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U.S. DISTRICT COURT
N.D. OF ALABAMA

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

BOBBY SINGLETON, et al.,

Plaintiffs,

v.

WES ALLEN, et al.,

Defendants.

No. 2:21-cv-1291-AMM
Three-Judge Court

***SINGLETON* PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

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INTRODUCTION

As they have done throughout this litigation, Defendants caricature the Singleton Plaintiffs as insisting that "nearly any split of Jefferson County is unconstitutional." Doc. 233 at 20 ("Motion to Dismiss").[1] That has never been the Singleton Plaintiffs' position; they have stated in writing and in open court that they support the plan this Court adopted, which splits Jefferson County. What the Singleton Plaintiffs object to is the State's dogged pursuit of congressional districts that do not provide equal opportunity to Black voters, in defiance of the holdings of this Court and the Supreme Court.

The Singleton Plaintiffs contend that this Court's preliminary injunction based on Section 2 of the Voting Rights Act should be made a final judgment, based on the evidence already in the record and the Supreme Court's ruling that this evidence establishes a Section 2 violation under the standards of *Thornburg v. Gingles*, 478 U.S. 30 (1986). Doc. 229, ¶¶ 1, 80–83 ("Complaint" or "Second Amended Complaint"). The Singleton Plaintiffs continue to support the plan adopted by this Court as a remedy for the VRA violation.

In addition, the Singleton Plaintiffs allege two independent constitutional grounds for challenging the 2023 enacted plan: it perpetuates an admitted racial

[1] Document numbers refer to filings in *Singleton v. Allen*.

gerrymander, and it intentionally discriminates against Black Alabamians by minimizing or diluting their voting strength by suppressing proposed crossover districts and all other plans with two opportunity districts. *Id*. ¶¶ 2–4, 67–79. The Singleton Plaintiffs have always contended that the Legislature can draw two opportunity districts using non-racial traditional districting principles, one or more of which will be a crossover district.[2] The Second Amended Complaint thus renews their contention that the Legislature's refusal to adopt two race-neutral opportunity districts is itself unconstitutional. The Singleton Plaintiffs renew their allegation that it is unnecessary to divide Jefferson County along racial lines, citing *Cooper v. Harris*. Second, the Singleton Plaintiffs assert, based on *Bartlett v. Strickland*, that the Legislature's refusal to adopt plans introduced by the Singleton Plaintiffs (which provide two performing opportunity districts that better conform to districting criteria contained in Act 2023-563 than does the districting plan contained in that act) violates the Fourteenth and Fifteenth Amendments by unnecessarily classifying Jefferson County residents by race and by intentionally diluting Black voting strength.

[2] "Like an influence district, a crossover district is one in which minority voters make up less than a majority of the voting-age population. But in a crossover district, the minority population, at least potentially, is large enough to elect the candidate of its choice with help from voters who are members of the majority and who cross over to support the minority's preferred candidate." *Bartlett v. Strickland,* 556 U.S. 1, 13 (2009).

Defendants' motion to dismiss the Singleton Second Amended Complaint contends that the Singleton Plaintiffs' alternative VRA and constitutional claims are inconsistent with each other; they are not. In addition, if Defendants somehow defeat the VRA claims asserted now in all three actions, they should not be allowed to evade constitutional liability for refusing to provide two opportunity districts in Alabama.

LEGAL STANDARD

> A complaint must provide "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A complaint need not make "detailed factual allegations;" its purpose is only to "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007) (cleaned up). To survive a motion to dismiss under Rule 12(b)(6), a complaint's "[f]actual allegations must be enough to raise a right to relief above the speculative level, ... on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* To test the complaint, the court discards any "conclusory allegations," takes the facts alleged as true, *McCullough v. Finley*, 907 F.3d 1324, 1333 (11th Cir. 2018), and "draw[s] all reasonable inferences in the plaintiff's favor," *Randall v. Scott*, 610 F.3d 701, 705 (11th Cir. 2010). These facts and inferences must amount to a "plausible" claim for relief, a standard that "requires the reviewing court to draw on its judicial experience and common sense." *Ashcroft v. Iqbal*, 556 U.S. 662, 679, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009).

Stone v. Allen, No. 2:21-CV-1531-AMM, 2024 WL 578578, at *5 (N.D. Ala. Feb. 13, 2024).

ARGUMENT

I. Defendants' Arguments Attempt to Create Confusion.

Defendants' motion argues in a variety of ways that the Singleton Plaintiffs cannot reconcile their claims that the 2023 enacted plan violates both the VRA and the Constitution:

First, the availability of crossover districts in the Singleton and Smitherman plans, they say, makes it impossible to satisfy the third *Gingles* factor that white voters will usually defeat the choices of Black voters. Motion to Dismiss at 18.

Second, the alleged constitutional infirmities of District 7 in the Court-adopted 2023 plan make it impossible to draw two majority-Black districts to remedy the VRA violation, and thus, Defendants say, the first *Gingles* factor cannot be satisfied. *Id.* at 19.

Third, the availability of crossover districts that make splitting Jefferson County unnecessary forecloses any Section 2 VRA claim because of *Bartlett v. Strickland*. *Id.* at 20.

The confusion Defendants attempt to create with these arguments is at bottom a contention that the Supreme Court's own case law regarding redistricting cannot be reconciled, a position Defendants adopted and lost in *Allen v. Milligan*. There, Defendants argued that the two majority-Black congressional districts required by *Gingles I* cannot be created without engaging in unconstitutional race-based

gerrymandering. The Supreme Court disagreed, holding that race-conscious illustrative plans that demonstrate the possibility of drawing two majority-Black districts do not violate the Equal Protection Clause so long as race is not the predominant factor. The Court held that the Milligan and Caster Plaintiffs had adduced evidence satisfying all the *Gingles* factors and the totality of circumstances, and it affirmed this Court's preliminary injunction requiring the Legislature "to enact a remedial plan that contains two majority-Black districts, or two districts in which Black voters otherwise have an opportunity to elect a representative of their choice, or a combination of such districts." Doc. 88 at 213.

In 2023, the Legislature had all the options available to create two districts in which "Black Alabamians, like everyone else, have a fair and reasonable opportunity to elect their preferred candidates." Doc. 210 at 33 (Preliminary Injunction Order). It could have chosen any reasonable combination of majority-Black and crossover districts, or it could have enacted one of the crossover district plans that kept Jefferson County whole, which Senators Singleton and Smitherman proposed. But once again, the Legislature enacted a plan that contained only the one majority-Black district that traces back to the 1992 racial gerrymander, maintaining the racially divided split of Jefferson County in CD7.

After determining that the Legislature's plan failed to remedy its earlier violation of the VRA, this Court was bound by the Supreme Court's "robust rule" that it "must select the plan that 'most clearly approximated the reapportionment of the state legislature,' while also satisfying federal constitutional and statutory requirements." *Id.* at 31–32 (quoting *White v. Weiser*, 412 U.S. 783, 798 (1973)). That meant the Special Master was constrained to reject the Singleton Plan, because by keeping Jefferson County whole it would have modified the enacted plan "far more than necessary to remedy the Section 2 violation." Special Master Doc. 44 at 27. The plan ultimately adopted by this Court thus retained most of the one opportunity district the Legislature enacted and added a performing crossover district. It avoided race-based line-drawing, thus satisfying both the VRA and the Constitution, and it changed the split of Jefferson County to more closely match municipal boundaries. The Singleton Plaintiffs supported this plan, and they still do.

The State's outright refusal to create two opportunity districts violated the VRA and the Constitution. Even if Defendants ultimately escape liability under the VRA, the Singleton Plaintiffs' constitutional claims will remain. For the reasons below, they should not be dismissed either.

II. The Alabama Legislature Reenacted a Racial Gerrymander Without Justification.

The Motion to Dismiss attempts to conflate the racial gerrymandering claim in Count I of the Complaint and the intentional discrimination claim in Count II. As the Singleton Plaintiffs have explained before, these are two different claims with two different burdens of proof.

Count I's claim that the 2023 plan contains an unconstitutional racial gerrymander, absent justification based on compliance with the VRA, requires proof that the plan classifies voters by race, not that it discriminates against them, as Defendants contend. Motion to Dismiss at 7–10. Count I does not rely on the "taint" of discrimination or the Legislature's duty to "cure ... bad faith and ... intentional discrimination." Motion to Dismiss at 9 (citing *Abbott v. Perez*, 138 S. Ct. 2305, 2326–27 (2018)). Instead, as the Singleton Plaintiffs have explained at length in prior filings,

> Here, the Alabama Legislature carried forward, with minimal changes, district lines undisputedly drawn for predominantly racial purposes. It is the carrying forward of race-driven lines, not the carrying forward of any taint or ill intent, that makes District 7 a racial gerrymander. The shape and demographics of District 7 are sufficient to carry the *Singleton* Plaintiffs' evidentiary burden.

Doc. 189 at 53; *see also id.* at 27–32, 52–54 (citing cases); *accord McClure v. Jefferson County Comm'n*, 2023 WL 8792145 (N.D. Ala. Dec. 19, 2023) at *7 n.14. Buried at the end of one paragraph, the Motion to Dismiss acknowledges the correct

legal standard: "In a gerrymandering case, 'because of' intent is established with evidence that 'race was the predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district.'" Motion to Dismiss at 7 (quoting *Cooper v. Harris*, 581 U.S. 285, 291 (2017)).

Importantly, Defendants do not contend that the 2023 split of Jefferson County differs in any material way from the race-based 1992 split, which the Secretary's predecessor admitted was a racial gerrymander. Complaint ¶ 15 n.1. Under the correct standard, this alone is sufficient for the Singleton Plaintiffs' gerrymandering claim to survive a motion to dismiss, because the Complaint alleges that Black and White Jefferson County voters remained separated by race in the 2023 plan.[3] Complaint ¶¶ 36, 55; *North Carolina v. Covington*, 138 S. Ct. at 2552–53 ("[I]t is the segregation of the plaintiffs—not the legislature's line-drawing as such—that gives rise to their claims. … [The Plaintiffs] argued in the District Court

[3] Defendants may reply that no court has held the 1992 plan to be a racial gerrymander (notwithstanding Secretary Merrill's admission that it was). That is because the Supreme Court did not decide until 1993 that "an effort to segregate the races for purposes of voting, without regard for traditional districting principles and without sufficiently compelling justification," is a racial gerrymander. *Shaw v. Reno*, 509 U.S. 630, 642 (1993). In the 2000 and 2010 redistricting cycles, the Alabama Legislature may have had a "compelling justification" for retaining the gerrymander: compliance with the preclearance requirement of Section 5 of the Voting Rights Act. But after the Supreme Court held that Alabama was no longer covered by Section 5 in *Shelby County v. Holder*, 570 U.S. 529 (2013), the Legislature had no "sufficiently compelling justification" for reenacting a racially gerrymandered district. For more on this issue, see Doc. 42 at 3–9, 11–19 (Preliminary Injunction Motion); Doc. 76 at 4–14 (Reply in Support of Preliminary Injunction Motion); Doc. 84 at 26–36 (Proposed Findings of Fact and Conclusions of Law); Doc. 189 at 46–51 (Proposed Findings of Fact and Conclusions of Law).

that some of the new districts were mere continuations of the old, gerrymandered districts. Because the plaintiffs asserted that they remained segregated on the basis of race, their claims remained the subject of a live dispute ….”); *Harris v. McCrory*, 159 F. Supp. 3d 600, 604 (M.D.N.C. 2016) (“[T]he Court notes that it makes no finding as to whether individual legislators acted in good faith in the redistricting process, as no such finding is required.”), *aff’d sub nom. Cooper v. Harris*, 137 S. Ct. 1455 (2017); *Page v. Va. State Bd. of Elections*, 2015 WL 3604029, at *8 (E.D. Va. June 5, 2015) (“Nevertheless, the good faith of the legislature does not excuse or cure the constitutional violation of separating voters according to race.”) (internal quotation marks omitted).

At various places Defendants’ motion to dismiss suggests – without squarely asserting – that the Legislature’s primary motive for enacting the 2023 plan was based on party, not race: enacting a district “likely to swing an additional congressional district to Democrats [is] a strange goal for Republican legislators to pursue.” Motion to Dismiss at 2–3; *see also id.* at 15 (“[T]he Democratic Senators explain that their preferred map would have created two reliably Democratic congressional districts instead of one, an outcome their Republican colleagues across the aisle understandably would disfavor for partisan reasons.”). But a desire to protect incumbent Republicans cannot justify a racial gerrymander, as a matter of

law. *Covington v. North Carolina*, 283 F. Supp. 3d 410, 431 (M.D.N.C. 2018) ("[E]fforts to protect incumbents by seeking to preserve the 'cores' of unconstitutional districts … have the potential to embed, rather than remedy, the effects of an unconstitutional racial gerrymander …."), *aff'd in relevant part and reversed in part on other grounds*, 138 S. Ct. 2548 (2018); *Covington*, 138 S. Ct. at 2551 (enjoining districts that "retain[ed] the core shape" of previously racially gerrymandered districts, because the redrawn districts continued to bear the hallmarks of racial predominance); *Personhuballah v. Alcorn*, 155 F. Supp. 3d 552, 561 n.8 (E.D. Va. 2016) ("In any event, maintaining district cores is the type of political consideration that must give way to the need to remedy a *Shaw* violation."); *see Allen v. Milligan*, 143 S. Ct. 1487, 1505 (2023) (majority opinion) ("But this Court has never held that a State's adherence to a previously used districting plan can defeat a § 2 claim. If that were the rule, a State could immunize from challenge a new racially discriminatory redistricting plan simply by claiming that it resembled an old racially discriminatory plan."). A legislature may not lawfully perpetuate an unconstitutional racial gerrymander simply because doing so was necessary to protect the party in power.[4]

[4] For more authority on point, see Doc. 189 at 42–45 (Proposed Findings of Fact and Conclusions of Law).

Moreover, Defendants' assertion of a "party, not race" defense conflicts with their stipulations in this case that in past elections "Black Alabamians in CD2 and CD7 have consistently preferred Democratic candidates in the general election[, and] white Alabamians in CD2 and CD7 consistently preferred Republican candidates over (Black-preferred) Democratic candidates." Doc. 191 at 89 (stipulated facts quoted by the Court). This Court and the Special Master relied on the ability of Democratic candidates to win elections as the measure of whether proposed districts performed as reliable opportunity districts for Black voters. The Supreme Court has repeatedly said that defendants' attempt to use race as a proxy for party is prohibited. *Cooper v. Harris*, 581 U.S. 285, 291 n.1 (2017) ("A plaintiff succeeds at this stage [of proving race was the predominant factor] even if the evidence reveals that a legislature elevated race to the predominant criterion in order to advance other goals, including political ones.") (citing *Bush v. Vera*, 517 U.S. 952, 968–70 (1996); *Miller v. Johnson*, 515 U.S. 900, 914 (1995)).

III. The Legislature Intentionally Diluted Black Votes by Rejecting All Plans that Contained Two Performing Crossover Districts.

Bartlett v. Strickland, 556 U.S. 1 (2009), holds that Section 2 of the VRA does not mandate the creation of crossover districts, but it encourages states to adopt them "as a matter of legislative choice or discretion." *Id.* at 23–24. Crossover districts "may serve to diminish the significance and influence of race by encouraging

minority and majority voters to work together toward a common goal. The option to draw such districts gives legislatures a choice that can lead to less racial isolation, not more." *Id.* If a plaintiff "show[s] that a State intentionally drew district lines in order to destroy otherwise effective crossover districts, that would raise serious questions under both the Fourteenth and Fifteenth Amendments." *Id.* at 24 (citing *Reno v. Bossier Parish School Bd.*, 520 U.S. 471, 481–482 (1997)).

That is exactly what Count II alleges. Even though the crossover districts in the Singleton and Smitherman plans better satisfied the districting criteria set out in the enacting statute itself, the Legislature rejected them because they would have provided two performing opportunity districts. Complaint ¶ 75. In their motion to dismiss, Defendants admit this was the Legislature's motive: "[Plaintiffs] admit that [the Singleton plan] would be far more likely to swing an additional congressional district to Democrats—a strange goal for Republican legislators to pursue." Motion to Dismiss at 2–3. "[T]he Democratic Senators explain that their preferred map would have created two reliably Democratic congressional districts instead of one, an outcome their Republican colleagues across the aisle understandably would disfavor for partisan reasons." *Id.* at 15.

This direct admission is buttressed by the circumstantial evidence contained in the Second Amended Complaint, which must be addressed by the standards set

out in *Abbott v. Perez*, 585 U.S. 579, 603–04 (2018), and *Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267 (1977). They include the "historical background of the decision," the "specific sequence of events leading up to the challenged decision," [d]epartures from the normal procedural sequence," and [s]ubstantive departures ... if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached." *Arlington Heights*, 429 U.S. at 267.

The historical background of the Legislature's rejection of crossover districts, the Second Amended Complaint alleges at Paragraphs 64 to 66, is Alabama's unbroken policy of suppressing efforts of Black voters to form electoral alliances with White voters and the use of political parties as the main instrument for maintaining White solidarity. The sequence of events of this historical policy of discrimination in the context of congressional redistricting is detailed at length in Paragraphs 17 to 55. The departures from the normal procedural sequence include the Reapportionment Committee's conduct of hearings over a period of weeks on plans proposed by members of the Legislature and the Chairs of the Committee themselves, all of which were cast aside on the last day of the special session in favor of a plan produced by the State's lawyer that neither the Reapportionment Committee nor other legislators had seen or had an opportunity to study before it

was rushed through passage. Complaint ¶¶ 54–55.

The Singleton plan performs as well or better than does the enacted 2023 plan according to all five of the "non-negotiable" principles set out in Act 2023-563, Complaint ¶ 56, except preventing any incumbent conflict, a poison pill for any effort to create a second opportunity district for Black voters.

The statute places special emphasis on three communities of interest: the Black Belt, the Gulf Coast, and the Wiregrass. The Singleton plan places sixteen of the eighteen core Black Belt counties in a single district, the maximum mathematically possible, while the enacted plan separates the Western Black Belt from the Eastern Black Belt. The Singleton plan preserves the Gulf Coast community of interest exactly the way it was drawn in the 2021 plan, the last plan actually drafted by the Legislature. The Singleton plan keeps the Wiregrass community of interest together as well or better than does the enacted plan. And the Singleton plan keeps the North Alabama communities of interest together exactly the way Districts 4 and 5 were drawn in the 2021 plan. Complaint ¶¶ 60–63. The Defendants acknowledge the importance of beginning with current boundaries and changing them as little as possible. Motion to Dismiss at 14.

But Act 2023-563 fails to recognize Jefferson County, perhaps the second most significant community of interest in Alabama history, as the industrial and

financial center of the state. The motion to dismiss cites core retention as the alleged justification for continuing to split Jefferson County in CD7. Motion to Dismiss at 14–15. But core retention is a secondary principle in the statute, and Defendants say the 2023 plan gave precedence to uniting (dividing in half?) the Black Belt over core retention. Id. at 4. Finally, as noted above, invoking core retention to justify splitting Jefferson County makes it impossible to separate CD7 from the race-based design of the 1992 plan. From the beginning, the large Black population in Jefferson County has been the sine qua non component for maintaining a Black majority in CD7.

Of course, as the Court knows, it was not just the Singleton plan that the Legislature rejected because it would have given Black voters the opportunity to elect candidates of their choice. Representative Chris Pringle, who is the House Chair of the Reapportionment Committee and an Intervenor-Defendant in this case, gave "heated testimony" about the Legislature's rejection of his proposed plan, which at least purported to provide two opportunity districts.[5] Doc. 191 at 100–01.

But the Legislature rejected every plan that provided two opportunity districts or even tried to. Instead, "the State enacted a map that the State readily admits does not provide the remedy [the Court] said federal law requires." Doc. 191 at 8. The Legislature's actions were unprecedented: "We are not aware of any other case in

[5] Whether this plan actually provided two opportunity districts is beyond the scope of this brief.

which a state legislature — faced with a federal court order declaring that its electoral plan unlawfully dilutes minority votes and requiring a plan that provides an additional opportunity district — responded with a plan that the state concedes does not provide that district." *Id.* at 8–9. The Legislature's rejection of every plan with two opportunity districts in favor of a plan with one opportunity district constitutes intentional discrimination. *See Petteway v. Galveston County*, 667 F. Supp. 3d 432, 445 (S.D. Tex. 2023) ("There can be little question that dismantling a performing precinct has a disparate impact on racial minority groups.") (internal quotation marks omitted).

IV. The Enacted 2023 Plan Violates the VRA, as This Court Has Held.

The Second Amended Complaint bases its claim that the enacted 2023 plan violates Section 2 of the Voting Rights Act on the evidence cited by this Court in support of its preliminary injunction and the Supreme Court's affirmance. Complaint ¶ 80. Defendants say that this amounts to "zero factual allegations." Motion to Dismiss at 17. Defendants appear to be insisting on a regurgitation of all the evidence "that two reasonably configured majority-BVAP congressional districts can be drawn in Alabama and that the other conditions required to establish a Section 2 violation, as prescribed by *Thornburg v. Gingles*, 478 U.S. 30 (1986), are satisfied." Complaint ¶ 80. Because Rule 8 requires notice pleading, this is not the Singleton

Plaintiffs' responsibility. Defendants do not claim, nor could they, that they are unaware of the evidence on which this Court and the Supreme Court held that Alabama likely violated Section 2 of the VRA. The prior orders were incorporated by reference into the Second Amended Complaint. *See Hi-Tech Pharms., Inc. v. HBS Int'l Corp.*, 910 F.3d 1186, 1189 (11th Cir. 2018) (describing incorporation by reference); *Luke v. Gulley*, 975 F.3d 1140, 1144 (11th Cir. 2020) (applying the doctrine to consideration of a prior court order).

Beyond this issue, Defendants raise four more, all of which attempt to relitigate findings this Court already made. These should also be rejected.

A. Individual Voters Have a Private Right of Action to Enforce Section 2.

Defendants' contention that individual voters have no private right to assert claims under Section 2 of the Voting Rights Act has previously been rejected in these cases. "Holding that Section Two does not provide a private right of action would work a major upheaval in the law, and we are not prepared to step down that road today." *Singleton v. Merrill*, 582 F. Supp. 3d 924, 1032 (N.D. Ala. 2022), *aff'd sub nom. Allen v. Milligan*, 599 U.S. 1 (2023). A judge of this Court has held that the Eighth Circuit's intervening decision in *Ark. State Conf. NAACP v. Ark. Bd. of Apportionment*, 86 F.4th 1204, 1207 (8th Cir. 2023), provides no basis for changing the law of this Court and this Circuit. *Stone v. Allen*, No. 2:21-CV-1531-

AMM, 2024 WL 578578, at *7 (N.D. Ala. Feb. 13, 2024). Neither do the motions to dismiss in *Singleton*, *Milligan*, and *Caster*, and Alabama's renewal of this contention should be rejected.

B. White Bloc Voting Undisputedly Exists.

This Court held that there was "no serious dispute" that Alabama's 2021 plan met the *Gingles* requirement of white bloc voting, *Singleton v. Merrill*, 582 F. Supp. 3d 924, 966–69, 980–82, 1016–18 (N.D. Ala. 2022). Defendants stipulated that the same was true for the 2023 plan. Doc. 191 at 178. Yet Defendants question the existence of white bloc voting because the remedial plans proposed by Senators Singleton and Smitherman contain crossover districts. Motion to Dismiss at 18. The existence of a crossover district in a proposed remedial plan has nothing to do with the analysis of liability under *Gingles*, which focuses on the plan that is being challenged. *See Cooper v. Harris*, 581 U.S. 285, 305 (2017) (rejecting the contention that if "§ 2 does not *require* crossover districts … , then § 2 also cannot be *satisfied by* crossover districts"). The plan this Court adopted includes a crossover district, but that does not mean the Court was wrong to hold that the 2023 enacted plan violated Section 2. Therefore, the Singleton Plaintiffs' allegations do not preclude a finding that the 2023 Plan violates the VRA.

C. This Court Has Already Held That Black Alabamians Have Less Opportunity to Participate in the Political Process.

As with their argument about white bloc voting, Defendants ignore that this Court has already held that Black Alabamians have less opportunity to participate in the political process, in both the 2021 and 2023 plans.

The Complaint alleges, at Paragraph ¶ 80, that this Court and the Supreme Court held that all the "conditions required to establish a Section 2 violation, as prescribed by *Thornburg v. Gingles*, 478 U.S. 30 (1986), are satisfied." Referring to § 10301(b), the Supreme Court said:

> Individuals thus lack an equal opportunity to participate in the political process when a State's electoral structure operates in a manner that "minimize[s] or cancel[s] out the[ir] voting strength." [*Gingles*, 478 U.S,] at 47. That occurs where an individual is disabled from "enter[ing] into the political process in a reliable and meaningful manner" "in the light of past and present reality, political and otherwise." *White [v. Regester*], 412 U.S. [755,] 767 [(1973)]. A district is not equally open, in other words, when minority voters face—unlike their majority peers—bloc voting along racial lines, arising against the backdrop of substantial racial discrimination within the State, that renders a minority vote unequal to a vote by a nonminority voter.

Allen v. Milligan, 599 U.S. 1, 13 (2023). On remand, this Court applied that same holding to the 2023 plan. Doc. 191 at 172–73. Defendants are indisputably on notice of the facts underlying the Singleton Plaintiffs' allegation that Black voters have less opportunity to participate in the political process.

D. The Singleton Plaintiffs Have Identified a Permissible Remedy.

Somehow, Defendants view the Singleton Plaintiffs' allegation that the enacted 2023 plan is racially gerrymandered as an admission that there is no permissible remedy for Alabama's violation of the Voting Rights Act. Motion to Dismiss at 18–19. But the Singleton Plaintiffs identified multiple permissible remedies, including the Whole County Plan and variations of it. Complaint ¶¶ 58–63. And as Defendants know, the Singleton Plaintiffs are on the record as supporting the remedial plan this Court adopted. Doc. 210 at 27–28. Any contention that the Singleton Plaintiffs have not specified a permissible remedy is frivolous.

CONCLUSION

The Motion to Dismiss should be denied.

Dated: March 7, 2024

Respectfully submitted,

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