

EXHIBIT 5

MILLIGAN V. ALLEN
Case No.: 2:21-cv-012921

REBUTTAL EXPERT REPORT OF JOSEPH BAGLEY PHD.
July 31, 2024

I. Summary of Opinions

Plaintiffs have asked me to examine the expert reports of Dr. Adam Carrington and Dr. Wilfried Reilly, submitted June 28, 2024, and to offer my opinion thereon insofar they relate to my own testimony in this case and to my expertise in general. I begin with Dr. Carrington, whose report I find offers the Court little in the way of support for a Senate Factors analysis focused on the state of Alabama, and which does not contradict or diminish any opinions that I have offered in my previous reports in this litigation. I also flag some methodological and substantive concerns with Dr. Carrington's report before moving on to a section-by-section analysis of that report relevant to a discriminatory intent inquiry, followed by an analysis of Dr. Reilly's report relevant to the same. Dr. Reilly's report attempts to justify the unification of Mobile and Baldwin counties at the expense of metropolitan Mobile and the Black Belt, an issue already addressed by this Court. In my opinion Dr. Reilly's argument lacks historical context and fails to deal compellingly with Alabama's present racial and political realities, particularly in its effort to disassociate Mobile and the Black Belt. Finally, I briefly address Mr. Sean Trende's report of June 28, 2024, arguing against his characterization of the state board of education districts.

II. Dr. Carrington's Report

Dr. Carrington argues that "the broader story of the partisan shift in the South, including Alabama, speaks to race as not the exclusive or even dominant factor in enduring voting changes," and that, "Instead, the success of the Civil Rights Movement helped in the ability for other political matters to come to prominence. Those other matters then took on a significant role in the partisan changes among Southern voters, including voters in Alabama." He explains that his "analysis is relevant to the totality of circumstances test required by §2 of the Voting Rights Act of 1965," in that it "appears to touch on the issue of redistricting in relation to at least three of the factors," to wit – Factors 1, 2, and 6.¹

Regarding Senate Factor 1, Carrington contends that "Understanding the significant roles played by issues other than race in Southern and Alabama party affiliations can help to understand whether racial discrimination features in Alabama's political processes."² He argues that what has really motivated Alabama voters, and therefore their chosen representatives, has been a commitment to free market economics, anti-communism, religious identity, and opposition to abortion and LGBTQ rights. Carrington attempts to contextualize this argument by explaining that the New Left took over the Democratic Party in the 1960s and 70s and moved the party in one direction on these issues, while the rise of "Modern Conservatism" allowed the Republican Party to move in the opposite direction, apparently attracting white Alabama voters but not Black Alabama voters.

These arguments do not withstand historical and contemporary scrutiny. First, Dr. Carrington appears to have done very little research or reading related to Alabama's troubled political history, instead focusing on white southern voters, broadly, and their votes in presidential elections. Accordingly, his report fails to explain shifts in political affiliation in Alabama, in terms of race or otherwise, and most particularly since 1990, and it largely ignores the state's long and unrelenting history of race discrimination. Indeed, if

¹ Carrington Report, June 28, 2024, pp. 2-3.

² Carrington, p. 3.

the inquiry is “whether racial discrimination features in Alabama’s political processes,” one would expect to see some discussion of the recent findings of discrimination against state entities or of the Voting Rights Act violations in this litigation.³ Beyond the examples I discuss in my previous reports, consider also that the Town of Newbern has just become the third locality in Alabama recently resubjected, or “bailed-in,” to preclearance under § 3 of the Voting Rights Act because of an admission of intentional discrimination – in this case related to the white town leadership’s refusal to hold elections for decades and its recent failure to recognize the legitimate election of a Black candidate for mayor of the town.⁴ Alabama is the only state where more than one jurisdiction has been resubjected to § 3 preclearance since *Shelby County v. Holder*.

Dr. Carrington’s broader regional approach also leaves much to be desired, even setting aside its failure to account for Alabama politics and history.⁵ He would have us believe that the New Left took control of the Democratic Party in the 1960s and 1970s, for example, an argument that cannot explain phenomena like the elections of Bill Clinton to the presidency in the 1990s or the election of Joe Biden in 2020. Both Clinton and Biden were considered relative racial moderates and are from border southern states below the Mason-Dixon line. Neither would be considered members of the New Left wing of the party. Dr. Carrington also argues that the Civil Rights Act of 1964 was an “anomaly” in Alabama electoral politics despite the fact that Alabama has not voted for a Democratic candidate for president since that election, with the exception of Jimmy Carter from neighboring Georgia in 1976.⁶

Carrington attempts to explain a more “slow motion” shift of voters in Alabama – and he appears here to be only talking about white voters – from the Republican to the Democratic Party, though he cannot explain why white voters in Alabama continued to vote for white Democratic candidates (but not Black candidates of any party) in congressional and local elections into the 1990s and 2000s, nor can he explain the GOP takeover of 2010. Not only are Black Alabama voters and candidates absent from the report (Fred Gray, Hank Sanders, Earl Hilliard, Vivian Figures, e.g.), so too are stalwart white political figures like Richard Shelby, Fob James, Jeff Sessions, Bob Reilly, Mike Hubbard, and Kay Ivey.

Additionally, Dr. Carrington is largely arguing against a strawman in terms of the literature in the history and political science fields. The scholarship on the politics of race in America has long since moved away from a race-only understanding of political change in the 20th and 21st century United States. And while the “southern strategy” thesis has been complicated, it has not been discredited.⁷ Consider this

³ Carrington, p. 2.

⁴ Ralph Chapoco, “Alabama town gets its mayor four years after he wins election,” *Alabama Reflector*, June 26, 2024.

⁵ As I discuss below and in previous reports, the story is really a national one, in terms of the so-called Southern Strategy and its counterpart, the Northern Strategy.

⁶ Carrington, p. 33.

⁷ See, for example, Joseph E. Lowndes, *From the New Deal to the New Right: Race and the Southern Origins of Modern Conservatism* (New Haven: Yale University Press, 2009); Joseph Crespino, *Strom Thurmond’s America* (New York: Hill and Wang, 2012); Joseph Crespino, *In Search of Another Country: Mississippi and the Conservative Counterrevolution* (Princeton: Princeton University Press, 2009); Kevin M. Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton University Press, 2005); Glenn Feldman, *The Great Melding: War, the Dixiecrat Rebellion, and the Southern Model for America’s New Conservatism* (Tuscaloosa: University of Alabama Press, 2014); Kari Frederickson, *The Dixiecrat Revolt and the End of the Solid South, 1932–1968* (Chapel Hill: University of North Carolina Press, 2001); Thomas Sugrue, *Sweet Land of Liberty: The Forgotten Struggle for Civil Rights in the North* (New York: Random House, 2008); Thomas Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton: Princeton University Press, 2010); Michelle Nickerson and Darren Dochuk, eds., *Sunbelt Rising: The Politics of Space, Place, and Region* (Philadelphia: University of Pennsylvania Press, 2011).

passage from historian Joseph Crespino from his 2012 book on Strom Thurmond and political change in America:

The southern strategy narrative is not wrong. Conservative Republicans did pursue disaffected southern Democrats who represented a mother lode of votes that they had to tap in order to win influence in the GOP and compete on the national level. Yet by isolating white southerners as carriers of the racist gene in the modern GOP, the southern strategy narrative actually *understates* the role of racial reaction on the right. It is not as though conservative Republican Party builders held their noses or ignored their better angels while recruiting white southerners. Most of them were as convinced as were their recruits about the presence of Communists inside the civil rights movement. They were also certain that liberal opponents were merely using civil rights to push what they saw as a broader socialist agenda of labor and economic rights that threatened business interests. Their embrace of someone like Strom Thurmond grew naturally out of their larger political worldview, one that consistently ignored or dismissed the moral imperative of the modern civil rights struggle. In addition, these conservative Republicans pursued not just white southerners but also disaffected Democrats in the North and the West – many of whom were in revolt against the New Deal coalition over how liberal social reforms were transforming the racial composition of their neighborhoods, workplaces, and schools.⁸

Dr. Carrington, in other words, insists that he has drawn “heavily” on scholarship in the history field but does not seem to be aware of some of the most important and most recent sources therein.⁹ He does cite to the historian Glenn Feldman (identified as “Bruce Feldmen” in the notes and as “Glen Feldmen” in the body), a very important historian of Alabama politics and race. He cites to a book that Professor Feldman wrote about the years 1865 to 1944 in support of his claim that scholars have moved away from a focus on race in southern political realignment.¹⁰

In a more recent book focused on the much more recent past – *Painting Dixie Red: When, Where, and Why the South Became Republican* – Professor Feldman writes, “It is about race – there can be no questioning or minimization of that basic premise. The South’s partisan realignment from Democratic to Republican is about race,” he concludes, adding that, yes, it involves more, especially what he calls a “politics of emotion” at the heart of white voters’ stances on other issues, including a few of the ones that Dr. Carrington is examining.¹¹ Which is to say, one can recognize, as scholars have been doing since around 2000, that race was the dominant force in partisan realignment while at the same time understanding that other factors were also involved.

In the political science field, relevant to Alabama, Carrington cites to Professors Merle and Earl Black. The Blacks observed, 22 years ago, that “modern southern politics involves more than its obvious racial divisions.” Apart from noting that racial division was an “obvious” part of modern southern politics, this quotation, presented alone, ignores what the Blacks had to say about Alabama specifically, where, they explained, the Republican Party’s strategy at the time was to “sweep the white conservatives and carry majorities of the white moderates” in order to affect a more complete racial-political polarization.¹²

⁸ Crespino, *Strom Thurmond’s America*, pp. 5-6, emphasis added.

⁹ To bolster his claim that scholars have relied exclusively or too heavily on race, he cites to an article from 1992 in the journal *Geographical Review*, another from 1958.

¹⁰ Carrington, p. 6.

¹¹ Glenn Feldman, *Painting Dixie Red: When, Where, and Why the South Became Republican* (Gainesville: University of Florida Press, 2011), p. 3, emphasis added.

¹² Carrington, p. 7; Merle and Earl Black, *The Rise of Southern Republicans* (New York: Belknap Press of Harvard, 2002), p. 317.

Other political scientists have made similar observations regarding the state. Patrick Cotter, Professor Emeritus of Political Science at the University of Alabama, from the critical vantage point of the early 2000s has argued that, according to the prevailing view at the time, race was the “most important” of the “social issues” that was driving white Alabama voters to the Republican Party. “According to this view,” he wrote, “Republicans, whether they like it or not, have drawn support from voters who harbor antiblack sentiments or who view the Democratic Party as too influenced by black political groups.” Cotter explained, “For most of the last decade, a clear plurality of white Alabama citizens have identified themselves as Republicans. During this same period, Democratic Party identification among blacks has generally exceeded 80 percent.” One result of this, Cotter indicated, was that Republican candidates made “little effort to gain black votes.” Furthermore, Cotter found that neither party had made “a concerted effort to reduce the racial polarization found in the state’s politics.”¹³

Beyond this flawed engagement with the literature, Dr. Carrington insists that he draws on primary sources. The only examples that I see in his report, however, are presidential inaugural speeches and party platforms, which are not especially helpful in explaining Alabama’s political realignment at the state level. Certainly, these are sources that historians would engage, but when attempting to explain state-level political change, you would expect to see this alongside contemporaneous statements by state leaders or news coverage or some other relevant source. If these were included, one might conclude, as I did in my previous reports, that race drives political alignment.¹⁴

Finally, regarding Senate Factor 1, I incorporate herein all my previous testimony and reports concerning racial discrimination by the State of Alabama. Given quite recent findings of discrimination on the part of the state, it seems disingenuous to discount the role of race in politics in Alabama. Most obviously, the state has twice been found in this litigation to have likely violated the Voting Rights Act in its congressional redistricting. I have also testified about findings of discrimination against Black residents of the Black Belt in areas where septic systems have long been failing and residents cited for noncompliance at the same time. And the state has been cited by the U.S. Department of Transportation for closing drivers’ license offices throughout the Black Belt, with a discriminatory impact if not perhaps discriminatory intent.

As I testified about previously in this case, in 2016, the U.S. Department of Transportation found that the state of Alabama violated Title VI of the Civil Rights Act for the closure of drivers’ license offices in the Black Belt.¹⁵ Governor Robert Bentley attempted to cast the action as strictly budget related. But a civil suit subsequently filed by the former head of the Alabama Law Enforcement Agency (ALEA), Spencer Collier, revealed that the process leading to the closures was replete with procedural and substantive departures that suggest discriminatory intent. For example, Collier testified that the idea of budget cuts for ALEA originated as retribution for his bypassing the legislature and raising the fee for obtaining a license to increase funding for his agency.¹⁶

Collier further explained that, instead of following the normal procedure for budget discussions, including discussion of any proposed cuts, he was required to meet with the Governor’s advisor and mistress, Rebekah Mason, who dictated to him that offices should be closed to “get the attention” of certain legislators and in a way that did not harm the governor’s political allies, which is to say white legislators.

¹³ Glenn Feldman, *Painting Dixie Red: When, Where, and Why the South Became Republican* (Gainesville: University of Florida Press, 2011), p. 3, emphasis added.

¹⁴ See Bagley Report, May 17, 2024, p. 17.

¹⁵ Melanie Zanona, “Feds: Closing driver’s license offices in Ala. violates civil rights,” *The Hill*, Dec. 28, 2016.

¹⁶ Deposition of Spencer Collier, Nov. 29, 2016, *Greater Birmingham Ministries v. State of Alabama*, 2:15-cv-02193-LSC, text transcript p. 61.

To that end, an office initially tapped for closure in former (white) Senator Gerald Dial's district was removed from the final list. Concerned that closing the offices in the overwhelmingly Black areas would lead to a Civil Rights Act violation, Collier insisted that an "objective protocol" be established to justify the closures.¹⁷ He explained:

In that meeting, [Mason] recommended we need to get the attention of legislators that were not supporting the governor's budget and tax increase. We just knew you cannot operate that way, you cannot do that. I didn't – I didn't give her a lot, I didn't tell her, no, we can't. But we walked out, I looked at my chief administrator, I looked at my executive counsel, and I said go find a neutral and arbitrary method to come up with driver's license closures.¹⁸

A threshold was then established that masked the closures under a numerical veneer. The resulting savings were reported to be a mere \$200,000. The state reversed the decision in part after the finding by the DOT that the closures discriminated against Black people in the Black Belt.¹⁹

Regarding Senate Factor 6, Dr. Carrington concludes that "the appeals that have effectively shifted partisan leanings in the South include appeals to economic, foreign policy, and social issues not focused on race."²⁰ This misreads the inquiry directed by Senate Factor 6, in my opinion, which asks simply if campaigns have been characterized by racial appeals. Setting that aside, Carrington fails to make the case that Alabama voters were not motivated by racial appeals. Lastly, I incorporate herein my testimony and reports regarding racial appeals, including Judge Roy Moore insisting that Alabama would be better off in slavery times, Senator Tommy Tuberville arguing that "inner city" teachers are incompetent, Representative Mo Brooks lamenting a "war on whites," and Representative Chris Pringle arguing that if you are "white like [him]" everyone blames society's problems on you.

I proceed now to a more thorough analysis of Dr. Carrington's report, broken down by the sections therein. I will then discuss my opinion of Dr. Reilly's report.

III. Carrington Report – Section-by-Section

Dr. Carrington begins by explaining that parties are malleable coalitions held together by core sets of policy issues, which are, themselves, ever shifting. He argues that a singular focus on race blinds us to other contributing factors, though as I noted above, the dominant literature in history and political science has acknowledged this for about 20 years. Scholars still recognize the primacy of race even while complicating a singularity of race. Dr. Carrington gives the impression that the prevailing scholarship credits only race, but this has not been the case for some time.

Carrington cites to the political scientists Shafer and Johnston's 2006 book, *The End of Southern Exceptionalism: Class, Race, and Partisan Change in the Postwar South*, in which the authors argue that V.O. Key was wrong [in the 1950s] to argue that race was the dominant factor in shifting partisan affiliation and that a class reversal was instead key – poorer voters flipped from voting Republican to voting Democrat

¹⁷ John Sharpe, "Rebekah Mason suggested closure of DMV offices in majority black counties, report shows," *Al.com*, April 8, 2017; Tierney Sneed, "Alabama Luv Guv's Impeachment Probe Reveals Political Motivation Behind DMV Closures," *Talking Points Memo*, April 11, 2017, Bentley Impeachment Report linked therein.

¹⁸ Deposition of Spencer Collier, Nov. 29, 2016, *Greater Birmingham Ministries v. State of Alabama*, 2:15-cv-02193-LSC (N.D. Ala., 2017), p. 61.

¹⁹ Sharpe, "Rebekah Mason suggested closure of DMV offices in majority black counties."

²⁰ Carrington, p. 3.

and vice-versa.²¹ This fails to account for the fact that poor (and rural) white Alabamians vote overwhelmingly Republican. It is also brought into question by a volume edited by Crespino and published in 2010 – *The Myth of Southern Exceptionalism*. The authors therein argue that there was no southern exceptionalism to begin with and that “white racial innocence” in the north and in the west is historically unfounded. Rather racial discrimination in employment, housing, education, and other areas is as endemic to America in general as it is to the South in particular.²²

Echoing Shafer and Johnston, Carrington refers often to “working class voters,” which seems to refer only to white working-class voters in Alabama. This is particularly true when he begins discussing history in earnest. He asserts that the Democratic Party became a party of poorer white voters and Black voters during and after the New Deal, despite the fact that, in the time under consideration, Black citizens of Alabama could not even register to vote, much less elect candidates in Alabama.²³ At the same time, the Democratic Party in Alabama, under the banner of “white supremacy for the right,” was still controlled by hyper-wealthy landholders in the Black Belt and wealthy industrialists in Birmingham and other cities.

Carrington then overstates the impact of the rise of the New Left. He locates the nexus for the emergence of the faction on college campuses in the 1960s and in documents like the Port Huron Statement. The New Left broke from the Old Left of the New Deal and, later, Great Society eras on civil rights, on the Containment policy and the war in Vietnam, and on real economic equality. Rather than discuss the latter tenet, however, Carrington suggests that the New Left abandoned the Old Left’s commitment to “working class” solidarity or class struggle. This fails to adequately account for the fact that it was the fervent racist backlash of working-class white voters and their neo-populist spokesmen in the 1950s that was largely responsible for the New Left’s reevaluation of “working class” politics. The New Left continued to focus on the economic issues of working class Americans; but, it also refused to continue to look the other way from the politics of white supremacy. Furthermore, scholars have moved beyond a focus on white, male, college-educated radicals of the movement and have included also Black Power advocates and leaders of the second-wave feminist and gay liberation movements, to name just a few.²⁴

In his 2005 book, for example, the historian Van Gosse defines the New Left as “a series of social movements [that] surged across America, radically changing the relationship between white people and people of color, how the U.S. government conducts foreign policy, and the popular consensus regarding gender and sexuality.”²⁵ Whether we take this view of the New Left’s commitments, Tom Hayden’s more narrow view (civil rights, peace and disengagement, and economic equality), or Carrington’s (somewhere between the two but with race removed), it would be difficult to argue that Jimmy Carter or Bill Clinton were truly representative of the New Left. While somewhat progressive on some issues like civil rights and human rights, Carter’s was a decidedly moderate administration. Clinton was responsible for policies now widely considered to have been responsible for an increase in mass incarceration, compared hip-hop artist Sister Souljah to white supremacist David Duke, and withdrew his nomination of Lani Guinier for Assistant Attorney General for Civil Rights after white conservatives dubbed her a “quota queen,” a racial appeal combining Reagan’s “welfare queen” trope with the racially loaded buzzword *quota*.²⁶

²¹ Carrington, p. 6.

²² Matthew Lassiter and Joseph Crespino, Eds, *The Myth of Southern Exceptionalism* (Oxford: Oxford University Press, 2010).

²³ Carrington, p. 8.

²⁴ Van Gosse, *The New Left: An Interpretive History* (New York: Palgrave MacMillan, 2005), passim.

²⁵ Gosse, *The New Left*, p. 2.

²⁶ Julian Zelizer, *Jimmy Carter*, The American Presidents Series (New York: Holt/Times, 2010); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Jim Crow* (New York: The New Press, 2012), pp. 70-72; Dani McClain, “How Sister Souljah Went From Radical Activist to

More importantly, no one could argue as much about the Democratic Party in Alabama. Carrington insists that working-class voters rejected the McGovern coalition's focus on issues like gender, gun regulation, and the environment. But this ignores the fact that "working class" Black voters in Alabama were only then just beginning to elect candidates of choice, in the Democratic Party, at the local and state level thanks to enforcement of the Voting Rights Act. Likewise, both working-class white voters, and wealthier white voters, in Alabama were enthralled by the racial politics of John Patterson and George Wallace and stuck by the latter, a Democrat till the end, who was repeatedly elected Governor into the 1980s. While Wallace tempered his positions on segregation and race when it became politically expedient, he and the state legislature continued to engage in racial discrimination, including in redistricting.²⁷

Carrington then turns to the rise of modern conservatism. He presents William F. Buckley, who used his *National Review* to condemn communism and to extol the virtues of Christianity, "free market" economics, and states' rights. Both "states' rights" and "free market economics" have been used as coded racial appeals for plainly racist policies. Beyond this, we should fully appreciate Buckley's role in realignment, as explained by the biographer that Carrington cites in his report, Carl T. Bogus. Bogus writes, "It was the presidential campaigns of Barry Goldwater in 1964 and, most especially, Richard Nixon in 1972, that exploited resentment over civil rights and caused the South to shift from the Democratic to the Republican Party, but it was *National Review*'s raw position on race in the late 1950s that made that possible by placing conservatives in opposition to civil rights. And *National Review*'s position flowed not from any preexisting conservative philosophy," Bogus concludes, "but from Buckley's personal background." Buckley, for example, argued that southern whites were being "responsible," meaning they were doing the right thing, when "refus[ing] to enfranchise the marginal Negro."²⁸

Buckley also gave a megaphone to James J. Kilpatrick, who wrote articles for *National Review* in opposition to civil rights measures, especially the Civil Rights Act of 1964 and Voting Rights Act of 1965, which Kilpatrick deemed unconstitutional while arguing that Black people were an inferior race incapable of contributing to civilization. Bogus explains that Kilpatrick's views "generally reflected" those of *National Review* and of Buckley. The publication thrived, according to Bogus, "by wrapping racism with ostensibly highbrow arguments about constitutional law and political theory, thereby appealing not only to self-confessed racists but to those who disliked the civil rights movement but believed themselves to be untainted by racist impulses." Buckley himself penned an editorial in which he argued that the "white community" in the South was "entitled" to maintain segregation and disenfranchisement because it was "the advanced race."²⁹

Carrington's focus on Buckley is telling, then, in that he attempts to do with Buckley's record what he is doing with this report as a whole – present the tertiary issues involved in partisan realignment while diminishing key issues like racial discrimination and polarized voting. Carrington turns then to Barry Goldwater, who, not coincidentally, voted against the Civil Rights Act before carrying states like Alabama, and who embraced the use of "law and order" as a racial code phrase. The culmination of the rise of modern conservatism, then, is Ronald Reagan, who distanced himself from then-perceived racial moderates like George H.W. Bush, used racially coded appeals like the "welfare queen," and rolled back civil rights

Scapegoat to Blockbuster Novelist," *The Nation*, Dec. 26, 2022; Lani Guiner, *Lift Every Voice: Turning a Civil Rights Setback Into a New Vision of Social Justice* (New York: Simon and Schuster, 1998).

²⁷ See Bagley Report, May 17, 2024, pp. 8-9.

²⁸ Carl T. Bogus, Buckley: *William F. Buckley and the Rise of Modern American Conservatism* (New York: Bloomsbury, 2011).

²⁹ Bogus, Buckley: *William F. Buckley and the Rise of Modern American Conservatism*; see also, William P. Hustwit, *James J. Kilpatrick: Salesman for Segregation* (Chapel Hill: University of North Carolina Press, 2013).

enforcement and expenditures at the federal level. One must also acknowledge that part of the context for the time period in question, especially for Alabama, was the emergence of Black voting power in the Democratic Party, the formation of coalitions, and the emergence of Black caucuses. More important, though, than the sanitized nature of this narrative, especially given that Carrington repeatedly refers to the “slow motion” nature of the partisan shift at issue, is Carrington’s failure to address or analyze any figures involved in Alabama politics.

Carrington turns next to “civil rights and voting patterns in the South.” He insists that “One cannot reduce the shift in political loyalties in the South either to one election or to one issue set like race,” arguing that “the fuller story spans close to a century of American history.”³⁰ A quotation from the Republican political strategist Lee Atwater, in 1981, sets forth how other “issue sets” were making their way into GOP campaigning. Atwater, who ran Reagan’s 1984 campaign and Bush’s 1988 campaign (both of which featured racial appeals) and who once helmed the Republican National Convention, explained:

You start out in 1954 by saying, “Nigger, nigger, nigger.” By 1968 you can’t say “nigger” – that hurts you, backfires. So you say stuff like, uh, “forced busing, states’ rights,” and all that stuff, and you’re getting so abstract. Now, you’re talking about cutting taxes, and all these things you’re talking about are totally economic things and a byproduct of them is, blacks get hurt worse than whites.... “We want to cut this,” is much more abstract than even the busing thing, uh, and a hell of a lot more abstract than “Nigger, nigger.”³¹

As I explain in my previous reports and testimony in this case, the culmination of the shift of white voters in Alabama from the Democratic to the Republican Party accelerated significantly as backlash to President Obama’s election fueled an increase in racially polarized voting and Republican strategists targeted white Democrats – culminating in the 2010 state legislative takeover. At that very moment, Republican lawmakers were caught on tape making plainly racist remarks and trying to quash ballot initiatives in order to drive down Black voter turnout.³² Dr. Carrington does not address these critical Alabama-specific episodes in his report.

When Dr. Carrington does turn to Alabama finally, he notes that Al Smith nearly lost the 1928 Democratic primary for president in Alabama, not because of “race-based issues, since Smith was more open than most Democrats of the time to African-American civil rights,” but because Smith was Roman Catholic, and “This point caused consternation in the very Protestant Southern portion of the Democratic Party.”³³ This ignores the fact that anti-Roman Catholicism was intimately connected to racism in the Deep South at that time. The newly invigorated Ku Klux Klan in Alabama was both anti-Catholic and anti-Black, in addition to being enormously influential in electoral politics.³⁴

Carrington next examines areas where the Republican Party did well in the South, looking at the 1952 presidential election, in which the City of Mountain Brook went for Eisenhower over Adlai Stevenson at a rate of 4-1. Eisenhower also performed somewhat well in Jefferson, Mobile, and Montgomery Counties. Carrington argues that this marks the beginning of metropolitan Republicanism in Alabama. He describes

³⁰ Carrington, p. 13.

³¹ Michelle Brattain, “Forgetting the South and the Southern Strategy,” *Miranda*, Dec. 1, 2011, p. 8; see also (though it was published at his death and long before the revelation of this quotation), Michael Oreskes, “Lee Atwater, Master of Tactics For Bush and G.O.P., Dies at 40,” *New York Times*, March 30, 1991.

³² Bagley Report, Dec. 10, 2021, fn. 49, p. 16.

³³ Carrington, p. 14.

³⁴ Wayne Flynt, *Alabama in the Twentieth Century*, pp. 40-45.

these as “urban areas.”³⁵ Mountain Brook was founded for the expressed purpose of being an all-white city, which it largely remains. The city avoided early school desegregation litigation because it formed its own school system for that purpose and, crucially, before Jefferson County was subject to its own court order, and there were no Black children in it. Too, the aforementioned counties were all home to cities wherein the threat of possible desegregation and Black voter registration was considerably higher than in the Black Belt at that time. White flight to suburban communities like Mountain Brook was increasing.³⁶

Carrington pivots back to the election of 1948, correctly noting that Alabama voters who went for the Dixiecrat Strom Thurmond “returned to the fold” of the Democrats.³⁷ He fundamentally misunderstands the significance of that election, however, dismissing the Dixiecrat phenomenon as an anomaly, as he does the 1964 elections. The scholarly consensus in history has never been that either the 1948 or 1964 elections delivered, wholesale and instantly, white southern votes to the GOP. Nor does it make sense to dismiss these elections as irrelevant. Scholars like Emory’s Crespino and the University of Alabama’s Kari Frederickson understand that the Dixiecrat movement was indicative of the very “slow motion” changes in partisan realignment.³⁸

Thurmond himself moved to the GOP not long after, and Goldwater carried the core set of issues that Thurmond had championed into the Republican fold and into the suburbs of the Sunbelt. Nixon and, later, Reagan, would capitalize on these phenomena. The Dixiecrats returned to the Democratic Party because their point had been made – theirs was not to be the party of civil rights. Until it became that, explicitly, with the passage of the Civil and Voting Rights Acts.³⁹

Carrington comes back to the 1964 election and argues that the Alabama congressional delegation flipping from 8 Democrats to 5 – 3 Republican was fleeting. It was hardly anomalous, though. Democrats won back a 5 – 3 majority in 1966, which fell to 4 – 3 after the state lost a seat, in 1972, and as Black candidates of choice were first being elected to the state legislature. This climbed to 5 – 2 in 1982 but fell back to 4 – 3 in 1992. It flipped back to the GOP, 5 – 2, in 1996, not coincidentally when Earl Hilliard became the first Black representative in the U.S. House since Reconstruction, thanks to the court-ordered creation of a majority-Black district to comply with the Voting Rights Act. None of the Democrats (or Republicans) elected to Congress in the nearly a century between the End of Reconstruction and 1992 were Black.⁴⁰ Nor have Black candidates won any elections outside of the majority-Black CD 7 after 1992.

Carrington makes the point that Nixon lost Alabama, though this was in the context of Wallace running as a third-party candidate (and Nixon laundering money into the gubernatorial campaign of Wallace’s state-level opponent, Albert Brewer). Carrington explains that Wallace did better in rural areas than in “metropolitan and later suburban areas” where the GOP was building strength. Setting aside that suburban areas are part of metropolitan areas, it is critical to note here that Wallace won reelection as governor, with support from rural, urban, and suburban areas, well into the 1980s. In other words, it is not as if Wallace failed to gain substantial support from white voters in metropolitan areas as well as in rural

³⁵ Carrington, p. 15.

³⁶ Kyra Miles, “Echoes of the Past as Overwhelmingly White Mountain Brook Debates Diversity,” *Birmingham Watch*, Aug. 7, 2021; Bagley, *The Politics of White Rights*, pp. 96, 154, 175-78, 206.

³⁷ Carrington, pp. 15-16.

³⁸ See, e.g., Kari Frederickson, *The Dixiecrat Revolt and the End of the Solid South, 1932-1968* (Chapel Hill: University of North Carolina Press, 2002), *passim*; Crespino, *Strom Thurmond’s America*, pp. 7-8.

³⁹ *Id.*

⁴⁰ James Blacksher, et al., “Voting Rights in Alabama, 1982-2006,” 17 *Southern California Review of Law and Social Justice* 2, Spring 2008: pp. 249-81, pp. 273-81.

areas. His refusal to follow others in an exodus to the GOP also helps explain, as I discuss in my report, white Alabamians' belated switch to the GOP, beginning in the 1990s.⁴¹

Carrington next argues that rural areas stayed loyal to the Democratic Party, while the metropolitan areas were slowly becoming Republican. Carrington seems to suggest that white people in Alabama's cities were more racially progressive. Such a claim would have to ignore, among many other things, racially motivated bombings in "Bombingham," the lawsuit filed against the Civil Rights Act by Birmingham restaurateur Ollie McClung, the organization of Citizens Councils in all of the state's major cities, Jim Clark and others' violent resistance to the Selma voting rights campaign and subsequent marches, white flight to suburbs, the City and County of Mobile's resistance to complying with the Voting Rights Act in the 1970s and 1980s, and violence and unrest in schools that were desegregated, including Phillips in Birmingham, Vigor and Murphy in Mobile, Jefferson Davis in Montgomery, and Baker in Huntsville. More on this below.⁴²

Carrington also argues that Alabama's metropolitan areas during these decades saw an "influx of persons immigrating [sic] from other parts of the country, including the Midwest, bringing with them more GOP votes and less segregationist attitudes. Thus, Key observed [in the 1950s] that, even in the deep South, it was true that at times 'urbanism apparently outweighed racial restraints.'" Historical consensus now acknowledges that racism and segregation are American problems, not uniquely southern ones. Not only does this problematize Carrington's argument here, but in addition, Huntsville is probably the only city in the state that has seen the kind of influx of non-southern population that would affect a wholesale change in character or attitudes. Currently, Huntsville and Madison County, where there continues to be racially polarized voting, Black elected officials represent only Black majority districts. And, as my report notes, in the last decade, a federal district court concluded that the Huntsville city school system has continued to discriminate against its Black students.⁴³

Carrington next contends that "after the era of Civil Rights," there was a "further normalization of Southern voting patterns." He argues that southern rural voters began to vote Republican, bringing the South in line with the rest of the country, where cities represented the traditional Democratic strongholds. This ignores the enfranchisement of Black voters in both the Black Belt and in cities like Birmingham, Montgomery, Huntsville, and Mobile, where white people fled to the suburbs to avoid integration. The one metropolitan area where white flight was relatively quick and thorough, Birmingham, is a dramatically divided city-suburb between Black Democratic voters and white Republican voters.. Its surrounding county, Jefferson, went for Republican candidates for President until 2008 when President Obama flipped the county for the first time since 1952 (Vivian Figures lost the county in the concurrent senatorial election to Jeff Sessions). In two of the others, Mobile and Montgomery, Black voters have only very recently been able to elect a Black mayor – Sam Jones in Mobile in 2005 (Jones won reelection in 2009 but was defeated by a white candidate in 2013) and Steven Reed in Montgomery in 2019. Huntsville, where the Black population has always been lower relative to the other three cities, has not yet elected a Black mayor and as noted above remains subject to school desegregation federal court oversight (as does Jefferson County).⁴⁴

Additionally, the "southern distinctiveness" that Dr. Carrington says preceded this change in no way accounts for Black disenfranchisement in the South. In order to make any sense of this, we have to believe that white southerners were only voting in a "dominantly race-conscious manner" prior to and

⁴¹ Bagley, Initial Report, pp. 10-11.

⁴² Carrington, p. 14; Joseph Bagley, *The Politics of White Rights*, passim.

⁴³ Bagley Report, Dec. 10, 2021, pp. 23-24.

⁴⁴ Bagley Report, Dec. 10, 2021, pp. 24-28; John Sharp, "[Where are the candidates? In newly-drawn Alabama congressional district, no one has signed up yet to run](#)," *Al.com*, Oct. 21, 2023.

immediately after the passage of the Civil and Voting Rights Acts, and that race really ceased to matter after that. As the dean of Alabama historians, Professor Wayne Flynt, explained, when Mike Hubbard was running for reelection in 2014:

What Mike (Hubbard) has done is spend probably 250 or a half-million dollars in a very good pre-campaign blitz of Lee County in which he's basically running against Barack Obama. ... The most fundamental thing about Alabama is race and they know that. And in a day when you can no longer talk like George Wallace did because 70-80 percent of African Americans are registered to vote and it hurts the state and it hurts you with people like the Business Council of Alabama and corporate types. What you can do is you use Obama as a metaphor and everybody understands what that's about. It's not about Obama and it's not about race in Washington and it's not about race in America. But it's about race in Alabama. And that's what you're voting for if you vote against Mike Hubbard.⁴⁵

Dr. Carrington argues that southern segregationists were in a “weak position” in the late 1960s and 1970s because the civil rights movement “won out.” No serious scholar in the history discipline would make the argument that the civil rights movement “won out” with the passage of the Civil and Voting Rights Acts. Those moments were, in many ways, only the beginning of the struggle, particularly when it came to Black voters electing candidates of choice. Alabama, for example, would not see its first Black state legislators elected until the following decade, would not see more than a token number in that body until the 1980s, and would not see a Black representative in Congress until the 1990s – and all of this was achieved only through persistent organization, litigation, and federal oversight. Alabama has to this day only ever elected two Black individuals to statewide office. And to the extent that (some) public schools were finally integrated via federal oversight and litigation in the 1970s and 1980s, many have since resegregated, others remain under court orders today, and many areas avoided integration altogether through suburban white flight or segregation academies. Finally, as noted elsewhere, the state legislature is controlled today by a nearly all-white supermajority.⁴⁶

Dr. Carrington next engages a report entered in this litigation by Dr. Kari Frederickson, a preeminent historian of Alabama and American political history and race who has spent almost all of her career at the University of Alabama.⁴⁷ He insists that Dr. Frederickson’s analysis “relies heavily on the GOP’s ‘Southern Strategy’ as inherently and perpetually grounded in white supremacy.” This misses the point. First, as I discuss in this report and in my previous reports, the Southern Strategy thesis has been problematized. But its core tenet is still widely accepted, and it need not involve “white supremacy.” Racial appeals and a race-based political strategy do not indicate an appeal or a commitment to “white supremacy.” What national strategists learned was that appealing to race in the South (and in then-overwhelmingly white suburbs, *nationally*) could win over disaffected white voters following the national Democratic Party’s embrace of civil rights. Much of this was achieved between 1968 and the 1990s via coded racial appeals.⁴⁸

Carrington attempts to dismiss the Nixon campaigns and administrations for their role in racial realignment, citing to Nixon’s support for civil rights measures, statements about equality, and enforcement of school desegregation. This ignores Nixon’s embrace of the coded appeal to “law and order” that not only signaled to white voters that he would not push any farther on desegregation than existing jurisprudence and policy required, it also, in his rhetoric, became a dog whistle for crackdowns on urban unrest, which is

⁴⁵ Paul Gattis, “6 opinions from Wayne Flynt on Alabama politics, the Democratic Party, Mike Hubbard, Parker Griffith and Robert Bentley,” *Al.com*, May 15, 2014.

⁴⁶ Bagley Report, Dec. 10, 2021, pp. 10-14.

⁴⁷ By contrast, Dr. Carrington’s work has focused on national electoral politics and is anchored in his home of Hillsdale College, Michigan.

⁴⁸ See fn. 7, *supra*.

to say Black frustrations. It also fails to account for the Nixon Justice Department's abrupt about-face in school desegregation litigation and Nixon's firing of Leon Panetta from the Office of Civil Rights for his refusal to decelerate the pace of desegregation. I discuss these and other examples of Nixon's payoff to his white voters in my book, as does William Hustwit in his recent book on the pivotal *Alexander v. Holmes* litigation.⁴⁹

Dr. Carrington similarly dismisses Dr. Frederickson's discussion of the Reagan campaigns and administrations by noting that President Reagan signed the 1982 Voting Rights Act extension (which he initially opposed and only acquiesced to signing under pressure from Congress and civil rights leaders). Reagan also rolled back or slowed federal civil rights enforcement and used coded racial appeals (like "states' rights," which he endorsed at near the burial site of slain civil rights workers in announcing his initial campaign).⁵⁰

Finally, as I note above, Nixon's southern strategy is now understood as more of a national strategy emphasizing, in the words of historians Matthew Lassiter and Kevin Kruse, "populist appeals to the 'silent majority' and pledges to protect white middle-class neighborhoods from court-ordered busing, low-income housing, urban crime, and liberal welfare programs that allegedly sent their tax dollars to the inner-city poor." They continue, "President Nixon made the same promises in the suburbs of Atlanta and Charlotte that he did outside Los Angeles and Detroit: his administration would enforce 'color-blind' policies that guaranteed equal opportunity to individuals but would also defend 'neighborhood schools' and exclusionary residential zoning because 'forced integration of the suburbs is not in the national interest.'" ⁵¹ Nixon also told his Civil Rights attorneys in the Justice Department to "quit bragging" about school desegregation and ousted his Housing and Urban Development secretary for his aggressive enforcement efforts vis-à-vis the Fair Housing Act.⁵²

Dr. Carrington next makes a few misrepresentations of my previous testimony in this case. He asserts that I "interpret advocacy for 'school choice' along with opposition to the teaching of critical race theory in primary schools as racially motivated rather than coming from a commitment to bettering education for all children." He adds that I see "a belief in greater border security regarding immigration . . . as signaling racial animosity." The relevant passages in my third report examine recent racial appeals. For example, I explain how a recent candidate for Congress in Alabama has "described the situation at the U.S. border with Mexico as a 'full-on invasion'" and has referred to a "surge of crime and enemy agents flooding our border" and the "sheer number of non-taxpayers who are coming here relying on our social services." These comments were posted online alongside "a news article about an undocumented immigrant, whose mugshot was featured, allegedly raping an 'incapacitated teen' (that charge was later dropped)."⁵³ These in my opinion are racial appeals.

I note that the same candidate has stated that they support school choice "*because*, in her own words, students 'may be learning critical race theory.'" The push to eliminate the teaching of this chimera

⁴⁹ Bagley, *The Politics of White Rights*, pp. 160-62; William T. Hustwit, *Integration Now: Alexander v. Holmes and the End of Jim Crow Education* (Chapel Hill: University of North Carolina Press, 2019), passim.

⁵⁰ Pedro Noguera and Robert Cohen, "[Remembering Reagan's Record on Civil Rights and the South African Freedom Struggle](#)," *The Nation*, Feb. 11, 2011; "[Remembering President's Reagan Civil Rights Legacy](#)," *Tell Me More*, NPR, Feb. 4, 2011.

⁵¹ "The Bulldozer Revolution: Suburbs and Southern History since World War II," *Journal of Southern History* 75.3 (2009): pp. 691-706, at pp. 699-700.

⁵² Bagley, *The Politics of White Rights*, p. 162; Nikole Hannah-Jones, "Living Apart: How the Government Betrayed a Landmark Civil Rights Law," *ProPublica*, June 25, 2015.

⁵³ Bagley Report, May 17, 2024, pp. 29-31.

in Alabama has not been limited, as Dr. Carrington suggests, to “primary schools.” It has included a ban on teaching alleged “CRT” in state agencies and institutions, including those of higher learning. As to another candidate I note that Black lawmakers staunchly opposed the CHOOSE Act that the candidate sponsored and quote their statements in opposition, again, in describing recent racial appeals under Senate Factor 6.⁵⁴ I do not think it follows from this that I interpret any calls for school choice or border security as somehow imbued with “white supremacy.”

In the next section, Dr. Carrington discusses “economics and the role of government.” He describes a long disenchantment, for [white] southern voters, with the Democratic Party dating back to the New Deal.⁵⁵ While this analysis is useful in better understanding southern white voters abandoning the Democratic Party in presidential elections in the 1960s, it does very little to help us understand partisan voting dynamics in Alabama, specifically. Carrington notes the ascendancy of Newt Gingrich in the 1990s, when, as I explain in my previous reports, Alabama’s white voters began to vote increasingly for Republican candidates at the Congressional, state, and local level, and as leading figures like Senator Shelby switched parties. He notes that I try “to cast Gingrich’s conservative politics, especially his attempts to reform entitlements, as dominated by disparaging racial views of African-Americans” and argues, “His accusation would have to strain history to find credible support. Gingrich’s views showed the decidedly suburban, middle-class focus of the GOP at the time not a subliminal attempt to play racial politics.”⁵⁶

Indeed, Gingrich often touted the values of his home Cobb County, Georgia, an affluent white flight destination, as hard-working and entrepreneurial, while at the same time deriding the “welfare state” values of then majority-Black Atlanta. Cobb was a place where “upper-middle class” people moved to avoid crime and “keep their lawn cut.” The threat was the “bus line” [referring to a potential expansion of Atlanta’s MARTA rapid transit service], which would “gradually destroy one apartment complex after another, bringing people out of public housing who have no middle class values and whose kids as they become teenagers often are centers of robbery and where” he continued, “the schools collapse because the parents who live in the apartment complex don’t care that the kids don’t do well in school and the whole school collapses.”⁵⁷

Gingrich is arguing, in other words, that the people who lived in majority-Black Atlanta faced poverty and crime-ridden neighborhoods with “failing” schools were there because they lacked the values that suburban (white) people had. He is also asserting that the predominately white people who fled to places like Cobb did so in order to exercise their “freedom of association,” that is, their constitutional right to live with, and go to school with, and pay taxes to support, and to elect, people of their own choosing, even if the nature of the choosing turned on race.

The political scientists Black and Black, to which Dr. Carrington often cites in his report, understood this as a plainly a colormasked racial appeal. Dr. Carrington notes that the nexus of political power in the Republican Party had shifted with the ascension of not only Gingrich but also Tom Delay and Dick Armey. Black and Black explain that all three men represented “overwhelmingly white, suburban, middle-class districts in key southern metropolitan areas.”⁵⁸ They describe how Gingrich, in particular, epitomized the “interests, beliefs, values, and priorities of the South’s rising *white* middle class.”⁵⁹ They

⁵⁴ *Id.*

⁵⁵ Dr. Carrington does not use the word *white*, but this seems to be who he is talking about.

⁵⁶ Black and Black, *The Rise of Southern Republicans*, pp. 5-6.

⁵⁷ Black and Black, *The Rise of Southern Republicans*, pp. 5-6; see also, Kevin Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton: Princeton University Press, 2005), pp. 260-63.

⁵⁸ Black and Black, *The Rise of Southern Republicans*, p. 5.

⁵⁹ Black and Black, *The Rise of Southern Republicans*, p. 6.

also quote at length from the *New York Times* interview in which Gingrich made these remarks. As the reporter, Peter Applebome, remarked, Gingrich's was "a pitch as old as the South. Fifteen years ago," he argued, "even a Strom Thurmond or a Jesse Helms would have been leery of using the most transparent of codes to stigmatize a whole race." The South of Thurmond and Helms' youth, however, "was one where blacks and whites, on some level, had to confront one another. Cobb's past," Applebome explained, "was full of the starkest issues of race, but in Cobb now blacks were largely symbolic rather than real – representing the unseen menace, horror, and decay of Atlanta, 70 percent black, just across the Chattahoochee."⁶⁰ We might well insert Birmingham or Mobile for Atlanta and "the mountain" or "the bay" for the river. In any case, Black politics in Alabama are absent from this section of Dr. Carrington's report, as elsewhere, and, as I explain in my reports, Black politics are critical to understanding the partisan shift.

The next section involves anti-communism. This is not very helpful in explaining Alabama's political dynamics in the 1990s and 2000s, which were the pivotal decades in terms of political realignment at the state level, in that the Soviet Union had by then collapsed and the Cold War ended. Strident anti-communism might help explain how voters behaved in presidential elections across the South and the nation, but not in the last 30 years. Crucially, anti-communism in Alabama has long been closely tied to anti-Civil Rights views, with many politicians accusing Martin Luther King Jr. and other activists of being communists. Take, for example, George Wallace's strident rhetoric about "Communist domination of the [civil rights] movement and its ultimate aim of intermarriage and miscegenation," or the billboard purporting to show Martin Luther King at "communist training school." Or read the words of white Citizens' Council pioneer Robert Patterson at a rally in Montgomery in 1965: "For years we have pointed out the part played in the Civil Rights Movement by the various Communists and Communist Front groups."⁶¹ There are many more examples. Even very recently, former state representative Will Dismukes has said, in response to calls that he step down following revelations of his unabashed involvement with a Confederate sympathizer organization, "We have enough people caving to the communist left. For the love of life, it's time for people to stop being so sensitive and apologetic and take a stand before our country is Gone with the Wind," with the latter being a reference to the Lost Cause of the Confederacy by way of the popular novel and film.⁶²

We move then, in Carrington's analysis, to "social issues," or "political reaction to cultural and moral matters." On the social issue of race, Dr. Carrington writes that this "of course came to the forefront in the 1960s in a way that severely tested the Democratic New Deal coalition. However," he concludes, "we have discussed how these intra-party battles did not produce an immediate move to the Republican Party of any durability."⁶³ In fact, it permanently fractured the New Deal coalition in presidential elections, and insofar as it did not "produce an immediate move" at the congressional, state, and local level in Alabama, this does not mean that it did not contribute fundamentally to an eventual move.

Next, we have "religious identity." Dr. Carrington writes, "The South has a reputation for high levels of religious adherence, especially to some iteration of Christianity. It is part of the so-called 'Bible Belt' and for good reason." He explains that Baptists and Methodists comprise the bulk of the mostly

⁶⁰ Id.

⁶¹ On Wallace, see Wayne Flynt, *Alabama in the Twentieth Century* (Tuscaloosa: University of Alabama Press, 200), pp. 90, 357; [Martin Luther King at Communist Training School](#); on Patterson, see *Selma Times-Journal*, Feb. 16, 1965.

⁶² See <http://theprattvilledragoons.blogspot.com/>; Paul Gattis, "Alabama Democrats call on GOP lawmaker to resign over Confederate support," *Al.com*, June 20, 2020; Brent Wilson, "[Alabama Democratic Party Seeks Resignation Of 'Confederate Apologist' State Rep. Will Dismukes](#)," *Bama Politics*, June 19, 2020.

⁶³ Carrington, p. 29.

Christian adherents in Alabama.⁶⁴ This analysis fails to account for the Black Christians who are members of the Black Baptist, AME, or AME Zion churches. These and other Black Christian churches are among the most theologically (if not liturgically) conservative in Christianity, but they are invisible in Dr. Carrington’s analysis because his focus is primarily the state’s white voters. He also ignores the state’s Roman Catholic adherents and voters, Black or white, save for a sentence at the end of this section – “Those who identify with some form of institutional Christianity, but especially theologically conservative evangelical or Roman Catholic iterations, vote overwhelmingly Republican.” This ignores Black evangelicals and Catholics, which I discuss more below.

Next is abortion, “Another issue to develop after the Civil Rights and Voting Rights Acts,” according to Dr. Carrington.⁶⁵ This is a *non sequitur* fallacy, suggesting that, because southern [white] opposition to abortion was ginned up after that legislation, there is no connection between the two. In fact, the white evangelical leaders that Carrington discusses in his report knew full well that decrying American “moral decline” in the 1970s and 1980s would appeal to many of the voters who had begun to move away from the Democratic Party in the 1960s. Furthermore, according to a Pew Research Center “religious landscape study,” 48 percent of Black Alabamians believe that abortion should be “illegal in all/most cases,” and only 47 percent believe it should be “legal in all/most cases.”⁶⁶ The Pew Research Center also found that 94 percent of Black Alabamians identify as Christian, and 88 percent of Black Alabamians see religion as “very important.” Most Black Alabamians identify as either conservative (41 percent) or moderate (35 percent), and only 19 percent identify as liberal. Yet, 80 percent of Black Alabamians are Democrats, with 71 percent supporting “bigger government,” and 67 percent believing it “does more good than harm.”⁶⁷

Lastly, Dr. Carrington discusses LGBTQ rights. He notes that President Clinton signed the Defense of Marriage Act in the 1990s (another indicator that the New Left had not overtaken the Democratic Party at that time). Carrington is not here talking about Black Christians or Black voters in Alabama; he is talking about white voters and white Christians.⁶⁸ The *Washington Post* unpacked these issues in a 2017 article examining former Senator Doug Jones’s victory over Roy Moore. Michelle Boorstein wrote, “In recent years the word ‘evangelical’ has become nearly synonymous with white, conservative Republicans. But in Alabama, one of the most evangelical states in the country, as well as across swaths of the American South – race and religion mix in a different way.” She indicated that 96 percent of Black voters chose Jones, “and the vast majority of those people self-identify, according to exit polling, as evangelical or born-again.”⁶⁹ Consider as well that recent polling has indicated that most Black people in Alabama oppose same-sex marriage (according to Pew, 47 percent oppose same-sex marriage, and only 45 percent favor it), yet they continue to vote overwhelmingly for Democratic candidates.⁷⁰

Black evangelicals in Alabama, Boorstein explained, “are less motivated by the issues that heavily drive white evangelicals – specifically abortion and the rise of LGBT rights.” Instead, she said, quoting a

⁶⁴ Carrington, pp. 29-31.

⁶⁵ Carrington, p. 31.

⁶⁶ “[Views about abortion among blacks by state](#),” Pew Research Center, 2024.

⁶⁷ Pew Research Center, “[Adults in Alabama Who identify as Black](#).”

⁶⁸ Here, as elsewhere, this limits the utility of the analysis. In explaining how a shift of voters from one party to another purportedly had little to do with race, the focus is largely, if not exclusively, on one race of voters – that seems to be a fundamentally damaging flaw.

⁶⁹ Michelle Boorstein, “The Stunning Difference between White and Black Evangelicals in Alabama,” *Washington Post*, Dec. 13, 2017. See also, *New York Times*, “Alabama Exit Polls: How Different Groups Voted,” 2024 Elections.

⁷⁰ Brendan Kirby, “[Alabama ranks last in nation in support for gay marriage, survey finds](#),” *Al.com*, Feb. 11, 2015; Pew Research Center, “[Views about same-sex marriage among adults in Alabama](#),” 2024.

pastor from a Mobile church, Black evangelicals in Alabama were motivated by “issues such as mass incarceration, a struggling state educational system and a ‘mentality that continues to consider us as second-class citizens.’” The *Post*’s Eugene Scott added that “black voters knew that Moore had adopted Trump’s ‘Make America Great Again’ slogan — and for residents of a state that has deep-rooted racial tensions running through its veins, some moments of America’s past are not among the state’s finest moments.” Boorstein concluded, “Race generally trumps religion in Alabama overall as a dividing line among voters – and that is certainly true among African American voters.”⁷¹

To summarize my opinions relevant to Dr. Carrington’s report, as I have indicated in previous testimony, the rise in Alabama politics of Black voters, with the help of enforcement of the Voting Rights Act, initially brought about a tenuous coalition in the Democratic Party. This began to break down as Black political power grew, especially in the 1990s. By the 2000s, as many white Alabamians came to view the state Democratic Party as too heavily controlled by Black political interests, leadership in the state Republican Party saw a way to use this fact to help create a white Republican super-majority, a goal that was realized in 2010. Certainly, there are other contributing factors, varying in degree of influence over time, but to dismiss the importance of race or how other issues are tied to race fails the credibility test.

Dr. Wayne Flynt commented on the 2017 elections and Attorney General Marshall’s suing the city of Birmingham for covering a Confederate monument in the wake of racist violence in Charlottesville, Virginia. White Alabamians, Flynt said, are “conservative”:

And so they vote Republican, just as once upon a time they voted Democratic, and the Democrats were both racist and conservative. I think Alabama is still defined primarily by race, that’s the most important issue. The most obvious example of that is blacks vote almost all together one way, whites vote almost all together another way. Blacks worship altogether in one setting, whites altogether in another setting. When blacks hit a tipping point of 40 or 50 percent in schools, all the whites tend to go to another school. When the neighborhood gets to be more than 50 percent black, all the whites move. Race defines Alabama completely⁷³

IV. Dr. Reilly’s Report

Dr. Reilly argues that Mobile and Baldwin County are more intimately linked than Mobile and the Black Belt. I disagree and incorporate herein my opinions as presented in my previous reports in this case. In those reports, I testified that, “A final enduring characteristic of the Black Belt is profound racial

⁷¹ Boorstein, “The Stunning Difference between White and Black Evangelicals in Alabama,” quoting Scott therein.

⁷² Press Release, Auburn University Montgomery, “[Alabama voters share opinions on race relations, expansion of Medicaid and equal access to education for latest Auburn University at Montgomery Poll.](#)”

⁷³ Jeremy Gray, “Historian Wayne Flynt on Senate race, Confederate monuments, Alabama’s ‘political prostitution,’” *AL.com*, Aug. 20, 2017.

inequality resulting from persistent racial subordination. Historically, much of the land in the region is owned by white people or corporations controlled by white people.”⁷⁴ A closer look at this fact allows us to see a flaw in Dr. Reilly’s analysis. Dr. Reilly suggests that sales of timber from Black-owned timberland in the Black Belt to companies in Mobile are irrelevant because “forestlands in the Black Belt seem to make up just 3-4% of all the Yellowhammer State’s timbering lands.”⁷⁵

This misses the point. As the Auburn University College of Agriculture has meticulously documented, the vast majority of the timber land in the Black Belt is absentee-owned by white-controlled corporations, many of them out-of-state.⁷⁶ There is a deep historical context here. That land has been blanket-owned by white people since at least Indian Removal and the rise of the Cotton Kingdom in the early 19th century, if not the early 18th century when French colonists introduced African slave labor to the region. Mobile was the entrepot for both the enslaved, as property, and the cash crops produced by enslaved labor, in both cases.⁷⁷

Consider, too, that the Black Belt’s public schools, like those in Mobile, are starkly segregated thanks to white flight. Property tax laws prevent taxes on timber land from adequately funding the Black Belt’s public schools, despite any efforts of local Black leadership (elected thanks to enforcement of federal voting rights law) to raise millage rates. White flight from the City of Mobile to Baldwin County has similarly deprived schools in the City of Mobile, where overwhelmingly Black schools routinely show up on the state’s list of “priority” (formerly “failing”) schools, of funding and support.⁷⁸

Dr. Reilly also finds it “unsurprising” that Baldwin County provides more “white-collar” jobs than Mobile. This is perhaps unsurprising because the eastern shore of Mobile Bay is an upper-middle class white flight destination and because Black people in Alabama are disproportionately represented in blue-collar jobs (in Mobile and the Black Belt).⁷⁹ Black landowners in the Black Belt selling timber to companies in Mobile is, therefore, not just exemplary of economic connections between the county and its parent region, it is also indicative of a shared struggle against the vestiges of segregation and discrimination, as I speak to in my previous reports.

It bears noting here as well that Dr. Reilly cites “an encyclopedic source” (*Wikipedia*) that he indicates “takes *nearly* its entire list of Black Belt counties from the well-regarded Alabama Black Belt Heritage Area Project, counties adjacent to the Black Belt but not part of the core list of 18 provided earlier – like ‘Clarke, Conecuh, Escambia, Monroe, and Washington’ – are rarely included in the region and are more often considered ‘part of Alabama’s Southern coastal plain.’”⁸⁰ Dr. Reilly appears to use this information to establish that “These counties, along with Mobile County’s true soul-mate of Baldwin County, make up most of AL Workforce Region Seven,” a regional amalgamation cited by Dr. Moorer.⁸¹ Reilly concludes, “By my count, five true Black Belt counties in fact fall in Region Three, seven in Region Five, and four in Region Six.” In fact, the Black Belt Heritage Area, recently recognized by Congress, includes Clarke, Conecuh, Monroe, and Washington. Thus, if we take the Heritage Area’s “self-identifying”

⁷⁴ Second Supplementary Declaration, p. 2.

⁷⁵ It is not clear where in the cited article that this figure comes from. The link in the report contains only the citation. Reilly, pp. 12-13.

⁷⁶ Auburn Agriculture, “[Alabama Timberland – Who Owns Alabama Timberland, and Why Should We Care?](#)”

⁷⁷ William Warren Rodgers, et al., Eds, *Alabama: The History of a Deep South State* (Tuscaloosa: University of Alabama Press, 1994), pp. 18-66.

⁷⁸ Bagley Report, Dec. 10, 2021, pp. 23-4; Bagley, *The Politics of White Rights*, pp. 216-34.

⁷⁹ Reilly, p. 13.

⁸⁰ Reilly, p. 12, emphasis added.

⁸¹ Reilly, p. 12.

criterion and map, that means that, contrary to Dr. Reilly's breakdown, there are six Black Belt counties in Region 3, six in Region 5, one in Region 6, and six in Region 7 along with Baldwin and Mobile.⁸²

Dr. Reilly also argues that the idea that Mobile and the Black Belt have a migratory relationship is "debatable." He cites statistics showing that the city of Mobile lost population due to the Great Migration – that is, he asks, how could Mobile have been characterized by Black immigration from the Black Belt when it was losing Black population to the industrial cities of the Midwest, Northeast, and West?⁸³ This question is obfuscation. Mobile was experiencing immigration from the Black Belt at the same time it was experiencing emigration to cities outside the South. The historian Wayne Flynt has described the former as a "hemorrhaging" of people that, along with white flight from Mobile, left behind a "topography of despair" in both Mobile and the Black Belt. And as I discuss in my previous report, Black legislators recently spoke at length of familial connections between the Black Belt and Mobile. Even if emigration cancelled out or outweighed immigration, it would not make the former irrelevant or insignificant.⁸⁴

I discussed riverine connections between Mobile and the Black Belt in my previous reports as well. I cited Professor Richard Pride who observed in his book on school desegregation in Mobile that the city's "roots followed the rivers north into the heart of the black belt." I noted how Representative Pringle explained, "The families in Mobile come from northern counties because of the way the river system is." He added, "I know the people in Wilcox County. We go up and down the rivers."⁸⁵ Similarly, the Alabama River Diversity Network and Finch Conservation are working together on a conservation project involving the Mobile-Tensaw Delta and the Alabama River basin. The project developers explained they "believe this basin and the rivers and forests that feed it are critical to understanding America's origins and preserving its biological and cultural richness."⁸⁶

Alabama River Diversity Network and Finch Conservation describe the "priority area" for the project as including "some six million acres in an area the size of Vermont, stretching along more than 200 miles of the Mobile and Alabama rivers, from the great wilderness of the Mobile Tensaw Delta to the haunting Black Belt region of central Alabama." They further explain that the region, which stretches from Mobile Bay up into Washington, Clarke, and Monroe counties, is significant because of its natural and human history. They describe it as "one of the most biologically diverse regions in the temperate world" and insist, "It is impossible to comprehend the exploration and exploitation of America, to understand the rise and destruction of America's first nations or the tragedy of Civil War and the promise of Civil Rights, if we don't expose and appreciate what happened here."⁸⁷

Rivers like the Alabama, Tombigbee, Black Warrior, and Mobile have provided transportation connecting Alabama's Black Belt to the Gulf of Mexico for centuries. White plantation owners and farm owners transported enslaved Black people up and down these rivers, alongside agricultural products that powered the region's economy. The port at Mobile was a critical hub for transporting people and cash crops during this time, domestically and internationally. It remains an important entrepot today, exporting not just timber from the Black Belt, but also soybeans, livestock, cotton, and automobiles (manufactured at the Hyundai assembly plant in Montgomery), in contrast to Dr. Reilly's assertion that this connection is tenuous. Black workers have been drawn to the port since at least World War II, when LeFlore began to organize Black stevedores in the civil and workers' rights struggle. The state docks include warehousing

⁸² ["Welcome to Alabama's Black Belt,"](#) Alabama Black Belt Heritage Area.

⁸³ Reilly, p. 14.

⁸⁴ Bagley Report, July 28, 2023, pp. 3-4.

⁸⁵ Id.

⁸⁶ Finch Conservation, ["Tensaw Delta and Alabama River Bluffs."](#)

⁸⁷ Id.

and shipping facilities that remain essential to storing and exporting agricultural goods from the Alabama Black Belt.⁸⁸

Both Mobile and the Black Belt, however, are also experiencing population decline, per a recent report. By contrast, Baldwin County has been the fastest growing county in the state and one of the fastest growing in the nation recently.⁸⁹ These facts are contextualized by the shared history of white flight connecting the Black Belt and Mobile and differentiating Mobile from Baldwin County. Consider also that the city of Mobile has been in a state board of education district with, not Baldwin, but an area that comprises a majority of the Black Belt. Mr. Trende argues that this is a matter of happenstance. He insists that the pairing is the result of litigation (compelling the state to adopt two majority-Black districts in the 1990s), wrongly adduced non-retrogression (the state thought it had to maintain 50 percent+ BVAP but it really did not and therefore, apparently, *should* not have), and numbers (there was no adjacent Black population for District 5 to take in but that of the City of Mobile – discounting such areas as East Alabama, from Chambers County to Barbour; Tallapoosa County; and Conecuh County).⁹⁰ This ignores the meaningful connections between urban Mobile and the Black Belt, including those aforementioned as well as, and more importantly here, shared educational concerns. For example, nearly half (78) of the state’s “priority” (formerly “failing”) schools (206) are in District 5. These are scattered throughout the metro Mobile and the Black Belt. By contrast, there is only one such school in Baldwin County.⁹¹

The Alabama Department of Public Health (ADPH) has also illuminated connections between Mobile and the Black Belt in its analysis of Social Determinants of Health (SDOH) in 2020. According to ADPH, “Income disparities, education, poverty, unemployment, food insecurity, housing, and family social support services need to be addressed as a system to build environments that contribute to wellness and support opportunities for healthy choices.” Risk factors for poor SDOH, according to the report, include factors I have identified in previous reports in this case, including rates of poverty, unemployment, incarceration, and level of educational attainment.⁹²

Mobile County tracks strongly with the Black Belt counties in the report, while Baldwin tracks much more strongly with other affluent white suburban counties like Shelby and Madison. It is also more strongly aligned in terms of food insecurity and single-parent households. Most tellingly, perhaps, is the fact that Mobile’s overall social vulnerability score is much more strongly aligned with the Black Belt counties than with Baldwin. Indeed, at .02, Baldwin has the second lowest (that is, best) score of any county. Mobile’s score of .52 is not only closer to the Black Belt counties, that score would no doubt be lower if the analysis were confined to the area of Mobile included in the Court’s approved CD 2.⁹³ Dr. Reilly’s opinions regarding per capita income, rates of crime, employment needs, commuting, and population density ignore important historical context relevant to these connections, and I have discussed some of that in my previous testimony in this case.⁹⁴

⁸⁸ [“A gateway for growth in the Gulf,”](#) Automotive Logistics, May 26, 2022; Office of the United States Trade Representative, State Benefits of Trade, [Alabama](#).

⁸⁹ [“UA Census Report: Alabama population grows while Black Belt shrinks,”](#) 1819 News, Feb. 18, 2022.

⁹⁰ Report of Sean Trende, June 28, 2024, pp. 53-61.

⁹¹ Trisha Powell Crain, [“No more ‘failing’ schools. See which schools Alabama labels for ‘priority,’ expanded school choice,”](#) *Al.com*, Dec. 15, 2023; [School Board Districts](#), Alabama Department of Education.

⁹² [2020 Alabama State Health Assessment](#).

⁹³ *Id.*

⁹⁴ Bagley Report, July 28, 2023, pp. 2-7.

With respect to migration, Baldwin has a distinctly different history compared to Mobile and the Black Belt. According to U.S. Census data, Baldwin County's 1860 population included 3,676 white and 3,714 Black residents. By 1870 the breakdown was 3,159 white to 2,845 Black. By contrast, Mobile's Black population increased significantly during the same period.⁹⁵ This deeply influenced the city's cultural and social dynamics in a way that distinguished it from Baldwin. This dynamic repeated itself in the 20th century, as Professor Flynt has explained. It has been exacerbated by white flight from Mobile to Baldwin, as I discuss here and in previous reports. Consider the growth of Davis Avenue as a Black cultural hub in Mobile and the activism of John LeFlore in organizing Black Mobilians after World War II and into the 1960s, similar to the activism of Black leaders in Tuskegee, Lowndes County, Dallas County, and elsewhere in the Black Belt. All of this aligns Mobile more strongly with the Black Belt than Baldwin.⁹⁶

Dr. Reilly argues that commuting patterns show a strong relationship between Mobile and Baldwin and little or no connection with the Black Belt. He notes that 12.8 percent of Mobile's workforce commute from Baldwin and that "no generally recognized Black Belt County other than Montgomery County (903, .6%) even makes the list of the top ten contributors to the Mobile-area workforce." But if we take the Black Belt Heritage Area's definition of the Black Belt, Washington, Clarke, and Monroe are all in the top ten, contributing 2.5 percent.⁹⁷ He also argues that Mobile and Baldwin County are urban-suburban while the Black Belt counties are "by and large small and agrarian." But this same criticism could be levied at other congressional districts, including CD 3 (Auburn-Opelika-Smiths Station and northeast Alabama), CD 4 (The Shoals and north central, northeast Alabama), CD 5 (Huntsville and northeast Alabama). Taking the figures that Dr. Reilly includes for per capita income, it is noteworthy that at \$31,328, Mobile city is roughly as far from Baldwin (\$38,907) as it is from the Black Belt (as defined by Reilly) (\$23,954).

Finally, I reiterate my previous testimony that not only have Mobile and Baldwin Counties not constituted some inviolable community of interest in Alabama congressional redistricting, their combination and severance has been historically informed by racial politics. As I write in my previous report in this case:

Mobile and Baldwin counties had been split between CDs 1 and 2 since 1875. They were split in that year for the expressed purpose of unseating the only Black candidate ever elected to the U.S. Congress from Alabama, Jeremiah Haralson. When Alabama lost a seat in the late 1920s, The *Cleburn News* reflected on the 1875 split, explaining, "Reasons no longer exist which led to the creation of 'shoe-string' districts, extending from the gulf through the black belt, as is the case with the second congressional district, of which Baldwin County in the southern extremity." The *News* concluded, "That gerimander [sic] seemed to be of paramount importance at a time when 'white' counties were given preponderance in each of the districts, to overcome the vote in the 'black counties.'" As I explain in my 2021 report in this case, this means that Mobile and Baldwin were, first, united in order to prevent the reelection of a Black incumbent and, 100 years later, reunited [] for similar racial reasons.

Regarding the reuniting, I explained, "In the 1970s, some Democrats had begun to accept that limited Black political power was a fait accompli, while at the same time, some in the GOP were coming to the understanding that the whiter the district, the better were their chance of carrying it." Specific to Mobile and Baldwin, I wrote:

⁹⁵ Historical Census Data for Alabama, [1860](#), [1870](#).

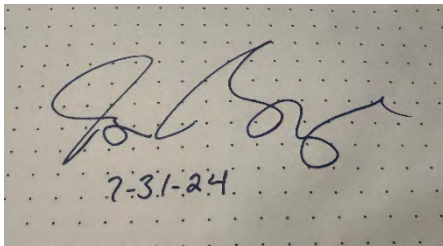
⁹⁶ Paulette Davis-Horton, *Avenue: the Place, the People, the Memories, 1799-1986* (Mobile, Alabama: Horton Inc., 1991). See also, Scotty Kirkland, "Pink Sheets and Black Ballots: Politics and Civil Rights in Mobile, Alabama, 1945-1985," MA Thesis: University of South Alabama, 2009.

⁹⁷ Alabama Department of Labor, Labor Market Information, [Mobile County](#).

Baldwin was a white flight destination and was considered to lean Republican. So the legislature took it from Dickinson and gave him, instead, counties in the more old-line white Democrat Wiregrass. This is all to say that, when the Democratic state legislature repaired Mobile and Baldwin, it did so not out of an overarching concern for those counties as a Gulf Coast COI, but rather because the politics of race had returned to Alabama.⁹⁸

It is therefore not surprising that this discussion now turns on electability of a white and white preferred candidate and the colormasked justification of one COI at the colorwashed expense of another.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed this 31st day of July, 2024.

A photograph of a piece of lined paper with a handwritten signature in blue ink. Below the signature, the date "7-31-24" is written in blue ink.

⁹⁸ Bagley Report, July 28, 2023, p. 7.