

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

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ALABAMA LEGISLATIVE BLACK)	
CAUCUS, et al.,)	
)	
Plaintiffs,)	
)	CIVIL ACTION NO.
v.)	2:12-cv-691-WKW-MHT-
)	WHP
)	(3-judge court)
THE STATE OF ALABAMA, et al.,)	
)	
Defendants.)	
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)	
DEMETRIUS NEWTON, et al.,)	
)	
Plaintiffs,)	
)	CIVIL ACTION NO.
v.)	2:12-cv-1081-WKW-MHT-
)	WHP
)	
THE STATE OF ALABAMA, et al.,)	
)	
Defendants.)	
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Proposed Findings of Fact and Conclusions of Law

Pursuant to this Court’s Order of August 13, 2013 (T4 51/8-11), the State of Alabama and Jim Bennett, in his official capacity as Secretary of State of Alabama, defendants in the ALBC case, and the State of Alabama, Robert Bentley, in his official capacity as Governor Alabama, and Jim Bennett, in his official capacity as Secretary of State of Alabama,

defendants in the Newton case, and Senator Gerald Dial and Representative Jim McClendon, defendants-intervenors in these cases, jointly submit the proposed findings of fact and conclusions of law set forth below.

Proposed Findings of Fact

1. Redistricting plans are drawn on the basis of total population.

T3 60/22-23.

2. The 2010 Census reported Alabama’s total population as 4,779,736. C-1 ¶ 1. There are 35 Senate districts and 105 House districts. C-1¶ IV.5.c-e. Consequently, the ideal population of a Senate district is 136,563, and the ideal population of a house district is 45,532.

3. Each of the black-majority districts in the 2001 Alabama legislative plans was underpopulated when the results of the 2010 Census were loaded into the district lines for the 2001 plans. S-DMcX 402, 406.

4. The demographics of the black-majority districts in Jefferson County are as follows:

	2012	2010 Under	2001	2001 Under	1993
52	60.13	- 5.19	65.848	-17.538	67.72
53	55.83	-22.28	64.445	-22.938	66.01
54	57.73	-23.32	63.276	-24.544	63.95

55	73.55	-21.86	67.772	-15.744	61.57
56	62.14	- 9.79	62.665	-19.706	63.52
57	68.47	-20.48	62.967	-18.282	63.90
58	75.68	-17.75	63.518	-22.688	62.75
59	72.96	-27.86	63.241	-27.091	63.86
60	67.68	-19.37	64.348	-26.038	66.22

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5. The results of loading the results of the 2010 Census into the 2001 district lines for the black-majority House districts in Jefferson County show the following:

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

D-403; 406.

6. Each of the nine black-majority House districts in Jefferson County was underpopulated when the results of the 2010 Census were loaded into the 2001 House district lines. S-DMcX 402.

7. The nine black-majority House districts in Jefferson County were collectively underpopulated by 76,427 people, or approximately the population of 1 ½ House districts populated at the ideal population. S-DMcX 406.

8. To the extent that Newton Plaintiffs' expert Dr. Ted Arrington points to an overall increase in the black population of Jefferson County and an overall decrease in the white population of Jefferson County between 2000 and 2010, those demographic changes were not reflected in the black-majority districts in Jefferson County. T3 122/10-21; T3 132/18 to 133/5.

9. The decision to move HD 53 from Birmingham to Madison County, where the new HD 53 remains a black-majority district, can be justified by the collective population shortfall in the Birmingham House districts and by the need to avoid retrogression.

10. Randy Hinaman explained that he made the recommendation to move HD 53 to Madison County "[b]ecause every one of the minority

majority districts in Jefferson County were underpopulated, some quite dramatically. And, when we looked at it as a whole, they were around 70,000 folks short of ideal, those districts added together, which is basically a district and a half. And looking at the map, I knew that most of the – if not all of the minority neighborhoods were already included in those districts, so trying to repopulate them to get them back to deviation was going to retrogress most if not all of them, some of them maybe to the point where I was very concerned about Section 5 preclearance of the plan.” T3 132/6-17.

11. With respect to the African-American House districts in Jefferson County, Hinaman explained that he recommended moving HD 53 from Jefferson County to create a new black-majority House district in Madison County. T3 131/22-133/1. While Hinaman made that recommendation, the decision whether or not to follow that recommendation “ultimately ... was the Legislature’s, but initially it was Representative McClendon’s.” T3 133/2-5.

12. Randy Hinaman drew HD 43 so that it maintained a portion of Jefferson County. It contained a portion of Jefferson County in the 2001

House plan, and Hinaman added a different portion of Jefferson County to the new version of HD 43. T3 164/6-19.

13. After McClendon 2 was released, Representative McClendon also worked with Representatives Oliver Robinson, Mary Moore, both of whom are African-American Democrats, and Patricia Todd, a white Democrat, to work out changes to the district lines they shared. The proposed changes affected only them and were neutral with respect to the population deviation, so they were made. T3 230/23-231/22.

14. Representative McClendon was not able to work out a proposed change in several Birmingham House districts that would have involved a “one-way swap” of some 3600 people. T3 231/23-232/15.

15. The local delegation for Jefferson County is currently balanced at 9 Democrats and 9 Republicans. T3 236/24-237/4.

16. In the 2012 House plan, HD 53 will be replaced by HD 16. HD 16 is currently represented by Daniel Boman, who was elected as a Republican but subsequently switched over to the Democrats. T3 237/4-11.

17. Representative McClendon would not be surprised if a Republican were elected in the new HD 16 because the voters in old HD 16 elected a Republican in 2010. T3 237/14-16.

18. If a Republican replaces Daniel Boman, the local delegation for Jefferson County will consist of 10 Republicans and 8 Democrats.

19. Whether a Republican replaces Daniel Boman as the representative for HD 16 is up to the voters. T3 257/1-9.

20. After the Senate passed the proposed new House redistricting plan in the special session, Representative Boman “came up to” Representative McClendon and “said he could win that new House District 16 the way it was drawn. He said he didn’t have a problem with it at all. Said, I can win that district.” T3 257/10-17.

21. While the Supreme Court held that Section 4 of the Voting Rights Act was unconstitutional in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), the Legislature was firmly under the preclearance requirement when it drafted the new redistricting plans.

22. Representative McClendon said, “We knew that we were going to be subject to preclearance by DOJ, and we knew that was a major hurdle.” T3 221/2-3.

23. Attempting to maintain the existing black percentages of black-majority districts was a reasonable preclearance strategy, in light of DOJ's objections to plans containing minor minority population decrease in minority dominated districts. S-DMcX 451 (objecting to decrease in total population from 55.9% to 55.3%).

24. In the preclearance process, retrogression "is assessed on a state-wide basis," and new black-majority districts can be created in new locations, in preference to former locations of black-majority districts, and this decision will not by itself be retrogressive. C-36 p. 3

25. In the process of obtaining preclearance of the State Board of Education redistricting plan and these legislative redistricting plans, the State pointed out that the overall population deviation had been reduced from $\pm 5\%$ to $\pm 1\%$. T1 29/13-22. The Black Caucus likewise pointed out this change to DOJ, and argued that it was evidence of discriminatory intent. S-DMcX 455 p. 16.

26. The Attorney General of the United States did not object to the State Board of Education redistricting plan or to either of these legislative redistricting plans. T1 29/8-12.

27. For the Senate plans, the demographics of the black-majority districts are as follows:

Senate District	Act 2012–603 Total Black Pop. (%)	Overpop.(+)/Underpop.(–) of 2001 District Using 2010 Census Data (%)	2001 Senate Total Black Pop. (%)	Overpop.(+)/Underpop.(–) of 1993 District Using 2000 Census Data (%)	1993 Senate Total Black Pop. (%)
18	59.10 ¹	–17.64 ²	66.685 ³	–21.674 ⁴	65.89 ⁵
19	65.31 ⁶	–20.06 ⁷	66.227 ⁸	–17.947 ⁹	63.00 ¹⁰
20	63.15	–21.37	65.697	–25.275	64.28
23	64.84	–18.03	62.305	–14.716	63.46
24	63.22	–12.98	62.409	–17.553	65.36
26	75.13	–11.64	71.507	–16.942	70.34
28	59.83	– 3.80	56.458	– 3.233	61.09
33	71.64	–18.05	62.451	–18.153	65.34

¹ S-DMcX 400 p. 401, column 7.

² S-DMcX 402 p. 415, column 5.

³ S-DMcX 407 p. 664, column 4.

⁴ S-DMcX 410 p. 754, column 6.

⁵ S-DMcX 410 p. 767, column 4.

⁶ S-DMcX 403 p. 418, column 7.

⁷ S-DMcX 406 p. 653, column 5.

⁸ S-DMcX 411 p. 766, column 4.

⁹ S-DMcX 419 p. 947, column 6.

¹⁰ S-DMcX 417 p. 927, column 4

28. This table shows that the demographics of the black-majority Senate districts in the 2012 plan are not substantially different from the demographics of those districts in the 1993 and 2001 plans.

29. For the House, the demographics of the black-majority districts are as follows:

House District	Act 2012-602 Total Black Pop. (%)	Overpop.(+)/Underpop.(-) of 2001 District Using 2010 Census Data (%)	2001 House Total Black Pop. (%)	Overpop.(+)/Underpop.(-) of 1993 District Using 2000 Census Data (%)	1993 House Total Black Pop. (%)
19	61.25	- 6.90	66.039	-22.256	66.27
32	60.05	-14.76	59.598	-15.567	63.93
52	60.13	- 5.19	65.848	-17.538	67.72
53	55.83	-22.28	64.445	-22.938	66.01
54	57.73	-23.32	63.276	-24.544	63.95
55	73.55	-21.86	67.772	-15.744	61.57
56	62.14	- 9.79	62.665	-19.706	63.52
57	68.47	-20.48	62.967	-18.282	63.90
58	75.68	-17.75	63.518	-22.688	62.75
59	72.96	-27.86	63.241	-27.091	63.86
60	67.68	-19.37	64.348	-26.038	66.22
67	69.15	-16.79	63.447	-22.357	63.50
68	64.31	-20.40	62.211	-13.524	63.58
69	64.21	-17.46	65.308	- 8.264	63.29
70	62.03	-13.77	62.827	-26.999	64.60
71	70.18	-16.32	64.191	-16.200	66.16
72	62.02	-13.42	60.748	- 9.338	65.36
76	73.79	- 1.38	73.309	- 8.505	66.69
77	67.04	-23.12	69.677	-24.289	71.93
78	70.00	-32.16	72.697	-18.029	72.37

82	62.14	- 4.68	62.663	- 8.663	79.73
83	57.52	- 9.85	61.214	+ 1.558	64.52
84	52.35	- 9.24	53.260	- 2.592	37.81
85	50.08	- 6.79	47.863	-25.002	51.13
98	60.02	-16.89	64.448	-21.972	65.72
99	65.61	-12.59	65.250	-18.214	65.09
103	65.06	-10.79	63.049	-19.000	65.58

30. That table shows that the demographics of the black-majority districts in the 2012 House plan are not substantially different from the demographics of those districts in the 2001 and 1993 plans.

31. When USDOJ reviewed redistricting plans under Section 5, it compared the demographics of the black-majority districts in the new plan to the demographics of those districts when the results of the 2010 Census were loaded into the 2001 district lines. Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act, Analysis of Plans, Retrogressive Effect, http://www.justice.gov/crt/about/vot/sec_5/sec_guidance2011.pdf.¹¹

¹¹ “An analysis of whether the jurisdiction has met its burden of establishing that the proposed plan would not result in a discriminatory or “retrogressive” effect starts with a basic comparison of the benchmark and proposed plans at issue, using updated census data in each. Thus, the Voting Section staff loads the boundaries of the benchmark and proposed plans into the Civil Rights Division’s geographic information system [GIS]. Population data are then calculated for each district in the benchmark and the proposed plans using the most recent decennial census data.”

32. The table below compares the demographics of the black-majority Senate districts in the 2012 plan with the demographics of those districts when the results of the 2010 Census were loaded into the 2001 Senate district lines:

	2012	2010 in 2001	Shortfall % African-American
SD 18	59.10% ¹²	-24,092 ¹³	59.92% (67,389 ¹⁴ /112,472 ¹⁵)
SD 19	65.31%	-27,399	71.59% (78,149/109,965)
SD 20	63.15%	-29,189	77.82% (83,554/107,375)
SD 23	64.84%	-24,625	64.76% (74,189/111,939)
SD 24	63.22% (74,459/118,832)	-17,73	62.78%
SD 26	75.13%	-15,898	72.69% (87,714/120,666)
SD 28	59.83%	-5,196	50.98% (66,968/131,368)
SD 33	71.64%	-24,649	64.85% (75,572/111,915)

D-400, D-402.

¹² S-DMcX 400 p. 401, column 7.

¹³ S-DMcX 402 p. 415, column 4.

¹⁴ S-DMcX 402 p. 415, column 7.

¹⁵ S-DMcX 402 p. 415, column 2.

33. The table below compares the demographics of the black-majority House districts in the 2012 plan with the demographics of those districts when the results of the 2010 Census were loaded into the 2001 House district lines:

2012	Needed	2010 in 2001 lines
HD 19 61.25% ¹⁶	-3,141 ¹⁷	69.82% ¹⁸
HD 32 60.05%	-6,721	59.34%
HD 52 60.13%	-2,362	60.11%
HD 53 *	-10,143	55.70%
HD 54 56.83%	-10,616	56.73%
HD 55 73.55%	-9,949	73.55%
HD 56 62.14%	-4,457	62.13%
HD 57 68.47%	-9,322	68.42%
HD 58 72.76%	-8,078	77.86%
HD 59 76.72%	-12,683	67.03%
HD 60 67.88%	-8,817	67.41%
HD 67 69.15%	-7,643	69.14%
HD 68 64.56%	-9,287	62.55%
HD 69 64.21%	-7,949	64.16%
HD 70 62.03%	-6,268	61.83%

¹⁶ S-DMcX 403 p. 418, column 7.

¹⁷ S-DMcX 406 p. 653, column 4.

¹⁸ S-DMcX 406 p. 653, column 7.

HD 76 73.79%	-627	69.54%
HD 77 67.04%	-10,523	73.52%
HD 78 69.99%	-14,641	74.26%
HD 82 62.14%	-2,132	57.13%
HD 83 57.52%	-4,482	56.92%
HD 84 52.34%	-4,204	50.61%
HD 85 50.08%	-3,092	47.94%
HD 97 60.66%	-10,115	60.66%
HD 98 60.02%	-7,690	65.22%
HD 99 65.61%	-5,730	73.35%
HD 103 65.06%	-4,910	69.84%

34. The 2012 Alabama Senate plan does not pair any incumbents.

T1 143/24-144/5.

35. With only two exceptions, the 2012 Alabama House plan does not pair any incumbents. T3 119/4-12; T3 161/8-23; T3 41/13-23; T3 236/24-237/8.

36. One of the exceptions results from the decision to move HD 53 from Birmingham to Madison County, where the new HD 53 remains a black-majority district. That decision is justified by the collective population shortfall in the Birmingham House districts and by the need to avoid retrogression. T3 131/22-132/17.

37. The other exception results from the decision to move HD 73 from Montgomery to Shelby County. T3 133/14-134/5.

38. Dr. Arrington contends that white Republican legislators should have counseled black Democratic legislators to accept lower percentages of African-American voters in their black majority districts, although he could not say whether doing so would have led to Section 5 and Section 2 challenges by the black legislators. S-DMcX 486 115/7-116/7.

39. According to Dr. Arrington, “[b]lack legislators would like their district[s] to be packed as much as possible and they learned from the result of 2010 that has really bad effects. But when they are talking about their own district, they like it still to be packed.” S-DMcX 486 119/20-120/17.

40. ALBC Plaintiff Fred Armsted was not deposed.

41. ALBC Plaintiff Fred Armsted did not testify at trial.

42. Newton Plaintiff Demetrius Newton was not deposed.

43. Newton Plaintiff Demetrius Newton did not testify at trial.

44. No Plaintiff who resides in SD 11 testified by deposition or at trial.

Drafting the 2012 Plans

45. Alabama Senator Gerald Dial, who first joined the Alabama Legislature in 1974, was appointed to the Permanent Legislative Committee on Reapportionment for the 2011-2014 Quadrennium. T1 24/7-22, No. 76-4 at 1-2, ¶ 2, line 38, ¶ 3, lines 3-6.

46. Alabama Representative Jim McClendon, a member of the Alabama Legislature since 2002, was appointed to the Permanent Legislative Committee on Reapportionment for the 2011-2014 Quadrennium. T3 219/1-16; No. 76-5 at 1-2, ¶ 2, lines 38-40, ¶ 3, lines 1-4.

47. Senator Dial and Representative McClendon served as co-chairs of the Reapportionment Committee. T1 25/38-; APX-66 6/7-22; APX-67 7/15-17.

48. Before undertaking to redo the district lines for the State of Alabama's congressional, State Board of Education and State legislative bodies after the 2010 Census, the Reapportionment Committee adopted Guidelines to assist it in its work. T1 26/15-25; No. 76-4 at 2, ¶ 6, lines 20-23; No. 76-5 at 2, ¶ 6, lines 15-18.

49. The 2011 version of the Guidelines is very much like the 2001 version.

50. The Reapportionment Committee held its initial meeting on May 4, 2010. *CX-27 (Committee meeting minutes)*; T1 26/15-18. At that meeting, the Committee adopted guidelines for redrawing the state's Congressional, State Board of Education, and Legislative districts. *CX-1 (Guidelines)*; T 26/19-22. For the most part, the new Guidelines merely copied the Guidelines used following the 2000 Census. T1 28/24-29/7. In particular, they restated and emphasized the importance of compliance with the one person, one vote requirement, *XC-1, § II, § IV.1*, and with the Voting Rights Act, *id., § III, § IV.2*. They required plans to avoid pitting incumbents against each other "whenever possible," *XC-1, § IV.7.a*, and to respect communities of interest, *id., § IV.7.b*, although the Guidelines cautioned that it was not always possible to respect every community of interest:

The Reapportionment Committee will attempt to accommodate communities of interest identified by people in a specific location. It is inevitable, however, that some interests will be advanced more than others by the choice of particular district configurations. The discernment, weighing, and balancing of the varied factors that contribute to communities of interest is an intensely political process.

Id.

51. The 2010 Guidelines also contained one significant change from the 2000 version, which was lowering the allowable total population deviation in the State Board of Education and Legislative plans from 10% to 2%. *XC-1 §11.2; T 28/24 to 29/7*. The Guidelines and trial testimony indicate that this change was made in part in response to *Larios v. Cox*, 300 F.Supp 2d (N.D. Ga. 2004)(three-judge court) aff'd sub nom *Cox v. Larios*, 542 U.S. 947 (2004), *XC-1 §11*, and the Equal Protection Clause's one person, one vote mandate. *APX 63, ¶16*.

52. The 1993 and 2001 legislative redistricting plans were the subject of legal challenges from Republican interests. Those challenges included claims of racial gerrymandering. See *Kelley v. Bennett*, 96 F. Supp. 2d 1301 (M.D. Ala. 2000) (three-judge court), rev'd sub nom *Sinkfield v. Kelley*, 531 U.S. 28 (2000); *Montiel v. Davis*, 215 F. Supp. 2d 1279 (S.D. Ala. 2002).

53. In addition, after the Supreme Court's decision in *Larios*, Republican interests directed a similar political gerrymandering, one-person, one-vote claim against the 2001 Alabama legislative redistricting plans. *Gustafson v. Johns*, 434 F. Supp. 2d 1246 (S.D. Ala. 2006)(three-judge court).

54. These challenges were all unsuccessful, for one reason or another, but the drafters of the 2012 plans cannot be faulted for thinking that, in Alabama, litigation challenging their redistricting plans would likely follow their enactment and preclearance.

55. Compliance with *Larios* also supported the Committee's purpose of assuring that whatever reapportionment plan were enacted would be precleared by the Attorney General pursuant to Section 5 of the Voting Rights Act. T 27/2-15; T1 29/8-10.

56. The Guidelines recognized that all of the redistricting criteria could not be honored all of the time:

In establishing congressional and legislative districts, the Reapportionment Committee shall give due consideration to all the criteria herein. However, priority is to be given to the compelling state interests requiring equality of population among districts and the Voting Rights Act of 1965, as amended, should the requirements of those criteria conflict with any other criteria.

XC-1, § IV.7.d.

57. Senator Dial and Representative McClendon served as the focal point of the redistricting effort in their respective chambers of the Alabama Legislature. T1 33/24-35/3; T1 42/2-18; T3 222/17-223/7.

58. In their judgment, changing the overall population deviation from $\pm 5\%$ to $\pm 1\%$ was a reasonable attempt to comply with the general constitutional mandate that districts be nearly equal to each other in population to each other, without the need for absolute equality. T1 27/2-12; T1 55/9-13; T3 220/1-12; APX-66 38/12-17; APX-67 22/7-24/9.

59. Representative McClendon explained that the use of an overall deviation of $\pm 1\%$ “just makes good sense to me. If you’re interested in one person, one vote, that’s a lot closer than 5 percent, or actually plus or minus 5, which gives you 10 percent deviation. You know, we had already gone through this with the congressional, which has zero percent, and state board of education with 1 percent. And we went right through the DOJ preclearance, so I didn’t have a problem at all with 1 percent. It made sense to me.” T3 220/1-12.

60. Before starting work on the legislative redistricting plans, the Committee conducted public hearings at 21 locations throughout the State of Alabama. T1 30/8-10; T1 32/2; C2 to C-22. The purposes of those hearings were to hear proposals from interested persons for drawing new districts and to receive other public comments. T1 30/25-32/8.

61. Senator Dial and Representative McClendon attended each of those public hearings. C-2 to C-22.

62. Other Committee members attended one or more of them, and sometimes members of the Legislature spoke at them. C-3; C-5; C-6; C-8; C-10; C-11; C-12; C-13; C-14; C-15; C-16; C-17; C-18; C-19; C-20; C-21; C-22.

63. At each meeting, Senator Dial and Representative McClendon pointed out to the attendees that changes in the population and its distribution required that some districts add people and others lose them. T1 34/14-24; C-2 to C-22.

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

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

C-21 p. 6.

65. In the public meeting in Selma, Representative Darrio Melton, another ALBC member, acknowledged that both HD 67, his district, and HD 69, represented by Representative David Colston, an ALBC member, needed to add population. C-21 p. 7.

66. In the public meeting in Selma, Representative Melton stated, “I would not like to see me and Colston, my colleague now, have to run against each other in regard[] to heavy representation in this area. So I would encourage the Committee to consider that when we start talking about redrawing these lines.” C-21 p. 7.

67. In the public meeting in Thomasville, Representative Thomas Jackson, an ALBC member, stated that, given that his district was a rural, Black Belt district, “having a minority district over there, it’s got to be ninety-nine percent minority.” C-16 p. 8.

68. Representative Jackson suggested, “It could be sixty-two or sixty-five percent [minority].” C16 p. 8.

69. In preparing to draft the Senate plan, Senator Dial talked to each of the other 34 members in the Senate to find out from them what they thought should be done. T1 34/1-5.

70. Senator Dial stated, “I had quite a number of years in the Legislature and I had watched the process in the past, and I felt like I could bring some knowledge and maybe change the procedure and make it more transparent and involve more people into it, and I had a real inclination to be involved in that process.” T1 25/12-16.

71. In the 2001 process, which was in the hands of the Democrats, Senator Emfinger, “the major drafter of the plan,” did not ask Senator Dial for his input. Instead, “[t]hey drew a plan and brought it to the Legislature and it was adopted, and I saw the plan when it came to the Legislature.” T1 26/2-10; see also APX-66 12/22 through 13/2 (Senator Emfinger “never contacted me or sat down with me to discuss my district. And I was a Democrat as well as he was, but I got what was left.”)

72. In preparing to draft the House plan, Representative McClendon offered to talk with each of his 104 House colleagues, and most, but not all, of them took him up on that offer. T3 222/21-22.

73. Each legislator knew or should have known that, because of the changes in the State’s population and its distribution since the last Census, the lines of his or her district would have to change. S-DMcX 402, S-DMcX 406

74. In his discussions with his Senate colleagues, Senator Dial told them that he could not guarantee that they would win in their new districts. T1 42/2-7.

75. In his discussions with his Senate colleagues, Senator Dial told them that he would try to make sure that none of them would have to run against one of their 34 colleagues. T1 28/14-17.

76. One goal of Senator Dial, Representative McClendon and Randy Hinaman was to draw plans that would be precleared by the Attorney General of the United States or by the U.S. District Court for the District of Columbia.

77. Representative McClendon stated, “[W]hen it came to retrogression and talking about percentages, to the best of my knowledge, there wasn’t any hard numbers. There were relative numbers, but there were not any hard numbers. There was nothing that said that 50 plus - 50 percent plus one is OK. In fact, my impression was that was not the case. So really, what we targeted was we tried to look at the 2010 census, overlay it on the districts, and try not to change the percentages of the citizens, the black citizens, in a district any more than we had to. Tried to keep them in about the same proportion as they were.” T3 221/4-15.

78. In drawing the plans, Senator Dial and Representative McClendon started with the black-majority districts because the Voting Rights Act requires the State to, among other things, preserve those districts to the extent possible. T1 35/8-14; T3 122/8-12.

79. Senator Dial and Representative McClendon understood their obligation under the Voting Rights Act to include (a) preserving the black majority districts and (b) doing their best to make sure that the African-American community could elect the candidate of choice in each such district. T1 35/8-36/12; T3 220/13-221/15.

80. Each of the 8 black-majority Senate districts and the 27 black-majority House districts in the 2001 plans was underpopulated when the 2010 Census results were loaded into them. S-DMcX 402.

81. Because each of the 8 black-majority Senate districts and the 27 black-majority House districts was underpopulated coming into the redistricting that followed the 2010 Census, population needed to be added to them. T3 122/18-21; S-DMcX 402, 406.

82. In order to essentially guarantee that the black community could elect the candidate of its choice in those pre-existing black-majority districts, the population to be added to the black-majority districts had to

be contiguous to the prior district lines and had to have about the same percentage of black population in it. T1 27/21-28/13; T3 118/7-19; T3 122/18-25; T3 221/4-15.

83. Another priority for Senator Dial and Representative McClendon was compliance with the $\pm 1\%$ overall population deviation established in the Guidelines. T1 27/2-15; T3 138/9-18; T3 220/1-12.

84. Any change made to accommodate the desires of a Senate or House member had to remain within the allowable $\pm 1\%$ overall population deviation. See T1 110/24111/4; T3 138/9-18.

85. Moving HD 53 from Birmingham to Huntsville and the related moves within the Birmingham area resulted in two Democratic incumbents being placed in the same district. T3 236/24-237/4.

86. Moving HD 73 from Montgomery to Shelby County and the related moves in the Montgomery area resulted in two Democratic incumbents being placed in the same district. T3 41/13-18.

87. In McClendon's view, the black-majority House districts in Birmingham were so underpopulated that the only way to reestablish their black populations was by dismantling an existing black-majority district; doing this also would allow for the creation of a new black-majority House

district in Huntsville, where the black population was growing. ALBC X 64 at 4, ¶ 12, lines 10-12.

88. The change moving HD 53 to Huntsville was made in accordance with the Voting Rights Act and with the overall population deviation of $\pm 1\%$. ALBC X 64 at 4, ¶ 12, lines 13-14.

89. Shelby County, to which HD 73 was moved from Montgomery, had experienced significant population growth in the preceding decade. T3 133/24-25; ALBC X 64 at 4, ¶ 13, lines 15-16.

90. Moving HD 73 from Montgomery to Shelby County was in accordance with the overall population deviation of $\pm 1\%$. S-McX 403.

91. Senator Dial and Representative McClendon also tried to preserve communities of interest in the new plans, but that consideration was subject to compliance with the Voting Rights Act and the overall population deviation of $\pm 1\%$. ALBC X 63 at ¶ 11, page 4, line 21 through page 5, line 1; ALBC X 64 at ¶ 11, page 4, lines 5-7.

92. Senator Dial reminded some of his Senate colleagues that they were State Senators, not county or district Senators. ALBC X 63 at ¶ 11, page 5, lines 1-2.

93. The Alabama Legislature took up legislative redistricting in a Special Session that began on May 17, 2012. NPX 315; T 150/22-151/13.

94. Shortly before the special session began, the draft Senate and House plans were completed. T 1 49/25-50/13; ALBC X 3 at 5, ¶ 12, line 3; ALBC X 64 at 5, ¶ 15, line 1.

95. “[T]he plan was to release individual maps ... at least a weekend prior to coming in to begin the special session.” APX-67 115/6-8.

96. Each member of the Senate received a summary of the Senate plan on Thursday, May 10, 2012, and they had the opportunity to review it and discuss it with their constituents over the weekend if they so choose. APX-63 at 5, ¶ 12, lines 5-7.

97. On May 10, 2012, each member of the House was offered a hard copy map of their district and had the opportunity to review and discuss it with their constituents over the weekend prior to discussion on the House floor if they so choose. APX 67-115/4-22.

98. Those plans were the subject of two more public hearings of the Reapportionment Committee that took place in Montgomery on the morning and afternoon of Thursday, May 17, 2012. ALBC X 63 at 5, ¶ 12, lines 3-15; ALBC X 64 at 5.

99. Senator Dial explained that there were three versions of the Dial Senate plan. “Dial Plan 1 was the original plan that we drew after the public hearings. We had a public hearing on Dial plan 1.” APX-67 70/3-5. Dial Plan 1 erroneously put two sets of incumbents in the same districts. Those errors were fixed in Dial Plan 2. APX-67 70/5-20. Dial Plan 3, which represented an accommodation between Senator Dial and Senator Tammy Irons, was ready to be introduced in the special session. T1 46/21 through 47/1.

100. Dial Plan 3 was not introduced because Senator Keahey, a white Democrat, asked for the bill to be read at length during the floor session in the Senate. Senate Rule 33 states, in part, “No amendment shall be received for discussion after the reading of any bill, resolution, amendment or motion, except by a suspension of the rules, before the final passage of any such bill, resolution, amendment or motion....”
<http://www.legislature.state.al.us/senate/senaterules/senaterules1.html>

101. Throughout the process, Senator Dial and Representative McClendon had to balance satisfying the competing redistricting criteria with the need to have the plans enacted. Senator Dial said that he had “to

have enough to pass it, and I can't create an opportunity where I at least can't have enough votes to cloture." T1 42/11-18.

THE SECTION 5 SUBMISSION

102. After the reapportionment plans were enacted as *Ala. Acts 2012-602 & 2013-603*, they were submitted for preclearance by the Attorney General of the United States under Section 5 of the Voting Rights Act. *T. 29.13-14*.

103. As acknowledged by Dr. Arrington, who testified for the *Newton* plaintiffs, the Section 5 preclearance process is opaque, and the submitting authority has no right to know the course of the Department of Justice's Section 5 investigation, with whom the Department is speaking, or what they are saying, and naturally follows that the submitting authority has no right to respond. *Arrington depo. 135/10 to 136/20* ("And I've been involved in Section 5 with the Justice Department, and what they tell me is you don't tell anybody what you've told us.").

104. In 2002, USDOJ objected to a proposed redistricting plan for Cumberland County, Virginia, which lowered the total population of the black majority from 55.9% to 55.3% and the voting age population from 55.7% to 55.2%. C-35 at 1.

105. In May 2002, USDOJ objected to the 2001 Arizona legislative redistricting plan because that plan split a Hispanic-majority district with a voting age population of 65.0% into two districts with a voting age population of 51.2% and 50.6%, respectively. C-37 at 3.

106. In October 2001, USDOJ rejected a proposed redistricting plan for the City of Charleston, South Carolina, pointing to anticipated population growth which threatened to undo the proposed plan “in a matter of only a few years.” C-36_ at 2.

107. Nevertheless, the record, while certainly incomplete on this point, indicates that the Department did investigate the state’s new redistricting plans. It interviewed Sen. Dial, *T29/13-22*, and Rep. McClendon, and also interviewed opponents of the plan, including Sen. Tammy Irons (who told DOJ there was a “culture of hate” among the Senate’s Republican leadership towards African Americans), *T178/5 to 180/12*, and Rep. Joe Hubbard (who was placed in HD 74 with another incumbent after his HD 73 was moved to Shelby County), *T43/17 to 44/9*, and Sen. Keahey, *T2 202/20 to 203/1*. In addition, counsel for the Black Caucus, John Tanner, submitted two letters to DOJ in opposition to preclearance of the plans, in which he made many of the arguments

presented at trial, including that the purpose and effect of the plans was racially discriminatory. S-DMcCX-454 & 455 (Tanner letters).

108. After conducting its investigation, the Department of Justice precleared the new Senate and House plans. T2 9/11-12.

Tom Brunell

109. There are a number of traditional, race-neutral redistricting criteria, each of which is in natural tension with the others. In the 2012 Alabama legislative plans, the desire to minimize the range of population deviations between districts through the use of an overall population deviation of $\pm 1\%$ conflicts with the desire to maintain the integrity of county boundaries. T3 194/11-T3 195/19.

110. It is the job of the Legislature to balance the competing criteria and adopt a plan.

111. In Brunell's judgment, smaller population deviations between districts in redistricting plans are preferable to larger population deviations. T3 198/1-20.

112. While he prefers zero deviation plans, Brunell "vastly prefer[s] a plus or minus 1 deviation over plus or minus 5." T3 197/23-24.

113. Smaller population deviations are preferable in part because they adhere more closely to overall population equality and make districts more nearly equal in population as they might be. T3 198/8-11.

114. Smaller population deviations are also preferable to larger deviations because it is easier to politically gerrymander a plan with larger deviations than with smaller. T3 198/12-22.

115. It is not impossible to politically gerrymander a redistricting plan with a smaller deviation, but such political gerrymandering occurs less frequently. T3 198/23-25.

116. A smaller overall deviation takes one tool out of the toolbox of those inclined to politically gerrymander a redistricting plan. T3 198/25-199/3.

117. Between 2000 and 2010, a number of states, including Alabama, tightened their allowable overall population deviations. APX-76; see also T2 87/15-T2 88/5.

118. A comparison of the difference between the average Republican population deviation and the average Democratic population deviation in the 2000 and 2010 redistricting cycles shows that the number

of statistically significant differences decreased from 21 in the 2000 round to 13 in the 2010 round. D-458; T3 204/17-20.

119. That comparison cannot be made for Alabama for the 2012 legislative redistricting plans because those plans have not yet been put to use. T3 202/10-11.

120. That comparison is statistically significant for the 2001 Alabama House redistricting plan at a level of p.001. D-458.

Randy Hinaman

121. Randy Hinaman is a political consultant who has also drawn redistricting plans. T3 114/16-20.

122. Hinaman drew the 1992 Alabama congressional redistricting plan and worked with Democratic leaders in the Alabama Senate on the 2001 Alabama congressional plan. T3 114/20-25; 115/17-23.

123. Hinaman drew the 1992 Alabama congressional plan for Paul Wesch for use in the case of *Wesch v. Hunt*, 785 F. Supp. 1491 (S.D. Ala. 1991) (three-judge court). T3 115/1-4.

124. The three-judge court sitting in *Wesch v. Hunt* adopted Hinaman's plan. T3 115/5-7; see also *Wesch*, 785 F. Supp. at 1500 ("The

plan which this court adopts today is substantially the same as the plan offered by Plaintiff Wesch.”).

125. The plan that Hinaman drew for Paul Wesch did not require preclearance. T3 115/8-16; see also *Wesch*, 785 F. Supp. at 1499-1500.

126. In its opinion, the *Wesch* court noted that the Alabama legislature had passed a congressional redistricting plan, which had not yet been precleared. The *Wesch* court stated;

If the plan reportedly adopted by the legislature should be precleared by some expedited method no later than 12:00 noon, Central Time, March 27, 1992, one week before the statutory deadline for candidates to qualify to run, as set out herein, then that plan will take effect and those will be the congressional districts for the 1992 election. Otherwise, the legislature will have defaulted in its obligation to the people and the plan described herein will take effect.

Wesch, 785 F. Supp. at 1501.

127. On March 27, 1992, the Attorney General of the United States objected to the congressional plan that was drawn by the legislature. See C-36 (referring to Act No. 92-63 “which provides the redistricting plan for Congressional districts” and noting “the extreme time constraints imposed by the order of the court in *Wesch v. Hunt*, No. 91-0787 (S.D. Ala. March 9,

1992), which allowed the State until noon today to obtain preclearance of its proposed plan under Section 5.”).

128. Hinaman worked with all of the members of the Alabama congressional delegation to draw a map for potential use in the 2012 elections. T3 116/3-6.

129. The plan that Hinaman drew for potential use in the 2012 congressional elections was passed by the Legislature with some changes, signed by the Governor, and used in the 2012 elections. T3 116/7-12.

130. Hinaman has experience drawing statewide plans in Alabama. T3 116/15-16.

131. Hinaman did not draw the 2011 redistricting plan for the State Board of Education. T3 116/20-23.

132. Hinaman worked on the congressional plan in conjunction with Senator Dial and Representative McClendon. T3 117/1-3.

133. Speaker Hubbard, Senator Dial, and Representative McClendon talked to Hinaman about “helping out with the legislative districts” after work on the congressional plan was done. T3 117/2-5.

134. Hinaman began working on the legislative plans in early September 2011. T3 117/6-9.

135. Hinaman obtained precinct-level election results from “the last eight or so general elections” and loaded them into the map he was working on. T3 117/18-25.

136. In preparing his initial draft, Hinaman followed the $\pm 1\%$ population deviation. T3 118/4-6.

137. In addition, Hinaman tried not to retrogress either the total number of black-majority districts or the strength of the minority population in the districts. T3 118/7-17.

138. In evaluating the strength of the minority population in each of the black-majority districts, Hinaman’s “[r]eference point was 2010 census in 2001 districts.” T3 118/18-19.

139. Hinaman also had incumbent addresses which he used in drafting his plans, all but two of which turned out to be correct. T3 118/20-119/1.

140. Hinaman “was instructed that we were not putting incumbents together to the extent we could avoid it.” T3 119/1-2.

141. While it would have been possible to put Senator Roger Bedford and Senator Tammy Irons, both northwest Alabama Democrats, in the same district, Senator Dial and Senate Pro Tem Del Marsh “both” told

Randy Hinaman “that they did not want to put two senators in the same district.” APX-75 144/21-145/1.

142. When Hinaman reported that he had “initial drafts” ready in early January 2012, that meant that he had “every district with one incumbent in it, 2[%] deviation, and had roughed out the majority districts’ overall number....” T3 119/3-12.

143. After the 2012 regular session of the Legislature began on February 7, 2012, Hinaman came to Alabama for two or three days every other week to confer with Senator Dial and Representative McClendon and to meet with individual legislators from both houses. T3 119/22-120/5.

144. Hinaman met only with Republican legislators at this stage of the process. T3 120/6-11.

145. While Hinaman met only with Republican legislators at this time, he received input from black and white Democratic legislators through Senator Dial and Representative McClendon. T3 120/14-121/4.

146. Hinaman began his work on the legislative plans with the black-majority districts, then worked from the edges of the map toward the middle. T3 122/8-20.

147. In the Senate plan, all eight black-majority districts were underpopulated, so Hinaman “had to find population to repopulate them.” T3 122/18-21.

148. The population used to repopulate the black-majority districts had to come from the neighboring, contiguous districts first. T3 122/22-25.

149. One major change to the Senate map that had effects on districts to the north and south of Montgomery was to move SD 30 entirely to the north of Montgomery. In the 2001 plan, SD 30 had parts of counties north of Montgomery and all or part of three counties to the south of Montgomery, with a land bridge through Lowndes County. T3 122/10-19.

150. With the move of SD 30 to the north of Montgomery, the rest of Lowndes County and all of Butler County went into SD 23, Crenshaw County went into SD 25, and Pike County went into SD 31. T3 122/19-22.

151. In the Senate plan, the underpopulated black-majority districts included SDs 23 and 24 in southwest central Alabama. D-400; D-402.

152. In order to gain population, SD 24 made several changes including pushing north into Pickens County, which had the effect of moving SD 21 north to pick up all of Lamar County. T3 122/23-123/1.

153. When the 2010 Census data were loaded into the 2001 Senate district lines, SD 4 and SD 5, in northwest Alabama, were both underpopulated, SD 4 by -13,273 or -9.72%, and SD 5 by -1,588 or -1.16%. T3 124/2-4; see also D-402.

154. Hinaman explained that SD 5 “couldn’t very easily go directly east because of the three African-American senate districts in Jefferson County, so it took up ... all of Fayette County.” T3 124/4-7.

155. When the 2010 Census data were loaded into the 2001 district lines, SD 6 in northwest Alabama was underpopulated by -19,519 people or -14.29%. D-402.

156. Taking Lamar and Fayette Counties and other territory away from SD 6 forced it to pick up population from Colbert, Lauderdale, and Lawrence Counties, pushing it north and east around the northwest corner of Alabama. T3 124/8-13.

157. Moving SD 6 into SD 1 pushed SD to the east where it picked up the northern part of SD 2. T3 124/16-17.

158. Unlike the other Senate districts in northwest Alabama, SD 2, in Limestone and Madison Counties was substantially overpopulated by 42,494 or 31.12%. D-402; T1 125/21-25.

159. Hinaman redistributed the population of SD 2 to bring it within the allowable deviation. T3 124/18-20.

160. Hinaman also moved SDs 23 and 24 to the south into Choctaw and Clarke Counties to pick up population. T3 124/22-23.

161. Moving SDs 23 and 24 south into Choctaw and Clarke Counties took them out of SD 22, but SD 22 could pick up population from SD 32 Baldwin County, which was overpopulated by 19,055 people or 13.95%. D-402, at 2; see also T3 124/22-125/2.

162. For the black-majority districts in Jefferson County, SDs 18, 19, and 20, Hinaman used a map that Senator Dial told him it came from Senator Rodger Smitherman, an African-American who represents SD 18. T3 126/7-12; see also D-469.

163. Hinaman estimated that he put “95, 97 percent of [the Smitherman map] into the Senate map.” T3 126/16.

164. With respect to the internal boundaries on the Smitherman map, Hinaman stated that, if he changed any of them, “[I]t was unintentional. I tried to follow those lines entirely. And I got no feedback that I was wrong, so I think I did those correctly as that map represents.” T3 126/17-21.

165. Hinaman moved several precincts on the western side of SD 19 from where they had been placed on the Smitherman map. He explained that those precincts “were in Senator Reed’s Senate District, Senate District 5, I believe, and he wanted to keep those like two or three precincts. In exchange for that, obviously, I had to have equal population, put in two or three precincts at the very southern tip of Jefferson County.” T3 126/22-127/3.

166. The precincts that Hinaman moved to SD 5 and those he replaced them with were both majority white precincts. T3 127/4-13

SD 26

167. With respect to SD 33, Hinaman explained that there were “some constraints” on where the new lines could be drawn as that district was repopulated. T3 130/7-11.

168. When the 2010 Census results were loaded into the lines of the 2001 Senate plan, SD 33 was underpopulated by 18.05%, or -24,649 people. D-402, at 2. In addition, while SD 34 was overpopulated by 13.82%, or 18,871 people, SD 35 was underpopulated by -7.23%, or -9,878 people. *Id.*

169. Hinaman explained, “[W]e didn’t want to cross the bay into Baldwin County, so we really couldn’t go east. The two senators – the senator who represents District 34, Senator Glover, lives essentially north – well, sort of northwest of 33, and the senator who represent[ed] District 35 at the time, Senator Brooks, lives southwest of 33, so going west was somewhat problematic in terms of going into their neighborhoods. And going north could have had the unintended consequence of cutting off the transportation, shall we say, from District 22 to Escambia County, so that was somewhat problematic. So going south was essentially the easiest course” for SD 33. T3 130/11-21.

170. Hinaman explained that SD 35 “picked up some of the western part of Mobile County and lost some of its northern – northeastern part to Senate District 33.” T3 131/2-4.

171. Those changes “[p]ushed [SD 34] a little further north; took up a little bit further north part of the county.” T3 131/5-8.

172. SD 22 was pushed farther south by the need to repopulate SDs 23 and 24.

173. In addition to preserving the land bridge from Washington County to Baldwin County for SD 22, Hinaman added population to SD 22 from SD 32 in northern Baldwin County. (8/12/2013. 131:13-18)

174. When the 2010 Census results were loaded into the 2001 Senate district lines, SD 32 was overpopulated by 13.95%, or 19,055 people. D-402 at 2.

175. With respect to the African-American House districts in Jefferson County, Hinaman explained that he recommended moving HD 53 from Jefferson County to create a new black-majority House district in Madison County. T3 131/22-133/1. While Hinaman made that recommendation, the decision whether or not to follow that recommendation “ultimately ... was the Legislature’s, but initially it was Representative McClendon’s.” T3 133/2-5.

176. Hinaman explained that he made that recommendation “[b]ecause every one of the minority majority districts in Jefferson County were underpopulated, some quite dramatically. And, when we looked at it as a whole, they were around 70,000 folks short of ideal, those districts added together, which is basically a district and a half. And looking at the map, I knew that most of the – if not all of the minority neighborhoods

were already included in those districts, so trying to repopulate them to get them back to deviation was going to retrogress most if not all of them, some of them maybe to the point where I was very concerned about Section 5 preclearance of the plan.” T3 132/6-17.

177. To the extent that, between 2000 and 2010, the black population in Jefferson County increased, it did not increase by 70,000 people nor did the increase show up in the 2001 House or Senate district lines. T3 132/18-133/13.

178. Hinaman recommended that HD 73 be moved from Montgomery to Shelby County. (T3 133/14-16)

179. In addition, moving HD 73 out of Montgomery County “was a feature of the map that Representative McClammy had given to Representative McClendon to give to [Hinaman].” (T3 133/16-18)

180. Hinaman advanced two reasons for moving HD 73 to Shelby County; “One, we needed population to repopulate the three majority black districts in Montgomery County, and the only – or most of the only logical population was in 73. Obviously, why move it to Shelby County? That was the fastest growing county in the state, I believe. And it also – every district whole or part that was in Shelby County was overpopulated,

so something was going to need to take – one district there, I think, was dramatically overpopulated. House District, I think, 41. So it made sense to move that district to a much faster growing area.” (T3 133/19 through 134/5)

181. In the 2001 House plan, all or part of six districts (HDs 41, 42, 43, 48, 49, and 50) lay in Shelby County. D-412.

182. When the 2010 Census results were loaded into the lines of the 2001 House plan, the following results appear for those districts all or part of which were in Shelby County:

HD 41+60.76%	+27,660
HD 42 +6.19%	+2,817
HD 43+23.14%	+10,535
HD 48+18.73%	+8,526
HD 49+14.26%	+6,493
HD 50+21.65%	+9,857

D-406, at 4.

183. The McClammy map package contained “a map, a couple of maps, and then corresponding demographic information.” (T3 134/11-12)

184. The demographic information that came with the McClammy map did not include HD 73 because Representative McClammy “drew the districts inside Montgomery County without a District 73.” (T3 134/13-16)

185. While Hinaman used the “concept” of the McClammy map in drawing the House districts in Montgomery County, “it wasn’t identical, because I also had to bring in House District 69, which is another majority African-American House district that was short of population, so that changed the nature of it slightly, somewhat. But I tried to use the concept of using District 73 to repopulate the minority districts in Montgomery County.” (T3 134/17-24)

186. In addition, Hinaman brought HD 90 into the southern portion of Montgomery County, where it took some 3,000 people. (T3 134/25 through 135/3)

187. Hinaman “believe[s]” that the changes he made to the McClammy map were consistent with the concept of that map. (T3 135/4-6)

188. Once the plans were drafted and in the hands of Senator Dial and Representative McClendon, Hinaman sat down with some legislators who wanted to make changes in the lines of their proposed districts.

Hinaman sat down with or talked to white and African-American Democrats in the House. In addition, he changed some district lines to correct erroneous information about the residence of “a couple of people.” (T3 135/18 through 137/4)

189. While “no one gets everything they want in redistricting,” Hinaman stated that he “tried” to carry out the wishes of the legislators whose input he received either directly or through Senator Dial or Representative McClendon “to the extent possible.” (T3 137/5-10)

190. Hinaman drew HD 43 so that it maintained a portion of Jefferson County. It contained a portion of Jefferson County in the 2001 House plan, and Hinaman added a different portion of Jefferson County to the new version of HD 43. (T3 164/6-19)

191. The 12 person portion of Greene County that was added to HD 61 was done to accommodate Representative Alan Harper, who “said he had a house or cabin on that property in Greene County and was thinking of potentially moving there” (T3 167/22 through 168/1)

Jim McClendon

192. Representative McClendon was appointed to the Reapportionment Committee by the Speaker of the House. (T3 219/12-19)

He was elected to serve as the House chair and co-chair of the joint committee. (T3 219/20-25)

193. Representative McClendon recalled that he saw the first legislative plans Randy Hinaman produced in late February or early March 2012. McClendon stated that Hinaman was working off a laptop and there were no hard copies. (T3 221/16 through 222/10)

194. The 2012 Regular Session of the Alabama Legislature started in February 2012. (T3 222/11-16)

195. Representative McClendon approached Representative McCampbell, the chair of the black caucus in the House, and Representative Craig Ford, the minority leader, and told them of his willingness to meet with the Democrats in the House. (T3 222/17 through 223/5)

196. Representative McClendon met with all of the Democrats “that wanted to meet.” He said, “I made myself available to them.” T3 223/10-11; T3 223/12-224/14; S-DMcX 459.

197. With respect to the cClammy map of the Montgomery House districts, Representative McClendon stated, “I believe the other black

legislators in Montgomery County had agreed upon this and thought it was a good plan.” (T3 229/3-5)

198. Representative McClendon stated that Representative McClammy told him that “his map would be a better map” than a competing map offered by another group of “black folks.” (T3 223/8-12)

199. The first map of the new House plan was McClendon 1, which had two representatives who were not in their new districts because of a problem with their home addresses. The necessary changes were made, and McClendon 2 was the result. (T3 228/7-19)

200. When Representative McClendon was approached about a change to the lines in McClendon 2, the first thing he looked for was any change to the population deviation. In addition, because each change to a district line affects at least two people, Representative McClendon wanted to have both parties involved. (T3 232/16 through 233/5)

201. After McClendon 2 was released, Representative McClendon talked with Representative Marcel Black, a white Democrat from northwest Alabama, about changes to the contiguous lines between his district and the districts of Representatives Johnny Mack Morrow and Greg Burdine,

both white Democrats. The proposed changes affected only the three of them, so they were made. (T3 230/10-20)

202. After McClendon 2 was released, Representative McClendon also worked with Representatives Oliver Robinson, Mary Moore, both of whom are African-American Democrats, and Patricia Todd, a white Democrat, to work out changes to the district lines they shared. The proposed changes affected only them and were neutral with respect to the population deviation, so they were made. (T3 230/23 through 231/22)

203. Representative McClendon was not able to work out a proposed change in several Birmingham House districts that would have involved a “one-way swap” of some 3600 people. (T3 231/23 through 232/15)

204. A group of five Marshall County Republicans was able to work out changes to McClendon 2. (T3 233/9-18)

205. With respect to Representative Hubbard’s proposal to change the Montgomery House districts, Representative McClendon explained, “[H]is plan didn’t fit in sync with Representative McClammy’s plan. Representative McClammy, I could make several people happy. With Representative Hubbard’s, I would just make him happy.” (T3 233/19-23)

206. After the Senate passed the proposed new House redistricting plan in the special session, Representative Boman “came up to” Representative McClendon and “said he could win that new House District 16 the way it was drawn. He said he didn’t have a problem with it at all. Said, I can win that district.” (8/12/2013, 257:10-17)

207. Representative McClendon did not see HB 16 before it was offered on the House floor. APX 67 117/5-11.

William Cooper

208. A population deviation of $\pm 5\%$ entails a greater degree of vote dilution between districts than a deviation of $\pm 1\%$.

209. In the 2001 Alabama Senate plan, which was drawn with an overall deviation of $\pm 5\%$, the difference between the most populated and the least populated district was 12,360 people. D-402; T2 115/4-8.

210. In the 2012 Alabama Senate plan, which was drawn with an overall deviation of $\pm 1\%$, the difference between the most populated and the least populated district is 2,701 people. D-400; T2 115/15-116/1.

211. The use of $\pm 5\%$ in the 2001 Alabama legislative plans and the resulting distribution of the State’s population contributed to a wide range in the population of districts by the time of the next Census. T2 117/15-18.

212. When the 2010 Census results were loaded into the 2001 Senate district lines, the difference in the population between the most overpopulated and the most underpopulated Senate district was 71,683 people. D-402.

213. When the 2010 Census results were loaded into the 2001 House district lines, the difference in the population between the most overpopulated and the most underpopulated House district was 42,301 people. D-406.

214. In Cooper's opinion, the wide range in population distributions that were revealed when the 2010 Census data was loaded into the 2001 district lines could be mitigated by underpopulating the parts of the State that were expected to grow at a disproportionate rate and underpopulating those parts of the State that were expected to lose population at a disproportionate rate. T2 116/16-19.

215. The drafters of the 2001 Alabama legislative plans did not adopt that practice. T2 116/23-117/22.

216. When the 2010 Census data were loaded into the lines of the 2001 Senate plan, SD 2 in north Alabama was the most overpopulated

district and was 42,494 people above the population of an ideal Senate district. D-402; T1 125/23.

217. Notwithstanding that SD 2 was overpopulated by 24.841% coming into the 2000 cycle, the then-Democratic majority overpopulated it by 4.625% in the 2001 Senate plan. D-407 at 2.

218. When the 2000 Census data were loaded into the lines of the 1993 Senate plan, SD 2 was overpopulated by 31,563 people or 24.841%. D-416.

219. In the 1993 Senate plan, SD 2 was overpopulated by 0.99%. D-414.

220. When the 2010 Census data were loaded into the lines of the 2001 Senate plan, SD 20, a black-majority Senate district in Jefferson County, was the most underpopulated district and was 29,189 people below the population of an ideal Senate district. D-402.

221. Notwithstanding the fact that SD 20 was underpopulated by -25.275% coming into the 2000 cycle, the then-Democratic majority underpopulated it by -4.072% in the 2001 Senate plan. D-407, at 2.

222. When the 2000 Census data were loaded into the 1993 Senate plan, SD 20 was underpopulated by -32,115 people or -25.275%. D-416.

223. In the 1993 Senate plan, SD 20 was underpopulated by -4.71%.
D-414.

224. Cooper prepared the Senate and House redistricting plans that became SB 5 and HB 16 in the Alabama Legislature. T1 211/1-13.

225. At the direction of one of the attorneys for the ALBC Plaintiffs, Cooper used an overall population deviation of $\pm 5\%$ when he drew the plans that became SB 5 and HB 16. T2 109/14-20.

226. At the direction of one of the attorneys for the ALBC Plaintiffs, Cooper tried to minimize the splitting of counties when he drew the plans that became SB 5 and HB 16. T2 109/11-13.

227. Cooper did not talk to any members of the Alabama Legislature when he was drawing the plans that became SB 5 and HB 16. T2 109/21-23.

228. Cooper knew that he paired some members of the Alabama Legislature when he drew the plans that became SB 5 and HB 16. T2 110/15-16.

229. The legislators that Cooper paired were not unpaired in SB 5 or HB 16. T2 110/17-18.

Laura Hall

230. Laura Hall has been in the Alabama House of Representatives since [1993] and currently represents HD 19. T3 5/10-14; T3 6/3.

231. Randy Hinaman stated that he looked at the possibility of drawing another black-majority Senate district in Madison County or elsewhere in north Alabama. He “tried a couple of different attempts and a couple of different approaches to draw a majority district in north Alabama, either using just mostly Madison County, or at one point I even tried to take Madison County all the way over to Florence, which I’m not sure would have been a Shaw compliant district, but nevertheless. And I was never – in either of those attempts, about the best – when drawn to deviation, the best I could do is in the 45 to 46 percent African American percentage total pop.” (T3, 187/4-18)

232. The Newton Plaintiffs’ illustrative remedy calling for the creation of a new black-majority Senate district in Madison County proposes the creation of a Senate district that is -4.96% below the population of an ideal Senate district. See NPX-302.

233. Representative Hall does not believe that she would be happy being a member of the Republican Party and has “not thought of asking them if I could be a member.” (T3 36/4-8)

Dr. Joe Reed

234. Dr. Reed had input into the 1993 Alabama legislative plans, which split counties and precincts. T2 170/25-171/1.

235. Dr. Reed stated, “We split voting precincts, because that’s going to happen anyway.” T2 163/2-4.

236. The Boards of Registrars complained about the county and precinct splits in the 1993 plans, but they were able to tell the voters where to vote and which districts they were in. T2 171/3-7.

237. The Boards of Registrars were able to cope with the county and precinct splits in the 2001 legislative plans. T2 172/15-173/2.

238. Dr. Reed stated that, in his opinion, the new plans were “going to overwork boards of registrars.” T2 168/3-4.

239. Dr. Reed did not identify any Boards of Registrars that lacked the technical skills necessary to cope with the split counties and split precincts in the 1993 and 2001 plans. T2 172/11-173/2.

240. Dr. Reed provided no support for his contention that any confusion resulting from splits in counties and precincts disproportionately affected minority voters. T2 174/4-7.

The Montgomery Black-Majority House Districts

241. Each of the black-majority districts in the 2001 Alabama legislative plans was underpopulated when the results of the 2010 Census were loaded into the district lines for the 2001 plans.

242. The black-majority House districts in Montgomery were no exception to that pattern. HD 78 was the most underpopulated House district in Alabama and HD 77 was the fourth most underpopulated out of 105 districts.

243. The demographics of the House districts in Montgomery are as follows:

	2012	Needed	2010 in 2001 Lines
HD 73 *		+2,745	48.44%
HD 74	24.52%	-4,474	30.32%
HD 75	26.43%	+14,619	27.61%
HD 76	73.79%	-627	69.54%
HD 77	67.04%	-10,523	73.52%

HD 78 69.99% -14,641 74.26%

D-403 at 6; D-406 at 6.

244. When compared to the results derived from loading the 2010 Census results into the lines of the 2001 Montgomery black-majority House districts and taking into consideration the contribution of the African-American House members in Montgomery to the new district lines, HDs 76, 77, and 78 in the 2012 House plan are not packed.

245. Those results show that (1) HDs 77 and 78 needed to gain a substantial amount of population; (2) HD 73 and HD 75 were the only districts with population to give; and (3) in the 2001 House plan, of the black-majority districts, HD 73 was contiguous to HDs 76 and 77, and HD 75 was contiguous to HDs 76 and 77. S-DMcX 480.

246. The demographics of the Montgomery black-majority House districts over time are as follows:

McClendon House	2010/2001	2001 House	1993 House
%		%	%
76 73.79	-1.38	73.309	66.69
77 67.04	-23.12	69.677	71.93
78 69.99	-32.16	72.697	72.37

D-403; D-406; D-411 at 13; D-417.

247. Measured by their prior demographics and taking into account the contribution of the African-American House members in Montgomery to the new district lines, HDs 76, 77, and 78 in the 2012 plan are not packed.

248. In the 2001 House plan, HDs 76, 77, and 78 were each underpopulated by more than -3.0%. D-411 at 4.

249. In the 1993 House plan, HDs 76, 77, and 78 were each underpopulated by more than -3.5%. D-417 at 2.

250. Representative McClendon gave Randy Hinaman a map of the black-majority House districts in Montgomery (HDs 76, 77, and 78) that Hinaman understood came from Representative Thad McClammy. APX-68 at 4, ¶ 6.

251. With respect to the McClammy map of the Montgomery House districts, Representative McClendon stated, "I believe the other black legislators in Montgomery County had agreed upon this and thought it was a good plan." T3 229/3-5

252. Representative McClendon stated that Representative McClammy told him that “his map would be a better map” than a competing map offered by another group of “black folks.” T3 223/8-12.

253. The McClammy map package contained “a map, a couple of maps, and then corresponding demographic information.” T3 134/11-12.

254. The demographic information that came with the McClammy map did not include HD 73 because Representative McClammy “drew the districts inside Montgomery County without a District 73.” T3 134/13-16.

255. The McClammy map used an overall deviation of $\pm 1\%$ and brought the population of HDs 76, 77 and 78 back within the allowable deviation without significantly changing the percentage of the population in those districts that were African-American. To get the black population needed to for HDs 76, 77 and 78, the McClammy map drew African-American voters from HD 73. APX-68 at 4, ¶ 6.

256. Randy Hinaman kept the African American percentages for each majority district very close to the percentages in the McClammy map. APX-68 at 4, ¶ 6.

257. Randy Hinaman recommended that HD 73 be moved from Montgomery to Shelby County, the fastest growing county in Alabama and one whose existing House districts were all overpopulated. T3 133/14-16.

258. In addition, moving HD 73 out of Montgomery County “was a feature of the map that Representative McClammy had given to Representative McClendon to give to [Hinaman].” T3 133/16-18.

259. Hinaman advanced two reasons for moving HD 73 to Shelby County; “One, we needed population to repopulate the three majority black districts in Montgomery County, and the only – or most of the only logical population was in 73. Obviously, why move it to Shelby County? That was the fastest growing county in the state, I believe. And it also – every district whole or part that was in Shelby County was overpopulated, so something was going to need to take – one district there, I think, was dramatically overpopulated. House District, I think, 41. So it made sense to move that district to a much faster growing area.” T3 133/19-134/5.

260. In the 2001 House plan, all or part of six districts (HDs 41, 42, 43, 48, 49, and 50) lay in Shelby County. D-412.

261. When the 2010 Census results were loaded into the lines of the 2001 House plan, the following results appear for those districts all or part of which were in Shelby County:

HD 41+60.76% +27,660

HD 42 +6.19% +2,817

HD 43+23.14% +10,535

HD 48+18.73% +8,526

HD 49+14.26% +6,493

HD 50+21.65% +9,857

D-406, at 4.

262. While Hinaman used the “concept” of the McClammy map in drawing the House districts in Montgomery County, “it wasn’t identical, because I also had to bring in House District 69, which is another majority African-American House district that was short of population, so that changed the nature of it slightly, somewhat. But I tried to use the concept of using District 73 to repopulate the minority districts in Montgomery County.” (8/12/2013, 134:17-24; see also APX-68 at 4, ¶ 7)

263. Bringing HD 69 into Montgomery County pushed HD 78 deeper into the northern part of Montgomery County, a feature which was also in

the McClammy map, and caused other ripple effects on the contiguous districts. APX-68 at 4-5, ¶ 7.

264. In addition, Hinaman brought HD 90 into the southern portion of Montgomery County, where it took some 3,000 people. T3 134/25-135/3.

265. Hinaman modified the McClammy map because “any districts have to fit into a statewide map. And obviously we could draw any one county ... and say this is a beautiful map, but if it doesn’t fit in with the other districts in the state, then it’s of little value.” APX-75 at 48/13-17.

266. Hinaman “believe[s]” that the changes he made to the McClammy map were consistent with the concept of that map. T3 135/4-6.

267. Representative McClendon and Randy Hinaman did not act unreasonably, illegally, or unconstitutionally in using the concept of the map and demographic information that Representative McClammy gave to Representative McClendon.

268. None of the African-American House members from Montgomery complained at trial about the new black-majority districts in Montgomery County.

269. Representative Joe Hubbard, who was elected from HD 73, proposed changes to the House districts in Montgomery County.

270. With respect to Representative Hubbard's proposal to change the Montgomery House districts, Representative McClendon explained, "[H]is plan didn't fit in sync with Representative McClammy's plan. Representative McClammy, I could make several people happy. With Representative Hubbard's, I would just make him happy." T3 233/19-23.

The Jefferson County House Districts

271. The demographics of the black-majority districts in Jefferson County are as follows:

	2012	2010 Under	2001	2001 Under	1993
52	60.13	- 5.19	65.848	-17.538	67.72
53	55.83	-22.28	64.445	-22.938	66.01
54	57.73	-23.32	63.276	-24.544	63.95
55	73.55	-21.86	67.772	-15.744	61.57
56	62.14	- 9.79	62.665	-19.706	63.52
57	68.47	-20.48	62.967	-18.282	63.90
58	75.68	-17.75	63.518	-22.688	62.75
59	72.96	-27.86	63.241	-27.091	63.86
60	67.68	-19.37	64.348	-26.038	66.22

D-403/ 406; ; 417.

272. The results of loading the results of the 2010 Census into the 2001 district lines for the black-majority House districts in Jefferson County show the following:

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

D-403; 406.

273. Each of the nine black-majority House districts in Jefferson County was underpopulated when the results of the 2010 Census were loaded into the 2001 House district lines.

274. The nine black-majority House districts in Jefferson County were collectively underpopulated by 76,427 people, or approximately the population of 1 ½ House districts populated at the ideal population.

275. To the extent that Newton Plaintiffs' expert Dr. Ted Arrington points to an overall increase in the black population of Jefferson County and an overall decrease in the white population of Jefferson County between 2000 and 2010, those demographic changes were not reflected in these nine black-majority districts in Jefferson County. (8/12/2013, 132:18 through 133:13)

276. The decision to move HD 53 from Birmingham to Madison County, where the new HD 53 remains a black-majority district, can be justified by the collective population shortfall in the Birmingham House districts and by the need to avoid retrogression.

277. Randy Hinaman explained that he made the recommendation to move HD 53 to Madison County “[b]ecause every one of the minority majority districts in Jefferson County were underpopulated, some quite dramatically. And, when we looked at it as a whole, they were around 70,000 folks short of ideal, those districts added together, which is basically a district and a half. And looking at the map, I knew that most of the – if

not all of the minority neighborhoods were already included in those districts, so trying to repopulate them to get them back to deviation was going to retrogress most if not all of them, some of them maybe to the point where I was very concerned about Section 5 preclearance of the plan.” (8/12/2013, 132:6-17)

278. With respect to the African-American House districts in Jefferson County, Hinaman explained that he recommended moving HD 53 from Jefferson County to create a new black-majority House district in Madison County. (8/12/2013, 131:22 through 133:1) While Hinaman made that recommendation, the decision whether or not to follow that recommendation “ultimately ... was the Legislature’s, but initially it was Representative McClendon’s.” (8/12/2013, 133:2-5)

279. Randy Hinaman drew HD 43 so that it maintained a portion of Jefferson County. It contained a portion of Jefferson County in the 2001 House plan, and Hinaman added a different portion of Jefferson County to the new version of HD 43. (8/12/2013, 164:6-19)

280. After McClendon 2 was released, Representative McClendon also worked with Representatives Oliver Robinson, Mary Moore, both of whom are African-American Democrats, and Patricia Todd, a white

Democrat, to work out changes to the district lines they shared. The proposed changes affected only them and were neutral with respect to the population deviation, so they were made. (8/13/2013, 230:23 through 231:22)

281. Representative McClendon was not able to work out a proposed change in several Birmingham House districts that would have involved a “one-way swap” of some 3600 people. (8/13/2013, 231:23 through 232:15)

282. The local delegation for Jefferson County is currently balanced at 9 Democrats and 9 Republicans. (8/13/2013, 236:24 through 237:4)

283. In the 2012 House plan, HD 53 will be replaced by HD 16. HD 16 is currently represented by Daniel Boman, who was elected as a Republican but subsequently switched over to the Democrats. (8/13/2013, 237:4-11)

284. Representative McClendon would not be surprised if a Republican were elected in the new HD 16 because the voters in old HD 16 elected a Republican in 2010. (8/13/2013, 237:14-16)

285. If a Republican replaces Daniel Boman, the local delegation for Jefferson County will consist of 10 Republicans and 8 Democrats.

286. Whether a Republican replaces Daniel Boman as the representative for HD 16 is up to the voters.

287. After the Senate passed the proposed new House redistricting plan in the special session, Representative Boman “came up to” Representative McClendon and “said he could win that new House District 16 the way it was drawn. He said he didn’t have a problem with it at all. Said, I can win that district.” (8/12/2013, 257:10-17)

Packing

288. At the Selma public hearing, Senator Hank Sanders, an ALBC member, suggested, “One of many concerns is we ought not to have any less African-American – the majority African-American districts than you have, and that those districts ought not be less than 62%.” D-444, at 6.

289. At the Selma public hearing, Senator Hank Sanders stated, “So I would hope that 62 percent is a minim[um] for the majority African-American district.” D-444, at 6.

290. At the Thomasville public hearing, Representative Thomas Jackson, an ALBC member, suggested that the African-American population of a black-majority district “could be sixty-two or sixty-five percent.” D-439, at 8.

291. Dr. Joe Reed, a representative of Newton Plaintiff The Alabama Democratic Conference, testified that his present opinion is that the African-American population in a black-majority district is safe when it is “[a]round 60 percent.” (8/9/2013, 157:20-24)

SD 26

292. In each of the last three redistricting plans, the black population of SD 26 has been in excess of 70% of the total population. That population was 70.34% in 1993, 71.507% in 2001, and is 75.13% of the total in the 2012 plan. D-407, at 6; D-400, at 3, respectively.

293. In the 2012 Senate plan, SD 26 contains 26,615 white people, or 19.51% of the total, and 102,520 black people, or 75.13% of the total. D-400, at 3.

294. In addition to those losses, Hinaman moved the southern portions of Montgomery County from SD 26 into SD 25. Hinaman estimated that the population of that portion of Montgomery County was “probably about 65 percent white.” T3 129/19-23.

295. In the course of repopulating SD 26, Hinaman moved both white and black people into the district. T3 129/23-25.

296. Between 2000 and 2010, the core of SD 26 lost a significant portion of its white population and a smaller portion of its black population. The net loss was 8,919 white people and 4,772 black people.

297. When the 2010 Census data were loaded into the lines of the 2001 Senate plan, SD 26 contained 26,579 white people and 87,714 black people. D-402.

298. In the 2001 Senate plan, SD 26 was overpopulated by +1.794%, or 2,279 people. D-407, at 2.

299. In the 2001 Senate plan, SD 26 contained 34,958 white people or 27.028% of the total population and 92,486 black people or 71.507% of its total population. D-407 at 6.

300. When the 2000 Census data were loaded into the lines of the 2001 Senate plan, SD 26 contained 26,624 white people, or 25.228% of the total, and 77,552 black people, or 73.385% of the total population. D-410 at 5.

301. In the 1993 Senate plan, SD 26 was underpopulated by -4.44%, having -5,120 people less than the ideal population of 115,445. D-414.

302. In the 1993 Senate plan, SD 26 contained 24,542 white people, or 32.33% of the total population, and 50,816 black people, or 66.93% of the total population. D-414, at 4.

Weaver / Sen 22 claims

303. Plaintiff Weaver identifies himself as an adult “Native American” citizen and a resident of Washington County, formerly assigned to Senate District 22. No. 1 at 2, ¶ 4. He alleges that the Legislature redrew Senate District 22 so as to intentionally minimize and cancel out minority political opportunities.

304. Plaintiffs have not shown that such a district can be created without violating the Legislature’s valid choices to observe a $\pm 1\%$ population deviation, to maintain prior population portions in minority districts, and avoid pitting incumbents against one another. While Plaintiffs presented an illustrative District 22 that was within $\pm 1\%$, Plaintiffs did not prove that such a district would not have the effect of causing unacceptable population deviations in surrounding districts.

305. Weaver testified that there were around 4,000 MOWA Indians in the District 22 area, but Plaintiffs presented no evidence concerning how many such persons are of voting age. T4 41/12-14; T4 50/1-9.

306. When the 2010 Census data are loaded into the 2001 Senate plan, SD 22 included 4731 people identified as American Indian (which number would include more than those who identify themselves as MOWA Indians). Exhibit 402. The difference between American Indian population with the 2010 Census data loaded into the 2001 plan (4731) and the American Indian population in SD 22 (3674, see Exhibit 400) is 1057 people.

307. The ideal population of a Senate district is 135,564 people. Accordingly, the change affected less than 1% of the district's population. Plaintiffs presented no evidence that 1057 people, even assuming all are voters, and even assuming all are MOWA, are sufficient to form a coalition with any other group. Plaintiffs have not shown that such a small group has the potential to make a difference in the outcome of any election.

308. No part of Alabama is subject to the provisions of 42 U.S.C. § 1973aa-1a, which sets a threshold of 5% of a State's or political subdivision's voting age population or 10,000 members of a single-language minority that is limited-English proficient for coverage. (See Department of Commerce, Bureau of the Census, Voting Rights Act Amendments of 2006, Determinations Under Section 203, available at http://www.justice.gov/crt/about/vot/sec_203/2011_notice.pdf).

309. Even assuming that Weaver is one of the 1057 American Indians who were moved from SD 22, as the Complaint suggests, he lacks standing, and his claim fails as a matter of law, because he is not a member of a federally recognized tribe of Native Americans.

310. In or around 1999, the Band sought recognition from the United States Government, and recognition was denied, finding “no evidence that established the Choctaw or other Indian ancestry of 99 percent of the MOWA membership. Rather, the evidence tended to disprove Indian ancestry.” Ex. 473. That determination is reflected in the evidentiary summary, which includes the following findings regarding the MOWA claims of American Indian ancestry:

- (1) the petitioner’s two core ancestral families cannot document American Indian ancestry;
- (2) the petitioner’s ancestors who were alive in 1880 have not been documented as descendants of the known removal-era, antebellum American Indians who were claimed as ancestors by the petitioner;

(3) many of the early nineteenth century persons claimed as members of their “founding Indian community” by the petitioner were not Choctaw, or even American Indian; and

(4) only one percent of the petitioner’s membership can document American Indian ancestry. This ancestry comes through other ancestral lines than those going to the two core families.

Ex. 472.

311. The Tribe’s appeals, motions for reconsideration, and subsequent litigation were unsuccessful. (Exhibits 471-474).

Pettway / Stallworth – Montgomery House claims

312. Plaintiffs are critical of the Legislature’s decision to move House District 73, which is presently in the Montgomery area, to Shelby County. District 73 is presently around 44% minority population with the 2000 lines and 2010 census data. (Exhibit 406). Plaintiffs allege that a plan could have been drawn keeping District 73 in Montgomery, or that if the Legislature chose to move a District, it should have been one with a larger proportion of white voters because the District was moved to heavily-white Shelby County.

313. The majority minority House districts in Montgomery were underpopulated by more than 25,000 people: District 76 by -627, District 77 by -10,523, and District 78 by -14,641. Ex. 406; T2 187/22-T2 188/16).

314. The House Districts in Shelby County, however, were consistently overpopulated: District 41 by 27,600, District 43 by 10,535, District 48 by 8,526, District 49 by 6,493, and District 50 by 9,857 (for a total of more than 63,000, or almost 1 ½ times the size of an ideal House District). Ex. 406; T2 189/14-T2 190/11.

315. Plaintiffs presented no evidence that District 73 could have been maintained in the Montgomery area as a majority-minority district, or as a cross-over district, without violations of the $\pm 1\%$ population standards or without lowering the minority percentages in surrounding districts. While Plaintiffs presented an illustrative district that was within $\pm 1\%$, Plaintiffs did not prove that such a district would not have the effect of causing unacceptable population deviations or retrogression in surrounding districts.

Claims Related to Hispanic Voters

316. Plaintiffs claim that the Legislature discriminated by failing to preserve or create a coalition Senate District in the Huntsville area.

Specifically, Plaintiffs claim that the Legislature should have preserved an alleged growing coalition between Blacks and Hispanics.

317. Plaintiffs' presented no evidence that a "coalition" Senate district could have been drawn in Huntsville while maintaining the Legislature's reasonable guidelines of a $\pm 1\%$ population deviation and preserving the former racial proportions in majority minority districts.

318. Plaintiffs have not proven that there are a sufficient number of Hispanic eligible voters in any discrete portion of the State to form a coalition with other voters.

319. Plaintiff's expert, William Cooper, testified that 58.3% of Latinos in Alabama who are 18 and over are not a U.S. citizen. Ex. 135; T3 100/2-15.

320. Any evidence that Hispanics vote as a group and support the Democratic Party as a group is anecdotal; Plaintiffs' polarized voting expert, Alan J. Lichtman, opined that there is no sufficient concentration of Hispanic voters in Alabama to test the cohesiveness of their vote. T3 106/3-14.

Lichtman / Racially-polarized voting

321. Plaintiffs presented testimony from expert Alan J. Lichtman to prove that voting is polarized by race in Alabama. There is no serious dispute that a majority of African American voters have supported the Democratic Party in recent elections, and that a majority of white voters have supported the Republican Party. That fact does not set Alabama apart from other parts of the country.

322. To the extent race and part are “inseparable,” that is true, according to Dr. Lichtman, “not just in Alabama. Everywhere.” T3 108/22-25.

323. There are, of course, black Republicans, and there are white Democrats. The correlation between race and voting is not perfect, but it does exist.

324. Plaintiffs contend that this shift in party loyalty by some white voters is an unfortunate one that has racial overtones. There may indeed have been some voters who abandoned the Democratic Party for reasons tied to the Civil Rights movement, but Plaintiffs have not shown that any present voters, or any present Legislators, have done so for that reason.

325. Defendants are not responsible for the shift in party loyalty, which, to the extent it occurred, occurred before the subject redistricting plans were enacted.

326. Lichtman further testified that as a result of this polarized voting, African-American voters could, with the help of “cross-over” white voters, elect their candidate of choice in legislative districts containing over forty percent black. The conclusion Plaintiffs urge is that the Alabama Legislature discriminated by “packing” districts with black voters.

327. Yet even after the election that gained Republicans the majority, African-Americans are represented roughly proportionally in both Houses of the Legislature, and the Legislature did not reduce the number of majority-minority districts.

328. Lichtman did not consider whether the cross-over districts could be drawn under the $\pm 1\%$ standard, nor did he consider whether drawing the cross-over districts would reduce the number of minorities in surrounding majority-minority districts. *See* T3 108/14-17.

329. Dr. Arrington testified that “[p]artisanism is always the major motive when you’re redrawing districts – when legislators are drawing districts.” S-DMcX 486 21/8-10.

330. Dr. Arrington testified that it would have been a waste of Speaker Hubbard's time to ask black Democrats to switch parties, and it would not have been in the self-interest of those black Democrats to switch. S-DMcX 486 28/3 to 29/4.

331. Dr. Arrington testified that "[i]f I were drawing a plan in '90 or 2000 or two years ago, if I knew that over the past few years a particular area was rapidly losing population, I wouldn't draw the district in that area as being under." S-DMcX 486 39/3-7.

332. Dr. Arrington asserted that politics is race, and race is politics, and that while this is true everywhere it's particularly true "in the deep South." S-DMcX 486 65/17-21.

333. Dr. Arrington agreed that DOJ keeps the preclearance process opaque, and likes the flexibility the gain by not providing covered jurisdictions with bright-line guidance. S-DMcX 486 79/8-23.

334. Dr. Arrington agreed that traditional redistricting criteria are incompatible with each other, and that it's the legislature's job to reconcile them. S-DMcX 486 101/20 to 102/8.

335. Although Dr. Arrington believes that the decision to tighten the standard for deviation was pretextual, he admits that it is “a policy choice that a Legislature can make.” S-DMcX 486 102/23 to 103/3.

336. According to Dr. Arrington, white voters are in the midst of a long-term migration from the Democratic Party to the Republican Party that began in 1948. S-are migrating from the Democratic Party and this migration began he trend line is the migration of white voters away from the Democratic Party. S-DMcX 486 123/23 to 125/10.

337. Dr. Arrington said that “in primaries [where] you have a white and a black Democrat, blacks are more likely to vote for the black Democrat, unless they know the white well or unless the black is a criminal or in some other way indicates that he has no qualifications.” S-DMcX 486 130/18-23.

Proposed Conclusions of Law

1. “Federal court review of districting legislation represents a serious intrusion on the most vital of local functions. It is well settled that reapportionment is primarily the duty and responsibility of the State.” *Miller v. Johnson*, 515 U.S. 900, 915 115 S. Ct. 2475, 2488 (1995) (internal quotation omitted).

2. “Electoral districting is a most difficult subject for legislatures, and so the States must have discretion to exercise the political judgment necessary to balance competing interests.” *Miller v. Johnson*, 515 U.S. 900, 915, 115 S. Ct. 2475, 2488 (1995).

3. When the State enacted the 2012 legislative redistricting plans, those plans could not be implemented unless they were precleared by the Attorney General of the United States or by the U.S. District Court for the District of Columbia.

4. The State had a compelling interest in complying with Section 5 of the Voting Rights Act.

5. The State’s interest in obtaining preclearance of the 2012 legislative redistricting plans was a valid, neutral policy. In *Shaw v. Hunt*, the Court “assume[d], *arguendo*, that a State may have a compelling interest in complying with the properly interpreted Voting Rights Act.” 517 U.S. 899, 908 n.4, 116 S. Ct. 1894, 1902 n.4 (1996); see also *id.*, 517 U.S. at 911, 116 S. Ct. at 1903 (declining to reach the issue where the State’s action “was not required under a correct reading of § 5 ...”). Given the fact that the State’s plans have been precleared, the State’s reading of Section 5 cannot be said to be incorrect.

6. It would have been “irresponsible” for the State not to attempt to comply with Section 5. *Bush v. Vera*, 517 U.S. 952, 991, 116 S. Ct. 1941, 1969 (1996)(O’Connor, J., concurring).

7. In order to obtain preclearance of the 2012 legislative redistricting plans, the State had to show that those plans did not retrogress.

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

9. As the result of the 2006 amendments to the Voting Rights Act, the Attorney General of the United States was authorized to look for “any

discriminatory purpose” when he reviewed the 2012 Alabama legislative redistricting plans, not just for a retrogressive purpose or effect.

10. The State’s belief that its obligation with respect to preclearance included (1) preserving the existing black-majority districts and (2) trying to make sure that the minority voting strength in those black-majority districts remained at or about the same level as it was when the 2010 Census data were loaded into the 2001 legislative district lines and in the 2001 districts was not unreasonable or demonstrably incorrect.

11. The State’s use of an overall population deviation of $\pm 1\%$ is a valid, race-neutral method of complying with constitutional one-person, one-vote standards.

12. Compliance with constitutional one-person, one-vote standards is a valid, race-neutral redistricting policy.

13. Avoiding contests between incumbents is a valid, neutral state redistricting policy. *Tennant v. Jefferson County Commission*, __ U.S. __, __ S. Ct. __ (2012); *Karcher v. Daggett*, 462 U.S. 725, 740, 103 S. Ct. 2653, 2663 (1983). The uniform consistency of the Senate plan’s application of this policy and the nearly uniform consistency of the House plan’s application of this policy

14. “A district with a minority voting majority of sixty-five percent (or more) essentially guarantees that, despite changes in voter turnout, registration, and other factors that affect participation at the polls, a cohesive minority group will be able to elect its candidate of choice.” *Texas v. United States*, 831 F. Supp. 2d 244, 263 & n. 22 (D.D.C. 2011)(three-judge court).

15. “Placing black voters in a district in which they constitute a sizable and therefore ‘safe’ majority ensures that they are able to elect their candidates of choice.” *Voinovich v. Quilter*, 507 U.S. 146, 154, 113 S. Ct. 1149, 1156 (1993).

16. Measured against these standards, any black-majority district in which the _____

17. Without a remedy, there is no claim for relief. *Nipper v. Smith*, 39 F. 3d 1494, 1533 (11th Cir. 1994) (en banc).

18. “[F]rom the inception of a section 2 case, the existence of a workable remedy ... is critical to the success of a vote dilution claim. The absence of an available remedy is not only relevant at the remedial stage of the litigation, but also precludes, under the totality of the circumstances inquiry, a finding of liability.” *Nipper*, 39 F. 3d at 1533.

19. Section 2 of the Voting Rights Act does not require the creation of influence districts, that is, districts “in which a minority group can influence the outcome of an election even if its preferred candidate cannot be elected.” *Bartlett v. Strickland*, 556 U.S. 1, 13, 129 S. Ct. 1231, 1242 (2009); LULAC

20. Section 2 of the Voting Rights Act does not require the creation of “effective minority districts” in which the minority population is less than 50% of the district’s total population. *Bartlett v. Strickland*, 556 U.S. 1, 14-15 129 S. Ct. 1231, 1243 (2009) (plurality op.).

21. “Section 2 does not impose on those who draw election districts a duty to give minority voters the most potential, or the best potential, to elect a candidate by electing crossover voters.” *Bartlett v. Strickland*, 556 U.S. 1, 15, 129 S. Ct. 1231, 1243 (2009) (plurality op.).

22. “Nothing in § 2 grants special protection to a minority group’s right to form political coalitions.” *Bartlett v. Strickland*, 556 U.S. 1, 10, 129 S. Ct. 1239, 1243 (2009)(plurality op.).

23. In *Bartlett v. Strickland*, the Court reserved the question “whether intentional discrimination affects the *Gingles* analysis.” *Bartlett v. Strickland*, 556 U.S. 1, 20, 129 S. Ct. 1239, 1246 (2009). This Court need

not address that question in this case. While the *Bartlett* Court noted that the case before it did not involve “allegations of intentional and wrongful conduct,” *id.*, the Plaintiffs have failed to establish that the 2010 Alabama legislative redistricting plans are the product of intentional or wrongful conduct.

24. “Only when a geographically compact group of minority voters could form a majority in a single-member district has the first *Gingles* requirement been met.” *Bartlett v. Strickland*, 556 U.S. 1, 14-15, 129 S. Ct. 1239, 1249 (2009). The Newton Plaintiffs’ attempt to satisfy this standard by presenting an “illustrative remedy” for the Birmingham-area black-majority House districts and for the proposed Madison County Senate district fails because neither illustrative remedy is within the overall deviation of $\pm 1\%$. NPX-301 and 302, respectively. The deviation of $\pm 1\%$ was not chosen for discriminatory reasons, and the results prong of Section 2 cannot justify a remedy that requires going outside the allowable population deviation. Otherwise, a plaintiff could obtain relief on that basis by presenting a district that is 6% or more over the ideal population in a plan drawn to $\pm 5\%$.

25. The contention that the Legislature's failure to enact new legislative redistricting plans in the first regular session after the State received the results of the 2010 Census counts against the State for the purposes of the Arlington Heights analysis fails for two reasons. First, that failure does not, as a matter of law, surrender the duty to reapportion the State's legislative districts to the courts. *Opinion of the Justices*, 47 So. 2d 714,716 (Ala. 1950) ("The legislature by a mere omission to perform its constitutional duty at a particular session cannot thereby prevent for another ten years the apportionment provided by the Constitution. The duty is a continuing one and, if it is not discharged at or within the time prescribed, the duty rests upon succeeding general assemblies.") Second, since the passage of the 1901 Alabama Constitution, the Alabama Legislature has never redistricted itself in the first regular session after the release of the Census. (T3 73/16-22) Accordingly, to the extent that the Arlington Heights analysis looks at irregularity, there was nothing historically irregular in the Legislature's enactment of the 2012 legislative plans during a 2012 special session.

26. Testimony regarding the Alabama Accountability Act and the asserted irregularity of its passage and the invocations of cloture are not

relevant. That testimony relates to the actions of a Republican supermajority that was elected from the districts in the 2001 plan, not from the new 2012 plans.

27. Reliance on alternate plans such as SB 5 and HB 16 is misplaced as a matter of law. *Gaffney v. Cummings*, 412 U.S. 735, 740-41, 93 S. Ct. 2321, 2325 (1973) (The appellees' showing of deviations from population equality was insufficient standing alone "or in combination with the additional fact that another plan could be conceived with lower deviations among the State's legislative districts."); *Daly v. Hunt*, 94 F. 3d 1212, 1221 (4th Cir. 1996); *Montiel v. Davis*, 215 F. Supp. 2d 1279, 1288 (S.D. Ala. 2002).

28. Neither Fred Armsted nor Demetrius Newton was deposed, and neither testified at trial. There is nothing in the record to support their claims, so their claims should be dismissed without prejudice.

29. In order to pursue a racial gerrymandering claim, one must live in the district at issue or otherwise show that he or she, personally, is the subject of an invidious racial classification. *United States v. Hays*, 515 U.S. 737, 115 S. Ct. 2431 (1995). Without such a showing, the claimant would

be asserting only a generalized grievance which is insufficient to create standing.

30. No plaintiff who has suffered an actual, concrete, and particularized injury attributable to SD 11 has appeared. Any claims that relate or pertain in any way to SD 11 should be dismissed with prejudice for that reason.

31. The change in the overall deviation from $\pm 5\%$ to $\pm 1\%$ did not have the purpose of discriminating against minority voters.

32. In deciding to adopt the overall deviation of $\pm 1\%$, Representative McClendon “[a]bsolutely” did not intend to discriminate against African-American voters. T3 234/1-4.

33. The change in the overall deviation from $\pm 5\%$ to $\pm 1\%$ does not have the purpose of discriminating against minority voters.

MOWA Band

34. The MOWA Band is too small to satisfy the first *Gingles* criterion.

35. The MOWA Band is likewise too small to be covered as a language-minority under the Voting Rights Act/

36. Evidence that Native Americans vote as a group and support the Democratic Party as a group is lacking; the testimony of Plaintiffs' polarized voting expert, Alan J. Lichtman, based on a single precinct in Alabama, is insufficient to find that Native Americans cohesively vote for Democrats. *See* T3 105/18-24.

37. While the MOWA Band is recognized under State law through two local acts, it is not recognized as an Indian Tribe under *federal law*, and that makes a difference in this federal claim.

38. The recognition under state law is limited. In Alabama AG Opinion 93-026, the then-Alabama Attorney General concluded that, because the MOWA Band was not federally recognized, it was subject to the laws and regulations of the State of Alabama, including those promulgated by the State Board of Health. Ex. 482.

39. In the same way, the then-Alabama Attorney General concluded that the Alabama Criminal Justice Information Center could require the MOWA Band to show that it was a "criminal justice agenc[y]" before it could receive criminal justice information through ACJIC. The MOWA Band could do that if it became federally recognized or it

“establishe[d] some evidence that it has a governmental right to create a police department” A.G. Op. 93-286, Ex. 483, at 2.

40. Given these factors, federal recognition is controlling and is a significant gateway in Indian law. In upholding a Bureau of Indian Affairs’ hiring preference for Indians over non-Indians, the United States Supreme Court stated that the preference was granted “not to Indians as a discrete racial group, but, rather, as members of quasi-sovereign tribal entities whose lives and activities are governed by the BIA in a unique fashion.” *Morton v. Mancari*, 417 U.S. 535, 554, 94 S. Ct. 2474, ____ (1974).

41. In the absence of federal recognition, the MOWA Band’s lives and activities are not governed by the BIA in a unique fashion.

42. The Secretary of the Interior’s power to take land into trust for Indian tribes is limited to those tribes that were federally recognized as of 1934, when Congress passed the Indian Reorganization Act. *Carciari v. Salazar*, 555 U.S. 379, 129 S. Ct. 1058 (2009).

43. The Secretary of the Interior has not taken any of the MOWA-owned land into trust for them.

44. Only federally recognized tribes are entitled to the benefits of the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.*

45. A group of Indians who elected to dissolve their relationship with a Tribe and limit their participation in the allocation of tribal assets was properly excluded from the proceeds of a congressional distribution settlement that went to the tribe. *Delaware Tribal Business Council v. Weeks*, 430 U.S. 73, 97 S. Ct. 911 (1977). The court explained that the group was “not a recognized tribal entity, but simply individual Indians with no vested rights in any tribal property.” *Id.*, 430 U.S. at 85; see also *Pit River Home and Agricultural Cooperative Association v. United States*, 30 F. 3d 1084, 1095 (9th Cir. 1996)(Association “originally composed of thirteen families that came from northeastern California” not a recognized tribe for purpose of obtaining federal court jurisdiction under 28 U.S.C. § 1362).

46. In the absence of federal recognition, the MOWA Choctaw Band is more like the disaffiliated Indians in *Delaware Tribal Council* than the tribes recognized in *Carcieri*.

47. Moreover, when § 2 claims have been brought by Indians, the Indians have been members of federally recognized tribes. See, e.g., *Shirt v. Hazeltine*, 336 F. Supp. 2d 976 (D.S.D. 2004)(members of Rosebud Sioux); *Graham v. Thornburgh*, 207 F. Supp. 2d 1280, 1285 (D. Kan. 2002)(Intervenor tribes are “federally recognized Native American Indian

Tribes”); *Frank v. Forest County*, 194 F. Supp. 2d 867 (E.D. Wis. 2002)(the Forest County Potawatomi Community of Wisconsin, a federally recognized tribe, and a tribal member); *Windy Boy v. County of Big Horn*, 647 F. Supp. 1002 (D. Mont. 1986) (members of the Crow and Northern Cheyenne tribes).

48. The Acts have neither the purpose nor the result of discriminating against Native Americans.

Montgomery House District

49. It was reasonable for the Legislature to decide to move District 73 to Shelby County, and to repopulate existing majority minority Districts in Montgomery with the population of former District 73.

50. The drafters of the House plan did not act unreasonably in using the concept of a map and demographic information that Representative Thad McClammy, an ALBC member, furnished to Representative McClendon. That concept included using the African-American population of HD 73 to repopulate the existing black-majority districts in Montgomery County. (8/12/2013, 134:6-16)

Hispanics

51. The Acts have neither the purpose nor the result of discriminating against Native Americans.

52. Plaintiffs argue that Alabama's immigration law, known as HB 56, is evidence of such discrimination, but the record does not establish that fact. There are legitimate reasons a Legislature might address societal problems related to illegal immigration, including preservation of jobs for citizens. *See Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 892-93 (1984) (“[A] primary purpose in restricting immigration is to preserve jobs for American workers.”); *De Canas v. Bica*, 424 U.S. 351, 356-57 (1976) (“Employment of illegal aliens in times of high unemployment deprives citizens and legally admitted aliens of jobs; acceptance by illegal aliens of jobs on substandard terms as to wages and working conditions can seriously depress wage scales and working conditions of citizens and legally admitted aliens; and employment of illegal aliens under such conditions can diminish the effectiveness of labor unions.”).

53. The Court notes that in *Central Alabama Fair Housing Center v. Magee*, the District Court found that the immigration law had a discriminatory purpose aimed at Hispanics. 835 F.Supp.2d 1165 (M.D. Ala. 2011), *vacated*, 2013 WL 2372302 (11th Cir. May 17, 2013). That decision

was appealed, and after the Legislature amended the immigration law so that it did not apply in the subject context, it was vacated by the Eleventh Circuit on grounds of mootness before the State could test the District Court's conclusions on appeal. 2013 WL 2372302. *Magee* therefore does not establish a discriminatory intent by the Legislature, and Plaintiffs have presented no such evidence here aside from two lay witnesses who expressed unsubstantiated opinions about the Legislature's intent. That evidence is insufficient.

54. Even if HB 56 were evidence of intent to discriminate against Hispanics when the Legislature enacted that bill, it is not evidence of an intent to discriminate in redistricting. Plaintiffs urge us to consider the immigration law as part of the "historical background" of the Legislature's decision here, an element of the test established in *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 97 S.Ct. 555 (1977). Using circumstantial evidence of intent makes sense when dealing with the decision of a 7-member Village Board, as in *Arlington Heights*, or a County Commission, as in *Hallmark Developers, Inc. v. Fulton County*, 466 F.3d 1276 (11th Cir. 2006). It makes far less sense when the decision was made by 140 Legislators.

55. As the Supreme Court has recognized, it is unsound to take evidence related to the intent of a few members of a large body and impute those views to the body as a whole:

Inquiries into congressional motives or purposes are a hazardous matter. When the issue is simply the interpretation of legislation, the Court will look to statements by legislators for guidance as to the purpose of the legislature, because the benefit to sound decision-making in the circumstance is thought sufficient to risk the possibility of misreading Congress' purpose. It is entirely a different matter when we are asked to void a statute that is, under well-settled criteria, constitutional on its face, on the basis of what fewer than a handful of Congressmen said about it. What motivates one legislator to make a speech about a statute is not necessarily what motivates scores of others to enact it, and the stakes are sufficiently high for us to eschew guesswork.

56. *United States v. O'Brien*, 391 U.S. 367, 383-84, 88 S.Ct. 1673, 1682 (1968) (footnote omitted). *See also City of Mobile, Ala. v. Bolden*, 446 U.S. 55, 90, 100 S.Ct. 1490, 1512 (1980) (Stevens, J., concurring) ("I do not believe that it is appropriate to focus on the subjective intent of the decision-makers."); *id.* at 92, 100 S.Ct. at 1513 ("a political decision that is supported by valid and articulable justifications cannot be invalid simply because some participants in the decision-making process were motivated by a purpose to disadvantage a minority group.").

57. It is true that the Supreme Court has endeavored to determine the motive of a larger body in *Hunter v. Underwood*, 471 U.S. 22, 22, 105 S.Ct. 1916, 1920 (1985) (a state constitutional convention). But there the Court observed that the normal difficulties of such an analysis (as noted in *O'Brien*) “do not obtain in this case.” 471 U.S. at 228, 105 S.Ct. at 1920. In *Hunter*, evidence was presented without objection that the primary purpose of the new constitution was to discriminate against blacks. *Id.* at 229, 105 S.Ct. at 1920-21. The defendants in *Underwood* did not dispute that “this zeal for white supremacy ran rampant at the convention.” *Id.* The case involved no “guesswork.” *O'Brien*, 391 U.S. at 383-84, 88 S.Ct. at 1682-83.

58. It is also true that the Supreme Court has looked for the intent of State Legislatures in certain redistricting cases, but those cases involved direct testimony that the Legislature considered race in an effort to create minority districts. *See Bush v. Vera*, 517 U.S. 952, 959, 116 S.Ct. 1941, 1951-52 (1996) (State conceded that one of its goals was to create a majority-minority district); *Miller v. Johnson*, 515 U.S. 900, 907, 115 S.Ct. 2475, 2483-84 (1995) (State set out to create a majority-minority district); *Shaw v. Hunt*, 517 U.S. 899, 906, 116 S.Ct. 1894, 1901 (1996) (recounting testimony

by a member that creating a majority-minority was the “principal reason” for drawing district lines).None of these cases suggest that it is permissible for us to assume that if a Legislature discriminated in an unrelated context, it discriminated when passing a redistricting plan.

59. Thus, whatever the intent of the Legislature when it passed HB 56, HB 56 is not evidence of an intent to discriminate against Hispanics in the context of redistricting.

Lichtman / Polarized Voting

60. The correlation between race and voting does not lead to a conclusion that the Alabama Legislature has discriminated by failing to maximize the election prospects of the Democratic Party. No doubt that when the Democrats held the majority in the Alabama Legislature, as they did for over a century until 2010, they acted in their political self-interest when drawing redistricting plans. The Constitution permits this within the limits established by the Fourteenth and Fifteenth Amendments.

61. Racial discrimination is illegal, but partisan politics is not. The fact that most black voters in Alabama tend to support one party does not mean that the other party may never act in its own political interests. Thus, to show that the redistricting plans have the effect of making it more

difficult for African-American voters to elect the candidate of their choice, Plaintiffs must do more than show that the plan favors one political party.

62. History has shown that no political trend is permanent. The Constitution does not require this Court to reverse a trend that favors a party that many minority voters oppose. The Constitution prohibits a redistricting plan that is the product of insidious racial discrimination, but Plaintiffs have not met their burden of proving that these are such plans.

63. The 2012 Alabama House plan's exceptions to the otherwise consistently applied practice of not pairing incumbents were not made with the purpose of discriminating against minority voters.

64. While the Supreme Court held that Section 4 of the Voting Rights Act was unconstitutional in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013), the Legislature was firmly under the preclearance requirement when it drafted the new redistricting plans.

Respectfully submitted this 21st day of August, 2013.

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I hereby certify that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and service will be perfected upon the following this the 21st day of August, 2013:

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