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.	)	

CONSOLIDATED REPLY BRIEF OF THE *NEWTON* STATE DEFENDANTS, SENATOR GERALD DIAL, AND REPRESENTATIVE JIM McCLENDON TO THE *NEWTON* PLAINTIFFS' RESPONSE

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,

defendants in this action, and Senator Gerald Dial and Representative Jim McClendon, defendants-intervenors, (collectively, the "Defendants", unless otherwise stated), jointly submit this Reply Brief in response to the *Newton* Plaintiffs' Response (No. 136 and its exhibits) to their Motion for Summary Judgment. For the reasons stated in their Motion and supporting Memorandum, including its exhibits, (Nos. 122, 125, and 125-1 through 125-14) and this Reply and its exhibits, this Court should enter judgment in favor of the Defendants and against the *Newton* Plaintiffs on their claims (1) seeking the creation of "minority opportunity House districts" in Jefferson and Montgomery Counties and a "minority opportunity Senate district" in Madison County, No. 136 at 1; and (2) challenging the elimination of Senate districts 11 and 22 as "crossover districts" and (3) seeking the invalidation of the 2012 Alabama Senate and House plans in their entirety.

FACTS

With respect to the proposed facts of the *Newton* Plaintiffs, and without admitting those not specifically addressed, the Defendants note:

93. The *Newton* Plaintiffs rely on the Hinaman deposition with respect to whether Senator Figures was consulted about moving excess Baldwin County population into the Mobile Senate districts. In so doing, they overlook Senator

Dial's testimony that, when he approached the "Baldwin and Mobile people and asked could we bring Senator Keahey into north Mobile, move Senator Glover over into Baldwin, … I got a less than warm reception." No. 125-3 at 90: 21 through 91:1. Moreover, Senator Figures was included when he talked to the Mobile delegation, and she was opposed. *Id.*, at 91: 4-11.

116. The *Newton* Plaintiffs point to Speaker Hubbard's statement about looking at the voting patterns in districts represented by white Democrats. The *Vieth* amicus brief and *Newton* Plaintiff Ted Arrington's deposition put this in context.

In the *Vieth* amicus brief, the then-Democratic leadership of the Alabama Legislature, assisted by one of the attorneys for the *ALBC* Plaintiffs, pointed to the 2001 Alabama legislative redistricting plans as an example of good political gerrymandering. They noted:

> [I]n the 2002 elections, even though the Republicans polled statewide majorities in Congressional and most statewide office contests, Democrats won 52% of the votes statewide for State Senate seats and 51% of the votes statewide for State House seats. Democrats captured 71% of the 35 Senate seats and 60% of the 105 House seats.

See No. 96-1 at 2. These results hardly look like a stable platform for continued Democratic success, and it is in the nature of political parties to exploit what they see as weakness.

As for Ted Arrington, he testified that it would have been futile for Speaker Hubbard to target black Democrats. Arrington testified:

> Q. Well, again, looking at the Republicans – when you talk about Speaker Hubbard's book and he says something – we're going to focus on the white Democrats.
>
> A. That he would not focus on the black Democrats, that he would focus on the white Democrats. Right.
>
> Q. Well, do you think it would have been effective focusing on the black Democrats?
>
> A. No.
>
> Q. It would be a waste of the Republicans' time, right?
>
> A. Yes.
>
> Q. Well, in the declarations from folks like Mr. Rogers and Mr. Jackson that say the Republicans didn't approach me about switching parties, what do you think would happen if someone like Mr. Rogers declared that he was a Republican? Would he do well in the next election in his district?
>
> A. No.
>
> Q. So it's in their self-interest not to switch whether they are approached or not, right, for the black Democrats?

A. That's correct.

Exhibit T-4, at 28:3 through 29:4.

120. The Eleventh Circuit has vacated the District Court's decision in *Central Alabama Housing Center, et al. v. Magee*, 835 F. Supp. 2d 1165 (M.D. Ala. 2011), as moot. Leaving that action aside, the Defendants note that the District Court cited statements by two ALBC legislative plaintiffs, Representative John Rogers and Representative Thomas Jackson. It observed that Representative Rogers "made comments that reflect popular stereotypes about Mexicans and drew explicit distinctions along the lines of race and national origin." Similarly, the court pointed to Representative Jackson's statements "[a]long these same lines," referring to "the people I saw when I went to visit the chicken houses" and "4-foot Mexicans in there catching them chickens." See No. 137-6 at 40-41.

ARGUMENT

In this portion of their Reply, the Defendants will first address the *Newton* Plaintiffs' district specific claims. Then, they will respond to the *Newton* Plaintiffs' global attack on the 2012 plans.

Jefferson County

The *Newton* Plaintiffs complain that the State failed to create a "minority opportunity House district" in Jefferson County. The House plan moves HD 53

from Jefferson County to Madison County, where it remains a black-majority district. That move makes sense when the demographics of the black-majority House districts in Jefferson County are considered. In particular, those districts were, collectively, short of the ideal population by more than 97,000 people, or more than two House districts.[1]

Those demographics are as follows:

	2012	Needed	2010 Census in 2001
HD 52	60.13%	-2,362	60.11%
HD 53	*	-10,143	55.70%
HD 54	56.83%	-10,616	56.73%
HD 55	73.55%	-9,949	73.55%
HD 56	62.14%	-4,457	62.13%
HD 57	68.47%	-9,322	68.42%
HD 58	72.76%	-8,078	77.86%
HD 59	76.72%	-12,683	67.03%
HD 60	67.88%	-8,817	67.41%

[1] The *Newton* Plaintiffs assert that the black population of Jefferson County increased between 2000 and 2010, and the white population decreased during that time. No. 136 at 3, ¶ 3. That fact is hard to reconcile with the fact that, when the 2010 Census results were loaded into the 2001 plans, the black-majority House and Senate districts were all underpopulated. See the text for the House plan and No. 30-41 for the Senate figures.

HD 67	69.15%	-7,643	69.14%
HD 68	64.56%	-9,287	62.55%
HD 69	64.21%	-7,949	64.16%
HD 70	62.03%	-6,268	61.83%

Plainly, the demographics noted above required some action.

The alternative would be a measure of retrogression, as white voters, but not too many of them, were added to the black-majority districts. Given the State's need to obtain preclearance and the opacity of that process, the drafters cannot be faulted for proceeding cautiously.

Montgomery County

The *Newton* Plaintiffs complain that the State failed to create a "minority opportunity House district" in Montgomery.

The demographics of the black-majority districts in Montgomery in the 2012 plan and when the 2010 Census data were loaded into the 2001 district lines show[2]:

	2012	Needed	2010 in 2001 Lines
HD 76	73.79%	-627	69.54%
HD 77	67.04%	-10,523	73.52%

[2] See Nos. 30-36 and 30-37.

HD 78	69.99%	-14,641	74.26%

Hinaman explains, "To get the black population needed for HDs 76, 77, and 78, the map I received from Representative McClendon [*i.e.*, the McClammy map] drew African-American voters from HD 73. I kept the African-American percentages for each black-majority district very close to the percentages in the McClammy map." No. 125-10 at 4, ¶ 6.

Put simply, following the McClammy map meant that the black population in old HD 73 largely went toward the repopulation of the black-majority House districts. Those representatives have not complained about their new districts yet, so, if the *Newton* Plaintiffs are going to obtain this new district, this Court will have to follow Ted Arrington's advice and insert itself between the voters and Representatives McClammy, Knight, and Holmes.

Madison County Senate District

The creation of a new "minority opportunity" Senate district in Madison County depends on both witness testimony and an adequate remedy. In their Memorandum, the *Newton* Plaintiffs assert that their proposed remedy satisfies their burden because it has a black plurality combined with Hispanic voters puts them over the 50% threshold. No. 136 at 45.

The *Newton* Plaintiffs' "illustrative remedy" is flawed. As the Defendants have noted, it requires the creation of a district with an absolute deviation of -6,767 and a relative deviation of -4.96%. See No. 138-7. Unless the *Newton* Plaintiffs can invalidate the use of the overall deviation of ±1% that the Senate plan used, the proposed remedy fails. Put differently, any § 2 remedy must come within the established population deviation.[3] Otherwise, the minority voters will get more of an opportunity than the non-minority voters in adjoining districts.

Rosa Toussaint's testimony is also insufficient to support the *Newton* Plaintiffs' claim for a "minority opportunity" Senate district in Madison County. In her deposition, Toussaint was repeatedly offered an opportunity to address her Senate district (of which 1, 2, and 7 are in Madison County), but kept returning to complaints about the House districts, which include HDs 10, 19, and 53, in Madison County, as the following excerpts show:

> Q. As I understand your complaint, you are complaining about not creating coalitions or crossover Senate districts. Is that how you understand your case or are you complaining about your House district too?
>
> A. My complaint is about all the changes that they are making. All those like the District 7, District 19, it's like when I see them, when I

[3] The results prong of § 2 cannot be the basis for deviating from the ±1% population deviation. If that were the case, the results prong of § 2 would justify the creation of "minority opportunity" districts that fail to satisfy a different population deviation, like ±5%.

talk to people that know a little bit about it, it's like something doesn't look right, like they are breaking us, you know, the southwest....

No 138-3 at 10:12-23.

* * * *

A. ... And if we look at the schools, those are the schools that have the most Hispanics. Butler High School, Ridgecrest Elementary, McDonald Elementary, Westlawn Middle, all those schools are the schools in Huntsville that house the most Hispanics and they are all right there in that southwest District 19, District 10, District 53. They used to be District 19.

No. 138-3 at 14:4-12.

* * * *

Q. I'm a little confused though. You are complaining about the way House District 53 was drawn and your complaint talks about, as I understand it, the Senate district. Do you think there can be a African-American or African-American and Hispanic Senate district up here other than the one that's already here in the Huntsville area?

Mr. Patty: Object to form.

A. When we are talking about Senate district, we are talking about like District 7?

Q. Yes, ma'am.

A. First, let me remind you. Did you – I don't know if you are aware what happened with District 7 in the election. I want to give you a glimpse of the problems that we are having. I was working with Laura Hall because she was trying to be District 7 and the folks that were for the older – the person going against her, they even have

the audacity of going into the radio, the radio talk show and website and confusing – trying to confuse people saying that the elections were going to be for democrats a different day than for republicans because there was not enough space. You know, what I'm trying to let you see is that things are not right. I am fighting this and I am here today because I want to make sure that the Department of Justice will look at it. If nothing – if it has been done with a good heart, fine, but I just want to make sure that somebody outside Alabama will look at this because I do not trust republicans. I was even in a prayer group and I got an email that they sent to me. They were not – I guess they forgot who they were sending emails, talking about a tea party and I was – you know, I objected to the tea party and I was in shock. So what I am telling you is I do not trust what is going on here when it comes to politics. All I am saying is as long as people are doing that in a fair way, that's fine, but I just want someone outside to look at it.

Q. When the Legislature passed the new House redistricting plan, one of the first things it had to do before it could put it into effect was send it to Washington to the Department of Justice to get what lawyers call pre-clearance. Do you understand that?

A. Uh-huh.

Q. Do you understand that the House plan was pre-cleared by the Department of Justice?

A. Let me explain to you. When we put – this is how I see it. When we put things in writing and reading something is one thing, but if I live in a neighborhood, I probably see things in a different way. They are sitting on their desk, looking at a map and reading, they don't really know that they are seeing as much as me that is living here every day, has been here for years, I know what is going on here. Like I said, if the republicans didn't do this with a bad heart, it's fine, you know. And God knows, you know, it's in God's hands. But if they are doing this with a bad heart, I want this to come to light, that's all.

No 138-3 at 15:22 through 18:17.

* * * *

Q. All this division you are talking about, is it in your House districts or your Senate districts or what?

A. What I see when – we used to be District 19 and now we are going to be 10, 53, 19, and it just doesn't look – what I see is that what we have is breaking apart.

No. 138-3 at 25:1-7.

* * * *

Q. Your lawyers have produced to us a proposed new Senate District 7. They sent us a map and some information about the races of the people who would be in it. Have you seen it?

A. I haven't seen them. I don't think so, no.

Q. Other than what you have already told me, is there any other reason why you think that the new redistricting plans for the State House and Senate intentionally discriminated against minority voters, other than what you have already told me?

A. All I want to tell you is that I am not a politician. I am not an expert in politics. I'm a chaplain and I'm also an advocate for the Hispanic community in this case for whoever is in need, you know. And what I have seen again, I mentioned to you before, I don't trust the republican party right now. And when I see all the division, I think they are trying to divide the coalition we are trying to build among African-Americans and Hispanics when it comes to vote.

No. 138-3 at 28:21 through 29:19.

In fact, Toussaint used the word "Senate" only once out of 17 references (No 138-3 at 16:8), and of the 11 times the number "7" was used, 7 came from her (No. 138-3 at 10:19; 16:9, 13,16; 20:23;and 21:13, 15). None of those uses support the *Newton* Plaintiffs' claim for a new "minority opportunity" Senate district in Madison County.

Accordingly, the *Newton* Plaintiffs have failed to state a cognizable claim that would support the creation of another "minority opportunity" district in Madison County.

Senate District 11

The *Newton* Plaintiffs contend that they can challenge the constitutionality of SD 11 through the Alabama Democratic Conference. They assert that the ADC has members who reside in Calhoun, Coosa, Elmore, and Talladega Counties, all of which part of the new SD 11. No. 136 at 44.

The Defendants disagree with the notion that an association with its presence in Montgomery can pursue district-specific claims in other parts of the State. The *Newton* Plaintiffs' response illustrates the problem. Who other than counsel and an expert from out-of-town have spoken about SD 11? Who would the Defendants depose?

The *Newton* Plaintiffs' reliance on associational standing is unsound in this context. In *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343, 97 S. Ct. 2434, 2441 (1977), the Supreme Court noted, "[W]e have recognized that an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." In this case, the claim asserted requires the participation of the individual ADC members. See *United States v. Hays*, 515 U.S. 737, 115 S. Ct. 2431 (1995)

United Food and Commercial Workers Union Local 751 v. Brown Group, 517 U.S. 544, 116 S. Ct. 1529 (1996), is not to the contrary. There, the Supreme Court held that a union could pursue a claim for backpay on behalf of its members under the Worker Adjustment and Retraining Notification Act. The Court resorted to general principles in concluding that the third prong of the associational standing test as asserted in that case was prudential.

No such resort to general principles is warranted in the redistricting context. The Court's decision in *Hays* is a specific holding regarding standing. If associational standing is allowed in this context, *Hays* will be a dead letter.

This Court should reject the *Newton* Plaintiffs' challenge to SD 11 because no individual plaintiff with standing has appeared to make that district-specific claim.

Senate District 22

The *Newton* Plaintiffs argue that the Senate plan violates Section 2 because it eliminated a "coalition" district, District 22 in southwest Alabama. They say that using the new census numbers, the population of old District 22 was within one percent of the ideal population "so that it did not need to change." No. 136 at ¶94.

As they do again and again, the *Newton* Plaintiffs forget that a district cannot be considered in a vacuum. District 22 *did* need to change because of population losses and gains in surrounding districts. Senator Sanders' District, District 23, had a significant loss of population, as did Districts 33 and 35 in Mobile County. See No. 30-41. And Baldwin County, District 32, was booming, with an excess population of nearly 20,000. *Id*. So District 22 took on some of the Baldwin County excess population, which was largely white voters, and gave up some minority voters to make up for the population loss of District 23. As a result, the minority population of new District 22 is lower than the minority population of old District 22.

But there are reasons that District 22 was changed in that way, and any other solution would only cause other problems. Senator Dial testified that he considered several proposals from Senator Keahey, who represents District 22. No. 125-3, at 80:4 through 83:23. Keahey proposed taking some of Senator Sanders' District 23, but this would have upset the African-American majority in District 23, and would have required that the under-populated District 23 expand northward. *Id.*, at 80:12-19. Any such proposal would have decreased the minority population of Senator Sanders' district, and Senator Dial was reluctant to do that. Id., at 80-84. And Senator Sanders preferred the opposite, that District 23 be expanded into former 22. *Id.*, at 86: 9-19. [4]

Senator Keahey also proposed that he take a larger portion of Mobile County, but this would not have worked either. Dial worked with the Mobile delegation, including Senator Figures, and they had "pretty well agreed on what they would like to have in Mobile County." *Id.*, at 83: 8-16. If District 22 were expanded deeper into Mobile County instead of Baldwin, then something still would have had to be done with the excess Baldwin population, likely having other Mobile County districts absorb it (resulting in more County splits, which in

[4] To the extent that Senator Sanders proposed that the African-American population of a black-majority district "ought not to be less than 62 percent," see No. 30-28 at 6, the resulting SD 23 did precisely that. Its African-American population is 64.84% of the total. See No. 30-39.

other cases Plaintiffs oppose). However, neither the Mobile County delegation nor the Baldwin County delegation wanted those Districts to jump across Mobile Bay. No. 125-3, at 83: 8-23; 90:21 through p. 9: 11. As Senator Dial explained, he got "less than a warm reception" when he asked the Senators from Baldwin and Mobile Counties whether we could "bring Senator Keahey into north Mobile, move Senator Glover over into Baldwin." No. 125-3 at 90:21 through 91:1.

Thus, to preserve the old racial percentages of District 22, Senator Dial would have to do one of two things: (1) Disregard the wishes of the Mobile County delegation, including its minority Senators, and increase the number of County splits by expanding those districts into Baldwin County, or (2) decrease the minority population of District 23, a majority-minority district, and create ripple effects into the north when finding population for that district.

Consequently, considering the circumstances as a whole, the changes to District 22 do not create a Section 2 violation, and Defendants are entitled to a judgment as a matter of law with respect to any such claim.

The Plans as a Whole

The *Newton* Plaintiffs assert that strict scrutiny is required and that consideration of the Arlington Heights factors means that these plans are the

unconstitutional product of intentional discrimination. The Defendants disagree with those contentions.

With respect to strict scrutiny, the Defendants note that the plans serve the compelling state interests of compliance with Section 5 of the Voting Rights Act and adherence to one-person, one-vote standards. In addition, the Defendants note that they took the interests on black legislators into account in significant effect. Finally, by protecting incumbents and giving nearly all of them an opportunity to win in their new districts, the drafters made certain that the new plans would gain a legislative majority.

The parties have disagreed about Senator Dial's and Representative McClendon's understanding of their obligations under § 5, but there is no denying that these plans had to be precleared before they could be put into effect. In order to obtain preclearance, the black-majority districts had to be preserved, if possible. Moreover, Senator Dial and Representative McClendon testified to their understanding that they were obligated to try to bring the demographics of the black-majority districts of the new plan close to those of the prior plan. The *Newton* Plaintiffs disagree with that understanding, but they have not pointed to anything more than generality to the contrary.

Likewise, with respect to packing, the *Newton* Plaintiffs criticize the "antiquated" understanding of the State. But, that understanding is based on the conclusion of the District Court for the District of Columbia in *Texas v. United States*, 831 F. Supp. 2d 244, 263 & n. 22 (D.D.C. 2011)(three-judge court). The argument to the contrary lacks commensurate authority.

In any event, these plans were precleared. They were precleared notwithstanding two letters and a meeting with one of the attorneys for the *Newton* Plaintiffs. See Exhibits T-1, T-2. Furthermore, to the extent that USDOJ can object to packed or to unpacked districts, it did neither in this case.

Finally, the Defendants object to the notion that they alone are responsible for Alabama's past. They also object to consideration of matters unrelated to the 2012 plans, like the decision in *United States v. McGregor* or the immigration bill.

Proportionality

The 2012 Senate and House plans also provide minority voters with roughly proportional representation. In *League of United Latin American Citizens v. Perry*, 548 U.S. 399, 126 S. Ct. 2594 (2006), the Court noted that proportionality is "a relevant fact in the totality of the circumstances" even if it may not be a "safe harbor" for § 2 purposes. 548 U.S. at 436. Where the challenge is statewide, as it is here, the proportionality inquiry should be statewide. *Id*.

The 2012 Senate and House plans provide minority voters with roughly proportional representation.[5] According to the 2010 Census, the African-American population of Alabama is about 26.8% of the total population. The Senate plan provides 8 black-majority districts, or 22.9% of the total of 35, and the House plan provides 28 black-majority districts, or 26.7% of the total of 105. Even if another black-majority Senate district would bring that plan closer to true proportionality (as to which, the *Newton* Plaintiffs have no statutory right), no such district can be drawn without satisfying the first *Gingles* criterion, something the *Newton* Plaintiffs cannot do. *Cf. Thornburg v. Gingles*, 478 U.S. 30, 50, 106 S. Ct. 2752, 2766 (1986)(" First, the minority group must be able to demonstrate that it is sufficiently large and geographically compact to constitute a majority in a single-member district.").

Demographic Comparison

The ALBC State Defendants have already shown that the demographics of the black-majority districts in the 2012 plans are not significantly different from the demographics of the same districts in the 2001 and 1993 plans, which

[5] The Defendants recognize that there are minorities other than African-Americans in Alabama. Those other minorities are not represented in the Legislature, and their numbers are too small to factor into the proportionality analysis. In that regard, the Defendants note that there are no § 203 language-minority jurisdictions in Alabama. See http://www.justice.gov/crt/about/vot/28cfr/55/28cfr55.htm#anchor55_203c (last visited July 13, 2013).

Democratic majorities drew. See Nos. 30 at 17, 20; No. 125 at 55-56. That similarity suggests that the districts in the 2012 plans are no more packed than those in the earlier plans, or that the ALBC Plaintiffs expect this Court to tell the Defendants to fix a problem that the Democrats did not just create, but also perpetuated.

Another measure of the continuity of the 2012 plans with past practice is a comparison of the demographics of the black-majority districts in the 2012 plans with the demographics of those districts in the 2001 plans with the 2010 Census results loaded into them.

For the Senate plan, the results are as follows[6]:

	2012	Needed	2010 in 2001 Lines
SD 18	59.10%	-24,092	59.92%
SD 19	65.31%	-27,399	71.59%
SD 20[7]	63.15%	-29,189	77.82%
SD 23	64.84%	-24,625	64.76%
SD 24	63.22%	-17,723	62.78%

[6] The demographics of the 2012 Senate plan can be found in No. 30-39, and the result of loading the 2010 Census results into the 2001 districts in No. 30-41.

[7] Senator Dial testified that the percentage of the total population that was African-American decreased "in the Smitherman, Dunn, Coleman map that they drew for themselves." No. 125-3 at 100:20 through 101:1.

SD 26	75.13%	-15,598	72.69%
SD 28	59.83%	-5, 196	50.98%
SD 33	71.64%	-24,649	64.85%

These results again show that every one of the black-majority Senate districts needed to add population to come within the allowable overall deviation. They also show that the drafters essentially left the black-majority districts as they found them.

For the House plan, the results are as follows[8]:

	2012	Needed	2010 in 2001 Lines
HD 19	61.25%	-3.141	69.82%
HD 32	60.05%	-6,721	59.34%
HD 52	60.13%	-2.362	60.11%
HD 53	*	-10,143	55.70%
HD 54	56.83%	-10,616	56.73%
HD 55	73.55%	-9,949	73.55%
HD 56	62.14%	-4,457	62.13%
HD 57	68.47%	-9,322	68.42%
HD 58	72.76%	-8.078	77.86%

[8] The demographics for the 2012 House plan can be found in No. 30-36, and the results of loading the 2010 Census into the 2001 districts in No. 30-37.

HD 59	76.72%	-12,683	67.03%
HD 60	67.88%	-8,817	67.41%
HD 67	69.15%	-7,643	69.14%
HD 68	64.56%	-9,287	62.55%
HD 69	64.21%	-7,949	64.16%
HD 70	62.03%	-6,268	61.83%
HD 71	66.90%	-7,427	64.28%
HD 72	64.60%	-6,107	60.20%
HD 76	73.79%	-627	69.54%
HD 77	67.04%	-10,523	73.52%
HD 78	69.99%	-14,641	74.26%
HD 82	62.14%	-2,132	57.13%
HD 83	57.52%	-4,482	56.92%
HD 84	52.34%	-4,204	50.61%
HD 85	50.08%	-3,092	47.94%
HD 97	60.66%	-10,115	60.66%
HD 98	60.02%	-7,690	65.22%
HD 99	65.61%	-5,730	73.55%
HD 103	65.06%	-4,910	69.84%

As with the 2012 Senate plan, these results again show that every one of the black-majority House districts needed to add population to come within the allowable overall population deviation. They also show that the drafters essentially left the black-majority House districts as they found them.

CONCLUSION

For the reasons stated, this Court should reject the *Newton* Plaintiffs' claims, either in part or in their entirety, seeking (1) the creation of new "minority opportunity" House districts in Jefferson and Montgomery Counties and the creation of a new "minority opportunity" Senate district in Madison County; (2) their challenges to SD 11 and SD 22; and (3) seeking to invalidate the 2012 House and Senate plans in their entirety, and should enter summary judgment in favor of the Defendants and against the *Newton* Plaintiffs.

Respectfully submitted, July 17, 2013

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and service will be perfected upon the following this the 17th day of July, 2013:

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