

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

ALABAMA LEGISLATIVE)	
BLACK CAUCUS, et al.,)	
)	
Plaintiffs,)	
)	
v.)	2:12 CV 00691 WKW MHT WHP
)	(Three Judge Court)
THE STATE OF ALABAMA, et al.,)	
)	
Defendants.)	
<hr/>)	
)	
ALABAMA DEMOCRATIC)	
CONFERENCE, et al.,)	
)	
Plaintiffs,)	
)	
v.)	2:12-CV-01081-WKW MHT WHP
)	(Three Judge Court)
STATE OF ALABAMA, et al.,)	
)	
Defendants.)	

RESPONSE OF THE ADC TO THE COURT’S AUGUST 28, 2015 ORDER

The ADC here respectfully submits its response to the Court’s August 28, 2015 Order, Doc. 283. As set forth herein, the ADC House and Senate plans meet the 15 numbered criteria specified in the Court’s Order and all other requirements in the Court’s Order.

The brief summary below documents the numerically measurable comparisons between the ADC’s plans and the State’s enacted plans:

	ADC	State
Counties Split, House	38	50
Counties Split, Senate	20	34
Precincts Split, House	86	433
Precincts Split, Senate	25	168
Districts with fewer counties, House	24	5
Districts with fewer counties, Senate	17	2
More Compact (3 methods), House	3	0
More Compact (3 methods), Senate	3	0
Black districts more compact, House	22	6
Black districts more compact, Senate	7	1
Majority-black districts House	29	28 ¹
Majority-black districts Senate	8	8
Within 1% deviation, House	105	105
Within 1% deviation, Senate	35	35
2010 Incumbents separated, House	103	103
2010 Incumbents separated, Senate	35	35

Moreover, the ADC plans create black-majority districts that have much lower black population percentages than in the State’s plans. In the House, for example, 23 of the 27 districts in the State’s plan are more than 60% black, while only 10 of the 28 districts are in the ADC’s plan. Twelve districts in the State’s plan are above 65%, but only three districts are in the ADC plan. In the Senate, 3 of the 8 districts are more than

¹ This calculation includes HD85 under both House plans.

65% black in the State’s plan, while none are in the ADC plan. Table 1 provides a comparison chart for the House districts. Table 2 provides the comparison chart for the Senate districts.

Table 1: Black-majority House District Comparison		
% Black	State Plan	ADC Plan
70+ %	5 districts	1 district
65-70%	7 districts	2 districts
60-65%	11 districts	7 districts
55-60%	3 districts	13 districts
50-55%	1 district	5 districts
	TOTAL: 27 districts	TOTAL: 28 districts

Table 2: Black-majority Senate District Comparison		
% Black	State Plan	ADC Plan
70+ %	2 districts	0 districts
65-70%	1 district	0 districts
60-65%	3 districts	3 districts
55-60%	2 districts	4 districts
50-55%	0 districts	1 district
	TOTAL: 8 districts	TOTAL: 8 districts

As documented more fully below, the ADC House and Senate plans thus confirm that race predominated in the drawing of the black-majority districts in the State’s plans and that the State’s use of race cannot survive strict scrutiny. The ADC plans demonstrate that the State could have easily complied with its plus or minus one percent population-deviation standard, the requirements of Section 5 and Section 2 of the VRA, not paired any incumbents other than those paired in the State’s plans, and met the other requirements and standards in the Court’s Order – all without producing VRA districts in which black residents are massively and unnecessarily over-concentrated and over-segregated. As Judge Pryor put it at oral argument, in his view, this is the “\$64,000 question” in this case. Tr. at 36-37. That question has now been answered.

As the ADC plans demonstrate, the extraordinarily high black-population percentages in the State's plans did not result from the happenstance of "natural demography," as the State's post-hoc rationalizations often contend. They resulted from the State's deliberate application of a policy that required the redistricters to re-create the prior black-population percentages in these districts, wherever feasible. As the Supreme Court held, there is no valid legal basis for the application of that policy to the design of any black-majority district. Yet that is the policy – by the State's own admission – that took priority, by virtue of the Supremacy Clause, over traditional districting principles. In order to re-create those black-population percentages, the State engaged in a variety of decisions, including (1) consistently bypassing whiter areas to add blacker areas to the black-majority districts in the process of repopulating them; (2) moving underpopulated black-majority districts into other underpopulated black-majority districts rather than overpopulated white-majority districts; (3) splitting county boundaries unnecessarily except to meet these racial targets; (4) splitting precincts in race-based patterns to meet these racial targets.

As the ADC plans demonstrate, if meeting these legally unjustified racial targets had not predominated over other districting principles, the State could have complied with Section 5 (and Section 2) of the VRA and all the other requirements in the Court's Order while creating districts that (1) were far more compact; (2) split many fewer counties; (3) and split many fewer precincts. The plaintiffs' briefs on remand demonstrate in great detail the ways in which race predominated in the design of each black-majority district and why these districts fail strict scrutiny. The ADC's alternative plans attached to this filing provide further confirmation of what those briefs document.

The legally unjustified racial targets Alabama set for each black-majority district led race to predominate in the drawing of those districts and the State's use of race lacks a compelling purpose and is not narrowly tailored to compliance with the VRA.

We discuss the construction of the plans and the various redistricting metrics below.

Constructing the Plans

At the outset, we note that the ADC has drawn these plans as presented here pursuant to the Court's Order as part of the process for resolving the substantive liability phase of this case. The ADC plans are not remedial plans and the ADC does not expect or propose that the plans will or should be adopted either by the State or by the Court. For example, as ordered by the Court the plans separate the 2010 incumbents rather than the current incumbents. Similarly, now that the Supreme Court has clarified that a plus or minus 1% population-deviation rule is not constitutionally required, the State or the Court might at the settlement or remedial phase of the case might relax that standard to allow even more counties to remain intact. The plans do, however, fully satisfy the standards identified by the Court.

In general terms, the ADC House and Senate plans use the 2010 district lines as a starting point. The changes from those lines reflect the pressure of population changes that result from population growth centers in Baldwin County, Houston County, Lee County, Madison and Limestone Counties, Autauga and Elmore Counties, Houston County, and Shelby County. This growth, of course, necessitates significant departures from the old lines. The ADC plan attempts to steer those departures so as to unite county boundaries and the communities of interest they represent, consistent with the Alabama

Constitution and the United States Supreme Court's emphasis on traditional districting principles.

Senate. To cite an example, the population growth in Baldwin County pulled SD22 south, adding one whole House district to SD22. This southward pull allowed SD22 to unite Clarke County in a single district, SD22, making that district significantly more compact. With SD22 now overpopulated it was possible to transfer areas of Monroe and Conecuh Counties to SD 23, making both counties whole. SDs 23 and 24 are able to maintain and improve their current form with the addition of Butler and Pickens Counties, respectively, and with the re-uniting of Perry and Marengo Counties, which had been split in the State's 2001 and 2012 plans.

The growth of population in Houston County and the ADC plan's avoidance of the race-based lines drawn by the State's plan in Houston and Russell Counties allowed SD 28 to be expanded to include all of Russell County, and allowed the ADC plan to place a Senate district, SD27, entirely within Lee County. The ADC plan reconfigures SDs 25 and 26 to eliminate the racial gerrymandering, as discussed in more detail within, and rationalizes SD 30.

In the northwest, the ADC Senate plan keeps the Muscle Shoals area united in SD1. This decision allows SD 6 to remain intact with the addition of the remainder of Lawrence County, with Winston County whole in SD5. In the northeast, the growth in Madison and Limestone (here made whole in SD 2) pulls SD 8 westward and SD 9 north, allowing all of DeKalb County to be united in SD 10.

The collision of the population growth in the Huntsville area to the North and Shelby County to the south, together with the awkward sizes of county population (for

redistricting purposes) and the peculiar placement of incumbent senators, including six incumbents in Jefferson County (with population only for four senators with a fraction left over) complicate efforts to maintain county boundaries in the intervening area. The ADC plan nonetheless maintains much of the 2010 configuration (see, e.g., SD 11, 12, 13, 15, and 17), keeps additional counties intact, and provides a whole Senate district (SD11) in Tuscaloosa County.

House. The genesis of the House districts was similar but necessarily more complex given the larger number of districts and incumbents; the smaller districts make it far more difficult to accommodate district boundaries to the fixed boundaries of counties and voting precincts. The transfer of HDs 53 and 73 to new parts of the state naturally discombobulates boundaries in those areas. The ADC House plan generally expands the under-populated 2001 districts outward into areas of growth in a way that reunites counties and avoids splitting them where possible, given the population, precinct, and incumbent constraints. As in the State's 2012 plan, the ADC plan transferred HD 53 to Madison County and HD 73 to growing Shelby County and St. Clair Counties. Mobile and Baldwin Counties were kept intact and subdivided into nine and four districts, respectively. Population growth pushed HD 64 and HD 66 out of Baldwin County, enabling Escambia to be re-united in a single district. The Monroe portion of HD64 went to HD 65, which also enlarged its share of Marengo County. The plan expands under-populated HD 69 into similar rural areas rather than deeply into the City of Montgomery, and House districts are concentrated within the City of Montgomery to the extent practicable as per the State's recently stated interest with respect to SD26. The plan expands the under-populated Birmingham districts outwards and maintains nine majority-

black districts there. The plan contains all of the Jefferson County districts, except one, entirely within Jefferson County, the minimum split possible.

In the Southeast, the ADC plan notably makes the HD85 boundary much more presentable while avoiding retrogression. In the north the ADC House plan retains, for example, a House district entirely within Colbert County and thus allows Lawrence County to remain whole and unites formerly trisected Winston County. The ADC House plan avoids the grotesque contortions of the State's House plan.

Elements of the Plans

This Court identified a number of requirements the ADC plan was required to meet and numbered those requirements. In explaining that the ADC meets all of these requirements, we reference in parentheses the numbered requirement involved from the Court's Order.

The ADC plans contain 35 Senate and 105 House districts (7). The population of each district is within one percent of the ideal district population² (2) based on the 2010 census, the sole numerical basis on which the plans were drawn (1). The plans contain no incumbent conflicts except for those identified by the Court (15), and each district is comprised of contiguous territory (9), and the districts are reasonably compact (10). We provide a full quantitative analysis of the compactness of these districts below, including comparisons with the districts in the enacted plans.

The plans provide for at least 27 majority black districts and eight majority black senate districts (12). As described more fully below, the ADC House plan provides for

² As set forth in the accompanying charts, Appendix 3. The population deviation of House district 16 is displayed as "1.00%." That figure reflects rounding up. The actual deviation is slightly below one percent.

28 majority black House districts in addition to HD 85, and one additional Senate district (SD 7) in which minority voters would have some opportunity to elect a candidate of their choice. The plans thus comply with Sections 2 and 5 of the Voting Rights Act (3-5), as discussed below.

The ADC House and Senate plans also are superior to the State plans under each additional standard. The ADC House and Senate plans maintain significantly more counties intact than the State's plans (13) and split far fewer Voter Tabulation Districts or precincts than the State's plans (14). The ADC House and Senate plans do a better job ensuring that each district contains as few counties as practicable (8). The ADC House and Senate plans also better maintain and protect communities of interest. (11). With such careful adherence to traditional redistricting criteria it is abundantly clear that the ADC House and Senate plans, unlike the State's plans, do not subordinate such criteria to race.

County Boundaries

Respecting County Boundaries: House

The ADC House plan splits 38 counties, leaving 29 counties intact. (Mobile and Baldwin Counties both are intact but subdivided among nine and four districts, respectively, that are coterminous with the county boundaries.) The State's House splits 50 counties, leaving only 17 intact. The ADC House plan thus keeps 12 (70.5%) more counties (70.5%) intact than the State's plan.

Of the 38 counties split by the ADC plan, 25 (Autauga, Blount, Calhoun, Coffee, Colbert, Cullman, Dale, DeKalb, Elmore, Etowah, Houston, Jackson, Jefferson, Lauderdale, Lee, Limestone, Madison, Marshall, Morgan, Russell, St. Clair, Shelby

Talladega, Tuscaloosa and Walker) have more than enough population for one or more district but too much or too little to be equally divided into whole districts (as is possible for Mobile, Baldwin and Montgomery Counties): these counties had to be split. Of these 25 counties, 21 (Blount, Calhoun, Coffee, Colbert, Dale, Dale, DeKalb, Elmore, Etowah, Jackson, Jefferson, Lauderdale, Lee, Madison, Marshall, Morgan, Shelby, Tuscaloosa, and Walker; plus Montgomery) have one or more districts entirely contained within the county boundaries: the counties must therefore be split. The ADC House plan split the remaining 17 counties (the number that the State House plan leaves intact) to achieve population equality.

Respecting County Boundaries: Senate

The ADC Senate plan splits 20 counties, leaving 47 counties intact. (Mobile County is intact but is subdivided in the sense that it contains three whole Senate districts that are coterminous with the county boundary.) The State's Senate plan splits 34 counties, meaning that only 33 counties are left intact. The ADC Senate plan thus keeps 14 (42.42%) more counties intact than the State's plan. Seven of the 20 counties split by the ADC plan (Baldwin, Jefferson, Lee, Madison, Montgomery, Shelby and Tuscaloosa) had more than enough population for a senate district but too much or too little to have self-contained districts within the one percent deviation requirement: these counties had to be split under any plan. Of these, only Shelby County did not have at least one senate district contained entirely within the county, largely because of the number of incumbents in Jefferson County, while the State plan fails to contain a senate district entirely within Lee, Shelby and Tuscaloosa Counties. Jefferson County had too many resident incumbent senators (six) for self-contained districts even under the more generous five percent

constitutional standard. The remaining 13 counties were split to meet equal population requirements.

Minimizing the Number of Counties in each District

The ADC plans put many fewer counties into each district than in the State's plans. Doing so serves the important and traditional state interest of ensuring that the county delegations in the legislature are representative of county residents..

The ADC Senate plan includes fewer counties than the State plan in 17 districts (1,3, 4, 8, 9, 10, 12, 14, 15, 17, 21, 22, 23, 24, 27, 28, and 30) and more counties in only two districts (6 and 13). In all, the ADC plan contains 23 fewer county segments in the 35 Senate districts than the State plan.

The ADC House plan includes fewer counties than the State's plan in 24 districts (3, 6, 9, 11, 13, 14, 15, 16, 17, 23, 27, 29, 31, 34, 35, 39, 43, 45, 49, 61, 64, 68, 71, 72, 81, 90, and 96.)), and more counties in five districts (21, 50, 62, 69, and 73). In all, the ADC House plan contains 30 fewer county segments than the State's plan.

Precincts/Voter Tabulation Districts

The ADC House plan splits 86 VTDs. The State House plan split 433 VTDs, or just over five times as many as the ADC plan. The ADC Senate plan splits 25 VTDs, while the State's Senate plan split 168 VTDs, or nearly seven times as many.

It bears noting that in some counties, the 2001 plan split VTDs. That is, in some counties some VTDs reported to the Census Bureau differed from the actual voting precincts used by the counties to administer elections. DeKalb County, with only five VTDs and Lee County, with one VTD (Auburn) containing over 53,000 people or more than the Auburn House district (HD 79) are examples. This phenomenon inflates

somewhat the ADC House Plan's VTD split total. For example, the ADC House plan records eight split precincts involved in the construct of HD 32. In fact, as redrawn in the ADC plan, HD32 adheres entirely to the 2001 plans lines except in the Anniston precinct of Calhoun County, and the Bethel Baptist precinct of Talladega County. The ADC plan adds the remainder of both of these precincts (that had been split in the 2001 plan) to HD32 to obtain the population necessary to come within one percent of the ideal. In that sense, the ADC plan does not create eight precinct splits but rather eliminates two precinct splits. In the Senate, the boundaries within Tuscaloosa County also "split" a number of VTDs by adhering to the 2001 precinct lines for SD24.

The record contains no indication that Mr. Hinaman was aware of this phenomenon or used the 2001 lines as partial boundaries within counties. The ADC is unaware of any instance in which the State's plan "split" a VTD by following the 2001 lines, although there may well be one or more serendipitous instances. Adherence to the census VTDs, like adherence to the actual precinct lines, remains significant in the context of this case as an inhibitor of racial gerrymandering, much in the same way that adherence to county boundaries inhibits gerrymandering by preventing the block-by-block racial sorting that so marks plans in which race predominates. The ADC plan avoids such VTD/precinct splits.

Black-Population Percentages in Majority-Black Districts

Appendices 1 and 2, respectively, provide the charts and statistics on (1) the total black population and black population percentage of each proposed district and (2) a

comparison of those figures to the comparable figures in the enacted plans. As noted in the summaries of these charts at page 2, *supra*, the black population percentages in the ADC districts are systematically significantly lower than in the enacted plans, for both the House and the Senate.

As noted above, in the State's plan for the House, for example, 23 districts have a 60% or higher black population percentage. In the ADC plan, only 10 districts have a 60% or higher black population percentage. Twelve districts in the State's plan are above 65%, but only three districts are in the ADC plan. In the State's plan for the Senate, 3 districts are about 65%, but no districts are above 65% in the ADC plan. The State's plan only has 2 districts between 50-60% black population percentage, while in the ADC plan, 5 of the 8 majority-black districts are below 60%.

The ADC plans thus also demonstrate that when traditional districting principles are adhered to and race does not predominate in the design of these districts, the black population percentages become significantly lower than in the State's plans, which were produced under the requirement that the prior black population percentages be maintained wherever feasible.

Compactness

Paragraph (10) of this Court's Order states that each district must be "compact." The districts in the ADC plans are significantly more compact than those in the State's plans.

The Supreme Court has recognized that compactness can be measured quantitatively and has relied on "objective, numerical" means of measuring the compactness of districts in *Shaw v. Reno* cases. *See, e.g., Bush v. Vera*, 517 U.S. 952,

960, 973 (1996). In doing so, the Court has relied on the conventional measures of compactness described in what the Court has called “the leading statistical study of relative district compactness and regularity.” *Id.* at 973 (citing Richard H. Pildes and Richard G. Niemi, *Expressive Harms, “Bizarre Districts,” and Voting Rights: Evaluating Election-District Appearances after Shaw v. Reno*, 92 Mich. L. Rev. 483 (1993)). These measures are directly available, for individual districts and for plans as a whole, in the standard software program, Maptitude, that is routinely used for redistricting. Both Mr. Hinaman, for the State, and the ADC used Maptitude.

A. The two measures of compactness the Court has endorsed are called the “dispersion” measure and the “perimeter” measure.

The **dispersion** measure captures how tightly packed or spread out is the geography of a district. This measure varies from 0.0 to 1.0, and the more compact a district is, the higher it scores on this scale. The approach to doing that became common during the 1990s round of redistricting litigation involves comparing the area of the actual district to the area of the minimum circle that would circumscribe or enclose the district; the ratio of the former to the latter is the dispersion score for the district (the more technical name for this measure is the Reock measure, after its inventor). “Hence, a circular district is perfectly compact. A square district is relatively compact because, when one draws a circle around the district, there is little area inside the circle that is not also in the district. A long, narrow district, or one with “fingers” or other extensions, is less compact because it takes a large circle to enclose the entire district, yet much of that circle is empty.” Pildes and Niemi, 92 Mich. L. Rev. at 554.³

³ The Maptitude for Redistricting Manual provides this technical definition to explain how the program calculates this measure:

Measures of district **perimeter** focus on the extent to which district borders wander in irregular ways. The perimeter measure of district compactness relates the length of the district perimeter to the area included by the district. *Id.* at 555-556. There are two standard metrics of compactness that focus on district perimeters, the Schwartzberg measure⁴ and the Polsby-Popper measure.⁵

For all of these measures, compactness is greater the closer the number comes to 1.00. For Reock and Polsby-Popper, the *higher* the number the more compact the

The Reock test is an area-based measure that compares each district to a circle, which is considered to be the most compact shape possible. For each district, the Reock test computes the ratio of the area of the district to the area of the minimum enclosing circle for the district. The measure is always between 0 and 1, with 1 being the most compact. The Reock test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.⁴ The Maptitude for Redistricting Manual provides this technical definition to explain how the program calculates this measure:

The Schwartzberg test is a perimeter-based measure that compares a simplified version of each district to a circle, which is considered to be the most compact shape possible. This test requires the base layer that was used to create the districts. The base layer is used to simplify the district to exclude complicated water boundaries.

For each district, the Schwartzberg test computes the ratio of the perimeter of the simplified version of the district to the perimeter of a circle with the same area as the original district. The district is simplified by only keeping those shape points where three or more areas in the base layer come together. Water features and a neighboring state also count as base layer areas. This measure is usually greater than or equal to 1, with 1 being the most compact. Unfortunately, the simplification procedure can result in a polygon that is substantially smaller than the original district, which can yield a ratio less than 1 (e.g., an island has a 0 ratio). The Schwartzberg test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

⁵ See Polsby & Popper, *The Third Criterion: Compactness as a Procedural Safeguard Against Partisan Gerrymandering*, 9 *Yale L. & Pol'y Rev.* 301, 339-351 (1991). The Maptitude for Redistricting Manual provides this technical definition to explain how the program calculates this measure:

The Polsby-Popper test computes the ratio of the district area to the area of a circle with the same perimeter: $4\pi \text{Area}/(\text{Perimeter}^2)$. The measure is always between 0 and 1, with 1 being the most compact. The Polsby-Popper test computes one number for each district and the minimum, maximum, mean and standard deviation for the plan.

district; for Schwartzberg, the *lower* the number the more compact the district. The three measures can produce different results as to a given district: a district may be more compact in Reock and less compact in Schwartzberg, for example.

B. Results.

The greater compactness of the ADC districts is apparent in a brief summary of the comparison between majority-black districts in the ADC plans and the State's enacted 2012 plans. The chart compares how many districts in each plan are more compact according to (1) all three methods, (2) two of the methods, and (3) one method with two measures tied, as set forth below in Table 3.

Table 3: Comparison of District Compactness

House Compactness Comparison Majority Black Districts		
<u>Methods more compact</u>	<u>ADC</u>	<u>State 2012</u>
All 3 measures	13	3
Two of three	8	3
One, two tied	1	0

Senate Compactness Comparison Majority Black Districts		
<u>Methods more compact</u>	<u>ADC</u>	<u>State 2012</u>
All 3 measures	7	1

The greater compactness in the ADC House and Senate plans is all the more striking because the ADC plan splits so many fewer precincts than in the enacted plans. The districts in the ADC plans could have been even more compact if those plans had split precincts in order to make the districts more compact; the edges of a number of House districts, in particular, are jagged because the precincts themselves are jagged, or

have large populations and interlock along jagged lines.⁶ See, e.g., HD 43 and the blip on the border of HDs 56 and 57. App. 7a. If the ADC plans had been designed to maximize the compactness of the districts, these precincts could have been split to do so. In the Senate plan, the only district in which the State’s plan bests the ADC plan in compactness flow from the ADC’s choice to “nest” of the House and Senate districts: Mobile County contains nine House districts and three Senate districts. Consistent with the practice prior to the 1992 plans, the plan creates each Senate district by combining three House districts, in numerical order (e.g., HDs 97-99). Such nesting was not possible statewide because of the residences of incumbents and the greater opportunities to keep counties and precincts intact in the Senate plan. The “pimple” in SD 9, App. 7b, was to separate incumbents, and that in SD28 was necessary to avoid an issue of possible retrogression. The Tuscaloosa County configuration in SD24, App.8a, 8b, has been a fixture since at least since 1983 when the House and Senate districts were nested in numerical order. Many of the split VTDs there result from close adherence to the 2010 boundary. *See App. id.*

Communities of Interest

In the context of Alabama, the clearest community of interest in terms of legislative redistricting and legislative activity is that held by residents of a given county. As this Court knows, in Alabama the Legislature decides an extraordinarily larger range of intensely local issues that affect cities, counties and school boards in most states, due to Alabama’s county-delegation system. *See Alabama Code Title 45 Chapters 1-67A.*

⁶ The Madison County precincts are particularly exasperating, especially in the western portion of the county: many have non-contiguous areas – islands within adjacent or nearby precincts. See, e.g., App. 7a (Madison County maps). The presence of such islands within a large precinct contribute to the cone shape of the eastern borders of ADC HD 6 and SD2.

The ADC House and Senate plans better recognize communities of interest through the plans' substantially greater adherence to county boundaries. Residents of municipalities share this county-based community of interest as municipal local legislation must be approved by the county legislative delegation, and voting precincts are determined at the county level. Other communities of interest are less concrete, and many communities of interest overlap. The State never defined most of the interests cited in its guidelines and there is no indication that it followed any such interests in crafting the majority black districts: in drawing the black districts, the State only looked at the total black population percentage. To cite one example, the State's plan ignores municipal boundaries, even when claiming to do otherwise, Doc. 272 at 78-79 (discussion of HD 72). In the case of SD 26 City of Montgomery, the ADC plan actually follows the State's post-hoc, Montgomery-specific rationale by creating a district within the City of Montgomery. The ADC plan actually crafts an almost purely City of Montgomery SD26 with clear, racially neutral boundaries – primarily the Alabama River, Catoma Creek, and the Eastern Bypass. (The district crosses the Bypass in one place to follow precinct lines. The ADC plan splits only one precinct (5E, Fitzpatrick Elementary, the squiggle in the southeast part of the district, split so as to exclude the “crab claw” area outside the city limits.) The ADC version of SD26, with a 60.70% black majority more closely matches the City racial composition (56.63%) and thus highlights the predominance of race in the State's intensely race-based version. The transfer of the rural areas of Montgomery County transfers rural Geneva County to more congenial rural SD31 and re-centers SD 25 along the US 231 corridor and links Troy University campuses.

The ADC version of SD 1 re-unites the Muscle Shoals area, and in most districts the ADC House and Senate plans maintain the general contours of the previous districts to a far greater extent than the State's 2012 plans.

Compliance with the Voting Rights Act

The ADC House plan has one more majority black district than in the 2001 House plan and in the enacted 2012 plan. The ADC Senate plan has the same number of majority black districts as the 2001 and 2012 Senate plans. Thus, the ADC House and Senate plans satisfy the Voting Rights Act without the use of legally unjustifiable, arbitrary targets that characterize the State's House and Senate plans.

Each of the majority-black districts provides minority voters an equal opportunity to elect representatives of their choice. To the extent the state would want to assert that the 50-55% black population districts in the ADC plan do not provide an equal opportunity to elect, the assertion would be irrelevant to the issue before the Court. Even if small increases in black population were proven to be necessary, it would be a simple matter to increase those numbers slightly, consistent with traditional districting principles. But none of this would affect the fact that the State used race predominantly when it set and met racial targets well in excess of these figures based on nothing more than the State's decision to re-create the prior black populations. In the State's House plan, for example, there are only 4 districts below 60% black; in the State's Senate plan, there are only 2 below 60% black.

But in any event, the districts in the ADC plan all do provide the required equal opportunity to elect. Based on his expert analysis, Dr. Lichtman testified that simple majority-black districts provide an equal opportunity to elect throughout the State of

Alabama today. *See* NPX 324 at 20-21. As the United States Department of Justice has presented Dr. Lichtman's expert testimony to courts of the United States in more than a dozen cases, NPX 324 at 3, his analysis alone is highly persuasive concerning the ability to elect under the VRA.

The results of recent legislative elections reinforce Dr. Lichtman's conclusions. Candidates who are the choice of the black community frequently face no opposition in the general election. The 2010 and 2014 cycles produced only three contested Senate elections and the results are set forth here:

Table4: Senate Election Return Data

2010 General Election		
Senate District	% Black Pop.	% Black Voters' Choice
18	59.82	100
19	71.59	100
20	77.82	100
23	64.75	100
24	62.78	100
26	72.69	100
28	50.91	70.45
33	64.84	73.41

2014 General Election		
Senate District	% Black Pop.	% Black Voters' Choice
18	59.12	100
19	65.39	100
20	63.38	100
23	64.81	100
24	63.30	100
26	75.22	100
28	59.66	73.41
33	71.71	100

App. 9. The margins for the black-supported candidates far exceeded the black percentage in the contested districts. Table 5, shows that results of House elections have been similar: few contests and large margins.

Table 5: House Election Return Data

2010 General Election		
House District	% Black Pop.	% Black Voters' Choice
19	61.25	100
32	60.05	71.36
52	60.13	100
53	55.83	100
54	56.53	100
55	73.55	100
56	62.14	100
57	68.47	100
58	72.76	100
59	76.72	100
60	67.88	100
67	69.15	100
68	64.56	100
69	64.21	100
70	62.03	100
71	66.90	100
72	64.60	100
76	73.79	100
77	67.04	100
78	69.99	84.84
82	62.14	100
83	57.52	100
84	53.35	100
85	50.08	51.69
97	60.66	100
98	60.02	67.74
99	65.61	82.62
103	65.06	100

2014 General Election		
House District	% Black Pop.	% Black Voters' Choice

19	61.5	100
32	60.3	77.09
52	60.1	76.80
53	56.9	77.78
54	56.73	100
55	73.55	100
56	62.43	63.83
57	68.42	100
58	77.86	100
59	67.03	100
69	67.41	100
67	69.14	100
68	62.55	100
69	64.16	67.36
70	61.83	100
71	64.28	100
72	60.20	100
76	69.54	100
77	73.52	72.32
78	74.26	72.73
82	57.13	100
83	56.92	65.64
84	50.61	100
85	47.94	62.92
97	60.66	100
98	65.22	58.81 ⁷
99	73.35	100
103	69.64	78.0

App. 9. Again, the results are few contests and large margins.

In addition, this Court specifically credited Dr. Lichtman's expert analysis and testimony regarding illustrative districts the ADC had submitted for Montgomery, Jefferson, and Madison counties. *ALBC v. Alabama*, 989 F. Supp. 2d 1227, 1270-71 (M.D. Ala. 2013). These districts included a bare-majority House district in Montgomery County, NPX 300, and a Senate district in Madison County with a bare (46.45%-45.18%)

⁷ A black Independent candidate, Daman Flott, ran as an Independent candidate after having narrowly lost the Democratic primary to Rep. Bracy in 2010. http://www.al.com/news/mobile/index.ssf/2014/11/incumbent_challenged_by_two_op.html . Mr. Flott received 9.74% of the votes.

black total population plurality, NPX 302. This Court credited Dr. Lichtman’s analysis that these districts would provide minority voters “a very good opportunity” to elect candidates of choice. 989 F. Supp. 2d at 1271.

Moreover, actual election return data publicly available fully supports Dr. Lichtman’s conclusions. General election performance is the real test for viability. In primary elections, a large number of white voters participate in the Republican primary with the result of inflating the effective black percentage in the Democratic primary, the primary in which all successful black legislative candidates have participated.⁸

Looking at the individual districts in the ADC’s plans, relatively low black majorities occur in Madison County, where the Court has found that a narrow plurality black plurality paired with significant Hispanic population created a viable district.

Indeed, ADC HD53, with an 11 percent black population, can be seen as honoring the

⁸ Consider the participation in the 2010 Republican and Democratic primaries in counties/paired counties of roughly the same population:

<u>County(ies)</u>	% Black	Votes Cast Dem. Primary	Votes Cast Rep. Primary
Bibb	22.02%	747	3,288
Monroe	41.68%	2,488	2,482
Lowndes/Wilcox	72.48%	8,522	602
Hale/Perry	62.91%	7,160	937
Winston	0.46%	532	3,976

<http://www.alabamavotes.gov/ElectionInfo/ElectionInfo2010.aspx?a=voters>. Republican participation expands rapidly as black majorities disappear.

Similarly, in the 2014 primary elections in Jefferson County, the Democratic primary contest for member of the State Democratic Executive Committee (SDEC) male position attracted 3,797 votes while the SDEC male position in SD46 attracted 460 votes.

http://www.alabamavotes.gov/downloads/election/2014/primary/2014-Pri-CertifiedResults-DemParty_2014-06-13.pdf. See also 2014 primary votes for governor in the Democratic Primary, at http://www.alabamavotes.gov/downloads/election/2014/primary/2014-Pri-CertifiedResults-DemParty_2014-06-13.pdf.

General election results alone are sufficient to determine the choice and effectiveness of the black community. *Lewis v. Alamanace Cnty., N.C.*, 99 F.3d 600, 614–16 (4th Cir. 1996), cert. denied, 520 U.S. 1229 (1997).

black-Hispanic coalition as to which plaintiffs produced considerable anecdotal evidence at trial.

ADC HD 53 in particular illustrates an important factor in terms of district percentages. The more pertinent racial percentages are the non-Hispanic white population and the “any part black.”⁹ ADC HD 53 is 54.8 percent “any part black” and only 31.5 percent non-Hispanic white – a 23 percentage point advantage. *Id.*

Use of these figures in all cases shows that the electoral position of minority citizens is actually greater than it appears in each district to at least some degree. Table 6 provides the relevant black percentages:

Alabama House Districts
Black-Majority Districts

District	NH_Wht	% NH_Wht	AP_Blak	% AP_Blak
019	18800	41.2%	24581	53.9%
032	18542	40.7%	25493	56.0%
045	17472	38.4%	25174	55.4%
052	14796	32.5%	26634	58.5%
053	14431	31.5%	25067	54.8%
054	15080	33.2%	27816	61.2%
055	19010	42.0%	25328	56.0%
056	15878	35.2%	26803	59.4%
057	13848	30.7%	30002	66.6%
058	14335	31.7%	29105	64.5%
059	12470	27.7%	28594	63.4%
060	18394	40.8%	25474	56.5%
067	14065	31.0%	30750	67.8%
068	18524	40.9%	26130	57.7%
069	17828	39.3%	26878	59.3%
070	15128	33.6%	28194	62.5%
071	16909	37.5%	27132	60.2%
072	19773	43.7%	24591	54.3%
076	14801	32.3%	27656	60.3%
077	14141	30.8%	29462	64.2%
078	8456	18.6%	35487	78.2%
082	17170	37.5%	26890	58.7%
083	17860	38.9%	25739	56.0%

⁹ Those persons who identify as “black” or of “two or more races”, one of which is black.

084	18680	40.7%	24327	53.0%
097	18800	40.9%	26098	56.8%
098	16849	36.7%	28011	61.0%
099	16859	36.7%	27112	59.0%
103	14893	32.4%	29104	63.3%

Alabama Senate Districts
Black-Majority Districts

District	NH_Wht	% NH_Wht	AP_Blak	% AP_Blak
18	43733	32.3%	81419	60.1%
19	46861	34.5%	84896	62.6%
20	43091	31.7%	85540	62.9%
23	53349	39.0%	81285	59.4%
24	51144	37.8%	80929	59.8%
26	45956	33.3%	84628	61.4%
28	58829	43.1%	71756	52.5%
33	52508	38.1%	81221	59.0%

Relatively narrow black majorities (and in HD 85, a black plurality), also mark the districts in the eastern Black Belt. Each of these House and Senate districts has elected the choice of the black community consistently for decades. There is no question as to their viability. The ADC matched or raised the black percentage in each district with the exception of HD83, where the reduction is slight (from 56.92% to 55.0%; but only 38.9 percent non-Hispanic white) and, in that region, well within the standard for an effective district. In 2010, Rep. Grimsley in HD85 experienced a serious challenge in a seriously challenging year but won with 51.69 percent of the vote. In 2014, however, Rep. Grimsley won with over 62 percent of the vote. Table 5. Challenges in HDs83 and 84 and in SD28 have been beaten easily at the polls. Id.

In the Western Black Belt, the lowest black percentage is in HD72 (54.0% black, 54.3% Any Part Black, and 43.7% non-Hispanic white). Voters within that district consistently have provided majorities for black candidates in recent general elections. Looking at whole county results shows a consistent pattern:

Election	County	Black Candidate	White Candidate
2010 Auditor			
	Bibb	1729	3646
	Hale	3956	2253
	Perry	3180	1175
	Total	8,865	7,783
2012 President			
	Bibb	2202	6132
	Hale	5411	3210
	Perry	4568	1506
	Total	12,181	10,848
2014 Lt. Governor			
	Bibb	1175	3667
	Hale	3112	1989
	Perry	2584	988
	Total	6,871	6,654
2014 Auditor			
	Bibb	1130	3646
	Hale	3014	1925
	Perry	2559	926
	Total	6,703	6,497

Of course, the district does not contain all of Bibb County. The excluded portions contain heavily white precincts, including Green Pond and Alternative School, which gave large majorities to the white candidates.¹⁰ Thus, the county totals above dramatically *understate* black voting strength in the ADC district.¹¹

¹⁰ In these precincts, the 2008 voting breakdown, for example, was: Green Pond, 158 Obama, 1,293 McCain; Alternative School: 425 Obama, 1,162 McCain. See <http://www.alabamavotes.gov/ElectionInfo/ElectionInfo2008.aspx?a=voters>

¹¹ The district also contains three precincts in Marengo County (Civic Center, Armory and Westside School) which collectively are 50.24 percent black, CE40 at 148, 152) which gave Obama a 51.13% major party majority. The precincts provided in the election returns for Bibb County do not match the census VTDs: there are VTDs for which no election returns are included. It is clear, however, that the named populations are not in ADC HD 72, so that the Obama margins cited above would be *at least* 1,872 larger.

All of the ADC House plan majority black districts in Jefferson County also are equal opportunity districts. Under the 2001 plan, the districts with the lowest black percentages, HDs 53 (55.70%) and 54 (56.73%) consistently proved effective. They were not even contested in the 2010 general election, or in 2014 in HD 54 under the 2010 plan. Table 5. The lowest percentages in the ADC House plan are comparable: HD 45 (54.6% black) and HD55 (55.6% black). Sen. Smitherman testified as to the ability of black candidates to win in at-large contests in the county, Tr. 2, at 12: 10-25 and 13: 1-17, even though the county is only 42 percent black. Similarly, as the “scattergrams” accompanying Dr. Lichtman’s written trial testimony show, for *every* precinct in Jefferson County, the percentage of the vote for the black candidate (Obama) was higher than the black voter registration percentage in that precinct. NPX 324 at 34-39, Appendix II. That is, each point on the chart was above a 45 degree line (not shown) rising from zero percent to 100 percent. This helps explain why the weakest majority black districts (HD 53 and HD 54) were not even contested in the 2010 general election, nor was HD 54, still in Jefferson County, contested in 2014 under the 2010 plan. Table 5.

The Court’s Order requires the ADC plan to contain at least as many majority-black districts as in the State’s plans. The ADC plan contains one more majority-black district in the House than in the 2001 plan and the 2012 plan. The ADC Senate plan includes the same number of majority-black districts as in the 2001 plan and the 2012 plan.

Conclusion

The ADC remand briefs already demonstrate that race predominated in the design of all the black-majority districts because (1) the State established racial floors for each of these districts that the Supreme Court has held lack any legal justification and (2) to meet these unjustified racial targets that the State prioritized in designing the districts, the State also made numerous decisions that further subordinated traditional districting principles, including (a) consistently bypassing whiter areas to add blacker areas to the black-majority districts in the process of repopulating them; (b) moving underpopulated black-majority districts into other underpopulated black-majority districts rather than overpopulated white-majority districts; (c) splitting county boundaries unnecessarily except to meet these racial targets; (d) splitting precincts in race-based patterns to meet these racial targets.

The alternative ADC plans, submitted pursuant to this Court's Order, further confirm the unconstitutional use of race in the State's plans with respect to each black-majority district. The ADC plans demonstrate that the extraordinarily high black-population percentages in the State's plans did not result from the constraints of "natural demography," as the State's post-hoc rationalizations to this Court implausibly assert. They resulted, not surprisingly, from the State's deliberate application of a policy that required the redistricters to re-create the prior black-population percentages in these districts, wherever feasible, and the State's repeated and systematic subordination of traditional districting principles to its higher-order priority of reaching its legally unjustifiable racial floors. In Judge Pryor's view, the "\$64,000 question" that could best be answered by submission of these alternative plans is whether the ADC could meet all the requirements of the Court's Order and produce districts that did not result in the

extremely high black population percentages in the districts. The ADC plans do exactly that, but they demonstrate even more than that. They establish that the State could have designed districts that were far more compact, that split dramatically fewer counties and precincts, and that minimized the number of counties for each district, while fully complying with the State's plus or minus 1% population-deviation standard. Had the State not subordinated traditional districting principles to its legally unjustified priority of meeting the racial floors it unconstitutionally assigned to each district, the State could have complied with the VRA while also respecting traditional districting principles.

The ADC alternative plans thus further confirm that race predominated in the State's design of each black-majority district and that the districts cannot survive strict scrutiny.

Respectfully submitted this 25th day of September, 2015.

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