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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.	)	**Case No.: 2:21-cv-1291-AMM**
	)	
WES ALLEN, in his official capacity as Alabama Secretary of State, *et al*.,	)	**THREE-JUDGE COURT**
	)	
	)	
Defendants.	)	

SINGLETON PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

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INTRODUCTION

Senator Bobby Singleton, Senator Rodger Smitherman, Leonette W. Slay, Darryl Andrews, and Andrew Walker (the "*Singleton* Plaintiffs") hereby submit the following Proposed Findings of Fact and Conclusions of Law.

On June 8, 2023, the United States Supreme Court affirmed this Court's preliminary injunction. *Allen v. Milligan*, 599 U.S. 1 (2023). The Supreme Court wrote that "the District Court [*i.e.*, this Court] concluded in a 227-page opinion that the question whether HB1 [*i.e.*, the 2021 Enacted Plan] violated § 2 was not a 'close one.'" *Id*. at 17. The Supreme Court "s[aw] no reason to disturb th[is] Court's careful factual findings . . ." and saw "no basis to upset th[is] Court's legal conclusions" because this "Court faithfully applied [the Supreme Court's] precedents and correctly determined that, under existing law, HB1 violated § 2." *Id*. at 23.

Accordingly, the question here might now be framed as follows:

Does the additional trial evidence show that the result after trial should be different from the preliminary injunction result that the Supreme Court affirmed?

The below Proposed Findings of Fact below thus focus on post 2023 evidence and make references to this Court's earlier rulings. The *Singleton* Plaintiffs adopt by reference this Court's findings during the preliminary injunction proceedings and the *Milligan* and *Caster* Plaintiffs' Post-Trial Proposed Findings of Fact and

Conclusions of Law filed by the *Milligan* Plaintiffs in *Milligan v. Allen*, No. 2:21-cv-01530-AMM, and the *Caster* Plaintiffs in *Caster v. Allen*, No. 2:21-cv-01536-AMM. The Proposed Findings of Fact and Conclusions of Law detailed below are primarily the *Singleton* Plaintiffs' contributions.

PROPOSED FINDINGS OF FACT

The *Singleton* Plaintiffs propose the following Findings of Fact, focusing on testimony and other evidence after the preliminary injunction proceedings.

I. The *Singleton* Plaintiffs

A. The *Singleton* Plaintiffs have standing

1. Plaintiff Rodger Smitherman is a Black registered voter who resides in Jefferson County and within the boundaries of Congressional District 7 in the 2011, 2021 and 2023 enacted plans. *Singelton* Doc. 47 at 5 of 12 (Stipulations of Fact); SX 24, *Singelton* Doc. 261-24 at 2 of 3.[1]

2. Plaintiff Leonette W. Slay is a White registered voter who resides in Jefferson County and resided within the boundaries of Congressional District 6 in 2011 and 2021. *Singelton* Doc. 47 at 5 of 12. At the time Ms. Slay decided to become a plaintiff in this action, she lived in the Congressional District 6 section of Hoover. Trial Tr., Vol. IV, at 879:3-4. As a result of the court-ordered remedial plan, her residence is now in the Congressional District 7 section of Hoover. *Id.* at 896:12-14.

[1] Page citations for documents filed in the *Singleton*, *Milligan* or *Caster* actions are to the page numbers at the top of the page.

3. Plaintiff Bobby Singleton is a Black registered voter who resides in Hale County and within the boundaries of Congressional District 7 in the 2011, 2021 and 2023 enacted plans. *Singelton* Doc. 47 at 5 of 12; SX 22, *Singelton* Doc. 261-22 at 2 of 3.

4. Plaintiffs Darryl Andrews and Andrew Walker are Black registered voters who reside in Montgomery County and within the boundaries of Congressional District 2 in the 2011, 2021 and 2023 enacted plans. *Singelton* Doc. 47 at 5 of 12; SX 21, *Singelton* Doc. 261-21 at 2 of 3; SX 25, *Singelton* Doc. 261-25 at 2 of 3.

B. Testimony of Plaintiff Colonel (Retired) Leonette Slay

5. Plaintiff Leonette Slay is a white female Army veteran residing in the City of Hoover, a municipality in the southern section of Jefferson County, Alabama. Trial Tr., Vol. IV, at 863:22-25, 864:1-4. A native Mississippian, she is a graduate of Millsaps College. *Id.* at 865:8-11. She earned a master's degree at the University of Texas (Austin) and another master's at the Army War College. *Id.* at 865:16-21. With a direct commission, she served on active duty in the United States Army until her retirement as a Colonel O6 in 1990. *Id.* at 867:78, 868:3.

6. Ms. Slay lived in Tuscaloosa, Alabama for four years, then moved to Jefferson County in 1994. *Id.* at 869:5-8. In Jefferson County, she worked at the Red

Cross for two years, followed by a position in the active Army Reserve in the Military Technician Program. *Id.* at 869:10-13.

7. Ms. Slay is a member of the Bluff Park United Methodist Church, the American Association of University Women, the Reserve Officers Association, and the League of Women Voters ("LWV"). *Id.* at 870:3-14. She has been a member of the LWV since 1976. *Id.* at 872:17-19. Although she does not speak for the LWV, she has served as its local president and state co-president. *Id.* at 872:20-25.

8. Ms. Slay has a lifelong interest in politics and redistricting. *Id.* at 864:22 – 865:4. Her father was a sheriff, and she once worked as the sole administrative assistant to a member of the Texas House of Representatives. *Id.* at 864:22 – 866:12. She has been paying attention to redistricting in Alabama for the last cycles. *Id.* at 873:22 – 874:2. She regularly works in voter registration and voter outreach. *Id.* at 880:19-20.

9. Ms. Slay testified that there is racially polarized voting in Jefferson County. *Id.* at 874:16-22.

10. Ms. Slay's first goal in this action was to keep Jefferson County whole in a single congressional district, "and if that's not possible to adhere to the Special Master's plan for the newly configured Congressional District 2." *Id.* at 875:16-19. She explained: "In Jefferson County, there's a plethora of issues that really could be

ameliorated, solved, if we had one representative to combine with our county and city officials to work for the betterment of Jefferson County." *Id.* at 875:22-25.

11. Ms. Slay testified to two examples of the effect of having two congressional districts for Jefferson County:

> … we had an infrastructure act which would have – will have gone a long way to repair the sewage and water infrastructure of Jefferson County as well as roads and bridges. One of the congressmen voted for it, the CD6 congressperson did not.
>
> The other one which is much closer to my heart is the PACT Act, which would have given compensation and access to the VA for military veterans who had been exposed to burn pits in the Middle East. CD6 congressman voted against it. The CD7 congresswoman voted for it, although in Jefferson County we have two major VA hospitals and a large number of veterans and active duty because we have multiple general officer headquarters located here in Birmingham as well as a special forces group, all of whom have been deployed multiple times to where burn pits are located. And yet, one congressman voted against it.
>
> If we had one representative working holistically with the other county officials in this county I cannot imagine what we could be doing to correct some of the particular issues in Jefferson County like gun violence, like poor public transportation for the whole county, like the debacle of water rates and the sewer rates in Jefferson County, none of which can be addressed when we are bifurcated like this.

Id. at 876:7 – 877:6.

12. Ms. Slay testified that Black and White voters in Jefferson County share the common problems of gun violence, an ineffective Water Works Board, an inadequate and unreliable transit system, and polluted air and water. *Id.* at 876:25 – 877:6.

13. Ms. Slay also testified that there are two types of multiracial groups in Jefferson County capable of forming viable coalitions: non-profit organizations and military/veteran groups. Trial Tr., Vol. X, at 2390:12 – 2392:4. Jefferson County is the headquarters of over a quarter of Alabama's non-profits; and it has more veterans than any other county in the State. *Id.*

14. If the Singleton Plan (*Singleton* Doc. 285-6, SX56) were enacted by the Legislature or ordered by this Court, Ms. Slay's opinion is that the Singleton Plan would perform effectively as an opportunity district for Black voters in Jefferson County to elect congressional candidates of their choice. *Id.* at 879:20 – 880:9.

C. Testimony of Plaintiff Senator Bobby Singleton

15. Plaintiff Senator Bobby Singleton represents Alabama Senate District 24, which includes parts of Tuscaloosa, Hale, Greene, Sumter, Marengo and Choctaw Counties. Trial Tr., Vol. X, at 2362:18-24. He is the Senate Minority Leader. *Id*. at 2362:25 – 2363:1.

16. Senator Singleton serves on about a dozen legislative committees, including the Permanent Legislative Committee on Reapportionment (the "Redistricting Committee"). *Id*. at 2363:2-7.

17. Senator Singleton has a law degree. *Id.* at 2363:19-20.

18. Senator Singleton sponsored the Congressional redistricting plan referred to as the Singleton Plan, shown to him and admitted as DX 93. *Id*. at 2369:2-10; *see also* SX56 (same Singleton Plan).

19. The Singleton Plan kept Jefferson County whole for a number of reasons: Senator Singleton testified about (1) Jefferson County's being the largest community in the state, (2) its having the largest legislative delegation, (3) the potential economic impact from Jefferson County being whole, and (4) every county would like to be whole in one Congressional district. *Id*. at 2369:11 – 2370:15.

20. While Senator Singleton would have preferred that Jefferson County be treated as a Community of Interest and kept whole, he supports the Special Master's Plan shown to him by Defendants as DX 107. *Id*. at 2370:18 – 2371:10.

21. Senator Singleton knows Senator Livingston, who is the Majority Leader in the Senate and one of the co-chairs of the Redistricting Committee. *Id*. at 2373:16 – 2374:5.

22. Senator Singleton does not remember Senator Livingston ever making a racist remark and has a good personal relationship with him. *Id*. at 2374:6-25.

23. Senator Livingston has supported legislation that Senator Singleton considers to be racial appeals. *Id*. at 2376:18-20. Examples include Senator Livington's support of Confederate Monuments bills, laws banning DEI (Diversity,

Equity and Inclusion), immigration laws, and voter suppression and ID laws. *Id*. at 2376:21 – 2377:2.

24. As to Republicans' support of Confederate Monuments legislation, Senator Singleton perceives that Republicans support such legislation and put those issues on the legislative agenda to help with White voter turnout despite such support making Black voters and legislators angry. *Id*. at 2377:3-18.

25. On cross, Defendants asked Senator Singleton more about Confederate Monuments. Senator Singleton testified the issues are "difficult in our time" and are "controversial." *Id*. at 2381:24 - 2382:7.

26. Senator Singleton has never had the Alabama Solicitor General draft any of the many bills he has sponsored. *Id*. at 2378:7-15.

27. Senator Singleton confirmed that when he (and others) consider whether to run for a legislative seat, he considers the racial makeup of the district, including the percentage of White people and the percentage of Black people, as to whether he can win, and those numbers would possibly change his calculus and decision. *Id*. at 2383:4 – 2384:18.

28. Senator Singleton testified that "race plays a factor in whether or not" he "decides to run for a particular seat or not" and thus race is "a consequential part of the decisionmaking process." *Id*. at 2384:19 – 2385:5.

II. Senate Bill 5 ("SB5")

A. SB5's legislative background

29. On June 8, 2023, the United States Supreme Court affirmed the preliminary injunction this Court entered in this action. *Allen v. Milligan*, 599 U.S. 1 (2023).

30. "The State then requested that this Court allow the Legislature approximately five weeks – until July 21, 2023 – to enact a new plan." *Singleton* Doc. 191 at 4 of 217.

31. During the Special Session that started June 17, 2023, the Permanent Legislative Committee on Reapportionment (the "Redistricting Committee") voted to re-adopt the 2021 Legislative Redistricting Guidelines (the "2021 Guidelines") and considered numerous redistricting plans. *Id.* at 93 of 217.

32. Randy Hinaman, the State's longstanding cartographer, drew a Plan that was sponsored by Representative Chris Pringle. *Id.* at 97 of 217.

33. Instead of following the normal legislative process, the Alabama Solicitor General was identified as having prepared SB5 and first shared SB5 with the legislators on the last day, July 21, 2023. *Singleton* Doc. 191 at 95-102 of 217; *cf.* Trial Tr., Vol. X, at 2378:7-15 (Senator Singleton testifying that the Alabama Solicitor General had not before drafted bills he sponsored).

34. On July 21, 2023, the Redistricting Committee passed SB5 along racial lines; then, the Alabama Legislature passed SB5, again along racial lines. *Singleton* Doc. 191 at 95-102 of 217.

35. The Redistricting Committee and other legislators did not see or consider SB5 until July 21, 2023, the same day that the Redistricting Committee and then the Legislature passed SB5. *Id*.

36. Representative Pringle testified that the Alabama Solicitor General worked as a map drawer at some point in time, Rep. Pringle did not know who drafted SB5's redistricting principles, Rep. Pringle had never seen a redistricting bill contain such findings, and Rep. Pringle told Senator Livingston that SB5 could not have his name on it. *Id.* at 99-101 of 217; *see* SB5, CX 19, *Caster* Doc. 319-19 at 8 of 12 (SB5's striking through and replacing "Pringle Congressional Plan" with "Livingston Congressional Plan").

37. Accordingly, on the same day SB5 was first seen by legislators, SB5 was enacted adopting a 2023 Congressional redistricting plan (the "2023 Enacted Plan") and stating new and unprecedented legislative findings that SB5 called "redistricting principles." *Id*. at 3 of 12.

38. On July 21, 2023, the Governor signed SB5. *Singleton* Doc. 191 at 95 of 217.

B. SB5's new "non-negotiable" redistricting principles

39. SB5 stated the "Legislature's intent . . . [was] to promote the following "traditional redistricting principles," labeling six as "non-negotiable." *Id.* at 2-3 of 12; CX 19, *Caster* Doc. 319-19 at 1; *see also* DX 58 (the same exhibit).

40. While the source of SB5's redistricting principles is unclear, they are new and appear to have replaced the re-adopted 2021 Guidelines. The Alabama Solicitor General was identified as having prepared SB5's redistricting principles. *Singleton* Doc. 191 at 95-102 of 217.

41. The 2021 Guidelines stated that "[t]he following requirements of the Alabama Constitution shall be complied with:" then list eight noncontroversial guidelines. SX 5, *Singleton* Doc. 261-5 at 3 of 8. The 2021 Guidelines had no "non-negotiable" guidelines or "non-negotiable" redistricting principles. *Id*.

42. No evidence before the Court reflects any previous Alabama redistricting legislation that had legislative findings or redistricting principles, much less the specific "non-negotiable" redistricting principles in SB5, or that had been drafted by the Alabama Solicitor General.

43. No evidence before the Court suggests any other legislature, in Alabama or elsewhere, has ever had "non-negotiable" redistricting principles.

44. No precedent suggests whether a Court should treat a "non-negotiable" redistricting principle the same or differently than any other redistricting guideline.

45. Three of SB5's six "non-negotiable" redistricting principles are normal redistricting guidelines: minimal population deviation, contiguous districts, and reasonably compact districts. *Id*. at 2-3 of 12.

46. Dr. Duchin described SB5's other nonnegotiable redistricting principles as "novel" and not "traditional." One of these novel principles is only six county splits. Trial Tr., Vol. II, at 297:5 – 299:24; 359:15 – 360:13.

47. Dr. Duchin testified that "the plan just from the last census cycle split seven counties so wouldn't meet the test put into the new 2023 guidelines." *Id*. at 360:6 - 360:13.

48. Another SB5 nonnegotiable principle is keeping together three regions of Alabama counties, with SB5 labeling each as a "community of interest." Those three areas are the Black Belt, the Gulf Coast, and the Wiregrass. CX 19, *Caster* Doc. 319-19 at 3-8 of 12.

49. SB5 provided the "Black Belt region is . . . composed of the following 18 core counties: Barbour. Bullock, Butler, Choctaw, Crenshaw, Dallas, Greene, Hale, Lowndes, Macon, Marengo, Montgomery, Perry, Pickens, Pike, Russell, Sumter, and Wilcox. Moreover, SB5 provides that the following five counties are sometimes considered part of the Black Belt: Clarke, Conecuh, Escambia, Monroe, and Washington." *Id*. at 4-5 of 12.

50. SB5 provided that the "Gulf Coast region is . . . composed of Mobile and Baldwin Counties." *Id*. at 5 of 12.

51. SB5 provided that the "Wiregrass region is composed of the following nine counties: Barbour, Coffee, Covington Crenshaw, Dale, Geneva, Henry, Houston, and Pike." *Id*. at 8 of 12.

52. SB5 has Barbour, Crenshaw and Pike counties as both core Black Belt and also as Wiregrass counties. *Id*. at 4-5 & 8 of 12.

C. SB5's impossible nonnegotiable redistricting principles

53. Dr. Duchin explained as follows when discussing these SB5 principles:

- Keeping the Blackbelt counties and the Wiregrass counties both together is "mathematically impossible," "because those two communities of interest overlap and, taken together, they have more population than a congressional district can have." Trial Tr., Vol. II, at 297:24 – 298:8.

- "[T]he Gulf Coast county cluster, which is Mobile and Baldwin Counties -- together those contain more than 90 percent of the population of a congressional district. So the effect of keeping those counties together is to come close to prescribing a congressional district in the guidelines." *Id*. at 298:9 – 298:15.

- And "mandating keeping Mobile and Baldwin County together" has the effect on "the racial composition of the district that includes those counties" must "as a matter of mathematical necessity be majority white." *Id*. at 298:16 – 298:24.

54. Dr. Duchin answered "[y]es. You understood that right." when the Court asked, "your testimony is that [the SB5 nonnegotiable principles] are

mathematically impossible to satisfy for any lawful map, not just a map that includes an additional opportunity district." *Id*. at 360:24 – 361:3.

55. "Because it's impossible to follow [SB5's nonnegotiable principles] fully literally, [Dr. Duchin] took them to be priorities." *Id*. at 299:3 – 299:9.

56. Toward the end of the trial, Defendants admitted essentially the same. When asked by the Court, "is keeping Mobile County and Baldwin County together a nonnegotiable interest for the legislature that trumps all of the other considerations that we've just read? Is that what the legislature is telling us? . . . Mr. Davis: I believe the best reading of that, Your Honor, is that there are a lot of interests that are all important." Trial Tr., Vol. XI, at 2643:11 – 2643:19.

57. Toward the end of the trial, the Court had the following exchange with Defendants:

> Judge Manasco: . . . Is it possible, consistent with the legislative findings expressed in SB5, to draw a map that contains two opportunity districts?
> Mr. Davis: As I've said, Your Honor, no one has shown that it can be done, that you can split – that you can draw two opportunity districts without splitting Mobile County.
>
> Judge Manasco: . . . Is the rule against splitting Mobile County a nonnegotiable?
>
> Mr. Davis: It's certainly extremely important to the legislature.
>
> Judge Manasco: So is it possible to draw a map that satisfies the findings expressed in SB5 with two opportunity districts?

> Mr. Davis: I am not aware of a way to draw two majority-black districts without going against the legislature's priority of keeping Mobile and Baldwin Counties whole."

Trial Tr., Vol. XI, at 2647:11 – 2648:6.

D. SB5's nonnegotiable redistricting principles not "traditional"

58. SB5 provides that "traditional redistricting principles . . . are the product of ***history, tradition, bipartisan consensus, and legal precedent***." CX 19, *Caster* Doc. 319-19 at 2 of 12 (emphasis added).

59. As to history and tradition, Alabama's history and tradition over the past 150 years has been to put Baldwin County and Mobile County in separate Congressional districts more years than not; since 1875, Mobile County has been split from Baldwin County over 90 of 150 years. SX 6.

60. For the past decades, the Alabama State Board of Education ("SBOE") district maps have split about half of Mobile County away from Baldwin County, like the Special Master's Plan does. *E.g.*, *compare* CX 18 (the Special Master's Plan *with* CX 44 (the SBOE Plan).

61. Based on Alabama's 150 years of history and tradition and on the recent SBOE's redistricting plans, SB5's Mobile-Baldwin Counties being part of the SB5's nonnegotiable Communities of Interest redistricting principle is ***not*** a product of ***history or tradition***.

62. The 2021 Guidelines, originally re-adopted for 2023, were a product of bipartisan consensus. In contrast, SB5's Mobile-Baldwin Counties' being part of a nonnegotiable Community of Interest redistricting principle is ***not*** a product of ***bipartisan consensus***. *See Singleton* Doc. 191 at 94 of 217 ("The 2023 Plan was approved along party and racial lines").

63. Defendants have ***not*** identified any ***legal precedent*** that shows SB5's Mobile-Baldwin Counties are part of a nonnegotiable Community of Interest redistricting principle.

64. SB5 states that "The Gulf Coast Community has a distinct culture stemming from its French and Spanish colonial heritage." Then, SB5 refers to "Mardi Gras" four times. CX 19, *Caster* Doc. 319-19 at 7 of 12.

65. Mobile County's Mardi Gras is one of the remaining bastions of segregation in Alabama. Trial Tr., Vol I, at 39:7 – 40:1 (Major Dowdy testifying that Mardi Gras is segregated today because in the past "black people were not allowed to participate in the Mardi Gras festivities with the white citizens of Mobile"); *id*. at 253:9-16 (Mr. Clopton testifying that black people and white people experience Mardi Gras differently. . . . Sadly, Mardi Gras is very segregated."); *id*. at 1467:17 – 1468:8 (Dr. Bagley testifying "the traditions in Mobile surrounding Mardi Gras have a pretty strong history of segregation").

66. "Mardi Gras" is French for Fat Tuesday. To the extent there is a Spanish equivalent, the Spanish would be "Carnaval." SB5 thus celebrates primarily French colonial heritage, a European American (as opposed to African American) heritage, back when Blacks were chattel slaves. In other words, SB5's language reflects racial and racist discrimination.

67. Because SB5 defines "traditional redistricting principles" as based on "history, tradition, bipartisan consensus, and legal precedent," SB5's nonnegotiable Mobile-Baldwin Counties as part of SB5's Communities of Interest redistricting principle is *not* a "traditional redistricting principle."

68. The SB5 nonnegotiable principles (1) are at most only priorities of whoever drafted them and arguably of who voted for them, which is almost all of the White legislators in the current legislature, (2) actually have language reflecting racial and racist discrimination, (3) are not absolutes, and (4) are subject to tradeoffs like any other redistricting guideline.

E. The Special Master Plan complies with SB5

69. Defendants do not "contend that [the Special Master's map is] unlawful under SB5." Trial Tr., Vol. XI, at 2640:14 – 2641:17.

70. As explained below, the Special Master Plan complies with SB5's nonnegotiable Community of Interest redistricting principle as well as or better than the 2023 Enacted Plan adopted by SB5.

71. Both the Special Master's Plan and SB5's 2023 Enacted Plan have 22 of 23 of SB5's Black Belt counties in two districts. *Compare* CX 18 (the Special Master's Plan) *with* CX 20 (the 2023 Enacted Plan). Both have Escambia County, a "sometimes" Black Belt County, in a third district. *Id*.

72. Three counties (Barbour, Crenshaw and Pike) are core Black Belt counties and are also Wiregrass counties. Both the Special Master's Plan and the 2023 Enacted Plan have these three counties in districts with Black Belt counties and not with Wiregrass counties. *Id*.

73. The Special Master's Plan has all the other Wiregrass counties in one district; SB5's 2023 Enacted Plan does not have Covington County, a Wiregrass County, with all the other Wiregrass counties. *Id*.

74. The Special Master's Plan has about half of Mobile County with Baldwin County; SB5's 2023 Enacted Plan has all of Mobile County with Baldwin County. *Id*.

75. For the Special Master's Plan, the about-half-of-Mobile County with Baldwin County includes most of those parts of Mobile County nearest to Baldwin County and includes the beach tourism areas. *Id*. Hence, most of the voters in Mobile County who are most likely to have common interests with Baldwin County voters are in the same district with Baldwin County voters.

76. In summary, as to SB5's Community of Interest nonnegotiable redistricting principle, (1) the Special Master's Plan misplaces only one-half of a county, (2) the Special Master's Plan has the about-half-of-Mobile County most likely to share interests with Baldwin County in the district with Baldwin County, (3) the 2023 Enacted Plan misplaces one whole county (not just half a county), (4) otherwise the two plans comparably follow SB5's Community of Interest redistricting principle, and (5) SB5's forcing Mobile-Baldwin Counties into SB5's Communities of Interest redistricting principle conflicts with SB5's own definition of "traditional redistricting principles" (*i.e.*, Mobile-Baldwin Counties fail SB5's "history, tradition, bipartisan consensus, and legal precedent" test.).

77. For these reasons, the Special Master Plan complies with SB5's nonnegotiable Community of Interest redistricting principle as well as or better than the 2023 Enacted Plan.

F. Having Jefferson County Whole Results in an Opportunity District

78. To have a reasonable Alabama Congressional plan/map with two majority-minority districts or opportunity districts, many variations are possible, yet only two general approaches are mathematically possible: The Special Master's Plan (or something close to it)[2] or the Singleton Plan (or something close to it).

[2] The *Milligan* and *Caster* Plaintiffs' experts' illustrative plans provide many examples of acceptable variations close to the Special Master's Plan.

79. As the November 5, 2024 general election confirms, the Special Master's Plan provides two opportunity districts, one majority-Black and one crossover district. *See* SX 49 at 22-23 & 32-33 of 126 (under the Special Master's Plan, election results for the Second and Seventh Congressional Districts, showing the Black preferred candidates prevailing).

80. Similarly, any redistricting plan that keeps Jefferson County together, like the Singleton Plan (SX 56; DX93), could create two opportunity districts. *See Singleton* Doc. 241 at 33 of 44 (Special Master's analysis showing that the "Singleton Plan performs comparably to Remedial Plan 2 . . . in the second opportunity district"); *Singleton* Doc. 202-15 (exhibit with the data supporting Special Master's analysis that keeping Jefferson County whole creates two opportunity districts).

81. Other Jefferson County elections show a Congressional district keeping Jefferson County whole would have two opportunity districts for Black voters to choose their preferred candidate. For examples,

- In the 2022 Jeferson County general election, eleven (11) Black candidates were elected to circuit judgeships.
- In the 2020 Jefferson County general election, two (2) Black candidates were elected to circuit judgeships; and an equal number of Black people were elected to district judgeships.

- In the 2018 Jefferson County general election, five (5) Blacks were elected to circuit judgeships; and four (4) Blacks were elected to district judgeships.

Singleton Doc 294 at 2-3 of 5 (Joint Stipulation as to Successful Jefferson County Judicial Candidates).

82. Accordingly, anyone drawing an Alabama Congressional redistricting plan/map to provide a second opportunity district must choose between two approaches: The Special Master's Plan (or something close to it) or the Singleton Plan (or something close to it).

G. Jefferson County compared to Mobile-Baldwin Counties

83. Why did the Alabama Legislature in SB5 not consider Jefferson County to be a community of interest and at the same time strive to make Mobile-Baldwin Counties the highest priority community of interest? This question has no answer favorable to Defendants.

84. So many times, the *Singleton* Plaintiffs promoted a redistricting plan that kept Jefferson County whole in one Congressional district as a priority Community of Interest. The Singleton Plan (SX 56; DX93) is an example.

85. The Alabama Legislature passed SB5, which ignored Jefferson County as a Community of Interest, yet SB5 strived so hard to define Mobile County and Baldwin County as a Community of Interest: as explained below, these indisputable facts reveal what SB5 was really intended to do.

86. Note, the Singleton Plan keeps both Jefferson County whole and keeps Mobile-Baldwin Counties whole and together. SX 56; *see* DX 93 (same plan).

87. SB5 had as a nonnegotiable redistricting principle "[t]he congressional redistricting plan shall not pair incumbent members of Congress within the same district." CX 19, *Caster* Doc. 319-19 at 2 of 12. To the extent this were really a "traditional redistricting principle," the Singleton Plan met this redistricting principle. *Singleton* Doc. 189 at 25-26 of 69.

88. In other words, if SB5's highest priority really were keeping Mobile-Baldwin Counties whole and together, then the Singleton Plan (or something close to it) is the only option that both could comply with the Court's directions to create a second opportunity district and could keep Mobile-Baldwin Counties whole and together.

89. By enacting SB5 and the 2023 Enacted Plan, the Alabama Republican super-majority legislature instead rejected keeping Jefferson County whole or calling it a Community of Interest and strived to make Mobile-Baldwin Counties whole and together and a "non-negotiable" Community of Interest. *See* CX 19 (the 2023 Enacted Plan).

90. If Mobile-Baldwin Counties were to be kept whole and together as a Community of Interest, then how do Mobile-Baldwin Counties whole and together compare to Jefferson County whole and as a Community of Interest?

91. Jefferson County's 2020 census population was 674,721. https://www.census.gov/quickfacts/fact/table/jeffersoncountyalabama/PST045224

92. Mobile County's 2020 census population was 414,809. https://www.census.gov/quickfacts/fact/table/mobilecountyalabama/PST045224.

93. Baldwin County's 2020 census population was 231,767. https://www.census.gov/quickfacts/fact/table/baldwincountyalabama/PST045224.

94. Mobile County's 2020 population, Alabama's second largest county, combined with Baldwin County's 2020 population is 646,576, and is not as large as Jefferson County's 2020 population of 674,721.

95. Leonette Slay and Bobby Singleton's testimonies about why Jefferson County should be a Community of Interest are unrebutted on this record. *See* FOF[3] ¶¶ 10-14 & 18-20.

96. While as neighboring counties, Mobile County and Baldwin County have some common interests, the testimony and other evidence in this record about the strength of those interests conflicted. *See Milligan* and *Caster* Plaintiffs' Post-Trial Proposed Findings of Fact and Conclusions of Law.

[3] "FOF" is for the Proposed Findings of Fact in this filing. These internal citations are for the Court's convenience only.

97. Moreover, as SB5 defined traditional redistricting principles, Mobile-Baldwin Counties as a Community of Interest do not meet that definition. *See* FOF ¶¶ 58-68.

98. Why is Jefferson County a stronger Community of Interest than Mobile and Baldwin Counties? (1) primarily, Jefferson County is one county (not two counties), (2) Jefferson County has more population and thus is closer to being a separate district alone than Mobile and Baldwin Counties combined, and (3) Jefferson County has as much or more reasons to be a Community of Interest. *See* FOF ¶¶ 10-14 & 18-20 (Ms. Slay's and Senator Singleton's unrebutted testimony).

99. An obvious additional question is why SB5 has over 30% of its words (2.5 of 8 pages) devoted to trying to justify Mobile and Baldwin Counties as a Community of Interest and zero words discussing Jefferson County as a Community of Interest (or any other Community of Interest for the top half of Alabama, which has two-thirds of Alabama's population).

100. Either the drafter of SB5 and its 2023 Enacted Plan (1) blindly fell into ignoring Jefferson County as a Community of Interest, having Mobile and Baldwin Counties together as the highest priority based on word count in SB5, and keeping Mobile and Baldwin Counties together without having Jefferson County whole and thus making a second opportunity district mathematically impossible or (2) the drafter of SB5 and its 2023 Enacted Plan knew what he or she was doing and

intended to tie this Court's hands and checkmate this Court with "non-negotiable" redistricting principles that would make mathematically impossible following this Court's directives to have a second opportunity district in an attempt to block this Court from providing Plaintiffs with the relief that this Court had already preliminarily determined Plaintiffs were entitled to have.

III. ***Gingles* I – Numerosity and Reasonable Compactness**

101. In this Court's January 24, 2022 Preliminary Injunction Memorandum Opinion and Order (the "Jan. 24, 2022 Order"), this Court made two *Gingles* I findings: "the *Milligan* Plaintiffs have established that Black voters are 'sufficiently large . . . to constitute a majority' in a second majority-minority legislative district" and the *Milligan* Plaintiffs have established that Black voters as a group are sufficiently large and 'geographically compact' to constitute a majority in a second congressional district." *Singleton* Doc. 88 at 146-147 of 225; *cf. Thornburg v. Gingles*, 478 U.S. 30 (1986) (describing *Gingles* I, II and III).

102. The United States Supreme Court affirmed, with Justice Kavanaugh "vot[ing] to affirm" and "concur[ring] in all but Part III-B-1 of the Court's opinion." *Allen v. Milligan*, 599 U.S. at 45 (Kavanaugh, J. concurring). Except for Part III-B-1, Justice Kavanaugh's concurrence made the affirmance by a Supreme Court majority; for Part III-B-1, his concurrence made the affirmance for that part by a four-justice plurality. This Court analyzed the concurrence, *Singleton* Doc. 191 at

61-64 of 217, and found "[t]he affirmance tells [this Court] that a majority of the Supreme Court concluded that the Plaintiffs satisfied their burden under *Gingles* I." *Id*. at 64 of 217.

103. The Jan. 24, 2022 Order turned in part on this Court's credibility determinations of the parties' expert witnesses. *Singleton* Doc.88 at 148-156 of 225. Some of the *Gingles* I experts have changed and at trial additional opinions and testimony were offered.

104. While the experts' statistics are favorable for Plaintiffs, the easiest test to understand is the eyeball test. Alabama changes geographically and thus agriculturally from North to South; northern counties on the western border are likely to have common interests with northern counties on the eastern border. The Black Belt also runs from Alabama's western border to its eastern border, with SB5 saying "[t]he Black Belt is characterized by its rural geography, fertile soil, and relative poverty, which have shaped its unique history and culture." CX 19, *Caster* Doc. 319-19 at 5 of 12.

105. Many Alabama Congressional plans, including the Alabama Legislature's 2021 Enacted Plan and its 2023 Enacted Plan, have District 4 running from the West border to the East border in northern Alabama. Similarly, as the eyeball test would suggest, the Special Master's Plans have Districts 1 and 2 running from the West border to the East border in southern Alabama, following the Alabama

Legislature's lead in having Congressional districts running from West to East. *Cf.* CX 18 (the Special Master's Plan) *with* CX 20 (the 2023 Enacted Plan).

106. In summary, the *Milligan* and *Caster* Plaintiffs' *Gingles* I evidence at trial, when compared to Defendants' *Gingles* I evidence at trial, is as strong or even stronger than during the preliminary injunction proceedings, as detailed in the *Milligan* and *Caster* Plaintiffs' Post-Trial Proposed Findings of Fact and Conclusions of Law. The *Singleton* Plaintiffs incorporate those Proposed Findings of Fact.

IV. *Gingles* II and III and Senate Factors

A. *Gingles* II and III and Racially Polarized Voting

107. The Jan. 24, 2022 Order discussed *Gingles* II and III together and found "there is no serious dispute that Black voters are 'politically cohesive,' nor that the challenged districts' white majority votes 'sufficiently as a bloc to usually defeat [Black voters'] preferred candidate.'" *Singleton* Doc. 88 at 174 of 225.

108. As part of this Court's discussion of the Supreme Court opinion affirming the Jan. 24, 2022 Order, this Court found that the "Supreme Court reviewed [this Court's] analysis of each *Gingles* requirement . . . [and] agreed with [this Court's] analysis as to each requirement. It did not hold, suggest or even hint that any aspect of [this Court's] *Gingles* analysis was erroneous." *Singleton* Doc. 191 at 54 of 217.

109. The Jan. 24, 2022 Order turned in part on this Court's credibility determinations of the parties' expert witnesses. *Singleton* Doc.88 at 148-156 of 225. Some of the *Gingles* II experts have changed and at trial additional opinions and testimony were offered.

110. As reflected primarily in the testimony of the *Milligan* Plaintiffs' expert Dr. Joseph Bagley and the scholarly writings of Defendants' expert Dr. M.V. Hood, race is still the predominant consideration in the 2020s, impacting Black voters' opportunity to vote for a candidate of their choice who has a chance to win. *See* FOF ¶¶ 204-206 (highlights of Dr. Hood's writings); *Milligan* and *Caster* Plaintiffs' Post-Trial Proposed Findings of Fact and Conclusions of Law.

111. As the *Singleton* and *Milligan* experts made clear, political parties, with the support of State government, have driven racially polarized voting throughout Alabama history by unifying White voters and suppressing Black voters and biracial coalitions.

112. In summary, the *Singleton*, *Milligan* and *Caster* Plaintiffs' *Gingles* II and III evidence at trial, when compared to Defendants' *Gingles* II and III evidence at trial, is as strong or even stronger than during the preliminary injunction proceedings.

B. Senate Factors 1, 3 and 5 and 2, 6, 7, 8 and 9

113. Under *Thornburg v. Gingles*, 478 U.S. 30 (1986), for a Voting Rights Act § 2 claim, in addition to the analysis of *Gingles* I, II and III, a court also analyzes the "totality of the circumstances," including considering nine Senate Factors.

114. Three of those Senate Factors involve history, with the possible historical evidence overlapping with each other, and the historical evidence at times significantly overlapping with the evidence for Gingles II and III.

Senate Factor 1: "The extent of any history of official discrimination in the state … that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process." *Id*. at 36-37.

Senate Factor 3: "The extent to which the state … has used … voting practices or procedures that may enhance the opportunity for discrimination against the minority group." *Id*. at 37.

Senate Factor 5: "The extent to which members of the minority group in the state … bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process." *Id*.

115. In addition, the other Senate Factors[4] involve evidence that often overlaps with *Gingles* II and III:

[4] As to Senate Factor 4, the *Singleton* Plaintiffs refer to the Senate Factor 4 arguments in the *Milligan* and *Caster* Plaintiffs' Post-Trial Findings of Fact and Conclusions of Law.

Senate Factor 2: "[T]he extent to which voting in the elections of the state or political subdivision is racially polarized." *Id*.

Senate Factor 6: "Whether political campaigns have been characterized by overt or subtle racial appeals." *Id*.

Senate Factor 7: "The extent to which members of the minority group have been elected to public office in the jurisdiction." *Id*.

Senate Factor 8: "Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group." *Id*.

Senate Factor 9: Whether the policy underlying the Plan is "tenuous." *Id*.

116. "During the preliminary injunction proceedings, [this Court] found that Senate Factors 1, 2, 3, 5, 6, and 7 weighed in favor of the Plaintiffs" and made no finding about Senate Factors 8 and 9. *Singleton* Doc. 191 at 178-179 of 217. This Court affirmed those findings on September 5, 2023, and again made no finding as to Senate Factor 9. *Id*. at 179-180 of 217.

117. As to Senate factor 8, in this Court's September 5, 2023 Injunction, Opinion and Order, this Court wrote that it "cannot help but find that the circumstances surrounding the enactment of the 2023 Plan reflect 'a significant lack of responsiveness on the part of the elected officials to the particularized needs' of Black voters of Alabama." *Id.* at 179-180 of 217 (quoting *Gingles*, 478 U.S. at 37)).

118. Below, the *Singleton* Plaintiffs summarize trial evidence relevant to Gingles II and III and to the Senate factors, and relevant to the Constitutional Claims too, referring to and incorporating the preliminary injunction proceedings and the *Milligan* and *Caster* Plaintiffs' filings that also have relevant evidence.

C. Singleton expert historian Dr. R. Volney Riser

119. *Singleton* expert historian Dr. R. Volney Riser is Professor of History at the University of West Alabama, which is in Sumter County, a Black Belt county. One of his published books is *Defying Disfranchisement: Black Voting Rights Activism in the Jim Crow South, 1890-1908* (Louisiana State University Press, May 2010; paperback edition, January 2013). SX 71.

120. Dr. Riser was qualified as an expert in the history of the role of race and politics and law in the South and Alabama, particularly in the 19th and early 20th Centuries. Trial Tr., Vol. III, at 750:9-750:15.

121. During Reconstruction, which lasted in Alabama from 1867 to 1874, the Republican Party was an interracial political coalition. Trial Tr., Vol. III, at 752:1-755:3.

122. But the Republican Party was controlled by Whites. Black rule or domination was a myth perpetuated in Alabama school history books at the end of the nineteenth century. White Republicans held most of the leadership positions and

legislative seats. So even though Black men were allowed to participate freely in the political process, they were never in control. Trial Tr., Vol. III, at 755:4-756:13.

123. The Democratic Party "redeemed" Alabama from "Black domination" when it regained control of state government with the votes of the overwhelming majority of White voters in the 1874 election. Trial Tr., Vol. III, at 756:14-757:3.

124. The Bourbon Period in Alabama began with Redemption and ran through 1890. During this time Black men were still able to vote, and violence was not widespread. But that was because the Republican Party had no chance of winning state elections, and the Democratic Party did not feel threatened. So even though Black men had access to the ballot and could still participate in the political process freely, their biracial coalition with Republicans always lost. Trial Tr., Vol. III, at 757:4-758:1.

125. There were Regular and Liberal factions in the Republican party during and after Reconstruction. Regular Republicans supported President Grant's progressive, pro-civil rights agenda, while Liberal Republicans didn't want Black men on the ballot or in party councils or serving as presidential electors. The Liberal Republicans were "deeply concerned that having African-Americans as part of the coalition served as an effective deterrent to white participation in the Republican coalition." Trial Tr., Vol. III, at 760:1-761:17.

126. Most of the violence committed or threatened against Black voters began when agrarian White voters, led by Reuben Kolb, challenged the Democratic leadership. The emergence of factions in the Democratic Party threatened White unity and raised fears that the Republican Party, the Peoples Party, or other coalitions Black voters were able to join might actually swing some elections. This never came close to happening, but the threat was real enough to cause Democratic leaders to join the disfranchisement movement that had begun with Mississippi in 1890. Trial Tr., Vol. III, at 758:2-759:25, 761:21-763:19.

127. To make clear what caused so much fear in Democratic leadership during the 1890s, Dr. Riser quoted an 1898 circular by influential Democratic attorney Sidney J. Bowie:

> White dissent coupled with African American votes, *i.e.* interracial coalition-building, was intolerable. "We are opposed," he continued, "to the rule of a minority of white men...as odious to every principle of free government, and of the whole essence of democracy, which is not in the least mitigated by the fact that minority is supplemented by a sufficient number of blacks to turn the scales." White politicians' appeals for African American votes meant that "the negro...is the arbitrator and his vote changes the result... *Negro arbitration in principle is not distinguishable from Negro rule*...."

Trial Tr., Vol. III, at 763:21-766:2; SX 33 at 15 (emphasis added by Dr. Riser).

128. The dispute between conservative, gold standard Democrats and the agrarian, more progressive Democrats delayed ultimate passage of a constitutional convention enabling act until 1901. The White reformers, led by former Governor

Joseph Johnston, opposed ratification of the 1901 Alabama Constitution, because they rightly suspected that its disfranchising provisions, in particular literacy tests and poll taxes, were aimed at them. But all Democrats were white supremacists who favored disfranchising Blacks, which was the main purpose of the 1901 Constitution. Trial Tr., Vol. III, at 766:13-769:12, 790:4-790:10.

129. The so-called Lily-White Republicans supported ratification. "They fell for this idea that if they supported disenfranchisement, if Black men are out of the picture, then the South can be a fully functioning, healthy two-party democracy." Trial Tr., Vol. III, at 769:13-771:2. "Alabama's Lily Whites remained publicly defiant, convinced that purging Blacks was a necessary step towards building a 'respectable' white man's Republican Party." SX 33 at 20.

130. But most Republicans in Alabama opposed ratification. Trial Tr., Vol. III, at 771:9-771:20. "Black Republicans and the interracial 'Black-and-Tan' faction they belonged to did not take the Lily White movement lightly or passively. They refused to go without a fight and announced a campaign against their G.O.P. assailants." SX 33 at 20; Trial Tr., Vol. III, at 776:5-776:20.

131. The 1901 Constitution was ratified by fraud. The vote from the counties with the highest Black populations provided the margin of victory, implying that Black Alabamians had voted for their own disfranchisement. Trial Tr., Vol. III, at 771:21-772:9.

132. Under the new Constitution's terms, all voters, Black and White, were immediately struck from the registration rolls, and "in the spring of 1902, the state conducted an entire from-scratch registration canvas in every county of the state." Trial Tr., Vol. III, at 772:13-772:18. Registrars appointed by the Alabama Governor, Auditor, and Agricultural Commissioner were reliable Democratic partisans who made sure that almost all Black voters were denied, along with Whites who had supported the Populist movement. As a result, 98 percent of Black men and one-third of White men were disfranchised. Trial Tr., Vol. III, at 772:23-774:21.

133. The "real teeth" of disfranchisement was the cumulative poll tax, which "was really an effective way to winnow down the number of voters that the Democratic Party had to campaign to," removing both Blacks and those poor Whites who in the future might have incentives to form effective biracial electoral coalitions. Trial Tr., Vol. III, at 774:22-775:4.

134. But even with nearly all Blacks and many Whites disfranchised, the Democratic Party still feared dissension within its membership. The party leadership, centered in the Black Belt, could no longer fraudulently control their Black voters and command obedience of its White members with cries of Black rule. So, to make sure the White vote was unified in the general election, where what was left of Black-and-Tan Republicans might field candidates, it established the all-White Democratic Primary. Trial Tr., Vol. III, at 775:9-778:1.

D. Singleton expert historian Dr. Kari Frederickson

135. Dr. Kari Frederickson is Professor of History at the University of Alabama, where she has been on faculty since 1999. She has published three books that span the twentieth century broadly, focusing particularly on Southern political history, including *The Dixiecrat Revolt and the End of the Solid South, 1932-1968* (Chapel Hill: University of North Carolina Press, 2001), which won the Harry S. Truman National Book Award in 2002. Most recently, she has contributed the chapter on politics in the South in the twentieth century in The *New History of the American South*, published by the University of North Carolina Press. Dr. Frederickson was qualified by this Court as an expert in American history with a particular focus on the role of race in the South and Alabama in the 20th Century. Trial Tr., Vol. IV, at 803:14-805:10; SX 70.

136. Dr. Frederickson's expert report and supplemental report were admitted in evidence as SX 31 and SX 32. Trial Tr., Vol. IV, at 805:21-25, 861:11-19.

137. Dr. Frederickson summarized her opinions as follows:

> So my summary is that race is the primary dividing line . . . for political allegiances and that both parties, . . . first the Democratic Party and then the Republican Party achieved viability and, in some cases, dominance through the deployment of racial appeals and racialized language and racialized positions on public policy and that this -- these appeals were made sometime explicitly and sometimes implicitly. And, thus, I think ... made creating viable biracial coalitions incredibly difficult, and in some cases, impossible.

Trial Tr., Vol. IV, at 806:24-807:8.

138. Dr. Frederickson agreed with Dr. Riser that the purpose of the 1901 Constitution was to disfranchise Black men and maintain White Supremacy. "But also to discipline white voters, particularly poor whites who had shown . . . the willingness, no matter how circumscribed and no matter how tentative to find other common -- to find commonalities outside of race with black men, with black voters." Trial Tr., Vol. IV, at 808:24-809:6, 812:15-812:17.

139. The White Primary allowed white politicians to express their disagreements on many issues, particularly economic issues. But they were united when it came to any issue that addressed racial segregation, voter disfranchisement, or that promoted racial equality. Trial Tr., Vol. IV, at 809:16-810:2.

140. Historical memory became a powerful tool for maintaining Black segregation and disfranchisement. The myth of Reconstruction recalled a time of Whites' humiliation and created "this sense of white victimhood that becomes a powerful strain in southern politics." This mythology became a "cultural touchstone for white southerners well into the 20th Century, something that is never to be repeated." Trial Tr., Vol. IV, at 810:3-810:25.

141. The myth of the lost cause also animated Southern politics, history books, and culture. It claimed slavery was relatively benign, glorified the Confederate military, and made symbols like the Confederate flag synonymous with the Democratic Party. "And so the Confederate flag becomes ... not only a historical

symbol, but it becomes a political symbol with state sanction." Trial Tr., Vol. IV, at 811:4-812:14.

142. The myths of Reconstruction and the lost cause were pushed in public schools and given state sanction by institutions like the Alabama Department of Archives and History. Trial Tr., Vol. IV, at 812:18-813:1.

143. Marie Bankhead Owen, who became Director of the Department of Archives and History in 1920, created a new seal for the State of Alabama and a new State motto, "We Dare Defend Our Rights." What the motto intends to defend is the right of the State of Alabama to resist federal intrusion into race relations. Trial Tr., Vol. IV, at 814:12 – 815:10. It is still Alabama's motto today. *See* https://archives.alabama.gov/research/guidance/Fast-Facts.aspx.

144. There were interracial labor coalitions among poor Whites and poor Blacks in Alabama around the turn of the twentieth century. Half of all coal miners were Black, as were many convict laborers. "There were gigantic strikes involving free black and white miners." When employers' appeals to white supremacy failed, the State sent in the militia to break the strikes. Trial Tr., Vol. IV, at 816:21-818:6.

145. In the 1930s biracial coalitions were formed around class interests. In 1938 the Southern Conference for Human Welfare held its inaugural meeting in Birmingham at what is now Boutwell Auditorium. White moderates and even some conservatives attended, along with members of the NAACP. Its agenda included

registering working-class voters and ending the poll tax. Eleanor Roosevelt attended the meeting, and when Bull Connor demanded that Whites sit on one side of the room and Blacks on the other side, Mrs. Roosevelt famously moved her chair to the middle aisle. Trial Tr., Vol. IV, at 818:7-819:17.

146. Some members of the tiny Communist Party headquartered in Birmingham joined the SCHW, and after World War II and the start of the Cold War the organization could not sustain accusations of being Communists. When in 1946 the SCHW declared its dedication to ending racial segregation, that "amplified the accusations of it being communist because a way to kill a biracial organization was to accuse it of being communist." Trial Tr., Vol. IV, at 819:18-820:9.

147. When the Supreme Court struck down the Texas white primary in *Smith v. Allwright*, 321 U.S. 649 (1944), it was a "political bombshell" in Alabama. Governor Frank Dixon said "It is obvious that the only thing that has held the Democratic Party together in the South for many years past has been the thing which caused its strength in the first place, namely, white supremacy." Dixon went on to say that if Alabama complied with the Supreme Court's decision "the Democratic Party will become anathema to the white people in the South." SX 31 at 14.

148. The State of Alabama responded by amending its constitution. The "Boswell Amendment" required citizens seeking to register to vote to satisfy the registrars that they can "understand and explain" any article of the U.S. Constitution.

A three-judge district court in Mobile enjoined enforcement of the Boswell Amendment, because it violated the Fifteenth Amendment. *Davis v. Schnell*, 81 F. Supp. 872 (S.D. Ala.), *aff'd per curiam*, 336 U.S. 933 (1949). Trial Tr., Vol. IV, at 820:10-821:2.

149. At the same time, Alabama Democrats were being forced to address President Truman's civil rights agenda, which included abolishing the poll tax, supporting anti-lynching legislation, and fair employment practices. So when Truman was nominated in 1948, leading Alabama Democrats bolted to form what they called the States' Rights Party, popularly known as the Dixiecrats. The Dixiecrats appropriated the most powerful cultural symbols associated with the Confederacy, including the Confederate battle flag and portraits of Confederate heroes. SX 31 at 15.

150. The Dixiecrat convention, held in Boutwell Auditorium, nominated Strom Thurmond for President "on an explicitly white supremacist platform." The Dixiecrats carried Alabama in 1948 but failed in their scheme to throw the Presidential election into the House of Representatives. Trial Tr., Vol. IV, at 821:8-822:21.

151. "Following the 1948 presidential election, politics in Alabama and across the South entered into a long transitional period in which the right to claim the mantle of the defender of white supremacy shifted slowly from the Democratic

Party to the Republican Party." SX 31 at 16. Immediately, the Republican Party started recruiting states' rights Democrats in Alabama. In 1950, at a Lincoln Day rally in Birmingham, Republican National Chairman Guy Gabrielson declared: "We want the Dixiecrats to vote for our candidate. The Dixiecrat movement is an anti-Truman movement. The Dixiecrat party believes in states' rights. That's what the Republican party believes in." SX 31 at 17, Trial Tr., Vol. IV, at 823:23-824:5.

152. In 1950 several prominent Dixiecrats threw their support to the Republican Presidential nominee, Dwight Eisenhower. SX 31 at 18. During Eisenhower's presidency the Republican Party launched a "Southern Division" to begin building party infrastructure in Alabama and the rest of the South. Trial Tr., Vol. IV, at 824:8-825:13, SX 31 at 18.

153. Richard Nixon, Eisenhower's Vice President, was not a segregationist, but he adopted states' right rhetoric to appeal to White Southerners. He focused on "country-club Republicans," like Birmingham newspaperman John Temple Graves, "who now saw the Republican Party as the best vehicle through which to preserve segregation and white political control." SX 31 at 18-19, Trial Tr., Vol. IV, at 825:17-826:15.

154. John Kennedy won Alabama in 1960 because he had Texan Lyndon Johnson on his ticket. But Kennedy's support for the anti-poll tax amendment,

Freedom Riders in Alabama, and desegregation of the University of Mississippi helped the Republican Party to make gains in the South in 1962. SX 31 at 20.

155. In 1962, James D. Martin became the first serious Republican candidate for national office since Reconstruction. He challenged Senator Lister Hill, the popular New Dealer who still supported segregation. Even though Martin opposed federal programs popular in Alabama, like social security and support for farmers, "he is able to leverage the anxiety and fear that white southerners feel about the unrolling Civil Rights movement." He talked about a second Reconstruction and invoked "the spirit of 1861," the year Alabama seceded from the Union. He called Kennedy's intervention on behalf of Freedom Riders a "federal invasion," and accused Attorney General Bobby Kennedy of "tearing like a predator ... at the [voter] registration laws in Alabama." Standing in front of a Confederate flag, Martin praised Mississippi Governor Ross Barnett for his "gallant defense of the sovereign state of Mississippi." SX 31 at 20-21, Trial Tr., Vol. IV, at 828:17-829:16.

156. "We're starting to see Republicans adopting the symbols, the language, the history that ... since the 1870s had been the purview of the Democratic Party." Trial Tr., Vol. IV, at 829:20-829:23.

157. Martin lost to Lister Hill by a scant 6,803-vote margin. A majority of White voters, especially in the Black Belt counties, supported Martin. SX 31 at 21-22, Trial Tr., Vol. IV, at 830:1-830:9.

158. Before the 1964 election Lyndon Johnson, who became President when Kennedy was assassinated, and the National Democratic Party became anathema to many White voters in the South by passing the 1964 Civil Rights Act. Johnson campaigned as the President of civil rights. His opponent, Republican Barry Goldwater, did not vote for the Civil Rights Act and ran on a states' rights platform, taking a lesson from Nixon. Famously saying that Republicans must "go hunting where the ducks are," referring to White Southerners, Goldwater was warmly received in Alabama and was endorsed by the Ku Klux Klan. Governor George Wallace offered to be his running mate after recognizing Goldwater's appeal and withdrawing his own Presidential candidacy. Goldwater got 70 percent of the vote in Alabama, with his greatest margins of victory in the Black Belt counties. Trial Tr., Vol. IV, at 830:11-831:16, SX 31 at 22-23.

159. In Congress, the Republicans in 1964 won five seats in Alabama, capturing a majority of the State's Congressional delegation for the first time since Reconstruction. The role of race and civil rights in the 1964 election was clear. Upon switching to the Republican Party, candidate Bill Dickinson declared. "I have joined the *white man's party*." He continued, "It behooves us to support those who support us and our way of life." Goldwater's victory in the South in 1964 initiated what political scientists Earl and Merle Black call part one of the "Great White Switch," in which southern white voters began to show greater preference for Republican

presidential candidates. SX 31 at 23, Trial Tr., Vol. IV, at 831:17-832:22 (emphasis added).

160. What followed was passage of the 1965 Voting Rights Act and the 1968 Fair Housing Act. The Alabama Democratic Party removed the slogan "White Supremacy For the Right" from its rooster logo that had been on the official state ballot for decades. Trial Tr., Vol. IV, at 836:9-836:15.

161. In 1968, "[w]ith staunch segregationist and American Independent Party candidate George Wallace in the race and sure to win the Deep South states, including his own, Republican candidate Richard Nixon took a more subtle, and ultimately enduring, rhetorical route to win white southern voters. Unlike Wallace, Nixon avoided supporting segregation openly. He developed what came to be known as a 'southern strategy,' which encompassed promises that appealed to white southerners (and many northerners as well) while avoiding the loss of moderate Republicans in the North. Nixon established a politically safe terrain by simultaneously affirming his belief in the principles of equality while opposing the use of federal intervention to enforce compliance." SX 31 at 24.

162. Nixon's Southern Strategy was to promise White Southerners he would slow down the desegregation of schools. Nixon did not carry Alabama in 1968, because George Wallace, who was more explicitly hostile to civil rights, ran as an independent. Wallace pioneered the rhetoric of racial resistance to change, avoiding

the "N" word and creating new villains: the federal bureaucracy and federal courts, who were charged with implementing the new civil rights and voting rights laws. Trial Tr., Vol. IV, at 832:23-835:25. *Milligan* expert, Dr. Joseph Bagley, agrees. MX 5 at 11-12.

163. Nixon carried through with his Southern Strategy, appointing conservative federal judges and opposing busing as a tool to desegregate schools. So in 1972, with Wallace out of the race, Nixon became the first Republican Presidential candidate to carry the South. "Voters who had supported Wallace in 1968 overwhelmingly went to Nixon." SX 31 at 25.

164. Republican success in Alabama at the Presidential level proceeded more slowly down ballot during the 1970s. "[T]he notion of a southern strategy ... is not terribly in dispute among political historians and political scientists. But it is not a transition that happens overnight." The slow transition was primarily because George Wallace continued to dominate Alabama politics into the 1980s and he never switched to the Republican Party. Trial Tr., Vol. IV, at 836:17-839:2.

165. "Black voters entered the political process as Democrats. Democrats remained competitive in Alabama into the 1980s and 1990s because of their ability to create biracial coalitions. In order to grow, the Republican Party continued to lean into its appeals to white voters. Republican state house members broke into double digits only in the early 1980s and in the state senate in the 1990s. As the parties

became more racially polarized in the 1980s and 1990s, and as more white voters migrated to the Republican Party, creating coalitions became increasingly difficult." SX 31 at 26.

166. "The election of Ronald Reagan in 1980 and 1984 secured the second part of the 'Great White Switch.' in which a majority or the South's white voters not only voted Republican for the presidency, but also identified as Republicans." SX 31 at 27.

167. "The Republican Party in the 1980s did not shy away from racial messaging. Reagan kicked off his presidential campaign in Philadelphia, Mississippi, site of a horrific 1964 triple murder of civil rights activists that happened with the complicity of law enforcement. His declaration of his support for states' rights was a not-so-subtle dog whistle to white southerners generally that his administration would not aggressively pursue remedies for racial discrimination." SX 31 at 27, Trial Tr., Vol. IV, at 841:3-841:17. *See also Milligan* expert, Dr. Bagley, MX 5 at 12.

168. Reagan did not support the Civil Rights Act of 1964, the Voting Rights Act of 1965, or the Fair Housing Act of 1968. His anti-communism appealed to Southerners' association of communism with racial integration and racial fairness. He treated affirmative action as racially discriminatory against Whites. Trial Tr., Vol. IV, at 840:7-841:2.

169. "Republican strategist Lee Atwater in 1981 admitted that 'The whole strategy was ... based on coded racism. The whole thing.' Reagan's vice president, George H.W. Bush, followed suit in his own presidential campaign in 1988. The infamous Willie Horton advertisement inextricably linked blackness, criminality, and liberalism — a linkage that originated with Nixon -- and hung it around the neck of Democratic Party candidate Governor Michael Dukakis of Massachusetts." SX 31 at 27.

170. *Milligan* expert Dr. Joseph Bagley quotes Lee Atwater more fully in his July 31, 2024, rebuttal report:

> 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."

MX 5 at 8 (footnote omitted).

171. Republicans adopted and refined the rhetoric that began with George Wallace, blaming Black people for the ills in society. "Under Reagan's leadership the Republican Party in the 1980s pursued a conservative agenda that, while not explicitly racist, had race at its center. Republicans pursued a range of policy prescriptions that relied on the belief that the Black community is marked by higher rates of crime and illegitimacy, a weakened family structure, low achievement in

educational levels, and greater demands on the welfare system." Trial Tr., Vol. IV, at 839:5-839:22. SX 31 at 27.

172. The Moral Majority, led by Jerry Falwell, supported Reagan in 1980 instead of their fellow Baptist Jimmy Carter. What got religious fundamentalists started in politics was federal court denial of tax-exempt status for their racially segregated schools. The IRS issued even more stringent requirements for admitting Black students under Carter. "[P]eople who organize ... what eventually becomes the Moral Majority are quite explicit about this is when it starts. This is when we begin to see, again, that, you know, the judiciary, the bureaucracy begin to involve itself in religious life and we need to fight against that." Trial Tr., Vol. IV, at 842:5-843:14.

173. Abortion did not become a political issue for white evangelicals until their schools were denied tax exempt status for excluding Blacks. "But race comes first. It comes first, it comes loudly. The family value stuff comes later. I think family values -- when you talk about family, again, I think you can't disentangle sort of the white evangelical family from the political family. There is a long history of those -- those entities, you know, sort of interlocking." Trial Tr., Vol. IV, at 857:1-857:6.

174. Dr. Frederickson emphasized that her testimony was about how political parties have appealed to white voters, not about voter choice. Trial Tr., Vol. IV, at 853:1-853:7. Her expert report concluded as follows:

> "By the late twentieth century, the Republican Party's electoral base resided solidly in the southern states. This remarkable political transformation was completed over the course of half a century. ... The ability to attract a large majority of white voters in southern states has become pivotal to the party's ability to win presidential elections and electoral majorities. In order to compete, beginning in the early 1960s, the Republican Party rebranded itself as a 'white party' and adopted a host of conservative policy positions that had race at their core and which allowed it to compete effectively for white southern votes. ... As Angie Maxwell and Todd Shields argue in their recent book, *The Long Southern Strategy*, 'the decision to chase white southern voters in order to build a new Republican coalition was not only intentional, strategic, and effective, but it was also unabating.' The consequence for Alabama is a politics that have become, in the words of one political scientist, 'polarized and uncompetitive.'"

SX 31 at 29-30.

175. Finally, Dr. Frederickson expressed her opinion that, based on her thirty-year career as an historian and the evidence she presented at trial, there has never been a time in Alabama history when partisanship rather than race drove racially polarized voting. Trial Tr., Vol. IV, at 843:19-844:1.

E. Defendants' Expert Dr. Adam M. Carrington

176. Defendants' expert Dr. Adam Carrington correctly recounts on the first page of his expert report the following:

> The end of legal segregation and the gains made by the Civil Rights movement in the 1960s caused racially focused Democrats to abandon the party of Jefferson Davis. They then moved to the Republican camp because the GOP, no longer the party of Lincoln, had adopted the race-conscious, even white-supremist views once the commitment of the Democratic Party. In short: the two parties switched and Southern whites, unchanged in their views, switched parties in response.

DX 3 at 1. Defendants' expert thus admitted that the historical Senate Factors 1, 3 and 5 favor Plaintiffs, at least up through the 1980s.

177. At trial, Dr. Carrington waived away this pre-1980s history, asserting that southern politics have not been dominated by race since the 1980s. Trial Tr., Vol. VII, at 1556:3-5.

178. When asked on direct "at what point did the south – did race in the south cease to dominate, in your view?" Dr. Carrington replied as follows:

> I pinpoint in my report that the 1960s and 1970s Civil Rights era as helping the south to become more normalized in politics by the 1980s. And what I mean by that is that the broader coalitional assumptions that I build off of the party literature in many ways were not true of the south. They were the exception. That's why it's so important to study them. They became more in line with that broader literature by, my argument is, the 1980s.

Trial Tr., Vol. VII, at 1556:6-15.

179. Dr. Carrington repeated his "normalized" by the 1980s theme: (1) White voters supported George Wallace because "the south was not normalized by that point [1968]," *id*. at 1606:21 – 1607:3; (2) "race predominated well into the 20th Century, but I say that it takes until the 1980s for things to normalize," *id*. at 1609:23 – 1610:4; (3) when asked about race's role in Alabama politics, responding "I am not comfortable saying things are more normalized until the 1980s." *Id*. at 1610:14-20.

180. Dr. Carrington's "normalized by the 1980s" theme is contradicted, as discussed below, by Republicans' shift to subtle racial appeals, by Congress amending the Voting Rights Act in 1982, by legal precedent and case law, and by statewide election results.

181. As to racial appeals, Dr. Carrington described George Wallace's 1963 Inauguration address with the racial appeal "Segregation now, Segregation tomorrow, Segregation forever" as "an obvious racial appeal" and "among the more well known." Trial Tr., Vol. VII, at 1629:19 – 1630:7.

182. But Dr. Carrington rejected the criticisms of Dr. Frederickson and Dr. Bagley that "I ignored what they described as covert or subtle racial appeals…." Trial Tr., Vol. VII, at 1561:18-23.

183. Dr. Carrington testified that Nixon and Reagan did not use "racial appeals to pursue southern white voters…. [T]he evidence I saw in my report is that … neither Nixon nor Reagan were [sic] willing to come to the southern segregationists on their own terms; in fact, that they would make the south come to the GOP more on its own terms; that it was really, for southern segregationists, a negotiation of their own surrender in the political system." *Id*. at 1564:10-18.

184. Dr. Carrington did not explain how Reagan made Southern segregationists surrender to the "GOP's terms" when he launched his 1980 campaign and promised to defend states' rights in Philadelphia, Mississippi, where James

Chaney, Andrew Goodman, and Michael Schwerner were murdered in 1964. *See* FOF ¶ 167. He cannot credibly deny that the White audience to whom this not-so-covert racial appeal was addressed understood what Reagan meant.

185. Moreover, following President Reagan's lead, as explained by Republican strategist Lee Atwater, the Republican Party's 1980s strategy used subtle racial appeals, as coded racism, to secure a majority of the South's White voters. *See* FOF ¶¶ 166-171.

186. If Dr. Carrington's "normalized" theme were correct, Congress would not have passed, in a bipartisan vote, the Voting Rights Act of 1982, Public Law No. 97-205. This 1982 Voting Rights Act amendment expanded protection of minority voters by extending the Section 5 preclearance requirements to Alabama and other states covered by Section 4, restating the prohibition against voting discrimination to include clearly as a violation conduct that has the effect of discriminating, and making clear that a violation could be based on the "totality of circumstances."

187. No evidence or argument has been offered on this record that Congress believed Alabama had been normalized when Congress enacted this 1982 law that expanded the Voting Rights Act.

188. In 1992, the first Alabama Congressional Redistricting action was resolved favorably for the Black plaintiffs. *Wesch v. Hunt*, 785 F. Supp. 1491 (S.D.

Ala. 1992) (three judge court), *aff'd sub nom*. *Camp v. Wesch*, 504 U.S. 902 (1992), *Figures v. Hunt*, 507 U.S. 901 (1993).

189. No evidence or argument has been offered on this record that the racially polarized voting and other problems Black voters faced in 1992 did not warrant the result in *Wesch v. Hunt*.

190. Based on the Republican racial appeals to White voters, the enactment and need for the Voting Rights Act of 1982, and on the result in *Wesch v. Hunt*, the inference is that the strong racially polarized voting continued into the 1980s and into the 1990s, certainly strong enough for Voting Rights Act § 2 liability.

191. Actual election results in statewide and in Congressional elections show only two Black candidates have ever won Alabama statewide races: First, after being appointed to the Supreme Court of Alabama, Justice Oscar Adams in 1982 and 1988 won and, second, after being appointed to the Supreme Court of Alabama, Justice Ralph Cook won in 1994 and lost in 2000. Trial Tr., Vol. VII, at 1668:16 – 1670:10; 1732:2 – 1737:6; Trial Tr., Vol. VIII, at 1834:1-4.

192. Alabama's state-wide elected offices include Governor, Lieutenant Governor, Attorney General, Secretary of State, Auditor, Treasurer, Commissioner of Agriculture and Industries, and three Public Service Commissioners (ten positions) elected every four years; nine Supreme Court Justices and ten intermediate appellate court judges (19 positions) elected every six years.

https://www.sos.alabama.gov/sites/default/files/voter-pdfs/election-calendar/Alabama%20Election%20Chart%202016-2030.pdf. The total statewide general elections for the 1980s and 1990s could be 107 (10 x 5 = 50; 19 x 3 = 57). Only three Black wins out of over 100 general elections in the 1980s and 1990s contradicts Dr. Carrington's normalized by the 1980s theme.

193. These undisputed election results show that, out of dozens of state-wide general elections, only in three elections did a Black candidate win in the 1980s and 1990s.

194. Moreover, like before the 1980s, since 1994, no Black candidate has won an Alabama statewide general election. In addition, no Black candidate, except for in the Seventh District following *Wesch v. Hunt* and the Second and Seventh Districts in 2024, has won a Congressional election.

195. Based on the results from Alabama's statewide and Congressional elections, to the extent Alabama voting might have "normalized" by the 1980s, the 2020s have reverted to the 1970s, showing that Dr. Carrington's normalized theme is not correct and certainly does not apply to the 2020s.

196. Dr. Carrington knows what DEI programs are; he understands that D stands for diversity, E stands for equity, and I stands for Inclusion. He answered "yes" when asked, "diversity means recruiting minority black students to your university, for example, right?" Trial Tr., Vol. VII, at 1631:3 – 1632:7.

197. Dr. Carrington is a professor at Ashland University, and Ashland University has a DEI program. Ashland University calls its DEI program the Center of "CommUNITY & Belonging Program." Dr. Carrington answered "yes, I believe so," when asked "[a]nd the main part of [its DEI program] is the black student alliance, right?" *Id*. at 1633:5-16.

198. Dr. Carrington knew that "within the last couple of years, the Alabama legislature has passed a law banning DEI programs at all Alabama universities" and, in 2025, an Alabama Republican "legislative priority is to further eliminate DEI." *Id*. at 1633:17 – 1634:9; *cf*. Trial Tr., Vol. I, at 246:9 (Mr. Clopton testifying that the University of Alabama closed the Black Student Union after the Alabama legislature "outlawed" DEI in 2024).

199. Dr. Carrington answered "yes," when asked "the opposite of diversity would have a homogenous, race-based student body?" Trial Tr., Vol. VII, at 1634:25 – 1635:3.

200. Dr. Carrington was asked: "And being against recruiting black students and retaining black students – being against a program that does that is a racial appeal, correct?" and answered, "I would argue if that – if that was the goal of what they were trying to do, that's the case." *Id*. at 1638:5-12.

201. Dr. Carrington next avoided admitting that promoting banning DEI programs was a subtle racial appeal by his answers focusing on individuals

implementing DEI programs and not the individuals talking about banning DEI programs. *Id*. at 1639:5-9.

202. Dr. Carrington's credibility was undermined by his answers about MX173; he is either culturally clueless or avoided answering truthfully when asked about MX173. MX173 is the political flyer with, on the red Republican half of the flyer, a white hand in an OK gesture that has become associated with White Supremacy and, on the blue Democratic half of the flyer, a dark almost black hand as a fist gesture that has become associated with Black protest including the 1968 Olympics. *Id*. at 1648:15 – 1652:1. His responses about this flyer weigh heavily against the credibility of his testimony.

203. Dr. Carrington's opinions as to White segregationist-favoring voters switching from the Democratic Party to the Republican Party up through the 1980s is correct. Otherwise, his opinions are not credible or persuasive.

F. Defendants' Expert Dr. H.M. Hood III

204. The scholarly writings of Defendants' expert Dr. H.M. Hood III further firmly tie the history discussed by Dr. Riser, Dr. Frederickson, and Dr. Bagley to Alabama today.

205. As Dr. Hood wrote in his 2012 book *The Rational Southerner*, (1) "the growth of southern Republicanism was primarily driven by racial dynamics, not class, demographic factors, or religion," (2) "the partisan and political

transformation of the South over the past half-century has, most centrally, revolved around the issue of race," (3) "Southern politics in the early 21st Century still revolves around the issue of race, (4) "race has left an indelible imprint on the [South], and it would certainly be a mistake to ignore the potential future role of racial dynamics in southern politics," and (5) "just as the southern novelist, William Falkner wrote, the past is never dead; it's not even past." Trial Tr., Vol. VIII, at 1929:15 – 1931:21.

206. Dr. Hood also wrote, in "Switching Sides but Still Fighting the Civil War in Southern Politics," his 2022 published article, as follows:

> . . . it is true that the modern southern Republican Party stands for a host of things beyond being more racially conservative than its Democratic opponent. But it is also undeniable that the successful GOP strategy of attracting southern whites by capturing the conservative position on African-American Civil Rights has ultimately led to the reality that the Republican Party has now become the defender of the very flag that white southerners once raised against the party of Lincoln on bloody battlefields and later in violent skirmishes over black equality.
>
> In addition, modern-day GOP adherents are also much more supportive of honoring the Confederate fallen, as we have shown with public opinion data on Confederate monuments.
>
> Finally, contemporary southern white Republicans are also the primary apologists for an almost universally disavowed historical argument that the war between the states was mainly about states' rights, as opposed to slavery.
>
> This development has come to fruition, despite the fact that our data clearly show that *white southerners very much value the south's history*

> and a large majority still think the Civil War remains relevant to American politics.
>
> Thus, the weight of the evidence shows that, in still fighting the Civil War, white southerners have rewritten history at least with respect to switching partisan sides in their defense of the lost cause.

Id. at 1936:11-20 & 1939:20 – 1940:25 (emphasis added).

207. Dr. Hood's testimony seems inconsistent with his scholarly writings. To the extent they are inconsistent, his writings are credible and his testimony is not.

G. Defendants' expert Dr. Wilfred Reilly

208. Dr. Reilly has never researched or written anything about the history or culture of Black Alabamians. *Id.* at 2323:7-9.

209. Dr. Reilly has not as an adult been to Mobile and has never worked in the Black Belt. Trial Tr., Vol. X, at 2348:11-18.

210. Dr. Reilly did not look at whether people from the Black Belt come to Mobile County for things like healthcare; yet, he admitted that medical care might be a substantial interest that one area might share with another. *Id.* at 2346:5-17.

211. Dr. Reilly would not agree that the 1965 "Bloody Sunday" and the Selma demonstrations led to the enactment of the 1965 Voting Rights Act. *Id.* at 2323:25 – 2324:8.

212. Dr. Reilly agreed that the Montgomery bus boycott, George Wallace and Bull Connor operating in Alabama, the 1963 Birmingham civil rights

demonstrations, and Bloody Sunday and the Edmund Pettus Bridge crossing were unique experiences in the Black American experience. *Id.* at 2323:10 – 2324:10.

213. Dr. Reilly did not agree that "no other state has a similar or more sordid history of black voter exclusion than Alabama," instead answering "Maybe Mississippi." *Id*.

214. Dr. Reilly's testimony that he "does not recall" whether he has read the court opinions in these cases is unworthy of belief. *Id*. at 2319:10 – 2320:9.

215. Dr. Reilly testified that his focus, as a statistician, is statistics and he bases his opinions primarily on statistics. *Id.* at 2320:14 – 2321:2.

216. While Dr. Reilly testified that his report, DX 8, is based on statistics, his report has only data with percentages and ratios. He does not offer other statistics that might show correlations and does not attempt to control statistically for various factors, such as poverty, to illuminate crime, education or other racial gaps. DX 8.

217. As the examples below show, Dr. Reilly's report has numerous obvious data anomalies that make his data unreliable.

218. In Figure One, Dr. Reilly has "Residence of Mobile County Workers." As expected, the county reported to have the most workers commuting to Mobile County is Baldwin County. The county reported to have the second most workers commuting to Mobile County is Jackson County, Alabama, on the Tennessee border

and an about six-hour drive without I-65 traffic.[5] The county reported to have the fourth most workers commuting to Mobile County is Jefferson County, an about four-hour drive without I-65 traffic. The county with the eighth most workers commuting to Mobile County is Montgomery County, an about two-and-a-half-hour drive. DX 8 at 6. Dr. Reilly's data in Figure One is not reliable.

219. In Figure Two, Dr. Reilly has "Work Destinations of Mobile County Residents." The county reported to have the second most workers commuting from Mobile County is Jefferson County, an about four-hour drive without I-65 traffic. The county reported to have the third most workers commuting from Mobile County is Montgomery County. The County reported to have the fourth most workers commuting from Mobile County is Shelby County, an about three-and-a-half-hour drive without I-65 traffic. DX 8 at 8. Dr. Reilly's data in Figure Two is not reliable.

220. In Figure Three, Dr. Reilly reports "Mobile/Baldwin County CSA Counties vs. Black Belt Counties, Various Metrics." Dr. Reilly used homicide rates as a proxy for crime rates. Figure Three has 9 homicides for Mobile County and 37 homicides for the City of Mobile. Should the number for Mobile County be 37 + 9 = 46? Dr. Reilly recognizes in a footnote that zero homicides for Montgomery County "is almost certainly due to non-reporting or mistake, to be fair." But what

[5] At trial, Dr. Reilly said he "believed [he] made a minor typo here. In fact, that's Jackson County, Mississippi, that's not even in Alabama." Trial Tr., Vol. X, at 2166:9-12.

about the other 17 out of 26 counties in Figure Two that also reflect zero homicides. Dr. Reilly offered no explanation and apparently did no investigation into this data. DX 8 at 10. Dr. Reilly's data in Figure Three is not reliable.

221. Dr. Reilly's testimony, his lack of familiarity with Alabama or of the culture of Black Alabamians and his unreliable data make his testimony not persuasive and not helpful to the Court.

H. Other fact and expert witnesses

222. For the remaining fact and expert witnesses, the Singleton Plaintiffs refer to and incorporate the facts in the Court's orders and in the *Milligan* and *Caster* Plaintiffs' Post-Trial Proposed Findings of Fact and Conclusions of Law.

PROPOSED CONCLUSIONS OF LAW FOR *SINGLETON* PLAINTIFFS' VOTING RIGHTS ACT § 2 CLAIM

The *Singleton* Plaintiffs propose the following Conclusions of Law, often adopting the Court's earlier findings, and adopting the *Milligan* Findings of Fact and Conclusions of Law and the *Caster* Findings of Fact and Conclusions of Law.

223. In *Allen v. Milligan*, 599 U.S. at 18, the Supreme Court set out the evidentiary standards for proving a violation of §2 of the Voting Rights Act:

> To succeed in proving a § 2 violation under *Gingles*, plaintiffs must satisfy three "preconditions." *Id*., at 50. First, the "minority group must be sufficiently large and [geographically] compact to constitute a majority in a reasonably configured district." *Wisconsin Legislature v.*

> *Wisconsin Elections Comm'n*, 595 U. S. 398, 402 (2022) (*per curiam*) (citing *Gingles*, 478 U.S. at 46–51). A district will be reasonably configured, our cases explain, if it comports with traditional districting criteria, such as being contiguous and reasonably compact. See *Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 272 (2015). "Second, the minority group must be able to show that it is politically cohesive." *Gingles*, 478 U.S. at 51. And third, "the minority must be able to demonstrate that the white majority votes sufficiently as a bloc to enable it ... to defeat the minority's preferred candidate." Ibid. Finally, a plaintiff who demonstrates the three preconditions must also show, under the "totality of circumstances," that the political process is not "equally open" to minority voters. *Id*., at 45–46; *see also id*., at 36–38 (identifying several factors relevant to the totality of circumstances inquiry, including "the extent of any history of official discrimination in the state ... that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process").

I. ***Gingles* I – Numerosity and Reasonable Compactness**

224. As *Thornburg v. Gingles*, 478 U.S. 30, 36-37 (1986) requires, and as reflected in this Court's January 24, 2022 Preliminary Injunction Memorandum Opinion and Order (the "Jan. 24, 2022 Order"), this Court did a *Gingles* I analysis of the numerosity and reasonable compactness of Alabama's Black voters. *Singleton* Doc. 88 at 146-147 of 225.

225. Based on this analysis, this Court held that "the *Milligan* Plaintiffs have established that Black voters are 'sufficiently large . . . to constitute a majority' in a second majority-minority legislative district" and the *Milligan* Plaintiffs have established that Black voters as a group are sufficiently large and 'geographically compact' to constitute a majority in a second congressional district." *Id*.

226. The United States Supreme Court specifically affirmed this Court's *Gingles* I holding. *Singleton* Doc. 191 at 61-64 of 217; *see* FOF ¶¶ 101-102.

227. In summary, the *Milligan* and *Caster* Plaintiffs' *Gingles* I evidence at trial, when compared to Defendants' *Gingles* I evidence at trial, is as strong or even stronger than during the preliminary injunction proceedings, as detailed in the *Milligan* and *Caster* Plaintiffs' Post-Trial Proposed Findings of Fact and Conclusions of Law. The *Singleton* Plaintiffs incorporate and adopt those proposed Conclusions of Law.

228. Therefore, this Court again holds that the number of Black voters is sufficiently large to constitute a majority in a second majority-minority legislative district and Plaintiffs have established that Black voters as a group are sufficiently large and geographically compact to constitute a majority in a second congressional district.

II. ***Gingles* II and III and Racially Polarized Voting**

229. The Jan. 24, 2022 Order discussed *Gingles* II and III together and held "there is no serious dispute that Black voters are 'politically cohesive,' nor that the challenged districts' white majority votes 'sufficiently as a bloc to usually defeat [Black voters'] preferred candidate.'" *Singleton* Doc. 88 at 174 of 225.

230. The Supreme Court affirmed this Court's *Gingles* II and III holding. *Singleton* Doc. 191 at 54 of 217.

231. At trial, Defendants did not dispute the overwhelming evidence of racially polarized voting today in Alabama, as the *Milliga*n and *Caster* Plaintiffs' experts' opinions and Defendants' expert Dr. Hood's scholarly writings further establish.

232. In summary, the *Gingles* II and III evidence at trial of the *Singleton*, *Milligan* and *Caster* Plaintiffs, when compared to Defendants' *Gingles* II and III evidence at trial, is as strong or even stronger than during the preliminary injunction proceedings. *See* FOF ¶¶ 107-112; *Milligan* Findings of Fact and Conclusions of Law; *Caster* Findings of Fact and Conclusions of Law. The *Singleton* Plaintiffs incorporate and adopt these proposed Conclusions of Law.

233. Therefore, this Court again holds that Black voters are politically cohesive and that the white majority votes sufficiently as a bloc usually to defeat Black voters' preferred candidate.

III. Senate Factors 1, 3 and 5

234. Under *Thornburg v. Gingles*, 478 U.S. 30 (1986), for a Voting Rights Act § 2 claim, in addition to the analysis of *Gingles* I, II and III, a court also analyzes the "totality of the circumstances" using nine available Senate Factors.

235. Of the nine Senate Factors, Senate Factors 1, 3 and 5 (and arguably others) are based in history.

Senate Factor 1: "The extent of any history of official discrimination in the state … that touched the right of the members of minority group to register, to vote, or otherwise to participate in the democratic process."

Senate Factor 3: "The extent to which the state … has used … voting practices or procedures that may enhance the opportunity for discrimination against the minority group."

Senate Factor 5: "The extent to which members of the minority group in the state … bear the effects of discrimination in such areas as education, employment, and health, which hinder their ability to participate effectively in the political process."

236. In the Jan. 24, 2022 Order, as part of the preliminary injunction proceedings, this Court discussed the Senate Factor 1, 3 and 5 evidence for about six pages. *Singleton* Doc. 88 at 182-188 of 225. The *Singleton* Plaintiffs refer to and incorporate this discussion.

237. During the 2022 preliminary injunction proceedings in this Court's Jan. 24, 2022 findings, this Court held that Senate Factors 1, 3 and 5 weighed in favor of the Plaintiffs; on September 5, 2023, this Court adopted its Jan. 24, 2022 findings. *Singleton* Doc. 191. at 178-179 of 217.

238. At trial, the *Singleton*, *Milligan* and *Caster* Plaintiffs' experts Dr. Riser, Dr. Fredrickson, Dr. Bagley, Dr. Liu, Dr. Palmer, and Dr. Burch were credible and persuasive.

239. At trial, Dr. Carrington's opinions as to before the 1980s and Dr. Hood's scholarly writings were persuasive. Otherwise, Dr. Carrington, Dr. Hood and Defendants' other political and history experts were not persuasive.

240. In summary, the *Singleton*, *Milligan* and *Caster* Plaintiffs' Senate Factors 1, 3 and 5 evidence at trial, when compared to Defendants' Senate Factors 1, 3 and 5 evidence at trial, is as strong or even stronger than during the preliminary injunction proceedings. *See* FOF ¶¶ 113-222; *Milligan* Findings of Fact and Conclusions of Law; *Caster* Findings of Fact and Conclusions of Law.

IV. Senate Factors 2, 6, 7, 8 and 9

241. The other Senate Factors[6] are 2, 6, 7, 8 and 9. Of the nine Senate Factors, the Supreme Court in *Gingles*, 478 U.S. at 48 n. 15, suggests that Senate Factors 2 and 7 are the "most important."

Senate Factor 2: "[T]he extent to which voting in the elections of the state or political subdivision is racially polarized."

242. In the Jan. 24, 2022 Order, this Court had "little difficulty finding that the factor weighs heavily in favor of the *Milligan* and *Caster* plaintiffs. . . . [the]

[6] Because Alabama's congressional elections do not have a slating process, Senate Factor 4 is not relevant here.

evidence is clear, stark, and intense." *Singleton* Doc. 88 at 178-179 of 225. On September 5, 2023, this Court wrote it "adopt[s] those findings here." *Singleton* Doc. 191 at 178-179 of 217.

243. At trial, Defendants did not dispute the overwhelming evidence of racially polarized voting today in Alabama, as the *Milligan* and *Caster* Plaintiffs' experts and Defendants' expert Dr. Hood's scholarly writings establish.

244. The trial evidence is as strong or stronger for Senate Factor 2 and thus this finding is as strong or stronger than as reflected in the Jan. 24, 2022 Order.

Senate Factor 6: "Whether political campaigns have been characterized by overt or subtle racial appeals."

245. In the Jan. 24, 2022 Order, this Court found that Senate Factor 6 weighs in favor of Plaintiffs but to a lesser degree than most of the other Senate Factors. *Singleton* Doc. 88 at 188-179 of 225. This Court discussed at length three racial appeals in recent congressional elections. *Id*. at 189-192. Based on these three racial appeals, this Court found that "there is some evidence that political campaigns (more particularly, congressional campaigns) in Alabama are characterized by overt or subtle racial appeals." *Id*. at 192 of 225.

246. As reflected in the *Milligan* and *Caster* Plaintiffs' Post-Trial Proposed Findings of Fact and Conclusions of Law, the trial evidence, particularly Dr. Bagley's testimony, adds numerous examples of overt and subtle racial appeals. *See*

Trial Tr. Vol. VI, at 1293:13 – 1296:15 (some of Dr. Bagley's testimony as to racial appeals).

247. Senator Singleton testified about bills and legislation that constitute subtle racial appeals. Examples include Republican legislative leadership's support of Confederate Monuments bills, laws banning DEI (Diversity, Equity and Inclusion), immigration laws, and voter suppression and ID laws. *Id*. at 2376:18 – 2377:2.

248. As to Republicans' support of Confederate Monuments legislation, Senator Singleton testified that Republicans support such legislation and put those issues on the legislative agenda to help with White voter turnout, despite such support making Black voters and legislators angry. *Id*. at 2377:3-18.

249. Therefore, the trial evidence is as strong or stronger for Senate Factor 6 and thus this finding is as strong or stronger for Plaintiffs than the Court found in the Jan. 24, 2022 Order.

Senate Factor 7: "The extent to which members of the minority group have been elected to public office in the jurisdiction."

250. In the Jan. 24, 2022 Order, this Court had "little difficulty finding that Senate Factor 7 weighs heavily in favor of the *Milligan* and *Caster* plaintiffs." *Singleton* Doc. 88 at 180-181 of 225. This Court commented that "[t]hree jointly stipulated facts do most of the heavy lifting here." Under Fed. R. Civ. P. 65(a)(2),

the three stipulated facts are part of this trial record too. On September 5, 2023, this Court wrote it "adopt[s] those findings here." *Singleton* Doc. 191 at 178-179 of 217.

251. At trial, additional evidence was added showing that, in Alabama, a Black candidate has won a state-wide general election three times since 1980, out of hundreds of general election races, and no times since 1994. *See* FOF ¶¶ 192-195.

252. The trial evidence makes this Senate Factor 7 finding as strong as reflected in the Jan. 24, 2022 Order.

Senate Factor 8: "Whether there is a significant lack of responsiveness on the part of elected officials to the particularized needs of the members of the minority group."

253. As to Senate Factor 8, this Court did not make a finding in 2022 as to whether "there is a lack of responsiveness on the part of elected officials in Alabama to the needs of the Black community, nor whether such a lack of responsiveness (if it exists) is significant." *Singleton* Doc. 88 at 192-193 of 225.

254. In this Court's September 5, 2023 Injunction, Opinion and Order, this Court wrote that it "cannot help but find that the circumstances surrounding the enactment of the 2023 Plan reflect 'a significant lack of responsiveness on the part of the elected officials to the particularized needs' of Black voters of Alabama." *Singleton* Doc. 191 at 179-180 of 217 (quoting *Gingles*, 478 U.S. at 37)).

255. This Court wrote "we say clearly that in our analysis, we did not deprive the Legislature of the presumption of good faith. . . . We simply find that on the undisputed evidence, Factor 8, like the other factors, weighs in favor of the plaintiffs." *Singleton* Doc. 191 at 184 of 21.7

256. As reflected in Ms. Slay's testimony, *see* FOF ¶¶ 8-14, in Senator Singleton's testimony, *see* FOF ¶¶ 18-28, and in the *Milligan* and *Caster* Plaintiffs' Post-Trial Proposed Findings of Fact and Conclusions of Law, the trial evidence before this Court further shows significant lack of responsiveness on the part of the elected officials to the particularized needs of Black voters of Alabama. Therefore, this trial evidence makes this Factor 8 more strongly favor Plaintiffs.

Senate Factor 9: Whether the policy underlying the Plan is "tenuous."

257. As to Senate Factor 9, in the Jan. 24, 2022 Order, this Court made "no finding about Factor 9." *Singleton* Doc. 88 at 193 of 225.

258. A preponderance of the evidence shows SB5's Mobile-Baldwin Counties Community of Interest nonnegotiable redistricting principle was an attempt to tie this Court's hands and to checkmate this Court by forcing this Court not to provide appropriate relief to Plaintiffs. *See* FOF ¶¶ 29-100 (discussing the facts related to SB5's policy underlying the 2023 Enacted Plan).

259. In light of the evidence and arguments now available, the Court finds that SB5's Mobile-Baldwin Counties Community of Interest nonnegotiable

redistricting principle, as the policy underlying the 2023 Enacted Plan, is tenuous and this Senate Factor 9 favors Plaintiffs.

V. Proportionality and Totality of the Circumstances

260. In the Jan. 22. 2024 Order, this Court recognized "the Supreme Court has held that "whether the number of districts in which the minority group forms an effective majority is roughly proportional to its share of the population in the relevant area" is a "relevant consideration" in the totality-of-the-circumstances analysis." *Singleton* Doc. 88 at 193 of 225.

261. This Court found that "the proportionality arguments of the plaintiffs [are] part and parcel of the totality of the circumstances, and [this Court] draw[s] the limited and obvious conclusion that this consideration weighs decidedly in favor of the plaintiffs." *Id*.

262. The trial evidence does not change this Court's proportionality finding in favor of Plaintiffs.

VI. Totality of the Circumstances Conclusion

263. In the Jan. 22. 2024 Order, this Court held "that every Senate Factor [this Court was] able to make a finding about, along with proportionality, weighs in favor of the *Milligan* plaintiffs and the *Caster* plaintiffs, and that no Senate Factors or other circumstances [this Court] consider[s] at this stage weigh in favor of Defendants." *Singleton* Doc. 88 at 195 of 225.

264. As the trial evidence and arguments further show, the totality of the circumstances now weigh even more heavily in favor of Plaintiffs and against Defendants on the Voting Rights Act § 2 claim.

VII. Politics Only Not Race?

As to politics only not race issues, Defendants did not adequately plead their positions but added them to the proposed Pretrial Order, which is *Singleton* Doc. 288. The *Singleton* Plaintiffs understand Defendants have two (incorrect) politics only not race positions: (1) voter choice, not race, causes Alabama's racially polarized voting and (2) § 2 can no longer constitutionally authorize race-based districting. *See Singleton* Doc. 288 at 11-12 of 20 (the Pretrial Order with Defendants' current positions).

A. Racial appeals lead to Alabama's racially polarized voting

265. As to racially polarized voting, Defendants incorrectly contend in the Pretrial Order that the focus in *Gingles* on polarized voting is an attack on voters' political choices, "and that what appears to be bloc voting on account of race is instead the result of political and personal affiliation of different racial groups with different candidates." *Id.* at 11 of 20 (citations omitted) (cleaned up).

266. In this action, the proper focus of racially polarized voting in the *Gingles* analysis is not voter choice but the efforts of political parties, with the

support of state laws and state actors, to encourage or "drive" racially polarized voting.

267. Defendants' misdirected focus on voter choice is reflected in their affirmative defenses, Doc. 248 at 12-13, to the *Singleton* Plaintiffs' Second Amended Complaint, Doc. 229:

> 24. To the extent Section 2 requires a court to assume that polarized voting is evidence of racial bias, Section 2 is unconstitutional.
>
> 25. To the extent Section 2 requires a court to assume that a white voter's support of Republican candidates is evidence of racial bias, Section 2 is unconstitutional.

268. At trial, Defendants did not dispute the overwhelming evidence of racially polarized voting today in Alabama, as demonstrated by the credible experts (Dr. Bagley, Dr. Liu, Dr. Palmer, and Dr. Burch) called by the *Milligan* and *Caster* Plaintiffs. Instead, Defendants called experts (Dr. Carrington and Dr. Hood) who tried to argue that racially polarized voting is a function of voter choice, *i.e.*, the alleged differing ideologies and policy preferences of Black and White voters.

269. Defendants have failed to respond adequately to Plaintiffs' evidence showing it was the political parties themselves who, with the support of State lawmakers and elected officials, have been and are *driving* voter choices.

270. Political parties, with the support of State government, have driven racially polarized voting throughout Alabama history by unifying White voters and suppressing Black voters and biracial coalitions.

271. As discussed above as to Senate Factor 6, this record has numerous examples of racial appeals. *See* FOF ¶¶ 245-249.

272. As reflected in the *Milligan* Plaintiffs' Findings of Fact and Conclusions of Law and the *Caster* Plaintiffs' Findings of Fact and Conclusions of Law, in the testimony of Plaintiffs' experts Dr. Bagley and Dr. Burch, and in the scholarly writings of Defendants' expert Dr. Hood, race is still the predominant consideration for polarized voting in the 2020s.

273. Accordingly, Defendants are trying to deny Black voters two congressional opportunity districts "on account of race," not on account of individual voters' party affiliations.

274. The State's support of the Republican Party's continuing policy of using racial appeals to unify the White voter majority in favor of its candidates and to oppose White voters' efforts to form effective coalitions with the party favored by Black voters denies Black voters in Alabama equal access to the political processes and would prevent them from electing representatives of their choice.

B. As to § 2 claims, the song remains the same

275. As to whether the Voting Rights Act § 2 can no longer constitutionally authorize race-based districting, this argument is new to this action, with Defendants not raising it in their answers. *See* Pretrial Order, *Singleton* Doc. 288 at 11 of 20 n. 1 ("Plaintiffs contend that this argument is new . . . .").

276. In the proposed Pretrial Order, Defendants added the following: "Defendants contend that they adequately preserved the defense and that the way these cases have been litigated and the evidence disclosed show there is no prejudicial surprise." *Id*. Then, Defendants cite a half dozen affirmative defenses, none directly raising this issue. *Id*. Defendants did not move to amend their answers.

277. In *Allen v. Milligan*, 599 U.S. at 45, Justice Kavanaugh, in his concurring opinion, wrote "even if Congress in 1982 could constitutionally authorize race-based redistricting under § 2 for some period of time, the authority to conduct race-based redistricting cannot extend indefinitely into the future. But Alabama did not raise that temporal argument in this Court, and I therefore would not consider it at this time."

278. The "temporal argument" raised by Justice Kavanaugh is answered by the testimony of Plaintiffs' expert Dr. Bagley, *see FOF* ¶¶ 65, 162, 167, 170, 182, & 246, Defendants' expert Dr. Hood's writings, *see FOF* ¶¶ 204-207, and the Alabama Legislature's adopting SB5. *See* FOF ¶¶ 29-100.

279. At trial, Dr. Hood's scholarly writings are persuasive, as well as Dr. Carrington's testimony as to before the 1980s. Otherwise, Dr. Carrington, Dr. Hood and Defendants' other political and history experts are not persuasive.

280. At trial, the *Singleton*, *Milligan* and *Caster* Plaintiffs' experts Dr. Riser, Dr. Fredrickson, Dr. Bagley Dr. Liu, Dr. Palmer, and Dr. Burch are credible and persuasive.

281. Based primarily on (1) these experts' opinions, (2) the results from Alabama's statewide and Congressional elections, (3) the Alabama Legislature's passing SB5, and (4) and other witnesses' testimony, Alabama in the 2020s has reverted to the 1970s.

282. In Alabama, the song remains the same; it might be decades before the Voting Rights Act is no longer needed to protect minority voters. In the meantime, this Court is bound by the legal principles set out in *Allen v. Milligan*, 599 U.S. 1, 18 (2023), governing claims under § 2 of the Voting Rights Act.

PROPOSED CONCLUSIONS OF LAW FOR *SINGLETON* PLAINTIFFS' CONSTITUTIONAL INTENTIONAL DISCRIMINATION CLAIM

The *Singleton* Plaintiffs' Count II, Intentional Racial Discrimination and Racial Classification: Equal Protection Clause of the Fourteenth Amendment and Fifteenth Amendment of the U.S. Constitution, is the strongest Plaintiffs' claim in this action. Whether this Court reaches this claim, though, depends on several contingencies, as discussed at trial, Trial Tr., Vol. XI, at 2599:5 – 2603:12.

283. Defendants violated the Fourteenth Amendment by enacting the 2021 and 2023 legislative plans for Alabama's congressional districts. Both the 2021

Enacted Plan and the 2023 Enacted Plan would have intentionally discriminated against Alabama's Black voters.

284. In *Village of Arlington Heights v. Metropolitan Housing Development Corporation*, 429 U.S. 252, 266–68 (1977), the Supreme Court identified four factors to provide guidance to identify discriminatory intent.

285. For these four factors, direct evidence is not required; a violation can be based on circumstantial evidence. *See id*. ("Determining whether invidious discriminatory purpose was a motivating factor demands a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.").

286. In *Arlington Heights*, the following four factors are identified: (1) "the racial impact of the official action," (2) the "historical background of the decision," (3) the "specific sequence of events leading up to the challenged decision," and (4) "procedural or substantive 'departures from the normal' sequence, and 'legislative or administrative history.'" *Stout v. Jefferson County Bd. of Educ.*, 882 F. 3d 988, 1006 (11th Cir. 2018) (quoting *Arlington Heights*, 429 U.S. at 266-68).

287. At this time, the primary decision at issue is the Alabama Legislature's enactment of SB5 with its 2023 Enacted Plan rather than the many other available alternatives.

288. As to the racial impact of SB5, Defendants concede that it would have taken away Black voters' access to a second opportunity district, as the Court had told the legislature the Voting Rights Act required.

289. As to historical background for SB5, Alabama's history of racial discrimination is overwhelming. *See* FOF ¶¶ 119-222; *see, e.g.*, *Dillard v. Crenshaw County*, 640 F. Supp. 1347, 1357 (M.D. Ala. 1986) ("any remaining doubt that the [at-large election] systems were racially inspired is dispelled by further evidence that the systems were created in the midst of the state's unrelenting historical agenda, spanning from the late 1800's to the 1980's, to keep its black citizens economically, socially, and politically downtrodden, from the cradle to the grave.") (citing *Arlington Heights*, 429 U.S. at 267)).

290. As to the sequence of events leading up to SB5, after the legislature asked for the opportunity to draw a compliant map, SB5 was drafted by or for the Alabama Solicitor General, was first provided to the Redistricting Committee members on the last day, was voted on by the Redistricting Committee and the legislators that same day, and was signed by the Governor that day too. *See* FOF ¶¶ 29-38.

291. As to the procedural departures from the normal sequence and legislative history, again SB5 was drafted by or for the Alabama Solicitor General, was first provided to the Redistricting Committee members on the last day, was

voted on by the redistricting Committee and the legislators that same day, and was signed by the Governor that day too. The evidence in this record does not suggest any other legislation has ever been handled in this manner. *See id.*

292. As to substantive departures, SB5 overrode the redistricting guidelines adopted and re-adopted by the Redistricting Committee, establishing for the first time certain criteria that were "non-negotiable" and identifying for the first time particular counties that were to be aggregated as "communities of interest." In previous decades the redistricting guidelines had been adopted only by the Redistricting Committee. There is no precedent for the guidelines to be inserted in enabling legislation.

293. Additional factors are also relevant, including the foreseeability of the disparate impact; the legislature's knowledge of that impact; and the availability of less discriminatory alternatives. *Jean v. Nelson*, 711 F.2d 1455, 1486 (11th Cir. 1983).

294. As to the foreseeability of the disparate impact, SB5's not complying with this Court's directive to have a second opportunity district was without dispute known (and intended). *See* FOF ¶¶ 29-100

295. As to the legislature's knowledge of that impact, without dispute, the legislature knew what this Court had directed, and at least some legislators knew and intended not to comply with the Court's request. *See id.*

296. As to the availability of less discriminatory alternatives, the alternatives included two obvious ones: The Special Master's Plan[7] (or something close to it) or the Singleton Plan (or something close to it). *See* FOF ¶¶ 78-82.

297. SB5 and the 2023 Enacted Plan represent Alabama's latest discriminatory scheme, designed with the intent to pack Black voters into one congressional district in a manner that prevents the creation of two congressional districts in which Black voters have an equal opportunity to elect candidates of their choice.

298. In light of the above factors, the direct and circumstantial evidence of the Alabama Legislature's intent shows that the 2023 Enacted Plan intentionally perpetuated the discriminatory effects of the 2021 Plan.

299. As this Court previously explained, the "State delayed remedial proceedings but ultimately did not even nurture the ambition to provide the required remedy," and this blatant defiance of the law constitutes an "extraordinary circumstance" in which Alabama "concedes [that the 2023 plan] does not provide [an additional opportunity] district." *Singleton* Doc. 191 at 8-9 of 198.

300. SB5 and the 2023 Enacted Plan were drafted with discriminatory purpose, intentionally drawing Congressional district lines intended to dilute the

[7] While the Special Master's three Plans were developed later. Plaintiffs had provided many variations close to them.

voting strength of Black Alabamians by avoiding the creation of effective opportunity districts.

301. SB5 and the 2023 Enacted Plan were drafted not to have Jefferson County whole and among the communities of interest, to attempt to require Mobile and Baldwin Counties to be together and whole, all in an attempt to tie this Court's hands and to checkmate the Court from providing Plaintiffs with the remedy the Court had decided was required. *See* FOF ¶¶ 29-100.

302. The Court has recognized that the Voting Rights Act § 2 claim is not close. From Plaintiffs' perspective, the constitutional intentional discrimination claim is even stronger than the Voting Rights Act § 2 claim.

303. The *Singleton* Plaintiffs further claim that the drafters of the 2023 Plan acted with discriminatory purpose "by intentionally drawing Congressional District lines in order to destroy otherwise effective crossover districts." *Singleton* Doc. 229 ¶ 75. The SB5 evidence detailed above makes the Alabama Legislature's intentional racial discrimination plain. *See* FOF ¶¶ 29-100.

304. Although states are not required by § 2 of the VRA to draw crossover districts, "[s]tates can—and in proper cases should—defend against alleged § 2 violations by pointing to crossover voting patterns and to effective crossover districts. Those can be evidence, for example, of diminished bloc voting under the third *Gingles* factor or of equal political opportunity under the § 2 totality-of-the-

circumstances analysis. And if there were a showing 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." *Bartlett v. Strickland*, 556 U.S. 1, 24 (2009) (citing *Reno v. Bossier Parish School Bd.*, 520 U.S. 471, 481-82 (1997)).

305. The 2023 Singleton Plan better satisfied the statutory "communities of interest" inserted in SB5, by keeping Mobile and Baldwin Counties together, by including all of the Black Belt counties except Barbour and Russell in a single district, and by keeping more of the Wiregrass counties together.

306. Nonetheless, the drafters of SB5 rejected the Singleton Plan because, as required by § 2 of the Voting Rights Act and this Court's Preliminary Injunction, they knew it would have provided two performing crossover districts. The performance analyses submitted to the Legislature made this clear. *See Singleton* Doc. 241 at 33 of 44 (Special Master's analysis showing that the "Singleton Plan performs comparably to Remedial Plan 2 . . . in the second opportunity district"); *id.* at 202-15 (exhibit with the data supporting Special Master's analysis that keeping Jefferson County whole creates two opportunity districts); *Singleton* Doc. 189 at 15-25 (detailing in proposed findings of fact Jefferson County's electoral history and potential performance as a crossover district).

307. In Defendants' motion to dismiss the *Singleton* Plaintiffs' Second Amended Complaint, Defendants admit they were aware 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." Doc. 233 at 2-3. This admission is additional direct evidence of intentional racial discrimination, because it perpetuates Alabama's policy of using political parties as instruments to dilute Black voting strength, to classify voters by race, and to suppress biracial electoral coalitions, in violation of the Fourteenth and Fifteenth Amendments.

PROPOSED CONCLUSIONS OF LAW FOR *SINGLETON* PLAINTIFFS' CONSTITUTIONAL RACIAL GERRYMANDERNG CLAIM

The *Singleton* Plaintiffs' Count I, Racial Gerrymandering: Equal Protection Clause of the Fourteenth Amendment and Article I, § 2 of the U.S. Constitution, is a strong claim in this action. Whether this Court reaches this claim, though, depends on several contingencies, as discussed at trial, Trial Tr., Vol. XI, at 2599:5 – 2603:12.

308. In evaluating racial gerrymandering claims, the Court starts with the "the presumption that the legislature acted in good faith." *Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 1 (2024). A plaintiff may overcome this presumption by showing the State "subordinated" race-neutral districting criteria to racial considerations. *Cooper v. Harris*, 581 U.S. 285, 291 (2017); *see also Miller v. Johnson*, 515 U.S. 900, 915–16 (1995) (explaining that the presumption must yield

"when the evidence shows that citizens have been assigned to legislative districts primarily based on their race").

309. Plaintiffs alleging an unconstitutional racial gerrymander must satisfy a two-part test. First, a plaintiff must show "that race was the 'predominant factor motivating the legislature's decision to place a significant number of voters within or without a particular district.'" *Alexander*, 602 U.S. at 7 (quoting *Miller*, 515 U.S. at 916; *Cooper v. Harris*, 581 U.S. at 291).

310. "If a plaintiff makes a showing of racial predominance, then the burden shifts to the State 'to prove that the map can overcome the daunting requirements of strict scrutiny;' that it has 'narrowly tailored' its use of race to further a 'compelling governmental interest.'" *McClure v. Jefferson County Comm'n*, 2025 WL 88404 *15 (N.D. Ala., Jan. 10, 2025) (quoting *Alexander*, 602 U.S. at 11). Here, Defendants argue only that Plaintiffs have not proven racial predominance in the 2023 plan; the State does not contend the map could satisfy strict scrutiny. "As a result, the Court analyzes only the first prong of this test." *McClure*, 2025 WL 88404 at *15.

311. "This showing [of racial predominance] can be made through some combination of direct and circumstantial evidence." *Alexander*, 602 U.S. at 8 (citing *Cooper v. Harris*, 581 U.S. 285, 291 (2017)).

312. "Direct evidence often comes in the form of a relevant state actor's express acknowledgment that race played a role in the drawing of district lines. Such

concessions are not uncommon because States often admit to considering race for the purpose of satisfying our precedent interpreting the Voting Rights Act of 1965. *See, e.g., Alabama Legislative Black Caucus v. Alabama*, 575 U.S. 254, 259-60 (2015). … In such instances, if the State cannot satisfy strict scrutiny, direct evidence of this sort amounts to a confession of error." *Alexander*, 602 U.S. at 8.

313. That is exactly the direct evidence received in the instant case, as counsel for Defendant Allen admitted in oral argument: "For racial gerrymandering, I would say that the law does not require us to undo the split of Jefferson County that was put into place in prior litigation to comply with the Voting Rights Act. After that, we had to keep it to comply with Section 5. After that, we contend there are nonracial reasons such as core preservation that we have kept the split into Jefferson County roughly the same." Trial Tr., Vol. XI, at 2650.

314. Alabama conceded in its 2011 Section 5 submission to DOJ that to comply with the Voting Rights Act race played a role in every congressional redistricting plan from 1992 through 2011. SX 43 at 4 ("As with the 1992 *Wesch* plan and the plan in Act No. 2002-57, the new plan has one African-American majority district, District 7, which is located in the west central part of the state."). This is direct evidence of the State's racial purpose in each of those redistricting cycles. *McClure v. Jefferson County Comm'n*, 2025 WL 88404 *18 (N.D. Ala., Jan. 10, 2025). With respect to the 2023 Enacted Pan, these DOJ submissions are

"probative circumstantial evidence of racial predominance." *Id.* (citing *Jacksonville Branch of NAACP v. City of Jacksonville*, 2022 WL 16754389 (11th Cir. Nov. 7, 2022) at *3).

315. Although the 2023 Plan splits the population of Jefferson County roughly in half between District 6 and District 7, 71% of the Black population of Jefferson County is assigned to District 7. The portion of District 7 in Jefferson County in the 2023 Plan is about 57% Black. The portion of District 6 in Jefferson County is about 27% Black. SX 28 (Defendants' Responses and Objections to *Singleton* Plaintiffs' Third Requests for Admissions) ¶¶ 96–97.

316. The only ground on which the Defendants attempt to justify keeping the 2011 plan's race-based split of Jefferson County is preserving the cores of districts. But core retention cannot change a racially gerrymandered district into one that is not gerrymandered. *North Carolina v. Covington*, 585 U.S. 969, 975-76 (2018) ("The defendants misunderstand the nature of the plaintiffs' claims. … [I]t is the *segregation* of the plaintiffs--not the legislature's line-drawing as such--that gives rise to their claims. … [T]hey argued in the District Court 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, and the District Court properly retained jurisdiction.").

317. When the starting point for redistricting is a map admittedly drawn for a predominantly racial purpose, preserving district cores and protecting incumbent interests is evidence that the line-drawers intended to separate voters by race. *Jacksonville Branch of the NAACP v. Jacksonville*, 635 F. Supp. 3d 1229, 1286 (M.D. Fla. 2022) ("Moreover, as other courts have recognized, by invoking core retention and incumbency protection as the predominant motive behind the shape of the Challenged Districts, the City makes the historical foundation for these districts particularly relevant."); *Jacksonville Branch of the NAACP v. City of Jacksonville*, 2022 WL 16754389, at *3 (11th Cir. Nov. 7, 2022) (an intent "to maintain the race-based lines created in the previous redistricting cycle" is "not a legitimate objective"); *GRACE, Inc. v. City of Miami*, 2023 WL 4942064, at *4 (S.D. Fla., Aug. 3, 2023) ("The Court's analysis of core retention was therefore appropriately limited to an evaluation of whether the Remedial Plan perpetuated the harms of racial gerrymandering, which the Court found it did."); *GRACE, Inc. v. City of Miami*, 2023 WL 4853635, at *2-3 (S.D. Fla., July 30, 2023) (finding of racial gerrymandering was buttressed where the city's "intent was, as expressed, to preserve previously-drawn race-based lines of the Commission Districts in the 2022 redistricting process") (citation omitted); *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*, 585 U.S. 969 (2018); *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.”); *Vera v. Richards*, 861 F. Supp. 1304, 1336 (S.D. Tex. 1994), *aff'd sub nom. Bush v. Vera*, 517 U.S. 952 (1996) (“Incumbent protection is a valid state interest only to the extent that it is not a pretext for unconstitutional racial gerrymandering.”); *see also Allen v. Milligan*, 599 U.S. 1, 22 (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.”).

318. If Defendants were asserting a partisan-gerrymandering defense, it would raise “special challenges” for Plaintiffs. *Alexander*, 602 U.S. at 9 (quoting *Cooper*, 581 U.S. at 308). Defendants have alleged party-not-race defenses to Plaintiffs’ Voting Rights Act and constitutional intent claims. But they have not contended that CD 7 in the enacted 2023 plan was a partisan gerrymander, only that it is justified by core retention. Even if they were to allege partisan gerrymandering at this late date, according to *Alexander*, Defendants could not overcome the direct

and circumstantial evidence that CD 7 is designed to perpetuate the race-based lines drawn since 1992 to comply with the Voting Rights Act. *Alexander*, 602 U.S. at 8. Accordingly, CD 7 in SB5 is an unconstitutional racial gerrymander.

319. The State's failure to submit CD 7 in the enacted SB5 plan to strict scrutiny is what distinguishes its racial division of Jefferson County from the Special Master's plan, which deferred to CD 7 in the 2023 enacted plan in order to remedy the VRA violation found by this Court and affirmed by the Supreme Court.

320. The Special Master determined that the division of Jefferson County along racial lines was necessary to provide two districts that were majority-Black or were close to it, and in that remedial context he drew a race-conscious CD 7 in a way in which race did not subordinate traditional redistricting principles. Thus, as a remedy for the Section 2 violation the Special Master's plan satisfied strict scrutiny. The SB5 plan intentionally avoided producing the two opportunity districts required to remedy the Section 2 violation. Consequently, it is a racial gerrymander that violates the Equal Protection Clause.

321. To remedy the racial gerrymandering violation, Supreme Court precedent requires the Legislature and this Court to attempt to draw a remedial plan according to traditional redistricting criteria without reference to race. "As we explained in *Cooper*, '[t]o have a strong basis in evidence to conclude that § 2 demands ... race-based steps, the State must carefully evaluate whether a plaintiff

could establish the *Gingles* preconditions ... in a new district created without those measures.'" *Wis. Legis. v. Wis. Elections Comm'n*, 595 U.S. 398, 404 (2022) (quoting *Cooper v. Harris*, 581 U.S. 285, 304 (2017)). "The question that our VRA precedents ask and the court failed to answer is whether a race-neutral alternative that did not add a seventh majority-black district would deny black voters equal political opportunity." *Id*. at 406.

322. In the instant actions the Defendants have contended that, beyond core retention, respecting county boundaries is the most important redistricting criterion. Any remedial plan should attempt to restore the integrity of county boundaries to correct the racial gerrymandering this Court has found.

323. Any remedial plan must also comply with Section 2 of the Voting Rights Act and the Constitution. *See Perry v. Perez*, 565 U.S. 388, 941 (2012); *Abrams v. Johnson*, 521 U.S. 74, 90 (1997).

CONCLUSION

The *Singleton* Plaintiffs respectfully request the Court to adopt the above Proposed Findings of Fact and Conclusions of Law and to adopt the *Milligan* and *Caster* Plaintiffs' Post-Trial Proposed Findings of Fact and Conclusions of Law.

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2025, a copy of the foregoing has been served on all counsel of record through the Court's CF/ECF system.

/s/ J.S. "Chris" Christie
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One of the Attorneys for the *Singleton* Plaintiffs