Exhibit A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

ALABAMA STATE CONFERENCE OF THE NAACP, *et al.*,	)	
Plaintiffs,	)	**No. 2:21-cv-01531-AMM**
vs.	)	
WES ALLEN, *etc.*,	)	
Defendants.	)	

MICHAEL WHALEY'S
AMICUS CURIAE BRIEF

Amicus Curiae Michael P. Whaley urges the Court to adopt Remedial Plan 3 in making an order that provides a remedy to the violation of the Voting Rights Act, 52 U.S.C. § 10301, found for the State Senate districts in the Montgomery area - i.e., Districts 25, 26, and 30 (Dkt. 274 at 216). Because Plan 3 leaves intact District 30, it makes the fewest changes to the Senate district statute enforced by Secretary of State Allen. That fact, plus the presence of historical election data showing past success of candidates preferred by the "class . . . protected" to hypothesize results for newly drawn Senate district lines for Districts 25 and 26, makes Plan 3 the better remedy. In the language of the Voting Rights Act, under those circumstances, it cannot be said Plan 3 offers "less opportunity than other members of the electorate

to participate in" that part of "the political process and to elect representatives of their choice." 52 U.S.C. § 10301(b). And accordingly, the Senate district lines of Plan 3 do not "result in a denial or abridgement of the right . . . to vote on account of race . . . ."

ARGUMENT

I. Locating Prattville in two different State Senate districts is unnecessary to remedy the Voting Rights Act violation identified in the Montgomery area by this Court.

In the exercise of its equitable powers to remedy the violation of the Act, the Court should prefer to disrupt only what is "necessary" to cure the defect. This principle is well-established and identified by the Special Master (Dkt. 312 at 14) (citing *Upham v. Seamon*, 456 U.S. 37, 43(1982)). Whaley's specific interest in preserving Prattville in a single district is of the kind previously honored by the Court. *See Singleton v. Allen*, 782 F. Supp. 3d 1092, 1144 (N.D. Ala. 2025) (choosing remedial plan that honors keeping City of Mobile in a single district, to the extent feasible), *appeal docketed*, Nos. 25-273, 25-274 (U.S. Sept. 10, 2025).

The preservation of Prattville in a single State Senate district is not at odds with this Court's decision that black voters in Montgomery were due to be unpacked and located in two separate State Senate districts. After all, Prattville has only about 37,000 people (and many fewer black citizens) and therefore is a fraction of the size

of Montgomery. There, black citizens alone can comprise a majority or something close to it in two election districts.

Nor can it be said on some other basis that splitting Prattville is needed to remedy the violation of the Voting Rights Act identified by the Court. There is nothing about keeping Prattville in one Senate District that is linked to the abridging the rights of black citizens in the overall map. At most, it could be said splitting Prattville is a feature that could contribute to remediating the violation. That is far from the standard the Court should follow, i.e., what is "necessary."

In exercising its remedial discretion, the Court need not find that the historical election data discussed by the Special Master requires a district plan that splits Prattville to prevent blacks from being denied equal opportunity to elect candidates. The Court should take guidance from the Supreme Court decision in *Abrams v. Johnson*, 521 U.S. 74 (1997), where the lower court discretion was upheld despite claims that reducing the number of majority black districts violated § 2. On the extent of racially polarized voting, the trial court "found the statistical evidence was for the most part inclusive and conflicting." *Id.* at 92; *id.* at 112 (Breyer, J. dissenting) (white support for black was 0 to 26 percent, and black support for white varied from 3 to 11 percent). In part, the district court retained a black majority for one urban district as it figured the "the probability of electing a candidate is below 50% when the percentage of black registered voters is 50%." *Id.* at 94. Nonetheless, in other

districts, the lower court had found there to be a "'general willingness' of whites to vote for blacks." *Id*. at 92 (in one of the disputed districts, and finding substantial crossover voting generally), 93 (criticizing DOJ methodology for predicting black-preferred candidate would win using "strict racial percentage," and noting that black won despite 33% BVAP).

Here, the data show black-preferred candidates won half the elections projected into the boundaries of District 26 in Remedial Plan 3. (Dkt. 312 at 20) (using 17 statewide elections). This reflects "opportunity" contemplated by the Act, despite being 43.5% black voting age population. (*Id*. at 19). When considered with District 25, where there is a clear black majority, the revision of District 26 in Remedial Plan 3 implies that there is no loss of "opportunity." Though the findings of crossover voting in Alabama do not reflect a basis for findings of the exact scope The district court found in the *Abrams* case, that does not prevent it being instructive. the composition of District 26 in Remedial Plan 3 is a "proper" remedy because the historical results reflect "legally significant" crossover voting.

The Special Master seems off base in opining that Remedial Plan 3 "only weakly remedies the Section Two violation . . . ." (*Id*. at 20). Rather than imply some objective standard is reflected in the historical election data, it might better be said merely that the data show less certainty for black preferred candidates in Remedial Plan 3, when compared to Plans 1 and 2. At some point, the insistence

on achieving more certain racial outcomes reflects an impermissible reliance on race. In that respect and given that Plan 3 changes less of the legislature's Plan than the other plans, Plan 3 is the better choice for the Court's discretion.

II. An alternative remedy based on 2020 census data that indicates a slightly more equal overall district population, but locates Prattville in two State Senate districts, is not a better Voting Rights Act remedy.

The lower population deviation reflected in Plan 2 does not warrant disruption of an extra district's boundaries, despite what Plaintiffs claim. (Dkt. 316 at 9). *See Perez v. Perez*, 565 U.S. 388, 393-94 (2012). This dispute has progressed midway through the decade, and census data is of course less accurate about actual district population. It provides less basis for judicial fine-tuning of the population among the districts used in choosing State legislators. Even when Congressional district lines need to be redrawn, and the Supreme Court is more insistent on minimal population deviation, such a time lapse reduces the value of the census data for court-ordered plans. *See Abrams v. Johnson*, 521 U.S. 74, 100-01 (1997) (excusing "slight population deviations,"); *compare id.* at 100 (due to population shifts in six years since the census, "the tinkerings appellants propose would not reflect Georgia's true population distribution in any event.") *with*, *Karcher v. Daggett*, 462 U.S. 725, 732 (1982) (two-year lapse).

Added to the passage of time is the imprecision of a violation of law grounded in vote dilution. The standard for one person-one vote dilution in State legislative

districts has always "as nearly as equal population as is practicable." *See Reynolds v. Sims*, 377 U.S. 533, 577 (1965). That of course is not as clear as it might seem. It has been applied mathematically to require typically a population deviation of no more than 10 % between the most populous and least populous districts. *See generally*, *Brown v. Thomson*, 462 U.S. 835, 846-48 (1983) (allowing larger deviation to overcome prima facie equal protection violation); *id.* at 842-43 (canvassing precedents applying *Reynolds* doctrine).

When the difference in the population deviation between Plan 2 and Plan 3 here is barely more than 2%, that hardly seems a basis for choosing one over the other. And, of course, both plans are well within the 10% standard of the *Reynolds* case.

When other factors inform whether a dilution is present, such as whether partisan power arising out of district configuration is adversely affected, there are problems of jurisdiction. *See Rucho v. Common Cause*, 588 U.S. 684, 708 (2019) (rejecting one-person, one-vote claims as benchmark for partisan gerrymander claims); *id.* at 713-15, 716 (rejecting First Amendment precedent as benchmark for enabling judicial evaluation of claims for fair share of partisan power). *See also*, *Gill v. Whetford*, 585 U.S. 48, 65 (2017) (remedy for dilution of partisan voter rights in district plan are limited to the district of his residence).

As is no doubt apparent, a claim for vote dilution based on § 2 of the Voting Rights Act does not lend itself readily to guidance on what population deviation is allowed. Likewise, there seems no instruction in the test of *Thornburgh v. Gingles*, 478 U.S. 30 (1986), or its recent application in *Allen v. Milligan*, 599 U.S. 1 (2023). Thus, even if the Court has power to conclude that a racial group has been denied its fair measure of government power, that only guides the Court to what portion of a district must be of the racial group. It does not control what deviation of the district from the median district population as a whole is allowed.

CONCLUSION

For these reasons, amicus curiae Michael P. Whaley urges the Court to adopt Remedial Plan 3, as a remedy for the § 2 violation found in the Montgomery area.

Respectfully submitted this the 10th day of November 2025.

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CERTIFICATE OF SERVICE

I hereby certify that on November 10, 2025, a copy of the foregoing has been served on all counsel of record through the Court's CF/ECF system, including on the following:

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