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

ALABAMA LEGISLATIVE BLACK CAUCUS, et al.	)	
Plaintiffs	)	
v.	)	**2:12-CV-00691-WKW-MHT-WHP**
	)	**(Three Judge Court)**
THE STATE OF ALABAMA, et al.	)	
Defendants	)	
DEMETRIUS NEWTON, et al.	)	
Plaintiffs	)	
vs.	)	**2:12-CV-01081-WKW-MHT-WHP**
	)	**(Three Judge Court)**
STATE OF ALABAMA, et al.	)	
Defendants	)	

NEWTON PLAINTIFFS PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Newton plaintiffs bring two distinct types of claims. The first claim, brought under the results prong of Section 2 of the Voting Rights Act, is that under the House and Senate plans enacted by the State of Alabama, minority voters will "have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice" and that each plan "results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color" or membership in a language minority group. 42 U.S. C. § 1973. The

Newton plaintiffs' Section 2 results claim relates to the State's failure to create additional minority opportunity House districts in Jefferson and Montgomery counties and the State's failure to create a minority opportunity Senate district in Madison County.

The Newton Plaintiffs also challenge the House and Senate plans under the purpose prong of Section 2 and under the 14th and 15th Amendments. Here, the focus includes but is not limited to the State's failure to draw minority opportunity districts in the counties noted above, but also on the elimination of Senate districts 11 and 22 as crossover districts; and, indeed, the Newton plaintiffs aver that the entire House and Senate plans are pervaded by a racially discriminatory purpose. Further, the Newton plaintiffs contend that the State violated the Fourteenth and Fifteenth Amendments by a stereotyping and stigmatizing black citizens of Alabama by establishing quotas for the number of minority districts and for the minority share of population in those districts, and by drawing district lines and arbitrarily over-concentrating ("packing") and/or fragmenting ("cracking") minority populations in an effort to segregate the races for purposes of voting, without regard for traditional districting principles and without any race-neutral justification - all to stigmatize black voters and discourage and inhibit cross-racial coalitions. In sum, the Newton Plaintiffs charge that the State thus designed the House and Senate plans to place a cap on the opportunities of minority voters to participate in the political process, to freeze in place a legislative filibuster-proof majority, and to debar black and other minority citizens from an opportunity to pull haul and trade to find common political ground" and thereby "hasten the waning of racism in American politics." *Johnson v. DeGrandy*, 512 U.S. 997, 1020 (1994).

PROPOSED FINDINGS OF FACTS

1. Newton Plaintiff Demetrius Newton is an adult African-American citizen who is a registered voter in Jefferson County, Alabama and who votes in former House District 53. Newton is the state house representative for former House District 53. Doc. 182, para. 57.

2. Newton Plaintiff Framon Weaver is an adult Native-American citizen who is a registered voter in Washington County, Alabama and who votes in Senate District 22. Vol. IV, R. 38, L. 10-11; Doc. 182, ¶ 59. Chief Weaver is the Chief of the MOWA Band of Choctaw Indians. Vol. IV, R. 38, L. 12-14.

3. Newton Plaintiff Lynn Pettway is an adult African-American citizen who is a registered voter in Montgomery County, Alabama and who votes in former House District 73, and will vote under the new plan for reapportionment of the Legislature in House District 74. Doc. 182, ¶ 60 ; Vol. II, R. 183. Newton Plaintiff Stacey Stallworth is an adult African-American citizen who is a registered voter in Montgomery County, Alabama and who votes in former House District 73, and will vote under the new plan for reapportionment of the Legislature in House District 77. Doc. 188.

4. Newton Plaintiff Rosa Toussaint is an adult Hispanic-American citizen who is a registered voter in Madison County, Alabama and who votes in former House District 19, and will vote under the new plan for reapportionment of the Legislature in House District 10. She also has voted in Senate District 7 and will vote in that district under the new plan for reapportionment of the Legislature. Doc. 182, ¶ 61; Vol. IV, R.19, L. 22-23; R. 32, L. 15-21.

5. Newton Plaintiff Alabama Democratic Conference ("ADC") is a statewide political caucus formed in 1960. The purpose of ADC is to endorse candidates for political office who will

be responsible to the needs of the blacks and other minorities and poor people of the State of Alabama. ADC uses a yellow ballot as a method of endorsing candidates. ADC's purpose is to protect the voting rights of racial minorities in the State of Alabama. The ADC purpose also involves advancing blacks politically in Alabama. ADC will endorse candidates and be involved in political races even in counties with low black or minority population and has chapters and members in almost all counties in the state. ADC is involved in lobbying and voter registration. ADC worked closely with the Alabama legislative committee to redraw the state senatorial and representative districts in 1980, 1990, and 2000 for the State of Alabama. Doc. 182, ¶58; Vol. II, R. 153, L. 14-22; R. 154; R. 158; R. 159; 160.

6. Newton Plaintiff ADC, through its representative, Dr. Reed, testified at trial that the plans for redistricting the Legislature would cause a great deal of confusion through the excessive county and precinct splits. These issues would impact ADC's voter turnout efforts and would undermine its ability to influence districts. Vol. II, R. 168. He also testified that packing of districts also damaged minorities' abilities to influence elections in non-packed districts. *Id*., at 168-69.

7. According to the 2010 Census, Alabama had 4,779,736 residents, including 3,274,402 white non-Hispanic persons (68.5%), 1,281,118 black persons (26.8%), 28,218 Native-Americans (1.2%), and 186,602 persons of Spanish Heritage, or Latinos (3.9%). The remaining residents were of other races or of mixed race. Newton Plaintiffs' Exhibit (NPX) 325.[1]

8. The 2010 white share of population declined from 71.1 percent in 2000 (including white Hispanics), NPX 326, and the white share continues to decline at an accelerating pace: the

[1] The white non-Hispanic population subtracts the white Hispanic population from the total white population. Consistent with Alabama historical practice, the black population includes persons who are black alone or in combination with another race.

Census Bureaus' American Community Survey reports that in 2011, the white population had declined not only as a proportion of the total population, but in absolute terms as well. NPX 327. The 2011 population of Alabama as a whole had grown to 4,802,740 persons while the white non-Hispanic population declined by over 63,000 persons to 3,202,563, or 66.7 percent of the state population. *Id.*

9. Under the State's House redistricting plan, 78 of the 105 districts have clear white non-Hispanic majorities. Defendants' Exhibit (DX) 403. There are NO districts in the enacted plans with a non-white VAP between 36% and 50%. DX 403; NPX 323 at ¶56. Each of these districts has a minority population well below the level that would accord minority voters to elect a candidate of their choice or to have any influence on the election. NPX 323 at ¶56. The districts with overwhelming white majorities comprise over 74 percent of the 105 total House districts as compared to the 68.5 percent white non-Hispanic share of the state's 2010 population and 66.7 percent of the state's 2011 population. The State's plan thus relegated the 31.5 percent (or 33.3 percent in 2011) minority population of the state to 25.7 percent of the House districts.[2]

10. Under the State's Senate redistricting plan, 27 districts have clear white non-Hispanic majorities. DX 400. Each of these districts has a minority population well below the level that would accord minority voters to elect a candidate of their choice. NPX 323 at ¶56. These districts comprise over 77 percent of the 35 total Senate districts as compared to the 68.5 percent white non-Hispanic share of the state's 2010 population and 66.7 percent of the state's 2011 population. The State's plan thus relegated the 31.5 percent (or 33.3 percent) minority population of the state to

[2] The black population would warrant 28.14 seats without inclusion of the Latino and Native-American population with whom they are in coalition.

22.86 percent of the Senate districts.[3]

11. The black population of Jefferson County (Birmingham) is sufficiently concentrated for the creation within Jefferson County of one additional compact, contiguous House district with a black voting age majority. Alabama Black Legislative Caucus Exhibit (APX) 16; NPX 301.

12. The black population of Montgomery County is sufficiently concentrated for the creation within Montgomery County of one additional compact, contiguous House district with a black voting age majority. NPX 300.

13. The black and Hispanic population of Madison County is sufficiently concentrated for the creation within Madison County of a compact, contiguous Senate district with a black and Hispanic voting age majority. NPX 302. The area of such a district includes an area in which the white population is declining as minorities move into neighborhoods and white residents leave. Vol. III, R. 7, L. 22-25; R. 8, L. 1-9; 15-18; Vol. III, R. 13, L. 22-25; R. 14, L. 1-7. Because of the military-NASA basis of its economy, the Madison County area has a high rate of citizenship among its Hispanic population. Vol. III, R. 197, L. 16-R. 198, L. 7.

14. Under the 2001 Senate plan, Senate district 11 had a 2010 population of 125,111 persons of whom 62.6 percent were white and 33.9 percent were black. Minority voters in Senate district 11 dependably were able to align with other minorities and with white persons dependably to elect a Senator of their choice from district 11. Lichtman Report at 13, 14. NPX 324.

15. Under the 2001 Senate plan, Senate district 22 had a 2010 population of 125,111 persons of whom 62.6 percent were white and 33.9 percent were black. Minority voters in Senate

[3] The black population would warrant 9.38 seats without inclusion of the Latino and Native-American population with whom they are in coalition.

district 11 dependably were able to align with other minorities and with white persons dependably to elect a Senator of their choice from district 22. NPX 324 at p. 18-19 (Table 6).

16. From 2000 to 2010, the black population of Jefferson County increased by 35,973 persons while the white population declined by 15,917 persons. NPX 328; NPX 329; NPX 323 at ¶ 62. The Latino population of Jefferson County increased by 15,204 persons from 2000 to 2010. NPX 328 and 329.

17. The minority population of Jefferson County is concentrated in the City of Birmingham and adjacent cities. Under both the 2001 and 2012 redistricting plans the county a single united cluster of majority-black districts. NPX 340; DX 400, 402, 406, 476, 477, 480 (Jefferson). Over the course of the decade, the black population tended to spread from this cluster into adjacent areas as black population replaced exiting white population. *Id*.

18. From 2000 to 2010, the black population increased in Montgomery County by 16,894 persons while the white population declined by 18,524 persons. NPX 328; NPX 330. The Latino population of Montgomery County increased by 5,649 persons from 2000-2010. *Id.* Much of this shift occurred in House District 73, which declined from 69.3 percent white in 2000 to 44.1 percent white in 2010. DX 411; NPX 332. With minorities comprising a majority of the population in District 73, minority voters elected the candidate of their choice to the Alabama House from District 73. NPX 324 at p. 25 (Table 9); Vol. III, R. 39, L. 18-21. The minority population of Montgomery is continuing to grow as, subsequent to 2010, minorities have moved into formerly white neighborhoods and white persons have left. Vol. III, R. 39, L. 22-25.

19. The minority population of Montgomery County is concentrated in the City of Montgomery and adjacent areas. The southern rural areas of the county also includes a substantial

black population. Over the course of the decade from 2000 to 2010, the black population tended to spread from this cluster into adjacent areas as black population replaced exiting white population, leaving an island of white population in the north-central areas of the county. The process of expansion of black and other minority population has continued since 2010. DX 400, 402, 406, 476, 477 (Montgomery).

20. Senator Quinton Ross (black) who represents Senate district 26 in Montgomery County, testified regarding the changes in demographics in Montgomery from 2000 to 2010. Vol. II, R. 123, L. 1-2; 5-9. Sen. Ross testified that the black population had grown and moved east in Montgomery while the white population declined. Vol. II, R. 125, L. 9-15. Plaintiff Lynn Pettway testified that he moved into District 73 around 1999/2000. Vol. II, R. 178, L. 10-17. He first moved into the Fairfield neighborhood. *Id.* This neighborhood is near where the Southern bypass meets Highway 231 and Bell Road. *Id.*; DX 480; NPX O. When he moved into the area it was predominately white. Vol. II, R. 178, L. 18-23. Pettway lived in the neighborhood for six years. Vol. III, R. 179, L. 2-5. There has been a steady increase in both blacks and Hispanics moving into the neighborhood. Vol. III, R. 178-179. Pettway left the Fairfield neighborhood, and moved to Halcyon South which is another neighborhood in District 73. Vol. III, 179. That neighborhood was again predominately white when Pettway moved in and now it has again changed. *Id.* The black population has substantially increased in that neighborhood while the white population has decreased. *Id.* Pettway has observed this trend over all of District 73. He works in a position that requires him to go into the schools in the Montgomery County system and he has seen these changes throughout the schools in District 73. Vol, II, R. 176, L. 9-12; R. 280-181. He has also seen a substantial growth in the Hispanic population in the district. *Id.*

21. Based upon the 2000 Census, District 73 was 69 % white and 27 % black. Common Exhibit CX 30 at 13. By 2010, District 73 was 44 % white and 48 % black. NPX 332. Pettway testified that based upon his observation the black population of District 73 had increased since the 2010 census. Vol. II, R. 183, L. 1-13. Further, the Hispanic population has increased since the census in that district. Vol. II, R. 183, L. 14-16.

22. The Madison County population grew by 21.0 percent between 2000 and 2010, and the black population increased by 17,351, or 27.5% and the Latino population nearly tripled (+195.1%), with a gain of over 10,000 persons. NPX 328; NPX 331.

23. The minority population of Madison County is concentrated in a single area. In 2000, the minority population was concentrated in and adjacent to House District 19. NPX 302, 340; DX 480; DX 406, 479. Over the course of the decade, the minority population grew rapidly and tended to spread from this cluster into adjacent areas as black population replaced exiting white population. Id. By 2012, the minority population growth was such that the expanded minority community had sufficient population for two adjacent compact and contiguous districts with large minority population majorities. Id.

24. The black and Hispanic populations of Madison County have continued to grow and neighborhoods have continued to change as minority voters move in and white votes move out. West and northwest Huntsville have changed during Representative Hall's forty years of living in the district, including twenty-five years teaching at Johnson High School and twenty years representing the district. Vol. III, R. 5, L.13-14; R. 7, L. 4-21; L. 22-25; R. 8, L. 1-9. The population of the district was around 76 % white and 24% black when she moved into the district and it is now around 90 % black. Vol. III, R. 7, L. 22-25 and R. 8, L. 1-9. Precincts such as Johnson High School

and West Maslin Lake are made up of predominately African-American voters. Vol. III, R.17. The African-American population is growing west of Huntsville into the rural areas and toward Harvest. Vol. III, R.8, L. 15-18.

25. In southwest Huntsville, the Hispanic population has grown. Vol. III, R. 13, L. 22-25, R. 14, L. 1-7. Madison County as a whole has approximately 15,000 Hispanics according to the 2010 census. NPX 325; Vol. IV, R. 30, L. 3-6. Hispanic population in this area has continued to grow since the census. Vol. III, R.14, L. 5-7. This area of southwest Huntsville was in Represent. Hall's House district 19 and was in Senate district 7. Vol. IV, R. 32-33; 34-35. Hall ran for Senate District 7 in the 2009 race. Vol. IV, R. 23. The Hispanic population in Huntsville's southwest lives mostly in Ridgecrest neighborhood as well as Bayless Drive, Governors, Drake, Patton, Triana and Bob Wallace Roads. Vol. IV R. 32-36. The high school with the most Hispanic students is Butler High near Holmes Ave. Vol. IV. R. 35, L. 2-4.

The State's Redistricting Plans: State Law Considerations

26. The Alabama Constitution requires that House and Senate redistricting plans be adopted in the first regular session of the Legislature after the census data becomes available. Alabama Constitution §§ 199, 200. The House and Senate plans were not adopted in the regular session but in a subsequent Special Session. Vol. III, R. 72, L. 1-6. Senator Dial testified that the "idea of passing a legislative reapportionment in the special session only arose at the end of the regular session. Vol I, R. 93, L. 10-12. Representative McClendon, however, testified that he had set up a schedule to recess the regular session and convene a special session on redistricting but the leadership changed that, APX 67 at114.L. 1-21, and was emphatic that the decision to hold a special session was made on “day one.” APX 67 at 116, L. 13-19.

27. Section 198 of the Alabama Constitution provides that:

> The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken.

28. Section 199 of the Alabama Constitution similarly provides that "each county shall be entitled to at least one representative."

29. Section 200 of the Alabama Constitution provides that:

> It shall be the duty of the legislature … to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more … No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other

30. The Alabama Constitution thus Constitution requires that no county be split by Senate districting boundaries, Section 200, and that each county have at least one representative. Section 198,199. These "whole county" provisions would prevent, or at least discourage, adding many surrounding districts to a county and thus diluting the votes of those who live in the county.

31. Dr. Arrington testified that these provisions strongly suggest that following county lines are an important traditional districting principle in Alabama. In drawing the Congressional and State Board of Education plans, the legislature followed county lines to a large extent. NPX 323 at ¶73. Defendants' expert, Dr. Brunell, has testified that maintaining counties intact protects

communities of interest. NPX 373, p. 20, L. 20-23.

32. Following county lines is an important traditional districting principle in Alabama. In the 2001 Senate plan, 27 Senate districts were included in a single county or only include parts of two counties, and only three districts included parts of four or more counties. NPX 323 at p. 68 (Table 3). The 2012 plan has only 10 districts which include only one or two counties, and 17 districts included parts of four or more counties. *Id.* In the 2001 House plan, 101 of the 105 districts were in only one (69) or two (32) counties, compared to only 54 counties in one (48) or two (6) districts in the 2012 plan, and 21 districts involved four or more counties. *Id.*

33. The legislature has a tradition of allowing the local delegation of each county to be the primary legislative committee to examine and approve legislation that applies to a specific local government within that county. Small delegations operate by unanimity, while larger delegations have majority vote rules. Legislative courtesy for local bills is common. Local bills account for two-thirds of the bills in the Alabama legislature and legislative courtesy "totally determines the fate of these bills." NPX 323 at ¶ 68.

34. County boundaries also have special significance in Alabama because the Legislature has exceptional power over and responsibility for local government functions. Alabama has no "home rule." The 50 states vary in the discretion given to local units of government, and Alabama is at the far end of little or no general grant of discretion. NPX 323 at ¶ 67 . This means that many of the policies of each county, city, and town are at the discretion of the state legislative process. The county's local legislative delegation effectively controls most important local government policies: for example, property and occupational taxes, changes in municipal boundaries, and salaries of elected county officials. *Id.* For example, Title 45 of the Alabama Code has at least 26 sub-chapters

for each of the State's 67 counties. Alabama Code § 45-14-150 authorizes nonprofit organizations to hold raffles, turkey shoots and cake walks in Clay County, Alabama. §45-24A-20 mandates the distribution of beer tax collected within the police jurisdiction in the Town of Orrville (Dallas County). Section 45-14-60 sets the expense allowance for Clay County Coroner, while section 45-25A-41 sets the hazardous duty pay for law enforcement in the City of Fort Payne and section 45-12A-50 determines the permissible areas of residence of appointees to the Town of Pennington. See also *Hardy V. Wallace*, 603 F. Supp. 174 (N.D. Ala. 1985) (appointments to Greene County Racing Commission).

35. Dr. Arrington testified that the make-up of the county delegations is thus an important feature of the legislative process and the county delegations become shadow county commissions and city councils with virtual veto power over the local units of government within their county. The rule is that every member of the legislature whose district includes even a small part of a county is part of that county delegation. Every member of the delegation has one vote, even if the legislator's district includes only a small portion of population from the county. Thus it is possible to submerge minority votes in a central city where minority voters are a large minority, or even a majority, by including in the county small pieces of white dominated districts from the surrounding suburban areas and rural hinterland. NPX 323 at ¶ 71.

36. While a particular piece of local legislation must pass through the entire legislative process and be approved by the Governor or passed over his veto, the power of the county delegation is substantial. First, a lack of action by the county delegation is almost certainly a veto. Second, the large number of local bills and the normal traditions of reciprocity dictate that affirmative actions by the county delegation on most local bills will be honored with little controversy. Doc. 182 at ¶¶

21-47; NPX 323 at ¶ 69.

37. This legislative authority and lack of home rule was a contributing factor to Birmingham's fiscal woes, NPX 323 at ¶ 67, especially in combination with the inclusion in the Jefferson County delegation of legislators elected primarily from outside the county. Vol. 11, R. 7-9, R. 11-13, 16, 18.

38. Under the 2001 plan, the Jefferson County House delegation was evenly divided along racial lines: Nine representatives were elected from majority black districts, all situated entirely within Jefferson County and nine majority white districts, two of which were situated entirely within Jefferson County. Vol. II, R. 34, L. 21-24; DX 476.

39. A simple majority of the Jefferson County House delegation is sufficient for approval of local legislation. The 9-9 split in the county delegation blocked important local legislation. Vol. 11, R. 7-9, 11-13, 16, 18, 34-35.

40. With 105 House districts, the ideal population of a House district is 45,521 persons. With a maximum 10 percent population variance, the population of House districts would vary from 43,246 persons to 47,797 persons. With 35 Senate districts, the ideal population of a Senate district is 136,563 persons. With a maximum 10 percent population variance, the population of Senate districts would vary from 129,735 persons to 143,391 persons. NPX 325.

41. Given a ten percent permissible population range, the following counties have sufficient population to include one or more whole House districts without any remainder: Baldwin (4 districts), Chilton, Dallas, Jefferson (14 or 15 districts), Lauderdale (2 districts), Marshall (2 districts), Mobile (9 districts), and Montgomery (5 districts). All minority districts within these counties are self-contained and do not rely on any part of any other county, so that there is no need

to split any of these counties to comply with the Voting Rights Act. C-41; APX 20; APX 21; NPX 300; NPX 301; DX 479.

42. Given a ten percent permissible population range, the following counties have sufficient population to include one or more whole Senate districts without any remainder: Lee, Mobile (3 districts), and Jefferson (5 districts). All minority districts within these counties are self-contained and do not rely on any part of any other county, so that there is no need to split any of these counties to comply with the Voting Rights Act. DX 476; APX 22.

43. Maintaining county boundaries intact is a traditional consideration normally considered important by decision-makers in redistricting. *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. GA. 2004).

Split Precincts

44. Dr. Arrington testified that given the costs and voter confusion that ensues from splitting voting precincts, avoiding such splits is a kind of universal traditional districting principle. Dr. Arrington testified that in his experience as an election administrator and as a scholar who studies election processes, splitting voting precincts places a special burden on minority voters because of their greater reliance on precinct political organization and the inevitable effects of any election related disruption on those with less education and financial resources to deal with bureaucracy. Further, splitting precincts along racial lines can result in segregating polling places. The financial costs of precinct splits are borne by often cash-poor counties: heavily black counties in are especially likely to be struggling financially. NPX 323 at ¶¶ 85 and 86.

45. Dr. Arrington testified that some precinct splits can be handled by simply changing the borders of existing precincts, but this may not be possible when the proposed Senate and House

districts cut across each other: then election officials can create an expensive mini-precinct, or it can use different ballot styles for different voters depending on where they live in the precinct. The former approach may involve finding new polling place, staffing a new precinct, and informing voters of the new voting location, while the latter approach creates confusion in the voting process, as voters often receive a ballot style that does not match the particular combination of districts for the block in which they reside. NPX 323 at ¶ 87.

46. Another problem that is created by the splitting of precincts is the need for additional polling places. Locating and securing accessible sites with appropriate space and parking unnecessarily burdens the time and resources on county governments who are already lacking adequate resources. NPX 323 at ¶ 86. ALBC Plaintiffs' expert Cooper testified that in Kentucky, similar excessive precinct splitting would cost that state $1.5 million . Vol. III, R. 89, L. 8-20. Sen. Quinton Ross testified that the proposed precinct splits in the House and Senate plans would be very costly to Montgomery County. Vol. II, R. 134, L. 14-25.

MISMATCHED PRECINCT SPLITS NECESSITATING NEW PRECINCTS
HOUSE DISTRICT 64 AND SENATE DISTRICT 22
MONROE AND WASHINGTON COUNTIES

	Total Population		
Monroe County			
	H64 PCT	S22 PCT	New PCT
Chrysler/Eliska /McGill	747	723	223
Purdue Hill	19	60	41
Days Inn/Ollie	435	738	303
Mexia Fire Station	0	816	NA
Mexia Fire Department	539	720	181
Shiloh/Grimes	26	22	4
Washington County			
McIntosh Community Center Voting District	775	0	NA

McIntosh Voting House Voting District	467	1,435	968
Cortelyou	189	86	103
Carson/Preswick	241	329	88

C-41 at 141-142; C-40 at 71-72, 74

47. In Conecuh County the House and Senate lines split completely different precincts, so that10 precincts are split in a county with only 13,228 residents. C-40 at 79; C-41 at 138-139. Mr. Hinaman testified that such splits, often to serve only a handful of voters, would create additional costs for local governments. Vol. III, R. 169, L. 9; R. 170, L. 7; R. 171, L. 6-7.

48. Splitting precincts can create "an electoral nightmare." *Vera V. Richards*, 861 F. Supp. 1304, 1325 (S.D. TX 1994), There, in one county "the county clerk's office sent the wrong ballots to certain precincts and erroneously counted those votes within the wrong District . . . as a result of the complex new district lines." *Id.* Given the voter confusion that ensues from split precincts, most states consider splitting precincts to be unwise, and avoiding such splits is a traditional districting principle. NPX 323 at ¶ 85.

49. Dr. Arrington testified that data on split precincts tells us a great deal about how the plans were drawn and how racial data were used in constructing the districts. Because political data are available only by county and by precincts, a line drawer who uses whole precincts to form districts knows how the district is likely to behave politically - whether the district would be favorable to Republican or Democratic candidates. NPX 323 at ¶ 88; see also Vol. II, R. 106, L. 6-15.

50. Election results are not available for census blocks, the smallest units of population for redistricting. Vol. II, R. 106, L. 6-15. A census block is a piece of land surrounded on all sides

by physical features such as roads, railroad lines, water, or a recognized political boundary such as a county or city limit. Election results are tabulated only at the precinct level. Because of the secret ballot, one cannot know from available data how the voters in a given census block voted. NPX 323 at ¶89.

51. The census does provide block data showing the number of black and Latino persons living in the block. Vol. II, R. 106, L. 6-15. It follows that a line drawer can use racial or ethnicity data to draw districts at the block level, including to segregate the races with the full understanding that racial data is highly important politically in Alabama. NPX 323 at ¶90.

52. Dr. Arrington testified that there is no question that Mr. Hinaman relied heavily on racial data in drawing the districts, as he split 164 precincts in his Senate plan and 423 in his House plan. These precinct splits mainly divided heavily minority blocks from heavily white ones. NPX 323 at ¶¶ 92, 94. Mr. Hinaman admitted that it required addition work additional actions in order to split voting precincts as he drew the districts. Vol. III, R. 167, L. 13-17

53. Mr. Hinaman split 47 precincts into three pieces in the house plan, six into four pieces, and one into an unbelievable five pieces. There are fewer splits in senate plans because the districts are so much larger. The Hinaman Senate plan splits 46 precincts around white Democrat Marc Keahey's District 22 in order to reduce the non-white VAP from 34% down to 27%. This is another example of cracking a white Democrat's district by manipulating the concentration of minority voters. NPX 323 at ¶ 92.

54. For example, the Senate plan raised the black percentage in Senate district 26 from an already excessive 72 percent to over 75 percent under the State's plan by splitting precincts 1A, 1B, 1C, 1D, 3F, 3G and 5M along racial lines and packing the black portions in Senate district 26.

C-40 at 90-97.

55. The alternative Sanders plans drawn by Mr. William S. Cooper split no precincts in the Senate, and only 11 in the House. These 11 were split only because some of the precincts had discontinuous territory or the sheer size of the precincts necessitated splitting for one-person-one vote purposes. NPX 323 at ¶93.

56. Dr. Arrington testified that while it is easier to avoid splitting precincts when the allowable deviation is 10 percent, as one who has drawn districts for jurisdictions, the Department of Justice, and the Federal Courts for decades he knows that it is not necessary to split such a larger proportion of the precincts in order to achieve less than a 2% deviation. Even when drawing Congressional districts with zero deviation, it is rarely necessary to split more than one or at most two precincts for each district. NPX 323 at ¶93.

57. Dr. Arrington testified that it is clear that the Mr. Hinaman was drawing districts with racial data, not political data *per se*, and that his goal was to increase the racial segregation of the districts to create an all non-white Democratic Party and an all white Republican Party. NPX 323 at ¶94.

Federal Law Considerations: the Section 2 Standard

58. The Legislature ignored the requirements of Section 2 of the Voting Rights Act in drawing district boundaries. APX 75 at 98-99. Mr. Hinaman was unaware of any studies or standard related to what black population in a district would be necessary for black voters to have a viable opportunity to elect a candidate of their choice and never discussed that issue with Sen. Dial or Represent. McClendon. APX 75 at 138-139.

59. Counsel for the Reapportionment Committee, Mr. Dorman Walker, did describe the concepts of "packing" and "cracking" in an October26, 2012 hearing of the Committee attended by Senator Dial and Representative McClendon:

> And for those of you who are not familiar with this, packing is the - is the tactic of overloading a minority district with members of a racial or language minority and putting more in that district than is necessary for it to be a safe minority district, which might be required under Section 2 of the Voting Rights Act. And if you - if you put all of that inventory, if you will, of minority voters into that district, then they're not available to help populate minority districts in other places.
> The opposite of that is called cracking, where you distribute the minority or - among a variety of districts in such numbers that they cannot form a majority in any one district; and both of those are not allowed by Section 2 of the Voting Rights Act.

DX 441 at 9.

60. Mr. Walker also provided to the Reapportionment Committee an example of packing:

> In the past it used to be 65 or 65 - above 65 . . . I'm pretty sure that if you were to send a district that was 65 percent black to the Department of Justice now, they would wonder why you were packing it, and they'll be looking for, my understanding is, much lower levels. I mean a black majority would certainly be above 50, but 55 may be extreme in some cases.

DX 441 at 17.

61. And further, when asked what percentage was necessary to make a district an effective majority minority, Mr. Walker district told the Committee that he was advised at a meeting of the National Conference of State legislatures by a former Chief of the Voting Section of the Civil Rights Division of the Justice Department, the office responsible for review of voting changes under Section 5, that it would be necessary to look at the actual voting patterns in a given district to see

what level of population was necessary to satisfy Section 5. DX 433 at 8. Represent. McClendon attended that same conference, as did other members of the Alabama Legislature. Vol. III, R. 248-250.

Federal Law Considerations: The Section 5 Standard

62. That same advice was available and widely known with respect to Section 5. The Department of Justice has long made available Procedures for the Administration of Section 5 of The Voting Rights Act Of 1965, as Amended, 28 C.F.R. §51, 52 Federal Register 490, Jan. 6, 1987, which specifically warn against over-concentration or "packing" of minorities into districts as well as fragmenting or "cracking" minority concentrations. *Id.* § 51.59

63. In gerrymandering, the voters of one's opponent are "packed" by putting more of them than are necessary for them to elect in a few districts. NPX 323 at ¶ 35. They win in those packed districts, of course, but waste votes that would otherwise be used to form majorities in adjoining districts. Cracking means to divide their other voters into several districts where they are not a majority. *Id*.

64. Section 5 has not been enforced so as to require that the black percentage cannot be reduced, and the Department of Justice earlier had interposed Section 5 objections to redistricting plans of the State of Alabama based, among other things, on "packing" or over-concentrating minorities in certain districts. C-38 and C-39.

65. In 2011 the Department of Justice had issued Guidance on its view of Section 5 compliance and noted that it would consider the following:

> In determining whether the ability to elect exists in the benchmark plan and whether it continues in the proposed plan, the Attorney General does not rely on any predetermined or fixed demographic

> percentages at any point in the assessment. Rather, in the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district.

76 Fed.Reg. 7470-01, at 7472 (February . 9, 2011). And the Department reiterated that it would consider:

> whether minority concentrations are fragmented among different districts; whether minorities are overconcentrated in one or more districts; whether alternative plans satisfying the jurisdiction's legitimate governmental interests exist, and whether they were considered; whether the proposed plan departs from objective redistricting criteria set by the submitting jurisdiction, ignores other relevant factors such as compactness and contiguity, or displays a configuration that inexplicably disregards available natural or artificial boundaries; and, whether the plan is inconsistent with the jurisdiction's stated redistricting standards.

Id.

66. In addition to guidance from the Department of Justice, the District of Columbia Court made clear in 2011 that Sections 2 and 5 of the Voting Rights Act have separate standards, both of which the Legislature was required to comply. *Texas v. United States*, 831 F. Supp.2d 244, 260-262 (D.D.C. 2011).

67. The District of Columbia Court also held that:

> [d]etermining that minorities have an ability to elect based solely on their numbers in the voting population of a district cannot account for the most fundamental concern of Section 5: the effect past discrimination has on current electoral power.

Id. at 262.

The District of Columbia Court further held that under Section 5:

> factors relevant to this complex [retrogression] inquiry may include the number of registered minority voters in redrawn districts; population shifts between or among redrawn districts that diminish or enhance the ability of a significant, organized group of minority voters to elect their candidate of choice; an assessment of voter turnout in a proposed district; to the extent discernible, consideration of future election patterns with respect to a minority preferred candidate; and new ability districts that would offset any lost ability district.

Id. at 254-265.

68. In keeping with this standard, the Justice Department did not call Representative Hall concerning the change in minority percentage in her district although her district declined from over 69.82 percent black to 60.25 percent black under the State's proposed plan; and although the newly-created minority district 53 was only 55 percent black in population. DX 406 at 2;DX 403 at 2, 5; Vol. III, R. 32, L. 25; R. 33, L. 1-10.

69. The creation of majority-minority districts with higher minority concentrations than are necessary for minority voters to have a reasonable ability to elect candidates of their choice, even if their choice is a minority candidate, can serve to waste minority votes that could be used in adjoining districts where minority voters can work in coalition with white voters and elect candidates in "crossover" districts. NPX 323 at ¶36.

70. While Sen. Dial testified that he was aware of the complaints against packing and cracking, Vol. I, R. 93, L. 13-94, L. 19, Representative McClendon testified that he first heard the term packing on the House floor. APX 67, p. 105, L. 18-23, p.106, L. 1-2.

71. In fact, during the Legislative Redistricting Committee's hearing on October 6, 2011 in Birmingham Alabama, Represent. Rod Scott (black) opposed "cracking" and "packing" of

minorities and asked if the Reapportionment Committee had plan to deal with those issues; and Represent. Merika Coleman (African-American) also stated that she was very concerned about "packing" and "cracking." C-10 at 6, 9. During the hearing in Demopolis, Alabama on October 13, 2011, Perry County Commissioner Albert Turner (African-American) voiced his hope that districts will not be "race packed", and that he wanted to make sure no "race packing" occurred. C-17 at 7-9.

72. During the hearing in Tuscaloosa, Alabama on October 13, 2011, Represent. Chris England (African-American) discussed the need to avoid "race-packing" of districts, and discussed with counsel for the Committee. C-18 at 7-9. During the hearing in Auburn, Alabama on October 17, 2011, Barbara Pitts (Alabama New South Coalition; African-American) told the Committee that it was important not to pack districts so that minority vote is not diluted and so that black voters do have an influence. C-20 at 9.

73. During the Selma, Alabama hearing on October 17, 2011, Senator Hank Sanders (African-American) stated that he hoped packing would not occur, and Representative Dario Melton (African-American) also stated his concerns about packing of districts. C-21 at 6-7, Ech 444. And during the May 17, 2012 hearing in Montgomery, Alabama, African-American citizens, including Represent Merika Coleman complained that the Legislature's map showed packing and that the plans were unconstitutional. C-23 at 27-28.

74. Despite the advice of their attorney and the clear legal authority on the issue, the State nonetheless applied a standard by which the black majority districts had to, where possible, maintain at least the usually elevated black population percentage that existed in 2010 under the 2001 plan in applying the non-retrogression standard of Section 5 of the Voting Rights Act. APX 75 at 23-24, 101.

75. Mr. Hinaman testifies that he understood that the black percentage in some districts could be reduced if necessary, but he had no idea how much the black majorities in "packed" districts such as those in Montgomery County could be reduced without threatening their viability, and made no inquiry into such a level of reduction. APX 75 at 146-147. He made no inquiry of any black legislator to ascertain their views. *Id*. Mr. Hinaman testified that he had electoral data for a number of statewide elections for every precinct in the state. Yet he never used this information to conduct a functional analysis of the concentration of African-Americans population needed to provide African-Americans the ability to elect candidates of their choice to the state legislature. Vol. III, R. 180, L. 1-17, R. 181, L. 18-25, R. 182, L. 1-12.

76. Using this metric, the State plans provided very large black majorities in a number of districts. Of the twenty-seven House and eight Senate majority-black districts, six House (22.2%) and two Senate (25%) districts are over 70 percent black in population; six additional House (22.2%) and one additional Senate (12.5%) districts are over 65 percent black in population; and 10 additional House (37%) and three additional Senate (37.5%) districts are over 60 percent black in population. Doc. 125 at 56-57 (Table S1 & H1). Dr. Lichtman's analysis showed that not only are 60%+ African-American districts unnecessary to provide African-American voters across the ability to elect candidates of their choice to the state legislature, but also that districts between 46% and 53% African-American voting age population are easily sufficient to provide such an ability. NPX 324 at ¶ 26; See also NPX 324, Tables 7 and 9.

77. The new districts are packed, but districts were packed in the 2002 plans as well. This is the point where intent or purpose, changing political circumstances, and improved understanding of racial politics must be considered. NPX 323 at ¶ 39. Dr. Arrington testified that

the 2002 plans were a "dummymander." That is, the plans were designed with incomplete and outdated information.

78. Dr. Arrington testified that, first, we have acquired with statistical analysis of election data a better understanding of the level of minority concentration required for an opportunity to exist. In the 1990 redistricting cycle we simply did not know where to draw the line, so that minority districts often were packed at 65 percent black, although this was never a rule in any court or in the Justice Department. NPX 323 at ¶ 49. Dr. Arrington testified that by the 2010 redistricting cycle there is good evidence of the necessary minority concentration necessary to create an opportunity to elect. NPX 323 at ¶ 49. Second, the necessary concentration has steadily declined as minority voters have become more likely to register and better mobilized: on this point there is no disagreement. NPX 323 at ¶ 50. See also NPX 324 at ¶ 23 ("Today African-American participation in elections in Alabama is at least comparable and likely above white participation. According to statistics compiled by the Alabama Secretary of State, African-Americans now comprise some 26.9 percent of active registered voters in the state. This is higher than the African-American percentage of the voting age population, which is 25.2 percent."); NPX 373 at 46. In the 2012 election, black voters were more highly mobilized than white voters, although that extreme may have been the result of specific

79. Sen. Dial admitted that he did not think that the 75 percent black super-majority in Senate district 26 was necessary for the election of a black senator from that district. Vol. III, R. 139, L. 13-17.

80. The testimony supporting the purported reliance by the State on a rule that the Legislature believed that the Voting Rights Act prohibited the reduction of the minority percentage in any existing minority district is not credible.

Racial Bloc Voting Continues to Characterize Alabama Elections

81. The Court can take judicial notice that in past years, elections in Alabama have been characterized by racially polarized voting. Dr. Thomas Brunell, an expert witness for the State, and Dr. Allan Lichtman, an expert for the Newton Plaintiffs, testified they had examined Alabama elections and found that Alabama elections were racially polarized. Dr. Brunell testified that he did not have any doubt Alabama elections currently are racially polarized. NPX 373, p. 23, L. 20-23, p. 24, L. 1-2; Vol. III, R. 88, L. 1-10.

82. The State of Alabama admits that elections are racially polarized. Doc. 59, Answer to Newton Complaint, at ¶18 ("The State Defendants admit that, when partisan campaigns are involved, African-American voters in Alabama generally vote for Democratic candidates and that many, but not all, white voters often vote for Republican candidates.").

83. While racial bloc voting is a long-standing feature of Alabama elections, the nature and extent of black political participation and mobilization has changed dramatically. Vol. III, R. 51, L. 9-23. While formerly large black majorities in excess of 65 percent were necessary in order for black voters to enjoy an equal opportunity to elect representatives of their choice, elections subsequent to 2000 establish that black voters now enjoy an equal opportunity to elect candidates of their choice in districts in which they comprise 50 percent of the voting age population; and that black voters enjoy an excellent opportunity to elect candidates of their choice in districts in which they comprise 45 percent of the voting age population. Vol. III, R. 96, L. 6-23.

84. Dr. Allan J. Lichtman is Distinguished Professor of History at American University in Washington, DC. His scholarship covers several areas of expertise, including quantitative and historical methods, voting rights, and American political history. Dr. Lichtman is the author or

co-author of eight books. His 1978 monograph, Ecological Inference (with Laura Langbein) developed methods for estimating the behavior of groups like minorities and whites from aggregate units such as counties or precincts. His 2008 book, White Protestant Nation: The Rise of the American Conservative Movement was a finalist for the National Book Critics Circle Award in General Nonfiction and his most recent 2013 book FDR and the Jews (with Richard Breitman) was a New York Times editor's choice book and has been submitted for the Pulitzer Prize. Dr. Lichtman is also the author or co-author of numerous scholarly articles in history, political science, scientific, and legal journals. He has served as a consultant or expert witness in more than 75 voting rights cases, on behalf of plaintiffs and defendants, including the US Department of Justice, civil rights groups, and governmental units. His work includes several cases in Alabama and was cited by the US Supreme Court in *LULAC v. Perry*, 548 U.S. 399, 427 (2006). NPX 324 at ¶¶ 1-4.

85. Dr. Lichtman conducted a voting analysis with standard data utilized in social science: county-level or precinct by precinct-level election returns for relevant elections, with candidates identified by race and voters categorized as either African-Americans or whites. The category white will include some Latinos and others. These ethnic and racial groups comprise a small percentage of Alabama's registered voters and are not concentrated in a sufficient number of precincts for statistical analysis of their voting choices. The analysis utilizes the standard methodology of ecological regression recognized by the Supreme Court in *Thornburg v. Gingles*, 478 U.S. 30 (1986), and applied by the Court to single-member districts plans in *Quilter v. Voinovich*, 113 S.Ct 1149 (1993). Dr. Lichtman's analysis based on these methods was cited in *LULAC v. Perry*, 548 U.S. 399, 427 (2006) and, most recently in *Committee for a Fair and Balanced Map, et al. v. Illinois State Board of Elections*, 835 F. Supp. 2d 563 N.D. Ill. 2011 (three-judge

panel). NPX 324 at ¶ 7.

86. Dr. Lichtman examined a variety of elections, including statewide elections involving both black candidates and partisan contests involving only white candidates. He also examined local contests in closely contested legislative districts, including Senate districts 7, 11 and 22, and House districts 73, 84 and 85. Finally, Dr. Lichtman conducted a precinct analysis of election returns in Jefferson, Madison and Montgomery Counties, the sites of the Newton Plaintiffs' illustrative districts (NPX 300, NPX 301, and NPX 302), so as to determine whether those specific districts would offer minority voters an opportunity to elect candidates of their choice. See generally, NPX 324.

87. Dr. Lichtman found that (1) voting is highly polarized along racial lines in recent general elections held in the state of Alabama, with black voters nearly unanimous in their choice of candidates and white citizens strongly voting against the candidates of choice of black voters. NPX 324 at ¶ 6.

88. Dr. Lichtman also found that racial polarization distinguishes the political parties: black voters invariably prefer Democratic candidates white voters invariably prefer Republican candidates. Thus, party loyalty is tied to race and pulls black and white voters in different directions. Dr. Lichtman further found that racial polarization is greater when the Democratic candidate is African-American rather than white: a black candidacy creates more racial polarization than would be accounted for by party alone. NPX 324 at ¶ 6.

89. Based on his analysis, Dr. Lichtman found the patterns of racially polarized voting indicate that the black American voters would not have reasonable opportunities to elect candidates of their choice to office in districts dominated by whites; however, given the patterns of polarized voting and voter registration and turnout rates among black and white voters, black voters in all parts

of the state[4] would have an excellent opportunity to elect candidates of their choice in districts over 50 percent black or even 45 percent in voting age population, including in the three additional illustrative majority-minority districts submitted by the Newton Plaintiffs. NPX 324 at ¶¶ 6, 23-27; NPX 300-302.

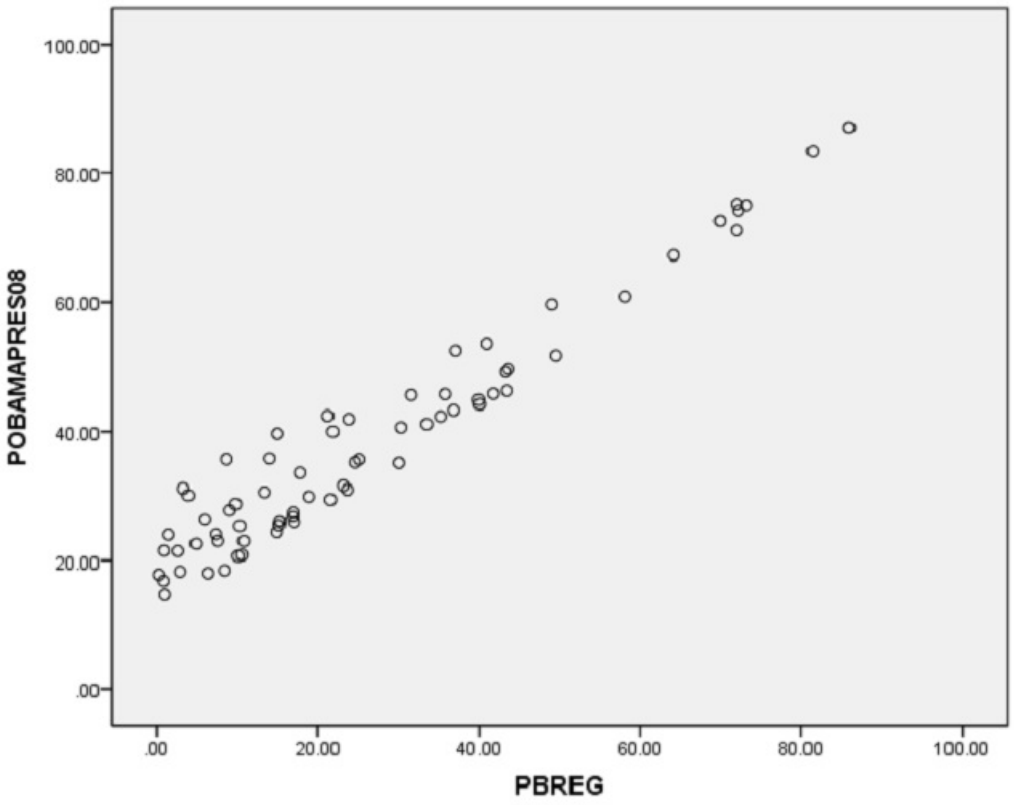
90. Dr. Lichtman tested the ecological regression analysis using "scattergrams" portraying the relationship between the percentage of black voter registrants in a county and the percentage of the two-party vote for black candidates and for white Democratic candidates.[5] See NPX 324, Charts 1-7.

91. In contrast to a "neutral" scattergram, each of the statewide and county scattergrams portrays a tight upward-sweeping linear relationship between the racial composition of the counties and the distribution of the vote in the counties, such as that below which reflects the vote for and against Obama in the 2008 presidential election.

[4] Dr. Brunell attempted to dispute Dr. Lichtman's "blanket statement" determination that a district with a 50% black VAP offered black voters an opportunity to elect candidates of their choice "in all parts of the state." Dr. Brunell, however, offered only a blanket statement that there always is variation from such a threshold, and admitted that he had not studied any election returns in preparing a response to Dr. Lichtman's report, NPX 373, p. 10, L. 13 -22, and that he was not aware of any area of the state that varied from Dr. Lichtman's standard. NPX 373, p. 12, L. 1-4.

[5] In these scattergrams the X axis represents the percentage of African-American registrants in each of the state's counties and the Y axis the percentage of the two-party vote for the Democratic candidate. Each point on the scattergram represents the intersection of each precincts percentage of African-Americans and its percentage of the two-party Democratic vote.

Chart 2: Relationship between the Percent of African-American Registrants in Each County and the Percent of the Vote for African-American Democrat Obama, 2008 Presidential General



NPX 324, para. 11-12.

92. As the African-American composition of a county increases, so does its vote for the Democratic candidate in each of six election. Dr. Lichtman testified that the close relationship displayed in the Alabama election scattergrams is very rarely found in social science. Dr. Lichtman further noted that the charts for white Democrats are pitched higher on the Y axis and slowly a slightly less tight relationship between race and the vote emerges. This reflects the greater white vote for white Democratic candidates, compared to black Democratic candidates. NPX 324 at ¶ 11.

93. The scattergrams demonstrate that counties are remarkably consistent in voting patterns across the state. There is no indication in these charts of substantial differences in various parts of the state in polarized voting between African-Americans and whites. Counties are tightly clustered in a linear pattern for a variety of elections across three election cycles. The results are especially consistent across counties for the three elections with black American candidates. NPX 324 at ¶ 12.

94. The ecological regression results are additionally confirmed by the scrutiny of exit polls, which are based on a methodology that is strictly independent of ecological regression. Exit polls involve no analysis of election returns; they are based on responses to questions presented to voters upon leaving the polls on Election Day. Exit polls for Alabama are available for three black vs. white and one white versus white of the six statewide elections studied. These results show nearly the same pattern of polarized voting as the ecological regression results. In fact, the exit polls show a higher level of polarization than the ecological regression results for each of the four elections included in both Table 1 and Table 2. The exit poll results reported in Table 2 also confirm that polarization in greater in elections with black Democrat as compared to elections with white Democrats - 83 percentage points (95% minus 12%) versus 74 percentage points (93% minus 19%). NPX 324 at ¶ 13.

95. Dr. Lichtman also testified that while there is an insufficient concentration of Native-Americans or Hispanics in the state of Alabama for ecological regression analysis, there is evidence pointing to the cohesion of these two groups with the choices of black voters in general elections. With respect to Native-American voting some indication of preferences is provided by the McIntosh High School precinct in Senate District 22, Washington County, which has a Native-American

(MOWA) plurality with 41 percent of registered voters. African-Americans comprise another 23 percent of registrants for a combined Native-American and black majority of 64 percent. In the 2006 general election for State Senate this precinct cast 75 percent of its vote for the Democrat Lindsay and in the 2010 general election for State Senate it cast 87 percent of its vote for the Democrat Keahey. These results point to a voting coalition of Native-Americans and African-Americans given that about 60 percent of white voters overall backed the Republican candidates in these two elections. NPX 324 at ¶ 21.

96. Dr. Lichtman testified that with respect to Hispanics, there are no precincts comparable to McIntosh High School for Native-Americans. However, it is well established that with the exception of Cuban-Americans, Hispanics are overwhelmingly Democratic in their choice of candidates. Vol. III, R. 106, L. 4-9. Recent Census data indicates that only 1.4 percent of Alabama Hispanics are Cuban-Americans. Given that these foreign born would also comprise most parents of native born Hispanics, the overall Hispanic population should closely reflect the minimal percentage reported above. NPX 324 at ¶22.

97. Black voters in Alabama, moreover, dependably can count on support from other minority voters. In south Alabama, in the area of Senate District 22, black voters have long been allied with the MOWA Band of the Choctaw Nation. Vol. II, R. 202, L. 5-21. In the area of Senate District 22, this coalition has long been able to elect candidates of their choice to the State Senate and to other offices. Vol. I, R. 44, L. 10-14.

98. Defendant's expert, Dr. Thomas Brunell, agrees that putting non-whites together for analysis is appropriate in this case. NPX 373 at 28. Newton Plaintiffs' expert, Dr. Theodore S. Arrington testified that the political science literature indicates that such coalitions of minorities are

the norm nationally. NPX 323 at ¶39. The passage of H.B. 56 by the Alabama Legislature has reinforced and reinvigorated the coalition between black and Hispanic voters. Vol. IV., R.16., L. 11-15.

99. The experts' opinions are supported by election results, well known to politically engaged officials: black legislative candidates won election in districts with total black total population percentages of 47.94 % (HD 85), 50.61 % (HD84), 56.92 % (HD83), and 55.70 % (HD53). DX 406. Obama had won a majority of the vote in Jefferson County in the 2008 presidential election, and had carried Montgomery County with nearly 60 percent of the vote. NPX 359 (2010 election).

100. The State has suggested that the MOWA are in fact non-Native-Americans. This is curious as the State of Alabama officially has recognized the MOWA as Native-Americans. NPX 371 (Act 79-343); NPX 370 (Act 79-228); see also NPX 364 (Attorney General Opinion, dated December 10, 1981, stating that Alabama recognized the MOWA Band of Choctaw as a Native-American Tribe). Chief Weaver of the MOWA Band sits on the Alabama Indian Affairs Commission. The MOWA Band has a police force per Ala. Code §§ 36-21-120 and 122. The State has represented to the United States that the MOWA are Native-Americans in order to obtain federal housing funds. Vol. IV, R. 49, L. 16-19; NPX 366; NPX 367; Ala. Code §24-7-1. The MOWA have not, to date, been recognized by the federal government. It is plain, however, that the MOWA are distinguished by their "race or color" and were placed in separate schools, and that they are in any event not white persons. 42 U.S.C. 1973.

101. Black voters also are in coalition with Hispanic voters in Alabama. Alabama State Conference NAACP President Bernard Simelton testified that he is on the steering committee for

the Alabama Coalition for Immigrant Justice, and that the NAACP has trained Latino voter registration workers, Vol. II, R. 203, L. 4-13. Black voters also are in coalition with Hispanic voters in Alabama. Vol. IV, R. 17, L. 14-25; Vol. IV, R.26-29; Vol. II, R. 195-196. The NAACP works with Hispanics on voter registration and meets reguarly to develop a relationship between the communities. Vol. II, R. 196, 203. The black-Hispanic alliance has been particularly strong since the passage of HB 56, a measure regarding the state's immigrant population that is regarded by the Hispanic community as the most anti-immigrant law in the United States. Vol. IV, R.14, L. 12-24; Vol. IV, R. 15, L. 23-25; R. 16, L. 22-25; R. 17, L. 1-15; R. 18; Vol. II, R. 198 L. 16–25, R. 199, L. 1-6, 13-25, R. 144, L. 1-5. While black and Hispanic voters alike see hostility from the legislative majority, they support black members of the Legislature and other black candidates. Vol. II, R. 199, L. 7-19.

102. Hispanic citizens in Alabama today face problems of discrimination that are familiar to the State's black residents, including the fear that being active may result in police or other legal action against a family member. Vol. II, R. 199, L. 20- 200, L. 16. Many Hispanic citizens who face language barriers do not have equal access to state and local government services, such as obtaining drivers' licenses and access to public assistance. Vol. II, R. 200, L. 19-201, L. 5. Ms. Toussaint relayed a story of how her niece who had been born in Puerto Rico could not get a Alabama Driver's license because the Department of Motor Vehicles would not accept her Puerto Rico birth certificate. Vol. IV, R. 23, L. 1-7. Ms. Rubio likewise testified to these similar type problems facing Hispanics. Vol. IV, R. 12-13. Driver's licenses are particularly important given Alabama's requirement regarding voter identification. Latinos are often treated inappropriately because of their accents. Vol. II, R. 201, L. 7-14; Vol. IV, R. 13-14. Ms. Rubio told the story of her husband, a lawyer, who

called a Judge's office in Alabama to speak to the Judge and was told the Judge does not normally speak to defendants. *Id*. at R. 13-14. Spanish language materials are not available to citizens entitled to them pursuant to 42 U.S. C. 1973b(e). Vol. II, R. 201, L. 15- 203, L. 3.

103. Senator Quinton Ross testified to active efforts to promote unity and a coalition with growing Hispanic community in his district (26) in Montgomery County. Vol. II, R.143-144.

104. While the Latino population in Alabama is still small, Republican legislators worry that Latino numbers will grow unless illegal immigration is curbed and this is important to them because Latino citizens vote for Democrats. NPX 323 at ¶ 97.

105. Both Representative Hall and Ms. Toussaint testified that given the percentages of population of blacks and Hispanics located in Madison County, the Newton plaintiffs' Illustrative Senate District 7, NPX 302, black and Hispanic voters would be able to elect the candidate of their choice. Vol. III, R. 18-19; Vol. IV, R. 28, L. 6-21. See NPX 353T. Both testified that black and Hispanic citizens vote in coalition. *Id.* Both also testified that blacks and Hispanics could elect a candidate of their choice under the Reed-Buskey Plan, *Id*., but that they could not under the Dial 2 plan adopted by the State for Senate District 7. Vol. III, R. 18-19; Vol. IV, R. 28, L. 16-21; NPX T.

106. Representative Hall noted that simply combining House districts 53 and 19 would produce a black population of 52, 798 and a combined minority population of 60,986. DX 403, pp. 2, 5; Vol. III, R. 19-20; NPX U. In order to reach a majority of the population, black and other minority voters would need to comprise only 8,000 persons of the additional 45,000 (17.78%) additional persons necessary to form a properly apportioned Senate district. NPX U. Hall stated she believed a minority Senate district could be drawn with House districts 19 and 53 serving as two of the three core districts. Vol. III, R. 20, L. 12-22.

107. Ms. Toussaint and Represent. Hall testified in detail how the Dial 2 plan cracked the black and Hispanic population concentration of Madison County and excluded it from Senate District 7. Much of the Hispanic community in Huntsville that is called Little Mexico is being split between Senate District 7 and Senate District 2. Vol. IV, R. 33, L. 1-25; R. 26, L. 5-22; R. 34, L. 125; R. 35, L. 1-25, R. 36, L. 1-13; Vol. III, R. 16. Ms. Toussaint testified that the Ridgecrest neighborhood, Butler High school, Patton Road, and Bayless areas are moved into Senate District 2 under the state's plan, while Governors and other Hispanic areas remain in Senate District 7. *Id*.; and the Hispanic areas of southwest Huntsville were also split in the House reapportionment plan. Vol. IV, R. 32, L. 18-25. The State also removed additional minority areas, including the heavily black Johnson High school precinct, where Representative Hall had taught for 25 years and where she received over 89 percent of the vote in her 2009 Senate campaign. Vol. III, R. 16, L. 16-25; NPX 359 (2009 Special Election). Other predominately black precincts that were areas of strength of Hall were moved to Senate district 1. Vol. III, R. 17, L. 1-25. The black and Hispanic vote in Senate district 7 thus was split in such a way that minorities would not have a reasonable opportunity to elect a candidate of their choice. See NPX T and Vol. III, R. 18-19; Vol. IV, R. 28, L. 16-21.

108. Dr. Lichtman further testified that all three additional illustrative districts presented by plaintiffs provide African-American voters an excellent opportunity to elect candidates of their choice. The projected vote for a candidate of choice for African-American voters in a general election (as corrected for the updated Montgomery County House District) ranges from 59 percent to 65 percent. Even limiting the analysis to an African-American candidate of choice of African-American voters, the projected vote in these three districts ranges from 54 percent to 62 percent. As Dr. Lichtman also explained, in such districts African-Americans would overwhelmingly dominate

Democratic primaries, given that African-Americans are nearly unanimously Democratic in their party affiliation, where whites are predominantly Republican. It should be noted that with the exception of Dr. Brunnel's blanket generalization general comment dealt with in note 2 above, Dr. Lichtman's testimony is un-refuted. NPX 324 at ¶¶ 25-27; NPX 324, Tables 7 and 8.

109. The black-Hispanic coalition is particularly strong in Madison County (Huntsville). Rosa Toussaint, an advocate and activist[6], for Hispanics worked in Representative Hall's campaigns including producing signs for Representative Hall's campaign for Senate. Vol. III, R.15, L. 6-16. Ms. Toussaint contacted Hispanic businesses to obtain permission to place the signs in the businesses. *Id*. Ms. Toussaint also joined the NAACP and meets each week with black political leaders. Vol. IV, R. 24, L. 20-25; R. 23, L. 14-16; R. 21, L. 15-16. She also meets with a group of fellow ministers who work on issues dealing with both communities. Vol. IV, R. 21, L. 7-23. Ms. Toussaint has been involved with voter registration and education. Vol. IV, R. 22, L. 10-15. Hispanics strongly supported Representative Hall in her race for Senate District 7 and in her campaigns for house. Vol. III, R. 15, L. 2-5; Vol. IV, R. 27, L. 7-9. Hispanics strongly supported Democratic candidates especially after HB 56. Vol. IV, R. 27. L. 4-15. Representative Hall testified Hispanic support for Democrats increased due to HB 56. Vol. III, R. 15, L. 22-25. Mr. Simelton, President of NAACP and who lives near Huntsville in the Harvest community, testified that HB 56

[6]Ms. Toussaint was born in the Dominican Republic and raised in Puerto Rico. Vol. IV, R. 19. She served in the military and attained the rank of second lieutenant. Id., at R.20. After her career in the military, she continued to live in Huntsville, Alabama. She has been an active member of that community for over twenty years. Id., at R. 9-20. Ms. Toussaint is a chaplain and is the founder of a ministry to the Hispanic community called Huntsville International Help Center Ministry. Id., at R.21. She is a member of the Hispanic American International Chaplain Association and the Greater Huntsville Ministerial Fellowship as well as the Mayor's Hispanic Advisory Committee. Id., at R.20-21.

unified the black and Hispanic communities. Vol. II, R. 198, L. 16-25 to R. 199, L. 1-15. It created the impression on Hispanics that they were under attack by the majority of the legislature and that black legislators were friends to them. Vol. II, R. 199.

110. Many of the Hispanics in southwest Huntsville are families of military retirees. Vol. R. 14. A large number of the Hispanics in this area are employed in the military or engineering fields. Vol. III, R. 14; Vol. II, R. 197, L. 16-25, R. 198, L. 1. Several corporations in the Huntsville area recruit Hispanic citizens from Puerto Rico. Vol. IV, R. 31, L. 11-20. Hispanics in Huntsville have a high rate of citizenship and vote. Vol. II, R. 198, L. 2-7; Vol. IV, R. 32, L. 9-14.

111. The defendants admit (Doc. No. 59, ¶¶ 20 and 22) that Alabama has a history of racial discrimination in voting and other areas: "white officials in Alabama - who for the past 150 years have been almost exclusively Democrats - acted to deter participation by black citizens and to disrupt and hamper black political organizations."

112. Defendants further admit that federal courts and the U.S. Justice Department have found state and local voting practices to be racially discriminatory. Doc. 59 at ¶ 23. Indeed, successive Attorneys General interposed objections under Section 5 of the Voting Rights Act, 42 U.S.C. 1973c to voting changes in Alabama on 104 occasions. NPX 305, 306.

113. Successive Attorneys General also authorized the assignment of federal observes to monitor 189 elections in Alabama, including elections as recently as this year. See http://www.justice.gov/opa/pr/2013/June/13-crt-684.html. Assignment of federal observers requires the Attorney General to certify that in his judgment constitutional violations have occurred and/or are likely to occur. 42 U.S.C. 1973f(2)(a).

114. The State of Alabama is in violation of the National Voter Registration Act due to its failure to provide voter registration opportunities at public assistance agencies. NPX 356. Alabama Conference NAACP President Bernard Simelton testified that the NAACP oversaw the investigation and he had full assurances that the allegations were accurate. Vol II, R. 209, L. 6-10. President Simelton testified that although it has been over a year since the State was notified of the violation, he specifically recalls the problems in Birmingham and Montgomery offices. Vol III, R. 207, L. 9-10. In over a year of negotiations to obtain relief, the only concrete step taken by the State has been the placement of a notice on the Secretary of State's web site. Vol II, R. 205, L. 1; R. 206, L. 14. Ms. Rubio, highly regarded leader of the Hispanic Interest Coalition of Alabama, testified that Latino citizens who have Hispanic accents or who have difficulty speaking English have difficulty obtaining any services from public assistance agencies and in obtaining services from the Department of Motor Vehicles, which in Alabama is the main agency for issuing photo identification. Vol. IV., R.12, L. 12-25, R.13, L.15-23.

115. Defendants admit that minority citizens in Alabama suffer from disparities in income, education, health, etc. Doc. 59, at ¶19 ("The State Defendants admit that, as a historical matter, black citizens in Alabama generally suffer from disparities in income, education, employment, and health."). Current data from the U.S. Census Bureau's American Community Survey confirms that these differences still exist. NPX 323 at ¶ 95. And minorities have been elected to the state legislature at percentages well below their percentage in Alabama's population or voting age population. See ¶¶ 1-4, *supra*. This is a reflection of the packing and cracking of minority population and the severe racial polarization is also documented in Dr. Lichtman's report. NPX 324.

116. An extraordinary element of the totality of circumstances affecting minority voters' ability to participate equally in the political process is their exclusion from meaningful participation in the Legislature. Senator Ross testified that since the super majority of Republicans took control of the legislature in 2010, black legislators have been effectively shut out of the legislative process. Vol. II, R. 135-143. He likened it to a "dictatorship" and that it brought back the concept of Ralph's Ellison's The Invisible Man" - you're there…but you're not listened to." Vol. II, R. 135, L. 7 and R.140, L. 18-22.

117. Representative Laura Hall testified that cloture has been used more this last three sessions since the supermajority took control than in her entire 20 year career. Vol. III, R.32. Sen. Ross similarly testified that cloture was repeatedly used to shut off debate. Vol. II, R. 142, L. 1-25, R.143, L. 1-7. In prior years the majority would allow minority voices to be heard on issues and respected the process of debate, and that there previously had been a practice, enforced by Sen. Ross and others, that there had to be at least 16 hours of debate before cloture could be invoked - even when the delay in debate favored Republicans. Vol. II, R. 141, L. 1-24. Until the 2010 election, legislators fought hard over issues, but they fought fair. Vol. II, R. 150, L.18; R. 151, L. 3.

118. Emblematic of the change is the process for passage of the Accountability Act. During the 2012 session, After weeks of study and negotiation, on February 26 the Senate passed Senator Ross' agreed version of a School Flexibility Act unanimously, Vol II, R. 136, L. 20-24 and, on February 28, the House passed a different version of the bill. *Id.*, Vol. III, R. 27, L. 20-23. The House and Senate versions differed ONLY on the issue of whether a school system could get a waiver of tenure rights for employees. Vol. 27, R. 27, L. 24-25; R.28, L. 1-12. Since the House and Senate bills differed the bills were sent to a Conference Committee to resolve those differences on

February 28. Vol. II, R.135, L. 24; R. 136, L. 24.

119. A Conference Committee is limited to resolving the specific disputes between the two bills. *Id.* L. 16-19. It is not allowed to enact bills with a different purpose or add appropriations. Vol. 27, R.27 L. 24-25; R.28, L. 1-12.

120. A Conference Committee is made up of three House members and three Senate members. If the differences are resolved the bill then goes to both houses for a vote. In this situation, the Committee was comprised of four white Republicans and two black Democrats, Representative Hall and Senator Ross. Vol. II, R. 136, L. 8-12; Vol. R. 28, L. 16-25. The Conference Committee is required to be a public meeting. Once the Flexibility Act conference meeting opened, it was immediately recessed by the white members of the Committee without debate or discussion, and they left to meet privately while the black members remained, non-plussed. Vol. II, R. 137, L. 3-8; Vol. III, R.28-29. The black Committee members waited for an extended period, to the point that Senator Ross sent a text message to the Chief of Staff with the missing white Republican members asking are they trying to "screw me?" Vol. II, R. 137, 2-25. To which he got a reply of "we are working on it." *Id.*

121. The white members eventually returned and offered as a substitute a new and very different bill: The new bill's name changed from School Flexibility to the Accountability Act, Vol. III, R.29, and it had grown from 7-8 pages to over 20 pages. Vol. II, R. 138, L. 4-5; Vol. III, R.28, L. 13-14; Vol. III, R. 29, L. 14-23. The bill now included appropriations, tax credits for private schools, and charitable scholarship trusts for students to attend private schools. *Id.*, at L. 20-25; R. 35. Typically, such a bill could only be voted on by Legislature after a fiscal study was completed, but there had been none. R. 30. The four white legislators quickly voted to approve the new bill

without the black members having a chance to read or discuss it. Vol. II, R. 139, L. 4-24; Vol. III, R.30, L. 22-25. The bill was the quickly presented to both houses and approved within hours of the bills coming out of committee and, given the lack of time to read and review the bill, little debate. Vol. II, R. 139; Vol. III, R.31. The changes in the substitute bill were sufficiently sweeping and controversial that they caused 45 minutes of uncontrolled debate on the floor of the Senate and an uproar outside: the State Superintendent of Education issued a statement opposing the bill as it was debated on the floor. Vol. II 138, L. 13-23; *Id.* at 140, L. 8-17.

122. In passing the Accountability Act, the Senate failed to comply with regular order and broke their own rules. Vol. II, R. 139, L. 24-140, L. 7. The substitute turned the bill into an appropriations bill and as such is could have been passed under Rule 21; however, Rule 21 requires two votes, and the Senate only voted once: a second vote would have taken the issue past midnight and placed the controversy into the public arena. *Id.*

123. The fact that the radically transformed bill was submitted at the last minute as a substitute created suspicion as to the contents of substitutes, including the Dial 2 and Representative McClendon 3 , was echoed in the substitutes submitted at the last minute on the day of voting on the redistricting plans. Vol. II, R. 138, L. 9-17. As Senator Figures testified regarding the Dial 2 substitute, "when you're in the senate and you've been there as long as I have, a substitute could be anything, and the sponsor could tell you anything, as has happened so many times. Vol II, R. 64, L. 19-22.

124. Both Representative Hall and Senator Ross are convinced that the State House and Senate redistricting plans will cement and perpetuate this type of legislative process where as Ross described it, black legislators are once again the "invisible man." Vol. II, R. 135, L. 7; R. 140, L. 18-

22; Vol. III, R. 32.

Drawing the Plan

125. The Legislature began the redistricting process by establishing a Joint Reapportionment Committee which began meeting in March 2011. The Committee consisted of 22 members, which included two black senators and three black representatives, or 23 percent of the membership. The white Republicans held a comfortable 16 to 6 majority on the Committee. One of the 23 Committee members was a white Democrat. NPX 323 at ¶ 112.

126 Senator Gerald Dial and Representative Jim McClendon served as co-chairs of the Reapportionment Committee during the post-2010 redistricting cycle. APX 63 and APX 64. The Legislative majority drew the districts using computer software. Sen. Dial and Represent. McClendon assigned the actual operation of the computer system for drawing the House and Senate plans on behalf of the Committee to Mr. Randolph Hinaman of Arlington, VA. APX 75 at 6-7.

127. Mr. Hinaman met with the Committee Co-Chairs, the House and Senate leadership, certain chiefs of staff, and counsel for the Committee, Mr. Dorman Walker, on September 22, 2011. APX 75 at 22. Mr. Hinaman was instructed to "interface" with the Republican Caucus through Co-Chairs Dial and McClendon in the development of the redistricting plans. APX 75 at 31.

128. The Committee adopted official guidelines purportedly to guide the contours of districts to be produced during the redistricting process. In addition to compliance with the U.S. Constitution and the Voting Rights Act, these included as a mandatory requirement that:

> 6. The following redistricting policies contained in the Alabama Constitution shall be observed to the extent that they do not violate or conflict with requirements prescribed by the Constitution and laws of the United States:
> a. Each House and Senate district should be composed of as few

> counties as practicable.
> b. Every part of every district shall be contiguous with every other part of the district. Contiguity by water is allowed, but point-to-point contiguity and long-lasso contiguity is not.
> c. Every district should be compact…
> 7. … b. The integrity of communities of interest shall be respected.

DX 420.

129. The limitation to a two percent population deviation was new to Alabama; it had never been used before by the State. NPX 323 at ¶ 76. The State gave the case of *Larios v. Cox*, 300 F.Supp.2d 1320 (N.D. GA. 2004), as the rationale for requiring the two percent deviation. However, Larios in fact speaks not to the necessity for a population deviation, but to the abuse and manipulation of population deviations to transfer one or more districts from one region to another so as to deprive the disfavored region of the equal protection of the law. *Larios*, 300 F.Supp.2d at 1347.

130. For the state to violate the Larios principle, it would have had to manipulate the population of districts so as systematically to disfavor a region of the state to a substantial extent. The state had no such inclination. Vol. I, R. 78, L. 12-17.

131. Where States respect county boundaries to the extent possible, larger population deviations are entirely permissible. *Tennant v. Jefferson County Commission*, 133 S.Ct. 3 (2012); *Brown v. Thompson*, 462 US 835 (1983); *Reynolds v. Sims*, 377 U.S. 533, 578-79 ("Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering"); *Larios*, 300 F.Supp.2d at 1338.

126. In prior Alabama redistricting, the Legislature used the traditional 10 percent deviation standard; and a 10 percent deviation allowance is the usual tradition for state legislative

districts in most states and local jurisdictions. NPX 323 at ¶33; Vol. II, R. 165, L. 12-19; Vol. II, R. 165, L. 13-19.

132. The minority members of the Committee argued against the two percent rule and voted to amend it repeatedly. NPX 323 at ¶113.

133. In public hearings the Committee's legal counsel, Dorman Walker admitted that it the two percent deviation range was not required by *Larios*.

> Representative England: But it's safe to say, though, that you could - as long as you can justify it by the needs of the communities, maybe keeping communities together, packing - to avoid packing and so forth, that you could actually go beyond 2 percent deviation, if necessary?
> Mr. Walker: The case law would allow that.

C-18 at 8.

134. The Legislature knew from the outset that the redistricting plans would split more counties under the two percent deviation than under a 10 percent deviation. APX 75 at 34. Represent. McClendon stated that "I was obligated to do my best to stay within the guidelines adopted by the redistricting committee." APX 67 at 10. As the House and Senate plans were drawn, they split more counties than necessary to comply with the two percent deviation requirement because "the current legislators for whatever reason liked it that way." APX 75 at 34.

135. According to Mr. Hinaman and, at least for white Republican legislators, as the maps evolved, the principle guidelines were to avoid placing two incumbents in the same district, and to maintain the core of each district and to change each district as little as possible. APX 75 at 25-26, 125. While these two requirements stand out, Mr. Hinaman could recall no discussion of the requirement to avoid splitting counties. APX 75 at 29.

136. As interpreted by the Redistricting Co-Chairs and as implemented by Mr. Hinaman under their guidance, the adopted guideline of maintaining communities of interest was meaningless. APX 75 at 121-123.

137. Before drawing a districting plan on his personal computer, Mr. Hinaman adjusted Maptitude computer redistricting software geography to match the Alabama voting precinct boundaries, and also loaded political data he had obtained from the Republican National Committee. The political data included precinct-by-precinct election returns showing how all Republican candidates had performed in Alabama elections since 2000. APX 75 at 15; Mr. Hinaman relied primarily on three statewide elections: 2006 Lt. Governor, 2008 President and 2010 Governor. Vol. III, R. 158. L. 15-18.

138. The State had available in its computer redistricting program not only census data but also precinct-by-precinct elections returns for all statewide elections in Alabama since 2000. These election returns included the 2008 elections in which there were black candidates for President and United States Senate. Accordingly, the State was in a position to make, precinct by precinct, the assessment required under Section 5 of the level of minority population needed to maintain the effectiveness of each minority district as it drew the district. The State failed to do so and, indeed, failed ever to consult its own elections data in drawing any minority district. Vol III, R. 180, L. 1-17; Vol. III, R. 158, L. 15-18.

139. The State identified eight Senate and 27 House districts as black majority districts. These districts range in black percentage from 47.94 % to 77.86% in the House and 50.98% to 77.82 % in the Senate total population. NPX 406, DX 402.

140. With the approval of Co-Chairs Dial and McClendon, Mr. Hinaman started by drawing in the majority black districts, but he did not consult with any black member of the legislature in drawing those districts. APX 75 at 23, 38, 67, 129; APX 67, p. 20, L. 5-20. Prior to the time the House and Senate proposals were made public, no black member of the Legislature was allowed to see the map. APX 75 at 91; APX 67, p. 98-99.

141. The Maptitude software used by Mr. Hinaman involved a map showing county boundaries, voting precincts and individual blocks. The software as adjusted Mr. Hinaman included census data, including race, for each county, precinct and block, as well as political date (election results) for whole precincts. It was not possible to determine accurately the political performance of individual blocks. NPX 323 at 36-37, ¶ 89.

142. As used by Mr. Hinaman, creating or altering a district involved "clicking" on an individual county, individual precinct or individual block. APX 75, 29, p. 111, L. 7 - 24. Each click thus involved a series of affirmative choices to select particular units. For counties and precincts those choices could be guided by election results. Where a precinct was split, the choices could only be guided by the racial composition of the black and by the total population of the block. Vol. III, R. 106, L. 6-16.

143. In his deposition Mr. Hinaman testified that he first drew the majority black districts, but without consulting any black member. APX 75 at 10, p. 38, L. 11-25. Mr. Hinaman then drew districts from the "four" corners of the state " because obviously you can't go into other states, so you can't end up in a corner and not have a full district." APX 75 at 10, p. 39, L. 17-20; APX 75 at 29, p. 95, L. 24-25, p. 96, L. 1-4. Mr. Hinaman testified that while he started in the northwest corner of Alabama with Senate District 1, he was mindful of the over-population of Senate district 2. Mr.

Hinaman testified that "Senate District 2 was very much overpopulated and those folks had to go somewhere, and the most likely place for them to go was Senate District APX 75 at 32, p. 122, L. 13-21. At trial Mr. Hinaman changed his testimony and stated that he had started in the two southern corners of the state only and moved north, heedless of the danger that he could wind up in a corner with too much or too little population for a district. Vol III, R. 38, 146, L. 13; R. 147, L. 6.

144. Whichever version is accurate, there was no need or logic to dismember Senate district 1, other than the motive to crack the black population in Madison County. In fact, Senate district 1 was under-populated by only 1,507 persons, and it was adjacent Senate districts 6 (-19,519) and 4 (-13,273) which together were under-populated by 32,792. DX 402. Withdrawing from district 6, as the Dial plan did, Fayette County (17,241 persons) and Lamar County (14,564 persons) created a population deficit of over 65,000 persons which easily could absorb the entire 42,494 excess population of Senate district 2. *Id.*; NPX 328. District 1 was hardly "the most likely place for them to go." Vol III, 32, page 122 L. 13-21.

145. The plan fragments Lauderdale County in the northwestern corner of the state. DX 476 . Lauderdale County was not split under the 2001 plan, where it was combined with part of Colbert County in Senate district 1. DX 477. The division of Lauderdale County was contrary to the Alabama Constitution and contrary to the interests of the State in respecting communities of interest, including Muscle Shoals and the minority community of Madison County. APX 75 at 121-123.

146. Mr. Hinaman sat at his computer terminal with white Republican legislators and adjusted the maps in response to their requests. APX 75 at 114, 136-139. As he sat with these white legislators, Mr. Hinaman had available political data showing the performance of various Republican candidates within the area of the district, and he would provide the data and discuss the data with

the white Legislators. APX 75 at136-139.

147. Mr. Hinaman completed his draft House and Senate plans and provided them to the Committee Chairs. Sen. Dial and Represent. McClendon unveiled the House and Senate plans to minority members of the Legislature only on May 7, 2012. Doc. 125, 47-48. Defendant brief MOTION FOR SUMMARY JUDGMENT but para talk about dial and McClendon aff, ALBC 63 & 64. The Special Legislative Session opened on May 17, 2012. Doc. 125-1 Proclamation by Gov. Mr. Hinaman ignored alternative plans presented by black Legislators during the special legislative session. APX 75 at 138-139.

148. Prior to May, 2012, Mr. Hinaman's only interaction with Ms. Bonnie Shanholtzer of the Alabama Reapportionment Office was on technical issues relating to the transfer of his map into the Reapportionment Office's computers; he did not discuss the outline of any district. APX 75 at 92-93.

149. After Mr. Hinaman had begun drawing the legislative redistricting plans in September 2011, the Committee conducted public hearings at 21 locations throughout the State of Alabama. APX 63 at 3; APX 64 at 3. The ostensible purpose of those hearings was to hear proposals from interested persons for drawing new districts and to receive other public comments. Senator Dial and Representative McClendon attended each of those public hearings. APX 63 at 3; APX 64 at 3.

Excessive Consideration of Race

150. Representative Hall testified that the Alabama black population is not monolithic, that there are important variations among black communities in Alabama. Vol. III, R. 20-21. Represent. Hall testified as to the differences between the Tri-City/Shoals area of Florence, Muscle Shoals and Tuscumbia as compared to Huntsville - Madison County. *Id.*. Represent. Hall testified that, as an

example, Huntsville was driven by engineering, science and service industries, *Id.* at 21, while the Muscle Shoals region is a more industrial, union oriented community. *Id.*, at 16-17. See also Vol. III, R. 22-23. Represent. Hall testified there are differences in the black communities in each respective area and that "people tend to want to think or feel all African-Americans, everybody think the same way, move the same way, which is not true." *Id.*, at L. 20-22.

151. The Legislature in drawing the plans, however, treated black citizens as interchangeable. Senator Dial testified that he did not look into the political behavior of the black populations in the individual districts. Instead, he simply went by the number of and percentage of black people in a given district and tried at least to maintain that percentage or increase it. Vol. I, R. 133, L. 21-134, L. 2. Sen. Dial testified that he focused on "not regressing the minority districts and where they had to grow; that they grow in the same proportion of minorities that they already had. Vol. I, R. 133, L. 17-20

152. Although he was aware that such data were available, Vol. I, R. 88, L. 24 89, L. 6, Sen. Dial did not look at political performance data - the election returns in Mr. Hinaman's computer - at all, but focused entirely on race. Vol. I, R. 55, L. 22- 56, L. 1.

153. Mr. Hinaman also testified that he looked solely at the black population and did not consider the presence of other minorities or the ratio between the white population and the black population. Vol. III, R. 150, L. 8-12. While Mr. Hinaman had political data - precinct returns for virtually every statewide election since 2002, Vol. III 152 at 16-17 - loaded into his redistricting computer and although he shared that information in working with Republican members to draw their districts, APX 75, 36, R. 136, L. 11-21,

154. Mr. Hinaman did not conduct, receive or have access to any studies of black political participation. Vol. III, R. 148, L. 19-24. He did not look at data on employment, education or educational level in the various black communities, nor did he consider the variations in the black communities among the various cities in the state, although he was aware of variations in their respective economies. Vol. III, R. 148, L. 19-24; R. 149, L. 2-10; R. 150, L. 2-7. Mr. Hinamn did not communicate directly with any black member concerning the characters of their districts. *Id*. at R. 150, L. 8-12. Mr. Hinaman had available data from the 2008 Obama election and other statewide elections since 2002, but he did not use that to examine the effectiveness of any majority black district: he just went by the numbers *Id.* at R. 180, L. 1-17; R. 181, L. 18; R. 182, L. 12.

155. Dr. Theodore S. Arrington testified as an expert witness on behalf of the Newton Plaintiffs. Dr. Arrington is Professor Emeritus of Political Science at the University of North Carolina at Charlotte ("UNC Charlotte") and in 2010-11, he was President of the North Carolina Political Science Association. He has co-edited one book and coauthored two monographs, published 36 refereed articles, and delivered numerous papers in the last 40 years, primarily on the effects of party and race on voting behavior. He has been a referee for The American Political Science Review, The Journal of Politics, The American Journal of Political Science, Social Science Quarterly, Political Research Quarterly, the National Science Foundation, and others. He has served as a consultant for a number of local governmental bodies and federal courts to advise them on redistricting and similar issues and has been retained by candidates and campaign managers to give advice for local, state, and national office to give advice. He was a member of the Charlotte /Mecklenburg Board of Elections from 1979 to 1991 and for six years served as the Chair of that body. Dr. Arrington has been an expert witness in more than 40 lawsuits involving voting rights and

has been an expert witness or consultant in 18 statewide redistricting cases including *Gingles v. Edmisten*, 590 F. Supp. 345 (E.D.N.C. 1984), later *Thornburg v. Gingles*, 478 U.S. 30 (1986), and has been called upon for for expert advice by the federal courts, a special master appointed by the federal courts, and the United States Department of Justice. NPX 323 at ¶¶ 4-12.

156. Dr. Arrington examined the purpose and results of the 2012 Alabama House and Senate redistricting plans based on accepted social science techniques and the applicable legal standards, including those set forth in *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252 (1977) and on the legislative redistricting records and reports, including the evidence introduced in this case. See generally NPX 323.

157. Dr. Arrington performed a content analysis of the hearings on the redistricting plans. The bulk of the comments, and by far the largest amount of time in each of the hearings, concerned the importance of maintaining county lines intact and having districts contain as few counties as possible. NPX 323 at ¶ 117; see also C-2 through C-22.

158. After the Hinaman plans had been unveiled, the Committee held only one public hearing on the actual plans, in Montgomery on 17 May 2013, the same day the plans were adopted by the Committee, and a week before the plans were enacted by the legislature. NPX 323 at ¶117; see also C-23.

159. When the final plan was introduced on the floor as a substitute, each Senator received an 8 ½ by 11" copy of the Senate district map for the entire state and no more detail. Vol. II, R. 50, L. 2-12.

160. At 21 public hearings, the Committee's legal counsel, Dorman Walker, often mentioned that the hearings were in some way required by the Department of Justice as part of

preclearance. Dr. Arrington testified that this indicated that the hearings were a mere form and played no part in the construction of the plans. NPX 323 at ¶ 114; see also C-2 through C-22. The Committee persistently ignored the comments and requests of the public. Arrington testified that the hearings "were window dressing and played no part in the construction of the plans." NPX 323 at ¶114.

161. The public hearings were held prior to the presentation of any proposed maps so that the discussion could only involve abstract principles, and 49 different speakers complained about the lack of any meaningful participation in the process absent some maps to consider. Thirty-eight speakers mentioned the importance, in principle, of recognizing race in Alabama politics by appropriate districting. No one suggested that the current packing of minority districts was appropriate, and many speakers suggested that the majority-minority districts should be "un-packed." The importance, in principle, of being fair to both political parties was mentioned thirteen (13) times. NPX 323 at ¶ 116; see also C-2 through C-22.

162. The bulk of the comments, and by far the largest amount of time in all twenty-one (21) of the hearings, concerned the importance of maintaining county lines intact and having districts contain as few counties as possible. NPX 323 at ¶ 117; see also C-2 through C-22.

163. Represent. McClendon and Senator Dial were present at each public hearing held by the Redistricting Committee. APX 63 at 3; APX 64 at 3.

164. The original "working plans" from Mr. Hinaman were changed very little in versions "2" and "3." These later versions of the House and Senate plans were the ones enacted. Arrington Report 110. But the changes all were minor: no changes were consequential or changed the overall pattern of the first draft. NPX 323 at ¶ 132.

165. After the House and Senate plans were unveiled, the legislature restricted potential amendments to the plans so that the only changes that would be accepted were those involving discrete exchanges of population between two or three districts within a week of final passage of the bills. APX 75 at 39, 40. Each changed district had to fall within the two percent population deviation range. APX 63 at 10; APX 64 at 10. Changes to cure the plans' violations of the prohibition against splitting counties and communities of interest could not be considered. APX 75 at 48. Represent. McClendon has testified that he insisted that, if changes were to be made, each member whose district would be affected concur on the proposed changes. APX 64 at 6.

166. In both the Committee and on the floor of the House and Senate, the minority legislators offered their plans as substitutes for the co-chair's plans. Each of these efforts was defeated essentially along party line votes in the various committees and on the floor of both houses. NPX 323 at ¶ 135.

167. The lack of an opportunity for black legislators to see the entire plan or how their own districts affected other districts crippled their effective participation. Dr. Arrington testified that Every sitting incumbent representative wants as many of his kind of voter in his district as he can get. And so if you -- if you play the game of divide and conquer where you talk to each of them individually and say, have we got a deal for you, we're going to give you a district you can't possibly lose, they aren't going to turn that down. But when they see the way the whole plan works, it becomes very different. But even given that, in the hearings there were several representatives and senators who said, do not pack these districts. Vol. III, R. 54, L. 1-10. Similarly, as Represent. McClendon testified, "Here's the main thing I remember. People were very self-centered on their district, and what happened in the adjacent districts was not much of their concern." APX 67, p.76,

L. 14-20. The fact that any ideas on the plans from black legislators had to be submitted under unequal and extremely crude conditions - at most, marks on a paper copy of their old district - played to individual cupidity and prevented any substantive comment or contribution until it was too late: the cake had been baked.

168. Dr. Arrington concluded that the State offered black legislators the illusion of participation in the process in the sense that they could offer amendments, vote and speak freely, but the plan was basically a fait accompli: only minor, almost cosmetic, changes were made that had no bearing on the ability of minority voters to participate in the political process. NPX 323 at ¶136.

169. The House and Senate plans placed an effective quota on minority districts. Before he eliminated majority-black district 53 in Jefferson County, Mr. Hinaman did not examine whether such elimination was in fact necessary, and whether it was possible to maintain all existing majority-black districts in Jefferson County. APX 75 at 60-61, 85.

County Delegations: Jefferson County

170. In drawing its redistricting plans, the State subordinated traditional redistricting criteria, including the criteria that the Committee itself had adopted, to the two percent rule and to the interests of white Republican incumbents. APX 75 at 63-64.

171. Under the 2001 plan, nine House districts (52-60) and three Senate districts (18-20) within Jefferson County allowed black voters to elect candidates of their choice, and alternative plans based on the 2010 census demonstrated that a fair plan would retain all of those districts with effective black majorities. APX 21. Legislators representing the interests of black voters under a plan that respected county boundaries under either population deviation standard would constitute a majority of the Jefferson County House delegation (9 of 14 or 15) and Senate delegation (3 of 5).

Id.

172. Under the State's 2012 plan, the number of black House districts in Jefferson County is reduced to eight (8) of the eighteen (18) districts that will comprise the county's House delegation under the new plan. Doc. No. 66 at 23. ALBC 2nd Mot for Par MOTION FOR SUMMARY JUDGMENT-talks about complaint of 2012-602 & 603. Under that plan, therefore, the Jefferson County House delegation would include eighteen (18) members of whom eight (8) would be elected from districts with effective black majorities and ten (10) would be elected from white-controlled districts after elections under the 2012 plans. *Id.* The Senate delegation would include eight (8) members, three (3) elected from majority black districts and five (5) elected from heavily white districts. NPX 323 at ¶ 82.

173. While a total of six (6) other counties vote to select members of the Jefferson County House delegation, the state's plan excludes the inner-city black voters of Jefferson County from voting on members of any of those six (6) counties' delegations. APX 40. These added districts are all white dominated. This makes the House delegation ten (10) white districts and eight (8) minority districts. NPX 323 at ¶ 80.

174. The enacted Senate plan adds five (5) Senate districts that swoop into Jefferson County from the surrounding counties. Jefferson County population is not a significant part of any of these five, and all of them are white districts. This makes the Senate delegation three (3) minority members and five white members. NPX 323 at ¶ 82.

175. While a total of eleven (11) other counties vote to select members of the Jefferson County Senate delegation, the state's plan excludes the inner-city black voters of Jefferson County from voting on members of any of those eleven (11) counties' Senate delegations. APX 43.

176. Senator Dial testified that he did not reduce the number of white majority Senate 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." APX 63 at 14. In fact, two Senators whose white-majority districts included portions of Jefferson County reside outside the county so that their districts could be removed from Jefferson County without placing incumbents in the same district: Senator Reed (5) resides in Cordova in Walker County, NPX 333, and Senator Ward (14) resides in Alabaster in Shelby County, NPX 334. Senate district 14 contains only a single precinct of Jefferson County, and that area could easily have been swapped with a Shelby County portion of district 16 or by other changes among districts 14, 15 and 16. C-40 at 36. There actually was no need to retain districts 5 and 14 in Jefferson County in order to separate incumbents.

177. The 9-9 split in the Jefferson County House was a source of frustration to the white members of the delegation. Vol. III, R. 236-237. The State avoided a black majority in the delegation by the artificial placement of a sliver of Jefferson County in House District 43, and by the removal of House district 53 from Jefferson County. This reduced the number of black majority districts in Jefferson County from nine to eight, and broke the 9-9 black-white split of the Jefferson County delegation. Timely growth in the Huntsville area minority population allowed the Legislature to transfer House district 53 to Madison County so that the State was able to maintain the total number of minority districts statewide while creating a 10-8 white majority in the Jefferson County delegation.

178. In no instance did the Legislature extend the boundaries of an urban black majority districts into a white majority suburban county so as to "integrate" the suburban delegation and give black legislators an opportunity to block local legislation comparable to that the white suburban

legislators enjoyed over urban counties. In Jefferson County, where the Legislature altered the Senate districts proposed by Sen. Smitherman by swapping groups of heavily white majority precincts plan, the Legislature did not, as it could have, extend a black district into Shelby County. DX 476 (Jefferson) Vol. III, R. 126, L. 22; R. 127. L. 13. In Montgomery County, both House district 78 and Senate 26 are adjacent to Autauga and Elmore Counties but include no part of those counties. DX 476, 477, 479, 480 (Jefferson, Montgomery and Mobile). In Mobile County, Sen. Figures specifically and publicly asked that her district include part of Baldwin County so that she could have a greater white share of population in her heavily packed district. Vol. III, R. 46, L. 6-15. That request was denied.[7]

Drawing Specific Districts

Jefferson County

179. Under the 2001 plan, there were nine majority black districts in Jefferson County. The nine districts comprised a compact area of the county, and all nine districts were contained within Jefferson County. Due to the growth and spread of minority population in Jefferson County and the decline of white population, it was possible to draw nine compact and contiguous majority black district in Jefferson County. APX 20; NPX 301. One such plan was placed before the Legislature but was rejected despite the support of all black members of the Legislature. APX 20; NPX 314, 315.

[7] The defendants offered conflicting testimony on the issue. Sen. Dial testified the Mobile Senate delegation did not want to include part of Baldwin County in the Mobile delegations, Vol. I, R. 41, L.7-10, while Mr. Hinaman, whose recollection generally is much detailed than that of Sen. Dial, testified that Sen. Pittman of Baldwin County blocked the idea. APX 75, p 28, pp. 107 l. 19- 108, l. 10. Mr. Hinaman's version, reflecting as it does suburban legislators' opposition to having a minority urban legislator in the suburban county delegations is consistent with the general pattern in the state.

180. The State's plan eliminates majority black House District 53 in Jefferson County, represented by Represent. Demetrius Newton. The eight remaining majority black districts in Jefferson County are packed: no district is less than 61 percent minority, and five of the districts are over 65 percent minority, three districts are over 70 percent minority, and one district is over 80 percent minority. Although two of the districts were under 58 percent black in the 2001 plan and although black candidates had won county-wide in white-majority Jefferson County, the Legislature increased the black percentage in existing black districts by as much as 9.69 percentage points (district 59) rather than assigning it to other districts in which black voters might have an influence, and where the continuing spread of minority population into white areas could organically create additional minority districts. House district 16 (10.38% black), for example, is adjacent to House districts 55(73.55% black), 56(62.14% black), 57(68.47% black), and 60 (67.68% black), or an aggregate of 31.84 percentage points above the abundantly "safe" 60 percent level. House districts in Jefferson County are bizarrely shaped as a result of the packing of minority districts. District 16 runs from the Mississippi border in rural Lamar County through Fayette and northern Tuscaloosa Counties and into western and northwestern Jefferson County Jefferson County, where at one point it is barely contiguous. DX 480. Adjacent district 55 is extremely elongated with jagged borders and a black majority of 73.55 percent, far in excess of what might be needed to offer black voters an opportunity o elect candidates of their choice. *Id.* DX 403.

181. Mr. Hinaman has testified that he regarded it as impossible to maintain nine majority black districts in Jefferson County. APX 75, p. 60, L. 20-25, p. 61 L.1-23. Mr. Hinaman testified that the nine House and three Senate districts in Jefferson County occupied essentially the same space. Vol. III, R. 133, L. 10-13.

182. Mr. Hinaman drew 3 compact and contiguous black majority senate districts in Jefferson County. DX 400. Mr. Hinaman was unaware of any concerns among the black legislators concerning the senate districts, each of which had declined in black percentage. Vol III, R. 156, L. 13-22. Senator Dial, who directed Mr. Hinaman's work, testified that he wanted to create as many black districts as possible. Vol. I, R.28.

183. Mr. Hinaman drew the House and Senate districts concurrently. Vol III, R. 156, L. 23; R. 157. L. 1.

184. The Alabama legislature has 35 senate and 105 house districts, and Mr. Hinaman knew, beyond simple mathematics, that the districts formerly had been nested, with three House districts comprising each Senate district. Vol III, R. 157, L. 11-14.

185. From drawing the Senate districts Mr. Hinaman must have been aware that along with the overall black population growth within the county, the black population had spread into areas adjacent to the cluster of House and Senate districts, and that these areas could be added to the 2001 district cluster.

186. In Mr. Hinaman's testimony he insisted that despite those painfully obvious facts he face he never considered that nine house districts could be created within the area of the three Senate districts he was creating simultaneously. Mr Hinaman's testimony in this regard is not credible.

MONTGOMERY COUNTY

Senate Districts

187. Senate district 26, represented by Senator Quinton Ross, was over 72 percent black within the 2001 district boundaries. The district was under-populated by 15,898 persons, but would still be in excess of 64 percent black if only white persons were added to make up that population

deficit. Senator Dial had "no doubt" that Senator Ross could win election in a 64 percent black district, Vol. I, R. 129, L. 13-16, and Mr. Hinaman conceded that probably was the case, Vol. III, R. 179, L. 19-24, and further conceded that no black legislator ever complained about the lowering of the black percentage in her or his district. *Id.* at 163, 4-6. Sen. Ross testified that neither Sen. Dial nor anyone else invited Ross to sit down with Randy Hinaman and discuss the plans, Vol. II, R. 124 at L. 7-11, and that in their one brief conversation regarding potential changes to his district, and Sen. Dial simply told him that his district would be "okay." *Id.* at L. 1-6. It was not okay; Sen. Ross testified that he would have been comfortable with 50, 55 or 60 percent black population in his district. Vol. II, R.127, L. 23-24. Rather, Sen. Ross testified that racial packing makes officials less responsive to the minority in their district and strains race relations and promotes racial separation. Vol. II, R. 130, L. 2-20.

188. Indeed, the population of under-populated 2001 Senate district 26 already was 777 persons above the average post-redistricting population of the other Alabama majority black Senate districts.

2001 SENATE DISTRICT 26 2010 POPULATION VS DIAL 2 POPULATION OF ALABAMA BLACK MAJORITY SENATE DISTRICTS

District	Dial 2 black pop.	2001 SD 26 pop.	Difference
18	79,939	87,714	+7,775
19	88,314	87,714	-600
20	85,382	87,714	+2,332
23	87,754	87,714	-40
24	87,072	87,714	+642
28	82,511	87,714	+5,203
33	97,587	87,714	-9,873

Average difference: +777

DX 400, DX 402

189. Senate district 26 shared Montgomery County with Senate district 25 (28.57% black under the 2001 plan and over-populated by 21,368 persons), which also included a portion of Elmore County. Both districts were compact: district 26 had the southern and northwestern portions of Montgomery County and district 25 had the northeastern portion of the county. District 25 had 108,697 of Montgomery County's 229,363 residents and 37,763 of its125,477 black residents. C-28; NPX 328.

190. The State chose to add Crenshaw County (13,906 persons, 3,254 black – NPX 328) to the district 25-26 area and reduce the Elmore County portion of Senate district 25 from 45,235 to 26,674 persons. *Id.* Rather than maintain the original district contours and add Crenshaw County to Senate district 26, to which it was adjacent, the state chose to reconfigure the two districts dramatically. Although district 26 was under-populated, the state removed additional population from the district -- the racially mixed southern portion of the district-- and transferred it to over-populated district 25 so as to make district 25 contiguous to Crenshaw County. The State then added Crenshaw County to district 25. The State then transferred heavily black portions of the City of Montgomery from district 25 to district 26.

191. The changes raised the black percentage of district 26 above 75 percent. The plan splits seven Montgomery precincts along racial lines; the district 26 portion of each split precinct is majority black and the district 25 portion of each split precinct is majority white. CX 40. pp. 93-96. Mr. Hinaman clearly went block by block to pack district 26 with black voters, including in the Vaughan Park Church of Christ precinct just to the north of Southern Boulevard, and thus fragmented an area that defendants have established is a community of interest. Vol II, R. 146, L. 14-19; NPX 353P. The splitting of precincts tends to segregate voters along racial lines. As Sen.

Ross testified while looking at the boundaries of his district and the clear white-black separation along the Eastern Bypass and US 231, "the street can almost separate you, black and white. Vol II, R. 126, L. 1-16.

192. The resulting boundaries of senate districts 25 and 26 within Montgomery County are uncouth and irregular. DX 476 (Montgomery) in NPX 353 T. Senate district 26 virtually surrounds a white-populated area on the western edge of district 25, and also sends an excrescence southeast along US 231, strictly keeping to the west of that racial dividing line and avoiding the white Pike Road community. Vol. II, R. 126 L.1-23.

193. The net mathematical result of the State's changes to district 26 speaks volumes:

RACIAL GERRYMANDER AND PACKING OF MONTGOMERY COUNTY SENATE DISTRICT 26

2010 population

	Total	White	Black	Other
2001 district	120,666	26,577	87,714	6,375
2012 district	136,451	26,615	102,520	7,316
Change	+15,785	+36	+14,806	+941

DX 402, p. 1; DX 401 p. 2

194. As result of the State's actions, only 0.02 percent of the population of the net area added to Senate district is white. This compares unfavorably to the 1.00 percent of the black voters who were left in the City of Tuskeegee after the racial gerrymander in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). The conclusion is "irresistible, tantamount for all practical purposes to a mathematical demonstration, that the legislation is solely concerned with segregating white and [black] voters." 364 U.S. at 341.

195. Sen. Ross indicated on NPX Demonstrative Exhibit O how his District and that of District 25 Sen. Brewbaker (a white Republican whose district adjoins Ross's in Montgomery County) were shaped to segregate white neighborhoods in District 25 and black neighborhoods in District 26. Vol. II, R. 125, L. 9-25, R. 126. His testimony is further supported by map NPX 353P. That map as, well as Exhibit O and NPX 353O, show that the odd shape of districts 25 and 26 reach out to encircle and capture areas of white population to draw in black neighborhoods into Senator Ross's district. Senator Ross's district was 72 % black prior to reapportionment. Vol. II, R. 129, L. 17-19. Senator Ross also testified that precincts were split so that blacks in the precinct were moved into his district and whites moved into Brewbaker. Vol. II, R. 134, L. 2-13.

House Districts

196. Montgomery County can be divided into five House districts, each of which is within one percent of the ideal district population. NPX 328; NPX 303; DX 403. The Newton Plaintiffs' illustrative plan demonstrates that it is possible to draw four compact and contiguous districts in Montgomery County with black voting age majorities. NPX 300. Indeed, the 102,520-person black population of Senate district 26 alone is sufficient to create four majority-minority House districts within Montgomery County, and more black population is available. DX 400; DX 403.

197. The State's House plan packs the Montgomery black population into three districts within the county, each of which has a black super-majority of from 67.05 percent to73.79 percent. DX 403, p. 6.

198. The State's plan eliminates House district 73 within Montgomery County. Much of the racial population shift in Montgomery County occurred in House District 73, which declined from 69.3 percent white in 2000 to 44.1 percent white in 2010. DX 411; NPX 332. As of the 2010

census, only 44.07 percent of the district 73 population was white, while a 48.44 percent plurality were black and the remainder were of other races. NPX 332. With minorities comprising a majority of the population in District 73, minority voters elected the candidate of their choice to the Alabama House from District 73. NPX 324 at ¶ 25 (Table 5); Vol. III, R. 39, L. 18-21.

199. House district 73 was over-populated while House district 74 was under-populated. DX 406, p. 6 The State selected district 73 to eliminate. The Legislature cracked the minority population that had been in House district 73 and used it to pack excessive black population into super-majority districts 76, 77, and 78, none of which has as much as 30 percent white population. DX 403, p. 6.

200. Another factor in the elimination of district 73 as a majority-minority district was the transference of 15,190 persons of whom 9,183 black were black from Montgomery County to super-majority House district 69 (64.21% black, 33.11 % white), as well as the shift of a racially mixed area of the county with 3,510 persons to House district 90. C-41, pp. 145, 181.

201. Under the State's plan, the Montgomery County delegation will include two members elected from rural House districts (69 and 90) and one (75) elected from a suburban district. C-41, 145, 157-159, 181. None of the three inner-city majority black House districts includes any part of a county other than Montgomery County although it would be possible to swap with adjacent areas of suburban Autauga and Elmore Counties. DX 476.

202. Mr. Hinaman testified that it was not possible to draw districts within Montgomery County because of the "ripple effect" that removing the Montgomery County portion of district 69 would create. Vol III, R. 158, L. 23-25; R. 159, L. 1-7. Mr. Hinaman's testimony is inconsistent with his testimony that he drew the black majority districts first, and then moved on to the rest of the plan.

Id. That a black majority district 69 could be drawn without going into western Montgomery County is illustrated by the Reed-Buskey plan. CX 42. Indeed, other black population was available in Butler County:

Lowndes	11,299	2,859	8,310
Wilcox County	11,670	3,126	8,465
Butler County	20,947	11,399	9,095
	43,916	17,384	25,890
		(39.58%)	(58.95%)
Autauga County part of HD 69	7,318	3,926	3,234

NPX 328, CX 41, 143.

203. The area in question has more than enough total and black population to create a "safe" black district, with enough flexibility to remove, if necessary, a portion of Butler County to accommodate any incumbent. *Id.* Mr. Hinaman was drawing the House and Senate plans concurrently. Vol III, R. 156, L. 23; R. 157, L. 1. Having placed Butler County in Senate District 23, which includes Butler County along with Lowndes and Wilcox County, Mr. Hinaman certainly knew that black population was available to district 69 without cracking, as he did, the urban black concentration in Montgomery County. Butler County, moreover is, like the remainder of district 69, a rural area, so that its black and white residents alike would have interests divergent from those in inner-city Montgomery. DX 479.

Mobile County

204. To meet the two percent deviation standard, Mobile County Senate districts needed to gain population and Baldwin County Senate district 32 needed to shed population. DX-402. Mobile and Baldwin Counties comprise a census Combined Metropolitan Area and a community

of interest. NPX 339 The State's House plan, however, fractures the boundaries of Mobile County so as to include a small portion of the county in House district 96, which includes parts of both Mobile and Baldwin Counties. C-41 at 187-188. House district 96 is 10.2 percent black in population. *Id.* House district 96 is joined to Mobile County by the swamplands at the head of Mobile Bay. It is directly accessible by automobile via a causeway over Mobile Bay. The same causeway connects Mobile and Baldwin counties at Senate district 33, and although Sen. Figures had requested that her 71.64 percent black district be "unpacked" by including white population from Baldwin County across the causeway, her request was denied. Vol. II, R. 46, L. 6-15.

205. As it did in other areas of the State, the Legislature exacerbated the excessive 71.64 percent black super- majority in Sen. Figures' district by splitting voting precincts along racial lines through a block by block selection. CX 49, pp. 113, 116.

ADDITIONAL SENATE DISTRICTS

District 22

206. According to the 2010 census, the three Senate districts (33, 34 and 35) contained entirely within Mobile County had a net deficit from the ideal population of 15,656 persons, while adjacent Senate district 32 in Baldwin County had a population surplus of 19,055. NPX 340. The population imbalance among the four districts could be resolved by a transfer of population from district 32 to the Mobile districts and appropriate adjustments among them to equalize population. *Id.*

207. A proposal to transfer the excess Baldwin County population to the Mobile districts was made but rejected by Senator Pittman. APX 75 at 101-110. Senator Figures, who is black, was never consulted concerning the option: indeed, Senator Figures actively sought to add white residents

from Baldwin County to her district, which she considered had an excessive black majority. Vol. II, R. 46, L. 6-15; APX 75 at 129-130. Had Baldwin County population been included in Senator Figures' district it would have placed a black legislator in the Baldwin County Senate delegation.

208. Senate district 22, which covered the northern portions of both Mobile and Baldwin Counties, was within one percent of the ideal district population and had a minority population of 34 percent, so it did not need to change. NPX 340. District 22 was a crossover district in which minority voters dependably had been able to, in coalition with an unusually number of white voters, elect candidates of their choice. NPX 324 at 18-19 (Table 6). Vol. IV, R. 44, L. 10-24.

209. As adopted, the Senate plan adds a heavily white area of population in Baldwin County to Senate district 22 and removes substantial Baldwin County minority populations from District 22 so that the absolute number of black persons in the Baldwin County portion of district 22 actually declines while the overall Baldwin County contribution to district 22 increases substantially.

ADJUSTMENT TO SD 22 WITHIN BALDWIN COUNTY BY DIAL 2 PLAN

2010 Population of Baldwin County Part:

	Total	White	Black
2001 district	26,646	17,916	7,695
Dial 2 district	44,347	36,022	6,290
Net change	+17,701	+18,106	- 1,405

C-40; NPX 344.

210. The new boundaries of Senate District 22 fragment the Native-American concentration within district 22, moving a substantial part of it to district 34 so as to disrupt an active

and successful minority coalition. C-40 at 110. Vol. IV, R. 44, L. 15-25; R. 45; R. 46, L. 1-5. The new boundaries fragmented Washington County and remove a heavily minority portion from Senate district 22 and place it in Senate district 23 in exchange for predominantly white area of Monroe County that had been in district 23. DX 476; C-40 at 75, 81.

211. The precinct splits involved in Senate district 22 illustrate another feature of the precinct splits: the creation of difficulty in both election administration and minority political participation. The contours of Senate district 22 are very similar to the boundaries of House district 68 in terms of the lines on Washington, Monroe and Conecuh Counties. DX 476; DX 479. The new lines within Washington and Monroe Counties split a number of voting precincts and, as in other areas of the state, these precinct splits were along racial lines: here, the splits placed black residents into district 23 and House district 68, and white residents into Senate district 22 and House district 64 and thus tended to segregate the voters. As elsewhere in the state, moreover, the House and Senate precinct splits were not coordinated, even though Mr. Hinaman drew the two plans concurrently. As a result, the plan leaves "orphan" precincts: areas that will need a separate precinct or ballot style and a separate accessible voting machine, additional personnel, and in some cases an additional voting site. The lack of coordination adds to the considerable equipment and personnel costs of splitting precincts in rural counties that can ill afford such expenditures. NPX 323, ¶¶ 84-86; Vol. II, R. 168. Senator Ross testified that the precinct splits in Montgomery County would create problems for election officials and much work to inform voters of their new assignments, much work for candidates, and a need for new polling places and personnel. Vol II, R. 134, L. 16; R. 135, L. 1.

MISMATCHED PRECINCT SPLITS NECESSITATING NEW PRECINCTS
HOUSE DISTRICT 64 AND SENATE DISTRICT 22
MONROE AND WASHINGTON COUNTIES

Population

	Total H64 PCT	Total S22 PCT	In new PCT
Monroe County			
Chrysler/Eliska /McGill	747	723	223
Purdue Hill	19	60	41
Days Inn/Ollie	435	738	303
Mexia Fire Station	0	816	NA
Mexia Fire Department	539	720	181
Shiloh/Grimes	26	22	4
Washington County			
McIntosh Community Center Voting District	775	0	NA
McIntosh Voting House Voting District	467	1,435	968
Cortelyou	189	86	103
Carson/Preswick	241	329	88

C-41 at 141-142; C-40 at71-72, 74

212. The precincts splits and the division of Washington County were unnecessary for any legitimate purpose: the plan could have kept Washington County intact in Senate district 22 and left portions of Monroe County in district 23 while maintaining district 23 at over 62 percent black, consistent with Senator Sanders' wishes and all consistent with the Legislature's stated goals of avoiding county and precinct splits and maintaining communities of interest. C-40.

REUNITING WASHINGTON COUNTY
AND REUNITING SPLIT PRECINCTS
EXCHANGE BETWEEN SENATE DISTRICTS 22 AND 23

Washington County Senate district 23 part			
	Total	White	Black
	2,001	280	1,636
Monroe County split precincts			
Senate district 22 part			
Precinct	Total	White	Black
Chrysler/Eliska /McGill	723	560	110
Perdue Hill Masonic Lodge	184	141	39
Purdue Hill	60	49	7
Monroe Beulah Church	141	119	19
Bethel Baptist House	38	38	0
Monroeville Housing Auth.	47	46	0
Mexia Fire Department	720	455	235
Total	1,913	1,408	410
DIAL 2 Senate 23	135,338	45,504	87,754
Remove Washington part	2,001	280	1,636
Reunite Monroe Part	1,913	1,408	410
	135520	46,632	86,528 (63.84%)

C-40, pp. 71-72, 81; DX 404, bates State-DMc440.

213. Another alternative course would have been to restore some or all of that part of Autauga County which had been in Senate district 23 prior to redistricting (see, e.g., that part of House District 69 in Autauga County (T 7,318, 3,926 W, 3,234 B). C-40, pp. 71-72, 81; DX 404, bates State-DMc440.

214. Because of the nature of the Maptitude system used by Mr. Hinaman, which required only a single click for a whole county and a single click for a whole the precinct as opposed to a separate click for each census block, the division of these voting precincts and the division of Washington County required a series of conscious decisions. Each decision involved dividing population on racial lines.

C-40, pp. 71-72, 81; DX 404, bates State-DMc440.

215. The State's revisions of Senate district 22 also unnecessarily split Clarke County between Senate districts 22 and 24. That split was easily avoidable.

ELIMINATE SENATE DISTRCT 24 SPLIT OF CLARKE COUNTY
ELIMINATE SPLIT OF HALE COUNTY

	Population		
	Total	White	Black
Senate District 24	137,724	47,152	87,072
Remove Clarke County Part	3,864	1,433	2,362
Add Hale County Part SD 14	3.097	2,216	807
	136,957	47,935	84,517
		(35.00%)	(62.44%)

216. One alternative would have been to re-united the McFarland Mall Precinct in the Tuscaloosa County which the state split between districts 21 and 24:

Part, SD 21, Tuscaloosa Co.	3,357	2,410	809
	137,217	48,129	85,519
		(35.07%)	(62.32%)

217. Another alternative would be to have retained or expanded the portion of Bibb County that had been in Senate district 24 under the 2001 plan:

Part Bibb County part, of HD 72 (T 6,280, 2,738 W, 3,447 B). DX 401, p. 8; C-40, at 82-83.

218. Retaining the Bibb County area in district 24 would have allowed the State to avoid the odd shape of district 24 within Choctaw County where, again, the division of the county was along racial lines: the Choctaw County portion of district 24 is majority black while in the Choctaw County portion of district 22 only 135 of the 3,059 residents are black. Districts 22 and 24 divide seven precincts along racial lines. C-40, at 82-83.

219. Similarly, placing part of Clarke County in District 24 involved splitting voting precincts along racial lines and the concomitant conscious decision to separate population by race.

C-40, pp. 68-69, 83.

220. Each unnecessary county split departed from the State's guidelines. C-1. Each unnecessary split also cracked minority communities and removed black population from Senate district 22, a crossover district in which the candidate supported by minority voters regularly prevailed.

221. Each unnecessary precinct split departed from a racially neutral redistricting criterion and from a factor consideration normally considered important in redistricting. NPX 323 at ¶ 85. Each precinct split also involved a block-by block selection of blocks and the separation of those blocks on the basis of race.

Senate District 1

222. Senate district 1 under the 2001 plan consisted of the Muscle Shoals area, a compact community of interest comprised of Lauderdale and Colbert Counties. Vol. I, R. 169-170; Vol. II, R. 20-23, L. 16-17. The district was slightly under-populated according to the 2010 census and needed only a few hundred persons to be within one percent of the ideal population. DX 402. The State dramatically reconfigured the district so as to divide the Muscle Shoals community of interest and fragment Lauderdale County which previously had been intact. DX 476, 477.

223. The State's plan also fragments Madison and Limestone Counties between Senate districts 1 and 2: a slender corridor of district 1 reaches across the northern portion of Limestone to take in 22,036 persons from Madison County. NPX 476; NPX 353 B. That portion juts into the Madison County black population concentration, cracking off the West Mastin, Johnson High School, and Lewis Chapel precincts. C-40, at 3-4. Madison County has a NASA and Redstone Arsenal-oriented economy that differs substantially from that of Muscle Shoals, Vol. III, R. 20-21,

Vol. III, R. 198, L. 16-20, and the interests of the black communities in the two areas are separated not only by many miles but also by their divergent social and economic interests. Vol. I, R. 151, L. 2-5. Representative Hall testified as to the substantial differences between the Tri-City/Muscle Shoals area (Florence, Muscle Shoals and Tuscumbia) and Huntsville. Vol. III, R. 20-21. Representative Hall testified that Madison County was characterized by engineering, science and service industries, *Id.* at 21, while Muscle Shoals was a more industrial, union-oriented community. *Id.*, at 16-17. See also Vol. III, R. 22-23. She testified there are differences in the black communities in each respective area and that "people tend to want to think or feel all African-Americans, everybody think the same way, move the same way, which is not true." *Id*. at L. 20-22. The Huntsville Times editor wrote that the district looks like someone giddy after a couple of glasses of bourbon had drawn it. Vol. I, R. 148, L. 12-13. As Senator Irons testified, "I concluded what had happened is they had drawn me that little diagonal strip of Madison County so I could -- so, really, Senate District 7, Paul Sanford's senate seat, could shed the minority population into Senate District 1, which was some two counties and 70 plus miles away. Vol. I, R. 151, L. 2-5.

224. Senate districts 2 also fragments Madison and Limestone Counties: a 23,092 person area of Madison County is in district 2. Senator Irons testified that the Dial 2 plan splits up her county and the Tri-City/ Shoals area and is not compact. Vol. I, R. 148. The plan runs the district east, around Athens in Limestone County and then drops it into west and north west Huntsville. Vol. I, R. 148-49. She testified that she was told that Senator Holtzclaw had to lose 43,000 people from Senate District 2 and that is why her district was shaped the way it was shaped. *Id.*, at 149. However, Lauderdale County had 43,000 people and if you added 43,000 people from Holtzclaw senate district 2 in Limestone County then you would have 136,000 people which is the ideal senate district. *Id.*

District 1 Senator Tammy Irons specifically suggested exchanging the Madison County portion of her district with for the Limestone County portion of district 2. That would have eliminated the Madison County split by district 1 and the Limestone County split of district 2.[8] And it would have avoided the cracking of the Madison County black population. The exchange also would have made district 2 more heavily minority. District 2 also took some minority population from district 2 including a small part of the Ed White Precinct, all of the Highlands School Precinct, and a relatively black part of Ridgecrest School Precinct, an area with a growing Latino population. C-40 at 5; NPX 359, (2009 special election) - Vol. III, R. 16, L. 18-19; NPX T--, Vol. IV, R. 26, L. 33-36; 32;28; Vol. III, R. 17-169. With the population cracked off to District 1, Senate district 2, which already includes areas that are becoming more heavily minority, would only be 63.23 percent white in population according to the 2010 census. The Legislature did not draw any white-majority Senate district with white majority as low as 63.23 percent; in each such district the white majority was larger and more dominant. DX 400

Senate District 7

225. According to the 2010 Census, Senate district 7 was overpopulated. NPX 340. Representative Laura Hall, a black member of the Alabama House, was an unsuccessful candidate for Senate district 7 in a 2009 Special election. APX 66 at 117:5 to 119:2. In that election, Represent. Hall enjoyed the united support of the black community and also the Hispanic community of the district. Vol. III, R, 15, L. 17.; Vol. IV, R. 27, L. 4-15. NPX 359, (2009 special election). Senator Dial was aware of that election. R. 151, L. 24; R. 152, L. 1.

[8] The exchange also would have over-populated district 1 somewhat and involved an additional transfer of Lauderdale County population, which was already split, and move it to district 6 which contains the remainder of the Muscle Shoals population.

226. Representative Hall had been a teacher at the Johnson High School for 25 years. Vol. III, R. 5, L. 7-8. In the 2009 special Senate election Represent. Hall received 89 percent of the vote in the Johnson High School Precinct. Vol. III, R. 16, L. 16-25; NPX 359 (2009 special election, p. 400-01).

227. The Legislature substantially reduced the minority population percentage in redrawing Senate district 7 as set forth below:

FRAGMENTATION OF BLACK POPULATION
MADISON COUNTY DISTRICT 7

	2010 Population				
	Total	White	Black	Other	
2001 Plan	148,905	89,761	47,860	11,284	
2012 Plan	137,911	90,411	37,708	9.792	
Net Change	10,994	+650	-10,152	- 1492	DX 400, 402

228. The Legislature thus lowered the total population by 10,994 persons; lowered the total black population by 10,151 persons; lowered the total minority population by 11,646; and increased the white population by 650 persons. NPX 340. The Legislature fragmented the minority population of Madison County among Senate districts 1, 2 and 7 and in doing so avoided creation of a majority-minority Senate district in Madison County. C-40; NPX 302. The State's Senate plan removes the majority black precincts West Mastin, Johnson High School and Lewis Chapel CP Church from district 7 and places them in district 1. C-40 The State plan places majority minority precincts Oakwood College, Ed White Middle School (part only), Highlands School, and University Place in district 2 along with a portion of precincts Ridgecrest School (49.5% minority) and the Sherwood Baptist and Blackburn Chapel CP Church, both over 40 percent minority in district 2. C-40.

229. Madison County contains two adjacent districts with black majorities of 61.25percent (19) and 55.83 percent (53): the districts are only 32.28 and 32.08 percent white, respectively. These districts from a community of interest combined, they have the following population:

COMBINED MCCLENDON PLAN 3 HOUSE DISTRICTS 19 AND 53

	TOTAL	WHITE	BLACK	OTHER	COMBINED MINORITY
DISTRICT 19	45,081	14,733	27,614	2,734	30,348
DISTRICT 53	45,106	14,468	25,184	5,454	30,638
TOTAL OF TWO DISTRICTS	90,187	29,201	52,798	8,188	60,986

IDEAL SENATE DISTRICT POPULATION: 136,564

IDEAL SENATE DISTRICT, POPULATION NEEDED FOR MAJORITY: 68,283

DX 403, bates State-DMc 418, 421

230. The state rejected alternative plans that better respected the state's redistricting criteria

PERCENTAGE OF BLACK AND OTHER POPULATION UNDER VARIOUS PLANS FOR SENATE DISTRICT 7

	BLACK	OTHER
DIAL PLAN 2	27.34%	7.10%
REED BUSKEY PLAN	47.17%	9.25%
NEWTON PLAINTIFFS' ILLUSTRATIVE PLAN	48.36%	9.62% *

*Dial Plan 2 and the Reed Buskey Plan do not provide statistics for solely Hispanic population; the Newton Illustrative Plan provides specific statistics for the Hispanic population in SD 7, which constitutes 7.49%

DX 400; C 48; NPX 302

231. Senator Dial testified that he was aware of the large minority population growth in Madison County and that there was sufficient minority population to create a second black majority House district. Vol. I, R. 126, L. 12-17. Although Senator Dial testified that he wanted to create as many black districts as possible, Vol. I, R. 28, he did not consider the creation of a minority district in Madison County because it would necessitate placing two incumbent Senators in the same district. He could not name which two Senators might have to be combined, and he did not make any inquiry into Senators' addresses, although that information was readily available, Vol. III, R. 118, L. 22-25. He testified that he simply considered it impossible. Vol. I, R. 123, L. 8; R. 124, L. 23; Vol. I, R. 125, L. 12; R. 126, L. 9. On the same assumption, he gave no consideration to the districts proposed in the Sanders and Reed-Buskey plans; he didn't look that far. *Id.*

232. In fact, only two senators, Holtzclaw and Sanford, reside in Madison County and there would be no need to combine them in a minority opportunity, crossover or influence district: Senator Holtzclaw resides at the western edge of the county, outside either minority House district and outside any proposed minority district or crossover district. APX 28, 29; C-48.

Senate District 11

233. Under the 2001 plan, Senate district 11 included all of Talladega and Coosa Counties and portions of Calhoun and Elmore Counties and was under-populated by 11,453 persons. NPX 340; DX 477. District 22 was a crossover district in which minority voters dependably had been able, in coalition with an exceptional number of white voters, to elect candidates of their choice. NPX 324 at 18-19 (Table 6). Senate district 11 included the cohesive minority population of majority-black House district 32, which formed a community of interest, and other areas of substantial black population. APX 75 at 131-132; NPX 324 at ¶ 31.

234. The enacted Senate plan reduces the non-white voting age population (VAP) in this district from 34.2% to 15.3%. The Legislature dramatically reconfigured district 11, dividing the bulk among districts 12, 15, 25 and 30, and removed the core of the district so that the new district contains only 22 percent from his old district. NPX 323at ¶ 31. Senator Fielding subsequently changed political parties. *Id.*

235. As was the case with Senate districts 1 and 2, the reconfiguration of district 11 involved an unnecessary precinct split involving of equally-populated areas. In the case of Senate district 11, the Legislature removed a majority black portion of Talladega County and swapped it for a heavily white portion of Senate district 15. Under the 2001 plan, district 15 include the eastern portion of Shelby County, a rapidly growing white suburban area much different than the majority black area of Talladega County. Even with the black population from Talladega County, the black percentage in Senate district 15 is only 14.49 percent, far below the level necessary for black voters to influence the outcome of an election. DX 400; See also NPX 323 and NPX 324.

236. The mismatched county splits were contrary to the State's redistricting criteria and unnecessary to achieve population equality.

COUNTY SPLITS UNNECESSARY WITHIN ONE PERCENT DEVIATION WITHIN DIAL 2 PLAN

	Total	Black
Restore Shelby district 11 part to 15	24,832	3,530
Restore Talladega district 15 part to 11	23,875	12,228

DX 401.

237. With the exchange the Senate District 11 population (135,157) would be slightly below the State's one percent target, a simple transfer of population within the Jefferson County portion of now over-populated Senate District 15 without any additional county split. Senator Dial's

testimony that the swap between districts 11 and 15 was necessitated somehow by changes within the Jefferson County Senate districts clearly is inaccurate: the Shelby-Talladega swap is just that - an internal change unaffected by other districts. DX 476.

238. The legislature took further steps to dismember Senate district 11 as a crossover district. Again, these changes were entirely unnecessary, and flowed from changes within St, Clair County. St. Clair County is the home of Representative McClendon, who is now a candidate for Senate district 11, having decided to run after seeing "the demographics" of the district. While some changes were necessary, the core of Senate district 11 could have been restored within the framework of the Dial 2 Senate plan: the dismemberment was unnecessary.

MAINTAINING DISTRICT CONTOURS WITHIN DIAL 2 PLAN WITH RIPPLE EFFECT CONTAINED

RESTORE DISTRICT 11

Restore part of Talladega to district 11 from 12		11.319	1,933
Restore additional Calhoun part to district 11 from 12:		23,268	13,468[9]
Restore Talladega part to district 11 from district 17:		5,797	1,370
Restore Talladega part to district 11 from district 15:		23,875	12,228
Retain Senate 11 part of Talladega		41,300	10,523
		105,559	39,522 (37.44%)
NEW St. Clair part of 11		30,555	xxxxx
DIAL 2 TOTAL	136,114		

Dx 401,pp. 4-6.

239. Accordingly, the minimum possible black percentage of a thus restored district 11 (i.e., with zero black population from the new area of St. Clair County and the ideal district size) would be 29.04 percent, as compared to the Dial 2 plan black percentage of 14.96 percent.

[9] Calhoun portion of McClendon 3 House District 32. DX 404, p. DMc 432.

HOUSE DISTRICTS

House District 43

240. The Legislature drew House district 43 so as to include a small portion of Jefferson County that included only 224 residents, or less than 0.4 percent of the district's population. C-41, p. 85. Mr. Hinaman initially testified that the Jefferson County area was included in district 43 because the incumbent Representative for district 43 wanted to retain as much of her 2001 district as possible. APX 75 at 63-64.

241. On cross-examination at trial Mr. Hiniman admitted that the portion of Jefferson County included in district 43 was not in fact in district 43 under the 2001 plan. NPX 335; Vol. III, R. 165-167; Vol. III, R. 164, L. 6-13.

242. In drawing House District 43, Mr. Hiniman created a false "need" for the 224 Jefferson County residents by manipulating the way in which he splits precincts. As set forth below, without those 224 Jefferson County residents, House District 43 would be 1.18 percent under-populated.

Jefferson County Split by House District 43: False Necessity

		Population
House district 43		45,209
Jefferson part		224
Without Jefferson part		44,985
	Deviation:	-536 (-1.18%)

Mr. Hinaman, however, had split the Helena United Methodist Church in Shelby County among House Districts 15, 43 and 73 as set forth below:

Part of Helena UMC in 43	546
Part of Helena UMC in 15	2,105
Part of Helena UMC in 73	10,911

DX 405, pp. 86, 95, 154; DMc 435; DX 403, p. DMc 418; C-41, p.33.

243. With less trouble, Mr. Hinaman could instead added either a portion of Helena United Methodist Church Precinct from overpopulated House District 15 (+ 372 persons, + 0.82) or overpopulated from House District 73 (+415 persons, 0.91 deviation) to HD 43, and left the 224 Jefferson County residents in adjacent House District 48 in Jefferson County (population 45,592 + 224=45,816 +295 (.65%).

244. The process of splitting voting precincts takes time and attention: it is an intentional process. The person drawing the district line must make considered decisions (1) that it is necessary to divide a given precinct and (2) precisely how to divide it. APX 75 at 110-112.

245. With 9,045 residents, Greene County has the smallest population of any county in Alabama. NPX 328. Over 80 percent of the residents of Greene County are black. *Id.* Under the 2002 plan, Greene County was entirely contained within House district 71. DX 411. Under the State's 2012 plan, Greene County is split between House districts 71, 72 and 61. DX 479;C-41 at 118-121, 146-153. House district 61 is a heavily white (18.9% black) district dominated by suburban and rural areas of Tuscaloosa County that have disparate interests from those of Greene County. C-41 at 118-121. The placement of a portion of Greene County in House district 61 gives the white voters of district 61 a veto over local legislation affecting Greene County.

246. The split of Greene County and the community of interest it represented was made at the request of the white incumbent Representative from House district 61, Alan Harper, who owns property in that portion of Greene County and may retire to that property. Representative Harper currently is a resident of Northport, Alabama, NPX 336, . will not reach the standard retirement age (65) until November 2022. NPX 337. Represent. Alan Harper Information. Represent. Alan

Harper changed his affiliation from the Democratic Party to the Republican Party in February 2012, during the redistricting process. NPX 338

247. Mr. Hiniman created a false "need" for the Green County split. Only 12 people live in the Greene County portion of House district 61. C-41, p. 118.

Greene County Split by House District 61: False Necessity

		Population
House district 61		45,071
Greene part		12
Without Greene part		45,059
	Deviation:	-462(-1.01%)

248. Mr. Hinaman split two Pickens County voting precincts between House District 61 and adjacent House District 71 (45,346 total, - 173 persons, - 0.38%): the Carrollton 4 Service Center and the Aliceville 2 National Guard Armory. A shift of from 12 to 279 persons from either precinct or a combination of precincts from House District 71 to House District 61 would have left both districts within the two percent deviation range. DX 405, p. DMc 421; C-41, p. 120

House District 68

249. House district 68 was over 62 percent black and under-populated by 9,287 persons within its 2001 boundaries; however, the district's minority population (23,249) was large enough to comprise over 50 percent of the ideal district size and adding any available population would result in a black majority well over 50 percent and an effective opportunity district. DX 406, p. 6.

250. The 2012 plan altered district 68 so that it is 64.56 percent black. DX 403, p. 6. The district stretches from north to south approximately 140 miles as the crow flies from Interstate 65 in Baldwin County to the border of Hale County north of US 80. The district is elongated and irregular in shape, with an excrescence to the east to capture majority black areas of Conecuh

County. DX 479.

251. The boundaries of the district were determined by race: the district splits 37 voting precincts in six counties along racial lines. (Small majority black portions of two southern Conecuh County precincts with an aggregate 110 persons barely maintain contiguity.) Adjacent districts are either packed with excessive black population (Districts 69, 71 and 72) or, in the case of district 90 (34.65% black), situated so that an increase in the black percentage would give black voters a substantial voice in district elections. District 90 is oddly shaped and, like district 68, barely contiguous within Conecuh County. The district stretches approximately 130 miles as the crow flies from southwestern Conecuh County into Montgomery County. The district is irregular in shape, largely as a result of the manner in which the district avoids the predominantly black areas of Conecuh County. DX 403, p. 9; DX 479.

Dr. Arrington's Analysis

252. After a careful expert review of the evidence, Dr. Arrington concluded that the purpose of the enacted plans is to perpetuate or create a kind of "political apartheid" such as the Supreme Court rejected in *Shaw v. Reno*, 509 U.S. 630 (1993) and its progeny. NPX 323 at ¶ 29.

253. Dr. Arrington testified that through the House and Senate redistricting plans, the Legislature has created a stark racial division. He noted that almost all districts are either strongly non-white, or strongly white. The districts in the middle, that might be competitive for the parties or ability/non-packed districts for minority voters, are largely missing. NPX 323 at ¶ 56.

254. Dr. Arrington testified that in the current politics of Alabama, minority voters would have no influence over a legislator elected from a heavily white district: such a legislator almost certainly would have won without minority support because of extreme polarized voting, and would

be part of a party coalition with decided racist elements. NPX 323 at ¶ 61.

255. If the minority VAP in a district is increased from 10 percent to 20 percent in a district, this would probably not increase minority influence at all. In the same way, when a district minority concentration is increased from 55 percent to 75 percent, it does not necessarily enhance minority ability to elect at all. NPX 323 at ¶61.

256. Based on his review Dr. Arrington concluded that the all-white Republican super-majority in the legislature designed the districts to create a situation where the Democratic Party in the legislature would be all black. This has a number of partisan advantages for the Republicans. It cuts off an important route to higher office for politically ambitious whites forcing them to choose the Republican Party as the vehicle for their ambitions. And it creates the impression among white voters that the Democratic Party is a "Black Party," as opposed to a strongly integrated multi-racial/ethnic party. It also creates the impression that the Republican Party is not just a white party, but is The White Party, the natural home for all white voters. NPX 323 at ¶ 30.

257. Dr. Arrington testified that Republicans frequently asked white Democrats in the Legislature to switch parties, but they do not similarly recruit black Democrats. NPX 323 at ¶ 31; NPX 309A through 309P. Republican legislators have not been shy about stating their desire to eliminate all of the Democrats in the legislature except those elected from packed majority-minority districts. Part of this process has been to entice white Democrats to switch parties, while making no such entreaties to black Democrats. NPX 323 at ¶¶ 30-32. Represent. Joe Hubbard was told that he needed to switch from the Democratic Party to the Republican Party because, in the future, the Democratic Party would be virtually a black party. NPX 323 at ¶ 31. For example, Senator Ross, a black male, was never asked to switch parties. Vol. II, R. 124, L. 12-13, nor was Representative

Laura Hall. Vol. III, R. 32, L. 22- 25.

258. Speaker of the House Mike Hubbard "commissioned an in-depth study of voting patterns in various districts represented by white Democratic legislators across the state. We looked at past results in presidential elections, gubernatorial contests, and other statewide offices and pinpointed the areas that cast the most Republican ballots yet continued to send [white] Democratic lawmakers to Montgomery." NPX 323 at ¶ 32.

259. Senate President Pro Tem, Del Marsh, openly stated his intent to eliminate all of the white Democratic senators, which would have the effect of cementing white Republican control of the legislature, institutionalizing the minimization of black influence, and leaving the Democratic Party as a black-only party. NPX 323 at ¶32. Vol. I, R. 58, L. 13-19. In fact, Representative McClendon's reappointment notebook/file contains a list of names of legislators with each name designated by an "R" (for Republican), or "B" (for Black) and "WD" (for White Democrat). Vol. III, R. 254; DX 459, p. 1477-1479.

260. The Legislature enacted the House and Senate plans so as to place the Republican party in the same position that the Democratic party occupied in Alabama prior to the enfranchisement of minority voters: the Republicans would be both a white-only party and, for all practical purposes, the only party in the state. Without the ability of some white Democrats to win office and work in coalition with minority Democrats, the racial minority legislators become isolated in a political ghetto, permanently locked out of equal participation in the political process. NPX 323 at ¶ 33.

261. Dr. Arrington testified that the racial apartheid strategy was illustrated, among other places, in Senate district 11. NPX 323 at ¶¶ 29-31. Sen. Jerry Fielding, a Democrat, won election

in district 11 with overwhelming black support and with barely one third of white votes, NPX 324 at 18 (Table 6). Sen. Fielding opposed the enacted plans which reduced the non-white voting age population (VAP) in his district from 34.2% to 15.3% and thus made his district impossible for a Democratic candidate to win. NPX 323 at ¶ 31. The plan having passed, he changed parties. Senate district 11 contains only 22 percent from the 2001 district. This is a clear example of cracking by manipulating minority concentrations to dilute their influence and bar effective cross-racial coalitions. NPX 323 at ¶ 31.

262. Dr. Arrington cited the pattern of packing and cracking minority concentrations, "the basic strategy of a gerrymander." In Alabama minorities are the only geographically identifiable group consistently opposes Republican candidates and policies. The packing of minority population into a quota of super-majority districts guarantees the election of minority candidates, but it undermines both the opportunity to create a fairer share of districts and also the opportunity to pull haul and trade to create cross-racial alliances and coalitions that is the real goal of the Voting Rights Act - not intended to protect incumbents who happen to be of a minority race. NPX 323 at ¶¶ 35-36.

Direct Evidence of Racial Animus

263. In *Central Alabama Fair Housing Center et al. v. Magee*,, 835 F.Supp.2d 1165 (M.D. Ala. 2011), the court found intentional discrimination by the Republican majority in the legislature against Hispanic persons including Hispanic citizens, and that the treatment of Latinos was driven by animus against Latinos in general.

264. In *United States v. McGregor*, 824 F.Supp.2d 1339 (M.D. Ala, 2011) the court found that powerful members of the Republican majority in the legislature acted specifically and intentionally to minimize or cancel out the ability of black voters to participate equally in the

political process by reducing African-American voter turnout. The legislators' motives were "rooted in naked political ambition and pure racial bias" and a desire to "increase Republican political fortunes by reducing African-American voter turnout" which they openly expressed: "Just keep in mind if [a pro-gambling] bill passes and we have a referendum in November, every black in this state will be bused to the polls. And that ain't gonna help….Every black, every illiterate" would be "bused on HUD financed buses." The white Republican politicians "did not target Democrats generally in their opposition to SB380; they plainly singled out African-Americans for mockery and racist abuse."

265. In addition to persons named in the *McGregor* decision as having expressing such racial intent, other powerful Republican legislators were engaged in the referenced conversations, including Senator Larry Dixon of Montgomery, Chair of the Senate Energy and Natural Resources Committee; Judiciary Committee Co-Chair and Local Legislation 3 Chair Ben Brooks of Mobile; Senate Governmental Affairs Chair and Rules Committee Vice-Chair Jimmy Holley of the "Wiregrass" region of Alabama; Senate Finance and Taxation Education Chair Trip Pittman of Baldwin County; and Monica Cooper, a Republican Senate Caucus staff member. See also NPX 323 at ¶ 107.

266. Dr. Arrington noted that none of the other white Republican leaders involved in these and other recorded calls made objections to the racial comments, and after the public release of the tape recordings, there was no response from the Republican leadership in the legislature. The State Republican Chair defended Senator Beason as late as June 2011. Senator Beason has never offered a public apology for his recorded racist comments. Senate President Pro Tem, Del Marsh, retained Senator Beason as the Chair of the powerful Rules Committee until 15 November 2011. The Republican Governor subsequently rewarded Lewis with a state court judgeship. NPX 323 at ¶ 108.

267. The conversations of white Republican legislators "represent compelling evidence that political exclusion through racism remains a real and enduring problem in this State" and " that such sentiments remain regrettably entrenched in the high echelons of state government." And the McGregor court found that The Court noted that "In an environment characterized by racially polarized voting, politicians can predictably manipulate elections--either by drawing districts or setting an issue for a referendum-to "minimize or cancel out [minority voters'] ability to elect their preferred candidates," citing *Thornburg v. Gingles*, 478 U.S. 30, 48 (1986). Id.

268. Representative Jay Love is a white Republican from Montgomery County, where the black population continues to expand into formerly white neighborhoods. During the special legislative session on redistricting Represent. Love stated that he opposed a proposal for his (Love's) district because the 69 percent white majority would fall below 60% white within the decade and that would hurt his chances to win reelection. Vol. III, R. 42, L. 2-25; R. 43, L. 1-7; NPX 323 at ¶ 54.

CONCLUSIONS OF LAW

The remaining issues in this case arise under the prohibition of Section 2 of the Voting Rights Act, 42 U.S.C. 1973, and under the 14th and 15th amendments. Section 2 prohibits any voting practice or procedure that results in the denial of an equal opportunity to participate in the political process and to elect representatives of their choice to any group because of its race, color or membership in a language minority group. 42 U.S.C 1973.[10] The Constitution prohibits such denials

[10] For the purposes of this case, the "membership in a minority language group" provision is redundant to "race or color." As noted in the House Report on the 1975 Voting Rights Act amendments that added the language minority language, "[t]he Fourteenth Amendment is added as a constitutional basis for these voting rights amendments. The Department of Justice and the United States Commission on Civil Rights have both expressed the position that all persons defined in this title as `language minorities' are members of a `race or color' group protected under the Fifteenth Amendment. However, the enactment of the expansion amendments under the authority of the Fourteenth as well as the Fifteenth Amendment, would doubly insure the constitutional basis for the Act." H.R.Rep. No.94-196, 94th Cong., 1st Sess. 41(1975). See *US v. Uvalde County Consolidated ISD*, 625 F2d 547, 552 5th City 1980 fn. 9

when undertaken with a discriminatory purpose, as does Section 2. *Mobile v. Bolden*, 446 U.S. 55 (1980).

As this case raises both statutory and constitutional claims, we address the statutory claim first.

A. The Proposed House and Senate Plans Would Result in a Denial to Minority Voters of an Equal Opportunity to Participate in the Political Process and Elect Representatives of Their Choice

A violation of the discriminatory results prong of Section 2 in the instant electoral system context exists where "a bloc voting majority must usually be able to defeat candidates supported by a politically cohesive, geographically insular minority group." *Thornburg v. Gingles*, 478 U.S. 30, 49 (1986). That is, a violation of Section 2 occurs where (1) the minority community votes cohesively; (2) "the white majority votes sufficiently as a bloc to enable it ... usually to defeat the minority's preferred candidate"; and (3) the minority population is "sufficiently large and geographically compact to constitute a majority in a single-member district". Id. at 50; See also *Bartlett v. Strickland*, 556 U.S. 1, 12-14 (2009). Once these threshold elements are present, the Court moves to determine whether under of the totality of the circumstances "as a result of the challenged practice or structure, plaintiffs do not have an equal opportunity to participate in the political processes and to elect candidates of their choice." *Gingles*, 478 U.S. at 44.

1. Voting in Alabama is Racially Polarized

The first *Gingles* element is undisputed. Defendants have admitted that elections in Alabama remain racially polarized in general elections,[11] and the defendants' own expert witness, Dr. Brunell,

[11] Review of general election returns is sufficient to establish racial polarization. As Dr. Lichtman noted, voter turnout in Democratic primary elections often is overwhelmingly black, as the Republican primary attracts many white

testified that he has "no doubt" that racial bloc voting obtains in Alabama elections. Dr. Allan Lichtman, Distinguished Professor of History at the American University and a highly regarded expert in quantitative methodology and racially polarized voting, provided a detailed report based on statewide contests and legislative contests using ecological regression analysis which he confirmed using "scattergrams" and exit polling data. Dr. Lichtman's report fully and convincingly establishes the continuing pattern of uniform racial bloc voting across the State of Alabama.

Dr. Lichtman's report also describes the extent and significance of polarization in terms of legislative redistricting, which is highly important in this case. Dr. Lichtman determined that black participation in elections, in terms of voter registration and turnout today, in Alabama is at least comparable and likely above white participation. Given the levels of polarization and participation in Alabama, Dr. Lichtman determined that black voters had an excellent opportunity to elect candidates of their choice in legislative districts that were above 45 percent black in voting age population, and that there was no need to construct super-majority districts to ensure an opportunity for black voters to elect candidates of their choice. Dr. Arrington supported Dr. Lichtman's analysis,

---

voters. And, as the court in *Texas v. United States*, 887 F. Supp. 2d 133, 174-175 (D.D.C. 2012) noted, "Courts regularly consider general election data to demonstrate voter cohesion in traditional majority-minority districts, without any indication that such a showing is insufficient without evidence of voter cohesion in the primary as well. *See, e.g., Thornburg v. Gingles,* 478 U.S. 30, 58–59, 106 S.Ct. 2752, 92 L.Ed.2d 25 (1986); *Old Person v. Cooney,* 230 F.3d 1113, 1121 (9th Cir.2000). Additionally, requiring cohesion in the primary election distorts the role of the primary. Although minority groups sometimes coalesce around a candidate at that point in time, minority voters, like any other voters, use the primary to help develop their preferences. We refuse to penalize minority voters for acting like other groups in a political party who do not coalesce around a candidate until the race is on for the general election. *See Alamance Cnty.,* 99 F.3d at 614–16 ("We reject the proposition that success of a minority-preferred candidate in a general election is entitled to less weight when a candidate with far greater minority support was defeated in the primary.... [S]uch a view is grounded in the belief that minority voters essentially take their marbles and go home whenever the candidate whom they prefer most in the primary does not prevail, a belief about minority voters that we do not share." (citation and internal quotation marks omitted)). "Pull, haul, and trade" describes the task of minority and majority voters alike, and candidates may be minority "candidates of choice" even if they do not "represent perfection to every minority voter." *De Grandy,* 512 U.S. at 1020, 114 S.Ct. 2647.

and stressed that the white majority districts in the State's House and Senate plans, almost all with super-majorities, offered no opportunity even for minority influence.

Dr. Lichtman also analyzed voting patterns in each of the illustrative districts described below. Based on a localized inquiry into the results of elections within those counties, Dr, Lichtman found that each of the illustrative districts would be effective and provide an excellent opportunity for black and other minority voters to elect legislators of their choice: the minority voters' candidate of choice won in simulated elections in each of the Newton plaintiffs' illustrative districts.[12]

2. The Alabama Minority Population is Concentrated so that Additional Compact Majority-Minority Districts Can be Drawn

a. House

The Newton plaintiffs have provided illustrative plans for Jefferson and Montgomery Counties, each of which provides for one additional House district with a black majority of voting age population. The districts would thus increase the share of opportunity districts from 27 (24.76%) to 29 (27.61%). The ALBC plaintiffs also have presented an illustrative district for Jefferson County. The illustrative plans are not proposed for adoption, but simply establish the possibility that additional districts can be drawn in which the racial voting age population exceeds 50 percent of the total population. None of the illustrative districts necessitate dismantling or impairing any other majority-minority district.

Both the Montgomery County and Jefferson County illustrative House districts are based within the compact urban cluster of majority-black districts, which comprise both the 2001 district boundaries and the boundaries used in the defendants' plans. Neither illustrative plan intrudes on

[12] Dr. Lichtman did not specifically examine the ALBC illustrative district in Jefferson County. Given the black majority in the population, we conclude that it, too, satisfies the "opportunity to elect" standard of Section 2.

the viability of any other majority-black district.[13] In Jefferson County this is true of both the Newton and ALBC districts. Each district within the affected area is compact and contiguous. No district raises concerns under *Shaw v. Reno,* 509 U.S. 630 (1993). The illustrative plans are entirely consistent with traditional redistricting criteria. The illustrative plans, unlike those of the State, avoid any unnecessary division of any county boundary and there is no argument that they divide communities of interest.

The State plans avoid these additional districts by packing and cracking minority population into black majority districts in Jefferson and Montgomery Counties and by fragmenting or "cracking" the minority population in Madison County.

The illustrative Senate district in Madison County has a black plurality of voting age population and the black-Hispanic coalition comprises over 50 percent of the voting age populations. There is a black plurality, with black voters and Latino voters having a commonality of interest and are politically cohesive. Defendants have offered no evidence of any absence of cohesion, and the evidence presented in this case strongly supports a finding that black, Hispanic and Native-American voters have similar interests and vote together. Dr. Lichtman determined that this illustrative district would provide an opportunity for black voters to elect a candidate of their choice.[14] The illustrative district would add one minority opportunity district in the Senate and increase the minority share from eight districts (22.86%) to nine (25.00%).

---

[13] The State's House plan splits Montgomery County and diverts a majority-black area to rural district 69. The Newton plaintiffs established that there are ample alternative black concentrations available to replace the diverted Montgomery population district 69, including in Butler County, and maintain even an unnecessary black super-majority The Reed-Buskey plan also creates majority black districts west of Montgomery, without including any Montgomery County population.

[14] Due to statistical constraints, Dr. Lichtman determined polarized voting based on the black and non-black population. The Latino, MOWA and other non-black minority support for the black candidates thus is included in what appears to be the white support, and this automatically is factored into his election analysis.

The Madison County district achieves a minority voting age majority by combining two different groups, black and Hispanic voters. The testimony establishes that both groups have increased their share of the area's population since 2010, as minorities continue to move into the area and whites leave. The Supreme Court has not had the occasion to directly address the issue of whether a district in which a coalition of minorities forms a majority of voting age population satisfies the Section 2 requirement. *Bartlett v. Strickland*, 556 U.S. at 13-14.[15] A large majority of lower courts, however, including the Eleventh, Fifth, and Second Circuits, have allowed minority group coalitions to satisfy the first *Gingle*s prerequisite. See, e.g., *Campos v. City of Baytown*, 840 F.2d 1240, 1244 (5th Cir. 1988) (Fifth Circuit allowed African-Americans and Latinos to be combined for purposes of satisfying the first *Gingles* prerequisite so long as the groups could show that they were politically cohesive); *Concerned Citizens v. Hardee County Board.*, 906 F.2d 524, 526-27 (1990) (in which the Eleventh Circuit stated:"Two minority groups … may be a single section 2 minority if they can establish that they behave in a politically cohesive manner"); and *Bridgeport Coalition for Fair Representation v. City of Bridgeport*, 26 F.3d 271,276 (2d Cir. 1994), vacated and remanded on other grounds, 512 U.S. 1283, 115 S. Ct. 35, 129 L. Ed. 2d 931 (1994) (Second Circuit combined African-Americans and Latinos for purposes of satisfying the first *Gingles* prerequisite).[16] These cases all are consistent with Congress' finding that the Voting Rights Act

[15] We have very different facts here: "minorities make up more than 50 percent of the voting-age population in the relevant geographic area," *Bartlett v. Stickland* ,556 U.S. at 18, as compared to the 39 percent minority in Bartlett: and, as demonstrated by Dr. Lichtman here, even the black population alone has a clear voting age plurality, that in Madison County is sufficient to provide an "opportunity to elect."

[16] These cases are hardly alone. See, e.g., *LULAC Council No. 4434 v. Clements*, 999 F.2d 831, 864 (5th Cir. 1993) (rehearing en banc), cert. denied 114 S Ct 878 (1994)("[i]f blacks and Hispanics vote cohesively, they are legally a single minority group"); *Concerned Citizens of Hardee County v. Hardee County Bd. of Comm'rs,* 906 F.2d 524 (11th Cir. 1990); *Overton v. City of Austin*, 871 F.2d 529, 538 (5th Cir. 1989); *Brewer v Ham*, 876 F.2d 448, 453 (5th Cir 1989)("minority groups may be aggregated for purposes of asserting a Section 2 violation");*Campos v. City of Baytown*, 840 F.2d 1240, 1244-45 (5th Cir. 1988) ("a minority group [in this case a coalition] is politically cohesive if it votes together"), reh'g denied, 849 F.2d 943, cert denied, 492 U.S. 905 (1989); *LULAC Council No.*

protects minorities' ability to elect candidates of choice either "directly or coalesced with other voters," (H.R. REPRESENT. No. 109-478, at 71), and with the Supreme Court's holding that the Voting Rights Act should be "interpreted ... in a manner which affords it 'the broadest possible scope' in combating racial discrimination." *Allen v. State Board. of Elections*, 393 U.S. 544, 565 (1969). The evidence of unity and coalition among black and Hispanic voters in Alabama is strong. Any differences have been erased by the Legislature's passage of H.B. 56, a bill that is perceived as the most hostile in the United States toward immigrants, and especially Hispanic immigrants. This Court received compelling testimony that throughout the State and particularly in Madison County, with a high Hispanic citizenship rate and a prior history of active coalition prior to the passage of H.B. 56, the two groups have built a strong alliance, fostered by the perception of a common opponent and by the echoes of the past official mistreatment of minorities in Alabama.

3. The House and Senate Plans Result in Over-Representation of the White Population and Under-Representation of the Minority Population of Alabama to the Disadvantage of Minority Voters.

The plans substantially over-represent the declining share that white voters now comprise of the Alabama population. The most recent census data shows that the white non-Hispanic population comprises just over two thirds of the Alabama population, but the Legislature has locked in 74 percent of House and 77 percent of Senate districts for white voters. Minority voters are substantially and unnecessarily under-represented.

The House and Senate plans, moreover, lock in that disparity for the foreseeable future, even as the white non-Hispanic share of the population declines. As Dr. Arrington discusses, the plans are

---

4386 v. Midland ISD, 812 F.2d 1494, 1501-2 (5th Cir. 1987), vacated on other grounds, 829 F.2d 546 (5th Cir. 1987) (en banc); *France v. Pataki*, 71F.Supp. 2d 317, 27 (S.D.N.Y .1999)*; Latino Political Action Committee v. City of Boston*, 609 F.Supp. 739, 746 .C.Mass.1985) aff'd, 784 F.2d 409 (1st Cir.1986).

startlingly devoid of "swing" districts; meaning those with a sufficient racial mix in population so that they might change hands as political winds shift and demographic changes occur. For example, Representative Love's district was openly configured to protect against demographic changes he expected. The plans thus use white super-majority districts to lock in a white super-majority in the Legislature. This can utterly exclude and ignore the black legislators and their remaining white allies, as was indeed done during the redistricting process itself. On the facts of this case, the black-Hispanic coalition satisfies the compactness requirement of Section 2. *Thornburg v. Gingles*, 478 U.S. 30, 49 (1986).

4. The Totality of the Circumstance Establishes a Violation of Section 2 by both the House and Senate Plans

It is undisputed that elections in Alabama are polarized along racial lines. The facts available to the Court demonstrate, even without the benefit of the inferences to which plaintiffs are entitled in the summary judgment setting, that the minority population is situated so that additional majority-minority districts can be drawn. The facts further demonstrate the other elements of a Section 2 claim.

It also is undisputed that black citizens of Alabama have been subject to a long history of racial discrimination in voting and other areas, and it is all too clear that the same racial-ethnic animus has greeted the more recent Latino population of Alabama.[17] In addition, it is undisputed that

[17] Rather than set forth facts that refute plaintiffs' evidence that tend to establish the legal elements of their Section 2 results claim, the State of Alabama has taken the position that the State of Alabama is not responsible for conditions fostered by actions of the State of Alabama in its long support of racial segregation and White Supremacy. See Doc. No. 59 at 4, 5, 6, and 7. Such an argument has little if anything to do with the Section 5 elements. *Thornburgh v Gingles, supra.* The State seems to confuse itself with the Republican Party, and suggests the Republican legislators are not responsible for the actions the State took when many of them were Democrats. *Id.* at 6. In the same vein, the packing of minority districts is not their fault because the Democrats did the same sort of thing in a different time, under much different circumstances, and with a misunderstanding of the level of minority population necessary to allow minority voters equal access to the political process. *Id.* at 6, 7-8,12. That earlier legislatures enacted "dummymanders" in no way excuses a knowing racial gerrymander today.

minority citizens of Alabama suffer from the effects of discrimination in areas such as education, employment and health with their concomitant effects on the ability to finance campaigns. And by not only freezing the under-representation of minorities in the Alabama House and Senate for the foreseeable future, they also leave the white majority free to completely ignore them, the House and Senate plans deprive minority voters not only of equal representation but of any realistic opportunity to "pull, haul and trade" either within the legislative districts or within the Legislature itself. *Johnson v. DeGrandy*, 512 U.S. 997,1020 (1994).

Senator Irons, Senator Ross and Representative Hall testified concerning the unprecedented use of cloture to cut off debate in the Legislature since the 2010 elections, including 43 times in 2011 alone, more than in the entire prior years of service of those members combined. Senator Ross and Representative Hall described the astounding violation of Senate rules and regular order in the lightning-fast passage of the Accountability Act, a substantial reform of the State's education system. Senator Ross well might feel that he is Ralph Ellison's "Invisible Man," present but ignored. The evidence satisfies plaintiffs' burdens under the Section 2 totality of circumstances test. *Thornburg v. Gingles*, 478 U.S. 30, 49 (1986); *Bartlett v. Strickland*, 556 U.S. 1 (2009).

B. The State Relies on a Section 5 Standard that is Inapplicable in a Section 2 Case and Misinterprets the Section 5 Standard

The State's approach to the results prong of Section 2 is singularly divorced from the legal elements of a Section 2 claim. Indeed, the facts set forth above indicate that the State did not even consider compliance with Section 2, and counsel for the State represented to the Court that

> The interests that the state believes are important to consider are the need to comply with Section 5 of the Voting Rights Act. … Second, the Legislature chose to go with an overall population deviation of plus minus 1 percent.

Vol. I, p. 8 L. 24-25, page p L. 1; page 9, L. 17-18. Instead of addressing the Section 2 requirement, the State sedulously focuses on a claim that their plans satisfy the requirements of Section 5 of the Voting Rights Act.

In this the State misfires. Section 5 and Section 2 have entirely different standards. The congressionally designated Section 5 forum, the United States District Court for the District of Columbia, underlined the difference between Section 5 and Section 2 early in the State's redistricting process. An "opportunity" to elect is at the core of Section 2 of the Voting Rights Act, but Section 5 asks a very different question:

> Section 2 is violated upon a showing that minorities "have less opportunity than other members of the electorate to ... elect representatives of their choice.…. A Section 5 claim requires a determination of how and where minority citizens' ability to elect is currently present in a covered jurisdiction and how it will manifest itself in a proposed plan. This requires identifying districts in which minority citizens enjoy an existing ability to elect and comparing the number of such districts in the benchmark to the number of such districts in a proposed plan to measure the proposed plan's effect on minority citizens' voting ability.

Texas v. United States, 831 F.Supp.2d 244, 261-262 (2011). This was not news. The Supreme Court has made the difference between the two statutes abundantly plain many times, as in *Bossier Parish v. Reno*, 520 U.S. 471 (1998), where the Supreme Court emphatically rejected the intermingling of Sections and Section 5. ("[W]e have consistently understood these sections to combat different evils and, accordingly, to impose very different duties upon the States.") The three-judge panel in *Major v. Treen*, 547 F. Supp. 325 (E.D. LA. 1983) held:

> Since the statutory standards of review under § 5 differ from those established by amended § 2, Report on S.1992 of the Senate Committee on the Judiciary, S.Rep. No. 97-417, 97th Cong., 2d Sess. (1982) at 68, 138-39, U.S.Code Cong. & Admin.News, p. 177, a grant or denial of preclearance pursuant to § 5 is not dispositive of a

> § 2 claim. Hence we conclude that the Assistant Attorney General's preclearance determination has no probative value in the instant case.

547 F. Supp. at 327, n. 1. To give one example of the differences in the two provisions, while the Attorney General simply counts the effective minority districts under the old plan and sees if there are more or fewer in the new plan, a Section 2 violation also flows where an emerging minority coalition in a district in one area (Laredo or Birmingham or Montgomery) is broken up and the district is moved to another area (Austin or Huntsville or Shelby County), even if the minority voters in the new district can elect a representative of their choice. *LULAC v. Perry*, 548 U.S. 399, 429 (2006) ("these conflicting concerns are resolved by allowing the State to use one majority-minority district to compensate for the absence of another only when the racial group in each area had a § 2 right and both could not be accommodated.")[18] The State gets it wrong, moreover, even within the context of its misidentified statute.

The administrative decision by the Attorney General and the standard under which that decision was made, through what the State characterizes as an "opaque process" Vol. I p. 9, L. 2, unreviewable by this Court, has no relevance to this case.[19]

Section 5 not only fails to offer defendants the support they imagine, defendants' interpretation of their Section 5 burden is utterly at odds with the statutory requirement. Section 5

---

[18] The State eliminated an extant black majority House district in Jefferson and an emerging majority House district Montgomery Counties even though the Section 2 right was present and could be accommodated.

[19] And at times the Attorney General got the answer wrong. See, e.g., *Blanding v. Dubose,* 454 U.S. 393 (1982) (minority citizens appealed successfully where Attorney General failed to appeal an adverse section 5 ruling); *Young v. Fordyce*, 520 U.S. 273, 281 (1997); *LULAC v. Perry*, 548 U.S. 399 (2006) (voting change precleared by the Attorney General found to be racially discriminatory); *Buskey v Oliver*, 565 F. Supp 1473 (M.D. Ala. 1983) (voting change precleared by the Attorney General found to be racially discriminatory); and *Major v Treen*, 574 F. Supp. 325 (E.D. La 1983) (three judge court) (voting change precleared by the Attorney General found to be racially discriminatory), to name a handful of cases. Most recently, the Attorney General did not oppose preclearance of the Texas Senate redistricting plan and aspects of the Texas congressional plan that were found to have been adopted with a racially discriminatory purpose. *Texas v. United States*, 887 F.Supp.2d 133 (2012).

courts have flatly rejected the concept of a bright line for minority effectiveness. There is no need to maintain the existing minority percentage in a district and no validity in a bright line "effective majority", such as the antiquated 65 percent figure the State offers. Indeed, while the issue of redistricting was being considered by the Legislature, the District of Columbia Court expressly rejected an effort of Texas to persuade

> this Court to rely solely on voter demographic data to identify majority-minority districts and to count only such districts as minority ability districts. This Court cannot oblige. We find that a simple voting-age population analysis cannot accurately measure minorities' ability to elect and, therefore, that Texas misjudged which districts offer its minority citizens the ability to elect their preferred candidates in both its benchmark and proposed Plans. Since Texas used the wrong standard, there are material facts in dispute about which districts are minority ability districts in the benchmark and proposed Plans.

Texas v. United States, 831 F. Supp.2d at 261. This decision from the authoritative Section 5 court was rendered, moreover, in December 2012, relatively early in the Legislature's development of its House and Senate redistricting plans, and with abundant time to shape those plans prior to their May 2012 unveiling.

Similarly, the Attorney General already had issued guidance on Section 5 and has rejected the standards used by the Legislature:

> In determining whether the ability to elect exists in the benchmark plan and whether it continues in the proposed plan, the Attorney General does not rely on any predetermined or fixed demographic percentages at any point in the assessment. Rather, in the Department's view, this determination requires a functional analysis of the electoral behavior within the particular jurisdiction or election district.

Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, 76 Federal Register, 27, 7470, at 7471. The Guidance specifically rejects packing: "[t]he Department also will consider

whether minorities are overconcentrated in one or more districts." *Id*. at 7472. And indeed, Assistant Attorney General Reynolds had interposed a Section 5 objection to Alabama redistricting involving packing in 1982.

If the clear statements of the District of Columbia Court and the Attorney General were insufficient, the Legislature had guidance from their own counsel, Mr. Walker, in describing the appropriate minority population level for majority-minority districts to satisfy Section 5:

> In the past it used to be 65 or 65 - above 65 . . . I'm pretty sure that if you were to send a district that was 65 percent black to the Department of Justice now, they would wonder why you were packing it, and they'll be looking for, my understanding is, much lower levels. I mean a black majority would certainly be above 50, but 55 may be extreme in some cases.

Arrington Report ¶ 40.

The testimony at trial also indicated that the Legislature did not substantively believe that it was necessary to maintain the current minority percentages in order to provide minority voters with an equal opportunity to elect candidates of their choice, or even to create a "safe" district. Senator Dial testified that Senate district 26 would perform with a black percentage 11 points lower than that in the Legislature's plan (64 percent, the black percentage if the district 26 population deficit were made up entirely of white persons versus the 75 percent black majority the Legislature adopted); and Mr. Hinaman grudgingly admitted as much.

The State also had before it recent electoral experience, in which black candidates had won legislative seats in districts with relatively narrow black majorities and, in House district 85, a mere black plurality. Similarly, House district 73, another black-plurality district not only had elected the minority candidate of choice in 2010, but had unseated a Republican incumbent in a decidedly Republican election. White-majority Jefferson County had given a majority of its votes to Obama

in 2008 amid extreme racially polarized voting. During the brief floor debates on the Senate plan, Senator Figures (district 33, Mobile County) pleaded to have more white voters placed in her super-majority district. Throughout the hearings, black legislators stressed their desire that the plan avoid packing and cracking minority concentrations.

Despite this chorus of advice and a mountain of legal authority, a record of electoral success by black legislative candidates at or below the simple total population majority level, and despite – or because of - its understanding of the electoral results of un-packing the black super-majority districts, the Legislature not only continued excessive black super-majorities but increased them by as much as 14 percentage points to 76.72 percent in the House (district 59, Jefferson County) and as much as nine percentage points to 71.64 percent in the Senate plan (district 33, Mobile County).

Defendants have offered no authority for their claim. Under the circumstances, it is impossible to take the state's claim that they were de-barred by Section 5 from lowering the black percentage in any district as anything other than a thinly veiled pretext for packing the minority population into a limited number of districts in order to avoid an immediate increase in the number of majority-minority districts, and to avoid creating the inevitable influence, crossover and, with likely population shifts, future majority minority districts that unpacking those districts would entail, as discussed within.

C. The Legislature Enacted the House and Senate Plans with a Racially Discriminatory Purpose to Minimize and Cancel out Black Political Strength

Section 2 of the Voting Rights Act, like the 14th and 15th Amendments, proscribes actions taken with a racially discriminatory purpose. *Mobile v. Bolden*, 446 U.S. 55 (1980). The State's motion does not directly address the claim that the plans were adopted with a racially discriminatory purpose through the applicable legal standards, but focuses on two arguments: that there was no

"packing" of minority districts, i.e., that the State's understanding of the requirements of the Voting Rights act was reasonable, and that the districts already had been packed by previous Democratic legislatures. As detailed above, the State's purported understanding of the requirements of the Voting Rights Act is not only wrong, but it is unsupported by anything other than bare assertion. The State has offered no studies of election results, no statements of persons familiar with the racial dynamics of elections in Alabama, and no case law in support of their claim. Indeed, the state has not even addressed the application of their theory to the Section 2 standard.

The State offers no support for their assertion that they can pack and crack minority population with the result of diluting minority voting strength because the State has done the same thing under Democratic control in previous rounds of redistricting.

First, as Dr. Arrington explained, the earlier Democratic redistricting plans were "dummymanders." Dummymanders are lines drawn with limited data based on the mistaken assumption that a 65 percent black majority was necessary for black voters to elect candidates of their choice. Events have proved that assumption wrong, and Dr. Arrington described how the earlier Democratic plans in fact diluted minority voting strength, albeit unwittingly. The Democratic line-drawers, having been hoist on their own petard, does not give license to the now fully informed Republican majority to knowingly hang them again.

Second, giving the State a license to re-enact the practices of the Alabama legislature under Democratic rule would unleash a host of demons. *See, e.g., Davis v. Schnell*, 81 F. Supp. 872 (S.D, Ala. 1949), *City of Pleasant Grove v. United States,* 479 U.S. 462; *Hunter v. Underwood,* 471 U.S. 222 (1985); *Gomillion v. Lightfoot,* 364 U.S. 339 (1960); *Harris v. Siegelman,* 695 F.Supp. 517 (M.D.Ala.1988); *Dillard v. Crenshaw County,* 640 F.Supp. 1347 (M.D.Ala.1986); *Buskey v. Oliver,*

565 F.Supp. 1473 (M.D.Ala.1983); *United States v. Alabama,* 252 F.Supp. 95 (M.D.Ala.1966) (Rives, J.); *Sims v. Baggett,* 247 F.Supp. 96 (M.D.Ala.1965) (per curiam); *United States v. Parker,* 236 F.Supp. 511 (M.D.Ala.1964) (Johnson, J.); *United States v. Penton,* 212 F.Supp. 193 (M.D.Ala.1962). There is, moreover, much more to the issue of racially discriminatory purpose.

1. The State's Approach to Racial Considerations Requires Strict Scrutiny of the House and Senate Plans

Some consideration of race in redistricting is inevitable. Racially segregated housing patterns and, in Alabama, voting patterns that correlate tightly with race make an awareness of race unavoidable. Also, the need to comply with the Voting Rights Act necessitates some awareness of and caution regarding the racial makeup of districts. But there are limits. "[S]o long as they do not subordinate traditional redistricting criteria to the use of race for its own sake or as a proxy, States may intentionally create majority-minority districts, and may otherwise take race into consideration, without coming under strict scrutiny….Only if traditional criteria are neglected *and* that neglect is predominantly due to the misuses of race does strict scrutiny apply." *Bush v. Vera*, 517 U.S. 952, 993 (1996). "[A] district drawn in order to satisfy § 2 must not subordinate traditional districting principles to race substantially more than is 'reasonably necessary' to avoid § 2 liability." *Id.* at 979.

Those responsible for redistricting uniformly testified that they did not look at the voting behavior in the majority black districts. The Legislature began redistricting by drawing in the black majority districts without the consultation of black members, and without regard to traditional redistricting criteria. They conducted no studies of the political participation levels of minority citizens in the various areas of the State. They did not examine the economic, employment or education characteristics of the black population in the various areas of Alabama; though they were aware of the distinctive characters of different cities. Despite the "disparate needs and interests" of

minority communities, *LULAC v. Perry*, 548 U.S. 399, 435 (2006), the State treated them as interchangeable.

The Legislature's redistricting database contained political as well as census data. This included precinct-level election returns from virtually every statewide election contest from 2002 to 2010. The Legislature used the political data when drawing the white-majority districts. They ignored their own election data when drawing the majority-black districts. The Legislature relied exclusively on race: they simply looked at the black population percentage in each of the 2001 districts and determined to match or exceed that percentage with no thought whatsoever to the needs, practices or potential of the affected communities. This much is uncontroverted. In fact, it is affirmatively urged by the State. In drawing the plans, the State treated black citizens as interchangeable. The State classified its citizens, as it had in the past, by race.

Racial classifications are subject to strict scrutiny. *Richmond v. Croson*, 488 U.S. 469, 493-494 (1989), and in the redistricting context they are damaging. As the Supreme Court held in *Shaw v. Reno*, 509 U.S. 630 (1993) and as Senator Ross in essence testified:

> The message that such districting sends to elected representatives is equally pernicious. When a district obviously is created solely to effectuate the perceived common interests of one racial group, elected officials are more likely to believe that their primary obligation is to represent only the members of that group, rather than their constituency as a whole. This is altogether antithetical to our system of representative democracy.

509 U.S. at 647-648.

The approach to race must be thoughtful. "The point of carefully examining the interest asserted by the government in support of a racial classification, and the evidence offered to show that the classification is needed, is precisely to distinguish legitimate from illegitimate uses of race in

governmental decision-making." *Adarand Constructors v. Pena*, 515 U.S. 200, 228 (1995). In Alabama, however, the Legislature essentially established a double quota. The Legislature set aside and placed a cap on the number of minority districts (27 House districts and eight Senate districts) that fell below the rising minority share of the State's population, *University of California Regents v. Bakke*, 438 U.S. 265 (1978). And the State placed a floor on the black population percentage in each district. At best the floor was established without regard for the need for continuing to segregate black voters in particular districts, but the weight of the evidence indicates that the Legislature, as a collection of politically alert individuals, was well aware that there was no need for a super-majority.

The packing and segregation of voters was accomplished, moreover, by a block-by-block manipulation of population. The Legislature's plans split an unnecessarily large number of voting precincts. Dr. Arrington, a Newton plaintiff expert witness who has impressive scholarly credentials and extensive hands-on experience in election administration, testified that in light of the financial cost of such precinct splits and the concomitant problems for voters and election administrators, avoiding precinct splits "is a kind of universal redistricting principle" standard. Dr Arrington noted that due to the absence of election results within the separated areas of split precincts, the division of a precinct along racial lines is a key indicator of a racial motivation in the split. The Legislature's plan splits hundreds of precincts, often in an overlapping and uncoordinated manner,[20] and does so repeatedly along racial lines.

[20] As noted above, the failure to coordinate House and Senate plan precinct splits in rural Monroe County left areas with a total population of as few as four (4) people who would have to be served by a separate accessible voting machine. See 42 US.C. 15481(a).

"The means that [Alabama] used to make its redistricting decisions provides further evidence of the importance of race." *Bush v. Vera,* 517 U.S. at 961. Mr. Hinaman's computer

> contained racial data at the block-by-block level, whereas other data, such as party registration and past voting statistics, were only available at the level of voter tabulation districts (which approximate election precincts). … By providing uniquely detailed racial data, [the system] enabled districters to make more intricate refinements on the basis of race than on the basis of other demographic information

Bush v. Vera, 961-962. And the House and Senate "availed themselves fully of that opportunity." *Id*. at 962.

Mr. Hinaman, the Legislature's map-drawer, acknowledged that he had to click on each individual block in each individual precinct that he split, and that he knew the racial composition of each block. The evidence set forth above shows that the House and Senate plans are replete with examples of precincts Mr. Hinaman split along racial lines, with the white voters placed in a super-majority white district and the black voters placed in a super-majority black district. Each click was a choice, and the evidence establishes that the choice was all too often based entirely on race.

One stark example involves Senate districts 25 and 26 in Montgomery County. The combined area of the two districts as redrawn is 271,943 persons of whom 123,622 are white and 133,437 are black. District 26 needed to add nearly 16,000 persons to reach the ideal district population. By splitting seven precincts along racial lines, and by a variety of additional manipulations that shifted relatively white areas from 26 to 25 and black areas from 25 to 26, the net change in the district population was to add

Total	White	Black	Other
+15,785	+36	+14,806	+941

Thus, only 0.02 percent of the population of the net area added to Senate district is white. This compares unfavorably to the 1.00 percent of the black voters who were left in the City of Tuskegee after the racial gerrymander in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). There and here the conclusion is "irresistible, tantamount for all practical purposes to a mathematical demonstration, that the legislation is solely concerned with segregating white and [black] voters." 364 U.S. at 341.

Unlike the *Shaw*, *Bush* and *Miller* cases, the Alabama House and Senate districts were not drawn to specially favor minority voters: Alabama reverted to *Gomillion*. As Justice Brennan noted in his partial concurrence in *United Jewish Organizations v. Carey,* 430 U. S. 144, 172 (1977), "a purportedly preferential race assignment may in fact disguise a policy that perpetuates disadvantageous treatment of the plan's supposed beneficiaries". Thus, the Alabama Legislature and, *contra,* the Supreme Court:

> Classifications of citizens solely on the basis of race "are by their very nature odious to a free people whose institutions are founded upon the doctrine of equality." They threaten to stigmatize individuals by reason of their membership in a racial group and to incite racial hostility. Accordingly, we have held that the Fourteenth Amendment requires state legislation that expressly distinguishes among citizens because of their race to be narrowly tailored to further a compelling governmental interest.

Shaw v. Reno, 509 U.S. at 643 (internal citations omitted). As Dr. Arrington explains, the redistricting plans go so far as to create a sort of "racial apartheid" across the State of Alabama. With the rarest of exceptions, House and Senate districts have racial super-majorities. In some districts the super-majority is black, in others it is white. The State has drawn black and white voters in separate legislative districts and has assigned them to separate polling places solely on the basis of their race.

Accordingly, the plans are subject to strict scrutiny. *Bush v. Vera, supra.* The state has done nothing to establish that they were "narrowly tailored to remedy the effects of past discrimination", *Richmond v. Croson* 488 U.S. at 508, or to serve any compelling governmental interest. The State has offered no credible non-racial justification for its choice of the line drawn between these two districts. The State cannot be said to have packed districts and applied a strict, percentage-based quota on black population in order to comply with the Voting Rights Act, especially when its counsel, the Department of Justice and the District of Columbia Court told it to avoid such packing. In any event, compliance with the Voting Rights Act does not justify such racial stereotyping as that in which the Legislature so frankly engaged. *Bush v. Vera* 517 U.S. 952 (1996). The State cannot claim a partisan basis for drawing the majority black districts because by their own admission, in these districts, as opposed the white districts, the State ignored – or assumed -- the partisanship of the voters and looked *only* at race.

The resulting boundaries of Senate districts 25 and 26 are irregular and oddly shaped. Within Montgomery County, the boundaries reflect a block by block selection of population based exclusively on race. Had the districts been drawn on more compact lines and in a race-neutral manner, the population would have been more balanced. The lines were not drawn to please an incumbent. Even if 16,000 white persons had been added to district 26, it would have been a super-abundantly "safe" district, and incumbent Senator Quinton Ross, who is black, testified that he would have been happy with 50, 55 or 60 percent black population. Here, as elsewhere in the plans, other legitimate districting principles were "subordinated "to race. *Miller v. Johnson,* 515 U.S. 900, 916 (1995).

Senate district 26 is hardly alone. The State's plan shows similar race-based line-drawing throughout Alabama; especially in Senate districts 1, 7, 11, 12, 22, the remarkably elongated House district 68, as well as multiple districts in Jefferson and Montgomery Counties and in the Black Belt region.

2. The Arlington Heights Analysis Demonstrates that the Legislature Drew New Districts with a Racially Discriminatory Purpose

Not only was the State's consideration of race unconstitutionally excessive, it was malignant. The standards for determining the existence *vel non* of intentional racial discrimination are set forth in *Arlington Heights v. Metropolitan Housing Development Corp*., 429 U. S. 252, 265-266 (1977). The "important starting point" for assessing whether or not the proposed plan was adopted free of a discriminatory purpose is "the impact of the official action whether it bears more heavily on one race than another." Id. Other factors besides impact relevant to a purpose inquiry under *Arlington Heights* include: the historical background of the decision, particularly if it reveals a series of decisions undertaken with discriminatory intent; the sequence of events leading up to the decision; whether the challenged decision departs, either procedurally or substantively, from the normal practice; and contemporaneous statements and viewpoints held by the decision-makers. *Id*. at 266-68.

The constitutional and statutory protection against intentional racial discrimination extends to minorities outside majority-minority areas and to crossover districts. Crossover districts are those "large enough to elect the candidate of its choice with help from voters who are members of the majority and who 'crossover' to support the minority's preferred candidate." *Bartlett*, 556 U.S. at 13. Senate districts 11 and 22 and House district 73 are examples. While denying such districts the protection of the results prong of Section 2, the Supreme Court in *Bartlett v. Strickland* expressly

recognizes that a state's intentional elimination of an existing crossover district "would raise serious questions under both the Fourteenth and Fifteenth Amendments." 556 U.S. at 24. The *Arlington Heights* framework shows, moreover, that racial discrimination motivated the elimination of crossover districts as well as the elimination of House district 53, and the failure to create majority minority districts in Montgomery and Madison Counties that would have flowed from a non-discriminatory application of traditional redistricting criteria.

In arguing the absence of such purpose in the State's passage of the State House and Senate plans, the State relies on conclusory assertions that the Legislature was motivated by its non-credible view of the requirements of Section 5 and its peculiar view of *Larios v.Cox*, 300 F.Supp.2d 1320 (N.D. GA. 2004) and, therefore, not by any invidious unconstitutional purpose.

The State addresses racial purpose only obliquely, primarily by pointing at its actions when Democrats were in the majority: they packed districts in a "dummymander" so we can pack districts, even though crucial facts now have come to light. What is noticeably absent from the State's approach to the discriminatory purpose issue is any discussion of what the Supreme Court itself has set down as guidance for assessing discriminatory purpose in the context of redistricting. As the Court has stated, "assessing a jurisdiction's motivation in enacting voting changes is a complex task requiring a 'sensitive inquiry into such circumstantial and direct evidence as may be available." *Arlington Heights*, 429 U.S. at 266.

In addition, intentional discrimination encompasses actions that purposefully discriminate to achieve an otherwise permissible aim. See *Garza v. County of Los Angeles*, 918 F.2d 763, 778 n.1 (9th Cir. 1990) (Kozinski J., concurring in part and dissenting in part) (describing purposeful housing discrimination motivated by a desire to maintain property values). Utilizing the *Arlington Heights*

analysis in this case a racially discriminatory purpose pervaded the construction of the State's House and Senate districts, as is amply demonstrated both by the reports of the Newton plaintiffs' expert, Dr. Arrington, as well as by the declarations and other exhibits appended to this Response.

a. The Impact of the Decision Points to a Racially Discriminatory Purpose in the Enactment of the Plans

The impact of the redistricting plans fall more heavily on minorities, who now comprise 31.5 percent (2010) or 33 percent (2011) of the State's population. Minority voters enjoy an opportunity in fewer than 26 percent of the House districts and fewer than 23 percent of the Senate districts. Both the House and Senate plans thus significantly under-represent the growing minority share of the State's population and over-represent the non-Hispanic whites' eroding majority.

The plans go further in freezing the white over-representation. The House plan eliminates a district in which minorities have achieved a majority of the population and have elected a candidate of their choice (who happens to be white). The plan also artificially reduces and avoids districts, such as that of Representative Love, where minorities could make their weight felt in the future with predictable, predicted growth and expansion. Perhaps most insidiously, as Dr. Arrington demonstrated, the plans eliminate crossover and influence districts in which white and minority citizens cooperate and work together. Dr. Arrington's thoughtful and detailed analysis shows that the Legislature's over-riding purpose was to reinforce the "faces" of the two political parties: to make one party the "White Party" and the other the "Black Party." By creating the impression that the Democratic Party is a "black" party, the Legislature would cut off an avenue of advancement for ambitious white citizens, limiting them to a Republican affiliation and, in the context of racial polarization in Alabama, to alienate or repel white voters from the Democratic Party. Dr. Arrington noted, among other things, that Republicans' regularly recruit white but not black Democrats to

switch parties, and that the proposed plans (and recent Republican electoral strategy) have targeted districts held by white Democrats so as to eliminate them, while the districts of black Democrats have been increased in black percentage. The upshot is that black voters are packed and excluded – wasted – so that they cannot influence elections in potential competitive or crossover districts.

The ultimate intended result promises the freezing in place of a white party in complete control, and a black party over which the white majority in the Legislature runs roughshod in defiance of regular order and formal rules. In the post-2010 Legislature, Senator Ross as he has testified, is Ralph Ellison's "Invisible Man." He is there, but no one listens.

b. The Historical Background of the Decision Points to a Racially Discriminatory Purpose in the Enactment of the Plans

The action of the State in devising the proposed House and Senate plan is all too consistent with the state's long history of intentional discrimination in voting. Here, a dramatic "wave" election in the 2010 election gave the Legislature a veto-proof white Republican majority in both Houses. This was after decades of Democratic control. As the 2010 census revealed, the non-Hispanic white population share was declining, particularly due to an increase in the Hispanic population of the state. Legislators had a well-founded belief that the new Latinos, who were citizens and the children of non-citizen immigrants (who themselves would be citizens), would vote against them. The new Legislature moved immediately to cement its control including through, among other things, passing a race-based anti-immigration bill aimed at driving Hispanic population from the state.

The 2010 census also revealed that the black population and Hispanic population was growing and spreading to new areas in Jefferson, Madison and Montgomery Counties. It also revealed that non-Hispanic white citizens had left and were continuing to leave formerly white neighborhoods. Over the course of the previous decade, the shift in Montgomery already had

transformed a 27 percent black district (73) into a black-plurality, majority-minority district. At the same time, rapid increases in the minority population in Madison County revealed a "threat" of a minority Senate district in that county. Testimony has demonstrated that these trends continued after the 2010 census.

This background puts in context the Legislatures action to cement its super-majority status in the Legislature by adopting a redistricting plan that would under-represent minority voters and over-represent their own faction.

c. The Sequence of Events and Procedural Departures Point to a Racially Discriminatory Purpose in the Enactment of the Plans

The Legislature began the redistricting process on September 1, 2011. For months thereafter, selected white members of the Legislature sat with a consultant hired by an outside group, Mr. Hinaman, and determined how the districts would be drawn. No black legislator had similar access to Mr. Hinaman. Although Mr. Hinaman drew the "Redistricting Committee Plans", he did not work for the Committee, but rather only for one party. The redistricting plan, devised by Mr. Hinaman and white legislators, was revealed to the public and to black members of the Legislature on May 9, 2012. The decision to hold the plan until well into May prevented the Legislature from considering the plans in its first post-census legislative session as required by Section 199 of the Alabama Constitution. A special session was convened on May 17, 2012 and the plans sped through the committee and the floor, before finally being adopted on May 24, 2012 without substantive change.

The process by which the plans were adopted marked a sharp departure from the norm. The public hearings on the plan were held in a vacuum, with no maps or other information that would allow discussion beyond generalities. Only one hearing was held after the plan finally was made

public, and at that point the plan was locked in. The plans had been drawn in a uniquely closed setting: white Republican legislators were allowed to sit with Mr. Hinaman as he drew and adjusted districts, but the State denied black legislators the same opportunity. Mr. Hinaman drew the majority black districts without consulting the black members. When, for example, the "Mobile delegation" decided against a simple transfer of excess population from Baldwin County to Mobile County, Senator Dial's explanation that the delegation would not agree to such a transfer completely excluded the black member of the Mobile County Senate delegation, Senator Figures, who wanted to add Baldwin County white population to her heavily packed Senate district.

After drawing plans in this closed process, the all-white majority in the Legislature would allow only mutually agreeable swaps between legislators. Black legislators could only swap population with each other. The Legislature gave no consideration to alternative plans that would better meet its stated redistricting criteria. Changes to improve compliance with the Alabama Constitution could not be considered because of the ripple effect.

Among many other departures, the State ignored the requirement of Section 199 of the Alabama Constitution which requires that the reapportionment take place in the first session of the Legislature after the decennial census. The State did not redistrict until after the close of the first regular session, and instead drew lines in a called special legislative session. The fencing out of black legislators from any effective participation in the redistricting further shows the presence of a racially discriminatory purpose.

d. Substantive Departures Point to a Racially Discriminatory Purpose in the Enactment of the Plans

The State also ignored the substantive commands of the Alabama Constitution which stress the importance of maintaining counties intact. Section 200 of the Alabama Constitution has an

express command that counties not be split between Senate districts. Section 198 provides that "[t]he members of the house of representatives shall be apportioned by the legislature among the several counties of the state" and that if new counties are created, "each new county shall be entitled to one representative." Section 199 repeats those commands.

While federal law requires that some counties be split, this does not give the Legislature *carte blanche* to ignore the Constitution. *See Burton v. Hobbie*, 561 F.Supp. 1029, 1035 (M.D. Ala. 1983) ("Furthermore, we find that Act No. 82-629 is impermissible under Ala. Const. art. IX, §§ 198, 199 & 200 because of its disregard for the integrity of county lines. Boundaries of thirty counties were unnecessarily split by the plan. Implementation of such a plan for an entire legislative term is unacceptable.").

Some of the county splits in the plans flowed from the Legislature's adoption of a two percent deviation rule. Nothing in the law requires a deviation below 10 percent so long as the Legislature does not abuse the population variances among districts to shift one or more districts from one region of the state to another, thus diluting the votes of the residents of the disfavored region. *Larios v.Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004) aff'd sub nom *Cox v. Larios*, 542 U.S. 947, (2004). The *Larios* court found, however, that adherence to traditional redistricting criteria "was not actually a concern of the Georgia Legislature in the redistricting process." *Id*. at 1334. The *Larios* court also found that the State's rationale of incumbency protection was "a permissible cause of population deviations only when it is limited to the avoidance of contests between incumbents and is applied in a consistent and nondiscriminatory manner" that it had been applied unevenly. Id. at 1338. Most particularly, the *Larios* court repeatedly cited the Georgia Legislature's splitting of county boundaries and splitting counties among multiple districts as part of the compelling evidence of the invidious,

unconstitutional nature of the plan. *Id*. at 1325, 1326, 1332, 1333, 1335, 1342, 1346-7, 1349, 1354, and 1356. Where such systematic departures from traditional redistricting criteria are absent, a 10 percent population variation is perfectly acceptable. *Rodriguez v. Pataki*, 308 F.Supp.2d 346 (S.D. N.Y. 2004). In essence, the Alabama Legislature took what the *Larios* court found to be a bug in the Georgia plans – departures from county boundaries and other traditional redistricting criteria -- and made it a feature of its own House and Senate redistricting plans.

This Court, of course, does not have before it a challenge to the legislative districts based on the Alabama Constitution, and has no occasion to interpret that document.[21] The Supreme Court long has recognized, however, that "[i]ndiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." *Reynolds v. Sims*, 377 U.S. 533, 578-79 (1964).

In Alabama, moreover, there are unusually strong communities of interest among county residents with respect to their county's legislative delegation. The Alabama Legislature exercises extraordinary control over counties and other local governments. The Alabama Legislature determines many issues that usually are controlled by the localities themselves. See. e.g., *Gomillion v. Lightfoot*, 364 U.S. 339 (1960) (annexation); *Hale County v. United States*, 496 F. Supp. 1206 (D.D.C. 1980) (at-large elections for county commission); *City of Pleasant Grove v. United States*,

[21] Significantly every state supreme court that has considered the issue has held that such state constitutional commands retain their full vitality where they do not conflict with federal law. *Craddick v. Smith*, 471 S.W.2d 375 (1971). See *Stephenson v. Bartlett*, 562 S. E. 2d 377, 392, stay denied, 535 U. S. 1301 (2002) (Rehnquist, C. J., in chambers); *Stephenson v. Bartlett*, 582 S. E. 2d 247, 254 (2003); *In re Reapportionment of Colo. Gen. Assembly*, 45 P. 3d 1237, 1247-8 (2002); *Hellar v. Cenarrusa*, 682 P.2d 524, 527-28 (1984) (Idaho Supreme Court upholding a plan with a high deviation in circumstances similar to those of *Brown v. Thompson,* 462 U.S. 835 (1983)); *Legislative Research Commission v. Fischer*, 366 SW 3d. 905(2012) (Kentucky). In Alaska, which does not have counties but has other state constitutional redistricting requirements, the state supreme court struck down a state redistricting plan because the Redistricting Board had started the redistricting process by drawing districts to comply with the Voting Rights Act, as did Mr. Hinaman, rather than starting by drawing districts that complied fully with the state constitution and adjusting those districts as necessary to comply with federal law. *In re 2011 Redistricting Cases*, 274 P.3d 466 (2012) See also *Hickel v. Southeast Conference*, 846 P.2d 38 (Alaska 1992).

623 F. Supp. 782 (D.D.C. 1985), aff'd, 479 U.S. 462 (1987); (annexations); and *Hardy v. Wallace,* 603 F. Supp. 174 (N.D. Ala. 1985) (method of appointing members to local racing commission). This Legislative control extends to such minutia as standards for a turkey shoot in a particular county, Alabama Code section 45-14-150, while section 45-24A-20 sets, to four decimal places the proportion of the beer tax collected in a small town that will go to the county and the share that will go to the county. This control creates a strong governmental interest in matching legislative district lines to county boundaries. The state constitutional provisions on county boundaries, whatever their current legal status, are thus intimately related to the legislative power, and each county thus constitutes a strong community of interest in terms of redistricting. In addition to the many social and economic ties that typically bind residents of particular governmental units, in Alabama a given county's residents uniquely bear common effects, good and bad, of much state legislation.

Such effects can be discriminatory. Dr. Arrington described how the plans split county boundaries in a racially discriminatory manner. Under the 2001 plan, Jefferson County's House delegation had 18 members, nine elected from majority black districts and nine from majority white districts. A simple majority is needed to approve local legislation, and the nine-nine split had impeded resolution of important issues in Jefferson County, which is in bankruptcy. Thus, as Dr. Arrington explained, the county need not have such a large delegation: the House plan artificially adds white majority districts by giving them small portions of Jefferson County (e.g., the 224 persons added to House District 43) which gives them a vote in the county delegation equal to that of legislators elected from districts entirely within Jefferson County. The effect of unnecessarily moving majority black district 53 out of Jefferson County (and packing the remaining districts) was

to create a white majority in the county House delegation. This was accomplished with the purpose of establishing white control over local legislation.

Issues can be raised regarding the wisdom of local legislation or the matters that properly are subject to local legislation, as opposed to broader consideration and approval. The State's plans are invidious in part since they systematically add white suburban districts to urban county delegations, not only in Jefferson County but in Mobile and Montgomery Counties as well. However, the plans never add a single urban black district to a white suburban county delegation, even though it would have been possible to do so, especially with the State's cavalier disregard for county boundaries and with the super-majorities assigned to those districts. See, e.g, Senate districts 18 (Shelby County), Senate district 26 and House District 78 (Autauga and Elmore Counties), and Senate district 33 and House district 98 (Baldwin County). The plans offer no reciprocity and no level playing field: the white suburbs enjoy a veto while the black urban areas have no counterweight. The State intruded numerous predominantly white suburban-dominated districts into urban Jefferson and Montgomery Counties, but never allowed a majority-minority district to have any portion of a suburban county.

The House and Senate plans also split counties unnecessarily to minimize minority political opportunities. The evidence clearly shows that the Senate plan involves roughly even swaps of population between counties that were not necessary for any identifiable legitimate purpose, and that also violated the Legislature's stated criterion of maintaining, where possible, the original (2001) district boundaries. Examples include the fragmentation of Talladega County by a swap of population between Senate districts 11 and 15, the import of which was to remove black voters from Senate district 11 so as to dilute minority voting strength in a crossover district; the fragmentation of Limestone and Madison Counties so as to fragment the minority concentration in Madison County

and avoid a minority opportunity or minority crossover district. In both cases the plans fragment communities of interest and join populations with very different interests; and in both cases the resulting districts are oddly shaped. The State unnecessarily split Clarke and Washington Counties to remove black population from crossover Senate district 22, and reconfigured the Baldwin County portion of the district so as to remove black population while adding a large white population. In the same district, the State divided a formally State-recognized community of interest in fragmenting the MOWA Band of the Choctaw Nation. None of these changes were necessary to comply with a two percent population deviation standard.

The list goes on and on as the proposed findings of fact demonstrate, and need not be recounted here. In Alabama, the standard of maintaining the boundaries of existing districts was ignored to the disadvantage of opportunities for black voters and candidates they support, as in Senate districts 1, 11 and 22 and House districts 53 and 73; and abused as a rationale as in the numerous "packed" districts, such as Senate district 26, or fabricated as a rationale, as in House district 43.[22] In House districts 43 and in House district 61, the Legislature artfully manipulated the way in which the House plan split specific voting precincts so as to create the misimpression that the intrusion of those districts into Jefferson and Greene Counties, respectively, was necessary to stay within the two percent population deviation range. Alternative splits of those precincts – if Mr. Hinaman had clicked on a handful of different blacks – would have avoided the "need" to split those precincts. House district 43, as noted above, contributed to a white majority in the Jefferson County delegation, while the 12-person sliver of Greene County (81.48% black) in House district 61

[22] The State initially contended that the district included a 224 person parcel of Jefferson County to conform to its original boundaries. The State abandoned that argument when it became apparent that the former district had included a different sliver of Jefferson County.

(18.89% black) gives the district 61 representative a veto over local legislation in Greene County. See *Hardy v. Wallace, supra.*

The separation of incumbents similarly was fabricated as a rational for the splitting of Jefferson County and Montgomery County, again to the disadvantage of black voters and their representatives in terms of local legislation. Senator Dial testified that he had to include parts Jefferson County in five white-majority Senate districts in order to avoid placing two or more incumbents in the same district, but the evidence is that three of those incumbents live outside Jefferson County. He made the same claim that he could not draw a minority Senate district in Madison County because he would have to pair incumbents although he had the addresses of the incumbents who would not be paired under any alternative. The division of Montgomery County in the House was unnecessary even to comply with the State's two percent rule, as were the division of other counties such as Washington and Greene. Jefferson and Mobile Counties could have been kept intact in both the House and Senate within a 10 percent deviation framework without raising any issue under the Voting Rights Act: all minority districts in the counties are self-contained. As the alternative plans presented to and rejected by the Legislature demonstrate, it would have been possible to maintain many other counties intact. No law placed any barrier to the Legislature maintaining many more counties intact. As it ignored the community of interest within each county, the State ignored other significant communities of interest. The State unnecessarily divided the tri-city Muscle Shoals area – "the Shoals" - well-recognized community of interest that long had been intact in Senate district 1 as part of the fragmentation.

e. Contemporaneous Statements by Legislators Point to a Racially Discriminatory Purpose in the Enactment of the Plans

Racial animus is not a precondition for a determination that a particular action was taken with a racially discriminatory purpose. As Judge Kozinski's explaining in opinion concurring in part and dissenting in part in *Garza v. County of Los Angeles*, 918 F.2d 763 (9th Cir.1990):

> Assume you are an anglo homeowner who lives in an all-white neighborhood. Suppose, also, that you harbor no ill feelings toward minorities. Suppose further, however, that some of your neighbors persuade you that having an integrated neighborhood would lower property values and that you stand to lose a lot of money on your home. On the basis of that belief, you join a pact not to sell your house to minorities. Have you engaged in intentional racial and ethnic discrimination? Of course you have. Your personal feelings toward minorities don't matter; what matters is that you intentionally took actions calculated to keep them out of your neighborhood.

918 F.2d at 778 n. 1.

While racial animus is not essential and while the existence of contemporaneous statements of direct racial intent related to current redistricting efforts maybe rare, both are present in this case. The candid contemporaneous statements of Senator Beason and others are plain on their face, and the silent acquiescence of other powerful Legislators speak eloquently. Judicial findings in *United States v. McGregor*, 824 F.Supp.2d 1339 (M.D. Ala, 2011) and *Central Alabama Fair Housing Center et al. v. Magee* 835 F.Supp.2d 1165 (M.D. Ala. 2011) establish that the too-familiar bias against black citizens is attended by animus against Native-American and Latino citizens. The State has offered no real response to the troubling evidence of racial animus directed toward a minority participation. Nor has the State rebutted testimony that Representative Love rejected an alternative district with a 69 percent white majority because he believed that within the decade the white percentage would drop to 60 percent and threaten his reelection prospects. His concern and action

to minimize the black percentage in his district illuminates the Legislature's fear of black voters effectively exercising their franchise.

Analysis of the *Arlington Heights* factors provides compelling evidence that the State acted with a racially discriminatory purpose in devising the House and Senate plans.

CONCLUSION

The Section 2 criteria and the constitutional standards that set the framework for the decision of this case are well-settled. Plaintiffs have established the elements of each claim.

The evidence establishes that Alabama elections are characterized by racially polarized voting. The State's plans substantially under-represent Alabama's growing minority population, and the minority population is concentrated in such a way that the under-representation could be reduced but not eliminated by two compact districts in the House and one compact district in the Senate. The totality of circumstances, moreover, establish that the political processes in the State of Alabama are not equally open to minority citizens.

The facts also establish that the inequality manifested in the redistricting plans is no accident. Beyond the plans' racially discriminatory impact, the evidence establishes that the Legislature deviated from normal procedural standards and systematically deviated from its own substantive non-racial redistricting standards to the detriment of black voters. This happened both in terms of the number of representatives they could expect to elect and in terms of their potential to form cross-racial coalitions and, through crossover and influence districts, pull haul and trade to gain an equal footing, to become visible members of the Legislature. The evidence also establishes that racial bias lingers in Alabama and continues to infect and corrupt an influential part of the white leadership of

the Legislature. The Legislature drew the lines in a way that affected black citizens solely on the basis of race and racial stereotypes.

The State has not refuted plaintiffs' evidence. They have offered little evidence relevant to the Section 2 criteria and no evidence concerning the intent of the proposed plan beyond self-serving and conclusory statements by the House and Senate Chairs.

The evidence before the Court establishes that both the House and Senate plan violate Section 2 of the Voting Rights act and the 14th and 15th amendments.

DONE This the _____ day of _____, 2013.

W. KEITH WATKINS
CHIEF UNITED STATES DISTRICT JUDGE

WILLIAM H. PRYOR, JR.
UNITED STATES CIRCUIT JUDGE PRESIDING

MYRON H. THOMPSON
UNITED STATES DISTRICT JUDGE

Cc: All Counsel of Record

James H. Anderson
William F. Patty
Brannan W. Reaves
Jesse K. Anderson
JACKSON, ANDERSON & PATTY, P.C.
P.O. Box 1988
Montgomery, AL 36102

Walter S. Turner
PO Box 6142
Montgomery, AL 36106

John K. Tanner
3743 Military Road, NW
Washington, DC 20015

Joe M. Reed
Joe M. Reed & Associates, LLC
524 S Union St.
Montgomery, AL 36104-4626

Luther Strange, Attorney General of Alabama
By: John J. Park, Jr.
Deputy Attorney General
Strickland, Brockington Lewis LLP
Midtown Proscenium Suite 2200
1170 Peachtree Street NE
Atlanta, GA 30309

James W. Davis
Misty S. Fairbanks Messick
Office of the Attorney General
State of Alabama
P.O. Box 300152
Montgomery, Alabama 36130-0152

Edward Still
130 Wildwood Parkway, STE 108 PMB 304
Birmingham, AL 35209

James U. Blacksher
P.O. Box 636
Birmingham AL 35201

U.W. Clemon
2025 Third Avenue North, Suite 500
Birmingham, AL 35203

Jordan Dorman Walker, Jr.
Balch & Bingham, LLP
P.O. Box 78
Montgomery, AL. 36101-0078