minority – an overwhelming amount of minority in that particular district. Like now [in HD 77] we're 67 percent black, that's an overwhelming majority.

Q. In your judgment, is there a – what's a – what's not an overwhelming majority?

A. Ideally, the 42/48 percent, that it's close to a 50-percent margin.

Anything that's not over a 50-percent margin.

Exhibit P-7 at 24, line 20 through 25, line 9.

203. Newton Plaintiff Stacey Stallworth testified:

> Q. [I]f you were drawing the plan, you would draw all the districts, to the extent that you could, so that the black and white populations were approximately equal. Is that – Am I understanding correctly?
>
> MR. PATTY: Object to the form.
>
> A. Maybe not equal, but not far from it. Because I know that…blacks are a minority in the State of Alabama and whites are the majority. But, you know, maybe as close as possible.

Exhibit P-7 at 35, lines 7-17.

204. Newton Plaintiff Stacey Stallworth would not look at anything other than the total minority population in a district to decide whether that district is packed. Exhibit P-7 at 27, line 18 through 28, line 2.

205. The Newton Plaintiffs' illustrative remedy for Montgomery County has three-black majority districts each of which is within ±1% of the ideal population for a House district and one white-majority district that is 4.85 % over the ideal population of a House district. Exhibit P-3.

206. Newton Plaintiff Stacey Stallworth did not know whether it is the "right thing to do, to bring …the three black-majority districts within plus/minus 1

and then overpopulate the white-majority district by almost 5 percent." Exhibit P-7 at 31, lines 15-22.

207. Newton Plaintiff Stacey Stallworth has not spoken or communicated with Representative Joe Hubbard or his staff. Exhibit P-7 at 36, lines 3-10.

208. Newton Plaintiff Stacey Stallworth did not know whether Senator Dial and Representative McClendon met with other members of the legislature "to discuss with them how they wanted their districts drawn." Exhibit P-7 at 43, lines 1-16.

209. Newton Plaintiff Stacey Stallworth did not know whether any African-American legislators gave parts of plans to Senator Dial or Representative McClendon or whether anything they gave them was "more or less incorporated into the final plan." Exhibit P-7 at 43, line 17 through 44, line 1.

Newton Plaintiff Lynn Pettway

210. Newton Plaintiff Lynn Pettway lives in HD 73 under the 2001 House plan. Exhibit P-8 at page 8, lines 12-14.

211. Newton Plaintiff Lynn Pettway will live in HD 74, which is represented by Jay Love, a white Republican, in the 2012 plan. Exhibit P-8 at page 8, lines 15-20.

212. Newton Plaintiff Lynn Pettway did not know where the other black voters in old HD 73 went. Exhibit P-8 at page 8, line 21 through page 9, line 6.

213. Newton Plaintiff Lynn Pettway testified:

> Q. Do you know of any documents other than the ones that have already been produced that are relevant to the contention that when the legislature moved House District 73 to Shelby County it had the invidious purpose of cancelling out minority opportunities for political success?
>
> A. Documentation to support that?
>
> Q. Yes, sir.
>
> A. I'm not aware of any documentation. I …know that, you know, I've been moved into a district and out of a district where I felt like, you know, as an African-American possibly I could have had some influence in the outcome of the elected official.

Exhibit P-8 at 9, lines 7-22.

214. Newton Plaintiff Lynn Pettway did not know whether "the African-American members of the House of Representatives had any input into the way their districts looked." Exhibit P-8 at page 13, lines 2-7.

215. When asked about the fact that, when the 2010 Census results were loaded into the 2001 House district lines, HD 73 was 6.03% above the population of an ideal district, Newton Plaintiff Lynn Pettway testified:

> Q. So if you used plus or minus five percent, you would have to lose some population, wouldn't you, from that district, House District 73?

A. I guess if you were trying to make it ideal. But, I think, you know, …Montgomery being as large as it is -- you know, I don't think it warranted that the numbers be calculated to give me as an African-American – you know, put me in a position where I didn't have any influence in the election. And I think that's what they did by taking the numbers away and putting me over in another district.

Q. Should they have moved other people?

A. I don't know what they could have done. I think -- the impact it had on myself, I think, is unfair.

Q. Well do you think it's unconstitutional for a state in redrawing a redistricting plan to ever move an African-American voter to a white-majority district?

MR. PATTY: Object to the form. Go ahead.

A. I don't know whether it's unconstitutional or not, but I – I just feel like it's been unfair to me in that district because it took me out of a district where I felt like my vote will have an influence on the elected official and now being put in a district where I don't think I will have any influence in any way at all in the election of a public official.
Q. Well, do you think it's illegal for a state when it redraws a districting plan to ever move an African-American voter to a white- majority district?

MR. PATTY: Object to the form.

A. I don't want to state my opinion in regards to the legalities or whatever because I'm not aware of the legal aspects of it.

Q. If the State moved an African-American voter to a white-majority district to satisfy constitutional population standards or legislatively chosen population standards, would that be unconstitutional in your opinion?

A. I'm not –

MR. PATTY: Object to the form.

Q. And you don't have an opinion on whether that would be illegal?

A. No.

Exhibit P-8 at page 17, line 13 through page 19, line 21.

216. Newton Plaintiff Lynn Pettway testified:

Q. [I]s it your testimony that you don't know whether population needed to be moved around [between the Montgomery-area House districts] to bring these districts closer to the ideal population?

A. Well, I would think that – I would state that I think it should have been done more fairly in regards to the distribution of population as far as race is concerned. Because I think, of course, you could have drew the lines where you could have included more blacks in the majority-white districts.

Q. What about the black-majority districts? Do they need to gain population?

A. I'm not certain whether they – I mean according to the document [i.e., No. 30-37, which loads the 2010 Census results into the 2001 lines], no. But, again, as far as diversity is concerned, I think it should have included more diversity in the districts.

Q. Is diversity constitutionally required in your judgment?

MR. PATTY: Object to the form.

A. I'm not certain.

Q. Is it legally required in your judgment?

MR. PATTY: Object to the form.

A. Not certain.

Q. If you were drawing the plan, is that what you would do?

A. I'm not certain. I'm not a redistricting expert, so I don't know what I would consider in that case.

Exhibit P-8 at page 22, line 16 through page 23, line 23.

217. Newton Plaintiff Lynn Pettway is "not certain" whether the Newton Plaintiffs' illustrative remedy for the Montgomery-area House districts is fair. Exhibit P-8 at page 26, lines 7-9.

218. Newton Plaintiff Lynn Pettway said that he saw HD 73 as "a progressively growing African-American district." Exhibit P-8 at page 26, lines 16-17.

219. Newton Plaintiff Lynn Pettway stated, "I just think that I, as a voter, would have more influence on an elected official living in [old HD 73] and being in that district than I have now going to 74 and 73, being drawn totally out of the Montgomery area." Exhibit P-8 at page 26, lines 17-22.

220. Newton Plaintiff Lynn Pettway testified:

Q. Well, Montgomery has got a population that needs to be divided into districts, right?

A. I would assume, yes.

Q. And somewhere in all of this, there's a solution that would be fair to you?

A. I would hope it is.

Q. Would it be – does it have to be fair to anybody else or is it –

A. Fair to me and other people that … have the same concerns that I have.

Q. What if people don't share your concerns? Does it have to be fair to them?

MR. PATTY: Object to the form.

A. Yes.

Q. So it should be fair to everybody, right?

A. Yes.

Exhibit P-8 at page 27, lines 8-23.

The Newton Plaintiffs' Illustrative Remedies

221. The Newton Plaintiffs contend that an additional black-majority Senate district can be drawn in Madison County. Exhibit P-1 at 2, Response to Interrogatories 1-3.

222. The Newton Plaintiffs' "illustrative" remedy for Madison County is the creation of a Senate district that has "a black plurality" that can form a coalition with Hispanic residents to give them "an opportunity" to elect the candidate of their choice. Exhibit P-1 at 2, Response to Interrogatory 2.

223. The Newton Plaintiffs "illustrative" remedy for Madison County would create a Senate district that would be -5.01% below, or -6,843 people less than, the ideal population of a Senate district. Exhibit P-2.

224. The Newton Plaintiffs contend that an additional black-majority House district can be drawn in Montgomery County. Exhibit P-1 at 3-4, Response to Interrogatories 4-6.

225. The Newton Plaintiffs' "illustrative" remedy for Montgomery County would create, among other things, one white-majority district that would be +4.85% above, or 2,210 people more than, the ideal population of a House district. Exhibit P-3.

226. The black-majority districts in the Newton Plaintiffs' "illustrative" remedy for Montgomery County would each be within ±1% of the ideal population of a House district. Exhibit P-3.

227. The Newton Plaintiffs' "illustrative" remedy for Montgomery County would dilute the votes of white voters.

228. The Newton Plaintiffs contend that an additional black-majority House district can be drawn in Jefferson County. Exhibit P-1 at 3-4, Response to Interrogatories 4-6.

229. The Newton Plaintiffs' "illustrative" remedy for Jefferson County would not satisfy the overall deviation of ±1% incorporated in the Guidelines. Exhibit P-4.

230. The Newton Plaintiffs contend that "[b]ased on information currently available, at least the following Senate districts are packed: 19, 26, and 33." Exhibit P-1 at 5, Response to Interrogatory 10.

231. The Newton Plaintiffs contend that "[b]ased on information currently available, at least the following House districts are packed: 55-60, 67, 76-78, 99, and 103." Exhibit P-1 at 5, Response to Interrogatory 10.

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 Alabama Democratic Conference lacks standing to pursue district-specific racial gerrymandering claims.[1]

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,

[1] The Newton State Defendants note that the State of Alabama has been named as a defendant. That raises serious constitutional questions that this Court can avoid because full relief can be obtained through the official capacity defendant. This Court should dismiss the State as a party defendant for those reasons.

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.).

Hays applies to the racial gerrymandering claims of the Alabama Democratic Conference. In Count II of their Complaint, the Newton Plaintiffs assert that the 2012 Alabama legislative redistricting plans are the product of unconstitutional racial gerrymandering. They do not distinguish between and among the individual plaintiffs and the Alabama Democratic Conference, which is characterized as "a statewide political caucus." Newton No. 1 at 4, ¶ 3. As an association, the Alabama Democratic Conference "lives" everywhere and nowhere, so any claim of racial gerrymandering that it makes is, necessarily, a general one that it lacks standing to make.

For that reason, this Court should dismiss the racial gerrymandering claim of the Alabama Democratic Conference.

3. The Newton Plaintiffs lack standing to pursue their challenge to SD 11.

In their Complaint, the Newton Plaintiffs point to, among other things, SD 11 as an alleged product of racial gerrymandering. Newton No. 1 at 16, ¶ 46f. None of the individual Newton Plaintiffs claims to live in SD 11 or alleges a specific injury with respect to SD 11. Accordingly, under *Hays*, the Newton Plaintiffs lack standing to bring this claim, and this Court lacks jurisdiction to consider it. *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734, 128 S. Ct. 2759, 2679 (2008)(internal citations and quotation marks omitted; alteration by the Court)("[S]tanding is not dispensed in gross. Rather, a plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought."). This Court should disregard any suggestion that SD 11 is the product of unconstitutional racial gerrymandering/

4. The Newton Plaintiffs' "packing" claims lack merit.

In their Interrogatory Responses, the Newton Plaintiffs contend that a number of the black-majority districts in the 2010 Alabama House and Senate plans are packed. They identify SDs 19, 26 , and 33 as the allegedly packed Senate districts and HDs 55-60, 67, 76-78, 99, and 103 as the allegedly packed House districts. Exhibit P-1 at 5, Response to Interrogatory 10.

The Newton State Defendants disagree. They will first reiterate the point that the districts in the 2012 House and Senate plans are not materially different from the same districts in the 2001 and 1993 plans, which were drawn by Democrats. Then, they will show that the black-majority districts in the 2012 plan are not packed as a matter of law. Third, they will demonstrate that those districts are not packed as a matter of fact. Finally, they will show that the understanding that Senator Dial and Representative McClendon had of their obligations under the Voting Rights Act are not unreasonable.

A. The District Demographics

The State Defendants have previously shown that 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. The Newton Plaintiffs point to SDs 19, 26, and 33 in their Interrogatory Responses, but the demographics of all of the black-majority Senate districts 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

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

The pattern with the House districts is similar:

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

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

In the judgment of the Newton 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." Instead, 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 members of the Alabama Legislative Black Caucus ("ALBC"), one of the plaintiffs in these consolidated cases. 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.

Viewing a specific figure, like a total minority population of "65% or more," as the legal threshold for evaluating packing claims provides specificity that has additional benefits. First, it provides a justiciable benchmark for courts to apply. Without such a clear and easily applied standard, courts will have to engage in a

highly factual, district-by-district inquiry. That factual inquiry will likely turn on the *ipse dixit* of an expert witness who will inevitably put a gloss on a politically motivated remedy.

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.")

In contrast, a specific benchmark 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. The most that remedy would create is an influence district, something that Section 2 of the Voting Rights Act does not require. Moreover, the work involved is messy political work for which courts are not institutionally suited. Indeed, not even politicians like to do it; if the Democratic majority that drew the 1993 and 2001 plans 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 Newton State Defendants, or both, to help them out.

C. The black-majority districts are not packed as a matter of fact.

In *Texas v. United States*, the U.S. District Court for the District of Columbia expressed the view that a black-majority district in which the minority population was "sixty-five percent (or more)" was sufficient to "essentially guarantee[]" that the minority community could elect the candidate of its choice. *Id*., 831 F. Supp. 2d at 263. In the Newton State Defendants judgment, that threshold does not just cast doubt on any assertion that a black-majority district with a minority population of less that 65% is packed, it also allows for latitude to exceed 65%.

In their Interrogatory Responses, the Newton Plaintiffs assert that SDs 19, 26, and 33 are packed. Table S1 above shows that SDs 18-20 have consistently ranged between 59.10% and 66.685% in the three plans. In addition, in the 2010 plan, each of those districts has seen a reduction in the percentage of the total population that is African-American since the 2001 plan.

Furthermore, the design for SDs 18-20 originated in a map that Senator Rodger Smitherman, one of the ALBC Plaintiffs, gave to Senator Dial. Senator Dial testified that, when he met with Senators Rodger Smitherman, Linda

Coleman, and Patricia Dunn, three African-American Democrats and ALBC members, to discuss their new districts, they brought a plan that they said "met the requirements." He asked Randy Hinaman to incorporate that plan into the Senate plan. Exhibit O-3 at page 13, line 12 through page 14, line 11. Randy Hinaman explains that what he got was a map that "did not include any demographic information." Exhibit O-10 at 3, ¶ 5. When Randy Hinaman "looked at the neighborhoods included in the new district boundaries, [he] saw that the black population in the proposed new districts was about the same percentage as in the old districts." *Id*. He estimates that he used "90-95%" of the map in the new plan.

Given that SDs 18, 19, and 20 are almost completely the product of input from the African-American incumbents, this Court should not conclude that these districts are packed and hold the Newton State Defendants responsible for that packing. Instead, the Newton Plaintiffs should bear the heavy burden to overcome the presumption that the incumbents drew districts that could be expected to return a majority for them, not districts they believed to be packed.

As for SD 26, its total population has been more than 70 % under each of the plans suggesting that its location plays a part. Finally, SD 33 is the only black-majority district in the Mobile area, again suggesting that its location plays a part in its demographics.

In their Interrogatory Responses, the Newton Plaintiffs contend that HDs 55-60, 67, 76-78, 99, and 103 are packed. In response, the Newton State Defendants note that:

(1) HDs 55-60 are all in the Birmingham area. Five of them (HDs 55, 57, 58, 59, and 60) were each underpopulated by more than 15%, when the 2010 Census results were loaded into the 2001 district lines, meaning that they needed to add population to come within the allowable overall deviation. Randy Hinaman explains that, "[w]hile the black-majority districts in Jefferson County needed to gain population, adding white voters from the rest of Jefferson County [to those underpopulated black-majority districts] posed a serious problem with retrogression." Exhibit O-10 at 5, ¶ 8. He recommended moving one of the black-majority districts to Huntsville, where there was a compact, contiguous group of minority voters large enough to be a majority in a Shaw-compliant House district, and redistributing the largely minority population among the remaining Jefferson County House districts. *Id*. That redistribution did not just help bring the underpopulated districts back to within the allowable deviation; it did not cause them to retrogress to such a degree that an explanation would be needed to support preclearance. The resulting districts should continue to allow the minority community to elect the candidate of its choice in those districts.

(2) HD 67 is a product of where it is. In the 2012 House plan, it will include all of Dallas County and part of Perry County, both of which are majority-black counties.

(3) The concept for HD 76-78 came from a map of the Montgomery black-majority House districts that Representative Thad McClammy, who is African-American, gave to Representative Jim McClendon.[2] Randy Hinaman states that the map "brought the overall population of HDs 76, 77 and 78 back within the allowable deviation without significantly changing the percentage of population in those districts that was African-American." Exhibit O-10 at page 4, ¶ 6. Hinaman also states that he "kept the African-American percentages for each black-majority district very close to the percentages in the McClammy map." *Id*.

The McClammy map and its percentages suggest that the incumbent House members in the black-majority districts in Montgomery drew districts that they thought would produce a majority for them, not that they believed those districts to be illegally packed.

(4) HD 99 and 103 have been consistently in the same range suggesting that their location has a great deal to do with their demographics.

[2] ALBC Plaintiff Jiles Williams testified that, in his opinion, HD 78 with a total population that is 69.99% African-American does not have "too many black folks" because "the area we are talking about is a totally black district." Exhibit O-8 at page , line

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

The Newton Plaintiffs' claim is also inconsistent with the way the redistricting process worked. In their Affidavits, Senator Dial and Representative McClendon explained that they understood their "obligation under the Voting Rights Act to include not just preserving the [black-majority] districts but also doing our 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 Newton Plaintiffs have offered nothing to suggest that the Legislators' understanding of what the Voting Rights Act requires is wrong. To the extent that they may contend that nothing in § 5 requires the preservation of 65% districts, maintaining the size of the voting minority is certainly one way to obtain preclearance. 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. Indeed, 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.

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. 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.

E. The Newton Plaintiffs are not entitled to the creation of an influence, coalition, or crossover district.

As noted above, the remedy for packing is to crack the black-majority districts redistributing some of the minority voters to other, neighboring districts. The number of minority voters so redistributed is necessarily a small percentage because the district from which they are taken must remain a reliable black-majority district. The result will be the creation of potential influence, coalition, or crossover districts, where the new black-minority voter will have to get help from other voters if they are to elect the candidate of their choice.

Section 2 of the Voting Rights Act does not, however, require the creation of a district in which the minority population will constitute less than 50 percent of the population. *Bartlett v. Strickland*, 556 U.S. 1, 129 S. Ct. 1231 (2009). That holding would apply to influence, coalition, and crossover districts, each of which has a minority population of less than 50% and needs the votes on non-minorities to elect the candidates of their choice. See *id*., 556 U.S. at 13, 129 S. Ct. at 1242

(citing *League of United Latin American Citizens v. Perry*, 548 U.S. 349, 445, 126 S. Ct. 2752, 2766 (2006)(opinion of Kennedy, J.).

Like the ALBC Plaintiffs, the Newton Plaintiffs contend that the holding in *Bartlett v. Strickland* does not extend to cases of intentional discrimination. Contrary to those suggestions, however, the Court did not answer that question in their favor. 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.

To take advantage of that potential opening, the Newton Plaintiffs must show that the 2012 legislative plans are the product of intentional discrimination, something that they cannot do.

There is no evidence that intentional discrimination had any effect on the 2012 Alabama legislative redistricting plans. Likewise, there is no evidence that intentional discrimination played any part in the decision to change the allowable overall population deviation from ±5% to ±1%.

When the Newton State Defendants asked the Newton Plaintiffs to state the facts on which they predicated their claims, the Newton Plaintiffs pointed to generalized atmospherics that have no connection to the 2012 legislative plans.

See generally, Exhibit P-1 at 4-5, Response to Interrogatories 7-9; Exhibit P-1, at 8-9, Response to Production Request 1.

Nothing in the record contradicts the testimony of Senator Dial and Representative McClendon on any material point. More specifically, nothing refutes their testimony that:

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

(2) 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 14-16.

(3) They understood that "[i]n order to essentially guarantee that the black community could elect the candidate of its choice, we had to add population that was both contiguous to the old district line and had 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.

5. The Newton Plaintiffs' "illustrative" remedies are flawed.

In their discovery response, the Newton Plaintiffs proposed a number of "illustrative" remedies. With respect to the proposed new black-majority House and Senate districts, each of those "illustrative" remedies relies on expanding the allowable overall population deviation. See Exhibits P-2, P-3, and P-4 . In fact, the illustrative remedy for SD 7 has an absolute deviation of -6,843, and a relative deviation of 5.01%. See Exhibit P-2. In a plan otherwise based on an allowable deviation of ±1%, there is no good reason to stretch one district so far.

There is, moreover, nothing unconstitutional about the use of an overall population deviation of ±1%, and the Newton Plaintiffs have not produced any reason to set it aside. Any remedy that turns on a population deviation of more than ±1% should be rejected for that reason.

Moreover, each of their proposed solutions just pushes problems elsewhere. In Montgomery County, for example, putting the county's population in five House districts pushes HD 69, a black-majority district, and HD 90, a white-majority district, out of the county and would force them to take population from other districts if the remedy is implemented. See No. 30-36 at 6, 7, respectively, for the district demographics. The illustrative remedy, moreover, treats the white-

majority differently from the black-majority districts, in effect packing it. See Exhibit P-3.

So, too, with the Newton Plaintiffs proposed SD 22, see Exhibit P-5, which would take, among other things, all of Clarke County and a portion of Covington County.[3] Those changes would have ripple effects on SD 23, a black-majority district, and SD 31, a white-majority district. See No. 30-39 at 2, 3, respectively, for the district demographics.

Newton Plaintiffs Stallworth, Pettway, and Toussaint seek the creation of a district in which the minority population is less than 50 %. Stallworth and Pettway characterize former HD 73 as a "nascent minority district," Newton No. 1 at 14, ¶ 46a, but, when 2010 census data were loaded into the 2001 House district lines, the minority population was only 48.44% of the total. See No. 30-37 at 6. That minority population was needed to bring the total population of HDs 76, 77, and 78 back within the allowable deviation. As Randy Hinaman explains, "To get the black population needed for HDs 76, 77, and 78, the map I received from Representative McClendon [, which came from Representative McClammy,] drew African-American voters from HD 73." Exhibit O-10 at page 4, ¶ 6.

[3] In fact, the Newton Plaintiffs' proposed SD 22 would take all of Escambia and Clarke Counties as well as portions of Baldwin, Mobile, Conecuh, Monroe, Covington, and Washington Counties. See Exhibit P-6. Their willingness to split 6 counties suggests that the Newton Plaintiffs do not share the same respect for county boundaries that the ALBC Plaintiffs have.

For her part, Toussaint alleges that the minority population in Madison County "had the potential to predominate in a Senate district in a coalition district or a crossover district." Newton No. 1 at 15, ¶ 46d. In the absence of a showing of intentional discrimination, none of these Newton Plaintiffs is entitled to the creation of such an influence, coalition, or crossover district.

6. The Newton Plaintiffs' Fourteenth Amendment claim need not be separately addressed.

The Newton Plaintiffs also assert that the 2012 Alabama legislative redistricting plans violate the Fourteenth Amendment. In the judgment of the Newton State Defendants, this claim is duplicative of the other claims made by the Newton Plaintiffs. The Newton State Defendants have shown that the 2012 Alabama legislative redistricting plans are not the product of intentional discrimination, a showing that disposes of not just the intent prong of Section 2 of the Voting Rights Act, but also the Fourteenth Amendment. See *Washington v. Davis*, 426 U.S. 229, 239, 96 S. Ct. 2040, 2047 (1976); see also *Mobile v. Bolden*, 446 U.S. 55, 66, 100 S. Ct. 1490, 1499 (1980) ("[O]nly if there is purposeful discrimination can there be a violation of the Equal Protection Clause of the Fourteenth Amendment."). Conversely, any reliance on the results prong of Section 2 will not be sufficient to prove a violation of the Fourteenth Amendment.

Accordingly, this Court should let its resolution of the other claims drive its resolution of the Fourteenth Amendment claim.

CONCLUSION

For the reasons stated above, this Court should enter summary judgment in favor of the Newton State Defendants and against the Newton Plaintiffs on their claims that the 2012 Alabama legislative redistricting plans violate Section 2 of the Voting Rights Act, that the plans are a product of racial gerrymandering, and that the plans violate the Fourteenth Amendment.

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CERTIFICATE OF SERVICE

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

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