

Supplemental Exhibits and documents attached to this brief pursuant to this Court’s Post-Remand Scheduling Order, and the conclusions of law set out in the Supreme Court’s opinion, the Alabama Democratic Conference (ADC) plaintiffs are entitled to final judgment declaring unconstitutional all 36 black-majority districts in Acts 2012-602 and 2012-603.

Introduction

As this challenge to Alabama’s legislative redistricting plans returns to this Court, much has been decided already. There is no mystery about what Alabama did when designing its black-majority House and Senate districts. As the Supreme Court concluded, Alabama “expressly adopted and applied a policy of prioritizing mechanical race targets above all other districting criteria” when it redesigned its black-majority districts (BMDs) to re-create the prior black-population percentages (BPPs) in each and every one of these districts, to the extent feasible to do so. *Ala. Legis. Black Caucus v. Alabama*, 135 S. Ct. 1257, 1267 (2015) (*Alabama*). The Supreme Court found that application of this policy involved “prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote).” *Id.* The issue is not what Alabama did, but whether Alabama had a legally adequate justification for doing what it did.

As the Supreme Court has now held, Alabama asked “the wrong question” when it used race to design each of its 36 black-majority House and Senate districts. *Id.* at 1274. Alabama was permitted under Section 5 of the Voting Rights Act (VRA) to take race into account to the extent necessary to preserve the African-American community’s “present ability to elect the candidate of its choice.” *Id.* But the Supreme Court concluded that is not what Alabama did. Instead, the Court held that Alabama, in designing each of its majority-black districts, took race

into account to answer an entirely different question: “How can we maintain present minority percentages in majority-minority districts.” *Id.* The Court’s decision thus establishes that, in invoking Section 5 to justify its use of race in designing each of the State’s BMDs, Alabama misinterpreted and misapplied Section 5 in a fundamental respect.

For all its apparent complexity, this case is much simpler than it might previously have appeared. The Supreme Court’s decision recognizes that the central failing in the way Alabama designed *each* BMD is that the State simply failed to ask, let alone answer, the legally relevant question. This is not a case, in other words, in which Alabama made a determination regarding the BPP needed to preserve the “ability to elect” in any or all of the States BMDs under current conditions, and the parties are now contesting whether that level is 51% or 54% or 58%. Instead, this is a case in which the State “mechanically” sought to maintain or increase a specific BPP in each and every BMD, to the extent at all feasible. *Id.* at 1273. In doing so, the State moved significant numbers of people into and out of the each BMD explicitly on the basis of race, as evident both from looking at the racial composition of the persons traded between districts and by the fact that the State engaged in systematic race-based splitting of election precincts.

But before Section 5 can be used to justify race-based districting, Alabama must ask and answer, at the very least, the legally relevant and appropriate question: what is necessary under current conditions to preserve the ability to elect. That is the principle upon which the Supreme Court’s decision in this case rests. *See also Shelby Cnty. v. Holder*, 133 S. Ct. 2612 (2013) (holding that Section 4 of the VRA is constitutional only if Congress adequately ties coverage formula to “current conditions”). Because the State so badly misconstrued its obligations under

Section 5, the Supreme Court's decision means that the VRA cannot provide a justification for the race-based districting in which Alabama engaged with respect to each of the BMDs.

Yet as the trial record shows, Alabama offered no other reason, beyond VRA compliance, for its use of race in designing the challenged districts. Consistently and repeatedly, that is the justification Alabama offered for setting the specific BPP targets it used in designing the BMDs. As a result, the posture of this case on remand is that Alabama has engaged in race-based districting, regarding all the State's BMDs, for no compelling or legitimate governmental interest. This case would be no different had Alabama determined that each BMD must be 80% BPP, to the extent feasible, on the view that Section 5 so required; once the Supreme Court held that Section 5 does not require that, the State would have no compelling interest in making its districts 80% BPP.

As demonstrated below, the record establishes that race was the predominant factor in the design of each majority-black House and Senate district. Strict scrutiny therefore applies and because the State fundamentally misinterpreted and misapplied Section 5, the use of race in each BMD does not serve a compelling purpose, nor is it narrowly tailored to legitimate compliance with Section 5.

As the Court's Post-Remand Scheduling Order instructs, this brief addresses only the substantive liability issues. The brief proceeds first by discussing the Supreme Court's decision and its application to Alabama's districting as a whole, and then proceeds to explain, as required by the Supreme Court, why race predominated in the State's drawing of each individual black majority district and why each of those districts fails under strict scrutiny.

I. The Supreme Court’s Decision.

As the Supreme Court recognized, the ADC claims that each MBD was racially gerrymandered in violation of the Constitution. The Supreme Court provided the following detailed guidance as to the legal framework within which this Court must address those claims:

1. The Policy Alabama Applied in Designing the BMDs. The Supreme Court has concluded already that, in designing its BMDs, “Alabama expressly adopted and *applied* a policy of *prioritizing* mechanical racial targets above all other redistricting criteria (save one-person, one-vote)” (emphasis added). *Id.* at 1267. That policy “provides evidence that race motivated the drawing of particular lines in multiple districts in the State.” *Id.* See also *id.* at 1273 (noting that “the record makes clear” that “the legislature relied heavily upon a mechanically numerical view” of what constitutes retrogression in designing these districts).

2. The Predominant-Motive Analysis. In determining whether race was the “predominant motivating factor” in the design of any specific BMD, the Supreme Court held that the issue is whether “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Id.* at 1267 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). “[T]he ‘predominance’ question concerns *which* voters the legislature decides to choose, and specifically whether the legislature predominantly uses race as opposed to other, ‘traditional’ factors when doing so.” *Alabama*, at 1271.

Thus, as the Supreme Court instructed, to calculate properly “predominance,” this Court should not “place in the balance” the State’s efforts to create districts of approximately equal population. *Id.* at 1270. This requirement of equal population is to be treated as “a background rule against which redistricting takes place.” *Id.* at 1271. Given the State’s equal-population

standard, this Court must assess whether race predominated in determining which voters to move into and out of the districts to meet the State’s population goals. Had this Court applied the correct approach to the “predominant motive” analysis, this Court’s conclusions “might well have been different.” *Id.*

3. SD 26 As An Example of Proper Predominant-Motive Analysis. With respect to the one district the parties discussed “in depth” before the Supreme Court, SD 26, the Supreme Court concluded “there is strong, perhaps overwhelming, evidence that race did predominate as a factor” in the design of SD 26. *Id.* With respect to SD 26 “and likely others as well, had the District Court treated equal population goals as background factors, it might have concluded that race was the predominant boundary-drawing consideration.” *Id.* at 1272. On remand, this Court must reconsider its predominance conclusions with respect to SD 26 “and others to which [the] analysis [used to evaluate SD 26] is applicable.” *Id.*

4. Narrow Tailoring Analysis. To the extent race is the predominant factor with respect to any specific district, the Supreme Court recognized that the State bears the burden of proving that such use of race was narrowly tailored to complying with Section 5 of the VRA. *Id.* at 1272. *See also Miller v. Johnson*, 515 U.S. 900, 920 (1995). To meet that burden, the State, like the public employer in *Ricci v. De Stefano*, 557 U.S. 557, 585 (2009), must have a “strong basis in evidence” for the State’s conclusion that Section 5 requires that specific use of race. *Alabama*, 135 S.Ct. at 1274 (quoting *Ricci*). Section 5 “prohibits only those diminutions of a minority group’s proportionate strength that strip the group within a district of its existing ability to elect its candidates of choice.” *Id.* at 1272-73 (quoting Brief of the United States as *Amicus Curiae*) (emphasis added). Thus, in applying narrow-tailoring analysis, this Court must ensure Alabama

has met its burden to prove that a “strong basis in evidence” exists in any particular district for the conclusion that the State’s use of race was required to avoid stripping black voters of their existing ability to elect.

5. The Federal Constitutional Standard for Population Equality. The Supreme Court concluded that Alabama’s 2% total population-deviation policy was “a more rigorous deviation standard than our precedents have found necessary under the Constitution.” *Id.* at 1263 (citing *Brown v. Thomson*, 462 U.S. 835, 842 (1983)). States have discretion to come closer to a one-person, one-vote ideal, but the Constitution does not require that.

6. Standing. The Supreme Court held that ADC must be given the opportunity to prove that it has standing to represent its members who reside in the challenged districts. *Id.* at 1268-1270.

As demonstrated below, proper application of these legal principles to the record in this case means that each BMD was designed in a way that violates the Constitution.

II. ADC Plaintiffs Have Standing and Race Was The Predominant-Factor In the Design of All the BMDs.

Pursuant to the Supreme Court’s opinion and this Court Post-Remand Scheduling Order, ADC plaintiffs have submitted an affidavit testifying to the fact that ADC has members in all the challenged districts. The Scheduling Order permitted the State to file a response to that submission. The State has not done so. The ADC plaintiffs have established that they have standing under *Shaw v. Reno*, 509 U.S. 630 (1993) to challenge each of the BMDs.

Race was the predominant factor motivating the design of each of these BMDs, including the districts (approximately 25% overall) in which the BPP decreased.

A. The Predominant-Factor Standard

The Supreme Court’s decision provides greater clarity as to how the predominant-motive analysis is to be performed with respect to the design of Alabama’s BMDs. To begin with, both the Supreme Court and this Court recognized that Alabama placed the greatest importance on two goals in the redistricting process. *Alabama*, at 1263. First, Alabama decided to go beyond what the federal Constitution requires and adopt a 2% total-population deviation standard to meet its Equal Protection obligations. *Id.* at 1268-1270. Second, Alabama prioritized “maintain[ing] roughly the same black population percentage in existing majority-minority districts.” *Id.* at 1263. As the Court noted, Alabama had “expressly *adopted* and *applied* a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote). . . .” *Id.* at 1267 (emphasis added).

The Supreme Court held that this Court “did not properly calculate ‘predominance’ because it had incorrectly “placed in the balance” Alabama’s efforts to create equal-population districts. *Id.* at 1270. Because all districting must meet equal-population requirements, that objective is not relevant to the *Shaw-Miller* analysis and has no place in it. As the Court put it, “the ‘predominance’ question concerns *which* voters the legislature decides to choose, and specifically whether the legislature predominantly uses race as opposed to other, ‘traditional’ factors when doing so.” *Id.* at 1271. The question is whether, in meeting its equal-population goals, Alabama deliberately used race as the predominant factor to place a significant number of voters within or without a particular district.

Thus, for purposes of the *Shaw-Miller* analysis, Alabama applied one relevant policy in designing the black-majority districts – meeting Alabama’s racial-population percentage targets – that dominated over other policy objectives. As the Supreme Court concluded, that policy had

priority “above all other districting criteria. . . .” *Id.* at 1267. Indeed, re-creating the BPPs at their prior level in each district *had* to dominate over all other considerations because, as Alabama represented to the Supreme Court, the State believed the Supremacy Clause *required* the State to meet these BPPs in each and every BMD. Al. Br. 2, 16. That belief was wrong, but there is no doubt that it drove Alabama to re-create the BPPs, to the extent feasible, in each district as pure racial numbers.

The conclusion is thus inescapable that race predominated in the design of any district in which Alabama applied the approach the Supreme Court described: if “prioritizing” does not mean that, it is hard to understand what else it would mean. But the record contains no evidence that Alabama abandoned this policy in the design of any BMD.

In addition, the Supreme Court’s opinion provides an even more detailed blueprint for how the predominance analysis is to proceed. Before the Court, the parties discussed one district in detail, SD 26; as noted above, the Court concluded that there was “strong, perhaps overwhelming evidence” that race predominated in the drawing of that district. *Id.* at 1271. The determinative evidence, according to the Court, consisted of four elements: (1) the State’s general policy that it sought to “maintain existing racial percentages in each majority-minority district, insofar as feasible;” (2) evidence that this goal “had a direct and significant impact on the drawing of at least some” of the District’s boundaries; (3) evidence that the redistricters transgressed their own redistricting guidelines by splitting precincts along racial lines; (4) evidence that the legislature did indeed succeed in preserving the black-population percentage in

the district.¹ *Id.* at 1271-72. The record, as described below, demonstrates the presence of the same elements in the design of each BMD.

The Supreme Court also provided guidance as to how *not* to perform the predominance analysis. The State cannot invoke purported compliance with traditional districting principles at a level of abstraction that does not specifically explain why particular voters were moved into or out of the BMDs. *Id.* at 1271-72. Similarly, to try to explain away the movement of voters by race, the State cannot invoke policies that it fails to apply in a consistent way. *Id.* See, e.g. *Page v. Virginia State Board of Elections*, Docket No. 3:13cv678 (E.D.Va. June 5, 2015), slip op. at 29 (in the predominant-motive analysis, “we consider irregularities in the application of [traditional districting principles] together”); *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 554 (3d Cir. 2011) (finding no racially discriminatory purpose in part because “Plan 3R has been applied consistently, regardless of race”); *N.A.A.C.P., Inc. v. Austin*, 857 F. Supp. 560, 574-75 (E.D. Mich. 1994) (decreasing compactness is “a valid consideration if the State is minimizing it in a consistent, racially impartial manner”); *In re Senate Joint Resolution of Legislative Apportionment* 1176, 83 So. 3d 597, 690 (Fla. 2012) (LEWIS, J., concurring) (“while a variety of different rationales and concepts may be available for application in redistricting, the rationales or concepts actually used must be applied consistently”). Nor can the State invoke ad hoc explanations not reflected in the state’s general policies, such as those announced in the Redistricting Guidelines. See *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257, 1271-72 (2015) (rejecting following highway lines as a rationale for the design of SD 26).

¹ As is discussed in more detail below, for the 25% of districts in which the BPP decreased, there typically were not enough contiguous black residents left to re-populate those districts fully up to their prior BPP levels.

The Supreme Court’s application of this analysis to Senate District 26 is particularly instructive. With respect to SD 26, the Supreme Court rejected the view previously held by this Court that Alabama could defeat plaintiffs’ predominant-motive analysis by invoking a *general* goal to preserve the core of the existing district. As the Supreme Court held, the general aim of preserving the core of a district “is not directly relevant to the origin of the *new* district inhabitants. . . .” *Id.* It is the movement of those voters that must be explained. Next, the Court rejected the argument that following county lines could adequately explain the movement of voters by race into SD 26; the district’s boundaries did not generally follow county lines. *Id.* As a result, the Court found any policy the State had of following county lines to be of “marginal importance;” such a policy therefore could not be sufficient to defeat the conclusion that race had been the predominant motive for moving significant numbers of black voters into SD 26. *Id.* Finally, the Supreme Court concluded this Court had given inappropriate weight to the State’s purported policy of following highway lines; the Court noted that this objective was not mentioned in the legislative redistricting guidelines. *Id.* Ad hoc objectives the State might offer to explain specific district-design decisions simply carry too little weight, at best, to defeat the conclusion that race predominated in districts in which Alabama applied its general race-based targets and engaged in measures such as race-based splitting of precincts.

The Supreme Court’s opinion provides detailed instructions on how the predominant-motive analysis is to proceed, given the evidence in the record and the conclusions the Supreme Court has reached already regarding that evidence. We now turn to applying these instructions to the State’s BMDs.

B. The Application of the Predominant-Factor Standard

The record provides extensive direct evidence, as well as circumstantial evidence, that race was the predominant factor in designing each and every BMD. In applying the *Shaw/Miller* predominant factor analysis, the critical question is whether “race for its own sake, and not other districting principles, was the legislature’s dominant and controlling rationale in drawing its district lines.” *Miller*, 515 U.S. at 913. *Miller* holds that it is the deliberate classification alone, by race, that triggers strict scrutiny. *Id.* at 910 (rejecting Georgia’s argument plaintiffs should have to prove more than this to state a claim). Race can predominate whether a district’s geographic shape is reasonably compact or not. The “bizarreness” of a district’s shape can be strong *circumstantial* evidence that race was used for its own sake, but such evidence is not necessary. *Id.* at 913. As *Miller* held, “parties may rely on evidence other than bizarreness to establish race-based districting.” *Id.* See also *Bush v. Vera*, 517 U.S. 952, 980 (1996) (noting that *Miller* recognizes that “the ultimate constitutional values at stake involve the harms caused by the use of unjustified racial classifications, and that bizarreness is not necessary to trigger strict scrutiny.”). See also *Hunt v. Cromartie*, 526 U.S. 541, 547 (1999) (plaintiffs can establish predominance “using direct or circumstantial evidence, or a combination of both.”). Whether proved through direct or circumstantial evidence, the key question is whether “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Alabama* at 1267 (quoting *Miller*).

1. Common Policies Applied In Each Black-Majority District. As the Supreme Court recognized, all of the BMDs were drawn pursuant to the same policy, priorities, methods, techniques, and legal understandings. The Court also held that this “statewide evidence” of the

policies employed as a general or common matter to all the black-majority districts is “perfectly relevant” to determining whether race predominated in the design of any specific district. *Id.* at 1267. Emphasizing this point, the Court specifically further concluded: “That Alabama expressly adopted and applied a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote) provides evidence that race motivated the drawing of particular lines in multiple districts.” *Id.*

The record demonstrates that when the redistricters designed *each* black-majority Senate and House district, (1) race-based population targets were set; (2) meeting these targets took priority over all other districting objectives (other than one vote, one person); (3) these districts were designed first, to make sure these racial-population targets were met, to the extent feasible; (4) no proposal for the design of any of these districts would be considered unless it met these BPP targets; (5) all other districting objectives were subordinated to ensuring that these racial targets met; (6) the redistricters considered nothing about the particular black voters it moved into these under-populated districts to re-create the BPPs other than their race.

The direct evidence on these points can be summarized briefly, because all three central actors, Senator Dial, Representative McClendon, and the consultant who drafted the districts, Randy Hinaman, gave the same, consistent testimony. First, as this Court previously found, the redistricters all understood avoiding retrogression to mean that “we could not in any plan reduce the number of black voters in any district that had been determined to be a majority black district.” See, e.g., Tr. 1-27-29; 174-75; Tr. 3-118, 145; 183-187. Senator Dial testified that he was unwilling to lower the minority percentage in *any* district, because that is what avoiding “retrogression,” in his view, required. Tr. 1-96. When black-majority districts needed to grow in

population, to meet the 2% population deviation standard, “they had to grow in the same percentage that they already have and not regress that district.” Tr. 1-81. Indeed, to meet this policy objective of avoiding “retrogression,” Senator Dial testified that the higher the BPP, the better for purposes of Section 5, as he understood it; he did not consider any black percentage too high for the districts he created. Tr. 1-56.²

Second, Senator Dial gave Randy Hinaman, the mapmaker, only two basic instructions (in addition to the 2% population-deviation standard): meet these BPP targets in each black-majority Senate district and do not pair incumbents. As Senator Dial testified: “That was basically it, yes,” for the instructions he gave Hinaman. Tr. 1-69.

Third, the first thing the redistricters did in drafting the plans was to design the black-majority districts. Tr. 1 -35-36 (Dial); Tr. 3- 122; 146 (Hinaman); Tr. 3-221-23 (McClendon). Only after those districts were “properly” repopulated to meet the BPP targets did the redistricters turn to filling in the rest of the districts. Tr. 3-122: 23-3-123:3. That followed from the overwhelmingly priority the redistricters gave to meeting their BPP targets. *Id.* Indeed, as a matter of logic and common-sense, if the priority in drafting the plan is to make sure each BMD meets a specific BPP, then the most effective means to achieve that – probably the only means of realizing that policy – is to design those districts first and make sure they meet the BPP requirement before moving on to the other districts. That is precisely what the redistricters did. Tr. 1-36.

Fourth, meeting or exceeding the prior BPP in each of these districts was not one aim among many: it was *the* prioritized policy or factor or constraint that dominated over all others

² Tr. 1 = Trial Transcript Volume I.

(other than the population-equality requirement). Thus, Senator Dial repeatedly testified that he rejected any other plan, including specific ones that other Senators proposed for the BMDs, if those other plans would reduce the BPP in any black-majority district. That was *the* reason he gave for rejecting Senator Sanders' plan, Tr. 1-135, and the Reed-Buskey Senate plan. Tr. 1-126. The Sanders plan maintained the same number of majority black voting age percentages as in the prior plan (eight). But Senator Dial testified that the "only reason" he rejected this plan was that it did not – in addition --- maintain the high BPPs those districts previously had. Tr. 1-77. Even though SB 5, the Sanders plan, avoided measures like splitting Mobile County between districts, Senator Dial rejected this plan, in favor of one that did split counties like Mobile, because of the priority given to meeting or exceeding the racial-population targets. *Id.* Senator Dial consistently rejected moving district boundaries in any way that would have "regressed" a district. Tr. 1-71-72.

Similarly, Hinaman testified that, while changing each district as little as possible was "a goal," that goal was "certainly down on the list from one person, one vote and not retrogressing the minority districts. . . ." Tr. 3-162. That is, meeting the racial targets predominated over any "least-change" policy. In the same way, any aim to protect communities of interest gave way to the higher priority goal of meeting the racial-population targets. Tr. 1-28.³:

³ As Senator Dial testified:

Q: And also, [your goal] to the extent possible, to protect communities of interest?

A: Yes, as much as possible.

Q: And that's not always possible, is it?

A: It becomes very difficult when you're trying to make sure that you do not regress any of the minority districts.

Even more significantly, the State had to subordinate the traditional Alabama districting principle of preserving county boundaries to the goal – thought to be federally required – of moving voters around to meet these racial-population targets. Yet Senator Dial testified that, to meet the higher-priority goal of hitting the State’s racial-population targets, the redistricters had to override county boundaries on numerous occasions. Tr. 1:75: 8-11; 1-93:7-1-94:2. Hinaman similarly testified that he would split counties “based on the Voting Rights Act and not retrogressing a Majority/Minority district.” APX 75, at 34.

Fifth, the redistricters did not examine or discuss what BPP or BVAP was necessary in any particular district to preserve the ability to elect. The districts were designed to re-create the BPPs, period, not on the basis of any judgment as to what was necessary in any particular district, in any region of the State, or in general to preserve the ability to elect. Tr. 1-28, 37, 56-57, 74-78, 81, 96, 136-37.

Hinaman testified, for example, that he never discussed with the Senate and House chairs the question of “what sort of black majority would be necessary in order for a black candidate to be elected or for black voters to have a viable opportunity to elect a candidate of their choice in a district.” APX 75 at 139-40. Meeting the racial-population targets as mere numbers was the overriding consideration in drawing the black-majority districts. Tr. 3-142-43. The redistricters did not look at, or take into account, the actual rates of black political participation in these districts—even though Hinaman took political participation data into account in designing the white-majority districts. Tr. 3-180-81. The redistricters did not look at, or take into account, the actual election-return analysis in black-majority districts to see how they would be likely to

perform or to determine what population levels were necessary to protect the minority community's ability to elect candidates of choice under Section 5. *Id.* They did not look at, or take into account, the socio-economic status characteristics of the black people he moved into or out of those districts to see whether he was joining black communities of similar socio-economic status. Tr. 3-143-44. They did not look at, or take into account, anything that would indicate whether the populations he moved into or out of the black-majority districts did or did not have common interests. Tr. 3-144.

The redistricters were aware that designing the districts to re-create the prior BPP levels meant that the smaller number of black voters left in white-majority districts might have less significant political influence, through coalitions with white voters. But in the redistricters view, that was a consequence of fulfilling their highest priority, which was to recreate these BPP numbers.⁴

In focusing on bare numbers of black residents alone, the redistricters were equally explicit that they did not engage in any analysis of how the black-majority districts actually performed, or would be likely to perform, in elections. Hinaman testified that he made no judgment concerning what BBP might be needed to preserve the ability to elect candidates of

⁴ As Senator Dial testified:

[1-63] Q. So what you're saying, Senator, is that in pursuing your overriding goal of maintaining the large black majorities in the majority black districts, if that resulted in blacks being taken out of the majority white districts, diluting their influence in those majority white districts, that was just collateral damage? That was just an accident or the results you get because of pursuing the Voting Rights Act?

A. That was because of the Voting Rights Act.

Q. So we can blame the Voting Rights Act for the loss of black influence in the majority white districts?

A. Absolutely.

choice, but instead sought to re-create the BPP figures in and of themselves. Tr. 3-149-50; 164; 180-87.⁵

Sixth, Hinaman testified that the only “normal” reasons he used to split a precinct between districts was to avoid “retrogressing a black Majority district” or to create a black-majority district, and to meet the population-deviation standard. APX 75, 117-18.

The State’s position that Section 5 required it not to re-create the prior BPPs is also directly contrary to the State’s actions in the prior, 2001 redistricting and the representations the State made to the United States Department of Justice in its 2001 Section 5 submission materials. ADC Supp. Ex. 2 and 3. As these documents state, in the 2001 House plan, the State reduced the BPP in 23 of the 27 BMDs. NPX 10 at 9. In many, the State reduced the BP dramatically: 19.6 points in HD 57; 16.1 points in HD 82; 12.5 points in HD 19; and 12.3 points in HD 103. *Id.* The State reduced the BPP by more than 5 points in more than half the districts. *Id.* In the 2001 Senate plan, the State reduced the BPP in *every* district and by as much as 10.2 points in SD 19 and 8.0 points in SD 33. NPX 10 at 12. Despite these often quite-large reductions, the Department of Justice pre-cleared the plans, as the 2012 redistricters surely knew.

In addition, in 2001 the State understood that the Section 5 standard was whether a reduction in black population nonetheless preserved for African-Americans a “reasonable opportunity to elect the representative of their choice.” ADC Supp. Ex. 1-3. That was the standard – the correct one – the State in 2001 cited to the DOJ in representing that these substantial black-population reductions would not violate Section 5. *Id.*

⁵ Q. But [you] didn’t even look how your black majority districts had performed in any election?

A. I was more concerned in drawing minority districts as to whether I was retrogressing the overall population, black percentage, than voter results.

In light of the undisputed direct evidence, if Alabama seeks to argue that it did *not* apply its common policy in any particular black-majority district, Alabama would bear the burden of proof to establish that fact. This case is much like a “common pattern or practice” case in the Title VII context. *See, e.g., Teamsters v. United States*, 431 U.S. 324 (1977). In such cases, once the plaintiffs establish that an employer relied on a general employment practice that violates Title VII, the “proof of the pattern or practice supports an inference that any particular employment decision, during the period in which the discriminatory policy was in force, was made in pursuit of that policy.” *Id.* at 362. The “burden then rests on the employer to demonstrate that [an] individual applicant was denied an employment opportunity for lawful reasons.” *Id.* The same principle should apply here: as the Supreme Court concluded, Alabama “expressly *adopted* and *applied* a policy of prioritizing mechanical racial targets above all other districting criteria (save one-person, one-vote). . . .” *Alabama Legislative Black Caucus v. Alabama*, 135 S.Ct. 1257, 1267 (2015) (emphasis added). That common policy or practice was applied in all the BMDs; Alabama defended this policy as required by Section 5, but did not introduce evidence or argue that it had *not* applied this policy in any specific BMD. If the State now seeks to argue that this policy was *not* applied in any district in which the BP decreased, the State must bear the burden of proving that fact.

The record provides no credible basis for concluding that the State abandoned its approach of prioritizing the maintenance of the BPPs in designing any particular district. Indeed, the State *could not* have abandoned this policy, on its own account. As Alabama’s brief to the Supreme Court represented, the State believed the Supremacy Clause required the State to meet these BPPs in each and every black-majority Senate district. Alabama Supreme Court Br. 2, 16.

Because the State (wrongly) believed the VRA demanded that the State meet these BPP figures in each district, to the extent feasible, the State had to make meeting those racial targets the predominant factor, to which all state law districting policies had to be subordinated. Thus, the direct evidence in the record demonstrates that race was the predominant factor in the construction of each and every black-majority House and Senate district. “Race was the criterion that, in the State's view, could not be compromised” *Shaw v. Hunt*, 517 U.S. 899, 907 (1996) (emphasis added).

For purposes of triggering strict scrutiny with respect to SDs 18, 19, 20, 23, 24, 26, 28, and 33, that is sufficient. The application of the State’s policy to each specific district is discussed below.

2. *Specific Black-Majority Senate Districts.*

a. *An Overview.*

Based on the 2010 Census, an ideally populated Senate district required 136,564 people. NPX-340. Those numbers revealed that the eight BMDs in the Senate were all under-populated. NPX-340: pp 1-2. But as Table 1 shows, six of the eight had sufficiently large black populations that black residents would have constituted the majority of an ideally populated district even if *no* additional black persons had been added to those districts. Indeed, two of these districts would have been more 60% BP without adding any black population. Moreover, the two remaining districts would have had black plurality populations over 49% had no additional black persons been added to them:⁶

⁶ SD 18 was 34% white and SD 28 was 44% white. NPX-340 at 2.

Table 1

SD	Ideal Pop.	2010 BP in 2001 Districts	Existing B % of Ideal District
18	136,564	67,389	49.35%
19	136,564	78,149	57.23%
20	136,564	83,554	61.18%
23	136,564	72,489	53.08%
24	136,564	74,599	54.63%
26	136,564	87,714	64.23%
28	136,564	66,968	49.03%
33	136,564	72,572	53.14%

Thus in six districts, there was no need to add any black population to the district to leave it 53% BP or higher, though any race-neutral process of adding thousands of persons to bring these districts up to the population requirement would inevitably have added some black population in any event. In the remaining two districts, a total of a mere 1,314 additional black persons would have made each district majority black; a total of 10,400 would have made each district 53% BP.

But the state added ten times that number of black people to these districts, on net. The State added a total of 156,453 black people to these eight districts and removed 49,202 in drawing the new districts, for a net addition of 107,151 black persons to these districts.⁷ In SD 28 and 33, the net number of black people added *exceeded* the size of the districts' under-populations, as Table 2 shows:

⁷ These numbers are from the ADC Supp. Ex. 5.

Table 2

Senate District	Deviation from Target Population⁸	Net Number of Blacks Added⁹	Total Population Moved Into or Out of District¹⁰
18	-24,092	12,496	24,708
19	-27,399	10,141	31,063
20	-29,189	1,818	61,352
23	-24,625	15,194	52,738
24	-17,732	12,413	70,988
26	-15,898	14,722	55,863
28	-5,196	15,470	74,327
33	-24,649	24,897	44,275

It is also clear that the State added many thousands more people, in some of these districts, than necessary to bring the districts up to ideal population size. Yet in moving these tens of thousands of voters, the redistricters managed to achieve their expressly stated goal of re-creating or increasing the BPPs in each of these districts, to the extent feasible. As demonstrated below, in the two districts in which the BP declined meaningfully, HDs 19 and 20, that was because there simply were not enough black persons left in the area to get any closer to their racial-target population levels.

b. The Role of Racially-Split Precinct Analysis.

When redistricters are faced with under-populated districts, they have to extend the district boundaries to incorporate new population. They have to choose which boundaries of the district to move. In examining the way Alabama thus extended the eight black-majority Senate districts, this Court must therefore focus on the district boundaries. Where did the State choose

⁸ These figures are taken from NPX-340.

⁹ These numbers are from the ADC Supp. Ex. 5.

¹⁰ These numbers are from the ADC Supp. Ex. 5.

to expand the boundaries of these districts and why did it do so in the manner it did? As the district-by-district analysis shows, the State used race-based means to move significant numbers of voters to meet its racial-population targets in these eight districts.

The circumstantial evidence which best confirms the direct evidence that race predominated in the design of these districts is the redistricters' systematic racial-splitting of precincts between white and black districts, with the predominantly black portions allocated to the BMD to meet the district's racial target, and the whiter portions being allocated to adjoining white-majority districts. In light of the Supreme Court's mandate that this Court reconsider its predominance analysis, it is important to emphasize the role the ADC argues that the evidence of racially-split precincts properly has in that analysis.

Census-block information (collected house by house) includes racial data for each block, but does not include political data on how voters register or vote. Thus, when using census-block data, Hinaman had only racial-demographic information to draw on with no information about how those blocks actually voted or performed in elections. See *Bush v. Vera*, 517 U.S. 952, 961–62 (1996) (describing these facts about precincts and census blocks). Thus, in the Supreme Court's determination in *Bush v. Vera* that race had been the predominant motive for the districts at issue, the Court identified as the "most significant" factor there the evidence of racially-split precincts:

"Finally, and most significantly, the objective evidence provided by the district plans and demographic maps suggests strongly the predominance of race. Given that the districting software used by the State provided only racial data at the block-by-block level, the fact that District 30, unlike Johnson's original proposal, splits voter tabulation districts and even individual streets in many places suggests that racial criteria predominated over other districting criteria in determining the

district's boundaries.” *Bush v. Vera*, 517 U.S. 952, 970-71 (1996) (citation omitted).

Thus, if race was used to split precincts and place a significant number of voters within or without a particular district, that constitutes significant evidence, at least, that race is the predominant motive in the design of *that* district. Even if Alabama split many precincts for other reasons in other parts of the State, such as in the exclusively white- or white-majority districts this Court identified in its prior opinion, that would have no legal bearing on whether race was the predominant motive when precincts were split along racial lines in any *specific* district. Thus, as this Court found, Hinaman sometimes split precincts to comply with the 2% population-deviation guideline. *Alabama Legislative Black Caucus v. Alabama*, 989 F.Supp. 2d 1227, 1300 (M.D. Ala. 2013). But as the Supreme Court concluded, that does not answer the relevant question. The “‘predominance’” question “concerns *which* voters the legislature decides to choose [to meet the population goal], and specifically whether the legislature uses race as opposed to other, ‘traditional’ factors when doing so.” *Alabama*, at 1271.

Hinaman specifically testified that, when he re-populated the black-majority districts to meet his black-population targets, he reached out to find “black precincts” to do so:

(Tr. 3-142: 14-18).

Q: Let me ask you this. When you are attempting to bring all majority black districts up to the size of the black majorities with 2010 census on top of 2001 plan – and you were reaching out to find black precincts, right?

A: Yes, sir.

(Tr. 3-143: 10-12).

A: But, yes, where it was something that I was concerned about retrogressing, I did look at the nature of the precincts I was adding, certainly.

In addition, Hinaman specifically also testified that he would go down to the census block level and split precincts by race – as the record demonstrates overwhelmingly that he did in repopulating all the BMDs – when he need to make sure he had not “retrogressed that number,” that is, the BPP as reflected in the prior plan. (Tr. 3-144: 1-7).

He also testified that with the Maptitude system he used to draw districts, only a single click was necessary to include a whole county or to include the whole of a precinct. APX 75, pp. 111:14-112:29; 114:8-12; Tr. 3-167:10-14. Splitting thousands of precincts therefore required considerable additional effort; when he split a precinct, Hinaman had to click on each individual census block separately and move them one by one between districts. The division of voting precincts thus required a series of very specific, affirmative choices and decisions. Each decision involved dividing population on racial lines. C-40, pp. 71-72, 81; DX 404, bates State-DMc440. Hinaman expressly acknowledged that he sometimes split precincts along racial lines. Tr. 3-143:21-144:14; 3-145: 5-17; 3-179: 10-14; APX 75, p. 117:19-25. At trial, the ADC provided examples of how numerous precincts splits were entirely unnecessary in the constructions of SD 24 and SD 24. Doc. 195-1 at 72-74.

The district-specific evidence of racially-split precincts along the boundaries of each majority-black district is presented here for the same reasons as in *Vera*. To clarify any potential confusion from the earlier stage of this case, ADC’s argument is *not* that the State systematically split more precincts statewide in black districts than in white districts or vice versa. In its prior opinion, the majority of this Court focused on that question and concluded the evidence did not show that the “majority-black districts suffered the brunt of the precinct splits. . . .” Doc. 203 at 143. But whether that is so or not is irrelevant to these *Shaw* claims. Similarly, the majority

appears to have thought this evidence was being offered only to prove that Alabama had acted with a racially discriminatory purpose. *Id.* (concluding that the lack of evidence of a statewide pattern of splitting precincts in black districts rather than white ones undermined any claim that the legislature had “acted with a racially discriminatory purpose when splitting precincts. . .”). But again, this is not the issue with respect to the *Shaw* claims. The issue in *Shaw* cases, and in this case on remand, is whether race was a predominant factor in “the legislature’s decision to place a significant number of voters within or without a particular district.” ALBC, Slip. Op. at 16 (quoting Miller).

In *Bush v. Vera*, for example, the Court focused on the way Texas had made “intricate refinements on the basis of race” at the level of precincts (or voting-tabulation districts) along the boundaries of the three *specific* majority-minority districts challenged there. 961-62. The Court did not address whether precincts were split for other reasons in any other part of the State; that question is irrelevant under *Shaw*. Indeed, even if redistricters split *some* precincts along the borders of a majority-minority district for non-racial reasons, that would also not affect the *Shaw* analysis; as long as *some* precincts in a district were split for racial reasons, the legislature would have decided to “place a significant number of voters within or without a particular district” on the basis of race. Under the Court’s precedents, that makes race the predominant factor.

The district-specific evidence of racially-split precincts along the boundaries of each majority-black district is presented here for the same reasons as in *Vera*. In each of these districts, Alabama “manipulated district lines to exploit unprecedentedly detailed racial data . . .” *Id.* at 962. The State did so to achieve their goal of meeting or exceeding the BPPs, to the extent

feasible, in each of these districts. As a result, race was the predominant motive, in each district, for moving a significant number of voters within or without that district.

The overall pattern of racially split precincts in all these districts also corroborates that race was the predominant factor for the racial pattern of precinct splits in any one particular district.

c. District-by-District Analysis.

Hinaman testified that in designing first the BMDs, he began in the southern part of Alabama and worked his way north. See generally, Tr. 3-122:23; 3-123-7; 3-123:12-3-126:25. This brief therefore addresses the Senate districts in that order.

SD 33 (Mobile)

In Mobile County, the prior version of SD 33 had been 64.85% BP. The district was under-populated by nearly 20%, or 24,649 people.¹¹ Yet in filling out this district, even if the State had added no additional black persons, SD 33 would have had a 53% BPP majority of an ideally populated district. Table 1. Of course, any race-neutral means of re-populating this district would have added more black people than zero. The population in Mobile County outside of SD 33, before the 2012 redistricting, was 23% black. NPX 340 at 2. Thus, any race-neutral means of re-populating SD 33 within Mobile County would have produced a district that was considerably more than 53% BPP.

But the State did not use race neutral means of determining *which* voters to add to meet SD 33's population target. Instead, the redistricters went about meeting their declared aim of re-

¹¹ For all Senate districts, all numbers concerning the prior districts and their deviation from ideal population after the 2010 Census are from NPX-340. All numbers concerning the numbers of voters added, removed, and who remained the same in each district by race are from ADC Supp. Ex. 5.

creating the district with a BP that would equal or exceed that of the prior version. Through racially sorting residents between SD 33 and the surrounding white-majority districts in Mobile County, the redistricters managed to fill out the district in a way that increased its BP from 64.85% to 71.64% BPP. NPX 340 at 2, NPX 10 at 12.

The redistricters moved a total of 42,767 persons into and out of SD 33. ADC Supp. Ex. 5. Of the ones added, 80% were black. *Id.* Of the ones removed, 84% were white. Indeed, although the district was under-populated, the State actually *removed* 8,065 whites from the district, in total, and 1,304 whites, in net.¹² ADC Supp. Ex. 5. As a result, the redistricters added a net of 24,999 persons. ADC Supp. Ex. 5. Remarkably, 24,897, of those net persons (99.59%) were black. *Id.*

The ADC map in Supp. Ex. 41B illustrates that the State chose to expand SD 33 to the south, rather than to the west. To the west, the census blocks were whiter than they were to the south. See NPX 340 at 2. In choosing to move south, the redistricters therefore brought into SD 33 large concentrations of predominantly black census blocks that previously had been in SD 35, as this map shows.

To provide a more precise picture of how the State racially sorted voters in SD 33 to meet his targets, Map ADC Supp. Ex. 41C shows the racial pattern of the way certain precincts were split along the boundary of SD 33 and the surrounding white-majority districts. Map ADC Suppl. Ex. 41B and 41C show this pattern at the southeastern part of SD 33, where there is an odd protuberance from SD 33 into SD 35. When the precincts were sliced, the whiter portions ended up in the white-majority districts and the blacker portions in SD 33. As the precinct map

¹² The other 1288 come from other minority categories. *Id.*

shows, in reaching out to pick up heavily black populations through that protuberance, the State did not just generally selectively reach out to areas that were predominantly black, the State went further and split the precincts in a racial pattern along the boundary between SD 33 and SD 35 and 34.

The detailed demographic breakdowns of the relevant precincts splits are in Appendix B at 7.

SD 23 and SD 24 (Western Black Belt)

These districts comprise the rural Western Black Belt. After the 2010 Census both were under-populated significantly: SD 23 was 24,625 persons below the new ideal population; SD 24 was 27,732 persons below. NPX 340 at 1.

In the process of redesigning SD 23, the State moved a total of 52,738 people into or out of the prior SD 23 (37,824 people were added, 14,914 were removed). ADC Supp. Ex. 5. In SD 24, Alabama moved even more people into and out of the prior SD 24: 64,414 (42,487 people were added, 24,927 were removed). *Id.* Given that the ideal population was 136,564, that means almost 50% of this number were added or removed to SD 24 and almost 40% in SD 23.

While moving all these people into and out of these and surrounding districts, the redistricters hit their racial targets almost on the head in SD 23 and 24. Under the new Census, SD 23 had a 64.7% BPP prior to the redistricting; the new SD 23 was designed with a 64.8% BPP. NPX 10 at 12. The same pattern applies for SD 24. While the prior SD 24 had a 62.8% BPP, the new SD 24 managed to come out with a 63.2% BPP, thus achieving the redistricters stated goal of equaling or exceeding the prior BPP. These numbers speak for themselves. With tens of thousands of people being moved into and out of these districts, and the redistricters

expressly proclaiming their goal of meeting these racial targets, it defies logic to think these targets could have been met so exactly without race being a predominant factor in their design – as the redistricters testified, in effect, that it was.

Moreover, as Table 1 shows, both districts started with a large enough black population that, even had they been filled out with no additional black residents, they would still have remained BMDs. SD 23 would have been 53.08% and SD 24 54.63% BPP. Of course, doing that was neither required nor possible, but these numbers provide perspective on how the redistricters conceived their task.

In addition, simple race-neutral means were at hand to cure to the under-population. Adding all of Butler County to SD 23, for example, would have created a district with 132,886 residents (about 2,700 less than the ideal size), of whom 61.39% would have been black; adding all of Pickens County to the 2001 SD24 would have created a district with 138,578 (2014 persons more than the ideal size), of whom 82,810 (59.76%) would have been black. NPX 340 at 2, NPX 328. With these changes the population of the two districts could have been balanced within adjoining residents of Marengo County, which had been split between the two districts in the 2001 plan and was split in the 2012 plan.

Instead, in designing SD 23, the redistricters overrode the Alabama constitutional requirement to keep counties whole and instead split Clarke, Conecuh, Marengo, Monroe, and Washington Counties. APX 17, ADC Suppl. Ex. B-F. They also engaged in race-based districting to meet their rigid racial targets. For SD 23, the redistricters did in fact add Butler County, but they did not stop there. The State *removed* predominantly white areas from Autauga, Conecuh, Monroe, and Clarke Counties. The State also added predominantly black

areas from Clarke and Washington Counties from SD 22, and added additional black majority areas from Perry County from SD 24 and Lowndes County from SD 30. *Id.*

The maps at ADC Supp. 37B and 37C shows the way the redistricters moved SD 23 north into Perry County to pick up large black populations there at the expense of under-populated SD 24, even as they were removing white areas from SD 23. The map at ADC Supp. Ex. 37D illustrates that in the southeastern are of SD 23, the redistricters reached into Conecuh County to grab the predominantly black areas there, while leaving the predominantly white areas in white-majority SD 22. The map at ADC Supp. Ex. 37E demonstrates the way the redistricters in the southwestern part of the district reached into Washington County, to pick up highly concentrated black populations there; this map also illustrates the removal of predominantly white areas from Monroe and Conecuh Counties.

In addition, the split-precinct maps illustrate in more precise detail the pattern of racially-splitting precincts along the southern and southeastern boundaries with the adjoining white-majority SDs 22 and 31. ADC Supp. Ex. 37G illustrates eight racially-split precincts along this border, with the predominantly black census blocks in Conecuh and Monroe Counties put in the SD 23 and the less-black ones put into the adjoining white –majority districts. ADC Supp. Ex. 37H illustrates the racial-splitting of precincts pattern for another five precincts, including precincts by race across the county boundaries of Clarke and Washington Counties. See ADC Supp. Ex. 37H and APX 17. For, the racial-demographic breakdowns of how these splits moved black voters and white voters by race between SD 23 and adjoining districts, see Appendix B at 2-3. A total of at least 25 precincts portray this pattern of racially splitting precincts to move voters by race between these districts. *Id.*

For SD 24, the State reached up to Tuscaloosa through a contorted, bizarrely-shaped hook in the northeastern part of the district that brought the predominantly black parts of Tuscaloosa into SD 24 while keeping the whiter areas out. ADC Supp. EX. 38A, 38D, and 38E. The redistricters dramatically redrew the lines within Tuscaloosa, as they added large black-populated areas and removed white-populated areas. ADC Supp. Ex. 38D demonstrates this racial sorting vividly. The new boundaries within the City of Tuscaloosa are bizarre. ADC Supp. Ex. 38J.

In addition, the State moved north to add a portion of Pickens County to SD 24, but only the predominantly black portion (7,303 persons, of whom 5405 black (74.01%)). Map ADC Supp. Ex. 38D and Ex. 38G illustrates the clear racial sorting of Pickens County. Maps ADC Supp. Ex. 38H and 38I shows that when the redistricters decided to expand SD 24 to the south, they selectively picked up predominantly black areas of Clarke, Choctaw, and Washington Counties. Finally, ADC Supp. Ex. 38H and 38I show the extraordinary racial selectivity in the oddly shaped additions to SD 24 in Choctaw County.

The illustrative precinct-split maps show that along the boundaries between SD 24 and SD 14, SD 24 and SD 21 and SD 5, the redistricters engaged in systematically racial sorting, in which predominantly black blocks in the precincts were added to SD 24, while the whiter areas were allocated to the surrounding white-majority districts. ADC Supp Ex. 38K, and 38L, and 38M.

The detailed demographic breakdowns of the relevant precincts splits are in Appendix B at 3-5.

SD 26 (Montgomery)

SD 26 is the one district the Supreme Court's opinion directly assessed and discussed. On the eve of the redistricting, SD 26 was 72.7% BPP, with the 2010 Census numbers. The district had to add 15,898 persons to meet its ideal size; there were, of course, numerous ways in which Alabama could have done so. If every additional resident of SD 26 needed to fill out the new SD 26 with nearly 16,000 additional voters had been white, the new district would still have been 64.3% black. *Ala. Leg. Black Caucus v. Alabama*, 989 F.Supp. 2d 1227, 1318, n.12 (M.D. 2013); APX 7.

But race predominated in the way the State went about moving thousands of people into and out of the district. The redistricters chose to re-design SD 26 in substantial fashion. In doing so, they added 33,029 people to it, removed 18,671, and thus moved 51,700 people altogether into and out of the district. ADC Supp. Ex. 5. The redistricters managed to do all that while realizing their stated goal of ensuring that the BPP remained the same or increased in the district. The new SD 26 was 75.1% black.

The Supreme Court's opinion discussed SD 26 in detail at *Alabama*, 135 S.Ct. at 1270-71:

The legislators in charge of creating the redistricting plan believed, and told their technical adviser, that a primary redistricting goal was to maintain existing racial percentages in each majority-minority district, insofar as feasible. See *supra*, at 9-10 (compiling extensive record testimony in support of this point). There is considerable evidence that this goal had a direct and significant impact on the drawing of at least some of District 26's boundaries. See 3 Tr. 175-180 (testimony of Hinaman); Appendix C, *infra* (change of district's shape from rectangular to irregular). Of the 15,785 individuals that the new redistricting laws added to the population of District 26, just 36 were white—a remarkable feat given the local demographics. See, e.g., 2 Tr. 127-128 (testimony of Senator Quinton Ross); 3 Tr. 179 (testimony of Hinaman).

Transgressing their own redistricting guidelines, Committee Guidelines 3-4, the drafters split seven precincts between the majority-black District 26 and the majority-white District 25, with the population in those precincts clearly divided on racial lines. See Exh. V in Support of Newton Plaintiffs' Opposition to Summary Judgment in No. 12-cv-691, Doc. 140-1, pp. 91-95. And the District Court conceded that race "was a factor in the drawing of District 26," and that the legislature "preserved" "the percentage of the population that was black." 989 F. Supp. 2d, at 1306.

We recognize that the District Court also found, with respect to District 26, that "preservi[ng] the core of the existing [d]istrict," following "county lines," and following "highway lines" played an important boundary-drawing role. *Ibid.* But the first of these (core preservation) is not directly relevant to the origin of the new district inhabitants; the second (county lines) seems of marginal importance since virtually all Senate District 26 boundaries departed from county lines; and the third (highways) was not mentioned in the legislative [1272] redistricting guidelines. Cf. Committee Guidelines 3-5.

All this is to say that, with respect to District 26 and likely others as well, had the District Court treated equal population goals as background factors, it might have concluded that race was the predominant boundary-drawing consideration. Thus, on remand, the District Court should reconsider its "no predominance" conclusions with respect to Senate District 26 and others to which our analysis is applicable.

Alabama, 135 S. Ct. 1257, 1271-72 (2015). Hinaman testified more extensively about SD 26 than any of the other black-majority Senate districts.

The prior version of SD 26 occupied most of Montgomery County, including the entire southern half of the county.¹³ Immediately to the south of SD 26 was Crenshaw County, with a population of 13,906.¹⁴ Because of unrelated changes in the districting scheme, Crenshaw County was no longer part of any Senate district.¹⁵ One obvious solution to both problems was

¹³ APX 37.

¹⁴ NPX 328, at 1.

¹⁵ Tr. 3-123:1-3-130:18.

to add Crenshaw County to the adjoining SD 26, a step that would have largely solved the under-population problem in SD 26. But Crenshaw was only 23.39% black; adding it to SD 26 would have reduced SD 26 from 72.75% to 67.15% black.¹⁶ Hinaman repeatedly explained that he was unwilling to add Crenshaw County to SD 26 because doing so would reduce the black percentage of the population in that district. At trial Senator Dial acknowledged that if *all* the population added to SD 26 had been white, it still would have been overwhelmingly black; but that simply was not good enough.¹⁷

Instead, the redistricters created a “land bridge”—through part of the old SD 26—between SD 25 and Crenshaw County. Tr.3-130: 9-12. By adding 13,906 people from Crenshaw County to SD 25, a 71% white-majority district, it was then possible to transfer an equal number of people from predominantly black portions of SD 25 in Montgomery County to SD 26.¹⁸ But doing that alone could not have repopulated SD 26 with a virtually all-black population. There was not a portion of SD 25 that contained 14,806 blacks but only 36 whites. The only way to achieve that exceptional result was to swap predominantly white areas in SD 26 for predominantly black areas of SD 25; the *net* effect of such an exchange could be to add only blacks to SD 26. Thus, the redistricters transferred from *under-populated* SD 26 to *overpopulated* SD 25 the southwest quarter of Montgomery County, an area in northwest corner

¹⁶ The resulting district would have had a population of 134,572, of whom 91,039 would have been black. NPX 340 at 1, NPX 328 at 1.

¹⁷ Tr. 1-131:16-132:5.

¹⁸ Under the 2012 plan 13,906 persons were added to SD 25 from Crenshaw County, and a net total of 15,785 persons were added to SD 26 from SD 25. NPX. 328, NPX 340 at 1, C-40 at 82-93, ADC Supp. E. 5. That meant that SD 25 lost a net of 1,879 persons from the population it had prior to the addition of Crenshaw and transfer of population to SD 26. After all of this, SD 25 had a population of 135,492; so before these changes, the SD 25 population (partly in Montgomery County and partly in Elmore County) was 137,361. NPX 10 at 12. The ideal Senate district size under the 2010 census was 136,563.

of the county, and a portion of the center of the county.¹⁹ Hinaman offered no non-racial explanation for removing these areas from under-populated SD 26.

By then replacing predominantly white portions of SD 26 with predominantly black areas from SD 25, the black population in SD 26 was increased from 72.75% to 75.22%. The resulting SD 26 is a strangely shaped configuration that the Supreme Court called “irregular” in contrast to the “rectangular” shape of the former district. See Map ADC Supp. Ex 39A.

As noted, even if no black persons had been added to repopulate SD 26, the district would have been 64% BPP. Senator Dial specifically testified that, at level, he knew the district would retain the ability to elect. But as with every other of the black-majority Senate district, Senator Dial nonetheless refused to permit lowering that BPP because, he asserted, Section 5 would not permit it. Tr. 1:67:20-68;1-69:16-19;1-131:4-1-132:5;1-136:8-1-138:20.

The way the redistricters did this is illustrated in the maps at ADC Supp. Ex. 39B and 39C. These two maps illustrate the census blocks the State added to SD 26 – and chose not to add – in the northeast corner of the district, where SD 26 hooks around SD 25. In the first map, predominantly black blocks in Montgomery are added right where the district juts out into SD 25; as the map shows, the redistricters were adding here overwhelmingly black census blocks while keeping the surrounding areas that were predominantly white in SD 25. The second map illustrates other parts of this area of the boundary between SD 26 and SD 25 where the redistricters did the same thing – selectively adding to SD 26 predominantly black areas while bypassing whiter areas that were then allocated to SD 25.

¹⁹ Compare APX 37 with APX 39.

To demonstrate this pattern of race-based decisionmaking, ADC Supp. Ex. 39F shows how three adjoining precincts were racially split between SD 26 and 25 in this area. The redistricters sliced through these adjoining precincts, with the predominantly black portions of all three put into SD 26, and the whiter portions put into SD 25.

This Court previously noted, as SD 26 Senator Ross testified, without contradiction in the record, that predominantly white portions of precincts previously within SD 26 were moved into the adjoining white-majority SD 25, while the black portions of those precincts were retained in SD 26. *Ala. Leg. Black Caucus*, 989 F.Supp.2d at 1318.

The detailed demographic breakdowns of the relevant precincts splits for SD 26 are in Appendix B at 5.

SD 28 (Eastern Black Belt)

SD 28 was barely under-populated, by only 5,196 persons. NPX 340 at 2. As drawn in 2001, SD 28 included all of Macon, Bullock, Barbour, and Henry Counties, along with compact portions of Russell and Lee Counties. To comply with the State's population-equality standard, the district needed little revision.

Although the existing district was barely under-populated, Senator Dial testified that he told incumbent Senator Beasley that "his district is basically a minority district and had to grow . . ." Tr. 1-143: 16-17. Despite the small under-population of this district, it was redrawn dramatically. Overall, the State moved 69,322 people into and out of the district (37,937 were added, 31,385 were removed). ADC Supp. Ex. 5. On net, the State added 15,470 black people to the district, while subtracting 5,896 whites. *Id.*

In doing all of this, the redistricters reached their state objective of ensuring, to the extent feasible, the BPP remained the same or increased. The prior SD 28, under the 2010 Census, was 50.98% BPP. The new SD 28 is 59.83% BPP. The State thus increased the BPP here by almost 9 points.

The changes to SD 28 were done in the racially-selective pattern that characterizes the other BMDs. At the north of the district, the State shifted the boundaries within Lee County in a highly bizarre and contorted manner. In Russell County, the State removed white-populated areas and added black-populated areas to SD 28. ADC Supp. Ex. 40A-40-F. And SD 28 was extended down to pick up a bizarrely shaped area of Houston County that contained 23,362 persons -- of whom 16,029 (68.78%) were black. C-40 at 102.

The before-and-after maps show the racial sorting that accounts for the bizarre maneuvers through which SD 28 was extended into Lee and Russell Counties. As Map ADC Supp. Ex. 408 portrays, pieces of Lee County that were predominantly black were scooped into SD 28, while whiter, surrounding areas were bypassed. Similarly, when the redistricters grabbed pieces of Russell County for SD 28, they picked and chose predominantly black areas to bring into SD 28, even as they skipped over predominantly white areas in between. Maps ADC Supp. Ex. 40G and ADC Supp. Ex. 40D illustrate this.

Once again, the precinct split maps illustrate even more precisely the extreme level of racial sorting involved in these maneuvers. Indeed, for the extension into Lee County, Map ADC Supp. Ex. 40H there is clear, systematic splitting of precincts by race, including splitting of precincts by race across the county boundary lines. The whiter portions of these precincts are allocated to SD 27 and 13, while the blacker portions are brought into SD 28. Map ADC Supp.

40I illustrates the way in which as the redistricters extended SD 28 into a tiny piece of Houston County, they spliced the black and white areas of nine precincts – systematically allocating the blacker portions to SD 28 and the whiter portions to SD 29.

The detailed demographic breakdowns of the relevant precincts splits are in Appendix B at 5-6.

SD 18, 19, 20. (Birmingham area)

These are the three Birmingham-based Senate districts. Given the direct interactions between the design of these three, we discuss them together.²⁰ Combined, these three districts were under-populated by 80,680 people.²¹ NPX 340 at 1. To meet the ideal population level, SD 18 had to add 24,092 people; SD 19 had to add 27,399; and SD 20 had to add 29,189. NPX 340; pp. 1-2. Although under-populated, both Districts 19 and 20 already had sufficient black population to comprise a majority (57% and 61%, respectively) of an ideally populated district; and in District 18 the black population alone comprised a 49.35% plurality of an ideally populated Senate district. See Table 1. The 2010 Census revealed 276,525 black residents of Jefferson County; the County's black population is 42% overall. NPX 328.

Yet the Senate plan, Act 2012-603, managed to put 90% of the county's black residents, 253,635, in the three black-majority districts. NPX 10 at 12. But in light of the overall under-population of these districts, Hinaman testified it was simply not possible to meet his BPP targets

²⁰ The districts are exceptional among the eight Jefferson County Senate districts in that they are the only Jefferson Senate districts fully confined within the boundaries of the county. The five Jefferson majority white districts (5, 14, 15, 16, and 17) all contain part of Jefferson County and parts of one or more additional counties. Majority black district 18 was under-populated and as drawn abuts the counties of Bibb, Shelby and Tuscaloosa, while under-populated SD 19 abuts Tuscaloosa County. Given that the drafters split the county in creating the white-majority districts, there is no explanation for the decision that the black-majority districts alone had to be confined to the County and could not be extended into adjacent counties.

²¹ All 2001 population figures for the Senate districts are from NPX-340.

in all three districts at the same time; there simply were not enough black residents to go around.

As put it in his deposition, APX 75, 102:17-25:

Q: Did anyone instruct you as to any particular type of reduction that would be a matter of concern?

A: No. But in some districts, it was obviously, for example, the Senate districts in Jefferson County, it was unavoidable because there was just not the African-American population to enter into those districts. The black percentage was going to go down no matter what. So there were certain areas where you couldn't help but lower the percentage."

The State systematically under-populated all three of these districts. All three fell close to 1% below ideal population. NPX 10 at 12. Even so, there still were not enough black residents to maintain the existing super-majorities. Thus, the redistricters came within 1 point of hitting his racial target for SD 18; but after that, the closest they could come to hitting their BPP targets in the other two districts fell 6.3 points short in SD 19 and 14.74 points short in SD 20. NPX 310 at 12. Of the eight black-majority Senate districts, these three are the only ones in which Hinaman did not succeed in meeting or exceeding the BPP in the prior plan. *Id.*

With respect to each of these districts, race was a predominant factor in "the legislature's decision to place a significant number of voters within or without a particular district."

Alabama, 135 S.Ct. at 1270 (quoting Miller).

SD 18.

The record suggests that the redistricters began with SD 18 and made sure to try to meet his racial target there first. That might have been because SD 18 had the lowest BPP of the three districts. The BPP of SD 18 under the baseline plan was 59.93%; in the enacted plan the State drew, SD 18 came out at 59.11 BPP –within 0.81 points of the target. Because the State added a net of 22,786 persons to SD 18 to bring the district within 1% of the ideal size, it required an

intentional race-conscious effort to do this while also getting the BPP so close to the State's intended target.

Of those added to the district, 12,550 (55%) were black on net and 9,901 were white. These proportions reflect the fact that the black-populations outside the boundaries of the prior SD 18 (who were not already in black-majority SD 19 and 20) were geographically dispersed;

As noted above, SD 18 would have had a 49+% black plurality if only white persons had been added. In addition, 97% of the persons moved out of the existing district, 930 people, were white; only 12 blacks were moved out. ADC Supp. Ex. 5. The redistricters obviously did not want to add any more black residents to SD 18 than "necessary," because they had to try at the same time to meet their racial targets in SD 19 and 20, and they knew there was not going to be enough black residents to do that, as a practical matter, in any event.

To move nearly 23,000 net people into the district, while still coming as close as the State did at the same time to meeting its racial-target population figure, the redistricters had to make race a predominant factor in moving "significant numbers" of people into SD 18. Otherwise, given the demographics of the surrounding populations not in the other two black-majority districts, the BPP of SD 18 likely would have dropped.

Map ADC Supp. Ex. 34B shows the way a piece was added to SD 18 at the most northeast area of the district to pick up overwhelmingly black census blocks in the service of ensuring SD 18 came in "on target." Because the redistricters sought to meet their racial target in SD 18 first, they also moved voters by race from SD 20 – the black district in this area with the highest pre-2012 BPP – into SD 18.

The detailed demographic breakdowns of precincts splits along racial lines to repopulate SD 18 within 1 point of its “target level” are in Appendix B at 1.

SD 19.

SD 19 was under-populated, but already had sufficient black population to comprise a 57% BPP majority in an ideally populated Senate district, even had not a single black resident been added to the district. Nonetheless, the Dial and Hinaman did not abandon the effort to bring SD 19 as close as feasible to the supermajority target of 71.65% BP. But they were able to get SD 19 “only” up to 65.39% BP. As Hinaman testified, “inside *each* district my goal was to and our goal was to stay as close to the 2001 numbers as possible. . . .” APX 75, 23: 19-21 (emphasis added). That goal required the use of race as a predominant factor for the movement of “significant numbers” of people between SD 19 and adjoining ones. To bring SD 19 within 1% of ideal size, the redistricters added a net of 26,053 persons, a net of 10,165 blacks and 15,188 whites. Of the voters moved out of the existing district 1848, or 74%, were white. ADC Supp. Ex. 5.

In designing SD 19, along with SD 18 and 20, these three districts, the redistricters worked from an initial map that Senator Smitherman had provided. While Hinaman “endeavored to duplicate” that map, doing so was not straightforward; the map was simply a single sheet of paper, Exhibit 469, that “didn’t have any demographic information, .” APX 75, 103:19-105:10. So the redistricters “had to eyeball it.” *Id.* He answered: “Yes, sir.” *Id.*

There was a “substantial area” in the west of the district that was almost 93% white, which Senator Smitherman’s map had included in the proposed district. But the redistricters decided not to include these areas in the district; he put them instead in white-majority SD 5.

These three precincts totaled 3,527 persons, of whom 327 were black. APX 75, 104-05. He did not explain why he rejected Senator Smitherman's map in this instance.

Map ADC Supp. Ex. 35B shows the way the State expanded SD 19 into white-majority SD 17 to pick up predominantly black but not white census blocks and into black-majority SD 20 to pick up black-majority census blocks to coming as close as feasible to the supermajority racial target of 71.65% BPP for SD 19, consistent with the State's racial targets for SD 18 and 20.

Map ADC Supp. Ex. 35D illustrates the racial splitting of a precinct at the boundary between SD 19 and SD 17. Map ADC Supp. Ex. 35E shows a similar racial-splitting of precincts at the boundary between SD 19 and SD 5.

The detailed demographic breakdowns of precincts splits along racial lines to repopulate SD 18 within 1 point of its "target level" are in Appendix B 1.

SD 20.

Strict scrutiny is triggered when race is a predominant factor in "the legislature's decision to place a significant number of voters within or *without* a particular district." *Alabama*, 135 S.Ct. at 1270 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)) (emphasis added). In the case of SD 20, race was used to move nearly 14,000 black voters *out* of SD 20 and into black-majority SDs 18 and 19. The State essentially cannibalized SD 20 to meet his racial targets for SDs 18 and 19 as closely as possible.

Thus, the State *removed* 13,833 black residents from SD 20, although SD was underpopulated by 29,189 persons. ADC Supp. Ex. 5; NPX-340. Remarkably, all but 15 of these black residents of SD were moved into either of the other two black-majority districts, SD 18 and 19. That is, the redistricters moved 13,818 black residents from SD 20 into either SD 18 or 19,

to meet the racial targets there. Moreover, the parts of SD 20 that he moved to SD 18 were 88.3% black. The parts of SD 20 the State moved to SD 19 were 76.2% black. ADC Supp. Ex. 5. Race was the predominant factor in the way the redistricters moved voters from the under-populated SD 20, as he tried to meet his racial-population targets in the surrounding districts.

Map ADC Supp. Ex. 36F shows the way blocks of overwhelmingly black populations were moved from SD 20 into SDs 18 and 19 to try to meet the racial targets there first.

Having moved nearly 14,000 blacks out of SD 20 into the other black-majority districts, the redistricters now had too few black residents left in contiguous areas to come very close to meeting the racial-target for SD 20 of 77.96%, the baseline figure. But nothing in the record suggests the redistricters abandoned the effort to design the district to come as close as feasible to hitting this number. As Hinaman testified, “inside *each* district my goal was to and our goal was to stay as close to the 2001 numbers as possible. . . .” APX 75, 23: 19-21(emphasis added). Thus, the redistricters used race-based approaches to get the numbers of SD 20 as close to its prior level as possible, given the goals he was also trying to satisfy in SD 18 and 19.

In redrawing SD 20, the redistricters created it, for example, with an odd hook in the northwestern area not reflected in the map Smitherman had handed to Dial. This hook bypasses white-majority areas and then swings back around to capture additional black residents to pull into the district. Maps ADC Supp. Ex. 36H and ADC Supp. Ex. 36G shows the race-based pattern of precinct splits, such as between SD 20 and SD 17, the redistricters used to do so. At the meandering boundary between SD 20 and SD 17 here, the district is sorting the black areas of the precincts into SD 20 and the white areas into SD 17.

The detailed demographic breakdowns of the relevant precincts splits are in Appendix B, at 1.

House Districts.

A. As this Court noted in its earlier decision, all 28 of the BMDs in the House were under-populated after the 2010 Census – 25 of them more than 5% under-populated. Those facts alone required the redistricters to move tens of thousands of voters to repopulate these districts. But in doing so, the redistricters did not just add additional people to these districts; they also removed tens of thousands of people from these districts. In more than 50% of these districts (15), the redistricters moved more than 20,000 people into or out of the district. ADC Suppl. EX. 4. Because the ideal district size was 45,521, NPX 332, that means that in these 15 districts, *at least* 44% of the residents in the re-drawn, 2012 districts were new. In some of the BMDs, the redistricters moved into and out of the district 10 times the number of people by which the district was underpopulated. Most dramatically, HD 76 was underpopulated by only 627 people, yet Hinaman added or removed 39,821 people into or out of the district. NPX 340 at 6, ADC Suppl. Ex. 4. The fewest people moved into or out of any district took place in HD 84, where 5,491 were moved. ADC Suppl. Ex. 4.

Table 3 presents the number of people by which each district was under-populated and the total number of people the redistricters moved into and out of the district in redrawing it:

Table 3

House District	Number of People Below Target Population ²²	Total Population Added and Removed ²³
19	-3,141	36,207

²² These figures are taken from NPX-332.

²³ These figures are taken from ADC Suppl. Ex. 5.

32	-6,721	12,130
52	-2,362	19,284
53	-10,143	New district created
54	-10,616	31,351
55	-9,949	28,143
56	-4,457	14,241
57	-9,322	21,590
58	-8,078	20,629
59	-12,683	24,426
60	-8,817	9,170
67	-7,643	7,200
68	-9,287	30,769
69	-7,949	24,373
70	-6,268	41,605
71	-7,427	41,412
72	-6,107	23,774
76	-627	43,084
77	-10,523	38,540
78	-14,641	44,637
82	-2,132	25,183
83	-4,482	18,466
84	-4,204	5,692
85	-3,092	10,034
97	-10,115	10,309
98	-7,690	24,806
99	-5,730	14,428
103	-4,910	12,324

Yet while reconstructing all of these districts and moving tens of thousands of people, the redistricters managed to do an extraordinary job in achieving their stated goal that the district-specific BPP increase or not be substantially reduced. In 20 of the 28 districts, they did exactly that. NPX 332, 361. In 13 of the districts, the drafters came within 1 percentage point of recreating the prior BPP exactly. That is not surprising, because the redistricters expressly stated that their highest priority (as relevant here) – the one that took precedence over all districting principles, because the Supremacy Clause required that precedence – was to equal or exceed the

prior BPPs. Because, on their account, they had to subordinate keeping counties, cities, towns, precincts, and other districting objectives to meeting these racial targets, it is to be expected that they would be able to achieve such remarkable “success” with respect to the BPPs.

As a matter of logic and common sense, without even examining the district-specific maps and precinct splits, the only credible explanation for how the redistricters were able to move tens of thousands of voters into and out of these districts while also meeting these BPP targets so precisely is that meeting those targets had to predominate over other goals. Similarly, the only credible explanation for how the redistricters could have done this, across so many districts, is that they had to move significant numbers of people by race. For all these districts, it is simply inevitable that “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” *Alabama*, 135 S.Ct. at 1270 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). And the pattern across these districts illuminates what was done in each specific district. No consistently-applied redistricting principles, other than race, could have been predominant across all these districts through which Alabama managed to move tens of thousands of people, yet reproduce the BPPs so exactly.

In only 7 districts (25.9%), did the BPP decrease and in only 5 of them, by more than 5 points. But the State did not abandon the attempt to meet its racial-targets in these districts in which it fell short. As both the Supreme Court and this Court concluded earlier, the State’s policy for all the BMDs was, *to the extent feasible*, not substantially reduce the BPP. *Alabama*, 135 S. Ct at 1271 (quoting initial decision). As this brief demonstrates below, the feasibility of meeting these targets was constrained in these districts by the fact that, as Hinaman testified, Tr. 3-162, he needed their black populations to meet his racial targets in adjoining districts. In

certain areas, it was not feasible simultaneously to meet the BPP targets in all the nearby districts. The record contains absolutely no evidence that the State suddenly abandoned its policy of moving black voters by race to meet these targets, to the extent feasible, in this handful of districts. As demonstrated below, the State still used race to come as close as possible to meeting his racial targets in these districts as well. Thus, race was still the predominant factor in moving significant numbers of people into and out of these districts, even if the State fell short a few points in being able to meet those targets.

HD 19 and 53 (Madison County):

These two districts are physically interlocking, as in a jigsaw puzzle. The evidence and testimony reveals that they were designed jointly as well.

Prior HD 53. The prior version of majority-black HD 53 had been in Jefferson County. As this Court's prior opinion found, Hinaman cannibalized this district's large black population and used it for the other 8 BMDs in Jefferson County. 989 F. Supp. 2d at 1249. But Hinaman engaged in that race-based transfer of this large population under the incorrect legal view that Section 5 required him to repopulate these other districts in a way that also re-created the districts' prior BPPs.

The findings in this Court's prior opinion necessarily establish that race was the predominant motive for the transfer *out* of HD 53 of its nearly 20,000 black residents into the surrounding BMDs. The Supreme Court has now established that this race-based transfer was based on a legally incorrect understanding of Section 5. *Shaw* applies, of course, when "race was the predominant factor motivating the legislature's decision to place a significant number of voters within or *without* a particular district." *Alabama*, 135 S.Ct. at 1270 (quoting *Miller*)

(emphasis added). As a result, the race-based destruction of HD 53, and the race-based transfer of its black population to meet the racial targets in the other eight BMDs, are unconstitutional under *Shaw*; Alabama did not have a compelling justification for these actions and these actions were also not narrowly tailored to legitimate Section 5 compliance. The destruction of HD 53 is discussed further, below, when these brief addresses the Birmingham districts in more detail.

Having destroyed HD 53 in Birmingham, Hinaman understood he had to create a replacement black-majority district somewhere else, because Section 5 genuinely does require that the number of ability-to-elect districts not be reduced, to the extent feasible. He did so by re-creating HD 53 in Huntsville, in Madison County, where the black population had grown there enough to justify a second majority-black district, in addition to the existing HD 19.

But now Hinaman, still operating under his legally incorrect understanding of Section 5, made another misguided and unconstitutional decision. He concluded that when he created the new HD 53 in an entirely different part of the State, Section 5 required that he create it with the same BPP it had when the district was in Birmingham *because that had been the district's prior BPP*. At this point, Hinaman had to create the new HD 53 from scratch, of course, so he had to find approximately 45,521 people to make this district. In doing that, the redistricters put that population together in the new HD 53 in a way that made sure to meet their goal of keeping the BPP the same as the prior HD 53. They did so quite precisely: while the HD 53 in Birmingham had a 55.71% BP, he designed the new one in Huntsville with a 55.83% BP. NPX 340 at 5; NPX 310 at 9. In this bizarre sequence, Hinaman thus invoked his mistaken view of Section 5 to use racial transfers of people first to destroy HD 53, then to create a new one with the identical percentage of black people.

But to meet that 55.7% target, the redistricters did not have enough black people around the new HD 53 to do that. Thus, they had to go into HD 19, the other black-majority district, and move black residents from there into HD 53 to meet HD 53's racial target. Tr.3-163. As a result, race was the predominant factor in moving significant numbers of voters into HD 53, including from HD 19. In addition, the redistricters maneuvered the boundaries of HD 19 to bring the black population there as close to its prior level as he practically could, given that he was also raiding HD 19 of black people to meet his racial target in HD 53.

HD 53.

Map ADC Supp. Ex 9A shows that where HD 53 has various contortions that jut into the area of HD 19, these twists and turns are concentrating black persons into HD 53 that are being pulled out of former HD 19.

There are 4 precincts split between HD 53 and 19 as well. In those splits, HD 53 got 68% of the black persons (6,690 out of 9,907 black people). In addition, 9 precincts were split between HD 53 and the adjoining white-majority districts, HD 6, 10, and 21). In these splits, 89% of blacks were put into HD 53 (9,004 out of 10,164) rather than the white districts. Appendix A at 3 provides specific documentation of the numbers and precincts involved.

HD 19.

Because its black population had to be raided for HD 53, the BP went down in HD from 69.82% to 61.25%. NPX 340 at 2, NPX 310 at 9. This 8.6 point drop is the largest decrease in any of the BMDs. It is explained, of course, by the need to meet the racial target in HD 53. Hinaman testified expressly to this trade. In his words, he decided to reduce the BP in HD 19 for "the greater good" of meeting HD 53's target. Tr.3 -163: 2-5.

Hinaman obviously thought HD 19 still satisfied Section 5 – had he “regressed” HD 19 in any legally or practically significant sense, none of this would have made any sense. Thus, this example demonstrates that he did not actually think that a nearly 9 point reduction would constitute retrogression when a district would still be 61.25% BP; it also demonstrates that he believed a district could go down at least to 61.25% and still be an adequate Section 5 district. Yet there are 18 House districts and 6 Senate districts that Hinaman repopulated with black populations above this level. NPX 310 at 9.

HD 19 had been a compact district. Its borders became non-compact, first, in the areas in which it was fit together like a jigsaw puzzle with HD 53 to pull black population into HD 53. But Hinaman did not want the BP in HD 19 to drop any more than necessary for meeting the racial target in HD 53. So he also made HD 19 non-compact in its eastern half. As Map ADC Supp. Ex 6C shows, he did that to pull black population *into* HD 19 from the white-majority HD 21.

The split-precinct map, ADC Supp. Ex. 6D, shows this in more precise detail; the redistricters split the Chase Valley United Methodist precinct, where HD 19’s eastern boundaries wander oddly, in order to pull the blacker portions into HD 19 and put the whiter portions in HD 21. Similarly, the borders become non-compact at the western border of HD 19 to split the Harvest Baptist Church precinct by race between HD 19 and the surrounding white-majority districts. In the 10 precincts split between HD 19 and white-majority HDs 6, 21, and 25, a total of 70% of the white residents were put into the white-majority districts and 56% of the black residents were placed into HD 19. Appendix A at 1.

Thus, the redistricters did not merely pull black voters by race out of HD 19 to serve HD 53. They also tried to keep the black-population of HD 19 as high as they could, despite this, by crafting meandering borders that selectively moved whites out of HD 19 into the surrounding white-majority districts. Given the limited black population in the area, they could not bring HD 19 back up to its prior BP level by adding large numbers of additional black people. So instead, they selectively moved whites *out* of the district in their effort to get as close as possible to meeting HD 19's racial target. ADC Supp. Ex. 4.

The contorted shapes of HDs 19 and 53 are a result of the redistricters simultaneously hitting their racial target for HD 53 on the head, while trying to keep up the black-population percentage in HD 19 as high as possible.

HD 32.

On the eve of the Census, this district was 59.34% BP and under-populated by 6,721 people. NPX 332 at 3. Hinaman moved 12,130 people into and out of the district. ADC Supp. Ex. 4. When he was done, he had kept the district within 1 point of his racial-population target; the district he created is 60.05% in BP. Managing to do that was an intricate matter.

The prior HD 32 had been somewhat elongated in shape. As the State moved these 11,160 people into and out of the district, it extended HD 32's elongation and rendered its borders uncouth. ADC Supp. Ex. 8A. As Map ADC Supp. Ex. 7B shows, the redistricters bumped out the district in three separate places along the western border to pick up heavily black areas. At the northern tip they did the same, as Map ADC Supp. Ex. 7C shows. The odd shapes of some of the district's northeastern boundaries likewise move in and out to pick up heavily concentrated black areas. Map ADC Supp. Ex. 7D. And the southern protrusion of the district

reaches down to pull heavily black areas out of adjoining white-majority HD 33.

The split precinct map, ADC Supp. Ex. 7F, shows that the oddly shapes of the northeastern piece of the district reflect the way the Anniston precinct was racially split to put the heavily black portions in HD 32 and the whiter areas in white-majority HDs 33, 35, 36, and 40. In this area, where the district wanders in and out of Calhoun County, 13 precincts were split. 77% of the black persons in these splits were put into HD 32. 60% of the white persons were put into the white-majority districts. Appendix A at 2-3 provides specific documentation of the numbers and precincts involved.

HD 52, 54-60 [Birmingham districts]:

In the 2012 plan, Birmingham is left with eight BMDs. In the prior plan, there had been nine BMDs in Birmingham. As discussed above, the redistricters acknowledged that they took the black population in HD 53 and moved it into these eight districts to meet the State's racial targets for these BMDs. This Court noted this fact as well: "Hinaman also moved House District 53, a majority-black district, from Jefferson County to the Huntsville area in Madison County because of the substantial underpopulation of the majority-black districts in Jefferson County." Ala. Leg. Black Caucus, 989 F.Supp. 2d at 1249. As a result of this move, Birmingham lost one of its BMDs.

On the eve of the 2012 redistricting, the nine BMDs in the prior plan were underpopulated, even though the overall black population of Jefferson County had increased by 35,973 persons between 2000 and 2010 (the white population had declined by 15,917). NPX 328; NPX 329; NPX 323 at ¶ 62.²⁴

²⁴ The County's Latino population increased by over 15,000. NPX 328 and 329.

Much of the black population growth was in adjacent districts, as the majority concentration spread to the northeast, particularly into HD 44 (29.43% black, up from 17.87%) and HD45 (35.63% black, up from 20.75%), and northwest into areas like the City of Pleasant Grove. NPX 332 at 4-5, NPX 10 at 9. Sufficient black population existed to maintain nine majority-black districts.²⁵ Indeed, with three Senate districts with comfortable black majorities and three House districts being equal in population to one Senate district, the potential for nine majority black House districts is clear.

Nonetheless, the redistricters made the decision to destroy HD 53 and move it to Madison County. But it was the redistricters' understanding of Section 5 that justified their decision to do, as this Court has found already -- an understanding that was legally incorrect. That misunderstanding led them to believe that they had to repopulate the districts *by race*, which was required only because of the State's view that it had to repopulate these districts in a way that kept them at their prior BPP levels. As the Supreme Court's opinion clarifies, these districts needed to be repopulated, but the predominant motive inquiry addresses *which* people the redistricters chose to use to do so.

As Table 4 shows, if no additional black persons had been added, six of these nine districts would have been between 54.36% BP and 64.04% BP. Only three districts, HD 53 at 43.29%, HD 54 at 43.50% BP and HD 59 at 48.36% BP, would have no longer have been majority black. To make those three districts majority black, only an additional 3,057 black

²⁵ The ADC introduced an alternative purely illustrative plan for Jefferson County that exceeded the legislature's 2% standard; however, each district is under-populated by more than one percent; however, each has sufficient black population for an ideal district with a black majority of at least 57.59%. NPX 301. Despite its different deviation standard, it shows that there was sufficient black population for nine majority black districts.

people would have needed to be added to HD 53; only 2,960 black people would have needed to be added to HD 54; and only 748 black persons would have had to be added to HD 59. By comparison, HDs 44 and 45 together have over 23,000 fewer black residents under the new plan. *See* C 30, C41. To meet either of those levels, HD 53 did not have to be cannibalized.²⁶

Table 4

	HD Ideal Pop.	2010 BP	B % of Ideal
52	45,521	25,944	56.99%
53	45,521	19,704	43.29%
54	45,521	19,801	43.50%
55	45,521	26,162	57.47%
56	45,521	25,513	56.04%
57	45,521	24,767	54.36%
58	45,521	29,153	64.04%
59	45,521	22,012	48.36%
60	45,521	24,743	54.36%

But Hinaman didn't even pause to consider the possibility of repopulating these districts with predominantly white persons, because he was operating under his wrong-headed understanding of Section 5. To repopulate these districts with predominantly white neighborhoods, as he testified, would "retrogress" them. Thus, when he went to repopulate the districts, he specifically went looking for minority neighborhoods. But there were not such neighborhoods in the adjoining white districts; that was what led to his decision to cannibalize

²⁶ NPX 332, NPX 310 at 12.

HD 53, then move it out of Birmingham. As he put it, the reason he recommended moving HD 53 was:

Tr. 3-132: 22-3-133:5:

A: Because everyone of the minority majority districts in Jefferson County were under-populated, 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(emphasis added).

Yet the redistricters did not want to stop at creating merely majority-black districts. They were determined to recreate the actual prior BPPs in all these districts. The BPP in some of these districts was extremely high, more than 65% in five of the eight. Nonetheless, the redistricters sought to re-create those numbers, as numbers. And by moving the black population, by race, from HD 53 into these other districts, the State was able to hit these racial targets with stunning exactitude.

In six of the eight districts, the State came within 1 point of meeting its racial targets precisely. NPX 320 at 4-5, NPX 310 at 9. In HD 59, the redistricters increased the BP by almost 10 points, from 67.03% to 76.72%; in HD 58, immediately to the east, they decreased the BP by 5.1 points, from 77.86% to the still supermajority level of 72.76%. *Id.*

These facts alone are enough to establish that race was the predominant motive for moving significant numbers of people into these eight districts, for the purpose of re-creating their prior BPPs, including at extremely high levels. As the State's witnesses testified, that is precisely why HD 53 was torn apart and moved 100 miles north to Madison County.

As further evidence of how deliberate an effort the State had to make to meet its racial targets so precisely in these districts, Table 5 shows that, in all these districts except HD 60, the redistricters moved many times the number of people into or out of the districts than the number of people needed to bring the district up to ideal size. As is the case throughout both the Senate and House plans, the redistricters moved tens of thousands of voters into and out of these Birmingham districts, yet managed to do so while hitting their racial targets so precisely. The evidence that race predominated as a factor in the re-creation of each of these districts is thus overwhelming.

Table 5 (from ADC Supp. Ex. 4)

House District	Deviation from Target Population²⁷	Total Population Moved Into or Out of District
52	-2,362	19,284
54	-10,616	31,351
55	-9,949	28,143
56	-4,457	14,241
57	-9,322	21,590
58	-8,078	20,160
59	-12,683	24,426
60	-8,817	9,170

Given these facts concerning all the Birmingham districts, this brief provides a more concise account with respect to each than for other BMDs in the State, to illustrate still further how race was used to ensure the racial targets were met.

²⁷ These figures are taken from NPX-332.

HD 52

HD 52 was only 2,363 persons under the ideal population. NPX Ex. 332 at 5. Adjacent to overpopulated HD 56, HD 52 could have drawn all of the necessary population from that district, while still retaining a black majority of at least 56.99%. NPX 332 at 4. Instead, the State moved more than 19,000 people into and out of this district, despite its minor under-population. ADC Suppl. Ex. 4. They managed to do while coming within 0.1 point of the district's prior BPP.

In this significant redesign of the district, Map 52 NE shows the district being pushed out to pick up predominantly black areas. ADC Supp. Ex. 8B.

Two precincts are split with white-majority HD 46, in which whites were predominantly moved out of HD 52 and into HD 46. Five precincts are split between HD 52 and the surrounding black-majority districts. This kind of splitting of precincts between the black districts in Birmingham played a significant part in the redistricters ability to hit their racial targets right on the nail in most of these districts, even as they were moving tens of thousands of voters between districts. Appendix A at 2. These splits show, further, the way in which race predominated in the design of these districts.

HD 54

Here the State moved more than 31,000 people into and out of this district, even though it was under-populated by 10,616 persons. ADC Suppl. Ex. 4. NPX 332 at 5. Once again, the redistricters managed to do while again coming within 0.1 point of the district's prior BPP.

As Map ADC Supp. Ex. 10B illustrates where this district pushed up into white-majority HD 44, the pieces added at the very north bring in blocks where black residents are predominantly concentrated.

Three precincts are split with white-majority HDs 44 and 45, in a pattern in which black persons were predominantly moved into HD 54 and whites into HDs 44 and 45. Appendix A at 3. Again, there is a great deal of precinct splitting with the black-majority districts, 13 splits in all. Once again, this kind of splitting of precincts between the black districts in Birmingham played a significant part in the redistricters ability to hit their racial targets exactly, even as they were moving tens of thousands of voters between districts. These splits show, further, the way in which race predominated in the design of these districts.

HD 55

HD 55 was adjacent to over-populated HD 15. DX 480. Rather than expand into that district, HD 55 actually gave up a white area to HD 16, to which it had not been adjacent in 2001. In all, the State moved more than 28,000 people into and out of the district, while it was under-populated by 9,949. ADC Suppl. Ex. 4, NPX 332 at 5. This time, the redistricters managed to do while coming even closer to the district's prior BPP – a mere 0.06 points away. NPX 332 at 5, NPX 10 at 9. In this district, 10 precincts were split, all with other BMDs, as evidence of the techniques the redistricters used to hit their racial targets in all the districts. C-41 at 106-108. The district boundaries were somewhat irregular under the 2001 plan. Under the 2012 plan, the district is bizarre, an elongated object with jagged edges indicative of a block by block selection of population. ADC Supp. Ex. 10A.

HD 56

The State moved 14,241 persons into and out of this district, while it was under-populated by only 4,457 persons. NPX 332 at 5. Here the redistricters once again managed to hit their racial target on the head. They managed to move more than 13,000 people in and out while designing the district within 0.04 points of its prior BPP. ADC Suppl. 4, NPX 332 at 5, NPX 10 at 9.

Two precincts were split with white-majority HD 15 and 46, where predominantly white areas were moved into the white districts, even though HD 56 was under-populated. Again, two precincts were split with adjoining black-majority districts as the redistricters “perfectly” met their racial targets in each of these districts. C41 at 110-111; Appendix A at 4.

HD 57

The State moved more than 21,000 people into and out of this district; it had been underpopulated by 9,322 people. NPX 332 at 5. Yet once again, it is remarkable that the district managed to get reconstructed at nearly the identical BPP. The redistricters came within 0.01 point of the district’s prior BPP. NPX 332, 5; NPX 10, 9

Map ADC Supp. Ex. 13C shows that where this district borders white-majority HD 15 along the lower western edge, the lines of HD 57 were moved out, with heavy black population areas pulled in, through contorted boundary maneuvering, into HD 57.

On the split precinct maps, Map ADC Supp. Ex. 13E shows that the some of the jagged boundaries with white-majority HD 15 reflect the fact that the Pleasant Grove First Baptist Church precinct was split in both of the western “pieces” of the district, with the predominantly black portions put in HD 57, the whiter portions in HD 15. Appendix A at 4. The odd-looking

west facing “open mouth” at the southwestern piece of the district reflects the way this same precinct was split again in this area, in the same racial pattern. ADC Supp. Ex. 13D; ADC Supp. Ex. 13A.

Here, the drafters split five precincts, four with adjoining BMDs. This was done in the service of meeting the racial targets in HD 57, as well as these other districts. C41 at 110-111.

HD 58

The State moved more than 20,000 people into and out of this district; it had been underpopulated by 8,078 persons. This is the only district in which the BPP went down. The district remained an extremely high 72.76% BPP district, but that was a 5.1 point decrease from the prior district. NPX 10 at 9, NPX 332 at 5. At the same time, the district to the west, HD 55, went up 9.69 points in BPP. *Id.*

These two districts are mirror images of each other. In these two districts, black incumbents might have been allowed to swap black populations between the two districts. But if so, the redistricters still permitted such a swap only as long as it satisfied their priority of making sure that the BPP increase, stay the same, or not be “substantially reduced.” *Alabama*, 135 S. Ct. 1257 at 1272. As the record makes clear, the redistricters would not accept any proposed district that did not meet this requirement. In this case, the redistricters apparently were prepared to accept this small reduction, while keeping the district at 72.76% BPP. Race still predominated as this district was redesigned. Nearly 20,000 people were moved in and out, ADC Supp. Ex. 4, but that had to be done in such a way as not to “substantially reduce,” in this instance, HD 58’s BPP. The resulting district has irregular boundaries. ADC Suppl. Ex. 14A.

Map ADC Supp. Ex. 14B shows that where the northern-most areas of the district border, in part, white-majority HD 44, and where those borders were expanded out in the redistricting, HD 58's contortions bring in heavy concentrations of black population to the district.

Seven of the 12 precinct splits in this district reflect transfers between the district and adjoining BMDs, including HD 59. C-41 at 112-116. The other 5 splits with white-majority districts reflects a pattern in which white residents are predominantly being moved out of HD 59 and black residents in from the white-majority districts. Appendix A at 4.

HD 59

The State moved 24,426 people into and out of this district; it had been under-populated by 12,683 people. ADC Supp. Ex. 4. As just noted, in this district the BPP increased substantially, by 9.69 points, as its neighbor, HD 58, went down by 5.1 points. NPX 332 at 5, NP 10 at 9.

Map ADC Supp. Ex. 15B helps explain the added protrusion into white-majority HD 44; that arm is reaching out to pull into HD 59 extremely heavy concentrations of black census blocks. Similarly, where the district was expanded to the southeast, the ins and outs of the lines are concentrating heavily black areas that are coming into the district from HD 58. ADC Suppl.EX 15C.

The district has 12 precinct splits, 11 of them with adjoining black-majority districts, many of which are with districts, such as HD 54, in which the redistricters met their racial targets precisely. C-41 at 113-116, Appendix A at 4-5.

HD 60

This is the only one of the BMDs in Birmingham in which the State moved only about the same number of people in or out as the number of people by which the district was under-populated. The district was under-populated by 8,817 people; the state moved 8,775 people into the district and removed only 395 people. ADC Supp. Ex. 4. Of the white/black people moved in, 75% were black. *Id.* The redistricters managed to come within 0.27 points of the district's prior BPP. NPX 332 at 5; NPX 10 at 9.

As ADC Supp. Ex. 16C shows, the arm of HD 60 that now reaches out to the southeast picks up areas of heavily black population concentrations. ADC Suppl. Ex. 16C. Along the northeast border, the district reaches up into white-majority HD 51 and grabs relatively black areas in Fultondale and Gardendale. C41 at 116-117.

Nine precincts were split here with other BMDs to ensure that the racial numbers were hit in all the districts. *Id.* Appendix A at 5. The racial balancing among the districts is reflected in the district's irregular boundaries. ADC Suppl. Ex. 16A.

HD 67-72 (Western Black Belt, Tuscaloosa County):

HD 67.

On the eve of the Census, this Dallas County based district was 69.14% BP and under-populated by 7,643 people. NPX 332 at 6. This is the only district in which Hinaman removed no one. He added 7,200 people to the district, of whom 69.0% were black. The district ended up with virtually exactly the same BPP as before, 69.15%. *Id.*, NPX 10 at 9.

In the 2001 plan, HD 67 was entirely in Dallas County. Under the 2010 Census, the County had enough people to be within 3.7% of an ideally-sized district. NPX 328. As the

Supreme Court's opinion makes clear, that would have been sufficient for federal constitutional purposes.

To add enough population to meet the new 2% population-equality standard, Hinaman chose to expand the district northwest, into Perry County, as Map ADC Supp. Ex. 17C shows. In doing so, he brought in predominantly black census blocks from Perry County. C41 at 135-6. Moreover, to hit this target on the head so closely, he split three of the ten precincts in Perry County in ways that brought more black residents than white from Perry County into HD 67. *Id.*

Had the redistricters not been so determined to match the prior BPP, they would not have needed to expand into Perry County. The fundamental task of redistricting is to shift population from over-populated districts to under-populated ones. But taking population out of Perry County exacerbated the under-population there of HD 72, from which the population was taken: HD 72 was under-populated by 6,107 persons, or 13.42%. ADC Supp. Ex. 4. The more logical course would have been to take the population from racially mixed areas of adjacent HD 42 (Chilton County) or from rapidly growing Autauga County.²⁸ Had the remaining population taken from HD 42 been all white, the resulting HD 67 would have been 66.83% black in population at the ideal population.

HD 68.

Running through and splitting six counties, HD 68 is both extremely non-compact and contains constantly meandering borders along its western, southern, and part of its eastern borders. With a precariously thin neck running up through Clarke County into Marengo County,

²⁸ HD 42, with the unification of Dallas County, had a surplus greater than HD 67's deficit. NPX 332 at 4, 6.

it perhaps resembles some bottom-heavy creature running to the west. ADC Supp. Ex. 18A. The pattern of race-based sorting of people in this district is stark.

On the eve of the Census, this district was 62.55% BP and under-populated by 9,287 people. NPX 332 at 6. Yet Hinaman moved more than 30,000 people into and out of the district. ADC Supp. Ex. 4. When he was done, he had met his objective of equaling or increasing the prior BPP. The district ended up as 64.56% in BP. NPX 10 at 9.

To the north, Map ADC Supp. Ex. 18C shows that the strange-looking neck and head of this district is picking up predominantly or overwhelmingly black census blocks. To the south, Hinaman created one “leg” for the district, which moved it south to pick up heavily black areas; the meandering borders pop in and out in areas to pick up overwhelmingly black areas. ADC Suppl. Ex. 18D. The “back leg” at the southeastern part similarly reaches out and grabs predominantly black areas. ADC Suppl. E. 18B. Remarkably, the HD 68 portion of each of the six counties is majority-black in population – and the most heavily black portions are those drawn from the racially-spilt precincts in Baldwin (78.02%) and Washington (82.12%) at the very extremity of the district.

As Appendix A demonstrates, there are 33 precincts with patterns of racial splitting between black-majority HD 68 and surrounding white districts. As one illustration, Map ADC Supp. Ex. 18E shows the racial splitting of the Repton City Hall precinct. The line that divides this precinct between white-majority HD 90 and HD 68 is overwhelmingly racial in character, with all the heavily black areas being placed in HD 68 and the whiter portions into HD 90. Appendix A at 5-7.

HD 69.

On the eve of the Census, this district was 64.2% BP and under-populated by 7,949 people. NPX 332 at 6. Yet Hinaman moved nearly 24,000 people into and out of the district. ADC Supp. Ex. 4. When he was done, he had hit his target on the head: the district ended up where it began as 64.2% BP. NPX 332 at 6, NPX 310 at 9.

Some adjustment was of course necessary. But the addition of urban areas of Montgomery County was contrary to the State's rationale for re-drawing SD 26 in the way the State did, as discussed above; there, the redistricters argued that rural Crenshaw County should not be paired with urban Montgomery.²⁹ Here, the redistricters extended this rural district into the urban areas of Montgomery, in an effort to find black population to meet the racial target for HD 69. C41 at 143-145, ADC Suppl. EX. 19A, 19B.

The census blocks the redistricters added to this district where they pushed the district east into Montgomery County reach in and out to pick up predominantly black areas; small, odd-shaped protrusions reach out to grab overwhelmingly black areas. ADC Supp. Ex. 19B. The precinct-split map, ADC Suppl. Ex.19 C, shows one of these protrusions in more detail; as that map shows, this area of HD 69 is reaching into the 5 D Ramer Library precinct to grab an overwhelmingly black area, while leaving the whiter areas of the precinct to white-majority HD 90.

²⁹ HD 67 had, of course, shed 4,235 black residents to make Dallas County whole, so that its thus adjusted 2001 boundaries no longer had sufficient population. As the ADC plaintiffs demonstrated at trial, however, the addition all or part of rural Butler County would have given HD 69 a solid black majority and maintained the rural character of the districts, Doc. 195 at 66-67; the racially mixed rural areas of southern Montgomery County also were available. *See* C41 at 182.

The intrusion of HD 69 into Montgomery County also complicated the redrawing of the Montgomery County districts. Indeed, the consequence was that the redistricters forced a House District from a county that had sufficient population for five districts wholly within the county, as discussed below.

As Appendix A at 7-8 demonstrates, there are five precincts with patterns of racial splitting between black-majority HD 69 and surrounding white districts.

HD 70.

Describing the shape of this non-compact Tuscaloosa district is not easy. But this highly contorted shape was necessary to enable the State to meet its racial target as precisely as it did. ADC Supp. Ex. 20A.

On the eve of the Census, this district was 61.83% BP and under-populated by 6,268 people. NPX 332 at 6. Yet Hinaman moved almost 41,000 people into and out of the district – a figure nearly equal to the size of an ideal district itself. ADC Supp. Ex. 4. When he was done, he had once again his racial-target precisely: the district ended up 62.03% BP, virtually exactly where it began. NPX 332 at 6, NPX 310 at 9.

The transfers were unnecessary except to achieve the racial target. HD 70, even within its under-populated 2001 lines, had sufficient black population to comprise a majority of an ideally populated district; indeed, the racially mixed nature of the surrounding areas ensured that the addition of any large area would only increase that majority by adding some black population. ADC Supp. Ex. 4; Appendix A at 14. HD 70, moreover, was adjacent to over-populated HDs 62 and 63, and HD 70 could have made up the deficit from HD 63, whose black population dropped from 14,054 to 6,070 primarily due to shifts to HD 70; or it could have made

that entire deficit up and more by keeping intact all or parts of the precincts split between HD 62 and HD 70, Holt Armory, Peterson Methodist and McFarland Mall. ADC Suppl. Ex. 20B-D; Appendix A at 8.

As Map 70 ADC Suppl. Ex. 20C shows, the way the contortions in this district move in and out with adjoining white-majority HD 62 reflect the way that the blocks being added to HD 70 in its northeastern corner are overwhelmingly black ones, while the district is bypassing the whiter blocks. Similarly, as Map ADC Suppl. Ex. 20B shows, when the district was changed to add additional blocks in this area, the blocks added were predominantly black.

As Appendix A demonstrates, the plan splits six precincts that are shared with white-majority HDs 62 and 63. There are six precincts with patterns of racial splitting between black-majority HD 70 and surrounding white districts. Appendix A at 8. ADC Suppl. Ex. 20D illustrates one of these splits, along with the wiggling northern boundary of the district with white-majority HD 63. The Bama Mall precinct is split so that the white part of the precinct along the boundary is put into HD 63, while the blacker parts are put into HD 70. *Id.*

HD 71.

On the eve of the Census, this district was 64.28% BP and under-populated 7,427 by people. NPX 332 at 6. Even as under-populated, however, the district had sufficient black population to comprise a majority of an ideally populated district. ADC Suppl. Ex. 4.

The State ended up moving more than 40,000 people into and out of the district – again, nearly the size of an ideal district itself. AC Suppl. Ex. 4. When done, the redistricters had met their objective of equaling or increasing the prior BPP. The district ended up as 66.9% in BP. NPX 310 at 9. Specifically, the State extended HD 71 into Pickens County in a northern,

bulbous extension (73.51% black); extended the northeastern portion of the district, taking 6,646 persons from the Stillman and McDonald Hughes precincts, 93.8% of whom were black; and extended southward into Choctaw County (81.42% black), depriving forlorn HD 68 of population. In all, the changes tilted HD 71 away from the I-59-centered orientation the district had in 2001 and transformed a relatively compact district into an uncouth, illogical figure. ADC Supp. Ex. 21A, 21C and 21D. Appendix A at 8-9. The map at ADC Supp. Ex. 21D shows the way in which the Crossroads-Intersection-Halsell precinct was racially split, as part of this general pattern.

As Appendix A demonstrates, there are 23 split precincts in HD 71. C41 at 146-150. Thirteen of these are split between HD 71 and surrounding white-majority districts, such as HD 63, 65, and 61. Appendix A. The pattern of these splits allocates the blacker portions of the precincts to HD 71. *Id.*

In addition, 10 precincts are split between HD 71 and its adjoining black-majority districts, HD 70 and 72. C41 at 146-150. The splits with HD 70, in particular, enabled HD 70 to meet its racial target precisely on the head.

HD 71, moreover, was adjacent to HD 62 which was overpopulated by 9,501 persons and had 12,773 black residents. NPX 332 at 5. A simple shift into HD 62 would have satisfied the population equality standard and left the district more than 50% BP.³⁰ But instead of this simple adjustment, the State added parts of Pickens and Choctaw Counties, and changed populations in Marengo and Tuscaloosa Counties, as described.

³⁰ This could have been accomplished by leaving intact or otherwise splitting the Courthouse and Frierson Bldg.-Big Sandy precincts; for the splits concerning these precincts, see Appendix A. The redistricting task had been complicated, however, by the transfer of nearly 18,000 persons in Greene, Marengo and Sumter Counties from HD 72, which itself unnecessarily had lost population to HD 67, as discussed above.

HD 72.

On the eve of the Census, this district was 60.12% BP and under-populated by 6,107 people. NPX 332 at 6. Still, it had sufficient black population to comprise a majority of an ideally populated district. HD 72 was adjacent to three over-populated districts, HDs 42, 49 and 62. NPX 332 at 4, 5. Yet the redistricters moved nearly 24,000 people into and out of the district. ADC Supp. Ex. 4. On net, they added 5,566 blacks and 183 whites to this district. When they were done, the redistricters had met their objective of equaling or increasing the prior BPP. The district ended up as 64.5% in BP. NPX 10, at 9.

On the surface, this district is somewhat more compact than others in this area, but it manages five additional county splits in four counties: Greene (2), Marengo, Perry, and Sumter. DX 479. Each of the six county segments that comprise the district is majority black in population. Such departures from the race-neutral, constitutional requirement of adhering to county boundary lines is extraordinary.

As Appendix A at 9-10 demonstrates, there are six precincts with patterns of racial splitting between black-majority HD 72 and surrounding white districts, all along the boundary with white-majority HD 49, in Bibb County; the pattern here is that areas of predominantly white residents were moved *out* of under-populated HD 72 and into HD 49. NPX 332 at 4 (SD 49 overpopulated by 14.26%).

Districts 76-78 (Montgomery County)

In Montgomery County, the redistricters began the process by doing the same thing to HD 73 that they did to HD 53 in Jefferson County. In Montgomery County, however, the State chose an over-populated district to dismantle: HD 73 was over-populated by 2,745 persons, or

6.03%, and was a strong black-plurality district, with 23,380 residents (48.44% black as over-populated, 51.36% of an ideal district). NPX 332 at 6, Appendix D. In contrast, white-majority HD 74 was under-populated by 9.83% (4,474), and contained 12,446 black residents who would have been available to maintain black majorities in HDs 76-78, had they been needed. NPX 332 at 6. As it was, each of the three majority-black districts in the county already had enough black residents to comprise majorities of an ideal district. As with HD 53, Hinaman explained that he chose to dismantle HD 73 because he had to do that to meet his racial targets in HDs 76-78. This Court found that HD 73 was dismembered to avoid the State's understanding of retrogression in these other districts. 989 F.Supp. 2d at 1249.

The three majority-black districts in the county had very high BPPs, at nearly 70% and higher. HD 76 had a 69.54% BP; HD 77 had a 73.52% BP; and HD 78 had a 74.26% BP. NPX 332 at 6. The first of these, HD 76, was already close to the ideal district size; it was short by only 627 persons. *Id.* But HD 77 and 78 were substantially under-populated; the first needed to add 10,523 persons, and the second, 14,641 persons. *Id.* There were racially-mixed areas of over-populated majority-white districts right next to HDs 76-78.³¹

The question was *which* voters to add to fill out these districts. The State rejected the obvious option of shifting population from these over-populated white-majority districts to the adjacent under-populated black-majority districts; instead, the State chose the counter-intuitive

³¹ Most of the growth in the area had been in HD 75 (Montgomery and Elmore Counties), which was 32.11 percent (14,619 persons) over the ideal, and HD 88 (Autauga and Elmore Counties), which was 24.12% (10,978 persons) over-populated. NPX 332 at 6, 7. The excess of HDs 75 and 78 almost exactly matched the deficit of HDs 76-78. HDs 73, 75 and 88 were over-populated by a total 28,342 persons, while HDs 74 and 76-78 were under-populated by 29,638, leaving a net under-population of 1,296 among the seven districts, or an average of 185 persons per district. Racially mixed areas of HD 75 were adjacent to HDs 76 and 77, and racially mixed areas of HD 88 were adjacent to HDs 77 and 78. C-41 at 157-158, 177-178.

option of dismantling HD 73, rather than, HD 74, because the State asserted that it had to meet the extremely high, prior BPPs in HD 76-78. Yet if the original black populations of HD 76-78 were already so high that all three would have remained majority black *even if not a single new black resident had been added to any of them*. A race-neutral means of filling out the districts would not, of course, have led to no new black residents being added – particularly given that the districts needed to add 10,523 people (HD 76) and 14,641 people (HD 78). But even in the most extreme scenario, the districts would have remained majority-black, as the numbers from NPX-332 show:

HD	Ideal Size	2010 B Pop.	Black % of Ideal District
76	45,521	31,219	68.58%
77	45,521	25,731	56.53%
78	45,521	22,930	50.37%

But in choosing *which* people to add to these districts, the redistricters used race-based means to move tens of thousands of people to meet the racial-population targets they had set, which meant trying to re-create the exceptionally high, prior BPPs in all three districts.

Based on their decision to repopulate these districts to avoid “retrogression,” 74-75% of the people added to HD 77 and 78 *had to be black*. Having wrongly decided that Section 5 of the VRA “required” them to do that, the redistricters then had to search out tens of thousands of additional black persons to move into these districts. The way the redistricters did that was to destroy the near-majority black HD 73 – which had been electing a candidate of choice of the black community -- and move most of its black inhabitants into HDs 76 and 77. In addition, 1,144 black persons were also transferred from HD 73 to meet the super-majority racial target of 64.2% BPP in black-majority HD 69. AC Suppl. Ex. 4.

Overall, HD 73 began with 23,380 black persons and 21,938 of them were moved to black-majority HDs 69, 76, and 77.³² APX 75, 142:3-7.

Thus, tens of thousands of black residents of HD 73 were transferred out in the effort to meet the extremely high racial-target population figures in HDs 69, 76, 77, and 78.³³ As Hinaman stated, “District 73 was cannibalized if you will to repopulate 77, 78, and 76” APX 75, at 142. This Court found: “Hinaman moved House District 73, a majority-white House district [note – this was a black-plurality district], from Montgomery County to Shelby and Bibb Counties to avoid retrogression of the majority-black House districts in Montgomery County.” 989 F. Supp. 2d at 1249.

As with HD 53, then, the findings in this Court’s prior opinion necessarily establish that race was the predominant motive for moving tens of thousands of blacks by race out of HD 73 to attempt to meet the extremely high racial-population targets in HDs 76, 77, and 78. *Shaw* applies, of course, when “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or *without* a particular district.” Ala. Leg. Black

³² ADC Supp. Ex. 4.

Hse2010	Hse2012	TTLPOP	NH_WHT	NH_BLK	NH_WHT%	NH_BLK%
073	069	1388	70	1144	5.0%	82.4%
073	074	5363	4284	896	79.9%	16.7%
073	075	3135	2062	441	65.8%	14.1%
073	076	15460	5272	8034	34.1%	52.0%
073	077	22920	8959	12760	39.1%	55.7%

³³ The addition of black population to HD 69 was unnecessary and inconsistent with the State’s rationale for not combining urban Montgomery with rural areas in SD 26.

Caucus, 135 S. Ct at 1270 (quoting *Miller*) (emphasis added). But this race-based transfer of people in these numbers is not narrowly tailored to Section 5's requirement that Alabama preserve the "ability to elect" in HDs 76-78. Thus, the destruction of HD 73 itself was unconstitutional and violated *Shaw*. The race-based transfer of its black residents to the black-majority districts necessarily does so as well.

Indeed, had Alabama not misapplied Section 5, the more logical candidate to transfer to Shelby County would have been white-majority HD 74.

Given this history, it should come as no surprise that race predominated when the three black-majority Montgomery districts were repopulated to come as close as practically possible to meet their extremely high racial population targets, after HD 73 had been torn apart to supply them.

HD 76

Though HD 76 was only under-populated by 627 people, the redistricters moved 39,821 people into and out of the district. ADC Supp. Ex. 4. In the course of doing so, they met their aim of equaling or exceeding the prior BPP in the district. HD 76 began as 69.54% BP; it ended with a 4.25 point increase, at 73.79% NP. NPX 332 at 6, NPX 310 at 9. Given how many people were moved into and out of the district, the district obviously changed configuration almost entirely, but managed to come in not only at, but somewhat above, the racial-population target for it. ADC Suppl. Ex. 23A.

As Map ADC Supp. Ex. 23C shows, the part of the district that looks like a dog's tail, at the northwest corner of the district, brings in heavily black areas of Montgomery to HD 76. The odd part of the district at the northeast corner is accounted for by the splitting of the 5M Bell

Road YMCA precinct, in which the blacker portions are put into HD 76 and the whiter ones into white-majority HDs 74 and 75. Map ADC Supp. Ex. 23D and 23E.

In addition to the racial split of the Bell Road precinct, there are 8 other split precincts in HD 76. Four of these were split with black-majority HD 69, to enable the redistricters to hit their target on the head in HD 69, as discussed above; these precinct splits moved 4,735 blacks and 439 whites into HD 69. The other four splits come from the cannibalized areas of HD 73.

Appendix A at 10 provides the specific details.

HD 77

HD 77 was under-populated by 10,523 persons; the State moved 36,627 people into and out of the district when radically redrawing it. NPX 332 at 6, ADC Supp. Ex. 4. The district began as 73.52% BP and was re-designed at 67.04% BP, a decline of 6.48 points. NPX 332 at 6, NPX 10 at 9.

In the eastern piece of the district, as Map 77 E shows, the entire odd-shaped pieces that were added pick up heavily black population concentrations in Montgomery. In the western half of the district, Map ADC Supp. Ex. 24C shows how predominantly black areas that would otherwise be in white-majority HD 74 are brought in, through the zig-zagging perimeter, into HD 77.

As an illustration of one of these precinct splits, the Map 77 shows at the jagged mid-northern top of the district the way the 1B Vaughn Park Church of Christ precinct was split at *two* separate places to pull the predominantly black areas into HD 77 and to put the predominantly white areas into HD 74. ADC Suppl. Ex. 24D.

This is one of the 7 House districts in which the black population declined a bit. After meeting his racial targets in HDs 69 and 76, he might have needed the remaining black persons in Montgomery County to make sure the white-majority districts were able to meet their equal-population targets. Since Hinaman occasionally discussed his aim to be not “substantially reducing” the BPP, he might have felt that he had achieved that goal here and stopped further adding black persons. He fell a bit short, but created a 67% BP district nonetheless. *See* Appendix A at 10.

HD 78

HD 78 was under-populated by 14,641 persons; the State moved nearly the entire size of an ideal district, 40,706 in dramatically redrawing it. NPX 332 at 6; ADC Suppl. Ex. 4. The district began as 74.26 BP and was re-designed at 69.99% BP, a decline of 4.27 points. NPX 332 at 6, NPX 10 at 9.

In this dramatic reconfiguration, the north-eastern half of the new district is shown in Map ADC Supp. Ex. 25B. As that map shows, at places where the district’s boundary has knobs and protrusions into white-majority HD 75 and 74, those twists and turns bring predominantly black areas into HD 78.

Map ADC Supp. Ex. 25C shows, in more detail, the racial splitting between HD 78 and 74 of the 4K Chisholm Community Center. *See* Appendix A at 10-11.

As with HD 77, this is one of the seven House districts in which the black population declined a bit. For same reasons as in HD 77, Hinaman fell a bit short, but created a 70% BP district nonetheless. NPX 10 at 9.

HD 82-85 (Eastern Black Belt):

HD 82 (Macon, Lee, Tallapoosa Counties).

HD 82 was under-populated by 2,132 persons but had sufficient black population to comprise 54.47% of an ideal district. Appendix D. The district was adjacent to racially mixed areas of over-populated HDs 31, 79, and 81. ADC Supp. Ex. 26B and C; NPX 332 3, 6 and 7.

In 2001, this was compact, but as redrawn the district has odd features. In the northwest (Tallapoosa County), there is an odd sort of contorted duckbill. ADC Supp. Ex. 26C. Not only did the State reach out to pull Tallapoosa into the district, but it selectively picked up the parts of the area that were predominantly black and left the white areas to white-majority HD 81 – that is what accounts for the duck-bill shape, as this map illustrates. There is a second duckbill in the Lee County portion of the district, this one left by removal of white population from HD 79 HD. These features are accounted for by the State’s race-based addition of areas to the district. ADC Suppl. Ex. 26B.

The split precinct map, ADC Supp. Ex. 26E, shows precisely the pattern of splitting the precinct by race that creates the “duck-bill” that Map ADC Supp. Ex. 26A shows from a more distant perspective. This area involves selectively carving up the Dadeville National Guard Armory precinct to put the whiter areas into white-majority HD 81 and the heavily black areas into HD 82. In the prior plan, this precinct, like all three Tallapoosa precincts, had been entirely in Tallapoosa County. This racial selectively explains why Hinaman created the duck-bill in the northwest.

Hinaman expanded HD 82 twice into Tallapoosa County, but he picked up two non-contiguous areas that were fairly distant from each other. Map ADC Supp. Ex. 26D shows the

second piece of Tallapoosa that Hinaman grabbed. That piece takes a small area at the south of Tallapoosa County and grabs predominantly black areas there. In other words, the two non-contiguous areas of Tallapoosa that Hinaman brought into HD 82 both involved heavy concentrations of black residents.

The upshot of the changes to HD 82 was to increase the black percentage from 57.13% in 2001 to C-30 at 62.14 in 2012: the district's excrescences add 2,297 black persons in excess of the number needed to maintain a 57.13% majority in the now over-populated HD 82. NPX 332 at 7, C-41 at 172, Appendix D.

As Appendix A at 11 demonstrates, there are six precincts with patterns of racial splitting between black-majority HD 82 and surrounding white districts.

HD 83. (Lee, Russell Counties).

HD 83 was one of the more irregular districts under the 2001 plan, but the 2012 legislature maintained the existing irregularities and added new ones. HD 83 now is an extremely non-compact district, particularly in the Lee County areas. ADC Supp. Ex. 27A.

On the eve of the Census, this district was 56.92% BP and, although under-populated by 4,482 people, had sufficient black population to comprise a 51.31% majority of an ideal district. Appendix D; NPX 332 at 7. HD 83 was adjacent to racially mixed areas of HDs 79 and 80. C-30 at 6-7. ADC Supp. Ex. B-D. Yet the redistricters moved more than 17,000 people into and out of the district. Appendix D. When Hinaman was done, he brought the district in at less than one point, 57.52 %, of its prior BP. NPX 332 at 7, NPX 10 at 9. As elsewhere, significant numbers of voters had to be moved by race to accomplish that. Appendix D.

Map ADC Supp. Ex. 27C demonstrates how this took place. When Hinaman extended one “claw” into Lee County, he picked up predominantly black areas in doing so. Map ADC Supp. Ex. 27D shows that at the top of a second claws in Lee County, Hinaman moved in and out, picking up predominantly areas that were between 25-75% BP. In areas where he pushed the district out within Russell County to bring in new areas, he again pulled in areas that are predominantly black, as Maps ADC Supp. Ex 27B and 27E show.

As one illustration of how Hinaman moved significant numbers of people by race, in the western-most claw that Hinaman had extended into Lee County, he split Opelika B precinct between three House districts: white-majority HDs 79 and 38, along with HD 83. C41 at 165, 171 and 172. Hinaman put the overwhelmingly black census blocks into HD 83, while he left the white areas of the precinct in the white districts. *Id.*; ADC Supp. Ex. 27F.

As Appendix A at 11-12 demonstrates, there are 11 precincts with patterns of racial splitting between black-majority HD 83 and adjoining districts. These include precincts, including CVCC and Ladonia Fire Department, that were contained entirely in white-majority HD 80, but from which Hinaman moved 4,464 blacks and 748 whites into HD 83. *Id.*

HD 84. (Bullock, Barbour, Russell Counties).

On the eve of the Census, this district was 50.61% black in population, a level at which black voters consistently had elected candidates of their choice. NPX 332 at 7. The district was under-populated by 4,204 people, and needed to add 1,850 black residents – about 70% of the excess black population the State added to HD 82 - to maintain a black majority. Appendix D. The redistricters moved 5,491 people into and out of the district. ADC Suppl. Ex. 4. When

done, they had met their objective of equaling or increasing the prior BPP; the district rose to 57.52 % in BP. NPX 10 at 9.

As Map ADC Supp. 28B and 28C shows, the redistricters unexceptionally added the rest of Bullock County, making that county whole and adding substantial black population. The redistricters went on to expand the district to the north, into Russell County where, they picked up overwhelmingly black areas from HD 83, contributing to that district's grotesque shape. In Russell County, the redistricters added 3,324 black and 1,667 white persons to HD 84, while removing 305 whites and 195 blacks.

HD 85. (Henry, Houston Counties).

On the eve of the Census, this district was 47.94% BP and under-populated by 3,092 people. NPX 332 at 7. Though not a majority-black district, it long had functioned as an effective ability-to-elect district. The State moved 9,426 people into and out of the district. Appendix D. When done, the redistricters had met their objective of equaling or increasing the black percentage to a majority of 50.05% BP. NPX 10 at 9. Eighty-four percent of the people removed from the district were white. ADC Supp. Ex. 4.

Under the 2001 plan, the district consisted of all of Henry County and a compact area of Houston County. The redistricters redesigned the Houston County portion in a crazy-quilt pattern. ADC Supp. Ex. 30 A. As Map ADC Supp. Ex. 29B shows, the redistricters went block by block to add relatively black areas and remove white areas. The split precinct map, ADC Supp. Ex. 29C, vividly demonstrates the extraordinary racial sorting that went on, virtually block by block, in the Houston County area of the district. This map shows 7 precincts in this area of the district in which the redistricters engaged in extremely detailed sorting of black voters in the

precincts into HD 85 and white voters into white-majority, adjoining districts HD 86 and 87. *Id.* Through the 9 precincts in total that were split by race, Hinaman moved a net of 2,311 blacks into the district and a net of 710 whites out. Appendix A at 12-13 provides the numerical details.

Section 5 of the VRA requires the preservation of the ability to elect. Just as Section 5 does not require that additional black-majority districts be created, it does not require that the racial population percentages be augmented of districts already performing as ability-to-elect districts. *Page v. Va. State Bd. of Elections*, (E.D. Va. June 5, 2015), Appendix C.

HD 97-99 and 103 (Mobile County):

Mobile County had four majority-black districts in the prior plan. NPX 332 at 9. All had high BPPs on the eve of the redistricting. *Id.* All were now under-populated, but given their high existing black populations, three of the districts, HDs 98, 99, and 103, would have remained as majority-black districts even had no white persons been added to fill them out. Appendix D. The fourth, HD 97, had sufficient black population to constitute 47.18% of an ideal sized district and thus needed to add 1,335 black persons to become a majority-black district. *Id.*

Hinaman, however, faced a particular problem here of his own creation. In his view, he had to create not just majority-minority districts, but districts that re-created the extremely high black populations of all these districts. That, he asserted, is what non-retrogression required. But there were not enough black residents in contiguous areas to go around; under the new, 2% population-deviation rule, the redistricters could not get all the districts simultaneously back up to their prior BPPs.

The record demonstrates that what Hinaman did was to start by meeting his racial target exactly in HD 97. He did that by moving black population into HD 97 from the other black-

majority districts, HD 96, 98, and 103, as well as moving black population from white-majority HD 105 into HD 97. As documented below, he split precincts racially between HD 97 and these surrounding districts in doing so.

Once Hinaman met his target exactly in HD 97, he then ran into the problem of the lack of sufficient contiguous black populations to meet the targets in the other three districts. As a result, even as Hinaman worked to move voters by race into these other three districts, and managed to make them all supermajority-black districts with black populations of 60-65%, the black populations nonetheless decreased in these three districts. NPX 332 at 9, NPX 10 at 9. As he did so, all of these four black-majority districts took on bizarre shapes, as population was transferred between them. ADC Supp. Ex. 30 A, 31 A, 32 A, 33 A.

Thus, of the seven House Districts in the State in which the black population decreased, three of those districts are these ones in Mobile. The Supreme Court's opinion, as well as this Court's prior opinion, noted that the black population had gone down in a few districts (around 25% of them overall). These Mobile districts provide the explanation for why that happened in these three districts; in this area, there simply were not enough black voters to go around to enable Hinaman at the same time (1) to add the necessary thousands of voters into these districts while also (2) preserving the BPPs in *all* the adjoining BMDs. Something had to give.

Hinaman specifically testified to the two constraints that precluded him from meeting his racial targets where he failed to do so. As he said, "Sometimes there's no way to avoid it [lowering the BPP]." Tr. 3-163. Yet in every district, he tried to design them "as close to the numbers as possible and practicable as they were in the 2001 plan." Tr. 3-164. Even when there were not enough black people to do so, he still tried to come as close as possible to the racial

targets. Second, he testified that he understood *Shaw v. Reno* limited the extent to which Alabama could use extremely bizarre district shapes to reach out to geographically distant, far-flung black communities and use them to bring one of these districts up to the exact BPP level it had before. Tr. 3-188; APX 75. at 84.

These constraints explain why the black population decreased in these three Mobile districts. But nothing in the record suggests Hinaman abandoned his effort even in these districts to “come as close as possible” to meeting those racial targets. And he used race-based means to do so, in all of these districts, including the three in which the BP dropped. Thus, for all of these districts, the record demonstrates racial predominance – the movement of significant numbers of people into and out of the districts by race – including in the districts in which the BP decreased.

HD 97.

Hinaman met his racial target on the head here. On the eve of the Census, this district was 60.66% BP; after redistricting, it was also 60.66% BP. NPX 332 at 10, NPX 10 at 9. The district was dramatically under-populated and needed to add 10,115 people. NPX 332 at 9. Hinaman moved 9,935 people into and out of the district to repopulate it. Appendix D. The record suggests Hinaman started with HD 97 because it had the lowest BPP of the four districts; met his racial target exactly there; and then did as best as he could to meet the racial targets in the districts from which he had intentionally moved black people into HD 97 to meet the target there first.

The district has an elongated, odd shape that resembles a bishop rising from his cathedra. ADC Suppl. EX. 30A. At the southwest corner of HD 97, ADC Suppl. Ex. 30D shows that Hinaman moved the district west, into HD 103, to pick up predominantly black areas there.

Farther north along the district's western edge, ADC Suppl. EX. D. shows that Hinaman extended the district into the most heavily black areas of Mobile, picking up large numbers of census blocks that were 75-100% black. The "bishop's head" was created by extending the district to the north, where it picked up heavily black census blocks as well. ADC Suppl. Ex. 30B. ADC Suppl. Ex. 30 C shows an extension to the south along Mobile Bay. The redistricters could simply have broadened the narrow corridor connecting this district to HD 101, but that would not have succeeded in recreating the prior BPP so exactly.³⁴ See DX 477.

Hinaman split nine precincts by race along the borders of the district as he selectively moved black people into the district in the process of meeting his racial target population on the head. To illustrate one example, as Hinaman created the "bishop's head" area by moving HD 97 north, he split the Chickasaw Auditorium precinct so that the predominantly black areas went into HD 97 (or black-majority HD 98), while an area of the precinct put into white-majority HD 96 had relatively whiter census blocks. ADC Suppl. Ex. 30E. Appendix A at 13 documents the 9 precincts with patterns of racial splitting in which Hinaman was disproportionately moving black residents from the surrounding black and white districts into HD 97, while also placing whiter areas of these split precincts into the adjoining white-majority district.

³⁴ HD 97, the most under-populated district, was virtually "landlocked" by the other black districts, with only a narrow corridor connecting it to HD 101, which had 10,642 black residents under the 2001 lines, or more than enough to create a black majority in HD 101. DX 477, NPX 332 at 9, and ADC Suppl. Ex. 32 C, 32F, 33B. Unlike other majority black districts, HD 97 had to take *some* population from another majority black district in order to reach the ideal population if it were to avoid the odd shaped and pinched connections that characterize certain other districts adopted by the State; both of the blocking districts, HD 99 to the west and HD 103 to the south, had abundant black population already under the 2001 lines (64% and 62%, respectively, vs. 54% for HD 98). NPX 332 at 9.

Rather than simply broaden the corridor to HD 101, however, Mr. Hinaman blocked it, adding substantial portions of black population from HD 101 and adjacent areas of HD 104 to HDs 99 and 103. ADC Suppl. Ex. 32C, 32F, 33B. He then proceeded to substantially redraw each of the majority black districts, giving each a bizarre shape and transferring population in and out of each district.

HD 98.

On the eve of the Census, this district was 65.22% BP and underpopulated by 7,690 people. NPX 332 at 9. Yet Hinaman moved close to 24,000 people into and out of the district. Appendix D. When he was done, the district ended up as 60.02% in BP, a decline of 5.20 points from its prior BP. NPX 10 at 9. He removed 3,685 black people, partly to meet his target in HD 97, but managed nonetheless to add 5,885 black people in as well. ADC Suppl. Ex. 4.

HD 98 had been a relatively compact district under the prior plan, but it now expands far to the north, with a narrow corridor between its southern and northern pieces. ADC Suppl. Ex. 31A, DX 477. As ADC Suppl. Ex. 31D shows, in the southern part of the district, Hinaman expanded the district into Mobile to pick up heavy concentrations of black population. In the southeastern area, he did the same, as ADC Suppl. Ex. 31C shows. The part of the district that was expanded through the narrow corridor running north also picks up areas of concentrated black population, as ADC Suppl. Ex. 31C shows.

Hinaman did his best to pick up as much black population as possible, given the constraints, by splitting 13 precincts along racial lines. A clear example is illustrated in ADC Suppl. Ex. 31C, where the district reaches out in odd, claw-like fashion, into white-majority HD 99. As this split precinct map shows, that odd shape is accounted for by the fact that the district is splitting the College Park Baptist Church precinct to put its heavily black areas into SD 98 and the white areas into HD 99. ADC Suppl. Ex. 31E. As Appendix A at 13-14 demonstrates, there are 13 precincts with patterns of racial splitting for HD 98.

As noted above, some of these splits involve unnecessary exchanges of black majority areas between HD 98 and 97 to enable Hinaman to meet his goal of hitting the HD 97 “target” figure so exactly.

HD 99.

On the eve of the Census, this district was 73.35% black and underpopulated by 5,730 people. NPX 332 at 9. Yet Hinaman moved 13,651 people into and out of the district in redrawing it. ADC Supp. Ex. 4. When he was done, the district ended up as 65.61% in BP, a decline of 7.74 points from its prior BP. NPX 332 at 9, NPX 10 at 9.

Once again, in the prior plan, this was a district that was relatively compact. DX 477. The district now has essentially three bulk areas, with small pinched areas connecting them. ADC Supp. Ex. 32A. In the southeast, the district has a prong that juts down to pick up black a group of black-majority blocks of Mobile; in the west, the district pulls in such black blocks as are available; and in the southwest, the district creates notches to pick up black census blocks in the 50-75% range. ADC Supp. EX. 32B, 32 C. 32D.

Once again, in the prior plan, this was a district that was relatively compact. The district now has essentially three bulk areas, with small pinched areas connecting them. In the southeast, the district has a prong that juts down to pick up black areas of Mobile; in the west, black areas of Mobile are also pulled in; in the southwest, the district creates notches to pick up black census blocks in the 50-75% range.

ADC Supp. Ex. shows in more detail why the district has the pattern of notches it does in the southwestern area. There Hinaman split two precincts by race, with the heavily black areas going into HD 99 and the whiter areas into the adjoining white-majority districts. Appendix A at 14. Even in these districts in which the BP declined, Hinaman was doing his best, including splitting precincts along racial lines, to get the BP in HD 99 back as close as possible to its prior level.

As Appendix A at 14 demonstrates, there are 13 precincts with patterns of racial splitting for HD 99.

HD 103.

On the eve of the Census, this district was 69.84% BP and underpopulated by 4,910 people. NP 332 at 9. Yet Hinaman moved over 12,000 people into and out of the district. ADC Supp. 4. When he was done, the district ended up as 69.84% in BP, a decline of 4.78 points from its prior BP. NPX 10 at 9.

HD 103 is an oddly shaped, elongated district, with odd features, including a hook at the northwest area, a small excrescence along the western edge, and erratic moves in and out of adjoining white-majority HD 105 in the south. ADC Supp. Ex. 33A. The maps explain the racial nature of these changes Hinaman made to the prior district.

Where the district was expanded to the south, the notches pick up heavily black areas of Mobile. ADC Supp. Ex. 33C. Similarly, when a bulb was extended to the west into white-majority HD 104, that protrusion picks up numerous census blocks in Mobile that are 75-100% BP. ADC Supp. Ex. 33D. The oddly-shaped northwestern piece of the district reached out into

white-majority HD 104 to pick up heavy concentrations of black residents there. ADC Suppl. Ex. 33B.

The split precinct map shows the change to the district that added the western “bulb” in more detail; that map illustrates how the First Independent Methodist precinct was split precisely so that areas of concentrated blocks that were more than 75% black were put into HD 103, while the whiter areas of that precinct were put into white-majority HD 104. ADC Supp. Ex. 33E. As Appendix A at 14-15 demonstrates, there are 10 precincts with patterns of racial splitting for HD 99.

3. Summary of the Application of the “Predominant Factor” Analysis to All 36 Districts

As the record demonstrates with respect to each of the 36 black-majority districts, “race was the predominant factor motivating the legislature’s decision to place a significant number of voters within or without a particular district.” 135 S.Ct. at 1265 (quoting *Miller v. Johnson*, 515 U.S. 900, 916 (1995)). That evidence consists of the following:

(1) The direct, consistent testimony and evidence that the redistricters prioritized a mechanical policy of re-creating or exceeding the population-percentage based racial targets, to the extent feasible, in each of these districts. There is no evidence the State abandoned this policy in any particular district.

(2) The outcomes produced, which reflect the fact that while moving tens of thousands of voters into and out of these districts, the State succeeded in implementing the policy the redistricters adopted expressly. In HDs 32, 52, 53, 54, 55, 56, 57, 59, 60, 67, 68, 69, 70, 71, 72, 76, 82, 83, 84, 85, and 97, and in SDs 23, 24, 26, 28, and 33, the redistricters achieved their stated objective. In the few districts in which the black population declined, HDs 19, 58, 77, 78,

98, 99, and 103 and SDs 18, 19, and 20 the evidence demonstrates the black population declined only because there were not enough contiguous additional black persons to make it feasible to repopulate the districts all the way back up to their exact prior BPP. But in these districts, race was also the predominant factor in the effort to repopulate them as close as feasible to their prior BP levels. There is no credible basis on which the State could have achieved these racial targets so precisely, despite moving tens of thousands of people between districts, without race having been the predominant factor in *which voters* were moved to repopulate these districts.

(3) The consistent pattern, demonstrated in the maps that document which blocks were added to each district, that the redistricters used of extending the boundaries of the districts in a way that bypassed whiter or more racially mixed areas to pick up areas of more concentrated black populations as needed to meet the districts' racial targets. *See Miller*, 515 U.S. at 918 (the State “ ‘would not have added those portions of Effingham and Chatham Counties that are now in the [far southeastern extension of the] present Eleventh Congressional District but for the need to include additional black population in that district to offset the loss of black population caused by the shift of predominantly black portions of Bibb County in the Second Congressional District which occurred in response to the Department of Justice's March 20th, 1992, objection letter.’ ”).

(4) The highly irregular shapes at the borders of the districts, where those irregularities pull predominantly black areas into the district, in a way that enables the district to meet its assigned racial target.

(5) The systematic pattern of splitting precincts in a racial pattern between the 36 districts and surrounding districts. *See Id.* (“[t]o the extent that precincts in the Eleventh Congressional

District are split, a substantial reason for their being split was the objective of increasing the black population of that district.”).

As a result, race was the predominant factor in each of the 36 House and Senate districts for sorting significant numbers of people into and out of these districts.

III. Alabama Lacks a Compelling Purpose for Its Use of Race in the Design of These Districts And, in Addition, Alabama’s Use of Race is Not Narrowly Tailored.

Because race was the predominant factor in the design of each of the 36 majority-black districts and thus strict scrutiny applies. Strict scrutiny for the use of race in redistricting requires *both* (1) that there be a “strong basis in evidence” to justify the particular use of race under Section 5 *and* (2) that Alabama’s actions be based on a legally correct interpretation of Section 5. *Alabama*, at (state must have “strong basis in evidence” and “good reasons”). With respect to the use of race in the design of each majority-black district, Alabama fails to meet either requirement. Moreover, under strict scrutiny, it is Alabama that bears the burden of proving its use of race was justified. *See Miller v. Johnson*, 515 U.S. 900, 920 (1995) (citing *Shaw v. Reno*, 509 U.S. 630, 653-57 (1993)); *see also Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411, 2419 (2013) (“Strict scrutiny is a searching examination, and it is the government that bears the burden to prove ‘that the reasons for any [racial] classification [are] clearly identified and unquestionably legitimate’”) (alterations in original) (quoting *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 505 (1989)); *Johnson v. California*, 543 U.S. 499, 505 (2005) (“[u]nder strict scrutiny, the government has the burden of proving that racial classifications ‘are narrowly tailored measures that further compelling governmental interests.’”) (quoting *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995)).

A. Alabama Lacks a Compelling Interest For Its Use of Race in the Design of These Districts.

The Supreme Court has consistently assumed that the use of race to comply with Section 5 constitutes a compelling purpose. But as the Court has made clear, that means “a compelling interest in complying with *the properly interpreted Voting Rights Act.*” *Shaw v. Hunt*, 517 at 909 n.4 (emphasis added). Thus, in *Miller v. Johnson*, the Court held unconstitutional Georgia’s districts because “the plan challenged here was not required by the [Voting Rights] Act under a *correct reading of the statute.*” 515 U.S. 900, 921 (emphasis added). *See also Shaw v. Hunt*, 517 U.S. 899, 911 (1996) (noting that *Miller* held that the districts were “not required by a correct reading of Section 5 and therefore compliance with that law could not justify race-based districting.”).

As these decisions establish, Alabama cannot have a compelling interest in complying with a legally incorrect reading of the Act. Indeed, these decisions also make clear that, even when the United States Department of Justice adopts a legally incorrect reading of the Act, and a State complies with DOJ’s understanding, the State still cannot have a compelling interest. The DOJ interpretation of Section 5 must be a correct if a State is to be able to rely on that interpretation to justify race-based districting as serving a compelling governmental interest.

Thus, when the Department of Justice in the 1990s took the view that Section 5 required creating the maximum number of minority districts feasible, the Court held in *Miller* that States could not justify race-based districting as needed to comply with this incorrect interpretation. The Court concluded that it was “safe to say that the congressional plan enacted [by Georgia] in the end was required in order to obtain preclearance.” 900 U.S. at 921. Yet even so, as the

Court concluded in the next sentence: “It does not follow, however, that the plan was required by the substantive provisions of the Act.” *Id.* As the Court held: “We do not accept the contention that a State has a compelling interest in complying with whatever preclearance mandates the Justice Department issues.” *Id.* at 922. Thus, because Alabama’s use of race is not required by Section 5’s substantive provisions, the State’s purported effort to comply with Section 5 cannot provide a compelling justification.

Strict scrutiny is required when race predominates in the design of a district precisely because of the profound harms the Court has identified that follow from the unjustified use of race. It is not necessary to recite the full range of those harms the Court has catalogued in these and related cases; as the Court has stated many times, when race is used in inappropriate or unjustified ways to design election districts, these districts “‘cause constitutional harm insofar as they convey the message that political identity is, or should be, predominantly racial.’” *Bush v. Vera*, 517 U.S. at 999 (Kennedy, J. concurring (quoting *Shaw v. Hunt*, 526 U.S. at 980)). The point of strict scrutiny is to avoid permitting States, in good faith or bad, from creating these constitutional harms. This essential purpose of strict scrutiny would be defeated were States permitted to invoke an incorrect interpretation of the Voting Rights Act as a compelling purpose. That is why the Supreme Court has never permitted States to do so. Just as a State cannot legally invoke a compelling interest in remedying “societal discrimination” as a justification for the use of race in government programs, *Crosby*, 488 U.S. at 505 (1989), Alabama cannot invoke complying with a fundamentally flawed view of Section 5 as a compelling justification.

In this case, the Supreme Court has determined that Alabama relied on a fundamentally incorrect legal interpretation of Section 5. Alabama’s critical failing here is a pure error of law.

Alabama simply misconstrued Section 5 and used race in the service of trying to implement that incorrect legal understanding. Instead of asking what black-populations levels would be necessary to preserve the ability to elect, as Section 5 actually requires, Alabama re-created the BPP levels of the prior district, to the extent feasible, for their own sake. There is no compelling purpose for the use of race in this way. Just as the Court held unconstitutional Georgia's use of race in *Miller* because that use was not "properly grounded in Section 5," *Shaw v. Hunt*, 717 U.S. at 913, Alabama's use of race in all its majority-black districts is not "properly grounded in Section 5."

Moreover, Alabama cannot even say – as Georgia could in *Miller* – that its use of race was required by the DOJ, even if not by Section 5. The Supreme Court's decision makes clear that *neither* Section 5 nor the DOJ implementation of Section 5 requires re-creating BPPs for their own sake. Indeed, the Court went even further and said that any such requirement "can raise constitutional concerns." Slip op. 21. If complying with the DOJ's incorrect interpretation of Section 5 cannot provide a compelling interest, surely Alabama's compliance with its own incorrect interpretation of the Section – one that is actually contrary to DOJ interpretation and implementation -- cannot provide a compelling interest for Alabama's use of race here.

Thus, no need exists for this Court to assess whether the districts are narrowly tailored to complying with a legally incorrect interpretation of Section 5. Even if the districts were perfectly tailored to complying with Alabama's incorrect interpretation of Section 5, they would still be unconstitutional.

B. The Use of Race is Also Not Narrowly Tailored.

This Court need not even reach the question of narrow tailoring because Alabama has not and cannot show that it had a “compelling interest” to justify its use of race pursuant to its legally erroneous understanding of Section 5’s requirements. If this Court nonetheless concludes it is necessary to reach the narrow-tailoring question, the Court should also conclude that none of the districts is narrowly tailored. The “strong-basis-in-evidence” standard requires that the institution involved, here the Alabama legislature, have that strong basis in evidence “‘before it embarks on an affirmative-action program,’” *Shaw v. Hunt*, 517 U.S. at 910 (quoting 517 U.S. at 910 (quoting *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 277 (plurality opinion))). If compliance with federal anti-discrimination laws, such as Section 5, is to provide an adequate justification under strict scrutiny, Alabama must have had a “strong basis in evidence” for its conclusion that it would be liable under Section 5 (or other anti-discrimination law) had it not used race in the way it did.

In the context of Section 5, this does not require “that a legislature guess precisely what percentage reduction a court of the Justice Department might eventually find to be retrogressive.” *Alabama*, at 1273. But if narrow tailoring requires anything, it requires more than that Alabama simply aim to hit specific racial targets as mere numbers, with no thought at all about whether those targets remain necessary to preserve the minority community’s ability to elect. Yet that, of course, is precisely what the Supreme Court has already concluded Alabama did here. As the Supreme Court concluded, Alabama “asked the wrong question with respect to narrow tailoring,” because Alabama did not correctly understand the legal meaning of “retrogression.” *Id.* at 1274. *Before* it embarked on race-based districting of these districts,

Alabama had to have a strong basis in evidence for believing its use of race was necessary to preserve *the ability to elect* in any particular district. But Alabama did not have that evidence because that was not the question the redistricters asked in designing these districts. A reapportionment plan is not “narrowly tailored to the goal of avoiding retrogression if the State went beyond what was reasonably necessary to avoid retrogression.” *Shaw v. Reno*, 509 U.S. 630, 655 (1983). As the Supreme Court held, Alabama went well beyond that point by asking the wrong question altogether and asserting that retrogression meant not “substantially reducing” the BP in any district.

This is not a case, in other words, in which Alabama made the determination that a 53% BPP (or any other BPP) was required to preserve the ability to elect in any specific district, in any specific region of the state, or in general as a statewide matter. The ADC is not second guessing Alabama for not getting the ability to elect figure precisely right; Alabama’s problem under strict scrutiny is that it simply did not ask this question at all before using race as a predominant factor in the design in each and every black-majority district.

In this case, Alabama did not make any considered judgment or analysis of the ability-to-elect issue. The record is clear on this point and no real dispute exists about it. As the redistricters testified consistently, they undertook no examination of the electoral viability of any district; they did not consider any factor such as voting age population, voter registration, socio-economic factors, or anything other than the black percentage of total population in that district – even when the district had been “moved” to another, non-contiguous county. Indeed, Sen. Dial admitted that the black percentage in Senate District 26 was far in excess of that necessary for the ability of black voters to elect a representative of their choice.

This Court need not reach the narrow-tailoring issue, but if it does, it should conclude that Alabama's use of race was not narrowly tailored, in any of the black-majority districts, to compliance with Section 5.

IV. The Court Should Reject Any Effort to Salvage Any One of These Districts Through Post-Hoc Ability-to-Elect Speculations.

Alabama might seek to argue, as it did in the Supreme Court, that “at least some of the majority-black districts have the right black population, regardless of how that population arrived there.” AL Br. 26. In other words, had Alabama made ability-to-elect judgments, it would have re-populated at least some of these districts at the same BPP level as they ended up at under Alabama's actual policy of not substantially reducing the BPPs in all these districts. In other words, Alabama would have made “the same decision” had it employed the correct legal rule under Section 5.

Any counterfactual argument of this sort is inappropriate under strict scrutiny – and all the moreso in the context of racial redistricting. As already noted, strict scrutiny requires that Alabama have a “strong-basis-in-evidence” for its specific use of race “*before* it embarks on” racial redistricting. *Hunt*, 517 U.S. at 910 (quoting 517 U.S. at 910 (quoting *Wygant v. Jackson Bd. of Ed.*, 476 U.S. 267, 277 (plurality opinion))). Because Alabama did not have that basis in advance for judging what was reasonably necessary to preserve the ability to elect, strict scrutiny precludes the State from invoking such an argument after the fact. In addition, Alabama has not created in this litigation even any after-the-fact record of what the ability-to-elect actually requires under current conditions. As this Court recognized in its prior opinion, the record supports no determination one way or the other regarding the BPP necessary to preserve the ability to elect in any specific district or region of the state or statewide. Under strict scrutiny,

Alabama would also, of course, bear the burden of proof on any such counterfactual argument that it would have made “the same decision” for any particular district. “To satisfy strict scrutiny, the State must demonstrate that its districting legislation is narrowly tailored to achieve a compelling interest.” *Miller v. Johnson*, 515 U.S. 900, 920 (1995). But even more importantly, it defies logic to try to apply this approach to redistricting. Unlike an employment decision involving a single individual, redistricting involves hundreds of interlocking decisions. The counterfactual policy Alabama would have employed to get to the “same” outcome in district A would have to be a policy the state would have applied in a consistent, non-pretextual way to all the other districts in the state. A policy of keeping counties intact to the maximum extent possible might produce in district A the “same” black population level, but it would also change the design of that district along many other dimensions -- just as importantly, such a consistently-applied policy would also change the design of other districts as well. No intelligible way exists to apply this counterfactual approach to redistricting, or to “create” one district after the fact, in isolation from all the other districts in the plan. The Supreme Court has never applied such a counterfactual approach in any redistricting case.

Indeed, the Supreme Court in *Shelby County* rejected this form of argument when the Court held irrelevant to the facial challenge there whether Alabama or any one particular State or jurisdiction could conceivably be covered under a different Section 4 coverage formula. The same principle applies here. Alabama can take race into account to comply with the VRA, but it must do so based on what “current conditions” require to preserve the ability to elect.

* * *

Writing for the Court in *Miller v. Johnson*, Justice Kennedy stated: “It takes a shortsighted and unauthorized view of the Voting Rights Act to invoke that statute, which has played a decisive role in redressing some of our worst forms of discrimination, to demand the very racial stereotyping the Fourteenth Amendment forbids.” 515 US at 927-28. But that, by their own direct, consistent, and uniform testimony is precisely what Alabama’s redistricters did here in using race to design each black-majority district *not* for the purposes the VRA authorizes – to preserve the ability to elect – but for the purpose of simply re-creating, to the extent feasible, the BPPs in each district. As the direct and circumstantial evidence show, race was the predominant factor in the design of each BMD in the House and Senate plans. Because that use of race lacks the compelling justification and narrow tailoring that strict scrutiny requires, Alabama violated the Fourteenth Amendment in the way it designed each of these districts.

CONCLUSION

For the foregoing reason, this Court should hold that the Alabama Democratic Conference has standing to raise its claims in this action, and that State of Alabama violated the Fourteenth Amendment with respect to Senate Districts 18, 19, 20, 23, 24, 26, 28, and 33; and House Districts 19, 32, 52, 53, 54, 55, 56, 57, 58, 59, 60, 67, 68, 69, 70, 71, 72, 76, 77, 78, 82, 83, 84, 85, 97, 97, 99, and 103.

Consistent with this Court’s Post-Remand Scheduling Order, this brief addresses the substantive liability phase of this case only and does not address any remedial issues.

Respectfully submitted this 31st day of July, 2015.

s/ James H. Anderson

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